

HCPA East Contra Costa County Habitat Conservation Plan Association

HCPA Coordination Group Meeting

Thursday, January 20, 2005

1 p.m. to 3 p.m.

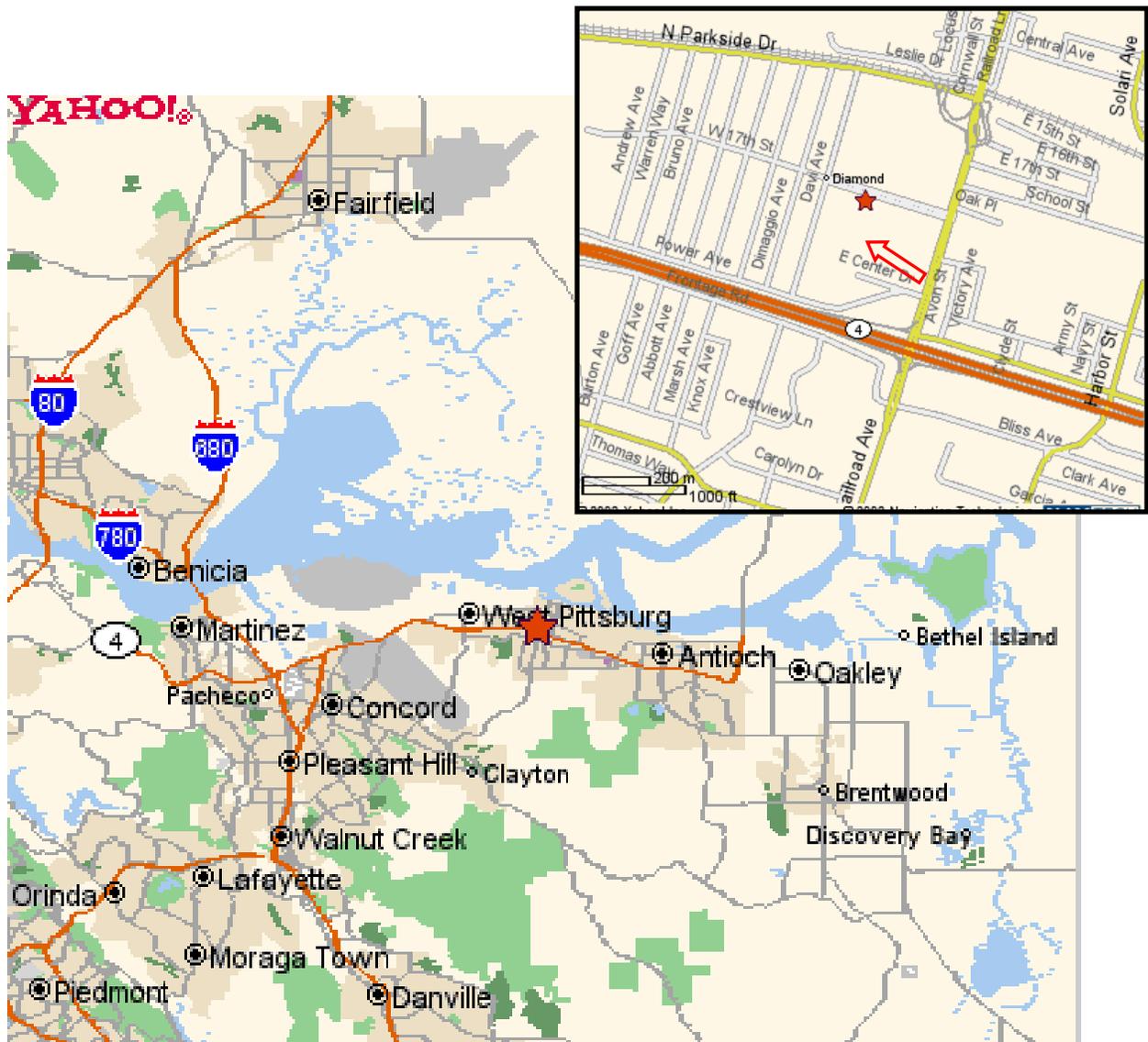
City of Pittsburg Council Chambers
65 Civic Drive in Pittsburg, 3rd Floor
(see map on reverse)

Agenda

- 1:00 Introductions. Review contents of meeting packet. Review and approve Draft Meeting Record of the December 16, 2004 Coordination Group meeting.
- 1:15 Updates:
- Request for exemption from Critical Habitat Designation related to East Contra Costa County HCP submitted to USFWS (letter was included in November packet);
 - Anticipated timeline for completion of Public Draft HCP
- 1:20 Revisions to conservation strategy and land acquisition priorities, per guidance from the Science Advisory Panel and comments received on November 2003 Draft. Maps will be available at the meeting.
- 1:40 Progress toward addressing the Coordination Group's list of important, outstanding issues (approved for submission to Executive Governing Committee in the Fall of 2004; a copy is attached FYI).
- Focused discussion on one item from this list: enhanced description of how an advisory committee will help to guide implementation (attachment)
- 2:15 Wetlands Permitting:
- Status update from staff on the three wetlands permitting "tracks":
 - CWA Section 404 and the U.S. Army Corps of Engineers
 - CWA Section 401 and the Regional Water Quality Control
 - Streambed Alteration Agreements, California Department of Fish and Game
 - Discussion on comments received from Coordination group participants on draft wetlands (404) permit strategy and inventory (attached)
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):
Thursday, March 17, 1 p.m. to 3 p.m. (PROPOSE CANCELLING FEB MTG)
HCPA Executive Governing Committee: January 27, 2005
- 2:55 Public comment.
- 3:00 Adjourn.

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

Map and Directions to Pittsburg City Hall 65 Civic Drive



*** Special Directions to Pittsburg City Hall from Eastbound Highway 4 During Construction

(exit to northbound Railroad is closed during Hwy 4 widening project):

1. Exit at Bailey Road, North (instead of Railroad), crossing under freeway
2. Continue on Bailey Road 0.5 miles
3. Turn right on WILLOW PASS RD
4. Continue eastbound on Willow Pass Road 1.2 mi
2. Continue on N PARKSIDE DR - go 1.6 mi
3. Turn right on DAVI AVE - go 0.2 mi
4. Turn left on POWER AVE - go 0.1 mi
5. Turn left into parking lot for 65 CIVIC AVE, PITTSBURG

DRAFT MEETING RECORD

East Contra Costa County Habitat Conservation Plan Association (HCPA) Coordination Group Meeting

Thursday, December 16, 2004
1 p.m. to 3 p.m.

City of Pittsburg Council Chambers

1:00 Welcome and Introductions. Meeting attendees introduced themselves. Coordination Group members and staff in attendance were:

Seth Adams, Save Mount Diablo	Dee Munk, CCC Farm Bureau
Chris Barton, City of Pittsburg	David Reid, Greenbelt Alliance
Abigail Fateman, CCC Community Dev.	Cece Sellgren, CCC Public Works
Janice Gan, CA DFG	Dick Vrmeer, CNPS
Randy Jerome, City of Pittsburg	Mike Vukelich, CCC Farm Bureau
John Kopchik, CC County Community Dev.	David Zippin, Jones and Stokes
Sheila Larsen, USFWS	

Also in attendance: Phillip Torres; and Cheryl Morgan.

1:00 Introductions. Review contents of meeting packet. Review and approve Draft Meeting Record of the November 18, 2004 Coordination Group meeting. Meeting record was approved.

