



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

Public Advisory Committee

Thursday, August 14, 2008
1:00 p.m. to 3:00 p.m.

City of Pittsburg Council Chambers
65 Civic Drive in Pittsburg, 3rd Floor
Pittsburg, CA

Agenda

- 1:00 Introductions.
- 1:05 Public comment on items not on the agenda. Public comment will also be accepted on each agenda item during discussion of that item.
- 1:10 Review recent actions of Governing Board.
- 1:20 Update on wetland restoration/creation projects planned for construction this year (Presentation and discussion).
- 1:50 Status report on process for issuing take authorization under HCP/NCCP.
- 2:10 Grant funding update. Discussion and update on efforts to increase the availability and ease of use of grant funds for HCP/NCCPs.
- 2:30 Explanation of the stream setback provisions of the HCP/NCCP.
- 2:50 Discuss topics for future meetings.
- 3:00 Adjourn.

Times are approximate. If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Community Development Department at 925-335-1227. The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 72 hours before the meeting.

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

DATE: August 14, 2008
TO: Public Advisory Committee
FROM: Conservancy Staff
SUBJECT: Update on HCP/NCCP Wetland Creation/Restoration Activities

Conservancy staff, consultants and staff at the East Bay Regional Park District (District, EBRPD) have been working hard to prepare two pilot restoration projects for construction this fall in order to achieve a critical jump start on the Conservancy's wetland restoration program. The two projects, Lentzner Spring Wetlands and Vasco Caves Souza I HCP Pond, will be the first wetland restoration projects to be implemented as a result of the adoption of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). A critical component to the HCP/NCCP is the implementation of the Conservation Strategy, which provides for the creation of a preserve system that will protect land for the benefit of covered species, natural communities, biological diversity, hydrologic function and ecosystem function, and the restoration or creation of specific habitats and land cover types both to compensate for impacts and to contribute to recovery of listed species.

Information on both projects is provided below. The Lentzner Springs project has already been approved by the Conservancy Board and excerpt from the staff report is provided below. The Vasco Caves Souza 1 Project is still in the bidding process and has not yet been to the Board. More limited information is provided on that project.

Lentzner Spring Project

The Lentzner Springs project will be the first to break ground. It will be constructed by the District and funded by the Conservancy. The detailed plans and specifications have been finalized, construction bids have been solicited, a lowest bid has been identified by the District and the project budget has been defined. On July 30, 2008 the Conservancy Board authorized the project to move forward (including a funding package and agreement with EBRPD). The EBRPD Board met on August 5th and awarded the contract.

Project Description: This restoration project will be the first restoration project performed under the Plan and has been designed to begin to fulfill Plan objectives. The project will restore 0.15 acres of alkali wetland and 0.37 acres of native grassland that is currently in a degraded stated (e.g., seasonally denuded and choked with invasive star thistle by past management practices, including soil compaction from grazing).

Project Objectives: The objectives of the Lentzner Springs Wetland Restoration Project are to:

- Restore the natural function and increase the extent of alkali wetlands in a degraded section of the Lentzner preserve;

- Better integrate existing constructed features in the area with the natural environment by relocating an existing unpaved road and fence away from the restoration area and by improving two stream crossings to increase durability, reduce erosion, and enhance hydrologic connectivity;
- Increase the abundance and distribution of native perennial grassland on the Lentzner parcel; and
- Develop a framework for successful implementation of HCP/NCCP restoration projects through a District and Conservancy partnership.

Selection of a Contractor: The District published a Notice to Bidders for this project on July 3, 2008 in two newspapers, with ten (10) firms submitting responsible bids on Thursday, July 24, 2008. The table below summarizes the bids received. The low bidder was Thunder Mountain Enterprises. The cost estimate generated by District and Conservancy staff and consultants for the Notice to Bidders was \$100,000. Submitted bids were generally lower than expected.

NAME OF BIDDER	TOTAL BASE BID
Thunder Mountain Enterprises Sacramento, CA	\$74,500.00
Cinray Construction Antioch, CA	\$79,000.00
Odyssey Companies Stockton, CA	\$86,000.00
Granite Construction Brentwood, CA	\$93,925.00
American Civil Constructors Martinez, CA	\$95,207.01
North Valley Construction Livermore, CA	\$103,921.32
Fanfa, Inc. San Lorenzo, CA	\$106,107.00
Grade Tech Castro Valley, CA	\$111,000.00
W. R. Forde Richmond, CA	\$116,000.00
McNabb Construction Lafayette, CA	\$116,536.00

Project Budget: The proposed budget to construct and manage this project for the next five years is presented below. It reflects the project budget provided by Thunder Mountain Enterprises and also includes District costs proposed in the Agreement. Additional Conservancy monitoring and management costs are included at the bottom of the table.

CONSTRUCTION

Mobilization/Demobilization

\$2,000

Demolition	\$10,000
Earthwork	\$12,500
Concrete Mat	\$10,000
Culvert	\$8,000
Fencing and Gate	\$15,000
Planting	\$12,000
Plant Maintenance Period	<u>\$5,000</u>
SUBTOTAL BASE CONSTRUCTION	<u>\$74,500</u>
Construction contingency (20%)	<u>\$14,900</u>
APPROVED CONSTRUCTION COSTS	<u>\$89,400</u>
Construction Management By District	<u>\$5,000</u>
Management Actions By District During Initial Five-Year Period	<u>\$25,000</u>
TOTAL DISTRICT COSTS TO BE COVERED BY CONSERVANCY DURING INITIAL FIVE-YEAR PERIOD	<u>\$119,400</u>
Anticipated Conservancy direct costs to perform its portion of management and monitoring responsibilities (annual, during initial five years)	<u>\$6,500 to \$15,000 per year</u>

The Project Budget includes a 20% construction contingency. This contingency may only be used to fund additional costs incurred by the contractor if work beyond that described in project plans and specification is required (for instance, if the contractor encounters additional metal debris during grading that must hauled offsite). Such additional work requires change orders approved by the District. The Budget also includes \$5,000 to cover the District’s staff time to have an inspector supervise construction and \$25,000 to cover the District’s anticipated management costs during the first five years after the project is completed (general supervision, grazing management, fence repair, trash removal).

The Conservancy will have responsibility for performing other management tasks, such as monitoring and reporting on the success of the project, salvaging and replanting plants, non-native species management and any remedial measures that may necessary if the Project is not performing as planned. Conservancy costs are more uncertain because they will depend on how well the project is performing.

Conservancy and District staff will track costs during the initial five-year period and develop cost estimates and a funding plan for long term management of the property. Ultimately, a management plan and management funding agreement is anticipated to be developed for the entire Lentzner property. Planning and funding for this restoration project may be subsumed into that larger effort. This will enable cost-savings due to economy of scale and will enable certain management tasks, such as invasive plant management, to be performed on a large enough scale to be effective over the long term.

The Project Budget is consistent with the Conservancy's approved 2008 Budget. The Conservancy's 2008 Budget included \$407,000 for Restoration/Creation and \$66,500 for Monitoring and Adaptive Management. Staff anticipates the Vasco Caves project can also be performed within the Conservancy's 2008 Budget.

Anticipated Project Schedule: Below is a rough estimate of the construction schedule.

August 5, 2008: Contract awarded.

