



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

Public Advisory Committee

Thursday, February 11, 2010
1:00 p.m. to 3:00 p.m.

City of Pittsburg, Council Chambers
65 Civic Avenue
Pittsburg, CA 94565

Agenda

- 1:00 **Introductions.** Please sign in.
- 1:05 **Public comment on items not on the agenda:** Public comment will also be accepted on each agenda item during discussion of that item.
- 1:10 **Approve the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Public Advisory Meeting on November 12, 2009.***
- 1:15 **Review recent actions of Governing Board:**
1. Annual review of PAC committee representation
 2. Input on Conservancy priorities for 2010 and Approved Work Plan for 2010*
 3. 2010 Budget*
 4. Revised Wind Policy*
- 1:20 **Determine alternate meeting date for meeting that was to fall on November 11, 2010 (Veteran’s Day).**
- 1:25 **Presentation: 2009 Year in Review**
- Land acquisition*
 - Wetland restoration
 - Covered activities
 - Funding and expenditures*
 - Management, monitoring and administration
- 2:00 **Review proposed updates to the Planning Survey Report/Application template***
- 2:10 **Ongoing review of key concepts in the HCP:**
- Stay Ahead Provision*
 - Funding for Long Term Management*.
- 2:25 **Review of the following policy question referred to the PAC by the Governing Board:**
- Whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and

federal regulatory agencies in order to purchase mitigation credit from the Conservancy and use a portion of the Conservancy's restoration project sites toward mitigation obligations.*

2:55 **Consider agenda items for future Public Advisory Committee meetings**

3:00 **Adjourn.**

Times are approximate. If you have questions about this agenda or desire additional meeting materials, you may contact Abby Fateman of the Contra Costa County Community Development Department at 925-335-1272. The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 72 hours before the meeting.

*Additional materials attached for these items



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Public Advisory Committee

Draft Meeting Record

Thursday, November 12, 2009

1:00 p.m. to 3:00 p.m.

City of Pittsburg, Council Chambers
65 Civic Avenue
Pittsburg, CA 94565

1) **Introductions.**

Committee Attendees:

Private Permit Seekers	Conservation Advocates	Landowners/Agriculturalists	Suburban/Rural Residents
Contra Costa Council Mitch Randall	California Native Plant Society: Lech Naumovich	Agricultural/Natural Resource Trust of Contra Costa County: Joe Ciolek	Dick Vrmeer: In attendance
Discovery Builders Inc.: Jim Coniglio	Friends of Marsh Creek: None	Contra Costa County Citizens Land Alliance: Jim Gwerder	Sharon Osteen: In attendance
Home Builders Association of Northern California None	Save Mount Diablo: Seth Adams	Contra Costa County Farm Bureau: None	Mary F. Dahlquist: [Absent]

Other Attendees:

Michelle Luebke Contra Costa County Department of Conservation and Development, Watershed Monitoring Coordinator
Chris Barton East Bay Regional Park District
Brian Kruse Resident

Conservancy Staff members in attendance: :

John Kopchik Conservancy Staff
Krystal Hinojosa Conservancy Staff

- 2) **Public comment on items not on the agenda:** No public comments made.
- 3) **Approve the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Public Advisory Meetings on August 13, 2009.** Approved as recommended.
- 4) **HCP/NCCP books available for purchase soon.** Ms. Hinojosa announced that Staff is in the process of having the HCP/NCCP book printed and they are now available for purchase.

- 5) **Review recent actions of Governing Board.** Mr. Kopchik provided an update on one key item from the September 16, 2009 Governing Board agenda, as follows:
 - a) Policy on Land Acquisition in Wind Turbine Areas: The Board approved the recommendations in the staff report with the following modification: Directed staff to seek to revise the portion of Policy that encourages the Conservancy to not renew wind leases in order to provide less impression that wind turbines will be removed throughout the Preserve Area, perhaps by focusing on language that emphasizes a stronger commitment to reducing biological impacts associated with wind turbines. Such revisions will be pursued in conjunction with USFWS and CDFG staff. Conservancy staff is authorized to approve the Policy after seeking concurrence from the Vice Chair that the Policy is consistent with the intent of the Board action.

- 6) **Annual review of PAC committee representation.** Mr. Kopchik provided an overview of the current makeup of the PAC and referred to the approved Governing Board staff report included in the meeting packet entitled “Initiate Public Advisory Committee Process.” Mr. Kopchik advised the committee of the requirement to review the PAC composition annually and adjust as appropriate. The PAC members were in agreement that the current composition is satisfactory and suggested information about PAC membership and participation be posted on the website allowing new members of the public to participate in and potentially apply for formal membership on the committee if interested. Mr. Naumovich asked what role the committee will have in the future and whether a new committee will be formed. Mr. Kopchik stated that no new committees were envisioned at the moment. The Conservancy is currently focused on land acquisition priorities which can limit the availability of topics for PAC meetings. More implementation issues will arise in the future as work expands.

- 7) **Input on Conservancy priorities for 2010.** Mr. Kopchik provided background information on the Conservancy Work Plan: 2008 Summary and 2009 Work Plan. He expressed that he would like input from the PAC prior to creation of the 2010 Work Plan which will be brought to the Governing Board on the December 16th, 2009 meeting. Mr. Vrmeer suggested adding information to the 2010 Work Plan that reflects on lessons learned from 2009 that can be applied/changed in 2010. Mr. Kopchik expressed that was a good idea and will include such considerations in the Work Plan and highlight the suggestion in the cover memo to the Governing Board for the 2010 Work Plan. Mr. Naumovich asked for an update on Work Plan item #27 and mentioned a meeting that EBRPD will be holding on November 18th to discuss the status of weeds and invasive plant management in the District. Staff agreed to circulate notification to the PAC about this meeting.

- 8) **Land Acquisition Update.** Mr. Kopchik provided a brief overview of land acquisition transactions and referenced the map included in the meeting packet entitled “EBRPD Acquisitions Completed and in Progress under HCP.” Mr. Ciolek asked for an update on the mitigation as match issue and Mr. Kopchik stated that the California Habitat Conservation Planning Coalition continues to lobby on this issue but no resolution has occurred as yet.

9) **Wetland Restoration Sites Update.** Mr. Kopchik gave a PowerPoint presentation on the Souza II Wetland Restoration Project to date.

10) **Initiate review of the following policy question referred to the PAC by the Governing Board: Whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies in order to purchase mitigation credit from the Conservancy and use a portion of the Conservancy's restoration project sites toward mitigation obligations.** This item was moved to the February 11, 2010 PAC agenda. Based on suggestions from Mr. Ciolek and others, Mr. Kopchik asked the PAC take time to review this issue in more detail and submit any thoughts and discussion points to Staff in order to facilitate a dialogue on this issue prior to the next meeting.

11) **Proposed agenda items as requested from last meeting:**

1) **Ongoing review of key concepts in the HCP: Today's topic is the Stay Ahead Provision.** This item was moved to the February 11, 2010 PAC agenda.

2) **Volunteer opportunities: a) Project Opportunities b) Presentation by Michelle Luebke.** Ms. Luebke gave a presentation which included an overview of the current watershed volunteer monitoring program she coordinates and how the existing volunteer program could be expanded to work more closely with the Conservancy. She provided three key ideas for involvement: 1) Terrestrial Monitoring: pre and post restoration; 2) Wildlife Monitoring: species counts, tracking, observations; 3) Site Maintenance: assist with weed abatement and plantings. Mr. Naumovich recommended monitoring as a critical issue to stay on top of, one such example is to monitor the ponds we have created over time to see what factors increase the likelihood of annual water retention. Mr. Kopchik expressed that Staff wants to create volunteer opportunities that will be meaningful to the public as well as serve the Conservancy's interests.

Consider agenda items for future Public Advisory Committee meetings.

1) Discuss management and monitoring activities and the monitoring program.

Adjourn.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **Conservancy Work Plan – 2008 & 2009 Summary & 2010 Work Plan**

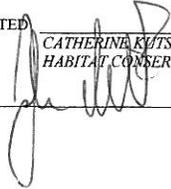
RECOMMENDATION

APPROVE the 2010 Conservancy Work Plan.

DISCUSSION

The Conservancy Work Plan: 2008 and 2009 Summary and 2010 Work Plan provides both a summary of tasks initiated and completed in 2008 and 2009 and tasks planned for 2010 (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 the 2010 Conservancy Work Plan. As mentioned, the Work Plan also includes a summary of tasks that have been completed in during the first two years of implementation. 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.

<p>CONTINUED ON ATTACHMENT: <u>YES</u> ACTION OF BOARD ON: <u>December 16, 2009</u> APPROVED AS RECOMMENDED: <u>See Below</u> OTHER: <u>The Board approved the recommendations in the staff report with the following conditions: 1) Edit task #5 of the Work Plan for “Actions Taken in 2009” to read as “The calculations were performed in March 2009”; 2) In 2010 provide the Board with a spreadsheet outlining the land acquisitions goals & accomplishments; and, 3) Present the 2008-2009 Annual Report to each Permittee’s City Council.</u></p>	
<p><u>VOTE OF BOARD MEMBERS</u> _____ UNANIMOUS _____ AYES: <u>Stonebarger, Stratford, Casey, Glover</u> _____ NOES: _____ ABSENT: <u>Connelley</u> _____ ABSTAIN:</p>	<p>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</p> <p>ATTESTED:  _____ CATHERINA KYTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</p> <p>BY: _____, DEPUTY</p>

The “Actions Taken in 2008 and 2009” column provides detail on the task, the type of work that has been completed and the end result for actions taken in 2008 and 2009. The “Actions Planned for 2010” column provides detail on the task, the type of work planned and end result for actions planned in 2010. The initial year (2008) of implementation was heavy on Plan administration. This was partly because there were a lot of start-up administrative tasks to do and because administrative tasks tend to be 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 included creating documents, maps, and informational pamphlets, training/assisting local agency staff on processing planning survey applications (PSA)/projects through the HCP/NCCP, general Plan implementation including taking whatever steps necessary to ensure the Plan is being implemented effectively and efficiently.

