



EAST CONTRA  
COSTA COUNTY  
HABITAT  
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

# GOVERNING BOARD

## REGULAR MEETING

Wednesday, December 17, 2008  
10:30 am

City of Pittsburg City Hall  
Council Chambers, 3<sup>rd</sup> Floor  
65 Civic Center Drive, Pittsburg, CA

### AGENDA

- 1) **Introductions. Elect Chair and Vice Chair.**
- 2) **Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 3) **Consider approving the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Regular Meeting of September 24, 2008.**
- 4) **Consider update on completed and planned wetland restoration projects:**
  - a) Vasco Caves-Souza 1 HCP Pond Project;
  - b) Lentzner Springs Wetland Restoration Project; and
  - c) Souza 2 Stream and Wetland Restoration Project.
- 5) **Consider the following actions related to extending take coverage:**
  - a) Consider authorizing staff to execute a Participating Special Entity agreement with the State Route 4 Bypass Authority for the Segment 2, Phase 2 Project.
  - b) Consider update on request by PG&E for take coverage for temporary impacts associated with replacing conductors on the Contra Costa--Las Positas Transmission Line.
- 6) **Consider the following actions on Conservancy finances.**
  - a) Consider approving the 2009 Conservancy Budget.
  - b) Consider authorizing staff to execute an agreement with the East Bay Regional Park District for the provision of specific land acquisition and wetland restoration services during 2009.

(continued)

- c) Consider authorizing staff to execute contracts for on-going biological and conservation planning services with Jones and Stokes for \$220,000, and with Monk and Associates for \$20,000. Consider extending duration of existing contract with H.T. Harvey & Associates to June 30, 2009.
- d) Consider authorizing staff to execute a contract for legal services with Resources Law Group for \$90,000.

- 7) Consider approving the 2009 Conservancy Work Plan.**
- 8) Consider action on applications received for two vacant positions on the Public Advisory Committee (suburban/rural residents category).**
- 9) Consider action on proposed protocol for covering communication towers under the HCP/NCCP.**

### **Adjourn to Closed Session**

#### **10) Closed Session: Conference With Real Property Negotiators**

Property: APN 007-020-013 (Briones Valley Rd, Brentwood area)  
Agency Negotiators: John Kopchik and Abby Fateman  
Negotiating Parties: East Contra Costa County Habitat Conservancy and East Bay Regional Park District  
Under negotiation: payment terms

#### **11) Closed Session: Conference With Real Property Negotiators**

Property: APNs 005-120-007, 005-120-008, 005-130-001, 005-090-006, 005-100-005, 005-140-003, 005-150-003, 005-150-004, 005-160-001, 005-160-004 (Vasco Road area)  
Agency Negotiators: John Kopchik and Abby Fateman  
Negotiating Parties: East Contra Costa County Habitat Conservancy, California Wildlife Foundation and East Bay Regional Park District  
Under negotiation: payment terms

### **Reconvene Open Session**

#### **12) Report on any actions taken in Closed Session.**

#### **13) Adjourn.**

If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Department of Conservation and Development at 925-335-1227.

*The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 24 hours before the meeting.*

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Election of Chair and Vice Chair

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**RECOMMENDATION**

ELECT Chair and Vice Chair.

**DISCUSSION**

Clayton Mayor Gregg Manning has served as the Chair of the Governing Board since he elected to that post the Board's first meeting in May of 2007. Contra Costa County Supervisor Mary Piepho has served as the Vice Chair for the same period. Mayor Manning's term on the Clayton City Council expired earlier this month when he did not seek reelection. The Clayton City Council will be considering appointing a new representative to the Governing Board at their meeting on December 16. Given Mayor Manning's retirement, the Board should consider electing a new Chair and Vice Chair.

CONTINUED ON ATTACHMENT: \_\_\_\_\_ YES  
ACTION OF BOARD ON \_\_\_\_\_ APPROVED AS RECOMMENDED \_\_\_\_\_  
OTHER \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

\_\_\_ UNANIMOUS  
A YES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED \_\_\_\_\_  
*CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY*

BY: \_\_\_\_\_, DEPUTY

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Meeting Record for June September 24, 2008 Governing Board Meeting

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**RECOMMENDATION**

Consider approving the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Regular Meeting of September 24, 2008.

**DISCUSSION**

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT:  X  YES  
ACTION OF BOARD ON \_\_\_\_\_ APPROVED AS RECOMMENDED \_\_\_\_\_  
OTHER \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

UNANIMOUS  
AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED \_\_\_\_\_  
*CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY*

BY: \_\_\_\_\_, DEPUTY

**Draft Meeting Record**

East Contra Costa County Habitat Conservancy  
Governing Board Meeting  
September 24, 2008

**1) Introductions.**

***Governing Board members in attendance were:***

Greg Manning           City of Clayton (Chair)  
Mary Piepho            Supervisor, Contra Costa County (Vice Chair)  
Erick Stonebarger     Councilman, City of Brentwood

***Other Attendees:***

Seth Adams            Save Mount Diablo  
Chris Barton          East Bay Regional Park District  
Mark Mueller         Contra Costa Water District  
Erik Nolthenius      City of Brentwood  
David Frazier         Supervisor Federal Glover's Office  
Suzanne Gilmore     California Department of Fish and Game

***Conservancy Staff members in attendance were:***

Abby Fateman         Conservancy Staff  
John Kopchik         Conservancy Staff

**2) Public Comment.** None

**3) Consider approving the Meeting Records from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Regular Meeting of June 18, 2008 and the Special Meetings of July 30 and August 25, 2008.** Dee Munk was incorrectly listed as an attendee at the June 18 Governing Board Meeting. She has been removed from the draft meeting record attendee list. The Board approved the meeting records. (Approved 3-0)

**4) Consider update on the Vasco Caves-Souza 1 HCP Pond Project and the Lentzner Springs Wetland Restoration Project, including final versions of agreements with the East Bay Regional Park District (EBRPD).** The Board received the update on the initial phases of the two restoration project undertaken by the Conservancy. Both projects started construction in mid-September and were on schedule. Staff also summarized the final versions of the agreements with East Bay Regional Park District (EBRPD). The Board accepted the update. (Approved 3-0)

**5) Consider update on Conservancy finances. Consider amending the expenditure limit for one budget category by \$23,000.** John Kopchik provided an update on the Conservancy finances. Overall the Conservancy is well under the approved budget for 2008. Staff requested that the Board authorize amending the expenditure limit in one budget category, environmental compliance, by \$23,000. The Conservancy encountered unanticipated expenses related to environmental compliance for the Lentzner Springs Restoration, meaning the adjustment is required if work on the analysis of non-covered species is to continue. Overall the Conservancy is spending less money that was budgeted for in the approved

operating budget. The Board asked that mid year Budget status reports be provided each year. The Board accepted the update and amended the expenditure limit for environmental compliance. (Approved 3-0)

**Consider approving the following contract amendments:**

- a) **Monk and Associates: Increase expenditure limit by \$15,000, from a former limit of \$75,000 to a new limit of \$90,000.**
- b) **ICF Jones and Stokes: Increase expenditure limit by \$100,000, from a former limit of \$225,000 to a new limit of \$325,000.**
- c) **Resources Law Group: Increase expenditure limit by \$40,000, from a former limit of \$50,000 to a new limit of \$90,000.**

Board members indicated they preferred that contract adjustments not be so large. The Board approved the increases in expenditure limits in the contracts. (Approved 3-0)

- 6) **Consider adopting a position on Measure WW, EBRPD’s proposed extension of a bond measure for park acquisition and facilities.** The Board received a presentation from John Kopchik about Measure WW and its potential benefits to the Conservancy’s land acquisition and restoration goals. The Board adopted a “support” position on the Measure. (Approved 3-0)

**Adjourn to Closed Session**

**7) Closed Session: Conference With Real Property Negotiators**

Property: APN#001-011-040 (commonly known as 6100 Armstrong Road, Byron, Contra Costa County)  
Agency Negotiators: John Kopchik and Abby Fateman  
Negotiating Parties: East Contra Costa County Habitat Conservancy and East Bay Regional Park District  
Under negotiation: payment terms

**8) Closed Session: Conference With Real Property Negotiators**

Property: APNs 005-120-007, 005-120-008, 005-130-001, 005-090-006, 005-100-005, 005-140-003, 005-150-003, 005-150-004, 005-160-001, 005-160-004 (Vasco Road area)  
Agency Negotiators: John Kopchik and Abby Fateman  
Negotiating Parties: East Contra Costa County Habitat Conservancy, California Wildlife Foundation and East Bay Regional Park District  
Under negotiation: payment terms

**Reconvene Open Session**

- 9) **Report on any actions taken in Closed Session.** The Chair reported on the direction provided by the Board to staff on payment terms associated with both items 7 and 8.

- 10) **Adjourn.**

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT: Wetland Restoration Projects**

**RECOMMENDATION**

ACCEPT update on the Vasco Caves-Souza 1 HCP Pond Project and the Lentzner Springs Wetland Restoration Project. ACCEPT update the concept design for restoration activities on the Souza II parcel planned for 2009.

**DISCUSSION**

The Board approved construction of The Vasco Caves- Souza I HCP Pond and the Lentzner Springs Restoration projects at the July and August Governing Board meetings. The Board received a status update on the construction of the projects at the September Board meeting. Construction is complete on both projects and photographic, hydrologic and vegetation monitoring has begun. Planning has started for restoration activities on the Souza II parcel for 2009. Below please find a status report on all three projects.

**Lentzner Springs Wetland Restoration Project:** The Lentzner Springs project restored 0.15 acres of a seasonal alkali wetland. Final sign-off on the construction occurred on October 24<sup>th</sup> and the project was deemed complete and the work was accepted by both the Conservancy and East Bay Regional Park District (EBRPD). Following construction, the newly planted areas of the project have been watered weekly. Staff from the Conservancy, EBRPD and Jones and Stokes (the designer) visited the site on December 5<sup>th</sup> and indicated that they were satisfied with the plant survival and the results of the 6 week watering period. The team determined the watering could be suspended for the time being. While the transplanted plant plugs are exhibited new growth, germinating milk thistle are a concern and will need to be addressed soon. Feral pigs have also entered the site and caused minor damage. EBRPD has initiated feral pig controls. EBRPD and conservancy staff are discussing the approach for weed management and will implement the selected approach as soon as possible.

CONTINUED ON ATTACHMENT:  X  YES  
ACTION OF BOARD ON \_\_\_\_\_ APPROVED AS RECOMMENDED \_\_\_\_\_  
OTHER \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

UNANIMOUS  
AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED \_\_\_\_\_  
*CATHERINE KUTSURI, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY*

BY: \_\_\_\_\_, DEPUTY

**Vasco Caves Souza I – HCP Pond Creation:** The Vasco Caves Souza I project created a 1.09 acre pond with varying depths (3ft – 1ft). Final sign-off on the construction occurred on October 24<sup>th</sup> and the project was deemed complete and the work was accepted by both the Conservancy and EBRPD. Following construction, photo monitoring started. As of November 3, following the first rain of the season, the pond has continuously held water in the deepest section. Nearby ponds have had no standing water, suggesting that the clay liner is doing its job. Photo monitoring of the pond has started and hydrologic and vegetation monitoring is scheduled to start in January 2009.

**Souza II - Creek and Wetland Restoration:** The Governing Board formally approved the Conservancy's participation in the acquisition of the Souza II parcel on September 24, 2008 after previously declaring its intent to participate in March of 2008. Conservancy staff has been working with EBRPD and consultants to develop a restoration strategy for the parcel.

**Studies:** In preparation for restoration activities on the Souza II parcel Conservancy staff has worked with EBRPD, ICF Jones and Stokes, H.T. Harvey and Associates and the San Francisco Estuary Project (SFEP) to develop a concept design for restoration activities in 2009. The team of experts provided substantive advice of the potential restoration and highlighted the many challenges associated with restoring the most deeply incised sections of the stream channel. SFEP provided a historical ecological analysis of the site, providing substantial evidence that prior to at least 1938, the creek on the property was not a straight, incised channel. Rather it seems to have been more of a flood plain system (no clear channel can be seen in the 1938 aerial and older maps of the area show the line of creek stopping upstream of the property and resuming again downstream. A number of additional studies have been commissioned, including: wetland delineation, hydrology, plant surveys, cultural resource studies, soil assessments, topographic surveys, and creek cross sections). In addition, the Conservancy contracted with the Watershed Nursery to collect native plant seeds from within the watershed to be used to in the restoration. Fall seed collection has been completed.

**Description of Concept Design and Restoration Strategy:** Based on the data, analysis and advice compiled to date, project designers with ICF Jones and Stokes have developed a preliminary design concepts (see attached). All of the proposed restoration activities are on the northern portion of the parcel in the vicinity the creek (tributary of Brushy Creek). The concept design incorporates many different wetland features including a pond, multiple seasonal wetland types, potential vernal pool habitats and creek channel and flood plain restoration. Focused on re-connecting the water in the creek to the natural flood plain, the concept design uses strategies such as laying back creek banks, adding stone weirs to the main channel to pond water and improve in-stream amphibian habitat, raising the creek bed, and gentle grading to create and restore wetland features by re-engaging them with the creek. Other components of the restoration include capturing and naturally filtering water draining off Vasco Road before it passes into other wetland features as well as retaining some water draining from the hill to the south of the creek.

These actions are anticipated to create and restore a variety of wetland features on the property. Conservative estimates of the amount of restoration that would be accomplished under this preliminary concept design are:

Restored alkali wetlands/vernal pools	4 to 5 acres
Created ponds	1/20 <sup>th</sup> of an acre
Restored swales	1/8 <sup>th</sup> of an acre
Restored stream	500 to 1000 feet
In stream ponds	Four or five

The concept design intends to present a first phase of a potentially larger project. The concept design mostly avoids improvements to the deeply incised portions of the main channel (in the central and western portions of the property) and instead focuses on the downstream reach where the stream is less incised and on other water sources.

Restoration scientists advise that an ambitious project addressing the incised channel must be studied and planned more comprehensively than is possible at this time because site constraints such as the power lines could not be moved in time and because the significant risk of the creek channel reverting to an incised channel after restoration must be carefully evaluated. The proposed project will attempt to raise the creek bed and lower the banks to restore a more natural hydrology in a downstream section where the challenges are less daunting. Experience with this reach will provide valuable information on if and how to approach the more incised section. Likewise, the in-stream weirs and resulting ponds will provide information on sediment transport and are a long shot means of slowly and cost-effectively raising the bed of the creek. Overall experience working on the site and evaluating the results of the current project is expected to yield a number of other more subtle insights that will inform planning for potential future phases.

An earlier version of the concept design was presented to the Public Advisory Committee in November. That body had several comments on the concept that have been incorporated into the latest concept, including concern with locating ponds close to Vasco Road where they might attract amphibians to a dangerous location (the pond was moved to the other side of the creek and replaced with an alkali wetland in the latest plan).

**Next Steps:** 65% designs are due in January and Draft 100% designs are due in February. The Governing Board will receive updates at future meetings and will be asked to consider approving the design and construction arrangements. Construction could begin as early as July or August.

**Initial Permitting:** A pre-application permit meeting with the U.S. Army Corps of Engineers is scheduled in early January to initiate the permitting process for this project. Representatives from other permitting agencies have been contacted and invited to participate meeting.

**Attached to this staff report:**  
Fact Sheet on Souza II property  
Historical Ecology  
Concept Design

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Agreement with State Route 4 Bypass Authority to Extend Take Coverage

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**RECOMMENDATION**

- A) AUTHORIZE staff to execute a Participating Special Entity agreement with the State Route 4 Bypass Authority for the Segment 2, Phase 2 Project.
- B) ACCEPT update on request by PG&E for take coverage for temporary impacts associated with replacing conductors on the Contra Costa--Las Positas Transmission Line.

**DISCUSSION**

**Item A:** The State Route 4 Bypass, Segment 2, Phase 2 (project) will consist of constructing a 2-lane east bound roadway from south of Lone Tree Way to south of San Jose Avenue in Brentwood, conversion of the existing road to a 2-lane west bound roadway, and completion of Phase 1 and 2 of the Sand Creek Road Interchange (See Exhibits 1 and 2). The project includes a clear span bridge crossing of Sand Creek.

The proposed project is within habitat suitable for several species covered by the HCP/NCCP and all previous phases of the project have required consultation with and a Biological Opinion from the United State Fish and Wildlife Service (USFWS). The State Route 4 Bypass Authority (Bypass Authority) has requested take authorization for this project pursuant to the HCP/NCCP from the Conservancy as a Participating Special Entity. Chapter 8.4 of the East Contra Costa County Habitat Conservation / Natural Community Conservation Plan (HCP/NCCP) provides that entities with projects not subject to the land use authority of one of the land use agencies participating in the HCP/NCCP may apply to the Conservancy for take coverage. The Bypass.

CONTINUED ON ATTACHMENT: <input checked="" type="checkbox"/> YES	
ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED _____	
OTHER _____	
<b><u>VOTE OF BOARD MEMBERS</u></b>	
<input type="checkbox"/> UNANIMOUS	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.  ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>  BY: _____, DEPUTY
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

Authority is a joint exercise of powers authority formed by east county cities and the County. It is not subject to the land use authority of any local agency. Therefore, to receive permit coverage under the HCP/NCCP, the Bypass Authority must be bound to perform all applicable avoidance, minimization and mitigation measures through an agreement with the Conservancy.

The attached agreement was adapted by Conservancy staff and the Conservancy attorney from the agreement approved by the Governing Board in June for Ameressco. The agreement describes the actions the bypass Authority must take to be covered under the HCP/NCCP permit by the Conservancy. Attached as Exhibit 1 to the agreement is the completed Application and Planning Survey Report for the project. Exhibit 1 documents the results of the planning-level surveys performed at the project site and describes the specific pre-construction surveys, avoidance measures and mitigation measures that are required for the project to be covered. The Bypass Authority Board has approved the agreement and Dale Dennis, the Program Manager, has signed the agreement.

**Key provisions of the agreement:**

- The project will be located within a 90.19 acre are of right-of-way. A total of 48.85 acres of non-urban land cover will be permanently disturbed within the project area, including 0.19 acres of riparian habitat (the only wetland impact). The remaining 41.34 acres of the right-of-way were either impacted during earlier phases or covered under the Biological Opinions for Segment 1 or Segment 2, Phase 1 (see Figures 3 and 3a).
- Coverage under the HCP/NCCP will require a development fee of \$880,435 and a wetland impact fee of \$11,774.11 for riparian impacts for a total of \$892,209.59 in HCP/NCCP mitigation fees (Exhibit 1 to the Planning Survey). If payment is not made before December 31, these fees are subject to automatic adjustment provisions of the HCP/NCCP. Given the strong drop in home prices and use of a home price index as one of the indices factored into the HCP/NCCP fee adjustment protocols (the other is a consumer price index, which is expected to be unchanged or slightly up), staff expects the HCP/NCCP Development Fees will go down in March (perhaps by 10 to 20%). Wetland Mitigation Fees will not change by much. Bypass Authority staff have been informed of this prediction and intend to submit payment the first week of January. If fees do go down when re-calculated on March 15, and if the project construction has not commenced by that time, a refund of the over-charged amount will be required (the opposite would have been true if the fees were going up).
- The agreement provides that the Bypass Authority will reimburse the Conservancy for staff and consultant costs associated with processing the Bypass Authority's request for take coverage, up to a maximum reimbursement of \$10,000. Staff estimates that these costs will be well under \$10,000.
- The agreement does not require a contribution to recovery from the Bypass Authority. The HCP/NCCP provides that the Conservancy may, at its discretion, require Participating Special Entities to pay an amount over and above required fees in order to contribute to recovery of covered species. Staff does not recommend requiring such a contribution in this instance. The intent of such contributions is to ensure that local agencies implementing the HCP/NCCP do not subsidize Participating Special Entities' coverage under the HCP/NCCP by absorbing plan preparation costs or the expense of the HCP/NCCP's contribution to recovery component without reimbursement.

However, the Bypass Authority was formed by virtually the same agencies as the Conservancy and serves virtually the same constituency. Therefore, staff does not believe such a contribution is warranted in this circumstance.

**California Environmental Quality Act (CEQA):** The CEQA document for the project is the 1994 State Route 4 Bypass EIR, and a 2007 addendum to the EIR covering the final geometrics of the Sand Creek Interchange. No additional CEQA review is required of the Conservancy.

**Next steps:** If the Conservancy Board authorizes staff to sign the Agreement, key next steps in granting take coverage would be as follows:

- Wildlife agencies review the agreement and are asked to concur with the Conservancy's determination that the agreement imposes all applicable conditions of the HCP/NCCP on the project. Participating Special Entity agreements, unlike the granting of take by cities and the County, require wildlife agency concurrence.
- The Bypass Authority pays all required fees.
- Conservancy issues the Bypass Authority a Certificate of Inclusion notifying the Bypass Authority that its take coverage is in effect subject to the terms of the agreement.
- The Bypass Authority conducts preconstruction surveys and avoidance measures and constructs the project.

**Item B:** PG&E has requested take coverage from the Conservancy for temporary impacts associated with replacing conductors on the Contra Costa--Las Positas Transmission Line. The project is urgently needed to accommodate additional power generation at the Contra Costa Power Plant in Antioch which is coming on line much sooner than anticipated. PG&E needs to commence the transmission line replacement by March to have the proper transmission in place by the time the power plant comes on line. Conservancy staff are working to prepare a Mitigated Negative Declaration for the project that they expect to release for public comment later in December (the California Public Utilities Commission regulates utility projects but does not need to issue any permits for this project that are subject to CEQA). A special Conservancy Board meeting is requested during the last week of January to consider take coverage for this project.

