



BYRON  
HOT SPRINGS

CONTRA COSTA

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COUNTY  
GOVERNMENT

December 1, 2005

Mr. John Kopchik  
Community Development Department  
County of Contra Costa  
651 Pine Street, North Wing, Fourth Floor  
Martinez, California 94553

Re: East Contra Costa County Habitat Conservation Plan as it pertains to  
Byron Hot Springs Resort Project

On behalf of East Bay Associates LLC ("EBA"), we hereby submit these comments on the East Contra Costa County Habitat Conservation Plan (the "HCP") and the associated EIR/EIS.

The landowner and small developer were not addressed in the HCP.

A-1

The HCP designates the Byron Hot Springs as a high acquisition area for open space. The Draft Land Valuation Memorandum is not in line with the current value of the Byron Hot Springs property. EBA currently holds an appraisal for the Byron Hot Springs property dated December 2004 for Forty Eight Million dollars (\$48,000,000). The property is zoned FR/P1. The Preliminary Land Values in the HCP provides estimates of average per acre fee title land values for agricultural land areas that are to be conserved. We would like to go on record prior to adoption of the HCP with our current valuation.

A-2

EBA has submitted a comprehensive plan for the historical renovation consisting of the historical spa, hotel, conference center and bungalows. Our first phase to start in January 2006 will be to renovate the existing historical structure for the spa utilizing the underground hot springs.

The development in Byron will help reduce traffic and become an economic engine for East County. EBA contends that the project will bring economic growth to East County, as it will provide local jobs during construction as well as local job opportunities at the resort at completion. The landscaping and gardens would provide open space as well as the grounds surrounding the entire resort.

A-3

It is my understanding during our recent conversation that the historical renovation would not disturb land and therefore does not qualify as a "project"

and therefore would be exempt from the fee. Any additional development on the property that disturbs land or that is not historical would be subject to the \$23,000 per acre fee. I would appreciate your written response addressing this issue for clarification as it applies to the renovation.

A-3

*From 1990 through 2000 the property was used as the recipient of Biosolids; which were land spread throughout the entire property, at that time we had an EIR with a negative declaration citing there were no endangered species located on the property.*

As you know, just last month the voters of Antioch and Pittsburg approved amendments to their urban limit lines to address their long-term needs for growth and urban development. In some areas, the newly designated urban areas overlap with "priority acquisition areas" identified by the HCP. Consistent with Principle 9, the acquisition priorities of the HCP should be re-examined to ensure that any conflict between the HCP and the voters' recent policy choices is eliminated.

A-4

Related to this issue, we are also concerned that the graphics we have seen thus far of the "priority acquisition areas" makes it very difficult to determine how or whether individual parcels lie within or outside the shaded areas, as well as how the lines fall in relation to the ULL, city limits, spheres of influence, etc. The development of more refined graphics may necessitate further changes to avoid conflicts.

A-5

The HCP may be in conflict with the general plan for historical open space and mineral resources. The HCP's proposed plan has some of these properties in high acquisition areas, which would be in conflict with the elements of the general plan's goals and policies regarding mineral excavation and the historical history of Contra Costa County.

A-6

EBA thanks you, and the representatives of the U.S. Fish and Wildlife Service and California Department of Fish and Game, for your hard work to produce the HCP. We look forward to a successful conclusion that addresses the remaining Principles, consistent with current law, as well as the concerns outlined above.

With kind regard, I am

Sincerely,

David Fowler

DTF/sms

## Response to Letter A, from Byron Hot Springs

### Response to Comment A-1

In response to the HCP/NCCP, the commenter states that the landowner and small developer were not addressed in the HCP/NCCP.

The comment is not particularly clear what its concern is. If it concerns the fact that specific development at Byron Hot Springs is not addressed in the HCP/NCCP, the proposed HCP/NCCP does not authorize any specific development as it is not a land use plan nor a land use permit. The HCP/NCCP would provide take authorization for all covered activities conducted by private entities, regardless of the particular characteristics of the project proponent. Likewise, by employing a fee-based mitigation program that also provides the option for providing land in lieu of fees, the HCP/NCCP provides flexibility that should benefit smaller developers who cannot acquire a mitigation parcel of a suitable size and landowners who may prefer to offer land in lieu of fees.

*No changes to the HCP/NCCP are required.*

### Response to Comment A-2

In response to the HCP/NCCP, the commenter states that the Draft Land Valuation Memorandum for the Byron Hot Springs property is inconsistent with a December 2004 appraisal held by the commenter.

The intent of the land valuation memorandum is to establish a financial planning horizon for the plan, not to provide a specific appraisal of any specific property. Appraisal of specific acquisition properties will be done during the course of later actual acquisition processes.

