

HCPA East Contra Costa County Habitat Conservation Plan Association

HCPA Coordination Group Meeting

Thursday, February 19, 2004
1 p.m. to 3 p.m.

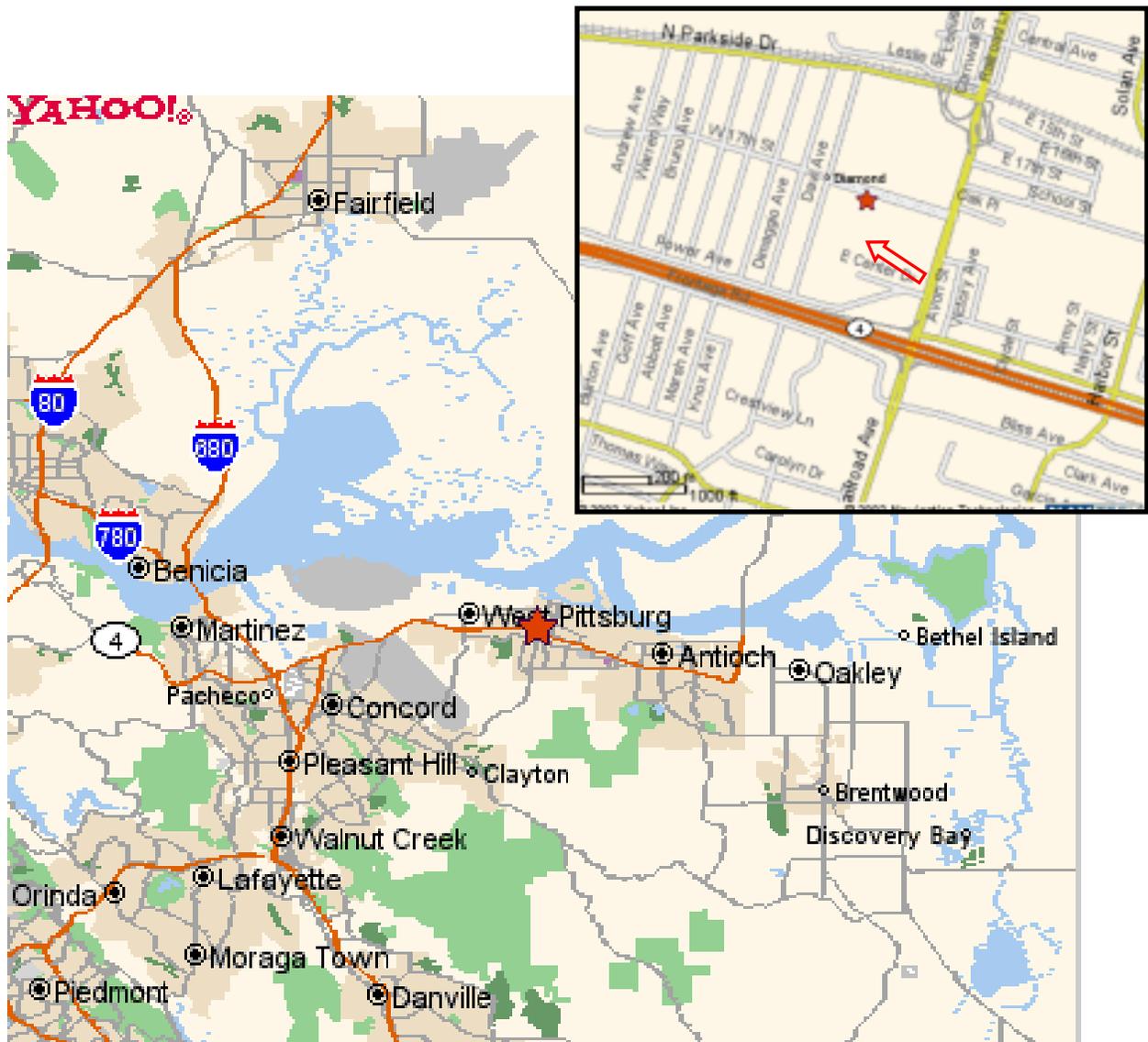
City of Pittsburg Council Chambers
65 Civic Drive in Pittsburg, 3rd Floor
(see map on reverse)

Agenda

- 1:00 Introductions. Review contents of meeting packet.
- 1:05 Review and approve Draft Meeting Record of the January 15, 2004 Coordination Group meeting.
- 1:10 Updates:
- Science Panel meeting report from December 9 is available; composite report summarizing outcomes of all 4 meetings organized by subject is coming soon
 - Wetlands permitting
- 1:20 Discuss written comments received from Coordination Group members on Preliminary Working Draft HCP/NCCP (see comments received attached).
- 1:45 Overview of potential evolution of the Conservation Strategy and land acquisition priorities, including ideas for enabling the HCP to coordinate its actions with those of other mitigation-seekers not covered by the HCP.
- 2:00 Refining survey requirements (see attachment).
- 2:15 Covering rural infrastructure projects.
- 2:30 Initial discussion on how and if HCP fees should be tiered: defining categories of impacts.
- 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 18, 1 p.m. to 3 p.m.
Thursday, April 15, 1 p.m. to 3 p.m.
HCPA Executive Governing Committee: Thursday, April 8, 2004, 5:30 pm
- 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 John Kopchik of the Contra Costa County Community Development Department at 925-335-1227. The HCPA will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 48 hours before the meeting.

Map and Directions to Pittsburg City Hall 65 Civic Drive



Directions from I-680, Central County

- 1) Take Hwy 4 East toward Antioch/Stockton
- 2) Follow Hwy East over the hill (Willow Pass)
- 3) Exit Railroad Ave. (the 2nd exit after the hill)
- 4) At the end of the exit ramp, turn left on Railroad Ave.
- 5) Turn left at the second intersection, East Center Drive (signs for various city offices will also point you this way)
- 6) Immediately bear right into the large parking lot next to City Hall
- 7) Meeting is on the 3rd floor

Directions from Antioch and points east

- 1) Take Hwy 4 West toward Martinez/Richmond
- 2) Exit Railroad Ave.
- 3) At the end of the exit ramp, turn right on Railroad Ave.
- 4) Turn left at the next intersection, East Center Drive (signs for various city offices will also point you this way)
- 5) Immediately bear right into the large parking lot next to City Hall
- 6) Meeting is on the 3rd floor

DRAFT MEETING RECORD

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

Thursday, January 15, 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:

Chris Barton, City of Pittsburg	Cece Sellgren, CCC Public Works
Bradley Brownlow, Morrison & Foerster	Beth Stone, EBRPD
Mike Daley, Sierra Club	Jay Torres-Muga, Seeno Construction
Abigail Fateman, CCC Community Dev.	Dick Vrmeer, CNPS
Jim Gwerder, CCC Citizens Land Alliance	Mike Vukelich, CC Farm Bureau
Barry Hand, City of Oakley	Carl Wilcox, CA Dept of Fish & Game
John Kopchik, CCC Community Dev.	David Zippin, Jones & Stokes, Inc.
Sheila Larsen, US Fish & Wildlife Service	

Also in attendance: John Hopkins, Institute for Ecological Health and Cheryl Morgan

1:05 Review and approve Draft Meeting Record of the December 18, 2003 Coordination Group meeting.

1:10 Updates:

- **Two Science Panel reports expected soon: meeting report from December 9 at composite report summarizing outcomes of all 4 meetings organized by subject**
- **Reminder: comment deadline on Preliminary Working Draft HCP/NCCP is January 31, 2004**

1:20 “Big picture” verbal comments of Coordination Group participants on the planning effort and the working draft plan. Participants shared comments and an **abbreviated summary** of comments is included:

CeCe Sellgreen :

- CC Flood Control projects are not included in the covered projects listed in the draft HCP. She is working to get long-term projects incorporated;
- She also suspects road projects may change from what is currently described in the draft working plan.

Mike Vukelich :

- Not sure how the HCP will impact agriculture. The agricultural community is unsure about the HCP;
- There is still concern about the “no surprises” and “neighboring landowners” clauses;
- Concerned about negative the impact of the HCP on property values.

Donna Vingo:

- Concerned how the maps and the HCP will impact property values;
- She has concerns about the funding mechanisms. There is too much dependence on the Open Space Measure, and developers share too much of the burden.

Bradely Bradlow:

- Make sure the HCP really does streamline the permit process;
- Prefers “fair share” funding approach;
- Plan may require too many surveys;
- The HCP isn’t a General Plan—just because a project isn’t covered doesn’t mean that project cannot go through the established development review process;
- Make sure all big ticket transportation projects are covered;
- Tie “stay ahead” to impacts not to land acquisition goals.

