

CONTRA COSTA

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December 1, 2005

John Kopchik
Contra Costa County Community Development Department
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Martinez, CA 94553

Dear John,

Thank you for the opportunity to comment on the draft Habitat Conservation Plan (HCP) for Eastern Contra Costa County. It's clear that a significant effort went into preparing and producing the document. Although there is a veritable mountain of technical information on biologic issues in the HCP, it is all presented in a very clear, concise, and well organized manner.

While the City of Antioch has not been a participant in the HCP process to date, we will ultimately need to address many of the biologic issues raised by the HCP. We also have an active interest in the HCP given that it includes in its "inventory area" the entire geographic limits of the City of Antioch, including lands in our sphere of influence. While a number of our comments raise issues fundamental to the HCP, it is our intent to be constructive in order to create a better document for all concerned. This is particularly important given the potential importance of the HCP in shaping the future environment of Eastern Contra Costa County.

Geographic Boundaries: "Urban Area" vs. "Acquisition Area"

A fundamental issue in preparing an HCP, or any sort of plan for that matter, is determining what area is to be developed and what area is to be preserved. The HCP defines an "Urban Development Area" (UDA) as shown in Figure 2-3, which is the "permit area" for urban development under the HCP. The UDA is further differentiated into the "Initial UDA" which corresponds to the existing County Urban Limit Line (ULL) and existing city limits, and the "Maximum UDA" which is the largest area in

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which urban development could expand under the permitting authority of the HCP. The HCP has language (pgs. 2-16, 17) for expanding or shrinking the UDA (i.e. the permit area) automatically based on changes to city limits, or if the County ULL changes. Land in private ownership outside of the UDA is considered to be located in “acquisition areas”, with the land being rated (Figure 5-2) from low priority (low biologic value) for acquisition to high priority (high biologic value). So far so good. However, there is an exception that renders the possibility of any real change to the UDA problematic for any jurisdiction participating in the HCP, namely the wording on pg. 2-17 that states “high priority acquisition land” cannot be added to the UDA. The other boundary related problem is that lands within the City of Antioch City limits and recently approved City Urban Limit Line are depicted as acquisition areas in the draft HCP. The following issues need to be addressed in the draft HCP:

F-1

- Roddy Ranch: With the decisive passage of Measure K on November 8, 2005, Antioch voters approved an Urban Limit Line for the City which includes the Horse Valley portion of the Roddy property. Voters also approved a General Plan designation and Rezoning for this area. The Draft HCP needs to be amended to reflect this fact, and not show the Horse Valley portion of Roddy as any sort of acquisition land. This is an important issue for the City and its voters, and needs to be addressed. The Deer Valley portion of the Roddy property should also be dropped as an acquisition area, given that it is in the City of Antioch’s Sphere of Influence.

F-2

This issue with the Roddy property is a symptom of an underlying problem with the draft HCP. Specifically, the HCP is structured so that the designation of land as “high priority for acquisition” would take precedence over a local voter approval of an Urban Limit Line (pg. 2-17). Since most existing city boundaries in East County are bordered by land that is high priority for acquisition, the practical result is that is not possible for the Urban Development Area (i.e. the HCP permit area) to expand to accommodate a voter approved city boundary change. While this provision would not directly impact the City of Antioch as we are currently not a participant in the HCP, it’s hard to picture why any East County jurisdictions would “sign up” for the HCP unless this wording is changed.

F-3

- Sand Creek Focus Area (FUA#1): The draft HCP designates the entire 2700 acre Sand Creek Focus Area as acquisition land, with approximately one third as “high priority” for acquisition and two thirds as “low priority”. As you are aware, this area is within the city limits of the City of Antioch, and has been since 1994. Given that the City of Antioch is not in the HCP permit area, it makes little sense to include a portion of the City in the acquisition area. It also does not make sense to show this land as acquisition area given the very practical problem that Antioch’s previous and current General Plans designate this area for future development, making acquisition of much of this land cost prohibitive. The HCP on pg. 5-47 calls for the acquisition of 75% of the land within the “high priority” western portion of the Sand Creek Focus Area, and 50% of the land in the lower priority eastern portion. These proportions would result in approximately 1700 of

F-4

the 2700 acres in the Sand Creek Focus Area being acquired through the HCP program. Recently, unentitled land on the Williamson property within the Sand Creek Focus Area sold for approximately \$200,000/acre. Assuming the HCP can purchase land for preservation purposes at one quarter of this value (\$50,000/acre), then the HCP acquisition costs within the Sand Creek Focus area would exceed \$80 million! Given that the entire land acquisition budget for the HCP to purchase 23,650 to 29,900 acres (pg. 9-6) is \$178 million (Table 9-1), it does not make good policy sense to spend almost 50% of the land acquisition budget on a small fraction of the land that is proposed to be acquired.

