



EAST CONTRA  
COSTA COUNTY  
HABITAT  
CONSERVANCY

# Public Advisory Committee

Wednesday, November 10, 2010  
1:00 p.m. to 3:00 p.m.

City of Pittsburg, City Council Chambers  
(Ante Chamber Room)  
65 Civic Avenue  
Pittsburg, CA 94565

← Note Location!

## Agenda

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

- 1:00 **Introductions.** Please sign in.
- 1:05 **Public comment on items not on the agenda:** Public comment will also be accepted on each agenda item during discussion of that item.
- 1:10 **Approve the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Public Advisory Committee (“PAC”) Meeting on August 12, 2010.\***
- 1:15 **Annual review of PAC committee representation**
- 1:20 **General Update & Update on recent actions of the Governing Board:**
1. A journalist interested in producing a documentary related to the ECCC HCP/NCCP, may attend and film the 11/10/10 meeting.
  2. Acquisition Updates
  3. Restoration of vernal pool fairy shrimp habitat
  4. Update on coordinating implementation of the HCP/NCCP with wetlands regulations.
- 2:00 **Review of the following policy question referred to the PAC by the Governing Board:**  
Whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies in order to purchase mitigation credit from the Conservancy and use a portion of the Conservancy’s restoration project sites toward mitigation obligations.\* (A continuation of the 2/11/10 and 5/13/10 discussion)
- 2:30 **Ongoing review of key concepts in the HCP:**
- Stay Ahead Provision\*
  - Funding for Long Term Management\*

**2:55 Consider agenda items for future Public Advisory Committee meetings.**

**3:00 Adjourn (next regular meeting date on February 10, 2011)**

*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 Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 72 hours before the meeting.*

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\*Additional materials attached for these items.



EAST CONTRA  
COSTA COUNTY  
HABITAT  
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

## Public Advisory Committee **\*Draft Meeting Record\***

Thursday, August 12, 2010  
1:00 p.m. to 3:30 p.m.

City of Clayton, Clayton Library  
6125 Clayton Road  
Clayton, CA 94517

### 1. Introductions.

#### *Committee Attendees:*

Private Permit Seekers	Conservation Advocates	Landowners/Agriculturalists	Suburban/Rural Residents
Contra Costa Council: Absent	California Native Plant Society: Absent	Agricultural/Natural Resource Trust of Contra Costa County: Joe Ciolek	Dick Vrmeer: In attendance
Discovery Builders Inc.: Jim Coniglio	Friends of Marsh Creek: Brian Curran	Contra Costa County Citizens Land Alliance: Jim Gwerder	Sharon Osteen: In attendance
Home Builders Association of Northern California Absent	Save Mount Diablo: Seth Adams	Contra Costa County Farm Bureau: Mike Vukelich	Mary F. Dahlquist: Absent

#### *Other Public Attendees:*

Gail Mallimson

#### *Conservancy Staff members in attendance:*

John Kopchik                      Conservancy Staff  
Abby Fateman                      Conservancy Staff

2. **Public comment on items not on the agenda:** No public comments made.

3. **Approve the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Public Advisory Meeting on May 13, 2010\*:**  
Approved as recommended.

4. **General Update & Update on recent actions of the Governing Board:**

1. **Documentarian:** Interested in producing a documentary of the ECCC HCP/NCCP, may attend and film the 8/12/10 meeting.
2. **Acquisition Updates\***

Mr. Kopchik distributed an acquisition map which shows the EBRPD acquisitions completed and in progress under the HCP/NCCP. There was a brief discussion on land acquisitions.

5. **Consider agenda items for future Public Advisory Committee meetings:** No items mentioned.
6. **Drive to Ang and Irish Canyon Site/Tour Site.** Tour of the Ang and Irish Canyon Properties.
7. **Adjourn.**

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** November 10, 2010  
**TO:** Public Advisory Committee (PAC)  
**FROM:** Conservancy Staff  
**SUBJECT:** Use of Conservancy Restoration Sites for Mitigation of Non-Covered Projects

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**INTRODUCTION:**

This issue was referred to the Public Advisory Committee (PAC) by the Governing Board at its September 16, 2009 meeting. The Governing Board requested a review and recommendations on the question of whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies to purchase mitigation credit from the Conservancy, thereby using a portion of the Conservancy's restoration project sites toward their mitigation obligations. The PAC has considered the matter at several previous meetings and developed and discussed a "Draft List of Considerations" dated 2-11-10. Based on the 2-11-10 draft, subsequent PAC discussion on it and input received from the wildlife agencies, staff has formulated a draft recommendation on the matter. The recommendation was adapted from the 2-11-10 document and tracks changes to it. PAC review and feedback on the draft recommendation is requested at the November 10, 2010 meeting such that staff and PAC recommendations may be presented at the December 15 Governing Board meeting.

**Attachments:**

- Governing Board action on September 16, 2009 referring this matter to the PAC
- Draft Recommendation (tracking changes from 2-11-10 Draft List Of Considerations)

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** September 16, 2009  
**TO:** Governing Board  
**FROM:** Conservancy Staff  
**SUBJECT:** Use of Conservancy Restoration Sites for Mitigation of Non-Covered Projects

**RECOMMENDATION**

- 1) REFER to the Public Advisory Committee (PAC) for review and recommendation the question of whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies to purchase mitigation credit from the Conservancy, thereby using a portion of the Conservancy's restoration project sites toward their mitigation obligations.
- 2) DIRECT staff to also discuss this issue with agencies that are party to the HCP/NCCP Implementing Agreement.