Mike Daley:

- Concern remains within the environmental community with flexible permit area idea;
- Many in the env. Community don’t want to change the ULL and will important to make clear that opinions on the HCP are not linked to opinions on the ULL
- Some are concerned that focus on habitat may neglect needs of individual species

Jim Gwerder

- A lot of initial concerns are being talked about
- Flexible permit area is key to alleviating concerns
- Make sure all property owners are notified of HCP and process. Need more than notice in the paper.

Beth Stone

- What role is EBRPD expected to take in managing land;

Dick Vmeer

- Overall this is a very worthwhile and important effort;
- Difficult to make decisions in absence of full scientific information;
- The science in HCP is focused on habitats, not species;
- Lack of assurance in reference to the ULL;
- Impacts of Los Vaqueros Expansion;
- Lack of explicit statements like “If X, then Y”;
- The HCP has greater confidence in mitigation efforts than science would suggest was reasonable;
- Incorporate more species based science in HCP;
- Move biological goals up front in the HCP
- Appreciates the earlier efforts to incorporate comments into the plan.

Jay Torres-Muga

- Disappointed with lack of progress on wetlands permitting;
- More integration of wetland with DFG;
- Science: integrate best available data on each specific property ;
- Concerned about formulas and funding mechanism;
- Operating procedures of Implementing Entity need to be clarified/improved

Randy

- Make sure HCP really streamlines;
- Concerned about the burden on city staff.

Sheila

- The plan is ambitious;
- What are biological implications of complete buildout?

John Hopkins

- Move biological goals to the front of document;
- Protecting habitats that are capable of supporting species doesn’t mean that you are actually protecting habitats that have species present;
- This is an impressive plan.

Cheryl Morgan

- Fiscally irresponsible;
- Easements are immoral;
- These meetings violate the spirit of the process and violate the Brown Act.

- 2:00 Continue examination of Preliminary Working Draft HCP/NCCP and begin to attempt to frame group comments. Specific discussion items including the following:**
- **Updated text of the Framework document (a.k.a. summary document)** John Kopchik reviewed changes to the Framework document and how/where comments were incorporated.
 - **Additional case studies on how the plan would work in practice: At this meeting, we will continue to look at hypothetical case studies of plan implementation. Request for presentation of “big picture” verbal comments at January Coordination Group meeting.** David Zippin continued the presentation of case studies.
- 2:40 Request for representatives of the Coordination Group to attend the January 22 Executive Governing Committee meeting to present an overview of comments**
- 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, February 19, 1 p.m. to 3 p.m.**
 - Thursday, March 18, 1 p.m. to 3 p.m.**
- 2:55 Public comment.** Public comment was included in the 1:20 agenda item.
- 3:00 Adjourn.**

Planning Survey Principles

- ❑ Avoid and minimize impacts to covered species and natural land cover types to the maximum extent practicable
- ❑ Simplify and reduce survey requirements for applicants compared to what they would do in future without HCP/NCCP
- ❑ Make survey requirements proportional to impacts—survey burden should be lower on low-quality habitat (most of impacts) than on high-quality habitat
- ❑ Species-level measures should be simplified and should clearly state when they are applied

Planning Surveys

*Required in impact areas and potential land acquisition areas

- Land-cover type
- Suitable breeding habitat for covered species with preconstruction survey requirements
- Rare vegetation alliances and landscape features
- Wetland delineation (if applicable)
- Potential nest sites of no-take wildlife species
- Covered and no-take plants

Preconstruction Surveys

- Townsend's big-eared bat (3.1.1)
- San Joaquin kit fox (3.2.1)
- Western burrowing owl (3.5.1)
- Swainson's Hawk (3.6.1)
- CA tiger salamander (3.10.0)
- Covered shrimp

Construction and/or other requirements that require biological monitor

Apply in Impact Areas and Restoration Sites in Preserves

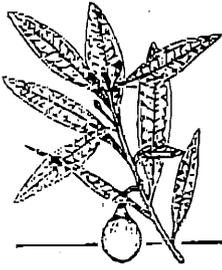
- Seal Townsend's nest site before hibernation (Nov-Mar) [Clarify]
- Seal Townsend's nest site before nursery season (Apr-Aug) – [Clarify]
- Excavate kit fox dens by hand, monitor dens, wait for pups to leave, partially plug dens
- Establish kit fox exclusion zones during construction [Reduce buffer?]
- Establish 0.5-mile buffer around golden eagle nest sites [Reduce buffer or clarify narrow cases in which it applies?]
- Establish burrowing owl non-disturbance buffer zones around nests (250 ft)
- Establish burrowing owl non-disturbance buffer zones around burrows (160 ft)
- Install one-way doors on burrowing owl dens

- Establish buffer zones around occupied Swainson's Hawk nest sites [need to define clear buffer and cases in which it is applied]
- Capture and remove Alameda whipsnake [Delete? Few, if any, impacts expected to individuals and surveys to find them are expensive. Translocation unproven technique]
- Establish buffers (200 ft) around all GGS habitat
- Monitor for GGS during construction
- Erect orange barriers for GGS outside construction areas (in staging areas?)
- Restrict construction near aquatic habitat (GGS) [Clarify or delete]
- Capture and remove CA tiger salamander egg masses, larvae, juveniles, and adults [Delete? Translocation is unproven; finding egg masses at right time for translocation could cause substantial project delay (up to 1 year)]
- Capture and remove red-legged frog egg masses, larvae, juveniles, and adults [Delete? Same issue as tiger salamander]
- Establish 250 ft. buffer outside all hydric vegetation associated with vernal pools and swales
- Prohibit activities associated with vernal areas within buffers
- Remove sample of vernal pool contents once pool is dry (seeds, cysts, etc.)
- Salvage actions for plants
- Train construction personnel on giant garter snake if working in suitable habitat
- Train construction personnel on HCP requirements if working within 100 feet of wetlands, ponds, streams, riparian woodland

Species-Level Measures

Proposed New Organization:

1. Overview: general description of how species is protected by conservation strategy (as is now)
2. Planning survey requirements
3. Preconstruction survey requirements
4. Avoidance and minimization requirements (species monitoring, relocation/translocation)
5. Construction monitoring requirements



EAST BAY CHAPTER

Alameda & Contra Costa Counties
California Native Plant Society

John Kopchik
Contra Costa Planning Department
651 Pine St, 4th Floor NW
Martinez, CA 94553
925-335-1227
FAX 925-335-1299
Subject: Eastern Contra Costa County Habitat Conservation Plan,

Mr. Kopchik,

We appreciate this opportunity to comment on the Preliminary Working Draft East Contra Costa County Habitat Conservation and Natural Community Conservation Plan (ECCCHCP). Our initial reaction is quite positive and our comments should be viewed as a serious attempt to strengthen the document in this early phase of its development. The ECCCHCP has the potential to bring together diverse interests in the community so as to insure the long-term protection and enhancement of the environment and, at the same time, to facilitate planned growth that is non-intrusive into environmentally sensitive areas of East County.

The California Native Plant Society is a non-profit organization of more than 10,000 laypersons and professional botanists organized into 32 chapters throughout California. The mission of the California Native Plant Society is to increase understanding and appreciation of California's native plants and to conserve them and their natural habitats through education, science, advocacy, horticulture and land stewardship. We offer our comments in support of our mission.

It needs to be recognized that such efforts as this one enter the scene after over a century of continuous environmental degradation. Perhaps now—at long last—the ECCCHCP can begin the process of protecting and restoring our environmental trust, while at the same time providing for carefully planned growth that meets the requirements of a growing population while enhancing the quality of life and insuring the protection of our environment for generations to come. While this is a difficult task, it is not an impossible one. It is certainly worthy of our efforts and what a wonderful legacy if it succeeds.

DEDICATED TO THE PRESERVATION
OF CALIFORNIA NATIVE FLORA

We offer the following observations and comments to further strengthen the ECCCHCP. As requested, for the most part we are focusing on the larger policy issues. A concern that applies generally to the whole plan is that of funding. While the document identifies many sources of funding for land acquisition, no particular party is given responsibility for raising them. We are concerned that development interests will not be required to fund conservation goals adequately. Who is responsible for raising funds and how, needs to be transparent and explicit. We feel the plan needs stronger language to ensure that the conservation benefits promised by the plan are actually achieved.

Please find the attached comments subdivided to correspond with the divisions of the plan. Feel free to contact me with any questions you might have.



