



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

REGULAR MEETING

Wednesday, February 6, 2008

5:30 pm

City of Pittsburg City Hall
Conference Room behind Council Chambers, 3rd Floor
65 Civic Center Drive, Pittsburg, CA

AGENDA

- 1) **Introductions**
- 2) **Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 3) **Consider approving the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of October 17, 2007**
- 4) **Accept update and provide guidance to staff on some key initial tasks related to implementing the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”), including:**
 - a) Assisting the Cities and the County with preparing to implement their HCP Implementing Ordinances and beginning to extend permit coverage to 3rd parties
 - b) Preparing for anticipated requests to the Conservancy to extend take coverage to projects not subject the land use authority of the Cities or the County, including Caltrans project to improve a stretch of Highway 4 from Marsh Creek Road to Discovery Bay
 - c) Initial wetland restoration/creation opportunities
- 5) **Consider approving the 2008 Conservancy Work Plan.**
- 6) **Consider recommendations received from stakeholders and consider initiating the Public Advisory Committee process.**
- 7) **Consider the following items related to Conservancy finances:**
 - a) Consider approving the 2008 Conservancy Budget.
 - b) Consider authorizing staff to execute an agreement with the East Bay Regional Park District for the provision of specific land acquisition services during 2007 and 2008.
 - c) Consider approving standard contract form for consulting services.
 - d) Consider authorizing staff to execute contracts for on-call biological and conservation planning services from January 1, 2008 to December 31, 2008

with Jones and Stokes for \$200,000, with H.T. Harvey & Associates for \$75,000 and with Monk and Associates for \$75,000.

e) Consider authorizing staff to execute a contract for legal services with the Resources Law Group for \$50,000.

8) Consider approving Resolution 2008-01 to support working together with agencies from Placer, Santa Clara, Solano and Yolo Counties to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund by \$50 million in the Fiscal Year 2009 Interior and Related Agencies Appropriations bill.

9) Adjourn to next Governing Board meeting on March 19, 2008.

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 24 hours before the meeting.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 19, 2007
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Meeting Record for October 17, 2007 Governing Board Meeting

RECOMMENDATION

APPROVE approving the Meeting Record from the Conservancy Governing Board Meeting of October 17, 2007.

DISCUSSION

Please find the draft meeting record attached

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

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Governing Board Meeting
Wednesday, October 17, 2007

1) Introductions.

Governing Board members in attendance were:

| | |
|-----------------|--|
| Will Casey | Vice Mayor, City of Pittsburg |
| Bruce Connelley | Vice Mayor, City of Oakley |
| Greg Manning | Vice Mayor, City of Clayton (Conservancy Chair) |
| Mary Piepho | Supervisor, Contra Costa County (Conservancy Vice Chair) |
| Brandon Richey | Councilman, City of Brentwood |

Conservancy Staff members in attendance were:

| | |
|--------------|-------------------|
| Abby Fateman | Conservancy Staff |
| John Kopchik | Conservancy Staff |
| Kevin Torell | Conservancy Staff |

Other Attendees:

| | |
|------------------|---|
| Shannah Anderson | Jones and Stokes |
| Brad Olson | East Bay Regional Park District |
| Ted Radke | East Bay Regional Park District |
| Winston Rhodes | City of Brentwood |
| Joe Ciolek | Agricultural/ Natural Resources Land Trust of Contra Costa County |
| Dick Vrmeer | California Native Plant Society |
| Mike Vukelich | Contra Costa County Farm Bureau |
| Nancy Wenninger | East Bay Regional Park District |

2) Public Comment.

Dick Vrmeer from California Native Plant Society made a comment that he wanted to be at the first official meeting of the East Contra Costa County Habitat Conservancy after the many years of planning to get to the implementation stage of the Plan.

3) Consider Approving the Meeting Record from the East Contra Costa County Habitat Conservancy Governing Board Meeting of May 9, 2007.

It was moved and seconded (Richey/Casey) to approve the meeting record. The motion passed unanimously.

4) Accept Update from staff on the status of permits and ordinances related to the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.

Mr. Kopchik started the discussion with an explanation of the permit documents which were included as an attachment to the staff report. Staff did not include the findings sections of the state permit (approximately 80 pages) in an attempt to reduce the size of the Board Packet. He also mentioned that at the next Governing Board meeting staff will distribute a compact disk that will include all the final and signed documents pertaining to the HCP as well as the local Implementing Ordinances. Mr. Kopchik reviewed the dates for consideration and summarized the status for each jurisdiction considering adoption of Implementing Ordinances. All

ordinances are expected be in effect by mid January; at that point, permit issuance to individual development projects will commence.

The Board accepted the update.

5) Consider the following items related to the Conservancy Work Plan:

- a. Discuss the Draft 2008 Conservancy work Plan. Comment on the draft work plan and schedule further review and approval for the next meeting.**
- b. Accept update presentation from staff on three critical program areas**
 - i. Process for extending take authorization to covered projects**
 - ii. Land Acquisition**
 - iii. Wetland restoration and creation**

Mr. Kopchik briefly described the approach for assembling the work plan, which included evaluating the work schedule provided in the HCP/NCCP and augmenting with tasks that staff knew would be necessary to achieve the many goals of the Plan.

Mr. Kopchik then turned the presentation over to Mr. Torell who gave a brief overview of the permit issuance section of the work plan. He discussed the status of each of the tasks included in the administration and permit issuance section. Mr. Torell then went through a case study of how a basic project would be processed through the HCP.

Ms. Fateman then proceeded with the Wetland Restoration and Creation section of the work plan. She explained the process for wetland restoration and creation: identifying potential sites, investigating soils and topography, evaluating suitability and feasibility of the restoration site, applying for and being issued permits to commence construction, hiring firms to perform the construction, and commencing construction activities. These steps, working in conjunction, can take up to 18 months. Therefore, it was stressed that these projects need to be initiated and continually researched in order to be in compliance with the stay-ahead provisions of the HCP/NCCP. Mr. Kopchik added that it is beneficial to the Conservancy to get started early in this process because once staff gets behind it is extremely difficult to pull back ahead based on the significant time involved. Jones and Stokes has been asked to prepare a report which will identify and evaluate sites for restoration and creation potential. Mr. Ciolek asked if the wetland restoration and creation would be completed on publicly owned sites, if they would be under conservation easement, and if there was a need for land trusts to bring more sites to the Conservancy staff. Mr. Kopchik responded that recently acquired public lands present the best opportunity for early restoration because ownership has already been secured, but staff is also seeking to ensure that the first acquisitions under the plan include sites that have wetland restoration and creation potential and suggestions in this regard are welcomed.

Staff raised the issue of examining wetlands on potential acquisition properties where the owner and the acquiring entity were still negotiating and negotiations were not public. Staff indicated they would seek legal advice on whether the Conservancy could hold closed sessions in order to be updated on potential acquisitions, costs of these acquisitions and the amount of a potential Conservancy contribution and wetland restoration opportunities on these potential acquisitions. The Governing Board asked if any restoration and/or creation sites could fall within city limits. Mr. Kopchik responded that although it was possible under the HCP/NCCP to purchase preserve lands within city limits and perform restoration there, it was more likely that the restoration

and/or creation sites would occur within the preserve system away from the city limits. The primary opportunity within city limits is the Marsh Creek corridor.

Mr. Kopchik then introduced the Preserve Acquisition section of the work plan. He indicated that it was staff's recommendation that preserve lands not be owned by the Conservancy since the Conservancy has no such experience and is expected to dissolve when the permit expires in 30 years. As an alternative, due to the land acquisition and ownership experience and interests of the East Bay Regional Park District, several land trusts working within the HCP/NCCP inventory area as well as other qualified agencies and organizations, staff proposes to seek out partners to assist with acquisitions and hold the properties and easements for the Conservancy. To explore and forge land acquisition partnership, staff proposes an on-going effort to reach out to potential partners and an open-door policy of inviting potential partners to present land acquisition partnership opportunities as they materialize.

The East Bay Regional Park District will play a major role in the acquisition of properties, as foreshadowed in the Implementing Agreement. Mr. Kopchik introduced Nancy Wenninger, Acquisition Program Manager for the East Bay Regional Park District. Ms. Wenninger discussed their process of acquisition and explained how the Conservancy's goals will fit into the Park District's current and future land acquisition projects. Ms. Wenninger mentioned that they are currently investigating several sites which would be compatible with the HCP/NCCP acquisition policies. To protect the landowners and the District's interests while negotiations are on-going, the Park District has specific procedures in terms of acquisitions and information does not become public until after an option agreement has been secured. Ms. Wenninger discussed a current acquisition opportunity in general terms and explained how the land acquisition process is more reactive than proactive.

Mr. Kopchik mentioned that although East Bay Regional Park District will be relied on to bring forward multiple preserve acquisitions, there is also need for additional organizations to participate in the acquisition process.

The Board accepted the update. Supervisor Piepho requested that the HCP map showing the HCP general acquisition priorities be regularly included in the packet to facilitate communication.

6) Consider initiating the Public Advisory Committee process.

The HCP/NCCP requires there to be a Public Advisory Committee (PAC) to provide feedback and make suggestions on implementation of the HCP/NCCP. The committee is to be made up of 12 members including 3 members from each subset of interested parties: the development community, the conservation community, local landowners and/or agriculturalists, and suburban/rural residents of the Plan area. It was the suggestion of Mr. Kopchik to invite all participants in the Coordination Group (the committee that advised on the development of the HCP/NCCP) process and all other interested parties to meet and discuss recommended members of the PAC. It is hoped that the collaborative nature of past Coordination Group meetings would carry over to the process for recommending the membership of the PAC. Other approaches were also discussed by the Governing Board and could be employed if stakeholders fail to reach consensus. Mr. Rhodes recommended that if there is more interest than space, that alternate positions could be established to allow greater participation and ensure back-up.

It was moved/seconded (Piepho/Casey) to initiate the Public Advisory Committee process by convening a meeting of members of the Coordination Committee and interested parties in an attempt to reach consensus and recommend members from each interested party subsets to the Governing Board for appointment to the Public Advisory Committee, as recommended in the staff report. Motion was passed unanimously.

7) Consider the following items related to Conservancy finances:

a. Workshop on the 2008 Conservancy Budget. Provide comment on Draft Budget materials and schedule further review and approval for the next meeting.

Mr. Kopchik began the staff report presentation by describing to the Board the complexities involved in preparing and reviewing the 2008 budget, including the wide variety of funding sources that afford varying levels of discretion and the wide variety of new tasks that would need to be performed and funded. Therefore, the agenda item is framed as a workshop to enable more discussion with an input from the Board. Staff would return in December with a final draft Budget that could be considered for adoption.

The draft 2008 budget was created by relying heavily on the financial analysis spreadsheets prepared by staff, Jones and Stokes and Economic Planning Systems in the HCP/NCCP. These spreadsheets broke down the cost estimates into 5 year periods for the 30 year life of the HCP/NCCP. Staff divided these five-year estimates by five to reflect a one year time frame, as shown in the tables attached to the staff report. Mr. Kopchik went through main budget table as well as the supporting tables and explained the assumptions and judgments made in creating the budget.

Mr. Kopchik described the tables summarizing the revenue sources the Plan has available. The Plan has three main funding sources at the moment. The first is mitigation dollars from development projects and wetlands impacts held directly by the Conservancy. The second is committed funding from grants that were secured by staff to be used mainly for preserve acquisitions. The third is from funds that were collected by the permitting agencies from project proponents on behalf of the HCP/NCCP (before implementation and/or from non-covered activities) and deposited into a California Wildlife Foundation Account. These different types of funding sources complicate the budget further because certain revenue sources may only be spent on certain expenditures. Therefore the money must be earmarked from each of the funding sources and denoted which category those funds can be appropriated to.

The Governing Board discussed the budget and posed a number of questions. The Governing Board was eager to understand further the availability of the funds being held by the California Wildlife Foundation. The Governing Board also discussed the budget categories and amounts as well as the liquidity of the grant funding.

b. Consider approving interim expenditure limits for the remainder of 2007.

It was moved/seconded (Richey,Piepho) to approve the expenditure limits for the remainder of 2007. The motion was approved unanimously.

- c. Consider approving policies for the expenditure of funds consistent with the Budget (once approved) or with approved interim expenditure limits.**

It was moved/seconded (Piepho, Richey) to approve the policies for the expenditure of funds as set forth in the staff recommendation, except that: (a) staff may purchase goods and services consistent with the approved budget or interim expenditure limits if total amount of the purchase is \$25,000 or less; and (b) with the concurrence of the Chair and Vice Chair Conservancy, staff may make purchases exceeding \$25,000. The motion was approved unanimously.

- d. Consider approving Resolution 2007-01 authorizing the County Treasurer to invest Conservancy funds.**

It was moved/seconded (Piepho, Richey) to authorize the County Treasurer to invest Conservancy funds. The motion was approved unanimously.

- e. Consider authorizing staff to develop an agreement with the East Bay Regional Park District for the provision of specific land acquisition services during 2007 and 2008. Consider an initial appropriation of \$30,000.**

Staff explained while they were recommending an agreement be developed, explained that the agreement would include an overall cost to the Conservancy of \$120,000, including an immediate \$30,000 contribution for services already rendered and that the intent of the agreement was to rely on a very close working relationship with EBRPD rather than a complicated and time-consuming invoicing procedure such that the remaining \$90,000 would be forwarded in one lump sum and actual costs would be reconciled at year end.. It was moved/seconded (Casey, Richey) to authorize staff to develop an agreement with the East Bay Regional Park District for the provision of specific land acquisition services during 2007 and 2008 and to make an initial appropriation of \$30,000 to EBRPD. The motion was approved unanimously.

- f. Consider approving Resolution 2007-02 authorizing the application and acceptance of \$60,000 in grant funds from the CA Department of Fish and Game for wetland restoration activities.**

It was moved/seconded (Richey, Connelley) to approve Resolution 2007-02 authorizing the application and acceptance of \$60,000 in grant funds from the CA Department of Fish and Game for wetland restoration activities. The motion was approved unanimously.

- 8) Consider establishing a regular meeting schedule and schedule next meeting.**

Mr. Kopchik suggested to the Board that it would be helpful to have a consistent meeting schedule on a quarterly basis. It was agreed upon by the Board Members that the Conservancy Board Meeting would occur on a quarterly basis on the 3rd Wednesday of the month during the 3rd, 6th, 9th and 12th months of the year. The next meeting would be held on December 19, 2007 at 5:30pm at the City of Pittsburg City Counsel Chambers. Subsequent meetings will be held on March 19, 2008, June 18, 2008, and September 17, 2008. Supervisor Piepho requested that the names of the participating cities and the county be added to the graphics used on future agendas.

- 9) Meeting was adjourned to the next meeting on December 19, 2007 at 5:30.**

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 19, 2007
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Update on key initial tasks related to implementing the HCP/NCCP

RECOMMENDATION

ACCEPT update and provide guidance to staff on some key initial tasks related to implementing the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”), including:

- a) Assisting the Cities and the County with preparing to implement their HCP Implementing Ordinances and beginning to extend permit coverage to 3rd parties
- b) Preparing for anticipated requests to the Conservancy to extend take coverage to projects not subject the land use authority of the Cities or the County, including Caltrans project to improve a stretch of Highway 4 from Marsh Creek Road to Discovery Bay
- c) Initial wetland restoration/creation opportunities

DISCUSSION

Item a: Since the last East Contra Costa Habitat Conservancy (“Conservancy”) Governing Board meeting in October 2007, the participating cities (“Cities”) and the County have each adopted HCP/NCCP Implementing Ordinances (“Ordinances”) to establish the HCP fees and the process by which projects proponents apply for and receive take authorization. Three of the Ordinances take effect on January 15, 2008 and two will take effect on January 18, 2008. Please see the attachment entitled, “Key Steps and Dates in the East Contra Costa County HCP/NCCP Approval Process” for more information.

Conservancy staff is working closely with staff from the Cities and the County to prepare for the process of granting permit coverage pursuant to the HCP once the Ordinances take effect in mid January. Some key steps planned or taken include the following:

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

- Prepared a Draft Application Form and Planning Survey Summary Report for the ECCC HCP/NCCP. Conservancy staff and consultants have worked closely with City and County staff to develop this form which serves both as an application for permit coverage under the HCP/NCCP (to be more precise, the extension of take authorization pursuant to the HCP/NCCP and state and federal permits) and as a summary report to document the results of the planning surveys required by the HCP/NCCP. The template has been formatted as a “click and type” document and has been crafted to solicit information needed from applicants to comply with the HCP and should facilitate the application process for project proponents while also standardizing materials to aid review and tracking by local agencies. The template continues to evolve.
- Prepared a planning counter checklist for the Cities and the County to assist with application review. The checklist will continue to evolve significantly.
- Continue to hold monthly meetings with the HCP Coordinators for each City and the County to prepare for implementation. The Cities and the County plan to rely on the Coordinators to conduct or at least oversee the process at their agency.
- Hosted a 3-hour orientation/training session on December 6 for the broader planning/development review staff at the Cities and the County.
- Will assist the Cities and the County with individual in-house trainings as requested.
- Developer/Consultant orientation and training on January 9 from 1 to 4 at Pittsburg City Hall.
- Provide Cities and the County with large format maps and/or computer mapping data to assist with implementation, as requested.
- “Project Proponents Guide” booklet is in preparation and will explain the application process and answer frequently asked questions.
- Conservancy website will be redesigned to include easier access to all Plan documents, forms, committee information, etc.

Item b: The HCP/NCCP provides a mechanism to extend permit coverage to projects that are not subject to the land use authority of the Cities or the County but are covered activities under the HCP. Examples would include projects of state or local agencies not covered on the HCP permits, including projects of school or water districts, Caltrans projects, etc. Such entities are referred to in the HCP as Participating Special Entities (PSEs). PSEs may approach the Conservancy for take coverage and the Conservancy may grant such coverage so long as the PSE complies with the HCP. Chapter 8.4 of the HCP sets forth the procedures and requirements for PSEs. Among the provisions for covering PSEs is the requirement that the conditions for take coverage be extended be established through an agreement between the Conservancy and the PSE. Following execution of the agreement, take coverage is conveyed through a Certificate of Inclusion. Attached please find a draft template PSE agreement and a draft template certificate of inclusion prepared by Resources Law Group. Comments from the Governing Board are welcomed. These draft documents will also be presented to the wildlife agencies and to prospective PSEs for comment.

Chapter 8.4 of the HCP also contains the following provision:

The Implementing Entity may require Participating Special Entities to pay fees over and above those specified in Chapter 9 to cover indirect costs of extending permit coverage under the

HCP/NCCP, including the costs of Implementing Entity staff time to assist with permit coverage, a portion of the costs of the initial preparation of the Plan, and a portion of the costs of conservation actions designed to contribute to species recovery.