1:15 Updates:

- **Request for exemption from Critical Habitat Designation related to East Contra Costa County HCP submitted to USFWS (see attached);** John Kopchik provided some background to the request and reviewed the letter that was submitted, and indicated that a delegation would present the request to FWS next week.
- **Revised rural road fee proposal (see attached):** The group discussed this proposal which had been forecast the previous meeting. Mike asked how the wildlife crossings would work and how they would be monitored. Habitat bridges, which members had heard of in Canada, aren't part of the plan.

1:40 Adaptive Management component: discussion of completely revised draft of Adaptive Management Chapter (attached): David Zippin presented the new, completely revised draft of this Chapter. It has been drastically modified based on the new guidance document prepared by the agencies and based on comments submitted by Coordination Group members and others. Coordination Group asked a number of clarifying questions. The general consensus was that this was an improvement on the prior draft. A question was asked about whether the funding plan included funds to take the corrective actions required by the Adaptive Management Plan. David responded that it does have a significant remedial measures fund. Dick Vrmeer stressed the importance of adaptive management in a situation (such as ours) where one has imperfect knowledge.

2:25 Wetlands Permitting:

- **Status update from staff:** John Kopchik summarized our status vis-à-vis the US Army Corps of Engineers and the SWRCB.

- **Comments due by December 16 on draft wetlands permit strategy and inventory (presented at October Coordination Group meeting and included in that packet; see also the Documents section of the HCPA website):** The deadline was extended to January 7, 2005.
- **Roundtable discussion of Coordination Group comments on wetlands permitting matters.** Deferred.

2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):

Thursday, December 16, 2004, 1 pm to 3 pm.

2:55 Public comment. None

3:00 Adjourn.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)**

DATE: September 23, 2004
TO: HCPA Coordination Group
FROM: John Kopchik, on behalf of the Coordination Group Funding Subcommittee
SUBJECT: Recommendations of the Funding Subcommittee

The Coordination Group Funding Subcommittee met three times in August and September (August 19, September 1, and September 20) to review ideas and develop recommendations regarding funding and fees. Attendees included:

Clark Morrison, Contra Costa Council
Seth Adams, Save Mount Diablo
Dick Vrmeer, California Native Plant Society
Paul Campos, Home Builders' Association of Northern California
Jim Gwerder, Contra Costa Citizens' Land Alliance
Janice Gan and Carl Wilcox, California Department of Fish and Game
Sheila Larsen, U.S. Fish and Wildlife Service
Brad Olson, East Bay Regional Park District
Steve Goetz, Contra Costa County Community Development Department, Transportation
Division
John Kopchik, HCPA staff

The subcommittee discussed a number of topics and attempted to make consensus recommendations where possible. Below please find a list of tentative recommendations related to fees and funding and to aspects of the plan that participants felt needed to be linked to a decision on fees and funding. Please note: a) the status of subcommittee deliberations is summarized within each tentative recommendation and there is not yet consensus among participants on all recommendations, and b) participants have explicitly reserved the right to confer further with their constituencies on all aspects of these recommendations to ensure that their positions are in line with those they represent.

Tentative Recommendations on Fees and Funding:

A) Wetlands Fees: Set separate fees on wetland impacts, exact amounts still not resolved. The Subcommittee reviewed the proposed new text on the Wetland Mitigation Fee (proposed for inclusion in Chapter 8, Funding) as well Table 8-5 and the Wetland Fee Worksheet. Participants generally concurred with key aspects of the wetlands fee proposal, including the concepts of:

- Basing the wetlands fee on an estimate of the full cost of required wetlands mitigation on a per acre impacted (or per linear foot impacted) basis;

- Establishing the wetlands fee as a charge over and above the basic per acre development fee (consequently, land acquisition costs associated with wetlands mitigation are not included in the wetlands fee);
- Setting different fees for different types of wetlands impacts to reflect variable mitigation costs;
- Allowing project proponents to avoid paying the wetlands fee if they provide comparable mitigation consistent with the Conservation Strategy through a mitigation bank or through direct performance of mitigation requirements.

Individual subcommittee participants expressed the following concerns/questions:

- Stream fee should be in units of linear feet impacted;
- Concern that the dollar amounts were lower than fees paid today under the project-by-project approach to mitigation and might not reflect an accurate estimate of the cost of performing the wetlands mitigation;
- An interest in refining the “Methods for Determining Fee Boundary” column of Table 8-5 through a separate meeting.

B) Rural Road Fees: Set special per acre fees on covered rural road projects, exact amounts not yet determined, and further discuss funding a portion of these fees through the proposed HCP fees on new development. The Subcommittee reviewed the three road fee options. The Subcommittee also reviewed Table 5-x, Conditions on Rural Road Projects Covered by the HCP/NCCP. Staff suggested Road Fees Option 2 as a starting point for discussion. It was suggested by individual participants that, consistent with the proposal to allocate the costs of the HCP/NCCP according to the “fair share” principle, fees on new development should cover a portion of the fees on rural road projects because these new development is driving the need for the new road projects. Other participants asked if developers would also be asked, through separate road construction fees, to cover the remainder of HCP fees on roads. Finally, other participants expressed concern that the fees and construction guidelines did not adequately reflect the fragmentation effects of projects like the Kirker Pass Road truck climbing lane or shoulder widening of key rural roads such as Deer Creek Road and Bailey Road. Additional work is required on these topics to reach consensus and representatives of the Contra Costa Council Transportation Committee have requested a meeting to discuss coverage of rural roads.

C) Fees on New Development: Consider selecting “Fee Calculator: Alternative 1” describing the basic HCP/NCCP fees on new development, provided that other aspects of the HCP/NCCP are refined as recommended in other Subcommittee recommendations. The Subcommittee considered a large number of alternative methods for setting fees before tentatively recommending Alternative 1. Alternative 1 excludes existing urban acres inside the City of Antioch from the “Fair Share” calculations, resulting in a 48:52, public:new development cost-sharing ratio. This ratio is applied only to the maximum permit area for urban development and allots \$133 million of the plan cost to the public. This public contribution level is assumed to be the same regardless of how much development occurs, meaning that development’s share of the overall plan costs is reduced to 42% if development beyond the initial permit area for urban development does not occur. The resulting fees are nearly the same for the Initial and Maximum Permit Area scenarios, but since we won’t know how much development will occur at the outset, it is recommended that the higher development fee be charged. Alternatives 2 and 3 have a similar basis but differ slightly from Alternative 1 in terms of the amount of the paying acres contingency and the portion of road fees covered by fees on new development. The

Subcommittee's recommendation of Alternative 1 is contingent on suggested provisions of the HCP/NCCP described in the other Subcommittee recommendations described in this memo.

D) Discuss further a proposal to adjust the HCP/NCCP fees periodically based on an index formula, with one-third of the fee amount to be adjusted according to a CPI index and two-thirds of the fee amount to be adjusted according to a home price index, to reflect the 33% : 66% ratio of operations and management costs to land acquisitions estimated under the HCP. Following years 3, 6, 10, 15, 20, and 25, cost estimates (including land acquisition cost estimates) will be re-evaluated and fees adjusted accordingly. The "Fair Share" cost allocation ratio will not change over the life of the plan. Subcommittee members specifically reserved the right to reconfer with their constituencies regarding the fee adjustment recommendation. The Subcommittee reviewed the September 3, 2004 memo from EPS and the attached Table 1: Potential Fee Inflators. The San Francisco/Oakland/San Jose CPI and the Median Home Price / SqFt Average for East Contra Costa Cities were tentatively identified as the preferred indices because they are the most localized, but additional technical analysis is recommend because the economic consultants specifically recommended broader indices.