Charlice W. Danielsen
Chair, Conservation Committee
East Bay Chapter, California Native Plant Society
P.O. Box 5597
Elmwood Station,
Berkeley, CA 94705
e-mail: charlid@pachell.net

Comments on Chapter One, Land Use and Covered Activities

While we recognize the desire of the cities for some flexibility in boundary adjustments, the use of the Urban Limit Line (ULL), as a significant boundary in the study area is justified by existing planning law. Further, it provides for stability and predictability in the development of land-use and environmental policy. However, we are concerned that significant changes to the ULL will impact the conservation goals of the ECCHCP as well as reduce the amount of land available for mitigation.

While the future possible expansion of Los Vaqueros Dam and the unmitigated impacts of wind generators are deemed outside the scope of the ECCCHCP study, both fall within the boundaries of the ECCCHCP. The envisioned expansion of the dam will have a dramatic, negative environmental impact on the wild animal and native plant life in the study area. How will that damage be mitigated? It's likely that the mitigation will occur in the area covered by the ECCHCP. Further, wind generators have had and continue to have a devastating impact on birds of prey. Omitting consideration of these project and their impacts is a serious flaw in the plan.

The possibility of the expansion of irrigated agriculture is dismissed by the plan, we think this is a mistake. Even though there is not much irrigated agriculture in the Plan Area now, that could change as the market and economy changes. Expansion of irrigated agriculture is likely to impact seasonal wetlands and some alkali areas as they are often on flat, low elevation sites, these areas need protection.

The draft states, "These rural infrastructure projects provide infrastructure that supports urban development and that has limited impacts on covered species." If infrastructure is being built in rural areas that supports urban development then it should be reviewed with an eye toward the type of development that will occur, and the impacts such development will cause. Urban development hardly has "limited impacts on covered species." How will the county prevent urban sprawl along the new arterial roads that it plans to construct?

Comments on Chapter 3, Physical and Biological Resources

We recognize the ECCCHCP necessarily begins the process of environmental protection and enhancement from a base of imperfect knowledge; however, our knowledge of existing animal and plant species is inadequate to make preserve design judgments. For example, rare alliances of grassland types could not be mapped so how can they be accounted for? Highest quality habitat and occurrences are purported to be considered in the delineation of the permit area and the preserve design but the status (extant or extirpated) of most populations is unknown. We recommend the ECCCHCP develop a stronger, more aggressive research agenda designed to identify and map existing plant and animal species in the study area to a much finer level of detail.

Additional surveys needed for special-status species not covered in the HCP/NCCP but still protected under CEQA and the ESA should be part of the Planning Surveys. This should not be put off until the Preconstruction Surveys (the year of construction). These surveys should be conducted as far in advance as possible to allow time to identify alternatives that would "avoid and minimize" or to ensure adequate

mitigation could occur in the HCP/NCCP Preserve That way, if non-targeted species are found there is adequate time to conduct the normal regulatory process. Furthermore, it should be emphasized, in this section and other places throughout the plan that the HCP/NCCP permit will not allow for take of special status species not covered by the HCP/NCCP.

Comments on Chapter Five, Conservation Strategy

We feel the ECCCHPC places too much emphasis upon habit protection and habitat development as a mitigation measure in lieu of species identification, protection and viability. We know that new habitat development does not guarantee that species habitation will follow. It fact, usually it does not. Consequently, knowledge of existing species and their protection is first priority, while development of new habitats as mitigations measures is a poor second.

Impact to the rarest wetland types is too high. Estimated remaining acreage of seasonal and alkali wetland types is about 50 and 40 acres respectively. The estimated impact is about 33 and 15 percent each. Given that these are the only habitat for several species including some covered taxa and they have already declined substantially, impact to these communities should not be allowed. Community diversity is likely to be decline with this impact, and habitat creation or restoration is unlikely to replicate lost community types. The Byron Airport area should have more protection.

Comments on Monitoring and Adaptive Management Plan

The ECCCHCP is progressive in calling for an "adaptive management" approach for the administration of the adopted plan. We support this concept, but urge careful attention to it. Adaptive management is an appropriate and effective administrative strategy uniquely suited to the managerial requirements of the ECCCHCP. The management and adaptive management process would be more efficient if at least one science advisor with a PhD was hired and chosen by the Science Advisors to oversee the Implementing Entity's scientific responsibilities. This way, problems with monitoring or research protocols, and identifying priorities could be addressed immediately rather than waiting for annual meetings with science advisors. As good as it sounds, traditional managers-- in socialization, experience and training-- will not have the foggiest of how to do it. Adaptive management requires a set of managerial skills that those experienced in bureaucratic and corporate environments will have a difficult time making sense of or carry out effectively. Adaptive management is as much an attitude toward management and administration, toward people, toward developing collaborative relations, toward acting on the basis of newly generated knowledge and toward organizational design, as it is a set of techniques. For adaptive management to be effective, careful attention must be paid to the personnel selection process. Further, its requirements ought to be more thoroughly reflected in the diagramming of managerial and decision-making relationships in the ECCCHCP.

Comments on Appendix E Biological Goals and Objectives

Land management improvements, suggested in the conservation strategy should be based on a scientifically rigorous, experimental approach to determine the optimum management technique.

Comments on Appendix F Urban-Wildland Interface Design Guidelines

Nowhere in the document is consideration given to the required fire-buffer. We wouldn't want the preserve areas to be impacted in an effort to provide a fire buffer. The HCP should make explicit the need for fire safety and vegetation management in new developments, so as not to impact the preserves.

HOME
BUILDERS
ASSOCIATION



OF NORTHERN CALIFORNIA

04 JAN 29 PM 1:50

January 28, 2004

Mr. John Kopchik
Contra Costa County
Community Development Department
651 Pine Street, 4th Floor
Martinez, CA 94553

Re: Preliminary Working Draft HCP/NCCP

Dear John:

You have asked the members of the HCPA Coordination Group to comment on the Preliminary Working Draft HCP/NCCP ("Plan") dated November 20, 2003. From our discussions, it is my understanding that you are looking primarily for each organization to identify what it sees as the "big picture" issues that have emerged and its positions/areas of concern. With that in mind, and with the understanding that there will be additional opportunities to provide more detailed comments as the Plan is revised, HBA's principal issues and concerns at this point are as follows:

- *Flexible Permit Area*

We support the flexible permit area approach to identifying the permit area and scope of "take" coverage. The Plan should reflect—not dictate—land use decisions made by the participating local governments. In this respect, the Plan should provide that Plan adjustments flow automatically from land use decisions.

We understand that for biological reasons, there are some areas where flexibility must be constrained. Currently, the Plan proposes that permitted activities (*i.e.*, development) cannot occur in areas defined as moderate priority acquisition areas. Given the margin of error built into the preserve design, and given the likely overstatement of actual "take" (see "*Overall Preserve Size*" below), we believe this is unnecessarily rigid. Only high priority acquisition areas should constrain potential permitted activities; and even then, there should be some mechanism to allow the proposed permitted activity if the implementing entity can make a finding that an alternative acquisition will provide equal or greater benefit for the resource in question.

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Tel (925) 820-7626

Fax (925) 820-7296

Website: hbanc.org

- *Local “No Surprises” Assurances*

In addition to the need for “No Surprises” assurances from the federal and state resource agencies to project proponents, there should be similar assurances given by the participating local agencies that they will not impose additional or inconsistent requirements once the Plan is implemented.

- *Plan Funding*

We acknowledge that fees imposed on development activities will be a component of funding for the Plan. However, we strongly believe that because the Plan is based on contributing to the recovery of covered species, the amount of the development fees should reflect the “fair share” principle—*i.e.*, the fee level should be proportionate to impacts and should not result in new development alone bearing the burden of providing what ultimately will be a higher standard of conservation than currently exists in the Plan area.

Conversely, we oppose what has been called the “funding gap” approach. This approach—which would require new development to cover any revenue shortfall required to meet Plan costs after taking into account federal, state, and other funding sources—is unfair and (we believe) unlawful.

- *Survey Requirements, Permitting, & Processing*

The Plan should deliver substantial streamlining in the development permitting process. It is very important that the Plan offer a real alternative to the current regime in areas such as survey requirements, mitigation identification, and permit processing.

Although HBA has already identified some suggestions in these areas (such as eliminating any 2-year survey requirements, eliminating multi-agency concurrence requirements for negative survey results, the need for Section 7 “assurances”, and eliminating relocation provisions for species such as CTS and CRLF), we will attempt to get additional specific comments from our members.

- *Stay Ahead Provisions*

The Plan’s stay ahead provisions should be realistic and sufficiently flexible over the 30-year permit term. Also, there should be “safety valves” to ensure that “take” coverage is not unnecessarily suspended during the permit term due to

temporary imbalances. Along these lines, preserve acquisition targets should match actual development impacts rather than ultimate preserve design.

