



# DEPARTMENT OF CONSERVATION

## DIVISION OF LAND RESOURCE PROTECTION

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Comment Letter R

December 6, 2005

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

Subject: SCH# 2005092129 Draft Environmental Impact Report for the East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan, Contra Costa County

Dear Mr. Kopchik:

The Department of Conservation's Division of Land Resource Protection (Division) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act, California Farmland Conservancy Program, and other agricultural land conservation programs.

The Division's staff reviewed the above-cited documentation and our understanding of the proposed project is as follows: A joint powers authority comprised of the Cities of Brentwood, Clayton, Oakley, and Pittsburg, Contra Costa County, The Contra Costa Water District, and the East Bay Regional Park District forms the East Contra Costa County Habitat Conservation Plan Association. The Joint Powers authority was formed to manage and fund the development of the proposed Habitat Conservation Plan/Natural Community Conservation Plan (Plan) for submission to the California Department of Fish and Game and the U. S. Fish and Wildlife Service. The planning area is approximately 175,000 acres.

The plan is a regional comprehensive plan that establishes a framework for complying with the State and Federal endangered species regulations, while accommodating future growth within the planning area. The permitting and mitigation of impacts on special status species is currently addressed on a case-by-case basis. The proposed project would coordinate the process for permitting and mitigating the take of covered species. Activities addressed in permitting include all types of urban development, rural infrastructure that would occur outside the preserve boundary.

We offer the following comments:

The document indicates that the implementation of the HCCP/NCCP involves acquisition in fee title or easement of agricultural lands within the plan area, and the statutory requirements for notification are noted. The document states that there would be less than significant impact to the agricultural resources, as the lands would remain in agriculture or in open space. The document indicates that pasture occupies 4,658 acres, cropland occupies 21,251 acres, orchards occupy 4,190 acres and vineyards occupy 2,145 acres.

These above-cited acreages include agricultural lands that are under Williamson Act contract. The document is unclear whether the acreage will remain under contract. While local participating governments can determine compatible uses allowed on Williamson Act contracted land, such uses must be consistent with the principles of compatibility defined in Government Code section 51238.1. Have the local entities initiated Williamson Act contract cancellation on the lands that would be converted to other uses?

R-1

A discussion of the proposed project's impacts of conversion of agricultural resources is contained in Section 4.4, Impacts and Mitigations Measures. Up to 400 acres would be acquired in Zone 6, and most of that land would remain in agricultural production. It would be managed to support new habitat, but would stay in agricultural production, and remain under Williamson Act contract. The final EIR/S should provide a description of where wildlife-friendly agriculture would occur, and what management practices would be implemented by the land operator to ensure that agricultural productivity is retained. Up to 200 acres of agricultural lands in Zone 6 would be ultimately converted to riparian woodland, upland habitat or wetlands. Zones 1-5 contain lands that would be acquired and be converted to nonagricultural uses. As the acreage is unknown at this time, it is not possible to ascertain the level of impact to agricultural resources. The Williamson Act Easement Exchange Program provides a voluntary rescission process for local entities and landowners to cancel a Williamson Act contract and simultaneously dedicate a permanent *agricultural conservation easement* on other land (Government Code section 51256 and 51256.1). The easement value on the easement parcel must be equal to or greater than the cancellation fee required to cancel the contract. In addition, the land to be placed under an easement must be of equal size or larger than the Williamson Act contracted land. Williamson Act easement exchange projects must meet criteria established under the California Farmland Conservancy Program (CFCP), the Department's agricultural land conservation easement program.

R-2

R-3

R-4

The Department has two policies regarding established thresholds of significance. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally will be determined to be less than significant. They are not intended to be

R-5

stand-alone environmental policies, although they may reflect the agency's policies. The Department has established two standards that pertain to impacts to agricultural resources:

1. The Department of Conservation's Land Evaluation Site Assessment Model (LESA) is an objective and quantitative tool under CEQA for lead agencies to determine threshold of significance. DLRP recommends the use of California's LESA model to determine significance, and we would be pleased to assist the lead agency on the analysis.

2. Loss of more than 100 acres of Williamson Act-contracted lands is considered of local, regional and statewide significance (CEQA Guidelines section 15206 (b)(3)). The document does not indicate whether more than 100 acres of contracted lands would be lost.

R-5 (Cont.)

We understand that the joint powers authority and lead agency is seeking to retain valuable open space, enhance wildlife habitat in the region while minimizing impacts to agricultural practices. Please keep the Division informed as implementation of this plan progresses so that we can ensure that our statutory requirements are met.