August 18, 2008: Pre-construction meeting

September 8 – September 26: Construction (approximate)

September 26 – November 7, 2008: Irrigation of restoration area (as needed during dry season)

November 7, 2008: Project completion. Monitoring and adaptive management commences.

Permits: One of the more challenging aspects of this project and a potential reason the District could be precluded from constructing the project this fall is the need for permits. Because the project seeks to restore a degraded wetland and includes work in a stream, the project requires permits from the U.S. Army Corps of Engineers, the Central Valley Regional Water Quality Control Board, the California Department of Fish and Game, and consultation by the U.S. Fish and Wildlife Service. The Conservancy is responsible for procuring these permits. Applications have been submitted but the timing is very tight due to the extremely compressed schedule for this project. Each permitting agency has been briefed on the project and the timing and has indicated they will make every effort to process the permits in an expedited fashion.

Value of Project to Conservancy: There are a number of reasons why it is critical to pursue this pilot wetland restoration projects this year. Over the 30-year life of the HCP/NCCP, the Conservancy may be required to restore or create a large number of acres of various types of wetlands and waters. If impacts to wetlands and waters are substantial during those 30 years, the cumulative total restoration/creation acreage could exceed 500 acres. A more likely but still conservative¹ projection is 300 acres, which amounts to 10 acres of restoration/creation per year. By the end of the second year of implementing the HCP, the Conservancy must have caught up to the mitigation requirements of impacts that have occurred. At this point, no impacts have occurred, though fees have been paid in advance of the HCP for minor impacts to wetlands totaling much less than one acre. The Conservancy's intention as stated in the Work Plan is to be aggressive in its wetlands restoration and creation program and to initiate at least some pilot projects during the first year of implementation (2008 is officially the first year of implementation).

Constructing this pilot project not only helps the Conservancy begin to achieve wetland restoration/creation targets, but also allows the Conservancy to understand and define the key challenges associated with planning and implementing restoration/creation projects, test the abilities of new consultants and become familiar with EBRPD's restoration process. Staff anticipates that this pilot project will be much more expensive per acre than future restoration projects because it is small in size and does not achieve an economy of scale. However, the

¹ Creation/restoration needs could very likely be less than 300 acres, but 300 acres is a conservative projection in the sense that is prudent for the Conservancy not to under-plan.

project can be designed, constructed and maintained within the limits set by the Conservancy's approved Budget for these Budget categories.

Detailed Information on Project Components: The primary components of the project are: 1) restoration of a degraded swale, 2) repair of a headcut adjacent to the swale, 3) relocation of dirt roads and fences to avoid the restoration area and 4) improvements to stream crossings in two locations.

To perform these restoration tasks, the project area will be cleared, grubbed, and graded to establish the contours and elevations shown on the Grading Plan. A failing cattle trough in the center of the denuded area will be removed along with other debris. Grading north and east of the box spring will address soil compaction and create a broad swale connected to existing wetland vegetation in the floodplain of Oil Canyon Creek. Grading south and east of the box spring and in/around an existing non-jurisdictional eroded channel in the southern part of project area will stabilize the channel, prevent upstream migration of the headcut, and create a seasonal wetland swale. Existing wetland vegetation will be protected by temporary fencing installed prior to earthwork.

As shown in the Planting Plan, the proposed native grassland restoration area is 0.37 acres and will be located in the western portion of the project area. This area will be disked to a depth of 12 inches prior to seeding. Approximately 14-20 pounds/acre of native seed mix [consisting of purple needlegrass (*Nasella pulchra*), creeping wildrye (*Leymus triticoides*), and meadow barley (*Hordeum brachyantherum*)] will be hand-broadcast using a rotary-type spreader and hydromulching.

For the proposed alkali wetland restoration section (0.15 acres - eastern project area), planting holes will be excavated with a hand auger to a depth and width sufficient to accommodate rootballs of on-site harvested 4-inch-diameter plugs of native herbaceous wetland species [saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), and spike rush (*Elyocharis macrostachya*)]. After planting, the holes will be backfilled with native material. The native alkali wetland and grassland restoration areas will be irrigated for 6 weeks after installation to promote their establishment.

Existing fencing (348 lf) that crosses the wetland area will be removed. The degraded fence that surrounds the spring outfall will be replaced (for public safety) and new fencing will be installed around the restoration area to protect restoration and plantings from cattle grazing and traffic. Fencing specifications are 48-inches in height, 14 to 15.5 gauge, 5-point barbed wire, Class III or Gaucho barbed wire fence with 6-foot galvanized steel T-posts. T-posts will be installed to a depth of 30 inches. The fence may be removed once vegetation is established.

The existing dirt road south of the box spring will be relocated away from the restoration area; an improved ford will be installed in the location where it will cross a small swale above the headcut. A 480 square-foot permeable, articulated concrete mat will be installed over the fill to create a low-water crossing that accommodates Park District vehicle access for monitoring, maintenance, and emergency purposes. The mat will contain 15 7/8" by 11 7/8" concrete blocks, excavated to a depth equal to the thickness of the block (holes will be less than or equal to 1-inch

in depth, grooves or depressions will be less than or equal to 0.5 inches in depth, with a dimension not exceeding 1-foot in any direction). Geotextile fabric will be placed between the compacted sub grade and the interlocking concrete blocks.

The road/trail crossing of Oil Canyon Creek at the north end of the project area will also be improved to reduce erosion and prevent future failure. The existing 36-inch diameter, 26-foot long Corrugated Metal Pipe (CPM) culvert does not provide sufficient capacity to convey high stream flow, and the overlying berm is susceptible to erosion. The culvert will be replaced with a 42-inch (span) by 32-inch (rise) corrugated (3-inch by 0.5-inch) galvanized steel pipe arch culvert. The larger culvert will increase hydrologic connectivity between the upstream and downstream reaches of Oil Canyon Creek, and provide inundation to the restored alkali wetland area during high flows without expanding the footprint of the existing culvert. Approximately 10 square feet of ungrouted, 8- to 12-inch rock will be installed on the downstream end of the culvert to dissipate energy and prevent scour. The rock will be keyed into the existing channel invert, allowing for the establishment of emergent wetland vegetation.

Vasco Caves Souza I HCP Pond

The Vasco Caves Souza I project will be constructed and funded by the Conservancy. The detailed plans and specifications have been finalized, construction bids have been solicited. Bids are due on August 25, 2008 (after this memo is made available) and the Conservancy the Conservancy Board is anticipated to award the contract to the lowest bidder on August 25, 2008.

Project Description: This project has been designed to begin to fulfill Plan objectives. The project will create approximately 1 acre of pond. The summary scope of work for the project is:

Excavate earth to create pond; separate soils and use excavated clay to line bottom and sides of pond; construct berm and install geotextile pyramat and HDPE geomembrane; hydroseed pond and disturbed area.

Project Objectives: The objectives of the Vasco Caves Souza I HCP Pond project are to:

- Create approximately one acre of pond;
- Create safe breeding habitat for CA tiger salamander;
- Establish wetland plant species;
- Establish native grasses in the disturbed surrounding upland area

Anticipated Project Schedule: Below is a rough estimate of the construction schedule.

August 25, 2008: Contract awarded.

August 28, 2008: Pre-construction meeting

September 8 – September October 1: Construction (approximate)

October 7, 2008: Project completion. Monitoring and adaptive management commences.