- *Permit Suspension*

There must be an explicit acknowledgement that if “take” coverage is suspended during the permit term, development processing and approval will not be suspended. The HCP/NCCP is not a General Plan—it is one method for obtaining “take” coverage for development activities. If that method is suspended, individual projects should retain the ability to obtain needed “take” coverage through the current individual permitting process and there should be no presumption by either the resource agencies or the local agencies that Plan suspension triggers a moratorium.

- *Avoidance and Minimization of “Take”*

To the maximum extent legally permissible, the Plan should acknowledge that the fundamental premise of the Plan is to avoid project-by-project analyses and mitigation and to establish a strong presumption that contribution toward the regional preserve system is the preferred mitigation strategy. This is especially important in light of the Plan’s acknowledgment that the levels of anticipated “take” on which the overall preserve size is based is likely to be overstated.

- *Overall Preserve Size*

While the preserve should contribute to recovery and accommodate a margin of error, an “oversized” preserve should also be avoided. If the preserve is unnecessarily large, the development fee will be unfairly high.

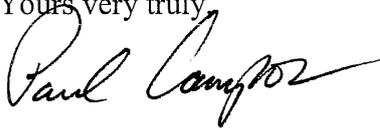
- *Critical Habitat*

The initial designations of critical habitat for both the CRLF and Alameda whipsnake have been vacated by court orders as a result of judicial challenges. Therefore, it is inappropriate for the Plan to cite to, or rely on, these designations themselves. However, to the extent that the Plan will provide conservation benefits equal to or greater than a critical habitat designation, it will be helpful and appropriate for the Plan to demonstrate and explain that fact.

HBA Comment Letter
Jan. 28, 2004
Page Four

Thank you for the opportunity to comment. If you have any questions, please call me at 925.820.7626.

Yours very truly,

A handwritten signature in black ink, appearing to read "Paul Campos", with a long, sweeping horizontal stroke extending to the right.

Paul Campos
General Counsel

Comments on some items in the November 2003 Preliminary Draft East Contra Costa HCP/NCCP

John Hopkins
Institute for Ecological Health

The overall habitat conservation proposal, its system of targets by zones and subzones, and many of the conservation measures promise extensive and effective long term conservation of habitat types.

There is also an expectation stated on page 5-17 (Population Enhancement) that the overall conservation measures will at least maintain current populations of covered and other native species and that the populations of some covered species will increase. This is a necessary, and minimal, outcome.

But overall the Plan is based on conservation of “suitable habitat” (as opposed to “occupied habitat”) and will not automatically translate into effective conservation of the covered species.

Unless I am missing important points, there are a number of interacting definitions and approaches, which together allow the Plan to fail to effectively conserve covered species but still be deemed a success. It is essential to change this underlying issue so that, barring unforeseen circumstances, population levels of covered species must be enhanced (allowing for large fluctuations seen, for example, with some annual plants) as a result of Plan implementation.

Some of the apparent problem items are:

- biological goals and objectives for many animal species that just require conservation of “habitat capable of supporting...” or similar language;
- for animals (but not plants) the ability to conserve suitable but unoccupied habitat to mitigate for loss of occupied habitat;
- an apparent inadequate usage of “contribute recovery” re listed species “actions that measurably increase the baseline conditions necessary to support covered species and...”
- effectiveness monitoring and status & trend monitoring that do not appear to require determining and following the population status of all covered species in preserve areas;

Points on Some Specific Items

Chapter 1

p1.1 The Overview paragraph states that the Plan “ will provide comprehensive species, wetlands and ecosystem conservation”. This is overstating the efficacy of the Plan. For example, it has not addressed the conservation needs of a number of declining species identified by the Science Advisory Panel or members of the public as needing inclusion in the plan. It would be more accurate to say “effective” rather than “comprehensive” and to state “26 species”

P1-5 Covered species I remain concerned that the Plan does not address a number of additional species, such as the Coast Horned Lizard. It is unlikely that these will be added at a later date, unless a particular species is listed by DFG or USFWS. These additional species will not necessarily be effectively conserved by the conservation and management actions of the plan, since they do not take into account specific needs of the species.

Chapter 6 - Conservation Strategy

p. 5-1 Says that plan “will help avoid listing of nonlisted covered species by protecting and enhancing their populations.” That is excellent, but objectives for these species do not include enhancing populations.

p.5-3 and Appendix E Biological Goals and Objectives

Many of these need a great deal of discussion, re-working and refinement. For example, the biological goals for many of the covered species do not include a species conservation component. For example, California Red-Legged Frog has an avoid, minimize and mitigate goal and an “establish and maintain a habitat reserve system capable of sustaining larger populations of.. And contribute to the recovery of...” [with “contribute to recovery” having the problem discussed above.] Neither of these goals explicitly require conservation of the CRLF.

It would also be helpful to have more explicit, quantified objectives in many cases.. Thus one example for the CR-LF would be “protect X/Y known occurrences in the inventory area that are currently unprotected” [as opposed to the vague objective 11.2.4 “enhance habitat function by restoring or creating aquatic breeding sites....”]. [By contrast, the Alameda Whipsnake does have a measurable objective for the species, taken from the draft Recovery Plan “protecting a minimum of five Alameda Whipsnake populations within the Mount Diablo-Black Hills Recovery Unit”.]

Note that a number of the conservation measures have very specific, quantified requirements [e.g., for Tricolored Blackbird “protect at least seven of the 13 ponds of Subzone c”] Such items can be used to have more specific objectives.

Overall, the Biological Goals and Objectives seem to have received little discussion or scrutiny during Plan preparation.

p.5-7 Minimize the Number of Preserve Units (also in framework, page 8).

The problem I have is that generally statements of reserve design principles do not include “minimize the number of preserve units” or “have as few units as possible” and such statements could be misused during implementation. The “maximum size” and “minimize edge” sections on pages 5-7 and 5-8 clearly state the benefits of large preserves, and obviously result in fewer preserves.

pp 5-28/29 Minimum preserve size to protect plant populations

There is no biological justification for the 40 acre minimum. Picking this because it is a common parcel size is not a sufficient basis. Far better to have a minimum size that has a biological basis (including buffers etc), while maintaining the caveat “unless acquiring a smaller site is the only way to...”

P 5-41 Acquisition requirements for Zone 1

The first paragraph seems to imply that the Concord Naval Weapons Station is a core existing preserve. According to page 5-53 that is not the case.

P 5-49 Agricultural conservation easements

Need to be absolutely explicit that a term easement has to be renewed or passed onto to another patch of suitable cropland, and so that acreage is conserved in perpetuity.

In connection with the term easement system, the statement re the Swainson’s Hawk that it “does not require specific sites be maintained as suitable foraging habitat, only that enough acreage is available in a given region” needs modification. (1) It is enough acreage within the foraging radius of a nest site and (2) if that acreage became highly fragmented - small patches a matrix of unsuitable habitat - it may no longer be effective.

p 5-51 Briones Valley - Marsh Creek Road

My interpretation of Fig 5.4 is that there is a ridge between most of Briones Valley and the parallel Marsh Creek Road.

pp5-54 / 55 and Table 5-15 Buffer zones

Table 5-15 still has a 1320 foot (1/4 mile) buffer for existing development (pages 1 and 2, but only a 300 foot buffer for new development (page 2). This is a large inconsistency, without a convincing explanation.

pp 5-55/56 Stream Buffer Zones

A 50 foot buffer is inadequate to achieve a number of the stated purposes.

p 5/102 /Appendices - Western Burrowing Owl

At a November 2003 symposium on this species, several speakers stressed that it is restricted to flat lands. The habitat model Figure seems to include areas with significant slopes. Important to check this issue and revise habitat model if necessary.

Chapter 6 Monitoring and Adaptive Management

p 6-8 and Table 6-2 Performance monitoring

This assumes that 5 years (occasionally 10) of monitoring restoration etc is sufficient to ensure long term success. Not so.

Various Effectiveness monitoring / Wildlife Indicator Species / Adaptive Management

Essential to monitor the status and trends of all covered species and to use this information as necessary in the adaptive management program.

Chapter 7, Plan Implementation

A stakeholder advisory committee (pp 7-4, 7-5)

This is essential.

Periodic review.

I do not see a system of periodic review of the Plan, including biological and economic elements and landowner concerns (maybe every five years). This is an important component for ensuring successful Plan implementation, and maintaining public confidence in the process. It more than annual review and reporting. It should provide an opportunity for public discussion of the how the Plan is proceeding. It should also provide an opportunity for locally agreed upon changes to the conservation strategy if that proves necessary.

While this is not required by permitting agencies, it is a “common sense” measure. Some other planning efforts are realizing the importance of periodic review.