E) Continue to evaluate and discuss with federal, state, and local agencies the non-fee funding projections presented in the September 3, 2004 EPS memo on this topic and work to ensure adequate funds exist to fully fund the plan. The September 3, 2004 memo and three associated tables describes the range of existing public funding sources that could be tapped to fund the public portion of plan costs. Assuming that EBRPD and local land trusts (and the grant programs upon which they have relied for about 35% of their funding) continue to perform HCP-NCCP compatible conservation in this area at 75% of the past rate of investment, approximately \$65 million can be expected to be generated from maintenance of existing efforts. An additional \$61.5 million is estimated to be available from federal and state sources that have not yet been tapped but which will be available after an HCP/NCCP is approved. The total estimated amount of public funds available to help implement the HCP/NCCP is \$126.5 million, about \$7 million short of the amount needed to fully fund the plan under Fee Alternative 1. Subcommittee participants recommended that these projections be reviewed and discussed further with the appropriate agencies.

Other Tentative Recommendations Individual Subcommittee Members Would Like Considered at the Same Time as Recommendations on Fees and Funding:

- 1) Consider Simplifying Survey/Avoidance Requirements. Developers to provide specific suggestions. Subcommittee opinion depends on the suggestions received.
- 2) Local no surprises (developers as 3rd party beneficiaries to no surprises assurances provided to local agencies by regulatory agencies). No objection to the concept of local agencies providing assurances to developers, but mechanics need to be explored.
- 3) Section 7 assurances. Developers seek assurances that the HCP will guide enforcement of the Federal Endangered Species Act with respect to projects in the permit area that have a federal nexus (i.e., require a federal wetlands permit). No Subcommittee objection to the concept. Current assurances language to be reviewed and wetlands permitting to be explored further.

- 4) Assurances that developers will have the option to provide land in lieu of fees and, if the HCP/NCCP permit is suspended for some reason, assurances that project by project permitting would take place. No Subcommittee objection to the concept. Developers to review existing language.
- 5) Critical habitat exemption. Subcommittee generally concurred with a proposal to request that the U.S. Fish and Wildlife Service (USFWS) provide an exemption to the critical habitat designation for California Tiger Salamander in recognition of the East Contra Costa HCP. Details of the proposed exemption, including the area to be covered and the timing of the exemption, to be determined. Similar requests would be recommended for future designations by other species. The Subcommittee recommends that a broad coalition of interests request a meeting with USFWS to provide an update on the status of the HCP and to submit the exemption request.
- 6) Ensure that fragmentation impacts of rural roads are adequately addressed (Kirker truck climbing, and shoulder widening of Bailey and Deer Valley, especially). See item B, above.
- 7) More details needed on how money will be distributed during implementation. Request input from citizen advisory committee on expenditures. Ensure a broad range of interests are represented, including people with expertise on the real estate market. Include in the HCP a written summary of the citizen advisory committee mission, representation, and conflict of interest guidelines.
- 8) Neighboring landowner provisions. Ensure that the HCP has neighboring landowner provisions and ask the wildlife agencies to consider expanding the eligible area from ½ mile around new preserves to 1 mile.
- 9) Land valuation assumptions. Ensure that the HCP/NCCP accurately estimates the cost of land acquisition.
- 10) Continue to emphasize acquisition of areas in acquisition analysis Zone 4 in the Conservation Strategy that would be followed under the Initial Permit Area for Urban Development.

8.2 Implementation Structure

Plan implementation will be overseen by the Implementing Entity, which will be overseen by a governing body composed of elected officials from the participating local jurisdictions (i.e., the permittees) (Figure 7-1). Day-to-day implementation of the HCP/NCCP will be managed by an Executive Director and her/his staff and their consultants. The Implementing Entity has the authority to delegate some of its responsibilities to existing or newly created entities including agencies and non-governmental organizations. Options that could be considered to implement some or all of the duties of the Implementing Entity include:

- staff dedicated to the Implementing Entity and independent of other agencies,
- staff wholly or partly dedicated to the Implementing Entity but housed within one or more existing government agencies,
- land trust specifically formed to implement the Plan,
- contracts with existing organizations that have relevant experience and expertise, such as experience with land management or monitoring (e.g., EBRPD, C DPR, Center for Natural Lands Management).

Other organizations with important roles in HCP/NCCP implementation include the regulatory agencies, other land-management agencies, Science Advisors, and the public (Figure 7-1). The roles, responsibilities, and relationships of each group are described below.

8.2.1 Participating Local Jurisdictions

The following local jurisdictions will each be permittees under the HCP/NCCP:

- Contra Costa County
- Contra Costa County Flood Control and Water Conservation District
- City of Pittsburg
- City of Clayton
- City of Oakley
- City of Brentwood

It is expected that each of these jurisdictions will hold an ESA Section 10(a)(1)(B) incidental take permit and an NCCP permit providing authorization for take that occurs from covered activities within their respective jurisdictions (Chapter 2). Each will also be a signatory to the Plan's Implementing Agreement. However, the participating jurisdictions will vest the responsibility for implementing the Plan to the Implementing Entity as described below. In other words, the Implementing Entity will oversee implementation of the Plan on

behalf of the participating jurisdictions. Nevertheless, the participating jurisdictions will ultimately be responsible for compliance with all the terms and conditions of the Plan's permits and for the performance of the Implementing Entity. Each local jurisdiction will provide staff to advise the Implementing Entity on HCP/NCCP implementation (Figure 7-1).

It is anticipated that most applications for coverage under the HCP/NCCP will come from private developers within the participating cities and the County. These jurisdictions will be responsible for determining the completeness of each project application (see *Applicant Responsibilities and the Application Process* below for details). If the application is complete and the applicant has complied with all relevant terms of the HCP/NCCP as determined by the participating jurisdiction, the participating jurisdiction will grant HCP/NCCP coverage as part of its normal project-review process (e.g., grading permit issuance, EIR certification). Participating local jurisdictions will also be responsible for reporting the relevant details of approved projects to the Implementing Entity (for entry into the HCP/NCCP database), for monitoring developer compliance with the avoidance and minimization requirements specified in the applicable conservation measures (Conservation Measures 1.1.1 through 1.2.6), and for collecting fees.

8.2.2 Implementing Entity

The Implementing Entity consists of the Governing Board, the Executive Director, and Staff. The Implementing Entity executes the requirements of the Plan as well as the Implementing Agreement. The Implementing Entity also coordinates with Science Advisors, outside consultants, and other land-management agencies to ensure adequate and coordinated implementation of the Plan. The Implementing Entity includes a network of staff scientists, administrators, and other specialists that carry out the planning and design, habitat restoration, monitoring, adaptive management programs, and periodic coordination with and reporting to regulatory agencies.

The Implementing Entity will be responsible for the day-to-day tasks of implementing the HCP/NCCP "on the ground", although some of the activities may be delegated to and carried out by contractors or partner land management agencies. The Implementing Entity's duties will consist of routine Plan activities such as identifying suitable conservation properties, undertaking survey and monitoring efforts on HCP/NCCP preserves, contacting neighboring landowners to explain coverage under the Implementing Entity's permit, maintaining a database of relevant preserve information, and tracking habitat losses and gains.

The Implementing Entity may include part of a local land management agency (such as EBRPD) or it may be formed through the expansion or creation of a nonprofit organization. The Implementing Entity will be composed of administrative and technical staff led by an Executive Director (see below for details of the organizational structure of the Implementing Entity). The Implementing Entity will hold title to lands or easements it purchases and will oversee cooperative agreements with other land management entities that manage

preserves for the Implementing Entity as part of the HCP/NCCP Preserve System.