Staff suggests that the Governing Board establish policy parameters at the next meeting related to this section. The following concepts are suggested for consideration:

- All PSEs be asked to cover the full cost of the Conservancy staff and consulting costs involved with processing their application.
- All PSEs be asked to make a fee or land contribution above and beyond their mitigation requirements. Such contribution would be applied toward the recovery of species covered by the HCP/NCCP and would assist the Conservancy with meeting its obligations in this regard. The amount of this contribution should vary from project to project, but could be proportional to amount of mitigation required. For instance, all projects could be asked to contribute an additional amount equal to 10% of their overall mitigation requirement. The Conservancy could also consider a minimum contribution for projects with very small mitigation requirements. The Conservancy may wish to consider the minimum contribution amount on a case-by-case basis, depending upon the project and the type of entity seeking coverage (e.g., school districts typically have very limited resources).
- Consider not asking for a contribution toward the costs of preparing the Plan. Though the HCP allows for such charges, given that a wide variety of sources were used to fund the Plan, it is not clear how such contributions should be spent.
- Extending take coverage for PSEs should always be evaluated in the context of how much take coverage remains cumulatively under the Plan and whether allocating some to the PSE will hinder take coverage for the local agency Permittees. Since all PSE projects must have been identified in the HCP as a covered activity and were therefore reflected in the overall impact estimates and take coverage estimates, extending such coverage would not present an unforeseen burden. Nevertheless, the limited supply of coverage should be a factor, as should the broader social benefits of the proposed PSE project.

Comments and guidance from the Governing Board are welcomed.

Caltrans has approached the Conservancy about the potential for seeking take coverage for a project covered by the HCP/NCCP: the widening of Highway 4 from Marsh Creek Road to the Old River Bridge on the east edge of Discovery Bay. The project primarily involves construction of a median barrier and shoulder widening. Caltrans has prepared a one-page fact sheet (attached) briefly summarizing the project and its impacts. Caltrans hopes that the project could be considered for coverage by the Board at its March 2008 meeting. Conservancy staff intends to cooperate with Caltrans to try to help them achieve this goal.

Item c: Conservancy staff has worked with Jones and Stokes to identify wetland restoration and creation opportunities within the HCP/NCCP planning area. A number of opportunities have been identified on land owned by East Bay Regional Park District.

As discussed at the October Conservancy Governing Board meeting, the wetland restoration/creation component of the Plan is so essential to successful implementation that staff recommends immediately initiating the site selection and design process so that construction can begin on some initial wetland sites in spring/summer 2008, a year earlier than had previously

anticipated would be possible. Though wetland restoration opportunities are being considered for a range of recently acquired properties and properties currently being evaluated for acquisition by the Conservancy's various prospective acquisition partners, wetland restoration this first year will need to occur on land that has already been acquired by a public agency. The recently-acquired Lentzner and Vasco Caves properties therefore present the only realistic opportunities for 2008. Brief summaries of the subject properties and opportunities are described below and on the attached sheets. A map is also attached for reference.

Lentzner, APN(s) 075-180-006: This property was recently acquired by EBRPD and is adjacent to EBRPD Black Diamond Mines. Parcel includes headwater areas of Oil Canyon sub-basin with ridgelines, valley zone, and several tributary ravines. Diverse vegetation communities include grassland, oak savannah, oak woodland, and chaparral. Land was historically grazed. Three possible wetland restoration/creation activities have been identified on the site and staff is moving forward with the consultant team on further evaluation, which, if promising, would lead to developing designs for the projects and going to construction in 2008.

Vasco Caves, APN(s) 005-160-005, 005-170-007, 005-170-011: This property was recently acquired by EBRPD and is adjacent and connected to pre-existing Vasco Caves Preserve. The landscape is rolling eastern Mt. Diablo foothills and grassland areas with sandstone rock outcrops. This is the southeastern portion of the conservation area that transitions to the Delta environment. This zone is particularly dry, being in the rain shadow of Mount Diablo and the high ridges of Morgan Territory and average precipitation can be as little as 10 inches per year. The property has several areas with localized gully erosion due mostly to road (or pipeline) construction and runoff; several stream reaches are incised. Staff is moving forward with additional exploration of one restoration/creation opportunity on the property and, if that evaluation shows promise, moving forward with design and construction in 2008.

After consultation with EBRPD staff and Jones and Stokes, preliminary estimates were developed for planning, design and construction of wetland projects on the two sites. The preliminary estimated costs for wetland restoration/creation on the Lentzner property are \$275,000. The preliminary estimated costs for wetland restoration/creation on the Vasco Caves property are \$175,000. The preliminary estimated total for both is \$400,000. Additional funds will be needed for monitoring and maintenance.

Attachments:

- Key Steps and Dates in the East Contra Costa County HCP/NCCP Approval Process
- Draft Template Participating Special Entity Agreement
- Draft Participating Special Entity Certificate of Inclusion
- Fact sheet from Caltrans on the Highway 4 Widening Project
- Figure 5-12 from the HCP/NCCP showing recent acquisition and highlighting the location of Lentzner and Vasco Caves properties.
- Draft preliminary wetland restoration opportunities summary sheets for Lentzner and Vasco Caves.



**EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY**

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

Key Steps and Dates in the East Contra Costa County HCP/NCCP Approval Process

| Agency | Action | Date |
|--|--------------------------------|-------------|
| Habitat Conservation Plan Association, Executive Governing Committee | Approve HCP/NCCP, Certify EIR | 11/8/06 |
| Contra Costa County Board of Supervisors (BOS) | Approve HCP/NCCP | 12/19/06 |
| CCC Flood Control and Water Conservation District (by BOS) | Approve HCP/NCCP | 12/19/06 |
| Clayton City Council | Approve HCP/NCCP | 12/19/06 |
| East Bay Regional Park District Board of Directors | Approve HCP/NCCP and IA | 1/9/07 |
| Oakley City Council | Approve HCP/NCCP, IA and JPA | 1/22/07 |
| Brentwood City Council | Approve HCP/NCCP, IA and JPA | 1/23/07 |
| Contra Costa County Board of Supervisors | Approve IA and JPA | 2/6/07 |
| CCC Flood Control and Water Conservation District (by BOS) | Approve IA | 2/6/07 |
| Clayton City Council | Approve IA and JPA | 2/20/07 |
| Pittsburg City Council | Approve HCP/NCCP, IA and JPA | 4/16/07 |
| East Contra Costa County Habitat Conservancy Governing Board | Approve HCP/NCCP and IA | 5/9/07 |
| United States Fish and Wildlife Service | Approve HCP/NCCP and IA | 7/24/07 |
| California Department of Fish and Game | Approve HCP/NCCP and IA | 7/25/07 |
| United States Fish and Wildlife Service | Approve and issue permit | 7/25/07 |
| California Department of Fish and Game | Approve and issue permit | 8/6/07 |
| Contra Costa County Board of Supervisors | Adopted Implementing Ordinance | 10/23/07 |
| Brentwood City Council | Adopted Implementing Ordinance | 11/13/07 |
| Pittsburg City Council | Adopted Implementing Ordinance | 11/18/07 |
| Clayton City Council | Adopted Implementing Ordinance | 11/6/07 |
| Contra Costa County Board of Supervisors | Adopted Implementing Ordinance | 10/23/07 |
| Oakley City Council | Adopted Implementing Ordinance | 11/13/07 |
| Cities of Brentwood and Clayton, Contra Costa County | Ordinance takes effect | 1/15/08 |
| Cities of Oakley and Pittsburg | Ordinance takes effect | 1/18/08 |

Key to abbreviations

HCP/NCCP: East Contra Costa County Habitat Conservation Plan/Natural Conservation Community Plan

EIR: Environmental Impact Report for the HCP/NCCP

IA: Implementing Agreement for the HCP/NCCP

JPA: Joint Exercise of Powers Agreement forming the East Contra Costa County Habitat Conservancy

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

BETWEEN

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, Implementing
Entity, and [insert name], a Participating Special Entity**

1.0 PARTIES

This Agreement is made and entered into by the East Contra Costa County Habitat Conservancy (“Conservancy”) and [insert name of Participating Special Entity] (“Participating Special Entity” or “PSE”) as of the Effective Date.

2.0 RECITALS

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

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

endangered or threatened, or that carry other special status, under federal and state laws.

- 2.5 The Conservancy has received authorization from the United States Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Game (“CDFG”) for the Take of the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6 The Conservancy may enter into agreements with Participating Special Entities that allow certain activities of theirs to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the HCP/NCCP and the Permits.
- 2.7 PSE is responsible for [*describe relevant responsibilities of PSE*] and seeks extension of the Conservancy’s permit coverage for [*describe activities that are the subject of PSE’s Application.*]
- 2.8 The Conservancy has determined that PSE has demonstrated compliance with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits in an application that is complete and that satisfies all relevant conditions of the HCP/NCCP, including ~~satisfying~~ the criteria detailed in Chapter 8.4 ~~of the HCP/NCCP~~ (“Application”), and has made findings to support this determination. The Application is attached hereto as Exhibit 1 and is hereby incorporated into this Agreement by reference

3.0 **DEFINITIONS**

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

- 3.1 **“Agreement”** means this Agreement, which incorporates the IA, the HCP/NCCP, the Permits, and the Application by reference.
- 3.2 **“Application”** means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, and which is attached hereto as Exhibit 1. The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.
- 3.3 **“Authorized Take”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Conservancy pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFG in the State Permit issued to the Conservancy pursuant to California Fish and Game Code section 2835.
- 3.4 **“CDFG”** means the California Department of Fish and Game, a department of the California Resources Agency.

- 3.5 “**CESA**” means the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.6 “**Changed Circumstances**” means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of the IA and Chapter 10.2.1 of the HCP/NCCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.7 “**Covered Activities**” means those land uses and conservation and other activities described in Chapter 2.3 of the HCP/NCCP to be carried out by the Conservancy or its agents that may result in Authorized Take of Covered Species during the term of the HCP/NCCP, and that are otherwise lawful.
- 3.8 “**Covered Species**” means the species, listed and non-listed, whose conservation and management are provided for by the HCP/NCCP and for which limited Take is authorized by the Wildlife Agencies pursuant to the Permits. The Take of Fully Protected Species is not allowed. The Take of extremely rare plants that are Covered Species is allowed only as described in Section 6.3 and the IA.
- 3.9 “**Effective Date**” means the date when this Agreement is fully executed.
- 3.10 “**Federal Listed Species**” means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.11 “**Federal Permit**” means the federal incidental Take permit issued by USFWS to the Conservancy and other local agencies pursuant to Section 10(a)(1)(B) of FESA (permit number TE 160958-0), as it may be amended from time to time.
- 3.12 “**FESA**” means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.13 “**Fully Protected Species**” means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.14 “**HCP/NCCP**” or “**Plan**” means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.
- 3.15 “**Implementing Agreement**” or “**IA**” means that document attached as Appendix B to the HCP/PCCP.
- 3.16 “**Jurisdictional Wetlands and Waters**” means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the

Porter-Cologne Water Quality Act, or CDFG under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.

- 3.17 **“Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.18 **“Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.19 **“Party”** or **“Parties”** means any or all of the signatories to this Agreement.
- 3.20 **“Permit Area”** means the area within the Plan Area where the Conservancy has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.21 **“Permits”** means the Federal Permit and the State Permit.
- 3.22 **“Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.23 **“Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.
- 3.24 **“Proposed Activities”** means the activities described in Exhibit 12 [same as Certificate’s Exhibit 2] that will occur on the property depicted on Exhibit 3 [same as Certificate’s Exhibit 1] identified in PSE’s Application that and that will ~~ould~~ be covered by the extension of the Conservancy’s take authorization.
- 3.25 **“State Permit”** means the state Take permit issued to the Conservancy and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2007-01-03), as it may be amended from time to time.
- 3.26 **“Take”** ~~and “Taking”~~ hasve the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also hasve the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.27 **“Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. **“Unforeseen Circumstances”** under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not

reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.

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

4.0 **PURPOSES**

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

5.0 **AVOIDANCE & MINIMIZATION OF IMPACTS**

5.1 **General Framework**

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

5.2 **Surveys**

Planning surveys are required prior to carrying out any Covered Activity for which a fee is collected or land in lieu of a fee is provided. PSE has submitted a planning survey for approval by the Conservancy in accordance with Chapter 6.2.1 of the HCP/NCCP. Based on the Application, the Conservancy has determined that PSE will implement and comply with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.2.2 and 6.2.3 of the HCP/NCCP.

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

Nothing in this Agreement, the HCP/NCCP or the Permits shall be construed to allow the Take of extremely rare plant species listed in Table 6-5 of the HCP/NCCP (“No-Take

Plant Population”) or any Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515. PSE shall avoid Take of these species.

5.3.1 No-Take Plant Management Plans *[if applicable]*

Because a no-Take plant population is present on the site of the Proposed Activities, the PSE shall preserve the population (e.g., link to existing public lands, provide adequate buffers), comply with the long-term management and monitoring plan it has developed, and fund the implementation of the plan, all pursuant to Conservation Measure 1.11 in the HCP/NCCP and as described in the Application. PSE has submitted the plan to the Conservancy and the Conservancy has determined that it complies with Conservation Measure 1.11. Even if PSE sells or otherwise transfers its property interest to the Preserve System, it shall remain responsible to fund the preparation and long-term implementation of the management and monitoring plan for conservation of the plant population.

5.3.2 Golden Eagle

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

5.4 Design Requirements for Covered Roads Outside the Urban Limit Line *[if applicable]*

The Application includes, and PSE shall implement, the siting, design and construction requirements for *[describe the new road or major road improvements included in the Proposed Activity]* to comply with Conservation Measure 1.14 and Table 6-3 in the HCP/NCCP, and other applicable requirements of the HCP/NCCP, as determined by the Conservancy based on PSE’s Application.

5.5 Delineation of Jurisdictional Wetlands and Waters *[if applicable]*

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

5.6 Fees and Dedications

As set forth in the Application, PSE agrees to *[dedicate xxx acres of land to the Preserve System in lieu of all or part of the fees ordinarily required under the HCP/NCCP, as further described in Chapter 8.6.7, in the location and manner described in the Application]* *[and/or]* *[pay fees in the amount of \$yyy, which amount includes all*

necessary development fees, wetland fees, and temporary impact fees, a contribution toward recovery of species covered by the Plan and reimbursement of Conservancy costs to extend take authorization to the PSE, as more particularly set forth in the Application].

6.0 TAKE AUTHORIZATION

6.1 Extension of Take Authorization to PSE

As provided in Chapter 8.4 of the HCP/NCCP, after execution of this agreement and payment of fees or dedication of land as set forth in Section 5.6, the Conservancy shall issue a Certificate of Inclusion to PSE that specifically describes the Authorized Take and required conservation measures and extends Take authorization under the Permits to PSE. PSE is ultimately responsible for compliance with all applicable terms and conditions of this Agreement, the IA, the HCP/NCCP and the Permits, including all applicable conservation measures, management plans, monitoring and reporting, and funding requirements.

6.2 Duration of Take Authorization

Once the Take authorization has been extended to the Proposed Activities, it shall remain in effect with regard to the Proposed Activities, even if the Permits are suspended or revoked, for as long as the PSE fully complies with the applicable terms and conditions of this Agreement, the IA, the HCP/NCCP, and the Permits; provided, however, that if one or both Permits are suspended or revoked, the USFWS or CDFG may suspend or revoke the extension of Take authorization to the PSE if the USFWS or CDFG determines that implementation of the Proposed Activities would likely jeopardize the continued existence of a Covered Species. Before making such a determination, the USFWS and CDFG will meet and confer with the PSE and the Conservancy to discuss the threat of jeopardy and possible ways to avoid it short of suspending or revoking the extension of Take authorization to the Proposed Activities.

7.0 RIGHTS AND OBLIGATIONS OF PSE

7.1 Rights

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

7.2 General Obligations

The PSE will fully and faithfully perform all obligations assigned to it under this Agreement, the IA, the HCP/NCCP, the Permits, including but not limited to the obligations assigned in the following chapters of the HCP/NCCP: Chapter 6.0 (Conditions on Covered Activities), Chapter 8.4 (Participating Special Entities), and Chapter 9.0 (Funding). PSE shall ensure that all mitigation, conservation, monitoring, reporting and adaptive management measures required of it are adequately funded throughout the term of this Agreement, and that monitoring, reporting and adaptive management measures are adequately funded in perpetuity as further described in the Application. PSE will promptly notify the Conservancy of any material change in its financial ability to fulfill its obligations under this Agreement.

7.3 Obligations In The Event of Suspension or Revocation

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

7.4 Interim Obligations upon a Finding of Unforeseen Circumstances

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

7.5 Obligations In The Event Of Changed Circumstances

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

8.0 REMEDIES AND ENFORCEMENT

8.1 Plan Implementation and Interpretation

The Parties recognize that disputes concerning implementation or interpretation of this Agreement, the IA, the HCP/NCCP, and the Permits may arise from time to time. The Parties agree to work together in good faith to resolve such disputes using the informal

dispute resolution procedure set forth in this section or such other procedures upon which the Parties may later agree. Any Party may seek any available remedy without regard to this Section if the Party concludes that circumstances so warrant. However, unless the Parties agree upon another dispute resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal or state court, the Parties agree to use the following procedures to attempt to resolve disputes.

8.1.1 Notice of Dispute; Meet and Confer

If a Party objects to any action or inaction by another Party on the basis that the action or inaction is inconsistent with the HCP/NCCP, the Permits, the IA, or this Agreement, it shall so notify the other Party in writing, explaining the basis of such objection. The other Party shall respond to the notice within thirty (30) days of receiving it, stating what actions it proposes to take to resolve the objection or, alternatively, explaining why the objection is unfounded. If the response resolves the objection to the satisfaction of the objecting Party, it shall notify the other Party, who shall implement the actions, if any, it proposed. If the response does not resolve the objection to the objecting Party's satisfaction, it shall notify the other Party accordingly, and the Parties shall meet and confer to attempt to resolve the dispute. The meeting shall occur within 30 (days) after the other Party receives the objecting Party's response, or at such later time as the Parties may agree.

8.1.2 Elevation of Dispute

If the Parties do not resolve a dispute after completing the dispute resolution procedure in Section 21.1.1, either of the Parties may elevate the dispute to a meeting of the chief executives of the Parties. Each Party shall be represented in person by its chief executive at the meeting, and the meeting shall occur within forty-five (45) days of a request by any Party following completion of the dispute resolution procedure.

8.2 Remedies in General

If PSE fails to comply with the terms of this Agreement, the IA, the HCP/NCCP, or the Permits, the Conservancy shall withdraw the Certificate of Inclusion and terminate any Take authorization extended to PSE. The Conservancy ~~Otherwise, each Party~~ shall also have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the IA, the HCP/NCCP and the Permits, and to seek redress and compensation for any breach or violation thereof. PSE shall defend, indemnify, protect, and hold harmless the Conservancy from and against any claim, loss, damage, cost, expense, or liability directly or indirectly arising out of or resulting from (i) PSE's, except that neither of the Parties shall be liable in damages to the other Party or to any other person or entity for any breach of this Agreement or the inaccuracy of any representation or warranty made by PSE in this Agreement, or (ii) PSE's, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, including without limitation

~~claims caused by or arising out of the negligence, recklessness, or intentional misconduct of any representative, employee, or agent of PSE, or any other cause of action arising from this Agreement.~~ The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement. ~~Nothing in this Agreement is intended to limit the authority of the Federal and State governments to seek civil or criminal penalties or otherwise fulfill their enforcement responsibilities under FESA, CESA or other applicable law.~~

9.0 FORCE MAJEURE

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

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

10.0 MISCELLANEOUS PROVISIONS

10.1 Calendar Days

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

10.2 Notices

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested. Notices may be delivered by facsimile or electronic mail,

provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as follows:

East Contra Costa County Habitat Conservancy
Address
Email
Phone

[name of PSE]
Address
Email
Phone

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

10.3 Entire Agreement

This Agreement, together with the IA, the HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

10.4 Amendment

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

10.5 Attorneys' Fees

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

10.6 Governing Law

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

10.7 Duplicate Originals

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

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

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

10.9 No Third Party Beneficiaries

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

10.10 References to Regulations

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

10.11 Applicable Laws

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

10.12 Severability

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

10.13 Due Authorization

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to

enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

10.14 No Assignment

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

10.15 Headings

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

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

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____

[insert name of PSE]

By: _____

CERTIFICATE OF INCLUSION

The United States Fish and Wildlife Service and the California Department of Fish and Game have issued Permits pursuant to the federal Endangered Species Act and the California Natural Community Conservation Planning Act (collectively "Permits") authorizing "Take" of certain species in accordance with the terms and conditions of the Permits, the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan ("HCP/NCCP") and the associated Implementing Agreement. Under the Permits, certain activities by [participating special entity] are authorized to "Take" certain species, provided all applicable terms and conditions of the Agreement Implementing the HCP/NCCP and Granting Take Authorization Between the East Contra Costa County Habitat Conservancy and [participating special entity] ("PSE Agreement"), Permits, the HCP/NCCP and the associated Implementing Agreement are met.