**Attachments:**

- Agreement with the Bypass Authority

**AGREEMENT IMPLEMENTING THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY  
CONSERVATION PLAN AND GRANTING TAKE AUTHORIZATION**

**BETWEEN**

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, Implementing  
Entity, and STATE ROUTE 4 BYPASS AUTHORITY, a Joint Powers Agency and  
Participating Special Entity**

**1.0 PARTIES**

This Agreement is made and entered into by the East Contra Costa County Habitat Conservancy (“Conservancy”) and **STATE ROUTE 4 BYPASS AUTHORITY** (“Participating Special Entity” or “PSE”) as of the Effective Date.

**2.0 RECITALS**

The Parties have entered into this Agreement in consideration of the following facts:

- 2.1** The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP,” or “Plan”) is intended to provide a comprehensive framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for certain projects that would cause impacts on endangered and threatened species. The primary policy priority of the Plan is to provide comprehensive species, wetlands, and ecosystem conservation and contribute to recovery of endangered and threatened species within East Contra Costa County while balancing open space, habitat, agriculture, and urban development. To that end, the Plan describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on Covered Species and their habitats while allowing for certain development and other activities in selected regions of the County and the Cities of Pittsburg, Clayton, Oakley, and Brentwood.
- 2.2** The Conservancy is a joint powers authority formed by its members, the County of Contra Costa (“County”), the City of Pittsburg (“Pittsburg”), the City of Clayton (“Clayton”), the City of Oakley (“Oakley”) and the City of Brentwood (“Brentwood”), to implement the HCP/NCCP.
- 2.3** The HCP/NCCP covers approximately one-third of the County, or 174,082 acres, all in East Contra Costa County, in which impacts from certain development and other activities are evaluated, and in which conservation will occur.
- 2.4** The area covered by the HCP/NCCP has been determined to provide, or potentially provide, habitat for twenty-eight (28) species that are listed as endangered or threatened, that could in the future be listed as endangered

or threatened, or that have some other special status under federal or state laws.

- 2.5 The Conservancy has received authorization from the United States Fish and Wildlife Service (“USFWS”) under incidental take permit TE 160958-0, and the California Department of Fish and Game (“CDFG”), under incidental take permit 2835-2007-01-03, for the Takeof the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6 The Conservancy may enter into agreements with participating special entities to allow certain activities of the participating special entities to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the HCP/NCCP and the Permits.
- 2.7 PSE is responsible for constructing the State Route 4 Bypass project and seeks extension of the Conservancy’s permit coverage for development of Phase 2 of Segment 2 of the State Route 4 Bypass Project, which consists primarily of the addition of two lanes from the Lone Tree Avenue to 2360 feet south of San Jose Avenue (“Project”).
- 2.8 The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 and is hereby incorporated into this Agreement by reference

### 3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in FESA, CESA or NCCPA or the regulations adopted by USFWS and DFG under those statutes shall have the same meaning when used in this Agreement. Definitions used in this Agreement may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

- 3.1 **“Agreement”** means this Agreement, which incorporates the IA, the HCP/NCCP, the Permits, and the Application by reference.
- 3.2 **“Application”** means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, and which is attached hereto as Exhibit 1. The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.
- 3.3 **“Authorized Take”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Conservancy pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFG in the State Permit issued

to the Conservancy pursuant to California Fish and Game Code section 2835.

- 3.4 **“CDFG”** means the California Department of Fish and Game, a department of the California Resources Agency.
- 3.5 **“CESA”** means the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.6 **“Changed Circumstances”** means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of the IA and Chapter 10.2.1 of the HCP/NCCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.7 **“Covered Activities”** means those land uses and conservation and other activities described in Chapter 2.3 of the HCP/NCCP to be carried out by the Conservancy or its agents that may result in Authorized Take of Covered Species during the term of the HCP/NCCP, and that are otherwise lawful.
- 3.8 **“Covered Species”** means the species, listed and non-listed, whose conservation and management are provided for by the HCP/NCCP and for which limited Take is authorized by the Wildlife Agencies pursuant to the Permits. The Take of Fully Protected Species is not allowed. The Take of extremely rare plants that are Covered Species is allowed only as described in Section 6.3 and the IA.
- 3.9 **“Effective Date”** means the date when this Agreement is fully executed.
- 3.10 **“Federal Listed Species”** means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.11 **“Federal Permit”** means the federal incidental Take permit issued by USFWS to the Conservancy and other local agencies pursuant to Section 10(a)(1)(B) of FESA (permit number TE 160958-0), as it may be amended from time to time.
- 3.12 **“FESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.13 **“Fully Protected Species”** means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.14 **“HCP/NCCP” or “Plan”** means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.
- 3.15 **“Implementing Agreement” or “IA”** means that document attached as Appendix B to the HCP/PCCP.

- 3.16 “Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFG under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- 3.17 “Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.18 “Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.19 “Party” or “Parties”** means any or all of the signatories to this Agreement.
- 3.20 “Permit Area”** means the area within the Plan Area where the Conservancy has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.21 “Permits”** means the Federal Permit and the State Permit.
- 3.22 “Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.23 “Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.
- 3.24 “Proposed Activities”** means the activities described in Exhibit 1 that will be covered by the extension of the Conservancy’s take authorization.
- 3.25 “State Permit”** means the state Take permit issued to the Conservancy and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2007-01-03), as it may be amended from time to time.
- 3.26 “Take”** has the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.27 “Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. **“Unforeseen Circumstances”** under the

State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.

**3.28** “**USFWS**” means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.

**3.29** “**Wildlife Agencies**” means USFWS and CDFG.

#### **4.0 PURPOSES**

This Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Proposed Activities, and to provide for the conservation of the Covered Species within the Plan Area. The purposes of this Agreement are to ensure implementation of each of the terms and conditions of this Agreement, and the relevant terms of the IA, the HCP/NCCP, and the Permits, and to describe remedies and recourse should either Party fail to perform its obligations as set forth in this Agreement.

#### **5.0 AVOIDANCE, MINIMIZATION AND MITIGATION OF IMPACTS**

##### **5.1 General Framework**

As required by FESA and NCCPA, the HCP/NCCP includes measures to avoid and minimize take of Covered Species and to conserve natural communities and Covered Species at the landscape-, habitat- and species-level. Chapter 6 of the HCP/NCCP provides further instructions to determine which avoidance and minimization measures are applicable to particular Covered Activities. PSE shall implement all applicable avoidance and minimization measures as required by the HCP/NCCP, including but not limited to those identified in Chapter 6, as described in the Application and this Agreement.

##### **5.2 Surveys and Avoidance Measures**

Planning surveys are required prior to carrying out any Covered Activity for which a fee is collected or land in lieu of a fee is provided. PSE has submitted a planning survey report for approval by the Conservancy in accordance with Chapter 6.2.1 of the HCP/NCCP. This planning survey report is contained within the Application, which describes the results of the planning survey and describes in detail the pre-construction surveys, construction monitoring, avoidance measures and mitigation measures that apply to the Proposed Activities and shall be performed by PSE. Based on the Application, the Conservancy has determined that PSE will implement and comply with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.2.2 and 6.2.3 of the HCP/NCCP.

### **5.3 No Take of Extremely Rare Plants or Fully Protected Species**

Nothing in this Agreement, the HCP/NCCP or the Permits shall be construed to allow the Take of extremely rare plant species listed in Table 6-5 of the HCP/NCCP (“No-Take Plant Population”) or any Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515. PSE shall avoid Take of these species.

#### **5.3.1 Golden Eagle**

The Permits do not authorize Take of the golden eagle and PSE shall avoid Take of any golden eagle. The avoidance measures set forth in the HCP/PCCP, including but not limited to Conservation Measure 1.11, should be adequate to prevent Take of golden eagles, but the Conservancy shall notify PSE in writing of any additional or different conservation measures that are designed to avoid Take of these species and that apply to PSE. PSE shall implement all such avoidance measures to avoid Take of golden eagles.

### **5.4 Delineation of Jurisdictional Wetlands and Waters**

Jurisdictional Wetlands or Waters are present on the site of the Proposed Activities, and PSE has provided to the Conservancy a jurisdictional delineation in accordance with Chapter 6.3.1 of the HCP/NCCP. PSE shall pay the Wetland Mitigation Fee based on the delineation, as specified in the Application.

### **5.5 Fees and Dedications**

As set forth in the Application, PSE agrees to pay the Conservancy \$\$892,209.59, which amount includes all HCP/NCCP mitigation fees necessary for the Proposed Activities. The overall payment amount is based on a summation of individual HCP/NCCP mitigation fees as follows:

Development fees: \$\$880,435.48  
 Wetland mitigation fees: \$\$11,774.11  
 Temporary impact fees: \$0

All fees and must be paid in full before any ground-disturbance associated with the Proposed Activities occurs. If any fee is not paid in full during the current calendar year (2008), the amount of all fees will be increased or decreased each following year, beginning in 2009, until such time as all fees are paid in full. All fees will be increased or decreased according to the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. Fee amounts will be adjusted annually on March 15, beginning in 2009. If PSE pays all fees during the period from January 1 to March 14, all fee amounts will be subject to the March 15 fee adjustments unless construction of the Proposed Activities has commenced by March 14. If payment is made during this period and construction does not commence before March 15, PSE will be required to submit an additional

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payment for any increases to fees and will be entitled to a refund without interest for any decreases to fees.

## **6.0 TAKE AUTHORIZATION**

### **6.1 Extension of Take Authorization to PSE**

As provided in Chapter 8.4 of the HCP/NCCP, after execution of this Agreement, payment of fees or dedication of land as set forth in Section 5.6, and receipt of the Wildlife Agencies' written concurrence that the Proposed Activity complies with the HCP/NCCP, the Permits and the IA, the Conservancy shall issue a Certificate of Inclusion to PSE that specifically describes the Authorized Take and required conservation measures and extends Take authorization under the Permits to PSE. PSE is ultimately responsible for compliance with all applicable terms and conditions of this Agreement, the IA, the HCP/NCCP and the Permits.

### **6.2 Duration of Take Authorization**

Once the Take authorization has been extended to the Proposed Activities, it shall remain in effect for a period of 15 years, unless and until the Permits are revoked by USFWS or CDFG, in which case the Take authorization may also be suspended or terminated.

## **7.0 RIGHTS AND OBLIGATIONS OF PSE**

### **7.1 Rights**

Upon the Conservancy's issuance of a Certificate of Inclusion to PA, PSE may Take the Covered Species while carrying out the Proposed Activities in the Permit Area, as further authorized by and subject to the conditions of this Agreement, the IA, the HCP/NCCP, and the Permits. The authority issued to PSE applies to all of the elected officials, officers, directors, employees, agents, subsidiaries, contractors, and subcontractors, and their officers, directors, employees and agents who engage in any Proposed Activity on behalf of the PSE. PSE shall periodically conduct an educational program to fully inform all such persons and entities of the terms and conditions of the Permits, and PSE shall be responsible for supervising their compliance with those terms and conditions. All contracts between PSE and such consultants and contractors associated with Project shall require their compliance with the Permits.

### **7.2 General Obligations**

The PSE will fully and faithfully perform all obligations assigned to it under this Agreement, the IA, the HCP/NCCP, the Permits, including but not limited to the obligations assigned in the following chapters of the HCP/NCCP: Chapter 6.0 (Conditions on Covered Activities), Chapter 8.4 (Participating Special Entities), and Chapter 9.0 (Funding). PSE shall ensure that all mitigation, conservation, monitoring, reporting and adaptive management measures required of it are adequately funded

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throughout the term of this Agreement, and that monitoring, reporting and adaptive management measures are adequately funded in perpetuity as further described in the Application. PSE will promptly notify the Conservancy of any material change in its financial ability to fulfill its obligations under this Agreement.

### **7.3 Obligations In The Event of Suspension or Revocation**

In the event that USFWS and/or CDFG suspend or revoke the Permits pursuant to Sections 19.0 and 21.0 of the IA, PSE will remain obligated to fulfill its mitigation, enforcement, management, and monitoring obligations, and its other HCP/NCCP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all Proposed Activities implemented prior to the suspension or revocation.

### **7.4 Interim Obligations upon a Finding of Unforeseen Circumstances**

If the Wildlife Agencies make a finding of Unforeseen Circumstances with regard to a Federal Listed Covered Species, during the period necessary to determine the nature and location of additional or modified mitigation, PSE will avoid contributing to an appreciable reduction in the likelihood of the survival and recovery of the affected species. As described below at Section 15.2.2 and Section 15.3.2, the Wildlife Agencies shall be responsible for implementing such additional measures or modifications, unless PSE consents to do so.

### **7.5 Obligations In The Event Of Changed Circumstances**

Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Chapter 7 and Chapter 10 of the HCP/NCCP, and PSE shall implement any measures for such circumstances as called for in the HCP/NCCP, as described in Section 12.2 of this Agreement.

### **7.6 Obligation to Compensate Conservancy for Expenses Incurred**

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy's "Administrative Costs"). Conservancy's Administrative Costs shall not exceed \$10,000. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy's discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

## **8.0 REMEDIES AND ENFORCEMENT**

If PSE fails to comply with the terms of this Agreement, the IA, the HCP/NCCP, or the Permits, the Conservancy may withdraw the Certificate of Inclusion and terminate any Take authorization extended to PSE. The Conservancy shall also have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the IA, the HCP/NCCP and the Permits, and to seek redress and compensation for any breach or violation thereof. PSE shall defend, indemnify, protect, and hold harmless the Conservancy from and against any claim, loss, damage, cost, expense, or liability directly or indirectly arising out of or resulting from (i) PSE's breach of this Agreement or the inaccuracy of any representation or warranty made by PSE in this Agreement, or (ii) PSE's, performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, including without limitation claims caused by or arising out of the negligence, recklessness, or intentional misconduct of any representative, employee, or agent of PSE. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

## **9.0 FORCE MAJEURE**

In the event that a Party is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Party ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Party shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize either Party to violate FESA, CESA or NCCPA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;
- Within seven (7) days after the occurrence of the Force Majeure, the Party invoking this section shall give the Conservancy written notice describing the particulars of the occurrence;
- The Party shall use best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Party is contrary to its interest); and
- When the Party is able to resume performance of their obligations, it shall give the other Party written notice to that effect.

## **10.0 MISCELLANEOUS PROVISIONS**

### **10.1 Calendar Days**

Throughout this Agreement and the HCP/NCCP, the use of the term “day” or “days” means calendar days, unless otherwise specified.

### **10.2 Notices**

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as follows:

John Kopchik  
East Contra Costa County Habitat Conservancy  
c/o Contra Costa County Department of Conservation and Development  
651 Pine Street, North Wing, 4<sup>th</sup> Floor  
Martinez, CA 94553  
Email: jkopc@cd.cccounty.us  
Phone: 925-335-1227

Dale Dennis, Program Manager  
State Route 4 Bypass Authority  
c/o Contra Costa County Public Works Department  
225 Glacier Drive, Martinez, CA 94553  
Email: dodennis@dataclonemail.com  
Phone: 925-686-0619

Notices shall be transmitted so that they are received within the specified deadlines. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service. Notice delivered via certified mail, return receipt requested, shall be deemed received as of the date on the return receipt or five (5) days after deposit in the United States mail, whichever is sooner. Notices delivered by facsimile or other electronic means shall be deemed received on the date they are received.

### **10.3 Entire Agreement**

This Agreement, together with the IA, the HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect

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to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

#### **10.4 Amendment**

This Agreement may only be amended with the written consent of both Parties.

#### **10.5 Attorneys' Fees**

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the Conservancy shall be able to recover its attorneys' fees and costs if it prevails.

#### **10.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

#### **10.7 Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

#### **10.8 Relationship to the FESA, CESA, NCCPA and Other Authorities**

The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, NCCPA and other applicable state and federal law.

#### **10.9 No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to FESA, CESA, NCCPA or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

#### **10.10 References to Regulations**

Any reference in this Agreement, the IA, the HCP/NCCP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

**10.11 Applicable Laws**

All activities undertaken pursuant to this Agreement, the IA, the HCP/NCCP, or the Permits must be in compliance with all applicable local, state and federal laws and regulations.

**10.12 Severability**

In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.

**10.13 Due Authorization**

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

**10.14 No Assignment**

The Parties shall not assign their rights or obligations under this Agreement, the Permits, or the HCP/NCCP to any other individual or entity.

**10.15 Headings**

Headings are using in this Agreement for convenience only and do not affect or define the Agreement’s terms and conditions.

**IN WITNESS WHEREOF, THE PARTIES HERETO** have executed this Implementing Agreement to be in effect as of the date last signed below.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: \_\_\_\_\_  
John Kopchik, Executive Director

STATE ROUTE 4 BYPASS AUTHORITY

By: \_\_\_\_\_  
Dale Dennis, Program Manager



East Contra Costa County  
Habitat Conservation Plan  
Natural Community  
Conservation Plan

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

ECCC Habitat Conservancy

Template prepared by the  
ECCC Habitat Conservancy

651 Pine Street, North Wing, 4th Floor  
Martinez, CA 94533-0095  
Phone: 925/335-1290  
Fax: 925/335-1299  
[www.cocohcp.org](http://www.cocohcp.org)

## Exhibit 1

# State Route 4 Bypass Authority Application Form and Planning Survey Report to Comply with and Receive Permit Coverage under the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan

### Project Applicant Information:

Project Name: State Route 4 Bypass, Segment 2, Phase 2

Project Applicant's Company/Organization: State Route 4 Bypass Authority

Contact's Name: Dale Dennis, Program Manager, Martinez, CA 94553

Contact's Phone: 925-686-0619 Fax: 925-313-2333

Contact's Email: [dodennis@DataCloneMail.com](mailto:dodennis@DataCloneMail.com)

Mailing Address: c/o Contra Costa County Public Works Department

255 Glazier Drive

Martinez, CA 94533

### Project Description:

Lead Reviewer: John Kopchik, East Contra Costa County Habitat Conservancy

Project Location: State Route 4 Bypass, Segment 2, Lone Tree Way to South of San Jose Ave.

Project APN(s) #: N/A (ROW)

Size of Parcel(s): 48.85 acres (total area within the grading limits)

Brief Project Description: Construct 2 eastbound lanes from south of Lone Tree Way to south of San Jose Avenue including on/off ramps, a western extension of Sand Creek Road, and a clear span bridge crossing of Sand Creek.

### Biologist Information:

Biological/Environmental Firm: RCL Ecology

Lead Contact: Randall C. Long

Contact's Phone: 925-672-0563 Fax: 925-672-2559

Contact's Email: [rcliml@comcast.net](mailto:rcliml@comcast.net)

Mailing Address: Randall Long, 329 Mt. Palomar Place, Clayton, CA 94517

# East Contra Costa County HCP/NCCP Planning Survey Report for State Highway 4, Segment 2, Phase 2

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## I. Project Overview

**Project proponent:** State Route 4 Bypass Authority  
**Project Name:** State Route 4 Bypass, Segment 2, Phase 2  
**Check appropriate**  Zone I  
**Development Fee Zone(s):**  Zone II

See Figure 9-1 of the Final HCP/NCCP for a generalized development fee zone map. Detailed development fee zone maps by jurisdiction are available from the jurisdiction or at [www.cocohcp.org](http://www.cocohcp.org).

**Acreage of land to be permanently disturbed<sup>1</sup>:** Zone 1: 24.80 acres  
Zone 2: 24.05 acres  
Total: 48.85 acres

The project will consist of constructing a 2-lane east bound roadway from south of Lone Tree Way to south of San Jose Avenue in Brentwood, conversion of the existing road to a 2-lane west bound roadway, and completion of Phase 1 and 2 of the Sand Creek Road Interchange. Figure 1 shows the locations of the three segments of the State Route 4 Bypass Project. Segment 2, Phase 2 affects approximately the northern two-thirds of Segment 2. A subsequent phase of the project is planned in the future to complete Segment 2 but is not a subject of this report. Additional project detail is provided in Figure 3.

The project includes a clear span bridge crossing of Sand Creek. Storm water runoff treatments consist of permanent post construction water quality swales adjacent to the roadway.

Permit application will be made to the CDFG for a 1602 Streambed Alteration Agreement due to minor removal of vegetation within the banks for placement of the clear span bridge crossing.

The CEQA document for the project is the 1994 State Route 4 Bypass EIR, and a 2007 addendum to the EIR covering the final geometrics of the Sand Creek Interchange.

## II Existing Conditions and Impacts

### Land Cover Types

Table 1. Land Cover Types on the Project Site as Determined in the Field and Shown in Figure 3.