F-5

We strongly request for the preceding reasons that the Sand Creek Focus Area and the Horse Valley portion of the Roddy Ranch be removed as acquisition land in the draft HCP. Given that the Deer Valley section of the Roddy property is in our Sphere of Influence, we feel this area should also be removed from the HCP as acquisition land.

F-6

Administration of the HCP:

While the City of Antioch is currently not a part of the HCP program, we do have an interest that the HCP program works as advertised, as the City at some point in the future may choose to participate and/or Antioch property owners may seek mitigation requirements similar to those offered in the draft HCP. Looked at from this perspective, the HCP may set the benchmark for the amount of endangered species mitigation required of new development inside or outside the permit area. Given this, we would like to see the following issues addressed in the HCP:

- It is clear that the draft HCP sets a high financial benchmark, as the development fee per acre will range from \$11,468/acre to \$22,936/acre for the permit area (Table 9-4). Based on Figure 9-1 the lower fee of \$11,468/acre would apply to the Oakley area and the unincorporated County Urban Limit Line “islands” around Bethel Island, Discovery Bay, and Byron, while the higher amount would be applicable to the lands bordering Antioch, Brentwood, and Pittsburg. This fee would in most cases be applicable to the gross acreage of the property being developed, including open space. Open space would be exempt from the fee only if it has connectivity with larger habitat areas being preserved through the HCP.
- It is instructive to put this fee in perspective when compared to other levies collected as part of the development process. For example, the Regional Traffic Fee in East County was just recently raised to approximately \$15,000/unit. If you assume a typical density of 2 units/acre in the HCP permit area, the HCP fee in lands adjacent to the City of Antioch would work out to be \$11,500/unit. The policy implications of this is that new development would be paying almost as much for endangered species mitigation as they are now paying to mitigate regional traffic impacts!
- While the proposed HCP permit fee is clearly significant, it could end up being the “tip of the iceberg” given the geographic scope and land acquisition goals of

F-7

F-8

the HCP program. The biggest unknown is estimating the cost of acquiring the 23,000 to 29,000 acres of land proposed as part of the HCP program. The HCP does an admirable job of categorizing the land to be purchased, and then utilizes recent sales of comparable land in an attempt to estimate value. This analysis yield an average land acquisition cost of somewhere between \$7000-\$9,000/acre.

The difficulty of all this is that the actual land acquisition costs could end up being significantly higher than an average of \$7000-\$9000 acre, given the need to rely on “willing sellers” and the dynamics of the real estate market. Simply having a single entity purchasing land (i.e. the HCP Authority) purchasing land in a limited geographic area would tend to drive up acquisition costs. For better or for worse, the dynamics of the initiative process, whereby a given property could be included in a local urban limit line by a vote of the people, could also increase the expectations of a property owner in relation to land value. Given the geographic scope of the HCP, with 23,650 to 29,900 acres of land to be purchased, a “bust” of \$1000/acre could result in land costs exceeding revenues by \$23 million to \$29 million! While this may not be the end of the world given the broad ambitions of the plan, the administration of the HCP is set up in such a manner that a lag in land acquisition created by a fee shortfall or other factors would result in the resource agencies getting the opportunity for “another bite of the apple”. As a result, in the not too distant future the impact fee of “just” \$22,936/acre could end up being nothing more than a fond memory. The following are the specific concerns with the administrative structure of the HCP:

F-8 (Cont.)

- The HCP contains a “Jump Start” provision, which requires that preserve land be acquired prior to the issuance of any actual permits (pg.5-51), and states that the Implementing Agency should acquire at least 500 acres of land (pg. 5-52) prior to the issuance of take permits. This creates the obvious “chicken/egg” problem as monies collected through fees to buy land cannot be collected until permits are issued. There is acknowledgement of this dilemma, as the “Jump Start” provision is considered to be a guideline.
- In addition to “Jump Start”, the HCP contains a “Stay Ahead” provision which has more “teeth”. This is essentially a mechanism to monitor and ensure that the acquisition of preservation land keeps pace with the impacts created by the issuance of permits for new development on an acreage basis. The HCP provides a couple of methodologies to measure that this proportionality is maintained, and allows only a 5% acreage deviation between land impacted and preservation land acquired. If the “Stay Ahead” requirements can’t be met, then “negotiations” will occur between the resource agencies and the local jurisdictions. Unless the issue can be resolved in these negotiations, then take permits may be withheld by the Implementing and/or Resource Agencies (pg.8-26 and 8-27). A fee increase is also another possibility. The HCP also closes out the possibility of using the “safety valve” of acquiring preserve land outside the inventory area as a way of reducing the land cost problem. The draft HCP as it’s currently written prohibits the purchase of preserve land outside the inventory , with two minor exceptions (pg. 5-54).

