



*EAST CONTRA  
COSTA COUNTY  
HABITAT  
CONSERVANCY*

*City of Brentwood*

*City of Clayton*

*City of Oakley*

*City of Pittsburg*

*Contra Costa County*

# **GOVERNING BOARD**

## ***REGULAR MEETING***

Monday, August 24, 2015  
2:00 p.m.

City of Oakley  
Oakley City Hall, Council Chambers  
3231 Main Street  
Oakley, CA 94561

### **AGENDA**

**2:00 p.m. Convene meeting.**

#### **Adjourn to Closed Session**

##### **CS1) Conference with Legal Counsel – Existing Litigation (Gov. Code, § 54956.9(d)(1))**

Discovery Builders, Inc. v. City of Brentwood, California; City Council of the City of Brentwood, et al.; Contra Costa County Superior Court, Case No. N13-1781

##### **CS2) Conference with Real Property Negotiators**

Property: 078-110-005

Agency Negotiators: John Kopchik, Abigail Fateman, and Joanne Chiu

Negotiating Parties: East Contra Costa County Habitat Conservancy and Save Mount Diablo

Under Negotiation: Price and payment terms

#### **Reconvene Open Session. Will not start before 2:30 p.m.**

- 1) Report on any actions taken in Closed Session.**
- 2) Introductions.**
- 3) Public Comment on items that are not on the agenda** (public comment on items on the agenda will be taken with each agenda item).
- 4) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board meeting of June 22, 2015.**
- 5) Consider DETERMINING process for filling the vacancy of an organization in the “Private Landowners/Agriculturalists” category on the Public Advisory Committee (PAC).**

- 6) Consider **APPROVING** Resolution No: 2015-01 related to Conservancy grant applications which **AUTHORIZES** Conservancy staff to:
  - a) **Submit grant applications to the California Department of Fish and Wildlife (CDFW) for the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program (up to \$140,000); and**
  - b) **Enter into a grant agreement to accept grant funds if approved by CDFW.**
- 7) Consider **ACCEPTING** the update on Proposition 1 funding opportunities and consider **AUTHORIZING** Conservancy staff to submit grant applications to the various agencies that have been allocated Proposition 1 funds and are now soliciting proposals.
- 8) Consider **ACCEPTING** the update on the award of \$2 million from the Federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for land acquisition projects consistent with the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (“HCP/NCCP”).
- 9) Consider the following items related to the concept of a Marsh Creek Corridor Multi-Use Trail:
  - a) **ACCEPT** updated one-page summary of the Marsh Creek Corridor Multi-Use Trail Concept outreach document
  - b) **ADOPT** policy position on the concept of a Marsh Creek Corridor Multi-Use Trail (along Marsh Creek Road)
  - c) **APPROVE** Resolution No. 2005-02 related to the Conservancy’s support of the concept of a Marsh Creek Corridor Multi-Use Trail
- 10) Consider **ACCEPTING** the update on the Three Creeks Restoration Project on Marsh Creek in Brentwood and **APPROVING** Conservancy staff’s continued engagement on the project.
- 11) Consider **AUTHORIZING** contribution of \$3,000 toward funding a lobbyist to represent the California Habitat Planning Coalition’s and the Conservancy’s 2015 and 2016 State Legislative Platform.
- 12) Consider **AUTHORIZING** the Executive Director to finalize and sign a letter to the U.S. Army Corps of Engineers committing to maintaining certain of the Conservancy’s previously restored wetlands in order to facilitate continued and immediate use of the Regional General Permit by project proponents.
- 13) Consider **AUTHORIZING** staff to execute a contract with the East Bay Regional Park District for a new research effort to better understand the impact of wind turbines on bat populations within the Preserve System for \$110,000 for the term from September 1, 2015 to June 30, 2017.
- 14) **Adjourn. The next Governing Board meeting is October 26, 2015.**

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If you have questions about this agenda or desire additional meeting materials, you may contact Maureen Parkes of the Contra Costa County Department of Conservation and Development at 925-674-7203.

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

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Governing Board Meeting Record for June 22, 2015

**RECOMMENDATION**

**APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of June 22, 2015.**

**DISCUSSION**

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes  
ACTION OF BOARD ON: August 24, 2015 APPROVED AS RECOMMENDED: \_\_\_\_\_  
OTHER: \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

\_\_\_ UNANIMOUS

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

I HEREBY 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

\_\_\_\_\_  
*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY*

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

## **Draft Meeting Record**

East Contra Costa County Habitat Conservancy

Monday, June 22, 2015

City of Brentwood

The Board convened the meeting at 2:00 p.m. and announced adjournment to Closed Session.

**1) Report on any actions taken in Closed Session.** There were no actions to report.

**2) Introductions.**

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

Randy Pope (Chair)	City Council, City of Oakley
Joel Bryant	City Council, City of Brentwood
Salvatore Evola	City Council, City of Pittsburg
Mary Piepho	Contra Costa County Board of Supervisors

***Other attendees (who signed the sign-in sheet):***

Seth Adams	Save Mount Diablo
Tomi Riley	Office of Supervisor Piepho, Contra Costa County

***Conservancy Staff and consultants in attendance were:***

Joanne Chiu	Conservancy Staff
Abigail Fateman	Conservancy Staff
John Kopchik	Conservancy Staff
Allie Van Dorn	Conservancy Staff
Chris Beale	Conservancy Counsel (closed session only)
Bill Abbott	Conservancy Counsel (closed session only)

**3) Public Comment on items that are not on the agenda** (public comment on items on the agenda will be taken with each agenda item). There were no public comments.

**4) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of April 27, 2015.**

The meeting record was approved. (4-0: Bryant, Evola, Piepho, Pope)

**5) Consider ACCEPTING the revised audited financial statements and related documents for the Year Ending December 31, 2014.** (Abigail Fateman) This item was considered earlier in the meeting than indicated on the agenda. Mr. Cody Smith from Maze & Associates presented on the revised audited financial statements and related documents. Mr. Smith answered questions regarding the audit findings and indicated that Conservancy staff were easy to work with and very helpful throughout the audit process. The item was approved as recommended. (4-0: Bryant, Evola, Piepho, Pope)

- 6) **Consider APPOINTING one Conservancy Board Member as the primary representative and one as the alternate to the East County Water Management Association Governing Board.** (Abigail Fateman) Ms. Fateman presented on this item. The item was approved with Randy Pope to serve as the primary representative and Joel Bryant to serve as the alternate representative. (4-0: Bryant, Evola, Piepho, Pope)
- 7) **Consider the following items related to Conservancy finances:**
  - a) **ACCEPT the mid-year status report on finances and the 2015 Conservancy Budget.**
  - b) **AUTHORIZE staff to execute a cost-sharing agreement with the East Bay Regional Park District for \$200,000 for land acquisition through December 2016.**
  - c) **AUTHORIZE staff to execute a second amendment to the existing contract (#2012-10, Amendment 1 for golden eagle research with the East Bay Regional Park District to extend the term from December 31, 2015 to June 30, 2016. (Abigail Fateman)**

Ms. Fateman presented items 7a, 7b, and 7c. All items were approved as recommended. (4-0: Bryant, Evola, Piepho, Pope)

- 8) **Consider AUTHORIZING staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”), one state grant agreement with the California Wildlife Conservation Board (“WCB”) for state funds, and one federal subgrant agreement with WCB for federal funds for acquisition of the Nunn Property (APNs 020-171-001 and 020-172-004); 8831 Byron Highway, Contra Costa County, CA). (Joanne Chiu)** Ms. Chiu presented on the Nunn Property acquisition. Supervisor Piepho asked for confirmation whether there are water rights on the property. Ms. Chiu stated that staff determined there are pre-1914 and riparian water rights on the property. The item was approved as recommended. (4-0: Bryant, Evola, Piepho, Pope)
- 9) **Consider ACCEPTING update on concept of a Marsh Creek Trail (along Marsh Creek Road) and DIRECTING staff to report back at the next Conservancy Board meeting with a policy proposal on this matter.** Supervisor Piepho presented the item and requested the Governing Board to consider this item. Supervisor Piepho provided feedback on the informational sheet that was attached to the item. She directed staff to provide more inclusive language referencing the cities that are along the trail, provide a more conservative estimate for the length of the trail, and revise the language to allow for alignment flexibility. Additional comments suggested that Conservancy member agencies may consider including the Marsh Creek Trail as a project listed in the CCTA Countywide reauthorization of the \$.50 sales tax. Chairman Pope suggested that staff develop a draft resolution that the Conservancy, the County and cities and other agencies may use to indicate support for the trail concept. Board Member Bryant and Chairman Pope expressed their support and concurrence with these suggestions. The item was approved as recommended, with suggested edits to the informational sheet; and direction for staff to draft a resolution and language to incorporate into the Conservancy’s legislative platform. (4-0: Bryant, Evola, Piepho, Pope)

- 10) **Adjourn. The next Governing Board meeting is August 24, 2015.**

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT:** 2015 Public Advisory Committee

**RECOMMENDATION**

**DETERMINE process for filling the vacancy of an organization in the “Private Landowners/Agriculturalists” category on the Public Advisory Committee (PAC).**

**DISCUSSION**

Pursuant to requirements in the HCP/NCCP, the Board initiated the PAC in February 2008 and established a quarterly meeting schedule. The PAC reports to the Board and provides input to the Board and staff on many aspects of Plan implementation. The PAC is responsible for reviewing and commenting on the general implementation processes of the HCP/NCCP including the expenditures of funds for conservation measures, the general process for issuing take coverage to covered activities, the operation of preserves and adaptive management, and the adherence to plan commitments. The PAC is to operate by consensus, but when consensus cannot be reached, the various positions will be reported to the Board. The Board action initiating the PAC requires the composition of the PAC to be reviewed annually. This review occurs in December of each year.

At the PAC’s August 6, 2015 meeting, Jim Gwerder, who represents the Citizens Land Alliance (CLA), announced that the organization was in extended hiatus and the Conservancy should select a different organization to fill the “Landowner/Agriculturalist” seat on the PAC.

