

# **HCPA** East Contra Costa County Habitat Conservation Plan Association

## **HCPA Coordination Group Meeting**

Thursday, April 21, 2005

1 p.m. to 3 p.m.

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

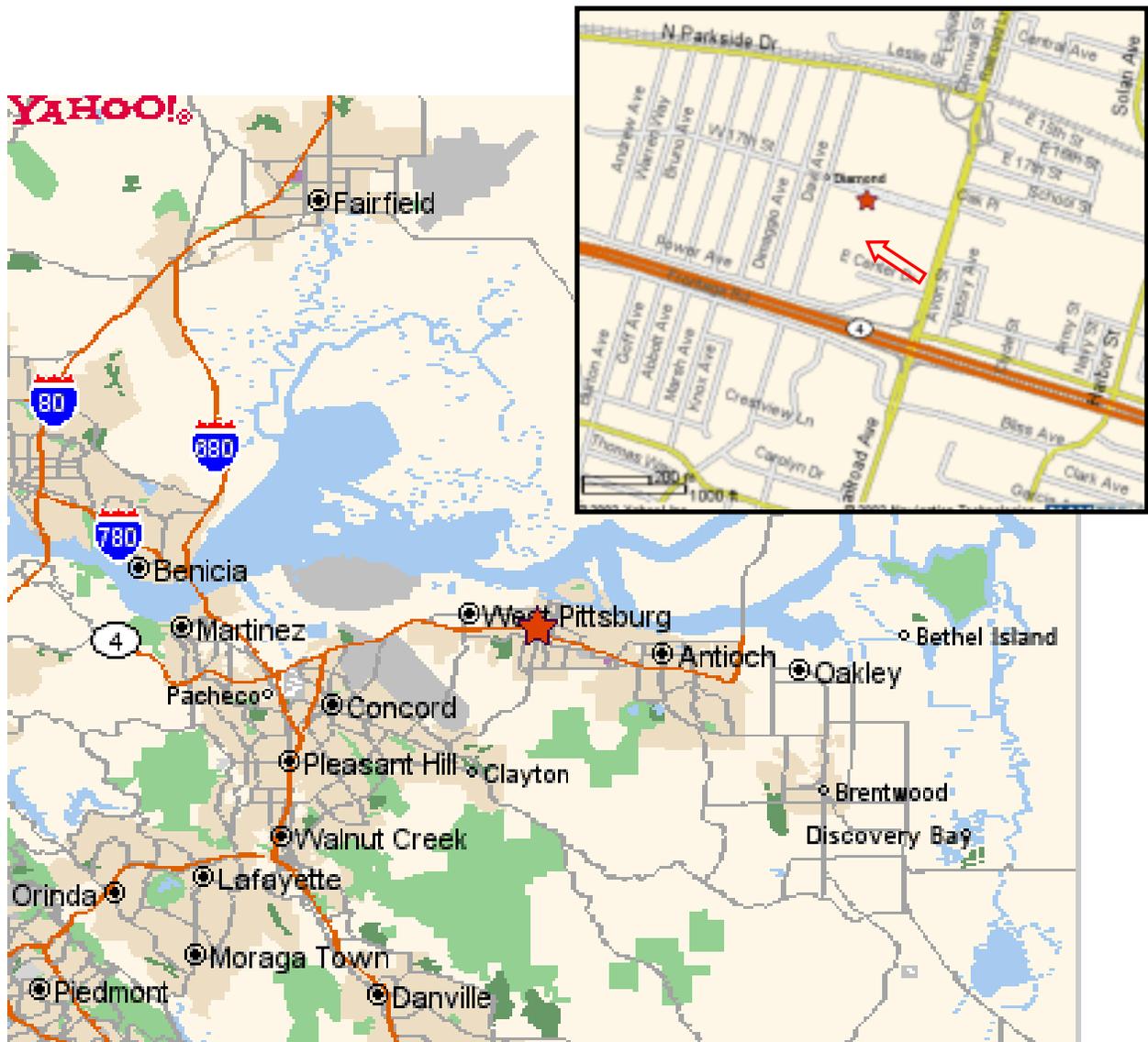
### **Agenda**

- 1:00 Introductions. Review contents of meeting packet. Review and approve Draft Meeting Record of the January 20 and March 17, 2005 Coordination Group meeting.
- 1:10 Updates:
- General update on status of planning effort, including wetlands
  - Anticipated timeline for completion of Public Draft HCP
- 1:20 Updated cost estimates and funding implications
- 1:50 How rigorous should project-by-project avoidance of wetlands and other features be under the HCP? Clarifying the tension that exists in the HCP/NCCP.
- 2:10 Documenting the willing seller commitment.
- 2:30 Review Framework document and stakeholder wish lists and seek to identify key outstanding issues.
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3<sup>rd</sup> Thursdays):  
Thursday, May 19, 1:30 p.m. to 3:30 p.m. (NOTE SPECIAL TIME FOR MAY)  
Thursday, June 16, 1 p.m. to 3 p.m.  
*HCPA Executive Governing Committee: May 19, 2005, 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 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.*

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## 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 2<sup>nd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> floor

# DRAFT MEETING RECORD

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

Thursday, March 17, 2005

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

Paola Bernazzani, Jones & Stokes

Bradley Brownlow, Morrison & Foerster

Joe Ciolek, Ag Trust of CCC

Abigail Fateman, CCC Community Dev.

Janice Gan, CA DFG

Jeff Garrigues, City of Oakley

Jim Gwerder, CLA

Randy Jerome, City of Pittsburg

John Kopchik, CC County Community Dev.

Dee Munk, CCC Farm Bureau

Cece Sellgren, CCC Public Works

Joel Summerhill, Mt. Diablo Audubon

Dick Vrmeer, CNPS

Also in attendance: John Hopkins, Institute for Ecological Health; Phillip Torres and Cheryl Morgan.

**1:00 Introductions. Review contents of meeting packet.** Meeting notes from the January meeting will be included in the April Coordination Group meeting packet.

**1:10 Updates:**

- **General update on status of planning effort, including wetlands (packet includes 2-23-05 memo to EGC with a general update)**
- **Anticipated timeline for completion of Public Draft HCP** – Formal public draft of the HCP/NCCP is expected in the spring of 2005

**1:30 Discussion on latest version of revised biological goals and objectives (attached) -**

Paola Bernazzani provided an overview of the revised biological goals and objectives (BGO). Staff from CDFG, USFWS and Jones & Stokes held multiple extensive meetings to revise and the content and form of the goals and objectives. They revised the BGO to increase accessibility, link them directly to the Conservation Strategy, provide measurable goals and group them by natural community type. Coordination group members provided comments:

Cece: Edit all conservation measures to be parallel – make all of them start with action verbs.

Dee: Formatting on first page is confusing. Adjust the header for the chart to start after the shaded box.

Cheryl: Raised the issue of eminent domain and property values. This issue was briefly discussed and tabled until the next meeting so the group could examine plan language on this.

Paola: Remove “the” from goal 18 to help clarify language regarding plants.

Jim: Raised questions concerns for oak woodland health regarding Conservation Measure 2

**2:00 Discussion on wetlands permitting, including:**

- **General update on agency involvement and on our proposed approach to coordinating wetlands permitting with the HCP/NCCP;**
- **Key elements of wetlands permitting (see attached table which also references tables and sections from the HCP (also attached))**
- **Past and new comments from Coordination Group**

John Kopchik walked the group through the Key Elements table that was included in the meeting packet.