Some key changes from the 2009 Work Plan include the following:

Land acquisition: The fast pace initiated in 2009 need to continue or increase.

Restoration: Small planting projects are on the agenda for 2010 as well planning for a bigger effort in 2011. The Conservancy is far enough ahead that we can adopt a pace for restoration that is more sustainable than the pace we managed to set the first two years.

Management: With preserve lands now in place and Management Plans to be completed soon, work on this task will increase substantially this year.

Monitoring: During 2010 and over the next several years, attention will be focused on the development of the Monitoring and Adaptive Management Program. Efforts have been underway on development and implementation of Restoration Management Plans for projects during 2008 and 2009. In 2010, Staff efforts will focus on the inventory phase of this process by focusing on collection of basic information as the Preserve System is being assembled.

Volunteers: Another new area focus in 2010 will be to increase efforts on the development of a Conservancy volunteer program. This program will provide opportunities to assist with plantings and to perform monitoring. A variety of potential partnerships with other organizations will be explored.

Outreach: We need to expand general awareness of our efforts.

Lessons learned: During the first two years of implementation the Conservancy has had many valuable experiences which have lead to process improvements for 2010. One such example is to work more closely with and utilizing participating agency staff, such as our partnership with the East Bay Regional Park District, for their experience and expertise on land acquisitions, restoration and creation projects, and management plan preparation including the creation of the Exotic Plant Control Plan, as the Conservancy continues to enhance the Preserve System.

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

Attachment:

- Conservancy Work Plan: 2008 & 2009 Summary and 2010 Work Plan

Conservancy Work Plan: 2008 & 2009 Summary and 2010 Work Plan

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
HCP/NCCP Administration (general)						
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.	In 2009, a consultant was hired to provide assistance to the Conservancy as a staff Conservation Planner, 3 days a week in lieu of hiring a full-time employee. 2009 agreement with EBRPD for acquisition services.	Continue to retain consultant to assist Conservancy as a staff Conservation Planner, 3 days a week in lieu of hiring a full-time employee. 2010 agreement with EBRPD.
2	Increase public awareness of the Plan and provide opportunities for involvement in the implementation of the Plan by the public, interested agencies, and others.	N/A	On-going	The Public Advisory Committee (PAC) was initiated in 2008 and met quarterly. Two new PAC members were recruited in late 2008 to represent suburban and rural interests.	Two new members will joined the PAC during 2009. Meetings continued to be held quarterly. Staff made a number of presentations on the Plan to interested parties. Staff wrote an article on the Plan for the Save Mount Diablo newsletter.	PAC meetings will continue to be held quarterly. The Conservancy will actively recruit additional PAC participation using the website and other means. Staff will pursue greater media coverage of Plan activities to improve awareness of the public at large. Public events will be held to commemorate accomplishments. Monthly meetings with wildlife agencies to help coordinate implementation of the HCP, begun in 2008, will continue in 2010.
2a	Develop a Conservancy Volunteer Program	N/A	Ongoing	---	Begin discussing the development of a volunteer program with the PAC. Explored partnering with the Contra Costa Watershed Forum's Volunteer Monitoring Program and other volunteer programs in order to collaborate on volunteer activities and involvement.	Finalize development of the program including drafting program overview and identifying goals and objectives for volunteer efforts. Conduct one large volunteer restoration event during 2010 and at least 6 volunteer monitoring events.
3	Establish HCP/NCCP Implementation web site.	6 Months - 1 Year	Development Complete Spring 2008, Maintenance Ongoing	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 were highlighted.	In addition to the ongoing actions from 2009, staff will continue to update the website with news on Conservancy land acquisitions and restoration/creation projects, and highlight public involvement opportunities in 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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 .	Completed for 2009. Conservancy staff have prepared the 2010 annual budget and the 2010 work plan for Board discussion in December 2009.	Conservancy staff will prepare the 2011 annual budget and the 2011 work plan for Board discussion in December 2010.
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	2009 adjustment complete. 2010 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.	The calculations will be performed again in March 2010.
6	Prepare and submit annual report to CDFG and USFWS.	Required by March 15 following first full year of implementation	Planned (March 2010)	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 completed incidental take vs. preserved acres tracking system. Staff completed entry of data into tracking system in preparation for annual report in 2010.	The 2008-2009 HCP Start-Up Period Annual report will be issued by March 15, 2010.
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.	New grants awarded in 2009 include \$880,000 from the Gordon and Betty Moore Foundation for land acquisition, \$2,500,000 from the USFWS/CDFG Section 6 Program for land acquisition and \$150,000 for restoration from the CDFG NCCP Local Assistance Grant Program.	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 during 2010. Staff will apply for Section 6 funds and for non-federal grant funds that can match the Section 6 funds.
7a	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 performed these duties for various grants during 2008.	Staff continued with these duties in 2009. Staff pursued streamlined approaches for largest grants received, the Section 6 grants, which will be administered through the Wildlife Conservation Board. WCB agreed to make the FY06 Section 6 Grant block grant. To avoid complications associated with block grant agreements, the WCB Board authorized staff to disburse funding for the FY07, FY08 and FY09 grants.	Staff will continue with these duties in 2009 and continue to pursue additional streamlining of the Section 6 granting process.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
8	Coordinate with other Regional HCPs and pursue a legislative program that will aid the Conservancy's implementation of the Plan.	N/A	On-going	Participated in the coalition of northern California HCPs called NCCPP and helped that group host its annual conference. Sought increased nationwide funding for the Section 6 program.	Participated in the coalition of northern California HCPs called NCCPP and helped that group host its annual conference. Helped form the California Habitat Conservation Plan Coalition to unite northern and southern efforts. Adopted Conservancy's first legislative platform. Sought increased nationwide funding for the Section 6 program, a change to the FWS policy prohibiting mitigation as a match for Section 6 funds, among other items. Proposed 2010 Platform.	Continue to participate in coalition to pursue common policy objectives and to learn from the experiences of other HCPs. Implement 2010 Legislative Platform, including continued work on mitigation as match and Section 6 funding..
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.	Continued 2008 work.	In addition to the ongoing actions from 2008-2009 the Conservancy will commission an independent audit of the accounts and records of the Conservancy since inception. The auditors written report will be presented to the Board.
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 2010)	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 the greatest extent possible, meet the requirements of wetlands regulations. In late 2008, staff meet 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.	In 2009 staff continued to meet with state and federal regulators and the Corps of Engineers to update them on restoration progress and seek continued support for regional permitting. Staff expects that a public draft of the Corps regional permit will be circulated in early 2010.	Prepare a public draft of the regional permit and continue coordination efforts between implementation and state and federal wetland regulations in 2010 with a goal of completing regional permitting instruments in 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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 or 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.	Checklist and other resource materials were updated and expanded in 2009 to include feedback received from local planners.	Checklists and other resource materials will continue to be updated, expanded, and created in 2010.
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 during 2009. A new version of the form is expected by early 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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	On-Going	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 for local jurisdictions in 2009. Conservancy staff completed the brochure explaining the process for applying for and receiving take authorization. Conservancy staff provided local jurisdictions assistance and technical support on as needed basis.	Staff will continue to provide assistance and technical support to local jurisdictions in 2010. Staff will hold regular meetings with the Contra Costa County Public Works Department, Environmental Unit Staff, in order to assist with facilitation of HCP/NCCP applicable CIP's.
15	Provide each participating local jurisdiction with detailed maps of fee zones and land cover so they 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.	---	Staff will check-in with participating local jurisdictions to evaluate whether using the maps for processing and evaluating HCP/NCCP applicability is useful.
16	Receive and Reviewing applications for coverage under the HCP/NCCP and collecting development fees.	0-6 Months	Ongoing	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).	---	---

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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 2010)	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, first draft of this document was completed late 2009.	A final draft of this document will be complete and circulated in 2010.
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, revised in 2009, to be updated in 2010)	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 Ameresco.	Conservancy staff had minor changes made to the PSE agreement during 2009.	Continue to assist PSE's with their applications and continue to review such applications and bring to the Board for approval. Several PSE applications are expected in 2010. PSEs have been the majority of applicants to date.
19	Establish GIS and other databases to track land acquisitions and HCP/NCCP impacts.	6 Months - 1 Year	On-going	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 and continued in 2009. GIS databases were updated, including enhancements to the land cover map based on newly available site-specific data. An application tracking database was completed.	Work on GIS and other databases will continue in 2010 with specific emphasis on improving the HCP impact tracking database.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
Preserve Acquisition and Management						
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.	The Jump Start goal was more than met in 2009, with a total of about 4800 acres acquired or in the pipeline. EBRPD acquired the following 2 properties in 2009 with Conservancy support: Schwartz (153 acres) and Souza 2 (191 acres). EBRPD is expected to close on the following 2 additional partnership properties by the end of 2009: Fox Ridge (221 acres) and Vaquero Farms South (1644 acres). Three properties acquired by EBRPD without the Conservancy (2 of which were pre-HCP) are progressing toward becoming part of the Preserve System.	In 2010, the pace land acquisition should remain high if not increase. Two properties are already in contract and will close within 2010: Vaquero Farms North (577 acres) and Ang (460 acres). With a generous amount of grant funding available and a number of willing sellers, it is important to aggressively pursue land acquisition to stay well ahead of the Stay Ahead provision.
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.	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.	