**DISCUSSION**

Conservancy staff has been approached on several occasions by proponents of non-covered activities to utilize existing preserve system restoration sites for mitigation purposes. Interested parties include those within the inventory area with non-covered projects (e.g. projects in Antioch and projects that restored habitat in the past to mitigate for impacts but the restorations failed or were destroyed), as well as those outside of the inventory area seeking mitigation alternatives in order to meet obligations under a variety of state and federal regulations. None of the inquiries received thus far appears (continued on next page)

CONTINUED ON ATTACHMENT: <u>YES</u>	
ACTION OF BOARD ON: <u>September 16, 2009</u>	APPROVED AS RECOMMENDED: <u>Item (a) was approved as recommended. Item (b) is approved with conditions to include United States Army Core of Engineers (USACE) and the Regional Water Quality Control Boards as agency parties to this discussion.</u>
<b><u>VOTE OF BOARD MEMBERS</u></b>	
___ UNANIMOUS	
AYES: <u>Connelley, Casey, Stonebarger, Stratford</u>	
NOES: _____	
ABSENT: <u>Glover</u>	
ABSTAIN: _____	
<p>I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN</p> <p>ATTESTED: <u>CATHERINE RUTSVIRIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</u></p> <p>BY: <u></u>, DEPUTY</p>	

likely to be pursued further by the project proponent because of issues such as timing, habitat type and location. However, staff anticipates that the issue will continue to come up.

The HCP/NCCP specifically allows such an arrangement, noting potential advantages to resources, project proponents and the Conservancy of maximizing use of the HCP/NCCP Conservation Strategy. The sections that discuss this topic even provide guidelines on how such arrangements are to be pursued.

The issue staff recommends exploring further with the PAC and other HCP/NCCP partner agencies is not if the Conservancy *can* pursue restoration credit arrangements, but if it *should* and under what circumstances. The types of issues that need to be addressed are:

- How much if any of the valuable acreage the Conservancy and its partners have worked hard to restore should be available for use by non-covered activities? Acreage that is made available for non-covered projects cannot be used for covered projects.
- How should the Conservancy determine a fair price that compensates for the opportunity cost of allowing restored acreage to go to third parties while also reflecting policy goals memorialized in the HCP/NCCP regarding keeping mitigation local rather than driving it away?
- Will such arrangements help or hinder efforts to secure regional wetlands permits coordinated with the HCP/NCCP?
- How can tracking mechanisms be put in place to ensure that no double-dipping of restoration credit occurs?

The topic is complicated and staff is recommending undertaking a broad evaluation now before a specific case must be decided upon. Similar questions may arise in the case of land preservation arrangements, but staff suggests the primary focus be on restoration credit for the time-being because the issue is more complicated and timely.

**Provisions in the HCP/NCCP:** The HCP/NCCP contains two sets of provisions for dealing with mitigation for non-covered projects. One is the contribution of land and the other is contribution of funds. Neither mechanism offers the project proponent take coverage under the HCP/NCCP. Rather, each makes use of aspects of HCP/NCCP implementation as resources for mitigation in order to meet state and federal obligations. Excerpts from the relevant sections of the HCP/NCCP are provided below.

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**HCP/NCCP Chapter 8, Section 8.6.2**

**Mitigation for Activities Not Covered by the HCP/NCCP**

By creating a framework for habitat conservation, the HCP/NCCP could attract additional mitigation to the HCP/NCCP inventory area by projects located in or around the inventory area but not covered by the HCP/NCCP. Land acquired, preserved in perpetuity, and managed for natural resource purposes to mitigate for the impacts of activities not covered by the HCP/NCCP may complement and augment the conservation achieved by the HCP/NCCP if the location and

management of the land is consistent with the goals of the HCP/NCCP. For example, mitigation from non-covered activities may preserve areas that would not have been preserved under the HCP/NCCP. Alternatively, mitigation may accomplish conservation objectives of the HCP/NCCP, enabling conservation under the HCP/NCCP to be redirected to other areas or conservation purposes (as described in Chapter 5 Conservation Measure 1.1, in the section *Conservation in the Inventory Area beyond HCP/NCCP Requirements*).

Project proponents with projects in or near the inventory area that are not covered by the Plan but that affect covered species may be interested in using the HCP/NCCP as a vehicle to mitigate their projects. These projects may be required to conduct mitigation or conservation actions under a variety of state and federal regulations, including ESA, CESA, CWA, Porter-Cologne Water Quality Control Act, NEPA, or CEQA. If these actions are compatible with the HCP/NCCP, there are advantages to using the conservation strategy of the Plan East Contra Costa County Habitat Conservation Plan Association as a guide to mitigating non-covered projects because of lower costs and greater conservation benefits. Some non-covered project proponents may be interested in contributing land to the HCP/NCCP as their mitigation. See also *Mitigation Funding from Activities Not Covered by the Plan* in Chapter 9, section 9.3.2, regarding the contribution of mitigation funds to the HCP/NCCP.

If mitigation by non-covered projects occurs in areas that are a priority for conservation in the HCP/NCCP, the Implementing Entity, CDFG, and USFWS will confer and determine how to redirect HCP/NCCP resources to other objectives. In such circumstances, HCP/NCCP resources may be redirected toward other areas such as the following.

- Additional land acquisition that will be prioritized as described in Chapter 5 Conservation Measure 1.1, in the section *Conservation in the Inventory Area beyond HCP/NCCP Requirements* (note that such additional land acquisition may not match the size and extent of such non-Plan mitigation acre for acre due to differences in land cover types, conservation value, cost, and other factors).
- Other measures necessary to achieve the objectives of the Plan. Mitigation for covered species by non-covered projects cannot be counted towards either the mitigation requirements or the Stay-Ahead provision of the HCP/NCCP and must result in a redirection of HCP/NCCP resources toward other conservation purposes as described above.