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project <sup>b</sup>	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel <sup>c</sup>	
		Stream Setback	Preserve System Dedication
<b>Grassland<sup>a</sup></b>			
<input checked="" type="checkbox"/> Annual grassland	23.33		
<input type="checkbox"/> Alkali grassland			
<input checked="" type="checkbox"/> Ruderal	13.81		
<input type="checkbox"/> <b>Chaparral and scrub</b>			
<input type="checkbox"/> <b>Oak savanna<sup>a</sup></b>			
<input type="checkbox"/> <b>Oak woodland</b>			
<b>Jurisdictional wetlands and waters</b>			
<input checked="" type="checkbox"/> Riparian woodland/scrub	0.19		
<input type="checkbox"/> Permanent wetland <sup>a</sup>			
<input type="checkbox"/> Seasonal wetland <sup>a</sup>			
<input type="checkbox"/> Alkali wetland <sup>a</sup>			
<input type="checkbox"/> Aquatic <sup>a</sup>			
<input type="checkbox"/> Pond <sup>a</sup>			
<input type="checkbox"/> Stream (acres) <sup>a, d</sup>			
<input type="checkbox"/> Total stream length (feet) <sup>a, d</sup>			
Stream length by width category			
<input type="checkbox"/> ≤ 25 feet wide			
<input type="checkbox"/> > 25 feet wide			
Stream length by type and order <sup>e</sup>			
<input type="checkbox"/> Perennial			
<input type="checkbox"/> Intermittent			
<input type="checkbox"/> Ephemeral, 3 <sup>rd</sup> or higher order			
<input type="checkbox"/> Ephemeral, 1 <sup>st</sup> or 2 <sup>nd</sup> order			
<b>Irrigated agriculture</b>			
<input checked="" type="checkbox"/> Cropland	9.44		
<input type="checkbox"/> Pasture			
<input checked="" type="checkbox"/> Orchard	1.73		
<input type="checkbox"/> Vineyard			

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project <sup>b</sup>	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel <sup>c</sup>	
		Stream Setback	Preserve System Dedication
<b>Other</b>			
<input type="checkbox"/> Nonnative woodland			
<input type="checkbox"/> Wind turbines			
<b>Developed</b>			
<input checked="" type="checkbox"/> Urban	0.35		
<input type="checkbox"/> Aqueduct			
<input type="checkbox"/> Turf			
<input type="checkbox"/> Landfill			
<b>Uncommon Vegetation Types (subtypes of above land cover types)</b>			
<input type="checkbox"/> Purple needlegrass grassland			
<input type="checkbox"/> Wildrye grassland			
<input type="checkbox"/> Wildflower fields			
<input type="checkbox"/> Squirreltail grassland			
<input type="checkbox"/> One-sided bluegrass grassland			
<input type="checkbox"/> Serpentine grassland			
<input type="checkbox"/> Saltgrass grassland (= alkali grassland)			
<input type="checkbox"/> Alkali sacaton bunchgrass grassland			
<input type="checkbox"/> Other uncommon vegetation types (please describe)			
<b>Uncommon Landscape Features or Habitat Elements</b>			
<input type="checkbox"/> Rock outcrop			
<input type="checkbox"/> Cave <sup>a</sup>			
<input type="checkbox"/> Springs/seeps			
<input type="checkbox"/> Scalds			
<input type="checkbox"/> Sand deposits			
<input type="checkbox"/> Mines <sup>a</sup>			
<input type="checkbox"/> Buildings (bat roosts) <sup>a</sup>	—	—	—
<input checked="" type="checkbox"/> Potential nest sites (trees or cliffs) <sup>a</sup> 1 large eucalyptus and 4 smaller trees at Sand Creek(see below)		—	—
<b>Total</b>	48.85		

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project <sup>b</sup>	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel <sup>c</sup>	
		Stream Setback	Preserve System Dedication
<sup>a</sup> Designates habitat elements that may trigger specific survey requirements and/or best management practices for key covered wildlife species. See Chapter 6 in the HCP/NCCP for details. <sup>b</sup> See Section 9.3.1 of the HCP/NCCP for a definition of "permanently disturbed." In nearly all cases, all land in the subject parcel is considered permanently disturbed. <sup>c</sup> Dedication of land in lieu of fees must be approved by the local agency and the Implementing Entity before they can be credited toward HCP/NCCP fees. See Section 8.6.7 on page 8-32 of the Plan for details on this provision. Stream setback requirements are described in Conservation Measure 1.7 in Section 6.4.1 and in Table 6-2. <sup>d</sup> Specific requirements on streams are discussed in detail in the HCP/NCCP. Stream setback requirements pertaining to stream type and order can be found in Table 6-2. Impact fees and boundary determination methods pertaining to stream width can be found in Table 9-5. Restoration/creation requirements in lieu of fees depend on stream type and can be found in Tables 5-16 and 5-17. <sup>e</sup> See glossary (Appendix A) for definition of stream type and order.			

A field-verified land cover map is provided in Figure 3. The impact acreage shown in Table 1 reflects those areas within the right-of-way of the project that were not previously permitted under the Biological Opinions for Segment 1 and segment 2, Phase 1. Please see Section V and Figure 3a for more information.

## Jurisdictional Wetlands and Waters

Riparian habitat designation was verified by:

USACE,  RWQCB, or  the ECCC Habitat Conservancy.

Sand Creek is the only jurisdictional wetland or water on site. The Creek is approximately 25 feet wide at top of bank and 18 feet wide at ordinary high water (OHW). The proposed clear span bridge will be approximately 40 feet wide with abutments on top of bank. The creek is a freshwater marsh with narrow-leaved cattail dominating the bed and a variety of native trees and shrubs as well as orchard escapes within the incised banks and extending to top of bank.

As a clear span bridge is proposed for the Sand Creek crossing, there would be no impacts to either USACE or RWQCB jurisdiction and no stream impacts under the HCP/NCCP. Therefore, no stream fee is required under the HCP/NCCP. As some riparian vegetation would need to be removed from the banks for bridge placement, a CDFG Streambed Alteration Agreement would be required. An HCP/NCCP

## Species-Specific Planning Survey Requirements

**Table 2a.** Species-Specific Planning Survey Requirements Triggered by Land Cover Types and Habitat Elements on Site based on Chapter 6 of the Final HCP/NCCP.

Land Cover Type on Site?	Species	Habitat Element on Site?	Planning Survey Requirement
<input checked="" type="checkbox"/> Grasslands, oak savanna, or agriculture	San Joaquin kit fox	Assumed if within modeled range of species	Identify and map potential breeding and denning habitat and potential dens if within modeled range of species (see Appendix D of HCP/NCCP).

Land Cover Type on Site?	Species	Habitat Element on Site?	Planning Survey Requirement
	Western burrowing owl	Assumed	Identify and map potential breeding habitat.
<input checked="" type="checkbox"/> Aquatic (ponds, wetlands, streams and marshes)	Giant garter snake	<input type="checkbox"/> Aquatic habitat accessible from San Joaquin River	Identify and map potential habitat.
	California tiger salamander	<input checked="" type="checkbox"/> Ponds and wetlands in grassland, oak savanna, oak woodland <input type="checkbox"/> Vernal pools <input type="checkbox"/> Reservoirs <input type="checkbox"/> Small lakes	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.
	California red-legged frog	<input checked="" type="checkbox"/> Slow-moving streams, ponds, and wetlands	Same as above
<input type="checkbox"/> Seasonal wetlands	Covered shrimp	<input type="checkbox"/> Vernal pools <input type="checkbox"/> Sandstone rock outcrops <input type="checkbox"/> Sandstone depressions	Identify and map potential breeding habitat.
Any	Townsend's big-eared bat	<input type="checkbox"/> Rock formations with caves <input type="checkbox"/> Mines Abandoned buildings outside urban areas	Map and document potential breeding or roosting habitat.
	Swainson's hawk	<input checked="" type="checkbox"/> Potential nest sites (trees within species' range usually below 200')	Inspect large trees for presence of nest sites.
	Golden eagle	<input checked="" type="checkbox"/> Potential nest sites (secluded cliffs with overhanging ledges; large trees)	Document and map potential nests.

<sup>a</sup> Vernal pool fairy shrimp, vernal pool tadpole shrimp, longhorn fairy shrimp, and midvalley fairy shrimp.

## Results of Species-Specific Planning Surveys Required in Table 2a

Randall Long, principal biologist of RCL Ecology performed pedestrian surveys of the project alignment on August 6 and August 15, 2007, and on February 20, March 6, and May 2, 2008. During these visits all cover types were mapped. Wetlands were identified for their potential as jurisdictional waters and surveyed for their potential use as breeding habitat for the California tiger salamander (*Ambystoma californiense*), and California red-legged frog (*Rana draytonii*). Upland habitat features such as ground squirrel burrows (*Spermophilus beecheyi*) were checked for signs of use by western burrowing owls (*Athene cunicularia*) and San Joaquin kit fox (*Vulpes macrotis mutica*). All trees with potential for Swainson's hawk (*Buteo Swainsoni*) and other protected raptors were checked for nests and sign of nesting.

### Covered Species

Planning surveys found that potential breeding habitat occurs within the project area for four covered requiring preconstruction surveys and/or minimization measures under the HCP/NCCP. These are the California tiger salamander, California red-legged frog, western burrowing owl, and San Joaquin kit fox.

Trees potentially suitable for Swainson's hawk or golden eagle nesting are located inside the project area and directly adjacent to the project area. Breeding habitat for these species is discussed below. As habitat is absent for the giant garter snake and shrimp species no additional surveys or avoidance measures will be performed for these species.

### **San Joaquin Kit Fox**

Although numerous ground squirrel burrows occur within the proposed project area none appeared to be of suitable size (e.g. 5-inches in diameter or greater) to serve as kit fox dens. Additionally, no sign of kit fox use (scat, tracks, etc.) was found at any of the burrows. However, to ensure that the project will not affect the species, a kit fox preconstruction survey will be conducted prior to the start of work.

### **Western Burrowing Owl**

One burrowing owl was observed at the mouth of a burrow on the southeast side of the Lone Tree Way-State Route 4 Bypass intersection during the February 2008 planning surveys, and sign of past use (pellets, egg shell fragments, prey parts) of burrows was found within the ROW northeast of the San Jose Ave.-Bypass intersection during the August 2007 surveys. Therefore, burrowing owl preconstruction surveys will be required for these areas.

### **California Red-legged Frog (CRLF)**

The closest record of the California red-legged frog occurrence is in a modified stock pond at the edge of the subdivision bordering the western section of San Jose Ave. Additional sightings occur approximately two miles west within Sand Creek which is believed to be a movement corridor for the species and the pools within the ROW for the proposed bridge crossing of the Creek may serve as breeding habitat, although the presence of predatory mosquitofish and three-spine stickleback fish (Jennings & Hayes, 1994) in the system may impact reproduction. While sampling of the pools was negative for both adults and larvae and while the pools will not be filled as part of the project, the USFWS and CDFG will be notified pursuant to HCP requirements for potential CRLF removal.

### **California Tiger Salamander (CTS)**

Surveys of the pools adjacent to the proposed Sand Creek Bridge crossing were negative for both larvae and adults. While CTS have been known to breed in streams, those occurrences were in pools in slack water areas. Judging by the high water mark at this location, flow during the CTS winter breeding period is very high in this portion of the Creek and may not provide this type of habitat. Likewise, it should be noted that the project will not be filling the stream and instead will be constructing a clear span bridge over the stream. However, as discussed above, the USFWS and CDFG will be notified prior to construction to see if they want to check the site for potential CTS removal.

### **Swainson's Hawk and Golden Eagle**

Several large eucalyptus trees within the ROW and immediately adjacent to it were inspected for evidence of nesting by Swainson's hawk, golden eagle and other protected raptors. No evidence of nests was found. After confirming no new nests have been established since the planning surveys, the trees will be removed and no further surveys or measures for these species will be needed. If all the suitable nesting trees cannot be removed before the project commences or, if the trees are found to have nests, then the pre-construction survey requirements and avoidance and minimization requirements of the HCP/NCCP will be implemented as applicable.

## Covered and No-Take Plants

Comprehensive protocol surveys for special-status plants associated with annual grassland, including the ten 'covered' and 'no-take' plants listed in the HCP, were conducted for the entire Bypass project and for specific segments between 1992 and 1999. These studies, hereby incorporated by reference, include ESA, 1993a; ESA, 1993b; Jones and Stokes, 1992; and ESA, 1998. These, as well as the latest study by ESA, 1999; for Segment 2, phase 1 resulted in negative findings for these species.

The HCP/NCCP covered and no-take habitat species and their habitat requirements, including the ten annual grassland species that were found to absent, are shown in Table 2b.

**Table 2b.** Covered and No-Take Plant Species, Typical Habitat Conditions, and Typical Blooming Periods

Land Cover Type on Site?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period <sup>a</sup>
☐ Oak savanna	Diablo Helianthella ( <i>Helianthella castanea</i> )	C	Elevation above 650 feet <sup>b</sup>	Mar–Jun
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 feet <sup>b</sup>	Apr–Jun
☐ Oak woodland	Brewer's dwarf flax ( <i>Hesperolinon breweri</i> )	C		May–Jul
	Diablo Helianthella ( <i>Helianthella castanea</i> )	C	Elevation above 650 feet <sup>b</sup>	Mar–Jun
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 feet <sup>b</sup>	Apr–Jun
	Showy madia ( <i>Madia radiata</i> )	C		Mar–May
☐ Chaparral and scrub	Brewer's dwarf flax ( <i>Hesperolinon breweri</i> )	C		May–Jul
	Diablo Helianthella ( <i>Helianthella castanea</i> )	C	Elevation above 650 feet <sup>b</sup>	Mar–Jun
	Mount Diablo buckwheat ( <i>Eriogonum truncatum</i> )	N		Apr–Sep; uncommonly Nov–Dec.
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 feet <sup>b</sup>	Apr–Jun
	Mount Diablo Manzanita ( <i>Arctostaphylos auriculata</i> )	C	Elevation between 700 and 1,860 feet; restricted to the eastern and northern flanks of Mt. Diablo <sup>b</sup>	Jan–Mar
☐ Alkali grassland	Brittlescale ( <i>Atriplex depressa</i> )	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area <sup>b</sup>	May–Oct
	Contra Costa goldfields ( <i>Lasthenia conjugens</i> )	N	Generally found in vernal pools	Mar–Jun

Land Cover Type on Site?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period <sup>a</sup>
	Recurved larkspur ( <i>Delphinium recurvatum</i> )	C		Mar–Jun
	San Joaquin spearscale ( <i>Atriplex joaquiniana</i> )	C		Apr–Oct
<input type="checkbox"/> Alkali wetland	Alkali milkvetch ( <i>Astragalus tener</i> ssp. <i>tener</i> )	N		Mar–Jun
	Brittlescale ( <i>Atriplex depressa</i> )			May–Oct
	San Joaquin spearscale ( <i>Atriplex joaquiniana</i> )	C		Apr–Oct
<input checked="" type="checkbox"/> Annual grassland	Alkali milkvetch ( <i>Astragalus tener</i> ssp. <i>tener</i> )	N		Mar–Jun
	Big tarplant ( <i>Blepharizonia plumosa</i> )	C	Elevation below 1500 feet <sup>b</sup>	Jul–Oct
	Brewer’s dwarf flax ( <i>Hesperolinon breweri</i> )	C	Restricted to grassland areas within a 500+ buffer from oak woodland and chaparral/scrub <sup>b</sup>	May–Jul
	Contra Costa goldfields ( <i>Lasthenia conjugens</i> )	N	Generally found in vernal pools	Mar–Jun
	Diamond-petaled poppy ( <i>Eschscholzia rhombipetala</i> )	N		Mar–Apr
	Large-flowered fiddleneck ( <i>Amsinckia grandiflora</i> )	N		Apr–May
	Mount Diablo buckwheat ( <i>Eriogonum truncatum</i> )	N		Apr–Sep; uncommonly Nov–Dec
	Mount Diablo fairy-lantern ( <i>Calochortus pulchellus</i> )	C	Elevation between 650 and 2,600 <sup>b</sup>	Apr–Jun
	Round-leaved filaree ( <i>California macrophylla</i> ) <sup>1</sup>	C		Mar–May
	Showy madia ( <i>Madia radiata</i> )	C		Mar–May
<input type="checkbox"/> Seasonal wetland	Adobe navarretia ( <i>Navarretia nigelliformis</i> ssp. <i>nigelliformis</i> )	C	Generally found in vernal pools <sup>b</sup>	Apr–Jun
	Alkali milkvetch ( <i>Astragalus tener</i> sp. <i>tener</i> )	N		Mar–Jun
	Contra Costa goldfields ( <i>Lasthenia conjugens</i> )	N	Generally found in vernal pools	Mar–Jun

Land Cover Type on Site?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period <sup>a</sup>
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<sup>a</sup> From California Native Plant Society. 2007. *Inventory of Rare and Endangered Plants* (online edition, v7-07d). Sacramento, CA. Species may be identifiable outside of the typical blooming period; a professional botanist shall determine if a covered or no take plant occurs on the project site.

<sup>b</sup> See Species Profiles in Appendix D of the Final HCP/NCCP.

### III. Species-Specific Monitoring and Avoidance Requirements

#### Preconstruction Surveys for Selected Covered Wildlife

Table 3. Applicable Preconstruction Survey and Notification Requirements based on Land Cover Types and Habitat Elements Identified in Table 2a.

Species	Preconstruction Survey and Notification Requirements
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Map all dens (>5 in. diameter) and determine status. Determine if breeding or denning foxes are on site. Provide written preconstruction survey results to FWS within 5 working days after surveying.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Map all burrows and determine status. Document use of habitat (e.g. breeding, foraging) in/near disturbance area (within 500 ft.)
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate aquatic habitat up to 200 ft. from water's edge. Document any sightings of garter snake.
<input checked="" type="checkbox"/> California tiger salamander (p. 6-46) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence on site.
<input checked="" type="checkbox"/> California red-legged frog (p. 6-47) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence on site.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Document and evaluate use of all habitat features (e.g., vernal pools, rock outcrops). Document occurrences of covered shrimp.
<input type="checkbox"/> Townsend's big-eared bat (p. 6-37)	Determine if site is occupied or shows signs of recent occupation (guano).
<input checked="" type="checkbox"/> Swainson's hawk (p. 6-42)	Determine whether nests are occupied.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Determine whether nests are occupied.

Note: Page numbers refer to the Final HCP/NCCP.

## **San Joaquin Kit fox**

Prior to any ground disturbance related to covered activities, a USFWS/CDFG-approved biologist will conduct a preconstruction survey of the project area. The surveys will establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (U.S. Fish and Wildlife Service 1999). Preconstruction surveys will be conducted within 30 days of ground disturbance. Within the ROW for the proposed project, the biologist will survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. The status of all dens will be determined and mapped. Written results of preconstruction surveys will be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. If San Joaquin kit foxes and/or suitable dens are identified in the survey area, the avoidance and minimization measures described in the section below will be implemented.

## **Western Burrowing Owl**

Prior to the start of the breeding season (February 1) a USFWS/CDFG-approved biologist will conduct preconstruction surveys to determine the presence of burrowing owls within the ROW. If present, the birds will be evicted from the site using passive relocation techniques. The site will then be continuously monitored until start of construction in order to ensure that owls do not reoccupy the area. All surveys and passive relocation will be carried out in accordance with CDFG survey guidelines (California Department of Fish and Game 1993). Passive relocation procedures include installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to excavation. The project area should be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows will be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure will be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

## **California Tiger Salamander (CTS) and California Red-legged Frog (CRLF)**

Proper written notification will be provided to USFWS, CDFG, and the Implementing Entity, at least 30 days prior to disturbance of potential habitat in order to provide an opportunity for these agencies to translocate any individuals of these species. The agencies in turn are required to notify the proponent within 14 days of their intent to translocate the species. The agencies will then be allowed 45 days to translocate individuals from the date the first written notification was submitted by the project proponent (or a longer period agreed to by the project proponent, USFWS, and CDFG).

## **Swainson's Hawk and Golden Eagle**

If the suitable nest trees found in the planning surveys cannot be removed in advance of the project, the preconstruction survey requirements of the HCP/NCCP for these species will be performed.

# Construction Monitoring and Avoidance for Selected Covered Species

Table 4. Applicable Construction Monitoring Requirements

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> None	N/A
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Establish exclusion zones (>50 ft) for potential dens. Establish exclusion zones (>100 ft) for known dens. Notify USFWS of occupied natal dens.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Establish buffer zones (250 ft) around nests. Establish buffer zones (160 ft) around burrows.
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate 200-ft buffer around potential habitat. Provide field report on monitoring efforts. Stop construction activities if snake is encountered; allow snake to passively relocate. Remove temporary fill or debris from construction site. Mandatory training for construction personnel.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Establish buffer around outer edge of all hydric vegetation associated with habitat (50 feet of limit of immediate watershed supporting the wetland, whichever is larger). Mandatory training for construction personnel.
<input checked="" type="checkbox"/> Swainson's hawk (p. 6-42)	Establish 1,000-ft buffer around active nest and monitor compliance.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Establish 0.5-mile buffer around active nest and monitor compliance.

## San Joaquin Kit fox

If a San Joaquin kit fox den is discovered in the proposed development footprint, the den will be monitored for 3 days by a USFWS/CDFG-approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used. Unoccupied dens will be destroyed immediately to prevent subsequent use. If a natal or pupping den is found, USFWS and CDFG will be notified immediately. The den will not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFG. If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).

If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances will be demarcated. The configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). No covered activities will occur within the exclusion zones. Exclusion zone radii for potential dens will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be

demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

### **Western Burrowing Owl**

If, despite the implementation of the passive relocation measures described above in the preconstruction surveys section, burrowing owls are found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishment of a 250 foot radius non-disturbance buffer zone. Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged.

### **California Tiger Salamander (CTS) and California Red-legged Frog (CRLF)**

Proper written notification will be provided to USFWS, CDFG, and the Implementing Entity, at least 30 days prior to disturbance of potential habitat in order to provide an opportunity for these agencies to translocate any individuals of these species. The agencies in turn are required to notify the proponent within 14 days of their intent to translocate the species. The agencies will then be allowed 45 days to translocate individuals from the date the first written notification was submitted by the project proponent (or a longer period agreed to by the project proponent, USFWS, and CDFG).

### **Swainson's Hawk and Golden Eagle**

If the suitable nest trees found in the planning surveys cannot be removed in advance of the project and the preconstruction surveys required under the HCP/NCCP for these species determine presence of one or both species, the avoidance, minimization and construction monitoring requirements of the HCP/NCCP for the species found will be performed.