Implementing Entity Governing Board

The Implementing Entity Governing Board will consist of elected officials from participating city councils, from the County Board of Supervisors, and Board members from involved special districts. The voting roles of land use planning agencies and non-land use planning agencies may vary (as is the case with the HCPA). The Governing Board, as the decision-making body for the Implementing Entity, will help to oversee compliance with those responsibilities set forth in the HCP/NCCP and assigned to the Implementing Entity. The Implementing Entity will receive advice from the following groups through the Board.

8.2.3 Other Land Management Agencies

Local land management agencies are important to the success of the Plan. HCP/NCCP preserves will often border existing parks or public lands run by EBRPD, the California Department of Parks and Recreation (CDPR), CCWD, and other public agencies or private land trusts. These agencies will help to guide implementation of the Plan as advisors to the Implementing Entity and/or the Governing Board. In addition, land managers from these organizations will need to coordinate closely with the Implementing Entity to ensure that management actions are compatible across the region. Significant cost savings can be achieved by coordination of local land-management agencies in undertaking joint management actions that are consistent with this Plan. These land management agencies may wish to establish a formal committee to facilitate this coordination and information sharing.

Technical Advisory Committee

If the Implementing Entity includes other land management agencies (i.e., agencies that manages land on behalf of the Implementing Entity), then senior land management staff of these other agencies will form a Technical Advisory Committee that includes preserve management staff of the Implementing Entity. The Technical Advisory Committee will report to the Executive Director and serve as a coordinating body to ensure that land management, monitoring, and other HCP/NCCP activities are applied consistently across the Preserve System. Representatives of USFWS and CDFG will serve as advisory members to the Technical Advisory Committee.

8.2.4 Regulatory Agencies

USFWS and CDFG are the regulating agencies that provide the federal and state permits for incidental take and regulate implementation of the Plan. They will receive annual reports concerning plan implementation, and they will guide the efforts of the Governing Board such that the Plan remains in compliance. Representative of these agencies will serve as advisory members to the Governing Board and the Technical Advisory Committee, if one is formed. Regulatory agencies are responsible for providing guidance to the Implementing Entity on how to fulfill the terms of the permits. Regulatory agencies will also assist the Implementing Entity in securing state and federal funding for HCP/NCCP implementation (see Chapters 8 and 9).

8.2.5 Science Advisors

Science Advisors with expertise in conservation biology, management of local natural communities and agricultural lands, or the ecology of covered species will be invited to provide input to the Governing Board as needed. The Science Advisor's primary function is to provide technical advice and help assemble the best available scientific data on the Plan's preserve assembly, monitoring, and adaptive management program. Nationally-recognized scientists will be convened periodically in an Independent Conservation Assessment Team to provide outside review of overall Plan progress. More detail on the structure, role, and schedule of Science Advisors and the Independent Conservation Assessment Team is provided below under *Structure of the Adaptive Management Decision-Making Process*.

8.2.6 Public Input

Public input is fundamental to the continuing support and success of the HCP/NCCP throughout its implementation. The NCCP Act requires that the IA provide for annual reporting to the public on the progress of NCCP implementation. All meetings of the HCP/NCCP Governing Board will be open to the public, and public comments will be heard at each meeting. (The Governing Board may need to hold periodic closed-door sessions to discuss confidential items such as land transaction negotiations or legal matters.) In addition, the public can contact the Executive Director of the Implementing Entity to comment on various aspects of Plan implementation. All data and reports associated with the monitoring program for this Plan will be available to the public, with the exception of reports documenting surveys on private lands considered for acquisition but not yet acquired by the Implementing Entity.

Public Advisory Committee

The Implementing Entity will establish a public advisory committee to solicit input from stakeholders with interest in Plan implementation. The committee will report directly to the HCP/NCCP Governing Board. Committee members will be drawn from a variety of interest groups including conservation advocacy organizations, landowner groups, and development interests. Staff from local jurisdictions and the regulatory agencies should participate in advisory committee meetings to help assure broad coordination among those parties interested in and responsible for implementing the Plan. Meeting frequency will be determined by the Implementing Entity and the committee; quarterly meetings are recommended to start. Meetings will be open to the public. The committee will sunset at the end of the permit term.

The public advisory committee will provide input to the HCP/NCCP Governing Board and staff on all aspects of Plan implementation, with an emphasis on the following topics:

- Expenditure of funds for habitat conservation measures;
- The general permit issuance process (but not project-by-project input on permits);
- Operation of preserves and adaptive management; and
- Adherence to plan commitments such as no surprises, neighboring landowner protections, etc.;

The following criteria shall guide establishment and operation of the public advisory committee:

- The committee will include representation of organizations and individuals with direct interest in Plan implementation, and shall be composed of the following members appointed by the Governing Board:
 - Three private permit seekers, including private developers and their representatives;
 - Three conservation advocates, including established organizations that represent members in the inventory area;
 - Three private landowners and/or agriculturalists, or their representatives;
 - Three citizens representing suburban and rural residents of the Plan area; and
 - Public agency staff, who shall also attend and participate in committee meetings.
- Despite formal membership, committee meetings will be open to the public and members of the public will be encouraged to participate in discussions and be part of committee recommendations;

- The committee shall attempt to operate by consensus. When consensus is not possible, the conflicting positions should be communicated to the Governing Board; and
- The committee shall strive in their recommendations to be objective, balanced, and constructive to help the Plan succeed biologically, financially, and within the social context of eastern Contra Costa County.

Annual Public Workshop

At least once annually, the HCP/NCCP Governing Board will report on the progress of implementation directly to the public in a workshop. The Board will summarize habitat losses and gains, habitat restoration and creation, and management and monitoring accomplishments for the previous year. The meeting will provide a forum for the public to ask questions and provide comments directly to the Board on the overall progress of HCP/NCCP implementation. The HCP/NCCP Governing Board may consider establishing a stakeholder advisory committee to provide further public input on Plan implementation. Periodic formal review of Plan progress in a public forum may also be appropriate and could perhaps coincide with the 5-year conservation audits by the Independent Conservation Assessment Team (see Chapter 6 for a description of this group and its function

California Native Plant Society

East Bay Chapter
P O Box 5597, Elmwood Station
Berkeley, CA 94705

January 7, 2005

John Kopchik
East Contra Costa County Habitat Conservation Plan Association
651 Pine Street, 4th Floor
Martinez, CA 94553

RE: Draft Regional Permit Program for Impacts to Aquatic Resources in the East Contra Costa County HCP/NCCP Inventory Area

Dear Mr. Kopchik:

The East Bay Chapter of the California Native Plant Society (CNPS) appreciates the opportunity to comment on this crucial aspect of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). CNPS is a non-profit organization of more than 10,000 laypersons and professional botanists organized into 32 chapters throughout California. The mission of CNPS is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation. The following are comments of the East Bay Chapter of CNPS on the *Draft Regional Permit Program for Impacts to the Aquatic Resources in the East Contra Costa County HCP/NCCP Inventory Area* (October 2004):

There is significant evidence that more vernal pool and wetland acreage has been lost to development than any other habitat type in California. According to the U.S. Environmental Protection Agency, less than 1% of the wetlands and 10% of vernal pools remain in the world.¹ In response to such drastic habitat loss, it is the policy of CNPS to “support all efforts to preserve and conserve wetlands of all types” and “oppose projects that adversely affect wetlands of any type unless there is a demonstrated net gain, in-kind, of wetlands prior to project impacts.” While CNPS recognizes the potential for the proposed Regional Permit Program (RPP) to facilitate landscape-level regional wetland and conservation planning, we are concerned that the proposed RPP has the potential to reduce protection of certain types of wetlands.