F-9

F-10

The result of the preceding administrative requirements is something of a financial “straight jacket” that gives the HCP Authority little room to maneuver. The reality is that it is likely that the cost of land acquisitions will exceed the dollar amounts assumed, given the “voluntary” nature of the sale of the preserved land and the market dynamics previously discussed. It may also turn out that non fee funding sources (grant funding) may be less than expected. Since these sources account for 45% of the total HCP program funding, the future “drying up” of these sources over which no local jurisdictions have control could wreak havoc with the program.

F-10 (Cont.)

Given that the major selling point of an HCP in the first place is both “certainty” on endangered species mitigation along with “no surprises” , it is unfortunate that the draft HCP is set up in such a manner to create a high likelihood of financial surprises (increased fees) and procedural surprises (withholding of permits) in the future. The HCP needs to do a better job of balancing the State Fish and Game requirement that “mitigation and conservation measures be roughly proportional in time and extent to the impact on habitat or cover species authorized under the plan”.

F-11

Scenario of Possible Participation by the City of Antioch:

The HCP accurately states the current stance of the City of Antioch in relation to the HCP, namely that the City to date has chosen not to actively participate in the preparation of the plan. The publication of the Draft HCP provides the City with an opportunity to evaluate its position on this issue. While it is likely that any participation in the HCP will necessitate successfully resolving the issues just identified, it would be helpful if the HCP in the body of the document or in its appendices would outline the steps that would need to occur for the City to become a plan participant, and what the implications would be for the components of the plan itself. Specifically, we would like to see the following issues addressed:

F-12

- As it stands now, the draft HCP is a document that is intended to provide ”comprehensive species, wetlands, and ecosystem conservation and contribute to the recovery of endangered species in Northern California” . This is inherent in the definition of an HCP. With or without the City of Antioch’s participation, the HCP is a self contained, complete document biologically. Looked at from this perspective, inclusion of the City of Antioch in the HCP would not result in the need to acquire additional preserve lands, given that the geographic scope of the preserved lands in the draft HCP is already sufficient. As a result, the City could in theory take the position that the endangered species issues have already been resolved, therefore the City does not have any obligation for further endangered species mitigation.
- If the City does decide to participate in the HCP, one very tangible benefit of participation should be to reduce the \$22,000/acre impact fee, as there would be more development seeking permits and paying the fee. It would be appropriate to include an analysis of this funding issue in the HCP in the event the City of Antioch chose to participate in the plan.

F-13

F-14

Resource Management Plan:

The City of Antioch, as part of the comprehensive General Plan update in 2003, prepared a framework Resource Management Plan (RMP) for the Sand Creek Focus Area. The HCP should contain an analysis of to what extent the HCP agrees of differs from what is contained in the RMP.

F-15

eBART

The proposed eBART system is identified as a “covered” transportation improvement in the HCP. The text of the HCP on pg. 2-22 needs to be updated to accurately reflect what is being proposed for the eBART system. Much of the information needed to do the update can be found at the eBART web site.

F-16

Thank you again for the opportunity to comment on the draft HCP. While the City is currently not a participating member in the HCP process, the publication of the draft plan provides an opportunity for the City to evaluate its position on this issue. We also understand the difficulty of preparing a viable HCP that is acceptable to all parties given the complexity of the issues involved and the disparate interests of the various stakeholders.

Sincerely,

VICTOR CARNIGLIA
Deputy Director of Community Development

- cc: Mayor and City Council Members
- James M. Jakel, City Manager
- William R. Galstan, City Attorney
- Joseph G. Brandt, Director of Community Development/City Engineer
- Tina Wehrmeister, Acting Deputy Director of Community Development
- Donna Landeris, City Manger, City of Brentwood
- Heidi Kline, Planning Manager, City of Brentwood
- Don Blubaugh, Acting City Manager, City of Oakley
- Rebecca Willis, Community Development Director, City of Oakley
- Marc Grisham, City Manger, City of Pittsburg
- Melissa Ayers, Planning Manger City of Pittsburg
- Clark Morrison, Esq., Morrison and Foerster

Response to Letter F, from City of Antioch

This comment letter contains introductory material on its first page that does not make comment on the HCP/NCCP or the EIS/EIR until the second part of the first paragraph on the second page.

Response to Comment F-1

In response to the HCP/NCCP, the commenter states that changes to the UDA are problematic due to the statement on page 2-17 that “high priority acquisition land” cannot be added to the UDA and due to the inclusion of lands within the City of Antioch city limits and the recently approved Antioch ULL as high-priority acquisition areas.

