

# Response to Letter J, from Discovery Builders as represented by Nossaman, Gunthner, Knox & Elliott, LLP

## Response to Comment J-1

In response to the HCP/NCCP, the commenter states that the cities of Antioch and Pittsburg changed their respective urban limit lines (ULLs) in November 2005. Consequently, the HCP/NCCP Permit Area should be revised to reflect these changes. Additionally, the commenter requests that designation of preserve acquisition priority of Subzone 1a, now within the ULL, be reduced to a lower priority because the commenter believes that this area has less biological value than ascribed by the HCP/NCCP

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 species 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 far larger than the ultimate preserve acquisition area allow the Implementing Entity to adapt to changes in land use policy over time.

The commenter advocates that the HCPA move the initial urban development area out to the extent of the city adopted urban limit lines. The adoption of the new ULLs by Antioch and Pittsburg does not provide the cities with land use authority in areas outside the city limits until these areas are incorporated. As such, it would be premature of the HCP/NCCP to ignore the in force land use designations of the County General Plan until the land use authority is formally vested in the respective city.

Regarding the biological value of Subzone 1a, the commenter’s own consultant, Michael Brandman Associates (MBA, Exhibit 2) describes the following concerning the Faria South property (henceforth “the property”) in its summary (p. 1-2):

(1) “San Joaquin kit fox is known from historic records to have occurred on lands 5 miles east of the property” but “there are no known occurrences of the kit fox within the site or in the general vicinity” and “there is a relatively large population of known predators”. The property “lies between undeveloped lands to the west (comprising Concord NWS) and to the southeast that may allow movements of relatively mobile species across the site, however the lands to the north, northeast, and southeast are developed or under development.”

(2) “Portions of the site also contain potentially suitable habitat for”... “San Joaquin kit fox” “California red-legged frog”, “California tiger salamander”, “western burrowing owl”, and “golden eagles”.

(3) “California red-legged frog is known to utilize nearby ponds adjacent” to the property and “have potential to be found within grasslands” on the property.

(4) “CTS is known to occur on the Concord NWS to the west and to north of the site” and “could possibly breed within the small man-made mitigation features located on the northern perimeter of the site” and potential “underground refuges” ...“are present on the project site.”

(5) “The western burrowing owl has been documented in habitats similar to those on the project site on lands immediately adjacent to the west and southeast.”

These descriptions are quoted from MBA’s own summary of their biological study of the property and provide no substantial evidence to contradict the description of the reasons provided in the HCP/NCCP for placing a high priority for Subzone 1a which are presented below along with response to MBA’s assertions regarding acquisition priority where appropriate:

(1) “to protect ridgelines and headwaters in the Willow creek and Lower Mount Diablo creek subbasins” - MBA asserts that the Faria property only contains a small percentage of the watershed. However, preservation of Subzone 1a would protect ridgelines and headwaters. The amount of the watershed preserved within this one site does not make it any less significant.

(2) “to provide a secondary connection for San Joaquin kit fox between Black Diamond Mines Regional Preserve and Detachment Concord once portions of the Keller Canyon landfill are closed and reclaimed” - The applicant’s consultant describes that the site allows for movement of highly mobile species (p. 2), but also asserts that there are no wildlife corridor for any covered species (p. 37), including San Joaquin kit fox. This assertion is unsupported as the potential for kit fox to migrate from Black Diamond mines to Concord NWS to the Faria property is a possibility as is the potential to migrate across the Keller Canyon landfill property, once restored.

(3) “to protect known occurrences of California tiger salamander” - The occurrences at the Concord NWS are known; protection of these occurrences includes preservation of land within the reasonable migratory range of CTS which can be up to and even exceeding 1 -mile. The Faria property is within 1 mile of two of the Concord NWS ponds. CTS are also previously known from the Vista Del Mar project site, which is east of the Faria property, but the breeding ponds were eliminated for development. Vista Del Mar mitigation ponds may become breeding habitat for CTS on the north side of the Faria property. Mitigation ponds for the Oak Hill development on the northwestern side of the property may also provide breeding habitat. This evidence supports a conclusion that the Faria property contains upland aestivation habitat associated with known occurrences and is adjacent to known and potential breeding habitat.

(4) “to provide connectivity to open space to the north within the Pittsburg city lands” - Subzone 1A is adjacent to existing open space and this is not disputed by the commenter or their consultant (see Exhibit 8 to the MBA study which shows designated open space to the north of the Faria property).

The applicant’s consultant asserts that preservation of Subzone 1A would not meet key objectives of the HCP/NCCP. The objectives (from p. 5-3 of the HCP/NCCP) and response to MBA’s assertions are provided below:

- 1) “Conserves, restores, and provides for the management of representative natural and semi-natural landscapes.” - MBA asserts that the Faria property is not representative because it is “homogenous non-native annual grassland” and is not unique. Non-native annual grassland is a naturalized landscape in the project area that provides habitat for numerous common and rare native species including many of the covered species and thus the Faria property meets this criteria.
- 2) “Establishes preserves that provide conservation of covered species within the inventory area and linkages to adjacent habitat outside the inventory area.” MBA asserts that the Faria property does not meet this criteria because it lacks breeding habitat for covered species. MBA’s report acknowledges that breeding habitat for CTS and CRLF is adjacent to the site and that upland aestivation of CTS may occur on the site along with WBO breeding. For CTS, successful breeding requires preservation of breeding sites as well as surrounding aestivation habitat such as that found on the Faria property. MBA also asserts that the site is separated from other preserve areas because the Concord NWS will be developed. Development of the Concord NWS is subject to both state and federal endangered species act requirements. While development may occur on portions of the transferred property, it probably that substantial areas will be maintained in open space. The area of open space is most likely to be the sloping land on the eastern part of the property adjacent to the Faria property including the area of known CTS breeding ponds. Thus, the Faria property and Subzone 1a are not likely to be isolated in the future as MBA asserts.
- 3) “Protects and maintains habitat areas that are large enough to support sustainable populations of covered species.” MBA asserts that the Faria property fails this criteria because there are no known populations of covered species, the site is too small, and potential breeding for CTS is limited to man-made mitigation features. As noted above there are known populations of CTS adjacent to the property that may utilize the property and the site is connected to areas that are likely to be conserved in the future. If CTS breeding occurs in the man-made mitigation features such breeding can contribute to sustainable populations; the man-made character of the features is irrelevant as long as they are successful. In addition, the MBA report does not conclude that breeding of WBO is not possible on the property. Even if breeding does not occur on a particular site, the area around breeding locations can be vital to support sustainable populations in terms of foraging, buffers from adjacent development, and migration.
- 4) “Incorporates a range of environmental gradients and high habitat diversity to provide for shifting species distributions due to changing circumstances”. MBA asserts that the Faria property is not diverse and does not provide a range of gradients. This objective is for a preserve system as a whole; it is not intended that every single parcel provide such a range or diversity, but rather that the contiguous preserve areas provide such range and diversity to accommodate shifting distributions.
- 5) “Sustains the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the Preserve System.” MBA asserts that the Faria property fails this criteria because it is surrounded by development on three sides. Since the property is adjacent to an expansive area of suitable and occupied habitat for covered species on the fourth side, to the west, the property can meet the criteria for movement and interchange as part of a connected preserve system.

Thus the commenter’s assertion that the biological priority of Subzone 1A is less than ascribed by the HCP/NCCP is not supported by compelling substantial evidence.

The HCP/NCCP seeks a balance that allows for planned City growth while also providing for species conservation. The conservation priorities for this particular location were evaluated further in light of

this comment. The highest conservation goal for this property is to provide a wildlife corridor that links California tiger salamander habitat to the east of the property with areas of habitat on the Concord Naval Weapons station to the west. This goal can be met through the provision of an adequate corridor crossing the property and the prospective corridor needs to be retained as a high-priority for acquisition. The remainder of the upland area has been changed from high-priority to low-priority to provide for more development opportunity in this area.

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

The revised acquisition priorities are shown in figures in Chapter 5 of the HCP/NCCP.