We are concerned that the proposed RPP policy on avoidance will threaten certain biodiversity in the region. Page 2 of the RPP states: “[r]egional conservation planning will generally restrict unavoidable aquatic resource impacts to the bottom of the watershed, in order to maintain the greatest possible watershed area intact.” While CNPS recognizes the value of protecting wetlands in the context of intact landscapes, we are

¹ Environmental Protection Agency. Wetlands. <http://www.epa.gov/owow/wetlands/>. Accessed on October 20, 2004



concerned that strict adherence to this principle will result in loss of certain wetland types, reducing biodiversity in the region. Restricting unavoidable impacts to the lower portions of watersheds will threaten the suite of species and communities most commonly found in the lower portions of the watersheds. These important communities include most vernal pools, alkali wetlands and many floodplain riparian areas. CNPS sees the need to increase protection to the wetlands in the lower portion of the watershed rather than weakening protection of them.

CNPS is also concerned that the public review process, now part of the Individual Permit process, will be eliminated by the proposed RPP processes. In what manner will all environmental impacts (both beneficial and detrimental) be disclosed to the public, as required by CEQA and NEPA? We fear that, without provision for public input, this RPP could set a precedent for NCCP/HCP/Wetland Permitting that could weaken protection of wetlands within areas covered by a regional conservation plan. CNPS hopes that the final RPP addresses these concerns and additionally submits the following specific comments:

- Regional Coordination (A. Introduction). Page 2 in the RPP states: “[t]he RPP provides a regulatory mechanism for landscape-level aquatic resource conservation planning.” CNPS would like to see greater clarification of how the San Francisco and Sacramento Districts of the Corps will coordinate this regional planning effort and jointly consider the potential cumulative impacts of filling jurisdictional water of the United States. Given low staffing levels and high workloads, will the appropriate agencies be given more than 10 days to respond to a pre-construction notice of Category II activities, and more than 15 days to comment?
- State 401 Water Quality Certification proposed conditions (H. General Conditions, Section 1). Page 7, item d, states: “[a]ll areas affected by construction shall be mulched and seeded as soon after construction as possible.” CNPS is concerned that these practices could introduce non-native plant species and genotypes into the region. Will the RPP require erosive areas be seeded with local genotypes of native plant species to avoid detrimental hybridization with the local flora?
- Threatened and Endangered Species (H. General Conditions, section 2). Page 8 of the RPP states: “Non-Federal applicants shall notify the District if any Federally-listed (or proposed for listing) endangered or threatened species or critical habitat might be affected by the activity or is located in the project area.” In addition to referring to requirements to address Federally-listed species, CNPS recommends that the general conditions of the RPP explicitly state requirements to address other special-status plants, bryophytes and wildlife that are protected under the California Environmental Quality Act (CEQA). We request that a thorough biological site assessment be conducted at all project sites by qualified botanists and wildlife biologists to determine if suitable habitat exists for special-status plant, bryophyte, and wildlife species. If suitable habitat exists, in order for

a project to comply with CEQA, focused protocol-level special-status species surveys should be conducted at the site prior to issuing the permit. CNPS requests that the language of the general conditions emphasize that protocol-level plant surveys should be conducted during the appropriate active growing stage of the life cycle of the target species and that the surveys therefore require adequate advance planning. We also recommend that the general conditions state that permits will not be considered until all protocol-level surveys are completed. Furthermore, we recommends that in addition to addressing federal and state listed species and CNPS List 1A, 1B and 2 species, the following species should also be addressed prior to issuing permits: plants and bryophytes that are CNPS List 1A, 1B, 2, 3 or 4 species, lichens on CDFG's Special Vascular Plants, Bryophytes, and Lichens List², plants listed in the *Rare, Unusual and Significant Plants of Alameda and Contra Costa Counties*³, and plants that are Federal species of concern or Federally-listed as species of local concern. This request is in accordance with CDFG Habitat Conservation Planning Branch recommendations for "...protection of plants which are regionally significant, such as locally rare species, disjunct populations of more common plants, or plants on the CNPS Lists 3 and 4."⁴ CNPS would also like to request that sensitive plant communities that are tracked by CDFG be addressed during the permitting process.

- **Mitigation** (H. General Conditions, Section 18). While CNPS considered protection of existing high quality wetlands as the most preferable mitigation strategy, we acknowledge that the "no net loss" policy does not encourage this method of mitigation. We feel that creation of new wetlands within existing systems or in areas where wetlands have not previously existed are potentially detrimental to the values and functions of these systems. Wetland creation rarely, if ever, replaces the values or quality of function lost in the impacted wetland⁵. We strongly recommend that mitigation be 4:1 preservation and 1:1 restoration, and that new wetland creation not occur within an intact functioning ecosystem. In addition, if functions and values of the impacted wetlands are high, then **preservation of equivalent natural wetlands must be part of the overall strategy.**
- **Mitigation Continued** (H. General Conditions, Section 18). Will the mitigation measures in the RPP require the collection of baseline data and long-term monitoring? A functional assessment (such as the one proposed in Hydrogeomorphic Guidebooks (e.g., those available at <http://el.ercd.usace.army.mil/wetlands/guidebooks.html>) is recommended to

² CDFG. California Department of Fish and Game Natural Diversity Database; Special Vascular Plants, Bryophytes, and Lichens List. July 2004 (periodically updated).

³ Lake, Dianne. *Rare, Unusual and Significant Plants of Alameda and Contra Costa Counties*. Seventh Edition. East Bay Chapter, California Native Plant Society. March 2004. (periodically updated)

⁴ Department of Fish and Game Habitat Conservation Branch. http://www.dfg.ca.gov/hcpb/species/t_e_spp/nat_plnt_consv.shtml. Accessed on December 9, 2004

⁵ Committee on Wetland Mitigation; National Research Council. 2001. *Compensating for Wetland Loss under the Clean Water Act*. National Academy Press, Washington, D.C.

determine and monitor impacts or benefits to aquatic resources. Furthermore, CNPS policy states “an evaluation of biota should include baseline data for the wetlands being lost (preferably at least two years) and must include a minimum of five years monitoring (and preferably more) to indicate the success of restoration or creation.”

- Notification (H. General Conditions, Section 19). Regarding notification on page 12: CNPS requests greater clarification of how or when surveys for listed or CEQA species or a Difficult-to-Replace Aquatic Resource (DTRAR) will occur and how the District will be notified of this survey and its results. Will the contents of the submission requirements for notification also include the list of plant species found at the site? With regard to item d, CNPS recommends that the “Map showing the location of the project area,” depict the various vegetation communities and designate the location of special-status plant species and sensitive plant communities (if found) at the project area as well as adjacent areas where data are available.
- Authority of Regional Permitting (Appendix A). Page 14, part 1b states that allowable projects are those for which “impact to waters of the U.S. shall not exceed X acres,” and 1d states: “[p]rojects that impact over 0.25 acre up to X acres.” Based on CNPS’s policy to “support all efforts to preserve and conserve wetlands of all types” we recommend that projects affect zero acres of waters of the U.S. If this is not possible, we recommend that X not exceed the NWP standard. CNPS also asks whether the RRP will eliminate the existing Individual Permit program’s public review process for projects that currently would require an Individual Permit? In parts 2b, 3a and 6I the RPP states: “The impact (or cumulative impacts) to waters of the U.S. from the project shall not exceed 5? 1? acres.” We are concerned that an increase in the acreage limitations as compared to the current Nation Wide Permit system will weaken agency oversight and eliminate public review. Until this is thoroughly addressed in the document, the environmental impacts have not been appropriately disclosed, and citizens cannot provide informed comment. Furthermore, part 1e states: “buffer footage (adjacent to the regulated area) to consist of native vegetation only (or other appropriate vegetation approved by the District).” CNPS recommends the use of only local native vegetation and propagules.
- Difficult-to-Replace Aquatic Resources (DTRAR) (Appendix C). Alkali wetlands are not listed as a DTRAR on page 31, but are listed on page 4 as a DTRAR. Will the RPP consider Alkali wetlands as a DTRAR in each relevant section? In order to prevent further loss of biodiversity in the region, wetlands that are habitat for regionally rare plants (see comments on H, section 2.), or designated as communities worthy of protection by CDFG should also be considered DTRARs. Furthermore, the definition of ephemeral pools should refer to a relatively impenetrable soil layer within the soil profile or be modified to acknowledge that the soil on the surface may be relatively well drained but situated above a deeper impenetrable layer.