Permits: Because the project seeks to create a pond and does not include work in a stream or existing water feature, the project does not require permits from the U.S. Army Corps of

Engineers, the Central Valley Regional Water Quality Control Board, the California Department of Fish and Game, or consultation by the U.S. Fish and Wildlife Service.

California Environmental Quality Act(CEQA): The project is categorically exempt from CEQA. Categorical exemption 15333, Small Habitat Restoration Projects, exempts certain restoration projects smaller than 5 acres. That exemption applies to this project. Conservancy staff will file a Notice of Exemption.

Selection of a Contractor: The Conservancy published a Notice to Bidders for this project in two papers on August 8 and August 9, 2008. The cost estimate generated by the Conservancy staff and consultants for the Notice to Bidders was \$245,000. All bids are due to the Conservancy by 2 p.m. on August 25, 2008. At that time the bids will be opened publicly and the lowest bid will be identified. The Conservancy Board is scheduled to meet later that day and consider awarding a contract for the project.

Attachments:

- Excerpts from construction plans for both projects.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: August 14, 2008
TO: Public Advisory Committee (PAC)
FROM: Conservancy Staff
SUBJECT: Grant Funding

At previous meetings, the PAXC expressed interest in the status of grant funding from the HCP/NCCP. The following report has been adapted from the report made to the conservancy Governing Board in June on this topic. The Board approved the staff recommendations on this item and provided direction to staff on a number of grant funding issues.

Background (excerpted from June report to Conservancy Governing Board):

A number of grants have been secured to help fund implementation of the HCP/NCCP, as more specifically shown in the attached table. These grants will fund a variety of implementation activities, from staffing to restoration to acquisition. The vast majority of the funds are for acquisition and the largest source of these funds is the federal Cooperative Endangered Species Conservation Fund, HCP Land Acquisition Program (also known as the Section 6 HCP Land Acquisition program because it is authorized by Section 6 of the Federal Endangered Species Act). These Section 6 grants will be a huge benefit to the implementation of the HCP/NCCP, but spending these funds will be a significant challenge. The purpose of this report is to summarize the key challenges that will be faced in making use of the Section 6 funds, describe what the Conservancy is doing to address these challenges.

Accessing the funds: Section 6 HCP Land Acquisition funds are typically granted to the states. The states administer the expenditure of the funds for specific land acquisition projects associated with the HCP named in the grant award. The Wildlife Conservation Board (WCB) is the state agency in California responsible administering for Section 6 Land Acquisition grants. Conservancy staff has been meeting with WCB staff since last summer to determine what needs to be done to access the funds and to take necessary steps to do so. Key developments include:

- Typically, the WCB disburses Section 6 funds acquisition by acquisition, with each acquisition requiring a separate grant agreement and separate approval by the WCB Governing Board. The WCB Board only meets quarterly. WCB staff has agreed to develop block grant agreements (also known as agreements to sub-grant) for the ECCC HCP/NCCP Section 6 grants, a device they have not used in some time. This approach is preferable, as the WCB Governing Board would only need to act one time to approve the agreements to sub-grant. Funds would still be disbursed by WCB acquisition by acquisition into escrow and each acquisition would still require WCB due diligence (appraisal review, etc.), but the process would be much simpler and quicker.
- The Section 6 grants for the ECCC HCP/NCCP require a 55% non-federal match (e.g., 45% of the cost may be covered by federal funds, but 55% must be covered with non-

federal funds). The agreement to sub-grant will enable the Conservancy to demonstrate compliance with the required non-federal match on a running basis. Without the agreement to sub-grant, the match would need to be supplied acquisition by acquisition. So long as the Conservancy stays ahead of the match requirement on a running basis, there will be more flexibility on assembling funding for acquisitions.

- WCB staff had indicated earlier this year an intention to bring the agreement to sub-grant to the WCB Board in August. Recently, Conservancy staff was informed that the agreement to sub-grant would not be ready until the November WCB Governing Board meeting. The delay is frustrating because the Section 6 grants have a three year term and the first of these will have less than 18 months remaining by November. WCB staff has been made aware of the concern but have indicated that it won't be possible for their attorney to finish the work in time for the August meeting. The Conservancy is developing strategies to ensure that the delay does not hinder the land acquisition process.

Mitigation Funding as Match: Conservancy staff recently learned that the administrators of the Section 6 grant program at the U.S. Fish and Wildlife Service (USFWS) in Washington D.C. have instituted a policy prohibiting the use of mitigation funds as match. This policy was not evident in the request for proposals for the grant and Conservancy staff had previously been informed that mitigation funds could be used as match. Conservancy staff traveled to Washington D.C. in April on a variety of policy matters, including this issue, and met with the administrator of the program to learn more. The rationale expressed for this policy is that mitigation funds are compulsory and don't leverage additional funds. Conservancy staff and others explained that this policy was not evident in the grant guidelines, did not seem logical for a grant program designed for HCPs and that the Section 6 grants do leverage huge amounts of conservation whether or not mitigation funds are used as match because the very existence of the Section 6 program has been an incentive to develop regional HCPs which are far better for conservation than project-by-project permitting. The Section 6 program administrator indicated that he would be willing to explore the issue further. Recently, the Director of the California Department of Fish and Game(CDFG) sent a letter to USFWS (attached) requesting that this policy be overturned and specifically mentioning the ECCC HCP/NCCP.

Assembling the required match: The Conservancy is pursuing the following strategies to fulfill the match requirements of the approved Section 6 grants:

- Request matching funds from WCB. WCB administers various funding programs to benefit wildlife, including a funding program specifically for NCCPs. Proposition 84, approved by voters in 2006, included a \$90 million line-item for NCCPs. Of this amount, approximately \$20 million has been appropriated to WCB so far. WCB staff has proposed an additional block grant consisting of state funds to the Conservancy's projects from this first appropriation. \$5 million has been mentioned as an amount. Conservancy staff plans to work with WCB staff to see if this amount can be increased and matched in future appropriation cycles such that the bulk of the non-federal match requirements of the Section 6 grants can be covered with Proposition 84 funds. This would require about \$20 million in Proposition 84 funds, more than 20% of the statewide allocation. Staff recommends that the Governing Board declare

a policy position supporting this request for matching funds and directing staff to pursue it.

- Seek revision to the policy preventing mitigation funds from being counted as match. Staff recommends that the Board declare a policy position supporting mitigation funds as an appropriate source of match and direct staff to communicate this position to appropriate parties and attempt to have the federal policy prohibiting such match changed.
- Document match from prior acquisitions. Prior acquisitions compatible with the conservation goals of the HCP/NCCP may be credited as match so long as the properties are encumbered in a manner equivalent to future HCP/NCCP preserves. Several properties acquired during development of the HCP/NCCP by the East Bay Regional Park District could be credited in this way once encumbered. New or updated appraisals would be necessary as well as management funding and an agreement with EBRPD to encumber these properties.
- Seek additional non-federal matching funds for future acquisitions, including grants secured by the Conservancy and grants and other funds contributed by other acquisition partners. The HCP already has a \$750,000 grant from the Department of Water Resources and staff will continue to pursue such opportunities. Private foundations and other state agencies such as the Coastal Conservancy could be significant partners, as these parties have contributed significant funds to this area in the past. EBRPD's proposed Measure AA extension could be a substantial source of match in future years if approved.
- Document start-up management costs. A substantial amount (approximately \$1,000,000) of such costs can be credited toward the match requirements for the some of the Section 6 grants.