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

**Thursday, April 21, 1 p.m. to 3 p.m.**

**Thursday May 19, 1:30 p.m. to 3:30 p.m. - NOTE TIME CHANGE**

***HCPA Executive Governing Committee: May 19, 2005, 5:30 pm***

**2:55 Public comment.**

**3:00 Adjourn.**

**Table 1**  
**Average Per Acre Land Values**  
**East Contra Costa County Habitat Conservation Plan**

Category #	Size	Slope	Other	Prior Per Acre Land Value	Mar-05 Per Acre Land Value	Change
<u>OUTSIDE URBAN LIMIT LINE</u>		<u>Whole Parcel</u>				
1.	120 acres+	< 26%	na	\$3,500	\$4,800	137%
2.	40 -120 acres	< 26%	na	\$6,000	\$8,200	137%
3.	10 - 40 acres	< 26%	na	\$20,000	\$27,400	137%
4.	5 - 10 acres	< 26%	na	\$35,000	\$48,000	137%
5.	0 - 5 acres	< 26%	na	\$50,000	\$68,600	137%
6.	ALL	> 26%	na	\$3,000	\$3,300	110%
<u>INSIDE URBAN LIMIT LINE</u>		<u>Percentages of Parcel</u>				
7.	na	<15%	Not Now Designated for Development	\$14,500	\$18,300	126%
8.	na	15-30%	Not Now Designated for Development	\$10,100	\$12,700	126%
9.	na	>30%	Not Now Designated for Development	\$3,600	\$4,500	125%
10.	na	<15%	Designated for Development	\$45,000	\$56,800	126%
11.	na	15-30%	Designated for Development	\$31,500	\$39,760	126%
12.	na	>30%	Designated for Development	\$11,300	\$14,263	126%
<u>INSIDE URBAN LIMIT LINE - BYRON AIRPORT</u>						
13.	na	na	na	\$8,000	\$8,800	110%

Source: Variety of Appraisals; County Assessor data; Home Sales Prices and Residual Land Value Analysis; Adjusted to March 2005 dollars based on recent appraisals and new home price data; Economic & Plannings Systems, Inc.

## Evolution of Cost Estimates

Type of Cost	Estimated Cost with Initial Urban Development Area		Estimated Cost with Maximum Urban Development Area	
	Nov-03	Apr-05	Nov-03	Apr-05
Land Costs	\$133,320,000	\$163,470,000	\$175,330,000	\$200,380,000
Site Improvements	\$5,400,000	\$5,560,000	\$5,625,000	\$5,625,000
<b>Land Acquisition Capital Costs (Subtotal)</b>	<b>\$138,720,000</b>	<b>\$169,030,000</b>	<b>\$180,955,000</b>	<b>\$206,005,000</b>
Land Acquisition Operation Costs (due diligence, surveys)	\$8,350,000	\$8,830,000	\$9,060,000	\$9,580,000
<b>Land Acquisition (Total)</b>	<b>\$147,070,000</b>	<b>\$177,860,000</b>	<b>\$190,015,000</b>	<b>\$215,585,000</b>
Program Admin	\$17,350,000	\$17,800,000	\$17,440,000	\$17,870,000
Planning and Design	\$5,900,000	\$6,000,000	\$5,980,000	\$6,080,000
Habitat Restoration/Creation	\$8,890,000	\$15,200,000	\$10,120,000	\$15,430,000
Environmental Compliance	\$3,600,000	\$2,300,000	\$3,600,000	\$2,300,000
Preserve Management and Maintenance	\$28,900,000	\$32,370,000	\$34,550,000	\$35,810,000
Monitoring, Research, and Adaptive Management	\$16,420,000	\$18,080,000	\$19,730,000	\$20,350,000
Remedial Measures	\$910,000	\$1,200,000	\$990,000	\$1,140,000
Contingency Fund	\$4,100,000	\$4,650,000	\$4,620,000	\$4,950,000
<b>Management costs (30 years) (all non acquisition costs)</b>	<b>\$86,070,000</b>	<b>\$97,600,000</b>	<b>\$97,030,000</b>	<b>\$103,930,000</b>
<b>TOTAL ESTIMATED COSTS</b>	<b>\$233,140,000</b>	<b>\$275,460,000</b>	<b>\$287,045,000</b>	<b>\$319,515,000</b>
<b>TOTAL ASSUMED COSTS (for fee calculations)</b>	<b>\$245,000,000</b>	<b>\$280,000,000</b>	<b>\$300,000,000</b>	<b>\$325,000,000</b>

# Chapter 6

## Conditions on Covered Activities

### 6.1 Introduction

As required by ESA, the Plan includes measures to avoid and minimize take of covered species. These measures are described as conditions on development and are designed to achieve the following.

- Avoid or minimize take of covered species resulting from covered activities on a regional scale (see discussion below).
- Avoid take by covered activities that is prohibited by law (e.g., take of fully protected species).
- Minimize adverse effects on ~~vegetation~~ natural communities and covered species that occur in the Preserve System near the covered activities.
- Avoid and minimize impacts on a regional scale to jurisdictional wetlands, waters of the United States, and waters and streams under state jurisdiction to meet the requirements of regional wetlands permits in preparation.

The permit area was designed to exclude high-quality habitat for covered species and high-quality jurisdictional waters (see Appendix K for the regional analysis of aquatic resources). Impacts on low-quality habitat for covered species and low-quality wetlands and waters will be allowed under the Plan. Habitat preservation and enhancement will be concentrated outside the permit area, in the high-quality habitat of the proposed HCP/NCCP Preserve System. The Plan has evaluated and complied with avoidance and minimization requirements at a regional scale to eliminate the need for individual projects to evaluate avoidance and minimization at the project scale. Projects that implement the measures in this chapter will be in compliance with the avoidance and minimization requirements of the Plan.

These measures are required for all covered projects in the HCP/NCCP permit area (i.e., the Urban Development Area and outside the ULL). It is the responsibility of project proponents to design and implement their projects in compliance with these measures. The local jurisdiction (City or County) will evaluate all projects to ensure that they have adopted these conservation measures prior to issuance of coverage under the HCP/NCCP. For projects not subject to City or County jurisdiction (e.g., special districts), the Implementing

Entity will review applications (see Chapter 8, *Implementation*, for more details of the process of providing HCP/NCCP coverage for project applicants).

The intent of these measures is, in part, to encourage individuals of covered wildlife species within the permit area to avoid or escape project construction zones. Populations of covered plant populations will be avoided when adequate conservation of these species is not available within HCP/NCCP preserves. Impacts will also be minimized by designing projects adjacent to the HCP/NCCP Preserve System in ways that reduce their impacts on covered species and habitats.

~~The permit area was designed to exclude high quality habitat for covered species. Impacts on low quality habitat for covered species will be allowed under the Plan. Habitat preservation and enhancement will be concentrated outside the permit area, in the high quality habitat of the proposed HCP/NCCP Preserve System. Avoidance and minimization measures are included at all three spatial scales of the Plan: landscape, community, and species.~~

## 6.2 Surveys for Covered Activities

Activities covered by an HCP must minimize and mitigate effects on covered species to the maximum extent practicable. To some degree, this requirement has been partially met already through careful design of the permit area and the Preserve System. Some avoidance and minimization is still required at the project level to fully meet this requirement. In order to meet these requirements, surveys are necessary prior to any covered activity. These surveys will identify the natural resources affected by the proposed project and will determine what additional preconstruction species surveys, if any, are needed. Planning surveys also serve another important function—to document actual impacts on land-cover types to ensure that assembly of the Preserve System keeps pace with or exceeds these impacts. The preconstruction surveys, in turn, will determine which species-specific avoidance and minimization measures must be applied to the project to ensure Plan compliance.

Three types of surveys may be required prior to or during implementation of covered activities: planning surveys, preconstruction surveys, and construction monitoring. Surveys are required for all covered activities for which a fee is collected or land in lieu of a fee is provided (see Chapter 9, *Funding*). Surveys are not required for temporary impacts that do not pay the temporary impact fee. The project proponent is responsible for paying for the surveys and completing the required survey report.