CONTINUED ON ATTACHMENT: <u>Yes</u>		
ACTION OF BOARD ON: <u>August 24, 2015</u>	APPROVED AS RECOMMENDED: _____	
OTHER: _____		
<b><u>VOTE OF BOARD MEMBERS</u></b>		
<input type="checkbox"/> UNANIMOUS		
AYES: _____		
NOES: _____		
ABSENT: _____		
ABSTAIN: _____		
	I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.	
	ATTESTED	
	_____ <i>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>	
	BY: _____, DEPUTY	

The last time the PAC had a vacancy was in 2012. The process the Board followed for recruiting a new member included the following steps:

- Invite past applicants/organizations who were not originally selected to serve in the “Landowners/Agriculturalists” category to re-apply for the open position;
- Use the Conservancy’s suitable email distribution lists for outreach to the public and other local organizations to solicit additional applications.
- The Governing Board Chair conducted brief interviews with the candidates and the full Board voted on the appointment to the position.

Consideration and determination of the process by which staff should proceed in recruiting and selecting a new organization to become a PAC member is requested.

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The current composition of the Public Advisory Committee includes one representative from each organization listed below, except where a specific individual is named:

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

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

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

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

Private landowners and/or agriculturalists or their representatives

- Agricultural/Natural Resources Trust of Contra Costa County
- Contra Costa County Farm Bureau
- Vacant

People representing suburban and rural residents of the Plan area

- Dick Vrmeer (Resident of Brentwood)
- Kelly Davidson (Resident of Clayton)
- Sharon L. Osteen (Resident of Clayton)

Staff members from interested public agencies and members of the public are welcome to attend and participate in committee meetings. Despite formal membership, members of the public are welcome to participate in discussions and be part of committee recommendations.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT:** **Conservancy Grant Applications**

**RECOMMENDATION**

**APPROVE Resolution No: 2015-01 related to Conservancy grant applications which AUTHORIZES Conservancy staff to:**

- a) **Submit grant applications to the California Department of Fish and Wildlife (CDFW) for the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program (up to \$140,000); and**
- b) **Enter into a grant agreement to accept grant funds if approved by CDFW.**

**DISCUSSION**

The California Department of Fish and Wildlife (CDFW) administers grants from CDFW's Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) Program. CDFW offers these grants to eligible applicants on an annual basis for high priority tasks urgently needed to implement approved NCCP's. The Conservancy has applied for and received LAG grants several times in the past. CDFW solicited concept proposals in late 2013. The Conservancy submitted initial funding requests totaling \$180,000 for two urgent implementation projects including: 1) studying invasive weed control methods and their impact on rare plant populations and 2) mapping of wetland and rare plant populations on new acquisitions.

To enter into an agreement to receive grant funding, CDFW requires an approved resolution from the Conservancy's Governing Board. The procedures established by CDFW require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the CDFW to implement the critical activities related to the NCCP Program.

**Attachment:** Resolution 2015-01

CONTINUED ON ATTACHMENT: Yes  
ACTION OF BOARD ON: August 24, 2015 APPROVED AS RECOMMENDED: \_\_\_\_\_  
OTHER: \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

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

I HEREBY 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 \_\_\_\_\_  
*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY*

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

Resolution No: 2015-01

RESOLUTION OF THE EAST CONTRA COSTA COUNTY HABITAT  
CONSERVANCY AUTHORIZING THE APPLICATION AND ACCEPTANCE OF  
GRANT FUNDS FOR URGENT NATURAL COMMUNITY CONSERVATION  
PLAN IMPLEMENTATION TASKS IN EASTERN CONTRA COSTA COUNTY

WHEREAS, certain local assistance grant funds are made available annually on a competitive basis by the California Department of Fish and Wildlife for Natural Community Conservation Planning (NCCP) Program urgent implementation tasks; and

WHEREAS, the grants are awarded pursuant to guidelines established by the California Department of Fish and Wildlife for determination of project eligibility for funds; and

WHEREAS, said procedures established by the California Department of Fish and Wildlife require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the California Department of Fish and Wildlife to implement urgent activities related to the NCCP Program.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy approves the filing of an application for local assistance for the above projects in an amount up to \$140,000.

IT IS FURTHER RESOLVED that the East Contra Costa County Habitat Conservancy appoints the Executive Director as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved by the following vote on August 24, 2015.

Ayes:

Noes:

Abstain:

Absent:

Attest: \_\_\_\_\_  
Abigail Fateman, Executive Director

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT:** Conservancy Grant Applications – Proposition 1 Grant Funding

**RECOMMENDATION**

**ACCEPT the update on Proposition 1 funding opportunities AUTHORIZE Conservancy staff to submit grant applications to the various state agencies that have been allocated Proposition 1 funds and are now soliciting proposals.**

**DISCUSSION**

**Background:**

The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), which California voters passed in November 2014, provides funding to implement the three broad objectives of the California Water Action Plan: more reliable water supplies, the restoration of important species and habitat, and a more resilient, sustainably managed water resources system (e.g., water supply, water quality, flood protection, environment) that can better withstand inevitable and unforeseen pressures in the coming decades.

The purposes of Proposition 1 include generating funding to address water quality, water supply and watershed protection and restoration. Proposition 1 funds have been appropriated to a number of state agencies to fund a variety of projects. These state agencies administering Proposition 1 funding share related objectives but have different funding and project priorities. The Coastal Conservancy will administer grants related to multi-benefit ecosystem and watershed protection and restoration projects, the California Department of Fish and Wildlife will administer grants for coastal wetland and watershed restoration, the Wildlife Conservation Board will administer grants to projects that enhance stream flows, and the Sacramento-San Joaquin Delta Conservancy will administer grants for habitat enhancements that maximize voluntary landowner participation in projects that provide measurable and long-lasting habitat or species improvements in the Delta.

CONTINUED ON ATTACHMENT: Yes  
 ACTION OF BOARD ON: August 24, 2015  
 OTHER: \_\_\_\_\_

APPROVED AS RECOMMENDED: \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

\_\_\_ UNANIMOUS

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

I HEREBY 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 \_\_\_\_\_  
*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
 HABITAT CONSERVANCY*

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

The Proposition 1 solicitation schedules vary depending on the state agency. The Conservancy may be eligible to apply for Proposition 1 funding for the Conservancy's Preserve System land acquisitions and restoration opportunities. The Conservancy seeks Board approval to pursue these funding opportunities as they arise.

Should the Conservancy be awarded Proposition 1 grant funds through these state agencies, the Conservancy will need to enter into agreements with the respective state agency to receive the grant funds. Conservancy staff would at that time seek Board approval to enter into any grant agreements with the state agencies who are distributing Proposition 1 grant funding.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT:** Conservancy Grants Awarded

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**RECOMMENDATION**

**ACCEPT the update on the award of \$2 million from the Federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for land acquisition projects consistent with the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (“HCP/NCCP”).**

**DISCUSSION**

The U.S. Fish and Wildlife Service (USFWS) announced on August 13, 2015 the FY2015 grant awards from the Cooperative Endangered Species Conservation Fund (Section 6 of the Endangered Species Act) Grant Program. These grants support conservation planning and acquisition of vital habitat for threatened and endangered species across the nation. The East Contra Costa County Habitat Conservancy was awarded \$2 million for land acquisition consistent with the HCP/NCCP.

**Background:** Each year, USFWS solicits proposals from the states for Section 6 grants. The California Department of Fish and Wildlife (CDFW), on behalf of the State of California, solicits draft proposals from local agencies implementing HCPs. CDFW reviews the draft proposals and determines which proposals to adopt as their own for submission to USFWS. For the last ten years, the Conservancy has submitted draft proposals to CDFW. CDFW has adopted these proposals and submitted them to USFWS, and USFWS has approved the requests in whole or in part. The nine grant awards to the Conservancy to date total approximately \$37.5 million.

CONTINUED ON ATTACHMENT: Yes  
 ACTION OF BOARD ON: August 24, 2015 APPROVED AS RECOMMENDED: \_\_\_\_\_  
 OTHER: \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

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

I HEREBY 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 \_\_\_\_\_  
*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
 HABITAT CONSERVANCY*

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

For FY2015, Conservancy staff submitted a grant proposal for \$2 million (the maximum award allowed for FY2015). Six HCPs in California received HCP land acquisition funding (\$12 million total, including the \$2 million for the East Contra Costa County HCP/NCCP). Though previous awards to the East Contra Costa County HCP/NCCP have been larger, \$2 million is nearly 10% of the land acquisition funds available nationwide and is a sizable grant that contributes to the successful implementation the HCP/NCCP.

Available funding from this grant source has become increasingly competitive. As more Plans are approved, there are more applicants competing nationally. Additionally, the available funding from the Land and Water Conservation Fund has been significantly reduced. In FY2015, \$50.1 million was appropriated for the Section 6 program, which was a significant decrease from the \$85 million appropriated in FY2010. In 2015, the USFWS awarded \$20.3 million of the \$50.1 million allocated to the Section 6 program to the HCP land acquisition component.

The Legislative Platform approved by the Conservancy Board supports advocating for increased Section 6 funding. The Conservancy participates in a coalition of HCPs in California that works to maintain and grow federal funding levels for HCPs. The outlook for FY2016 is not clear at this time.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT:** Marsh Creek Corridor Multi-Use Trail

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**RECOMMENDATION**

Consider the following items related to the concept of a Marsh Creek Corridor Multi-Use Trail:

- a) **ACCEPT updated one-page summary of the Marsh Creek Corridor Multi-Use Trail Concept outreach document**
- b) **ADOPT policy position on the concept of a Marsh Creek Corridor Multi-Use Trail (along Marsh Creek Road)**
- c) **APPOVE Resolution No. 2005-02 related to the Conservancy's support of the concept of a Marsh Creek Corridor Multi-Use Trail**

**BACKGROUND**

The Conservancy Board considered an item at its June 22<sup>nd</sup> meeting regarding the concept of a Marsh Creek Corridor Multi-Use Trail. The Board supported the concept and directed staff to return with three items for consideration. These items are listed above as items a, b and c and also discussed in more detail below. This item was also discussed by the Conservancy's Public Advisory Committee (PAC) at their August 6<sup>th</sup> meeting as part of a general update on Board activities. PAC members were intrigued by the concept and had a brief discussion exploring how the Trail would affect Conservancy activities, adjacent landowners, and recreational opportunities.