Securing the necessary match and spending the Section 6 and match funds by the required timelines will be a major challenge. Staff are devoting significant time to help ensure that we can meet the challenge.

Growing the Section 6 HCP Land Acquisition funds over the long term and improving flexibility: The Governing Board has previously adopted a position of support for increasing the size of the Section 6 fund nationally. Staff worked with a coalition of other northern California HCPs to present this proposal to Congress and the Administration. Staff recommends that this position be continued in future years and will bring a specific recommendation for FY 2010 at a future meeting. In addition, the northern California coalition is seeking to reach out to proponents of HCPs in southern California. Staff is helping to propose a statewide meeting of proponents of local government HCPs to explore ways we can work together.

Attachments:

- Table summarizing grants awarded
- Letter from CDFG to USFWS on the mitigation funds as match issue

Grants Awarded for ECCC HCP/NCCP Implementation

<i>Funding Source</i>	<i>Agency</i>	<i>Purpose</i>	<i>Amount</i>	<i>Match¹</i>	<i>Match non-federal?</i>	<i>Date Funds Available to Spend</i>	<i>Need to be used by...</i>
Section 6 (2006)	USFW	Acquisition	\$6,531,054	\$7,982,399	yes	November 2008	January 1, 2010
Section 6 (2007)	USFW	Acquisition	\$7,000,000	\$8,555,600	yes	November 2008	June 30, 2010
Section 6 (2008)	USFW	Acquisition	\$6,000,000	\$7,333,333	yes	November 2008	after May 2011
CVPIA - HRP	USBR	Acquisition	\$1,241,631	\$500,000	yes	September 2006	Sept 30, 2010
IRWMP - Prop 50	DWR	Acquisition	\$750,000	\$500,000	no	August 2008?	June 2012
NCCP Local Assistance Funds (2006)	CDFG	Start-up staffing	\$40,000	\$0	no	May 2006	June 2008 (has been invoiced)
NCCP Local Assistance Funds (2007)	CDFG	Start-up wetlands restoration	\$60,000	\$120,000	no	?	?
TOTAL			\$21,622,685	\$24,991,332			

Notes:

- 1) Since state grants may be used to match federal grants and vice-versa, the total match is somewhat irrelevant.



DEPARTMENT OF FISH AND GAME

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1416 Ninth Street
Sacramento, CA 95814
(916) 653-7667



May 23, 2008

Mr. Don Morgan
Endangered Species Program
US Fish and Wildlife Service
4401 North Fairfax Drive, MS 420
Arlington, VA 22203

Dear Mr. Morgan:

The California Department of Fish and Game (Department) greatly appreciates the opportunity to review and comment on the Draft-Internal U.S. Fish and Wildlife Service Cooperative Endangered Species Conservation Fund (Section 6 of the Endangered Species Act) Grant Program's fiscal year 2009 request for proposals. The Endangered Species Act Section 6 Grants to States significantly benefit sensitive species through land acquisition and habitat conservation planning. The Department is committed to our partnership to work toward recovery of sensitive species and their habitats, and we believe that an open, interactive process will facilitate our mutual goals.

First, we believe it is critical for our agencies to begin an immediate dialogue to address a substantial issue facing the conservation and recovery of species in California due to the application of a policy regarding use of mitigation funds as match for federal grant dollars as described in the draft FY09 request for proposals (RFP). We believe this policy has the potential to derail conservation planning in many parts of California and reverse the meaningful conservation work achieved through partnerships with local governments. Second, we wish to offer comments on other elements of the solicitation based on California's implementation of the program with the Service and provide some general editorial comments regarding the RFP process and information contained therein.

Principal Reason for Commenting

III. Eligibility Information, Item #3, Other Policy

California's Natural Communities Conservation Planning Act (NCCP) permit issuance standards require plans provide for the "conservation and management" of listed and non-listed species, by contributing to recovery of listed species and preventing declines in non-listed species populations that might result in their addition to threatened and endangered lists. In practice, this means that under an NCCP, project proponents (often local government) identify impacts to listed species within the NCCP area and fund minimization, avoidance, mitigation and monitoring efforts to offset these impacts. In addition, an NCCP is unique in that it provides for joint state and applicant contribution to funding for conservation and recovery of species within the Plan area. Whereas Section 10 of the Endangered Species Act (ESA) addresses incidental take of endangered and threatened species and requires avoidance, minimization, and mitigation for take, the NCCP Act goes further by emphasizing building reserve/conservation areas that will contribute to the recovery and conservation of species through a local, state, federal partnership arrangement. Rather than explicitly separating mitigation from conservation,

the NCCP Act blends these elements obligating the permittee to achieve the required mitigation, and the agencies to contribute to funding the additional conservation. For the last decade, the two Acts have been seamlessly blended and have complemented one another very well. NCCPs have effectively "raised the bar" on the standards for regional Habitat Conservation Plans (HCP) and exceed the protections afforded by an HCP alone. Thus, California HCP/NCCP plans have the highest standards for regional conservation plans in the nation.

The RFP emphasizes throughout the document that land acquisition grants should complement, but not replace, private mitigation responsibilities contained in a Habitat Conservation Plan. Further, it indicates that the Service does not intend to grant funding for projects that serve to satisfy regulatory requirements of ESA, including complying with a biological opinion (Section 7) or fulfilling commitments of an HCP (Section 10), or for projects that serve to satisfy other local, State, or Federal regulatory requirements (e.g., mitigation for local, State, or Federal permits).

The Department recognizes and agrees with the Services' concerns to ensure that grants awarded do not directly fund the mitigation responsibilities of the permittees, but instead, support recovery actions. However, the Department, and many of the local entities currently enrolled in existing HCP/NCCPs, believe that under an NCCP, federal funding could be combined with funding needed to satisfy regulatory requirements to result in conservation above and beyond that required to mitigate a project. We are concerned enforcement of this policy will seriously affect conservation planning in our State. The State has a similar policy; however, we do not understand how counting mitigation fees, which fund required mitigation purchases, as matching contribution for federal land acquisition funding violates the Service's policy, as the federal grant funds themselves would not pay for the mitigation required by the HCP/NCCP permits.

Policy Implications

The aforementioned policy has serious implications for the success of California's approved NCCPs in achieving their conservation goals and for future plan participation. Most, if not all, plans in California have been or are being developed where the only sources of non-mitigation monies are State and Federal sources. The local entities find it difficult to generate funding, other than development fees, for successful plan implementation. Two permitted plans affected by the policy would have an unanticipated additional \$34.5 million dollar burden if mitigation fees cannot be used as match for Section 6 land acquisition grants. There are 11 other permitted plans and 26 plans in the planning stages that may be affected by this policy. Hundreds of millions of dollars for local entities and the State are at stake.

For example, Service approved Section 6 land acquisition grants have already been used for a series of completed land acquisitions for the Western Riverside County HCP/NCCP. The local match for most of the acquisitions was a combination of Wildlife Conservation Board (State bond funds), local development (mitigation) fees, transportation mitigation, and county-wide assessment funding. Each acquisition and federal grant has been handled differently, but in each case the match was approximately 50%, these match funds were derived from local mitigation funds as

identified in the approved plan. If the policy contemplated by the Service were enforced, the State could be responsible for additional match funds up to \$10.5 million dollars for the completed acquisitions if the local match derived from mitigation fees is disallowed.