The intent of the survey requirements and species-specific AMMs avoidance and minimization measures is to reduce impacts to specific, high-value resources such as streams and occupied dens and nests of covered species ~~the maximum extent possible~~ while allowing covered activities within the permit area to take place. This Plan allows impacts on covered species within the permit area. The

of invasive exotic plants such as yellow star-thistle into nearby or adjacent preserves.

- Vegetation and debris must be managed in and near culverts and under and near bridges to ensure that entryways remain open and visible to wildlife and the passage through the culvert or under the bridge remains clear.
- Cut-and-fill slopes will be revegetated with native or non-invasive nonnative plants suitable for the altered soil conditions.
- All structures constructed for wildlife movement (tunnels, culverts, underpasses, fences) must be monitored at regular intervals and repairs made promptly to ensure that the structure is in proper condition.

### Rationale

Road projects in rural natural areas have been shown to have significant adverse effects on some wildlife species (Forman et al. 2002; Irwin et al. 2003). Some rural road projects covered by the HCP/NCCP are expected to have adverse effects on native wildlife as well as some covered species, particularly amphibians and San Joaquin kit fox. In order to meet regulatory requirements under the Plan to avoid and minimize impacts to the maximum extent practicable, this conservation measure was developed by Contra Costa County transportation planning staff, the HCPA, CDFG, and USFWS. Design guidelines and requirements are based on some of the latest techniques for minimizing impacts of rural road projects (Forman et al. 2002; Irwin et al. 2003; Finch 2004).

## 6.3.2 Natural Community–Level Measures

### Conservation Measure 2.12. Wetland, Pond, and Stream Avoidance and Minimization

#### Measure

All project proponents will implement the following measures to avoid and minimize impacts of covered activities on wetlands, ponds, streams, and riparian woodland/scrub.

- All wetlands, ponds, and streams greater than XX acres and streams longer than XX feet [to be determined by per-project impact cap being negotiated with wetlands agencies] will be avoided to the maximum extent practicable on site. Projects with wetlands and streams below this threshold may be filled subject to approval of the applicable wetland agencies (U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Game) through the applicable regional wetland permit process. Projects with wetlands or stream acreage/length above these size thresholds are not eligible for streamlined compliance under the regional wetlands permits for the HCP/NCCP; these applicants must apply for their own wetlands permits to receive authorization for discharge or fill.

Like avoidance and minimization measures for terrestrial habitats, this conservation measure is not intended to create small, isolated wetland mitigation sites. Some impacts on aquatic land-cover types are expected under the Plan for projects that receive CWA Section 404 permits. The intent of the Plan is to concentrate mitigation for filled aquatic features in areas away from urban development and within large preserves that are linked to existing protected areas. Larger preserves will make it more effective to protect, enhance, and restore wetlands.

- Applicants ~~that preserve with~~ streams on site must follow the stream ~~buffer guidelines setback requirements~~ in Conservation Measure 1.7.
- Applicants for coverage under the HCP/NCCP must follow the guidelines in Conservation Measure 1.10 to minimize the effects of urban development on downstream hydrology, streams, and wetlands.
- All wetlands, ponds, streams, and riparian woodland/scrub to be avoided by covered activities will be temporarily staked in the field by a qualified biologist. Buffer zones should be established where feasible between the aquatic resource and development. Credit for preservation of aquatic habitat will be given only if these features meet minimum distances from dense urban development (see Table 5-6). Buffers for streams and riparian vegetation will follow the minimum requirements in Conservation Measure 1.7.
- Fencing will be erected between the outer edge of the buffer zone and the project area. The type of fencing will match the activity and impact types. For example, projects that have the potential to cause erosion will require erosion control barriers (see below), and projects that may bring more household pets to a site should be fenced to keep the pets out. The temporal requirements for fencing also depend on the activity and impact type. For example, fencing for permanent impacts should be permanent, and fencing for short-term impacts should be removed after the activity is completed.
- Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and the legal obligations of project proponents working under this HCP/NCCP.
- Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.
- Trash generated by covered activities will be promptly and properly removed from the site.
- No vehicles will be refueled within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
- Appropriate erosion control measures (e.g., hay bales, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub.

Erosion control measures will be placed between the outer edge of the buffer and the project site.

- Hay bales used for erosion control will be certified as weed free.
- Seed mixtures applied for erosion control will not contain invasive nonnative species, and will be composed of native species or sterile nonnative species.
- Where feasible, stream crossings will be located in stream segments without riparian vegetation, and bridge footings will be built outside the ordinary high water mark of these streams.
- Herbicide will not be applied within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub; however, where appropriate to control serious invasive plants, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In seasonal or intermittent stream or wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift should be minimized by applying the herbicide as close to the target area as possible.

### **Rationale**

Avoidance and minimization measures are required to meet the biological objectives of the HCP/NCCP to avoid and minimize effects on wetlands, ponds, streams, and riparian woodland/scrub. Because of the sensitivity of these aquatic land-cover types, special avoidance and minimization measures are necessary.

~~Like avoidance and minimization measures for terrestrial habitats, this conservation measure is not intended to create small, isolated wetland mitigation sites. Some impacts on aquatic land cover types are expected under the Plan for projects that receive CWA Section 404 permits. The intent of the Plan is to concentrate mitigation for filled aquatic features in areas away from urban development and within large preserves that are linked to existing protected areas. Larger preserves will generally make it easier to protect, enhance, and restore wetlands.~~

### **Conservation Measure 2.13. Minimize Effects on Oak Woodland**

Native oak trees should be retained on site by projects covered by the HCP/NCCP whenever possible to preserve the wildlife value of individual trees and to enhance property values. Avoidance and minimization measures implemented during construction can be effective at preserving oak trees on site. However, trees that are isolated by development will be considered by the Implementing Entity to be part of oak woodland or savanna that has been removed and that requires mitigation through preservation (Conservation Measure 1.1), habitat enhancement (Conservation Measures 2.4 and 2.6), and restoration (Conservation Measure 2.7). Project applicants must also comply

## 8.6.5 Willing Sellers

A key principle of the HCP/NCCP is that land will only be acquired by the Implementing Entity from willing sellers. This principle will be strictly followed; the Implementing Entity will not condemn land in order to meet Plan conservation requirements. Likewise, the Implementing Entity will not partner or contract with a separate agency to condemn land for the HCP/NCCP nor will it contribute funding toward a condemnation.

Nothing in the HCP/NCCP shall prevent other organizations from exercising their powers of eminent domain for purposes other than implementation of the HCP/NCCP and with funds other than those raised as a result of this HCP/NCCP. If subsequent to such a condemnation, and after soliciting input from the Public Advisory Committee, the Governing Board of the Implementing Entity finds that the condemned lands are integral to the successful implementation of the HCP/NCCP, the Implementing Entity may seek agreement with the owner of the condemned lands to manage those lands in a manner consistent with the HCP/NCCP.

Given the many land acquisition requirements in Chapter 5 (see Conservation Measure 1.1), it is possible that one or several landowners that own key resources of interest to the Implementing Entity will refuse to sell, or that negotiations to sell will fail. It is impossible to predict at this time where this may occur and in what context it will occur (e.g., how much of the Preserve System has been acquired, the extent of resources remaining to protect). This situation, if it occurs, is only expected near the end of the 30-year permit term when the final land acquisition requirements must be met. By this time, most or all of the development impacts will likely have occurred; consequently, any delays in land acquisition associated with a lack of willing sellers should not impede urban growth. This situation can be avoided if the Implementing Entity is closely tracking land acquisitions and negotiations with key landowners begin early in the permit term. This review will take place at least annually with each annual report submitted to CDFG and USFWS.