### **Response to Comment J-2.1**

In response to the HCP/NCCP and EIS/EIR, the commenter states the HCP/NCCP is inconsistent with General Plan land use designations and policies for the Cities of Brentwood, Clayton, Oakley, and Pittsburg and that the EIS/EIR did not adequately address conflict between the HCP/NCCP, County, and City General Plans. The commenter also states that the HCP/NCCP would constrain local General Plan authority and require the cities to adopt General Plan amendments.

As noted in the response to J-1, 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 respects 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 far larger than the ultimate preserve acquisition area allow the Implementing Entity to adapt to changes in land use policy over time.

The commenter advocates that in the event of conflict between the County and city general plans, the HCP/NCCP should default to the highest development scenario to avoid conflict with city land use planning, growth, and state, regional, and affordable housing requirements, and to avoid widening the jobs/housing imbalance.

The conflict the commenter ascribes between the HCP/NCCP and the city General Plans is better described as an inconsistency between the land use designations of the County within the unincorporated areas and the various cities for the areas outside of their city limits. This inconsistency is described in the draft EIS/EIR in Chapter 4, p. 4-25. The draft EIS/EIR properly assessed the consistency of the project to the existing land use authority in-force, which is the County General Plan in the unincorporated areas.

Regarding adoption of the highest development scenario in the event of conflict, the HCPA prefers to maintain use of the applicable land use designations today rather than speculate what the ultimate land use designations may be at some point in the future when city limits may be expanded. The HCP/NCCP is designed to accommodate a more expansive growth scenario as evidenced by the Maximum Urban Development Area.

Regarding potential conflict with housing requirements, see the response to comment J-2.2 below.

*No revisions to the EIS/EIR are necessary in response to this comment.*

## **Response to Comment J-2.2**

In response to the EIS/EIR, the commenter states that the analysis of land use and population/housing impacts, including direct, indirect, and cumulative, was inadequate for the following reasons:

- 1) Inconsistencies exist between the HCP/NCCP and local general plan land use plans for the City of Pittsburg, Antioch, and Brentwood such that they will not be able to meet their regional housing needs for the future, including affordable housing.
- 2) The HCP/NCCP includes “new and additional hurdles” such as stream setbacks, wetland mitigation fees, etc., that will discourage or prohibit development of covered areas consistent with the local general plans.
- 3) The HCP/NCCP includes new requirements and fees that will hinder general plan buildout and the ability to meet housing requirements.
- 4) The cumulative impact of multiple HCPs throughout Northern California on land use, population, and housing is not analyzed in the EIS/EIR

Each of these is responded to in turn below:

### **1) Inconsistencies between the HCP/NCCP and local general plan land uses for the City of Pittsburg, Antioch, and Brentwood regarding housing.**

**Pittsburg** - The Pittsburg General Plan Housing Element (City of Pittsburg 2004) includes a strategy to meet the City’s Regional Housing Needs Determination (RHND) for 1999 - 2006 of 2,513 dwelling units (DUs) including very low income (534 DUs), low income (296 DUs), moderate income (696 DUs, and above moderate income (987 DUs) (City of Pittsburg, Housing Element, December 2004). As of the end of 2004, the City had approved 1,511 units leaving 1,002 units of remaining need by 2006. The city Housing Element (See Table 13.6-6) identifies 420 acres within the city limits with a housing buildout potential between 3,970 and 9,788 units and 391 acres outside the city limits with a potential of between 314 and 1,327 units.

As demonstrated by these numbers, the City’s strategy to meet these housing needs is based primarily on residential development within the current city limits, as recognized by the commenter (see page 10, third paragraph of Comment Letter J). Within the City of Pittsburg, the HCP/NCCP identifies portions of western part of the City as low acquisition priority within subzone 1e. According to this comment, subzone 1e includes about 633 acres with a maximum buildout potential of 3,705 potential units. However, the commenter may be under the impression that the HCP/NCCP will result in substantial acquisition with subzone 1e or other low priority acquisition areas. To the contrary, only limited acquisition is actually expected within low priority acquisition areas overall. At this time, the amount of acquisition within subzone 1e is expected to be very limited. With such limited expected acquisition, the HCP/NCCP is likely to have little to no effect in the short and medium-term on the ability of the City of Pittsburg to fulfill its RDND allocations.

The City of Pittsburg concluded in its 2004 Housing Element (p. 13-76) “Pittsburg contains adequate land within the City limits to accommodate housing objectives.” The City is a participant in the

HCPA and has not identified that the HCP/NCCP will be an obstacle to meeting its current or future RHND needs.

In the long-term, the commenter is correct that acquisitions may occur within areas currently designated for residential development (in the City General Plan) outside the city limits that may limit the future ability of the City to meet residential allocations from these specific areas. The commenter identifies two specific areas of concern: the Faria property in subzone 1a and the Montreux et al property in subzone 1d.

The Faria property is approximately 370 acres (according to the MBA biological report included as Exhibit 2 to Comment J), is within the Southwest Hills planning area, and is designated for Hillside low-density residential, park and open space. As noted above, the acquisition priority for this area has been changed in the Final HCP/NCCP (see Chapter 5). With the revisions, less than 25% of the Faria property (roughly 85 acres) is designated high-priority and the remainder is low priority. If the property is acquired for the HCP/NCCP, the City will likely not have the opportunity to meet its future RHND allocation on these 85 acres of this particular property and will need to seek elsewhere to provide for residential needs. Presuming all of these 85 acres could otherwise be developed a maximum density (for hillside low-density residential = < 5 dus/acre), the opportunity lost can be estimated as < 425 units. Actual amounts are likely to be less as slope, drainage, and other site considerations are not included in this very rough estimate. Likewise, the amount of open space designated for the area may exceed the high priority designation, creating opportunities for no loss of development potential.

The Montreux et al property is within subzone area 1d, a low priority acquisition area. Current estimates are that between 25% and 30% may be acquired in this subzone for the HCP/NCCP. Given the size of area 1d (1,900 acres), there would remain substantial acreage (> 1,300 acres) within area 1d for future residential development even with limited HCP/NCCP acquisition.

While the areas within the high-priority area in subzone 1a are likely to be acquired given their high priority, the loss of this area and potential residential units (up to 425 units based on estimate above), given the ample residential opportunities identified by the City within city limits and those outside city limits within low-priority acquisition areas, the HCP/NCCP is not expected to result in short, medium or long-term impediments to meet housing allocations overall. For this reason, the draft EIS/EIR concluded (on p. 4-29) that this is a less than significant land use impact.

**Antioch** - For the City of Antioch, the compatibility of the HCP/NCCP with the Sand Creek Focus Area was analyzed in the Draft EIS/EIR in Chapter 4, p. 4-25 to 4-26 and with the Roddy Ranch Area and Special Planning Area "R" on page 4-27 to 4-29. Development at the Roddy Ranch area and Ginochio property are also mentioned in the cumulative analysis on p. 5-3 and 5-4.

The City of Antioch had designated RHND needs for 1999 - 2006 of 4,459 units, of which 3,387 units had been constructed/permitted by November 2003 leaving a remaining need of 1,826 units (City of Antioch General Plan, Chapter 9, Housing, Table 9.T November 2003). Lands designated for residential development within the city were estimated as 13,224 acres and within the unincorporated areas as 2,869 acres (Table 9.U in the Housing Element). Of note, these totals include 2,700 acres in the Sand Creek Focus Area (mostly within the City), 1,711 acres within Roddy Ranch (outside the City, but 850 acres are now within the City's newly adopted ULL), and 1,068 acres within the Ginochio property (outside the city, but with 200 acres now within the City's ULL). Capacity for new residential development through 2006 was estimated as 10,770 units within the city and 340 units within the unincorporated areas. The City of Antioch concluded in its General Plan that

Antioch “has adequate land capacity to meet its share of regional housing growth through and beyond 2006”.

The HCP/NCCP includes acquisition areas that overlap with the Sand Creek Focus Area (within the city limits), and Roddy Ranch and the Ginocchio property. Each of these areas is analyzed in respect to residential development capacity and the impact of the HCP/NCCP.