As the owner/operator of the property depicted in Exhibit "1," attached hereto and incorporated herein by this reference, you are entitled to the protection of the Permits for the proposed activities which are described in Exhibit "1," with respect to any Take of species as identified in the HCP/NCCP. In the event that the property depicted in Exhibit "1" is used for other purposes without the express consent of the East Contra Costa County Habitat Conservancy ("Conservancy"), Take Authorization under the Permits will automatically cease. Such authorization is described in the PSE Agreement, Permits, the HCP/NCCP and the Implementing Agreement. By signing this Certificate of Inclusion, you signify your election to receive Take Authorization under the Permits and the PSE Agreement in accordance with the terms and conditions thereof. This Certificate of Inclusion does not give state and federal agencies additional regulatory control over the signatory nor require the signatory to provide additional information not called for in the Certificate of Inclusion, but instead ensures compliance with 50 Code of Federal Regulations, section 13.25(d).

Coverage under the Permits will become effective upon receipt of the executed Certificate of Inclusion by the Conservancy. In the event that the subject property is sold or leased, the buyer or lessee must be informed of these provisions and execute a new Certificate of Inclusion.

Signature

Address

Title (if any)

Phone

Conservancy Representative: _____

Date: _____

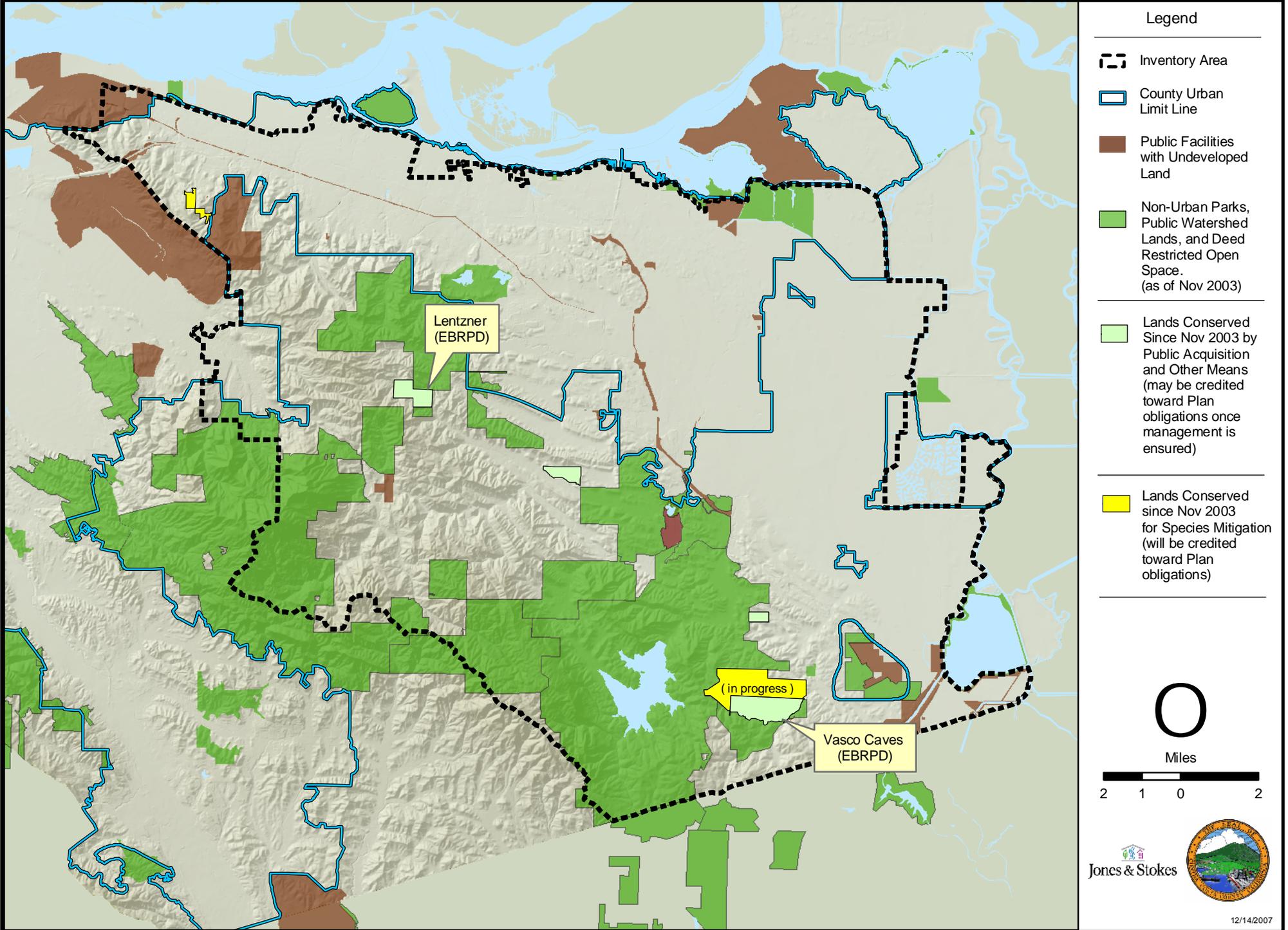


Contra Costa 4 Median Buffer and Shoulder Widening Project Fact Sheet EA 0A8400

- **Purpose and Need** - Improve traffic safety by installing a buffer zone to separate opposing traffic, and by widening existing paved shoulders to current highway standards. Existing nonstandard shoulder widths vary from 2 to 4 feet. Many types of collisions (head-on, sideswipe, broadside, rear-end, hit-object) occur along this stretch of SR-4 that are typical of two-lane highways, and cause partial road closures.
- **Project Description** – Caltrans proposes to add a median buffer to CC 4 from Marsh Creek Road to the end of Discovery Bay. In addition, Caltrans proposes to widen the shoulders to the standard width of 8 feet for the entire project area. In order to accommodate standard shoulders and a median buffer, Caltrans will widen the Kellogg Creek Bridge by 6 feet.
- **Schedule and Construction** – The project is scheduled to begin in May 2010 and finish in October 2011.
- **Impact assessment** – A preliminary estimate of the number of acres of impacts for this project is 3.44 acres of additional roadway and 10.62 acres of temporary soil disturbance. Areas of temporary disturbance will be restored to function as species habitat.
- **Potential habitat for the following species potentially occurs near the project area**

 - San Joaquin Kit Fox
 - Delta Smelt
 - California Tiger Salamander
 - California Red-legged frog
 - Giant Garter Snake
 - Vernal Pool Fairy Shrimp

Figure 5-12 (adapted): Lands Conserved During Preparation of the HCP/NCCP



Lentzner



APN: 075-180-006

LOCATION: Near Black Diamond Mines Park

PARCEL STATUS: EBRPD owns property

SUB-BASIN/CREEK: Oil Canyon Creek

TOTAL PARCEL(S) & SIZE (ACRES): 2 parcels; 465 acres

**PRIORITY FOR CONSIDERATION OF WETLAND
CREATION/RESTORATION:** High

PARCEL DESCRIPTION: Adjacent to EBRPD Black Diamond Mines. Parcel includes headwater areas of Oil Canyon sub-basin with ridgelines, valley zone, and several tributary ravines. Diverse vegetation communities include grassland, oak savannah, oak woodland, and chaparral. Land was historically grazed.

EXISTING WETLAND TYPE(S), DESCRIPTION, AND ACRES: Three known and active springs support perennial wetlands. Main stream channel is intermittent or ephemeral depending on the water year. Riparian areas have some in-channel vegetation and canopy. Existing constructed pond is degraded due to eroded berm and can be restored.

FEASIBILITY: Restoration of spring/pond at northeast section of parcel is highly feasible. Restoration of pond on north directed tributary is moderately feasible due to steep slopes. Main valley feasibility is moderate due to availability of flow where springs are not present.

SUSTAINABILITY (APPROPRIATENESS TO LANDSCAPE, MAINTENANCE, ETC.): Updated pond design and restoration could increase sustainability.

EST. COST: \$ for spring/pond restoration in the northeast parcel. \$\$\$ for restoration of upper pond feature due to steep outlet.

POTENTIAL WETLAND RESTORATION ACRES:

Ponds – (# acres) (1) Spring at northwest parcel boundary (above photo) can be restored to improve channel connectivity to main creek, as well as creating a pond with greater retention. (2) Restoration of pond built into steep north flowing tributary in the upper valley zone.

Streams – (# acres) Riparian and stream restoration to increase canopy and encourage more in-channel wetlands.

Seasonal wetland – (# acres)

RESTORATION ACTIONS REQUIRED: (1) At northwest spring, pond restoration and development of channel/wetland sequence connecting the spring, pond, and downstream receiving channel. (2) In upper valley zone, restoration of eroding pond as described above; and (3) in upper valley zone (near tributary

Lentzner

confluence) installation of in-stream structures to detain recessionary and low flows in creek and encourage wetland formation.



Condition of existing pond area

Vasco Caves



APN: 005-160-005, 005-170-007, 005-170-011

LOCATION/ACCESS: Unmarked access from Vasco Road. Public access by appointment/tour only.

PARCEL STATUS: Acquired and managed by EBRPD.

SUB-BASIN/CREEK: Brushy Creek

TOTAL PARCEL(S) & SIZE (ACRES): 3; 635

PRIORITY FOR WETLAND CREATION/RESTORATION: High due to limited public land availability for wetland creation in Brushy Creek Watershed. Moderate restoration potential due to infrastructure and precipitation constraints.

PARCEL DESCRIPTION: Adjacent and connected to Vaquero Farms property. Landscape is rolling eastern Mt. Diablo foothills and grassland areas with sandstone rock outcrops. This is the southeastern portion of the conservation area that transitions to the Delta environment. This zone is particularly dry, where the rainshadow effect limits average precipitation to as little as 10"/year. The parcel has several areas with localized gully erosion due mostly to road (or pipeline) construction and runoff; several stream reaches are incised.

EXISTING WETLAND TYPE(S), DESCRIPTION, AND ACRES:

EBRPD is in process of restoring two ponds: (1) a pond using a reconstructed berm (photo left) and improving downstream channel connection; and (2) a larger pond in the western parcel area that has recently been redesigned including a new outlet facility (top left).

FEASIBILITY: Moderately feasible: western pond highly constrained by pipeline infrastructure. Wetland creation at eastern confluence of streams constrained by localized precipitation.

SUSTAINABILITY (APPROPRIATENESS TO LANDSCAPE, MAINTENANCE, ETC.): Ponds are currently filling with sediment, which requires erosion control for long-term sustainability.

EST. COST: \$\$

POTENTIAL WETLAND RESTORATION ACRES:

pond-

seasonal wetland –

RESTORATION ACTION REQUIRED: (1) Existing ponds that are prone to sedimentation can use bank stabilization and small instream check dams or other grade modification, to retain and store sediment and promote a more sustainable pond. (2) Restoration of eroded instream habitat related to pipeline, upstream of recent large pond restoration. (3) Other opportunity for wetland creation found near

Vasco Caves

downstream confluence with Brushy Creek by creating a more actively inundated floodplain area.



**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 19, 2007
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2008 Work Plan

RECOMMENDATION

Consider approving the 2008 Conservancy Work Plan.

DISCUSSION

The Draft Work Plan was presented to the Governing Board in October. The attached version has been updated slightly. No tasks have been added or changed but the status column has been updated to reflect current accomplishments and staffs latest thinking on the timing of activities. For your convenience, the text of the October 17, 2007 staff report with background on the work Plan has been repeated below to avoid the need to reference the October packet.

Below please find the text from the October 2007 staff report:

Section 8.11.1 of the HCP/NCCP provides a schedule for early implementation tasks, indicating whether these tasks should be completed in the first six months, in the second six months or in 1-5 years of HCP implementation. The HCP also provides a list of the duties of the implementing entity (the Conservancy) in Section 8.3. Based on this information and general knowledge of the HCP, staff has developed a Draft 2008 Conservancy Work Plan. The Draft Work Plan also includes tasks that have been completed already or are on-going and may be completed before 2008. In cases where a task appeared in the HCP implementation schedule, the recommended timeline from the HCP is juxtaposed with staff's recommended timeline in the Work Plan for comparison purposes. The "Actions Taken or Planned" column provides more detail on the task, the type of work that has or will be completed, and the end result.

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

The initial year of implementation is heavy on Plan administration. This partly because there are a lot of start-up administrative tasks to do and partly because administrative tasks are more discrete and easy to itemize than more complex programmatic tasks like land acquisition or restoration or creation. For the more complex tasks, the Work Plan attempts to provide a sense of the general approach recommended. The many administrative tasks include creating documents, maps, and informational pamphlets, assisting with ordinance adoption and implementation, training/assisting jurisdiction staff on processing projects through the HCP/NCCP, and taking whatever steps necessary to ensure the Plan is being implemented effectively and efficiently. Several of the tasks listed that are required to be completed by the end of month six are completed. Two on-going tasks are the development of a checklist local agencies can use in reviewing applications for take coverage and the development of a template planning survey report indicating what information is needed from the surveys and how it should be presented. Drafts of both items are attached.

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

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

Attachment:

- 2008 Conservancy Work Plan

| 2008 CONSERVANCY WORK PLAN | | | | |
|---|---|---|--|--|
| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
| <i>HCP/NCCP Administration (general)</i> | | | | |
| 1 | Establish HCP/NCCP Governing Board | 0-6 Months | Completed (Spring 2007) | <i>East Contra Costa Habitat Conservancy Governing Board was established in April 2007. Held first meeting and elected officers on May 9, 2007.</i> |
| 2 | Hire Implementing Entity Executive Director | 0-6 Months | Addressed a different way (Spring 2007) | <i>The Joint Exercise of Powers Agreement that formed the Conservancy provides that the County Community Development Director shall serve as Conservancy Secretary and provide staff support to the Conservancy unless and until a decision is made to secure staff support from another source. John Kopchik has been directed by the Community Development Director to continue to serve as the lead staff on the HCP/NCCP program.</i> |
| 3 | Hire key administrative staff of Implementing entity or secure agreements or contacts with other organizations to fulfill these roles | 6 Months - 1 Year | On-going (Winter 2008) | <i>One staff person was hired by County to provide staff support to the Conservancy in the beginning of September 2007, but has subsequently left and will need to be replaced. Contracts with Jones and Stokes and resources law group are also recommended to assist the Conservancy.</i> |
| 4 | Provide opportunities for involvement in the implementation of the Plan by the public, science advisors, interested agencies, and others. | N/A | On-going (Initiate PAC by start of 2008) | <i>The process for initiating the Public Advisory Committee (PAC) process was before the Board in October for consideration. Former members of and participants in the Coordination Group process on December 6 to make recommendations on the composition of the PAC. The Board will consider these recommendations and appoint the PAC at its December meeting. Other committees, including the science advisors, may be initiated in 2008, depending upon need.</i> |
| 5 | Establish HCP/NCCP Implementation web site. | 6 Months - 1 Year | On-going (January 2008) | <i>The website is being converted from the HCPA's website to the Conservancy's website. New website will include all needed forms and will be updated regularly based on Plan implementation.</i> |
| 6 | Develop and maintain annual budgets and work plans | N/A | On-going (approval before start of 2008) | <i>Conservancy staff prepared drafts of both the annual budget and the work plan for Board discussion in October 2007. The Board will consider these items for approval at their December meeting. These items, particularly this Work Plan, could be adjusted during the year by the Board.</i> |
| 7 | Calculate the amounts of automatic annual fee increases and distribute these calculations to the cities and the county by March 15 of each year, in accordance with Chapter 9 of the HCP/NCCP | N/A | 2007adjust- ment complete. 2008 adjustment planned for March. | <i>Conservancy staff calculated the 2007 adjustments based on the formulas in the HCP and distributed the new fee amounts to the cities and the county for incorporation in the ordinances. The Development Fee amounts increased 4.5 percent from the amounts published in 2006 and the Wetland Mitigation Fee amounts increased 3.2 percent. The calculations will be performed again in March 2008.</i> |

| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
|--|--|--|------------------------------------|--|
| 8 | Prepare and submit annual report to CDFG and USFWS | Required by March 15 following first full year of implementation | Planned (March 2009) | <i>No annual report is due for 2007 or 2008. However, Conservancy staff has started creating the initial incidental take vs. preserved acres tracking system which will be an integral part of the annual report.</i> |
| 9 | Pursue State and Federal Grants to assist in funding preserve acquisition and other implementation tasks | N/A | On-going | <i>Conservancy staff will continue to research and apply for available grant monies which make up a significant portion of the funding for implementation of the HCP/NCCP. Approved grants are listed in Table III-1 in the Budget discussion under item 7. Additional grants submitted or proposed at this time are: (a) a \$6 million request to USFWS for a FY08 Federal Section 6 land acquisition grant (submitted), (b) a grant requesting \$700,000 from the U.S. Bureau of Reclamation under the Central Valley Project Conservation Program for land acquisition.</i> |
| 10 | Administer grants already awarded | N/A | On-going | <i>Substantial staff time is required to prepare grant contracts, invoices, and required periodic grant reports for the many grants already received. Staff will continue with these duties for current and future grants. The largest grants received, the Section 6 grants, will be administered through the Wildlife Conservation Board and funds must be sought and received acquisition by acquisition.</i> |
| 11 | Provide accounting services for the Conservancy | N/A | On-going | <i>Duties include processing all requests for payment, making deposits, tracking all account activities, providing summary reports as needed, and ensuring that fees are tracked and expended in compliance with the Mitigation Fee Act.</i> |
| 12 | Pursue regional permits and permitting programs for jurisdictional wetlands and waters with the appropriate state and federal agencies to help ensure coordination between implementation of the HCP and the implementation of state and federal wetlands regulations. | N/A | On-going (end of 2008) | <i>This process started early in the development of the HCP. Much of the important work to achieve this goal has been accomplished. Measures in the HCP for wetlands have been designed to address species needs and, to greatest extent possible, meet the requirements of wetlands regulations. In late 2007, staff will reassemble the working committee of staff and state and federal wetland regulators and seek to develop an interagency agreement for wetlands conservation and permitting and one or more regional wetland permits.</i> |
| HCP/NCCP Administration (permit issuance) | | | | |
| 13 | Pass local ordinances to implement HCP/NCCP (cities and County) | 0-6 Months | Complete (October-November) | <i>This task is for the cities and the County. Conservancy staff has provided assistance to the cities and the County in the crafting of ordinances. The cities and the County approved the ordinances in October and November. The ordinances are scheduled to take effect January 15-18, 2008.</i> |

| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
|----|---|--|---|---|
| 14 | Develop checklists and other materials for local planners to ensure compliance by each project receiving coverage under the Plan. | 0-6 Months | On-going (by January 15) | <i>Draft checklist and materials were provided to Permittee staff on September 6, 2007 for review and comment and were revised based on comments received. Additional review and revision is planned.</i> |
| 15 | Develop template survey report that may be used by project proponents as a guide and by local jurisdictions to evaluate the completeness of the survey reports they review | 0-6 Months | On-going (by January 15) | <i>Draft planning survey template was provided to Permittee staff on September 6, 2007 and to the Governing Board in October 2007 for review and comment. It was revised based on comments received and reissued for december 6 training. Additional review and revision is planned.</i> |
| 16 | Assist local jurisdictions with training staff to review and process HCP/NCCP applications. Assist local jurisdictions to ensure that project proponents comply with the provisions of the Plan, including performance of required avoidance, minimization and mitigation measures. | 0-6 Months | On-going (by January 15) | <i>First staff training session occurred at September 6, 2007 permittee meeting and will continue at monthly meeting of city, County and Conservancy staff. A large training session for multiple staff at each jurisdiction was held on December 6, 2007. There will also be an information session for builders and developers concerning the operations of the HCP/NCCP on January 9, 2008. Conservancy staff has started to develop a brochure explaining the process for applying for and receiving take authorization. Conservancy staff will remain available to local jurisdictions for assistance and technical support on as needed basis</i> |
| 17 | Provide each participating local jurisdiction with detailed maps of fee zones and land cover so the can process and evaluate HCP/NCCP applications | 0-6 Months | On-going | <i>At the request of city staff, Conservancy staff prepared detailed maps of fee zones for inclusion in city ordinances. If requested, Conservancy will continue to provide mapping and GIS support to implementation of the HCP by local jurisdictions.</i> |
| 18 | Begin receiving and reviewing applications for a coverage under the HCP/NCCP and collecting development fees. | 0-6 Months | Planned (expected to start January 15, 2008) | <i>City, County and Conservancy staff have yet to review applications as the local ordinances have yet to take effect. Ordinances will take effect on January 15 and January 18, 2008. The Conservancy's role will be limited to assisting the cities and the County, considering offers of land in lieu of development fees, considering other special circumstances set forth in Chapter 8.7.1 of the HCP and considering applications of Participating Special Entities (see item 20 below).</i> |
| 19 | Prepare report documenting the expected benefits of the HCP/NCCP to non-covered special-status species to provide streamlining for future CEQA documents | 6 Months - 1 Year | Planned (complete by end of 2008) | <i>Conservancy staff recommend commissioning a review of the habitat and mitigation needs of special status species and compare these to the habitat and mitigation needs of covered species. This report could be referenced by future CEQA documents for public and private projects to streamline the analysis of biological impacts. The ecological consulting contracts recommended on December 19, 2007 would enable performance of this task.</i> |

| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
|--|--|--|------------------------------------|--|
| 20 | Develop policies, a template agreement and application form for Participating Special Entities (entities with projects not subject to the land use authority of the cities or the County) so they may receive take authorization through the Plan. | N/A | On-going (early 2008) | <i>Conservancy Staff has initiated work on this in cooperation with Resources Law Group and a template agreement and certificate of inclusion for Participating Special Entities (PSEs) is in the Board's december packet. CALTRANS has initiated discussions with the Conservancy regarding the potential to cover impacts of Highway 4 improvements near Discovery Bay through the HCP. Conservancy staff has also suggested at the concept level some policies for covering PSEs.</i> |
| 21 | Establish GIS and other databases to track land acquisitions and HCP/NCCP impacts | 6 Months - 1 Year | On-going (Winter 2008) | <i>Conservancy staff is working to establish one or more databases to track and cross tabulate the amount of acres of various types of impacts and the amount of acres of various types of conservation to provide a compliance monitoring function pursuant to the state and federal permits. Staff may track both in a GIS database in order to provide maps and analysis and in a non-GIS database in order to maintain redundant tracking system and to track actual acres reported rather than acres estimated by the GIS. The best approach is still being evaluated.</i> |
| Preserve Acquisition and Management | | | | |
| 22 | Acquire land to meet Jump Start guidelines as described in Chapter 8. | 0-6 Months | On-going | <i>As described in Chapter 5 and Table 5-15, the HCP sets forth the goal of acquiring about 500 acres before the state and federal permits are issued. As described in Table 5-21 and Figure 5-12, 2,383 acres of land have already been acquired prior to permit issuance. The acquisition goal has essentially been met, but for these lands to be credited as part of the HCP Preserve System and count toward land preservation requirements, permanent preservation and management of these lands must be assured. For some of these lands, that simply means that the proposed conservation easement needs to be recorded. For others, it requires that the Conservancy work with the owner to record an easement or deed restriction and ensure management consistent with the HCP.</i> |

| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
|----|--|---|-----------------------------|---|
| 23 | Continue to acquire land to assemble Preserve System and Meet Stay Ahead requirements as described in Section 8.6.1 | 1-5 Years | Planned | <p><i>Conservancy staff will continue to meet with acquisition partners such as the East Bay Regional Park District, Save Mount Diablo, Agricultural-Natural Resource Land Trust of Contra Costa County, Contra Costa Water District, the Natural Heritage Institute, cities such as the Cities of Oakley and Brentwood with potential preserves in their boundaries and private mitigation banks to learn of their current acquisition efforts and explore opportunities for partnering.</i></p> <p><i>Conservancy staff proposes the following general approach to land acquisition in the first year: (a) seek partners willing to be responsible for assisting with the fund-raising and willing to be the land owner and land manager or easement holder (or to find another entity to serve that role) so that the Conservancy can avoid actually owning and managing land or easements in perpetuity, (b) maintain an "Open Door Policy" and be willing to consider proposals from a range of partners, (c) once a prospective partner has found a willing landowner and established a price, the Conservancy should evaluate the cost effectiveness of the acquisition in achieving HCP goals, develop a proposed acquisition cost-share and strategy for ensuring management and monitoring, evaluate the pros and cons of the overall package and consider approving or disapproving Conservancy participation in the acquisition.</i></p> <p><i>A verbal update and discussion on this critical component of HCP implementation is planned for October 17. The Board may use this opportunity to ask questions and provide guidance to staff on the land acquisition approach.</i></p> |
| 24 | Develop a mutually agreeable programmatic strategy with East Bay Regional Park District (EBRPD) to collaborate on land acquisition and management in the HCP area. | N/A | Planned | <p><i>EBRPD has approved the HCP and Implementing Agreement and is a permittee with the other local agencies. EBRPD is also implementing its Master Plan and is buying land in the HCP area for park and open space purposes. Developing a mutually agreeable strategy will help to ensure that the land acquisition and management goals of EBRPD's land program and the similar goals of the HCP are implemented in a coordinated manner (this goal is set forth in Section 13.6 of the Implementing Agreement).</i></p> <p><i>Conservancy staff and EBRPD staff have been discussing partnership opportunities and believe, for the time-being, that partnership opportunities should be addressed case by case because the details are numerous and specific to the parcel in question. Ensuring permanent protection and management for lands already purchased by EBRPD may present an early opportunity to develop such a case by case partnership. However, Conservancy staff is recommending that an agreement be approved with EBRPD regarding cost share of land acquisition due diligence (see agenda item 7).</i></p> |

| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
|----|---|---|------------------------------------|---|
| 25 | Conducting pre-acquisition surveys of potential acquisitions to determine their biological value for the HCP | N/A | Planned | <i>The HCP requires that planning surveys similar to those conducted by developers also be conducted on potential additions to the Preserve System to establish that the property proposed for acquisition will help to meet HCP requirements.</i> |
| 26 | Create template Conservation Easement Deeds and Deed Restrictions and other protective covenants to speed-up addition of land to the Preserve System and to protect the interests of the Conservancy in land it acquires. | N/A | On-going (early 2008) | <i>Conservancy staff is working with Resources Law Group to develop draft templates of these documents. The Draft Easement and Deed Restriction Templates would be adapted case by case to bring parcels into the Preserve System, but having a template will make this process much more efficient and consistent. Conservancy staff is also working on drafting protective covenants that could be recorded with certain acquisitions and held by the Conservancy to provide the conservancy with a mechanism to enforce its conditions for participating in land acquisition. The intent is for these covenants to be extinguished or transferred when the Conservancy ceases to exist (in other words, the intent is not to encumber the Conservancy with a permanent asset). Drafts of these documents or provisions will be shared with potential acquisition partners and with the Public Advisory Committee to receive comment before being approved by the Board. These documents probably will require periodic updating.</i> |
| 27 | Develop and begin to implement a strategy for funding the long term management of the Preserve system before 50% of the authorized take under the maximum urban development area is used or before the end of year 15 of implementation, whichever comes first. Provide progress reports on this matter in the Annual Report. | Year 15 or when half of the impacts have occurred, whichever comes first. | Planned | <i>Though not required immediately, Conservancy staff recommend starting now to explore opportunities for ensuring the funding of operations and management of the preserves after the 30 year permit term. This issue will also come up with each prospective acquisition and should be considered and addressed on a case-by-case basis until a general approach is established.</i> |

| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
|--------------------------------------|--|---|-----------------------------|--|
| 28 | Develop system-wide and site-specific management plans for the Preserve System and individual preserves. | 1-5 Years | Planned (late 2008) | <p><i>Conservancy staff will work closely with biological experts and acquisition partners to assist in developing preserve management plans for each of the preserves. To avoid developing management plans parcel by parcel, conservancy staff will seek to develop interim management prescriptions and complete full management plans when enough parcels have been acquired to provide a logical management unit, consistent with the requirements of the HCP (2 years is generally the maximum time allowed, unless a plan for a nearby parcel is deemed adequate). Conservancy staff will also begin the process for scoping the development of system-wide plans, including the Recreation Plan (HCP requires this no more than 3 years after the first parcel is added to the Preserve System and before 25% of the Preserve System is assembled) and the Exotic Species Control Plan (HCP requires this no more than 2 years after the first parcel is added to the Preserve System).</i></p> |
| Preserve Restoration/Creation | | | | |
| 29 | Begin habitat restoration and creation design and additional environmental compliance for habitat restoration if needed. | 1-5 Years | On-going (early 2008) | <p><i>Like land acquisition, habitat restoration and creation will be a key program area for the Conservancy. If restoration and creation of jurisdictional wetlands and waters does not keep pace with impacts, the ability to mitigate such impacts by paying a fee will be suspended (the HCP provides that the Conservancy has until the second annual report to "get ahead"). To reflect the importance of early restoration and creation, Conservancy staff has been working with Jones and Stokes to perform a reconnaissance-level survey of wetland restoration opportunities. Lands being surveyed include those lands already acquired by a public agency, lands to be preserved pursuant to an agreement with the wildlife agencies or known to Conservancy staff as a property in negotiation for potential acquisition by a conservation organization. Such information may inform future conservancy decisions on land acquisition opportunities and my help Conservancy staff to partner with the current and future owner of the property to develop detailed restoration plans and begin the environmental review process.</i></p> |

| | TASK | TIME FRAME Recommended in Chapter 8 of HCP/NCCP | STATUS (completion date) | ACTIONS TAKEN or PLANNED |
|----|--|---|---|--|
| 30 | Implement habitat restoration and habitat creation projects. | 1-5 Years | Pending (Possibly summer or early fall 2008) | <p><i>As explained above, Conservancy staff has started working on a process in which to implement wetland restoration/creation projects. The process to implement a project would normally would take roughly 2 years to implement from start to finish, based on the time of year when the project is started (because the restoration cannot be initiated in the wet season). The general process is as follows: (a) Develop a list of suitable restoration sites after conducting a "fatal flaw" analysis on potential sites (see above), (b) select sites and secure land/access for restoration/creation, (c) provide a conceptual restoration plan, (d) complete site-specific restoration plans, (e) secure permits, (f) initiate construction and construction monitoring, and (g) complete construction and start performance monitoring. To get the earliest start possible on such work, staff is exploring the possibility of pursuing several restoration projects on a very rapid time-frame in 2008 and possibly constructing the projects in 2008. Staff will report further at the December Board meeting.</i></p> |

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: December 19, 2007
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Initiate Public Advisory Committee Process

RECOMMENDATION

Consider the following actions to initiate the Public Advisory Committee process:

- a) Consider recommendations of the members of the Coordination Group (the advisory committee involved in developing the HCP/NCCP) and other participants in the December 6, 2007 open public meeting on the formation of a Public Advisory Committee for implementation of the HCP/NCCP.
- b) DETERMINE which organizations or individuals to invite to serve on the Public Advisory Committee and DIRECT staff to send letters inviting their participation and notifying them of the first meeting on February 14, 2008 at 1 p.m.
- c) DETERMINE any other parameters the Governing Board wishes to specify for the operation of the Public Advisory Committee (see "Additional Recommendations" section at bottom of staff report).

DISCUSSION

Item a: As was discussed at the October 17, 2007 Governing Board meeting, Chapter 8.2.6 of the HCP/NCCP requires the appointment of a Public Advisory Committee (PAC) to provide input to the Governing Board on all aspects of HCP/NCCP Implementation. The HCP/NCCP also describes the composition, purpose and operation of the PAC. The PAC is to be composed of members representing a variety of interest groups, including three members from the development community, three representatives from the conservation community, three private landowners and/or agriculturalists, three representatives of suburban and/or rural residents within the Plan area, as well as staff members from interested public agencies. Each member will be appointed by the Governing Board. PAC meetings will be open to the public, so although

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

individuals will be designated to the before mentioned positions, there will also be an opportunity for additional interested parties to contribute to the discussions and recommendations.

The PAC will be 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.

Results of December 6 public meeting: As directed by the Governing Board, staff invited members and participants of the Coordination Group process to a meeting on December 6 to discuss the formation of the PAC. The meeting was well attended and consensus recommendations were generated on the composition and operation of the PAC.

Attendees included:

| Name | Organization |
|--------------------|---|
| Albert Seeno | landowner |
| Brian Curran | Friends of Marsh Creek |
| Cece Sellgren | CCC Public Works Department |
| Chris Barton | East Bay Regional Park District |
| Christina Wong | Greenbelt Alliance |
| Dee Munk | Contra Costa County Farm Bureau |
| Diane Burgis | Friends of Marsh Creek |
| Dick Vrmeer | resident |
| Janice Gan | California Department Of Fish And Game |
| Jim Coniglio | Discovery Builders |
| Jim Gwerder | Contra Costa County Citizens Land Alliance |
| Joe Ciolek | Agricultural/Natural Resources Trust of Contra Costa County |
| John Kopchik | East Contra Costa County Habitat Conservancy |
| Karyn Cornell | Office of CCC Supervisor Mary Piepho |
| Lech Naumovich | California Native Plant Society |
| Mariela Pena | City of Oakley |
| Mike Vukelich | Contra Costa County Farm Bureau |
| Roy Skinner | Contra Costa Water District |
| Seth Adams | Save Mount Diablo |
| Sheila Larsen | U.S. Fish and Wildlife Service |
| Tomi Van de Brooke | Office of CCC Supervisor Mary Piepho |

Prior to the December 6 meeting staff had telephone contact with representatives of the Home Builders Association of Northern California and the Contra Costa Council. Both organizations indicated an interest in participating in the PAC. Subsequent to the December 6 meeting, staff had telephone contact with a representative of the Byron Municipal Advisory Council (MAC) who indicated an interest in participating in the PAC.

At the meeting participants were invited to indicate if they or their organization wished to participate in the PAC. Participants also discussed several aspects of how the PAC should operate, as further discuss below under “Additional Recommendations”. For some of the categories, more interest was expressed than there was space. For others, not all spaces had volunteers. Participants discussed options for developing recommendations on PAC composition and ultimately decided to break out in small groups to discuss. Through this process, the challenge of two many volunteers was resolved amicably and resulted in a consensus recommendations. The procedures for the PAC set forth in the HCP were some reassurance as they stipulate that non-members will be able to participate in all meeting and discussions and are even welcomed to be part of recommendations. For this reason, the participants did not see the need to recommend additional organizations be appointed as alternates.

Consensus recommendations to the Governing Board on PAC Composition (categories are copied verbatim from the HCP/NCCP):

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

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

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

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

Private landowners and/or agriculturalists, or their representatives

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

People representing suburban and rural residents of the Plan area

- Dick Vrmeer (resident of Brentwood)
- No recommendations on other 2 slots. Brian Kruse and the byron MAC were mentioned, but since their interest could not be confirmed at that time, no recommendations were made. Participants felt the Governing Board could add to the PAC membership over time as interested residents identified themselves. (Given that staff now understands the Byron MAC is interested, staff recommend that the Byron MAC be invited to fill one of these slots)

Public agency staff

- No recommendations on this category as the HCP/NCCP indicates it should be open to interested public agency staff, including staff from local agencies involved in the HCP/NCCP, wildlife agency staff and other interest staff. Contra Costa Water District expressed an interest in participating. Conservancy staff recommends that even though CCWD is not a party to the Implementing Agreement, the HCP intends for this category to be open to

interested public agencies and that CCWD be allowed to participate in this category.

Additional Recommendations on the Operation of the PAC: Participants also made the following additional recommendations:

- 1) PAC composition be reviewed annually and adjusted as appropriate.
- 2) PAC members be asked to disclose potential conflicts of interest during deliberations, but that conflicts not serve to disqualify participation altogether. Participants felt that since the PAC is not a decision-making body and would be operating by consensus.
- 3) When an organization is invited to be represented, leave the selection of the specific representative up to the organization but ask that representation be as consistent as possible.
- 4) Set a quarterly meeting schedule for the first year, meetings to be held the 4th Thursday of every 3rd month from 1 to 3 in Pittsburg, beginning with February 14, 2008 (other dates in 2008 would be May 8, August 14 and November 13).

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 1, 2008
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2008 Budget and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) Consider approving the 2008 Conservancy Budget.
- b) Consider authorizing staff to execute an agreement with the East Bay Regional Park District for the provision of specific land acquisition services during 2007 and 2008.
- c) Consider approving standard contract form for consulting services.
- d) Consider authorizing staff to execute contracts for on-call biological and conservation planning services from January 1, 2008 to December 31, 2008 with Jones and Stokes for \$200,000, with H.T. Harvey & Associates for \$75,000 and with Monk and Associates for \$75,000.
- e) Consider authorizing staff to execute a contract for legal services with the Resources Law Group for \$50,000.