If key landowners are not willing to sell, the Implementing Entity, in coordination with USFWS and CDFG, will reconfigure the land-cover acquisition strategy to ensure that the biological goals and objectives will be achieved and that the total extent and type of lands to be preserved under the HCP/NCCP will be acquired. If such a reconfiguration is not possible, options considered will include

- requiring applicants to provide land instead of fees to obtain coverage under the Plan, or
- slowing or stopping local permit issuance under the HCP/NCCP until key land acquisitions can be made.

**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

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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;

see pages  
6-7 to 6-10

# 6-4

- 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.

see pages  
6-11 to 6-12

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

see pages  
6-13 to 6-15

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.

see pages 6-17 to 6-20

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 Inflatons. 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.

see pages 6-21 to 6-27

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 3<sup>rd</sup> 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.

# 6-6

- 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.



# East Contra Costa County Habitat Conservation Plan Association

PRELIMINARY WORKING DRAFT (Nov-04)

## Framework for the East Contra Costa County HCP/NCCP

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*This document is intended to outline key components of the HCP/NCCP and serve as a focus of discussion for the Coordination Group, the committee of stakeholders and agency staff providing detailed guidance on development of the HCP/NCCP. This document will record key recommendations of the Coordination Group as they are made. The Framework cannot replace the detailed information that will be contained in supporting documentation such as the Conservation Strategy and other chapters of the plan itself (these will continue to be discussed), but it can guide development of the more detailed work products and allow the Coordination Group to focus on the most important policy questions. From time to time, the Framework will be presented to the HCPA Executive Governing Committee, the committee of elected officials that governs the HCPA, for review and policy direction.*

### Contents

- I Purpose of the HCP/NCCP
- II Background: The Intersection of Natural Resources, Development, and Agriculture in East County
- III Mechanism: the HCP/NCCP as an Alternative to Project-By-Project Permitting and Mitigation
- IV Key Permit Terms and Conditions
- V Biological Commitments
- VI Landowner Commitments
- VII Implementing Entity
- VIII Funding to Implement HCP/NCCP
- IX Regulatory Assurances
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### I Purpose of the HCP/NCCP

*Mission statement (below) recommended by Coordination Group on 5-17-02 and approved by the Executive Governing Committee on 5-23-02.*

The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan will provide comprehensive species, wetlands and ecosystem conservation and contribute to recovery of endangered species within East Contra Costa County, while:

- balancing open space, habitat, agriculture, and urban development;
- reducing the cost and increasing the clarity and consistency of federal and state permitting by consolidating and streamlining these processes into one, locally-controlled plan,
- encouraging, where appropriate, the multiple use of protected areas, including recreation and agriculture,
- sharing the costs and benefits of the habitat conservation plan as widely and equitably as possible, and
- protecting the rights of private property owners.

## II Background: The Intersection of Natural Resources, Development, and Agriculture in East County

Eastern Contra Costa County is one of the fastest growing regions in the state--with a population that is predicted to grow by 127,000 people by 2025<sup>1</sup>--providing important new housing for the Bay Area's growing workforce. Though efforts are underway to direct future growth toward infill opportunities (to the maximum extent practicable) and to finding more sustainable ways to grow, existing land use plans and development approvals allow significant new development on rangelands and irrigated crop lands. This new development will displace a variety of natural habitats, including valley floor and foothill grassland, oak woodland, oak woodland savannah, chaparral, riparian woodland, emergent wetland, and vernal pool habitat. Anticipated growth could also threaten key habitat corridors needed to protect a variety of state and federally listed threatened and endangered species. Approximately 154 special status species occur or could occur in the East County area, including the San Joaquin Kit Fox, California Red-Legged Frog, Alameda Whipsnake, Golden Eagle, Western Burrowing Owl, Vernal Pool Fairy Shrimp, and Diablo Helianthella. The East County area is also home to productive agricultural lands, including intensively cultivated areas with high quality soils in lower elevations and productive grazing lands in the hills that cover a large part of the region. Agriculturalists depend on these lands for income and as an important investment.

Conflict between these different land-uses or community values is, to some extent, unavoidable. However, coordinated conservation planning is an opportunity to reduce the level of conflict and to identify mutually acceptable approaches to these problems.



Scott Hein

<sup>1</sup> ABAG, Projections 2002. By 2025, the populations of Brentwood, Oakley, Pittsburg, and Antioch are expected to grow by 123%, 57%, 52%, and 30%, respectively.

### III Mechanism: the HCP/NCCP as an Alternative to Project-By-Project Permitting and Mitigation

#### **Current Process for Complying with Endangered Species Acts and Other Resource Protection Regulations:**

Public agencies, developers, and other project sponsors currently address endangered species regulations individually on a project-by-project basis. Potential impacts to endangered species are considered and potentially mitigated within the California Environmental Quality Act (CEQA) process, but in many cases must also be addressed through individual consultation with the USFWS and CDFG. Regardless of regulatory venue, endangered species compliance typically requires:

- a) thorough field surveys of the site at appropriate times for endangered species;
- b) negotiations on mitigation, site design, and construction practices; and
- c) identification and procurement of any needed off-site mitigation and/or dedication of on-site mitigation (e.g., open space easements) and establishment of mitigation monitoring program.

The above compliance is performed individually by the landowner/developer and the USFWS and CDFG in order to obtain an individual take permit (ITP) pursuant to CESA section 2081 and FESA section 10 when a non-federal action (i.e., project or activity) may jeopardize or impact a listed species, or its habitat. In Contra Costa County, the ITP is more often issued under section 7 of FESA which applies when a project has federal funding or requires federal permits, such as for wetlands. The local land use agency is usually not involved, but does separately negotiate mitigation under CEQA.

The amount of time and funding dedicated to each of the above three tasks varies, sometimes dramatically, from one project to another. Some project proponents in East County have incurred significant expense in this process. All project proponents must contend with some uncertainty regarding how long endangered species compliance will take, how much mitigation will be required, and what will happen in the future if unforeseen circumstances arise that affect a protected species before an ITP issued.

In addition to endangered species requirements, CEQA (and NEPA if a federal project), and any resource protection measures adopted by the local land use planning agency, project proponents must also comply with a number of other environmental regulations. For example, actions that could affect wetlands must have a thorough site survey and formal wetland delineation sanctioned by an appropriate regulatory agency. Such projects must also receive permits from the U.S. Army Corps of Engineers (COE), and the Regional Water Quality Control Board (RWQCB). Depending on the project, the U.S. Environmental Protection Agency (EPA), USFWS, and CDFG might be involved in processing the wetlands permit from the COE. Projects affecting streams require a streambed alteration agreement with CDFG and may also be subject to wetland regulations. Construction activities require a separate permit from the RWQCB to control water quality impacts. Projects might also face local and other restrictions on impacts to prime agricultural lands.

## **How the HCP/NCCP Will Provide an Alternative Process for Compliance:**

The East County HCP/NCCP establishes a coordinated process for permitting and mitigating the incidental take of endangered species that can be used in place of the current, project-by-project approach. Rather than individually surveying, negotiating, and securing mitigation, project proponents will receive an ITP by paying a fee (and/or dedicating land), performing limited surveys, and adhering to protocols to avoid and minimize impacts during construction. The fees are collected by the Implementing Entity (TBD) (often a Joint Powers Authority composed of representatives of local agencies). The Implementation Entity then uses the fee money, as well as grants and any other funding sources established in the plan, to purchase habitat lands or easements from willing sellers. Collected funds are also used for monitoring and any habitat enhancement or management actions.

The HCP/NCCP will (we hope) also offer an alternative, parallel means for complying with wetlands regulations, including the Sections 404 and 401 of the federal Clean Water Act (wetlands fill and water quality certification) and Section 1601 of the California Fish and Game Code (Streambed Alteration). The approach to complying with wetlands regulations will be similar to the approach used for endangered species compliance: coordination of off-site mitigation through the plan when impacts cannot be avoided.