*No changes to the HCP/NCCP are required.*

### Response to Comment A-3

In response to the HCP/NCCP, the commenter seeks to confirm that additional development in a portion of the Byron Hot Springs property would not pay a fee under the HCP/NCCP if the development involved historical renovation of an existing building, but would pay a fee under the HCP/NCCP if land were disturbed or if the development was not a renovation of a historic building.

Development fee collection procedures are described in section 9.3.1 of the HCP/NCCP and the covered activities to which they apply are described in Chapter 2. Only those activities defined as covered activities within the Urban Development Area (UDA) or defined as a covered rural infrastructure project will receive take authority from the HCP/NCCP and will be subject to fees under the HCP/NCCP. Further, the HCP/NCCP provides that covered activities inside the UDA are not required to pay HCP/NCCP fees for areas already mapped as urban, turf, or aqueduct land cover.

In terms of the Byron Hot Springs property referenced by the commenter, that property is not within the Initial UDA (see Figure 2-3). Since the property is not within the UDA, the property would not receive take coverage under the HCP/NCCP and would not be subject to HCP/NCCP fees, and may

require individual compliance with the state and federal Endangered Species Acts. If all or a portion of property were to become part of the UDA through one or more of the mechanisms for changing the UDA described in the “Changes in the Urban Development Area” section of 2.3.1, it would become eligible for take coverage under the HCP/NCCP and subject to HCP/NCCP fees. If this were to occur, any portions of the property already mapped as urban, turf, or aqueduct land cover would not be subject to the HCP/NCCP fees. Whether the planned development is a historical renovation or involves grading would not affect the amount of the fee. Put another way, if the physical impacts of the future development activity were entirely limited to areas already mapped as urban land cover, no fee would be required whether or not the development was a historical renovation and whether or not grading was involved.

#### *Revisions to the HCP/NCCP*

The response to this comment has indicated the need to clarify several aspects of section 9.3.1, including:

- Clarification that the development fee only applies to covered activities within the UDA;
- Clarification that evidence documenting site conditions prior to the HCP/NCCP, such as an aerial photo taken on or up to four years before the date the HCP/NCCP takes effect, may be used to more accurately define what portions of a property had an urban, turf, or aqueduct land cover at the start of the HCP/NCCP permit term and are not subject to the development fee.

### **Response to Comment A-4**

In response to the HCP/NCCP, the commenter states that that the Plan’s acquisition priorities be re-examined in light of the passage of ballot measures in November 2005 to redraw urban limit lines (ULL) in Antioch and Pittsburg.

*Please refer to response to comment J-1.*

### **Response to Comment A-5**

In response to the HCP/NCCP, the commenter requests that more refined graphics identifying preserve areas, the ULL and city limits be created for the Final HCP/NCCP.

As described in the HCP/NCCP, preserve acquisition priorities are identified, but the specific ultimate preserve area is not identified at this time. Thus, at this time, it cannot be concluded that a particular parcel will or won’t be ultimately acquired. It is more likely that acquisitions will occur within higher priority areas rather than lower priority areas, but this should not be taken to be conclusive for any specific property. See also the response to A-3 above as it pertains to the process for more accurately defining the boundaries of the urban development area.

*No changes to the HCP/NCCP are required.*

### **Response to Comment A-6**

In response to the HCP/NCCP, the commenter notes that the Plan may be in conflict with Contra Costa County's General Plan policies and goal pertaining to historical open space and mineral excavation.

Commenter's reference to General Plan policies pertaining to "historical open space" is unclear. A review of the General Plan could not identify any policies or goals pertaining to "historical open space". No response is needed.

The EIS/EIR analyzes the effect of the project on cultural resources, including historic resources, in Chapter 4, Section 4.9. As concluded there, the project would not have a significant impact on cultural resources, after mitigation.

The EIS/EIR The EIS/EIR analyzes the effect of the project on open space in Chapter 4, Section 4.3.2 as part of the analysis of land use. As concluded there, the project would not have a significant impact on existing land uses or designations, which includes open space. By establishment of the preserve system, the project would facilitate the preservation of open space throughout eastern Contra Costa County, and as such would be consistent with the County General Plan policies and goals pertaining to open space.

The EIS/EIR analyzes the effect of the project on mineral resources in Chapter 4, Section 4.13. As concluded there, the project would not have a significant impact on mineral resources, after mitigation. Mitigation Measure MIN-1 was specifically adopted to ensure that preserve acquisition within mineral resource protection areas will only be done if the acquisition would not impair future mineral resource extraction. As such the HCP/NCCP will be consistent with County General Plan policies.

*No changes to the HCP/NCCP or EIS/EIR are required.*