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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.		
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.	Conservancy staff and consultants have developed protocols for a phased and more streamlined approach to this task that defers the most expensive field work until after agreement has been reached to purchase a property.	Continue streamlined approach in 2010.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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 (Complete in 2010)	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.	The draft template for Deed Restrictions is complete and in the process of being review by wildlife agency staff.	In 2010, staff will complete a draft of the Conservation Easements template.
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.	Continued work in 2009.	Work on this effort will continue in 2010. Progress on this effort will be provided in the 2008 & 2009 annual reports.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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).	In 2009, a preserve management plan was drafted for the Byron Hills area and will cover four properties that have been acquired or are in the pipeline. In 2009, a Restoration Management Plan was drafted for the Souza II Wetland Restoration Project.	In 2010, Preserve Management Plans will be completed to cover Fox Ridge and Schwartz and work on other plans will commence.
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. During 2009 control of exotic plants was conducted on the Souza II property, prior to program development, because the infestations was serious.	In 2010 Staff will begin developing a draft of the Exotic Plant Control Program. Once developed, the program will be evaluated and revised at least every 5 years.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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.	In 2010 Staff will begin developing this Plan.
<i>Preserve Restoration/Creation</i>						
29	Begin habitat restoration and creation design and additional environmental compliance for habitat restoration if needed.	1-5 Years	Ongoing		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 year 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.	

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
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. The general process is as follows: (a) Develop a list of suitable restoration sites after analyzing 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.	In 2009, the Souza II Wetland Restoration Project was conducted. The restored/created 8.5 acres of wetland and a 0.18 acre pond and restored about a half mile of stream. . Planting commenced December 7, 2009 and replacement of any dead plants will continue into 2010.	In 2010, riparian restoration work will occur on the Irish Canyon-Chopra property and the initial design phase of the site includes three areas of oak/buckeye riparian planting. Fencing wetland areas may also commence in 2010. Additional sites for small scale planting projects will be explored in 2010 and planting may commence. One or more larger projects will be planned in 2010 for construction in 2011.
Monitoring and Adaptive Management Program						
31	Design Monitoring and Adaptive Management Program	1-5 Years	Ongoing	---	The initial "Monitoring Design Phase" of monitoring is to occur within the first 5 years of plan implementation and will lay the foundation of the overarching monitoring program. In 2009 Conservancy Staff working on developing the framework to be a part of the comprehensive monitoring strategy.	In 2010 efforts continue to focus on the monitoring design phase with attention on compiling information and data toward the development of a comprehensive monitoring strategy as well as determining monitoring priorities within each natural community type.

	TASK	HCP/NCCP TIME FRAME	STATUS (completion date)	ACTIONS TAKEN IN 2008	ACTIONS TAKEN IN 2009	ACTIONS PLANNED FOR 2010
32	Initiate monitoring of restoration projects and new preserves.	1-5 Years	Ongoing	Monitoring and adaptive management commenced at Lentzner and Souza 1 restoration sites. Efforts focused on hydrological conditions, success of planting and seeding, and control of invasives	Efforts on Souza 1 and Lentzner continued and monitoring of Souza 2 got underway. Initial monitoring efforts on newly acquired preserves got underway.	With expected completion of Preserve Management Plans, and need for interim monitoring in the meantime, monitoring and adaptive management efforts will ramp up substantially in 2010.

Proposed 2010 Conservancy Budget: Recommended Expenditures and Comparison to 2008 and 2009 Budgets

Table I-1

Cost Category	Proposed 2010 Expenditures									Approved 2009 Conservancy Budget		Approved 2008 Conservancy Budget	
	Development Fee Account	Dev. Fee Revenues Accrued in 2010 ¹	Wetland Mitigation Fee Account ²	Wetland Mitigation Fee Revenues Accrued in 2010 ²	CDFG's California Wildlife Foundation Account ³	Grant Funding ⁴	TOTAL (2010)	% of Total	% Change from 2009	TOTAL (2009)	% of Total	TOTAL (2008)	% of Total
Program Administration	\$257,094	0%	\$0	0%	\$257,094	\$0	\$514,189	3%	4%	\$493,665	3%	\$494,575	4%
Land Acquisition	\$0	20%	\$0	0%	\$100,000	\$13,946,303	\$14,046,303	89%	0%	\$14,046,495	85%	\$9,900,667	84%
Management, Restoration & Recreation Planning & Design	\$52,856	0%	\$0	20%	\$79,283	\$100,000	\$232,139	1%	-29%	\$328,170	2%	\$338,322	3%
Habitat Restoration/Creation	\$0	0%	\$40,960	20%	\$40,960	\$250,000	\$331,920	2%	-66%	\$980,239	6%	\$407,326	3%
Environmental Compliance	\$75,000	0%	\$10,000	0%	\$10,000	\$56,303	\$151,303	1%	-9%	\$166,495	1%	\$109,000	1%
HCP/NCCP Preserve Management and Maintenance	\$99,384	20%	\$0	0%	\$198,768	\$0	\$298,151	2%	2%	\$293,247	2%	\$404,100	3%
Monitoring, Research, and Adaptive Management	\$20,000	0%	\$20,000	0%	\$129,565	\$0	\$169,565	1%	80%	\$94,345	1%	\$66,500	1%
Remedial Measures	\$6,000	0%	\$0	0%	\$0	\$0	\$6,000	0%	0%	\$6,000	0%	\$6,000	0%
Contingency Fund (5% of non-land acquisition costs)	\$84,863	0%	\$0	0%	\$0	\$0	\$84,863	1%	-28%	\$117,808	1%	\$90,141	1%
TOTAL 2010 EXPENDITURES	\$595,197	40%	\$70,960	40%	\$815,670	\$14,352,606	\$15,834,433	100%	-4%	\$16,526,464	100%	\$11,816,631	100%
PROJECTED BALANCE ON JANUARY 1, 2010	\$940,000		\$280,000		\$850,000	\$20,247,054	\$22,317,054						
Amount of Projected January 1, 2010 Balance To Be Reserved For Future	\$344,803	60%	\$209,040	60%	\$34,330	\$5,894,448	\$6,482,621						

Notes:

- (1) Percentages reflect the recommended porportion of new revenues accrued in 2010 to be spent on each cost category.
- (2) Projected Wetland Mitigation Fee balance on 1-1-08 reflects projected expenditures for remainder of 2009 as well as pending \$549K transfer from CWF Account.
- (3) This account was set up specifically for the HCP. Wildlife agencies must approve disbursements. Projected balance reflects pending \$549k transfer to Wetland account. Upon anticipated closing of Vaquero Farms North in early 2010, available funds in the CWF account will increase by \$2,770,000. See Table II for more information.
- (4) Grant funding total refelcts funding that remains from approved grants. Does not include \$5M grant that has been offered by WCB staff. See Table III for grant funding details.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 16, 2009
TO: Governing Board Meeting
FROM: Conservancy Staff
SUBJECT: Policy on Land Acquisition in Wind Turbine Areas

RECOMMENDATION

Consider APPROVING "Policy on Land Acquisition in Wind Turbine Areas" as revised since Governing Board Meeting on September 16, 2009.

DISCUSSION

At the September 16, 2009 meeting the Board approved the recommendations in the staff report regarding the Policy on Land Acquisition in Wind Turbine Areas with the following modification:

Directed staff to seek to revise the portion of Policy that encourages the Conservancy to not renew wind leases in order to provide less impression that wind turbines will be removed throughout the Preserve Area, perhaps by focusing on language that emphasizes a stronger commitment to reducing biological impacts associated with wind turbines. Such revisions will be pursued in conjunction with USFWS and CDFG staff. Conservancy staff is authorized to approve the Policy after seeking concurrence from the Vice Chair that the Policy is consistent with the intent of the Board action.

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: December 16, 2009 APPROVED AS RECOMMENDED: YES
OTHER: _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS
___ AYES: Stonebarger, Stratford, Casey, Glover
___ NOES: _____
___ ABSENT: Connelley
___ 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 Eustis SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY

BY: _____, DEPUTY

THE PROPOSED POLICY AS REVISED:

In consultation with Board Member Stonebarger, staff developed proposed revisions to the policy. These revisions modified the ‘encourage to not renew’ provision and made removal of turbines on option of last resort if other measures fail. The wildlife agencies have indicated they concur with the changes but are still discussing with staff the manner in which the language is memorialized. Adding signature blocks is one option and is the option shown below. Staff may have an update on discussions with the wildlife agencies by the time of the meeting. Please find the revised text of the Policy inserted below:

“Policy on Land Acquisition in Wind Turbine Areas”

The purpose of this Policy is to clarify provisions of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) as they relate to land acquisition in wind turbine areas and better achieve the goals and objectives set forth in the HCP/NCCP. Regarding wind turbines, the intent of the HCP/NCCP is to reduce the overall effects of wind turbines on the covered species and raptors within the HCP/NCCP Preserve System. The East Contra Costa County Habitat Conservancy (Conservancy) and fee simple owner of a Preserve System property will retire wind leases, require turbine reconfiguring and/or take other measures to reduce the biological impacts of wind turbines on Preserve System Lands, as more specifically set forth below, unless the Conservancy and fee simple owner lack the legal authority or control to do so or unless these turbines are shown to have minimal adverse impacts with United States Fish and Wildlife Service (FWS) and California Department of Fish and Game (DFG) concurrence. Of the various options presented herein, retiring wind leases and removal of turbines will reduce the overall effects of wind turbines on the covered species and raptors more than the other options.