DISCUSSION

Item (a): Please find attached a proposed 2008 Conservancy Budget prepared by staff for discussion by the Board. The proposed 2008 Budget has been modestly revised since the Draft presented in October. Key changes include the following:

- Projected expenditures have been revised somewhat to reflect better information on costs for certain tasks such as restoration and to reflect organizational changes made to the categories as discussed below. The following table compares the October 2007 recommended expenditures with the December 2007 recommended expenditures.

| | |
|---|--|
| CONTINUED ON ATTACHMENT: <input checked="" type="checkbox"/> YES | |
| ACTION OF BOARD ON: <u>10/17/2007</u> APPROVED AS RECOMMENDED: <u>NO</u> | |
| OTHER Approved as Recommended with the exception of item (c) iv.: Staff may purchase goods and services consistent with the approved budget or interim expenditure limits if total amount of the purchase is \$25,000 or less. With the concurrence of the Chair and Vice Chair Conservancy staff may make purchases exceeding \$25,000. | |
| <u>VOTE OF BOARD MEMBERS</u> | |
| <u>X</u> UNANIMOUS | I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. |
| AYES: <u>5</u> | ATTESTED <u>DENNIS M. BARRY, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</u> |
| NOES: <u>0</u> | |
| ABSENT: <u>0</u> | |
| ABSTAIN: <u>0</u> | |
| | BY: _____, DEPUTY |

Comparison of Total Expenditures Recommended in October 2007 with those in December 2007

| | October 2007 Recom- mendation | October 2007 % | December 2007 Recom- mendation | December 2007 % |
|--|-------------------------------------|-------------------|---|--------------------|
| Program Administration | \$500,000 | 4.3% | \$494,575 | 4.2% |
| Land Acquisition | \$9,800,000 | 84.3% | \$9,900,667 | 83.9% |
| Management, Restoration and Recreation Planning and Design | \$286,191 | 2.5% | \$338,322 | 2.9% |
| Habitat Restoration/Creation | \$350,000 | 3.0% | \$407,326 | 3.5% |
| Environmental Compliance | \$25,000 | 0.2% | \$86,000 | 0.7% |
| HCP/NCCP Preserve Management and Maintenance | \$400,000 | 3.4% | \$404,100 | 3.4% |
| Monitoring, Research, and Adaptive Management | \$170,000 | 1.5% | \$66,500 | 0.6% |
| Remedial Measures | \$6,000 | 0.1% | \$6,000 | 0.1% |
| Contingency Fund (5% of non-land acquisition costs) | \$86,860 | 0.7% | \$90,141 | 0.8% |
| TOTAL EXPENDITURES | \$11,624,051 | 100.0% | \$11,793,631 | 100.0% |

- Detailed cost estimate tables have been revised to contain not just detailed estimates from the HCP, but also detailed estimates supporting proposed 2008 Conservancy Budget. In some cases, the supporting cost estimate tables have been simplified and condensed into fewer tables than presented in October.
- The Program Administration category has been modified to encompass cost for certain tasks rather than all tasks performed by certain employees. Administration tasks include managing the take issuance process, public outreach and involvement, financial management, grant management and legal assistance. Reorganized in this way, most of the Conservancy staff now have tasks budgeted in program areas other than Administration.
- The Personnel Costs summary table has been revised to compare the personnel structure envisioned in the HCP with the Conservancy’s emerging structure and to detail the cost basis for the County’s staff support.
- Development fee account funds have been updated to reflect deposits and debits.
- Funds in the Wildlife Conservation Board account have increased by approximately \$500,000 due to recent fee payments approved by the wildlife agencies.
- The grant summary table has been expanded to include information on the type of match and schedule information.

Staff recommends that the Governing Board discuss the Proposed Budget, determine any modifications or clarifications, and approve the Budget with any modifications. Consistent with the expenditure policies approved in December, the total amounts for each program area in the Budget would be figures that could not be exceeded without amendment of the Budget. The detailed estimates provided in Tables I-2 through I-10 provide the basis for the program area totals but the subcategories presented are estimates not binding totals. However, one exception

is that the total estimated cost of County staff support, \$490,598, should also be designated by the Board as a an expenditure limit that may not be exceeded without further approval of a revised amount. This recommendation is offered to be consistent with the Joint Exercise of Powers Agreement forming the Conservancy which provides that the Governing Board shall set an annual limit on the amount of County staff costs that may be recovered from the Conservancy.

To avoid the need to cross-reference the October staff report for additional background information on the Budget tables, relevant information from that staff report is excerpted below:

In developing the Budget, staff felt the cost estimate information presented in Table 9.2 of the HCP/CCP, *Summary of East Contra Costa County HCP/NCCP Implementation Costs (Rounded to the Nearest \$10,000) for Maximum Urban Development Area*, would be provide a useful starting point and basis of comparison for the 2008 Budget. Staff reviewed this table and the supporting tables in Appendix G of the HCP/NCCP and extracted cost estimate information for first five years of implementation. Staff then calculated the estimated average annual costs during this five year period. This estimated average annual cost is a useful point of comparison in crafting the 2008 Budget, but should be used for general comparison purposes rather than as a detailed yardstick. Since the costs of some tasks may change significantly during the five year period (e.g. land management), the annual average of the five-year cost estimate may over or under-estimate needs in year 1.

The 2008 Conservancy Budget, Table I-1, includes summary cost estimate information from the HCP as well as recommended expenditures from the various funding sources controlled by the Conservancy or related to the HCP, including the Development Fee Account, the Wetland Mitigation Fee Account, the California Wildlife Foundation Account (which contain pre-plan mitigation payments collected by the wildlife agencies as well as mitigation payments from activities not covered by the HCP; the wildlife agencies control disbursements from this account), and the various grant funds awarded to support implementation of various tasks associated with the HCP.

The 2008 Budget also presents recommendations on how future revenues received in 2008 should be spent in 2008. For example if \$1,000,000 in new revenues was collected in the development Fee account after January 1, 2008, the expenditure limit for land acquisition would increase by \$500,000 to \$1,400,667 since the budget provides that 50% of new development fee revenues will be allocated to land acquisition. Depending upon the timing of the new funds, it may not be possible to actually spend them in 2008. But the intent of this provision is to ensure that new funds are spent promptly and prudently.

With respect to grant expenditures, it should be noted that the recommended grant expenditures are an optimistic recommendation and will depend on willing sellers, the timing of acquisitions and the ability to procure match.

Tables I-2 though I-10 present detailed cost estimates by program area (e.g., Administration, Land Acquisition, etc.). Detailed estimates are excerpted from the HCP as a point of comparison with the detailed estimates provided for the proposed 2008 budget. The estimates that form the basis for the 2008 Budget are typically shaded light blue. Table I-2 summarizes staff costs,

which are distributed among the various program areas. Tables I-3 through I-10 provide the basis for each HCP cost estimate provide in Table I-1. The purpose of including these tables is to provide more information on what these program areas encompass and how the estimates were derived.

Table II-1 presents the starting and ending balance and the debits from and deposits to the two accounts controlled directly by the Conservancy, the Development Fee Account and the Wetland Mitigation Fee Account. Table II-1 also presents anticipated debits that may occur before the Board approves the 2008 Budget in order to provide a conservative baseline balance for the 2008 Budget. Table II-2 presents similar information for the California Wildlife Foundation account explained above. Table III-1 presents information on approved grants.

Item (b): At the October meeting, the Governing Board authorized staff to develop a cost-sharing agreement with EBRPD for land acquisition services and authorized an initial payment of \$30,000. A draft agreement is attached. This draft has changed slightly from the version included in the December 19, 2007 meeting packet as a result of ongoing discussions with EBRPD, and changes from the December 19 version are marked with track changes.

Consistent with Board direction in October, the Draft agreement reflects the following general parameters: (1) land acquisition due diligence costs would be shared approximately evenly overall, though the specific arrangements would vary case by case depending upon the extent of the park and open space value presented by the property, (2) the Conservancy's estimated share of these costs from May 2007 through December 2008 is \$120,000, including the initial \$30,000 payment (3) costs to both parties to administer the reimbursements terms of the agreement would be kept to a bare minimum.

Item (c): The attached standard contract form for consulting services has been adapted for the Conservancy's use from the County's standard contract form. County counsel assisted with the adaptation and have approved the adapted contract as to form. This standard form is proposed to be used for the on-call biological services contracts to be discussed in the next item. Forms L-3 and L-4 will be adapted on a case-by-case basis by staff depending upon the type of service being sought. Small changes have been made to these forms since distributed in the December 19, 2007 meeting packet, including the addition of a sample confidentiality provision to the Special Conditions.

Item (d): On November 13th, 2007, Conservancy Staff widely circulated a request for proposals (RFP) outlining tasks associated with the implementation of the HCP/NCCCP. The RFP was mailed directly to 36 consulting firms specializing in environmental and biological services. The list was generated from Contra Costa County's basic consulting list as well as recommendations from staff working to implement the San Joaquin County Multi-Species Conservation Plan.

Six proposals were submitted and all six firms were interviewed by a panel convened by Conservancy staff. Interviews were conducted the week of December 10. The interview panel included: Cece Sellgren from Contra Costa County Public Works Department who has extensive experience working with such firms and with the HCP, John Kopchik and Abby Fateman from the Conservancy Staff, and Brad Olson and Chris Barton from East Bay Regional Park District

who also have experience working with many such firms and who will be key partners in implementation work involving these firms (Mr. Barton and Mr. Olson participated on separate days, not at the same time).

The interview panel was impressed by all the firms. After much discussion and review of qualifications, the panel recommended Jones & Stokes, H. T. Harvey & Associates and Monk and Associates as the top three candidates for providing on-call biological services. References were checked for these firms.

Staff recommends contracting with all three firms identified by the panel. Each firm can contribute unique value to the HCP. Jones and Stokes were the primary authors of the Plan and bring substantial experience to bear in advising the Conservancy on Plan implementation and also possess the most comprehensive experience in the region in assisting with HCP preserve establishment. H.T. Harvey & Associates displayed an impressive team during their interview that could assist with many aspects of implementation and at least one suitable task would be to prepare a comprehensive report analyzing the special status species not covered by the HCP to document how the HCP would benefit these species and what if any additional conservation measures would possibly be needed by individual development projects to comply with CEQA (this report would help to streamline CEQA for future developments). Monk and Associates have substantial local knowledge and expertise with wetland restoration and creation and involving a second firm in this task could provide the Conservancy with additional capacity to perform this critical task. Staff recommends contracting with selected firms for on-call biological and conservation planning services from January 1, 2008 to December 31, 2008. The recommended contract limits are: Jones and Stokes for \$200,000; H.T. Harvey & Associates for \$75,000; and Monk and Associates for \$75,000. The recommended contracts are consistent with the recommended 2008 Conservancy Budget.

Item (e): Resources Law Group assisted with developing all of the agreements related to the HCP/NCCP and have also assisted with a number of initial implementation tasks under a separate contract approved by the Board in May. Many tasks are on-going, such as development of a template conservation easement, development of a template deed restriction, development of a template Participating Special Entity Agreement and development of an agreement with the wetlands regulatory agencies. Staff recommends contracting with Resources Law Group to continue these and other vital tasks. Staff recommends the contract extend from January 1, 2008 to December 31, 2008 and have a limit of \$50,000. The recommended contract amount is consistent with the recommended 2008 Conservancy Budget. The Conservancy has used a slightly different form to contract for legal services previously, and the recommendation is to use the same form that was used before and was approved as to form by County Counsel. A copy of the Conservancy's existing contract with Resources Law Group is attached.

Attachments:

- Table I-1: Draft 2008 Conservancy Budget
- Tables I-2 through I-10 providing detailed cost estimates from the HCP by program area
- Table II-1, providing a financial summary for Conservancy accounts

- Table 1 II-2, providing a financial summary for the California Wildlife Foundation account
- Table III-1, providing a summary of approved grants
- Draft Cost Sharing Agreement with EBRPD
- Contract template for consulting services
- Existing contract for legal Services with resources Law Group

Proposed 2008 Conservancy Budget: Recommended Expenditures and Comparison to Budget Projections from the HCP/NCCP

Table I-1

| Cost Category | Projected Expenditures ¹ from HCP Chapter 9 | | | Proposed 2008 Expenditures | | | | | | | |
|--|--|--|---------------|-----------------------------------|---|--|--|--|---------------------|---------------------|---------------|
| | Years 1-5 | Average Cost Per Year (Years 1-5) ² | % of Total | Existing Development Fee Revenues | Development Fee Revenues Accrued in 2008 ³ | Existing Wetland Mitigation Fee Revenues | Wetland Mitigation Fee Revenues Accrued in 2008 ³ | CDFG's California Wildlife Foundation Account ⁴ | Grant Funding | TOTAL | % of Total |
| Program Administration | \$3,065,485 | \$613,097 | 5.8% | \$224,575 | 0% | \$0 | 0% | \$230,000 | \$40,000 | \$494,575 | 4.2% |
| Land Acquisition | \$37,337,984 | \$7,467,600 | 71.2% | \$900,667 | 50% | \$0 | 0% | \$1,000,000 | \$8,000,000 | \$9,900,667 | 83.9% |
| Management, Restoration and Recreation Planning and Design | \$1,861,131 | \$372,226 | 3.5% | \$100,000 | 0% | \$28,322 | 50% | \$150,000 | \$60,000 | \$338,322 | 2.9% |
| Habitat Restoration/Creation | \$3,625,657 | \$725,131 | 6.9% | \$0 | 0% | \$7,869 | 20% | \$399,457 | \$0 | \$407,326 | 3.5% |
| Environmental Compliance | \$459,000 | \$91,800 | 0.9% | \$36,000 | 0% | \$0 | 10% | \$50,000 | \$0 | \$86,000 | 0.7% |
| HCP/NCCP Preserve Management and Maintenance | \$3,191,980 | \$638,396 | 6.1% | \$204,100 | 27% | \$0 | 0% | \$200,000 | \$0 | \$404,100 | 3.4% |
| Monitoring, Research, and Adaptive Management | \$2,159,819 | \$431,964 | 4.1% | \$16,500 | 0% | \$0 | 0% | \$0 | \$50,000 | \$66,500 | 0.6% |
| Remedial Measures | \$30,000 | \$6,000 | 0.1% | \$6,000 | 0% | \$0 | 0% | \$0 | \$0 | \$6,000 | 0.1% |
| Contingency Fund (5% of non-land acquisition costs) | \$719,654 | \$143,931 | 1.4% | \$90,141 | 3% | \$0 | 0% | \$0 | \$0 | \$90,141 | 0.8% |
| TOTAL EXPENDITURES | \$52,450,710 | \$10,490,145 | 100.0% | \$1,577,983 | 80% | \$36,191 | 80% | \$2,029,457 | \$8,150,000 | \$11,793,631 | 100.0% |
| TOTAL FUNDS RECEIVED OR AWARDED | | | | \$2,288,489 | | \$36,191 | | \$2,782,388 | \$15,702,685 | \$20,809,753 | |
| BALANCE (TO Be Reserved For Future Years) | | | | \$710,506 | 20% | \$0 | 20% | \$752,931 | \$7,552,685 | \$9,016,122 | |

Notes:

- (1) HCP expenditure projections are in 2005 dollars and have not been adjusted for inflation. Costs reflect the Maximum Urban Development Area scenario.
- (2) For general comparison only. Since the costs of some tasks may change significantly during the five year period (e.g. land management), the annual average of the five-year cost estimate may over or under estimate needs in year 1.
- (3) Percentages reflect the recommended porportion of new revenues to be spent on each cost category.
- (4) This account was set up specifically for the HCP. Wildlife agencies must approve disbursements but are being asked to pre-approve these budget allocations.

Summary of Personnel for Max Urban Development Area¹

Table I-2

Personnel Cost estimates from the HCP

| | Total cost per FTE per Year (from HCP) | Estimated FTEs From HCP Years 1-5 | One-Fifth of Five-Year HCP Estimate | How These Functions Are/Will Be Performed in the Conservancy |
|--|--|-----------------------------------|-------------------------------------|--|
| Administrative Personnel | | | | |
| Executive Director | \$134,640 | 1 | \$134,640 | County principal planner (60% FTE) |
| IT- Database / GIS Manager | \$87,516 | 0.5 | \$43,758 | County GIS staff and County IT staff |
| Budget Analyst | \$74,052 | 1 | \$74,052 | County senior planner (30% FTE) & County accountants |
| Acquisition Specialist | \$100,980 | 1 | \$100,980 | Outsourced to EBRPD and others |
| Grant Specialist / Conservation Planner | \$94,248 | 1 | \$94,248 | County senior planners (2 individuals, 1 FTE) |
| Admin - Secretary | \$60,588 | 0.5 | \$30,294 | County secretaries |
| Total administrative personnel | | 5 | \$477,972 | |
| Restoration Planning, Design, & Implementation and Monitoring Personnel² | | | | |
| Senior Specialist | \$107,712 | 1 | \$107,712 | Outsourced to consultants |
| Project Manager | \$99,054 | 1 | \$99,054 | County senior planner (30% FTE) and consultants |
| Technical Support | \$64,320 | 1 | \$64,320 | Consultants |
| Total restoration personnel | | 3 | \$271,086 | |
| Preserve Management and Maintenance Personnel | | | | |
| Preserve Manager | \$100,980 | 1 | \$100,980 | Outsourced to Conservancy land partners |
| Laborer | \$53,856 | 2 | \$107,712 | Outsourced to Conservancy land partners |
| Admin - Secretary | \$60,588 | 0.5 | \$30,294 | Outsourced to Conservancy land partners |
| Total Management and Maintenance Personnel | | 3.5 | \$238,986 | |
| TOTAL PERSONNEL (FROM HCP) | | 11.5 | \$988,044 | |

Staff Cost Estimates for the 2008 Conservancy Budget

| | Current billing rate per hour (fully burdened incl. support staff) | Projected average billing rate 2008 ³ | Estimated FTE | Estimated Annual Cost |
|------------------------------------|--|--|---------------|-----------------------|
| Principal Planner | \$185 | \$187 | 0.60 | \$184,000 |
| Senior Planner (experienced) | \$148 | \$149 | 0.50 | \$122,242 |
| Senior Planner (new) | \$131 | \$132 | 0.85 | \$184,356 |
| IT staff | costs included in planner rates | | 0.10 | \$0 |
| GIS staff | costs included in planner rates | | 0.25 | \$0 |
| Accounting staff | costs included in planner rates | | 0.25 | \$0 |
| Secretarial staff | costs included in planner rates | | 0.50 | \$0 |
| Senior management staff | costs included in planner rates | | 0.10 | \$0 |
| TOTAL CONSERVANCY PERSONNEL | | | | \$490,598 |

Basis for Planner Billing Rates

| | Principal Planner | | Senior Planner (experienced) | | Senior Planner (experienced) | |
|---|-------------------------|--------------|------------------------------|--------------|------------------------------|--------------|
| | Portion of billing rate | \$ per hour | Portion of billing rate | \$ per hour | Portion of billing rate | \$ per hour |
| Salary, retirement and all benefits | 41% | \$77 | 41% | \$61 | 41% | \$53 |
| Increment to reflect paid time off | 11% | \$21 | 11% | \$16 | 11% | \$14 |
| Increment for secretarial support | 10% | \$19 | 10% | \$15 | 10% | \$13 |
| Increment for Department IT, GIS, accounting, management, computers, software, supplies and equipment | 26% | \$48 | 26% | \$38 | 26% | \$33 |
| Increment for building, power, phones, network, HR, County management | 13% | \$23 | 13% | \$19 | 13% | \$16 |
| TOTAL | 100% | \$187 | 100% | \$149 | 100% | \$132 |

Notes:

- (1) Costs detailed in this Table are not reflected in summary Budget because they are split estimates for program areas
- (2) Costs for these staff are equally split between three program areas: Planning & Design, Restoration, and Monitoring
- (3) Reflects potential cost of living adjustment in October 2008.

