

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: March 21, 2011
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Update from the US Army Corps of Engineers

RECOMMENDATION

ACCEPT an update from the U.S. Army Corps of Engineer’s regarding proposed In-Lieu Fee Program and Regional General Permit related to the HCP/NCCP.

DISCUSSION

The HCP/NCCP was designed to facilitate not only endangered species permitting but also to one day support regional permitting under state and federal laws for impacts on jurisdictional wetlands and waters. The interest in integrating federal and state wetland permitting into the HCP/NCCP process is the same as the articulated purpose of the Plan—to benefit stream and wetland resources by conserving these resources in a more coordinated and comprehensive fashion on a regional scale and to provide an integrated, coordinated approach to permitting in lieu of the often inefficient and costly project-by-project approach.

Discussion with U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, State Water Resources Control Board, the Regional Water Quality Control Boards, California Department of Fish and Game and the U.S. Fish and Wildlife Service is ongoing regarding this parallel approach to compliance with wetlands regulations and reliance on the avoidance, minimization, and mitigation measures in the HCP/NCCP as the basis for regional wetlands permitting programs.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: March 21, 2011 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS
AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

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

ATTESTED _____
Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

In 2010, the U.S. Army Corps of Engineers, Sacramento District assumed a critical leadership role, developing a potential Regional General Permit related to the HCP/NCCP and reaching out to other wetland regulatory agencies to pursue means for coordinating such a permit with other laws and regulations. In 2010, the Conservancy also prepared and submitted a Prospectus for an In Lieu Fee Program to be considered for approval by the Corps. Such approval would sanction payment of HCP/NCCP fees as suitable mitigation under Corps permits and with the proposed Regional General Permit would achieve significant integration of wetland and species regulations.

Attending the meeting to provide an update on recent actions by the Corps will be Mary R. Pakenham-Walsh, Project Manager, California Delta Branch, U.S. Army Corps of Engineers, Sacramento Regulatory Division (Corps).

The Corps recently released Public Notices inviting public comment on two separate but related processes intended to coordinate the Corps regulation of impacts to wetlands with implementation of the HCP/NCCP. A summary of the two actions is provided below:

- **In Lieu Fee (ILF) Program:** On January 12, 2011, the Corps issued a Public Notice on a proposal by the Conservancy to establish an In-Lieu Fee (ILF) program in accordance with the federal “Mitigation Rule” (33 CFR Part 332). The proposed ILF program would be implemented in conjunction with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The comment period closed on February 14, 2011. The Public Notice, ILF Prospectus and the seven comments that were submitted on the Notice and ILF are attached.
- **Regional General Permit (RGP):** On February 16, 2011, the Corps issued a Public Notice on their proposal to issue a Regional General Permit (RGP) for activities that would cause no more than minimal adverse impacts to the aquatic environment within the Plan Area of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan. The purpose of the proposed RGP would be to expedite Department of the Army (DA) authorization of recurring activities that are similar in nature and would have minimal individual and cumulative impacts on the aquatic environment. The proposed RGP is part of an overall strategy envisioned in the HCP/NCCP to balance the protection of important natural resources with long-term economic development in the area covered by the Plan. One of the central premises of the proposed RGP is that for purposes of Section 404, the requirement to avoid and minimize impacts to waters of the U.S., the RGP would recognize the regional avoidance strategy adopted by the HCP/NCCP. Use of the RGP would be intended to reduce the amount of paperwork and time required to authorize qualifying activities. The comment period closed on March, 2011. The Public Notice, Draft RGP and the Conservancy’s comment letter is attached.

Attachments:

- Public Notice of Proposed In-Lieu Fee (ILF) Program and Draft ILF Prospectus Proposed by Conservancy

Agenda Item 5

- Public Notice on Proposal to Issue a Regional General Permit (RGP) and Draft RGP
- Public comments received by the Corps on ILF
- Comments submitted by Conservancy on RGP



Public Notice of Proposed In-Lieu Fee Program

Action ID: SPK-2001-00147

Comments Period: January 12, 2011 – February 14, 2011

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) is evaluating a proposal to establish an In-Lieu Fee (ILF) program to implement in conjunction with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The purpose of the ILF Program is to coordinate the expenditure of in-lieu fees collected pursuant to the HCP/NCCP with federal regulatory requirements for impacts to waters of the U.S. The ILF program would result in the establishment, restoration and/or preservation of up to 903 acres of non-stream (e.g., wetlands) waters of the U.S., and up to 12 linear miles of stream-type waters of the U.S. within the approximately 174,018-acre HCP/NCCP Plan Area. This area includes two significant watersheds (HUC codes 18050001 and 18040003). This notice is to inform interested parties of the proposed activity and to solicit comments. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>. A copy of the Applicant's ILF prospectus is also available online at: <http://www.co.contra-costa.ca.us/depart/cd/water/HCP/news.html>.

AUTHORITY: This proposal is being evaluated under the federal "Mitigation Rule," published in the Federal Register (FR) (FR Vol. 73 No. 70, p. 19670-19705, by the Corps and U.S. Environmental Protection Agency (EPA) on April 10, 2008. The proposal will be reviewed in accordance with the procedures found at 33 CFR Part 332.8, "Mitigation banks and in-lieu fee programs," and for overall consistency with 33 CFR Part 332, "Compensatory Mitigation for Losses of Aquatic Resources."

APPLICANT: East Contra Costa County Habitat Conservancy
c/o John Kopchik, Executive Director
651 Pine Street, 4th Floor NW
Martinez, California 94553

LOCATION: The ILF program would serve the HCP/NCCP's existing Plan Area, a 174,018-acre portion of eastern Contra Costa County, California. The HCP/NCCP Plan Area includes the Cities of Clayton, Pittsburg, Brentwood, and Oakley, and specific areas of unincorporated Contra Costa County (Figures 1a and 1b of attached prospectus). The Plan Area is contained within two Corps Districts, Sacramento and San Francisco; the majority of the Plan Area is in the Sacramento District. More detailed mapping of the HCP/NCCP Plan Area is available in entirety at: <http://www.co.contra-costa.ca.us/depart/cd/water/HCP/documents.html>.

PROJECT DESCRIPTION: The applicant, the East Contra Costa County Habitat Conservancy, is proposing to establish an ILF program that would operate in conjunction with the East Contra Costa County HCP/NCCP. The applicant manages the HCP/NCCP, which was approved in 2007 and provides incidental take coverage for 28 species listed under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA). More information about the HCP/NCCP, including plan documents, can be accessed by the public at the link provided above.

The proposed ILF program is described below, and more fully in the attached prospectus. The prospectus includes the following: a) program overview, b) goals and objectives, c) establishment and operation, d) proposed service area, e) need and technical feasibility, f) ownership and long-term management strategy, g) sponsor (i.e., applicant) qualifications for ILF establishment, h) compensation planning framework, and i) program accounting.

The HCP/NCCP provides for comprehensive, regional species and habitat conservation planning while allowing local land use authorities to manage anticipated growth and development in the Plan Area. As an alternative to project-by-project take authorization under the ESA and CESA, the HCP/NCCP provides a coordinated process and offers incidental take coverage for covered species when implementing “covered activities” as defined in the HCP/NCCP. The HCP/NCCP’s conservation strategy was designed to comprehensively address anticipated impacts to, and compensation for, loss of waters of the U.S. (and waters of the state; hereafter, simply “waters”), inclusive of setting mitigation ratios and requiring an aquatic resources mitigation fee for covered activities under the HCP/NCCP that would cause impacts to waters.

The proposed ILF program would operate in conjunction with the current HCP/NCCP aquatic resources compensation framework, and would also be designed to function with a Regional General Permit (RGP) program. By providing multiple assurances (in compliance with the federal Mitigation Rule), the proposed ILF program would result in more ecologically meaningful and sustainable compensation for impacts to waters in the Plan Area.

The HCP/NCCP estimates that over the 30-year term of the plan, up to approximately 254 acres of wetlands and other non-stream waters (e.g., ponds), and 5.8 miles of streams would be permanently impacted (the plan’s “Maximum Urban Development Area Scenario”). Under the ILF Program and the HCP/NCCP, if impacts occurred at this level, 470 acres of these waters would be preserved and 433 acres would be restored or established. Additionally, 6.2 miles of streams would be preserved, and 5.8 miles of streams would be restored or established. The proposed ILF program would rely on the mitigation ratios set forth in the HCP/NCCP (see Table 1 of prospectus), and would develop on-the-ground mitigation projects consistent with both Corps and HCP/NCCP priorities, including the geography and type of aquatic resources anticipated to incur near-future impacts as informed by local land use planning trends.

The HCP/NCCP’s mitigation requirements include preservation and restoration/establishment of aquatic resources, with each type of aquatic resource (e.g., perennial wetland, seasonal wetland, etc.) having a range of future preservation and restoration/establishment acreage, based on the “Initial” vs. “Maximum” Urban Development Area Scenarios (see Table 1 of prospectus). For example, a range of 129 to 168 acres of seasonal wetlands would be preserved, and a range of 86 to 112 acres of seasonal wetlands would be restored/established. On top of ratios required for compensatory mitigation, the HCP/NCCP requires restoration/establishment to contribute to the “recovery” component of the Plan. Following the same example of seasonal wetlands, 20 acres of wetlands would be restored/established in addition to the preservation and restoration/establishment ranges stated above.

The applicant would use fees collected by the ILF program for the acquisition, design, implementation, monitoring and management of compensatory mitigation projects. The cost of credits would be determined by the applicant, consistent with the fee provisions of the HCP/NCCP. Credits generated through ILF program mitigation projects would be available for purchase by any private or public sector individual, organization or agency undertaking an HCP/NCCP covered activity and seeking aquatic resource mitigation in association with obtaining a Corps permit (Individual or General) under Section 404. The ILF program is anticipated to have the flexibility to potentially provide aquatic resource mitigation credits for projects not covered under the HCP/HCCP. This flexibility and associated discretionary guidance will be further explored in the pending ILF program instrument.

Long-term preservation and management of mitigation projects would occur through acquisition of land or conservation easements, with the East Bay Regional Park District (EBRPD) anticipated to be the primary fee-title owner of the majority of mitigation lands. Preservation and management activities would be consistent with the HCP/NCCP, and subject to potential additional provisions to achieve compliance with the federal mitigation rule (33 CFR Part 332).

Comments received in response to this public notice, in addition to comments received from state and federal agencies, will be considered by the Corps to determine the potential of the proposed ILF program to provide compensatory mitigation for activities authorized by Department of the Army (DA) permits. If the Corps makes a positive determination, the applicant will be guided to proceed with preparation of a draft program instrument (in accordance with 33 CFR Part 332.8).

REVIEW PROCEDURES: The ILF program proposal will be reviewed in accordance with the procedures found at 33 CFR Part 332, "Compensatory Mitigation for Losses of Aquatic Resources." Under Part 332, an Interagency Review Team (IRT) consisting of federal and state agency representatives, will review the proposed ILF program instrument. The IRT would also oversee the ILF program's establishment, use and continuing operation. The Sacramento District would act as the IRT Chair, and would be responsible for final decision-making regarding the proposed ILF program.

OTHER GOVERNMENTAL AUTHORIZATIONS: The IRT responsible for the review and approval of the proposed ILF includes, at the current time, representatives from the Corps, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG). Additional agencies may have representation in the IRT as appropriate.

HISTORIC PROPERTIES: Establishment of the proposed ILF program would result in no "on the ground" projects until such time that individual mitigation projects are proposed to be implemented. As potential ILF program mitigation projects are developed by the applicant, their implementation would be subject to applicable permitting requirements. At that time, the Corps would evaluate proposed ILF mitigation projects to ensure compliance with Section 106 of the National Historic Preservation Act.

ENDANGERED SPECIES: Establishment of the proposed ILF program would not affect any Federally-listed threatened or endangered species or their critical habitat that are protected by the Endangered Species Act. As potential ILF program mitigation projects are developed by the applicant, their implementation would be subject to applicable permitting requirements. At that time, the Corps would evaluate proposed ILF mitigation projects to ensure compliance with Section 7 of the Endangered Species Act.

ESSENTIAL FISH HABITAT: Establishment of the proposed ILF program would not adversely affect Essential Fish Habitat (EFH) as defined in the Magnuson-Stevens Fishery Conservation and Management Act. As potential ILF program mitigation projects are developed by the applicant, their implementation would be subject to applicable permitting requirements. At that time, the Corps would evaluate proposed ILF mitigation projects to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS: The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed program. The proposal will be evaluated in accordance with 33 CFR Part 332. Any comments received will be considered by the Corps to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2001-00147 must be submitted to the office listed below on or before **February 14, 2011**.

Mary Pakenham-Walsh, Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922

E-mail: Mary.R.Pakenham-Walsh@usace.army.mil
Direct: (916) 557-7718

Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager, Mary Pakenham-Walsh, at (916) 557-7718, or by e-mail at Mary.R.Pakenham-Walsh@usace.army.mil.

Attachments: East Contra Costa County Habitat Conservancy's Prospectus for an In-Lieu Fee Program (September, 2010)

East Contra Costa County Habitat Conservancy's Prospectus for an In-Lieu Fee Program

Introduction

Activities that result in the discharge of fill or dredged materials into waters of the United States require a permit from the U.S. Army Corps of Engineers (USACE). The USACE regulates these activities through Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act regulatory processes. In addition to the USACE, the California Department of Fish and Game (CDFG) and the Regional Water Quality Control Boards (RWQCB) also regulate activities that would impact waters of the State and/or United States via CDFG Code 1600-1616, Section 401 of the CWA, and the California Porter-Cologne Water Quality Control Act. These state and federal regulatory agencies require aquatic functions and services lost due to impacts be replaced through compensatory mitigation.

The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP or Plan) was approved in 2007 and is executed and managed by the East Contra Costa County Habitat Conservancy¹ (Conservancy). The HCP/NCCP is intended to provide an effective framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for impacts to endangered species and sensitive habitat types, including wetlands and streams, which would result from implementation of "covered activities²". The HCP/NCCP offers incidental take coverage for covered species listed under the federal Endangered Species Act (ESA) and California Endangered Species Act (CESA), while implementing a conservation strategy that not only mitigates for the loss of listed species and their habitat, but also contributes to the recovery of listed species through preservation, restoration and management of land within the "Plan Area³". As part of this conservation strategy, the HCP/NCCP was designed to compensate for the loss of waters of the United States and the state and is intended to serve as the basis for compensatory mitigation associated with Section 404 Regional General Permit⁴ applications and/or other 404 applications reviewed by USACE, and ultimately for 401 Water Quality Certifications and/or Waste Discharge Requirements issued by the RWQCBs and 1602 permits issued by CDFG.

Pursuant to the federal mitigation rule (33 CFR Part 332), the Conservancy is requesting the establishment of an In-Lieu Fee (ILF) program that will work in conjunction with the RGP currently under development (and/or other permit processes) and the existing HCP/NCCP mitigation program, including the current HCP/NCCP aquatic resources mitigation fees. The ILF program will result in the following types of compensatory mitigation projects: establishment, rehabilitation, and preservation. Mitigation projects will be paid for through funds that the Conservancy will collect from qualifying project proponents that participate in the NCCP/HCP and ILF program. The Conservancy will then be responsible

¹ See section below on Sponsor Qualifications for more information on the Conservancy.