## **IV. Landscape and Natural Community-Level Avoidance and Minimization Measures**

### **For All Projects**

#### **HCP/NCCP Conservation Measure 1.10. Maintain Hydrologic Conditions and Minimize Erosion**

A Storm Water Control Plan per the Contra Costa County Clean Water Program (C-3 handbook), and the City of Brentwood's Storm water Management and Discharge Control Ordinance (No. 793) will be prepared. The Plan will contain the details of design and monitoring of storm water control facilities both during and post-construction consistent with City, County, and Caltrans requirements. A key component of the Plan will be the installation of grassy swales to slow and filter runoff from the roadway in order settle out sediment and road oils before the water flows offsite or enters stream areas.

## **HCP/NCCP Conservation Measure 1.11. Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Covered Migratory Birds**

### **Protected/Migratory Birds**

Breeding habitat for birds of prey protected by the CDFG Commission Code, Section 1600, and the federal Migratory Bird Treaty Act occurs along and adjacent to Sand Creek. These species include the red-tailed hawk (*Buteo jamaicensis*) and Cooper's hawk (*Accipiter cooperii*) that were observed during the August site visit, as well as the white-tailed kite (*Elanus leucurus*). The trees will be removed during the non-nesting season (September 15-March 1) to avoid any potential disturbance during the nesting season. If the trees cannot be removed, preconstruction nest surveys will be conducted within the Sand Creek Bridge crossing area for these species. If surveys determine the presence of occupied nests, CDFG, USFWS and the Conservancy will be consulted to determine appropriate avoidance measures

## **For Projects on or adjacent to Streams or Wetlands**

### **HCP/NCCP Conservation Measure 1.7. Establish Stream Setbacks**

Not-applicable. The project is a linear feature perpendicular to a stream. Impacts to the stream will be avoided by construction of a clear span bridge. The applicant will pay a Wetland Fee into the category of Riparian Woodland/scrub for the impact at Sand Creek.

## **HCP/NCCP Conservation Measure 2.12. Wetland, Pond, and Stream Avoidance and Minimization**

The proposed clear span bridge avoids disturbance to Sand Creek and minimizes disturbance to its riparian habitat. To minimize water quality impacts all in-stream work will be restricted to hand-operated equipment. To prevent siltation, woven silt fence material will be placed at top of bank on each side of the creek and be monitored to ensure it remains in place.

## **For Projects adjacent to Protected Natural Lands (existing and projected)**

N/A

## **HCP/NCCP Conservation Measure 1.6. Minimize Development Footprint Adjacent to Open Space**

N/A

## **HCP/NCCP Conservation Measure 1.8. Establish Fuel Management Buffer to Protect Preserves and Property**

N/A

## HCP/NCCP Conservation Measure 1.9. Incorporate Urban-Wildland Interface Design Elements

NA

## For Rural Infrastructure Projects

N/A

## HCP/NCCP Conservation Measure 1.12. Implement Best Management Practices for Rural Road Maintenance

N/A

## HCP/NCCP Conservation Measure 1.13. Implement Best Management Practices for Flood Control Facility Maintenance

N/A

## HCP/NCCP Conservation Measure 1.14. Design Requirements for Covered Roads outside the Urban Development Area

N/A

## V. Mitigation Measures

The project will be paying an HCP/NCCP Development Fee and a Wetland Mitigation Fee to mitigate for avoidable impacts. Calculating the acreage of land permanently disturbed under the take authorization for the Segment 2, Phase 2 project and determining fee amounts requires assessment of the extent to which the ROW for the project has already been covered by past take authorizations for Segment 1 and Segment 2, Phase 1.

The total project area within Segment 2 Phase 2 right-of-way is 90.19 acres across six land cover types. A total of 41.34 acres of right-of-way within the project area have already been impacted or covered as part of Segment 1 and Segment 2, Phase 1. The Biological Opinion for Segment 2, Phase 1 included permit coverage for 28.08 acres of land cover within this area. The Biological Opinion for Segment 1 included permit coverage for 13.26 acres of within this area. Therefore, a total of 41.34 acres were either previously impacted or covered by earlier phases (Table 5 and Figures 3).

Table 5. Current land cover within previously covered areas

<b>Land cover type</b>	<b>Acres</b>
Ruderal	22.56
Urban	18.69
Riparian	0.10
<b>Total</b>	<b>41.34</b>

Newly impacted land cover types total to 48.85 acres. These impacts occur within Fee Zone 1 and Fee Zone 2. For terrestrial land covers, this includes 24.80 acres within Fee Zone 1 and 24.05 acres within Fee Zone 2. For wetland and riparian land cover, a wetland fee for impacts to riparian woodland/scrub habitat applies to 0.19 acres (Table 6). Coverage under the HCP/NCCP will require a Development Fee of \$880,435.48 and a Wetland Mitigation Fee of \$11,774.11 for riparian impacts for a total of \$892,209.59 in HCP/NCCP Mitigation Fees (Exhibit 1). These fees are subject to the periodic adjustment provisions of the HCP/NCCP.

Table 6. Newly impacted land cover areas

Land cover type	Acres		Total
	Zone 1	Zone 2	
Grassland	8.37	14.96	23.33
Ruderal	5.15	8.66	13.81
Cropland	9.44	0.00	9.44
Orchard	1.73	0.00	1.73
Urban	0.10	0.25	0.35
Riparian	0.00	0.19	0.19
<b>Total</b>	<b>24.80</b>	<b>24.05</b>	<b>48.85</b>

## Attachments:

Figure 1	Project Alignment
Figure 2	Photographs
Figure 3	Filed-Verified Land Cover Types
Figure 3a	Land Cover Map – Acreage & Mitigation Detail
Exhibit 1	Fee Calculator

FIGURE 1

Project alignment

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FIGURE 2

**Photographs**

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Existing Bridge at Sand Creek



Site of Proposed Bridge Crossing of Sand Creek

FIGURE 3

Field-Verified Land Cover Map

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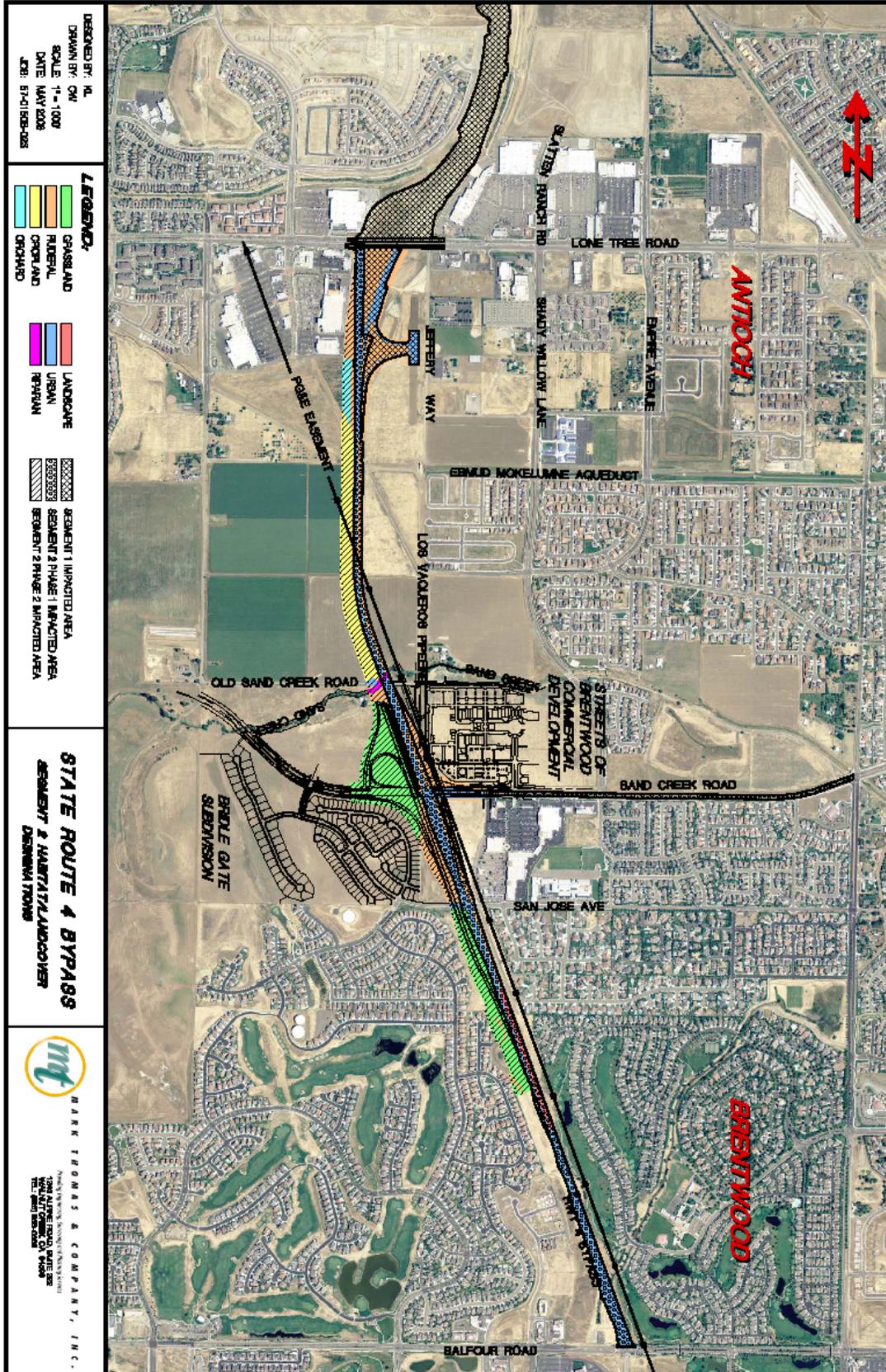


FIGURE 3a

Calculation of Acreage Proposed For Coverage Under This Application and Acreage Covered By Previous Biological Opinions

**Calculation of Acreage Covered by Previous Permits**

A) Total Area within Segment 2 Phase 2 ROW

3928593  Acres

B) Portion of Segment 2 Phase 1 Permit Area within Phase 2 ROW

1223213  Acres

C) Portion of Segment 1 Permit Area within Seg 2 Phase 2 ROW

577540  Acres

D) Total Covered by Previous Permits (Biological Opinions) (D=B+C)

**41.34 Acres**

E) Total Segment 2, Phase 2 ROW To Be Covered Under Current Application to Conservancy (E=A-D)

**48.85 Acres**

**Calculation of Land Cover Impacts by Fee Zone For Areas Not Covered by Prior Permits**

	Zone 1 (ft <sup>2</sup> )	Zone 2 (ft <sup>2</sup> )	Total (ft <sup>2</sup> )	Zone 1 (acres)	Zone 2 (acres)	Total (acres)
Grassland	364775	651476	1016251.00	8.37	14.96	23.33
Ruderal	224282	377092	601374.00	5.15	8.66	13.81
Cropland	411417	0	411416.88	9.44	0.00	9.44
Orchard	75335	0	75334.96	1.73	0.00	1.73
Urban	4443	10767	15209.28	0.10	0.25	0.35
Riparain	0	8254	8253.59	0.00	0.19	0.19
<b>Total</b>	<b>1080251.62</b>	<b>1047588.09</b>	<b>2127839.71</b>	<b>24.80</b>	<b>24.05</b>	<b>48.85</b>

**Current Land Cover within Previously Permitted Areas**

	ft <sup>2</sup>	Acres
Ruderal	982503	22.56
Urban	814034	18.69
Riparain	4216	0.10
<b>Total</b>	<b>1800753</b>	<b>41.34</b>

EXHIBIT 1

Fee Calculator

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# Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

## PROJECT APPLICANT INFO:

Project Applicant:	SR4			
Project Name:	Seg. 2, Phase 2			
APN (s):	ROW			
Date:	9/5/2008	Jurisdiction:		

### DEVELOPMENT FEE (see appropriate ordinance or HCP/NCCP Figure 9-1 to determine Fee Zone)

			Acreage of land to be permanently disturbed (from Table 1)*		Fee per Acre (subject to change on 3/15/09)	
	Fee Zone 1		24.80	x	\$12,078	= \$299,524.31
	Fee Zone 2		24.05	x	\$24,155	= \$580,911.16
	Fee Zone 3			x	\$6,039	= \$0.00
<b>Development Fee Total</b>						<b>\$880,435.48</b>

### WETLAND MITIGATION FEE

		Acreage of wetland		Fee per Acre (subject to change on 3/15/09)	
	Riparian woodland / scrub	0.19	x	\$61,969	= \$11,774.11
	Perennial Wetland		x	\$84,799	= \$0.00
	Seasonal Wetland		x	\$183,731	= \$0.00
	Alkali Wetland		x	\$173,947	= \$0.00
	Ponds		x	\$92,409	= \$0.00
	Aquatic (open water)		x	\$46,748	= \$0.00
	Slough / Channel		x	\$105,455	= \$0.00
	<b>Streams</b>				
	Streams 25 Feet wide or less (Fee is per Linear Foot)		x	\$505	= \$0.00
	Streams greater than 25 feet wide (Fee is per Linear Foot)		x	\$761	= \$0.00
<b>Wetland Mitigation Fee Total</b>					<b>\$11,774.11</b>

### FEE REDUCTION

Development Fee reduction (authorized by Implementing Entity) for land in lieu of fee					
Development Fee reduction (up to 33%, but must be approved by Conservancy) for permanent assessments					
Wetland Mitigation Fee reduction (authorized by Implementing Entity) for wetland restoration/creation performed by applicant					
<b>Reduction Total</b>					<b>\$0.00</b>

### CALCULATE FINAL FEE

	Development Fee Total	\$880,435.48
	Wetland Mitigation Fee Total +	\$11,774.11
	<b>Fee Subtotal</b>	<b>\$892,209.59</b>
	Reduction Total -	<b>\$0.00</b>
	<b>TOTAL FEE TO BE PAID</b>	<b>\$892,209.59</b>

\* City/County Planning Staff will consult the land cover map in the Final HCP/NCCP and will reduce the acreage subject to the Development Fee by the acreage of the subject property that was identified in the Final HCP/NCCP as urban, turf, landfill or aqueduct land cover.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** 2009 Budget and Finances

---

**RECOMMENDATION**

Consider the following items related to Conservancy finances:

- a) APPROVE the 2009 Conservancy Budget.
- b) AUTHORIZE staff to execute an agreement with the East Bay Regional Park District for the provision of specific land acquisition and wetland restoration services during 2009.
- c) AUTHOIRZE staff to execute contracts for on-going biological and conservation planning services with Jones and Stokes for \$220,000 for January 1 to June 30, 2009, and with Monk and Associates for \$20,000 for January 1 to December 31, 2009. AUTHORIZE staff to amend existing contract with H.T. Harvey & Associates to extend termination date to June 30, 2009.
- d) AUTHORIZE staff to execute a contract for legal services with Resources Law Group for \$90,000 for January 1, 2009 to December 31, 2009.

**DISCUSSION**

**Item (a):** Please find attached a proposed 2009 Conservancy Budget (Table I-1) and supporting tables prepared by staff for discussion by the Board.

**Table I-1:** The 2009 Conservancy Budget, Table I-1, includes summary cost estimate information from the HCP as well as recommended expenditures from the various funding sources controlled by the Conservancy or related to the HCP, including the Development Fee Account, the Wetland Mitigation Fee Account, the California Wildlife Foundation Account (which contain pre-plan mitigation payments collected by the wildlife agencies as well as mitigation payments from activities not covered by the HCP; the wildlife agencies control.

CONTINUED ON ATTACHMENT:  X  YES  
ACTION OF BOARD ON: \_\_\_\_\_ APPROVED AS RECOMMENDED: \_\_\_\_\_  
OTHER

**VOTE OF BOARD MEMBERS**

X  UNANIMOUS  
AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED \_\_\_\_\_  
*CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY*

BY: \_\_\_\_\_, DEPUTY

disbursements from this account), and the various grant funds awarded to support implementation of various tasks associated with the HCP.

The 2009 Budget also presents recommendations on how future revenues received in 2009 should be spent (or not) in 2009. For example if \$1,000,000 in new revenues were collected in the Development Fee account after January 1, 2009, the expenditure limit for land acquisition would increase by \$400,000 to \$690,000 and \$600,000 would be reserved for next year since the budget provides that 40% of new development fee revenues will be allocated to land acquisition and 60% will reserved for the future. Depending upon the timing of the new funds, it may not be possible to actually spend them in 2008. But the intent of this provision is to ensure that new funds are spent promptly and prudently

**Tables I-2 though I-10:** Tables I-2 though I-10 present detailed cost estimates by program area (e.g., Administration, Land Acquisition, etc.). Detailed estimates are excerpted from the HCP as a point of comparison with the detailed estimates provided for the proposed 2009 budget. The 2009 estimates that form the basis for the 2009 Budget are typically shaded light blue. The 2008 Budget Amounts are also provided for comparison purposes. Table I-2 summarizes staff costs, which are distributed among the various program areas. Tables I-3 through I-10 provide the basis for each HCP cost estimate provide in Table I-1. The purpose of including these tables is to provide more information on what these program areas encompass and how the estimates were derived.

**Background on HCP cost estimates presented for comparison:** As was the case in developing the 2008 Budget, staff felt the cost estimate information presented in Table 9.2 of the HCP/CCP, *Summary of East Contra Costa County HCP/NCCP Implementation Costs (Rounded to the Nearest \$10,000) for Maximum Urban Development Area*, would be provide a useful basis of comparison for the 2009 Budget. Staff reviewed this table and the supporting tables in Appendix G of the HCP/NCCP and extracted cost estimate information for first five years of implementation. Staff then calculated the estimated average annual costs during this five year period. This estimated average annual cost is a useful point of comparison in crafting the 2009 Budget, but should be used for general comparison purposes rather than as a detailed yardstick. Since the costs of some tasks may change significantly during the five year period (e.g. land management), the annual average of the five-year cost estimate may over or under-estimate needs in early years.

**Tables II, III and IV:** Table II provides an overview of the current balance for the California Wildlife Foundation account explained above. It also documents the significant expenditures expected to be completed before the 2009 Budget takes effect. Table III presents updated information on approved grants. Table IV is an update of the Budget Status Table presented in September. It compares the approved 2008 Budget with actual expenditures to date and also takes into account expenditures projected to occur before the end of the year but not yet reflected in the Conservancy's accounting.

**Considerations in developing the 2009 Budget:** The proposed 2009 Budget has been adapted from the 2008 Budget approved earlier this year. Key changes include the following:

- Projected expenditures have been revised to reflect both a better understanding of actual costs (for example, the comparison of projected and actual costs presented Table IV) and knowledge about program opportunities available to the Conservancy in 2009. Recommended expenditures for both Land Acquisition and Restoration/Creation increased substantially this year. These categories are very heavily funded by grants, the vast majority of which have deadlines for expending funds that should not be missed. Likewise, 2009 is the last year for the Conservancy to perform land acquisition and restoration before the Stay Ahead provisions take effect. Further, market conditions are favorable for both activities. As a result of all these factors, the recommendations for these categories are aggressive. However, it should be noted that, like last year, the recommended expenditures may exceed what we are capable of spending this year and will depend on willing sellers, the timing of acquisitions, the ability to procure match, the costs of habitat restoration (which are not well-defined at this point) and the pace of grant procurement. Nonetheless, staff felt it prudent to recommend ambitious figures.
- Ambitious (e.g., large) Budget totals for grant-funded categories have been complemented with more restrained recommendations for categories funded directly by the Conservancy. With the downturn in the development market, fee revenue has not been high. Likewise, a significant portion of the CWF Account will soon be used for an early land acquisition payment, leaving cash reserves lower than last year. Consequently, staff is proposing measures to reduce costs and maintain flexibility. For instance, rather than hire another senior planner to help with Conservancy workload as was budgeted last year, staff is proposing to secure the services of a consulting planner through Jones and Stokes. The hourly rate is less than the County's rates, the planner will only work for the Conservancy three days a week, and the arrangement can be terminated after 6 months. This approach has been applied to many categories funded with cash, but not without balancing other considerations. Spending large amounts of grant funds for land acquisition and restoration is not possible unless the necessary land acquisition due diligence and unless wetland restoration projects are planned and permitted. Further, the cash shortage is not as bad as it seems since in addition to the Bypass Authority fee of almost \$900,000, approximately \$500,000 is expected from PG&E very early this year. And the CWF account is proposed to be replenished with almost \$3M of grant funds. In short, the allocations for the non-grant categories are intended to be fiscally conservative without shooting ourselves in the foot.
- The Personnel Costs summary table has been revised to compare the personnel structure envisioned in the HCP with the Conservancy's actual structure and to detail the cost basis for the County's staff support.

**Recommendation on 2009 Budget:** Staff recommends that the Governing Board discuss the Proposed Budget, determine any modifications or clarifications, and approve the Budget with any modifications. Consistent with the expenditure policies approved in October 2007, the total amounts for each program area in the Budget would be figures that could not be exceeded without amendment of the Budget. The detailed estimates provided in Tables I-2 through I-10 provide the basis for the program area totals but the subcategories presented are estimates not binding totals. However, one exception is that the total estimated cost of County staff support, \$526,590, should also be designated by the Board as an expenditure limit that may not be exceeded without further approval of a revised amount. This recommendation is offered to be

consistent with the Joint Exercise of Powers Agreement forming the Conservancy which provides that the Governing Board shall set an annual limit on the amount of County staff costs that may be recovered from the Conservancy.