**Item (a):** The one-page summary of the Marsh Creek Corridor Multi-Use Trail outreach material was updated and is included for the Board's acceptance. Edits provide more inclusive language regarding the cities that are along the trail alignment, provide for a more flexible trail alignment as well as has an added section regarding possible funding mechanisms. See Attachment 9a.

**Item (b):** The Conservancy's adopted 2015 Legislative Platform addresses 10 specific policy statements pertaining to issues affecting the ongoing progress of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan and the utility of the Plan for local agency planning needs.

The Board directed staff to draft an 11<sup>th</sup> policy statement to be added to the Legislative Platform regarding support for the concept of a Marsh Creek Corridor Multi-Use Trail. Staff has provided the following draft text related to Marsh Creek Corridor Multi-Use Trail concept.

**Item 11:** *Advocate* for support and funding for the Marsh Creek Corridor Multi-Use Trail, including study and potential implementation, in local, state, and federal transportation, recreation, park, and open space funding efforts.

**Item (c):** The Board directed staff to prepare a Resolution in support of the Marsh Creek Corridor Multi-Use Trail Concept for use by the Conservancy and partner agencies. A resolution is attached for the Board's consideration. See attachment 9b.

**ATTACHMENTS:**

- 9a: Marsh Creek Corridor Multi-Use Trail Information sheet
- 9b: Marsh Creek Corridor Multi-Use Trail Concept Resolution 2015-02

# MARSH CREEK CORRIDOR MULTI-USE TRAIL

## CONCEPT FOR EXPANDED CONNECTIVITY: DELTA TO DIABLO



**Project Description:** Develop an approximately 15-mile long multi-use path along the Marsh Creek Corridor between the City of Clayton and the City of Brentwood. Once this path and adjacent paths are completed, there will be one continuous non-motorized trail that spans from Downtown Concord to Mount Diablo and ultimately continues to the shoreline of the Delta in Oakley.

**Background:** Marsh Creek Road is a major thoroughfare that connects Central Contra Costa County and East Contra Costa County. It is the gateway to 110,000 acres of open space and recreational areas managed by the East Bay Regional Park District, Contra Costa Water District, State Parks and other local jurisdictions. A significant number of bicycle trips take place on Marsh Creek Road, in spite of the lack of a bicycle path or designated lane. Marsh Creek Road within Clayton has an existing Class II bicycle lane, which connects to Clayton's extensive trail network. In East Contra Costa County, the Marsh Creek Trail currently runs from the Big Break Regional Shoreline in Oakley to the southern city limits of the City of Brentwood. The East Bay Regional Park District plans to extend the Marsh Creek Trail through the City of Brentwood to the Round Valley Regional Preserve. After that section is completed, a gap in the multi-use trail would still exist between Round Valley Regional Preserve and the City of Clayton.

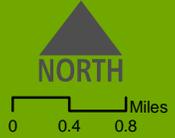
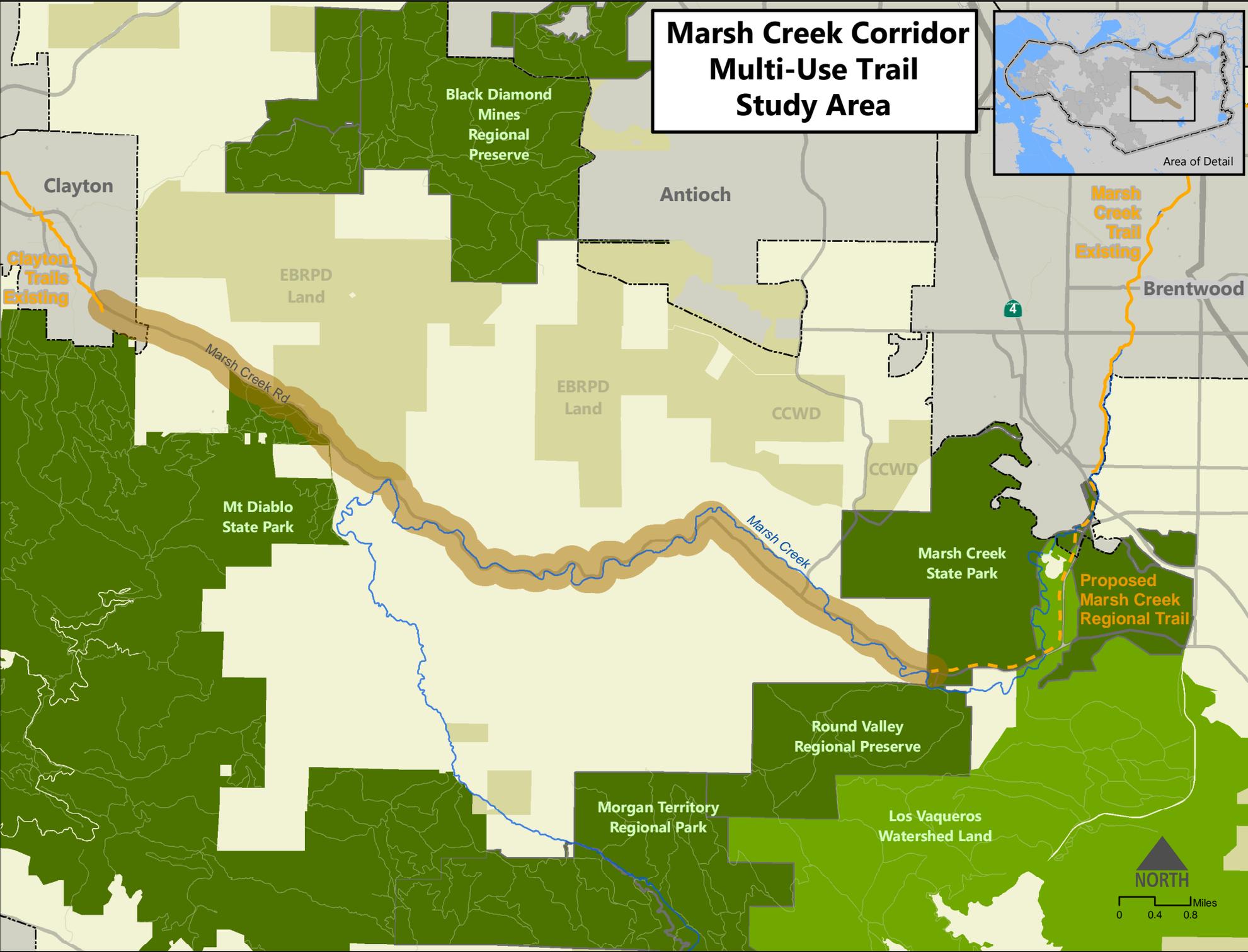
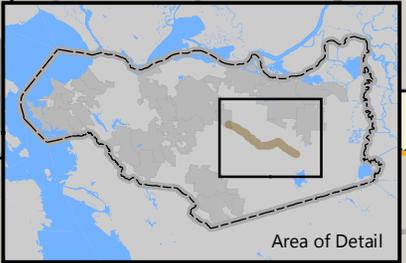
**Benefits:** The completed multi-use path will create a new major non-motorized east-west thoroughfare for expanded commuting and recreational opportunities. It will provide access to Downtown Clayton, Diablo View Middle School, Mount Diablo State Park, Round Valley Regional Preserve, and the existing Marsh Creek Trail. Once this path and adjacent paths are completed, there will be one continuous non-motorized trail from Downtown Concord to the Delta shoreline in Oakley. Various trail alignment options are available which allow for flexible design opportunities to follow the creek, the road or separate the trail entirely to follow more user friendly routes. Construction of the trail could be performed in conjunction with restoration of Marsh Creek, as anticipated in the East Contra Costa County HCP/NCCP, and be constructed in a sensitive manner that reflects the scenic and natural resources of the area.

**Policies:** Both the County's General Plan and Contra Costa Transportation Authority's Countywide Bicycle and Pedestrian Plan call for bicycle facilities along Marsh Creek Road. The County's adopted precise alignment for Marsh Creek Road in this area has sufficient right-of-way (ROW) for expansion.

**Funding Opportunities:** A number federal, state and local funding opportunities exist to support the planning, additional ROW acquisition and construction of the Marsh Creek Trail. Local agencies in Contra Costa County have an additional opportunity to generate secure local funding by including the Marsh Creek Trail as a project in the upcoming proposed augmentation of the county-wide transportation sales tax.

**Cost:** TBD

# Marsh Creek Corridor Multi-Use Trail Study Area



Resolution No: 2015-02

RESOLUTION OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
SUPPORTING THE CONCEPT OF A MARSH CREEK CORRIDOR MULTI-USE TRAIL  
THAT CONNECTS THE DELTA TO MOUNT DIABLO AND NEIGHBORING  
COMMUNITIES

WHEREAS, Marsh Creek Road is a major thoroughfare that connects Central Contra Costa County and East Contra Costa County and is the gateway to 110,000 acres of open space and recreational areas managed by the East Bay Regional Park District, Contra Costa Water District, State Parks and other local jurisdictions; and

WHEREAS, a significant number of bicycle trips take place on Marsh Creek Road, in spite of the lack of a bicycle path or a dedicated lane; and

WHEREAS, Marsh Creek Road within Clayton has an existing Class II bicycle lane, which connects to Clayton's extensive trail network into Concord and Mount Diablo State Park; and

WHEREAS, in East Contra Costa County, the Marsh Creek Trail currently runs from the Big Break Regional Shoreline in Oakley to the southern city limits of the City of Brentwood, leaving a gap between that terminus and trails in the City of Clayton; and

WHEREAS, the completed multi-use trail would create a new major non-motorized east-west thoroughfare for expanded commuting or recreational opportunities, would provide non-motorized access to Downtown Clayton, Diablo View Middle School, Mount Diablo State Park, Round Valley Regional Preserve, and the Marsh Creek Trail through Brentwood and Oakley; and

WHEREAS, once this trail and adjacent trails are completed, there will be one continuous non-motorized route from Central Contra Costa County to the Delta; and

WHEREAS, construction of the trail could be performed in conjunction with restoration of Marsh Creek, as anticipated in the East Contra Costa County HCP/NCCP, and be constructed in a sensitive manner that reflects the scenic and natural resources of the area.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy will advocate for support and funding for the Marsh Creek Corridor Multi-Use Trail, including study and potential implementation, in local, state, and federal transportation, recreation, park and open space funding efforts.