² "Covered activities" include all ground- and vegetation-disturbing activities controlled by land use agency permit holders (i.e., cities and the County) via their land use land use planning process. Covered activities also include certain infrastructure projects and projects implemented for conservation purposes by the Conservancy.

³ The "Plan Area" is defined as the area in which impacts are evaluated and conservation will occur under the HCP/NCCP.

⁴ The USACE intends to circulate a draft Regional General Permit related to the HCP/NCCP (the "RGP") in 2010. The RGP would authorize specific categories of activities with minimal individual and cumulative impacts that meet the terms and conditions set forth by the USACE.

for the compensatory mitigation requirements associated with these projects (“covered activities” in the HCP/NCCP). This prospectus outlines the circumstances and manner in which the Conservancy will develop and administer an ILF program that will comply with the federal mitigation rule.

Goals and Objectives of the In-Lieu-Fee Program

The goals and objectives of the Conservancy’s ILF program area as follows:

- Provide an effective framework to protect natural resources while mitigating for impacts to waters of the United States permitted through the Regional General Permit related to the HCP/NCCP (the “RGP”) or other 404 permit procedure.
- Provide HCP/NCCP covered activities a consolidated mitigation program that will address impacts to threatened and endangered species and wetlands and waters of the United States.
- Provide an alternative to permittee-responsible compensatory mitigation by constructing mitigation projects adequate to meet current and expected demand for credits in the service area.
- Minimize the temporal loss of wetlands by developing mitigation projects in advance of mitigation needs, consistent with the Stay Ahead Provision in the HCP/NCCP that requires acquisition and restoration requirements to stay ahead of impacts.
- Maintain a level of accountability commensurate with mitigation banks, such that the mitigation obligations assumed by the Conservancy are met in a timely and effective manner.
- Avoid project-by-project mitigation and develop more ecologically significant establishment and rehabilitation projects that sustain aquatic resources functions and values consistent with a watershed-based approach.

Establishment and Operation

The Conservancy intends to establish itself as a qualified ILF mitigation sponsor for the USACE. The Interagency Review Team (IRT) will advise the USACE on the establishment and management of the ILF program. The IRT will be composed of representatives invited by the USACE from other federal, state and local resource agencies that would have a substantive interest in the establishment and management of the ILF program being sponsored by the Conservancy. The USACE District Engineer may designate different representatives of the agencies identified above, and may invite additional members, to serve on the IRT.

The structure of the proposed ILF program will be outlined in the Instrument that will describe the program elements and project selection criteria. The Instrument will serve as the “umbrella” under which ILF program mitigation projects within the service area will be established. Mitigation projects will be described in one or more separate “mitigation plans,” reviewed and signed by the Conservancy and the IRT (inclusive of USACE). The Conservancy’s Instrument will provide the information required in 33 CFR 332.8 and will include the following nine elements:

1. Service Area
2. Accounting Procedures
3. Legal Responsibility
4. Default and Closure

5. Reporting Protocols
6. Compensation Planning Framework
7. Advance Credits
8. Determination of Project-Specific Credits
9. Program Accounting

The Conservancy will use ILF program fees for the selection, design, acquisition, implementation, monitoring and management of ILF program compensatory mitigation projects. The Conservancy intends to leverage ILF Program Fees with grant and other funds in order to extend preservation and restoration activities beyond that which is required for mitigation (such excess conservation would not be credited toward ultimate mitigation requirements). The Conservancy will remain responsible for the implementation, performance, and long-term management of its completed compensatory mitigation projects.

Proposed Service Area

The proposed geographic service area for the ILF program is located in the San Francisco Bay Area and San Joaquin Valley sub regions in eastern Contra Costa County, and would be identical to the HCP/NCCP's existing Plan Area, which is the same area proposed to be covered by the RGP (see Figure 1). The proposed service area is based on a combination of political, ecological and hydrological factors; however, watershed boundaries were the determining factor in the creation of the boundary. The service area includes all or portions of nine significant watersheds (the area is within the following two HUCs: 18050001 and 18040003): Kellogg Creek, Frisk Creek, Brushy Creek, East/West Antioch Creeks, Marsh Creek, Willow Creeks, Kirker Creek and Mount Diablo Creek (Contra Costa County 2004). In total, the service area contains 174,018 acres of which approximately 3,595 acres of potential waters of the United States were identified during the HCP/NCCP's preliminary geographic information system land cover identification process. Natural resources were inventoried and evaluated in the HCP/NCCP, and an Aquatic Resources Inventory, Classification, and Function was completed and included in Appendix J of the HCP/NCCP

The Conservancy will provide compensatory mitigation in the service area for impacts resulting from implementation of covered activities in service area, unless the District Engineer, in consultation with the IRT, has agreed to an exemption. The service area was selected because the Conservancy, in consultation with the District Engineer, has concluded that the service area should mirror the existing HCP/NCCP Plan Area to ensure that projects seeking ESA take coverage under the Plan will also effectively compensate for adverse impacts to waters of the United States.

Need and Technical Feasibility

As previously described, one of the goals of the HCP/NCCP is to streamline the environmental permitting process while creating a more comprehensive watershed-based mitigation approach. The Conservancy anticipates the need for a significant quantity of high quality mitigation credits to offset impacts associated with covered activities within the service area. The ILF program will ensure that mitigation is in place in a timely manner and will enhance the ability for required mitigation in the service area to be consistent with the federal mitigation rule, which gives priority to ILF programs over permittee-responsible wetland mitigation options for unavoidable impacts to waters of the United States.

The ILF program is feasible because the Conservancy has a history of pursuing compensatory mitigation (e.g., restoration/establishment and preservation) for waters of the United States as part of the HCP/NCCP conservation strategy (see additional information on progress to date below in Sponsors Qualifications). In addition, the HCP/NCCP requires that mitigation and conservation actions, including restoration/establishment and preservation of aquatic resources, “stay ahead” of impacts. The Conservancy is obligated to implement restoration/establishment and preservation activities in advance of impacts that require such mitigation. The ILF program will enhance the restoration/establishment and preservation activities already being conducted by the Conservancy, while allowing the Conservancy to generate credits that can be purchased by project proponents. As specific compensatory mitigation projects are developed by the Conservancy, the technical feasibility of the projects will be considered prior to IRT review and UASCE approval.

Ownership and Long-Term Management Strategy

The Conservancy will provide for the long-term preservation and management of the mitigation sites through direct acquisition of land or conservation easements. The HCP/NCCP provides that the Conservancy may work with partners who will own and manage the land in cooperation with the Conservancy, under certain conditions. The Conservancy anticipates that the bulk of the preserved lands will be purchased and owned by East Bay Regional Park District (EBRPD) in partnership with the Conservancy and subject to covenants set forth in the HCP/NCCP. Each mitigation project covered by the ILF program will meet the appropriate ownership and stewardship requirements to insure its long-term protection. Final conservation easements or equivalent protection measures will be submitted to the USACE and IRT for review and approval prior to the final release of mitigation project credits. The Conservancy’s land acquisition priorities, as set forth through the HCP/NCCP, are shown in Figure 2.

Sponsor Qualifications

The Conservancy is a joint exercise of powers agency formed by the Cities of Brentwood, Clayton, Oakley, and Pittsburg and Contra Costa County. The Conservancy is overseen by the Governing Board which is comprised of one elected official from each of the five agencies that created the Conservancy. A Secretary, the Executive Director, and Staff conduct the day-to-day operations of the Conservancy. The Conservancy currently executes the requirements of the HCP/NCCP and is responsible for developing and maintaining annual budgets; obtaining grants; receiving, tracking and reporting fee revenues collected; researching land acquisition opportunities; acquiring land (with partners); implementing restoration projects; and management/monitoring of the preserves. The Conservancy has been successfully managing the HCP/NCCP program for the past two years and has been acquiring land within the Plan Area for implementation of restoration and creation projects. The Conservancy has experience with the planning, implementation, maintenance, and monitoring of wetland/waters restoration and creation projects. Recent Conservancy projects include the Lentzner Springs Wetland Restoration (restored 0.15 acre of alkali wetland), the Vasco Caves Souza I Pond (created 1.09 acres of seasonal pond/wetland), the Souza II Wetland Restoration (restored 0.41 acre of tributary drainage, 0.18 acre of pond, and 8.85 acres of seasonal wetland and 3500 feet of intermittent stream). All projects have resulted in a cumulative net increase of waters of the United States within the proposed service area. Working with the EBRPD, the Conservancy has helped acquire more than 6,000 acres of land since January 2008 when implementation of the HCP/NCCP officially commenced. Table 2 and Figure 3 detail progress so far.

The Conservancy will operate the ILF program, including the maintenance of site-specific ledgers and annual reporting requirements. The Conservancy’s staff has experience managing permit fees collected

by the HCP/NCCP program, and this same staff will also be responsible for the ILF program accounting described later in this prospectus. In addition, the Conservancy will contract with experienced mitigation providers/contractors to design, construct, monitor, and maintain the mitigation sites.

Compensation Planning Framework

The HCP/NCCP requires both restoration/creation and preservation to address the mitigation requirement of the HCP and the contribution to recovery requirement of the NCCP. These requirements are identified in the HCP/NCCP in terms of preservation and restoration/establishment (creation) ratios. Preservation is exclusive of restoration/establishment. In other words, preservation and restoration/establishment are additive. For example, 1 acre of impact to a seasonal wetland requires BOTH 3 acres of preservation and 2 acres of restoration for a total of 5 acres of mitigation and preservation for every 1 acre of impact. In addition, the HCP/NCCP also requires some restoration/creation above the mitigation requirements to meet the requirements of the NCCP contribution to recovery. Cumulatively for all wetland land cover types and including mitigation ratios and restoration designed to contribute to recovery, the HCP/NCCP will result in a net gain of waters (preservation is in addition). The ILF Program and the RGP are proposed to rely on the same ratios as the HCP/NCCP.

According to the HCP/NCCP, it is estimated that approximately 254 acres and 5.8 miles of waters of the United States will be lost under the plan's Maximum Urban Development Area Scenario⁵. The Conservancy plans to develop ILF program compensatory mitigation projects within the service area that will provide an appropriate level of mitigation to offset anticipated impacts to waters of the United States and consistent with the mitigation and contribution to recovery ratios required by the HCP/NCCP. The restoration/creation projects proposed by the Conservancy will be identical to the mitigation restoration/establishment and preservation requirements outlined in the HCP/NCCP. Table 1, attached to this Prospectus and also attached to the proposed RGP, identifies the specific impacts to USACE jurisdictional waters as anticipated under the Maximum Urban Development Areas Scenario, the preservation and restoration/creation ratios, and the estimated amount of restoration/creation and preservation required under the HCP/NCCP.

The Conservancy will develop ILF program mitigation projects that are consistent with the HCP/NCCP restoration/establishment and preservation requirements over time as opportunities within the service area become available. Mitigation projects will be prioritized on the basis of anticipated impacts to aquatic resources. As such, the selection of potential mitigation projects will focus on large scale restoration/establishment and preservation projects that address USACE and HCP/NCCP priorities within the service area. Each ILF program mitigation project will be evaluated for its potential to provide appropriate compensatory mitigation for impacts to waters of the United States based on the following criteria:

- *Likelihood of Success* – Demonstrated through a mitigation plan concept and proper site due diligence.
- *Achieves Multiple Objectives* – In addition to the establishment and preservation of wetlands, the potential mitigation projects should provide function improvements that must benefit habitat, species, water quality, and recreation and/or educational values.

⁵ The Maximum Development Area Scenario is the largest area to which urban development would be covered under the 30-year life of the HCP/NCCP.

- *Land Use Compatibility* – Projects must be located where they limit land use conflicts and where they can benefit existing habitat corridors and nearby protected natural areas.
- *Funding leverage* – Mitigation project costs must be itemized (e.g., planning, implementation and monitoring) and funding must be secured.
- *Capacity of Conservancy* – Conservancy must demonstrate that there is sufficient capacity and expertise to plan, implement, monitor and manage the mitigation project.
- *Long Term Management* – Mitigation projects must have a plan for the long-term management of the site.

Program Accounting

Generation of Credits

In the initial phase of ILF program development, compensatory mitigation projects will be established using HCP/NCCP funds currently allocated for wetland/waters restoration/establishment and preservation. Upon approval of the Final Instrument, the number of credits available from a mitigation project will reflect the difference between pre- and post- project site conditions as determined by a wetland delineation and functional assessment. Credits will be generated based on the ratios set forth in Table 1. One credit will be equal to one acre.

Only projects that generate credits in excess of the current mitigation obligation (i.e., advanced credits or credits allocated for a particular covered activity) for the service area will be considered eligible for ILF mitigation. Mitigation projects that receive collaborative funding from multiple sources are encouraged under the ILF program, as allowed for in federal regulations (33 CFR Part 332). When determining the ultimate allocation of credit for ILF Program from a collaboratively funded project, the Conservancy may only claim mitigation credit proportional to the funding amount it provided to the project, including cash and in-kind contributions.

Credit Release

In order for the ILF program to be available as an option for meeting USACE mitigation requirements for permit authorizations within the service area, a mitigation project will have to be identified and described in a mitigation plan that has been approved by the IRT. Given the volume of projects, the Conservancy proposes such approval to occur on a programmatic basis (e.g., annually, property by property, or some other logical grouping of several large or many projects; we would like to determine the best approach through discussion with the IRT). The number of credits available at any given time will be determined by the credit release schedule outlined in the mitigation plan, and may include advance credits (33 CFR Part 332).

Credits generated through ILF mitigation projects may be sold to any private or public sector individual, organization, agency, with an HCP/NCCP covered activity that is seeking mitigation credits as authorized by a Section 404 permit within the ILF service area. Use of, as well as the number and type, of credits for activities authorized by USACE permits will be at the discretion of the USACE District Engineer. Upon sale of the credits, the Conservancy becomes responsible for the compensatory mitigation requirements of the permit. The cost of the credit will be determined by the Conservancy consistent with the HCP/NCCP fees required for covered activities that fill or dredge waters of the United States during implementation. Two primary types of HCP/NCCP fees will fund the restoration, creation, preservation,

management and monitoring requirements. Wetland mitigation fees pay for the costs of constructing restoration projects and managing them until success criteria are met. Development fees apply to both the upland and wetland impacts of a covered activity and pay for land acquisition (including the land where restoration projects will be constructed) and long term management and monitoring. Wetland mitigation fees were developed based on the average cost per acre of wetland restoration projects developed in and nearby the Plan Area at the time of Plan development (2002-2006). Development fees were based on estimated costs of land acquisition, maintenance and monitoring. Both fees will be adjusted by the Conservancy. On an annual basis, the fees will be adjusted according to formulas and price indices set forth in the HCP/NCCP. In addition, fees will be comprehensively adjusted every three to five years based on audits of the fee and expenditures. Audits will occur in 2010, 2013, 2017, 2022, 2027, and 2032. Credits purchased from the ILF program may be used to fully satisfy the environmental requirements of the USACE.

