



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

REGULAR MEETING

Wednesday, September 16, 2009
10:30 a.m.

City of Oakley, City Hall
City Council Chambers ← **NEW LOCATION!**
3231 Main Street, Oakley, CA 94561

AGENDA

- 1) **Introductions.**
- 2) **Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 3) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Special Meeting of July 16, 2009.**
- 4) **Consider ACCEPTING update on the Souza II Wetland Restoration Project.**
- 5) **Consider APPROVING Policy on Land Acquisition in Wind Turbine Areas, as recommended by staff and Public Advisory Committee (PAC).**
- 6) **Consider APPROVING Resolution No: 2009-02 which authorizes Conservancy staff to: a) submit a grant application to the California Department of Fish and Game (CDFG) for \$150,000 from the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program; and b) enter into a grant agreement to accept such grant funds as are approved by CDFG.**
- 7) **Consider REFERRING to the Public Advisory Committee (PAC) for review and recommendation the question of whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies in order to purchase**

mitigation credit from the Conservancy and use of a portion of the Conservancy's restoration project sites toward mitigation obligations. Consider DIRECTING staff to also discuss this issue with agencies that are party to the HCP/NCCP Implementing Agreement.

- 8) Consider ACCPETING update from staff on the issue of using HCP/NCCP mitigation fees as match for U.S. Department of the Interior Section 6 grants. Consider AUTHORIZING additional action by staff to represent the Conservancy's views on this matter.**

Adjourn to Closed Session

9) Closed Session: Conference With Real Property Negotiators

Property: APN 075-200-008 (Clayton area)

Agency Negotiators: John Kopchik and Abby Fateman

Negotiating Parties Conservancy, Save Mount Diablo and East Bay Regional Park District

Under negotiation: Price and payment terms

10) Closed Session: Conference With Real Property Negotiators

Property: APN 075-080-007, 075-200-002, 075-200-009 (Clayton area)

Agency Negotiators: John Kopchik and Abby Fateman

Negotiating Parties: Conservancy and East Bay Regional Park District

Under negotiation: Price and payment terms

Reconvene Open Session

11) Report on any actions taken in Closed Session.

12) Adjourn.

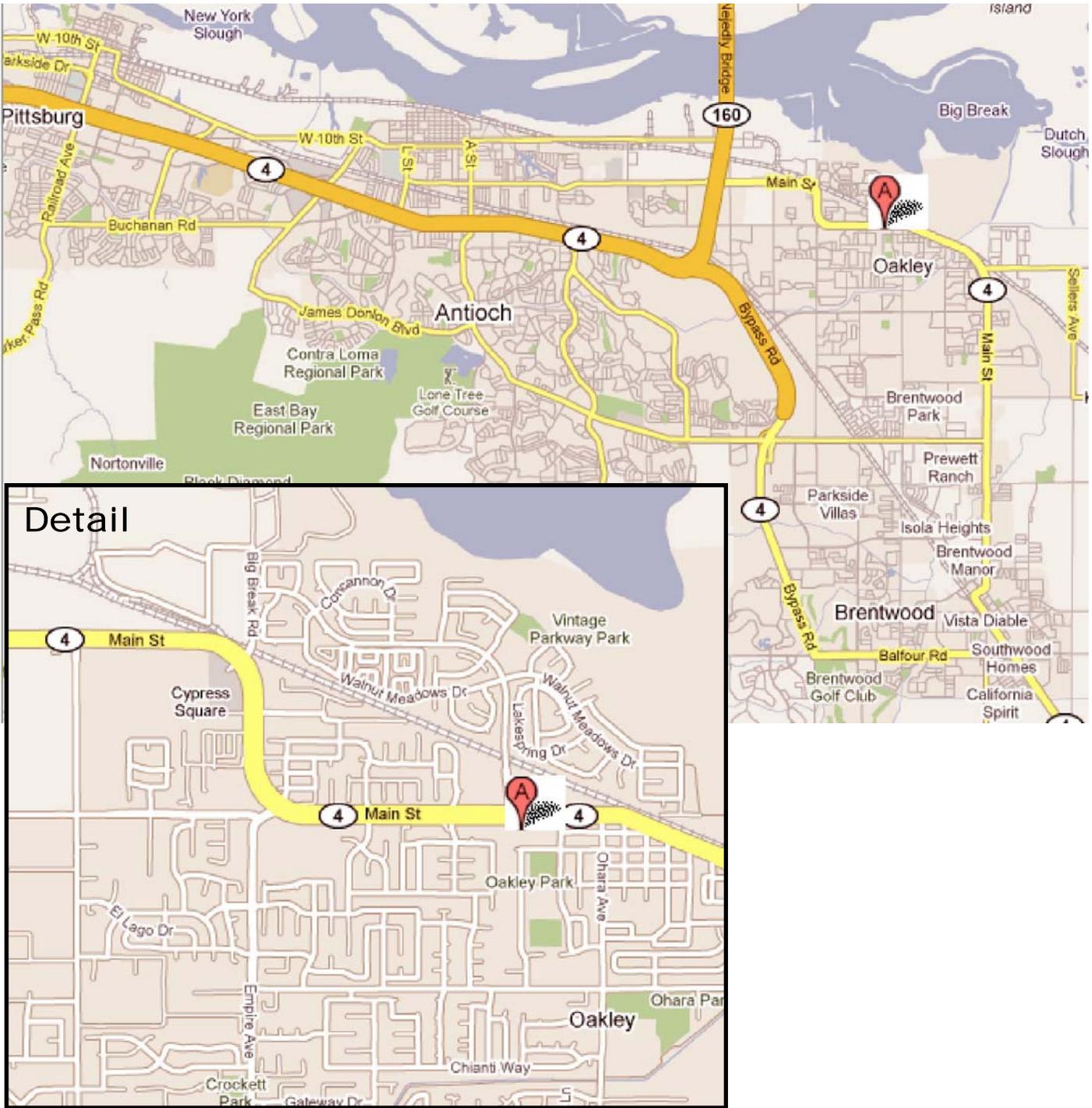
If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Department of Conservation and Development at 925-335-1227.