The following provisions apply to purchasing lands for the HCP/NCCP Preserve System within the wind turbine areas:

PART ONE

In order to reduce impacts from all wind turbines within the Preserve System, the following measures and conditions shall apply:

1. There will be no lands credited to the Preserve System with severed wind rights unless and until all the wind rights are also acquired, other than the Vaquero Farms South and Vaquero Farms North properties.
2. The Conservancy, DFG and FWS acknowledge that non-renewal of wind leases and removal of turbines will eliminate impacts. Prior to the Conservancy and the future owner of the subject Preserve System lands choosing to renew wind leases on Preserve System lands, the reasons for

- this decision will be provided to FWS and DFG in a letter authorized by the Conservancy Board.
3. During the term of existing wind leases, the Conservancy, DFG and FWS will cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities. The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects.
 4. If wind leases are renewed on future acquisitions, DFG, FWS, the Conservancy and the fee simple owner of the Preserve System lands in question will meet and confer to discuss and agree on the measures that will be included in such renewal to reduce the effects of wind turbine operations on covered species, provided that the parties recognize that these measures will continue to permit reasonable generation of electricity from the Contra Costa County's (County) wind energy resource area. The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects. This measure will also apply to Vaquero Farms, should the Conservancy and the future fee simple owner of the land subsequently secure the wind rights.
 5. If measures to reduce biological effects fail to reduce the impacts of wind turbines to a biologically sustainable level, the Conservancy, DFG and FWS will meet and confer to discuss and agree on supplementary measures that may be taken to reduce the impacts of wind turbines within the Preserve System to a biologically sustainable level, including but not limited to removal of turbines and retirement of leases at the next available opportunity.
 6. Prior to any acquisition with wind turbines, the Conservancy, FWS, DFG and future fee simple owner will agree on i) a structure of the transaction that allows the wind turbine review process outlined above to take place at the appropriate time; and ii) how the future wind turbine review process will be conducted; to ensure the acquisition meets the intent described above.
 7. The Conservancy, FWS, and DFG recognize that the Souza 1 property was identified in the HCP/NCCP as an existing acquisition and an initial component of the Preserve System. The Conservancy and the fee simple owner of this property are encouraged to pursue the range of measures outlined above.

PART TWO

The Conservancy, U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) support the following measures to

address impacts related to wind turbines on Vaquero Farms South, and when applicable, on Vaquero Farms North:

1. Continue to pursue acquisition of all wind rights.
2. Cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities.
3. Improve accounting for wind turbine infrastructure impacts. The HCP/NCCP excludes a 50-foot buffered width around each wind turbine string from land acquisition credits. If re-powering projects result in substantially larger turbines, the Conservancy, FWS, and DFG will meet and agree on a larger buffer and associated reduced credit to the Preserve System.
4. The HCP/NCCP does not specify a minimum mapping unit for mapping roads and other supporting infrastructure (i.e., storage areas) in the Preserve System nor does it specify exclusion of such features from land acquisition credits. In order to more accurately account for the physical infrastructure, the area of the roads and supporting infrastructure will be mapped to a minimum mapping unit of 0.1 acre and excluded from grassland and other landcover acquisition credits (roads will generally be mapped as ruderal unless paved, in which case they will be mapped as urban; building and corporation yards will be mapped as urban). With this approved accounting, removal and reclamation of wind power infrastructure will result in an increase in land acquisition credits when natural land cover is restored. Conversely, expansion of wind turbines and supporting infrastructure will result in a decrease in land acquisition credits as natural land cover types are converted to disturbed land cover types.

The Policy may only be revised upon mutual agreement of the signatories set forth below.

Signatories

John Kopchik, East Contra Costa County Habitat Conservancy

Cay Goude, U.S. Fish & Wildlife Service

Scott Wilson, California Department of Fish & Game

**THE REVISED POLICY SHOWING CHANGES FROM
SEPTEMBER 16, 2009:**

Please find the revised text of the proposed policy memo showing changes made since the September 16, 2009 Governing Board Meeting below:

“Policy on Land Acquisition in Wind Turbine Areas”

The purpose of this Policy is to clarify provisions of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) as they relate to land acquisition in wind turbine areas and better achieve the goals and objectives set forth in the HCP/NCCP. Regarding wind turbines, the intent of the HCP/NCCP is to reduce the overall effects of wind turbines on the covered species and raptors within the HCP/NCCP Preserve System. The East Contra Costa County Habitat Conservancy (Conservancy) and fee simple owner of a Preserve System property will retire wind leases, require turbine reconfiguring and/or take other measures to reduce the biological impacts of wind turbines on Preserve System Lands, as more specifically set forth below, unless the Conservancy and fee simple owner lack the legal authority or control to do so or unless these turbines are shown to have minimal adverse impacts with United States Fish and Wildlife Service (FWS) and California Department of Fish and Game (DFG) concurrence. Of the various options presented herein, retiring wind leases and removal of turbines will reduce the overall effects of wind turbines on the covered species and raptors more than the other options.

The following provisions apply to purchasing lands for the HCP/NCCP Preserve System within the wind turbine areas:

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1. There will be no lands credited to the Preserve System with severed wind rights unless and until all the wind rights are also acquired, other than the Vaquero Farms South and Vaquero Farms North properties.
2. ~~The Conservancy, DFG, and FWS acknowledge that non-renewal of~~ For all acquisitions, the Conservancy and the future fee simple owner of the subject Preserve System lands are encouraged to not renew wind leases and removal of turbines as this will eliminate impacts. ~~unless these turbines are shown to have minimal adverse impacts with FWS and DFG concurrence.~~ Prior to the Conservancy and the future owner of the subject Preserve System lands choosing to renew wind leases on Preserve System lands, the reasons for this decision will be provided to FWS and DFG in a letter authorized by the Conservancy Board.
3. ~~During the term of existing wind leases, the Conservancy, DFG and FWS will cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities.~~

The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects.

4. If wind leases are renewed on future acquisitions, DFG, FWS, the Conservancy and the fee simple owner of the Preserve System lands in question will meet and confer to discuss and agree on the measures that will be included in such renewal to reduce the effects of wind turbine operations on covered species, provided that the parties recognize that these measures will continue to permit reasonable generation of electricity from the Contra Costa County's (County) wind energy resource area. The following measures will be considered to reduce the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects. This measure will also apply to Vaquero Farms, should the Conservancy and the future fee simple owner of the land subsequently secure the wind rights.
5. If measures to reduce biological effects fail to reduce the impacts of wind turbines to a biologically sustainable level, the Conservancy, DFG and FWS will meet and confer to discuss and agree on supplementary measures that may be taken to reduce the impacts of wind turbines within the Preserve System to a biologically sustainable level, including but not limited to removal of turbines and retirement of leases at the next available opportunity.
6. Prior to any acquisition with wind turbines, the Conservancy, FWS, DFG and future fee simple owner will agree on i) a structure of the transaction that allows the wind turbine review process outlined above to take place at the appropriate time; and ii) how the future wind turbine review process will be conducted; to ensure the acquisition meets the intent described above.
7. The Conservancy, FWS, and DFG recognize that the Souza 1 property was identified in the HCP/NCCP as an existing acquisition and an initial component of the Preserve System. The Conservancy and the fee simple owner of this property are encouraged to pursue the range of measures outlined above.

PART TWO

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1. Continue to pursue acquisition of all wind rights.
2. Cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities.

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4. The HCP/NCCP does not specify a minimum mapping unit for mapping roads and other supporting infrastructure (i.e., storage areas) in the Preserve System nor does it specify exclusion of such features from land acquisition credits. In order to more accurately account for the physical infrastructure, the area of the roads and supporting infrastructure will be mapped to a minimum mapping unit of 0.1 acre and excluded from grassland and other landcover acquisition credits (roads will generally be mapped as ruderal unless paved, in which case they will be mapped as urban; building and corporation yards will be mapped as urban). With this approved accounting, removal and reclamation of wind power infrastructure will result in an increase in land acquisition credits when natural land cover is restored. Conversely, expansion of wind turbines and supporting infrastructure will result in a decrease in land acquisition credits as natural land cover types are converted to disturbed land cover types.

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Signatories

John Kopchik, East Contra Costa County Habitat Conservancy

Cay Goude, U.S. Fish & Wildlife Service

Scott Wilson, California Department of Fish & Game

Attachments:

- Board Action from September 16, 2009

Table IV: End of Year Budget Status: Conservancy's 2009 Budget

(includes Conservancy's own accounts, as well as the CWF ECCCHCP/NCCP account, and grant funds disbursed on behalf of the ECCCHC)

	<i>Expenditures</i>					
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D= B + C</i>	<i>E= A minus D</i>	<i>F= E/A*100</i>
	<i>Approved 2009 Conservancy Budget¹</i>	<i>Actual Expenditures as of 12/10/09²</i>	<i>Projected Expenditures Remainder 2009</i>	<i>All 2009 Expenditures (Actual plus Projected Expenditures)</i>	<i>Budget Amount Remaining</i>	<i>Percent Remaining</i>
Program Administration	\$493,665	\$416,822	\$76,000	\$492,822	\$843	0%
Land Acquisition	\$14,046,495	\$1,862,438	\$3,655,000	\$5,517,438	\$8,529,057	61%
Management, Restoration and Recreation Planning and Design	\$328,170	\$160,562	\$7,500	\$168,062	\$160,108	49%
Habitat Restoration/Creation	\$980,239	\$452,318	\$59,388	\$511,706	\$468,533	48%
Environmental Compliance	\$166,495	\$117,741	\$19,500	\$137,241	\$29,254	18%
HCP/NCCP Preserve Management and Maintenance	\$293,247	\$11,492	\$0	\$11,492	\$281,755	96%
Monitoring, Research, and Adaptive Management	\$94,345	\$33,905	\$12,666	\$46,571	\$47,774	51%
Remedial Measures	\$6,000	\$0	\$0	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$117,808	\$0	\$0	\$0	\$117,808	100%
TOTAL EXPENDITURES	\$16,526,464	\$3,055,277	\$3,830,054	\$6,885,331	\$9,641,133	58%
FEE REVENUES IN 2009 (projected through 12/31/09)³				\$1,487,993		
GRANT REVENUES IN 2009 (projected through 12/31/09)				\$5,114,992		
TOTAL REVENUES IN 2009 (projected through 12/31/09)				\$6,602,985		
DIFFERENCE BETWEEN 2009 REVENUES & EXPENDITURES (projected)				-\$282,346		
ESTIMATED FUNDS IN ALL ACCOUNTS, JANUARY 1, 2009⁴				\$2,350,000		
ESTIMATED FUNDS IN ALL ACCOUNTS, DECEMBER 31, 2009⁴				\$2,070,000		

Notes:

(1) Budget amounts do not reflect augmentation formulas. The approved Budget allowed the expenditure limits for certain categories to increase in proportion to revenues. These augmentations are not included here in order to keep the comparison of expenditures to budget simple and conservative.