Thank you for the opportunity to provide comment. Please contact Jeannie Blakeslee if you have any questions regarding these comments at (916) 323-4943.

Sincerely,



Dennis O'Bryant  
Acting Assistant Director



## Response to Letter R, from the California Department of Conservation, Division of Land Resource Protection

### Response to Comment R-1

In response to the draft EIS/EIR, the commenter states that the document is unclear whether agricultural lands that are under Williamson Act will remain under contract once made part of the HCP/NCCP preserve and if not, if the local jurisdictions have initiated contract cancellation on lands that would be converted to other uses.

The draft EIS/EIR states on page 4-34 that most of the cropland acquired in Zone 6 would remain in agricultural production and would not require contract cancellation, unless acquired in-fee. The draft EIS/EIR states that cropland acquired in Zones 1 through 5 would be acquired in-fee (or donated in-lieu)

If land is conserved through a conservation easement, there will be no need to cancel any Williamson Act contracts. If acquired in fee, the contracts would need to be cancelled because public agencies are not eligible for coverage under the Williamson Act.

Contract cancellation has not been initiated as the HCP/NCCP has not yet been approved.

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

### Response to Comment R-2

In response to the draft EIS/EIR, the commenter requests the final EIS/EIR provide a description of where "wildlife-friendly" agriculture would occur and what management practices would be implemented by the land operator to ensure that agricultural productivity would be retained.

The specific location of exactly where "wildlife-friendly" agriculture would occur cannot be identified at this time as preserve assembly cannot begin until the HCP/NCCP has been approved. This is an implementing measure that is not necessary to characterize spatially in order to assess the impact of the project on agricultural resources on a landscape level

As to management practices, the HCP/NCCP describes the development of Management Plans for Cultivated Agricultural Lands (Conservation Measure 1.3, Chapter 5) for preserved croplands and irrigated pasture. Potential management actions such as harvest timing, buffer zones, and water management are described there. As the intent of management is to provide a compatibility between ongoing agricultural activity and habitat enhancement, management of these lands is adequately characterized on a landscape level impact assessment in the EIS/EIR.

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

### Response to Comment R-3

In response to the draft EIS/EIR, the commenter states that 200 acres of agricultural land would be converted to nonagricultural uses in Zone 6 and that Zones 1 through 5 contain lands that would be

acquired and be converted to nonagricultural uses, but that the acreage is unknown at this time, and thus it is not possible to ascertain the level of impact to agricultural resources.

The draft EIS/EIR analyzed impacts to agriculture in Section 4.4.2. As disclosed there, the ultimate amount of conversion of agricultural areas to non-agricultural use in Zone 6 is from 75 acres up to 200 acres, which would be less than 1% of the significant farmland (prime farmland, farmland of statewide importance, and unique farmland) in Zone 6 and in the inventory area. Virtually all (99%) of the significant farmland is in Zone 6. Acquisition in Zone 6 of significant farmland would range from 241 acres (Initial UDA) to 366 acres (Max. UDA). If this were all significant farmland, then acquisition would constitute 1 to 1.5% of the significant farmland in the zone and the inventory area.

As shown in Figure 3-3, the areas of prime farmland, unique farmland, or farmland of state importance in Zones 1 through 5 are very limited (estimated to be about 300 acres). Potential conversion would only affect small portions of the acquired areas (e.g. areas targeted for wetland restoration or creation) and as such agricultural conversion in these areas was considered to be less than significant. Table 3-3 provides evidence that the extent of such areas is quite limited.

There are areas of farmland of local importance within the acquisition zones 1 through 5, particularly in Zones 2 and 5. As shown on Figures 5-2 and 5-3 in Chapter 5 of the Final HCP/NCCP, there are a number of high-priority and medium-priority acquisition areas that overlay these areas of farmland of local importance. The remaining land in zones 1 through 5 are mostly grazing land.

A new table (Table 4-4-1) has been added to the EIS/EIR to describe the acres of significant (prime, unique, and farmland of state importance) and other farmland, according to Farmland Mapping and Monitoring Program (FMMP) designations, that are found within the inventory area. The table also presents an estimate of the potential acquisition of different types of farmland. Overall, across the inventory area, implementation could result in acquisition of less than 3% of the significant farmland, of which only limited portions would actually be converted from their current agricultural use.