**Item (b):** Last year, the Governing Board authorized staff to develop a cost-sharing agreement with EBRPD for land acquisition services and ultimately approved an agreement that provided EBRPD with \$120,000 for land acquisition services in 2008 and part of 2007. Staff have prepared another such agreement for 2009 to cover land acquisition and restoration services (see attachment). The proposed 2009 Agreement would provide EBRPD with \$100,000 for land acquisition services (commissioning and reviewing appraisals, preliminary title reports, and phase 1 environmental assessments, crafting purchase and sale agreements, performing due diligence on the property's and negotiating with property owners). The 2009 Agreement would also provide EBRPD with \$50,000 for wetland restoration planning and public contracting services (e.g., detailed oversight of development of plans and specs, preparation of bid packages, and administration of the process for retaining a contractor consistent with the Public Contract Code—construction and construction oversight we be the subject of a separate agreement). Both areas of work are specialized, time-consuming and can have serious repercussions if not performed well. Given the structure of the Conservancy, such partnerships make sense, in staff's view.

The 2009 Agreement has virtually identical text to the 2008 agreement. The Draft Agreement reflects the following general parameters: (1) land acquisition due diligence and restoration planning costs would be shared approximately evenly overall, though the specific arrangements would vary case by case depending upon the extent of the park and open space value presented by the property, (2) costs to both parties to administer the reimbursements terms of the agreement would be kept to a bare minimum.

**Item (c):** Staff recommends the following actions with respect to three firms providing on-going biological services to the Conservancy:

**Jones and Stokes:** Authorize staff to execute contracts for on-going biological and conservation planning services with Jones and Stokes for \$220,000 for the period of January 1, 2009 to June 30, 2009. Jones and Stokes has provided a range of services to the Conservancy in 2008 and a continuation of that support is vital in 2009. Staff worked with Jones and Stokes to develop cost projections for key tasks that will continue in 2009 and used this information as background in crafting the Proposed 2009 Conservancy Budget. Key tasks for Jones and Stokes in 2009 include:

- Planning, design and permitting for the Souza 2 wetland restoration project;
- Land acquisition surveys and assessments and preparation of required documentation for land acquisition grants;
- Preparation of preserve management plans and system-wide management plans required by the HCP;
- Provision of a consulting planner to assist the Conservancy 3 days a week for 6 months with review of permit applications, development and upkeep of comprehensive tracking databases, and general program support (in lieu of the Conservancy hiring a full-time planner for considerably more expense);

- Assistance with the completing the regional wetlands permitting programs initiated during development of the HCP;
- Provision of biological expertise to assist with answering questions and assist with day to day operation of the Plan; and
- Continued assistance with monitoring the Lentzner Springs project.

The proposed contract is consistent with the Proposed 2008 Conservancy Budget. In fact, the Budget was based on and could accommodate a full-year contract. However, given that we may or may not wish to discontinue the consulting planner services after 6 months and the general desirability of maintaining flexibility and accountability with this critical contract, staff propose a 6-month contract and scheduling an evaluation of the scope of an amendment for the Board's June meeting.

**Monk and Associates:** Authorize staff to execute contracts for on-going biological and conservation planning services with Monk and Associates for \$20,000 for the period of January 1, 2009 to December 31, 2009. Monk and Associates designed and oversaw construction of the Vasco Caves-Souza 1 HCP Pond. Additional services are needed from Monk and Associates to produce as-built documents, to perform biological monitoring the pond for one year and to document the results of the monitoring and provide recommendations.

**H.T. Harvey & Associates:** Authorize staff to amend existing contract with H.T. Harvey & Associates to extend termination date to June 30, 2009. H.T. Harvey & Associates has an existing \$75,000 contract with the Conservancy that will expire December 31, 2008. H.T. Harvey & Associates has been preparing a comprehensive report analyzing all special status species with a potential to occur in the area (a list many times larger than the 28 covered species) with respect to the conservation measures of the HCP. The report is intended as a document the Conservancy and other customers of the Plan can use to streamline their CEQA measures. With this report and the HCP EIR, project proponents would have effective base upon which biological impact sections could tiered. Some HCPs cover all such species just for this reason, but the retrofit approach was more cost-effective for the Conservancy. H.T. Harvey and Associates has also been providing supplemental expertise on the design of the Souza 2 project and this support should continue. H.T. Harvey has a little over \$50,000 remaining on their contract.

**Item (d):** Authorize staff to execute a contract for legal services with Resources Law Group for \$90,000 for January 1, 2009 to December 31, 2009. Resources Law Group assisted with developing all of the agreements related to the HCP/NCCP and have also assisted with a large number of initial implementation tasks since approval of the HCP. Many tasks are complete, such as development of a template deed restriction, development of a template Participating Special Entity Agreement and development of model agreements with EBRPD for land acquisition and restoration. However, substantial future and on-going work remains, such as development of an agreement with the wetlands regulatory agencies, development of master agreements with EBRPD for land acquisition, restoration and management, due diligence on land acquisition prospects, assistance with interacting with granting agencies and general legal support services to implementation of the Plan and operation of the Conservancy. The

recommended contract amount is consistent with the recommended 2009 Conservancy Budget and is of n equal amount to the 2008 contract.

**Attachments:**

- Proposed 2009 Conservancy Budget and supporting tables
- Draft Cost Sharing Agreement with EBRPD

## Proposed 2009 Conservancy Budget: Recommended Expenditures and Comparison to 2008 Budget

Table I-1

Cost Category	Proposed 2009 Expenditures								Approved 2008 Conservancy Budget	
	Development Fee Account <sup>1</sup>	Dev. Fee Revenues Accrued in 2009 <sup>2</sup>	Wetland Mitigation Fee Account <sup>3</sup>	Wetland Mitigation Fee Revenues Accrued in 2009 <sup>2</sup>	CDFG's California Wildlife Foundation Account <sup>4</sup>	Grant Funding <sup>5</sup>	TOTAL (2009)	% of Total	TOTAL (2008)	% of Total
Program Administration	\$235,000	0%	\$0	0%	\$229,360	\$29,305	\$493,665	3%	\$494,575	4%
Land Acquisition	\$290,000	40%	\$0	0%	\$110,000	\$13,646,495	\$14,046,495	85%	\$9,900,667	84%
Management, Restoration & Recreation Planning & Design	\$75,000	0%	\$127,360	20%	\$65,810	\$60,000	\$328,170	2%	\$338,322	3%
Habitat Restoration/Creation	\$0	0%	\$0	20%	\$80,239	\$900,000	\$980,239	6%	\$407,326	3%
Environmental Compliance	\$111,495	0%	\$0	0%	\$55,000	\$0	\$166,495	1%	\$109,000	1%
HCP/NCCP Preserve Management and Maintenance	\$293,247	0%	\$0	0%	\$0	\$0	\$293,247	2%	\$404,100	3%
Monitoring, Research, and Adaptive Management	\$94,345	0%	\$0	0%	\$0	\$0	\$94,345	1%	\$66,500	1%
Remedial Measures	\$6,000	0%	\$0	0%	\$0	\$0	\$6,000	0%	\$6,000	0%
Contingency Fund (5% of non-land acquisition costs)	\$117,808	0%	\$0	0%	\$0	\$0	\$117,808	1%	\$90,141	1%
<b>TOTAL 2009 EXPENDITURES</b>	<b>\$1,222,895</b>	<b>40%</b>	<b>\$127,360</b>	<b>40%</b>	<b>\$540,409</b>	<b>\$14,635,800</b>	<b>\$16,526,464</b>	<b>100%</b>	<b>\$11,816,631</b>	<b>100%</b>
<b>PROJECTED BALANCE ON JANUARY 1, 2009</b>	<b>\$1,826,814</b>		<b>\$127,360</b>		<b>\$748,282</b>	<b>\$21,772,685</b>	<b>\$24,475,140</b>			
<b>DIFFERENCE=AMOUNT OF 1-1-09 FUNDS REMAINING ON DECEMBER 31, 2009 (To Be Reserved For Future)</b>	<b>\$603,919</b>	<b>60%</b>	<b>\$0</b>	<b>60%</b>	<b>\$207,873</b>	<b>\$7,136,885</b>	<b>\$7,948,676</b>			

Notes:

- (1) Projected Development Fee balance on 1-1-08 reflects projected expenditures for remainder of 2008 as well as \$700K of fee funds from SR4 that is expected to follow 12-17-08 meeting.
- (2) Percentages reflect the recommended proportion of new revenues accrued in 2009 to be spent on each cost category.
- (3) Projected Wetland Mitigation Fee balance on 1-1-08 reflects projected expenditures for remainder of 2008 as well as pending \$549K transfer from CCWF Account.
- (4) This account was set up specifically for the HCP. Wildlife agencies must approve disbursements but are being asked to pre-approve these budget allocations. Current balance is \$4.2M, but projected balance reflects late year activity. See Table II for more information.
- (5) Grant funding total does not include \$5M grant that has been offered by WCB staff. See Table III for grant funding details.

# Personnel Summary: Comparison of HCP Cost Projections With Conservancy's Approach to Staffing<sup>1</sup>

Table I-2

Personnel Cost estimates from the HCP

	Total cost per FTE per Year (from HCP)	Estimated FTEs From HCP Years 1-5	One-Fifth of Five-Year HCP Estimate	How These Functions Are/Will Be Performed in the Conservancy
<b>Administrative Personnel</b>				
Executive Director ("E.D.")	\$134,640	1	\$134,640	County principal planner (50% FTE)
IT- Database / GIS Manager	\$87,516	0.5	\$43,758	County GIS staff, County IT staff & contract planner
Budget Analyst	\$74,052	1	\$74,052	Principal planner (10% FTE); County accountants
Acquisition Specialist	\$100,980	1	\$100,980	County prin. plnr.(10% FTE); outsourced to EBRPD/others
Grant Specialist / Conservation Planner	\$94,248	1	\$94,248	County Senior Planner (20% FTE) & contract planner
Admin - Secretary	\$60,588	0.5	\$30,294	County secretaries (70% FTE)
<b>Total administrative personnel</b>		<b>5</b>	<b>\$477,972</b>	
<b>Restoration Planning, Design, &amp; Implementation and Monitoring Personnel<sup>2</sup></b>				
Senior Specialist	\$107,712	1	\$107,712	Outsourced to consultants
Project Manager	\$99,054	1	\$99,054	County senior planner (50% FTE) and consultants
Technical Support	\$64,320	1	\$64,320	County associate planner (25% FTE) & consultants
<b>Total restoration personnel</b>		<b>3</b>	<b>\$271,086</b>	
<b>Preserve Management and Maintenance Personnel</b>				
Preserve Manager	\$100,980	1	\$100,980	Outsourced to Conservancy land partners
Laborer	\$53,856	2	\$107,712	Outsourced to Conservancy land partners
Admin - Secretary	\$60,588	0.5	\$30,294	Outsourced to Conservancy land partners
<b>Total Management and Maintenance Personnel</b>		<b>3.5</b>	<b>\$238,986</b>	
<b>TOTAL PERSONNEL (FROM HCP)</b>		<b>11.5</b>	<b>\$988,044</b>	

## Conservancy Staff Cost Estimates for the 2009 Conservancy Budget

	Current billing rate per hour (fully burdened incl. support staff)	Projected average billing rate 2008 <sup>3</sup>	Estimated FTE	Estimated Annual Cost
Principal Planner	\$194	\$194	0.70	\$255,462
Senior Planner	\$158	\$158	0.70	\$207,783
Associate Planner	\$131	\$135	0.25	\$63,345
IT staff	costs included in planner rates		0.10	\$0
GIS staff	costs included in planner rates		0.30	\$0
Accounting staff	costs included in planner rates		0.30	\$0
Secretarial staff	costs included in planner rates		0.70	\$0
Senior management staff	costs included in planner rates		0.10	\$0
<b>TOTAL CONSERVANCY PERSONNEL</b>				<b>\$526,590</b>

## Basis for Planner Billing Rates

	Principal Planner		Senior Planner		Associate Planner	
	Portion of billing rate	\$ per hour	Portion of billing rate	\$ per hour	Portion of billing rate	\$ per hour
Salary, retirement and all benefits	41%	\$80	41%	\$65	41%	\$56
Increment to reflect paid time off	11%	\$21	11%	\$17	11%	\$15
Increment for secretarial support	10%	\$19	10%	\$16	10%	\$13
Increment for Department IT, GIS, accounting, management, computers, software, supplies and equipment	26%	\$50	26%	\$40	26%	\$35
Increment for building, power, phones, network, HR, County management	13%	\$24	13%	\$20	13%	\$17
<b>TOTAL</b>	<b>100%</b>	<b>\$194</b>	<b>100%</b>	<b>\$158</b>	<b>100%</b>	<b>\$135</b>

Notes:

- (1) Costs detailed in this Table are not reflected in summary Budget because they are split estimates for program areas
- (2) Costs for these staff are equally split between three program areas: Planning & Design, Restoration, and Monitoring
- (3) Reflects expected step increase and projected 0% cost of living adjustment in October 2009.

# Program Administration<sup>1</sup>

Table I-3

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<b>Cost Estimate Used for 2009 Conservancy Budget</b>	<b>Cost Estimate Used for 2008 Conservancy Budget</b>	<b>Notes</b>
Office Space	\$28,500	\$5,700	\$0	\$0	costs included in planner rates
Office Equipment by Employee	\$21,750	\$4,350	\$0	\$0	costs included in planner rates
General Office Equipment	\$38,600	\$7,720	\$0	\$0	costs included in planner rates
GIS/Database Equipment	\$17,500	\$3,500	\$0	\$0	costs included in planner rates
Maintenance of General Office Equipment	\$2,275	\$455	\$0	\$455	costs included in planner rates
Maintenance of GIS Database equipment	\$3,250	\$650	\$0	\$650	costs included in planner rates
<b>Employees</b>					
Executive Director	\$673,200	\$134,640	\$0	\$0	Principal planner performs these functions
IT- Database / GIS Manager	\$218,790	\$43,758	\$0	\$0	Contract planner (below) has some database responsibilities; IT/GIS staff costs included in planner rates
Budget Analyst	\$370,260	\$74,052	\$0	\$0	Principal planner performs many functions / accountants perform others and their costs are included in planner rates
Acquisition Specialist	\$504,900	\$100,980	\$0	\$0	Outsourced to EBRPD/others
Grant Specialist / Conservation Planner	\$471,240	\$94,248	\$0	\$0	Senior planners perform these functions
Admin - Secretary	\$151,470	\$30,294	\$0	\$0	Secretary costs included in planner rates
Principal Planner	n/a	n/a	\$145,978	\$102,666	Principal planner 40% FTE (position also has budget increments in other categories)
Senior planner	n/a	n/a	\$59,367	\$24,448	Senior planner 20% FTE (position also has budget increments in other categories)
Senior Planner (new)	n/a	n/a	\$0	\$184,356	Propose not hiring 2nd senior planner for cost-efficiency and flexibility purposes
<b>Employees Subtotal</b>	<b>\$2,389,860</b>	<b>\$477,972</b>	<b>\$205,345</b>	<b>\$311,470</b>	
Travel	\$33,250	\$6,650	\$3,000	\$6,000	
Vehicle / Mileage Allowance	\$5,063	\$1,013	\$3,000	\$1,000	
Insurance	\$187,000	\$37,400	\$25,000	\$35,000	
Legal Assistance	\$150,000	\$30,000	\$50,000	\$50,000	additional legal in land acquisition
Financial Analysis Assistance	\$15,500	\$3,100	\$10,000	\$3,000	
JPA Member Meeting Stipend	\$30,000	\$6,000	\$0	\$0	
In-Lieu funding for Law Enforcement and Firefight	\$17,938	\$3,588	\$0	\$2,000	
Contractor assistance with program admin.	\$0	\$0	\$60,000	\$60,000	Tech review of permit apps; agency coord & training; general tech support
Contract planner (entry level)	\$0	\$0	\$112,320	\$0	Coordinates take auth. process; manages databases; general supporting role (estimate assumes 60% FTE at \$90 per hour)
Public Relations and Outreach	\$125,000	\$25,000	\$25,000	\$25,000	includes web design and maintenance, publications, document reproduction
<b>TOTAL</b>	<b>\$3,065,486</b>	<b>\$613,097</b>	<b>\$493,665</b>	<b>\$494,575</b>	

Notes:

(1) Tasks include administration of take authorization program, public outreach and involvement, financial management, grant management, legal assistance and general costs associated with Conservancy operations.

## Land Acquisition

Table I-4

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>
Land Costs	\$33,396,556	\$6,679,311	\$13,750,000	\$9,350,000
Due Diligence	\$1,868,113	\$373,623	\$226,495	\$215,667
Planning Surveys	\$1,109,415	\$221,883	\$70,000	\$170,000
Site Improvements	\$963,900	\$192,783	\$165,000	\$165,000
<b>TOTAL</b>	<b>\$37,337,984</b>	<b>\$7,274,817</b>	<b>\$14,046,495</b>	<b>\$9,900,667</b>

## Land Cost Estimates and Assumptions

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Estimates Used for 2009 Conservancy Budget</i>	<i>Estimates Used for 2008 Conservancy Budget</i>
Number of parcels	42	8	12	10
Number of properties	n/a	n/a	6	5
Overall acreage acquired	5,060	1,012	2,500	1,700
Average cost per acre	n/a	n/a	\$5,500	\$5,500
<b>TOTAL</b>	<b>\$33,396,556</b>	<b>\$6,679,311</b>	<b>\$13,750,000</b>	<b>\$9,350,000</b>

## Due Diligence

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Estimates Used for 2009 Conservancy Budget</i>	<i>Estimates Used for 2008 Conservancy Budget</i>
Number of Parcels to be Purchased	42	8.4	12	10
Number of Parcels Investigated	53	10.6	14	12
Appraisals	\$216,240	\$43,248	n/a	n/a
Preliminary Title Report	\$27,030	\$5,406	n/a	n/a
Phase I Site Assessment	\$324,360	\$64,872	n/a	n/a
Boundary Survey	\$331,197	\$66,239	n/a	n/a
Legal Description	\$216,240	\$43,248	n/a	n/a
Monumentation	\$248,146	\$49,629	n/a	n/a
Land acquisition specialist	\$504,900	\$100,980	n/a	n/a
0.1 FTE of principal planner	n/a	n/a	\$36,495	\$30,667
Proposed Agreement with EBRPD	n/a	n/a	\$100,000	\$90,000
Legal support to land acquisition	n/a	n/a	\$40,000	\$0
Due diligence contingency	n/a	n/a	\$25,000	\$50,000
Due diligence costs with other partners	n/a	n/a	\$25,000	\$45,000
<b>TOTAL</b>	<b>\$1,868,113</b>	<b>\$373,623</b>	<b>\$226,495</b>	<b>\$215,667</b>

Table I-4 (continued)

Planning Surveys

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Estimates Used for 2009 Conservancy Budget</i>	<i>Estimates Used for 2008 Conservancy Budget</i>
Land cover type surveys	\$166,412.00	\$33,282	\$15,000	\$30,000
Covered Species	\$83,206.00	\$16,641	\$10,000	\$10,000
Covered Plant Surveys	\$665,649.00	\$133,130	\$20,000	\$100,000
Covered Wildlife Surveys	\$194,148.00	\$38,830	\$10,000	\$30,000
Assess & document conservation value	\$0.00	\$0	\$15,000	\$0
<b>Planning Survey Subtotal</b>	<b>\$1,109,415.00</b>	<b>\$221,883</b>	<b>\$70,000</b>	<b>\$170,000</b>

Site Improvements

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Estimates Used for 2009 Conservancy Budget</i>	<i>Estimates Used for 2008 Conservancy Budget</i>
Number of Parcels Purchased	42	8	12	10
Demolition of Old Facilities	\$212,500	\$42,500	\$30,000	\$30,000
Repair of Boundary Fence	\$390,166	\$78,033	\$60,000	\$60,000
Repair and Replacement of Gates	\$170,000	\$34,000	\$30,000	\$30,000
Signs (Boundary, Landmark, ect.)	\$106,250	\$21,250	\$20,000	\$20,000
Other Security (e.g., Boarding up barns)	\$85,000	\$17,000	\$25,000	\$25,000
<b>TOTAL</b>	<b>\$963,915</b>	<b>\$192,783</b>	<b>\$165,000</b>	<b>\$165,000</b>

## Management, Restoration, and Recreation Planning and Design

Table I-5

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Office Equipment	\$11,350	\$2,270	\$0	\$0	included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	factored into contractor rates
Staff	\$456,810	\$91,362	\$125,545	\$85,697	see detail below
Travel	\$13,125	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	factored into contractor rates
Contractors	\$1,297,013	\$259,403	\$200,000	\$250,000	see detail below
<b>TOTAL</b>	<b>\$1,861,131</b>	<b>\$372,226</b>	<b>\$328,170</b>	<b>\$338,322</b>	

### Staff

<i>Position</i>	<i>Estimate from HCP</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Senior Scientist (HCP estimate)	\$35,904	\$0		HCP assumed 33% FTE
Project Manager (HCP estimate)	\$33,018	\$0		HCP assumed 33% FTE
Technical Support (HCP estimate)	\$22,440	\$0		HCP assumed 33% FTE
Senior planner	\$0	\$89,050	\$48,897	30% FTE
Principal planner (60% time)	\$0	\$36,495	\$36,800	10% FTE
<b>TOTAL FOR CONSERVANCY 2008</b>	<b>\$91,362</b>	<b>\$125,545</b>	<b>\$85,697</b>	

### Contractors

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for 20089 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Management and Recreation planning	\$750,000	\$150,000	\$60,000	\$100,000	2 preserve mngmnt plans, 2 systemwide plans
Restoration Planning	\$500,000	\$100,000	\$140,000	\$75,000	finish Souza 2 & 1 small prjct
Restoration Design	\$47,013	\$9,403	\$0	\$75,000	lumped with planning
<b>TOTAL</b>	<b>\$1,297,013</b>	<b>\$259,403</b>	<b>\$200,000</b>	<b>\$250,000</b>	