Financial Accounting

The Conservancy will establish and maintain a system for tracking the production of credits, credit transactions, and financial transactions between the Conservancy and permittees. Credit protection, credit transactions, and financial transactions must be tracked on a programmatic basis (i.e., the number of available credits for the entire program by service area) and separately for each individual project.

The Conservancy's ILF program account will track funds accepted from permittees separately from those accepted from other entities and for other purposes (i.e., enforcement actions, supplemental environmental projects). The account will be set up within the Treasury of the County of Contra Costa, which in turn is held at a financial institution that is a member of the Federal Deposit Insurance Corporation. Any and all interest accruing from the account will be used to provide compensatory mitigation for impacts to aquatic resources.

The program account will be established after approval of the Instrument is approved and before any ILF Program fees are accepted by the Conservancy. If the USACE determines that the Conservancy is failing to provide compensatory mitigation by the third full growing season after the first advance of credit is secured, funds may be directed to alternative compensatory mitigation projects. Additional information on failure to fulfill compensatory mitigation requirements will be provided in the ILF Instrument. The USACE has authority to audit the program account at any time.

Funds paid into the Conservancy's ILF program will be used for the array of conservation-related commitments required in the HCP/NCCP and the ILF Program. Specifically, wetland mitigation fee funds will be used for selection, design, acquisition, implementation, entitlements/permitting, and initial management of the restoration projects. Development fees will be used for the acquisition, management and monitoring of the acquired lands,

A portion of the fees paid into the Conservancy's ILF program may be used for administrative costs. Such costs include bank fees associated with the establishment and operation of the program, staff time for carrying out program responsibilities, expenses for day-to-day management of the program, and administrative duties associated with hiring of private contractors or consultants.

Credit Accounting

The Conservancy will establish and maintain an annual report ledger that tracks the production of released credits for the ILF program and for each individual in-lieu fee project. Reporting requirements for the annual report will be provided in the ILF Instrument.

The Conservancy will track fees and all other income received the source of the income, and any interest earned by the program account. The ledgers will include a list of all the permits for which in-lieu fee program funds were accepted, including the USACE file number, the specific watershed in which the authorized impacts are located, the amount (acreage/linear feet) of authorized impacts, the aquatic resource type impacted, the amount of compensatory mitigation required, the amount paid to the ILF program, and the date the funds were received. In addition, the Conservancy will create and maintain a report ledger for the ILF program that will track all program disbursements/expenditures and the nature of disbursement. The Conservancy will also track funds obligated or committed, but not yet disbursed.

The ledger will also include, for each restoration/establishment and preservation project, the specific watershed in which the project is located, the amount of compensation being provided by method (restoration/establishment or preservation), the aquatic resource type represented, the amount of compensatory mitigation being provided (acres/linear feet), and the number of credits certified by the IRT. The annual report ledger will also include a balance of advance credits and released credits at the end of the report period for the service area.

Regional Internet Bank Information Tracking System

In addition to the Program Account described above, the Conservancy will also utilize the USACE's Regional Internet Bank Information Tracking System (RIBITS) to disclose the ILF program's compensatory mitigation activities. The Conservancy's use of RIBITS will allow the USACE to track the status of the ILF program, monitor credits and debits incurred by permitted actions, view compliance reports, and automatically email requests for information and upcoming deadlines from a single Internet-based interface.

**Table 1. Required Ratios and Estimated Preservation, Restoration and Creation Requirements for Aquatic Land-Cover Types under Initial and Maximum Urban Development Area
(Combines tables 5.5a, 5.5b, 5.16 and 5.17 of HCP)**

Preservation Requirements										Restoration & Creation Requirements								
Aquatic Land Cover Type	Required Preservation Ratio	Estimated Impact ¹ (acres)		Estimated Preservation Requirement ¹ (acres)		Impact & preservation notes	Minimum Available in Acquisition Analysis Zones ² (acres)		Availability notes	Required Restoration and Creation Ratios (in addition to preservation requirements)		Estimated Restoration/Creation Requirement ¹ (acres)		Restoration or Creation Required to Contribute to Recovery (acres)		Estimated Total Restoration or Creation ¹ (acres)		restoration / creation notes
		Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario		Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario		Restoration	Creation	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	
Riparian woodland/scrub	2:1	30	35	60	70		205	205		1:1	–	30	35	20	20	50	55	
Wetlands and Ponds																		
Perennial wetlands ³	1:1	74	75	74	75	³	231	232	³	1:1	–	74	75	10	10	84	85	⁷
Seasonal wetlands	3:1	43	56	129	168	^{3,4}	172	172	^{3,4,5}	2:1	–	86	112	20	20	106	132	^{4,7}
Alkali wetland	3:1	28	31	84	93	⁴	168	168	⁴	2:1	–	56	62	5	5	61	67	⁴
Ponds	2:1	7	8	14	16		80	80		–	1:1	7	8	8	8	15	16	
Slough/channel	0.5:1	72	72	36	36		137	137		1:1 or riparian	–	72	72	0	0	72	72	⁹
Aquatic (open water)	1:1	12	12		12		123	123		–	0.5:1 (ponds)	6 (ponds)	6 (ponds)	0	0	6 (ponds)	6 (ponds)	⁹
Tota Aquatic Land Cover Types (acres)	–	266	289	397	470		1,117	1,117				331	370	63	63	394	433	
Perennial streams (miles)	2:1	0.3	0.4	0.6	0.8	⁶	18	184	^{6,7}	1:1	1:1 if restoration not feasible	0.3	0.4	0	0	0.3	0.4	^{7,10}
Intermittent streams (miles)	1:1	0.3	0.4	0.3	0.4	⁶	184	184	^{6,7}	1:1	1:1 if restoration not feasible	0.3	0.4	0	0	0.3	0.4	^{7,10}
Ephemeral streams (miles)	1:1	4	5	4	5		184	184	⁷	1:1	1:1 if restoration not feasible	4	5	0	0	4	5	^{7,10}

Notes:

¹ Actual impacts, preservation requirements and restoration/creation requirements will be based on field-delineated resources at impact sites and application of the required preservation ratios in this table.

² Many land cover types were underestimated in the mapping conducted for this HCP/NCCP, so these figures represent minimum acreages of what is available for preservation. See Chapter 3 for a discussion of the mapping limitations.

³ Undetermined wetlands could be seasonal wetlands or perennial wetlands (e.g., freshwater marsh). Seasonal wetlands will be mitigated at a preservation ratio of 3:1; perennial wetlands will be mitigated at a preservation ratio of 1:1. This table assumes 75% of undetermined wetlands are perennial wetlands and 25% are seasonal wetlands.

⁴ Seasonal and alkali wetland acreage was quantified as the minimum polygon encompassing clusters of seasonal pools or drainages (i.e., wetland complexes). Impacts and land acquisition requirements will be tracked by jurisdictional wetland boundary, so estimates in this table overstate the expected impacts to and preservation of these land cover types. Impact restrictions and preservation ratios apply only to wetted acres.

⁵ The actual amount of seasonal wetlands available for preservation in the inventory area is unknown because of a lack of field surveys. The allowable impact to seasonal wetlands by covered activities will be capped at the amount required to preserve seasonal wetlands at the required 3:1 ratio. For example, if only 30 acres are preserved, allowable impacts will be capped at 10 acres.

⁶ Maximum allowable impacts for perennial and intermittent streams could not be separately estimated. Cumulative impacts for these two categories were estimated at 0.6 miles for the Initial Urban Development Area and 0.8 for the Maximum Urban Development Area. For the purposes of this table, it is assumed that the impacts are evenly split between the two categories.

⁷ The approximate length of all streams of all types in the Acquisition Analysis Zone is 184 miles.

⁸ Undetermined wetlands are either seasonal wetlands or perennial wetlands. Mitigation of seasonal wetlands will be accomplished through restoration at 2:1. Mitigation of perennial wetlands will be accomplished through in-kind creation at 1:1. This table assumes 75% of the undetermined wetlands are perennial wetlands and 25% are seasonal wetlands.

⁹ Loss of slough/channel will be compensated by either restoring slough/channel at a 1:1 ratio or restoring riparian woodland/scrub at a 1:1 ratio (see text). These calculations assume all slough/channel impacts will be compensated through riparian woodland/scrub restoration because of the limited opportunities for slough/channel creation. Loss of open water will be compensated by creating ponds (see text).

¹⁰ Streams will be restored at a 1:1 ratio where feasible. Where stream restoration is not feasible, out-of-kind creation of seasonal wetlands or permanent wetlands will be required to replace some of the functions of the lost stream at a 1:1 ratio. See Conservation Measure 2.10 for more details.

Table 2. Protection, Restoration, and Creation by Land-Cover Type (Includes properties under contract as of 8-31-10. Note: comprehensive surveys for preserved wetlands in progress. Wetland preservation is probably underestimated.)

Land Cover Type	Land Cover Requirements ³ (acres)			Progress to Date (acres)				Percent Complete (%)		
	Protection	Creation	Restoration	Protection	Existing Easement (no credit)	Creation	Restoration	Protection	Creation	Restoration
Terrestrial										
Annual grassland	16500.0	--	--	4035.6	1451.6	0.0	0.4	24%	--	--
Alkali grassland	1250.0	--	--	121.1	24.1	0.0	0.0	10%	--	--
Ruderal	--	--	--	49.1	22.6	0.0	0.0	--	--	--
Chaparral and scrub	550.0	--	--	37.1	0.0	0.0	0.0	7%	--	--
Oak savanna	500.0	--	165.0	188.7	23.9	0.0	0.0	38%	--	0%
Oak woodland	400.0	--	--	425.5	130.8	0.0	0.0	106%	--	--
<i>Subtotal terrestrial</i>	<i>19200.0</i>	<i>--</i>	<i>165.0</i>	<i>4857.1</i>	<i>1653.0</i>	<i>0.0</i>	<i>0.4</i>	<i>25%</i>	<i>--</i>	<i>0%</i>
Aquatic										
Riparian woodland/scrub	70.0	--	55.0	15.8	0.2	0.0	0.5	23%	--	1%
Perennial wetland ¹	75.0	--	85.0	0.8	3.3	0.0	0.0	1%	--	0%
Seasonal wetland	168.0	--	163.0	10.1	2.7	1.0	8.9	6%	--	5%
Alkali wetland	93.0	--	67.0	21.5	1.9	0.0	0.2	23%	--	0%
Pond	16.0	--	--	5.3	2.3	0.4	0.0	33%	--	--
Reservoir (open water) ²	12.0	--	--	0.0	0.0	0.0	0.0	0%	--	--
Slough/Channel	36.0	--	72.0	0.0	0.0	0.0	0.0	0%	--	0%
<i>Subtotal aquatic</i>	<i>470.0</i>	<i>--</i>	<i>442.0</i>	<i>53.5</i>	<i>10.3</i>	<i>1.4</i>	<i>9.5</i>	<i>11%</i>	<i>--</i>	<i>2%</i>
Stream (length in linear feet)										
Total stream length	32736.0	--	--	96282.6	38153.7	0.0	3508.0	294%	--	--
<i>Stream length by type and order</i>										
Perennial	4224.0		2112.0	0.0	0.0		0.0	0%		0%
Intermittent	2112.0		2112.0	15617.8	5555.0		3508.0	739%		166%
Ephemeral	26400.0		26400.0	80664.8	32598.7		0.0	306%		0%
<i>Subtotal stream length</i>	<i>32736.0</i>		<i>30624.0</i>	<i>96282.6</i>	<i>38153.7</i>	<i>0.0</i>	<i>3508.0</i>	<i>294%</i>		<i>0%</i>
Irrigated agriculture										
Cropland	400.0	--	--	0.0	0.0	0.0	0.0	0%	--	--
Pasture	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Orchard	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Vineyard	--	--	--	0.0	0.0	0.0	0.0	--	--	--
<i>Subtotal irrigated agricultural</i>	<i>400.0</i>	<i>--</i>	<i>--</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>	<i>0%</i>	<i>--</i>	<i>--</i>
Other										
Nonnative woodland	--	--	--	0.7	0.0	0.0	0.0	--	--	--
Wind turbines	--	--	--	64.0	25.1	0.0	0.0	--	--	--
<i>Subtotal other</i>	<i>--</i>	<i>--</i>	<i>--</i>	<i>64.7</i>	<i>25.1</i>	<i>0.0</i>	<i>0.0</i>	<i>--</i>	<i>--</i>	<i>--</i>
Developed										
Urban	--	--	--	2.5	0.8	0.0	0.0	--	--	--
Aqueduct	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Turf	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Landfill	--	--	--	0.0	0.0	0.0	0.0	--	--	--
<i>Subtotal developed</i>	<i>--</i>	<i>--</i>	<i>--</i>	<i>2.5</i>	<i>0.8</i>	<i>0.0</i>	<i>0.0</i>	<i>--</i>	<i>--</i>	<i>--</i>

Protection, Restoration, and Creation by Land-Cover Type (Includes properties under contract as of 8-31-10. Note: comprehensive surveys for preserved wetlands in progress. Wetland preservation is probably underestimated.)

Land Cover Type	Land Cover Requirements ³ (acres)			Progress to Date (acres)				Percent Complete (%)		
	Protection	Creation	Restoration	Protection	Existing Easement (no credit)	Creation	Restoration	Protection	Creation	Restoration
Uncommon Landscape Features or Habitat Elements										
Rock outcrop	--	--	--	9.5	0.2	0.0	0.0	--	--	--
Cave	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Springs/seeps	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Scalds	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Sand deposits	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Mines (number)	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Buildings (number)	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Potential nest sites (number)	--	--	--	0.0	0.0	0.0	0.0	--	--	--
<i>Subtotal uncommon landscape features (acres)</i>	--	--	--	9.5	0.2	0.0	0.0	--	--	--
<i>Subtotal uncommon landscape features (number)</i>	--	--	--	0.0	0.0	0.0	0.0	--	--	--
Totals (excludes subtypes)										
Acres	--	--	--	4987.3	1689.3	1.4	9.9	--	--	--
Linear feet	--	--	--	96282.6	38153.7	0.0	3508.0	--	--	--
¹ Perennial wetlands are equivalent to permanent wetlands. ² Reservoir (open water) is equivalent to aquatic. ³ All land cover requirements assume the Maximum Urban Development Area scenario. The requirements for restoration and creation are dependent upon amount of impact. The requirements provided are based on the conservative estimates of wetland impacts provided in the Plan.										