The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 24 hours before the meeting.

MAP TO MEETING LOCATION

City of Oakley, City Hall
City Council Chambers
3231 Main Street, Oakley, CA 94561

← NEW LOCATION!



**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Meeting Record for July 16, 2009 Governing Board Meeting

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of July 16, 2009.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: X YES
ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED _____
OTHER _____

VOTE OF BOARD MEMBERS

UNANIMOUS
AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
*CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Governing Board Meeting
July 16, 2009

1) Introductions.

Governing Board members in attendance were:

Federal Glover	Supervisor, Contra Costa County (Chair)
Bruce Connelley	Councilman, City of Oakley (Vice Chair)
Will Casey	Councilman, City of Pittsburg
Hank Stratford	Councilman, City of Clayton

Other Attendees:

Chris Barton	East Bay Regional Park District
Seth Adams	Save Mount Diablo
Joe Ciolek	Agricultural/Natural Resource Trust of Contra Costa County
Sharon Osteen	Public Advisory Committee

Conservancy Staff members in attendance were:

John Kopchik	Conservancy Staff
Krystal Hinojosa	Conservancy Staff

- 2) **Public Comment.** Seth Adams offered to host a tour of one of the properties named on the agenda (APN 075-200-008).
- 3) **Consider approving the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Regular Meeting of January 28, 2009.** The Board approved the Meeting Record. (3-0).
- 4) **Consider the following actions on Conservancy Budget and contracts:**
- a) **ACCEPT mid-year status report on the 2009 Conservancy Budget.**
 - b) **AUTHORIZE staff to execute contracts for on-going biological and conservation planning services with Jones and Stokes for \$220,000, and with H.T. Harvey & Associates for \$43,000.**
 - c) **AUTHORIZE staff to execute a contract amendment with the Watershed Nursery to extend the term to March 31, 2009 and increase the payment limit by \$4,000 from \$38,000 to \$42,000.**

John Kopchik provided an overview of Item 4. The board reviewed the budget and Mr. Kopchik provided an oral status report on mid-year finances. He provided an overview of Jones and Stokes services to date, including the provision of a staff planner working as an extension of Conservancy staff. Mr. Kopchik informed the Board of the services provided by and needed from ICF Jones and Stokes, H.T. Harvey and Associates and the Watershed Nursery and

recommended action on contracts for these organizations. . The Board approved the recommendation in the staff report (3-0).