(2) Cost for work performed but not yet billed is not included. Staff costs through the end of October are included. Projections in Column C include these amounts. CWF's expenditure of \$2,770,000 to pay the Vauqero Farms North purchase price is not included because this expenditure was intended to provide bridge financing until the Conservancy's grants could be used to assist EBRPD's purchase of the property from CWF. The expenditure will be reflected in the Conservancy's accounting when this second transaction occurs.

(3) Includes \$49,131 in fees collected for contribution to recovery.

(4) Includes CWF account which is held in trust for the Conservancy but is controlled by the wildlife agencies. Upon anticipated closing of Vaquero Farms North in early 2010, available funds in the CWF account will increase by \$2,770,000.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: November 12, 2009
TO: Public Advisory Committee (PAC)
FROM: Conservancy Staff
SUBJECT: Overview of the Stay Ahead Provision

INTRODUCTION:

At its August meeting, the PAC discussed potential topics for future meetings. One potential topic the group seemed interested in was to request that staff provide briefings on some of the more complicated aspects of the Plan. This was deemed helpful both to PAC members with a lot of history with the HCP/NCCP and those who are new to the process. Staff felt the Stay Ahead provisions was a good topic to start with.

The stay ahead provision in the HCP/NCCP refers to the timing and sequence of the preserve assembly relative to impacts from covered activities and is critical to the success of the HCP/NCCP. Progress towards assembling the Preserve System must stay ahead of progress towards total impacts allowed under the permit. This sequence ensures that preserve assembly is keeping pace with development and that the Implementing Entity is making steady progress towards the full Preserve System.

Such progress toward assembly of the Preserve System is a requirement under the Natural Community Conservation Planning Act (NCCPA). The NCCPA requires that implementation of mitigation and conservation measures be “roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan” (California Fish and Game Code Section 2820[b][9]). To meet the requirements of this section, CDFG requires that NCCPs make progress towards the final conservation goals (i.e., the ultimate size and configuration of the Preserve System) in proportion to the impacts of covered activities. The Stay-Ahead provision in this Plan addresses this requirement.

OVERVIEW:

The HCP/NCCP references how the stay ahead provision is to be implemented in Chapter 8, Section 8.6.1 of the document, as attached:

8.6.1 Stay-Ahead Provision

The Implementing Entity is required to ensure that progress towards assembling the Preserve System stays ahead of the total impacts allowed under the permit. To improve

the chances of meeting this requirement, the Implementing Entity is encouraged to acquire land before permits are issued according to a *Jump-Start* guideline.

Jump-Start Guideline. The Implementing Entity should acquire at least 500 acres of land before issuance of ESA and NCCPA permits according to the land cover and habitat requirements in Table 5-15. Jump-start guidelines recommend approximately 2% of the expected preservation requirement and represent an aggressive but realistic goal for land acquisition prior to permit issuance.

As documented in Table 5-21, 2,383 acres have been acquired or preserved during Plan development that will be counted toward the land acquisition requirements described in Chapter 5 once conditions described in Table 5-21 have been met. Additional acquisitions are also in process. Precise acreages of land cover types conserved during Plan development will be determined through site-specific resource inventories performed in accordance with the final HCP/NCCP.

Stay-Ahead Provision. During the first year after permit issuance, the Implementing Entity will be establishing its structure, collecting initial HCP/NCCP fees, and actively pursuing land acquisition deals with willing landowners. To allow time for these start-up tasks to occur, the Stay-Ahead provision will only apply after 1 year of Plan implementation.

After 1 year of implementation, the Implementing Entity must measure its compliance with the Stay-Ahead provision by one of the following two methods during the first 10 years of the permit term (i.e., from the beginning of Year 2 to the end of Year 10). Two methods are provided to give the Implementing Entity more flexibility and to provide an incentive for land acquisition in key areas of the inventory area.

The Implementing Entity will strive to achieve the Stay-Ahead provision using both methods, but must comply with at least one of the two methods for the first 10 years. After Year 10, the Implementing Entity must use only the Measurement Method #1 to measure compliance with the Stay-Ahead provision.

Stay-Ahead Measurement Method #1. The amount of each land cover type conserved by the Implementing Entity as a proportion of the total requirement for each land cover type (Table 5-8) must be equal to or greater than the impact on that land cover type as a proportion of the total impact expected under the maximum urban development area by all covered activities (Table 5-8). For example, if 25% of the expected impacts on oak woodland have occurred, then at least 25% of the required land acquisition for oak woodland must also have occurred. The exceptions to this rule are annual grassland, alkali grassland, ruderal land cover, and all cultivated agriculture land cover types (cropland, irrigated pasture, vineyard, orchard), which will be aggregated for the purposes of measuring compliance with the Stay-Ahead provision. That is, the sum of the current and expected impacts on these land cover types will be measured for Stay-Ahead purposes against the sum of the acquisitions and acquisition requirements for these land cover types.

OR

Stay-Ahead Measurement Method #2. The amount of annual grassland conserved by the Implementing Entity in Zone 2 as a proportion of the total requirement for annual

grassland acquisition in Zone 2 (see Table 5-14) must be equal to or greater than the impact on annual grassland and all cultivated agriculture land cover types (cropland, irrigated pasture, vineyard, orchard) as a proportion of the total impact expected under the maximum urban development area scenario on these land cover types by all covered activities. For example, if 40% of the expected impacts on annual grassland and cultivated agriculture land cover types have occurred, then at least 40% of the required acquisitions of annual grassland in Zone 2 must also have occurred. This option provides an incentive for the Implementing Entity to acquire land in Zone 2 early in Plan implementation because land in this zone is likely to be more expensive and at higher risk than land in other zones.

Under either measurement method, land may be counted toward the Stay-Ahead provision once it is incorporated into the Preserve System. The criteria for incorporating land into the Preserve System are described in Section 8.6, *Land Acquisition*.

The Plan allows a 5% deviation from the strict requirements above without penalty to account for the likely pattern of infrequent land acquisition of large parcels. This allowable deviation will apply to either method employed by the Implementing Entity to calculate compliance with the Stay-Ahead provision.

The Implementing Entity will monitor the status of the Stay-Ahead provision throughout Plan implementation. The Stay-Ahead provision will also be evaluated on an annual basis by USFWS and CDFG. Beginning with the Year 2 annual report, the Implementing Entity will report on the status of the Stay-Ahead provision. As long as the ratio between impacts as a percentage of estimated impacts and acquisition as a percentage of required acquisitions remains within a 5% deviation (under either measurement method for the first ten years) then the Stay-Ahead provision will have been satisfied. If the annual evaluation shows that the Stay-Ahead provision is not satisfied, then the Implementing Entity and USFWS and CDFG will meet and confer to mutually develop a plan to achieve the Stay-Ahead provision, as further described below.

Land acquired in full or in part by state or federal agencies to contribute to species recovery under this Plan will also contribute to compliance with the Stay-Ahead provision. Because a portion of the Plan's conservation actions depend on commitments by the state and federal governments, the Implementing Entity's compliance with the Stay-Ahead provision will depend in part on the fulfillment of these commitments. The Implementing Entity must recognize, however, that funds from public agencies will be available on budget cycles that may or may not correspond to the timing of covered activities in the permit area. Therefore, the Implementing Entity must acquire land on its own and cannot rely solely on the timely availability of state or federal funds to acquire land.

Rough Proportionality

The Stay-Ahead provision will also be evaluated on an annual basis (beginning at the end of Year 2) by CDFG based on analysis provided by the Implementing Entity to determine if the "rough proportionality" standard of NCCPA is being met. If the Plan is found to be out of compliance with the Stay-Ahead provision by more than a 10% deviation (i.e., 5% over the allowable deviation of 5% for Stay Ahead), then CDFG will determine whether the Plan has maintained rough proportionality. If CDFG issues a notification to the Implementing Entity that rough proportionality has not been met, then CDFG and USFWS and the Implementing Entity will meet to develop a plan to remedy the situation.

If the federal and state commitment to the Plan cannot be provided in order to meet the rough proportionality requirement, the Plan will be reevaluated in light of these limitations, with possible adjustments made to the permit coverage and assurances or adjustments to the conservation obligations.

This chapter provides planning-level estimates of the costs to implement the ECCC HCP/NCCP and identifies all necessary funds to pay for implementation.

9.1 Cost to Implement the HCP/NCCP

The cost analysis was based on a number of assumptions regarding the eventual development of the HCP/NCCP and the unit cost of many items. Unit cost estimates were based on the best available information and represent average unit costs. The costs of individual items will fluctuate above and below these averages. The total cost presented herein should therefore be regarded as a planning-level estimate to aid in the determination of the eventual amount of funding likely to be necessary to implement the Plan.