**Sand Creek Focus Area.** The Sand Creek Focus Area encompasses approximately 2,700 acres within the city. The Sand Creek Specific Plan designates this area for a mix of residential, commercial, recreational (golf course), and open space. The focus area overlaps with the high priority acquisition subzone 2h and the low priority subzones 2g and 2i. Subzone 2h (1,200 acres) overlaps with the western third of the focus area and the overlapping 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).

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 in 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 2g is a low priority area for preservation and all land in the area of overlap is designated by the City as Open Space; therefore no conflict exists for this subzone. Subzone 2i is approximately 3,200 acres and includes the eastern two-thirds of the Sand Creek Focus Area (about 1,800 acres). Acquisition in this area is likely to be limited as there is no minimum acquisition requirement for subzone 2i. Given that the RMP designates part of the overlap for open space, and the subzone contains substantial areas outside the focus area, there is ample flexibility in preserve assembly to avoid substantial conflict for the eastern two-thirds of the Sand Creek Focus Area.

Within the Sand Creek Focus Area, if 600 acres of the portion within subzone 2h within the focus area is ultimately acquired, and if only 450 acres overlaps, then about 150 acres could conflict with areas designated for residential use. The City would lose the opportunity within up to 150 acres for hillside and estate residential. The exact number of units is not estimated; however on a gross basis, loss of up to 150 acres out of an overall opportunity area of 16,000 acres (City General Plan Table 9.U) would represent a reduction of about 1% percent of land designated for Antioch residential development.

**Roddy Ranch.** The Roddy Ranch area is located outside the City and encompasses more than 2,100 acres and was previously proposed as a master planned development consisting of single family

residential (1,500 units), multifamily residential (200 units), and commercial (425,000 square feet). Approximately, 1100 acres within the Roddy Ranch have deeded development rights, including the golf course in the center of the ranch. The November 2005 ballot measure adopting the City's new ULL limited residential development in this area to 700 units. The Roddy Ranch area is within high-priority subzones 2f and 2h and low-priority subzone 2g. The developable portion of the Roddy Ranch within the new ULL is within high priority acquisition area 2h (300 acres) and low priority subzone 2g (200 acres), reflecting a reduction in the amount of high priority designation in this portion of the Ranch since the Draft HCP/NCCP. Likewise, due to the adoption of the Antioch ULL, Chapter 5 in the Final HCP/NCCP has been revised to indicate that "conservation of narrower movement routes will be pursued through the western and central portions of Horse Valley through Subzone 2h (west of and through the Roddy Ranch Golf Course) to connect to larger proposed conservation areas in Lone Tree Valley". It is therefore possible (though unlikely) that 300 acres of developable land within the Roddy Ranch Ranch and the Antioch ULL would be acquired by the HCP/NCCP, representing a reduction of about 2 percent of land designated for Antioch residential development.

**Ginocchio Property.** The Ginocchio property (also referred to as Special Planning Area "R") encompasses approximately 1,070 acres and has been proposed as a master planned development of single family residential (1,215 units), multifamily residential (135 units), and commercial (175,000 square feet). The Ginocchio property is within the low priority subzones 2g and 2i. Within subzone 2i, the conflict between residential development and preserve acquisition is considered low given the limited level of likely acquisition within this subzone. As disclosed in the draft EIS/EIR (Table 4.2-1 on p. 4-28 and p. 4-29), there was a potential for conflict in subzone 2g, which was designated high-priority at that time. In response to comment, the priority in subzone 2g was lowered, thus reducing the potential for land use conflict further.

**Antioch Overall.** Overall, combining the conservative estimates above for the Sand Creek Focus Area (up to 150 acres), Roddy Ranch (up to 300 acres), and the Ginocchio Property (no assumed acquisition), HCP/NCCP acquisition could eliminate up to 450 acres of currently residentially designated land out of 15,000 acres (assuming elimination of 1,000 acres due to the November 2005 ballot). This would represent a loss of about 3% residential development opportunity overall. Given the extensive remaining areas (>14,000 acres) available for residential development identified by the City in its General Plan, the compatibility conflicts identified are not considered to be an ultimate impediment to the City meeting its current nor its future regional housing allocations. As noted above, the incompatibility may be lower if acquisitions occur in areas designated for open space or constrained due to prior easements or other considerations. For these reasons, this was disclosed in the EIS/EIR as a less than significant land use impact for the City of Antioch.

**Brentwood** - The City of Brentwood has a RHND need for 1999 - 2007 of 4,073 units. As of mid-2005, Brentwood had approved or constructed about 6,725 units which exceeds their gross allocation and their requirements for moderate and above-moderate income housing substantially. However, Brentwood had not yet met allocations for very low and low-income groups and thus had a remaining need of about 1,004 units in these categories (City of Brentwood, Housing Element, Adopted May 10, 2005).

Brentwood's vacant land inventory within the city limits in 2005 identified approximately 977 acres within a dwelling unit capacity of 4,735 units, including approximately 2,164 units in medium to very high density designated areas that are likely more suitable for very low and low-income categories. Thus, there is ample residential development potential to meet housing needs within the city limits currently.

Within the Brentwood city limits, the only HCP/NCCP acquisition zone is subzone 2i, which is a low-priority area. Only a limited part of the subzone overall (which includes unincorporated land and area within the City of Antioch) is expected to be acquired. This subzone overlaps with the portion of Special Planning Area “J” that is west of the planned State Route 4 Bypass. This area already contains approved development (the Vineyards and Cowell Ranch State Park) has already been substantially planned, thus future limited acquisitions would not likely result in any effect on land use compatibility or residential buildout.

Special Planning Areas “R” is located mostly within low-priority subzone 2i with a small portion possibly in low-priority subzone 2g. The City has no current planning or land use designations for this area. For the same reasons noted above, limited acquisition in this area is not likely to hinder residential goals if proposed for this site.

However, potential future land use compatibility conflicts may exist in Special Planning Areas “G” and “H” (located outside the city and the ULL) because they are partially located with high-priority HCP/NCCP acquisition areas. SPA “G” is designated for residential use (195 acres; max of 195 dwelling units), limited commercial use (25 acres), and open space (150 acres) of open space and is located within subzones 2i, 2e and 2f. SPA “H” is designated for residential (192 acres, max. of 384 dwelling units), public facilities (90 acres), limited commercial (10 acres) and open space (158 acres) and is located within subzone 2i and 2e. The draft EIS/EIR (Table 4.3-1) identified the potential land use compatibility conflict as moderate in SPA “G” and “H”. The Brentwood Housing Element does not identify residential allocations outside of the City limits in terms of their potential to contribute to meeting RHND requirements. If substantial portions of SPA “G” and “H” are acquired for the HCP/NCCP, there could be an opportunity loss of up to 353 acres of residential use (and up to 579 units). In this case, Brentwood residential development would need to occur within the City/ULL and in SPA “R”. Given that at present, the City has ample acreage within the City to accommodate short-term and mid-term growth residential growth (> 3,700 unit potential beyond 2007 requirements) and SPA “R” will be available for future growth, the land use incompatibility is identified as a less than significant land use impact for the City of Brentwood.

**Oakley** - The only acquisition area within the City of Oakley is low-priority subzone 6a. The only preservation requirements for this subzone (which is over 11,000 acres in size) is for 250 to 400 acres of cropland or pasture that are to be acquired in 6a, 6b, 6c, or 6f along Kellogg Creek, Marsh Creek or adjacent to Dutch Slough.

The City of Oakley has a RHND for 1999 - 2006 of 1,208 units, all of which are designated to be met within the City’s jurisdiction (e.g. city limits) and none within its sphere of influence. As of 2001, the City identified about 1,656 acres with a residential buildout of 7,224 units in the City. (City of Oakley, Housing Element, 2002).

These numbers demonstrate that there is ample available acreage and residential capacity to meet current and future RHND requirements in the City of Oakley. Limited acquisition along creeks or near Dutch Slough within the City is highly unlikely to result in a substantial conflict between the HCP/NCCP and the City’s land use plan and ability to meet residential needs.