Approved by the following vote on August 24, 2014.

Ayes:

Noes:

Abstain:

Absent:

Attest: \_\_\_\_\_

Abigail Fateman, Executive Director



In June 2015, the partners started planning a kickoff event to celebrate the successful fundraising and increase public awareness about the project. Associated with that event, the partners developed public outreach materials and a press release. With concurrence from the Conservancy Chair and Vice Chair, the Executive Director gave permission for the Conservancy to be listed as a partner on the materials.

The partners held a successful kickoff event on Saturday, July 25<sup>th</sup>, 2015.

**Attachment:** Three Creeks Restoration Project informational sheet

# Three Creeks Restoration Project



As Marsh Creek winds through the heart of the city of Brentwood, there is a stretch between its confluence with Sand and Deer Creeks waiting to be discovered. Thanks to a unique public-private partnership, the “Three Creeks Restoration Project” will transform 1/3 of a mile along this flood control channel into a recreational and environmental jewel.

This Project is an urban creek restoration effort that will restore habitat in a creekside park setting in a rapidly growing area of Brentwood, while continuing to maintain flood protection for the surrounding communities. The project site is on the longest stretch of undeveloped land adjacent to Marsh Creek and on the border of the recently approved Palmilla subdivision, where Pulte Homes plans to build 400 new residences. The City of Brentwood and Pulte consider the creek a community amenity, and are working to connect the community to the natural environment by integrating the restoration project, adjacent Marsh Creek Regional Trail and new city park to create a destination spot for residents to bike, walk, and enjoy the natural beauty of Marsh Creek.

This Project will provide a variety of benefits to the community and the environment. The project is

designed to improve water quality, maintain flood protection, create habitat for native fish and wildlife, and provide shade for recreational users. This is the third major restoration project along lower Marsh Creek, and it will build on the success of earlier projects. A fish ladder constructed downstream in 2010 enables

Chinook salmon and other fish to migrate up

Marsh Creek to spawn. Unfortunately,

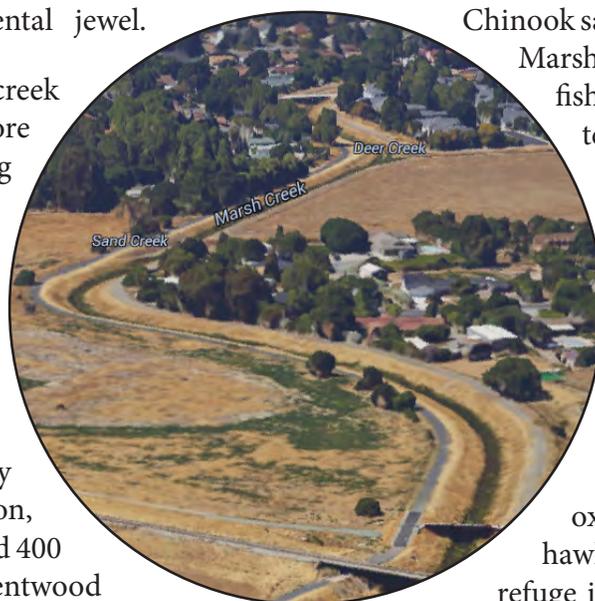
fish currently encounter high water temperatures, low dissolved oxygen and other difficult conditions, often reducing the numbers that survive.

The Three Creeks Project will improve riparian habitat and increase the likelihood for successful spawning by shading the creek to lower water temperatures and increase healthy oxygen levels. The Swainson's

hawk, a threatened species, will find refuge in the tall trees. The new habitat

will produce more sources of food for fish and wildlife expected to flourish in the improved conditions.

This is another multi-benefit flood management project implemented under the Contra Costa County Flood Control District's new 50 year plan to restore the District's network of aging flood control channels into healthier waterways that will better protect and serve Contra Costa's communities in the 21st century and





beyond. The restoration design calls for widening the existing channel to create a more natural shape with a new floodplain. Flood control channels throughout the county are typically maintained to prevent the growth of any trees or shrubs that could clog the limited capacity and lead to flooding. Widening the channel will allow the creek to safely accommodate flood waters while also allowing for a wooded creek side environment for the benefit of people, fish and wildlife.

Projects like this take time and the willingness of many partners to collaborate and coordinate, and this one is no exception. Among those working for more than ten years to create this vision are the City of Brentwood, Contra Costa County Flood Control and Water Conservation District, Friends of Marsh Creek Watershed, American Rivers, Palmilla Development Project, East Bay Regional Park District, and the

East Contra Costa County Habitat Conservancy.

This project would not be possible without funding from taxpayers and generous private parties. Over the last decade the State Coastal Conservancy, National Fish and Wildlife Foundation, Kresge Foundation, U.S. Environmental Protection Agency, and others have provided grants to plan the project. More recently, Pulte Homes and the California Department of Water Resources Urban Streams Restoration Program have pledged a total of \$1.75 million to construct the project.

The Three Creeks Project partners begin project design in the summer of 2015 and plan to break ground by the summer of 2017. To learn more about this project or get involved in future plans and community events, please contact Friends of Marsh Creek Watershed at [www.fomcw.org](http://www.fomcw.org).

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# Three Creeks Restoration Project

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT:** State Legislative Issues

**RECOMMENDATION**

**AUTHORIZE contribution of \$3,000 toward funding a lobbyist to represent the California Habitat Conservation Planning Coalition’s and the Conservancy’s 2015 and 2016 State Legislative Platform.**

**DISCUSSION**

The Conservancy’s Legislative Platform contains specific policy statements pertaining to ten issues affecting the ongoing progress of East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan and the utility of the ECCC HCP/NCCP for local agency planning needs. Conservancy staff has participated in several statewide meetings of representatives of and advocates for HCPs and NCCPs in northern and southern California, and as a result it is expected that nearly all items on the Platform will be jointly pursued by the statewide HCP coalition, the California Habitat Conservation Planning Coalition (CHCPC or Coalition).

Staff is recommending the contribution of \$3,000 toward the hiring of a lobbyist to coordinate work on State legislative issues for the remainder of 2015 and through the end of June 2016. The Conservancy’s continued participation with the California Habitat Conservation Planning Coalition is an effective and cost-effective means for pursuing the Conservancy’s Federal Legislative Platform. In recent months the Coalition members have discussed hiring a lobbyist to work at the state level to more readily position HCPs/NCCPs for funding from a variety of new sources including Proposition 1 as well as Cap and Trade revenue.

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>August 24, 2015</u>	APPROVED AS RECOMMENDED: _____
OTHER: _____	
<b><u>VOTE OF BOARD MEMBERS</u></b>	
<input type="checkbox"/> UNANIMOUS	I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.  ATTESTED _____ <i>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>  BY: _____, DEPUTY
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

The Coalition needs professional legislative assistance to coordinate advocacy efforts and to advise as to the best opportunities to engage. These efforts are not currently within the scope or expertise of the Coalition coordinator (who has a focus on and experience with Federal legislative issues).

For these reasons, members of the Coalition being asked to jointly fund a lobbyist for the remainder of 2015 and first half of 2016, and reevaluate if the lobby work is meeting its goals and consider extending the relationship.

This contribution is consistent with the Conservancy's 2015 budget. The funds used for lobbying purposes are from contribution to recovery payments made by participating special entities and do not impact budgets related to required conservation activities.

**Attachments:**

- 11a: Coalition Legislative campaign proposal
- 11b: CHCPC legislative platform

**State Legislative Proposal  
California Habitat Conservation Planning Coalition  
August 18, 2015**

**I. Background**

In recent months, members of the California Habitat Conservation Planning Coalition ("Coalition") have discussed the need for an improved state legislative strategy, with professional assistance from a Sacramento lobbyist in development and implementation of the strategy. The reasons for the need for the improved process is as follows:

- More potential state funding for HCPs and NCCPs is available from Cap and Trade Auction Revenue, a Park Bond and other sources than at any other time in recent history:
- The Coalition needs ongoing, timely information about legislative and budget opportunities so it may effectively engage with elected officials to make the case for increased funding; and
- The Coalition needs the help of a Sacramento lobbyist to coordinate advocacy efforts and to advise as to the best opportunities to engage.

For these reasons, members of the Coalition have prepared this proposal for consideration by the full Coalition. The proposal is to implement this more active legislative approach for the remainder of 2015 and first half 2016 and reevaluate if it is meeting its goals and consider extending the relationship.

**II. Legislative Platform**

- We ask members of the Coalition to adopt, if permissible, the attached state legislative platform as part of the legislative platform development process in the fall of 2015.
- We ask members of the Coalition to encourage individual local governments (e.g. counties and cities), to adopt the state legislative platform as part of the legislative platform development process in the fall of 2015 for activities in 2016.
- We will develop a letter requesting state funding consistent with the legislative platform and ask Coalition members that can do so to sign on, using their logos.

**III. Coalition Lobbyist**

- We ask Coalition members to provide information about their willingness to help fund a state lobbyist to advocate for the legislative platform. Based on an expected cost of \$36,000, the minimum suggested contribution \$3,000 through June 2016. At the suggested level a minimum of 12 members will need to participate at this rate to raise the necessary funds. The Yolo Habitat Conservancy has already approved a \$3,000 contribution.