Tables 9-1 and 9-2 summarize the costs likely to be necessary to implement the HCP/NCCP. Cost categories are listed below.

- Program administration.
- Land acquisition.
- Planning and design of management, restoration, and recreational facilities.
- Habitat restoration/creation.
- Environmental compliance.
- HCP/NCCP preserve management and maintenance.
- Monitoring, research, and adaptive management.
- Remedial measures.

Some cost elements are split between categories or assigned a single category for simplicity; for example, Implementing Entity staff salaries appear in several categories because staff will perform a variety of functions. All cost categories, however, are mutually exclusive. Each cost category is divided into capital and operational costs. Capital costs are typically one-time costs for land, equipment, or structures. Operational costs are ongoing costs such as staff salaries and contractor fees. Table 9-1 summarizes total costs, capital costs, and operational costs under the initial urban development area. Table 9-2 summarizes total costs,

capital costs, and operational costs under the maximum urban development area. Costs are summarized by 5-year periods except for year 0, which contains initial start-up expenses. All costs are in 2006 dollars. Costs estimates are for the 30-year permit term of the HCP/NCCP. See Section 9.3.4, *Funding Adequacy*, for a discussion of post-permit term funding.

9.2 Cost Estimate Methodology

This section provides an explanation of each cost category and the methods that were used to develop the HCP/NCCP cost estimate.

The spreadsheets used to develop the HCP/NCCP cost estimate are provided in Appendix G, *HCP/NCCP Cost Data*. The cost estimates for operations, maintenance, and administration were developed in coordination with land management agencies in the inventory area—specifically, EBRPD and CCWD. These agencies helped to determine the specific elements in each broad cost category and the unit cost assumptions. The land valuation analysis used to develop the HCP/NCCP land acquisition cost estimates (Appendix G) was based on land and real estate data from appraisers, brokers, land management agencies, and land trusts.

9.2.1 Program Administration

Program administration costs involve the support of employees, facilities, equipment, and vehicles to operate the office of the Implementing Entity. Program administration costs also include associated costs such as travel, insurance, legal and financial assistance, meeting stipends, contingency budgets, and in-lieu payments for law enforcement and firefighting paid to the County and other land management agencies. Program administration costs are estimated to be, on average, \$605,000 or \$608,000 annually during the permit term under the initial urban development area and maximum urban development area scenarios, respectively (Tables 9-1 and 9-2). Some program administration costs will be necessary beyond the permit term.

Costs incurred by Permittees other than the Implementing Entity to implement the Plan are not included in the cost estimates. For example, the participating cities and the County will incur costs when reviewing applications for take authorization from various project proponents (see Chapter 6, Section 6.2). The participating cities and the County will recover these costs from applicants according to the policies in place at each local jurisdiction. The fee amounts specified in the Plan do not reflect the costs of application review by the cities and the County, and revenues from the HCP/NCCP fees will not be used to cover these costs.

Cost savings in program administration can be realized by partnering with existing land management agencies that already have staff with the required qualifications and have the infrastructure to hire and manage such staff.

large (640 acres or more) land acquisitions will comprise the bulk of the total acreage of the Preserve System. Acquisition of large parcels (or combinations of parcels) is typically more complex and may take longer to realize than acquisition of small parcels. Over the long term, larger land acquisitions will save money because of their typically lower price per acre and lower land expense costs per acre (e.g., due diligence, legal fees).

The Implementing Entity will be responsible for performing the conservation measures necessary to comply with the Stay-Ahead provision, as described in Chapter 8. If the Implementing Entity determines it is at risk of non-compliance with the Stay-Ahead provision, the Implementing Entity may notify the other Permittees that it is necessary to temporarily require project proponents to provide land instead of paying a fee. If the Stay Ahead provision is not satisfied for any land cover type based on the criteria in Section 8.6.1 of Chapter 8, the Implementing Entity will notify the other Permittees that it is necessary to temporarily require project proponents to provide land instead of paying a fee unless CDFG and USFWS agree, after conferring with the Implementing Entity, that a different plan of action devised with the Implementing Entity will remedy the situation and it is not necessary to require project proponents to provide land instead of paying a fee.

If the Implementing Entity initiated the requirement due its own determination that the Plan was at risk of non-compliance, the requirement to provide land instead of a fee will be lifted (i.e., it will revert back to an option) as soon as the Implementing Entity determines that it is no longer at risk of non-compliance with the Stay-Ahead provision. If the Implementing Entity initiated the requirement following non-compliance with the Stay-Ahead provision, the requirement will be lifted as soon as the Implementing Entity demonstrates in writing to the satisfaction of CDFG and USFWS that the Plan is in compliance with the Stay-Ahead provision.

Funding for Post-Permit Management and Monitoring

Annual costs to operate and maintain the Preserve System in perpetuity are estimated to be slightly less than the annual cost for program administration, preserve management, and monitoring estimated during years 26–30 funding period, or approximately \$3.0 million or \$3.3 million¹⁴ annually under the initial or maximum urban development area, respectively. Actual long-term costs may be lower if the Implementing Entity can develop streamlined procedures for management and monitoring during the permit term or reduce administrative costs. Responsibility for funding long-term management and monitoring rests solely with the Permittees.

¹⁴ This is equivalent to approximately \$125 per acre per year or \$110 per acre per year in operational and capital costs for Preserve System operation under the initial or maximum urban development areas, respectively.

The Implementing Entity will develop a detailed plan for long-term funding of operation and maintenance and will have secured all necessary commitments to implement this plan before using 50% of all authorized take under the maximum urban development area (= 50% of 12,704 acres [Table 4-3], or 6,352 acres) or at the end of year 15 of implementation, whichever occurs first.

Potential approaches, funding sources, and opportunities for redirecting cost-savings toward post-permit management and monitoring include the following. Estimates of available funding are presented in Table 9-9.

- Partnerships with and commitments from existing organizations to assist with purchase and full operation and maintenance of HCP/NCCP preserves during and after the permit term. EBRPD is expected to be one such partner during Plan implementation. Since publication of the Draft HCP/NCCP, EBRPD has become an intended signatory to the Implementing Agreement and a Permittee under the HCP/NCCP. As described in Sections 9.4, 10.2 and 13.6 of the Implementing Agreement, EBRPD will provide a variety of assurances regarding maintaining its level of conservation effort in the HCP/NCCP area, managing land consistent with HCP/NCCP requirements, and cooperating with the Implementing Entity to ensure that assembly of the HCP/NCCP Preserve System is coordinated with park acquisitions. These new provisions of the Implementing Agreement demonstrate significant progress toward assembling a plan for long-term funding of operation and maintenance because they:
 - document a maintenance of effort commitment,
 - enable some preserve assembly and management tasks to be addressed by an organization that may be able to perform this work more efficiently and cost effectively than was estimated for the Implementing Entity, and
 - enable some post-permit preserve management tasks to be performed by an organization with a long history of land management and a substantial constituency of park users who will provide substantial public accountability not commonly associated with habitat preservation initiatives.
- Endowment from cost savings over estimated Plan costs (e.g., lower than estimated operations and maintenance costs from using existing organizations in the inventory area).
- Local tax or other funding measure for operations and maintenance of open space similar to four recent measures proposed in Contra Costa County: Measures K (2001) and W (2003) proposed by EBRPD (both failed), Measure CC in 2004 (passed), and Contra Costa County Open Space Funding Authority's Parks and Open Space Protection and Preservation District in 2004 (failed).
- Assessments on new development covered by the HCP/NCCP that can contribute to long-term operations and maintenance as a substitute for up to 1/3 of the development fee (see description above).

- Real estate transfer fees on new development (permanent covenants recorded on the title of new parcels requiring fees to be paid to the HCP/NCCP with every ownership change) as an alternative or supplement to assessments.
- Greater than expected leveraging of acquisition and management costs from partnerships with other organizations.
- Grant funding for long-term management.
- Reduction of the required frequency or intensity of monitoring or adaptive management actions after the permit term based on monitoring results during the permit term, and development of more streamlined monitoring and management procedures, thereby reducing post permit costs.
- Grazing fees. If used, all or a large portion of grazing fee revenue should be earmarked to support livestock operations (e.g., fencing, watering tanks, access roads).
- Recreational use fees. If used, all or a large portion of recreational use fees should be earmarked to support recreational facilities (e.g., parking lots, informational kiosks, restrooms, trails).

The Implementing Entity will attempt to secure post-permit funding for HCP/NCCP implementation during the early phases of the permit term. The Implementing Entity will provide status reports and consult with CDFG and USFWS annually on progress toward this goal. As described in the Implementing Agreement (Section 14.1), the Implementing Entity, County, Cities of Brentwood, Clayton, Oakley, and Pittsburg (Cities), and Flood Control District must ensure that all required mitigation, conservation, monitoring, reporting and adaptive management measures are adequately funded throughout the term of the Permits, and that monitoring, reporting and adaptive management measures are adequately funded in perpetuity. Therefore, the Implementing Entity, County, Cities, and Flood Control District must take appropriate actions to secure long-term funding during the permit term.

If for reasons beyond the control of the Implementing Entity, County, Cities, and Flood Control District sufficient long-term funding sources are not secured before 50% of the authorized take under the maximum urban development area is used or before the end of year 15 of implementation, whichever occurs first, the Implementing Entity, County, Cities, and Flood Control District will consult with CDFG and USFWS on the following courses of action, some of which may require a Plan amendment.

- Consider slowing or stopping local permit issuance under the HCP/NCCP until post-permit funding is secured.
- Consider revoking or suspending take permits.
- Consider reduction of take authorization limits, covered activities, or permit duration.
- Consider raising HCP/NCCP fees to cover some or all of post-permit management and monitoring.
- Develop alternative strategies for long-term funding.