Program Administration for Maximum Urban Development Area¹

Table I-3

| | <i>Estimated Costs From HCP Years 1-5</i> | <i>One-Fifth of Five-Year HCP Estimate</i> | Cost Estimate Used for 2008 Conservancy Budget | Notes |
|--|---|--|---|---|
| Office Space | \$28,500 | \$5,700 | \$0 | costs included in planner rates |
| Office Equipment by Employee | \$21,750 | \$4,350 | \$0 | costs included in planner rates |
| General Office Equipment | \$38,600 | \$7,720 | \$0 | costs included in planner rates |
| GIS/Database Equipment | \$17,500 | \$3,500 | \$0 | costs included in planner rates |
| Maintenance of General Office Equipment | \$2,275 | \$455 | \$455 | costs included in planner rates |
| Maintenance of GIS Database equipment | \$3,250 | \$650 | \$650 | costs included in planner rates |
| | | | | |
| Employees | | | | |
| Executive Director | \$673,200 | \$134,640 | \$0 | Principal planner performs these functions |
| IT- Database / GIS Manager | \$218,790 | \$43,758 | \$0 | costs included in planner rates |
| | | | | Senior planner performs many functions / accountants perform others and their costs are included in planner rates |
| Budget Analyst | \$370,260 | \$74,052 | \$0 | |
| Acquisition Specialist | \$504,900 | \$100,980 | \$0 | Outsourced to EBRPD/others |
| Grant Specialist / Conservation Planner | \$471,240 | \$94,248 | \$0 | Senior planners perform these functions |
| Admin - Secretary | \$151,470 | \$30,294 | \$0 | costs included in planner rates |
| | | | | Principal planner also has small budget increments in most program categories |
| Principal Planner | n/a | n/a | \$102,666 | |
| Senior planner (experienced) | n/a | n/a | \$24,448 | 0.1 FTE for grant management |
| Senior Planner (new) | n/a | n/a | \$184,356 | New senior planner is 100% admin |
| Employees Subtotal | \$2,389,860 | \$477,972 | \$311,470 | |
| | | | | |
| Travel | \$33,250 | \$6,650 | \$6,000 | |
| Vehicle / Mileage Allowance | \$5,063 | \$1,013 | \$1,000 | |
| Insurance | \$187,000 | \$37,400 | \$35,000 | |
| Legal Assistance | \$150,000 | \$30,000 | \$50,000 | |
| Financial Analysis Assistance | \$15,500 | \$3,100 | \$3,000 | |
| JPA Member Meeting Stipend | \$30,000 | \$6,000 | \$0 | |
| In-Lieu funding for Law Enforcement and Firefight | \$17,938 | \$3,588 | \$2,000 | |
| Contractor assistance with take authorization prog | \$0 | \$0 | \$60,000 | |
| | | | | includes web design and maintenance, publications, document reproduction |
| Public Relations and Outreach | \$125,000 | \$25,000 | \$25,000 | |
| | | | | |
| TOTAL | \$3,065,486 | \$613,097 | \$494,575 | |

Notes:

(1) Tasks include administration of take authorization program, public outreach and involvement, financial management, grant management and legal assistance

Land Acquisition for MAX UDA

Table I-4

| | Estimated Costs From HCP Years 1-5 | One-Fifth of Five- Year HCP Estimate | Cost Estimate Used for 2008 Conservancy Budget |
|-------------------|---|---|---|
| Land Costs | \$33,396,556 | \$6,679,311 | \$9,350,000 |
| Site Approvements | \$963,900 | \$192,783 | \$165,000 |
| Due Diligence | \$1,868,113 | \$373,623 | \$215,667 |
| Planning Surveys | \$1,109,415 | \$221,883 | \$170,000 |
| TOTAL | \$37,337,984 | \$7,467,600 | \$9,900,667 |

Land Cost Estimates and Assumptions

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

Due Diligence

| | Estimated Costs From HCP Years 1-5 | One-Fifth of Five- Year HCP Estimate | Estimates Used for 2008 Conservancy Budget |
|--|---|---|---|
| Number of Parcels to be Purchased | 42 | 8.4 | 10 |
| Number of Parcels Investigated | 53 | 10.6 | 12 |
| Appraisals | \$216,240 | \$43,248 | n/a |
| Preliminary Title Report | \$27,030 | \$5,406 | n/a |
| Phase I Site Assessment | \$324,360 | \$64,872 | n/a |
| Boundary Survey | \$331,197 | \$66,239 | n/a |
| Legal Description | \$216,240 | \$43,248 | n/a |
| Monumentation | \$248,146 | \$49,629 | n/a |
| Land acquisition specialist | \$504,900 | \$100,980 | n/a |
| 0.1 FTE of principal planner (\$184,000) | n/a | n/a | \$30,667 |
| Proposed Agreement with EBRPD | n/a | n/a | \$90,000 |
| Due diligence contingency | n/a | n/a | \$50,000 |
| Due diligence costs with other partners | n/a | n/a | \$45,000 |
| TOTAL | \$1,868,113 | \$373,623 | \$215,667 |

Table I-4 (continued)

Planning Surveys

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

Site Improvements

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

Management, Restoration, and Recreation Planning and Design for Maximum Urban Development Area

Table I-5

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

Staff

| <i>Position</i> | <i>Total cost of Employee per year</i> | <i>Number of FTE in 2008</i> | <i>Estimated Cost in 2008</i> |
|----------------------------------|--|----------------------------------|-----------------------------------|
| <i>Estimate From HCP</i> | | | |
| Senior Scientist (HCP estimate) | \$107,712 | 0.3 | \$35,904 |
| Project Manager (HCP estimate) | \$99,054 | 0.3 | \$33,018 |
| Technical Support (HCP estimate) | \$67,320 | 0.3 | \$22,440 |
| TOTAL FROM HCP | | 1.0 | \$91,362 |

Estimate for Conservancy 2008 Budget

| | | | |
|--|-----------|------------|-----------------|
| Senior planner (experienced, 50% time) | \$122,242 | 0.2 | \$48,897 |
| Principal planner (60% time) | \$184,000 | 0.1 | \$36,800 |
| TOTAL FOR CONSERVANCY 2008 | | 0.3 | \$85,697 |

Contractors

| | <i>Estimated Costs From HCP Years 1-5</i> | <i>One-Fifth of Five- Year HCP Estimate</i> | <i>Cost Estimate Used for 2008 Conservancy Budget</i> |
|------------------------------------|---|---|---|
| Management and Recreation planning | \$750,000 | \$150,000 | \$100,000 |
| Restoration Planning | \$500,000 | \$100,000 | \$75,000 |
| Restoration Design | \$47,013 | \$9,403 | \$75,000 |
| TOTAL | \$1,297,013 | \$259,403 | \$250,000 |

Habitat Restoration/Creation for Maximum Urban Development Area

Table I-6

| | <i>Estimated Costs From HCP Years 1-5</i> | <i>One-Fifth of Five-Year HCP Estimate</i> | <i>Cost Estimate Used for 2008 Conservancy Budget</i> | <i>Notes</i> |
|-----------------------------------|---|--|---|---|
| Creation/Restoration Construction | \$2,291,709 | \$458,342 | \$200,804 | see detail below |
| Office Equipment | \$11,350 | \$2,270 | \$0 | included in staff costs |
| Vehicle Purchase | \$73,333 | \$14,667 | \$0 | factored into contractor rates |
| Staff | \$456,810 | \$91,362 | \$53,897 | Sr. Planner (0.2 FTE) & \$5k principal planner |
| Travel | \$13,125 | \$2,625 | \$2,625 | |
| Vehicle Fuel and Maintenance | \$9,500 | \$1,900 | \$0 | factored into contractor rates |
| Contractors | \$769,830 | \$153,966 | \$150,000 | see detail below |
| TOTAL | \$3,625,657 | \$725,131 | \$407,326 | |

Land Cover Type Restored/Created

| <i>Land Cover Type (Acres)</i> | <i>Total Estimated Acres in HCP Years 1-5</i> | <i>One-Fifth of Five-Year HCP Estimate</i> | <i>Estimate Used for 2008 Conservancy Budget</i> |
|--------------------------------|---|--|--|
| oak savanna | 29.5 | 5.9 | 0 |
| riparian woodland/scrub | 9.2 | 1.84 | 1 |
| perennial wetland | 10.6 | 2.12 | 0 |
| seasonal wetland | 7.8 | 1.56 | 3 |
| alkali wetland | 3.5 | 0.7 | 0 |
| slough/channel | 12.2 | 2.44 | 0 |
| open water | 0 | 0 | 0 |
| ponds | 5.5 | 1.1 | 0.5 |
| streams | 0.1 | 0.02 | 0.01 |
| TOTAL | 78.4 | 15.68 | 4.51 |

Cost of Restoration/Creation Construction

| <i>Land Cover Type</i> | <i>Unit</i> | <i>Cost per unit</i> | <i>Estimated Costs From HCP Years 1-5</i> | <i>One-Fifth of Five-Year HCP Estimate</i> | <i>Cost Estimate Used for 2008 Conservancy Budget</i> |
|-------------------------|-------------|----------------------|---|--|---|
| oak savanna | Acres | \$1,850 | \$54,575 | \$10,915 | \$0 |
| riparian woodland/scrub | Acres | \$25,000 | \$230,000 | \$46,000 | \$25,000 |
| perennial wetland | Acres | \$40,000 | \$424,000 | \$84,800 | \$0 |
| seasonal wetland | Acres | \$45,000 | \$351,000 | \$70,200 | \$135,000 |
| alkali wetland | Acres | \$41,700 | \$145,950 | \$29,190 | \$0 |
| slough/channel | Acres | \$54,000 | \$658,800 | \$131,760 | \$0 |
| open water | Acres | \$45,000 | \$0 | \$0 | \$0 |
| ponds | Acres | \$45,000 | \$247,500 | \$49,500 | \$22,500 |
| streams | Linear Feet | \$260 | \$183,040 | \$36,608 | \$18,304 |
| TOTAL | | | | \$458,973 | \$200,804 |

Contractors

| | <i>Estimated Costs From HCP Years 1-5</i> | <i>One-Fifth of Five-Year HCP Estimate</i> | <i>Cost Estimate Used for 2008 Conservancy Budget</i> |
|--|---|--|---|
| Plans, Specifications, and engineering | \$176,297 | \$35,259 | \$35,000 |
| Bid Assistance | \$23,503 | \$4,701 | \$5,000 |
| Construction Oversight | \$99,902 | \$19,980 | \$20,000 |
| Post-construction Maintenance | \$470,125 | \$94,025 | \$90,000 |
| TOTAL | | \$153,965 | \$150,000 |

Environmental Compliance for Maximum Urban Development Area

Table I-7

| | <i>Estimated Costs From HCP Years 1-5</i> | <i>One-Fifth of Five- Year HCP Estimate</i> | <i>Cost Estimate Used for 2008 Conservancy Budget</i> | <i>Notes</i> |
|-------------------------------|---|---|---|----------------------------|
| NEPA/CEQA | \$380,000 | \$76,000 | \$10,000 | most projects exempt |
| CWA 404/401 | \$0 | \$0 | \$10,000 | |
| NHPA | \$41,000 | \$8,200 | \$10,000 | |
| CDFG 1600-1607 | \$8,000 | \$1,600 | \$1,000 | |
| Report on non-covered species | \$0 | \$0 | \$50,000 | |
| Other/staff | \$30,000 | \$6,000 | \$5,000 | \$5k for principal planner |
| TOTAL | | \$91,800 | \$86,000 | |

HCP/NCCP Preserve Management and Maintenance for Maximum Urban Development Area

Table I-8

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

Monitoring Research and Adaptive Management

Table I-9

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

Remedial Measures

Table I-10

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

Contingency Fund

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

Assumptions:

5% Percent of total program funding needed for contingency fund.

HABITAT CONSERVATION PLAN IMPLEMENTATION FEES ACTIVITY SUMMARY

As of October 22, 2007

Table II-1

DEVELOPMENT FEE ACCOUNT

| Payment Date | Deposits | Amount |
|-----------------------|---|-----------------------|
| 7/26/2005 | CCC Public Works Department for Highway 4 Extension Segment 1 | \$1,140,000.00 |
| 9/19/2006 | CCC Public Works Department for Highway 4 Extension Segment 3 | \$1,245,000.00 |
| | Remaining funds from HCPA | \$10,911.96 |
| 7/29/2005 | Development Fee Interest | \$21,536.55 |
| 10/5/2006 | Development Fee Interest | \$30,610.12 |
| 4/25/2007 | Development Fee Interest | \$28,722.63 |
| 7/25/2007 | Development Fee Interest | \$28,891.59 |
| | City of Brentwood | \$62,336.00 |
| 10/10/2007 | Sheppard Mullin Receipt # 8210 (HCP Vol 1 & 2) | \$89.00 |
| 10/16/2007 | Moore Biological Consultants Receipt # 8243 (HCP Vol 1 & 2) | \$89.00 |
| TOTAL DEPOSITS | | \$2,568,186.85 |

| Debit Date | Debits | Amount |
|---|---------------------------------|-----------------------|
| 7/16/2007 | Jones and Stokes Invoice #44139 | \$1,717.50 |
| 8/14/2007 | Jones and Stokes Invoice #45124 | \$1,420.00 |
| 9/5/2007 | Black Tie Transportation | \$1,094.27 |
| 9/10/2007 | Jones and Stokes Invoice #45840 | \$9,050.00 |
| 10/22/2007 | Farwest Sanitation and Storage | \$97.43 |
| TOTAL DEBITS | | \$13,379.20 |
| CURRENT BALANCE OF DEVELOPMENT FEE ACCOUNT | | \$2,554,807.65 |

| <i>Debits Pending Before 2008 Budget is Adopted</i> <i>(County has not yet requested reimbursement from the Conservancy for those expenses described below that have already occurred)</i> | Amount |
|---|-----------------------|
| Conservancy staff costs authorized on May 9, 2007 | \$70,000.00 |
| Remainder of Jones and Stokes \$40,000 contract | \$25,429.10 |
| Remainder of Resources Law Group \$30,000 contract | \$30,000.00 |
| <u>July 25, 2007 Approval event</u> | |
| Envelopes for Invitations | \$32.93 |
| Postage - Invitations | \$110.70 |
| Paper for Invitations | \$18.92 |
| Badges | \$94.00 |
| Paper for panoramic photo | \$11.71 |
| Postage for Directions | \$38.13 |
| Cake | \$167.00 |
| Enterprise Rent-A Car (2 vans for County drivers) | \$160.00 |
| Costco for food and beverages, etc. | \$256.16 |
| Approval Event Subtotal | \$889.55 |
| Approved augmentation expenditure limit for Conservancy staff costs through 2007 | \$60,000.00 |
| Approved expenditure limit for miscellaneous operational costs until 2008 Budget is adopted | \$50,000.00 |
| Approved appropriation to EBRPD for land acquisition services from May to December | \$30,000.00 |
| TOTAL DEBITS PENDING | \$266,318.65 |
| ESTIMATED BALANCE OF DEVELOPMENT FEE ACCOUNT ON JANUARY 1, 2008 | \$2,288,489.00 |

WETLAND MITIGATION FEE ACCOUNT

| Payment Date | Deposits | Fee Collected |
|---------------------|--|----------------------|
| 9/12/2007 | PINN BROS CONSTRUCTION | \$19,191.00 |
| 9/12/2007 | CITY OF BRENTWOOD | \$17,000.00 |
| | TOTAL DEPOSITS | \$36,191.00 |
| | TOTAL DEBITS | \$0.00 |
| | BALANCE OF WETLAND MITIGATION FEE ACCOUNT | \$36,191.00 |

**CALIFORNIA WILDLIFE FOUNDATION ACCOUNT: PRE-PLAN AND NON-COVERED ACTIVITIES
MITIGATION FUNDS AS OF 12-13-07**

Table II-2

| DATE | PROJECT | FUNDS |
|---------------|---|--------------------|
| 1/3/2005 | Shea Homes | \$500,000 |
| 10/7/2005 | Hoffman Development (Burrowing Owl), Discovery Bay | \$76,032 |
| 11/3/2005 | Meritage Homes, Brentwood | \$15,000 |
| 11/10/2005 | Shell pipeline repair | \$5,243 |
| 1/18/2006 | Standard Pacific, Barrington Project, Brentwood | \$97,500 |
| 1/30/2006 | Claremont Homes, Gregory Ranch, Brentwood | \$90,000 |
| 5/15/2006 | Suncrest Homes | \$20,000 |
| 6/12/2006 | Shea Homes | \$500,000 |
| 6/21/2006 | Mercy Housing, Villa Amador | \$32,000 |
| 8/21/2006 | Contra Costa County, streambed alteration (flood control) | \$44,489 |
| 9/1/2006 | City of Antioch, Bluerock Business Center | \$196,875 |
| 10/10/2006 | Conoco Philips, pipeline repair | \$40,525 |
| 10/13/2006 | Contra Costa Water District, construction of intertie | \$6,108 |
| 11/2/2006 | Lone Tree Brentwood, Lone Tree Town Plaza project | \$75,220 |
| 11/21/2006 | CC County Public Works, Marsh Creek Bridge repair | \$7,200 |
| 12/21/2006 | CCC stream bed alteration | \$6,880 |
| 1/18/2007 | Pinn Bros., Brentwood | \$348,270 |
| 1/24/2007 | Empire Crossing Lone Tree Way, Brentwood | \$14,841 |
| 1/27/2007 | KFC/A&W project, Lonetree Way, Brentwood | \$6,903 |
| 3/20/2007 | Baca Properties, Brentwood | \$10,500 |
| 5/27/2007 | Delta/CCDA | \$60,000 |
| 6/14/2007 | Lemke | \$324,197 |
| 7/27/2007 | Seeno, Discovery Builders | 46,634.80 |
| 7/31/2007 | Knowledge Corp., Kindercare, Brentwood | 9,163.00 |
| 8/21/2007 | PGE | 17,136.00 |
| 10/22/2007 | PGE | 420,535.00 |
| | TOTAL REVENUES | \$2,971,251 |
| | TOTAL EXPENSES¹ | \$254,528 |
| | INTEREST | \$65,665 |
| | BALANCE (6-25-07) | \$2,782,388 |
| Notes: | | |
| | (1) Expenses include \$180,000 contribution toward HCP plan development and CWF service costs | |

Grants Awarded to Support Implementation of the ECC HCP/NCCP

Table III-1

| <i>Funding Source</i> | <i>Agency</i> | <i>Purpose</i> | <i>Amount</i> | <i>Match</i> | <i>Match non-federal?</i> | <i>Date Funds Available</i> | <i>Need to be used by...</i> |
|---|---------------------|--|---------------------|------------------------------------|---------------------------|-----------------------------|------------------------------|
| Section 6 (2006) | USFW | Acquisition | \$6,531,054 | \$7,982,399 | yes | April 2007 | April 2010 |
| Section 6 (2007) | USFW | Acquisition | \$7,000,000 | \$8,555,600 | yes | 2008? | 3 years after start |
| CVPIA - HRP | USBR | Acquisition | \$991,631 | \$500,000 | yes | September 2006 | September 2009 |
| IRWMP - Prop 50 | DWR | Acquisition | \$750,000 | \$500,000 | no | ? | June 2012 |
| NCCP Local Assistance Funds (2006) | CDFG | Start-up staffing | \$40,000 | \$0 | no | May 2006 | June 2008 |
| NCCP Local Assistance Funds (2007) | CDFG | Start-up wetlands restoration | \$60,000 | \$120,000 | no | ? | ? |
| NCCP Local Assistance Funds (2006 & 2007) | CDFG | Historical ecological assessment (grant not to or for the Conservancy and not specifically an HCP project, but useful) | \$80,000 | Coastal Conservancy, Flood control | no | May 2006 and ? | june 2008 and ? |
| SF Bay Conservancy | Coastal Conservancy | Historical ecological assessment (grant not to or for the Conservancy and not specifically an HCP project, but useful) | \$150,000 | CDFG, Flood Control | no | July 2006 | 2009 |
| CCC Flood Control | CCCFCDD | Historical ecological assessment | \$100,000 | CDFG, CC | no | ? | ? |
| TOTAL | | | \$15,702,685 | \$17,657,999 | | | |

COST SHARING AGREEMENT

This **COST SHARING AGREEMENT** (the “**Agreement**”), dated ~~December 19~~ February 6, 2008 for reference purposes only, is by and between **EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**, a joint exercise of powers authority (“**Conservancy**”), and **EAST BAY REGIONAL PARK DISTRICT**, a California special district (“**District**”). Hereafter, Conservancy and District are sometimes individually referred to herein as a “**Party**” and are sometimes collectively referred to herein as the “**Parties.**”

Recitals

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

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

C. District manages more than 97,000-98,000 acres of parkland, wilderness, shorelines, preserves and land banks in Alameda and Contra Costa Counties.