- This advocacy contribution will be in addition to the voluntary membership dues that cover the basic expenses of running our Coalition.
- Based on the responses to the request for contributions, a subcommittee of the Coalition will identify and interview potential lobbyists in September 2015.
- If the Coalition agrees to hire a lobbyist based on the interviews, we expect the Yolo Habitat Conservancy will contract with the lobbyist and manage the funds.
- Once the lobbyist is hired, the lobbyist will work with Coalition members to develop a strategy in September/October 2015 to build champions in the Legislature and pursue the state legislative platform.
- Working with the lobbyist, the Coalition will determine priorities for the 2016 legislative session from the platform, recognizing that there may be insufficient time and resources to achieve all priorities in the platform.

**IV. Building Legislative Champions**

- When we have identified potential legislative champions, we will design and implement individual district campaigns including outreach to various local organizations. The Coalition coordinator will assist with this grassroots effort, which will include meetings and field trips with the legislators.

**California Habitat Conservation Planning Coalition**

**2016 Legislative Platform**

**STATE**

**SB 317 (Park Bond)**

- \* \$90 million for implementation of NCCPs and regional HCPs.
- \* An additional \$100 in funding of Article 5, River, Lakes and Streams, for watershed protection.

**Greenhouse Gas Reduction Fund (GGRF)**

- \* \$40 million for the Wildlife Conservation Board's Oak Woodlands and Rangeland Conservation programs.
- \* An increase in funding for the Strategic Growth Council's Sustainable Agricultural Lands Conservation (SALC) program (funded at \$5 million in fiscal year 2014-15), including support for legislation (such as SB 367 [Wolk] ) to guarantee funding for the SALC program.
- \* Support other opportunities for NCCP and regional HCP funding that arise through proposals for new Natural Resource programs.

**2016-17 State Budget**

- \* An increase to \$1.6 million (FY 2001-02 level) from \$576,000 (FY 2013-14 level) for the California Department of Fish and Wildlife's Local Assistance Grant program, used for urgent NCCP implementation projects.

**Legislation**

- \* Support legislation to allow HCPs and NCCP flexibility to invest in sustainable endowment funds.

**FEDERAL**

- \* Restore funding for the Cooperative Endangered Species Conservation Fund to \$85 million in Fiscal Year 2017 (the level appropriated in Fiscal Year 2010).
- \* Support other opportunities to provide funding for regional HCPs.

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT:** Update on issuance of the U.S. Army Corps of Engineers' Regional General Permit (RGP) and request for authorization to sign letter to Corps to enable use of Conservancy's existing restoration projects for the RGP

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**RECOMMENDATION**

**AUTHORIZE the Executive Director to finalize and sign a letter to the U.S. Army Corps of Engineers committing to maintaining certain of the Conservancy's previously restored wetlands in order to facilitate continued and immediate use of the Regional General Permit by project proponents.**

**BACKGROUND**

On May 4, 2012 the U.S. Army Corps of Engineers (USACE) issued a Regional General Permit (RGP) related to the HCP/NCCP. On April 30, 2012, the U.S. Fish and Wildlife Service issued a Biological Opinion on the RGP. The issuance of the RGP and Biological Opinion are important milestones for the overall goals of the HCP/NCCP. Since 2012, twelve projects (including two Conservancy restoration projects) that have received permit coverage through the HCP/NCCP have also received permit coverage for impacts to federal waters through the RGP. The Conservancy is required to report to the USACE on permit usage as well as wetland mitigation that has been completed to stay in compliance with the interim mitigation strategy associated with the Regional General Permit, until such time as a programmatic agreement, known as an In Lieu Fee Agreement, can be put in place to memorialize the process by which the Conservancy will utilize the Fee Funds to satisfy the RGP mitigation requirements.

CONTINUED ON ATTACHMENT: Yes  
ACTION OF BOARD ON: August 24, 2015 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 John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

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

At its May 2012 meeting the Conservancy Board received an update on the RGP and approved an initial letter providing financial assurances for restoration projects. The May 2012 Board memo is attached for additional background on the RGP.

With the RGP issued, but the In Lieu Fee Program (ILF) not yet in place, an interim strategy has been followed to coordinate mitigation required under the RGP with HCP/NCCP mitigation fees. The Corps' proposed approach is "permittee-responsible compensatory mitigation," an option defined in federal Mitigation Rule 33 CFR Part 332. Under this approach, until the ILF is approved, the Conservancy would document to the Corps that applicants receiving authorization under the RGP would fulfill compensatory Section 404 mitigation requirements by designating a portion of one or more of the Conservancy's existing wetland restoration sites as the compensatory mitigation for an applicant's project. The Corps initially approved using this interim strategy for up to one year, and subsequently extended this approval to be ongoing until such time that the interim strategy is replaced by the ILF program, provided the Conservancy is working diligently to complete the ILF program.

Before the Conservancy's existing wetland restoration sites can be deemed eligible by the Corps for permittee-responsible mitigation purposes, the Conservancy must submit detailed information to the Corps on the site. This information includes point by point documentation of how the site complies with each requirement of the mitigation rule for a final mitigation plan (33 CFR 332.4[c]2-14). For the Conservancy's existing wetland restoration projects, the required documentation already exists in the form of construction plans and Mitigation and Monitoring Plans for each project. The Corps will however require detailed monitoring reports on the performance of the restoration projects used by the interim strategy.

There is one condition of the mitigation rule for which the Corps requests additional assurance from the Conservancy before a restoration site may provide compensatory mitigation under the interim strategy. Point 13 of the rule covers financial assurances, and is intended to ensure that mitigation projects are successfully completed and meet their established performance standards. Since the Conservancy's wetland restoration sites have been constructed, the need in this case is to ensure that ongoing monitoring and management will take place until the projects' performance standards are met.

The commitment to fund monitoring and maintenance need only apply to the acreage of the mitigation site committed as permittee-responsible mitigation by the Conservancy - i.e., the financial commitment is only required for the number of acres needed to actually meet the mitigation requirements of projects covered by the RGP and HCP/NCCP during the interim period. However, it may be impractical to seek Board approval to send a letter each time a project seeks coverage under the RGP during the interim period. Most projects covered so far by the HCP/NCCP don't have wetland impacts. Those projects that have had impacts to wetlands have had small impacts. Twelve projects received authorization under the RGP between RGP approval in 2012 and Dec. 31, 2014. These include two East Contra Costa County Habitat Conservancy Restoration Projects. The applicants for the remaining ten projects included Contra Costa Public Works Department (7 projects), Chevron (2 projects), and City of Pittsburg (1 project).

Permanent impacts of these 12 projects totaled 0.21 acre of wetlands (seasonal wetland, alkali wetland, permanent wetland, and pond), 0.18 acre of riparian woodland/scrub, and 467 linear feet of stream (0.19 acre). These impacts are summarized on Attachment 12b.

In May 2012, at the start of the permit term, the Conservancy Board authorized financial assurances for two restoration projects to enable their use in the interim mitigation strategy (the Souza 2 Wetland Restoration and the Upper Hess Creek Watershed Restoration Project). The Conservancy committed to maintain two acres of wetlands and ponds (combined) and 2000 feet of stream spread over two restoration sites, each in a different RWQCB. This assurance would be in place through the time when a specific project site's performance standards are met.

To facilitate continued implementation of the RGP, staff seeks authorization from the Board to provide a formal, documented commitment in the form of a letter to the Corps stating that the Conservancy will fund the monitoring and maintenance of specified, existing wetland restoration project site(s) proposed for use as permittee-responsible mitigation. A draft of this letter is included as attachment 12c.

Staff is recommending that in addition to the portions of two restoration projects for which financial assurances were provided in May 2012, financial assurances also be provided for portions of the Hess Creek Channel Restoration Project (1.0 acres of riparian habitat) and the Lentzner Spring Project (0.15 acres of alkali wetland). Staff also recommends that the Conservancy provide financial assurances for an additional portion of the Upper Hess Creek (0.06 acres of permanent wetland). This would enable these additional acres to be credited as mitigation under the interim strategy. This can be adjusted upward at future Board meetings as the need arises. No commitment would be made for acres that are not actually used during the period.

The assurance requested by the Corps is not much different from the Conservancy's existing requirements through the HCP/NCCP to monitor and maintain restoration projects. The Conservancy is already funding monitoring and maintenance for the entirety of all sites restored to date (the Board has approved sufficient funding each year in the Budget). Likewise, the most expensive portion of wetland restoration is the construction. Since construction is complete, it is in the Conservancy's interest to protect its investment by maintaining the wetlands. The only difference is that during the interim period there may be a specific acreage at a specific site allotted to mitigate a specific impact. Mitigating on a program basis as occurs under the HCP/NCCP and as would occur under the ILF Program is more flexible, so there is no advantage to setting a large cap, especially since it can subsequently be raised.

**Attachments:**

- 12a: May 10, 2012 Board Cover memo with background on the USACE Regional General Permit.
- 12b: Summary of Conservancy Restoration Projects that Compensate for Impacts under the RGP to date.
- 12c: Draft Letter recommended letter to the USACE extending financial assurances to portions of additional restoration projects

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** May 10, 2012  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Update on issuance of the U.S. Army Corps of Engineers' Regional General Permit (RGP) and request for authorization to sign letter to Corps to enable use of Conservancy's existing restoration projects for the RGP

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**RECOMMENDATION**

- a) **ACCEPT** update on the issuance of U.S. Army Corps of Engineer's Regional General Permit (RGP) related to the HCP/NCCP and issuance of U.S. Fish and Wildlife Service Biological Opinion on the RGP.
- b) **AUTHORIZE** the Executive Director to sign a letter to the U.S. Army Corps of Engineers committing to maintaining certain of the Conservancy's previously restored wetlands in order to facilitate immediate use of the RGP by project proponents.

**DISCUSSION**

On May 4, 2012 the U.S. Army Corps of Engineers issued a Regional General Permit (RGP) related to the HCP/NCCP. On April 30, 2012, the U.S. Fish and Wildlife Service issued a Biological Opinion on the RGP. The issuance of the RGP and Biological Opinion are important milestones for the overall goals of the HCP/NCCP. The intention of this memo is to document the steps that have been taken to arrive at this point, and the work that remains to be done to further coordinate wetland and species permitting in the HCP/NCCP Plan Area.