- 5) **Consider the following actions to implement the Souza II Wetland Restoration Project (Project):**
- a) **AUTHORIZE Conservancy staff to execute an agreement with the East Bay Regional Park District (District) for construction of the Project.**
 - b) **AUTHORIZE the payment of \$306,215 to the District for construction of the Project.**
 - c) **DIRECT Conservancy staff to monitor construction of the Project and inspect final improvements to confirm completion of the Project in accordance with the plans and specifications.**

John Kopchik provided an overview of Item 5 including the details of the Souza II Wetland Restoration Project. He explained that EBRPD will oversee the construction, while the Conservancy provides the plants and funding for the project. Mr. Connelley asked why we are going to be adding San Joaquin spearscale to the restoration site and Mr. Kopchik explained this plant naturally occurs in the surrounding area, may have occurred previously on Souza II because suitable habitat conditions exist. Planting it on Souza II will enhance native species diversity on the site and benefit spearscale, a species covered by the HCP/NCCP. Mr. Connelley also referenced background information in the staff report on the hypothetical pace of restoration needed to achieve all HCP/NCCP restoration requirements by the end of the permit term and asked if the Conservancy was behind since we won't have 20 acres of restoration/creation by the end of the year. Mr. Kopchik said that the Conservancy will have restored more than 10 acres of wetlands by the end of this year whereas impacts are still less than one acre. Mr. Kopchik stated that he didn't need not believe it was a problem that weren't meeting the hypothetical pace of restoration inferred from the HCP requirements because: a) development is currently much slower than the average pace anticipated in the HCP; and b) the HCP probably greatly overestimates the amount of wetland fill that will occur and therefore also overestimate the amount of restoration that will be necessary. Mr. Kopchik stated that getting ahead was wise but were ultimately limited by the amount of fee funds and available restoration sites.

Seth Adams questioned whether the proposed fill of wetlands that would occur as part of the Highway 4 widening counts against the HCP and whether such projects could or should mitigate through the HCP. Mr. Kopchik explained that for the project Mr. Adams mentioned, the project proponent (Contra Costa Transportation Authority (CCTA)) was not required to participate in the HCP because CCTA is not subject to city or County land use authority (and may have been approved before the HCP was in place) and had not contacted Conservancy staff about opting into the HCP for coverage. As a non-covered activity, the impacts of the project would not count against the HCP. However, the HCP/NCCP does include provisions to encourage mitigation from non-covered

activities to occur in east Contra Costa County through or in coordination with the HCP. Mr. Adams stated if impacts occur locally then mitigation should also occur locally and would like to propose to discuss this topic at a future meeting.

The Board concluded discussion of the Souza II Wetland Restoration Project. Mr. Kopchik recommended the actions described in the staff report and requested the Board authorize a process for making minor modifications to the agreement with the District before it is signed. The Board approved the recommendations in the staff report and authorized staff to make minor changes to the agreement and sign it provided the Chair first approves the changes as consistent with the intent of the Board (4-0).

- 6) **Consider the following actions related to grants:**
- a) **AUTHORIZE Conservancy staff to execute an agreement with the California Wildlife Conservation Board that would provide \$6,531,054 from the federal Cooperative Endangered Species Conservation Fund (“Section 6 Funds”) for land acquisition projects consistent with the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (“HCP/NCCP”).**
 - b) **AUTHORIZE Conservancy staff to submit to the California Department of Fish and Game an application for \$6,000,000 in federal FY2010 Section 6 Funds for land acquisition consistent with the HCP/NCCP.**
 - c) **AUTHORIZE Conservancy staff to submit a grant application to the Gordon and Betty Moore Foundation requesting \$880,000 for land acquisition.**

John Kopchik provided an overview of Item 6a. He expressed the urgency to close on several properties promptly which would require timely execution of a final agreement with the Wildlife Conservation Board (WCB). Mr. Kopchik advised the board that adjustments need to be made to the language in the Draft Agreement before the Conservancy should sign. For instance, provisions that suggest lands purchased with funds from the grant cannot be used to satisfy the HCP/NCCP need to be removed or clarified so that there is no prohibition on counting lands purchased toward the HCP/NCCP. Mr. Kopchik recommended that staff be authorized to work with WCB to modify the Agreement to meet the needs of the Conservancy and suggested that the Board convene another meeting to review the final Agreement or provide some other process to provide staff the authority to sign a revised Agreement. Board Members suggested the revised WCB agreement be brought to the Chair for concurrence in lieu of convening a board meeting. The Board approved the recommendations in the staff report for item 6a and authorized staff to make necessary changes to the agreement and sign it provided the Chair first approves the changes as consistent with the intent of the Board (4-0).