Table 9-8. HCP/NCCP Cost and Funding Overview

Type	Amount		Source Category
	Initial Urban Development Area	Maximum Urban Development Area	
Estimated Costs (in 2005 dollars; rounded to nearest \$10,000)			
Land Acquisition ¹ (%)	\$191,640,000 (65%)	\$235,680,000 (67%)	
Management costs over permit term (%) (including all other costs)	<u>\$105,450,000 (35%)</u>	<u>\$114,360,000 (33%)</u>	
Total Estimated and Assumed Costs	\$297,090,000	\$350,040,000	
Projected Funding² (in 2005 dollars; rounded to nearest \$10,000)			
Fee Funding			
Fees on new development in Urban Development Area	\$118,183,000	\$169,723,000	Local
Wetland Impact Fees	\$22,240,000	\$24,010,000	Local
Fees on rural infrastructure (e.g., roads, detention basins, pipelines)	<u>\$8,932,000</u>	<u>\$8,932,000</u>	Local
Total Projected Fee Funding	\$149,350,000	\$202,670,000	Local
Non-Fee Funding			
Maintenance of Existing Conservation Effort ³			
Local	\$55,000,000	\$55,000,000	Local
State	\$25,000,000	\$25,000,000	State
Federal	<u>\$5,000,000</u>	<u>\$5,000,000</u>	Federal
Subtotal, Maintenance of Effort	\$85,000,000	\$85,000,000	Mixed
Byron Airport Clear Zone Acquisitions	\$6,500,000	\$6,500,000	Federal
New Wildlife Agency Funds (Section 6, park bonds, etc.) ⁴	<u>\$58,000,000</u>	<u>\$58,000,000</u>	State/Fed
Total Non-Fee Funding	\$149,500,000	\$149,500,000	Mixed
TOTAL PROJECTED FUNDING (Permit Term)	\$298,850,000	\$352,170,000	
TOTAL FUNDING - TOTAL COSTS (Permit Term)	\$1,760,000	\$2,130,000	
Summary of Funding by Source⁵			
Local (%)	\$204,350,000 (68%)	\$257,670,000 (73%)	
State/Federal ⁴ (%)	\$94,500,000 (32%)	\$94,500,000 (27%)	
State/Federal Contribution in Units of Acres⁶			
Total State/Federal contribution	13,350	13,350	
CDFG / USFWS share of state/federal contribution ⁷	8,700	8,700	
Contribution by other state/federal agencies	4,650	4,650	

Notes

- ¹ Land acquisition costs include due diligence, pre-acquisition surveys, site improvements, and appraisals.
 - ² Funding estimates include projected monetary contributions and the monetary value of projected in-kind contributions.
 - ³ Based on analysis of conservation performed over the past 30 years. Assumes 75% historic rate. See Appendix G.
 - ⁴ Estimates only. State and federal contributions are described in the HCP/NCCP in terms of acres.
 - ⁵ Costs of post permit term management and monitoring are not included. These costs are estimated at \$3.0M and \$3.3M per year for the initial and max UDA respectively. The net present value of these future costs is estimated at \$83M and \$91M respectively, assuming a net discount rate of 2% above inflation (expressed another way, the size of the non-wasting endowment necessary at the end of year 30 to fund these costs in perpetuity would be \$150M and \$166M respectively). It is presumed that funding for these costs will come from local sources. See Table 9-9 and text of Chapter 9 for more information.
 - ⁶ State/federal contribution is defined in the HCP/NCCP in units of acres. Acreage contribution levels were developed with reference to baseline funding projections (shown in this table), but these funding estimates are presented here solely for informational purposes.
 - ⁷ Wildlife agencies' share of total state and federal acres contribution is defined in the HCP/NCCP and expressed in units of acres. Acreage contribution was related to funding estimates under the assumption that the wildlife agencies' acreage contribution would be funded with the estimated \$55M in new wildlife agency funds plus about 15% of the state and federal component of maintenance of existing effort, which has been the approximate portion of existing conservation funds contributed by the wildlife agencies (including the Wildlife Conservation Board).
-

Table 9-9. Estimated Funding Availability for Post-Permit Management and Monitoring

Funding Source ¹	Estimated Amount Available ² (expressed in 2005 dollars)		Notes
	More Conservative Estimate	Conservative Estimate	
Cost savings during permit term relative to estimated Plan costs	\$5,900,000	\$12,600,000	More conservative estimate assumes 10% savings from initial urban development area; conservative estimate assumes 25% savings from maximum urban development area; in both cases, savings applied to program administration, design work, environmental compliance, preserve management, and monitoring. See text for rationale.
Cost savings after permit term relative to estimated Plan costs	\$8,300,000	\$22,900,000	Same assumptions as above.
Local tax or other funding measure	\$12,400,000 (If revenue was continued indefinitely, the net present value of the revenue stream would be \$27,600,000)	\$49,400,000 (If the revenue ceased after 30 years, the net present value of the revenue stream would be \$22,100,000)	A variety of local funding measures for parks and open space have been proposed over the last 15 years. Some have passed and some have failed. The most recent proposal, the Contra Costa County Open Space Funding Authority's proposed park and open space assessment district narrowly failed in 2004. It would have raised approximately \$40,000,000 for acquisitions and other projects compatible with the HCP/NCCP over its 30 year life, or approximately \$1.33 million per year. The more conservative estimate assumes a 30-year measure is passed in year 30 of the HCP/NCCP and yields \$1 million annually to the HCP. The conservative estimate assumes a measure is passed in year 15 of the HCP/NCCP, yields \$1.33 million annually, and is continued into the foreseeable future.
Assessments or real estate transfer fees on new development	\$5,400,000	\$19,500,000	Value depends heavily on how many developers/planning agencies choose this option in lieu of a paying a portion of their development fee. Estimates assume annual assessment rates after the permit term are set at 1.7% of the development fee. More conservative estimate assumes initial urban development area and 10% participation in the assessment option. Conservative estimate assumes max urban development area and 25% participation. Real estate transfer fee is an alternative to assessments, so projections for these two sources have been combined.

Funding Source ¹	Estimated Amount Available ² (expressed in 2005 dollars)		Notes
	More Conservative Estimate	Conservative Estimate	
Reduced frequency or intensity of monitoring or adaptive management after the permit term	\$2,000,000	\$6,000,000	Assumes reductions of 10-25% (or \$75,300-\$219,400) in monitoring and adaptive management costs annually after the permit term for the initial and max urban development areas respectively.
Grazing fees	\$1,400,000	\$8,300,000	Revenue could also come in the form of in-kind services from grazing operators such as fence repair. More conservative estimate assumes annual revenue of \$50,000 per year. Conservative estimate of \$300,000 per year is based on actual charges on Los Vaqueros Watershed lands by CCWD (B. Nuzum, pers. comm.) and on the Alameda Watershed in Alameda County by San Francisco Public Utilities Commission (J. Naras, pers. comm.).
Recreational use fees	\$0	\$1,400,000	Conservative estimate assumes \$50,000 per year in recreational use fees.
TOTAL¹	\$35,400,000	\$120,100,000	
Estimated post-permit costs for initial urban development area	\$82,600,000	\$82,600,000	
Estimated post-permit costs for maximum urban development area	\$91,500,000	\$91,500,000	

¹ Only funding sources for which cost estimates could be reasonably developed are listed. For other possible funding sources for post-permit management and maintenance, see Chapter 9.

² All estimates are expressed in terms of the net present value of future annual revenues or cost savings assuming a net discount rate 2% above inflation.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Use of Conservancy Restoration Sites for Mitigation of Non-Covered Projects

RECOMMENDATION

- 1) REFER to the Public Advisory Committee (PAC) for review and recommendation the question of whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies to purchase mitigation credit from the Conservancy, thereby using a portion of the Conservancy's restoration project sites toward their mitigation obligations.
- 2) DIRECT staff to also discuss this issue with agencies that are party to the HCP/NCCP Implementing Agreement.

DISCUSSION

Conservancy staff has been approached on several occasions by proponents of non-covered activities to utilize existing preserve system restoration sites for mitigation purposes. Interested parties include those within the inventory area with non-covered projects (e.g. projects in Antioch and projects that restored habitat in the past to mitigate for impacts but the restorations failed or were destroyed), as well as those outside of the inventory area seeking mitigation alternatives in order to meet obligations under a variety of state and federal regulations. None of the inquiries received thus far appears (continued on next page)

CONTINUED ON ATTACHMENT: <u>YES</u>	
ACTION OF BOARD ON: <u>September 16, 2009</u>	APPROVED AS RECOMMENDED: <u>Item (a) was approved as recommended. Item (b) is approved with conditions to include United States Army Core of Engineers (USACE) and the Regional Water Quality Control Boards as agency parties to this discussion.</u>
<u>VOTE OF BOARD MEMBERS</u>	
UNANIMOUS	
AYES: <u>Connelley, Casey, Stonebarger, Stratford</u>	
NOES: _____	
ABSENT: <u>Glover</u>	
ABSTAIN: _____	
<p>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</p> <p>ATTESTED: <u>CATHERINE RUTSVIRIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</u></p> <p>BY: <u>[Signature]</u>, DEPUTY</p>	

likely to be pursued further by the project proponent because of issues such as timing, habitat type and location. However, staff anticipates that the issue will continue to come up.

The HCP/NCCP specifically allows such an arrangement, noting potential advantages to resources, project proponents and the Conservancy of maximizing use of the HCP/NCCP Conservation Strategy. The sections that discuss this topic even provide guidelines on how such arrangements are to be pursued.