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>May 10, 2012</u> APPROVED AS RECOMMENDED: <u>No</u>	
OTHER: <u>Item A was approved as recommended. Item B was approved with the addition that the letter clarify the ability to assign the responsibility of long term maintenance of restoration projects and that staff is authorized to work with the U.S. Army Corps to make minor adjustments to the letter.</u>	
<b><u>VOTE OF BOARD MEMBERS</u></b>	
<input checked="" type="checkbox"/> UNANIMOUS	
AYES:	
NOES:	
ABSENT:	
ABSTAIN:	
I HEREBY 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 KUKULURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
BY _____	DEPUTY

**Item (a)****Background**

The HCP/NCCP was designed to conserve not only endangered species, but also wetlands and waters that provide habitat for these species and support other natural resource functions and values. This approach was intended, in part, to enable permit streamlining to extend beyond endangered species and to include 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 and to provide an integrated, coordinated approach to permitting in lieu of the often inefficient and costly project-by-project approach.

**Timeline of Wetland Permitting Coordination Activities**

Discussion with U.S. Army Corps of Engineers (Corps), U.S. Environmental Protection Agency (EPA), State Water Resources Control Board (State Board), Regional Water Quality Control Boards (RWQCBs), California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS) regarding this parallel approach to compliance with wetlands regulations started in 2002 during the early stages of developing the HCP/NCCP. Coordinating wetlands regulation with HCPs is difficult and time-consuming in part because there is no precedent.

- March 14, 2002: Initial meeting between representatives of the HCPA and agencies involved in wetland permitting to discuss coordinating wetland permitting with species permitting.
- 2002-2006: Wetland agencies advise development of the HCP/NCCP to help ensure concordance with wetland permitting requirements. HCPA creates an initial Draft RGP.
- 2008-present: Conservancy proactively constructs wetland restoration projects in advance of impacts to wetlands from covered activities.
- 2010: U.S. Army Corps of Engineers, Sacramento District (Corps) assumes a stronger leadership role in developing an RGP related to the HCP/NCCP.
- 2010: Conservancy submits to the Corps a Prospectus for an In Lieu Fee (ILF) program. The ILF program would complement the RGP by sanctioning HCP/NCCP fees under Corps regulations.
- January-March 2011: Corps solicits public comments on the draft RGP and ILF program prospectus. Eleven comment letters on the RGP and seven comment letters on the ILF are received, all supportive.

- June 2011: Corps initiates programmatic consultation on the RGP with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the ESA, and requests a General 401 Water Quality Certification from the State Water Resources Control Board for activities that would be authorized under the Corps' proposed implementation of the RGP.
- June 22, 2011: Public informational workshop on the RGP coordinating species and wetland permitting hosted by the Conservancy. Panel had representatives of the Corps, USFWS, and CDFG.
- June 22, 2011: Corps Southwest Pacific Division officially designates Sacramento District as the lead Corps District for all required actions associated with issuing and implementing an RGP across the entire HCP/NCCP Plan Area, including portion within the San Francisco district.
- April 30, 2012: USFWS issues a Biological Opinion on the RGP
- May 4, 2012: Corps issues the RGP

### **Summary of the Regional General Permit and associated Biological Opinion**

The RGP is designed to streamline wetland permitting in the HCP/NCCP Plan Area by coordinating the avoidance, minimization, and mitigation measures in the Plan with the Corps wetland permitting requirements. Projects eligible to apply for the RGP are those covered by the HCP/NCCP that meet specified wetland impact limitations (i.e., wetland impacts are less than 1.5 acres.) The RGP has a greater impact threshold than the Corps' existing Nationwide permit program, which limits wetland impacts to 0.5 acres.

The USFWS Biological Opinion for the RGP relies on the HCP/NCCP for mitigation measures and eliminates the need for the Corps to consult individually with USFWS for each project covered by the RGP. The term of the Biological Opinion corresponds with the 30-year term of the HCP/NCCP. By regulation, RGPs must be renewed every five years, but in this case a new Biological Opinion would not be needed.

With the RGP in place, project proponents will still apply directly to the wetland agencies for their wetland permits. However, due to the close match between HCP/NCCP and RGP permit conditions, the process will be expedited and improved. Key improvements include:

- Consistent mitigation ratios and offsite mitigation requirements, which makes it possible to satisfy Corps requirements with HCP/NCCP fees (see In Lieu Fee program and item (b) below)
- Consistent emphasis on regional avoidance to avoid "postage-stamp" conservation on project sites that can hinder projects and compromise the functions and values of conserved resources
- Consistent, regional, watershed approach to conserving wetlands, waters and species which will maximize the value and sustainability of conservation actions

Currently, the RGP only relates to CWA Section 404 permits, those issued by the Corps, but discussions are ongoing with the State Board and RWQCBs to coordinate their requirements with the RGP and HCP/NCCP. This coordination would lead to further permitting assurances and streamlining.

### **Proposed In Lieu Fee Instrument/Program**

The In Lieu Fee (ILF) Instrument is the agreement with the Corps and U.S. EPA (and possibly other agencies such as the State Board and RWQCBs) that will sanction payment of HCP/NCCP fees as eligible mitigation under the RGP. The ILF Instrument will also provide the Corps and other signatories with oversight of the Conservancy's use of the fees. The resulting ILF program would comply with the recent federal "Mitigation Rule" (33 CFR Part 332). The proposed ILF program would be implemented in conjunction with the RGP and HCP/NCCP. Until the ILF program is in place, an interim mitigation strategy is needed to enable payment of HCP/NCCP fees to satisfy RGP requirements (see item (b)).

### **Next Steps**

- RGP implementation begins, relying on a proposed interim mitigation strategy until ILF program is in place (see item (b))
- Conservancy staff continues to develop a draft of the In Lieu Fee Instrument for consideration by the Governing Board, Corps, U.S. EPA and possibly other agencies
- The Corps and the Conservancy will continue to seek a 401 Water Quality Certification from the State Water Resources Control Board / RWQCBs.

### **Item (b)**

With the RGP issued, but the In Lieu Fee Program not yet in place, an interim strategy is needed to coordinate mitigation required under the RGP with HCP/NCCP mitigation fees. The Corps' proposed approach is "permittee-responsible compensatory mitigation," an option defined in federal Mitigation Rule 33 CFR Part 332. Under this approach, until the ILF is approved, the Conservancy would represent for the Corps that applicants receiving authorization under the RGP would fulfill compensatory Section 404 mitigation requirements by designating a portion of one or more of the Conservancy's existing wetland restoration sites as the compensatory mitigation for an applicant's project. The Corps has approved using this interim strategy for up to one year, at which time the interim strategy would be replaced by the ILF program

Before one or more of the Conservancy's existing wetland restoration sites is deemed eligible by the Corps for permittee-responsible mitigation purposes, the Conservancy must submit detailed information to the Corps on the site. This information includes point by point documentation of how the site complies with each requirement of the mitigation rule for a final mitigation plan (33 CFR 332.4[c]2-14). For the Conservancy's existing wetland restoration projects, the required documentation already exists in the form of construction plans and Mitigation and Monitoring Plans for each project. The Corps will however require detailed quarterly and annual monitoring reports on the performance of the restoration projects used by the interim strategy.

There is one condition of the mitigation rule for which the Corps requests additional assurance from the Conservancy before the interim strategy may proceed. Point 13 of the rule covers financial assurances, and is intended to ensure that mitigation projects are successfully completed and meet their established performance standards. Since all five of the Conservancy's wetland restoration sites have been constructed, the need in this case is to ensure that ongoing monitoring and management will take place until the projects' performance standards are met.

To facilitate immediate implementation of the RGP, the Executive Director seeks authorization from the Board to provide a formal, documented commitment in the form of a letter to the Corps stating that the Conservancy will fund the monitoring and maintenance of specified, existing wetland restoration project site(s) proposed for use as permittee-responsible mitigation. This assurance would be in place through the time when a specific project site's performance standards are met. A draft of the letter is attached.

The commitment to fund monitoring and maintenance need only apply to the acreage of the mitigation site committed as permittee-responsible mitigation by the Conservancy—i.e., the financial commitment is only required for the number of acres needed to actually meet the mitigation requirements of projects covered by the RGP and HCP/NCCP during the interim period. However, it may be impractical to seek Board approval to send a letter each time a project seeks coverage under the RGP during the interim period. Most projects covered so far by the HCP/NCCP don't have wetland impacts and those that do have had small impacts (the total cumulative permanent impacts to aquatic resources over the last four years for all projects is 0.61 acres / 197 feet of stream). Consequently, Conservancy staff is recommending that the Board specify as a cap on its commitment a modest acreage that is likely to be sufficient to cover the need during the interim period. Staff is recommending a commitment for two acre of wetlands and ponds (combined) and 2000 feet of stream spread over two restoration sites, each in a different RWQCB district (Souza 2 and Upper Hess). This can be adjusted at future Board meetings as the need arises. No commitment would be made for acres that are not actually used during the interim period.

The assurance requested by the Corps is not much different from the Conservancy's existing requirements through the HCP/NCCP to monitor and maintain restoration projects. The Conservancy is already funding monitoring and maintenance for the entirety of all five sites restored to date (the Board has approved sufficient funding each year in the Budget). Likewise, the most expensive portion of wetland restoration is the construction. Since construction is complete, it is in the Conservancy's interest to protect its investment by maintaining the wetlands. The only difference is that during the interim period there may be a specific acreage at a specific site allotted to mitigate a specific impact. Mitigating on a program basis as occurs under the HCP/NCCP and as would occur under the ILF Program is more flexible, so there is no advantage to setting a large cap, especially since it can subsequently be raised.