Similarly, local entities in the East Contra Costa County HCP/NCCP have been awarded three Service-approved Section 6 grants for HCP land acquisition, matched with local in-kind services. For future acquisitions, the locals may only have mitigation fees to offer for match, which would prohibit them from receiving future federal land acquisition grants under the proposed policy. The approved Plan does not require local agencies to contribute money over and above mitigation fees, specifically for land acquisition. The monies they have to draw from for land acquisition are a combination of "mitigation" fees money, State money, and federal grant money. Without federal grant money, the locals would not be able to implement the approved and permitted Plan.

Our interpretation of the policy presented in the RFP, is that the Service would not allow any of the "mitigation" fee money to be used as match for the Section 6 grants, so the only viable option for the East Contra Costa County Plans is to have State NCCP bond money be the match to the Section 6 federal money. As a result, it is not certain at this point whether the local entities will be able to utilize all of the Section 6 money, because they may not be able to generate enough match. Essentially, the State would be responsible for \$24 million that was the obligation of the local entities who applied for these funds through the Department of Fish and Game.

The local entities for all approved HCP/NCCPs will, as a result of the implementation of this policy, need to come up with a separate source of funds from the development fees to achieve the match needed to be eligible for Section 6 funds. If local applicants for permitted plans cannot identify an alternate funding source and are limited by match options, it may result in the State making up the difference and shouldering the match burden for plans unable to comply with their permit obligations. If the permittees are out of compliance, both of our agencies may be placed in the awkward position of being forced to revoke their permits.

This policy could also deter participation in currently developing plans and future plans due to the difficulty of finding and providing other reliable funding sources. Non-traditional Section 6 funding has been used successfully to "seed" or jumpstart the acquisitions prior to Plan approval and motivate and create incentive for plan completion. This was used as a major selling point with the local entities for the Western Riverside County Plan as well as East Contra Costa County and the Santa Clara Valley plan, which is currently in late planning stages. In all these cases, non-traditional Section 6 funding was used by the Department and the Service as a selling point to the local entities as a viable future funding source for acquisitions.

There is a positive incentive to local governments when State and federal governments cooperatively contribute acquisition monies to the overall conservation effort. It helps create a spirit of partnership and trust that is essential to the success of these programs. For approved Plans, this trust may be compromised and thereby may stall or discourage the development of future Plans. These Plans will also take a great deal more time to meet their conservation goals than anticipated, which would in essence stall the "in-step" permitting of development projects within the HCP/NCCP area.

Preferably, the Department would like to work with the Service to clarify these issues and recognize how unique and progressive the programs are in California that blend the State and federal Acts to achieve more effective conservation of the species and their habitats. Our significant collaboration warrants recognition and flexibility in the interpretation of this policy, or the development of a separate policy altogether. The equal partnership between the Department and the Service is critical to our mutual efforts for robust conservation, and we have accomplished more conservation together through these Acts than would ever have been accomplished alone. Alternatively, if the policy is to stay as currently described in the FY09 draft RFP, the Department recommends that the Service make it absolutely clear to local entities in the planning stages that mitigation funds cannot be used for match and that other non-mitigation funding sources will need to be identified accordingly to provide the required local match. As for approved Plans, since the policy was not made absolutely clear in the planning stages, we believe that the plans should be "grandfathered in" and be eligible for funding assistance without the limitations now being imposed.

Other Comments

Significant Changes to Non-Traditional Programs for Fiscal Year 2009 Summary

"A priority species ranking criterion has been added to the evaluation form for each of the programs. Projects that benefit more priority species will score higher."

Comment: How will this list of priority species be determined? At what level within the Service will this determination be made? The Department would like the opportunity to have a significant role in determining which species are priorities in California when these priority species lists are created. We recommend including a link to a website where the lists will be made available.

"A new process is being implemented providing the Service Regional Directors with 25 points total in each of the non-traditional programs to distribute among project proposals to reflect the collective priorities of the State and the Service."

Comment: The Department fully supports this idea. We have long wanted a way for state priorities to be taken into account, rather than the straight scoring implemented in the past.

III. Eligibility Information Item #2, Cost Sharing

General Comment: It would be helpful for the Service to develop and provide a list of acceptable forms of cost share/match for applicants to access on a website or make available to the states to share with applicants for determining if they are eligible when preparing a proposal.

Habitat Conservation Plan Land Acquisition Item #5

"if you submit more than one parcel for consideration in your proposal, you must include the relative acquisition priorities for each parcel, the price of each parcel, and the amount of the request (purchase price minus the non-Federal match) for each parcel."

Comment: The language above should be modified to reflect that the price information requested for the grant proposals should be reasonable estimates. The estimated price of each parcel and the amount requested per parcel should be used by the local Service office for grant application evaluation only. These amounts will very likely change prior to the acquisition transaction, and the state should not be held exactly to these amounts. Also, please provide an example priority list and cost calculation here for clarification.

IV. Application and Submission Information, Item #5 Funding Restrictions

"The project must involve voluntary conservation efforts within the United States, States and Territories. As a voluntary program, we will not grant funding for projects that serve to satisfy regulatory requirements of the Act, including complying with a biological opinion under section 7 of the Act or fulfilling commitments of a Habitat Conservation Plan under section 10 of the Act, or for projects that serve to satisfy other local, State, or Federal regulatory requirements (e.g., mitigation for local, State, or Federal permits)."

Comment: Similar to our comments regarding Section III, Eligibility, Item 3, the Department recommends adding the following statement to provide some flexibility to recognize the blending of conservation and mitigation in the NCCP Act, higher standards and more significant contribution to recovery achieved by plans in California:
"However, federal funding can be combined with funding needed to satisfy regulatory requirements to achieve a project where the federal funding would result in conservation above and beyond that required to mitigate the project."

This same comment also applies to the General Questions section answers to Items 1 and 3 (see below).

VI. Award Administration Information, Administrative and National Policy Requirements, Expenditure of Funds

The nontraditional section 6 program is one of the most complex grants programs to manage and implement. It is especially challenging in California due to the large number of listed species, complicated real estate processes, and a dynamic political climate. These challenges have led to a slower than desired obligation rate for this grants program.

The main challenge is spending the grant funds in an expedited manner due to the complexity of the land purchases and planning processes in California. The reality is between the evaluation, proposal review period and awarding of the funds it takes from 2 to 3 years before it is spent on the ground.

- Land values sometimes increase beyond the amount awarded prior to the money being obligated or the purchases being completed;
- Escalating land prices sometimes prevent the State and its partners from meeting the State and Federal requirements to only pay fair market value;
- Willing sellers have changed their minds about selling, because they can sell the property on the open market at higher prices;
- Overall workload at the State has increased due to recent bond acts and new grant funds which all compete for limited staff;
- Completing land acquisitions in California is a complex process requiring specialized expertise with local knowledge and relationships; and

- Older grants only considered a limited set of parcels for purchase, and amendments to grants have become necessary if these parcels become unavailable for the reasons described above. Amendment processes can take time and staff resources.

Given California's constraints, we ask that up to two 1-year extensions be allowed such that:

- If there is grant activity/progress within the three years, the grant can be extended for two more years;
- The maximum possible term for a Recovery Land or HCP Land Acquisition Grant would be five years, if progress is demonstrated as identified above and an extension is requested. At the end of five years, the grant would be closed and any remaining Federal funds would be reverted.