Figure 1a: General Location of HCP/NCCP Plan Area and Area Covered by RGP

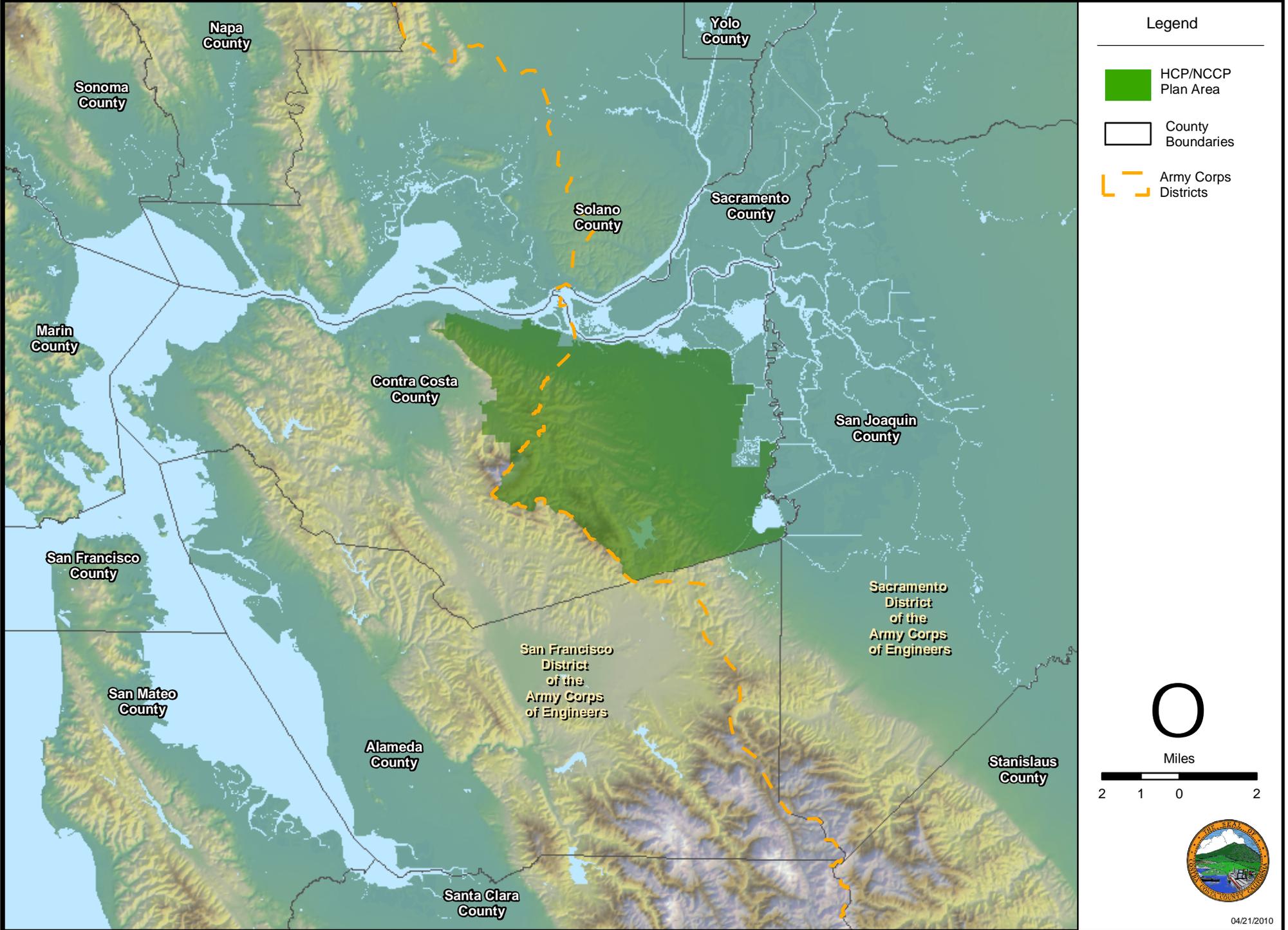


Figure 1b: HCP/NCCP Plan Area. Area Covered by Proposed ILF Program Service Area is proposed to match HCP/NCCP Plan Area.

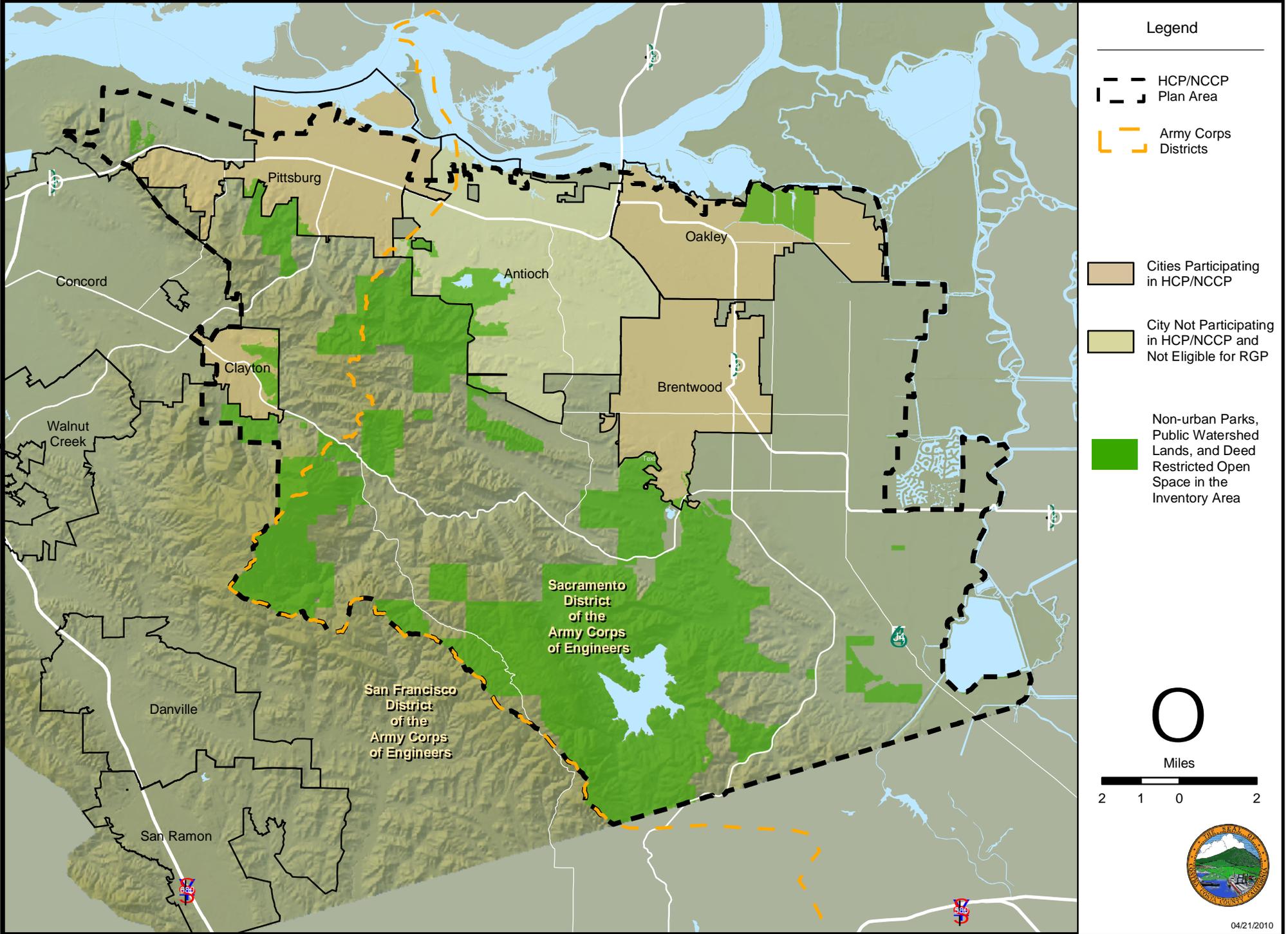
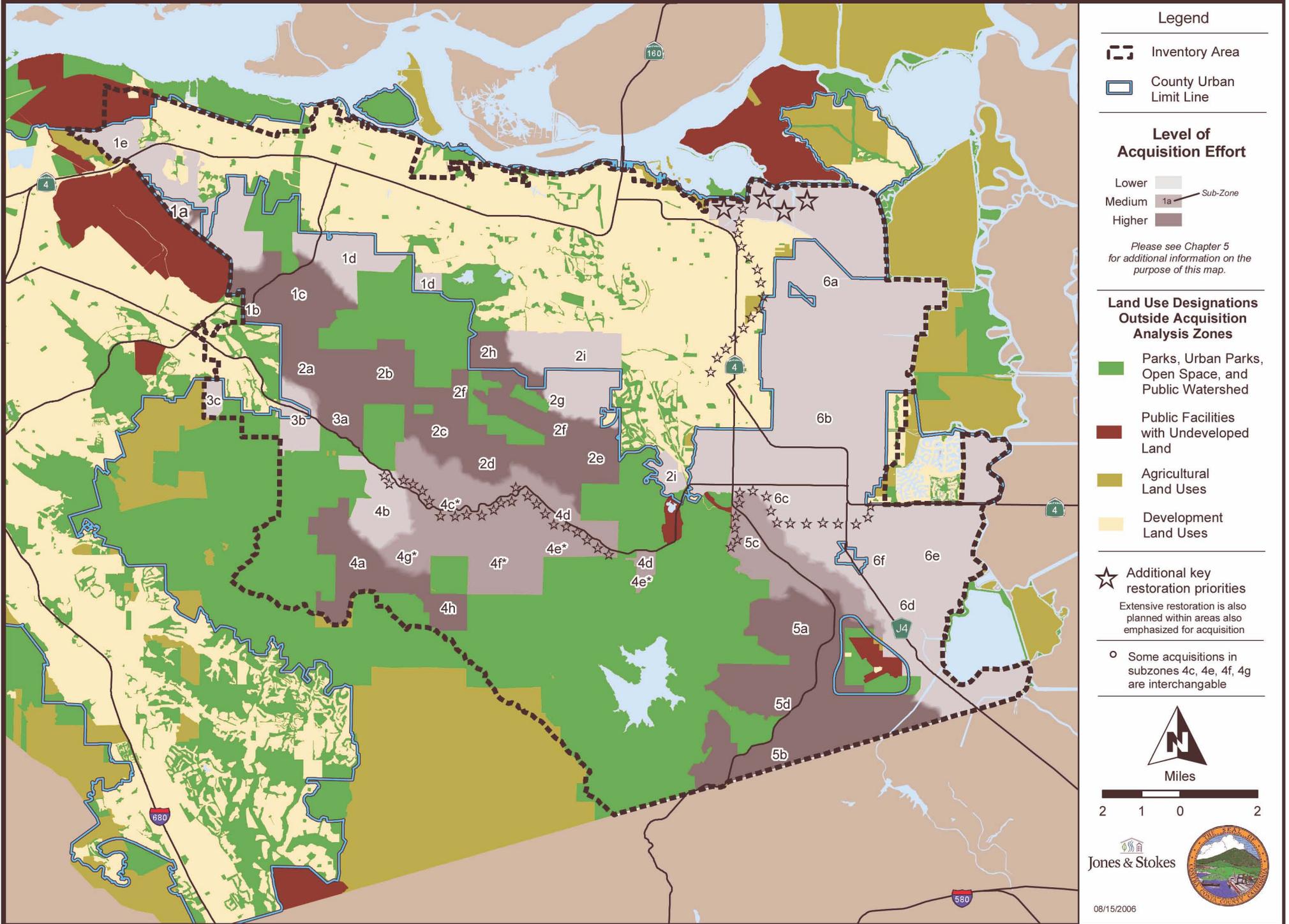


Figure 5-3 : Acquisition Priorities with Maximum Urban Development Area



Legend

- Inventory Area
- County Urban Limit Line

Level of Acquisition Effort

- Lower
- Medium 1a *Sub-Zone*
- Higher

Please see Chapter 5 for additional information on the purpose of this map.

Land Use Designations Outside Acquisition Analysis Zones

- Parks, Urban Parks, Open Space, and Public Watershed
- Public Facilities with Undeveloped Land
- Agricultural Land Uses
- Development Land Uses

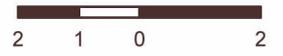
★ Additional key restoration priorities

Extensive restoration is also planned within areas also emphasized for acquisition

○ Some acquisitions in subzones 4c, 4e, 4f, 4g are interchangeable



Miles



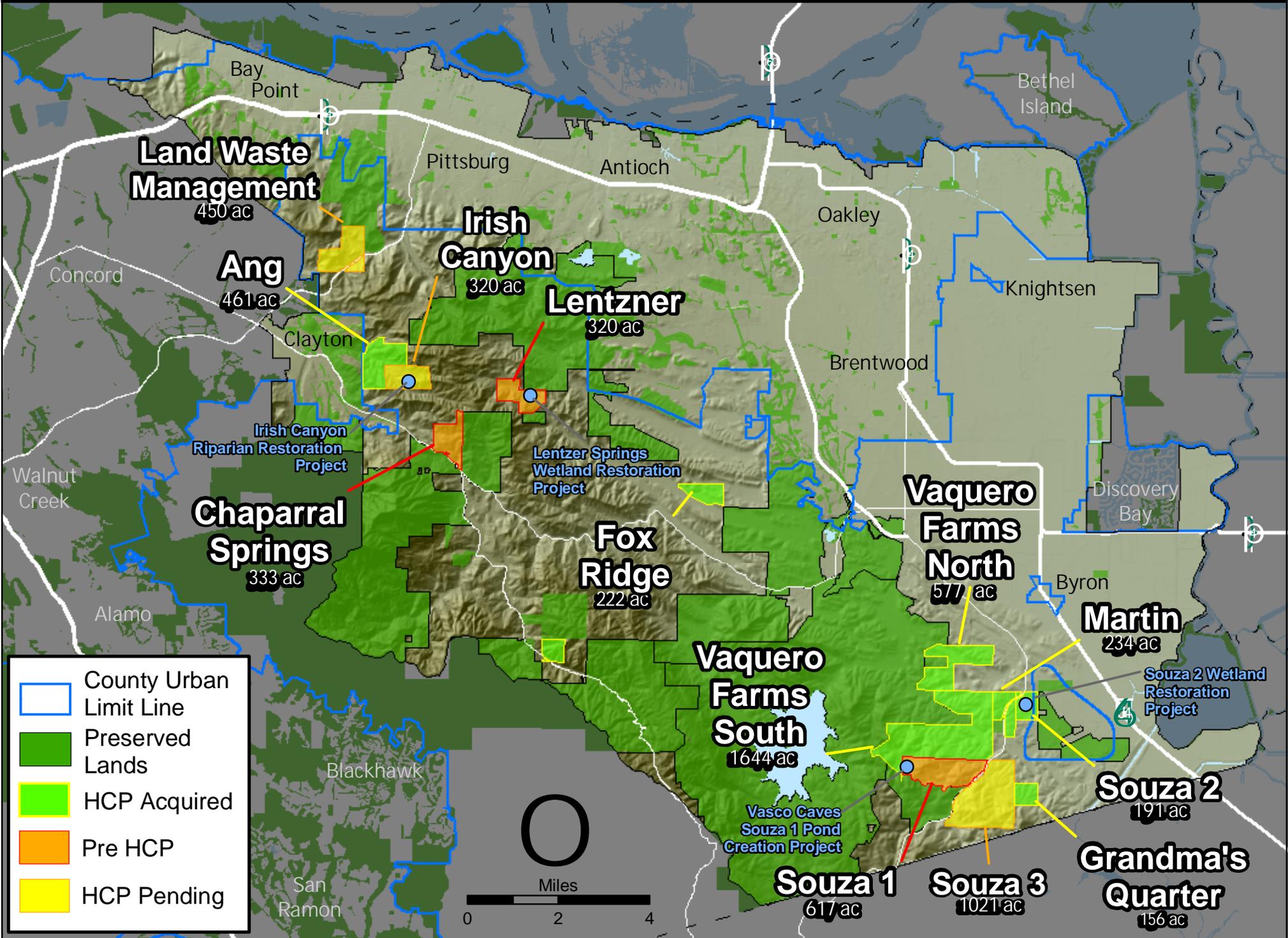
Jones & Stokes



08/15/2006

Figure 3: EBRPD Acquisitions Under HCP/NCCP as of 8/31/2010

(Restoration project locations are also shown.)