**Attachments:**

- Regional General Permit
- USFWS Biological Opinion
- Letter of commitment to the Corps

**Summary of Conservancy Restoration Projects that Compensate for Impacts under RGP through 2014**

Wetland Types	Conservancy Existing Restoration Projects									Total Permanent Impacts (from Projects)	Mitigation Ratios Required by the HCP <sup>3</sup>	Total Created and Restored Required <sup>4</sup>
	Souza II <sup>1</sup>		Lentzner <sup>1</sup>		Upper Hess <sup>2</sup>		Hess Creek <sup>2</sup>		Total Created and Restored			
	Created	Restored	Created	Restored	Created	Restored	Created	Restored				
Stream (linear ft)	-	2,700	-	--		226	930	-	<b>3,856</b>	467	1:1	<b>467</b>
Stream (acre)	-	0.37 <sup>5</sup>	-	--		0.03 <sup>2</sup>	0.08	-	<b>0.49</b>	0.19	N/A	<b>N/A</b>
Seasonal Wetland (acre)	-	---			2.29	-	0.30	-	<b>2.59</b>	0.05	2:1	<b>0.10</b>
Alkali Wetland (acre)	1.40	-	-	0.15	-	-	-	-	<b>1.55</b>	0.13	2:1	<b>0.26</b>
Permanent Wetland (acre)	-	---			0.06	-	-	-	<b>0.06</b>	0.02	1:1	<b>0.02</b>
Pond (acre)	0.62	-	--		0.007	-	-	-	<b>0.627</b>	0.01	1:1	<b>0.01</b>
Riparian (acre)	-	-----					2.57	-	<b>2.57</b>	0.18	1:1	<b>0.18</b>

<sup>1</sup>Acreage based on field mapping during 2011 annual monitoring.

<sup>2</sup>Acreage based on design specifications. Actual acreage will be ground truthed during Year 5 monitoring and acreage will be recalculated.

<sup>3</sup>As shown in Table 5-16 and Table 5-17 in the HCP.

<sup>4</sup>The total created and restored of each wetland type exceeds that required to meet mitigation requirements.

<sup>5</sup>Restored acreage is an estimate based on the length of the stream and an average width for the stream and is just for informational purposes as the HCP tracks linear feet of stream (not acreage).



**EAST CONTRA  
COSTA COUNTY  
HABITAT  
CONSERVANCY**

*City of Brentwood*

*City of Clayton*

*City of Oakley*

*City of Pittsburg*

*Contra Costa County*

August 24, 2015

To: Michael S. Jewell  
Chief Regulatory Division  
U.S. Army Corps of Engineers  
Sacramento District  
1325 J Street  
Sacramento, CA 95814-2922

Subject: Financial Commitments on Existing Wetland Rehabilitation/Establishment Projects

Dear Mr. Jewell:

The Governing Board of the East Contra Costa County Habitat Conservancy (“Conservancy”) has authorized this letter in response to your request for financial assurances before considering the Conservancy’s existing wetland establishment/rehabilitation projects (“restoration projects”) eligible to provide mitigation under the Regional General Permit, permit number RGP #1 (“RGP”) recently approved by the U.S. Army Corps of Engineers (“Corps”).

The Conservancy desires to promptly establish an In-Lieu Fee (“ILF”) Program with the Corps that will enable payment of HCP/NCCP mitigation fees to satisfy compensatory mitigation requirements under the RGP. So that the RGP may be effectively implemented during the interim period before the ILF Program takes effect, the Conservancy is willing to enable use of restoration projects as permittee-responsible mitigation (as required by 33 CFR 332.4[c]14.), an approach the Corps has referred to as the Interim Mitigation Strategy. The Corps has indicated that financial assurances from the Conservancy Board relating to monitoring and maintenance of restoration projects are needed to implement the Interim Mitigation Strategy.

The Conservancy previously provided a letter confirming its commitment to fund the monitoring and maintenance of portions of two of its restoration projects (the Souza 2 Wetland Restoration Project and the Upper Hess Creek Watershed Restoration Project), until these portions meet success criteria. The Conservancy made this commitment for a total of up to two (2) acres and 2000 linear feet of restored waters at designated restoration sites.

This letter shall serve as formal confirmation of the Conservancy’s commitment to fund the monitoring and maintenance of portions of an additional two restoration projects and a new portion of the Upper Hess Creek Restoration Project, until these portions meet success criteria. With the addition of the two new sites and the addition of another feature on a previously committed project site, the Conservancy adds 0.06 acres of permanent wetland from the Upper Hess Creek Watershed Restoration Project, 0.15 acres of alkali

wetland from the Lentzner Spring Project, and 1.0 acres of riparian habitat from the Hess Creek Channel Restoration Project to the interim strategy. This financial commitment applies only to the acreage and linear feet of designated restoration sites actually committed as permittee-responsible mitigation during the interim period (i.e. if no permittee-responsible mitigation is approved for these sites the Conservancy Board will have no obligation to the Corps to fund any monitoring or maintenance at the sites). The Conservancy reserves the ability to assign the responsibility of long-term maintenance of restoration projects to a third party.

Thank you for your efforts to approve and implement the RGP.

Sincerely,

Abigail Fateman  
Executive Director

DRAFT

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** August 24, 2015  
**TO:** Governing Board  
**FROM:** Conservancy Staff (Abigail Fateman)  
**SUBJECT: Bird and Bat Research Associated with 2010 Gordon and Betty Moore Foundation Grant**

---

**RECOMMENDATION**

**AUTHORIZE staff to execute a contract with the East Bay Regional Park District for a new research effort to better understand the impact of wind turbines on bat populations within the Preserve System for \$110,000 for the term from September 1, 2015 to June 30, 2017.**

**BACKGROUND:**

**Overview of Research Grant and Proposed Projects:** In 2010, the Gordon and Betty Moore Foundation (GBMF) awarded the Conservancy a \$2,250,000 grant; \$2,000,000 to contribute to acquisition of Souza III (matching funds for a federal Section 6 grant) and \$250,000 for the design and implementation of a research project related to wind turbine generator (WTG) and wildlife interactions. The purpose of the research grant was to contribute to the body of science focused on reducing WTG-related impacts to birds and bats, while taking advantage of the fact that the Souza III property includes a portion the Buena Vista wind farm thus facilitating access to a study site.

In 2012 The Conservancy contracted with the East Bay Regional Park District (EBRPD) to conduct research on golden eagles. The \$140,000 research grant funded the research titled “Using Satellite Telemetry to Improve and Expand Golden Eagle Hazard Collision Mapping to Lessen Impacts of Wind Turbine Repowering in the Altamont Pass Wind Resources Area, California.” This work is winding down and the researchers are working on finalizing reports for publication (expected by June 2016).

CONTINUED ON ATTACHMENT: \_\_\_\_\_  
 ACTION OF BOARD ON: August 24, 2015  
 OTHER: \_\_\_\_\_

APPROVED AS RECOMMENDED: \_\_\_\_\_

**VOTE OF BOARD MEMBERS**

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

I HEREBY 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 \_\_\_\_\_  
*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY  
 HABITAT CONSERVANCY*

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

There is \$110,000 remaining in the Moore Foundation grant award that is programmed for additional research related to wind turbines and impacts avian resources (birds and bats). Conservancy staff has worked closely with EBRPD Wildlife Program Manager, Dr. Doug Bell who has been active in the Altamont Pass Wind Resource Area (APWRA) and the Contra Costa County Windfarm Technical Advisory Committee, to develop a research proposal to better understand wind turbine impacts to bat populations.

**DISCUSSION:**

There are several pressing needs associated with bat fatalities in the APWRA and elsewhere. The collision mechanisms need to be understood so that effective mitigation measures can be formulated (if possible). Additional information is needed to understand why bats are fatally injured by wind turbines, including the seasons, time periods, wind conditions, behaviors, and terrain and vegetation settings associated with fatalities. Monitoring techniques need to be refined to improve the accuracy and precision of fatality estimates by improving detection rates of available carcasses and the adjustments for the portion of the fatalities that are never found. This study proposes to contribute to all three of these pressing needs.

Dr. Bell (EBRPD) and Dr. Smallwood developed a research proposal titled, “Fatality Searches and Nocturnal Surveys to Improve Understanding and Predictions of Bat Fatalities in the Altamont Pass Wind Resource Area.” Complete details of the proposal are included as an attachment and a summary of the proposal is included below. (See attachment 13a)

The proposed study seeks to better quantify bat fatalities related to wind turbines. The study will examine searcher efficiency (human and canine), compare search intervals (1 and 3 days), and monitor wildlife scavenger rates. The data gathered and estimates made will be compared to recent and on-going studies in the region that focus on avian/raptor fatalities that also attempt to include bat data as well.

**Schedule:** The study will aim to start work in mid-September 2015, however given that mobilization for intensive research may take longer than the three week lead time being provided, it is possible that the project may begin in September 2016 for the fall bat migration through the region.

Element	Dates of start and finish
Fatality searches, humans	15 SEP – 14 NOV 2016
Fatality searches, dogs	11 OCT – 23 OCT 2016
Carcass trial administration	15 SEP – 14 NOV 2016
Bat carcass shipments	1 SEP – 1 NOV 2016
Camera trap monitoring	15 SEP – 14 NOV 2016
Nocturnal surveys	15 SEP – 14 NOV 2016
Analysis and reporting	15 NOV – 30 JUN 2017

**Budget:** The budget for the study is \$119,800. This includes a contribution from the East Bay Regional Park District for \$10,040 for Dr. Bell’s time. This project will expend the remaining funds from the GBMF award.

Element	Cost basis	Match <sup>a</sup> (\$)	Cost (\$)
Fatality searches, humans	1104 hours @ \$37.5/hr		41,400
Fatality searches, dogs	3 weeks in field plus travel		18,800
Carcass trial administration	150 hours @ \$80/hr		12,000
Bat carcass shipments	Overnight deliveries in dry ice		800
Camera trap monitoring	\$3,000 for cameras & 90 hours @ \$80/hr	5,040	5,160
Nocturnal surveys	270 hours @ \$80/hr		21,600
Analysis and reporting	187.5 hours @ \$80/hr	5,000	10,000
<b>Total</b>		<b>10,040</b>	<b>109,760</b>
<b>Total including match contribution</b>			<b>119,800</b>

<sup>a</sup> East Bay Regional Park District match contribution in Doug Bell's hours.