Questions and Answers Section

General Questions, Item 10, answer.

"This time frame begins with a signed award document (*i.e.*, obligation of funds) and ends with grant closeout."

Comment: This is critical information for knowing when the clock starts, and this description appears too vague. Please clarify what a signed award document is, who it goes to, and when it is provided.

Additionally, last year's (2007) awards were not announced until well into 2008. Projects that stated they could be completed within one year were counting on the awards being announced in October 2007 and having until December 2008 to finish. With the delay in award announcement, does that mean those projects now have until December 2009? Please clarify.

General Questions, Item 10, answer.

"Yes, provided that funds sufficient to cover the management costs for a specified time period are secured at the time the land or easement is purchased **AND** provided that the *proportion of Federal funding provided for management* does not exceed the proportion of Federal funding provided for the land or easement purchase.

Comment: Please clarify the use of Habitat Conservation Planning Land Acquisition (HCPLA) funds for management. If funds are available for management, there should be a discussion of this option earlier in this document where it is described for what HCPLA funds may be used. Also, we suggest providing a formula here for determining what the maximum federal share of management can be.

General Questions, Item 16, answer.

"It is the Service's policy that grants be funded prospectively; therefore, we will not accept proposals submitted for reimbursement of previously purchased land."

Comment: This has been allowed in the past and the Service has previously approved the use of such lands as the non-federal match if they are appraised again. Will this no longer be allowed?

Habitat Conservation Planning Assistance Grants Questions and Answers

"One Year, for the purposes of this grant program, is defined as the close of the calendar year subsequent to the calendar year in which funding was appropriated."

Comment: Please clarify whether the funds would be appropriated in the same year as approved and in the following year. Also, please clarify the meaning of the terms appropriated and awarded.

In conclusion, the non-traditional Section 6 Program is one of the most complex grant programs to manage and implement. It is especially challenging in California due to the large number of listed species, the cooperative nature of the NCCP Act blended with the federal regional HCPs, complicated real estate processes, and a dynamic political climate. With all these innate challenges, we still continue to look forward to working cooperatively with the Service in our effort to conserve the precious natural resources found only within California. A flexible approach to funding sources is likely the best way to achieve our mutual goals. We feel optimistic that we can make this work, and thereby continue to be a leader in the nation for ingenuity and progress in the world of large-scale, regional natural community conservation.

Sincerely,



Donald Koch
Director

cc: Mr. Steve Thompson, Regional Director
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Sonke Mastrup, Deputy Director
Kevin Hunting, Deputy Director
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Chuck Armor, Regional Manager, Bay Delta Region
Bill Loudermilk, Regional Manager, Central Region
Ed Pert, Regional Manager, South Coast Region
Curt Taucher, Regional Manger, Inland Deserts Region
Marija Vojkovich, Regional Manager, Marine Region

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: August 14, 2008
TO: Public Advisory Committee (PAC)
FROM: Conservancy Staff
SUBJECT: Stream Setback Provisions

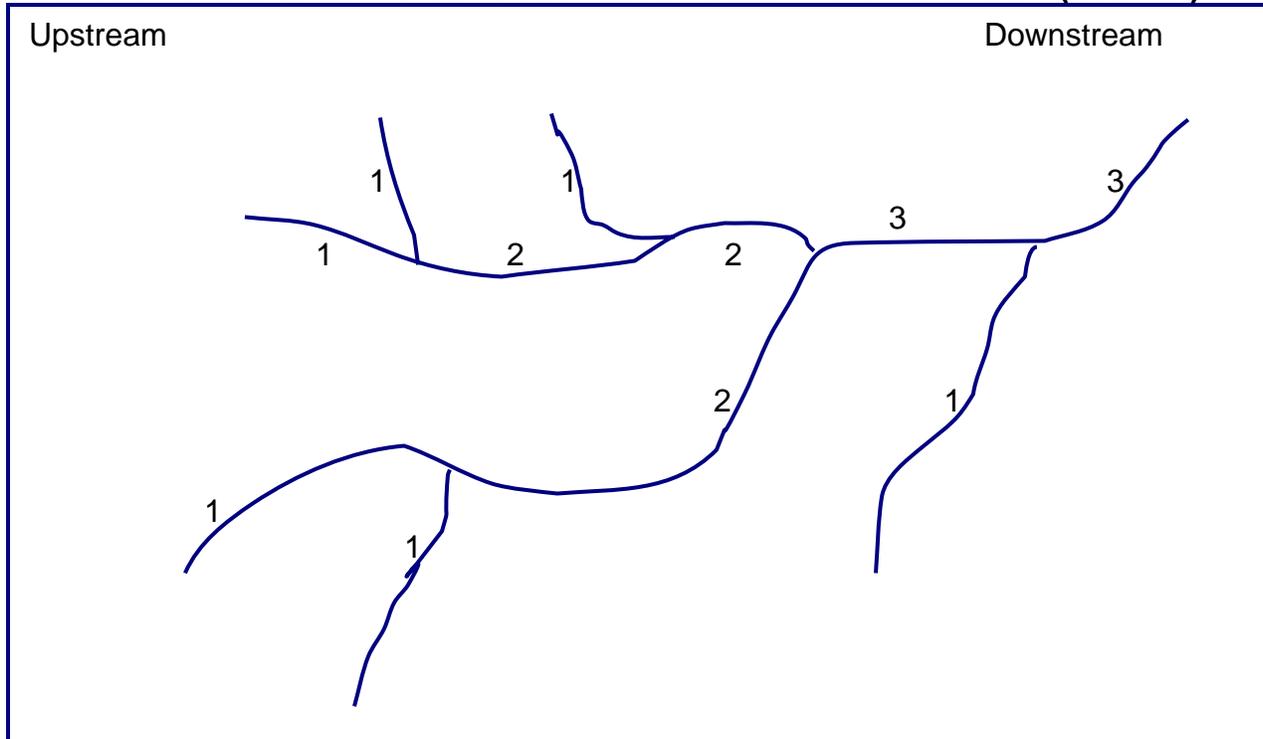
At the last PAC meeting in May, the PAC reviewed and commented on a draft map indicating which HCP/NCCP stream setback provisions apply where. The legend on the draft map was modified based on comments received and a “Note to reader” box was also added. The Governing Board approved the map as information resource at its meeting in June. Conservancy staff felt it would be useful to include an item on the general topic of the HCP/NCCP stream setback provisions at the August PAC meeting because the stream setback provisions are complex and the discussion of the draft map at the May PAC meeting indicated the PAC was interested in a more detailed explanation of the setback provisions themselves. An excerpt from the Conservancy Governing Board packet on the informational map is provided below for background. Excerpts from the HCP/NCCP are also included.

Background: Conservation Measure 1.7 (attached) of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (“HCP/NCCP”) describes stream setback provisions that apply to activities covered by the HCP/NCCP. As described in Table 6-2 (attached), the setback provisions vary by type of stream and whether the stream is in an urban, agricultural or natural area. Stream types are distinguished on the basis of concrete banks, on whether the flow is ephemeral, intermittent or perennial and on stream order. Stream order is an indication of how far up or down a watershed a reach of stream is located (see additional background information below).