**Conclusion regarding housing for project** - As demonstrated above, HCP/NCCP implementation will not hinder short or medium-term ability of the local cities to meet their regional housing needs. In the long-term, Pittsburg, Antioch, and Brentwood may need to adjust the location of future residential development depending on where HCP/NCCP acquisitions actually occur, but given the ample opportunity lands that are identified in the local jurisdictional housing elements and the

flexibility in the preserve system assembly, there is no substantial evidence that the HCP/NCCP will hinder the ability of the local jurisdictions to meet their regional housing allocations.

**2) The HCP/NCCP includes “new and additional hurdles” including stream setbacks, water quality /erosion mitigation, and wetland mitigation and fees that will discourage or prohibit development of covered areas consistent with the local general plans.**

Some of the HCP/NCCP requirements are “new” in that they are proposed for development across the permit area in a uniform way. However, the key consideration is not whether the requirements are different than what may have occurred in the past but whether they are different or more burdensome than what would occur in the future without the HCP/NCCP.

The various jurisdictions require setbacks, but the HCP/NCCP establishes setbacks across the permit area. This is an “additional” requirement that may reduce, but by no means eliminate, the ability to develop certain properties along streams. The area lost to development is not expected to be substantial on a landscape basis such that one would expect noticeable effects on general plan buildout on an acreage basis. Stream setback measures in the HCP/NCCP provide for exceptions to setback requirements, including categories of pre-identified exceptions and case by case exceptions. Cumulatively, the stream setback measures should facilitate development by providing a clear explanation up front of how stream impacts should be avoided and by providing an expedited means of receiving permits for unavoidable impacts to streams.

The application of the C.3 provision (concerning hydrology and erosion) of Contra Costa County’s municipal stormwater permit to the eastern part of the County is an existing not a new requirement. The County’s Clean Water Program NPDES Permit applies throughout the County. The draft HCP/NCCP did not describe this correctly; this has been corrected in the Final HCP/NCCP.

Projects that fill wetlands, ponds, and streams are subject to the permit authority of the U.S. Army of Corps of Engineers, California Department of Fish and Game, and the Regional Water Quality Control Board. All of these agencies require some combination of avoidance, minimization, mitigation, and/or compensation for effects to these water resources. This requirement is not “new” the HCP/NCCP seeks to provide a more uniform and coordinate approach to mitigation overall. Regarding wetland fees, projects are currently required to mitigate loss of wetlands often through case-by-case wetland creation, restoration, enhancement, or preservation. The HCP/NCCP creates a more uniform method of mitigation through fees that on a broad basis is not a substantial new additional requirement since applicable law applies with or without the HCP/NCCP.

Regarding the suggestion that the HCP/NCCP will burden development with additional surveys even if a site is not environmentally sensitive, the intent of the survey requirement is not to conduct detailed surveys of land that is demonstrably not habitat, but rather to provide a uniform, phased approach to identifying the habitat and species value of specific properties proposed for development. Such planning level surveys are already usually required to support land use processing and CEQA evaluation and thus this is not a “new” or “additional” requirement across the permit area. Where preliminary surveys can clearly demonstrate that a site does not contain habitat for a particular species, then detailed protocol surveys for that species will not be required, consistent with current practice.

The commenter is incorrect in their quotation of what is or isn’t a covered activity. The actual language on p. 1-7 of the HCP/NCCP is “all ground-disturbing activities controlled by permit holds via their land use planning process.” Thus, the HCP/NCCP is not creating new permit approvals, but

rather providing a means by which the local jurisdictions can provide compliance with the state and federal endangered species acts through their local permitting process.

Overall, while HCP/NCCP does include new requirements for development, these requirements are part of an overall streamlining and coordinating of mitigation of impacts to covered species and habitat effects that are already subject to existing government authority. Because many of these disparate requirements have been collected into a single coordinated strategy, the requirements may appear “new” or “additional” but they are likely on a broad scale skin to those that would be imposed through existing authority without the HCP/NCCP. Further, by providing for a coordinated approach to mitigation overall, it is intended that the HCP/NCCP will actually shorten the approval process relative to endangered species as well as provide feasible mitigation that would not be achievable on a case by case basis. Thus, across the permit area, the HCP/NCCP is more likely to remove a potential constraint to development that is compliant with the local General Plans that it is to hinder such development.

### **3) The HCP/NCCP includes new requirements and fees that will hinder general plan buildout and the ability to meet housing requirements.**

The HCP/NCCP will add new fees. Without the HCP/NCCP, individual developers would need to negotiate their individual compliance with the state and federal agencies, all of which can be quite costly where the site in question contains rare species habitat or other sensitive environments. In some cases, on-site options for mitigation do not exist or are prohibitively expensive, which can eliminate the development potential of a site substantially, which can result in a drastic reduction in land value and financial losses. In addition, the cost of purchasing off-site mitigation, including having to fund an endowment and find an entity to hold and manage the land, is extremely expensive and time-consuming. Further, the HCP/NCCP represents fulfillment of a commitment made by CCWD pursuant to provision of water to eastern Contra Costa County for future development. Absent the HCP/NCCP, CCWD could be limited in its ability to provide water to future development forcing individual developments to seek their own water sources, which would be quite costly and sometimes infeasible.

The HCP/NCCP fees represent the replacement of these real future costs to individual developers, public agencies, and the public with fees and funding to implement a coordinated mitigation approach that will allow development to proceed within the permit area in accordance with the plan and the local General Plans. As many of the costs that occur today for compliance are similar to those incorporated into the HCP/NCCP and its fees, the HCP/NCCP is not expected to pose a substantial financial impediment to long-term development within the project area. Regarding “additional” survey requirements and approval process, see response above.

It should also be noted that the HCP/NCCP may remove obstacles to development in some cases where at present there is no way to comply with the state and federal endangered species act absent a landscape level approach to mitigation.

### **4) The cumulative impact of multiple HCPs throughout Northern California on land use, population, and housing is not analyzed in the EIS/EIR**

Although there a number of HCPs in preparation, there is only one approved large-scale HCP adjacent to eastern Contra Costa County, the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) that is within the same housing market area as the current project. Accordingly, the SJMSCP is the only HCP discussed in the cumulative impacts analysis in the

EIS/EIR. CEQA and NEPA both require consideration of recent past, current, and reasonably foreseeable development in the cumulative analysis. Other HCPs that are in preparation may not ultimately be adopted, or may be substantially different in adoption than their present status. It is for this reason that it is common practice in CEQA and NEPA documents to not consider draft documents as part of the cumulative scenario. A similar case exists for not analyzing draft land use plans prior to their adoption. The reason for doing so is to avoid speculative analysis that is of no credible and reliable value in identifying the likely cumulative impacts of a project. Thus, there is no need or requirement to assess the impacts of the various other HCPs until such a time that they are actually adopted.

Regarding cumulative impacts of the ECCC HCP/NCCP and the SJMSCP, as described in response to prior comment, the ECCC HCP/NCCP is not expected to have a significant impact on the ability of local jurisdictions to meet the existing and future regional housing needs. The SJMSCP EIS/EIR (2000) does not identify that its implementation will result in significant land use, population or housing impacts. Thus, implementation of both plans in adjacent counties is highly unlikely to result in significant cumulative impacts on land use, population or housing. It should be noted that the housing centers in San Joaquin (Stockton, Tracy, etc.) are separate from those in eastern Contra Costa County and thus combined effects of the two plans are not likely to affect contiguous housing areas.

Regarding the suggestion to change the initial permit area to include areas outside the city limits and to revise the HCP/NCCP acquisition priorities in areas where the County and City land use plans are inconsistent in favor of the higher development scenario see the response to J-1 above.