### **Key Unresolved Issue: Will the Plan Be Able to Provide Wetland Permits?**

There are a number of reasons why it is desirable for the plan to fulfill the requirements of the Federal Clean Water Act and provide permits for wetlands impacts, including better delivery of a "one-stop-shop" for natural resource permits and assurances that wetlands and species conservation objectives are achieved in a complementary fashion. Unfortunately, there is no precedent for including wetlands permits in a Regional HCP for urban development. However, the East Contra Costa HCP effort is cooperating with three similar efforts in Northern California to explore with the Army Corps of Engineers and the U.S. EPA opportunities for securing Regional General Permits for the activities covered in the HCP.

A comprehensive, landscape-level analysis of the biological resources of East County forms the basis for the permits issued and conservation actions taken under the plan. By examining conservation priorities at a regional scale, the plan is better suited for implementing key conservation biology principles than more focused work with perhaps greater detail. The biological work in this plan cannot replace the site-specific biological work that will still be required under the California Environmental Quality Act for specific projects, but it can provide a broader scientific context, assist with evaluating cumulative impacts, and should facilitate both the preparation and review of future site-specific studies.

## **Expected Benefits of the HCP/NCCP:**

The HCP/NCCP is intended to benefit developers by improving regulatory certainty, by reducing the need for surveys and mitigation negotiations, and by providing a coordinated, more cost effective system for acquiring mitigation. HCP/NCCP's are also intended to benefit species by replacing the current project-by-project mitigation with a coordinated system more suitable for protecting connected blocks of habitat in a biologically sound manner. Larger and connected blocks of conserved lands will increase the potential to benefit and preserve multiple species. Because conservation objectives will be achieved with purchase of land or easements from willing sellers rather than through new regulations, the HCP/NCCP may viewed more favorably by landowners.

**IV Key Permit Terms and Conditions**

Summarized below are key aspects of the permits to be requested through the HCP/NCCP.

- Term of permit:** 30 years
- Permit holders:** TBD (Could be the implementing entity or each individual jurisdiction (i.e., County, cities, any covered special districts, and the organization responsible for managing the Preserves)
- Permit issuers:** U.S. Fish and Wildlife Service  
California Department of Fish and Game  
Wetlands agencies like USACE and SWRCB and EPA (we hope)

**Desired permits:**

- a) Section 10 of FESA (Incidental Take Permit under Section 10 of the Federal Endangered Species Act) and assurances regarding future Section 7 permits<sup>2</sup>
- b) Section 2835 of CESA (Incidental Take Permit under the California Endangered Species Act through provisions of the California Natural Community Conservation Planning Act)
- b) Section 1600 (Master streambed alteration agreement under the California Fish and Game Code)
- d) Section 404 of CWA (Regional General Permit under Section 404 of the Federal Clean Water Act)
- e) Section 401 of CWA (Programmatic Water Quality Certification from the State Water Resources Control Board)

(note: no-take requirements will be in place for half a dozen species that are either fully protected under the California Fish and Game Code (e.g. Peregrine Falcon), or are so rare that it would not be possible for the agencies to issue take permits (e.g. Mount Diablo Buckwheat, which is presumed extinct))

**28 Species To Be Covered by the Permit:**  
 Townsend’s Western Big-eared Bat  
 San Joaquin Kit Fox  
 Tricolored Blackbird  
 Golden Eagle  
 Western Burrowing Owl  
 Swainson’s Hawk  
 Silvery Legless Lizard  
 Alameda Whipsnake  
 Giant Garter Snake  
 Western Pond Turtle  
 California Tiger Salamander  
 California Red-legged Frog  
 Foothill Yellow-legged Frog  
 Longhorn Fairy Shrimp  
 Vernal Pool Fairy Shrimp  
 Midvalley Fairy Shrimp  
 Vernal Pool Tadpole Shrimp  
 Mount Diablo Manzanita  
 Brittscale  
 San Joaquin Spearscale  
 Big Tarplant  
 Mount Diablo Fairy Lantern  
 Recurred Larkspur  
 Diablo Helianthella  
 Brewer’s Dwarf Flax  
 Showy Madia  
 Adobe Navarretia  
 Round leaf filaree

Listed and non-listed species are covered to provide additional regulatory assurance and to help

<sup>2</sup> Projects performed by federal agencies or that receive federal funds or permits (including permits to fill wetlands) are regulated under Section 7 of FESA. An HCP can only provide a permit under Section 10 of FESA, but the HCPA will be seeking assurances that the HCP will be used by USFWS to guide requirements for Section 7 permits as well.

**Permit area:** The permit area for urban development under the HCP/NCCP shall be adjusted by the implementing entity as follows, subject to the conditions imposed by the Implementation Agreement for the HCP/NCCP:

a) The permit area authorized by the implementing entity shall be the area within the HCP inventory area and within either the Urban Limit Line (ULL) or the city limits of participating cities, whichever is larger.

b) Should the ULL or city limits expand or contract during the term of the plan, the implementing entity would expand or contract the permit area accordingly.

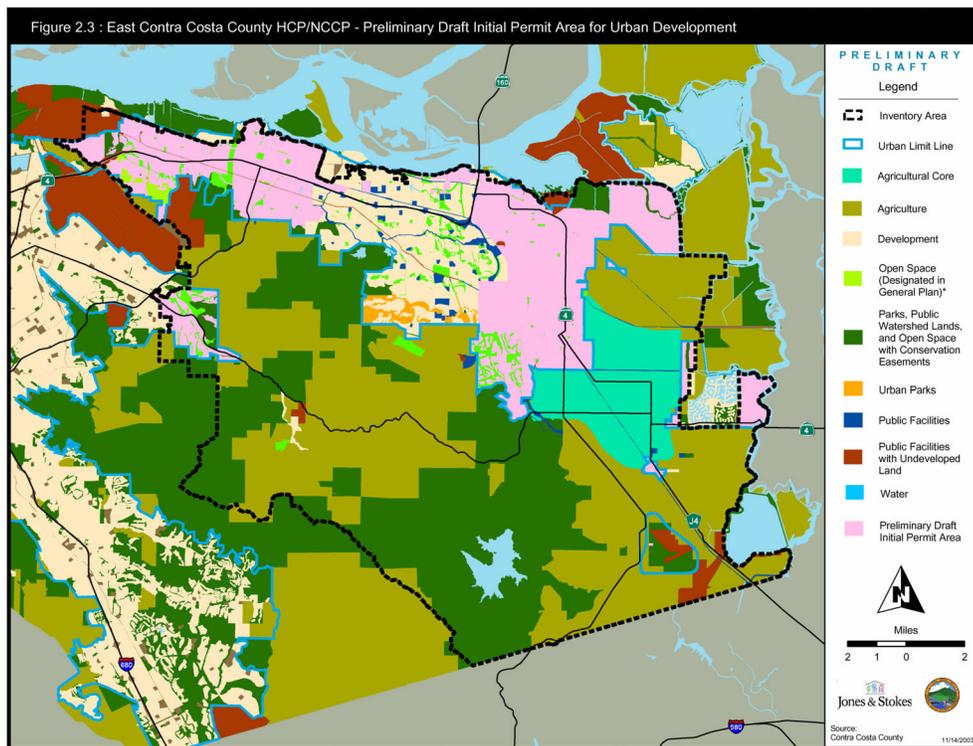
c) The HCP/NCCP shall define an area that will not be covered by the permit area for urban development, now or in the future, regardless of the location of the ULL or city limits. The area excluded from future permit coverage under the HCP/NCCP shall reflect the high and medium acquisition priorities of the Conservation Strategy for the HCP/NCCP. There shall also be an acreage limit on the amount of land that can be added to the permit area

The permit areas for preserve management, for rural infrastructure projects, and for rural residential (if covered) shall be defined separately.