Conservation Measure 1.7 provides that the Implementing Entity (the Conservancy) should make available to local agencies for information purposes a map that categorizes stream reaches in the inventory area according to the criteria described in Conservation Measure 1.7 and Table 6-2. The attached map was created by Conservancy staff and approved by the Conservancy Board for this purpose. The map includes a note to users explaining the purpose and limitations of the map and explaining that the map is an information tool and not final arbiter of which provisions apply where (the land use agencies decide on a case-by-case basis). The map was created using the Geographic Information System (“GIS”) map data on creeks and land cover used in the HCP/NCCP. The land cover data was used to determine whether a stream reach was within an urban, agricultural or natural area. The creek data was used as a basis for the map and to distinguish stream order.

A note on how stream order is determined: In the classification system used by the HCP/NCCP (Strahler), a stream reach with no tributaries is a 1st order stream. A reach with only 1st order tributaries is a 2nd order stream. A reach with only 1st and 2nd order tributaries is a 3rd order stream, and so on (please see illustration below). The stream setback provisions in the HCP/NCCP generally treat 1st and 2nd order ephemeral streams differently from perennial, intermittent and 3rd and higher order ephemeral streams.

Illustration of the Stream Order Classification Used in the HCP/NCCP (Strahler)



Attachments:

- Conservation Measure 1.7 from the HCP/NCCP (Stream Setbacks)
- Table 6-2 from the HCP/NCCP (Stream Setbacks)

for the preservation, enhancement, and restoration of areas with high biological value.

Project proponents are required to minimize their impacts on natural vegetation communities and covered species in order to meet the regulatory requirements of ESA. Although the Plan does this on a large scale, there are still opportunities to avoid and minimize impacts on a local scale when projects occur adjacent to existing or future open space. Good project design at these urban-wildland interfaces is critical to the success of the open space and to the HCP/NCCP preserves as part of that open space. This conservation measure is intended to help achieve compliance with the avoidance and minimization requirements of ESA and CWA. This measure is not intended to result in avoidance of small, isolated habitats on a project-by-project basis.

Conservation Measure 1.7. Establish Stream Setbacks

Measure

A stream setback will be applied to all development projects covered by the HCP/NCCP according to the stream types listed in Table 6-2. The setback is measured from the top of the stream bank in an aerial perspective (to eliminate differences in setbacks on different slopes). Where native woody riparian vegetation is present, setbacks will extend, at minimum, to the outer dripline of this vegetation. Stream setbacks will be established for all perennial, intermittent, and ephemeral streams for all covered activities within the UDA. Stream setback requirements have been developed on the basis of an extensive literature review of applicable research from both local and national sources (Table 6-3) and in consultation with USFWS, CDFG, USACE, SWRCB, RWQCBs, and EPA. For the purpose of determining required stream setbacks, streams will be assigned to one of five categories.

- Concrete channel.
- First and second order ephemeral reaches in urban and agricultural areas.
- First and second order ephemeral reaches in natural areas.
- Perennial, intermittent, or third or higher order ephemeral reaches in urban areas except Marsh Creek mainstem.
- Perennial, intermittent, or third or higher order ephemeral reaches in agricultural or natural areas and Marsh Creek mainstem.

No setbacks are required on irrigation ditches, underground stream reaches, or on drainages and swales that have neither defined bed and bank nor evidence of scour or sediment transport. It is anticipated that these features are likely to be filled in the course of covered development activities. However, where impacts to such features are sufficiently extensive to result in changes to the hydrograph of the watershed, measures will be implemented to maintain the baseline hydrograph, in keeping with requirements of the RWQCB (C3 provisions) and Conservation Measure 1.10 (Maintain Hydrologic Conditions and Minimize

Erosion). Irrigation ditches, underground stream reaches, and swales may provide important hydrologic/ecologic support functions for other downstream systems and features. Such support functions include being "catchment areas" or hydrologic source areas for surface flows or shallow subsurface flows that support downstream wetlands.

The stream categories above are designed to correlate with existing habitat quality for species covered by the HCP/NCCP and with potential impacts of development to stream functions. Stream setbacks are designed to protect existing habitat quality, to protect water quality and hydrologic processes through buffering, and allow for at least minimal restoration. For informational purposes, the Implementing Entity will create and make available to local jurisdictions digital and hardcopy maps categorizing stream reaches according to this system.

Local jurisdictions will ensure that project proponents seeking coverage under the HCP/NCCP adhere to setback requirements. Rare exceptions to the requirements may be granted by local jurisdictions according to the limitations on exceptions to setback requirements described in Table 6-2 if the local agency finds that complete adherence to the setback requirement is not practicable. Additional, site-specific exceptions will be considered case by case on the basis of factors such as unusual topography or reasonable economic use of a highly constrained site and shall require the approval of the Implementing Entity for projects within the UDA or the approval of CDFG and USFWS for projects outside the UDA (see Chapter 8, Section 8.7 for more information). Activities granted any such exception must mitigate these additional impacts as described below. Technical assistance will be provided by the Implementing Entity, if needed.

Project proponents are encouraged to site trails and access roads outside the required setback to reduce disturbance to wildlife that use adjacent streams and riparian habitats. When roads and trails cannot be sited outside the required setback, they must be sited as far from the stream channel as practicable, must adhere to limitations on exceptions to stream setback requirements described in Table 6-2, and must mitigate additional impacts as described below. Project proponents are encouraged to use permeable or semi-permeable surfaces on roads and trails within stream setbacks as long as they are consistent with safety and zoning limits. If such surfaces are used, the project may be eligible for fee reductions (see below).

Water quality treatment wetlands and grassy swales may be included within the setback if consistent with the biological goals and objectives of the Plan and the biological goals of the setback.

The HCP/NCCP development fee will not apply to the portions of the development project within the stream setback if the land in the stream setback is precluded from future development (including active recreational facilities such as turf) by restrictions placed in the deed (see Section 9.3.1). If the stream setback deed restriction exceeds the minimum required, the fee may be waived on the entire protected area provided that the Implementing Entity finds that the

entire protected area provides a stream buffer benefit. Roads or trails constructed in the outer third of the setback with permeable or semi-permeable surfaces may be accommodated within the deed restriction; projects with such features retain eligibility for the fee waiver.

If deed restrictions are not provided on the stream setback or if the development is granted an exception to the stream setback, the project proponent shall be charged the applicable HCP/NCCP development fee over the entire area (i.e., development area and the diminished setback). Development granted an exception to the stream setback shall also be required to mitigate for the loss of stream buffer by restoring riparian vegetation on site or off-site at a 0.5 to 1 ratio or to pay one half the riparian impact fee per acre of setback encroachment⁸. Development that causes fill of streams or other jurisdictional wetlands and waters shall also be subject to the wetland fee described in Section 9.3.1. All fee requirements described in this paragraph may also be satisfied with the applicable land-in-lieu of fee provisions described in Section 8.6.7 or with the applicable provisions in Section 9.3.1 for applicants to perform direct mitigation for impacts on jurisdictional wetlands and waters in lieu of paying a fee.

The required stream setbacks proposed by this measure are designed to maintain existing habitat value for covered species, which is generally low within the UDA. Existing habitat value is largely correlated with adjacent land use. While these setbacks are designed to maintain a limited restoration potential, this measure is not intended to be an urban creeks restoration program, which is outside the scope of the HCP/NCCP.

The stream setback measure is intended to achieve the following purposes.