## Habitat Restoration/Creation

Table I-6

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Creation/Restoration Construction	\$2,291,709	\$458,342	\$650,000	\$200,804	see detail below
Office Equipment	\$11,350	\$2,270	\$0	\$0	included in staff costs
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	factored into contractor rates
Staff	\$456,810	\$91,362	\$77,614	\$53,897	senior planner ( 20% FTE) & principal planner (5% FTE)
Travel	\$13,125	\$2,625	\$2,625	\$2,625	
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	factored into contractor rates
Contractors	\$769,830	\$153,966	\$250,000	\$150,000	see detail below
<b>TOTAL</b>	<b>\$3,625,657</b>	<b>\$725,131</b>	<b>\$980,239</b>	<b>\$407,326</b>	

### Cost of Restoration/Creation Construction

	<i>Approximate Acres Restored</i>	<i>Assumed cost per acre</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes/Location</i>
Project Type					
Large project (stream, vernal pool, pond, wetland)	5	\$90,000	\$450,000	n/a	Souza 2
Small project (riparian / wetland)	1 or 2	\$100,000	\$200,000	n/a	location TBD
<b>TOTAL</b>			<b>\$650,000</b>	<b>\$200,804</b>	

### Contractors

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Plans, Specifications, and engineering	\$176,297	\$35,259	\$50,000	\$35,000	
Development of bid package	\$23,503	\$4,701	\$50,000	\$5,000	EBRPD (inc. plng/design oversight)
Construction Oversight	\$99,902	\$19,980	\$60,000	\$20,000	Includes inspectors and const. mngr
Post-construction Maintenance	\$470,125	\$94,025	\$90,000	\$90,000	
<b>TOTAL</b>		<b>\$153,965</b>	<b>\$250,000</b>	<b>\$150,000</b>	<b>\$0</b>

## Environmental Compliance

Table I-7

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
NEPA/CEQA	\$380,000	\$76,000	\$3,000	\$10,000	existing EIS and categorical exemptions keep costs down
CWA 404/401	\$0	\$0	\$20,000	\$10,000	Army Corps permitting
NHPA	\$41,000	\$8,200	\$12,000	\$10,000	
CDFG 1600-1607	\$8,000	\$1,600	\$20,000	\$1,000	streambed alteration agreements
Report on non-covered species	\$0	\$0	\$40,000	\$50,000	streamlines CEQA for HCP users
Staff support to project permits	n/a	n/a	\$18,247	\$5,000	Principal Planner (5% FTE)
Develop regional wetlands permits	n/a	n/a	\$35,000	\$0	Contractor technical support
Develop regional wetlands permits	n/a	n/a	\$18,247	\$0	Principal Planner (5% FTE)
Mid year budget correction	n/a	n/a	\$0	\$23,000	
<b>TOTAL</b>	<b>\$429,000</b>	<b>\$85,800</b>	<b>\$166,495</b>	<b>\$109,000</b>	

## HCP/NCCP Preserve Management and Maintenance

Table I-8

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Office Equipment	\$31,050	\$6,210	\$0	\$1,000	too early in the program
Vehicle Purchase	\$221,000	\$44,200	\$0	\$8,000	too early in the program
Equipment - capital	\$75,000	\$15,000	\$0	\$3,000	too early in the program
Field Facilities	\$750,000	\$150,000	\$0	\$70,000	too early in the program
Contractors - Capital	\$225,000	\$45,000	\$45,000	\$45,000	construction, fencing, etc.
Recreation Facilities	\$0	\$0	\$0	\$0	partners
Preserve Staff	\$1,194,930	\$238,986	\$180,000	\$180,000	\$5k for principal planner
Conservancy staff coordination/oversight	\$0	\$0	\$18,247	\$0	principal planner (5% FTE)
Maintenance of Office Equipment	\$0	\$0	\$0	\$0	too early in the program
Travel	\$875	\$175	\$0	\$100	too early in the program
Vehicle Fuel and Maintenance	\$62,750	\$12,550	\$0	\$10,000	too early in the program
Equipment - Operational	\$162,500	\$32,500	\$0	\$25,000	too early in the program
Facilities Maintenance and utilities	\$57,500	\$11,500	\$0	\$10,000	too early in the program
Water Pumping	\$9,375	\$1,875	\$0	\$2,000	too early in the program
Contractors- operational	\$402,000	\$80,400	\$50,000	\$50,000	road, pond maintenance, etc.
Recreation - operational	\$0	\$0	\$0	\$0	partners
<b>TOTAL</b>	<b>\$3,191,980</b>	<b>\$638,396</b>	<b>\$293,247</b>	<b>\$404,100</b>	

## Monitoring, Research and Adaptive Management

Table I-9

	<i>Estimated Costs From HCP (Years 1-5)</i>	<i>One-Fifth of Five-Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>	<i>Notes</i>
Office Equipment	\$11,350	\$2,270	\$0	\$0	Factored in contractor rates
Vehicle Purchase	\$73,333	\$14,667	\$0	\$0	Factored in contractor rates
Monitoring staff	\$456,810	\$91,362	\$63,345	\$5,000	Associate planner (25% FTE)
Vehicle Fuel and Maintenance	\$9,500	\$1,900	\$0	\$0	Factored in contractor rates
Travel	\$13,125	\$2,625	\$1,000	\$500	
Field Data Collection (Contractors)	\$1,070,700	\$214,140	\$30,000	\$50,000	Specialized monitoring
Directed Research	\$375,000	\$75,000	\$0	\$1,000	Too early in program
Adaptive Management	\$150,000	\$30,000	\$0	\$10,000	Too early in program
<b>TOTAL</b>	<b>\$2,159,818</b>	<b>\$431,964</b>	<b>\$94,345</b>	<b>\$66,500</b>	

## Remedial Measures

Table I-10

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>
Remedial measures	\$30,000	\$6,000	\$6,000	\$6,000
<b>TOTAL</b>		<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>

## Contingency Fund

	<i>Estimated Costs From HCP Years 1-5</i>	<i>One-Fifth of Five- Year HCP Estimate</i>	<i>Cost Estimate Used for 2009 Conservancy Budget</i>	<i>Cost Estimate Used for 2008 Conservancy Budget</i>
Total cost of program excluding land acquisition	\$14,393,072	\$2,878,614	\$2,356,160	\$1,802,823
Contingency Fund	\$719,654	\$143,931	\$117,808	\$90,141
<b>TOTAL</b>		<b>\$143,931</b>	<b>\$117,808</b>	<b>\$90,141</b>

Assumptions: 5% Percent of total program funding (other than land acquisition funding) needed for contingency fund.

**CALIFORNIA WILDLIFE FOUNDATION ACCOUNT<sup>1</sup>: CURRENT BALANCE AND PROJECTED DEPOSITS AND WITHDRAWALS**

**Table II**

<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>NOTES</b>
<b>Account balance as of October 28, 2008</b>	<b>\$4,205,066</b>	
Anticipated withdrawal for CWF expenses	-\$57,327	anticipated Dec 08
Anticipated transfer to Conservancy for wetland expenses	-\$549,457	anticipated Dec 08
Anticipated early land acquisition payment	-\$2,850,000	anticipated Dec 08
<b>Anticipated account balance as of January 1, 2009</b>	<b>\$748,282</b>	
Anticipated grant reimbursement of land acquisition payment	\$2,850,000	anticipated by 6-30-09
<b>Notes:</b>		
(1) Fund is managed by the California Wildlife Foundation for the California department of Fish and Game in order to receive contributions from pre-plan and non-covered activities and disburse funds to the HCP.		

## Grants Awarded for ECC HCP/NCCP Implementation

*Table III*

<i>Funding Source</i>	<i>Agency</i>	<i>Purpose</i>	<i>Amount</i>	<i>Match</i>	<i>Match non-federal?</i>	<i>Date Funds Available to Spend</i>	<i>Need to be used by...</i>
Section 6 (2006)	USFW	Acquisition	\$6,531,054	\$7,982,399	yes	August 2008	January 2010
Section 6 (2007)	USFW	Acquisition	\$7,000,000	\$8,555,600	yes	August 2008	June 30, 2010
Section 6 (2008)	USFW	Acquisition	\$6,000,000	\$7,333,333	yes	Aug 2008?	after July 2011
CVPIA - HRP	USBR	Acquisition	\$1,241,631	\$500,000	yes	September 2006	September 2010
IRWMP - Prop 50	DWR	Acquisition or restoration	\$750,000	\$500,000	no	====	June 2012
NCCP Local Assistance Funds (2006)	CDFG	Start-up staffing	\$40,000	\$0	no	now	June 2008 (has been invoiced)
NCCP Local Assistance Funds (2007)	CDFG	Start-up wetlands restoration	\$60,000	\$120,000	no	now	====
NCCP Local Assistance Funds (2008)	CDFG	Wetlands restoration at Souza 2	\$150,000	====	no	spring 09	====
Prop 84 NCCP account	WCB	Acquisition	\$5,000,000	====	no	not confirmed	====
<b>TOTAL</b>			<b>\$26,772,685</b>	<b>\$24,991,332</b>			

## Comparison of Approved 2008 Conservancy Budget, Expenditures as of October, 31 2008 and Projected Expenditures for Remainder of 2008

*Table IV*

<i>Cost Category</i>	<i>Expenditures</i>				
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D = B+C</i>	<i>E = A minus D</i>
	<i>Approved 2008 Conservancy Budget</i>	<i>Actual Expenditures as of 10/31/08<sup>1</sup></i>	<i>Projected Expenditures Remainder 2008</i>	<i>All 2008 Expenditures (Actual plus Projected Expenditures)</i>	<i>Difference (Budget minus All 2008 expenditures)</i>
Program Administration	\$494,575	\$365,647	\$92,169	\$457,816	\$36,759
Land Acquisition <sup>2</sup>	\$9,900,667	\$938,301	\$3,192,699	\$4,131,000	\$5,769,667
Management, Restoration and Recreation Planning and Design	\$338,322	\$125,682	\$99,592	\$225,275	\$113,047
Habitat Restoration/Creation	\$407,326	\$358,807	\$16,390	\$375,197	\$32,129
Environmental Compliance	\$109,000	\$79,951	\$6,321	\$86,272	\$22,728
HCP/NCCP Preserve Management and Maintenance	\$404,100	\$387	\$35,100	\$35,487	\$368,613
Monitoring, Research, and Adaptive Management	\$66,500	\$0	\$0	\$0	\$66,500
Remedial Measures	\$6,000	\$0	\$0	\$0	\$6,000
Contingency Fund (5% of non-land acquisition costs)	\$90,141	\$0	\$0	\$0	\$90,141
<b>TOTAL EXPENDITURES</b>	<b>\$11,816,631</b>	<b>\$1,868,775</b>	<b>\$3,442,272</b>	<b>\$5,311,047</b>	<b>\$6,505,584</b>

Notes:

(1) Cost for work performed but not yet billed is not included. Consultant and staff costs through October are included.

(2) Projected land acquisition expenditures for 2008 do not include grant funds. Grant funds for acquisitions approved in 2008 will not actually be spent until 2009.

## **COST SHARING AGREEMENT**

This **COST SHARING AGREEMENT** (the “**Agreement**”), dated January 1, 2009 for reference purposes only, is by and between **EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**, a joint exercise of powers authority (“**Conservancy**”), and **EAST BAY REGIONAL PARK DISTRICT**, a California special district (“**District**”). Hereafter, Conservancy and District are sometimes individually referred to herein as a “**Party**” and are sometimes collectively referred to herein as the “**Parties.**”

### **Recitals**

A. The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, dated October 2006 (“**HCP/NCCP,**” or “**Plan**”), prepared by the East Contra Costa Habitat Conservation Planning Association and approved by United States Fish and Wildlife Service (“**USFWS**”) and by California Department of Fish and Game (“**DFG**”) is intended to provide a comprehensive framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for certain projects that would cause impacts on endangered and threatened species. The primary policy priority of the Plan is to provide comprehensive species, wetlands, and ecosystem conservation and contribute to recovery of endangered and threatened species within eastern Contra Costa County while balancing open space, habitat, agriculture, and urban development. To that end, the Plan describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on those species covered by the Plan and their habitats while allowing for the urban development in selected regions of Contra Costa County (“**County**”) and the cities of Pittsburg, Clayton, Oakley, and Brentwood (“**Cities**”).

B. Conservancy is a joint powers authority formed by its members, the County and the Cities, to implement the Plan.

C. District manages more than 98,000 acres of parkland, wilderness, shorelines, preserves and land banks in Alameda and Contra Costa Counties.

D. Conservancy, District, County, Cities, Contra Costa County Flood Control and Water Conservation District, USFWS and DFG have entered into that certain Implementing Agreement, dated January 22, 2007 (the “**Implementing Agreement**”), which defines the roles and responsibilities of the parties to such agreement with regards to implementation of the Plan.

E. The Implementing Agreement contemplates, among other things, Conservancy’s creation of a preserve system through acquisition and dedication in perpetuity of fee and conservation easement interests in lands intended to meet the preservation, conservation, enhancement, and restoration objectives of the “**Conservation Strategy**” of the Plan.

F. Conservancy and District desire to work together to identify, negotiate and execute fee and/or conservation easement acquisitions consistent with the Implementing Agreement, to perform restoration projects on such acquisitions, and to share costs and expenses incurred in connection with such joint acquisition and restoration activities and efforts, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

**1. Joint Projects.** Conservancy and District shall cooperate and collaborate in identifying land acquisition opportunities to jointly pursue that are consistent with the Plan and the Implementing Agreement (“**Joint Acquisition Projects**”). The Parties expect that they will identify and pursue five to ten separate Joint Acquisition Projects during the term of this Agreement. The Parties intend and expect that District will take the lead in performing customary pre-acquisition and property due diligence activities reasonably advisable for any Joint Acquisition Project, including, without limitation, preliminary discussions and negotiations with landowners; obtaining and reviewing appraisals, environmental reports, and engineering reports; and obtaining and reviewing preliminary title reports and title documents and identifying and clearing title issues.

Conservancy and District shall also cooperate and collaborate in planning habitat restoration projects that are consistent with the Plan and the Implementing Agreement (“**Joint Restoration Planning Projects**”). The Parties expect that they will plan a five to ten acre habitat restoration project at the Souza 2 Property at 6100 Armstrong Road during 2009. The Parties intend and expect to construct the restoration project in 2009. The Parties intend and expect that Conservancy will be responsible for providing draft planning documents for review by Conservancy and District, and District will be responsible for administering the public contracting process necessary to retain a contractor to build the project. The Parties acknowledge that a separate agreement will be necessary to describe the roles and responsibilities of the Parties in actually constructing the project.

**2. Shared Costs.** Subject to the terms, conditions and procedures set forth below, Conservancy and District shall each share out-of-pocket pre-acquisition and due diligence costs and expenses incurred or to be incurred in connection with the Joint Acquisition Projects and out-of-pocket planning costs and expenses incurred or to be incurred in connection with the Joint Restoration Planning Projects, including, without limitation, the following costs and expenses (collectively, the “**Shared Costs**”):

- (a) Appraisal costs and District’s staff expenses related directly to commissioning the appraisal;
- (b) Title costs, including preparation of preliminary title reports, title searches, and clearing title exceptions;
- (c) Phase one environmental site assessments for hazardous materials, and any recommended follow-up environmental testing or clean-up work;
- (d) Engineering and structural integrity studies;
- (e) Water rights searches and assessments, and water quality testing;

- (f) Baseline documentation of natural and cultural resources, as necessary, to support land acquisition;;
- (g) Deposits, earnest money, option consideration and/or extension fees due sellers, to the extent such amounts are approved in advance by the Parties (collectively, “**Approved Deposits**”);
- (h) District’s staff expenses related directly to performing other technical land acquisition duties agreed upon by the Parties;
- (i) Closing costs and escrow fees;
- (j) District staff expenses related directly to overseeing development of plans and specifications, assembling the bid package and conducting the competitive bid process for Joint Restoration Planning Projects; and
- (k) Other non-reimbursable, out-of-pocket costs reasonably agreed to by the Parties.

Notwithstanding anything to the contrary in this Agreement, the Shared Costs shall specifically *not* include the Parties’ soft costs consisting of staff time not expressly described above, any post-acquisition costs or expenses associated with the ownership, operation, management, or maintenance of any property interest acquired by District or Conservancy, nor any actual construction costs or construction management costs of a Shared Restoration Project, as such expenses are anticipated to be the subject of future agreements, except that costs to secure the property may be considered shared costs if reasonably agreed to by the Parties. The Shared Costs shall also not include any pre-acquisition biological surveys required under the Plan, which shall be paid fully by Conservancy.

**3. Conservancy’s Shared Costs Amount.** Conservancy and District estimate that Conservancy’s portion of the Shared Costs for the Joint Land Acquisition and Restoration Projects from the period commencing January 1, 2009 through December 31, 2009 is One Hundred Fifty Thousand Dollars (\$150,000) (“**Conservancy’s Total Shared Costs**”), as described as follows:

(a) *[One Hundred Thousand Dollars (\$100,000)]* of Conservancy’s Total Shared Costs represent Conservancy’s equal share of the total estimated Shared Costs District is expected to incur for Joint Acquisition Projects during the 2009 calendar year (“**Conservancy’s Estimated 2009 Shared Land Acquisition Costs**”).

(b) *[Fifty Thousand Dollars (\$50,000)]* of the Conservancy’s Total Shared Costs represents Conservancy’s equal share of the remaining total of the total estimated Shared Costs District is expected to incur for Joint Restoration Planning Projects during the 2009 calendar year (“**Conservancy’s Estimated 2009 Shared Restoration Costs**”).

**4. Payment of Conservancy’s Total Shared Costs.** Conservancy shall pay Conservancy’s Total Shared Costs (the “**Conservancy Funds**”) within

twenty-five business days of the Effective Date, Conservancy shall forward to District cash in the amount equal to *[One Hundred and Fifty Thousand Dollars (\$150,000)]* (“**Conservancy’s Estimated Funds**”) which shall represent Conservancy’s advance payment of Conservancy’s Estimated 2009 Shared Costs for the 2009 calendar year. District shall be entitled to use Conservancy’s Estimated 2009 Funds to pay Conservancy’s Estimated Shared Costs during the term of this Agreement.

District shall directly fund District’s portion of the Shared Costs incurred by District for the Joint Acquisition Projects from the period commencing January 1, 2009 through December 31, 2009. If the number of Joint Acquisition Projects far exceeds the number expected or if District actions to oversee development of wetland restoration plans exceed the level of effort anticipated, as detailed above, the Parties shall meet and confer to discuss increasing the amount of the Conservancy’s Total Shared Costs; provided, however, Conservancy will not be required to fund any Shared Costs in excess of the Conservancy’s Total Shared Costs identified herein unless and until Conservancy and District agree in writing on a revised cost estimate that reflects such increase in the number of Joint Acquisition Projects or in the level of effort for restoration planning oversight and a schedule for additional payments due from Conservancy to District in connection with such revised cost estimate.

**5. Reporting.** Within 30 days of a request by Conservancy, District shall provide to Conservancy copies of all reports, documents, analysis and evaluations obtained or generated by District with respect to the Joint Acquisition Projects and paid for by any Conservancy Funds. District and Conservancy shall meet and confer regularly, at least on a monthly basis, to discuss the status and results of District’s pre-acquisition and due diligence activities and efforts for the Joint Acquisition Projects, and the appropriate future direction and next steps for such Joint Acquisition Projects as relates to the Plan and the Implementing Agreement.

**6. Accounting.** On or before November 30, 2009, District shall deliver to Conservancy a preliminary written accounting estimating all Shared Costs actually incurred as of that date for use in discussing cost share arrangements for future years. On or before March 1, 2010, District shall deliver to Conservancy the following: (a) a preliminary written accounting detailing all Shared Costs actually incurred and paid by District during the term of the Agreement for each Acquisition Project, Conservancy’s portion of such Shared Costs, and all Conservancy Funds used to pay such Shared Costs; and (b) cash in the amount equal to the difference, if any, between the Conservancy Funds and the Total Conservancy Shared Costs.

**7. Term.** The term of this Agreement shall commence on the Effective Date and shall terminate on December 31, 2009.

**8. Notices.** Any notice, demand, request, consent or approval that either Party desires or is required to give to the other Party under this Agreement shall be in writing and shall be sent to the following relevant address:

{00051479.DOC.2}

If to Conservancy:

East Contra Costa County Habitat  
Conservancy  
651 Pine Street  
North Wing, 4<sup>th</sup> Floor  
Martinez, CA 94553  
Attention: John Kopchik  
Facsimile: (925) 335-1299

If to District:

East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605  
Attention: Nancy Wenninger  
Facsimile: (510) 569-1417

## 9. Miscellaneous Provisions.

(a) **Effective Date.** The Parties' rights and obligations set forth in this Agreement shall be effective (the "**Effective Date**") the first date upon which both Parties shall have executed this Agreement.

(b) **Counterparts.** This Agreement may be executed in one or more identical counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

(c) **Successors and Assigns.** This Agreement may not be assigned, in full or in part, by either Party without the prior written consent of the other Party. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and assigns.

(d) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the agreements set forth herein and supersedes any and all prior written and oral understandings relating thereto. Any representations, amendments or modifications concerning this Agreement shall be of no force or effect unless confirmed in a writing signed by the Parties.

(e) **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under, the internal laws of the State of California.