**Key Issue: Defining the Permit Area for Urban Development**

The Working Draft NCCP/HCP incorporates a more flexibly-defined permit area for urban development. This preliminary approach was chosen because there is uncertainty in East Contra Costa County over where growth should or will occur over the next 30 years. This issue will be resolved over time and in different forums that consider not only habitat needs, but also transportation, jobs, economic growth, housing, and quality of life.

**Figure 2.3: Initial Permit Area for Urban Development**



**Covered activities:**

Working Draft Covered Activities List

1. Residential, commercial, and industrial development (and other development activities, such as described in items 2 thru 4, inside the Urban Limit Line)
2. Road and highway construction and maintenance outside the ULL
3. Water infrastructure construction and maintenance outside the ULL
4. Flood control project construction and maintenance outside the ULL
5. Sanitary system infrastructure construction and maintenance
6. Rural recreational facility construction, maintenance, and operation (unlikely to be covered)
7. Recreational use of rural parks and preserves
8. Mining facility construction, operation, and maintenance (if requested by mining companies)
9. Miscellaneous development outside the ULL (see page 6)
10. Population surveys, species relocation, habitat restoration, management, and scientific research on preserve lands or potential preserve lands

**Preliminary List of Rural Infrastructure Projects Proposed for Permit Coverage** (see Chapter 2 for more details; many items are listed as placeholders pending further discussion)

Armstrong Road Extension/ Byron Highway-Vasco Connector  
Buchanan Bypass  
Byron Airport Commercial Services (105 acres)  
Byron Highway Northern Extension and Widening  
Byron Highway South Improvements / Re-designation as State Route 237 (info pending)  
Byron Sewer Line (info pending)  
EBART  
Flood Control Facilities Construction and O&M  
Highway 4 Widening (Brentwood to Discovery Bay)  
Kirker Pass Road Widening (truck climbing lane)  
Marsh Creek Road Realignment at Selected Curves  
Vasco Road Widening and Safety Improvements (info pending)

**Key Issues Regarding Covered Activities:**

- Agricultural operations have not been recommended for permit coverage by the Coordination Group because no request was received for coverage from the agricultural community and the Coordination Group saw little need for covering an activity that traditionally has not received ESA permits.
- Wind turbine construction and re-powering has not been covered because these activities have a very different suite of impacts that are outside the scope and budget of this planning effort. Purchase of conservation easements in existing wind turbine areas and consistent with continued wind turbine operations is contemplated.
- Rural residential permit coverage is an unresolved issue. Staff have recommended not covering such activities under the HCP/NCCP.

## V Biological Commitments

### Qualitative Conservation Requirements:

The conservation strategy will be designed to meet the biological goals and objectives of the plan. The strategy will be based on four fundamental regulatory goals: mitigate the impacts to the covered species to the maximum extent practicable, contribute to the recovery of the covered species, maintain ecosystem processes, and conserve biological diversity.

### Preserve Design Principles\*

Maximum Size  
 Minimize the Number of Preserve Units \*\*  
 Link Preserves  
 Include Urban Buffer  
 Minimize Edge  
 Maximize Environmental Gradients  
 Consider Watersheds  
 Consider Full Ecological Range of  
 Communities

\*See Chapter 5 for a description of each of these principles

\*\* JH may suggest alternative language

- Conservation dollars must be spent efficiently and effectively. Conservation easements may be an effective tool in this regard, though the funding strategy for the plan should not assume that such transactions will be as common as they might be in an ideal situation. Conservation easements have not been common in this area in the past and factors that have limited their use may continue to be limiting in the future.
- Habitat restoration should be included in the conservation strategy for habitats that have historically been lost or degraded such as riparian woodland, seasonal wetlands, and native grasslands.
- Habitat restoration should only occur within HCP/NCCP Preserves except in cases where there are no restoration opportunities within the new preserves. If restoration must occur outside preserves, it will occur only on public lands adjacent to or near HCP/NCCP preserves and in direct support of these preserves (e.g., along the same stream).
- The plan will include “stay ahead” provisions to ensure that land acquisition and restoration occurs ahead of development. The plan will also include a “jump start” provision to ensure that the implementing entity acquires and begins to restore some land before any impacts occur.
- Agriculture can be compatible with conservation. Many agricultural activities, such as grazing, will be critical for maintaining and restoring habitat values in some areas.
- The impacts of development close to the proposed HCP/NCCP Preserves will be minimized through the use of planning surveys (as described in the conservation strategy), creation of buffer zones, and more intensive management along the urban-wildland interface. The plan assumes that minimization measures will not be required for most species in isolated areas such as urban infill.
- Development will not take “no take” species (see Key Permit Terms and Conditions)
- HCP/NCCP Preserves will conserve biological resources at all scales including small-scale features such as rock outcrops, native grassland vegetation associations, seeps, springs, and other features determined to be important to native biological diversity.
- The plan will contribute substantially to the recovery of the Alameda whipsnake despite relatively low impacts to this species because the inventory area includes such a large proportion of this species’ entire range (approximately 20%).

- The implementing entity will acquire and manage land in key areas to maintain connectivity between Contra Costa County and neighboring counties to support landscape-level ecological functions such as the long-term survival of the San Joaquin kit fox in Contra Costa County.
- Recreational use of HCP/NCCP Preserves will be limited to areas and types of uses that have negligible impacts on covered species and habitats.
- All relevant elements of this plan will be monitored in the field to ensure that the biological goals and objectives will be achieved and to inform the on-going adaptive management process.

**Partially-Scaling Conservation to Keep Pace with Development:**

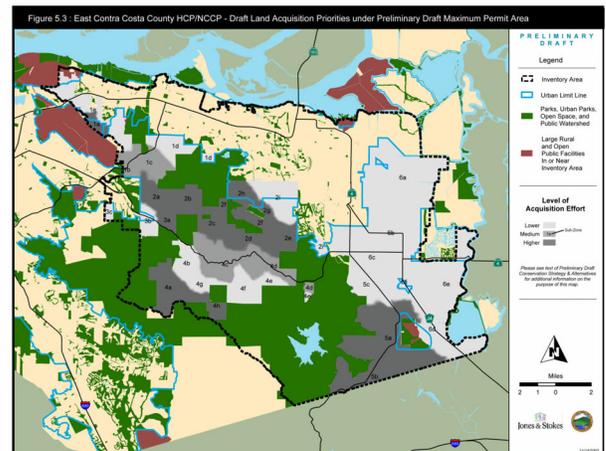
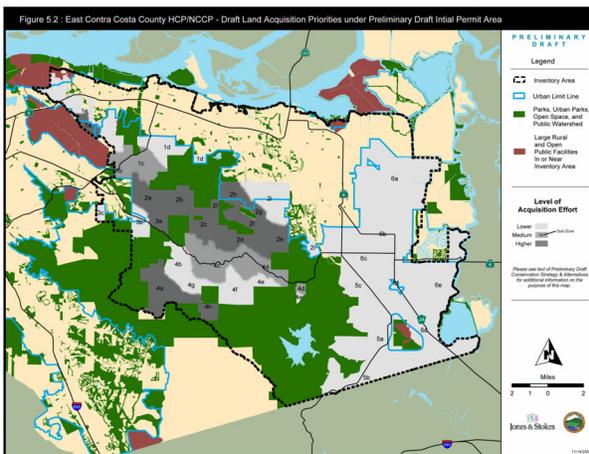
To reflect the phased approach to the permit area for urban development and the uncertainty over how much development and how much habitat impact will occur over the life of the plan--and therefore how much money will be raised from development fees—staff propose introducing an element of scalability to the Conservation Strategy. For example, the Conservation Strategy would include a baseline of required conservation actions, including acreage requirements for habitat protection, but some of the conservation requirements could increase as the level of impact increases. Such scaling would need to have a strong geographic component so conservation actions establish a base of preserves and build on these over time.