Public Notice

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

Public Notice of Proposal to Issue a Regional General Permit for Minimal Impact Activities within the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan Permit Area

Action ID: SPK-2001-00147

Comments Period: February 16, 2011 – March 16, 2011

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) proposes to issue a regional general permit (RGP) for activities that would cause no more than minimal adverse impacts to the aquatic environment within the Plan Area of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP, or “Plan”). The proposed RGP would authorize placement of dredged or fill material into waters of the U.S. pursuant to Section 404 of the Clean Water Act. This notice is to inform interested parties of the availability of a draft of the proposed RGP and to solicit comments. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

AUTHORITY: The proposed RGP would authorize certain activities under Section 404 of the Clean Water Act for discharge of dredged or fill material in waters of the United States.

APPLICANT: An individual, organization, or company requesting authorization under the RGP.

LOCATION: The proposed RGP would apply to portions of east Contra Costa County, including the cities of Clayton, Brentwood, Oakley, and Pittsburg, and specific areas of unincorporated Contra Costa County. It is geographically contained within the “Plan Area” of the HCP/NCCP (see Figures 1a and 1b, attached). More detailed mapping of the HCP/NCCP Inventory Area is available in entirety to the public at: <http://www.co.contra-costa.ca.us/depart/cd/water/HCP/documents.html>.

PURPOSE: The purpose of the proposed RGP would be to expedite Department of the Army (DA) authorization of recurring activities that are similar in nature and would have minimal individual and cumulative impacts on the aquatic environment. The proposed RGP is part of an overall strategy envisioned in the HCP/NCCP to balance the protection of important natural resources with long-term economic development in the area covered by the Plan. One of the central premises of the proposed RGP is that for purposes of Section 404’s requirement to avoid and minimize impacts to waters of the U.S., the RGP would recognize the “regional avoidance” strategy adopted by the HCP/NCCP. Use of the RGP would be intended to reduce the amount of paperwork and time required to authorize qualifying activities. Regional permits are a type of general permit as defined in 33 CFR 322.2(f) and 33 CFR 323.2(h). As provided by 33 CFR 325.2(e)(2), the District Engineer (DE) retains discretionary authority on a case-by-case basis to require an individual permit for a proposed project that could otherwise be authorized by a general permit, if concerns for the aquatic environment so indicate.

WORK AUTHORIZED BY THIS PERMIT: The proposed RGP would authorize activities that are “Covered Activities” under the HCP/NCCP, that would have minimal individual and cumulative impacts on the aquatic environment. To receive authorization, proposed activities would need to meet the terms, general conditions, and activity-specific conditions of the RGP. The loss of waters of the U.S., including wetlands, resulting from a single and complete project, would be proposed to not exceed a total of 1.5 acres. In addition, a project could not permanently affect more than 300 linear feet of perennial, intermittent or third or higher order ephemeral streams (as defined in Table 2, footnote six of the RGP and in the glossary of the HCP/NCCP), unless this linear limit is waived in writing by the Corps. Proposed projects that do not meet the eligibility requirements of the RGP would require authorization by a standard permit, letter of permission or Nationwide permit.

U.S. ARMY CORPS OF ENGINEERS – Sacramento District

1325 J Street, Room 1480, Sacramento, CA 95814-2922

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/index.html>

The proposed RGP divides HCP/NCCP Covered Activities into the following categories for the purpose of assigning Activity-specific conditions:

1. Residential, commercial, industrial, institutional, other urban developments and associated infrastructure inside the Urban Limit Line of Contra Costa County or inside the City Limits of the Cities of Brentwood, Clayton, Oakley and Pittsburg;
2. Recreation projects;
3. Flood control detention basins and reservoirs;
4. Transportation projects;
5. Wetland and stream restoration, creation, enhancement and management;
6. Utility projects; and
7. Maintenance, repair, rehabilitation or replacement of any previously authorized (under the
8. RGP or other Corps permit), currently serviceable, structure or fill.

The RGP contains 22 general conditions that would apply to all categories, and four Activity-specific conditions that would apply to specified categories.

COMPENSATORY MITIGATION: Mitigation for impacts to waters of the U.S. would be accomplished by conforming to the minimum mitigation ratios set by the HCP/NCCP, as summarized in Table 1 of the RGP. Mitigation proposals would be required to be consistent with the Corps' mitigation rule (33 CFR Part 332). Applicants would have three options for accomplishing mitigation under the RGP:

1. Payment of the aquatic resources mitigation fees to the East Contra Costa County Habitat Conservancy (Conservancy), in accordance with the in-lieu fee (ILF) program envisioned to be established by the Conservancy. The ILF program would be required to be consistent with the Corps' mitigation rule (33 CFR Part 332.8). If mitigation is satisfied through payment into a future-established ILF program, after accepting the applicant's fee, the Conservancy would be responsible for compensatory mitigation for impacts to waters of the U.S. associated with projects authorized by this RGP.
2. Purchasing credits at a Corps-approved mitigation bank that also provides mitigation acceptable under the HCP/NCCP.
3. Proposing a permittee-responsible mitigation project (including all necessary mitigation plan components specified in the Corps' mitigation rule (33 CFR Part 332).

Only the first option is unique to the proposed RGP. Pending establishment of an ILF program, this would be the Corps' preferred option since it supports landscape-scale creation, restoration and enhancement of aquatic resources within the overall habitat conservation strategy of the HCP/NCCP.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification (WQC) or a waiver, as required under Section 401 of the Clean Water Act, would be required for permits reviewed under the proposed RGP. The proposed RGP includes several required water quality-related conditions intended to facilitate review under Section 401. The Corps is seeking development of a programmatic WQC for the proposed RGP.

HISTORIC PROPERTIES: Proposals for activities to be authorized by the proposed RGP would be reviewed individually for compliance with Section 106 of the National Historic Preservation Act (NHPA), following the consultation process typical of Nationwide or individual permit applications. Applicants would notify the Corps if the proposed project may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places (NRHP), including previously unidentified properties. As appropriate, the Corps would initiate consultation with the State Historic Preservation Officer under Section 106 of the NHPA.

ENDANGERED SPECIES: The Corps would initiate consultation with the U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of the Endangered Species Act (ESA) for the proposed RGP. The Corps would seek a programmatic biological opinion that incorporates by reference the conservation strategy, covered species, covered activities, measures and other primary elements of the HCP/NCCP. The consultation process would be required to be completed prior to issuance of the RGP. The HCP/NCCP does not cover federally-listed species under the authority of the National Marine Fisheries Service (NMFS). For projects that may affect species not covered under the HCP/NCCP, the Corps would initiate Section 7 consultation on an individual project basis.

ESSENTIAL FISH HABITAT: Since the HCP/NCCP does not address Essential Fish Habitat (EFH) as defined in the Magnuson-Stevens Fishery Conservation and Management Act (MSA), in applicable cases the Corps would initiate project-specific consultation with NMFS pursuant to the MSA.

EVALUATION FACTORS: The decision whether to issue the proposed RGP will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activities, must be balanced against their reasonably foreseeable detriments. All factors which may be relevant to the proposed RGP will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The proposed RGP's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of issuing the proposed RGP. Any comments received will be considered by the Corps to determine whether or not to issue the RGP. To make this decision, comments will be used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed RGP.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2001-00147, must be submitted by postal mail or e-mail to the office listed below on or before March 16, 2011:

Mary Pakenham-Walsh
Project Manager, Regulatory Division, California Delta Branch
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922
E-mail: Mary.R.Pakenham-Walsh@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this proposal. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager, Mary Pakenham-Walsh, at 916-557-7718, or by e-mail at Mary.R.Pakenham-Walsh@usace.army.mil.

Attachments: (Draft) Department of the Army Permit / Regional General Permit Number 1 for Minimal Impact Activities, East Contra Costa County, California; Figures 1a & 1b.

U.S. Army Corps of Engineers
Sacramento District

**DEPARTMENT OF THE ARMY PERMIT
REGIONAL GENERAL PERMIT NUMBER 1
Minimal Impact Activities
East Contra Costa County, California**

Effective: XXX, 200X
Expiration: XXX, 200X

The Sacramento District of the U.S. Army Corps of Engineers (Corps) hereby issues this Regional General Permit (RGP) for certain activities that would cause no more than minimal individual and cumulative impacts on the aquatic environment in the eastern portion of Contra Costa County, California.

Purpose: The purpose of this RGP is to provide a simplified and expeditious means to authorize activities in waters of the United States (U.S.), including wetlands, that are substantially similar in nature and cause only minimal individual and cumulative impacts, within the area covered by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), dated December, 2006. This RGP is part of an overall strategy envisioned in the HCP/NCCP to balance the protection of important natural resources with long term economic development in the area covered by the HCP/NCCP. The HCP/NCCP is intended to enhance protection of important natural resources, including 28 listed and non-listed species and waters of the United States, by coordinating conservation activities at a regional and watershed scale, enabling protection of large, contiguous resource-rich areas and preservation of ecosystem processes and watershed functions. Appendix J of the HCP/NCCP contains a partial inventory and assessment of the functions and services of waters of the U.S. located within the HCP/NCCP Plan Area. The HCP/NCCP, associated documents and other program information are available to the public at: <http://www.coco.hcp.org>. Definitions associated with this RGP are provided under the “Definitions” section at the end of the RGP.

Location: The area covered by this RGP is east Contra Costa County, including the cities of Clayton, Brentwood, Oakley, and Pittsburg, and specific areas of unincorporated Contra Costa County. It is geographically coincident with the “Plan Area” of the HCP/NCCP (see Figures 1a and 1b).

Authority: The RGP authorizes activities within the permit area within the Plan Area that involve discharges of dredged or fill material into waters of the U.S. under Section 404 of the Clean Water Act (CWA).

Activities Authorized by this RGP: This RGP authorizes specific categories of activities with minimal individual and cumulative impacts on the aquatic environment that meet the terms, general conditions, and activity-specific conditions of this permit, as well as any special conditions that may be added by the Corps. This RGP applies only to HCP/NCCP Covered Activities, as set forth in Section 2.3 of the HCP/NCCP. The HCP/NCCP Covered Activities are divided among the following Activity categories in this RGP for purposes of assigning Activity-specific conditions (see section “Activity Specific Conditions”):

1. Residential, commercial, industrial, institutional, other urban developments and associated infrastructure inside the Urban Limit Line of Contra Costa County or inside the City Limits of the Cities of Brentwood, Clayton, Oakley and Pittsburg (activity-specific conditions: 1 through 4).
2. Recreation projects, including parks, picnic areas, staging areas and trails. (activity-specific conditions: 1 through 4).

3. Flood control detention basins and reservoirs¹. Applies only to the specific planned facilities set forth in Section 2.3.2 of the HCP/NCCP. (activity-specific conditions: 1 through 4).
4. Transportation projects, including road construction and widening, bicycle trails, rail projects and safety projects. Applies only to the specific planned facilities set forth in Section 2.3.2 of the HCP/NCCP. (general conditions apply only).
5. Wetland and stream restoration, creation, enhancement and management (activity-specific conditions: 1, 2 and 4).
6. Utility projects, including electrical transmission projects, cellular communication projects and pipelines (activity-specific condition 4).
7. Maintenance, repair, rehabilitation or replacement of any previously authorized (under the RGP or other Corps permit), currently serviceable, structure or fill (general conditions apply only).

Terms of Authorization:

1. Applying for RGP authorization: Prior to commencing a proposed activity, applicants seeking authorization under this RGP shall notify the Corps in accordance with RGP general condition number 19 (Notification). If the Corps determines that an activity is not an eligible activity under the RGP, it will notify the applicant in writing within thirty (30) calendar days and provide instructions on the procedures to seek authorization under a standard permit, letter of permission or Nationwide permit. If the Corps determines that a proposed activity is eligible for coverage under the RGP, it will notify the applicant within 45 calendar days of receipt of a complete application. If the Corps does not provide a written response to the applicant within 45 calendar days following receipt of a complete application, the applicant may presume the proposed activity is an eligible activity that may be covered under the RGP, provided the activity complies with all other terms and conditions of the RGP.
2. Impact Thresholds for waters of the U.S.: Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. The loss of waters of the U.S. (including wetlands) resulting from individual project impacts may not exceed a total of 1.5 acres or more than 300 linear feet of perennial, intermittent or 3rd or higher order ephemeral streams (as defined in Table 2 of the RGP and further described in the HCP/NCCP), unless the linear limit is waived in writing by the Corps. Additional restrictions are listed in the General and Activity-Specific Conditions.
3. Single and complete project: The project must be a single and complete project. For example, if construction of a residential development involves phases, the sum of all impacted areas would be the basis for deciding whether or not the project will be covered by this RGP.
4. After-the-fact projects: This RGP may not be used to authorize activities after they have impacted Waters of the U.S.
5. Compliance with HCP/NCCP Conditions: Activities to be authorized under this RGP must be HCP/NCCP Covered Activities and must fully comply with the HCP/NCCP. Compliance with the HCP/NCCP requires applicants to implement the appropriate conservation measures outlined in Chapter 6 of the HCP/NCCP.
6. Special conditions: The Corps may add special conditions to an authorization to ensure the activity complies with the terms and conditions of the RGP, and/or that adverse impacts on the aquatic environment or other aspects of the public interest are individually and cumulatively minimal.
7. Activity completion: Any activity authorized by the Corps under the RGP must be completed within three (3) years of the date it is authorized. The “authorization date” is the date the Corps verifies in writing that the activity meets the terms and conditions of the RGP. The Corps will, on a case-by-case basis, review requests for time extensions if the permittee fails to complete the activity within three years. A time extension would be considered a reverification and would be subject to review and approval policies in effect at the time of review. Pursuant to term #9, below, activities

¹ The proposed Los Vaqueros Reservoir Expansion project is not covered by the HCP/NCCP as per Section 2.4 of the HCP/NCCP.

authorized under the RGP that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of the RGP's expiration, modification or revocation, unless the Corps exercises its discretionary authority to modify, suspend, or revoke the authorization of a specific project.

8. Discretionary Authority: The Corps has the discretion to suspend, modify, or revoke authorizations under this RGP. This discretionary authority may be used by the Corps to also further condition or restrict the applicability of the RGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any public interest factor. Should the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to aquatic resources or otherwise be contrary to the public interest, the Corps will modify the authorization to reduce or eliminate those adverse effects, or notify the applicant that the proposed activity is not authorized by the RGP and provide instructions on how to seek authorization under an individual permit. The Corps may restore authorization under the RGP at any time it determines that the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The Corps may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.
9. Expiration of RGP: This RGP is valid for five (5) years from the date of issuance (or reissuance). At least sixty (60) calendar days prior to the expiration date of this RGP, the Corps will issue a public notice, with an opportunity for public comment, describing the reasons for reissuing the RGP, reissuing the RGP with modifications, or not reissuing the RGP for another five years. The Corps may extend the RGP for six months beyond the expiration date if it is unable to reissue the RGP due to unresolved issues. If the Corps has not reissued or extended the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended or revoked by the Corps at any time deemed necessary. In such instance, the Corps will issue a public notice concerning the action.