Commenter is correct that the UDA is not proposed to include high-priority acquisition area and that some lands within the City of Antioch city limits and the recently approved ULL are included in high-priority acquisition areas. The designation of acquisition areas as high priority is not a land use designation and development within areas outside the approved UDA is not prohibited by the HCP/NCCP. The HCP/NCCP establishes a new means of compliance with the state and federal endangered species acts but does not change the existing compliance process for development outside of the HCP/NCCP process.

The inclusion of specific areas as high-priority acquisition areas does not inherently mean that the properties will be acquired. It should be noted that, under the HCP/NCCP, lands may only be acquired from willing sellers. Furthermore, the HCP/NCCP provides flexibility in meeting the land acquisition requirements and neither requires nor anticipates that all areas within the high-priority acquisition zones will be acquired. Nevertheless, the designation of such areas has been done to provide guidance to the implementing entity on the areas where acquisition will best support the overall conservation strategy.

The conservation strategy, as described in response to Comment F-2, has been revised within certain portions of the recently approved ULL.

Revisions to the HCP/NCCP

The HCP/NCCP (see Chapter 5) has been revised in regards to the conservation strategy within a portion of the recently adopted Antioch ULL.

Response to Comment F-2

In response to the HCP/NCCP, the City requests that the HCP be amended to take into account the recently approved urban limit line, specifically concerning the Horse Valley and Deer Valley portion of the Roddy property.

We concur with the commenter that voter-approval of the Antioch ULL in November 2005 reduced the feasibility of conserving as much land within the new ULL as previously contemplated. As shown in Figures 5-2 and 5-3 in the Final HCP/NCCP, eastern portions of Horse Valley, including portions of the Roddy property, have been changed from a high to a low acquisition priority category. The text and land acquisition acreage requirements in Chapter 5 have also been modified to reduce acquisition priorities within the new Antioch ULL. The western portion of Horse Valley and all of

Deer Valley (which is outside the new Antioch ULL) have been retained as high priority acquisition areas in Figures 5-2 and 5-3 as they are important to the overall conservation strategy, in particular regarding potential San Joaquin kit fox corridors. The text of Chapter 5 describes objectives for protecting wildlife corridors through western Horse Valley to connect Deer Valley to Black Diamond Mines Regional Preserve and the portions of western Lone Tree Valley that are proposed for open space in the Antioch General Plan. Such corridors would be key links in the overall HCP/NCCP Preserve System for kit fox and other species and would be essential for maintaining the biological value of the wildlife corridor identified in western Lone Tree Valley by the Resource Management Plan prepared for the City of Antioch in 2003 for the Sand Creek Focus Area. This wildlife corridor is reflected in the Antioch General Plan, but would dead-end south of the current city limits unless a connection is maintained to Deer Valley through western Horse Valley.

The inclusion of specific areas as high, medium, or low priority acquisition areas does not inherently mean that the properties will be acquired. It should be noted that, under the HCP/NCCP, lands may only be acquired from willing sellers. Furthermore, the HCP/NCCP provides flexibility in meeting the land acquisition requirements and neither requires nor anticipates that all areas within the high-priority acquisition zones will be acquired. Nevertheless, the designation of such areas has been done to provide guidance to the implementing entity on the areas where acquisition will be best support the overall conservation strategy.

The designation of acquisition areas as high, medium, or low priority is not a land use designation and development within areas outside the approved UDA is not prohibited by the HCP/NCCP. The HCP/NCCP establishes a new means of compliance with the state and federal endangered species acts but does not change the existing compliance process for development outside of the HCP/NCCP process.

Revisions to the HCP/NCCP

The HCP/NCCP (see Chapter 5) has been revised in regards to the conservation strategy within a portion of the recently adopted Antioch ULL.

Response to Comment F-3

In response to the HCP/NCCP, the commenter states that the designation of land within a voter-approved urban limit line as high acquisition priority would make it impossible for the UDA to expand to accommodate a voter-approved city boundary change.

Commenter is correct that the UDA does not include high-priority acquisition areas and that some lands within the City of Antioch recently-approved ULL are included in high-priority acquisition areas. The designation of acquisition areas as high priority is not a land use designation and development within areas outside the approved UDA is not prohibited by the HCP/NCCP. The HCP/NCCP establishes a means of compliance with the state and federal endangered species acts but does not change the existing compliance process for development outside of the HCP/NCCP process. However, it is not correct that high-priority acquisition areas occur in all areas where growth is planned. All of the lands that had been proposed for development in the failed Brentwood ULL measure were in low-priority acquisition analysis zones. . All potential expansions of the City of Oakley would be in low-priority acquisition analysis zones, including the recently annexed East Cypress Corridor area. Likewise, growth contemplated by the City of Clayton is also in low-priority acquisition analysis zones. The new Pittsburg ULL, approved by Pittsburg voters in November 2005, primarily included lands that were in low-priority acquisition analysis zones in the Draft HCP/NCCP

and acquisition priorities in the Final HCP/NCCP have been reduced within the Pittsburg ULL and now include only a small but critical wildlife corridor. Unincorporated areas within the County ULL, including areas near and within Bay Point and Discovery Bay, are also within low-priority acquisition analysis zones. And, as further described in the response to F-2 above, most of the undeveloped lands within Antioch city limits and the Antioch ULL are in low-priority acquisition analysis zones.