#### *Revisions to the EIS/EIR*

Discussion of housing impacts in Pittsburg, Antioch, Brentwood, and Oakley were added EIS/EIR

### **Response to Comment J-2.3**

In response to the HCP/NCCP, the commenter states that the plan includes substantial mitigation requirements for wetlands and water quality that are burdensome and inequitable because applicants will be subject to separate wetland and water quality permitting requirements. The commenter describes that the imposition of avoidance and minimization measures if to ensure that new development has no to minimal adverse effects on downstream fisheries, but no fish species are actually covered by the HCP/NCCP.

The HCPA is seeking regional wetland permitting presently with the U.S. Army Corps of Engineers, the California Department of Fish and Game and the State Water Resources Control Board. The intent of this parallel effort is to, the extent feasible, create uniformity of mitigation between the HCP/NCCP requirements and those of the regional permitting as it relates to development conditions (such as stream setbacks and the C.3 provisions for hydrology/erosion control), wetland avoidance and minimization, and compensation/mitigation fees for species and wetland impacts.

While it is the intent of the HCPA to obtain regional permitting that will formally streamline permitting and avoid duplication of effort and inconsistent mitigation, even if such regional permitting is not ultimately secured, permitting agencies must consider the mitigating value of the HCP/NCCP when adopting any permit conditions. This is similar in effect to mitigation that is adopted during the CEQA process prior to permitting. A CEQA lead agency may impose certain avoidance, minimization, mitigation, and compensation measures for impacts to rare species, habitats,

and wetlands that a permitting agency must consider. This is an existing condition today in which projects are subject to the separate authority of the land use authority/CEQA lead agency, the USFWS, CDFG, USACE, RWQCB, and others. The HCP/NCCP and the parallel regional wetland permitting effort offers a way to streamline many of the different regulatory processes as they relate to species, habitat, wetland, and water quality permitting.

Regarding whether HCP/NCCP requirements are “new” or “additional” see the response above to comment J-2.2.

Regarding extension of the C.3 provisions into eastern Contra Costa County, see earlier response to this issue.

Regarding fish species, the commenter is correct that the HCP/NCCP does not provide coverage for take of fish species. One of the purposes (see p. 1-2) of the HCP/NCCP is to serve as the basis for regional wetland permits. The HCPA must consider the impacts of covered activities and HCP/NCCP activities on beneficial uses, including water quality and its effect on fish species, if it is to secure the SWRCB’s adoption of a streamlined water quality-permitting program, which the commenter appears to support. These measures also serve to protect habitat for covered aquatic species (such as riparian-associated birds, California red-legged and yellow-legged frogs, and western pond turtle. Thus, if certain development conditions such as the stream setbacks (Conservation Measure 1.6) and hydrology/erosion controls (Conservation Measure 1.10), and wetland avoidance and minimization (Conservation Measure 2.12) are the “cost” to the regulated community, then the “benefit” would be streamlined permit processes.

Regarding the suggestion to delete Conservation Measures 1.6, 1.10, and 2.12 if streamlined regional wetland permit processes are not secured, the comment is noted. At this time, because these processes are being pursued and due to the benefit of these measures to covered species (as well as non-covered), they are being retained. However, a new Section 17.4 has been added to the Implementing Agreement that provides a process for adjusting wetland-related requirement if regional wetland permit processes are not provided.

Regarding including fish species as covered species, the inventory area excluded current and historic tidal areas to avoid duplicating other conservation efforts focused on species and natural communities within the Delta.

#### *Revisions to the HCP/NCCP and EIS/EIR*

Section 17.4 has been added to the Implementing Agreement that provides a process for adjusting wetland-related requirement if regional wetland permit processes are not provided..

## **Response to Comment J-2.4**

In response to the HCP/NCCP, the commenter (1) states that the HCP/NCCP creates uncertainty for landowners because it does not clarify the effect of inclusion in a designated acquisition area and does not identify how development may proceed in acquisition areas or whether take coverage will be available for such activities; (2) recommends 180-day advance notice of changes to the Permit Area and permission of applicants with one or more discretionary permits prior to a change in the Permit Area to complete their project irrespective of the Permit Area change; and (3) requests more information regarding the acquisition zones in the form of a table.

Regarding the effect of inclusion in a designated acquisition area on development, projects located within the initial urban development area or later within the designated future urban development area can obtain take coverage through the HCP/NCCP. Unless and until a project area is included with the urban development area, a project cannot seek take coverage through the HCP/NCCP but is not in anyway precluded from seeking coverage through an individual permit process with the CDFG and USFWS. Projects within the initial urban development area can obtain take coverage upon HCP/NCCP adoption. Projects within designated low and medium-priority areas outside the urban development area can seek take coverage through the HCP/NCCP only after inclusion in a revised urban development area, which would occur when changes in the County ULL or the city limits occur.

High-priority areas are excluded from inclusion in the urban development area for the HCP/NCCP but are not precluded from seeking take coverage through an individual permit process with the CDFG and USFWS. Since proposed development in high-priority areas may affect the ability to meet the goals of the HCP/NCCP, major development proposals are likely to trigger consideration of potential amendments to the HCP/NCCP, which would trigger formal USFWS and CDFG review similar to the process for the initial adoption of the plan (see HCP/NCCP, Section 10.3.3). Whether or not such major amendments would be approved in such a way that would allow major development to proceed within currently designated high-priority area is speculative and unknown.

Regarding HCP/NCCP fees being required for projects that will not receive take coverage from the HCP/NCCP, the commenter is mistaken. Projects outside the permit area will not be charged HCP/NCCP fees as they do not qualify for coverage.

Regarding a 180-day advance notice and processing of projects during the interim between notice and Permit Area change, this comment is noted. This comment concerns specific implementation details, which will need to be finalized at a later date.

Regarding information on acquisition zones, Table J-1 summarizes the minimum acquisition areas from the HCP/NCCP by subzone.

Regarding later information potentially changing the biological value/priority of acquisition zones, the Implementing Entity will be able to consider minor modifications of preserve system configuration pursuant to the procedures in Section 10.3.2 and major modifications pursuant to Section 10.3.3, as well as under the adaptive management provisions of the HCP/NCCP, when changes are consistent with, and may be funded by, existing budget resources. Likewise, a provision has been added to the criteria for defining the urban development area in Chapter 2 of the Final HCP/NCCP that stipulates that a boundary precising may be pursued with the wildlife agencies on the basis of site-specific biological information. Biological information will also be considered during preserve system acquisition and development over time and may influence which specific locales will be targeted for acquisition; however alteration of the designated priorities or conservation strategy must go through the revision process and approvals established by the HCP/NCCP.

#### *Revisions to the HCP/NCCP and EIS/EIR*

Added a provision to the criteria for defining the urban development area in Chapter 2 of the Final HCP/NCCP that stipulates that a more precise definition of the boundary may be pursued with the wildlife agencies on the basis of site-specific biological information.

**Table J-1.** Summary of Land Acquisition Requirements in the HCP/NCCP

Zone	Subzone	Priority IUDA	Priority MUDA	Total Acres Available	Requirements <sup>1</sup>	Min. Acres (IUDA)	Min. Acres (MUDA)	Source
1	1a	LP/HP	LP/HP	97	Annual grassland	85	85	Chap 5, Zone 1 Requirements
1	1b	HP	HP	593	Annual grassland (1,450 acres combined w/ 1c)	TBD	TBD	Chap 5, Zone 1 Requirements
1	1c	HP	HP	2,206	Annual grassland (1,450 acres combined w/ 1c)	TBD	TBD	Chap 5, Zone 1 Requirements
1	1d	LP	LP	1,913	25% of total area	478	478	Chap 5, Zone 1 Requirements
1	1e	LP	LP	3,803	No specific requirements	0	0	Chap 5, Zone 1 Requirements
1	All	All	All		Estimated minimum requirement	2,100	2,250	Table 5-9
1	All	All	All		Estimated maximum requirement	2,850	3,150	Table 5-9
			<b>TOTAL</b>	<b>8,613</b>				
2	2a	HP	HP	1,841	At least 60% of subzone Annual grassland (850 acres) 90% of chaparral in 2a, 2b, and 2c Land to protect Mount Diablo manzanita	1,104	1,104	Chap 5, Zone 2 Requirements Table 5-14
2	2b	HP	HP	1,782	Annual grassland (450 acres) Connection b/w Black Diamond R.P. and Clayton Ranch (w/ 2c) 90% of chaparral in 2a, 2b, 2c	450	450	Chap 5, Zone 2 Requirements Table 5-14
2	2c	HP	HP	1,105	Annual grassland (400 acres) 0.5-mile wide connect b/w Black Diamond and Clayton Ranch (w/2c) 90% of chaparral in 2a, 2b, 2c Seven (7) of thirteen (13) ponds for TCB, CTS, WPT, or CRLF	400	400	Chap 5, Zone 2 Requirements Table 5-14