CDFG and USFWS will, to the extent consistent with their responsibility to ensure effective mitigation proximate to the location of impact, promote mitigation in the HCP/NCCP inventory area by non-covered projects to complement and augment the conservation to be achieved by the HCP/NCCP.

### **HCP/NCCP Chapter 9, Section 9.3.2**

#### **Mitigation Funding from Activities Not Covered by the Plan**

There may be a number of benefits to addressing the mitigation needs of noncovered projects through the implementing structure of the HCP/NCCP. USFWS and CDFG may wish to use the conservation strategy and implementing structure of the Plan to maximize the conservation benefits to covered species and natural communities. Project proponents may wish to utilize the mitigation approach of the Plan to facilitate their mitigation obligations under a variety of state and federal regulations. The HCP/NCCP Implementing Entity may benefit from the additional flexibility to implement the Plan afforded by access to revenue early in the permit term. See also *Mitigation Acquisitions by Activities Not Covered by the HCP/NCCP* in Section 8.6.2, *Land Acquired by Other Organizations or through Partnerships*.

Mitigation funds collected from non-covered activities must augment the mitigation and conservation obligations of the Plan (i.e., they may not offset these requirements). To achieve this, the Implementing Entity, the project proponent, USFWS, and CDFG will meet to discuss a mutually acceptable mitigation funding arrangement. Such an arrangement will rest on a description of conservation actions (e.g., land acquisition, restoration) over and above those required by the HCP/NCCP that must be performed to mitigate the non-covered activity. The subsection of Conservation Measure 1.1 entitled *Conservation in the Inventory Area beyond HCP/NCCP Requirements* in Chapter 5 entitled will help guide the identification of the expanded conservation requirements. The expanded conservation requirements must be approved by CDFG and USFWS. The Implementing Entity must be willing to perform the additional conservation with the funds offered, and the funding arrangement must be acceptable to the project proponent. It is likely that an agreement involving all four parties will be necessary to implement such mitigation funding arrangements.

To facilitate successful implementation of the HCP/NCCP and to ensure that mitigation from non-covered activities is coordinated with the HCP/NCCP, mitigation funding arrangements will include the provisions described below.

- Flexibility to use the additional revenue to meet existing HCP/NCCP requirements and to use future HCP/NCCP revenue to meet the expanded conservation requirements of the non-covered activity. This will enable the Implementing Entity to use the additional funds in an opportunistic fashion and to meet urgent Plan requirements, such as habitat connectivity requirements in Acquisition Analysis Zone 2, faster than it could otherwise do.
  
- Flexibility in adapting the Stay-Ahead provision to the expanded conservation requirements. In measuring compliance with the Stay-Ahead provision in annual reports, the Implementing Entity will be able to choose either to (a) disregard the expanded the conservation requirements and the land purchased with additional revenue from the non-covered activities when measuring compliance, or (b) include both the expanded conservation requirements (i.e., the HCP/NCCP requirements plus the requirements of the non-covered activities and any continued land acquisition obligations) and the land purchased with additional revenue from non-covered activities when calculating compliance.

Mitigation funding arrangements will describe the specific application of these provisions in each instance. The additional revenue received from non-covered activities cannot be taken into account during the periodic audits used to recalibrate HCP/NCCP fees.

**Use of Conservancy Wetland Restoration Sites to Mitigate Non-Covered Activities:  
Draft List of Considerations Recommendations 112-101-10**

**Key Assumptions:**

- We are only considering whether and under what considerations the Conservancy should allow this. The regulatory agencies would also have to consider whether they want this to happen and that decision is theirs.
- If portions of Conservancy restoration sites are used to mitigate for non-covered activities, these portions cannot be used to meet the Conservancy recovery or mitigation requirements.
- Use of mitigation funds from non-covered activities to assist with buying land is a separate topic and is not part of the considerations below.

**Location of activity seeking mitigation:** The location of the activity seeking mitigation on Conservancy restoration sites will certainly matter to the regulatory agencies. It ~~perhaps~~ should also matter to the Conservancy. Foreseeable areas that might seek mitigation at Conservancy restoration sites include:

- Antioch
- Non-covered activities within the HCP inventory area (e.g., rural residential development, wind development, mining)
- Delta region of Contra Costa County outside of inventory area
- Concord hills
- Livermore/Pleasanton

Recommendation: When evaluating whether to allow a non-covered project to purchase restoration credit from the Conservancy, the Conservancy should look most favorably at projects within the inventory area followed by projects within the County and adjacent to the inventory area, followed by projects inside county but not adjacent to the inventory area. Projects from outside the County should only be considered if suitable mitigation opportunities are not available in the county where the project is located, there is no danger of interference with a mitigation coordination program in that county, and the Conservancy is being asked to assist by a resource agency.

**Type of activity seeking mitigation:** Whether the project is private or public or whether it will serve the citizens of east Contra Costa County may be factor for consideration.

Recommendation: The type of project need not be a major consideration.

**Type and amount of restoration credit sought:** the Conservancy may be in a better position to sell certain types of credit than others (e.g., the types it has the most of). Also, requests for smaller amounts of credit may be more attractive.

Recommendation: The Conservancy should only sell mitigation credit when it believes that it has accomplished enough restoration of the type requested that even if the request

is granted, that enough acres of that type of restoration will remain unused to satisfy the anticipated demand for that restoration by covered activities for three years.