**Advantages and Challenges of Scaled Conservation Requirements**

**Advantages:** 1) more assurance that funding levels will match conservation requirements; and 2) more assurance that if growth stops unexpectedly, the preserve system will have integrity.

**Challenges:** Distinctive requirements of the state and federal laws with which the HCP/NCCP must comply and the associated tension between mitigation-based requirements and requirements for general conservation of species and ecological processes.

Figures 5.2 and 5.3: Preliminary Acquisition Priorities for the Initial Permit Area (left) and Max Permit Area (right)



## Quantitative Conservation Requirements:

**Table 5-10.** Estimated Minimum and Maximum Size of Preserve System under each Permit Area (acres)

Zone	Preliminary Draft Initial Permit Area		Preliminary Draft Maximum Permit Area	
	Est. Minimum <sup>1</sup>	Est. Maximum <sup>1</sup>	Est. Minimum <sup>1</sup>	Est. Maximum <sup>1</sup>
1	2,050	2,700	2,050	2,700
2	8,250	10,350	8,250	10,350
3	400	750	400	750
4	6,500	8,150	6,500	8,150
5	2,150	2,700	8,000	10,350
6	1,300	1,750	1,900	2,500
<b>Total</b>	<b>20,650</b>	<b>26,400</b>	<b>27,100</b>	<b>34,800</b>

Notes:

<sup>1</sup> Numbers rounded to the nearest 50 acres.

## VI Landowner Commitments

*This section still needs more work, though several comments were made on March 20 that seem appropriate for including here as we start to fill this section out. Likewise, the work of the Agricultural Subcommittee has generated material for this section and should continue to do so.*

### Fundamental assurances:

- The plan should respect and protect the rights of property owners.
- All land or easements purchased by the implementer of the plan must be from willing sellers. Eminent domain cannot be used.
- The plan should assume that agricultural lands not purchased for conservation will not necessarily continue to be operated and to function as they do now.

### Neighboring landowner assurances:

- The plan must consider the interests of property owners adjacent to HCP/NCCP Preserves. Such land owners should be offered assurances that any proliferation of endangered species on the Preserves will not hinder their existing operations (i.e., beyond conditions before the Preserves are established).
- Questions to be worked out: “opt-in” vs. “opt-out” (i.e., whether all neighboring lands are automatically covered and landowners can choose to opt out, or whether all neighboring lands must choose to receive protection) and how the pre-preserve baseline of endangered species is established

### Financial assurances:

- HCP/NCCP fees and other funding sources must fully fund the cost of land acquisition and maintenance, but must not be so high as to discourage development.
- The plan should provide the option of purchasing either conservation easements or fee title, but, given the limited use of easements in this area to date, the economic analysis should be fiscally conservative and assume that easement purchases will be rare.
- The plan will operate in and affect the local real estate market. This role must be undertaken sensitively to avoid significant disruptions of the private marketplace.

**Agricultural assurances:**

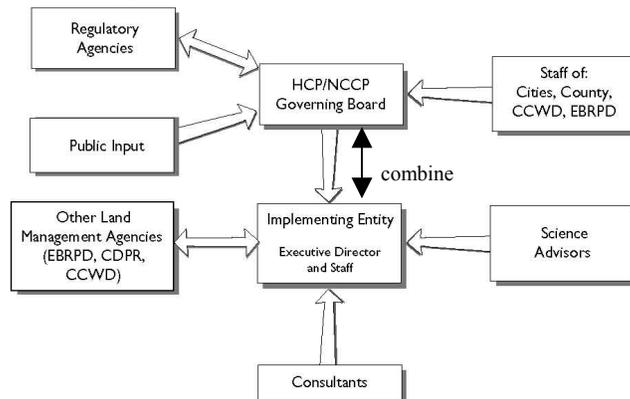
- The plan should contribute to keeping grazing viable, both as an economical agricultural activity and as a necessary habitat and species management tool.
- Lands conserved for habitat may constitute an increasingly significant portion of the agricultural resource in the area. Land management practices must maximize the compatibility of agriculture with conservation, avoid all unnecessary restrictions of agricultural operations, and generally support the viability of agriculture in East County.
- The plan will include a provision to allow for a transfer of agricultural conservation easements to lands with equal or greater biological value to allow for flexibility in future agricultural operations

**VII Implementing Entity**

**General Principles discussed (but not necessarily recommended) by Coordination Group:**

- The Working Draft Plan is quite flexible with respect to the structure of the Implementing Entity (IE). The IE is given the flexibility to evolve “organically” over time to develop structures and relationships necessary at different phases of the implementation process.
- The Implementing Entity is likely to act through partnerships and to rely on the experience and resources of existing institutions. For instance, it is foreseeable that the Implementing Entity may not actually own any of the lands purchased according to the requirements of the plan, relying instead on partnerships with existing institutions.
- Flexibility in the structure of the IE must not compromise its ability to meet its requirements under the plan. If responsibilities are passed on to other organizations (e.g., for land management), this must be done in a binding and effective manner.

Figure 7.1: Working Draft Organizational Structure for Implementation



**Advisory Committee to Assist Implementation:** Members will be appointed to represent a broad array of interests and organizations. Opportunities for participation by non-members will be provided.

**VIII Funding to Implement HCP/NCCP**

**Costs:**

The preliminary cost estimates for implementing the HCP/NCCP have been estimated both for the Preliminary Draft Initial Permit Area and for the Preliminary Draft Maximum Permit Area. Cost estimates include the costs of land acquisition, land management, restoration, monitoring, administration and other actions required by the Implementing Entity over the 30 year life of the Plan. Detailed information on these estimates is provided in Chapter 8 and in Appendix g. The preliminary grand total estimates are:

<u>Preliminary Draft Initial Permit Area</u>	<u>Preliminary Draft Maximum Permit Area</u>
\$233 million	\$287 million

**Funding:**

A draft funding proposal has been developed in parallel with the cost estimation process assuming an overall implementation cost of \$300 million. Several approaches to allocating costs were considered including: a) allocating costs on the basis of a biological determination of which conservation actions were attributable to mitigation and which were attributable to funding sources appropriate for species recovery actions; b) allocating costs on the basis of a conservative estimate of existing, readily available public funding sources and requiring impact fees to cover the remainder; and c) allocating costs between new development and the public based on analysis of impact and conservation acres before and during implementation of the HCP and assigning new development a share of costs that is proportional to new development’s share of impacts. Option c has been tentatively selected, is being reviewed with wildlife agencies, and is reflected in the draft proposal described below.

**Draft Funding Proposal**

<b>Costs/Funding Sources</b>	<b>Amount</b>
Estimated Total Plan Costs	\$300m
Estimated Non-Fee Funding	
Maintenance of existing Local Conservation Effort*	\$42m
Maintenance of existing State/Federal Conservation Effort**	\$23m
New State and Federal Contribution	\$55m
FAA Byron Airport Airport Clear Zone Match	<u>\$6.5m</u>
Total Non-Fee Funding	\$126.5m
Estimated Fee Funding	
Habitat/Open Space Fee on New Development ***	\$150m
Wetlands Impact Fee	\$11.5m
Fees on rural infrastructure projects	<u>\$5.5m</u>
Total Non-Fee Funding	\$167m
Total Estimated Funding From All Sources	\$293.5m
<b>Funding Gap</b>	<b>\$6.5</b>

\* Estimated by assuming continued acquisitions by EBRPD, land trusts, and other local entities at approximately 75% of EBRPD’s acquisition rate over the past 30 years.