Zone	Subzone	Priority IUDA	Priority MUDA	Total Acres Available	Requirements <sup>1</sup>	Min. Acres (IUDA)	Min. Acres (MUDA)	Source
2	2d	HP	HP	1,953	Annual grassland (800 acres) Known occurrence of round-leaved filaree	800	800	Chap 5, Zone 2 Requirements Table 5-14
2	2e	HP	HP	1,173	Annual grassland (800 acres) See 2e/2f/2h below	800	800	Table 5-14
2	2f	HP	HP	1,757	Annual grassland (1,000 acres) San Joaquin kit fox movement corridor Land for SJKF Movement must include 2 occurrence For big tarplant Land for SJKF Movement must include 1 occurrence of round-leaved filaree Where possible, land for SJKF and plants, should include alkali soils See 2e/2f/2h below	1,000	1,000	Chap 5, Zone 2 Requirements Table 5-14
2	2g	LP	LP	315	No specific requirements	0	0	Table 5-14
2	2h	HP	HP	1,200	Annual grassland (600 acres) Two occ. of big tarplant Known occ. of Mt. Diablo manzanita and Brewer's dwarf flax San Joaquin kit fox (75%) Silvery legless habitat, if present See 2e/2f/2h below	600	600	Chap 5, Zone 2 Requirements Table 5-14
2	2i	LP	LP	3,459	No specific requirements	0	0	Table 5-14
2	2a/2b/2c			135	Chaparral habitat (90%)	122	122	Chap 5, Zone 2 Requirements
2	2e/2f/2h			3,200	Annual grassland, combined	2,400	2,400	Chap 5, SJKF Requirements
2	All				Vernal pool invertebrate suitable habitat, wherever possible			Chap 5, Zone 2 Requirements
2	All	All	All		Estimated minimum requirement	7,500	7,500	Table 5-9
2	All	All	All		Estimated maximum requirement	9,550	9,550	Table 5-9

Zone	Subzone	Priority IUDA	Priority MUDA	Total Acres Available	Requirements <sup>1</sup>	Min. Acres (IUDA)	Min. Acres (MUDA)	Source
2			TOTAL	14,583				
3	3a	HP	HP	759	90% of modeled AWS suitable core habitat Land to increase linkage from chaparral in zone to Mt. Diablo chaparral	159	159	Chap 5, Zone 3 Requirements
3	3b	LP	LP	1,104	No specific requirements	0	0	Chap 5, Zone 3 Requirements
3	3c	LP	LP	315	No specific requirements	0	0	Chap 5, Zone 3 Requirements
3	All	All	All		Estimated minimum requirement	400	400	Table 5-9
3	All	All	All		Estimated maximum requirement	750	750	Table 5-9
3			TOTAL	2,179				
4	4a	HP	HP	2,266	75% of natural land cover types Known occ. of Diablo helianthella and Brewer's dwarf flax See 4a/4h below	1,700	1,700	Chap 5, Zone 4 Requirements Table 5-10
4	4b	LP	LP	1,731	Known occ. for Mt. Diablo fairy lantern if extant.	0	0	Chap 5, Zone 4 Requirements Table 5-10
4	4c	LP	MP	4,160	See 4c/4e/4f/4g below	TBD	TBD	
4	4d	MP	MP	1,588	60% of natural land cover types	953	953	Table 5-10
4	4e	LP	MP	740	See 4c/4e/4f/4g below	TBD	TBD	
4	4f	LP	MP	2,138	Known occ. for Brewer's dwarf flax See 4c/4e/4f/4g below	TBD	TBD	Chap 5, Zone 4 Requirements Table 5-10
4	4g	LP	MP	659	See 4c/4e/4f/4g below	TBD	TBD	
4	4h	HP	HP	1,055	75% of natural land cover types Linkage between Morgan Territory Ranch, Morgan Territory RP and Mt. Diablo	791	791	Chap 5, Zone 4 Requirements

Zone	Subzone	Priority IUDA	Priority MUDA	Total Acres Available	Requirements <sup>1</sup>	Min. Acres (IUDA)	Min. Acres (MUDA)	Source
					See 4a/4h below			Table 5-10
4	4a/4h			222	90% of modeled AWS suitable core habitat	200	200	Chap 5, Zone 4 Requirements
4	4c/4e/4f/4g				18%/IDA or 39%MDA of natural land cover types in 4c, 4e, 4f, 4g	1,400	3,000	Table 5-10
4	All			435	Chaparral/Scrub	270	270	Chap 5, Zone 4 Requirements
4	All	All	All		Estimated minimum requirement	4,900	6,050	Table 5-9
4	All	All	All		Estimated maximum requirement	6,150	8,350	Table 5-9
4			TOTAL	14,338				
5	5a	HP	HP	4,732	See 5a/5d and 5a/5b/5d below	TBD	TBD	
5	5b	LP	HP	2,240	See 5a/5b/5d below	TBD	TBD	
5	5c	MP	MP	3,247	Annual Grassland/Suitable foraging habitat for Swainson's hawk Modeled silvery legless lizard habitat, if feasible (for MUDA)	1,000	1,000	Table 5-11
5	5d	MP	HP	2,928	See 5a/5d and 5a/5b/5d below	TBD	TBD	
5	5a/5d				Annual grassland 2 (IUDA) or 4 (MUDA) of the occ. of brittlescale At least 2 occurrences of recurved larkspur 170 acres connected to Byron Airport preserved areas	4,300		Chap 5, Zone 5 requirements Table 5-11
5	5a/5b/5d				Annual grassland		7,100	Table 5-11
5	All			10,734	Grassland	5,300	8,100	Table 5-11
5	All			1,053	Alkali grassland	750	900	Table 5-11

Zone	Subzone	Priority IUDA	Priority MUDA	Total Acres Available	Requirements <sup>1</sup>	Min. Acres (IUDA)	Min. Acres (MUDA)	Source
5	All			59	Alkali wetland	40	40	Table 5-11
5	All				Vernal pool invertebrate suitable habitat, wherever possible			Chap 5, Zone 5 Requirements
5	All	All	All		Estimated minimum requirement	6,100	9,050	Table 5-9
5	All	All	All		Estimated maximum requirement	7,200	11,450	Table 5-9
5			TOTAL	13,147				
6	6a	LP	LP	11,462	See 6a/6b/6c/6f below	TBD	TBD	
6	6b	LP	LP	8,004	See 6a/6b/6c/6f below	TBD	TBD	
6	6c	LP	LP	3,402	See 6a/6b/6c/6f below	TBD	TBD	
6	6d	LP	LP	4,226	See 6d/6e below	TBD	TBD	
6	6e	LP	LP	5,030	See 6d/6e below	TBD	TBD	
6	6f	LP	LP	789	See 6a/6b/6c/6f below	TBD	TBD	
6	6d/6e			467	Alkali grassland	100	300	Table 5-11
6	6d/6e			88	Alkali wetland	20	40	Table 5-11
6	6a/6b/6c/6f			22,328	Cropland or Pasture	250	400	Table 5-11
6	All	All	All		Estimated minimum requirement	450	800	Table 5-9
6	All	All	All		Estimated maximum requirement	550	1,100	Table 5-9
6			TOTAL	32,913				
ALL	All	All	All		Estimated minimum requirement	21,450	26,050	Table 5-9
ALL	All	All	All		Estimated maximum requirement	27,050	34,350	Table 5-9

Note 1: The requirements in this table are a summary of the land acquisition requirements in Chapter 5 of the HCP/NCCP; consult that chapter for a complete description of all land acquisition requirements

## Response to Comment J-2.5

In response to the HCP/NCCP, the commenter requests clarification that local General Plan land use designations included in the HCP/NCCP were identified to develop the HCP/NCCP Conservation strategy, not for regulatory purposes.