Mr. Kopchik provided an overview of Item 6b and 6c Mr. Connelley asked whether Board Authority was needed or should be needed for staff to request

grant to support HCP implementation. Mr. Glover expressed the view such authority should not be required and recommended that staff should be free to pursue funding opportunities as necessary without having such items on the regular board agenda. Mr. Kopchik informed the board that some grants need a Board resolution and in those cases they will be added to the agenda. The Board approved the recommendations in the staff report for items 6b and 6c and further directed staff that grant funding does not need to be a standing item on the agenda, but rather staff can provide updates on grant funding when necessary or as required for a Board resolution. (4-0)

- 7) **Consider approving California Habitat Conservation Planning Coalition Resolution:** John Kopchik provided background information on the formation of the coalition and why this partnership is important to the Conservancy. He described two of the key issues the Coalition is working on. Both are identified in the Conservancy’s approved 2009 Legislative Platform. They are: 1) Addressing the problem with local fee money as match for Section 6 HCP Land Acquisition grants, and 2) Working to increase financial support for HCP/NCCP’s. Working together on an informal basis, Coalition members have enjoyed some success already with item (2). The President recommended a 35% increase in federal support for the section 6 Program. Mr. Connelley asked who the other coalition members are and asked if the Conservancy would be better served by joining a coalition with potential competitors for grant funds or competing on its own. Mr. Kopchik stated it was not a simple question to answer but explained a significant part of the Coalition’s mission would be to help solve policy problems the Conservancy would have difficulty solving alone. With respect to funding, in the long run it would be better to try to grow the pool of available funding rather than focus solely on securing the largest possible share. The Board approved the recommendations in the staff report (4-0).

Adjourn to Closed Session

- 8) **Closed Session: Conference With Real Property Negotiators**

a) Property: APNs 005-120-007, 005-120-008, 005-130-001, 005-090-006, 005-100-005, 005-140-003, 005-150-003, 005-150-004, 005-160-001, 005-160-004 (Vasco Road area)
 Agency Negotiators: John Kopchik and Abby Fateman
 Negotiating Parties: Conservancy, California Wildlife Foundation and District
 Under negotiation: payment terms

b) Property: APN 001-011-040 (commonly known as 6100 Armstrong Road, Byron, Contra Costa County)
 Agency Negotiators: John Kopchik and Abby Fateman
 Negotiating Parties: Conservancy and District
 Under negotiation: payment terms

c) Property: APN 075-200-008 (Clayton area)

Agency Negotiators: John Kopchik and Abby Fateman
Negotiating Parties Conservancy, Save Mount Diablo and District
Under negotiation: Price and payment terms

d) Property: APN 001-21-001, 001-21-008, 001-21-009, 005-170-009, 005-180-02, 005-180-006 (Vasco Road area)

Agency Negotiators: John Kopchik and Abby Fateman
Negotiating Parties: Conservancy, Anthony F. Souza and Gloria P. Souza Family Trust and District
Under negotiation: Price and payment terms

Reconvene Open Session

9) Report on any actions taken in Closed Session. The Chair reported on the approval of Item 8 (a), (b), (c) and(d), as follows:

Item a): Approval to extend option period and make associated payments. (4-0)

Item b): Approved payment to close on property, APN 001-011-040. (4-0)

Item c): Nothing to report.

Item d): Nothing to report.

10) Adjourn. The Board adjourned to the next regular meeting on September 16, 2009.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board
FROM: John Kopchik, Executive Director
SUBJECT: Souza II Wetland Restoration Project

RECOMMENDATION

ACCPET update on the Souza II Wetland Restoration Project.