The inclusion of specific areas as high-priority acquisition areas does not inherently mean that the properties will be acquired. It should be noted that, under the HCP/NCCP, lands may only be acquired from willing sellers. Furthermore, the HCP/NCCP provides flexibility in meeting the land acquisition requirements and neither requires nor anticipates that all areas within the high-priority acquisition zones will be acquired. Nevertheless, the designation of such areas has been done to provide guidance to the implementing entity on the areas considered most necessary to support the overall conservation strategy.

Revisions to the HCP/NCCP

The HCP/NCCP (see Chapter 5) has been revised in regards to the conservation strategy within a portion of the recently adopted Antioch ULL and Pittsburg ULL.

Response to Comment F-4, F-5, and F-6

In response to the HCP/NCCP, the commenter states that there is a conflict between the City of Antioch's land use planning for the Sand Creek Focus Area and the HCP/NCCP designation of the 2700-acre area as 1/3 high priority acquisition area and 2/3 low priority acquisition area. Commenter asserts that the HCP/NCCP calls for approximately 1,700 acres of acquisition in this area (75% of the high-priority area and 50% of the low-priority area) and asserts that this would cost approximately \$80 million based on a cost of \$50,000/acre.

Acquisition priorities for the Final HCP/NCCP have been clarified and revised in response to this comment and to the approval of the Antioch ULL. No acquisition was required in low-priority areas in the eastern Sand Creek Focus Area under the Draft HCP/NCCP. Table 5-14 and the text of Chapter 5 of the Final HCP/NCCP have been revised to make this clearer. In addition, acquisition priorities in the Sand Creek Focus Area have been reduced in the text, tables and figures in Chapter 5 of the Final HCP/NCCP. Acquisition priorities now closely conform to the wildlife corridor identified in city's Resource Management Plan and to the open space designations in the Antioch General Plan. The Antioch General Plan does designate an area of open space at the west end of the corridor adjacent to Black Diamond Mines Regional Preserve that is smaller the area shown in Figures 5-2 and 5-3 of the HCP as a high-priority for acquisition, but the difference is relatively small and does not have any practical effect on land-use decisions or endangered species permitting since Antioch is not part of the HCP/NCCP and is not a Permittee. To meet requirements of the Natural Community Conservation Planning Act and to provide a comprehensive plan for protection of biological resources, the HCP/NCCP does describe acquisition priorities within the City of Antioch so that Plan resources may be directed to these priorities if need be and to create a regionally cohesive conservation plan.

Regarding land acquisition costs, the HCP/NCCP estimated average per acre land values (Appendix G, Table 1) as follows: inside the ULL, level (< 15%), not designated for development - \$18,300/acre; inside the ULL, level (< 15%) designated for development - \$56,800/acre. The HCP/NCCP's estimate of land acquisition costs inside the ULL designated for development are similar to the assumption used by the commenter.

Assuming that the land acquisition requirement of 600 acres for subzone 2h occurred entirely within the Sand Creek Focus Area (which is unlikely because acquisition would also be considered outside of the Focus Area) and that one quarter of the acquired land was designated for development rather than open space (also unlikely, given the general conformance between high priority areas in the HCP and the open space designations in the Antioch General Plan), acquisition costs for this area can be roughly estimated as follows:

<u>Designation</u>	<u>Area</u>	<u>Estimated Cost/Acre</u>	<u>Acquisition Cost</u>
Open space land	450 acres	\$18,300	\$8.2 million
Development land	150 acres	\$56,800	\$8.5 million
Total	600 acres		\$16.7 million

This acquisition area (600 acres) is about 2.5 percent of the overall target preserve (23,800 acres for the initial urban development area midpoint) and based on these estimates would cost about 4.4 percent of the budget (\$192 million).

If all acquisitions were in similarly priced areas, the preserve could not be assembled at the estimated cost. However, the bulk of acquisition overall is within areas outside the ULL that are not currently designated for development in the applicable jurisdictional land use plan and the HCP/NCCP cost estimate was developed cognizant of the likely cost of acquisition within and outside the ULL. It should also be noted that the HCP land cost analysis assumes for purposes of consistency that all land will be acquired rather than dedicated. If land dedications were offered or required by the local land use planning agency or by state and federal regulatory agencies, the cost of the dedication would represent an opportunity cost but not an actual, out-of-pocket expense.