\*\* Estimated by measuring average state/federal cost share in EBRPD acquisitions.

\*\*\* Fee would be about \$11,500 per acre on average. Fee for impacts in natural lands zone would be about \$18,000 per acre, half that amount in cultivated agriculture zone, and one fourth that amount in infill zones.

## IX Regulatory Assurances

*This section will summarize & expand on key assurances such as described in principles 6 and 7.*

### **No Surprises Assurances:**

- The permittees will obtain “No Surprises” assurances so that the implementing entity will not be responsible for additional land, water, money, or other restrictions beyond that provided in the plan for any unforeseen circumstances or changed circumstances not provided for in the plan.
- The unlisted covered species are addressed in the plan as if they were listed, so if the unlisted covered species are listed in the future, the permit will be amended to include these species with no additional mitigation requirements.
- The plan should not impose costs of any contingent mitigation on private property owners. However, the plan may include inflation corrections in the mitigation fee, different fees for different types of impacts, and assurances that funding keeps pace with habitat protection benchmarks established in the plan.

## IX Amendment

*Consideration of the amendment process may help us balance the desire to resolve all issues in the plan with the need to maintain some flexibility over the long term.*

## X Next Steps and Schedule

January 31, 2004	Comments requested from Stakeholders on Preliminary Working Draft HCP/NCCP
Winter 2004-05	Draft HCP/NCCP, EIR/EIS, and Implementation Agreement
Spring/Summer 2005	Final Draft HCP/NCCP, EIR/EIS, and Implementation Agreement and local agency decisions on approving the Plan
Fall 2005	Expected Completion of Wildlife Agency Review and Permit Issuance
Fall 2005	Local agency’s form an Implementing Entity (likely a JPA of permit holders) and likely adopt Implementing Ordinance

**PRINCIPLES OF PARTICIPATION:  
EAST CONTRA COSTA COUNTY REGIONAL HABITAT  
CONSERVATION PLAN REFERENCED TO THE HCPA FRAMEWORK  
DOCUMENT**

*Compiled for the June 6, 2000 meeting of the Contra Costa County Board of Supervisors by Community Development Departments staff based on comments received from the Contra Costa Council, Save Mount Diablo/Greenbelt Alliance, and the CCC Citizens Land Alliance. Please see staff report for details.*

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1. The U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) should allow development consistent with local plans to proceed as before (in accordance with existing permitting requirements) until any HCP is implemented.
2. The plan must be based on respectable and credible biological information on the presence of endangered species and on sound scientific analyses, i.e. the need exists and the program will produce the intended result. A scientific advisory committee should be created and there should be independent peer review by scientists specializing in conservation biology.
3. USFWS and CDFG must agree in advance not to unreasonably withhold approval of the HCP nor insist on modification after all parties have agreed to the process and local agencies have approved the resultant HCP.
4. USFWS, CDFG and the plan sponsors should agree to hold periodic reviews during the development of the plan to avoid any major disagreements later.
5. The Incidental Take Permit must be totally consistent with the approved HCP.
6. Any HCP must have a “no surprises” clause consistent with the current federal policy. Should the no surprises clause be invalidated by court action, the HCP implementing agreement should be terminable by local agencies. **(Framework Part IX)**
7. Consistent with the "no surprises" policy which precludes changes to the terms of permits based on future biological conditions, the plan should not impose costs of any contingent mitigation on private property owners. However, the plan may include inflation corrections in the mitigation fee, different fees for different specific impacts, and assurances that funding keeps pace with habitat protection benchmarks established in the HCP conservation strategy. **(Framework Part VIII—more detail needs to be added)**
8. The plan should not include any provision for the use of eminent domain. **(Framework Part VI)**
9. Habitat areas acquired through the plan must be within Contra Costa County. Expenditure of funds collected to protect habitat should be guided primarily by biological considerations. Economic development opportunities and public open space value should be secondary considerations in spending habitat protection funds. **(Framework Part V)**
10. Properties bordering lands to be used as mitigation must be protected from any impacts caused by the mitigation program. **(Framework Part VI)**
11. Participation in the planning process by any property owner does not constitute agreement that use of the property produces any impact on endangered species. **(Framework Part VI—more work needed)**
12. Opportunities for site-by-site planning and permitting by individual property owners should be continued. **(Framework Part IV)**
13. The plan must be economically feasible to implement and the total cost of

- implementation of the plan, including soft costs, land acquisition, maintenance and monitoring must be known prior to adoption. **(Framework Part VIII)**
14. The plan should provide for the issuance of a programmatic 404 permit and identify any required wetlands mitigation. Alternatively, the HCP must be accepted as tacit approval by USFWS of any 404 permit application to the U.S. Army Corps of Engineers within the affected area and consistent with the HCP. **(Framework Part III & IV)**
  15. There must be a committee of stakeholders established in advance of the planning process which includes landowner representatives, environmental organizations, and other interested parties. A similar committee should be established for implementation of any approved HCP. **(Framework Part VIII)**
  16. Funding of the HCP proposed for East Contra Costa County should be as broadly based as is justified by the purpose and content of the plan when written. Cost allocations should be guided by regulatory obligations, cumulative responsibility for impact, and by who benefits from non-regulatory components of the plan. Developer fees for permits and public funds, possibly including water rates and/or bond funds, should be included. **(Framework Part VIII)**
  17. The HCP's conservation strategy should provide full recognition of past and future public and private habitat and open space acquisition and other mitigation efforts. Existing public lands should not be considered for future species mitigation, since many of these areas were acquired for other purposes. Certainly such areas can be considered for limited species enhancement projects, but the focus should be on preservation of habitat not already protected or publicly managed. Mitigation should result in expansions and enhancements of preserved habitat rather than restrictions on use of existing public lands. **(Framework Part V and VIII)**
  18. There should be federal participation in HCP funding since this effort is a pass-through of obligations imposed by USFWS on other federal agencies under Section 7 of the Endangered Species Act. **(Framework Part VIII)**
  19. The plan should rely on avoidance as the primary means for addressing irreplaceable resources such as creeks, wetlands, and endangered native plant communities. **(Framework Part V)**
  20. The HCP should not lock in permanent uses before conservation easements or fee title land interests are purchased. **(Framework Part VI)**
  21. USFWS and CDFG should allow public infrastructure projects, such as those for roads, highways, water delivery, sanitation, storm drainage, and flood control to proceed in accordance with existing permit requirements in an expeditious and timely manner before an HCP is implemented. **(Framework Part IV)**

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Key to how the above principles were compiled:

- 1) Based on CC Council #1
- 2) Combines CC Council #2, CC Council introductory sentence, and SMD/Greenbelt #2
- 3) Based on CC Council #3

- 4) *Based on CC Council #4*
- 5) *Based on CC Council #5*
- 6) *Based on CC Council #6*
- 7) *Combines CC Council #7 and SMD/Greenbelt #6*
- 8) *Based on CC Council #8*
- 9) *Combines CC Council #9 and SMD/Greenbelt #3*
- 10) *Based on CC Council #10, but also attempts to address specific comments of CLA*
- 11) *Based on CC Council #11*
- 12) *Based on CC Council #12, but language adopted from East County Task Force Report*
- 13) *Based on CC Council #13*
- 14) *Based on CC Council #14, but also attempts to address specific comments of CLA*
- 15) *Combines CC Council #15 and SMD/Greenbelt #8*
- 16) *Combines CC Council #16 and SMD/Greenbelt #5*
- 17) *Combines CC Council #17 and SMD/Greenbelt #4*
- 18) *Based on CC Council #18*
- 19) *Based on SMD/Greenbelt #1*
- 20) *Attempts to address specific comments of CLA*
- 21) *Developed by staff*