**Would the Research Project Help the Conservancy Achieve the Conservation Goals of the HCP/NCCP?** Yes. The Townsend’s western big-eared bat is a species covered by the Plan. Although the HCP/NCCP does not cover construction or operation of wind turbines, conservation of this species in Contra Costa County is a requirement of the HCP/NCCP. This research will assist the Conservancy in understanding the impacts of turbines on local and migrating bat populations in the Preserve.

Staff recommends that the Conservancy partner with EBRPD on the project “Fatality Searches and Nocturnal Surveys to Improve Understanding and Predictions of Bat Fatalities in the Altamont Pass Wind Resource Area” for the following reasons:

- The GBMF included funding of such a project in its 2010 grant.
- Implementation of this research project is likely to support the HCP/NCCP’s understanding of local bat populations including Townsend’s western big-eared bat.
- The Conservancy regularly partners with EBRPD and fully anticipates EBRPD will successfully implement this research project.
- EBRPD is contributing a funding match for Dr. Bell’s time on this project (\$10,000).

**Attachment**

- 13a: Fatality Searches and Nocturnal Surveys to Improve Understanding and Predictions of Bat Fatalities in the Altamont Pass Wind Resource Area

## **Fatality Searches and Nocturnal Surveys to Improve Understanding and Predictions of Bat Fatalities in the Altamont Pass Wind Resource Area**

Shawn Smallwood and Doug Bell

18 August 2015

Recent research in the Altamont Pass Wind Resource Area (APWRA) has revealed high fatality rates of bats, although these estimates have been accompanied by wide confidence ranges (Brown et al. 2014, Smallwood unpublished data). That these fatality rate estimates might be realistic was supported by 800 hours of nocturnal surveys using a FLIR T620 thermal camera with an 88 mm lens (Smallwood unpublished data). The nocturnal surveys accumulated hundreds of near misses and possible collisions with wind turbine blades or with the atmospheric pressure waves and wake turbulence created by the blade sweeps. Bats were often seen to tumble through the air and sometimes disappeared around the blade sweeps. Bats were also seen to target wind turbines, to often make multiple passes through operating wind turbine rotors, and to chase blades as they swept through their rotations. Also, large bats (likely hoary bats) behaved differently than small bats (mostly Mexican free-tailed bats), and behaviors appeared to associate with the frequencies of near misses.

Recent studies have also revealed that bat impacts were previously grossly underestimated in the APWRA due to fatality search intervals being performed at time intervals that were inappropriate for detecting bat carcasses. Search intervals averaged about 40 days throughout most of the history of fatality monitoring in the APWRA. High bat fatalities went unnoticed until search intervals of 7 days and 5 days were tried at select projects. Smallwood (2013) also noticed that adjusted bat fatality estimates correlated with the average search interval used among wind projects across North America, thus indicating that the adjustments made to bat fatality estimates for carcass persistence and searcher detection rates failed to account for variation in searcher detection of bat carcasses due to variation in time between searches. Most bat carcasses deposited on the ground are removed by scavengers within one week, and half are removed within two days. Those that remain available to be found are also much more difficult to detect by human searchers than are similar-sized bird carcasses (Smallwood unpublished data). The implication of these findings is that bat fatalities caused by wind turbines have been much more frequent than most fatality reports have indicated.

There are several pressing needs associated with bat fatalities in the APWRA and elsewhere. The collision mechanisms need to be understood so that effective mitigation measures can be formulated (if possible). We need to learn why bats are fatally injured by wind turbines, including the seasons, time periods, wind conditions, behaviors, and terrain and vegetation settings associated with fatalities. We also need to improve the accuracy and precision of fatality estimates by improving detection rates of available carcasses and the adjustments for the portion of the fatalities that are never found. This study proposes to contribute to all three of these pressing needs.

The detection rates of bats could be increased by shortening the search interval and using dogs in addition to people for bat carcass searches. As search intervals were reduced in the APWRA from 40 days (Smallwood and Thelander 2008, ICF 2014) to 28 days (Brown et al. 2014) to 15 days (Insignia Environmental 2011) and to 7 days (Brown et al. 2014), our estimates of bat fatality rates increased. However, even 7 days might be too long for obtaining accurate bat fatality rate estimates, so shorter search intervals need to be tried in new research. Also needed are carefully managed dog searches using trained dogs and trained handlers (Matthews et al. 2013). We propose to test both methods for improving detection rates in the same study.

Understanding of collision mechanisms can be improved by coordinating the more frequent searches with nocturnal surveys that are designed to measure bat passage rates through wind turbine rotors and to quantify behavior rates and rates of near-misses. With daily searches through the seasonal peak of bat activity (October in the APWRA), we can match fatality finds to nocturnal surveys made within two to three nights of the bat fatality finds. This improved resolution between nocturnal surveys and fatality searches might achieve the predictive power that Hein et al. (2012) could not achieve using acoustic passage rates to predict fatality rates at wind projects, or it might prove that passage rates are not predictive. In either event, we would be able to settle the question and move forward.

### **Study Objectives**

Our study would pursue the following objectives:

Test whether dogs are more cost-effective for finding bat and small bird fatalities than are human searchers, or whether dogs can be effectively integrated into human searches to both improve detection rates and reduce monitoring costs.

Obtain overall searcher detection rates ( $D$ ) for bats based on search intervals of 1 day, 3 days, and longer intervals.

Test whether bat fatality rates measured at wind turbines correlate with passage rates measured during nocturnal surveys using a thermal camera.

Test whether bat behavior rates and numbers of near misses correlate with bat fatality finds from daily searches.

Identify which species of scavengers are removing bat carcasses, and explore whether the locations of bat fatality finds correlated with nocturnal mammalian and diurnal avian scavenger activity levels.

## **METHODS**

### **Fatality searches**

Three trained searchers would search a set of wind turbines daily for two months overlapping the peak period of bat activity in the APRWA, 15 September through 15 November. Searchers would be rotated among the turbines to also achieve a search interval of 3 days per searcher, 4 days, and 10 days. In summary, by rotating searchers and maintaining blindness of search results between searchers we would achieve search intervals of 1 day, 3 days, 4 days, and 10 days in the same study. And onto this pattern of searches we would add searches by trained dogs and dog handlers during the time period associated with the typical peak period of bat fatalities in the APWRA. Canines for Conservation would deploy two dog teams who would search the turbines during the afternoons, after the human searchers have left the field.

The searchers would be blind to trial carcass placements, which would be randomized within their search areas and deposited on randomized days into the study. Even the trial carcasses would be randomized to ensure that body sizes and species are distributed without bias. The trial administrator would check on the status of the trial carcasses nearly every day, but only during afternoons so that the searchers are unable to witness the carcass checks (routine searches would be performed during the morning hours). Fatality finds would be recorded using Trimble GeoExplorer 6000 GPS units, including attributes describing the carcasses and geo-registered photos. Found carcasses would be left in place for repeat discovery and for discovery by other searchers.

### **Camera traps**

We would acquire 5 remote-triggered cameras for installation at non-monitored wind turbines, and we would place trial carcasses in front of these cameras to record which scavengers remove trial carcasses. We will focus on bat carcasses if we can obtain a sufficient number of bats for this purpose. Cameras would be installed at randomized locations within the typical search radius of the turbines, and they will be camouflaged. Our methods would generally followed those described in Smallwood et al. (2010).

### **Nocturnal surveys**

Between dusk and 3 hours after dusk we will perform nocturnal surveys 3 nights per week using a FLIR T620 with an 88 mm telephoto lens. We will record temperature, wind direction, and wind speed each hour using a Kestrel wind meter. We will also record temperatures of ground cover, wind turbine towers, and nacelles (particularly at the vents) using the thermal camera. Passage rates through individual wind turbine rotors will be measured over 5 minute intervals and repeated at least three times per turbine through the survey session. In between timed passage rate surveys, we will search for individual bats, which upon detection will be tracked by panning the thermal camera to keep pace with the bat. We will also survey the ground for mammalian scavengers and we will record their activity.

## Personnel

Skye Standish, Liz Leyvas, and another yet-to-be determined biologist will perform carcass searches. Canines for Conservation will perform the dog searches. Doug Bell will manage the camera traps. Shawn Smallwood will administer the carcass trials and nocturnal surveys. Smallwood and Bell will perform the analysis of data and prepare the reports.

## Schedule

Whereas we aim to complete the study in 2015, our proposed schedule extends one year longer in the event that we cannot acquire a sufficient number of bats by this fall or we cannot field three qualified fatality searchers. If it turns out that we cannot achieve our objectives this fall, then we will aim to perform the field work either in spring or fall 2016.

<b>Element</b>	<b>Dates of start and finish</b>
Fatality searches, humans	15 SEP – 14 NOV 2016
Fatality searches, dogs	11 – 23 OCT 2016
Carcass trial administration	15 SEP – 14 NOV 2016
Bat carcass shipments	1 SEP – 1 NOV 2016
Camera trap monitoring	15 SEP – 14 NOV 2016
Nocturnal surveys	15 SEP – 14 NOV 2016
Analysis and reporting	15 NOV – 30 JUN 2017

## Budget

<b>Element</b>	<b>Cost basis</b>	<b>Match<sup>a</sup> (\$)</b>	<b>Cost (\$)</b>
Fatality searches, humans	1104 hours @ \$37.5/hr		41,400
Fatality searches, dogs	3 weeks in field plus travel		18,800
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Analysis and reporting	187.5 hours @ \$80/hr	5,000	10,000
<b>Total</b>		<b>10,040</b>	<b>109,760</b>
<b>Total including match contribution</b>			<b>119,800</b>

<sup>a</sup> East Bay Regional Park District match contribution in Doug Bell's hours.

## **Deliverables**

A final report summarizing findings and conclusions from the research will be provided with a final invoice. Data collected as part of this study may be used in future peer-reviewed published article(s) addressing avian and bat fatalities related to wind turbines.

## **REFERENCES CITED**

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