(f) **Drafting.** Each of the Parties hereto acknowledge that such Party and its counsel have reviewed, revised (where it was deemed appropriate), and approved this Agreement, and that no rule of construction that ambiguities are to be resolved against the drafting Party shall be employed in the interpretation of this Agreement.

(g) **Invalidity.** If any provision of this Agreement or the application thereof to any person(s) or circumstance(s) shall to any extent be held to be invalid,

illegal, or unenforceable in any respect by any court of competent jurisdiction, and provided that the essential agreement of the Parties to this Agreement is not materially altered as a result of such holding: (i) neither the remainder of this Agreement nor the application of such provision to any person(s) or circumstance(s), other than those as to whom or which it is held to be invalid or unenforceable, shall be affected thereby; (ii) this Agreement shall be construed as though such invalid, illegal or unenforceable provision had never been contained in this Agreement; and (iii) every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision is so stricken from this Agreement, the Parties agree to negotiate in good faith any modifications that may be required to effectuate the intent of this Agreement.

**(h) Performance and Waiver.** Time is of the essence in the performance of each of the obligations of the Parties under this Agreement, but no failure of a Party to this Agreement to insist upon the timely performance of any obligation by another Party shall constitute a waiver of the right to require performance of such obligation, or act as a waiver of the right to require the performance of any other obligation of such Party (or any other party).

**(i) Attorneys' Fees.** In the event of any litigation or arbitration between the Parties to this Agreement in connection with the interpretation of this Agreement, or the enforcement of any right or obligation under this Agreement, the Party prevailing in such litigation or arbitration shall be entitled to payment by the other Party of the court costs and reasonable attorneys' fees and expenses incurred by the prevailing Party in connection with such litigation or arbitration (whether incurred at the trial, appellate, or administrative level), in such amount as the court or administration body may judge reasonable, all of which may be incorporated into and be a part of any judgment or decision rendered in such litigation or arbitration.

**(j) Due Authorization.** Each Party represents and warrants to the other Party as to the following: (1) such Party's execution and delivery of this Agreement has been duly authorized and approved by all requisite action; (2) no other authorization or approval, whether of governmental bodies or otherwise, shall be necessary in order to enable such party to enter into this Agreement and comply with the terms hereof; and (3) the person executing this Agreement on behalf of such party has all requisite power and authority to legally bind such Party.

IN WITNESS WHEREOF, the Parties hereby enter into this Agreement as of the Effective Date.

**CONSERVANCY:**

EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY, a joint  
exercise of powers authority

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Catherine

Kutsuris

Title: Secretary

**DISTRICT:**

EAST BAY REGIONAL PARK  
DISTRICT, a California special district

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Pat O'Brien

General Manager

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Conservancy Work Plan – 2008 Summary and 2009 Work Plan

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**RECOMMENDATION**

APPROVE the 2009 Conservancy Work Plan.

**DISCUSSION**

The *Conservancy Work Plan: 2008 Summary and 2009 Work Plan* provides both a summary of task completed and initiated in 2008 and tasks planned for 2009 (attached).

Section 8.11.1 of the HCP/NCCP provides a schedule for early implementation tasks, indicating whether these tasks should be completed in the first six months, in the second six months or in 1-5 years of HCP implementation. The HCP also provides a list of the duties of the implementing entity (the Conservancy) in Section 8.3. Based on this information and general knowledge of the HCP, staff has developed a 2009 Conservancy Work Plan. As mentioned, the Work Plan also includes a summary of tasks that have been completed in 2008 or are on-going for 2009. In cases where a task appeared in the HCP implementation schedule, the recommended timeline from the HCP is juxtaposed with staff's recommended timeline in the Work Plan for comparison purposes.

CONTINUED ON ATTACHMENT:  X  YES  
ACTION OF BOARD ON \_\_\_\_\_ APPROVED AS RECOMMENDED \_\_\_\_\_  
OTHER \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

UNANIMOUS  
AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED \_\_\_\_\_  
*DENNIS M. BARRY, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY*

BY: \_\_\_\_\_, DEPUTY

The “Actions Taken in 2008” column provides detail on the task, the type of work that has been completed and the end result for actions taken in 2008. The “Actions Planned for 2009” column provides detail on the task, the type of work planned and end result for actions planned in 2009. The initial year (2008) of implementation is heavy on Plan administration. This partly because there are a lot of start-up administrative tasks to do and partly because administrative tasks are more discrete and easy to itemize than more complex programmatic tasks like land acquisition or restoration or creation. For the more complex tasks, the Work Plan attempts to provide a sense of the general approach recommended. The many administrative tasks include creating documents, maps, and informational pamphlets, assisting with ordinance adoption and implementation, training/assisting jurisdiction staff on processing projects through the HCP/NCCP, and taking whatever steps necessary to ensure the Plan is being implemented effectively and efficiently.

Implementing the HCP/NCCP will be an interagency process. To ensure coordination during this next phase of HCP/NCCP implementation, City, County and Conservancy staff have been meeting on a regular basis to plan and coordinate their operating procedures. The Cities and the County have each designated one or more staff people who will be the in-house expert on the HCP/NCCP and who will be responsible for ensuring consistent, effective and efficient implementation at their agency. Conservancy staff will host a general “refresher” training session in early 2009 to explain the HCP/NCCP to a broader array of staff from the Cities and the County involved in project review so that these individuals will have general knowledge of how the HCP/NCCP procedures will work.

Questions, comments and guidance from the Board on the Draft Work Plan are welcomed.

**Attachment:**

- Conservancy Work Plan: 2008 Summary and 2009 Work Plan

**Conservancy Work Plan: 2008 Summary and 2009 Work Plan**

	<b>TASK</b>	<b>TIME FRAME</b> Recommended in HCP/NCCP	<b>STATUS</b> (completion date)	<b>ACTIONS TAKEN IN 2008</b>	<b>ACTIONS PLANNED FOR 2009</b>
<b>HCP/NCCP Administration (general)</b>					
1	Hire key administrative staff of Implementing entity or secure agreements or contacts with other organizations to fulfill these roles	6 Months - 1 Year	Complete (Winter 2008)	Key staff has been provided by the County and an E.D. has been designated. Agreement with EBRPD provide land acquisition services. Consultants and attorneys were retained to provide assistance.	New for 2009, consultant will provide a planner 3 days a week to assist Conservancy as Conservation Planner in lieu of hiring a full-time employee. 2009 agreement with EBRPD.
2	Provide opportunities for involvement in the implementation of the Plan by the public, science advisors, interested agencies, and others.	N/A	On-going (PAC initiated 2008)	Two new members were recruited in 2008 to represent suburban and rural interests. Applications have been brought to 12-17-08 meeting for review and new member selection. Other committees, including the science advisors, may be initiated in 2009, depending upon need.	Two new members will join PAC. Meetings will continue to be held quarterly. A field trip is scheduled for May to visit 2008/2009 restoration project sites.
3	Establish HCP/NCCP Implementation web site.	6 Months - 1 Year	Completed (Spring 2008)	The website has been converted from the HCPA's website to the Conservancy's website and Conservancy staff now maintain. New website includes all needed forms and will be updated regularly based on Plan implementation.	More documentation of conservation actions will be included, access to resources will be improved, and public involvement opportunities will be highlighted.
4	Develop and maintain annual budgets and work plans	N/A	On-going (approval before start of 2008)	Completed for 2008. Conservancy staff will prepare drafts of both the 2009 annual budget and the 2009 work plan for Board discussion in December 2008 .	---
5	Calculate the amounts of automatic annual fee increases and distribute these calculations to the cities and the county by March 15 of each year, in accordance with Chapter 9 of the HCP/NCCP	N/A	2008 adjustment complete. 2009 adjustment planned for March.	Conservancy staff calculated the 2008 adjustments based on the formulas in the HCP and distributed the new fee amounts to the cities and the county for incorporation in development review and permitting. T	The calculations will be performed again in March 2009.
6	Prepare and submit annual report to CDFG and USFWS	Required by March 15 following first full year of implementation	Planned (March 2009)	No annual report is due for 2008. However, Conservancy staff has started creating the initial incidental take vs. preserved acres tracking system which will be an integral part of the annual report.	Conservancy will complete incidental take vs. preserved acres tracking system. "Practice annual" annual report will be generated for March 2009.
7	Pursue State and Federal Grants to assist in funding preserve acquisition and other implementation tasks	N/A	On-going	New grants include \$250K augmentation from the USBR for land acquisition, a new \$150K grant award from CDFG for restoration at the Souza 2 property and a \$5M WCB grant has been recommended.	Conservancy staff continue to research and apply for available grant monies which make up a significant portion of the funding for implementation of the HCP/NCCP.
8	Administer grants already awarded	N/A	On-going	Substantial staff time is required to prepare grant contracts, invoices, and required periodic grant reports for the many grants already received. Staff will continue with these duties for current and future grants. The largest grants received, the Section 6 grants, will be administered through the Wildlife Conservation Board.	Staff will continue with these duties for current and future grants. The largest grants received, the Section 6 grants, will be administered through the Wildlife Conservation Board. Staff will pursue block grant agreements to expedite processing.
9	Provide accounting services for the Conservancy	N/A	On-going	Duties include processing all requests for payment, making deposits, tracking all account activities, providing summary reports as needed, and ensuring that fees are tracked and expended in compliance with the Mitigation Fee Act.	Duties include processing all requests for payment, making deposits, tracking all account activities, providing summary reports as needed, and ensuring that fees are tracked and expended in compliance with the Mitigation Fee Act.

	TASK	TIME FRAME Recommended in HCP/NCCP	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS PLANNED FOR 2009
10	Pursue regional permits and permitting programs for jurisdictional wetlands and waters with the appropriate state and federal agencies to help ensure coordination between implementation of the HCP and the implementation of state and federal wetlands regulations.	N/A	On-going (end of 2009)	This process started early in the development of the HCP. Much of the important work to achieve this goal has been accomplished. Measures in the HCP for wetlands have been designed to address species needs and, to greatest extent possible, meet the requirements of wetlands regulations. In late 2008, staff has been meeting with key staff and state and federal wetland regulators to seek to develop an interagency agreement for wetlands conservation and permitting and one or more regional wetland permits. Staff have resumed meeting with the Corps of Engineers and expect that a draft Regional Permit will be circulated for public review by the Corps soon.	Continue process from 2008 and obtain regional and federal permits in 2009.
<b>HCP/NCCP Administration (permit issuance)</b>					
11	Pass local ordinances to implement HCP/NCCP (cities and County)	0-6 Months	Complete (October-November)	This task is for the cities and the County. Conservancy staff has provided assistance to the cities and the County in the crafting of ordinances. The cities and the County approved the ordinances in October and November. The ordinances took effect in January 2008.	---
12	Develop checklists and other materials for local planners to ensure compliance by each project receiving coverage under the Plan.	0-6 Months	On-going (materials to be updated in 2009)	Checklists and other resource materials were developed for local planner to ensure compliance by each project receiving coverage under the Plan. Feedback of the permitting process was received at a December 2008 meeting with the local planners.	Checklists and other resource materials will be updated and expanded in 2009 to include feedback received from local planners.
13	Develop template survey report that may be used by project proponents as a guide and by local jurisdictions to evaluate the completeness of the survey reports they review	0-6 Months	Complete (Spring 2008)	Draft planning survey template was provided to Permittee staff on September 6, 2007 and to the Governing Board in October 2007 for review and comment. It was revised based on comments received and reissued for December 6, 2007 training. The first official version was released in January, revised in February and revised again in March to reflect fee updates.	Additional review and revision is on-going based on experiences with projects that have used the form so far and new version is expected by early 2009.
14	Assist local jurisdictions with training staff to review and process HCP/NCCP applications. Assist local jurisdictions to ensure that project proponents comply with the provisions of the Plan, including performance of required avoidance, minimization and mitigation measures.	0-6 Months	Complete	The Conservancy hosted a series of trainings in 2008. There was an information session for builders and developers concerning the operations of the HCP/NCCP on January 9, 2008. Refresher trainings are planned for 2009. Conservancy staff is in the process of developing a brochure explaining the process for applying for and receiving take authorization. Conservancy staff will remain available to local jurisdictions for assistance and technical support on as needed basis	Refresher trainings are planned for 2009. Conservancy staff is in the process of developing a brochure explaining the process for applying for and receiving take authorization. Conservancy staff will remain available to local jurisdictions for assistance and technical support on as needed basis
15	Provide each participating local jurisdiction with detailed maps of fee zones and land cover so the can process and evaluate HCP/NCCP applications	0-6 Months	Complete	At the request of city staff, Conservancy staff prepared detailed maps of fee zones for inclusion in city ordinances in 2008 and a detailed map is on the website. The Conservancy will continue to provide mapping and GIS support to implementation of the HCP by local jurisdictions.	---

	<b>TASK</b>	<b>TIME FRAME</b> Recommended in HCP/NCCP	<b>STATUS</b> (completion date)	<b>ACTIONS TAKEN IN 2008</b>	<b>ACTIONS PLANNED FOR 2009</b>
16	Begin receiving and reviewing applications for a coverage under the HCP/NCCP and collecting development fees.	0-6 Months	Complete (January 15, 2008)	City, County and Conservancy staff have started the review of applications. The Conservancy's role will be limited to assisting the cities and the County, considering offers of land in lieu of development fees, considering other special circumstances set forth in Chapter 8.7.1 of the HCP and considering applications of Participating Special Entities (see item 20 below).	---
17	Prepare report documenting the expected benefits of the HCP/NCCP to non-covered special-status species to provide streamlining for future CEQA documents	6 Months - 1 Year	In-process (complete by 2009)	The the Conservancy staff has hired H.T. Harvey to review the habitat and mitigation needs of special status species and compare these to the habitat and mitigation needs of covered species. This report will be referenced by future CEQA documents for public and private projects to streamline the analysis of biological impacts.	Work initiated in 2008 will be completed in 2009.
18	Develop policies, a template agreement and application form for Participating Special Entities (entities with projects not subject to the land use authority of the cities or the County) so they may receive take authorization through the Plan.	N/A	Complete (early 2008)	Conservancy Staff has completed work on this in cooperation with Resources Law Group. A template agreement and certificate of inclusion for Participating Special Entities (PSEs) was included in the Board's December 2007 packet and final version was used to provide coverage for Ameesco.	---
19	Establish GIS and other databases to track land acquisitions and HCP/NCCP impacts	6 Months - 1 Year	On-going (Early 2009)	Conservancy staff is working to establish one or more databases to track and cross tabulate the amount of acres of various types of impacts and the amount of acres of various types of conservation to provide a compliance monitoring function pursuant to the state and federal permits. Staff may track both in a GIS database in order to provide maps and analysis and in a non-GIS database in order to maintain redundant tracking system and to track actual acres reported rather than acres estimated by the GIS. The best approach is still being evaluated.	Work initiated in 2008 will be completed in 2009.
<b><i>Preserve Acquisition and Management</i></b>					
20	Acquire land to meet Jump Start guidelines as described in Chapter 8.	0-6 Months	Complete	As described in Chapter 5 and Table 5-15, the HCP sets forth the goal of acquiring about 500 acres before the state and federal permits are issued. As described in Table 5-21 and Figure 5-12, 2,383 acres of land have already been acquired prior to permit issuance. The acquisition goal has essentially been met, but for these lands to be credited as part of the HCP Preserve System and count toward land preservation requirements, permanent preservation and management of these lands must be assured. For some of these lands, that simply means that the proposed conservation easement needs to be recorded. For others, it requires that the Conservancy work with the owner to record an easement or deed restriction and ensure management consistent with the HCP.	More than 1000 acres have been added to the Preserve System already.

	<b>TASK</b>	<b>TIME FRAME</b> Recommended in HCP/NCCP	<b>STATUS</b> (completion date)	<b>ACTIONS TAKEN IN 2008</b>	<b>ACTIONS PLANNED FOR 2009</b>
21	Continue to acquire land to assemble Preserve System and Meet Stay Ahead requirements as described in Section 8.6.1	1-5 Years	On-going	Conservancy staff will continue to meet with acquisition partners such as the East Bay Regional Park District, Save Mount Diablo, Agricultural-Natural Resource Land Trust of Contra Costa County, Contra Costa Water District, the Natural Heritage Institute, cities such as the Cities of Oakley and Brentwood with potential preserves in their boundaries and private mitigation banks to learn of their current acquisition efforts and explore opportunities for partnering.	Work initiated in 2008 will continue in 2009.
				Conservancy staff proposes the following general approach to land acquisition in early years: (a) seek partners willing to be responsible for assisting with the fund-raising and willing to be the land owner and land manager or easement holder (or to find another entity to serve that role) so that the Conservancy can avoid actually owning and managing land or easements in perpetuity, (b) maintain an "Open Door Policy" and be willing to consider proposals from a range of partners, (c) once a prospective partner has found a willing landowner and established a price, the Conservancy should evaluate the cost effectiveness of the acquisition in achieving HCP goals, develop a proposed acquisition cost-share and strategy for ensuring management and monitoring, evaluate the pros and cons of the overall package and consider approving or disapproving Conservancy participation in the acquisition.	Work initiated in 2008 will continue in 2009.
				A verbal update and discussion on this critical component of HCP implementation is a regular part of our Governing Board and PAC agendas. Two new properties not acquired or conserved previously are in the process of being acquired as part of the HCP Preserve System, the Schwartz Property (153 acres) and the Souza 2 Property (191 acres).	Goal is add 2500 additional acres to the Preserve System in 2009.
22	Develop a mutually agreeable programmatic strategy with East Bay Regional Park District (EBRPD) to collaborate on land acquisition and management in the HCP area.	N/A	On-going	EBRPD has approved the HCP and Implementing Agreement and is a co-permittee with the other local agencies. EBRPD is also implementing its Master Plan and is buying land in the HCP area for park and open space purposes. Developing a mutually agreeable strategy will help to ensure that the land acquisition and management goals of EBRPD's land program and the similar goals of the HCP are implemented in a coordinated manner (this goal is set forth in Section 13.6 of the Implementing Agreement). Conservancy staff and EBRPD staff have been discussing partnership opportunities and believe, for the time-being, that partnership opportunities should be addressed case by case because the details are numerous and specific to the parcel in question. Ensuring permanent protection and management for lands already purchased by EBRPD may present an early opportunity to develop such a case by case partnership.	Work initiated in 2008 will continue in 2009.

	<b>TASK</b>	<b>TIME FRAME</b> Recommended in HCP/NCCP	<b>STATUS</b> (completion date)	<b>ACTIONS TAKEN IN 2008</b>	<b>ACTIONS PLANNED FOR 2009</b>
23	Conducting pre-acquisition surveys of potential acquisitions to determine their biological value for the HCP	N/A	On-going	The HCP requires that planning surveys similar to those conducted by developers also be conducted on potential additions to the Preserve System to establish that the property proposed for acquisition will help to meet HCP requirements. Such surveys have been performed on a number of current and potential acquisitions.	Work initiated in 2008 will continue in 2009. Conservancy staff and consultants have developed protocols for a phased and mre streamlined approach to this task that defers the most expensive field work until after agreement has been reached to purchase a property.
24	Create template Conservation Easement Deeds and Deed Restrictions and other protective covenants to speed-up addition of land to the Preserve System and to protect the interests of the Conservancy in land it acquires.	N/A	On-going	Conservancy staff worked with Resources Law Group to develop draft templates of these documents. The Draft Easement and Deed Restriction Templates would be adapted case by case to bring parcels into the Preserve System, but having a template will make this process much more efficient and consistent. A draft was developed for use in agreements with EBRPD. Drafts of these documents or provisions will be shared with potential acquisition partners and with the Public Advisory Committee to receive comment before being approved by the Board and wildlife agencies. These documents probably will require periodic updating.	Work initiated in 2008 will be completed in 2009.
25	Develop and begin to implement a strategy for funding the long term management of the Preserve system before 50% of the authorized take under the maximum urban development area is used or before the end of year 15 of implementation, whichever comes first. Provide progress reports on this matter in the Annual Report.	Year 15 or when half of the impacts have occurred, whichever comes first.	Planned	Though not required immediately, Conservancy staff recommend starting now to explore opportunities for ensuring the funding of operations and management of the preserves after the 30 year permit term. This issue will also come up with each prospective acquisition and should be considered and addressed on a case-by-case basis until a general approach is established.	Work initiated in 2008 will continue in 2009.
26	Develop site-specific management plans for the Preserve System and individual preserves.	1-5 Years	On-going	Conservancy staff will work closely with biological experts and acquisition partners to assist in developing preserve management plans for each of the preserves. To avoid developing management plans parcel by parcel, conservancy staff will seek to develop interim management prescriptions and complete full management plans when enough parcels have been acquired to provide a logical management unit, consistent with the requirements of the HCP (2 years is generally the maximum time allowed, unless a plan for a nearby parcel is deemed adequate).	Work initiated in 2008 will be completed in 2009. 2 preserve management plans and 2 system-wide plans will be drafted in 2009.