- Draft Aquatic Resource Inventory (Appendix D). CNPS is impressed to see an inventory of existing wetlands in Appendix D, the *Draft Aquatic Resources Inventory, Classification, and Function for East Contra Costa County HCP/NCCP Inventory Area*. We would like to see greater clarification of the relationship between wetland functional quality and the likelihood for development or permitting, to ensure the best examples of each type are protected. Furthermore, CNPS is concerned that the use of the Draft Aquatic Resource Inventory within the RPP does not address the cumulative impacts of developing wetlands with a functional quality of “low” or “moderate.” For instance, if several wetlands with a functional quality of “low” are permitted for development within the same watershed as wetlands with “moderate” and “high” functional quality, will the latter wetlands be impacted? In the evaluation of the functional value of each wetland and determination of wetland permitting, we strongly recommend including an evaluation of cumulative impacts for each permit. Within the evaluation of cumulative impacts, CNPS recommends that the RPP address sensitive plant communities and species that are currently recognized as uncommon by the California Department of Fish and Game (CDFG). Lastly, in regards to section 4.7, we would like to see greater clarification of why the minimum mapping unit of Palustrine persistent emergent wetlands (PPEM) is 1 acre when the stated “median area” for PPEM seasonal wetlands is 0.8 acres.

Thank you for the opportunity to participate in this important process. We look forward to reviewing future drafts. If you have any questions, please contact me at (415) 488-4851.

Sincerely,

Jessica Olson
East Bay Conservation Analyst
California Native Plant Society



CONTRA COSTA COUNTY FARM BUREAU

Affiliated with the
CALIFORNIA FARM BUREAU FEDERATION
and the
AMERICAN FARM BUREAU FEDERATION

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5554 CLAYTON ROAD
CONCORD, CALIFORNIA 94521

January 7, 2005

John Kopchik, Principal Planner
Contra Costa County Community Development Department, Coordinating Agency
East Contra Costa County Habitat Conservation Plan Association
651 Pine Street, 4th Floor
Martinez, CA 94553

Dear Mr. Kopchik:

Once again the Contra Costa County Farm Bureau feels compelled to comment on the proposals of the East Contra Costa County Habitat Conservation Plan Association (HCPA). This time it is the "Draft Aquatic Resources Inventory, Classification, and Function for East Contra Costa County HCP/NCCP Inventory Area" (Wetlands Draft) which is causing us concern.

As we stated in our letter to the Board of Supervisors in October 2003, we are most concerned that the HCPA is predisposed to ideas regarding the preferability of "open space" and "habitat" to cropland and rangeland. We feel that a weighted "consensus" against productive agriculture is built into the plan.

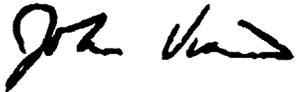
The Wetlands Draft furthers our concern in this regard for a number of reasons:

- The application for the wetlands permit includes a land type mapping based on the interpretation of aerial photos rather than an actual "on the ground" study. This paints many agricultural areas with the broad brush of "habitat", without any scientific basis. This effective "rezoning" of property could reduce its value, and is once again aimed at production agriculture.
- The proposed wetlands permit places specific, temporary land types, i.e., vernal pools, into special protection status equivalent to that of an endangered species – without a specific species being protected. The precedent set by this process is hostile to any land use, such as grazing, that requires open pastures to be included which are subject to these periodic events – it is equivalent to establishing a new endangered species without an economic impact statement – and again seems specifically targeted at productive agriculture.
- There is no guarantee at this time that the wetlands permit applied for by the HCPA will "replace the existing Nationwide Permit Program" as stated in the introduction to the Wetlands Draft. We are concerned that this will result in another layer of

permitting with attendant fees that will duplicate efforts by State and Federal agencies, and which will do nothing but generate funds for the HCPA. While we realize that the HCPA is something that is not going to go away, we continue to be concerned about the loss of productive agricultural land and the increase of unmaintained "open space" which can harbor pests and diseases harmful to both plants and animals.

We encourage you to take into consideration the agricultural community and it's importance and continuing role in the life and economy of this County.

Sincerely,



John Viano, President
Contra Costa County Farm Bureau

JV/dm

Cc: Gayle B. Uilkema, Chairma¹, Contra Costa County Board of Supervisors
Mayor Brian Swisher
Mayor Nancy Parent
Mayor Pat Anderson
Mayor Gregg Manning
Mayor Donald P. Freitas

**PUBLIC WORKS DEPARTMENT
CONTRA COSTA COUNTY**

DATE: January 13, 2005

TO: John Kopchik, Conservation Planner, Community Development Department

FROM: Cece Sellgren, Environmental Planner, Engineering Services

SUBJECT: Comments on draft wetland Regional Programmatic Permit for East County HCP/NCCP

I have reviewed the draft Regional Programmatic Permit (RPP) proposed to provide Section 404 compliance with the objectives of the East County HCP/NCCP. I offer the following comments.

Need for inclusion of additional Nationwide Permits

The RPP proposes to replace several Nationwide Permits with a series of Regional permits. The Nationwide Permits proposed for replacement include NWP 3 (Maintenance), NWP 12 (Utility Lines), NWP 13 (Bank Stabilization), NWP 14 (Transportation Crossings), NWP 18 (Minor Discharges), NWP 19 (Minor Dredging), NWP 27 (Restoration), NWP 29 (Single Family Housing), NWP 33 (Temporary Fill), NWP 37 (Recreation Projects), and NWP 39 (Residential, Commercial, and Institutional Developments). The proposed RPP does not include several other Nationwide Permits that are also important for the continued development of the proposed HCP permit area. I recommend the following Nationwide Permits also be included in the RPP:

- NWP 7 (Outfalls)
- NWP 23 (Approved Categorical Exclusions)
- NWP 31 (Flood Control Facilities)
- NWP 41 (Ditches)
- NWP 43 (Stormwater Facilities)

Each of these Nationwide Permits is routinely associated with the kind of activities that will be permitted through the HCP. Failure to include these Nationwide Permits will create a two-tiered system where some activities requiring Section 404 compliance is covered (and mitigates through the HCP), while other activities associated with the same project will not. This will lead to a dysfunctional regulatory system.

Concerns raised by State and Regional Board staff

Staff at the San Francisco and Central Valley Regional Boards and the State Board have raised a number of concerns about the Regional Programmatic Permit. Their issues include having adequate oversight over project by project permitting, inclusion and enforcement of avoidance and minimization measures, and creation of adequate amounts of diverse wetland and aquatic habitat. As frustrating as it is to receive these comments at this late hour, it is imperative that the Regional and State Boards participate fully in the RPP. Without their full cooperation the functionality of this innovative permit will be compromised. I strongly encourage HCP staff to work with the State and Regional Board

staff to address their concerns and incorporate, where feasible, measures to ensure that these Boards continue to meet their mandates through this permit. At the same time, I encourage the staff at these Boards to evolve beyond their project-by-project review paradigm to seek innovative ways to achieve their regulatory mandate. Common ground can be achieved, if all parties work together to reach it.