**Stay Ahead Status:** If the Conservancy is not far ahead of its Stay Ahead requirements, it would be difficult to see why the Conservancy would want to sell restoration to others.

Recommendation: The Conservancy should only sell mitigation credit when it is far ahead of Stay Ahead requirements for the requested habitat type.

**Anticipated needs of future covered activities:** Knowledge of such needs could inform decisions. How much advance knowledge we have or could develop is an important question.

Recommendation: The Conservancy should estimate demand by examining projects in the pipeline, by extrapolating from HCP estimates and by examining demand in years passed. A conservative amalgamation of these approaches may be used.

**Cost recovery:** HCP fees were based on projected costs (they will be updated soon based on actual costs). Full cost recovery would be an important minimum objective. HCP development fees were calculated to pay for all costs during the 30-year permit term. If funds were accepted from non-covered activities, it would be prudent to recover estimated costs for managing the restoration in perpetuity. Determining these costs is a substantial task.

Recommendation: The Conservancy should only sell mitigation credit when its full costs will be recovered.

**Contribution to recovery:** As an NCCP, the Plan must go above and beyond mitigation and contribute to recovery of endangered species. The Conservancy may want to request that project proponents of non-covered activities make a contribution to recovery. These funds would be used to acquire, maintain, restore and enhance habitat above and beyond what is required in the HCP/NCCP for mitigation. The amount of such contribution may be an important factor.

Recommendation: The Conservancy should require a contribution to recovery and look more favorably at projects with a higher contribution to recovery..

**Good government considerations:** Local, state and federal agencies have invested considerable effort at largely public expense to set up the HCP and its associated system of converting funding into habitat. There may be some rationale for making as much public use out of this system as possible. The desire not to interfere with other mitigation is another consideration.

Recommendation: The Conservancy should consider the broader public benefits of offering its services (and any disadvantages) when asked to assist a non-covered activity.:

**EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**DATE:** November 12, 2009  
**TO:** Public Advisory Committee (PAC)  
**FROM:** Conservancy Staff  
**SUBJECT: Overview of the Stay Ahead Provision**

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**INTRODUCTION:**

At its August meeting, the PAC discussed potential topics for future meetings. One potential topic the group seemed interested in was to request that staff provide briefings on some of the more complicated aspects of the Plan. This was deemed helpful both to PAC members with a lot of history with the HCP/NCCP and those who are new to the process. Staff felt the Stay Ahead provisions was a good topic to start with.

The stay ahead provision in the HCP/NCCP refers to the timing and sequence of the preserve assembly relative to impacts from covered activities and is critical to the success of the HCP/NCCP. Progress towards assembling the Preserve System must stay ahead of progress towards total impacts allowed under the permit. This sequence ensures that preserve assembly is keeping pace with development and that the Implementing Entity is making steady progress towards the full Preserve System.

Such progress toward assembly of the Preserve System is a requirement under the Natural Community Conservation Planning Act (NCCPA). The NCCPA requires that implementation of mitigation and conservation measures be “roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan” (California Fish and Game Code Section 2820[b][9]). To meet the requirements of this section, CDFG requires that NCCPs make progress towards the final conservation goals (i.e., the ultimate size and configuration of the Preserve System) in proportion to the impacts of covered activities. The Stay-Ahead provision in this Plan addresses this requirement.

**OVERVIEW:**

The HCP/NCCP references how the stay ahead provision is to be implemented in Chapter 8, Section 8.6.1 of the document, as attached:

**8.6.1 Stay-Ahead Provision**

The Implementing Entity is required to ensure that progress towards assembling the Preserve System stays ahead of the total impacts allowed under the permit. To improve

the chances of meeting this requirement, the Implementing Entity is encouraged to acquire land before permits are issued according to a *Jump-Start* guideline.

**Jump-Start Guideline.** The Implementing Entity should acquire at least 500 acres of land before issuance of ESA and NCCPA permits according to the land cover and habitat requirements in Table 5-15. Jump-start guidelines recommend approximately 2% of the expected preservation requirement and represent an aggressive but realistic goal for land acquisition prior to permit issuance.

As documented in Table 5-21, 2,383 acres have been acquired or preserved during Plan development that will be counted toward the land acquisition requirements described in Chapter 5 once conditions described in Table 5-21 have been met. Additional acquisitions are also in process. Precise acreages of land cover types conserved during Plan development will be determined through site-specific resource inventories performed in accordance with the final HCP/NCCP.

**Stay-Ahead Provision.** During the first year after permit issuance, the Implementing Entity will be establishing its structure, collecting initial HCP/NCCP fees, and actively pursuing land acquisition deals with willing landowners. To allow time for these start-up tasks to occur, the Stay-Ahead provision will only apply after 1 year of Plan implementation.

After 1 year of implementation, the Implementing Entity must measure its compliance with the Stay-Ahead provision by one of the following two methods during the first 10 years of the permit term (i.e., from the beginning of Year 2 to the end of Year 10). Two methods are provided to give the Implementing Entity more flexibility and to provide an incentive for land acquisition in key areas of the inventory area.

The Implementing Entity will strive to achieve the Stay-Ahead provision using both methods, but must comply with at least one of the two methods for the first 10 years. After Year 10, the Implementing Entity must use only the Measurement Method #1 to measure compliance with the Stay-Ahead provision.