General Conditions:

The following conditions apply to all Activity categories:

1. Threatened and Endangered Species: No activity is authorized under the RGP if the activity is likely to jeopardize the continued existence of a threatened or endangered species listed or proposed for listing under the ESA, or which will destroy or adversely modify the critical habitat of such species, unless such impacts to critical habitat have been authorized by USFWS. The attached USFWS biological opinion (BO) (*number/dated*) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" authorization under this RGP. Authorization under this RGP is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with the RGP. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA. The permittee must comply with all conditions of this BO, including those ascribed to the Corps.
2. Water Quality Certification: Section 401 Water Quality Certification is required for activities to be authorized by this RGP. The Corps may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal impacts, individually or cumulatively.
3. Historic Properties: No activity is authorized under the RGP if the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. Applicants must notify the Corps if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The Corps will consult with the State Historic Preservation Officer (SHPO), as appropriate, following the policy and procedural standards of 33 CFR Part 325 Appendix C.
4. Unanticipated Cultural Resources Discoveries: If previously unidentified cultural materials are unearthed during construction, all work shall be halted until a qualified archaeologist can examine the deposit and determine its nature and significance. In the event of discovery of possible human remains, state law requires that the County Coroner be contacted.

5. Fills within 100-Year Floodplains: The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
6. Bed and Bank Stabilization: Bank stabilization activities are limited to: a) using the minimum amount of material needed for erosion protection; b) no more than 500 feet in length along the bank, unless this criterion is waived in writing by the Corps; and c) no more than 1 cubic yard of material per running foot placed along the bank below the plane of the ordinary high water mark or high tide line, unless this criterion is waived in writing by the Corps.
7. Best Management Practices: Best Management Practices (BMPs) must be employed during construction and in project design to protect water quality and minimize impacts of stormwater runoff on aquatic resources. BMPs should be appropriately located in or adjacent to waters of the U.S. (e.g., upland buffer). The applicant shall use the following BMP hierarchy in designing the project:
- a. Preservation of natural resource features on the project site (e.g., floodplains, wetlands, streams, and other drainageways, grasslands, woodlands, and native soils);
 - b. Preservation of natural water infiltration and storage characteristics of the site;
 - c. Minimization of new impervious surfaces in project design (impervious surfaces may be minimized through practices such as reducing road widths and clustering developments designed around open space);
 - d. Structural measures that provide water quality and quantity control,
 - e. Structural measures that provide only quantity control and conveyance; and
 - f. Construction BMPs.
- Examples of structural BMPs include: vegetated natural buffers, grassed swales, infiltration trenches, level spreaders and channel grade controls. Examples of construction BMPs include: filter fencing or other barrier methods to intercept/capture sediment and matting.
8. Proper Maintenance: Any authorized structure or fill shall be properly maintained, including maintenance necessary to ensure public safety and the movement of aquatic organisms.
9. Aquatic Life Movements: No activity may substantially disrupt the necessary life cycle movement of aquatic species indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions.
10. Equipment: Heavy equipment working in wetlands must be placed on mats, or other measures, such as low-ground pressure equipment, must be taken to minimize soil disturbance.
11. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
12. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake, except where the discharge is for the repair or improvement of the intake structure(s), and/or adjacent bank stabilization.
13. Suitable Material: No discharge of dredged or fill material may consist of unsuitable material and material discharged must be free from toxic pollutants in toxic amounts (section 307 of the Clean Water Act). Unsuitable material includes, but is not limited to, trash, debris, car bodies, and asphalt.
14. Spawning Areas: Activities in fish spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that are expected to result in the physical destruction (e.g., through excavation, fill or downstream smothering by sedimentation) of an important spawning area are not authorized by this RGP.
15. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration project).

16. Migratory Bird Breeding Areas: Activities in waters of the U.S. that serve as breeding areas for migratory birds shall be avoided to the maximum extent practicable.

17. Removal of temporary fills and restoration of affected areas: Temporary fills shall be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas shall be revegetated with native vegetation upon completion of the project. A restoration plan, which includes a 1-foot contour topographic map, must be submitted with the notification to the Corps.

18. Compensatory Mitigation: Mitigation for impacts to waters of the U.S. must be accomplished by conforming to the minimum mitigation ratios set by the HCP/NCCP, as summarized in Table 1. Mitigation proposals are required to be consistent with the Corps' mitigation rule (33 CFR Part 332).

- a. Mitigation may be accomplished by one or more of the following mechanisms: 1) payment of the aquatic resources mitigation fee to the Conservancy in accordance with the in-lieu fee (ILF) program envisioned to be established by the Conservancy; 2) purchasing credits from a Corps-approved mitigation bank that also provides mitigation acceptable under the HCP/NCCP, and/or; 3) through a "permittee-responsible" mitigation project.
- b. Prior to proceeding with the activity authorized by this RGP, a final mitigation plan must be approved by the Corps and the Conservancy, and/or mitigation fees must be paid. Evidence of fee payment must be provided to the Corps before commencement of the activity authorized by this RGP can be initiated.
- c. If the RGP verification includes permittee-responsible compensatory mitigation, the mitigation plan must contain a reporting procedure consistent with the Corps' mitigation rule (33 CFR Part 332.4[c][10]), *Monitoring Requirements*.

19. Notification: The applicant shall provide written notification (i.e., a complete application) for a proposed activity to be authorized under the RGP prior to commencing the activity. The Corps' receipt of the complete application is the date when the Corps receives all required notification information from the applicant (see below). Written notification shall include all of the following:

- a. A letter signed by the applicant requesting authorization under the RGP, identifying the Activity Category(s), a description of the proposed activity, the location of the activity (with latitude and longitude), and the area (in acres, and/or linear feet as applicable) of waters of the U.S., including wetlands, to be impacted;
- b. For each general and applicable activity-specific condition of this RGP, a brief narrative describing how the activity would comply with the condition, or that the condition does not apply;
- c. Vicinity and project site maps;
- d. A delineation of waters of the U.S., including wetlands, for the project site and for areas immediately adjacent to the project site. On-site wetlands must be delineated using the Corps Wetlands Delineation Manual (1987) and Arid West Region Regional Supplement (2008), or most recent manual(s) in effect at the time of the applicant's proposal. Off-site wetlands may be identified through the use of reference materials including local wetland inventories, soil surveys and aerial photography. The delineation shall *also* include information on wetlands and waters, as defined in the HCP/NCCP, that are/may not be waters of the U.S.
- e. Preliminary plans (on 8 ½" x 11" or 14" reduced-sized drawings) showing all aspects of the proposed activity and the location of avoided and impacted waters of the U.S. Plan-view and cross-section plans shall be included. Both temporary (e.g., access, staging) and permanent impacts to waters of the U.S. shall be shown. The plans shall include grading contours and existing and proposed structures, such as buildings, roadways, stormwater management facilities, utilities, construction access areas and water conveyance structures. The drawings shall also show buffer areas, open space designations, locations of BMPs, deed restricted areas, and restoration areas, if required; and
- f. A written statement explaining how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. For compensatory mitigation proposed in accordance with general condition #18, submit a preliminary plan to offset unavoidable impacts to waters of the U.S.

If the Corps determines that the activity complies with the terms and conditions of the RGP, including confirmation that proposed impacts to aquatic resources are minimal, the Corps will notify the applicant in writing and include any special conditions deemed necessary. If the Corps determines the impacts of the proposed activity are more than minimal, the Corps will notify the applicant that the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit.

20. Reporting Responsibilities: The permittee must submit a report to the Corps within 30 days of project completion. The report will contain the following:

- a. The Corps' file number;
- b. Photographs showing pre- and post-construction project conditions;
- c. A completed compliance certification.

21. Access: The permittee must allow representatives from the Corps to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of the permit.

22. Transfer of RGP Authorization: If the permittee sells the property associated with this permit, the permittee must obtain the signature and mailing address of the new owner on the permit verification letter, and forward a copy to this office to validate the transfer.

Activity-Specific Conditions:

The following conditions apply to Activity categories specified at the end of each condition.

1. **Upland buffers.** Upland buffer(s) of native plants (or other appropriate vegetation approved by the Corps) must be established adjacent to all created, restored, enhanced, avoided or preserved waters of the U.S., including wetlands. Buffer widths required by the HCP/NCCP for streams and creeks are summarized in Table 2 of this RGP. Waters of the U.S. shall not be filled in order to meet the buffer requirements (Activity categories 1, 2, 3 and 5).
2. **Permanent protections.** All preserved, created, restored or enhanced waters of the U.S. and adjacent buffers on the project site shall be preserved and permanently protected through a deed restriction, conservation easement, or other appropriate real estate or legal instrument, unless the land is owned by a public agency as a park or preserve. A recorded copy of the real estate instrument must be provided to the Corps prior to proceeding with any activity otherwise authorized by this RGP (Activity categories 1, 2, 3 and 5).
3. **Fencing and signage.** Preserved areas on the project site must be fenced and signed as sensitive areas to discourage human disturbance (Activity categories 1, 2 and 3).
4. **Utility lines.** All utility lines shall be constructed in accordance with the following:
 - a. The construction area for linear utility line projects shall be limited to a width of 75 feet, unless this limit is waived in writing by the Corps.
 - b. For utility line projects, directional drilling, clear span or other techniques that do not contact the waterbody shall be used if the waterbody contains perennial flow.
 - c. If the project involves the use of directional drilling below waters, notification shall include a contingency plan. The plan will include actions that will be taken to stabilize the work area and avoidance/contingency measures in the event of a potential "frac-out."
 - d. Material resulting from trench excavation may be temporarily sidecast (up to 60 days) into waters of the U.S., provided that the material is not placed in such a manner that is dispersed by currents or other forces. The Corps may extend the period of temporary side casting for no more than a total of 180 days, where appropriate.
 - e. Utility lines must not adversely alter existing hydrology, including draining of wetlands. In wetland areas, utility line trenches shall be lined with clay, or other impermeable materials or structures (such as cut-off walls) to ensure that the trench through which the utility line is installed does not drain waters of the U.S. In addition, to prevent a french drain effect, gravel cannot be used as backfill material in the top 10 feet of the trench.
 - f. In wetland areas, the top 6"-12" of the trench shall be backfilled with topsoil excavated from the trench in the same stratification in which it was removed.
 - g. Excess material shall be removed to upland areas immediately upon completion of utility line construction in any segment of the project containing waters of the U.S. In no case shall the excess material be left in place until the entire utility line is completed.
 - h. The construction area, including unprotected slopes and streambanks, shall be stabilized (e.g., blanketed and seeded) immediately upon completion of the utility line construction in any segment of the project. In no case shall soil stabilization be delayed until the entire utility line is completed.

- i. Temporarily disturbed construction areas must be restored to pre-construction conditions, including grading to original contours and revegetating (with native vegetation or other appropriate vegetation approved by the Corps) immediately upon completion of the project. A restoration plan, which includes a 1-foot contour topographic map, shall be submitted with notification (Activity categories 1, 2, 3, 5 and 6).

Limitations and Restrictions:

1. The Corps has authority to determine if an activity complies with the terms and conditions of the RGP.
2. This RGP does not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
3. This RGP does not grant any property rights or exclusive privileges.
4. This RGP does not authorize any injury to the property or rights of others.
5. This RGP does not authorize interference with any existing or proposed Federal project.

Definitions:

Activity is any discharge of dredged or fill material into waters of the U.S. under Section 404 of CWA.

Activity categories are descriptions of HCP/NCCP Covered Activities listed in this RGP for purposes of assigning activity-specific conditions.

Activity-specific conditions are RGP conditions that would apply to specified Activity categories defined in this RGP.

Applicant is the individual, organization, or company requesting authorization under the RGP.

Authorization is written verification by the Corps that an activity qualifies for, and may proceed under, the RGP provided all terms and conditions of the RGP are followed.

Compensatory mitigation is the restoration, establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Complete application is all required notification materials that must be submitted by the applicant to the Corps, as listed in general condition #19. If all materials are not submitted, the application is considered incomplete and will not be processed under the RGP.

Conservancy is the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency formed by the Cities of Brentwood, Clayton, Oakley and Pittsburg and Contra Costa County to perform the role of Implementing Entity for the HCP/NCCP.

General conditions are RGP conditions that would apply to all activities authorized by this RGP.

HCP/NCCP is the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan dated December, 2006. The United States Fish and Wildlife Service (“USFWS”), under incidental take permit TE 160958-0, and the California Department of Fish and Game (“CDFG”), under incidental take permit 2835-2007-01-03, have approved the HCP/NCCP and have authorized the “HCP/NCCP Permittees” to take certain species of plants and wildlife listed under the federal Endangered Species Act (ESA) and/or covered under the state of California’s Natural Community Conservation Planning Act (NCCPA) while carrying out or approving certain development and other “covered activities.” Take is defined under federal and state laws.

HCP/NCCP Covered Activity means an activity or project within one of the categories of activities set forth in Section 2.3 of the HCP/NCCP that has been approved by an HCP/NCCP Permittee for coverage under the HCP/NCCP.

HCP/NCCP Permittee is any of the following eight local agencies that have approved the HCP/NCCP and have been authorized by USFWS and CDFG to take certain species, as take is defined respectively under federal and state law. These are the Cities of Brentwood, Clayton, Oakley and Pittsburg, Contra Costa County, the Contra Costa County Flood Control and Water Conservation District, the Conservancy, and the East Bay Regional Park District.

Impact is the direct and indirect loss of waters of the U.S., including wetlands, which results from implementation of a proposed activity. See also “loss of waters” definition.

In-lieu fee refers to an in-lieu fee (ILF) program as defined in 33 CFR Part 332.2. An ILF program involves the restoration, establishment (creation), enhancement and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of the Army (DA) permits. As required by 33 CFR Part 332.8(a), all ILF programs must be approved prior to being used to provide compensatory mitigation for projects authorized by the Corps.

Loss of waters of the U.S. refers to waters that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredge or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of an aquatic feature. The acreage of loss of waters of the U.S. is a threshold measurement of the impact to jurisdictional waters for determining if the project may qualify for the RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services.

Mitigation see “compensatory mitigation” definition.

Mitigation Bank is a site where aquatic resources (e.g., wetlands, streams) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits.

Notification is the submission of required information by the applicant to the Corps for a complete application.

Permittee is an entity that has received authorization to conduct activities in waters of the U.S. under this RGP.

Plan Area is the area shown in Figure 1-1 of the HCP/NCCP and Figures 1a and 1b of this RGP. It is the area analyzed by the HCP/NCCP and covered by the USFWS and CDFG incidental take permits issued pursuant to the HCP/NCCP. In the HCP, the Plan Area is also referred to as the “Inventory Area.” This RGP uses the term Plan Area.