Chapter 9 Assurances

9-1 Changed Circumstances

This is a very important topic. The Plan needs to outline an array of reasonably foreseeable changed circumstances, their possible impacts and implications. This section provides no such information but refers to a Table 6-5. There is no Table 6-5 in the pdf document I received.

9-6 Administrative changes

Annual adjustments to the mitigation fee to keep pace with inflation (a) should be based on inflation of land values, not something like the Consumer Price Index.

Appendix A, Glossary

Needs expansion. (E.g.: Footnote on page 5-1 refers to glossary for definitions of terms “fully mitigated” and “mitigated to the maximum extent practicable” but they are not in the Glossary)

Bits and Pieces

A number of references cited in the chapters (including tables) are not included in Chapter 11. A complete and careful review of all citations is needed before production of the public review draft.

Page 8-15. Local contributions. I have been told that local funding systems are not working out in a number of implementation-phase southern California plans, but do not have any details.

Page 8-20. The absence of a system to address permit management and monitoring (e.g.: endowment) is very troublesome. Also a permanent legal fund is necessary for long-term protection of easement provisions and other eventualities.



CITY OF OAKLEY
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MAYOR
Carol Rios

VICE MAYOR
Pat Anderson

COUNCIL MEMBERS
Jeffrey D. Huffaker
Brad Nix
Tinker Vanek

January 29, 2004

04 FEB -2 AM 9:00

Mr. John Kopchik
Community Development Department
651 Pine Street, North Wing, 4th Floor
Martinez, CA 94553

Dear John:

Staff has participated in the development of the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan. In addition, staff has reviewed the draft document dated November 20, 2003 and provide the following technical comments for your consideration:

1. Please review the acreage figures on Table 2-3 for accuracy. The area of land use designation does not match the City of Oakley 2020 General Plan dated December 16, 2002.
2. There are some minor typos and punctuation errors, which will be identified separately.

Staff supports the technical aspects of the overall approach including the flexible take area, covered species, and covered activities. No comments are provided on future discretionary decisions such as finance methods or formation of an Implementing Entity as the City Council will need to provide direction in these areas.

Staff appreciates the collaborative efforts of all participants, which has resulted in the draft plan. If I may be of further assistance, please let me know.

Sincerely,

Barry Hand
Community Development Director

MORRISON & FOERSTER LLP

SAN FRANCISCO
LOS ANGELES
DENVER
PALO ALTO
WALNUT CREEK
SACRAMENTO
CENTURY CITY
ORANGE COUNTY
SAN DIEGO

ATTORNEYS AT LAW

PLEASE RESPOND TO:

P.O. BOX 8130

WALNUT CREEK, CALIFORNIA 94596-8130

101 YGNACIO VALLEY ROAD, SUITE 450
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SHANGHAI
SINGAPORE
TOKYO

February 9, 2004

Writer's Direct Contact
925/295-3317
CMorrison@mofo.com

John Kopchik
Contra Costa County
Community Development Department
County Administration Building
N. Wing, 4th Floor
651 Pine Street
Martinez, CA 94553

Re: East County Habitat Conservation Plan

Dear Mr. Kopchik:

On behalf of the Contra Costa Council (the "Council"), I thank you for this opportunity to comment on the administrative draft of the East County Habitat Conservation Plan/Natural Community Conservation Plan (the "HCP"). In an effort to develop a HCP that is more acceptable to the Council's membership, we offer the following comments and recommendations.

I. Preconstruction Surveys and Construction Monitoring.

At the outset, we note that many of the project survey and construction monitoring requirements included in the HCP's various conservation measures are similar to those required by permit applicants operating outside of an approved habitat conservation plan. In other words, HCP take permit applicants are not provided much in the way of true permit streamlining, negating one of the incentives driving plan participation. The required planning surveys are not objectionable *per se*, given that they are required as part of the CEQA process. However, the Council suggests that the preconstruction survey requirements and construction monitoring requirements currently included in the HCP be limited to those circumstances where there is a true need for data collection or in limited instances where HCP avoidance measures require such work to be done.

John Kopchik
February 9, 2004
Page Two

II. Development Footprint.

Conservation Measure 1.1.1 requires all new development within the HCP permit area to avoid and/or minimize direct impacts on covered vegetation communities and covered species by encouraging compatible project plan design. This is a very broadly-worded measure, and may undermine many of the benefits of the HCP that are sought by our membership. We would like to work further with you to develop language that provides certainty to landowners that -- in light of the fees they will pay, the substantial amount of protections to be afforded to other lands by the HCP, and the limited value of postage-stamp avoidance areas -- lands within the permit area be given lighter regulatory treatment by the HCP.

III. No Surprises Assurances.

It is noted that under the HCP, the participating governmental entities are the actual holders of the take permit, not individual developers. Accordingly, the HCP's "No Surprises" policy technically extends only to such governmental entities, exposing project applicants to additional mitigation obligations that may be imposed by the entity with jurisdiction over the applicable land use approval. Of course, this state of affairs undermines the primary benefit of the HCP. In order to ensure that the development community is provided the complete protection of the No Surprises assurances, the HCP needs to establish a mechanism whereby each individual project applicant is provided the status of third-party beneficiary of the take permit, which rights should be enforceable as against local, state and federal government.

IV. CEQA.

The HCP must fully explain the link between the conservation measures required of project applicants under the HCP and the mitigation requirements of the California Environmental Quality Act. Ideally, the development community will be provided assurances that participation in the HCP will, for purposes of CEQA, fully mitigate any and all project impacts on covered species.

V. Plan Performance Standards.

The many performance standards related to preserve acquisition, particularly the zone-specific acquisition requirements, are aggressive and threaten to leave the plan perpetually on the brink of noncompliance. This is a particularly acute concern given that the plan's acquisition scheme requires the cooperation of willing sellers. For example, the acquisition requirements for Zone 2 include, among other things, the acquisition of seven of thirteen ponds in Subzone 2c, ninety percent of the remaining

John Kopchik
February 9, 2004
Page Three

chaparral in Subzones 2a, 2b, and 2c, five of the ten acres of alkali grassland mapped in Subzone 2f, and thirty-seven acres of silvery legless lizard habitat identified in Subzone 2a. In order to reduce the likelihood of permit revocation over the life of the plan for failure to meet all of the HCP's preserve acquisition requirements, it is suggested that the attainment of these goals be afforded a much more reasonable level of flexibility. In addition, there is concern that the HCP's "stay-ahead" requirement will, if not achieved, result in a moratorium on permit issuances. To avoid this result, some flexibility should be incorporated into this aspect of the plan, as well.

VI. Status of the Implementing Entity.

It is necessary that the HCP clearly state the relationship between the permittees, project applicants and the Implementing Entity. In several instances, the HCP is worded such that it appears that the Implementing Entity has a regulatory oversight role in the project approval process. For example, on page 5-19 of the HCP, it is stated that "[t]he Implementing Entity will evaluate all projects to ensure that they have adopted these conservation measures prior to issuance of a permit under the HCP." Again, at the top of page 5-25, it is stated that "[p]lanning surveys are surveys conducted by both the project proponents and the Implementing Entity." Although it is understood that the Implementing Entity will play an oversight role with regard to projects proposed by entities such as the Contra Costa Water District, it is imperative that the HCP clarify that the Implementing Entity will not have any regulatory authority over projects where the applicant is a private party seeking permit coverage from the County or other participating local governmental entity.

VII. Additional Species Coverage.

It is suggested that the HCP plan coverage be expanded to include coverage of the western pond turtle, the peregrine falcon, the short eared owl, and the round leaf filigree, as permitted by budgetary constraints.

VIII. Wetlands Permits.

The Council encourages the ECCC Habitat Conservation Plan Association to continue its efforts to obtain both a regional Section 404 wetlands permit pursuant to the federal Clean Water Act and a regional Master Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code. If these approvals are obtained, a powerful incentive for plan participation will be achieved.

John Kopchik
February 9, 2004
Page Four

IX. Third Party Acquisitions.

In the event that a third-party governmental entity that is not participating in the HCP condemns or otherwise acquires land within the preserve area for open space, conservation, or other compatible use, the HCP should allow for such land to be counted toward the HCP's preserve requirements.

X. Agency Adherence to Principles of Participation.

To the extent feasible, the Council would like the USFWS and CDFG to formally explain in writing their current position on the various principles of participation adopted by the County Board of Supervisors. Over the course of the HCP planning process, representatives of these agencies have orally expressed certain reservations regarding the principles, despite previous representations that the principles were acceptable to the agencies. Given that the principles were adopted to formalize the conditions pursuant to which all stakeholders would participate in the planning process, an update from the agencies regarding their position on the principles of participation seems appropriate. This request is consistent with the fourth principle of participation, which states that "USFWS, CDFG and the plan sponsors should agree to hold periodic reviews during the development of the plan to avoid any major disagreements later."