**Stay-Ahead Measurement Method #1.** The amount of each land cover type conserved by the Implementing Entity as a proportion of the total requirement for each land cover type (Table 5-8) must be equal to or greater than the impact on that land cover type as a proportion of the total impact expected under the maximum urban development area by all covered activities (Table 5-8). For example, if 25% of the expected impacts on oak woodland have occurred, then at least 25% of the required land acquisition for oak woodland must also have occurred. The exceptions to this rule are annual grassland, alkali grassland, ruderal land cover, and all cultivated agriculture land cover types (cropland, irrigated pasture, vineyard, orchard), which will be aggregated for the purposes of measuring compliance with the Stay-Ahead provision. That is, the sum of the current and expected impacts on these land cover types will be measured for Stay-Ahead purposes against the sum of the acquisitions and acquisition requirements for these land cover types.

OR

**Stay-Ahead Measurement Method #2.** The amount of annual grassland conserved by the Implementing Entity in Zone 2 as a proportion of the total requirement for annual

grassland acquisition in Zone 2 (see Table 5-14) must be equal to or greater than the impact on annual grassland and all cultivated agriculture land cover types (cropland, irrigated pasture, vineyard, orchard) as a proportion of the total impact expected under the maximum urban development area scenario on these land cover types by all covered activities. For example, if 40% of the expected impacts on annual grassland and cultivated agriculture land cover types have occurred, then at least 40% of the required acquisitions of annual grassland in Zone 2 must also have occurred. This option provides an incentive for the Implementing Entity to acquire land in Zone 2 early in Plan implementation because land in this zone is likely to be more expensive and at higher risk than land in other zones.

Under either measurement method, land may be counted toward the Stay-Ahead provision once it is incorporated into the Preserve System. The criteria for incorporating land into the Preserve System are described in Section 8.6, *Land Acquisition*.

The Plan allows a 5% deviation from the strict requirements above without penalty to account for the likely pattern of infrequent land acquisition of large parcels. This allowable deviation will apply to either method employed by the Implementing Entity to calculate compliance with the Stay-Ahead provision.

The Implementing Entity will monitor the status of the Stay-Ahead provision throughout Plan implementation. The Stay-Ahead provision will also be evaluated on an annual basis by USFWS and CDFG. Beginning with the Year 2 annual report, the Implementing Entity will report on the status of the Stay-Ahead provision. As long as the ratio between impacts as a percentage of estimated impacts and acquisition as a percentage of required acquisitions remains within a 5% deviation (under either measurement method for the first ten years) then the Stay-Ahead provision will have been satisfied. If the annual evaluation shows that the Stay-Ahead provision is not satisfied, then the Implementing Entity and USFWS and CDFG will meet and confer to mutually develop a plan to achieve the Stay-Ahead provision, as further described below.

Land acquired in full or in part by state or federal agencies to contribute to species recovery under this Plan will also contribute to compliance with the Stay-Ahead provision. Because a portion of the Plan's conservation actions depend on commitments by the state and federal governments, the Implementing Entity's compliance with the Stay-Ahead provision will depend in part on the fulfillment of these commitments. The Implementing Entity must recognize, however, that funds from public agencies will be available on budget cycles that may or may not correspond to the timing of covered activities in the permit area. Therefore, the Implementing Entity must acquire land on its own and cannot rely solely on the timely availability of state or federal funds to acquire land.

### **Rough Proportionality**

The Stay-Ahead provision will also be evaluated on an annual basis (beginning at the end of Year 2) by CDFG based on analysis provided by the Implementing Entity to determine if the "rough proportionality" standard of NCCPA is being met. If the Plan is found to be out of compliance with the Stay-Ahead provision by more than a 10% deviation (i.e., 5% over the allowable deviation of 5% for Stay Ahead), then CDFG will determine whether the Plan has maintained rough proportionality. If CDFG issues a notification to the Implementing Entity that rough proportionality has not been met, then CDFG and USFWS and the Implementing Entity will meet to develop a plan to remedy the situation.

If the federal and state commitment to the Plan cannot be provided in order to meet the rough proportionality requirement, the Plan will be reevaluated in light of these limitations, with possible adjustments made to the permit coverage and assurances or adjustments to the conservation obligations.

This chapter provides planning-level estimates of the costs to implement the ECCC HCP/NCCP and identifies all necessary funds to pay for implementation.

## 9.1 Cost to Implement the HCP/NCCP

The cost analysis was based on a number of assumptions regarding the eventual development of the HCP/NCCP and the unit cost of many items. Unit cost estimates were based on the best available information and represent average unit costs. The costs of individual items will fluctuate above and below these averages. The total cost presented herein should therefore be regarded as a planning-level estimate to aid in the determination of the eventual amount of funding likely to be necessary to implement the Plan.

Tables 9-1 and 9-2 summarize the costs likely to be necessary to implement the HCP/NCCP. Cost categories are listed below.

- Program administration.
- Land acquisition.
- Planning and design of management, restoration, and recreational facilities.
- Habitat restoration/creation.
- Environmental compliance.
- HCP/NCCP preserve management and maintenance.
- Monitoring, research, and adaptive management.
- Remedial measures.

Some cost elements are split between categories or assigned a single category for simplicity; for example, Implementing Entity staff salaries appear in several categories because staff will perform a variety of functions. All cost categories, however, are mutually exclusive. Each cost category is divided into capital and operational costs. Capital costs are typically one-time costs for land, equipment, or structures. Operational costs are ongoing costs such as staff salaries and contractor fees. Table 9-1 summarizes total costs, capital costs, and operational costs under the initial urban development area. Table 9-2 summarizes total costs,

capital costs, and operational costs under the maximum urban development area. Costs are summarized by 5-year periods except for year 0, which contains initial start-up expenses. All costs are in 2006 dollars. Costs estimates are for the 30-year permit term of the HCP/NCCP. See Section 9.3.4, *Funding Adequacy*, for a discussion of post-permit term funding.