Project site is the land, including waters of the U.S. and uplands, utilized for a single and complete project. The project site includes the land cleared, graded, and/or filled to construct the single and complete project, including any buildings, utilities, stormwater management facilities, roads, yards, and other attendant features. Temporary construction areas (e.g., access and staging) are included. The project site also includes any other land and attendant features that are used in conjunction with the single and complete project, such as open space, roads and utilities.

Single and complete project is the “total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers” (33 CFR 330.2[i]).

Special conditions are conditions added by the Corps for projects on a case-by case basis to ensure an activity has minimal impacts on aquatic resources and complies with the RGP.

Stream order refers to the numeric identification of the reaches within a stream network. This document follows the stream ordering system of Strahler (1964)². In this system, a first order stream is a stream with an identifiable bed and bank, without any tributary streams. A second order stream is formed by the confluence of two first order streams. A third order stream is formed by the confluence of two second order streams, and so on. Addition of a lesser order stream does not change the stream order of the trunk stream.

² Strahler, A.N. 1964. Quantitative Geomorphology of drainage basins and channel networks; section 4-2, in *Handbook of Applied Hydrology*, ed. Ven te Chow, McGraw-Hill, New York.

Suspension is the temporary cancellation of the authorization while a decision is made to modify, revoke or reinstate the authorization.

Terms and conditions are the parameters, including thresholds, limitations and requirements, for completing an activity under the RGP. These parameters are described in each Activity category and in the general conditions and Activity-specific conditions. Special conditions may also be added by the Corps on individual authorizations to ensure an activity has minimal individual and cumulative impacts.

Urban Limit Line is the boundary for urban growth that has been set for Contra Costa County in the Contra Costa County General Plan, as amended from time to time.

Utility line is any pipeline used to transport a gaseous, liquid, liquefiable or slurry substance for any purpose, and any cable, line or wire used to transmit electrical energy, telephone, radio signals, television signals or data communication. This definition does not include pipes or ditches which serve to drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from one area to another.

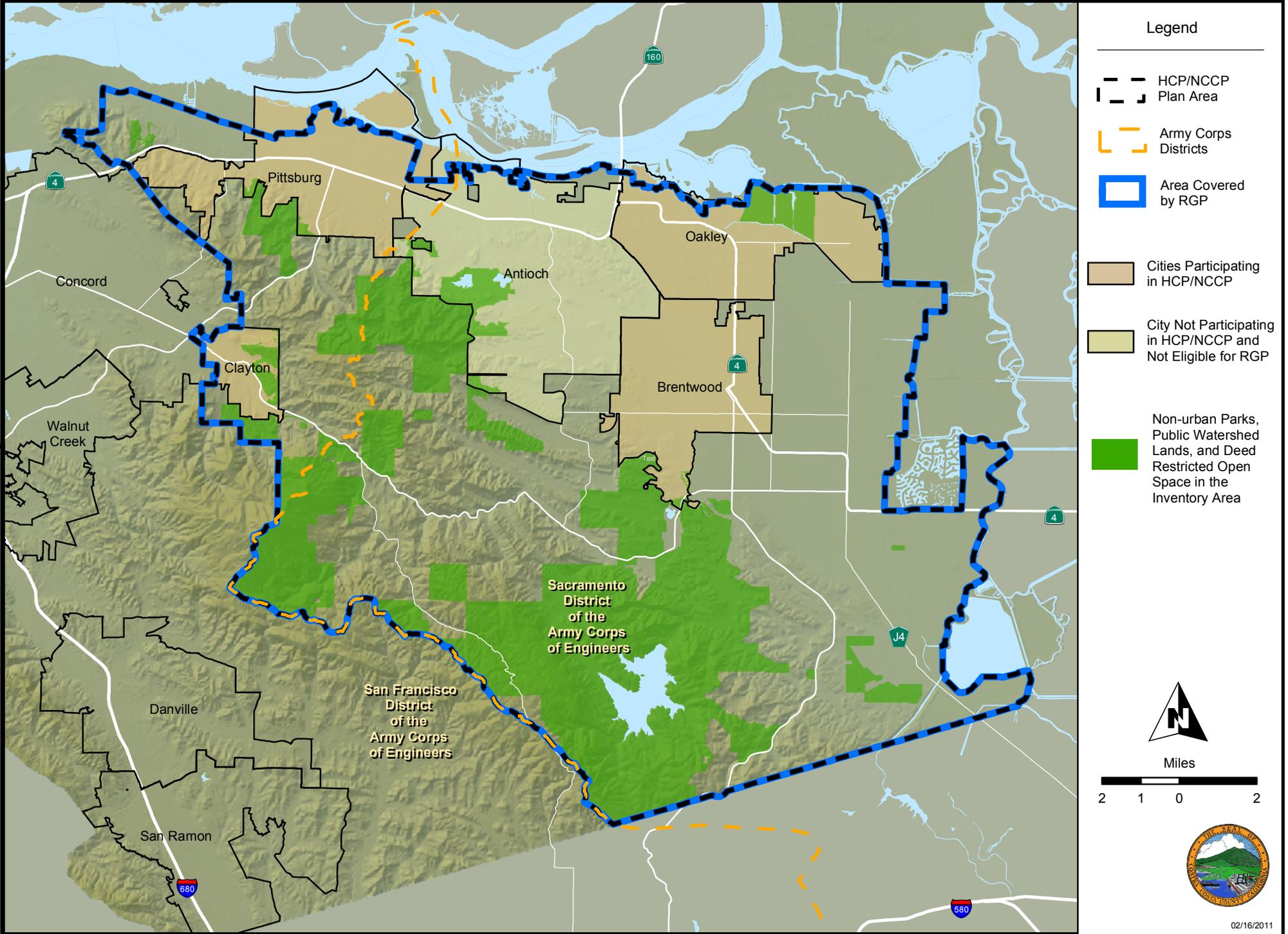
Waters of the U.S. are as defined in 33 CFR Part 328.3(a). For purposes of wetlands regulated under Section 404 of the Clean Water Act under this RGP, the identification and delineation of wetlands must be in accordance with the most recent guidance and wetland delineation manual and manual supplement issued by the Corps.

Definitions found at 33 CFR Parts 320-323, 325-329, and 331-332 and 40 CFR Part 230 are also applicable to this RGP and are incorporated by reference herein.

Figure 1a: General Location of HCP/NCCP Plan Area and Area Covered by RGP



Figure 1b: HCP/NCCP Plan Area and Area Covered by RGP



**Table 1. Required Ratios and Estimated Preservation, Restoration and Creation Requirements for Aquatic Land-Cover Types under Initial and Maximum Urban Development Area
(Combines tables 5.5a, 5.5b, 5.16 and 5.17 of HCP)**

Preservation Requirements										Restoration & Creation Requirements								
Aquatic Land Cover Type	Required Preservation Ratio	Estimated Impact ¹ (acres)		Estimated Preservation Requirement ¹ (acres)		Impact & preservation notes	Minimum Available in Acquisition Analysis Zones ² (acres)		Availability notes	Required Restoration and Creation Ratios (in addition to preservation requirements)		Estimated Restoration/Creation Requirement ¹ (acres)		Restoration or Creation Required to Contribute to Recovery (acres)		Estimated Total Restoration or Creation ¹ (acres)		restoration / creation notes
		Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario		Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario		Restoration	Creation	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	Initial Urban Development Area Scenario	Maximum Urban Development Area Scenario	
Riparian woodland/scrub	2:1	30	35	60	70		205	205		1:1	–	30	35	20	20	50	55	
Wetlands and Ponds																		
Perennial wetlands ³	1:1	74	75	74	75	³	231	232	³	1:1	–	74	75	10	10	84	85	⁷
Seasonal wetlands	3:1	43	56	129	168	^{3,4}	172	172	^{3,4,5}	2:1	–	86	112	20	20	106	132	^{4,7}
Alkali wetland	3:1	28	31	84	93	⁴	168	168	⁴	2:1	–	56	62	5	5	61	67	⁴
Ponds	2:1	7	8	14	16		80	80		–	1:1	7	8	8	8	15	16	
Slough/channel	0.5:1	72	72	36	36		137	137		1:1 or riparian	–	72	72	0	0	72	72	⁹
Aquatic (open water)	1:1	12	12		12		123	123		–	0.5:1 (ponds)	6 (ponds)	6 (ponds)	0	0	6 (ponds)	6 (ponds)	⁹
Tota Aquatic Land Cover Types (acres)	–	266	289	397	470		1,117	1,117				331	370	63	63	394	433	
Perennial streams (miles)	2:1	0.3	0.4	0.6	0.8	⁶	18	184	^{6,7}	1:1	1:1 if restoration not feasible	0.3	0.4	0	0	0.3	0.4	^{7,10}
Intermittent streams (miles)	1:1	0.3	0.4	0.3	0.4	⁶	184	184	^{6,7}	1:1	1:1 if restoration not feasible	0.3	0.4	0	0	0.3	0.4	^{7,10}
Ephemeral streams (miles)	1:1	4	5	4	5		184	184	⁷	1:1	1:1 if restoration not feasible	4	5	0	0	4	5	^{7,10}

Notes:

¹ Actual impacts, preservation requirements and restoration/creation requirements will be based on field-delineated resources at impact sites and application of the required preservation ratios in this table.

² Many land cover types were underestimated in the mapping conducted for this HCP/NCCP, so these figures represent minimum acreages of what is available for preservation. See Chapter 3 for a discussion of the mapping limitations.

³ Undetermined wetlands could be seasonal wetlands or perennial wetlands (e.g., freshwater marsh). Seasonal wetlands will be mitigated at a preservation ratio of 3:1; perennial wetlands will be mitigated at a preservation ratio of 1:1. This table assumes 75% of undetermined wetlands are perennial wetlands and 25% are seasonal wetlands.

⁴ Seasonal and alkali wetland acreage was quantified as the minimum polygon encompassing clusters of seasonal pools or drainages (i.e., wetland complexes). Impacts and land acquisition requirements will be tracked by jurisdictional wetland boundary, so estimates in this table overstate the expected impacts to and preservation of these land cover types. Impact restrictions and preservation ratios apply only to wetted acres.

⁵ The actual amount of seasonal wetlands available for preservation in the inventory area is unknown because of a lack of field surveys. The allowable impact to seasonal wetlands by covered activities will be capped at the amount required to preserve seasonal wetlands at the required 3:1 ratio. For example, if only 30 acres are preserved, allowable impacts will be capped at 10 acres.

⁶ Maximum allowable impacts for perennial and intermittent streams could not be separately estimated. Cumulative impacts for these two categories were estimated at 0.6 miles for the Initial Urban Development Area and 0.8 for the Maximum Urban Development Area. For the purposes of this table, it is assumed that the impacts are evenly split between the two categories.

⁷ The approximate length of all streams of all types in the Acquisition Analysis Zone is 184 miles.

⁸ Undetermined wetlands are either seasonal wetlands or perennial wetlands. Mitigation of seasonal wetlands will be accomplished through restoration at 2:1. Mitigation of perennial wetlands will be accomplished through in-kind creation at 1:1. This table assumes 75% of the undetermined wetlands are perennial wetlands and 25% are seasonal wetlands.

⁹ Loss of slough/channel will be compensated by either restoring slough/channel at a 1:1 ratio or restoring riparian woodland/scrub at a 1:1 ratio (see text). These calculations assume all slough/channel impacts will be compensated through riparian woodland/scrub restoration because of the limited opportunities for slough/channel creation. Loss of open water will be compensated by creating ponds (see text).

¹⁰ Streams will be restored at a 1:1 ratio where feasible. Where stream restoration is not feasible, out-of-kind creation of seasonal wetlands or permanent wetlands will be required to replace some of the functions of the lost stream at a 1:1 ratio. See Conservation Measure 2.10 for more details.

Table 2: Stream Setback Minimum Requirements for Streams within the Urban Development Area

Stream Reach Type and Location ¹	Buffer Objective/ Function (from Figure 5-11)	Example Sites in Inventory Area	Minimum Setback (from top of bank measured in aerial perspective ²)	Conditions and Limitations on Impacts To Streams ³		Conditions and Limitations on Impacts Within Setbacks ⁴		Comments
				Linear Limitations on Impacts to Streams	Activities for Which Stream Impacts Will Be Authorized	Limitations on Area of Impacts Within Setback ⁵	Activities for Which Setback Impacts Will Be Authorized	
1 st and 2 nd order ⁶ ephemeral reaches in urban and agricultural areas	N/A	Multiple unnamed tributaries to intermittent and perennial reaches	Avoidance and minimization measures for drainages must be documented but no setback is required	No limitations	Any activities	No limitations	Any activities	These reaches are located in dense urban and intensive agricultural areas, and provide low habitat function for covered species. Avoidance and implementation of Conservation Measure 1.10 will minimize impacts to water quality and hydrologic functions.
Concrete-lined channels	Enhance water quality; retain restoration potential	Reaches of Kirker Creek	20 ft	No limitations	Any activities	No limitations	Any activities	These reaches are located in dense urban areas and provide low habitat function for covered species. A minimal buffer width will reduce sediment and nutrient inputs from surface flows, retain some potential for stream restoration, and provide for recreational opportunities.
1 st and 2 nd order ⁶ ephemeral reaches in natural areas	Erosion and nutrient control;	Multiple unnamed tributaries to intermittent and perennial reaches	25 ft	No limitations	Any activities	No limitations	No limitations, but avoidance and minimization must be documented.	Although ephemeral streams play a limited role in providing habitat to covered species, these systems represent the first point of entry for sediment and other contaminants into downstream reaches. Thus, unlike the stream types below, the primary objective of the setback for ephemeral streams is to filter out sediment and contaminants before

Stream Reach Type and Location ¹	Buffer Objective/ Function (from Figure 5-11)	Example Sites in Inventory Area	Minimum Setback (from top of bank measured in aerial perspective ²)	Conditions and Limitations on Impacts To Streams ³		Conditions and Limitations on Impacts Within Setbacks ⁴		Comments
				Linear Limitations on Impacts to Streams	Activities for Which Stream Impacts Will Be Authorized	Limitations on Area of Impacts Within Setback ⁵	Activities for Which Setback Impacts Will Be Authorized	
								they degrade downstream habitat.
Perennial, intermittent, or 3 rd or higher order ⁶ ephemeral streams in urban areas except Marsh Creek mainstem	Enhance water quality; retain restoration potential	Lower Willow Creek, Lower Kirker Creek, Lower Sand and Deer Creeks	50 ft	300 feet	Necessary bridges and outfalls	Up to 15% of setback area	Necessary bridges and outfalls, access and maintenance roads for flood control, c3 facilities, and trails	These reaches are located mostly in dense urban areas and provide low habitat function for covered species. However, potential may exist for restoration of riparian vegetation and minimal floodplain areas. In addition, a minimal buffer width will reduce sediment and nutrient inputs from surface flows and provide for recreational opportunities.
Perennial, intermittent, or 3 rd or higher order ⁶ ephemeral streams in agricultural or natural areas and Marsh Creek mainstem	Enhance water quality; retain restoration potential	See examples below ⁷	75 ft	300 feet	Necessary bridges and outfalls	Up to 15% of setback area	Necessary bridges and outfalls, access and maintenance roads for flood control, trails, and other necessary facilities approved by wetlands agencies	These reaches retain the greatest habitat value and potential for restoration within the Urban Limit Line. The buffer will filter sediment and other contaminants, maintain habitat for covered species, allow for restoration of riparian vegetation and some small floodplain areas, as well as providing recreation opportunities.

