



November 30, 2005

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

Re: Draft East Contra Costa County Habitat Conservation Plan and
EIR/EIS

Dear John:

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

As you know, the Council worked actively in the development of the eighteen (18) "Principles of Participation" that brought together the many stakeholders that joined this planning effort over the last few years. We have appreciated the opportunity to participate in this endeavor and your openness to the many suggestions we have offered during this process. We remain committed to the original adopted Principles to the extent consistent with governing law and withhold final judgment on the acceptability of the HCP pending refinement and resolution of outstanding details and the concerns expressed below.

The streamlining and certainty associated with a well-crafted HCP can provide many benefits, not just to the development community in particular, but also to the economic development of East Contra Costa County as well. We urge your continued efforts to complete the HCP in a manner faithful to the Principles that have guided it since the beginning to be sure that these benefits can be realized.

The Homebuilders Association of Northern California has developed a set of technical comments on the HCP and EIR/EIS. We urge you to give them careful consideration

In this letter we would like to make a few important observations and outline some remaining concerns.

First, we appreciate the HCP's provision of "full recognition and credit for past and future public and private habitat and open space acquisition and other mitigation efforts" [Principle 17]. By recognizing that the public at large enjoys the benefits provided by the open space and habitat acquisitions, and that public and other past and future acquisitions

H-1

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contribute to the recovery of the species sought to be protected by the HCP, the document appropriately distributes across different sectors the burden of financing these acquisitions. The “fair share” financing concept built into the HCP ensures that new development as a whole bears only its proportionate burden in this process. Coupled with the “No Surprises” commitments included in the HCP (per Principles 6 and 7), this is a major achievement of the HCP as presently drafted.

H-1 (Cont.)

Second, we urge you to continue your efforts with the U.S. Army Corps of Engineers, the Environmental Protection Agency (Region 9) and the Regional Water Quality Control Boards (San Francisco Bay and Central Valley Regions) to secure their commitment to rely upon the HCP in the Section 404 permitting and Section 401 certification processes [Principle 14]. Because of the heavy overlap between the aquatic species protected by the HCP (i.e., California red-legged frog and California tiger salamander) and those resources protected by the above-mentioned agencies (i.e., waters of the United States and the State of California), we believe the value of the HCP would be greatly enhanced if the Corps, EPA and the RWQCBs were to use the HCP as the basis for the issuance of their permits.

H-2

We appreciate the commitments made to date by the USFWS to ensure that its other regulatory programs (Section 7 consultations and critical habitat designations) respect the policy and biological decisions reflected in the HCP. We request your assistance in ensuring that any such future efforts (including additional critical habitat designations or recovery plans) continue to do so. Without the full and active participation of the Corps, EPA and RWQCBs, however, we are concerned that the value of these efforts would be constrained. You have made good progress to date on these issues, and we offer any assistance that might be helpful in moving this along.

H-3

Third, 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.

H-4

Related to this issue, we are also concerned that the graphic illustrations contained in the HCP of the “priority acquisition areas” makes it very difficult to determine how or whether individual parcels lie within or outside the acquisition areas, as well as how the acquisition areas fall in relation to the ULL, city limits, spheres of influence, and related planning and jurisdictional lines. The development of more definitive and clearer graphics may necessitate further changes in the location of acquisition areas to avoid conflicts.

H-5

Fourth, we recognize that the HCP has not provided any ability for members of the regulated community to opt out of the HCP as anticipated by Principle 12. This change in direction was required by, among other things, the Court’s decision in Natomas I, 128F.Supp.2d 1274 (E.D.Cal.2000), which interpreted the requirement of Section 10 of the Endangered Species Act that funding for an HCP be “fully ensured.”

H-6



In light of this recognized constraint, however, we urge your continued discussions with the City of Oakley to address its concerns over the fee burden proposed for the Cypress Corridor. Oakley's participation in the HCP is of course critical to its success.

H-6 (Cont.)

Finally, we request your efforts to address the technical comments included in the letter from HBANC. We would be happy to work with you further to find ways of resolving those concerns.

The Council 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 an HCP that responds to many of the issues raised originally by the Council. We look forward to a successful conclusion that addresses the remaining Principles, consistent with current law, as well as the concerns outlined above.

Sincerely yours,

Linda Best
Executive Director

Response to Letter H, from the Contra Costa Council

Response to Comment H-1

In response to the HCP/NCCP, the commenter states support for the “fair share” financing concept and the “No Surprises” commitments included in the HCP

Commenter’s support of these aspects of the HCP/NCCP are noted.

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

Response to Comment H-2

In response to the HCP/NCCP, the commenter states support to continue effort with the USACE, EPA, and RWQCB to use the HCP as the basis for their permits.

The HCPA continues to work with the USACE, CDFG, EPA, SWRCB and the RWQCBs to urge streamlining of related regulatory permits and recognition of the value of the HCP in providing for aquatic resources protection and water quality enhancement in the plan area. The HCPA is optimistic that a regional permit program that addresses the regulatory requirements of the above-described agencies for jurisdictional wetlands and waters will be approved and in effect soon. The goal of this regional permit program will be to ensure that permit compliance for these regulatory mandates is coordinated with the HCP/NCCP and that fees paid under the HCP/NCCP will satisfy the off-site mitigation requirements of the wetlands regulations. Such coordination has not been achieved to our knowledge previously in a terrestrial HCP/NCCP (though several efforts are in the works), so the continued support and assistance from the Contra Costa Council in this regard would be helpful.