XI. No Surprises and Adaptive Management.

Some members of the Council have expressed concern that the No Surprises and Adaptive Management policies contained in the HCP are incompatible. Specifically, there is concern the requirements of adaptive management will impose additional mitigation costs on private activities that have already been issued permit coverage, seemingly in violation of the seventh principle of participation. It is suggested that the HCP include a discussion concerning the relationship between these two policies with the goal of clarifying their interaction.

XII. Adjoining Landowner Protections.

The Council is concerned that HCP does not adequately protect all landowners who own property adjacent to the preserve system. It is recommended that existing HCP protections afforded owners of adjoining agricultural land be expanded to include protections for owners of non-agricultural land.

MORRISON & FOERSTER LLP

John Kopchik
February 9, 2004
Page Five

XIII. Section 7 Consultations and the HCP.

The Council would like the HCP to include language to ensure that the USFWS will adhere closely to the HCP measures during any Section 7 consultation.

The Council reiterates its appreciation for the opportunity to comment on the administrative draft of the HCP and looks forward to continuing its participation in the development of this document. We would be happy to sit down with you and your staff to work out the details of the ideas expressed above.

Sincerely,

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

Clark Morrison

cc: Daniel Muller, Esq., Contra Costa Council Land Use Task Force

CCCCLA Comments on Preliminary Working Draft of ECCHCP/NCCP

GENERAL

- A. Every landowner in inventory area should receive notice of this process, and that only a percentage of the lands considered for inclusion in the preserve system will be acquired.

SPECIFIC

1. Page 1-3, ¶2- Principles of Participation should be included as an appendix.
2. Page 1-7, ¶1- “ESA Prohibits take”, ¶4- “incidental take permits”. Maybe add “intentional” or “purposeful” after Prohibits
3. Page 1-10, ¶2- what is NOT a migratory bird?
4. Page 1-14, last ¶- 2 periods after “permit”
5. Page 2-1, ¶1, line 5- remove the word “begin”
6. Page 2-2, add after ¶1 paragraph about Contra Costa County investment in the Byron Airport in the late 80’s
7. Page 2-2, ¶2, line 1- change “related environmental changes” to “perceived loss of open space”.
8. Page 2-2, ¶3, line 10- add language regarding Board of Supervisors decision to address expansion of the urban limit line around the Byron Airport until the Airport Comprehensive Land Use Plan was completed. Also add language regarding the Supervisor’s direction to include the Byron MAC Plan in studies concerning the Byron Airport Area. (I have the documentation if you would like to see/hear it)
9. Page 2-3, ¶4, line 5- after “General Plan” add “(except for the Agricultural Core as described below)”
10. Page 2-4, ¶3- there are NO “Open Space” designations on private land in the county General Plan that are not encumbered by a conservation easement. Same comment for Table 2-2, Note #3.
11. Page 2-6, ¶3, line 3 “being most profitable”. Are these most profitable or do they yield the highest amount in gross sales? This should be clarified. Also, the County Agricultural Commissioner has more recent statistics than 1990.
12. Page 2-6, add a ¶4 describing the southeastern portion of the inventory area as primarily rangeland, characterized by gentle to steep slopes with wind turbines throughout.
13. Page 2-7, ¶4- there is NOT a contiguous string of parks along the southern boundary on the east.
14. Page 2-9, ¶2, line 3- the EBRPD didn’t acquire the Vasco Caves until the 1990’s, so the 1977 reference cannot be correct.
15. Page 2-13, bullet #3- Our committee level discussion so far indicated that an expanded permit area would not go in to “high” priority acquisition areas, not “high” AND “moderate” areas.
16. Page 2-14, ¶3- permit area should AT LEAST include the private property in the Byron Airport Area ULL that is not encumbered by a conservation easement.
17. Page 2-20, ¶2, line 5- Eliminate “there is” before “little conversion of rangeland”
18. Page 2-21, Table 2-1- should include figures for Byron and Knightsen

19. Page 2-22, Table 2-2- See #10 above.
20. Page 2-23, Table 2-3- where is the 1 acre of Open Space on private land in the unincorporated area?
21. Page 2-24, Table 2-4- Wildlands Inc. mitigation parcel north of Byron Airport is 120 acres.
22. Page 3-6, ¶2, line 5- you should define “frequent”. Earthquakes may be frequent in terms of the history of the world, but I don’t think they are frequent in terms of a lifetime or the life of the HCP.
23. Page 3-6, ¶5- On Figure 3.2, check the tributary of Brushy Creek between Byron Airport and Byron Road. The creek was rechannelized before the current owners purchased it.
24. Page 3-9, ¶2, line 2- define improper livestock grazing
25. Page 3-14, ¶1- Is the “riparian” designation on Figure 3.3?
26. Page 3-18, ¶4- See comment #23 above
27. Page 3-19, ¶2- Figure 3.3 does not have Los Vaqueros mapped as aquatic.
28. Page 3-22, ¶1, line 5- Sometimes hay is cut and baled from a pasture and consumed off site
29. Page 3-23, ¶1, line 8- What is a nonnative mammalian predator? A human? Dogs and cats?
30. Page 3-23, ¶1, line 15- Vineyard also exist south of Byron surrounded by rangeland/cropland.
31. Page 3-25, ¶2, line 2- Change to read “between Los Vaqueros Reservoir and Byron Airport”.
32. Page 3-35, ¶4, line 5- change word “natural” to “nature”
33. Page 4-6, ¶5, line 9- Coverage under the incidental take permits should be offered to properties within a mile of the preserve system, or whatever the largest measure of a species range is. Example: kit fox “suitable” areas are a mile outside of core areas. Appendix says kit fox can range 20 miles at night. Red-legged frogs can disperse up to two miles (See page 4-12, ¶4) Also, does the use of “preserve system” in this paragraph reflect properties already acquired or properties in the designed preserve system? In other words, does the NLA apply to property in the designed system? This needs to be clarified.
34. Page 4-6, ¶5, line 18- are these the only species under the NLA? What about California tiger salamander? They don’t stay within property lines. (See page 4-11, ¶3)
35. Page 4-9, ¶5- So is this Plan preserving habitat for the Big eared bat? It would seem there is none available unless man-made structures will be built in the preserve (like bridges). Why have the recent sightings not been published? Are we protecting something that does not exist in Contra Costa County?
36. Page 4-10, ¶1- Doesn’t the inventory area represent the furthest-north historical range of the kit fox in California? There should be discussion regarding linkage availability or non-availability to the rest of that range outside the inventory area.
37. Page 4-14, ¶4, line 1- a word is missing after “covered”
38. Page 4-17, ¶5- Does “rural ranchettes” in this context mean subdivision or simply building a house on an existing parcel?

39. Page 5-5, ¶1-There should be an example management plan or further discussion for a landowner to review in order to evaluate the desirability of placing a conservation easement on their property.
40. Page 5-6, under “Preserve Design Principles”- Line 2 says “Science-based approaches for regional conservation planning make use of the best available biological data...”. The last line of that paragraph says “Note that detailed biological data are lacking for the majority of the covered species.” Crux of the problem with this plan and probably many others.*****
41. Comment intentionally left blank
42. Page 5-12, ¶1, line 5- How is all landowner agreement with designations placed on their land in a “hard boundary plan” different in this hybrid plan, or is it? The definition of “zones” is appreciated, but nonetheless there are obviously private property boundaries/ownerships within each zone. Will all of the landowners have the opportunity to agree or disagree with the designations placed on their lands as called for in “hard boundary plans”?
43. Page 5-25, ¶2, line 9- What would be an example of a special status specie that is not covered by the HCP? Why are all species addressed by CEQA not in the HCP?
44. Page 5-26, ¶2, line 9- The Implementing Entity would need to survey all potential preserve lands in advance to set acquisition priorities as discussed here. Prior discussion has been about setting priorities at the outset of the program based on information other than site specific surveys. If a preserve property has more species/habitat, will it bring a higher price?
45. Page 5-39, ¶1, line 5- Should include ULL around Byron Airport (-) conservation easement lands.
46. Page 5-26, ¶3- Not accurate description of development potential. There are subzones in each zone (including 5 and 6) that have a greater development potential, and subzones in each that are unlikely to develop. Also, since it is assumed that the entire area is the northernmost range of the SJ kit fox, it seems that a connection to the rest of the range outside of the area through Zone 5 is necessary for success of the preserve.
47. Page 5-42- Statements requiring acquisition of all known occurrences of “species X”.....what happens if there’s no willing sellers or not all are willing sellers?
48. Page 5-45, ¶7, line 3- misspelled “Byron”.
49. Page 5-46, ¶1 after the bullets, line 9- Remove “and” after “preserves”.
50. Page 5-46, ¶2 after the bullets, line 5- does this mean that existing conservation easements won’t count or lands in the area of conservation easements won’t count?
51. Page 5-47, ¶3- Shouldn’t a priority of the acquisition plan be to link the preserve to conservation easements outside the area within the limits of Contra Costa County? I.e., to the state lands around Bethany Reservoir in order to ensure that kit fox can make it in to the preserve?
52. Page 5-63, last ¶1- zones 1 through 5 are used as agricultural land.
53. Page 5-105, ¶3, line 8- In what instances would a stepping stone temporary agreement NOT be implemented with a landowner?