In most cases, existing grazing and agricultural practice would continue after acquisition. In fact, grazing is a common habitat management tool used in the area to manage vegetation for many of the covered species, which actually require some level of open ground cover (such as California tiger salamander which require ground squirrel activity to provide aestivation burrows). Conversion from agriculture to a non-agricultural use would occur when active restoration measures are implemented, such as wetland or riparian restoration, but this activity over the preserve area is limited in extent. Actual conversion of grazing land (which is extensive locally and state-wide) and farmland of local importance (which is not regionally significant) is not considered significant due to the character of the affected areas, the limited extent of potential conversion, and the unlikelihood of substantial displacement of agricultural effort into submarginal areas.

For these reasons, the final EIS/EIR concludes that the level of impact remains less than significant as disclosed in the draft EIS/EIR. The EIS/EIR notes that the total amount converted to nonagricultural use is likely to be small.

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

Table 4.4-1 added to provide acreages different types of farmland found within acquisition areas and an estimate of the amount of farmland that may be acquired as part of the conservation strategy.

## Response to Comment R-4

In response to the EIS/EIR, the commenter describes the voluntary rescission process to cancel a Williamson Act contract and simultaneously dedicate an agricultural conservation easement on other land.

*Comment provides information only and makes no comment on the HCP/NCCP or the draft EIS/EIR. No response and no revisions are necessary.*

## Response to Comment R-5

In response to the EIS/EIR, the commenter describes the Department of Conservation's LESA Model and recommends its use to determine significance. Commenter also asserts that loss of more than 100 acres of Williamson-Act contracted lands is considered significant per CEQA guidelines section 15206(b) (3) and asks if the project will result in loss of more than 100 acres of such land.

While the LESA model is a commonly used tool for assessment of the value of agricultural land, it is more appropriate to a project-level evaluation of individual parcels of land. It is not feasible to assess all of the agricultural land within the permit or potential preserve area due to the expense involved. Further, the potential preserve area is far larger than the amount of actual preserve that is included within the HCP/NCCP and thus analysis of the entire preserve area would include analysis of substantial areas that will not ultimately be preserved and would not provide an accurate analysis of project effects.

Instead of using the LESA model, the EIS/EIR assessed the significance of potential agricultural conversion by identifying the estimated amount of conversion of agriculturally significant land (prime, unique, and of statewide importance) in Zone 6 and the identification of only a limited amount of such conversion in Zones 1 through 5.

CEQA Guidelines Section 15206(b)(3) actually states that projects that result in cancellation of a Williamson Act contract for any parcel of 100 or more acres shall be considered a project of statewide, regional, or areawide significance. The guidelines specification of such projects is for the purpose of establishing which projects must have environmental documents processed through the State Clearinghouse for distribution to state agencies for their review and comment. The guidelines do not mandate that cancellation of Williamson Act contracts for parcels of 100 or more acres is a significant effect or not under CEQA.

Figure 3-4 in Chapter 3 of the EIS/EIR shows the land within Williamson Act contracts in the Acquisition Zones. Based on this figure and the revised figures 5-2 and 5-3 in the HCP/NCCP, it is probable that significantly more than 100 acres of farmland with existing Williamson Act contracts will be acquired. The EIS/EIR describes on page 4-34 that public agencies are not eligible for coverage under the Williamson Act and that land acquisition by the Implementing Entity would result in voiding of applicable contracts (although acquisition of conservation easements would not require such cancellation).

Cancellation of a Williamson Act contract is not an act that inherently results in a physical impact on the environment as it is a contractual action. Under CEQA, adverse impacts are not considered significant unless they actually result in a physical impact on the environment. Thus the concern about Williamson Act cancellation is not a CEQA concern unless it results in a physically adverse

impact directly or indirectly. There are two potential physical results from cancellation of a Williamson Act contract: (1) development on the subject land itself resulting in physical changes; or (2) displacement of agricultural effort to other locations that results in physical changes off-site. Impacts due to actual physical conversion of agriculturally-productive land and the potential for agricultural effort displacement were discussed above in response to Comment R-3 and are concluded in the EIS/EIR to be less than significant.

Further, the EIS/EIR identifies that land acquired through conservation easement or through fee title will either remain in agricultural production or be used as open space. Use as open space is a use compatible with the Williamson Act. The EIS/EIR concludes that the intended future use (continued agricultural or open space) would be compatible with the Williamson Act, would not represent a significant physical impact on the environment due merely to the fact of cancellation of the contract. Physical impacts due to preserve management are described in the other relevant sections of the EIS/EIR.

*No revisions to the EIS/EIR are required.*