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

Response to Comment H-3

In response to the HCP/NCCP, the commenter requests the assistance of the HCPA, the CDFG, and USFWS in ensuring that future considerations of critical habitat or recovery plans for listed species take into account the policy and biological decisions in the HCP. Commenter notes concern that the full and active participation of the Corps, EPA, and RWQCBs will be necessary and offers the Council’s assistance.

The HCP/NCCP has been coordinated with current listed species planning. The Implementing Entity will continue to work with CDFG and USFWS during plan implementation. However, USFWS regulatory authority and responsibilities concerning critical habitat designation and recovery planning are separate from, and not limited by, the adoption of the HCP/NCCP. As with current recent designation of critical habitat for certain species, USFWS does take into account current planning processes on the ground when developing critical habitat and recovery plan proposals. Chapter 10 of the HCP/NCCP provides assurances regarding the designation of critical habitat in the HCP/NCCP inventory area. Several critical habitat designations issued during preparation of the HCP/NCCP concern species proposed for coverage under the HCP/NCCP (e.g., California tiger salamander,

California red-legged frog, and Alameda whipsnake), and no critical habitat was designated in the HCP/NCCP inventory area, at least in part due to the preparation of the HCP/NCCP.

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

Response to Comment H-4

In response to the HCP/NCCP, the commenter states that the HCP acquisition priorities should be reexamined in light of the adoption of new urban limit lines by the City of Antioch and Pittsburg.

As stated on page 1-2 of the Draft HCP/NCCP, an important purpose of the Plan is to allow for the continued growth of the participating jurisdictions. As stated on page 1-7 of the Draft EIS/EIR, a specific objective of the Plan is to “Enable the County and the Cities of Brentwood, Clayton, Oakley, and Pittsburg to reasonably and efficiently implement their respective general and specific plans, which collectively represent the foreseeable development in eastern Contra Costa County.”

The County and City General Plans are sometimes inconsistent within areas outside of the current city limits but within city urban limit lines, planning areas, and spheres of influence. The HCP/NCCP was designed to support development consistent with both County and city plans. The plan does so by respecting the current land use authority within the different jurisdictions. Within current city limits, that is the particular city and its adopted general plan. Within unincorporated areas, that is the County and the County’s general plan. The HCP/NCCP is cognizant of the potential for future changes in city boundaries and land use designations, which is why there is both an initial urban development area and a maximum urban development area included within the permit area. This flexibility and the identification of preserve opportunities larger than the initial preserve acquisition area allow the Implementing Entity to adapt to changes in land use policy over time.

The acquisition priorities have been altered in two locations that are within the newly adopted ULLs. South of Antioch, within the new ULL, a part of the eastern portion of Horse Valley and a portion of Lone Tree Valley have been changed from high priority to low priority. West of Pittsburg, within the new Pittsburg ULL, portions of the Faria property have been changed from high priority to low priority, while maintaining a critical wildlife corridor across part of the property.

Revisions to the HCP/NCCP

Commenter is referred to Chapter 5 of the HCP/NCCP to note the changes in acquisition priorities.

Revisions to the EIS/EIR

Commenter is referred to revised discussion of the new ULLs in Chapter 4 of the EIS/EIR

Response to Comment H-5

In response to the HCP/NCCP, the commenter notes a concern about the level of detail in the figures showing the acquisition priority areas and suggests that more definitive graphics may necessitate further changes in the location of acquisition areas to avoid future conflicts.

The designation of acquisition priority areas has been done at a landscape level, not at a parcel level as the HCP is a broad conservation plan and not a land use or zoning plan. Designation of an area is

not a land use designation that prohibits development. Instead, such designation is intended to guide the Implementing Authority in terms of overall conservation acquisitions. As such, it is not considered necessary to develop parcel-based or similarly detailed acquisition priority maps in order to develop and adopt the HCP/NCCP. However, a modification has been made to Section 2.3.1 of the HCP/NCCP to clarify that Permittees may more precisely define the boundaries of acquisition priorities when necessary based on site-specific information and in consultation with CDFG and USFWS.

Revisions to the HCP/NCCP

Section 2.3.1 of the HCP/NCCP has been modified as described above.

Response to Comment H-6

In response to the HCP/NCCP, the commenter describes that the HCP/NCCP is not voluntary for the participants despite Principle 12 in light of the requirement that an HCP be “fully ensured”. The commenter also urges continued discussions with the City of Oakley concerning the fee burden for the Cypress Corridor and notes the critical participation of the City of Oakley to the HCP success.

The commenter describes the mandatory nature of the HCP correctly. The HCPA, CDFG, and USFWS continue discussions and dialogue with the City of Oakley and concurs that Oakley participation is important. A memorandum of understanding (MOU) has been signed by the wildlife agencies and developers involved in the Cypress Corridor concerning species mitigation and participation in the HCP.

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