54. Page 5-109, ¶2, line 2- “example” is missing an “a”.
55. Page 5-114, ¶2- describes the current process without an HCP. How is this streamlining?
56. Page 5-116, ¶4- describes the current process without an HCP. How is this streamlining?
57. Page 5-118, ¶5, line 7- what happens to the chytrid-laden red-legged frogs?
58. Page 5-120, ¶2- will a property with one of the few occurrences of a habitat or species receive a higher sales price?
59. Page 5-122, bullets #1 & #2- does the mitigation bank have to be located in the inventory area?
60. Page 5-127, ¶1, line 5- what happens if the 2 known occurrences of Mt Diablo manzanita are not sold? Is it possible that another agency not a part of the HCP group could condemn these rare properties?
61. Table 5-4- What is the 2003 critical habitat designation specific area for the Contra Costa goldfields?
62. Table 5-15- how can we be assured that these requirements won’t become a part of county home-permitting requirements on private property? *****
63. Table 5-16, page 1- bottom is cut off.
64. Table 5-18, Contra Costa County ordinances- comment #62 applies also to stream setbacks recommended in the Preserve area
65. Table 5-23- If I am interpreting this table correctly, then impacts on certain plants will only be allowed if those plants are preserved through the HCP. So if those plants are not impacted and not preserved through the HCP, does the HCP fail? If there is a project that will impact a named plant, but it has not yet been preserved through the HCP, will the Implementing Agency pay more for that piece of preserve or will they just say, “oh well, you can’t get a permit for your development”?
66. Page 6-7, ¶3, line 3- there should be interim guidelines established at the time the agencies authorize the Plan so that development activity is not waiting 2 years.
67. Page 6-14- should also coordinate with the Bethany Reservoir management plan if there is one.
68. Page 7-2, ¶1- a separate, independent land trust specifically to implement the HCP should be formed.
69. Page 7-3, ¶4- a separate, independent non-profit organization specifically to implement the HCP should be formed.
70. Page 7-4- an independent panel of real estate expert should be formed to provide input to the Governing Board and Implementing Entity regarding compliance with the HCP’s requirements (to be formulated) for fair treatment of property owners in negotiations commensurate to the level of property values established through current and relevant sales data generated for the HCP, and to provide input regarding real estate market and land use restrictions which may be generated as a result of this HCP.*****
71. Page 8-18, ¶3, line 13- “fair market value” should be defined, using the State of California eminent domain definition.*****

72. Page 8-20, ¶1- another option to consider is paying more for the land to create willing sellers. Add language to indicate that individual permits would still be available, but not under the HCP.
73. Page 9-4, ¶3, line 3- put a period after the word “land”.
74. Page 9-4, ¶3, line 9- neighboring landowner assurances should automatically apply without “opting in”. See comment #52 re: this draft’s definition of “agricultural land”. See comment #33 re: NLA distances.
75. Page 9-5, ¶1, line 7- dairies should not be excluded from NLA, they are agricultural.
76. Page 9-5, ¶1- this section should include residential and outbuildings uses as agricultural uses that are common and covered under the NLA. The same goes for vehicle and horse use, and other practices done for agricultural production.
77. Appendices- Cost Tables- should include a factor for inflation. Land acquisition tables should include expected price per acre for each land type.
78. Appendix-EPS Technical Memo dated 11/14/03: Page 2, ¶2, line 4- Recent sales indicate mitigation banking/preservation elements of value.
79. Page 5, ¶2- I am enclosing data regarding 10 acres sold in June 2000, just outside the ULL near the airport. Sales price was \$20,000 per acre.
80. Page 7, ¶3, line 1- table 5-9a says 14,700 acres
81. Page 7, ¶3, line 2- table 5-9b says 20,750 acres
82. Table 1 should have a category for 120+ acres, >26% that goes along with the verbage in the memo (\$3,000 per acre).
83. Table 2 still does not include Wildlands purchase of 120 acres near Byron Airport for \$5,000/acre for a mitigation bank (information provided several months ago). I also provided information on an option to purchase 158 acres on Franklin Ridge for habitat preservation at \$5,000 per acre. The consultant should contact Muir Heritage Land Trust to see if this closed escrow as scheduled. This would have an effect on assumptions regarding land inflation, as he already has two other sales in that area that he could use as matched pairs. I am also sending information on two listings for conservation easements at \$5,000 per acre and \$15,000 per acre.
84. Table 5- how is the calculation done to account for time to development in Category IV?
85. I know it’s a lot of work, but please respond to these comments in writing.
86. John, we met a couple months ago regarding the November 14, 2003 version of the maps. I made several comments in that meeting, and I’m wondering when the next versions will be printed for review.

JIM GWERDER
CCC CLA
February 9, 2004

PROPERTY INFORMATION

1) Property: **5595 HOPE WAY, BYRON CA**
 APN: **002-210-020-0** Use: **AGRICULTURAL LAND**
 Card#: Property Tax: **\$2,256.46** Total Value: **\$212,241**
 County: **CONTRA COSTA, CA** Tax Year: **2003** Delinq: Land Value: **\$212,241**
 Map Page: Tax Rate Area: **60008** Imprv Value:
 New Page: **593-A3** Exemptions: Taxable Val:
 Census: **3040.00** Assd Year: **2003**
 Subdiv: % Improved:
 Owner: **K & E PROPERTIES LLC** Phone:
 Owner Vest: / / CO

Mail: **605 HARVEST PARK DR STE D; BRENTWOOD CA 94513-4017 C009**
 Owner Transfer = Date: **11/07/2001** Price: Doc#: **342662** Type: **QUIT CLAIM DEED**
 07/05/2001

SALE & FINANCE INFORMATION

	LAST SALE		PRIOR SALE	
Recording/Sale Date:	06/23/2000	10/21/1999	06/22/2000	10/20/1999
Sale Price/Type:	\$200,000	FULL	\$200,000	FULL
Document #:	132337		131461	
Deed Type:	GRANT DEED		GRANT DEED	
1st Mtg Amt/Type:	\$160,000	PRIVATE	\$190,000	
1st Mtg Rt/Type/Term:	/	FIXED /		FIXED
1st Mtg Lender:	LENDER SELLER		LENDER SELLER	
2nd Mtg Amt/Type:				
2nd Mtg Rt/Type/Term:	/	/		
Title Company:	NORTH AMERICAN TITLE			
Seller:	HYLTON FAM LIMITED PARTNERSHIP			
New Construction:				
Other Last Sale Info =	# Parcels:	Type 2:	Pend:	