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

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

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

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

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

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

- (a) Appraisal costs and District’s staff expenses related directly to commissioning the appraisal;
- (b) Title costs, including preparation of preliminary title reports, title searches, and clearing title exceptions;
- (c) Phase one environmental site assessments for hazardous materials, and any recommended follow-up environmental testing or clean-up work;
- (d) Engineering and structural integrity studies;
- (e) Water rights searches and assessments, and water quality testing;
- (f) Baseline documentation of natural and cultural resources, as necessary, to support land acquisition;;
- (g) Deposits, earnest money, option consideration and/or extension fees due sellers, to the extent such amounts are approved in advance by the Parties (collectively, “**Approved Deposits**”);
- (h) District’s staff expenses related directly to performing other technical land acquisition duties agreed upon by the Parties;
- (i) Closing costs and escrow fees; and
- (j) Other non-reimbursable, out-of-pocket costs reasonably agreed to by the Parties.

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

3. Conservancy's Shared Costs Amount. Conservancy and District estimate that Conservancy's portion of the Shared Costs for the Joint Acquisition Projects from the period commencing June 1, 2007 through December 31, 2008 is One Hundred Twenty Thousand Dollars (\$120,000) ("**Conservancy's Total Shared Costs**"), as described as follows:

(a) *[Thirty Thousand Dollars (\$30,000)]* of Conservancy's Total Shared Costs represent Conservancy's estimated equal share of Shared Costs during the period June 1, 2007 through December 31, 2007 ("**Conservancy's Initial Shared Costs**"), and

(b) *[Ninety Thousand Dollars (\$90,000)]* of Conservancy's Total Shared Costs represent Conservancy's equal share of the remaining total estimated Shared Costs District is expected to incur for Joint Acquisition Projects during the 2008 calendar year ("**Conservancy's Estimated 2008 Shared Costs**").

4. Payment of Conservancy's Total Shared Costs. Conservancy shall pay Conservancy's Total Shared Costs as follows (the "**Conservancy Funds**"):

(a) Prior to the Effective Date of this agreement, Conservancy shall pay to District *[Thirty Thousand Dollars (\$30,000)]* to reimburse District for Conservancy's Initial Shared Costs; and

(b) Within twenty-five business days of the Effective Date, Conservancy shall forward to District cash in the amount equal to *[Ninety Thousand Dollars (\$90,000)]* ("**Conservancy's Estimated Funds**") which shall represent Conservancy's advance payment of Conservancy's Estimated 2008 Shared Costs for the 2008 calendar year. District shall be entitled to use Conservancy's Estimated 2008 Funds to pay Conservancy's Estimated Shared Costs during the term of this Agreement.

District shall directly fund District's portion of the Shared Costs incurred by District for the Joint Acquisition Projects from the period commencing June 1, 2007 through December 31, 2008, as reflected in the Budget. If the number of Joint

Acquisition Projects far exceeds the number expected, as detailed above, the Parties shall meet and confer to discuss increasing the amount of the Conservancy's Total Shared Costs; provided, however, Conservancy will not be required to fund any Shared Costs in excess of the Conservancy's Total Shared Costs identified herein unless and until Conservancy and District agree in writing on a revised cost estimate that reflects such increase in the number of Joint Acquisition Projects and timing of additional payments due from Conservancy to District in connection with such revised cost estimate.

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

6. Accounting. On or before November 30, 2008, District shall deliver to Conservancy a preliminary written accounting estimating all Shared Costs actually incurred as of that date for use in discussing cost share arrangements for future years. On or before March 1, 2009, District shall deliver to Conservancy the following: (a) a preliminary written accounting detailing all Shared Costs actually incurred and paid by District during the term of the Agreement for each Acquisition Project, Conservancy's portion of such Shared Costs, and all Conservancy Funds used to pay such Shared Costs; and (b) cash in the amount equal to the difference, if any, between the Conservancy Funds and the Total Conservancy Shared Costs.

7. Term. The term of this Agreement shall commence on the Effective Date and shall terminate on December 31, 2008.

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

If to Conservancy:

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

If to District:

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

9. Miscellaneous Provisions.

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

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

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

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

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

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

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

(h) **Performance and Waiver.** Time is of the essence in the performance of each of the obligations of the Parties under this Agreement, but no failure

of a Party to this Agreement to insist upon the timely performance of any obligation by another Party shall constitute a waiver of the right to require performance of such obligation, or act as a waiver of the right to require the performance of any other obligation of such Party (or any other party).

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

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

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

CONSERVANCY:

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

Date: _____

By: _____

Name: Dennis M. Barry

Title: Secretary

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special district

Date: _____

By: _____

Name: Pat O'Brien

Title: General Manager

STANDARD CONTRACT
(Purchase of Services - Long Form)

1. **Contract Identification.**

Subject: East Contra Costa County HCP/NCCP

2. **Parties.** The East Contra Costa County Habitat Conservancy (Conservancy) and the following named Contractor mutually agree and promise as follows:

Contractor:

Capacity:

Address:

3. **Term.** The effective date of this Contract is _____. It terminates on _____ unless sooner terminated as provided herein.

4. **Payment Limit.** Conservancy's total payments to Contractor under this Contract shall not exceed \$ _____.

5. **Conservancy's Obligations.** Conservancy shall make to the Contractor those payments described in the Payment Provisions attached hereto which are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

6. **Contractor's Obligations.** Contractor shall provide those services and carry out that work described in the Service Plan attached hereto which is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

7. **General and Special Conditions.** This Contract is subject to the General Conditions and Special Conditions (if any) attached hereto, which are incorporated herein by reference.

8. **Project.** This Contract implements in whole or in part the following described Project, the application and approval documents of which are incorporated herein by reference:

STANDARD CONTRACT
(Purchase of Services - Long Form)

9. **Legal Authority.** This Contract is entered into under and subject to the following legal authorities:
California Government Code Sections 6502 and 31000.

10. **Signatures.** These signatures attest the parties' agreement hereto:

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

| | |
|--|--|
| By _____ Secretary of the Conservancy | ATTEST: By _____ Conservancy Staff |
|--|--|

CONTRACTOR

| | |
|---|---|
| Name of business entity By _____ (Signature of individual or officer) _____ (Print name and title A, if applicable) | Name of business entity By _____ (Signature of individual or officer) _____ (Print name and title B, if applicable) |
|---|---|

Note to Contractor: For Corporations (profit or nonprofit), the contract must be signed by two officers. Signature A must be that of the president or vice-president and Signature B must be that of the secretary or assistant secretary (Civil Code Section 1190 and Corporations Code Section 313). All signatures must be acknowledged as set forth on Form L-2.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

1. **Compliance with Law.** Contractor shall be subject to and comply with all applicable federal, state and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment and purchasing practices; and wages, hours and conditions of employment, including nondiscrimination.

2. **Inspection.** Contractor's performance, place of business and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the Conservancy, the County of Contra Costa ("County"), the State of California, and the United States Government.

3. **Records.** Contractor shall keep and make available for inspection and copying by authorized representatives of the Conservancy, the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the Conservancy.
 - a. **Retention of Records.** Contractor shall retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this contract's funding period. Upon request, Contractor shall make these records available to authorized representatives of the Conservancy, the County, the State of California, and the United States Government.

 - b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor shall, upon written request and until the expiration of four years after the furnishing of services pursuant to this Contract, make available to the Conservancy, the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that upon written request and until the expiration of four years after the furnishing of services pursuant to such subcontract, the subcontractor shall make available to the Conservancy, the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This special condition is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor shall include in all documents or written reports completed and submitted to Conservancy in accordance with this Contract, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section shall apply only if the payment limit under this Contract exceeds \$5,000.

5. **Termination and Cancellation.**

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
 - b. **Failure to Perform.** Conservancy, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, Conservancy may proceed with the work in any reasonable manner it chooses. The cost to Conservancy of completing Contractor's performance shall be deducted from any sum due Contractor under this Contract, without prejudice to Conservancy's rights to recover damages.
 - c. **Cessation of Funding.** Notwithstanding Paragraph 5.a. above, in the event that federal, state, or other non-Conservancy funding for this Contract ceases, this Contract is terminated without notice.
6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.
7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be developed and set forth in a written Informal Agreement between Contractor and Conservancy. Informal Agreements shall be designated as such and shall not be amendments to this Contract except to the extent that they further detail or clarify that which is already required hereunder. Informal Agreements may not enlarge in any manner the scope of this Contract, including any sums of money to be paid Contractor as provided herein. Informal Agreements may be approved and signed by the Secretary of the Conservancy or his designee.
8. **Modifications and Amendments.**
- a. **General Amendments.** This Contract may be modified or amended by a written document executed by Contractor and the Conservancy Governing Board or, after Board approval, by its designee, subject to any required state or federal approval.
 - b. **Administrative Amendments.** Subject to the Payment Limit, the Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the Secretary of the Conservancy (or designee), subject to any required state or federal approval, provided that such administrative amendment may not materially change the Payment Provisions or the Service Plan.
9. **Disputes.** Disagreements between Conservancy and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the Secretary of the Conservancy, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.
10. **Choice of Law and Personal Jurisdiction.**
- a. This Contract is made in Contra Costa County and shall be governed and construed in accordance with the laws of the State of California.
 - b. Any action relating to this Contract shall be instituted and prosecuted in the courts of Contra Costa County, State of California.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

11. **Conformance with Federal and State Regulations and Laws.** Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract shall be deemed amended to assure conformance with such federal or state requirements.
12. **No Waiver by Conservancy.** Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of Conservancy indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, shall not relieve Contractor's obligation to fulfill this Contract as prescribed; nor shall the Conservancy be thereby estopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.
13. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the Secretary of the Conservancy or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.
14. **Independent Contractor Status.** This Contract is by and between two independent contractors and is not intended to and shall not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture or association.
15. **Conflicts of Interest.** Contractor, its officers, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by this Contract to influence any governmental decision in which they know or have reason to know they have a financial interest under California Government Code Sections 87100, et seq., or otherwise.
16. **Confidentiality.** Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that:
- a. All applications and records concerning any individual made or kept by Contractor or any public officer or agency in connection with the administration of or relating to services provided under this Contract will be confidential, and will not be open to examination for any purpose not directly connected with the administration of such service.
 - b. No person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services.** Contractor agrees that all goods and services under this Contract shall be available to all qualified persons regardless of age, sex, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none shall be used, in whole or in part, for religious worship or instruction.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

18. **Indemnification.** The Contractor shall defend, indemnify, save, protect and hold harmless the Conservancy, its governing body, officers, employees, representatives and agents from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, sickness, death, or injury to person(s) or property arising directly or indirectly from or connected with the services provided hereunder which is caused in whole or in part, by the negligence or willful misconduct of the Contractor, its officers, employees, agents, servants, employees, subcontractors, or any persons under its direction or control, and shall make good to reimburse Conservancy for any expenditures, including reasonable attorney's fees and costs, the Conservancy may make by reason of such matters and shall, if requested by Conservancy, at the sole cost and expense of Contractor, defend any such claim or suit or provide counsel reasonably acceptable to Conservancy to contest or defend any such claim or suit. Contractor's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the Conservancy or any other person; provided, however, that Contractor shall not be required to indemnify Conservancy for any expenditures, including attorney's fees and costs, for the proportion of liability a court determines is attributable to the negligence or willful misconduct of the Conservancy, its governing body, officers, or employees. This indemnification clause shall survive the termination or expiration of this Agreement.

Conservancy agrees to give Contractor prompt written notice of any claims or other matter as to which Conservancy believes this indemnification provision is applicable, and failure to do so will relieve Contractor of any obligations or liability pursuant to this indemnification provision to the extent that Contractor is prejudiced in its defense of the action or claim by the Conservancy's failure to give such notice. Neither party, nor their successors or assigns, shall admit any liability to any matter for which indemnification is sought, or settle, compromise, pay or discharge the same without the prior written consent of the other, which shall not be unreasonably withheld or delayed, and Conservancy shall reasonably cooperate with Contractor in the contest and defense thereof.

19. **Insurance.** During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:

a. **Liability Insurance.** For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor shall provide comprehensive liability insurance, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance shall be endorsed to include Conservancy and its officers, agents and employees as additional insureds as to all services performed by Contractor under this agreement. Said policies shall constitute primary insurance as to Conservancy, the County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by them or their self-insurance program(s) shall not be required to contribute to any loss covered under Contractor's insurance policy or policies. For all contracts where the total payment limit is above \$500,000, the aforementioned insurance coverage to be provided by Contractor shall have a minimum combined single limit coverage of \$1,000,000, and Contractor shall be required to provide Conservancy with a copy of the endorsement making the Conservancy an additional insured on all general liability, worker's compensation, and, if applicable, all professional liability insurance policies as required herein no later than the effective date of this Contract.

b. **Workers' Compensation.** Contractor shall provide workers' compensation insurance coverage for its employees.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

- c. **Certificate of Insurance.** The Contractor shall provide the Conservancy with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If the Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor shall provide (a) current certificate(s) of insurance.
- d. **Additional Insurance Provisions.** The insurance policies provided by Contractor shall include a provision for thirty (30) days written notice to Conservancy before cancellation or material change of the above specified coverage.
20. **Notices.** All notices provided for by this Contract shall be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to Conservancy shall be addressed to the Secretary of the Conservancy. Notices to Contractor shall be addressed to the Contractor's address designated herein. The effective date of notice shall be the date of deposit in the mails or of other delivery, except that the effective date of notice to Conservancy shall be the date of receipt by the Secretary of the Conservancy.
21. **Primacy of General Conditions.** Except for Special Conditions which expressly supersede General Conditions, the Special Conditions (if any) and Service Plan do not limit any term of the General Conditions.
22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by Conservancy under a new contract following expiration or termination of this Contract, and waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.
23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.
24. **No Third-Party Beneficiaries.** Notwithstanding mutual recognition that services under this Contract may provide some aid or assistance to members of the County's population or those served by the Conservancy, it is not the intention of either Conservancy or Contractor that such individuals occupy the position of intended third-party beneficiaries of the obligations assumed by either party to this Contract.
25. **Copyrights and Rights in Data.** Contractor shall not publish or transfer any materials produced or resulting from activities supported by this agreement without the express written consent of the Secretary of the Conservancy. If any material is subject to copyright, Conservancy reserves the right to copyright, and Contractor agrees not to copyright, such material. If the material is copyrighted, Conservancy reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

26. **Endorsements.** Contractor shall not in its capacity as a contractor with the Conservancy publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of the Board of Supervisors. In its Conservancy contractor capacity, Contractor shall not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior approval of the Board of Supervisors. In its Conservancy contractor capacity, Contractor shall not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of the Conservancy. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Conservancy Governing Board, Conservancy officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.

27. **Required Audit.** (A) If Contractor is funded by \$500,000 or more in federal grant funds in any fiscal year ending after December 31, 2003 from any source, Contractor shall provide to Conservancy at Contractor's expense an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. (B) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year ending after December 31, 2003 from any source, but such grant imposes specific audit requirements; Contractor shall provide to Conservancy an audit conforming to those requirements. (C) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year ending after December 31, 2003 from any source, Contractor is exempt from federal audit requirements for that year, however, Contractor's records must be available for and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the Conservancy. If any such audit is required, Contractor shall provide Conservancy with such audit. With respect to the audits specified in (A), (B) and (C) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. Conservancy may withhold the estimated cost of the audit or 10 percent of the contract amount, whichever is larger, or the final payment, from Contractor until Conservancy receives the audit from Contractor.

28. **Authorization.** Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and perform the obligations herein.

Adapted from
Contra Costa County
Standard Form L-3

SERVICE PLAN
(Purchase of Services – Long Form)

Number

SAMPLE LANGUAGE. THIS FORM WILL NEED TO BE CUSTOMIZED BY
STAFF FOR EACH SPECIFIC CONTRACT.

(FOR TIME AND MATERIALS CONTRACTS:)

Contractor will perform one or more of the following services listed below for the Conservancy. Conservancy will reimburse Contractor on a time and materials basis according to the fee schedule provided in the attached document entitled, “xxx Fee Schedule”)

LIST DUTIES HERE

(FOR FIXED FEE-CONTRACTS:)

Contractor will perform the services described in the attached scope of work for the Conservancy. Conservancy will reimburse Contractor on a fixed-basis according to the attached cost estimate provided with the scope of work, “Cost Estimate”.

Initials:

Contractor

Conservancy.

PAYMENT PROVISIONS
(Fee Basis Contracts - Long and Short Form)

Number _____

1. **Payment Amounts.** Subject to the Payment Limit of this Contract and subject to the following Payment Provisions, County will pay Contractor the following fee as full compensation for all services, work, expenses or costs provided or incurred by Contractor:

[Check one alternative only.]

- a. \$ _____ monthly, or
- b. \$ _____ per unit, as defined in the Service Plan, or
- c. \$ _____ after completion of all obligations and conditions herein.
- d. Other: As specified in the Service Plan.

2. **Payment Demands.** Contractor shall submit written demands for payment on County Demand Form D-15 in the manner and form prescribed by County. Contractor shall submit said demands for payment no later than 30 days from the end of the month in which the contract services upon which such demand is based were actually rendered. Upon approval of payment demands by the head of the County Department for which this Contract is made, or his designee, County will make payments as specified in Paragraph 1. (Payment Amounts) above.

3. **Penalty for Late Submission.** If County is unable to obtain reimbursement from the State of California as a result of Contractor's failure to submit to County a timely demand for payment as specified in Paragraph 2. (Payment Demands) above, County shall not pay Contractor for such services to the extent County's recovery of funding is prejudiced by the delay even though such services were fully provided.

4. **Right to Withhold.** County has the right to withhold payment to Contractor when, in the opinion of County expressed in writing to Contractor, (a) Contractor's performance, in whole or in part, either has not been carried out or is insufficiently documented, (b) Contractor has neglected, failed or refused to furnish information or to cooperate with any inspection, review or audit of its program, work or records, or (c) Contractor has failed to sufficiently itemize or document its demand(s) for payment.