Revisions to the HCP/NCCP

The HCP/NCCP (see Chapter 5) has been revised in regards to the conservation strategy within a portion of the recently adopted Antioch ULL.

Response to Comment F-7

In response to the HCP/NCCP, the commenter describes the proposed development fees associated with the HCP/NCCP and then points out that under some circumstances the fee for endangered species mitigation can be almost as much as that for mitigation of regional traffic impacts.

Commenter is correct, though recent development projects in the HCP/NCCP inventory area have averaged four units per acre, so the highest HCP/NCCP development fee comes to less than \$6000 per unit under that assumption. This specific comment provides description but no request for revision or change in the plan.

However, it should be noted that compliance with endangered species regulations is a current cost for project proponents. Direct costs under the current project-by-project approach to compliance include the costs of detailed species surveys to determine presence/absence at certain specified times of the year, time-consuming consultations with wildlife agency staff, loss of project area to avoid sensitive resources on site, identification and acquisition of off-site mitigation lands, identification of a steward for the off-site mitigation land and the development and recording of a conservation easement on that land, and funding an endowment to pay for perpetual monitoring and management on the mitigation lands. Indirect costs of the current approach include the cost of project delays and the cost of general uncertainty with endangered species permit conditions and permit schedule. The HCP/NCCP

compiles all the direct costs into one or more pre-determined fees (and as some more narrowly defined and simplified survey and avoidance requirements) and eliminates the indirect costs of delay and uncertainty. While it is not possible to precisely quantify for comparison purposes the direct and indirect costs of the current approach to compliance, one of the goals of the HCP/NCCP has been to improve for project proponents the process for seeking and obtaining endangered species permits. From a project proponents' perspective, cost is a key consideration. HCP/NCCP fees were set according to a formula and a fair-share apportionment approach that was discussed in detail by a range of stakeholders, including developer representatives, and ultimately recommended for inclusion in the HCP/NCCP by the HCPA Coordination Group, the official stakeholder committee for the HCPA. Furthermore, though the amount of other non-endangered species fees required by local jurisdictions in the HCP/NCCP inventory area varies, the highest development fee under the HCP/NCCP represents less than 10% of \$60,000, which was the low end of the estimated range of total fee burden in the HCP/NCCP area in 2003.

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

Response to Comment F-8

In response to the HCP/NCCP, the commenter states that the land acquisition costs could be significantly higher than estimated and that the currently estimated fees could end up being much higher in the future.

Commenter is correct that it is challenging to estimate future land acquisition costs. The preparers of the plan have endeavored to provide realistic estimates of acquisition costs on a broad scale in order to inform the development of the fee structure. Based on current estimates, the fee structure is considered realistic. As described in Chapter 9 of the HCP/NCCP if actual costs prove to be more than estimated, then fees will need to be adjusted.

It should be noted that the requirements to mitigate effects to listed species exist today. The HCP/NCCP has not introduced the requirement to comply with state and federal endangered species acts. Thus costs are being incurred today for mitigation. The HCP/NCCP is an effort to mitigate in a broad and coordinated effort to provide for better conservation of endangered species while allowing for planned development in the permit area.

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

Response to Comment F-9

In response to the HCP/NCCP, the commenter states that the Jump Start provision is a "chicken-egg" problem as fees cannot be collected before permits are issued, but that the HCP/NCCP recognizes this dilemma by making the provision a guideline

The commenter is correct that the draft HCP/NCCP describes that the Jump Start guideline is a goal, rather than a mandatory requirement, as explained on pages 5-51 and 5-52 of the draft HCP/NCCP. The Jump Start guideline states that the Implementing Entity should acquire 500 acres of land before the ESA and NCCPA permits are issued, but does not require the Implementing Entity to do so.

However, Section 9.2 of the IA addresses the Stay Ahead requirement, which is a separate, mandatory requirement, as explained on page 5-52 and 5-53 of the draft HCP/NCCP. The Stay Ahead provision

generally requires the Implementing Entity to acquire lands in proportion to take authorized under the ESA and NCCPA permits in order to ensure that the lands acquired meet or exceed compensatory mitigation requirements for such impacts. Section 9.2 of the IA correctly characterizes the Stay Ahead requirement as mandatory.