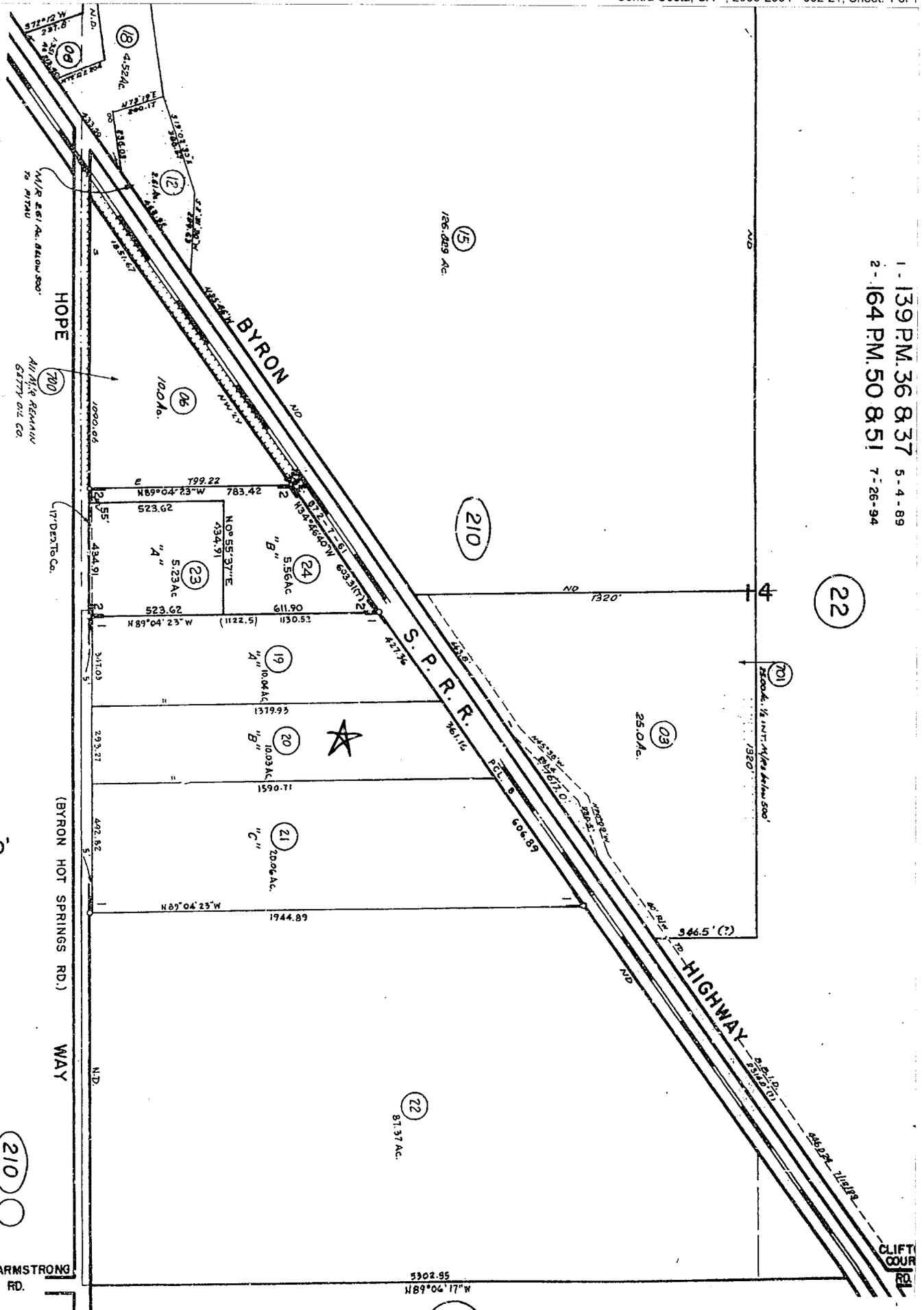
IMPROVEMENTS

Bldg/Liv Area:
 Gross Area:
 Ground Flr:
 Bsmnt Area:
 \$/SqFt: **\$.45**
 Yrblt/Eff:
 # Stories:
 Rooms:
 Bedrooms:
 Full/Half Bath:
 Ttl Baths/Fixt:
 Fireplace:
 Pool:
 Porch Type:
 Patio Type:
 Construct:
 Foundation:
 Ext Wall:
 Roof Shape:
 Roof Type:
 Roof Matl:
 Floor Type:
 Floor Cover:
 Heat Type:
 Heat Fuel:
 Air Cond:
 Quality:
 Condition:
 Style:
 Equipment:
 Other Rms:

SITE INFORMATION

Res. Units: County Use: **62** Acres: **10.03**
 # Comm Units: Zoning: **A-3** Lot Area: **436,906.8**
 # Buildings: Flood Panel: **0600250550B** Lot Width:
 Bldg Class: Sewer Type:
 Parking Sqft: Water Type: Usable Lot:
 Park Spaces:
 Garage Cap#: Site Influence:
 Park Type: Amenities:
 Other Impvs:
 Legal Blk/Bldg:
 Legal Lot/Unit:
 Legal: **PCL MAP 139 PG 36 PCL B**

1-139 P.M. 36 8 37 5-4-89
 2-164 P.M. 50 8 51 7-26-94



REVISED	CHANGE	BY
9-21-94	164 PM 50	TA

20



210

ARMSTRONG RD.

OCT 19 1994

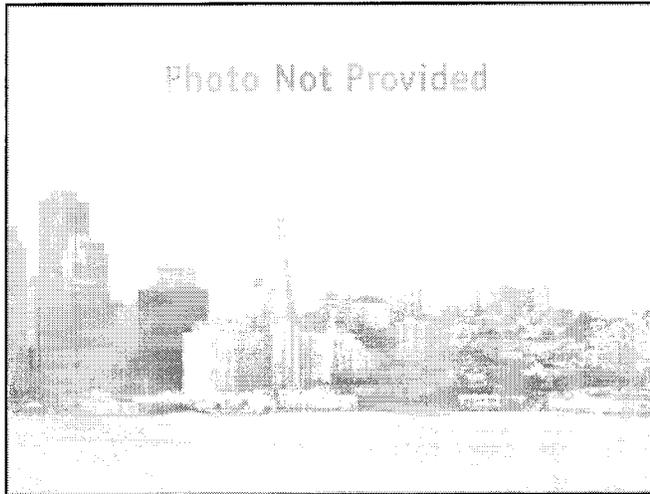
ASSESSOR'S MAP
 BOOK 2 PAGE 21

CONTRA COSTA COUNTY CALIF

CLIFT COUR

3302.95
 N 89° 04' 17" W

P.E. 1

Coldwell Banker**Red Legged Frog Mitigation Easement** [Email Delwyn Lounsbury](mailto:Delwyn.Lounsbury) for more information**Offering Summary**

Listing Status: Active
Property ID: 13834169
Property Type: Agricultural
Subtype: Pasture/Ranch
Address: 0 Christensen Road
 Livermore, CA 94550
 United States
County: Alameda

Price: \$1,275,000
Down Pmt: N/A
Lot Size: 85.00 Acres
Use Type: Vacant/Owner-User
Investment: Cap Rate: N/A actual
Factors: Cash-on-Cash: N/A% actual
 Price/Acre: \$15,000.00
Last Verified: 8 Jan 2004

Property Description

85 acre conservation easement for developer or municipality to transfer to Dept. of Fish & Game for mitigation of red legged frog, tiger salamander, kit fox and burrowing owl. Buyer to pay endowment fee to the State of California of approximately \$2,500 per acre. Already approved by biologist and Dept. of Fish and Game.

Location Description

Corner of Christensen and Bruns Road, Livermore

Contact Information**Coldwell Banker**

Delwyn Lounsbury

Phone: 925-371-2097

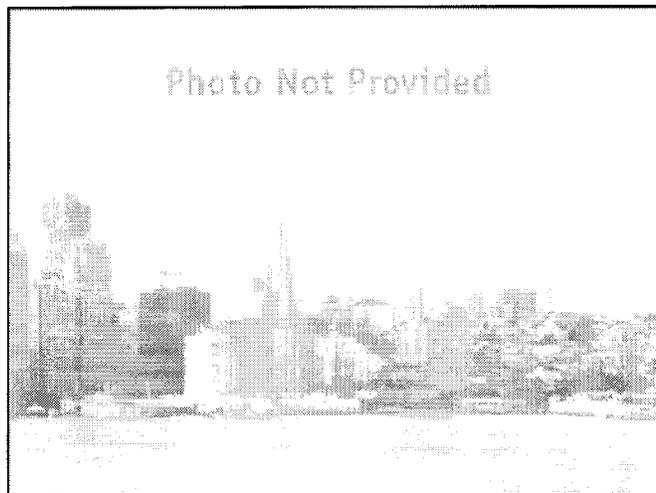
To access this listing directly use: <http://listing.loopnet.com/13834169> 1/8/2004P

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Coldwell Banker

Kit Fox & Burrowing Owl Mitigation

 [Email Delwyn Lounsbury](mailto:Delwyn.Lounsbury) for more information



Offering Summary

Listing Status: Active
Property ID: 13834174
Property Type: Agricultural
Subtype: Agricultural
Address: 0 Lone Tree Creek
 Livermore, CA 94550
 United States
County: Alameda

Price: \$590,000
Down Pmt: N/A
Lot Size: 118.00 Acres
Use Type: Vacant/Owner-User
Investment: Cap Rate: N/A actual
Factors: Cash-on-Cash: N/A% actual
 Price/Acre: \$5,000.00
Last Verified: 8 Jan 2004

Property Description

118 acre conservation easement only for developer or municipality to transfer to the Dept. of Fish & Game for mitigation of Kit Fox and Burrowing Owl endangered species. Buyer to pay endowment fee to State of California of approximately \$1,500 per acre. Allready approved by biologist and Dept. of Fish & Game

Location Description

Corner of Christensen Road and Bruns Road, Livermore

Contact Information

Coldwell Banker

Delwyn.Lounsbury

Phone: 925-371-2097

To access this listing directly use: <http://listing.loopnet.com/13834174> 1/8/2004P

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