¹ Location parameters (e.g., “agricultural areas”, “natural areas”, etc.) describe the setting of the stream at the time of completing this HCP/NCCP and refer to the fee zones and urban landcover shown in Figure 9-1.

² Where native woody riparian vegetation is present, minimum setbacks must extend to the outer dripline of the riparian vegetation or the specified number of feet measured from top of bank, whichever is greatest. Riparian vegetation is defined broadly to include oaks and other woody species that function as riparian corridors. Setbacks must also meet minimum setback requirements of the applicable local land use agency. Contra Costa County has an ordinance regulating

impacts near unimproved earthen channels. This Ordinance requires a “structure setback line” that varies between approximately 30 feet and 50 feet from top of bank depending on the height of top of bank above the channel invert (County Code Title 9, Division 914-14.012).

³ Mitigation is required for all impacts to streams, as described in Chapter 5 of the HCP/NCCP. Restoration requirements are summarized in Tables 5-16, 5-17, and 9-5. Preservation requirements are summarized in Tables 5-5a and 5-5b and may be accomplished through payment of the development fee described in Section 9.3.1 or through provision of land in lieu of fees.

⁴ Impacts within setbacks must be mitigated through: a) payment of the development fee described in Section 9.3.1 over the entire property including the setback and the stream channel; and b) through payment of the riparian impact fee (see Table 9-5 of HCP/NCCP) for every acre of impact within the setback or through direct performance of riparian restoration at a 0.5 to 1 ratio on-site or off-site.

⁵ Restrictions will be measured as a percentage of the setback area excluding the area the of the stream channel.

⁶ Stream order refers to the numeric identification of the links within a stream network. This document follows the stream ordering system of Strahler (1964). In this system, a first order stream is a stream with an identifiable bed and bank, without any tributary streams. A second order stream is formed by the confluence of two first order streams. A third order stream is formed by the confluence of two second order streams, and so on. Addition of a lesser order stream does not change the stream order of the trunk stream.

⁷ Perennial streams in agricultural or natural areas within the Inventory Area consist of the following:

- a. Mount Diablo Creek, Russelman Creek, Peacock Creek upstream of the Oakhurst Country Club property, and tributaries to Mount Diablo Creek within Mount Diablo State Park;
- b. Kellogg Creek in the Foothills/Upper Valley and Delta geomorphic zones;
- c. Brushy Creek in the Delta and Lower Valley/Plain geomorphic zones;
- d. Indian, Rock, Sand Mound, Dutch, Piper, and Taylor Sloughs, and False River (does not include reaches in concrete channels); and
- e. Sand Creek and Oil Canyon Creek in the Montane geomorphic zone.

Pakenham-Walsh, Mary R SPK

From: Paul Campos [pcampos@biabayarea.org]
Sent: Thursday, February 10, 2011 3:24 PM
To: Pakenham-Walsh, Mary R SPK
Subject: Public Notice SPK-2001-00147

Dear Ms. Pakehnham-Walsh,

The Building Industry Association of the Bay Area (BIA) strongly supports the East Contra Costa County Habitat Conservancy's proposal to establish an ILF program in conjunction with the East Contra Costa County HCP/NCCP. BIA represents builders, developers, contractors, property owners, and others involved in the building industry throughout the SF Bay Area. BIA was heavily involved in the development of the ECC HCP/NCCP, spending years working closely with the resource agencies, local governments, and others to craft a successful regional HCP/NCCP. The aquatic features component of the HCP/NCCP was prepared expressly with the purpose of possible future integration of the Corps' 404 permitting program with the HCP/NCCP process. That integration is now being proposed, and it is vital to achieving the full potential of regional HCPs that the Corps approve the proposal.

In our view, one of the most important regulatory reforms that the federal resource agencies can undertake is to implement precisely what is being proposed here. The ILF program and associated RGP would benefit aquatic resources by allowing larger and more effective wetlands management and mitigation, and would provide much needed certainty to local governments and builder/developers in the HCP Plan Area. This proposal, if adopted and implemented, would demonstrate that the ESA and CWA can be integrated without compromising the desired resource protection outcomes of the statutes.

BIA supports the proposal and hopes that its approval will serve as model for future integration of the 404 permitting program with existing regional HCPs and future HCPs throughout California. BIA strongly commends the Sacramento District for showing real leadership on this very important issue.

Respectfully submitted,

Paul Campos

Sr. Vice-President, Governmental Affairs General Counsel pcampos@biabayarea.org 925.951.6840
(office main)
925.951.6844 (office direct)
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California Native Plant Society

East Bay Chapter

P O Box 5597, Elmwood Station. Berkeley, CA 94705

February 14, 2011

Ms. Mary Pakenham-Walsh, Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Re: Public Notice SPK-2001-00147, In-Lieu Program proposed by the East Contra Costa County Habitat Conservancy

Dear Ms. Pakenham-Walsh:

I am writing as the Chair of the Conservation Committee of the East Bay Chapter of the California Native Plant Society (EBCNPS) regarding the East Contra Costa County Habitat Conservancy's proposal to the U.S. Army Corps of Engineers to establish an In-Lieu Fee program. EBCNPS has been a participating member organization since the inception of the ECC-HCP planning process, and we currently hold a seat on the Public Advisory Commission of the conservancy.

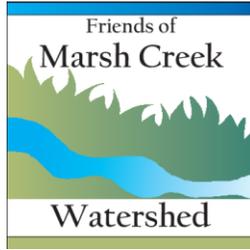
We have seen the draft proposal for the In-Lieu Fee program, and we enthusiastically support it and encourage the USACE to approve it, since it would help provide greater, more localized and more robust mitigation for impacts to wetlands and waters than would occur without the program. We believe that establishing the In-Lieu Fee program is an excellent way to create more comprehensive conservation of wetlands since the ECC-HCP is a regional, scientifically sound plan that is fully accountable to regulators and to the public.

Thank you for the opportunity to comment.

Best regards,
Laura Baker
Conservation Committee Chair
East Bay Chapter of the California Native Plant Society



Dedicated to the preservation of California native flora



February 14, 2011

Ms. Mary Pakenham-Walsh, Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Re: Public Notice SPK-2001-00147, In-Lieu Fee Program proposed by the East Contra Costa County
Habitat Conservancy

Dear Ms. Pakenham-Walsh:

I am writing on behalf of Friends of the Marsh Creek Watershed (FOMCW), a not-for-profit community organization formed in 2009 whose mission is to protect, conserve, and restore Marsh Creek and its tributaries, and to inspire appreciation and conservation of the Marsh Creek Watershed. Marsh Creek and its watershed form the heart of the preservation and restoration efforts underway for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan and would also be a focus for the proposed In Lieu Fee Program that is the subject of your request for comment.

We urge your favorable consideration of the proposed In Lieu Fee Program because the Program would:

- Help ensure that impacts permitted in the Marsh Creek Watershed and neighboring watersheds are balanced by actions to preserve and restore the creek, wetlands and other resources in the watershed;
- Better coordinate wetland regulation with species regulation;
- Build on the successful partnership of local, state and federal agencies that has been assembled as part of the HCP to ensure that wetland mitigation results in the best possible preservation and restoration of creeks and wetlands in the East County area.

Thank you very much for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Diane Burgis". The signature is fluid and cursive.

Diane Burgis
Executive Director

2063 Main St., #311, Oakley, CA 94561
Fomcw.org



**MILLER STARR
REGALIA**

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February 2, 2011

VIA EMAIL MARY.R.PAKENHAM-WALSH@USACE.ARMY.MIL

Mary R. Pakenham-Walsh
Corps Project Manager
U.S. Army Corps of Engineers
Regulatory Division
California Delta Branch
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Re: East Contra Costa Habitat Conservation Plan (HCP); Potential Integration
of Wetlands Permitting

Dear Ms. Pakenham-Walsh:

Our firm frequently represents applicants who must navigate the often complex, costly, and confusing federal regulatory regime covering resource protection, including endangered species and wetlands. We believe the proposed in-lieu fee program would be a significant improvement to the process and would greatly enhance the effectiveness of regional HCPs and the Corps' own 404 permitting process. We strongly support the proposal.

Very truly yours,

MILLER STARR REGALIA

Nadia L. Costa

Nadia L. Costa

NLC:jj



save MOUNT DIABLO

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February 14, 2011

Ms. Mary Pakenham-Walsh, Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Re: Public Notice SPK-2001-00147, In-Lieu Fee Program proposed by the East Contra Costa County Habitat Conservancy

Dear Ms. Pakenham-Walsh:

Thank you for the opportunity to comment on the evaluation by the U.S. Army Corps of Engineers, Sacramento District (Corps) of a proposal to establish an In-Lieu Fee program that would operate consistent with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP).

Save Mount Diablo is a non profit environmental organization that has worked for almost 40 years to protect land in and around Mount Diablo and along the Diablo Range in southeastern Contra Costa County and the northeast portions of Alameda County. We have been involved of direct purchase of land for addition to Mount Diablo State Park and other open space parks in the area. We have also been very active in monitoring and commenting land use projects in our area of interest, frequently advocating for the best possible mitigation to from the perspective of habitat protection as well as public benefit.

Save Mount Diablo was an active participant in the development of the HCP/NCCP and joined with other conservation, business, civic and agricultural organizations to support approval of the HCP/NCCP in 2007. The HCP/NCCP provides a comprehensive framework for conserving habitat for

rare, threatened and endangered species and includes a series of strong and comprehensive measures to preserve and restore streams and wetlands. Completion and approval of the In-Lieu Fee program would help ensure consistency between the implementation of HCP/NCCP and Corps implementation of the federal Clean Water Act.

Save Mount Diablo supports the proposed In-Lieu Program described in the draft prospectus. We prefer a coordinated, centrally-implemented and monitored mitigation program that would perform preservation and restoration in the watersheds affected by the impact. The current project-by-project approach does not provide these benefits. The regional conservation strategy underlying the HCP/NCCP and the proposed In-lieu Fee Program not only provides a comprehensive road map for large-scale conservation, it provides accountability and science-driven protocols to ensure protection and enhancement of species, wetlands and the ecological and hydrological processes that support them.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Seth Adams", with a long horizontal flourish extending to the right.

Seth Adams
Director of Land Programs



Mary Pakenham-Walsh, Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922
VIA email and US Mail
Mary.R.Pakenham-Walsh@usace.army.mil

February 14, 2011

RE: Public Notice of Proposed In-Lieu Fee Program
Action ID: SPK-2001-00147

Dear Ms. Pakenham:

I am writing in support of the above referenced In-Lieu Fee Program coordinated with the East Contra Costa HCP/NCCP.

By working in conjunction with the ECC HCP/NCCP, the ILF Program would result in a more ecologically robust preserve for the HCP/NCCP, would result in a better ability to coordinate the overall local enhancement of waters of the US, and finally would provide a more economic and streamlined approach to local enhancement, conservation, preservation and management efforts. These factors all point toward an alternative that is environmentally superior.

Sincerely,

James A. Gwerder, Broker
SOUZA REALTY & DEVELOPMENT

enc.

cc: John Kopchik, Executive Director
East Contra Costa Habitat Conservancy
105 EAST TENTH STREET, TRACY, CA 95376
PHONE: (209) 835-8330 FAX: (209) 832-8355
www.souzard.com

Pakenham-Walsh, Mary R SPK

From: John Lowry [JohnL@burbankhousing.org]
Sent: Tuesday, February 08, 2011 6:08 PM
To: Pakenham-Walsh, Mary R SPK
Subject: Wetlands Permitting

Dear Ms. Pakenham-Walsh:

I am writing on behalf of Burbank Housing in support of Habitat Conservation Plans that would provide a more systematic and effective approach to the protection of wetland and stream resources. We also support the proposal to create a wetland in lieu fee program. This approach could provide for improved mitigation along with a simpler and efficient compliance process.

Burbank Housing is a nonprofit housing organization that has developed nearly 3500 low income affordable housing units, mostly in Sonoma County. Wetland mitigation has been an issue for us over the years, and it seems that the in lieu fee approach would add some greater reliability to the process.

Thank you for your consideration of our views.

Sincerely,

John Lowry

Executive Director, Burbank Housing Development Corporation



*EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY*

Formed by:

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

March 16, 2011

Ms. Mary Pakenham-Walsh, Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Re: Public Notice SPK-2001-00147, Regional General Permit for Minimal Impact Activities within the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan Permit Area

Dear Ms. Pakenham-Walsh:

Thank you for the opportunity to comment on the U.S. Army Corps of Engineers, Sacramento District (Corps) proposal to issue a Regional General Permit (RGP) associated with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP).

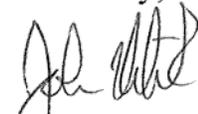
The East Contra Costa County Habitat Conservancy is a joint exercise of powers authority formed by the Cities of Brentwood, Clayton, Oakley and Pittsburg and Contra Costa County to implement the HCP/NCCP. The HCP/NCCP was specifically intended to address not only conservation of endangered species but also conservation of wetlands and other waters. The coalition of agencies that developed the HCP/NCCP worked closely with the Corps and other wetland regulatory agencies to incorporate their guidance and input to help ensure that the avoidance, minimization and mitigation measures in the HCP/NCCP would address the requirements of the Clean Water Act and other regulations. Following adoption of the HCP/NCCP, the Conservancy has diligently pursued implementation of conservation measures, including aggressive land acquisition and wetland restoration programs that have conserved approximately 7,500 acres (including two transactions about to close) and have constructed four wetland restoration projects. Preservation and restoration under the HCP/NCCP are significantly ahead of the Plan's requirements to stay ahead of impacts. Approximately 100 times more land has been acquired than has been approved for permanent impacts and approximately 10 times more wetlands have been designed and constructed under the restoration program than have been impacted under the HCP/NCCP.

The Conservancy strongly supports and greatly appreciates the Corps efforts to develop an RGP to complement the HCP/NCCP. The Conservancy also strongly appreciates and supports the Corps comprehensive efforts to engage with other wetland regulatory agencies such as the State Water Resources Control Board to

coordinate preparation and potential implementation of the RGP with the regulatory responsibilities of these other agencies. In addition, the Conservancy supports covering the entirety of the HCP/NCCP Plan Area in one RGP. Implementation of the RGP should be managed in a centralized, coordinated manner by one Corps District. As the Sacramento District contains the majority of the RGP area and the Sacramento District has taken the lead in developing the RGP, the Sacramento District would be the appropriate lead for its implementation.

Finalization and approval of the RGP, finalization and approval of the Conservancy's proposed In Lieu Fee Program and establishment of coordinated regional approaches to complying with other wetland regulations would be a major advance in regulatory policy and practice, better protecting species and wetland resources and better serving the public interest through more efficient, coordinated and effective regulation. Thank you for your leadership and hard work on this important initiative.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Kopchik', written over a circular stamp or mark.

John Kopchik
Executive Director