## 9.2 Cost Estimate Methodology

This section provides an explanation of each cost category and the methods that were used to develop the HCP/NCCP cost estimate.

The spreadsheets used to develop the HCP/NCCP cost estimate are provided in Appendix G, *HCP/NCCP Cost Data*. The cost estimates for operations, maintenance, and administration were developed in coordination with land management agencies in the inventory area—specifically, EBRPD and CCWD. These agencies helped to determine the specific elements in each broad cost category and the unit cost assumptions. The land valuation analysis used to develop the HCP/NCCP land acquisition cost estimates (Appendix G) was based on land and real estate data from appraisers, brokers, land management agencies, and land trusts.

### 9.2.1 Program Administration

Program administration costs involve the support of employees, facilities, equipment, and vehicles to operate the office of the Implementing Entity. Program administration costs also include associated costs such as travel, insurance, legal and financial assistance, meeting stipends, contingency budgets, and in-lieu payments for law enforcement and firefighting paid to the County and other land management agencies. Program administration costs are estimated to be, on average, \$605,000 or \$608,000 annually during the permit term under the initial urban development area and maximum urban development area scenarios, respectively (Tables 9-1 and 9-2). Some program administration costs will be necessary beyond the permit term.

Costs incurred by Permittees other than the Implementing Entity to implement the Plan are not included in the cost estimates. For example, the participating cities and the County will incur costs when reviewing applications for take authorization from various project proponents (see Chapter 6, Section 6.2). The participating cities and the County will recover these costs from applicants according to the policies in place at each local jurisdiction. The fee amounts specified in the Plan do not reflect the costs of application review by the cities and the County, and revenues from the HCP/NCCP fees will not be used to cover these costs.

Cost savings in program administration can be realized by partnering with existing land management agencies that already have staff with the required qualifications and have the infrastructure to hire and manage such staff.

large (640 acres or more) land acquisitions will comprise the bulk of the total acreage of the Preserve System. Acquisition of large parcels (or combinations of parcels) is typically more complex and may take longer to realize than acquisition of small parcels. Over the long term, larger land acquisitions will save money because of their typically lower price per acre and lower land expense costs per acre (e.g., due diligence, legal fees).

The Implementing Entity will be responsible for performing the conservation measures necessary to comply with the Stay-Ahead provision, as described in Chapter 8. If the Implementing Entity determines it is at risk of non-compliance with the Stay-Ahead provision, the Implementing Entity may notify the other Permittees that it is necessary to temporarily require project proponents to provide land instead of paying a fee. If the Stay Ahead provision is not satisfied for any land cover type based on the criteria in Section 8.6.1 of Chapter 8, the Implementing Entity will notify the other Permittees that it is necessary to temporarily require project proponents to provide land instead of paying a fee unless CDFG and USFWS agree, after conferring with the Implementing Entity, that a different plan of action devised with the Implementing Entity will remedy the situation and it is not necessary to require project proponents to provide land instead of paying a fee.

If the Implementing Entity initiated the requirement due its own determination that the Plan was at risk of non-compliance, the requirement to provide land instead of a fee will be lifted (i.e., it will revert back to an option) as soon as the Implementing Entity determines that it is no longer at risk of non-compliance with the Stay-Ahead provision. If the Implementing Entity initiated the requirement following non-compliance with the Stay-Ahead provision, the requirement will be lifted as soon as the Implementing Entity demonstrates in writing to the satisfaction of CDFG and USFWS that the Plan is in compliance with the Stay-Ahead provision.

## **Funding for Post-Permit Management and Monitoring**

Annual costs to operate and maintain the Preserve System in perpetuity are estimated to be slightly less than the annual cost for program administration, preserve management, and monitoring estimated during years 26–30 funding period, or approximately \$3.0 million or \$3.3 million<sup>14</sup> annually under the initial or maximum urban development area, respectively. Actual long-term costs may be lower if the Implementing Entity can develop streamlined procedures for management and monitoring during the permit term or reduce administrative costs. Responsibility for funding long-term management and monitoring rests solely with the Permittees.

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<sup>14</sup> This is equivalent to approximately \$125 per acre per year or \$110 per acre per year in operational and capital costs for Preserve System operation under the initial or maximum urban development areas, respectively.

The Implementing Entity will develop a detailed plan for long-term funding of operation and maintenance and will have secured all necessary commitments to implement this plan before using 50% of all authorized take under the maximum urban development area (= 50% of 12,704 acres [Table 4-3], or 6,352 acres) or at the end of year 15 of implementation, whichever occurs first.

Potential approaches, funding sources, and opportunities for redirecting cost-savings toward post-permit management and monitoring include the following. Estimates of available funding are presented in Table 9-9.