Authorization – Sec G (page 6)

Is reference to general Condition 21 an error? I think you meant General Condition 19 (Notification). There is currently no General Condition 21 (see below).

Erosion Control – Sec H. 1. d. (page 7)

Within this paragraph is a description of possible interim erosion control measures. I encourage the permit to avoid prescriptive measures as methods and material change over time. Also I recommend that language requiring construction within waterways be limited to zero or low flow conditions be conditioned upon feasibility. It is possible that other permit conditions (like bird nesting periods) will have greater priority than stream flow conditions or that other factors will require a project be implemented when flows are less than ideal.

CEQA compliance – Sec H. 1. g. (page 8)

The Regional Board will need to comply with CEQA due to the issuance of the discretionary 401-certification and/or waste discharge requirements. The permittee is not required to comply with CEQA unless the permittee is a State or local agency physically altering the environment. Private parties do not need to comply with CEQA. Governments do. This distinction needs to be clarified.

One area where CEQA compliance by regulatory agencies is problematic is when a private applicant needs to obtain regulatory permits. These individuals usually have not obtained a discretionary permit through their local municipality and therefore no CEQA document has been written. This permit needs to recognize these situations (which are more frequent than we think) and clearly delineate which State agency shall be the Lead Agency.

Backfill Materials – Sec H. 1. j. (Page 8)

The draft permit limits the kind of backfill to clean aggregate materials. But the California Department of Fish and Game Streambed Alteration Agreements frequently require a permittee to apply soil to rock slope protection or other hard streambank armor. An exception to the backfill prohibition needs to be included or DFG needs to abandon this permit requirement.

Floodplain – Sec H. 5 (page 9 – 10)

Please change the local agency responsible for floodplain issues to:
Contra Costa County Public Works Department
Attn: Floodplain Manager
255 Glacier Dr.
Martinez, CA 94553
(925) 313-2000

Mitigation – Sec H 18 (page 11)

The language within this section as it relates to the East County HCP/NCCP is confusing.

On one hand it clearly states that the HCP conservation measures will be considered for mitigation. But on the other had it implies on-site mitigation is preferred when it states, “off site wetland mitigation may be considered where long-term success of on-site mitigation is uncertain.” This ambiguity needs to be clarified. It is my understanding that unavoidable impacts to wetland and aquatic resources will mitigate through the payments to the HCP implementing agency unless the permittee chooses to create, restore, and/or enhance waters or wetlands on their own. The ability to conduct compensatory mitigation through the HCP needs to be clearly spelled out as a priority.

Notification – Sec H. 19. (page 11 – 13)

Activities requiring notification.

Under the current Nationwide Permit program some NWP do not require notification as outlined under General Condition 13. This does not appear to be the case with the Regional Programmatic Permit. This is of concern, as it will automatically cause up to a 45-day delay in the implementation of some routine and minimal impact activities (such as those authorized under NWP 3 (Maintenance)). Is there some way these minimal impact activities can bypass the notification process all together?

Notification requirements.

The level of detail required under Category I notification is far more rigorous than required under the current Nationwide Permit program. Below is a discussion of several components of the notification requirement for which I have concerns.

- The new requirement to conduct a Hydrogeomorphic Functional Assessment (HFA) is especially troubling. Although very useful at the landscape level, the HFA protocol is a detailed and laborious procedure that yields limited data on a project site level. This will be required for Category 1 activities? I believe that this is a much greater level of analysis than is needed for activities proposed under the RPP, especially those that will usually impact a ¼ of an acre or less of waters or wetlands. I encourage reconsideration of this requirement, especially for category 1 activities.
- I am also concerned about the requirements to address best management practices (BMPs) at the application level. BMPs are a set of tools and the choice of which tools to employ are usually made as a field decision by the contractor, not the applicant/owner. Due to the inherent delay in obtaining regulatory permits, permit applications must be submitted well in advance of proposed construction timeframes. As such it is impossible to outline with any definitive authority which BMPs will be utilized. This requirement should be scaled back to a brief discussion of possible BMPs that may be utilized.
- Another notification requirement is the submittal of a preliminary stormwater pollution prevention plan (SWPPP). SWPPPs are required for activities over one acre or adjacent to sensitive resources. Projects in or near waters or wetlands are not automatically required to comply with the General Stormwater Construction Permit. Why is a SWPPP a requirement for Category 1 projects, when they are all under ¼ acre in size? Another issue for requiring a preliminary SWPPP in the application is that contractors usually develop SWPPP's just prior to the onset of construction. Different construction techniques necessitate different SWPPP strategies. The point of submittal of a wetland permit application is far too premature to require even a preliminary SWPPP. I recommend that this requirement be scaled back to simply requiring proof of

an application for a General Stormwater Construction permit in those situations where it is required.

- I am confused as to the requirement to submit a compensatory mitigation plan as part of the notification requirement. Isn't the point of creating the RPP to utilize the HCP fee mechanism to compensate for unavoidable impacts of listed species habitats? Won't the majority of mitigation plans be a simple statement to pay a fee to the HCP Implementing Entity? I recommend this requirement be amended to clearly show that it is only required when the applicant chooses to mitigate separately from the HCP fee program.

Conditions 20 and 21 (page 13)

Where are they?

RP1: Residential, Commercial, and Institutional Developments

Blue Line Streams

The requirement in sub section "i" prohibiting stormwater management facilities on any "blue-line" stream is unacceptable. The Contra Costa County Flood Control and Water Conservation District has created regional flood protection infrastructure plans for each watershed within the permit area. Almost all of these plans involve some kind of stormwater facility in existing stream (blue-line streams). In most cases portions of the stormwater infrastructure has already been constructed, and it would be impossible to change these regional plans to avoid further improvements within existing stream channel. Developer frequently install regional flood control improvements as part of CEQA mitigation (for flooding) and to pay a portion of their drainage fee obligations. It would simply cripple the Flood Control District's ability to meet its flood protection mandate if this requirement were implemented. This new requirement is not a part of the current Nationwide Permit program and any stormwater facility improvements within these streams would be subject to full regulatory permits and compensatory mitigation as outlined in the HCP. This new requirement must be removed.

Buffer zones

The discussion of buffer zones adjacent to conservation areas needs more clarification. In particular the specifications of the buffer area will need more detail. Although I want to discourage use of prescriptive measures in the permits, I think applicants will need a better idea of what a "sufficient width" should be.

Timing of vegetation clearing

The requirement to delay vegetation clearing until 7 days prior to installation of utility lines will create a conflict with other HCP permit requirements, specifically bird nesting requirements. In order to avoid impacts to active nests, contractors need the flexibility to remove vegetation during inactive nesting periods.

Finally, Section "o" refers to RP 10, which does not appear to exist. This error appears in several of the Regional Permits.

RP 2 – Recreational Projects

The proposed activities exceeds those authorized in the current NWP 43 (Recreation

Facilities) by allowing construction of sport facilities and play grounds. The Public Works Department is supportive of this addition.