- Maintain or improve water quality by filtering sediments and pollutants from urban runoff before they reach the stream.
- Allow for protection of preserved and restored riparian woodland and scrub within and adjacent to the stream channel.
- Maintain a buffer zone between urban development and existing and restored nesting habitat for Swainson's hawk and other bird species.
- Maintain and enhance the water quality of the stream to protect native fish populations, including populations of special-status species that occur in downstream reaches (e.g., fall-run Chinook salmon in Marsh Creek).
- Maintain a more viable wildlife corridor for some species (e.g., California red-legged frog, foothill yellow-legged frog) than would be present with a narrower buffer zone.
- Maximize the natural flood protection value of the floodplain.

⁸ Roads, trails, bridges, turf, and development of all kinds within the setback will be considered encroachments; roads and trails constructed with permeable and semi-permeable surfaces may have their mitigated acreage reduced by 50%.

- Provide for recreational trails along the corridor that are compatible with wildlife use.

Setback requirements that are larger or more restrictive than those described in this conservation measure and in Table 6-2 could accomplish additional goals or may be necessary to comply with other regulations, but are not required by this Plan. For example, a wider corridor could provide aesthetic benefits and could increase habitat values, water quality protection, and opportunities for recreation. A minimum stream setback of 100 feet has been recommended in Brentwood to achieve habitat protection and enhancement goals (Natural Heritage Institute 2002). This setback is based on an extensive review of existing conditions in Brentwood and published literature on stream setbacks (e.g., Young et al. 1980; Lynch et al. 1985; Magette et al. 1987; Herson-Jones et al. 1995; Spackman and Hughes 1995; Hagar 1999). Tables 6-3 and 6-4 summarize available data on buffers for a variety of purposes (including some that go beyond the purposes of this conservation measure), and provide examples of existing and proposed buffer requirements elsewhere in the greater San Francisco Bay Area.

Contra Costa County has policies encouraging stream setbacks from new development. The Conservation Element of the General Plan (Contra Costa County 1996b) states:

Setback areas shall be provided along natural creeks and streams in areas planned for urbanization. The setback areas shall be of a width adequate to allow maintenance and to prevent damage to adjacent structures, the natural channel and associated riparian vegetation. The setback area shall be a minimum of 100 feet; 50 feet on each side of the centerline of the creek (Policy 8-89).

The County also requires minimum setbacks to meet water quality and erosion-control goals through a stream ordinance for unimproved earthen channels. This ordinance requires a “structure setback line” that varies between 30 feet and 50 feet from top of bank depending on the height of top of bank above the channel invert (County Code Title 9, Division 914-14.012). Some participating cities have or will have their own similar setback ordinances. All covered activities must also meet County and city setback requirements, where applicable.

Conservation Measure 1.8. Establish Fuel Management Buffer to Protect Preserves and Property

Measure

When a project site is adjacent to HCP/NCCP preserves, likely HCP/NCCP acquisition sites (i.e., within the high or moderate priorities for conservation, See Figure 5-3), or existing public open space that is or will be linked to HCP/NCCP preserve, a fuel management buffer will be established between the project site and the boundary of the existing or future conservation area. The purpose of buffer zones is to provide a buffer between development and wildlands that

Table 6-2. Stream Setback Requirements for Streams within the Urban Development Area

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

Stream Reach Type and Location ¹	Buffer Objective/ Function (from Figure 5-11)	Example Sites in Inventory Area	Required Setback (from top of bank measured in aerial perspective ²)	Limitations On Exceptions To Setback Requirements That May Be Granted By Local Agencies			Comments
				Maximum Allowable Linear Impact to Streams ³ (per project)	Activities Eligible For Streams Impact Exception	Maximum Allowable Area of Impact Within Setback ⁴ (per project)	
Perennial, intermittent, or 3 rd or higher order ⁵ ephemeral streams in urban areas except Marsh Creek mainstem	Enhance water quality; retain restoration potential	Lower Willow Creek, Lower Kirker Creek	50 ft	300 feet ³	Necessary bridges and outfalls	Up to 15% of setback area ⁴	These reaches are located mostly in dense urban areas and provide low habitat function for covered species. However, potential may exist for restoration of riparian vegetation and minimal floodplain areas. In addition, a minimal buffer width will reduce sediment and nutrient inputs from surface flows and provide for recreational opportunities.
Perennial, intermittent, or 3 rd or higher order ⁵ ephemeral streams in agricultural or natural areas and Marsh Creek mainstem	Enhance water quality; retain restoration potential	See examples below ⁶	75 ft	300 feet ³	Necessary bridges and outfalls	Up to 15% of setback area ⁴	These reaches retain the greatest habitat value and potential for restoration within the Urban Development Area. The buffer will filter sediment and other contaminants, maintain habitat for covered species, allow for restoration of riparian vegetation and some small floodplain areas, as well as providing recreation opportunities.

Notes:

- ¹ Location parameters (e.g., “agricultural areas”, “natural areas”, etc.) describe the setting of the stream at the time of completing this HCP/NCCP and refer to the fee zones and urban landcover shown in Figure 9-1.
- ² Where native woody riparian vegetation is present, minimum setbacks must extend to the outer dripline of the riparian vegetation or the specified number of feet measured from top of bank, whichever is greatest. Riparian vegetation is defined broadly to include oaks and other woody species that function as riparian corridors. Setbacks must also meet minimum setback requirements of the applicable local land use agency. Contra Costa County has an ordinance regulating impacts near unimproved earthen channels. This Ordinance requires a “structure setback line” that varies between approximately 30 feet and 50 feet from top of bank depending on the height of top of bank above the channel invert (County Code Title 9, Division 914-14.012).
- ³ Mitigation is required for all impacts to streams, as described in Chapter 5. Restoration requirements are summarized in Tables 5-16, 5-17, and 9-5. Preservation requirements are summarized in Tables 5-5a and 5-5b and may be accomplished through payment of the development fee described in Section 9.3.1 or through provision of land in lieu of fees.
- ⁴ Restrictions will be measured as a percentage of the setback area excluding the area the of the stream channel. Impacts within setbacks must be mitigated through: a) payment of the development fee described in Section 9.3.1 over the entire property including the setback and the stream channel; and b) through payment of the riparian impact fee (see Table 9-5) for every acre of impact within the setback or through direct performance of riparian restoration at a 0.5 to 1 ratio on-site or off-site.
- ⁵ Stream order refers to the numeric identification of the links within a stream network. This document follows the stream ordering system of Strahler (1964). In this system, a first order stream is a stream with an identifiable bed and bank, without any tributary streams. A second order stream is formed by the confluence of two first order streams. A third order stream is formed by the confluence of two second order streams, and so on. Addition of a lesser order stream does not change the stream order of the trunk stream.
- ⁶ Perennial streams in agricultural or natural areas within the Inventory Area consist of the following:
- Mount Diablo Creek, Russelman Creek, Peacock Creek upstream of the Oakhurst Country Club property, and tributaries to Mount Diablo Creek within Mount Diablo State Park;
 - Kellogg Creek in the Foothills/Upper Valley and Delta geomorphic zones;
 - Brushy Creek in the Delta and Lower Valley/Plain geomorphic zones;
 - Indian, Rock, Sand Mound, Dutch, Piper, and Taylor Sloughs, and False River (does not include reaches in concrete channels); and
 - Sand Creek and Oil Canyon Creek in the Montane geomorphic zone.
-