County and city General Plan land use designations are managed by the associated city or county. The HCP/NCCP is based on the current applicable land use jurisdictional designations, which means the City general plans within city limits and the County general plan within the unincorporated areas. No new land use designations are created by the HCP/NCCP. A flexible approach is described in the HCP/NCCP to accommodate future changes in the city limits or County ULL over time.

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

## Response to Comment J-2.6

In response to the HCP/NCCP, the commenter states that the survey requirements appear to be onerous for sites with little to no biological value.

One of the guiding principles (see Chapter 6) is to “make survey requirements proportional to impacts - the survey burden should be lower on low-quality habitat than on high-quality habitat. It is the intent that surveys follows a similar triage to that which is done for current development in which general reconnaissance surveys are done first to identify the habitats present on site and their general potential to support covered species followed by more specific surveys (such as botanical surveys, wetland delineations, and species surveys) as needed to describe in detail the potential biological resources that might be present on a particular development site. As the commenter notes, if there are no potential wetlands on a site, no delineation should be required. Similarly, if suitable habitat is not present for a covered species, then no preconstruction surveys for that species should be required.

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

## Response to Comment J-2.7

In response to the HCP/NCCP, the commenter states that the implementation provisions are ambiguous because they (1) vest authority with the Implementing Entity that should be vested with the permitted jurisdictions and (2) that the HCP/NCCP fails to establish rigorous processing timeframes.

In regards to the Implementing Entity, it should be noted that the IE consists of elected officials from the respective jurisdictions. Further, day-to-day permit processing, as stated on p. 8-2 to 8-3, the participating jurisdictions have the authority to grant take coverage for complete applications that comply with all relevant terms. The reference on p. 2-14 in the draft EIS/EIR is to activities not specifically described as covered in the HCP/NCCP that would require approval of both the participating jurisdiction and the Implementing Entity. The language on p. 8-2 to 8-3 is correct in that the participating jurisdictions have the authority to grant take coverage for covered activities.

Regarding processing timeframes, Section 7.7 of the IA establishes a 60-day processing timeframe, which is considered reasonable given the extensive contents of application submittals. The commenter’s suggestion for a 15-day completeness review and 45-day application review is noted.

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

## **Response to Comment J-2.8**

In response to the HCP/NCCP, the commenter requests that “CEQA coverage” be provided for all biological resources through compliance with the HCP/NCCP.

Formally, the HCP/NCCP can only provide take coverage for covered species pursuant to the state and federal endangered species act. The EIS/EIR for the HCP/NCCP can thus only provide “CEQA coverage” for the covered species as they are the only species for which detailed impact analysis was conducted. However, the commenter is correct that the HCP/NCCP requirements/conservation measures will provide mitigation for development activities that will also be of benefit to a wide range of terrestrial and aquatic habitats and species. An argument can be made that compliance with the HCP/NCCP may provide all necessary mitigation to reduce impacts of a particular project to a less than significant level; however, such a determination will depend on the specific project effects on biological resources.

The participating jurisdictions will be able to conclude that project impacts to covered species and their habitat will be fully mitigated by compliance with the HCP/NCCP. After the adoption of the HCP/NCCP, it is the intent of the HCPA to prepare an analysis of the benefits/mitigation value of HCP/NCCP relative to impacts of covered activities to non-covered species and habitats that could then be used by the participating jurisdictions when making CEQA project findings concerning impacts to non-covered biological resources.

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

## **Response to Comment J-2.9**

In response to the HCP/NCCP, the commenter presents a different definition of “edge effects” as the effects that preserve designation has on the development potential on adjacent urban development areas. The commenter believes that the effects of the Urban-Wild land Interface Design Guidelines on adjacent development are onerous and are not properly analyzed in the EIS/EIR. The commenter also asserts that the guidelines are in conflict with the Principles of Participation.

The urban-wildland interface is defined as a narrow zone (<100 feet) between urban development and preserve areas. Thus the interface is by definition outside the preserve itself. The design guidelines in HCP/NCCP Appendix E recognize that it is not practical to retrofit existing development that borders planned preserve areas, but it is possible to incorporate interface design features into new development. The interface design features will not only reduce indirect effects of development on covered species and habitats in the preserves, but can also reduce the entry of species into developed areas, which can reduce potential impact of the adjacent preserve on adjacent properties, which is consistent with one of the plan principles of participation.

While the commenter is correct that the interface design requirements will affect the development character within the interface itself, the design guidelines allow for fencing, trails, firebreaks and minor roads within the buffer zone and also allow that the width of the buffer zone can be reduced if the indirect effects of adjacent development are reduced through good design practices. Thus, it is unlikely that development design cannot accommodate appropriate site-specific interface design requirements and also achieve development in accordance with land use designations. As one

example, it is common local practice to provide for firebreak areas and sometimes fencing between residential development and wildland areas for safety reasons alone. Incorporation of the interface design requirements to be cognizant of mitigation for indirect species effects may change the specific techniques used in the interface, but not substantially reduce the available land for development.

Regarding suggested change to the HCP/NCCP and the IA regarding mitigation for edge effects, the HCP/NCCP and the EIS/EIR contain the complete set of mitigations required for impacts to covered species, including edge/indirect effects. These HCP/NCCP requirements include Conservation Measure 1.9 to incorporate urban-wildland interface design requirements into site design of immediately adjacent urban development.

Regarding the Principles of Participation, given the details noted above, the guidelines provide a framework for managing potential impacts to adjacent properties in a manner that does not impede the ability for new development.

#### *Revisions to the EIS/EIR*

Specific language has been added to Section 4 of the EIS/EIR disclosing the above analysis of the potential effect of the interface design requirements on adjacent properties and the conclusion that this is a less than significant land use effect.

### **Response to Comment J-2.10**

In response to the HCP/NCCP, the commenter states that there is inadequate justification for the 30-year permit term in the Plan relative to the USFWS 5-point policy.

The HCPA and the USFWS believe that the Plan adequately describes the basis for the 30-year permit term. Contrary to the commenter's statement, the Plan on page 1-4 provides more than two sentences justifying the permit term. As summarized by the commenter, the 30-year permit term was selected, in part, because that is the expected time period needed to assemble the Preserve System. This time period was also selected because it is the duration expected to be needed to realize the planned growth in the jurisdictions participating in the Plan. This assessment is based on the lifespan of the general plans of participating jurisdictions (cited fully in Chapter 2 of the Plan) as well as the professional judgment of senior planners and planning directors of the participating jurisdictions regarding the expected buildout of their jurisdictions. Factors considered in this analysis included the pace of development in the recent past and the extent of city spheres of influence (a planning tool used to define the ultimate boundary of a city). This permit term was also reviewed with the HCPA Coordination Group (a stakeholder committee), which included representatives of the development and builder community. This group concurred with the 30-year permit term as a reasonable timeframe in which to implement this Plan.

The commenter also states that the EIS/EIR alternative of a reduced permit duration must compare the consistency of the preferred alternative and the reduce permit term alternative with the five-point policy. The five-point policy describes that the duration of covered activities, the positive and negative effects on covered species, the extent of information underlying the conservation strategy, the length of time to implement and achieve the benefits of the conservation program, and the extent to which the program incorporates adaptive management strategies need to be included in a HCP (65 Fed. Reg at 35255 - 35256). As discussed above, the covered activities (urban development/growth) and preserve assembly is expected to take up to 30 years. In the judgment of the HCPA, the reduced permit alternative would not cover the full duration of potential covered activities nor the

conservation program implementation (including funding considerations), both of which are considerations under the five-point plan.

#### *Revisions to the EIS/EIR*

Text was added concerning the reduced permit duration alternative and the USFWS five-point plan.