Regarding funding for the Jump Start provision, as noted in Chapter 9 and in Section 9.6 of the IA in Appendix B to the Final HCP/NCCP, funding is available from interim projects. In addition, the HCP/NCCP may also receive non-fee based funding from local, state, or federal sources that may be useable to facilitate the Jump Start provision. For example, the Department of the Interior announced in September 2006 that more \$6.5 million had been awarded through the Cooperative Endangered Species Conservation Fund to acquire lands in Eastern Contra Costa County that would complement the existing approved HCP in San Joaquin County. These funds would be spent within with the inventory area of the East Contra Costa County HCP/NCCP. The U.S. Bureau of Reclamation and the U.S. Fish and Wildlife Service have also approved a \$991,000 grant to support land acquisition consistent with the HP/NCCP through the Central Valley Project Conservation Plan. Finally, as described in Table 5-21, Figure 5-12 and Section 8.6.1 of Chapter 8 of the HCP/NCCP, 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 permanent management consistent with the Plan is ensured. Additional acquisitions are also in process. These lands have been conserved through mitigation requirements of interim projects and through acquisitions by organizations such as EBRPD.

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

Response to Comment F-10

In response to the HCP/NCCP, the commenter states that the Stay Ahead provision is a financial “strait jacket” that may leave the HCP authority with “little room to maneuver” due to potential land acquisition difficulties, acquisition costs, and non-fee funding source problems

Commenter is correct that land acquisition and funding issues are challenges for effective HCP/NCCP implementation. The Stay Ahead provision is a necessary requirement to ensure that impacts to covered species are being mitigated in proportion and at the same time as the impacts occurring. This is essential to any effective conservation strategy.

As noted above, the requirements to mitigate effects to listed species exist today. The HCP/NCCP has not introduced the requirement to comply with state and federal endangered species acts. Thus costs are being incurred today for mitigation. The HCP/NCCP is an effort to mitigate in a broad and coordinated effort to provide for better conservation of endangered species while allowing for planned development in the permit area.

The alternative to the HCP/NCCP is project-by-project compliance; in such a case it is more probable that mitigation requirements would be even more onerous because no overall conservation strategy would be being implemented. Thus, although there are funding challenges to any landscape HCP/NCCP effort, it is expected in the long-run that planned development will be better facilitated (resulting in economic gains in the permit area) and that mitigation funds will be more effective in providing for species conservation than in the current regime.

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

Response to Comment F-11

In response to the HCP/NCCP, the commenter states that HCP/NCCP implementation has a high likelihood of “increased fees” and “withholding of permits” and that the plan should do a better job of mitigation be roughly proportional in time and extent to impacts to covered species.

The possibility of increased fees is noted in Chapter 9 of the HCP/NCCP and the potential for withholding of permits under certain conditions are also described in Chapter 8 and in the Implementing Agreement. However, the plan has taken into account realistic current estimates of potential costs and incorporated strategies to adapt to future conditions where feasible to avoid the potential for withholding of permits.

It is important to note that the rising cost of species mitigation is an existing condition that would continue in absence of an HCP/NCCP. Further, lack of a comprehensive conservation strategy increases the likelihood that species impacts could rise to an unacceptable level that may warrant regulatory agency placement of additional constraints on future planned development and “withholding of permits”. The HCP/NCCP offers a more realistic approach to facilitate planned development and to effectively use mitigation fees to conserve covered species in the long run than the current project-by-project approach.

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

Response to Comment F-12

In response to the HCP/NCCP, the commenter states that the City would like the HCP/NCCP to outline the steps necessary by which the City could become a plan participant and what the implications would be for the components of the plan itself.

The members of the HCPA, CDFG, and USGWS had extensive discussions with the City in the early phases of HCP/NCCP implementation at which time the City chose not to actively participate in plan participation. Thus, the HCPA, CDFG, and USFWS, in order to continue progress on plan development and adoption, had to continue without the City of Antioch’s active participation.

The HCPA, CDFG, and USFWS would welcome discussion with the City about the possibility of the City participating in the HCP/NCCP and takes note of the comments provided on the draft HCP/NCCP.

City of Antioch participation would change the permit area and the UDA, acquisition priorities and areas, and conservation strategies. Such changes would need to be approved as an amendment to the HCP/NCCP by the local agencies that are Permittees under the HCP/NCCP and by the CDFG and USFWS in their regulatory role. Revisions to the HCP/NCCP would need to be developed, additional public review would likely be required, and additional compliance with NEPA and CEQA would likely also be necessary. Please see Section 17.6 of the Implementing Agreement for a discussion on the amendment process.

It would also not be appropriate to speculate at this time what the specific implications for the components of the plan may be in the event of Antioch participation unless and until the City decides that it desires to become an active participant and such participation has been discussed by the HCP/NCCP permittees, CDFG, and USFWS.

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

Response to Comment F-13

In response to the HCP/NCCP, the commenter states that inclusion of the City of Antioch in the HCP/NCCP would not result in the need to acquire additional preserve lands, given that the HCP acquisition is already sufficient and that the City could take the position that endangered species issues have already been resolved therefore the City does not have any obligation for further endangered species mitigation.

