

# Chapter 6

## Consultation and Coordination

### 6.1 Introduction

This chapter provides an overview of consultation, other requirements, and the scoping process and public involvement process for the proposed HCP/NCCP.

### 6.2 Consultation and Requirements

#### 6.2.1 Federal Endangered Species Act

Threatened and endangered species are listed under the provisions of Section 4 of the federal ESA; Section 9 prohibitions provide for substantial protection of these listed species. Through Section 7 and Section 10 processes, USFWS and NOAA Fisheries ensure that activities undertaken by federal agencies and non-federal entities do not result in jeopardy of listed species or adverse modification of critical habitat.

If federally listed species may be affected, the federal lead agency must informally consult with USFWS and/or NOAA Fisheries to assess the consequences of its actions and to determine whether formal consultation is warranted. USFWS is proposing to issue a Section 10 incidental take permit, which is a federal action that triggers Section 7 consultation requirements. As the federal action agency for the Proposed Plan and permit, USFWS will consult internally pursuant to Section 7. USFWS will initiate internal consultation following the submission of the Section 10 permit application package by the Habitat Conservation Plan Association. If USFWS concludes that the action is not likely to adversely affect a listed species, then no formal consultation will be conducted and no biological opinion will be prepared. If the action is likely to result in adverse effects on a listed species, then USFWS will prepare a biological opinion describing how the action will affect the listed species. The USFWS's opinion will be either a "jeopardy opinion" or a "no-jeopardy opinion." A jeopardy opinion concludes that the proposed action would jeopardize the continued existence of a federally listed species or would adversely modify designated critical habitat. Under this finding, the biological opinion must suggest "reasonable and prudent alternatives" that would avoid

jeopardy. If the USFWS issues a no-jeopardy opinion, this opinion may include “reasonable and prudent measures” to minimize adverse effects on listed species and an “incidental take statement” that specifies the allowable amount of take that may occur as a result of the action.

## 6.2.2 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to inventory historic properties and evaluate the eligibility of those properties for listing in the NRHP. The potential effects of the proposed HCP/NCCP or alternatives on cultural resources, including properties listed or eligible for the NRHP, and any necessary measures to avoid or reduce impacts on these resources are described in Section 4.9 *Cultural Resources*. As presented in that section, the proposed project is not expected to result in any significant effects on cultural resources; and a cultural resources management plan would be developed as a basis for establishment of a programmatic memorandum of agreement between USFWS, SHPO, and ACHP for compliance with the requirements of the NHPA Section 106 process such that no NRHP-listed eligible or potentially eligible resources would be affected.

## 6.2.3 Farmland Protection Policy Act

The Farmland Protection Policy Act (FPPA) of 1981 requires federal agencies to consider project alternatives that minimize or avoid adverse impacts on important farmland. As described in Section 4.4 *Agricultural Resources*, the FPPA does not apply to federal permitting (7 CFR §658.2[a][1][i]). In addition, the proposed Plan would result in insignificant impacts to important farmland. Prime, unique, or farmland of statewide importance is found almost entirely within the County’s Agricultural Core. The proposed Plan would acquire land in easements in this area and would not result in the conversion of these farmlands to non-agricultural uses. Minor amounts of important farmland may be acquired in-fee, but these lands would remain in agricultural or open space use, and would not be converted to non-agricultural uses.

## 6.2.4 Clean Air Act

Section 176(c) of the Clean Air Act requires federal agencies to ensure that their proposed actions are consistent with the Clean Air Act and with federally enforceable state implementation plans (SIPs) (air quality management plans). The conformity review process is intended to ensure that federal agency actions will not cause or contribute to new violations of any federal ambient air quality standards; will not increase the frequency or severity of any existing violations of federal ambient air quality standards; and will not delay the timely attainment of federal ambient air quality standards.

The project is within an area designated by the EPA as a non-attainment area for ozone. Based on the current non-attainment status of the area, the proposed Plan would conform to the SIP if its annual emissions were less than 50 tons of ozone (volatile organic compounds or NOx).

As described in Section 3.12 *Air Quality*, the proposed Plan, assuming construction of one large-scale habitat restoration project a year, the proposed Plan would result in annual emissions of 0.11 tons per year of ROG and 1.31 tons per year of NOx. Conformity calculations are provided in Appendix E. These emissions would not exceed the *de minimis* thresholds of 50 tons per year for these ozone precursors.

## 6.2.5 Migratory Bird Treaty Act

Migratory birds are protected by the USFWS under the provisions of the Migratory Bird Treaty Act (MBTA) of 1916 as amended (16 U.S.C. Chapter 7, 703-712) which governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. The take of all migratory birds is governed by the MBTA's regulation of taking migratory birds for educational, scientific, and recreational purposes and requiring harvest to be limited to levels that prevent over utilization. Section 704 of the MBTA states that the Secretary of the Interior (Secretary) is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take. The Secretary in adopting regulations is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species. Currently, the USFWS has issued Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines (68 FR 132, July 10, 2003) for such activities to provide a pro-active segue in many of the USFWS activities within the planning area. This guidance would be utilized in informal consultation on any such activities within the proposed HCP/NCCP planning area.

## 6.3 Executive Orders

### 6.3.1 Executive Order 11988—Floodplain Management

Executive Order 11988, Floodplain Management, requires federal agencies to prepare floodplain assessments for proposed projects located in or affecting floodplains. An agency proposing to conduct an action in a floodplain must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the only practicable alternative involves siting in a floodplain, the agency must minimize potential harm to or development in the floodplain and explain why the action is proposed in the floodplain.