Buffer zones

The buffer requirements are similar to those outlined in RP 1 (Residential Development). These are very robust buffers. New developments, planned from scratch will likely be able to incorporate these buffer sizes into their overall layout. But recreational facilities are far more constrained in their ability to layout fields and playground equipment. This Regional Permit will likely be used in dual use detention basins, where there is limited areas to construct ball fields and playground equipment. These large buffers (which greatly exceed anything in the Nationwide Permit program) will greatly reduce the ability to install these facilities in limited space. I recommend the buffers be dramatically reduced in size for this Regional Permit.

Best Management Practices

The Best Management Practices to protect water quality focuses mostly on construction techniques. Although this is an important issue, long-term management of recreational facilities adjacent to waters is probably a greater threat to water quality. Buffers can be an effective tool (even smaller one - see above), but there may be other regulatory mechanisms to encourage BMPs in the long-term maintenance and management of these facilities. I encourage this permit to explore these avenues.

RP 3 – Transportation Projects

Linear-foot limitations

This Regional Permit has a linear foot limitation that does not occur in the current NWP 14 (Linear Transportation Projects). I am unclear why it is needed. Is the limit for the fill or for the actual crossing? If creek crossing were built such that it fills less than ¼ acre and does not affect the hydrology of the stream, why would a linear limit be needed? Many bridge projects have relatively small footprints but can span much longer distances. This requirement needs to be at least clarified or (even better) removed.

Discharge to surface waters

Section “h” requires that surface water cannot discharge directly into the stream. This is completely unacceptable. This requirement is far beyond what is required under the new hydromodifications in the NPDES permit (AKA C.3 modifications), which requires this level of treatment for projects over one acre (and later 10,000 square feet). This requirement needs to at least be consistent with the modifications to the NPDES permit or removed altogether (as it will be redundant to the NPDES permit).

RP 4 (Wetland and Stream Restoration and Enhancement)

This appears to be very similar to NWP 27(Stream and Wetland Enhancement Activities). I have no comments on the Regional Permit.

RP 5 (Temporary Construction Activities)

Category II Regional Permit

It is disappointing to see that all projects using this Regional Permit will be Category II

projects. In other words all projects requiring the diversion of stream water around the work area will be Category II projects. This is the vast majority of all wetland permit projects. If this will be the case, then I question the utility of creating categories at all, since the majority of projects will require temporary fill in order to dewater the work area. I recommend that for those project that otherwise qualify for Category 1, the temporary construction activities Regional Permit also qualify for Category 1. This would further the goal of permit streamlining.

Coffer Dams

I want to again discourage the use of prescriptive conditions. Prohibitions against certain types of fill restrict contractors in their ability to construct facilities in an environmentally sound way. For example, I have seen dozens of dewatering schemes in action and can say the use of dirt fill material is the most effective and one of the least environmentally intrusive methods for keeping a creek work area dry, especially in larger streams like Marsh Creek. I have seen most of the other dewatering structure recommended and have found them to be problematic. They require constant maintenance and frequently fail, leading to the need to re-dewater and construction delays. The biggest temporal impact of instream construction is the amount of time the creek is dewatered. I encourage use of language that prohibits contaminants from entering the stream, and allow the applicant and contractor to determine how best to achieve that goal.

Prohibitions of fill

In the past DFG has allowed permittee to spread clean river gravel used in downstream sediment basin cofferdams after the completion of the project. I would like to see this be allowed to continue.

Revegetation requirements

Native revegetation is not always an option, especially in flood control facilities, where capacity is paramount. There are very few native grass seeds that can function for erosion control over the first winter. In almost every circumstance a non-native cover crop is required to achieve quick and effective vegetation growth of streambanks. I recommend that the native vegetation requirement throughout the Regional Programmatic Permit be softened to include feasibility.

RP 6 – Utility Line Projects

Blue-line streams

My comments on this Regional Permit were made earlier in Regional Permits, including references to stormwater facilities in blue-line streams and prohibitions against discharges directly to waters of the US.

Individual water quality certifications

What is the purpose of the requirement for individual water quality certification for this Regional Permit? What aspect of this kind of activity is so different to warrant individual certification? Which streams are so much more sensitive than others within the HCP permit area to warrant special dispensation? If HCP staff wants the Regional and/or State Boards to issue a certification for the entire program, I recommend careful use of this certification tool.

RP 7 – Maintenance

Sediment removal

Why is the excavation of accumulated sediment in and around structures (bridges, culvert outfall, etc.) excluded from this Regional Permit when it is expressly authorized in the nationwide Permit? This seems patently unfair and inappropriate. Removal of these sediments is a public safety issue and forcing these activities into an individual permit is unacceptable. My only hope is that this exclusion reflects the Corps' current policy to not regulate excavation at all. If this is the case, then I recommend that this be made explicitly clear in the Regional Permit. Otherwise, sediment removal near facilities needs to be included.

Corps-built facilities

Why is maintenance of a flood control facility limited to those facilities built by the Army Corps of Engineers? Although I have not researched the issue, I am not familiar with a single Corps-built project within the HCP permit area. I recommend that all flood control facilities, regardless of who constructed it, qualify for use of the maintenance Regional Permit.

I strongly encourage this permit be consistent with all elements of the existing Nationwide Permit.

RP 8 - Bed and Bank Stabilization

Conforming to original grade

The proposed permit states that bank stabilization shall not be allowed to reclaim land lost to erosion. This is an untenable and unwise prohibition. Leaving irregular erosion scars will only increase erosion on adjacent and/or nearby sections of the creek. Reconfiguration to create a smooth streambank is essential to stopping erosion. Frequently streambank erosion crosses property lines and/or directly threatens buildings and facilities. Does this permit intend to prohibit repairs that are required to ensure that adjacent properties and facilities are not properly repaired and/or protected from further erosion? This would lead to a litigation nightmare. This is a new requirement that is not part of the Nationwide Permit program, nor (to my knowledge) been required before. This language needs to be removed from the permit.

Streambank slope ratios

The permit requires that streambanks repaired with rock slope protection may not be steeper than a 2:1 slope. This is another example of a prescriptive requirement. It is much wiser to develop conditions that set goals to be achieved rather than tell applicants how to achieve them. For example, the engineering standard for maximum slope for use of rock slope protection is 1.5:1. The steeper the slope the larger the armoring material needs to be. There is no conceivable way that rock could be "hand placed" in a steep streambank situation unless the stream involved is a tiny tributary. Rock used in most steep slope situations is ¼ ton (500 lbs.) or heavier. It is also important to note that rock is not "dumped" onto a slope, but is placed there by heavy equipment. As with the prohibition to fill sections of streambank lost to erosion, the streambank slope requirements for rock slope protection are not currently found under the Nationwide Permit program. The requirements for streambank slope ratios should be removed altogether.

RP9 – Minor Discharges and Minor Dredging

This Regional Permit appears to be a combination of NWP 18 (Minor Discharges), NWP 19 (Minor Dredging), and NWP 29 (Single Family Homes) and is somewhat more robust than the Nationwide Permits it will replace. I encourage innovative approaches used in this Regional Permit to be applied in other Regional Permits as well.

Thank you for the opportunity to comment upon the draft Regional Programmatic Permit. I encourage the use of this permit program to streamline the wetland permitting process, improve mitigation coordination and success, and facilitate use of HCP mechanisms in wetland permitting. If you have any questions, please don't hesitate to contact me at the above address, by telephone at (925) 313-2296 or by e-mail at csellgre@pw.co.contra-costa.ca.us.

CS:sr

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Cc: M. Shiu, Director
M. Avalon, Deputy Director
J. Bueren, Deputy Director,
H. Ballenger, Deputy Director
G. Connaughton, Flood Control
B. Balbas, Eng. Svc.
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E. Whan, Eng. Svc.
D. Zippin, Jones and Stokes