As described in Chapter 4 of the HCP/NCCP, the impacts to covered species are derived from the footprint of covered activities within covered species habitat. As shown in Figure 2-3, the City of Antioch is not included in the Urban Development Area because development within the City is not a covered activity. Thus, the impact analysis does not include the impact of development within the City of Antioch city limits as a covered activity nor as an impact of the HCP/NCCP.

Thus, the HCP/NCCP does not conclude that the impacts of development within the City of Antioch on covered species have been mitigated. Were these impacts included, it is likely that additional preservation would be needed to meet the conservation strategy goals.

Thus, the City's assertions that inclusion of Antioch in the HCP/NCCP would require no additional preservation and the City (or development within the City) has no obligation for endangered species mitigation are unsupported. Development within the City will still need to comply with all state and federal regulations concerning covered species including mitigation.

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

Response to Comment F-14

In response to the HCP/NCCP, the commenter states that the impact fee would be lowered if the City of Antioch were to participate and that the HCP/NCCP should analyze this scenario in the event that the City chooses to participate.

It is possible that impact fees may be lower overall within participation of the City of Antioch than without. However, as noted above, the impact of covered activities on covered species would increase with inclusion of development within the City limits and additional conservation actions are likely in order to mitigate the increased impact. Thus, it is speculative at this time to analyze the potential conservation requirements, costs, and related fees for a HCP/NCCP that included the City of Antioch.

As noted above, the HCPA, CDFG, and USFWS would welcome discussion with the City of Antioch about the City's participation. That discussion is the appropriate venue in which to assess potential conservation requirements, costs and related fees.

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

Response to Comment F-15

In response to the HCP/NCCP, the commenter states that the HCP/NCCP should include an analysis comparing the Plan with the City of Antioch's Resource Management Plan (RMP) for the Sand Creek Focus Area prepared as part of the 2003 General Plan update.

The compatibility of the HCP/NCCP with the Sand Creek Focus Area Resource Management Plan (RMP) was analyzed in the Draft EIS/EIR in Chapter 4, p. 4-25 to 4-26. The western third of the focus area (about 900 acres) is designated approximately three-quarters open space, one quarter Hillside and Estate Residential, and a minor portion as golf course/senior housing/open space (City of Antioch 2003) and is within the HCP/NCCP high-priority acquisition subzone 2h with a portion inside low-priority subzone 2g. The eastern third of the focus area (about 1,800 acres) is designated for residential use (City of Antioch 2003) and is within the HCP/NCCP low acquisition subzone 2i. Subzone 2h (1,200 acres) and subzone 2i (3,200 acres) include substantial areas outside the focus area.

As described in Chapter 5 of the Final HCP/NCCP, the conservation strategy in southern Antioch and the area immediately south has been changed in recognition of the newly designated urban limit line. The Final HCP/NCCP calls for acquisition of 600 acres of high-priority subzone 2h and calls for acquisition of at least 2,400 acres of the grasslands in acquisition subzones 2e, 2f, and 2h combined. As shown in Table 5-14, there is no minimum acquisition in low-priority subzones 2g and 2i.

Assuming that 600 acres of land is acquired in subzone 2h and that all of the acquired land is within the Sand Creek Focus Area, it is possible that this 600 acres may occur entirely within the open space designated area (about 675 acres) which would result in no incompatibility. However, if acquisition were to occur where the RMP designates residential use, there could be an incompatibility. If acquisition were to impede residential goals for this focus area, there may be a need to replace the lost residential and recreational opportunities in other parts of Antioch. At most, the area of potential incompatibility is identified as perhaps 150 acres of residentially designated land. Given an overall flexibility in preserve design as well as in the long-term land use planning process, the potential incompatibility within about 6% of the Sand Creek Focus Area (~150 acres) is not considered insurmountable and thus is not identified as a significant land use impact in the EIS/EIR.

Subzone 2i is approximately 3,200 acres and includes the eastern two-thirds of the focus area. There is no HCP/NCCP minimum acquisition in this area. Given that this area is a low priority acquisition area, the acquisition area is in any case, likely to be less than 5%. Given that the RMP designates part of the overlap in subzone 2i for open space, the subzone contains substantial areas outside the focus area), there is ample flexibility in preserve assembly to avoid substantial conflict with City of Antioch planning in this overlap area.

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

Response to Comment F-16

In response to the HCP/NCCP, the commenter states that the information concerning e-BART needs to be updated in Chapter 2 of the HCP.

Revisions to the HCP/NCCP

HCP/NCCP Chapter 2 was updated concerning e-BART utilizing the information from the e-BART web site as well as information from transportation planners in the County Community Development Department.