The proposed HCP/NCCP would not directly result in any incompatible development within a floodplain. Future development within the incorporated cities, which is covered under the proposed Plan, may occur in floodplains along the Bay-Delta. This development is planned development that has been evaluated, and mitigation measures are identified in the County and city general plan EIRs.

### **6.3.2 Executive Order 11990—Protection of Wetlands**

Executive Order 11990, Protection of Wetlands, requires federal agencies to prepare wetland assessments for projects located in or affecting wetlands. Agencies must avoid undertaking new construction in wetlands unless no practicable alternative is available and the proposed action includes all practicable measures to minimize harm to wetlands.

This proposed Plan has been designed to address impacts on federal and state jurisdictional waters, including wetlands, and on state jurisdictional streams and lakes. Specific biological goals and objectives for wetlands and streams have been developed and the conservation strategy includes a range of specific measures to avoid and mitigate for impacts to these resources. Specific measures included in the proposed HCP/NCCP or alternatives include:

- Conservation Measure 1.2.3 provides for a delineation of jurisdictional waters to be conducted as a condition of approval for all projects covered under the proposed Plan.
- Conservation Measure 1.3.3 requires establishment of buffer zones between streams and development.
- Conservation Measure 2.2.1 provides measures to avoid and minimize impacts to wetlands, ponds, and streams.
- Conservation Measure 2.2.2 establishes a program to enhance and manage wetlands and ponds.
- Conservation Measure 2.2.3 establishes a program to restore and create wetlands ponds.

These measures, implemented in concert, would provide adequate protection for existing wetlands, as well as restore and create additional wetlands in the inventory area.

### **6.3.3 Executive Order 12898—Environmental Justice**

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, requires federal agencies to identify and

address disproportionately high and adverse human health or environmental effects of their actions on minorities and low-income populations and communities. Potential impacts related to environmental justice are discussed in Section 4.7, *Socioeconomics and Environmental Justice*.

## 6.4 Scoping

The process of determining the scope, focus, and content of an EIS/EIR is known as scoping. The scoping process assists the lead agencies in determining the substantive issues to be addressed in an EIS/EIR. The scoping period for this EIS/EIR began with publication of the NOI/NOP on June 5, 2003. Publication of the NOI/NOP initiated the scoping period, which lasted until August 5, 2003. Two public scoping meetings were held during the scoping period. The meetings were held on July 12, 2003, from 3:30 p.m.–5:00 p.m. and 7:00 p.m.–8:30 p.m. at City Hall, Council Chambers, 65 Civic Drive, Pittsburg, California. The scoping meetings provided an opportunity for the attendees to comment on environmental issues of concern and the alternatives that should be discussed in the EIS/EIR. Comment letters were received from the following agencies and organizations during the scoping period

1. Mr. William R. Galstan, the City of Antioch.
2. Mr. Mike Daley, The Sierra Club, San Francisco Bay Chapter.
3. Mr. R. Clark Morrison, Morrison & Forrester LLP (on behalf of the Contra Costa Council and in conjunction with the Home Builders Association of Northern California).

Key issues of public concern about the proposed Plan that were identified during the scoping process include the following.

### *Schedule and Process for Environmental Document*

- Will the EIS/EIR and HCP drafts be available at the same time?
- Will comment letters on the draft EIS/EIR be included in final EIS/EIR document?
- EIS/EIR and HCP should be separate documents (independent).

### *Alternatives*

- EIS/EIR should consider an HCP alternative with an expanded list of covered species.
- EIS/EIR should consider alternatives that rely on land use and development assumptions that differ from the current models (i.e., smart growth).
- EIS/EIR should consider alternatives that account for any shortcomings in the quality of data on species and biological communities in the area.

### *Scope of the Analysis and Impact Issues*

#### Property Acquisitions, Easements, and Valuation

- Need to provide information on the process of acquiring property (i.e., how are potential sellers informed of HCP/NCCP process; is there an opt-out process?).
- HCP/NCCP and EIS/EIR should consider long-term value of easement and perpetual payments for easements.
- The EIS/EIR needs to study impacts to property owners that become isolated in conservation areas (e.g., availability of utility services).

#### Biological Resources/Wetlands

- Will proposed covered species be included in EIS/EIR?
- Are there listed/special-status plants in the study area?
- Will plants be included in the HCP/NCCP even though they are not yet federally listed?
- Who determines who is an “expert” with respect to covered species?
- How do species get listed and how do we verify the science behind listing a species?
- How do we verify historical/current occurrence of species?
- The EIS/EIR should address wetlands and ESA issues with USACE.
- The EIS/EIR should evaluate impacts of HCP/NCCP that provides coordinated permit processing for CDFG §1601 and CWA §§404 and 401.

#### Population and Housing

- EIS/EIR needs to address impacts of the HCP/NCCP permit area on housing needs in eastern Contra Costa County over the 30-year period of the permit.

#### Growth Inducement

- EIS/EIR should evaluate the impacts of the HCP/NCCP on growth and discuss the relationship to other planning documents (e.g., general plans).

### *Scientific Review*

- Will the EIS/EIR reflect inherent scientific biases?

The substantive issues relative to NEPA and CEQA review raised during scoping were considered by the lead agencies in preparing the EIS/EIR.