5. **Audit Exceptions.** Contractor agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate county, state or federal audit agencies resulting from its performance of this Contract. Within 30 days of demand, Contractor shall pay County the full amount of County's obligation, if any, to the state and/or federal government resulting from any audit exceptions, to the extent such are attributable to Contractor's failure to perform properly any of its obligations under this Contract.

Initials: _____
Contractor County Dept.

SPECIAL CONDITIONS
(Purchase of Services - Long Form)

Contract #

(SAMPLES OF SPECIAL CONDITIONS THAT WILL BE FREQUENTLY. STAFF WILL NEED TO ADJUST THESE PROVISIONS TO THE CIRCUMSTANCES OF THE SPECIFIC CONTRACT)

1. **Notice to Proceed.** Contractor shall not perform any work pursuant to this Agreement nor incur any costs reimbursable by Conservancy unless and until directed to do so by Conservancy staff through the issuance of a Notice to Proceed. Such Notices to Proceed shall indicate the general task requested of Consultant consistent with the Service Plan and shall specify an interim payment limit. Consultant shall not perform work not authorized by a Notice to Proceed nor incur costs in excess of the Interim Payment Limit set therein.

2. **Confidentiality.** Contractor may receive from or develop for the Conservancy information of a sensitive or confidential manner, such as the locations of sensitive nesting sights and locations for potential acquisition or restoration. When directed by Conservancy to keep information confidential, Contractor shall not disclose such information to any third party without express written authorization from the Conservancy.

**CONSULTING SERVICES AGREEMENT
FOR LEGAL SERVICES**

Between
The East Contra Costa County Habitat Conservancy
and
Resources Law Group, LLP.

1. Parties and Effective Date. Effective May 9, 2007, The East Contra Costa County Habitat Conservancy, a joint exercise of powers entity formed under Government Code section 6500, et seq., (hereinafter called "Agency"), and Resources Law Group, LLP, a Limited Liability Partnership, (hereinafter called "Consultant"), mutually agree and promise as follows:
2. Term: The term of this Agreement shall be from the Effective Date shown above, until the completion date shown below, unless sooner terminated as provided herein
3. Completion Date: December 31, 2007
4. Compensation – Payment Limit. In consideration of the Consultant's provision of services, Agency shall compensate Consultant as shown below. Total compensation under this contract shall not exceed \$ 30,000.
 - a. For legal services: See schedule of attorney rates attached hereto as Appendix B – Payment Provisions.
 - b. Reasonable costs as follows: Automobile mileage at the rate of \$0.485 per mile. Postage, long distance telephone charges, facsimile transmission, photocopying costs and similar expenses at the actual cost incurred.
5. Billing and Payment. Consultant shall submit to Agency a properly documented demand for payment monthly, in the form and manner prescribed by Agency. The demand for payment shall itemize the type of services performed, the date the services were performed, who performed the services, and the amount of time spent on each service.
6. General Conditions. This Agreement is subject to the General Conditions attached hereto and incorporated herein by reference.
7. Disclosures and Conflict of Interest. Attached as Appendix C and incorporated in this Agreement is a document disclosing certain potential conflicts of interest provided by Consultant. Agency agrees to retain Consultant's services notwithstanding the potential conflicts described in Appendix C. If any of these potential conflicts becomes an actual conflict, Consultant will notify Agency immediately upon learning of the actual conflict of interest and ask for Agency's review and decision. In addition, Consultant will notify Agency immediately upon learning of any other case or situation which may involve an actual or potential conflict of interest.

Consultant has disclosed to Agency that it works with the California Department of Fish and Game (CDFG), the United Fish and Wildlife Services (USFWS) and the Fisheries Division of the National Marine Fisheries Service (NOAA Fisheries) on issues unrelated to this Project and that it does not believe that these professional relationships constitute a conflict under this contract or will interfere with Consultant's commitment or ability to represent the Agency's interests. Consultant has also disclosed, pursuant to Rule 3-301(B)(3), that it is engaged by a variety of other clients in matters supportive of resource conservation in California.
8. Project Description and Consultant's Obligations. Consultant shall provide legal services in the form of advice and assistance in the implementation of the East Contra Costa County Habitat Conservation Plan under the terms of this Agreement and in accordance with the Scope of Services attached hereto as Appendix A. The primary attorneys assigned to this matter will be Chris Beale and Sylvia Quast. Consultant may assign to this matter other members of the firm who are qualified and competent to provide professional legal services, however, Agency reserves the right of approval regarding any staff member assigned to handle any aspect of a matter requiring specialized knowledge and experience. If Agency disapproves of any staff member assigned to the matter, Agency shall so inform Contractor, which will then assign a new qualified and competent staff member.
9. Termination. This Agreement may be terminated by either party upon 30 days prior written notice to the other. Upon such termination, Consultant shall, without delay, deliver to Agency all materials and records prepared or obtained in the performance of this Agreement. Consultant will thereafter be paid, without duplication, for the services rendered up to the date of termination.

GENERAL CONDITIONS
TO CONSULTING SERVICES AGREEMENT FOR LEGAL SERVICES

1. **Scope of Service.** Scope of service shall be described in Appendix A, attached hereto and made a part hereof by this reference.
2. **Report Disclosure Section.** Consultant will comply with Government Code section 7550.
3. **Insurance.** Consultant shall, at no cost to Agency, obtain and maintain during the term hereof: (a) Workers' Compensation Insurance pursuant to state law, (b) Comprehensive General Liability Insurance, including blanket contractual (or contractual liability) coverage, broad form property damage coverage, and coverage for owned and non-owned vehicles, with a minimum single limit coverage of \$ 500,000 for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof, arising out of each accident or occurrence, and naming Agency its governing body, officers, employees, representatives and agents as additional insureds, and (c) Professional Liability Insurance protecting Consultant against claims arising out of negligent acts, errors, or omissions of Consultant pursuant to this Agreement, in an amount not less than \$1,000,000 combined single limit coverage and \$2,000,000 aggregate, on a claims made basis with a continuation of coverage extension for two years. Consultant shall promptly furnish to Public Agency certificates of insurance evidencing such coverage and requiring 30 days' written notice to Public Agency of policy lapse, cancellation or material change in coverage.
4. **Independent Contractor Status.** This contract is by and between two independent contractors and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.
5. **Time of Completion.** Unless the time is extended in writing by Agency, Consultant shall complete all services covered by this Agreement per Appendix A (Scope of Services), attached hereto and made a part hereof by this reference.
6. **Record Retention.** Except for materials and records, delivered to Agency, Consultant shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least three years after Consultant's receipt of the final payment under this Agreement. Upon request by Public Agency, Consultant shall make such materials and records available without restriction or limitation to Public Agency at no additional charge and to State and federal governments at no additional charge.
7. **Documentation.** Consultant shall prepare and deliver to Agency at no additional charge the items described in Appendix A to document the performance of this Agreement and shall furnish to Agency such information as is necessary to enable Agency to monitor the performance of this Agreement.
8. **Ownership of Documents.** All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of Agency. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to Agency at no additional charge and without restriction or limitation on their use.
9. **Compliance with Laws.** In performing this Agreement, Consultant shall comply with all applicable laws, statutes, ordinances, rules and regulation, whether federal, state or local in origin.
10. **Subcontracting and Assignment.** Consultant shall not subcontract any of the work or assign any of its rights or obligations under this contract without the prior written consent of the Chair of the Agency. Any other purported assignment, transfer or sub-contracting shall be void.
11. **Indemnification.** The Contractor shall defend, indemnify, save, protect and hold harmless the Agency, its governing body, officers, employees, representatives and agents from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, sickness, death, or injury to person(s) or property arising directly or indirectly from or connected with the services provided hereunder which is caused in whole or in part, by the negligence or willful misconduct of the Contractor, its officers, employees, agents, servants, employees, subcontractors, or any persons under its direction or control, and shall make good to reimburse Agency for any expenditures, including reasonable attorney's fees and costs, the Agency may make by reason of such matters and shall, if requested by Agency, at the sole cost and expense of Contractor, defend any such claim or suit or provide counsel reasonably acceptable to Agency to contest or defend any such claim or suit. Contractor's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the Agency or any other person; provided, however, that Contractor shall not be required to indemnify Agency for any expenditures, including attorney's fees and costs, for the proportion of liability a court determines is attributable to the negligence or willful misconduct of the Agency, its governing body, officers, or employees. This indemnification clause shall survive the termination or expiration of this Agreement.

Agency agrees to give Contractor prompt written notice of any claims or other matter as to which Agency believes this indemnification provision is applicable, and failure to do so will relieve Contractor of any obligations or liability pursuant to this indemnification provision to the extent that Contractor is prejudiced in its defense of the action or claim by the Agency's failure to give such notice. Neither party, nor their successors or assigns, shall admit any liability to any matter for which indemnification is sought, or settle, compromise, pay or discharge the same without the prior written consent of the other, which shall not be unreasonably withheld or delayed, and Agency shall reasonably cooperate with Contractor in the contest and defense thereof.

12. **Entire Agreement - Severability.** The parties have herein set forth the whole of their agreement. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
13. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
14. **Waiver.** A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party
15. **Governing Law and Venue.** This Agreement shall be governed and construed in accordance with California law. The venue of any litigation pertaining to this Agreement shall be Contra Costa County, California.
16. **Heirs, Successors and Assigns.** Except as provided otherwise in Section 10 above, this Agreement shall inure to the benefit of and bind the heirs, successors, executors, personal representatives and assigns of the parties.

End of General Conditions

Appendix A – Scope of Services

Consultant shall perform one or more of the following services related to the East Contra Costa County Habitat Conservation Plan (“HCP”) for the Agency:

- Assistance with pursuit of regional wetland permits and/or permit assurances from the U.S. Army Corps of Engineers, Regional Water Quality Control Boards, State Water Resources Control Board, U.S. Environmental Protection Agency and the California Department of Fish and Game. Continue work on a wetlands permitting implementation agreement.
- Assist the cities and the County, which are members of the Agency, with developing their specific implementing ordinances.
- Development of template agreements needed to implement the HCP such as conservation easements, deed restrictions, agreements for Participating Special Entities, contracts, and interagency cooperation and reimbursement agreements.
- Advice on successful implementation of the HCP.
- General legal operational support as required for the Agency.

Appendix B – Payment Plan

In accordance with Sections 4 and 5 of this Agreement, Agency shall pay Consultant for professional services performed as follows:

| <u>Attorney</u> | <u>Hourly Rate</u> |
|-------------------------------|---------------------------|
| Chris Beale | \$325 |
| Julie Turrini | \$285 |
| Merswind Reyer | \$235 |
| Sylvia Quast | \$285 |
| <u>Legal Assistant</u> | |
| Sydney Carrillo | \$150 |

The above hourly billing rates shall remain constant through the term of this Agreement.

Appendix C: Consultant's Disclosures and Potential Conflicts; Waiver

The California Rules of Professional Conduct govern members of the California State Bar. These rules require Consultant to disclose to clients certain relationships that it has and under certain circumstances to obtain the client's informed written consent. (*See* California Rules of Professional Conduct, Rule 3-310.) More specifically, the Rules of Professional Conduct require that attorneys:

- Disclose to each client certain relationships with persons or entities that are either: (1) parties to the same matter; (2) would be substantially affected by the matter; or (3) would substantially affect the attorneys' representation in the matter; and
- Obtain informed written consent from the client to: (1) represent multiple clients in the same matter who have either a potential or actual conflict of interest in that matter; (2) represent a client whose interest is adverse to another client's in a separate matter in which the attorney is engaged; (3) represent a client who is adverse to a present or former client if the attorney has obtained confidential information material to the employment; or (4) accept compensation for representing a client from a person other than that client.

Consultant is not aware of any actual conflict of interest in its representation of the Agency in this matter. However, it is possible a conflict of interest may arise during the representation. This disclosure explains the nature and extent of certain of Consultant's relationships, and the *potential* for certain conflicts of interest to arise from its representation of philanthropists and philanthropic foundations and institutions. This disclosure also constitutes a waiver in which the Agency acknowledges and agrees to accept the potential conflict of interest. The Agency may terminate Consultant's representation at any time. However, under the waiver, if a conflict of interest arises due to Consultant's representation of a philanthropic client, the Agency agrees not to attempt to terminate Consultant's representation of the philanthropic client.

Agency understands that Consultant might at times make grant recommendations or give advice to its philanthropic clients that could be adverse to the Agency's interests. Possible conflict-of-interest scenarios that may arise include, but are not limited to:

(1) the Agency applies for a grant through a philanthropy for which Consultant is the grants administrator, and Consultant recommends, based on the philanthropy's criteria for selection, that the Agency's application be denied;

(2) Consultant recommends to the philanthropy that it provide grant funding to an applicant that meets the philanthropy's criteria, even though Consultant knows that the applicant will use the funds to promote governmental policies or take other actions that may be adverse to the Agency's interests;

(3) Consultant recommends to the philanthropy that it deny grant funding to an applicant that was intending to use the funds to buy land from the Agency or take other actions that would benefit the Agency.

Agency understands that Consultant, in its role as a grants administrator or grants program advisor, might be called upon to make recommendations that are adverse to the Agency's interests as described above. The Agency further understands that Consultant will not give any preference to the Agency or the Agency's interests when serving as grants administrator or grants program advisor for any philanthropy. Because Consultant's work with philanthropists and philanthropic foundations is an essential part of its law practice, this conflict waiver is a necessary condition of Consultant's agreement to represent the Agency.

If Consultant any time becomes aware that these potential conflicts of interest have become actual conflicts of interest, it will promptly inform the Agency and provide an opportunity to discuss it. At that time, Consultant would again request the Agency's informed written consent to continue representing the Agency in this matter. If the Agency does not wish to provide such consent and waiver, the Agency may terminate Consultant's representation, in which case Consultant will cooperate with the Agency to minimize any disruption to the Agency or harm to the Agency's interests resulting from the termination. However, the Agency confirms that it will not seek to terminate or restrict Consultant's representation of its philanthropic client on the matter that created the conflict or any other matter.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 1, 2008
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Resolution 2008-01 Supporting Increased Federal Funding For HCPs

RECOMMENDATION

Consider APPROVING Resolution 2008-01 to support working together with agencies from Placer, Santa Clara, Solano and Yolo Counties to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund by \$50 million in the Fiscal Year 2009 Interior and Related Agencies Appropriations bill. Consider AUTHORIZING the Chair or staff, as appropriate, to communicate this position to relevant members of the U.S. Congress, Congressional staff, and relevant federal agencies.

DISCUSSION

The U.S. Department of the Interior provides grants to help develop and implement HCPs through a fund called the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund. In Fiscal Year 2008, the Congress appropriated \$75 million for the CESCFC program. Since Fiscal Year 2001, when the program reached its highest level of \$104.7 million, funding for the program has decreased. In sharp contrast, there is tremendous demand both in California and across the country for threatened and endangered species grant funding. With the increased utilization of HCPs and enhanced activity in recent years to update and finalize Recovery Plans, the CESCFC program is currently receiving requests at two to three times the amount available, and from single states totaling as much as the entire program is able to provide in any given year. The East Contra Costa County HCP/NCCP has been approved to receive \$13.56 million dollars from this fund the past two funding cycles, which is a significant portion of the total federal budget. Competition for these funds will become more and more fierce in the future as more HCPs are approved.

| | |
|---|---|
| CONTINUED ON ATTACHMENT: <input checked="" type="checkbox"/> YES | |
| ACTION OF BOARD ON: <u>10/17/2007</u> APPROVED AS RECOMMENDED: <u>NO</u> | |
| OTHER Approved as Recommended with the exception of item (c) iv.: Staff may purchase goods and services consistent with the approved budget or interim expenditure limits if total amount of the purchase is \$25,000 or less. With the concurrence of the Chair and Vice Chair Conservancy staff may make purchases exceeding \$25,000. | |
| <u>VOTE OF BOARD MEMBERS</u> | |
| <input checked="" type="checkbox"/> UNANIMOUS | I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED <u>DENNIS M. BARRY, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</u> BY: _____, DEPUTY |
| AYES: <u>5</u> | |
| NOES: <u>0</u> | |
| ABSENT: <u>0</u> | |
| ABSTAIN: <u>0</u> | |

In recognition of the tremendous need for a continued federal investment in cooperative partnerships providing funds for threatened and endangered species work by non federal partners, staff from the above-described Counties are proposing to their respective governing boards that we collectively propose \$50 million in additional funds for the CESCOP program in the Fiscal Year 2009 Senate Interior and Related Agencies Appropriations Bill for a total of \$125 million. The increase reflects the Fiscal Year 2001 funding level increased by the change in the Consumer Price Index from December 2000 to October 2007. The need for funding has increased faster than inflation, but staff felt the \$50 million increase was the most that could be asked for this year.

If the Governing Board approves Resolution 2008-01, staff is also recommending that the Board authorize this position to be communicated to appropriate parties through written communication and attendance of meetings. It is also possible that a Conservancy representative will be invited to attend a short trip to Washington D.C. as part of a coalition effort to advocate for this issue, and if the item is approved Conservancy staff would propose to attend if such action does not conflict with other Conservancy business. The costs of such a trip would be covered within the proposed 2008 Conservancy Budget.

Attachment:

- Resolution 2008-01

Resolution No: 2008-01

RESOLUTION OF THE
East Contra Costa County Habitat Conservancy Governing Board
TO SUPPORT A REQUEST TO CONGRESS TO INCREASE FUNDING FOR THE
U.S. FISH AND WILDLIFE SERVICE COOPERATIVE ENDANGERED SPECIES FUND

WHEREAS, jurisdictions in Contra Costa, Placer, Sacramento, Santa Clara, Solano, Yolo and other Counties are preparing or implementing Habitat Conservation Plans (HCPs) or Natural Community Conservation Plans (NCCPs) to conserve species and their habitats and aid our economies through efficient permitting; and,

WHEREAS, the East Contra Costa County Habitat Conservancy is a joint exercise of powers authority formed by the Cities of Brentwood, Clayton, Oakley and Pittsburg and Contra Costa County to implement the East Contra Costa County HCP/NCCP; and

WHEREAS, these HCP/NCCP planning efforts will provide regulatory relief by streamlining the permitting process, identifying the costs earlier in the process, and providing time for complying with state and federal environmental regulations; and,

WHEREAS, these planning efforts will offer opportunities for landowners to voluntarily participate in the selling of conservation easements, transfer of development rights or sale of land; and,

WHEREAS, these planning efforts will aid in the recovery of endangered and threatened wildlife species and enhance their habitats; and,

WHEREAS, regional, landscape level conservation planning efforts will protect a broad diversity of species and habitats; and,

WHEREAS, more than \$1.8 million from various local, state and federal sources into drafting the East Contra Costa County HCP/NCCP and an additional \$350 million is planned to be spent over the next 30 years to implement that plan ; and,

WHEREAS, multi-county applications have multiple benefits including better likelihood of success, improved coordination and better integration of planning efforts; and,

WHEREAS, appropriations for the U.S. Fish and Wildlife Service to make grants for Habitat Conservation Plan land acquisition and planning has fallen and does not meet the nation-wide need.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy Governing Board does hereby support working together with agencies from Contra Costa, Placer, Santa Clara, Solano and Yolo Counties to request that the United States Congress increase overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund by \$50 million in the Fiscal Year 2009 Interior and Related Agencies Appropriations bill, anticipated to be passed by Congress in 2008.

Approved by the following vote on _____.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Conservancy Staff