### **Response to Comment J-2.11**

In response to the HCP/NCCP, the commenter states that the Stay Ahead provision is impractical because there is not enough time in the first year to collect fees and acquire enough land to meet the provision. The commenter also states that the annual review imposes too great a burden on the Plan and the Stay Ahead accounting should be done by aggregate acres rather than by land-cover type.

The Stay Ahead provision was developed closely with CDFG and USFWS (the Wildlife Agencies) to comply with the requirements of the Natural Community Conservation Planning Act (NCCPA) to maintain rough proportionality between impacts and conservation, and to provide a requirement that was feasible. Similar provisions are found in many other NCCPs in California, including the Western Riverside County HCP/NCCP (approved) and the Coachella Valley HCP/NCCP (public draft). 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.

The Stay Ahead provision will be measured first at the end of the second full year of implementation (not after one year as suggested by the commenter) to provide the Implementing Entity with enough time to collect enough fees to being acquiring large blocks of land. The land acquisition process can take considerable time (e.g., identify and negotiate with willing sellers and conduct pre-acquisition surveys). The Stay Ahead provision does not come into effect immediately in order to, in part, give the Implementing Entity enough time to become established and conduct several land acquisitions. As documented in Table 5-21 and Figure 5-12 of the HCP/NCCP, 2,383 acres of land have been acquired or preserved during development of the HCP/NCCP that may be counted toward fulfilling the requirements of the HCP/NCCP once management is ensured. This is equivalent to almost 10% of the total acres projected to be acquired under the initial urban development area during the 30 year term of the permits. Additional acquisitions are in progress. Likewise, 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 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. The HCPA and the Wildlife Agencies believe that the Stay Ahead provision is achievable. The significant amount of land acquisition that has occurred already and the allocation of substantial initial land acquisition funds support this assertion.

The actual pace of available funding will depend not only on development fees but on the availability of state and federal grants, primarily through Section 6 of the federal ESA. State and federal Wildlife Agency officials have stated their intent to secure as much of the state and federal share of the HCP/NCCP as possible early in Plan implementation. This pattern of early state and federal grants has been true of southern California NCCPs such as Central Orange County, San Diego MSCP, and the Western Riverside MSHCP. The HCPA acknowledges that it will be increasingly difficult to secure federal grants as the competition for these funds increases. However, we expect these grants

to become available earlier rather than later in the permit term, and, as noted above, significant grant funds have already been secured. This will help to ensure that the Stay Ahead requirement can be met early in Plan implementation.

Compliance with the Stay Ahead provision must be measured annually to provide an incentive to the Implementing Entity to aggressively pursue land acquisition to keep pace with the extent of covered activities under the Plan. Contingencies are in place in the event that funding or land acquisition cannot keep pace with covered activities as described in Chapter 9. Options considered will include

- changes to the manner in which the Plan is implemented (e.g., more direct acquisition of land by the Implementing Entity rather than relying on partnerships, shifting the Implementing Entity's budget allocations to place a higher priority on land acquisition, or accelerating the process for being able to count land already acquired against Stay-Ahead requirements by, for example, recording easements more quickly),
- making it a requirement that project proponents provide land in lieu of fees,
- temporarily or permanently adjusting certain Plan provisions through an amendment or other process (e.g., the method for measuring compliance with the Stay-Ahead provision), or
- slowing or stopping permit issuance until land acquisition catches up with impacts.

The HCP/NCCP provides that the land in lieu of fee alternative is a mandatory measure unless the wildlife agencies determine that other measures are sufficient to correct the deficit.

The Wildlife Agencies and the HCPA believe that these contingencies will be adequate to address any shortfalls in land acquisition as a result of slow state/federal funding or a lack of willing sellers.

The Stay Ahead provision must be measured by land cover type in order to ensure that impacts to habitat for covered species is being mitigated through acquisition of similar habitat. Without this provision, there could be significant delays between the time of impact and when habitat is preserved or restored. During the interim period, populations of covered species could decline. Tracking Stay Ahead by land cover type is essential to ensure that assembly of the Preserve System closely tracks the impacts from covered activities. This approach is consistent with a regional conservation plan because the unit of measure is land cover and not habitat for each species. Measuring compliance in terms of land cover types preserved greatly streamlines compliance relative to measurement by species habitat. Likewise, the HCP/NCCP provides two alternative approaches to measuring compliance with the Stay Ahead provision by land cover type during the first 10 years of implementation to provide greater flexibility in achieving compliance. One measurement approach tracks acquisitions throughout the inventory area while the other tracks acquisitions within a portion of the inventory area that is of particular significance for conservation.

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

## **Response to Comment J-2.12**

In response to the EIS/EIR, the commenter asserts that the HCP/NCCP and EIS/EIR processes have not conducted sufficient outreach to minority communities such as Hispanic, Asian, and Pacific Islander populations and that potential environmental justice impacts related to affordable housing were not fully assessed in the EIS/EIR.

Minority populations within the inventory area are identified in the draft EIS/EIR on p. 3-55 and include Hispanic, Asian & Pacific Islander, African-American, American Indian and Alaska Native. These populations are distributed across the varying jurisdictions. As disclosed on p. 4-51 in the draft EIS/EIR, minority and low-income populations are found throughout the county, but the activities associated with the HCP/NCCP would be broadly distributed through eastern Contra Costa County and thus would not result in disproportionately high effects on minority or low-income populations.

Regarding affordable housing, as described in response to Comment J-2.2, the HCP/NCCP is not expected to be a substantial impediment to meeting current or future residential development needs, including affordable housing allocations. All of the local jurisdictions (Pittsburg, Antioch, Brentwood, and Oakley) have identified that they have sufficient residentially-designated land within their current city limits to meet their current and future regional housing needs, including affordable housing. As noted above, in the long-term there are several compatibility conflicts between areas outside the city limits that are designated high-priority HCP/NCCP acquisition areas and are designated for residential use. However, most of these areas are located in the foothills, and are designated for low-density housing. These areas are likely to provide market rate housing, not low-income housing which is usually provided within city limits in areas designated for medium and high-density residential development. Overall, given the City's own identification of substantial available acreage for residential development and that the limited areas of conflict primarily concern market-rate housing, the HCP/NCCP is not likely to result in a disproportionate impact on low-income housing utilized by economically disadvantaged residents of eastern county.

Regarding outreach to minority and low-income residents within the inventory area, this would be appropriate if the HCP/NCCP were to have potential disproportionate effects on these in order to ensure involvement of these parts of the community. However, as demonstrated above, no such disproportionate impacts on historically disadvantaged communities are expected with implementation of the HCP/NCCP. Thus, the notifications, scoping and comment meetings, and involvement of all the local participating jurisdictions (which represent their entire communities in the HCPA) is considered adequate opportunity for the community at large, including minority and low-income populations to be involved in HCP/NCCP and EIS/EIR review.

#### *Revisions to the EIS/EIR*

The information in the response above concerning affordable housing has been referenced in Section 4.3 Land Use and Section 4.7 Socioeconomics and Environmental Justice of the EIS/EIR.

### **Response to Comment J-3**

In response to the HCP/NCCP, the commenter states that the HCP/NCCP is not voluntary within the permit area, which is inconsistent with the principles of participation.

The commenter is correct that the HCP/NCCP is not voluntary for covered activities within the permit area, and that this is not consistent with one of the original principles of participation. During development of the HCP/NCCP a voluntary approach was considered in depth in accordance with the particular principle. However, financial analysis of the HCP/NCCP indicated the need to ensure that the overall funding from mitigation fees was adequate in combination with other funding sources to achieve the goals of the conservation strategy. If the mitigation fees cannot be reasonably assured, then the financial feasibility of the strategy as a whole would be called into question. The only way to assure adequate fees for the plan was to make the plan mandatory for all covered activities. The

participating jurisdictions in the HCPA all agreed to making the plan mandatory within the permit area.

Landowners outside the permit area will continue to be able to conduct site-by-site planning and permitting unchanged.

*No revisions to the HCP/NCCP are necessary.*