- Partnerships with and commitments from existing organizations to assist with purchase and full operation and maintenance of HCP/NCCP preserves during and after the permit term. EBRPD is expected to be one such partner during Plan implementation. Since publication of the Draft HCP/NCCP, EBRPD has become an intended signatory to the Implementing Agreement and a Permittee under the HCP/NCCP. As described in Sections 9.4, 10.2 and 13.6 of the Implementing Agreement, EBRPD will provide a variety of assurances regarding maintaining its level of conservation effort in the HCP/NCCP area, managing land consistent with HCP/NCCP requirements, and cooperating with the Implementing Entity to ensure that assembly of the HCP/NCCP Preserve System is coordinated with park acquisitions. These new provisions of the Implementing Agreement demonstrate significant progress toward assembling a plan for long-term funding of operation and maintenance because they:
  - document a maintenance of effort commitment,
  - enable some preserve assembly and management tasks to be addressed by an organization that may be able to perform this work more efficiently and cost effectively than was estimated for the Implementing Entity, and
  - enable some post-permit preserve management tasks to be performed by an organization with a long history of land management and a substantial constituency of park users who will provide substantial public accountability not commonly associated with habitat preservation initiatives.
- Endowment from cost savings over estimated Plan costs (e.g., lower than estimated operations and maintenance costs from using existing organizations in the inventory area).
- Local tax or other funding measure for operations and maintenance of open space similar to four recent measures proposed in Contra Costa County: Measures K (2001) and W (2003) proposed by EBRPD (both failed), Measure CC in 2004 (passed), and Contra Costa County Open Space Funding Authority's Parks and Open Space Protection and Preservation District in 2004 (failed).
- Assessments on new development covered by the HCP/NCCP that can contribute to long-term operations and maintenance as a substitute for up to 1/3 of the development fee (see description above).

- Real estate transfer fees on new development (permanent covenants recorded on the title of new parcels requiring fees to be paid to the HCP/NCCP with every ownership change) as an alternative or supplement to assessments.
- Greater than expected leveraging of acquisition and management costs from partnerships with other organizations.
- Grant funding for long-term management.
- Reduction of the required frequency or intensity of monitoring or adaptive management actions after the permit term based on monitoring results during the permit term, and development of more streamlined monitoring and management procedures, thereby reducing post permit costs.
- Grazing fees. If used, all or a large portion of grazing fee revenue should be earmarked to support livestock operations (e.g., fencing, watering tanks, access roads).
- Recreational use fees. If used, all or a large portion of recreational use fees should be earmarked to support recreational facilities (e.g., parking lots, informational kiosks, restrooms, trails).

The Implementing Entity will attempt to secure post-permit funding for HCP/NCCP implementation during the early phases of the permit term. The Implementing Entity will provide status reports and consult with CDFG and USFWS annually on progress toward this goal. As described in the Implementing Agreement (Section 14.1), the Implementing Entity, County, Cities of Brentwood, Clayton, Oakley, and Pittsburg (Cities), and Flood Control District must ensure that all required mitigation, conservation, monitoring, reporting and adaptive management measures are adequately funded throughout the term of the Permits, and that monitoring, reporting and adaptive management measures are adequately funded in perpetuity. Therefore, the Implementing Entity, County, Cities, and Flood Control District must take appropriate actions to secure long-term funding during the permit term.

If for reasons beyond the control of the Implementing Entity, County, Cities, and Flood Control District sufficient long-term funding sources are not secured before 50% of the authorized take under the maximum urban development area is used or before the end of year 15 of implementation, whichever occurs first, the Implementing Entity, County, Cities, and Flood Control District will consult with CDFG and USFWS on the following courses of action, some of which may require a Plan amendment.

- Consider slowing or stopping local permit issuance under the HCP/NCCP until post-permit funding is secured.
- Consider revoking or suspending take permits.
- Consider reduction of take authorization limits, covered activities, or permit duration.
- Consider raising HCP/NCCP fees to cover some or all of post-permit management and monitoring.
- Develop alternative strategies for long-term funding.

**Table 9-8. HCP/NCCP Cost and Funding Overview**

Type	Amount		Source Category
	Initial Urban Development Area	Maximum Urban Development Area	
<b>Estimated Costs (in 2005 dollars; rounded to nearest \$10,000)</b>			
Land Acquisition <sup>1</sup> (%)	\$191,640,000 (65%)	\$235,680,000 (67%)	
Management costs over permit term (%) (including all other costs)	<u>\$105,450,000 (35%)</u>	<u>\$114,360,000 (33%)</u>	
Total Estimated and Assumed Costs	\$297,090,000	\$350,040,000	
<b>Projected Funding<sup>2</sup> (in 2005 dollars; rounded to nearest \$10,000)</b>			
Fee Funding			
Fees on new development in Urban Development Area	\$118,183,000	\$169,723,000	Local
Wetland Impact Fees	\$22,240,000	\$24,010,000	Local
Fees on rural infrastructure (e.g., roads, detention basins, pipelines)	<u>\$8,932,000</u>	<u>\$8,932,000</u>	Local
Total Projected Fee Funding	\$149,350,000	\$202,670,000	Local
Non-Fee Funding			
Maintenance of Existing Conservation Effort <sup>3</sup>			
Local	\$55,000,000	\$55,000,000	Local
State	\$25,000,000	\$25,000,000	State
Federal	<u>\$5,000,000</u>	<u>\$5,000,000</u>	Federal
Subtotal, Maintenance of Effort	\$85,000,000	\$85,000,000	Mixed
Byron Airport Clear Zone Acquisitions	\$6,500,000	\$6,500,000	Federal
New Wildlife Agency Funds (Section 6, park bonds, etc.) <sup>4</sup>	<u>\$58,000,000</u>	<u>\$58,000,000</u>	State/Fed
Total Non-Fee Funding	\$149,500,000	\$149,500,000	Mixed
TOTAL PROJECTED FUNDING (Permit Term)	\$298,850,000	\$352,170,000	
TOTAL FUNDING - TOTAL COSTS (Permit Term)	\$1,760,000	\$2,130,000	
<b>Summary of Funding by Source<sup>5</sup></b>			
Local (%)	\$204,350,000 (68%)	\$257,670,000 (73%)	
State/Federal <sup>4</sup> (%)	\$94,500,000 (32%)	\$94,500,000 (27%)	
<b>State/Federal Contribution in Units of Acres<sup>6</sup></b>			
Total State/Federal contribution	13,350	13,350	
CDFG / USFWS share of state/federal contribution <sup>7</sup>	8,700	8,700	
Contribution by other state/federal agencies	4,650	4,650	