The issue staff recommends exploring further with the PAC and other HCP/NCCP partner agencies is not if the Conservancy *can* pursue restoration credit arrangements, but if it *should* and under what circumstances. The types of issues that need to be addressed are:

- How much if any of the valuable acreage the Conservancy and its partners have worked hard to restore should be available for use by non-covered activities? Acreage that is made available for non-covered projects cannot be used for covered projects.
- How should the Conservancy determine a fair price that compensates for the opportunity cost of allowing restored acreage to go to third parties while also reflecting policy goals memorialized in the HCP/NCCP regarding keeping mitigation local rather than driving it away?
- Will such arrangements help or hinder efforts to secure regional wetlands permits coordinated with the HCP/NCCP?
- How can tracking mechanisms be put in place to ensure that no double-dipping of restoration credit occurs?

The topic is complicated and staff is recommending undertaking a broad evaluation now before a specific case must be decided upon. Similar questions may arise in the case of land preservation arrangements, but staff suggests the primary focus be on restoration credit for the time-being because the issue is more complicated and timely.

Provisions in the HCP/NCCP: The HCP/NCCP contains two sets of provisions for dealing with mitigation for non-covered projects. One is the contribution of land and the other is contribution of funds. Neither mechanism offers the project proponent take coverage under the HCP/NCCP. Rather, each makes use of aspects of HCP/NCCP implementation as resources for mitigation in order to meet state and federal obligations. Excerpts from the relevant sections of the HCP/NCCP are provided below.

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HCP/NCCP Chapter 8, Section 8.6.2

Mitigation for Activities Not Covered by the HCP/NCCP

By creating a framework for habitat conservation, the HCP/NCCP could attract additional mitigation to the HCP/NCCP inventory area by projects located in or around the inventory area but not covered by the HCP/NCCP. Land acquired, preserved in perpetuity, and managed for natural resource purposes to mitigate for the impacts of activities not covered by the HCP/NCCP may complement and augment the conservation achieved by the HCP/NCCP if the location and

management of the land is consistent with the goals of the HCP/NCCP. For example, mitigation from non-covered activities may preserve areas that would not have been preserved under the HCP/NCCP. Alternatively, mitigation may accomplish conservation objectives of the HCP/NCCP, enabling conservation under the HCP/NCCP to be redirected to other areas or conservation purposes (as described in Chapter 5 Conservation Measure 1.1, in the section *Conservation in the Inventory Area beyond HCP/NCCP Requirements*).

Project proponents with projects in or near the inventory area that are not covered by the Plan but that affect covered species may be interested in using the HCP/NCCP as a vehicle to mitigate their projects. These projects may be required to conduct mitigation or conservation actions under a variety of state and federal regulations, including ESA, CESA, CWA, Porter-Cologne Water Quality Control Act, NEPA, or CEQA. If these actions are compatible with the HCP/NCCP, there are advantages to using the conservation strategy of the Plan East Contra Costa County Habitat Conservation Plan Association as a guide to mitigating non-covered projects because of lower costs and greater conservation benefits. Some non-covered project proponents may be interested in contributing land to the HCP/NCCP as their mitigation. See also *Mitigation Funding from Activities Not Covered by the Plan* in Chapter 9, section 9.3.2, regarding the contribution of mitigation funds to the HCP/NCCP.

If mitigation by non-covered projects occurs in areas that are a priority for conservation in the HCP/NCCP, the Implementing Entity, CDFG, and USFWS will confer and determine how to redirect HCP/NCCP resources to other objectives. In such circumstances, HCP/NCCP resources may be redirected toward other areas such as the following.

- Additional land acquisition that will be prioritized as described in Chapter 5 Conservation Measure 1.1, in the section *Conservation in the Inventory Area beyond HCP/NCCP Requirements* (note that such additional land acquisition may not match the size and extent of such non-Plan mitigation acre for acre due to differences in land cover types, conservation value, cost, and other factors).
- Other measures necessary to achieve the objectives of the Plan. Mitigation for covered species by non-covered projects cannot be counted towards either the mitigation requirements or the Stay-Ahead provision of the HCP/NCCP and must result in a redirection of HCP/NCCP resources toward other conservation purposes as described above.

CDFG and USFWS will, to the extent consistent with their responsibility to ensure effective mitigation proximate to the location of impact, promote mitigation in the HCP/NCCP inventory area by non-covered projects to complement and augment the conservation to be achieved by the HCP/NCCP.

HCP/NCCP Chapter 9, Section 9.3.2

Mitigation Funding from Activities Not Covered by the Plan

There may be a number of benefits to addressing the mitigation needs of noncovered projects through the implementing structure of the HCP/NCCP. USFWS and CDFG may wish to use the conservation strategy and implementing structure of the Plan to maximize the conservation benefits to covered species and natural communities. Project proponents may wish to utilize the mitigation approach of the Plan to facilitate their mitigation obligations under a variety of state and federal regulations. The HCP/NCCP Implementing Entity may benefit from the additional flexibility to implement the Plan afforded by access to revenue early in the permit term. See also *Mitigation Acquisitions by Activities Not Covered by the HCP/NCCP* in Section 8.6.2, *Land Acquired by Other Organizations or through Partnerships*.

Mitigation funds collected from non-covered activities must augment the mitigation and conservation obligations of the Plan (i.e., they may not offset these requirements). To achieve this, the Implementing Entity, the project proponent, USFWS, and CDFG will meet to discuss a mutually acceptable mitigation funding arrangement. Such an arrangement will rest on a description of conservation actions (e.g., land acquisition, restoration) over and above those required by the HCP/NCCP that must be performed to mitigate the non-covered activity. The subsection of Conservation Measure 1.1 entitled *Conservation in the Inventory Area beyond HCP/NCCP Requirements* in Chapter 5 entitled will help guide the identification of the expanded conservation requirements. The expanded conservation requirements must be approved by CDFG and USFWS. The Implementing Entity must be willing to perform the additional conservation with the funds offered, and the funding arrangement must be acceptable to the project proponent. It is likely that an agreement involving all four parties will be necessary to implement such mitigation funding arrangements.

To facilitate successful implementation of the HCP/NCCP and to ensure that mitigation from non-covered activities is coordinated with the HCP/NCCP, mitigation funding arrangements will include the provisions described below.

- Flexibility to use the additional revenue to meet existing HCP/NCCP requirements and to use future HCP/NCCP revenue to meet the expanded conservation requirements of the non-covered activity. This will enable the Implementing Entity to use the additional funds in an opportunistic fashion and to meet urgent Plan requirements, such as habitat connectivity requirements in Acquisition Analysis Zone 2, faster than it could otherwise do.
- Flexibility in adapting the Stay-Ahead provision to the expanded conservation requirements. In measuring compliance with the Stay-Ahead provision in annual reports, the Implementing Entity will be able to choose either to (a) disregard the expanded the conservation requirements and the land purchased with additional revenue from the non-covered activities when measuring compliance, or (b) include both the expanded conservation requirements (i.e., the HCP/NCCP requirements plus the requirements of the non-covered activities and any continued land acquisition obligations) and the land purchased with additional revenue from non-covered activities when calculating compliance.

Mitigation funding arrangements will describe the specific application of these provisions in each instance. The additional revenue received from non-covered activities cannot be taken into account during the periodic audits used to recalibrate HCP/NCCP fees.

Use of Conservancy Wetland Restoration Sites to Mitigate Non-Covered Activities: Draft List of Considerations 2-11-10

Key Assumptions:

- We are only considering whether and under what considerations the Conservancy should allow this. The regulatory agencies would also have to consider whether they want this to happen and that decision is theirs.
- If portions of Conservancy restoration sites are used to mitigate for non-covered activities, these portions cannot be used to meet the conservancy recovery or mitigation requirements.
- Use of mitigation funds from non-covered activities to assist with buying land is a separate topic and is not part of the considerations below.

Location of activity seeking mitigation: The location of the activity seeking mitigation on Conservancy restoration sites will certainly matter to the regulatory agencies. It perhaps should also matter to the Conservancy. Foreseeable areas that might seek mitigation at Conservancy restoration sites include:

- Antioch
- Non-covered activities within the HCP inventory area (e.g., rural residential development, wind development, mining)
- Delta region of Contra Costa County outside of inventory area
- Concord hills
- Livermore/Pleasanton

Type of activity seeking mitigation: Whether the project is private or public or whether it will serve the citizens of east Contra Costa County may be a factor for consideration.

Type and amount of restoration credit sought: the Conservancy may be in a better position to sell certain types of credit than others (e.g., the types it has the most of). Also, requests for smaller amounts of credit may be more attractive.

Stay Ahead Status: If the Conservancy is not far ahead of its Stay Ahead requirements, it would be difficult to see why the Conservancy would want to sell restoration to others.

Anticipated needs of future covered activities: Knowledge of such needs could inform decisions. How much advance knowledge we have or could develop is an important question.

Cost recovery: HCP fees were based on projected costs (they will be updated soon based on actual costs). Full cost recovery would be an important minimum objective. HCP development fees were calculated to pay for all costs during the 30-year permit term. If funds were accepted from non-covered activities, it would be prudent to recover estimated costs for managing the restoration in perpetuity. Determining these costs is a substantial task.

Contribution to recovery: As an NCCP, the Plan must go above and beyond mitigation and contribute to recovery of endangered species. The Conservancy may want to request that project proponents of non-covered activities make a contribution to recovery. The amount of such contribution may be an important factor.

Good government considerations: Local, state and federal agencies have invested considerable effort at largely public expense to set up the HCP and its associated system of converting funding into habitat. There may be some rationale for making as much public use out of this system as possible. The desire not to interfere with other mitigation is another consideration..