	TASK	TIME FRAME Recommended in HCP/NCCP	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS PLANNED FOR 2009
27	Prepare an Exotic Plant Control Plan to address exotic and invasive plants on Preserve System lands	1-5 Years	On-going	---	An Exotic Plant Control Program will be developed by the Implementing Entity and implemented for the Preserve System in accordance with Conservation Measure 1.4. Development of program will be coordinated with the Contra Costa County Department of Agriculture, Weights, and Measures and other major resource management agencies in the inventory area, including CCWD, EBRPD, and CDPR. The program will be prepared within no more than 2 years of acquisition of the first parcel. However, control of exotic plants may begin prior to program development if infestations are serious. Program will be evaluated and revised at least every 5 years.
28	Prepare a Recreation Plan to address recreational uses on Preserve System lands	1-5 Years	On-going	---	A Recreation Plan will be developed by the Implementing Entity and implemented for the Preserve System in accordance with Conservation Measure 1.5. The recreation plan will be prepared no more than 3 years after acquisition of the first parcel or when 25% of the Preserve System has been acquired, whichever comes first. If the preserve has pre-existing recreational use, the recreation plan must be approved within 1 year in order for the site to be considered part of the Preserve System. The recreation plan will be revised as needed as the Preserve System expands. Formal evaluations and revisions, if needed, must occur at least every 5 years.
<b>Preserve Restoration/Creation</b>					
29	Begin habitat restoration and creation design and additional environmental compliance for habitat restoration if needed.	1-5 Years	Complete	Like land acquisition, habitat restoration and creation will be a key program area for the Conservancy. If restoration and creation of jurisdictional wetlands and waters does not keep pace with impacts, the ability to mitigate such impacts by paying a fee will be suspended (the HCP provides that the Conservancy has until the second annual report to "get ahead"). To reflect the importance of early restoration and creation, Conservancy staff worked with ICF Jones & Stokes to perform a reconnaissance-level survey of wetland restoration opportunities. Lands surveyed included those lands already acquired by a public agency, lands to be preserved pursuant to an agreement with the wildlife agencies or known to Conservancy staff as a property in negotiation for potential acquisition by a conservation organization. Such information may inform future conservancy decisions on land acquisition opportunities and my help Conservancy staff to partner with the current and future owner of the property to develop detailed restoration plans and begin the environmental review process.	---

	<b>TASK</b>	<b>TIME FRAME</b> Recommended in HCP/NCCP	<b>STATUS</b> (completion date)	<b>ACTIONS TAKEN IN 2008</b>	<b>ACTIONS PLANNED FOR 2009</b>
30	Implement habitat restoration and habitat creation projects.	1-5 Years	On-going	As explained above, Conservancy staff has started working on a process in which to implement wetland restoration/creation projects. The process to implement a project would normally would take roughly 2 years to implement from start to finish, based on the time of year when the project is started (because the restoration cannot be initiated in the wet season). The general process is as follows: (a) Develop a list of suitable restoration sites after conducting a "fatal flaw" analysis on potential sites (see above), (b) select sites and secure land/access for restoration/creation, (c) provide a conceptual restoration plan, (d) complete site-specific restoration plans, (e) secure permits, (f) initiate construction and construction monitoring, and (g) complete construction and start performance monitoring. To get the earliest start possible on such work, staff has completed two restoration projects in 2008: Lentzner and Vasco-Souza 1. Restoration planning for Souza 2 is now underway.	Complete restoration of Souza 2 and continue to look for one additional restoration opportunity in 2009.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** PAC membership

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**RECOMMENDATION**

REVIEW six (6) applications received for two vacant positions on the Public Advisory Committee (PAC) in the suburban/rural resident category. APPOINT two (2) members based on this review or APPROVE a procedure for further screening and selecting the two new members.

**DISCUSSION**

The Board initiated the PAC in February 2007 and appointed the initial members. Two seats remain unfilled in the category representing suburban and rural residents of the Plan area. The Conservancy posted an RFP and application on its website, sent notices to entire Conservancy email list and placed notices in the Contra Costa Times (11/27/08 and 12/4/08). A total of six applications were received (attached).

The PAC meets quarterly. It reports to the Board and is responsible for reviewing and commenting on the general implementation processes of the HCP/NCCP including the expenditures of funds for conservation measures, the general process for issuing take coverage to covered activities, the operation of preserves and adaptive management and the adherence to plan commitments. The PAC is to operate by consensus, but when consensus cannot be reached, the various positions will be reported to the Board.

The Board has previously appointed the following representatives to the PAC:

CONTINUED ON ATTACHMENT: <input checked="" type="checkbox"/> YES	
ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED _____	
OTHER _____	
<b><u>VOTE OF BOARD MEMBERS</u></b>	
<input type="checkbox"/> UNANIMOUS	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.  ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY                  HABITAT CONSERVANCY</i>  BY: _____, DEPUTY
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

Private permit seekers, (e.g., private developers or their representatives)

- Contra Costa Council
- Discovery Builders
- Home Builders Association of Northern California

Conservation advocates, (e.g., established organizations that represent members in the inventory area)

- California Native Plant Society
- Friends of Marsh Creek
- Save Mount Diablo

Private landowners and/or agriculturalists, or their representatives

- Agricultural/Natural Resources Trust of Contra Costa County
- Contra Costa County Citizens Land Alliance
- Contra Costa County Farm Bureau

People representing suburban and rural residents of the Plan area

- Dick Vrmeer (resident of Brentwood)
- Two remaining seats vacant

Staff members from interested public agencies are also welcome to participate on the committee. All meetings are also open to public observation and participation.

**Selection process alternatives:** The following are some alternative methods for selecting the new members that could be considered.

- a) Conduct in-person (or possibly phone) interviews with applicants and select PAC members based on interviews.
- b) Assign an individual or subcommittee to recommend two PAC members
- c) Select two PAC based on applications

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
APPLICATION FORM**

Name of Advisory Board applying for: Public Advisory Committee

Position:  Suburban/Rural Resident

Name of Applicant: John W. Alcorn

Home Address: 670 Sundale Lane  
City, State, Zip: Brentwood, CA 94513

Home Phone: 925 634 6934

Business Address:  
City, State, Zip:

Work Phone:

Signature: John Alcorn

Date: 12/10/2008

**Personal Experience, Skills and Interests**

Education/Background: BS University of California Berkeley - Business Administration  
MBA University of California Berkeley - Accounting

Occupation (student, for pay work, not for pay work, retiree or similar): Retired

Community Activities: Immaculate Heart of Mary Parish - Knights of Columbus Council 7467,  
Treasurer, Currently,  
Immaculate Heart of Mary Parish - Adult Confirmation Team - currently am the Lay leader - and RCIA  
Team member (Adult Education)  
Delta Informal Gardeners - Member  
Diocese of Oakland - Cursillos in Christianity retreat program - Secretariat member currently and for  
many years  
Friends of Marsh Creek Watershed - Treasurer

**Special Interests:**

Home Landscaping using California Native Plants — our yard was on the 2008 Bringing Back the  
Natives garden tour

Reading

Gardening

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
APPLICATION FORM**

Name of Advisory Board applying for: Public Advisory Committee

Position:  Suburban/Rural Resident

Name of Applicant: Cathy Case

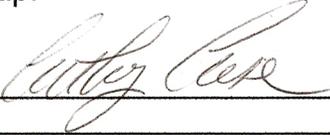
Home Address: 9 McClarren Ct  
City, State, Zip: Brentwood, Calif., 94513

Home Phone: 925-516-7705

Business Address:  
City, State, Zip:

Work Phone:

Signature: \_\_\_\_\_



Date: 12/09/08

**Personal Experience, Skills and Interests**

Education/Background: College 2yrs, 25 years law enforcement,

Occupation (student, for pay work, not for pay work, retiree or similar): Retired Deputy Sheriff

Community Activities: Friends of Marsh Creek Watershed, member 2yrs, Golden West Women Flyfisher member, Delta Bass Tactics member/secretary/treasurer.

Special Interests: Marsh Creek Watershed, Delta Wetland, Dutch slough, Water issues of State of California

**Information:**

1. For more information about the East Contra Costa County Habitat Conservancy and the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan visit: [www.cocohcp.org](http://www.cocohcp.org)
2. File completed application with John Kopchik, Contra Costa County Department of Conservation and Development, 651 Pine Street, 4<sup>th</sup> Floor, North Wing, Martinez, CA 94553.
3. Members of some advisory bodies may be required to file annual Conflict of Interest Statements.
4. Meetings of advisory bodies may be held in Pittsburg or in areas not accessible by public transportation.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
APPLICATION FORM**

CONTRA COSTA

Name of Advisory Board applying for: Public Advisory Committee

Position:  Suburban/Rural Resident

08 DEC 10 PM 1:50

Name of Applicant: Mary F. (Frances) Dahlquist  
Home Address: 1314 Columbia St.  
City, State, Zip: Pittsburg, CA 94565 Home Phone: 925-473-0402  
Business Address: 245 Market St.  
City, State, Zip: San Francisco, CA 94105 Work Phone: 415-973-7854  
Signature: [Signature] Date: 12/9/08

**Personal Experience, Skills and Interests**

**Education/Background:**

Bachelor of Arts - University of California, Berkeley

**Occupation (student, for pay work, not for pay work, retiree or similar):**

Currently I work as an IT liaison for Pacific Gas & Electric company. Previously I worked for four years in the clean vehicle program at PG&E.

**Community Activities:**

- Regular participant in Pittsburg's Neighborhood Improvement Team Meetings
- Member: Native Plant Society

**Special Interests:**

- enjoyment of east Bay open spaces
- impact of global warming on ecosystems
- entrepreneurship
- web/database - related
- current events
- energy and water conservation

**Information:**

- For more information about the East Contra Costa County Habitat Conservancy and the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan visit: [www.cocohcp.org](http://www.cocohcp.org)
- File completed application with John Kopchik, Contra Costa County Department of Conservation and Development, 651 Pine Street, 4<sup>th</sup> Floor, North Wing, Martinez, CA 94553.
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- Meetings of advisory bodies may be held in Pittsburg or in areas not accessible by public transportation.
- Meetings may be held either in the evenings or during the day, usually once a quarter.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
APPLICATION FORM**

Name of Advisory Board applying for: **Public Advisory Committee**

Position: Suburban/Rural Resident

Name of Applicant: Lisa Keenan

Home Address: 2595 Morgan Territory Road  
City, State, Zip: Clayton, CA 94517

Home Phone: 925.524.0002

Business Address: 5950 Doyle Street, 3  
City, State, Zip: Emeryville, CA 94608

Work Phone: 510.547.8222

Signature:

Date: 12/9/08

**Personal Experience, Skills and Interests**

**Education/Background:**

1974 Rio Americano High School - Graduate  
1978-82 CSUSacramento – Studied Architecture  
1982-1984 Glen Fishback School of Photography

Occupation (student, for pay work, not for pay work, retiree or similar):  
Commercial/Advertising photographer

**Community Activities:**

Contra Costa Mount Diablo Trail Ride Association

Special Interests: Nature, Horseback Riding, Art & Cooking

**Information:**

1. For more information about the East Contra Costa County Habitat Conservancy and the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan visit:  
[www.cocohcp.org](http://www.cocohcp.org)
2. File completed application with John Kopchik, Contra Costa County Department of Conservation and Development, 651 Pine Street, 4<sup>th</sup> Floor, North Wing, Martinez, CA 94553.
3. Members of some advisory bodies may be required to file annual Conflict of Interest Statements.
4. Meetings of advisory bodies may be held in Pittsburg or in areas not accessible by public transportation.
5. Meetings may be held either in the evenings or during the day, usually once a quarter.

# EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY APPLICATION FORM

Name of Advisory Board applying for: **Public Advisory Committee**

CONTRA COSTA

Position:  Suburban/Rural Resident

DEC -8 PM 1:24

Name of Applicant: Brian Kruse

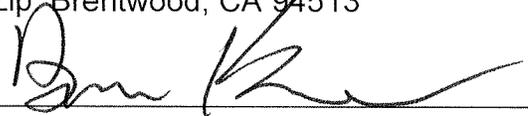
Home Address: 18201 Marsh Creek Road  
City, State, Zip: Brentwood, CA 94513

Home Phone: 925-634-3437

Business Address: 18201 Marsh Creek Road  
City, State, Zip: Brentwood, CA 94513

Work Phone: 925-550-5139 (cell)

Signature: \_\_\_\_\_



Date: 12/06/08

DEPARTMENT OF CONSERVATION  
AND DEVELOPMENT

### Personal Experience, Skills and Interests

Education/Background: Raised in Concord, California. Attended Mt. Diablo High School, graduating in 1977. Graduate of Chico State University with a degree in Psychology and minor in Construction Management.

Occupation (student, for pay work, not for pay work, retiree or similar): Self employed General Contractor and owner of Kruse Construction. Over the course of my career I have primarily worked on high-end residential construction - both new construction and remodels. In addition, manage our 623 acres of family property (wine grapes, almond trees and cattle pasture) located on Marsh Creek Road.

Community Activities: Currently serving as member of Save Mount Diablo's Land Acquisition Subcommittee. Past memberships and volunteer work for City of Brentwood's Cornfest, Brentwood Wine and Grape Growers Association and Brentwood Agricultural Land Trust. I also contribute to and support the John Marsh Trust and East County Historical Society Events. During my children's younger years I was actively involved in yourth coaching. I was a founder of the Marsh Creek Association and very actively involved in that group's campaign to keep a dump from being built on Marsh Creek Road, in what is now East Bay Park's Round Valley.

Special Interests: Preserving land in east county area for open space and agricultural use, and creek restoration efforts.

# EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY APPLICATION FORM

Name of Advisory Board applying for: Public Advisory Committee

Position:  Suburban/Rural Resident

Name of Applicant: Sharon L. Osteen

Home Address: 1060 Pine Lane  
City, State, Zip: Clayton, CA 94517

Home Phone: 925-672-5828

Business Address: Same  
City, State, Zip:

Work Phone: 925-672-5198

Signature: Sharon L. Osteen

Date: 12-10-08

### Personal Experience, Skills and Interests

#### Education/Background:

College graduate in Business  
Currently enrolled at DVC in Horticulture

#### Occupation (student, for pay work, not for pay work, retiree or similar):

Own a business:  
Clayton Valley Pumpkin Farm & Christmas Trees

#### Community Activities:

Belong to:  
Clayton Business and Community Association  
Clayton Valley Garden Club

#### Special Interests:

Gardening and teaching children about plants & nature.

### Information:

1. For more information about the East Contra Costa County Habitat Conservancy and the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan visit: [www.cocohcp.org](http://www.cocohcp.org)
2. File completed application with John Kopchik, Contra Costa County Department of Conservation and Development, 651 Pine Street, 4<sup>th</sup> Floor, North Wing, Martinez, CA 94553.
3. Members of some advisory bodies may be required to file annual Conflict of Interest Statements.
4. Meetings of advisory bodies may be held in Pittsburg or in areas not accessible by public transportation.
5. Meetings may be held either in the evenings or during the day, usually once a quarter.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** December 17, 2008  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Protocol for Covering Communication Towers Under the HCP/NCCP

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**RECOMMENDATION**

- a.) Approve proposed “Protocol for Communication Tower Impact and Fee Calculations.”
- b.) Authorize Conservancy staff to approve coverage under the HCP/NCCP for communications towers when the proposed conditions on granting take coverage are consistent with this protocol.

**DISCUSSION**

The HCP/NCCP enables public and private utility projects inside and outside the urban development area to receive take authorization pursuant to the HCP/NCCP. The HCP/NCCP allows for covering for these projects in rural areas outside the Urban Development Area only on a case-by-case basis because of the uncertainty of their location and project footprint. The U.S. Fish and Wildlife Service (FWS), California Department of Fish and Game (CDFG) and the East Contra Costa County Habitat Conservancy (Conservancy) must approve coverage for such rural utility projects. This approach allows for alternative project siting or redesign to avoid or minimize impacts on covered species and natural communities and also enables a project specific assessment of impacts. One type rural utility project proposal has come up frequently during the past year: communication towers, particularly cellular telephone communication towers. Given the prevalence of this type of application and the characteristics common to them, communication towers a protocol for addressing this class of apokucation under the HCP/NCP may be helpful.

CONTINUED ON ATTACHMENT: <input checked="" type="checkbox"/> YES	
ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED _____	
OTHER _____	
<b><u>VOTE OF BOARD MEMBERS</u></b>	
<input type="checkbox"/> UNANIMOUS	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.  ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY                  HABITAT CONSERVANCY</i>  BY: _____, DEPUTY
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

Neither the HCP/NCCP nor the Implementing Ordinance adopted by the County mandates participation in the HCP/NCCP by applicants with communication tower projects such as cell towers, but such applicants typically are required to seek a Biological Opinion from the U.S. Fish and Wildlife Service (FWS) as a result of permits needed from the federal Communications Commission. However, recent proposed cell phone tower projects have illustrated the need to codify an approach for the calculation of impacts and mitigation fees for future communication tower projects seeking coverage under the HCP/NCCP. Such projects have been delayed while agencies determine how to coordinate a Biological Opinion with the HCP/NCCP and required mitigation has not been consistent among applications. The purpose of this report is to attempt to document an approach that is consistent with the avoidance and mitigation provisions of the HCP/NCCP, is acceptable to CDFG and FWS and can be practically implemented by local agencies and communication tower applicants.

## **BACKGROUND**

The HCP/NCCP requires that mitigation requirements (in particular, fees) be based on the “acreage of land permanently disturbed.” As explained in the following excerpt from Chapter 9 of the HCP, “acreage of land permanently disturbed” is broadly defined in the HCP and generally includes the entirety of a parcel where a project is being constructed:

Acreage of land permanently disturbed is broadly defined in this section to include all areas removed from an undeveloped or habitat-providing state and includes land in the same parcel or project that is not developed, graded, physically altered or directly affected in any way but is isolated from natural areas by the covered activity. As further described below, unless such undeveloped land is dedicated to the Preserve System or is a deed-restricted creek setback, the development fee will apply. The development fees were calculated with the assumption that all undeveloped areas within a parcel (e.g., fragments of undisturbed open space within a residential development) would be charged a fee; the fee per acre would have been higher had this assumption not been made.

Rural communication tower projects are a little unusual in that the footprint of the new tower and its supporting infrastructure typically cover only a tiny fraction of the parcel on which they are built. For instance, a cell tower and supporting infrastructure many only cover a few hundred square feet of a parcel that encompasses several hundred acres. Basing mitigation fees on the entire parcel is therefore not reasonable. Likewise, the footprint of the tower itself is not the extent of area impacted. The tower and its supporting infrastructure and access road impact the value of surround habitats by fragmenting habitats, creating edge effects, creating a source of wildlife mortality (e.g., vehicle use of access roads), altering runoff, etc.

## **APPROACH**

Staff from the Conservancy, CDFG and FWS have discussed how to adapt the established HCP/NCCP protocols for impact calculations to the unique case of communication towers in rural areas. Three approaches (e.g., whole parcel, project footprint, flat fee) were discussed; however, they were rejected as they failed to provide practical fees, incentives for project siting and design and a variable fee structure dependent on the nature of the impacts. In order to address these issues, it was decided that use of a disturbance envelope provided the best estimate of permanent and temporary impacts. The proposed Protocol developed by the Conservancy, CDFG and FWS to calculate impacts and development fees is described below. A draft version of the protocol was presented to the Public Advisory Committee (PAC) and suggestions were received from some members. The PAC suggested that the draft protocol be edited to not

discount the fees on new structures near existing structures so heavily, not exempt use of an existing access road from all fees and not overlook the impacts to replacement structures. Based on this feedback, Conservancy staff discussed the issue further with CDFG and FWS and reached agreement with them on a revision that would discount the fees by 50% rather than 100% for those buffer areas within 100 feet of an existing structure and agreed to include fee provisions for replacing structures. The complete fee exemption for use of an existing road was left in place because the agencies judged that extra use of an existing road had far less impacts than creation of a new road. CDFG and FWS also agreed that the Verizon project on the Martin property could be granted the 100% waiver of fees within 100 feet of an existing structure because this project, the primary impetus for the development of the protocol, had needed a determination of a proper fee amount months ago and the wildlife agencies had accepted the Conservancy staff proposal of the draft Protocol.

### **PROTOCOL:**

Below is the “Protocol for Communication Tower Impact and Fee Calculations.”

- a. Full development fee will be charged for the base area of each permanent structure (including permanently disturbed areas around the base such as permanently disturbed paved or fenced areas and areas covered with gravel) plus a 100-ft buffer around each base area.
- b. Temporary impact fee will be charged for the area of each trench plus a 25-ft buffer on either side of the trench.
- c. Full development fee will be charged for the area of any new paved, all-purpose or gravel road plus a buffer on either side of the new road (50 ft for paved or all-purpose and 35 ft for gravel).
- d. Reduction of buffer to 25 ft on either side of the new road if road is designed to minimize impacts (i.e., a dirt road that does not provide a dark surface and/or hard surface that will attract snakes as a basking site).
- e. No permanent or temporary impact fee will be charged for use of an existing road despite a small increase in traffic. Construction of new road would remove natural land cover and, depending on the location, require extensive grading and/or create significant new edge effects. Use of existing roads is judged to be less significant than construction of new road and is therefore exempted.
- f. Overlapping buffered areas will be discounted by 50%. If a permanent impact buffer overlaps with a temporary impact buffer, the permanent impact fee will apply to area of the buffer.
- g. Temporary impact fees (1-2 years) will be charged for each replacement structure plus a 100-ft buffer around each structure. No credit will be given for overlapping buffered areas.

### **RATIONALE**

Incentives for project siting and design that avoid and minimize impacts are incorporated into the impact and development fee calculations. First, the buffer used to calculate the impacts provides an incentive to site projects away from sensitive land cover types (i.e., wetlands). Second, clustering of structures is encouraged by the reduction of the full development fee if facilities are sited within 100 ft of adjacent structures. Third, use of existing infrastructure (i.e., roads) is also

encouraged, as no impact fee is charged. Finally, the buffer distance used to calculate permanent impacts for new roads is reduced from up to 50-ft to 25-ft if species-specific habitat requirements are incorporated to minimize take of individual species after project completion. As a result, the disturbance envelop approach includes incentives to minimize and avoid impacts during project siting and design, as well as, calculation of fees based on the nature of impacts.