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**Notes**

- <sup>1</sup> Land acquisition costs include due diligence, pre-acquisition surveys, site improvements, and appraisals.
  - <sup>2</sup> Funding estimates include projected monetary contributions and the monetary value of projected in-kind contributions.
  - <sup>3</sup> Based on analysis of conservation performed over the past 30 years. Assumes 75% historic rate. See Appendix G.
  - <sup>4</sup> Estimates only. State and federal contributions are described in the HCP/NCCP in terms of acres.
  - <sup>5</sup> Costs of post permit term management and monitoring are not included. These costs are estimated at \$3.0M and \$3.3M per year for the initial and max UDA respectively. The net present value of these future costs is estimated at \$83M and \$91M respectively, assuming a net discount rate of 2% above inflation (expressed another way, the size of the non-wasting endowment necessary at the end of year 30 to fund these costs in perpetuity would be \$150M and \$166M respectively). It is presumed that funding for these costs will come from local sources. See Table 9-9 and text of Chapter 9 for more information.
  - <sup>6</sup> State/federal contribution is defined in the HCP/NCCP in units of acres. Acreage contribution levels were developed with reference to baseline funding projections (shown in this table), but these funding estimates are presented here solely for informational purposes.
  - <sup>7</sup> Wildlife agencies' share of total state and federal acres contribution is defined in the HCP/NCCP and expressed in units of acres. Acreage contribution was related to funding estimates under the assumption that the wildlife agencies' acreage contribution would be funded with the estimated \$55M in new wildlife agency funds plus about 15% of the state and federal component of maintenance of existing effort, which has been the approximate portion of existing conservation funds contributed by the wildlife agencies (including the Wildlife Conservation Board).
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**Table 9-9.** Estimated Funding Availability for Post-Permit Management and Monitoring

Funding Source <sup>1</sup>	Estimated Amount Available <sup>2</sup> (expressed in 2005 dollars)		Notes
	More Conservative Estimate	Conservative Estimate	
Cost savings during permit term relative to estimated Plan costs	\$5,900,000	\$12,600,000	More conservative estimate assumes 10% savings from initial urban development area; conservative estimate assumes 25% savings from maximum urban development area; in both cases, savings applied to program administration, design work, environmental compliance, preserve management, and monitoring. See text for rationale.
Cost savings after permit term relative to estimated Plan costs	\$8,300,000	\$22,900,000	Same assumptions as above.
Local tax or other funding measure	\$12,400,000 (If revenue was continued indefinitely, the net present value of the revenue stream would be \$27,600,000)	\$49,400,000 (If the revenue ceased after 30 years, the net present value of the revenue stream would be \$22,100,000)	A variety of local funding measures for parks and open space have been proposed over the last 15 years. Some have passed and some have failed. The most recent proposal, the Contra Costa County Open Space Funding Authority's proposed park and open space assessment district narrowly failed in 2004. It would have raised approximately \$40,000,000 for acquisitions and other projects compatible with the HCP/NCCP over its 30 year life, or approximately \$1.33 million per year. The more conservative estimate assumes a 30-year measure is passed in year 30 of the HCP/NCCP and yields \$1 million annually to the HCP. The conservative estimate assumes a measure is passed in year 15 of the HCP/NCCP, yields \$1.33 million annually, and is continued into the foreseeable future.
Assessments or real estate transfer fees on new development	\$5,400,000	\$19,500,000	Value depends heavily on how many developers/planning agencies choose this option in lieu of a paying a portion of their development fee. Estimates assume annual assessment rates after the permit term are set at 1.7% of the development fee. More conservative estimate assumes initial urban development area and 10% participation in the assessment option. Conservative estimate assumes max urban development area and 25% participation. Real estate transfer fee is an alternative to assessments, so projections for these two sources have been combined.

Funding Source <sup>1</sup>	Estimated Amount Available <sup>2</sup> (expressed in 2005 dollars)		Notes
	More Conservative Estimate	Conservative Estimate	
Reduced frequency or intensity of monitoring or adaptive management after the permit term	\$2,000,000	\$6,000,000	Assumes reductions of 10-25% (or \$75,300-\$219,400) in monitoring and adaptive management costs annually after the permit term for the initial and max urban development areas respectively.
Grazing fees	\$1,400,000	\$8,300,000	Revenue could also come in the form of in-kind services from grazing operators such as fence repair. More conservative estimate assumes annual revenue of \$50,000 per year. Conservative estimate of \$300,000 per year is based on actual charges on Los Vaqueros Watershed lands by CCWD (B. Nuzum, pers. comm.) and on the Alameda Watershed in Alameda County by San Francisco Public Utilities Commission (J. Naras, pers. comm.).
Recreational use fees	\$0	\$1,400,000	Conservative estimate assumes \$50,000 per year in recreational use fees.
<b>TOTAL<sup>1</sup></b>	<b>\$35,400,000</b>	<b>\$120,100,000</b>	
Estimated post-permit costs for initial urban development area	\$82,600,000	\$82,600,000	
Estimated post-permit costs for maximum urban development area	\$91,500,000	\$91,500,000	

<sup>1</sup> Only funding sources for which cost estimates could be reasonably developed are listed. For other possible funding sources for post-permit management and maintenance, see Chapter 9.

<sup>2</sup> All estimates are expressed in terms of the net present value of future annual revenues or cost savings assuming a net discount rate 2% above inflation.