BACKGROUND

As reported at previous Governing Board meetings, Conservancy staff, consultants and staff at the District have been working hard to prepare the Souza II Wetland Restoration Project (Project) for construction this summer. The Souza II Wetland Restoration Project will contribute to achieving a critical jump start on the Conservancy’s wetland restoration program. The Board approved the Project at the July 16, 2009 meeting and detailed background information on the Project may be found in the materials for that meeting. Pre-construction surveys for sensitive species were completed in the last week of July and first week of August. The Contractor (Restoration Resources) initiated non-invasive preparatory activities (surveying, construction fencing and erosion control measures) on August 6. The final necessary permit was received on August 13. Earthwork started on August 17, 2009. Earthwork was completed on September 2nd, and the work was accepted by staff from the Conservancy and the East Bay Regional Park District. Seeding of the project site occurred the second week of September. Planting of the site will occur in November.

Staff will present a slide show during the meeting of photos showing the project’s progress.

CONTINUED ON ATTACHMENT: <input checked="" type="checkbox"/> YES	
ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED _____	
OTHER _____	
<u>VOTE OF BOARD MEMBERS</u>	
<input type="checkbox"/> UNANIMOUS	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board Meeting
FROM: Conservancy Staff
SUBJECT: Policy on Land Acquisition in Wind Turbine Areas

RECOMMENDATION

APPROVE “Policy on Land Acquisition in Wind Turbine Areas”, as recommended by staff and Public Advisory Committee (PAC).

DISCUSSION

East Contra Costa County Conservancy (Conservancy) staff, in conjunction with the United States Fish and Wildlife Service (FWS) and California Department of Fish and Game (DFG) have developed a “Policy on Land Acquisition in Wind Turbine Areas”(Policy) in order to clarify provisions of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP) as they relate to this topic and better achieve the goals and objectives set forth in the HCP/NCCP. FWS and CDFG staff suggested developing the Policy as result of issues raised during evaluation of the proposed Vaquero Farms South acquisition and they have indicated that approval of such a provision is necessary if federal HCP Land Acquisition grant funds are to be used for the purchase. The Policy provides specific clarification on the approach to land acquisition and preserve management within wind turbine areas. On August 13, 2009 the Policy was presented to the PAC for review and comment. After posing a number of questions to staff and discussing the details of the Policy, the PAC members present agreed by consensus to recommend Governing Board approval of the Policy, with the following two members abstaining from the recommendation: Laura Baker representing the California Native Plant Society and Mitch Randall representing the Contra Costa Council.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON September 16, 2009
OTHER _____

APPROVED AS RECOMMENDED _____

VOTE OF BOARD MEMBERS

UNANIMOUS

AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

BACKGROUND:

The presence of wind turbines in the southeastern section (wind turbine areas) of the inventory area presents a potential challenge in acquiring and managing preserve lands for the benefit of covered species and other species. Wind turbine areas provide important breeding and foraging habitat for several covered species, including, golden eagle (a fully protected species under the California Fish and Game Code), western burrowing owl, San Joaquin kit fox, California red-legged frog, and California tiger salamander. Wind turbine areas are also a critical landscape connection between existing and proposed conserved lands. Consequently, the HCP/NCCP requires substantial conservation to occur in wind turbine areas. However, the operation of wind turbines poses a serious hazard to avian species and compromises efforts to manage habitat and enhance populations of covered species, especially avian species, without a set of policy measures that work toward achieving the biological goals, objectives, and conservation requirements of the HCP/NCCP.

HCP/NCCP AND WIND TURBINES

The presence of wind turbines in the Inventory Area is well documented in the HCP. Wind turbines were assigned their own land cover type in the land cover mapping process and the locations of turbines are shown in all maps that display land cover in the Inventory Area. The continued operation of wind turbines and the potential for “repowering” projections to replace older turbines with new turbines are discussed in Chapter 4 as one of five cumulative impacts that were considered in addition to the impacts covered by the HCP/NCCP (other potential cumulative impacts considered were development in Antioch, Los Vaqueros Reservoir expansion, ongoing and routine agriculture and use of exiting roads). Likewise, the HCP specifically excludes wind power operation or expansion as a covered activity of the HCP because of the unique and substantial impacts on raptors. However, the HCP/NCCP contains only three references to how wind turbines are to be addressed if they are incorporated into the Preserve System and one reference to leases of properties with wind turbines. These references are as follows:

Reference 1: Page 5-38 (Conservation Strategy). This reference clearly states that areas mapped as wind turbine land cover will not be credited against land acquisition requirements of the Plan:

“Wind turbines are abundant and somewhat evenly distributed within Zone 5, so they will inevitably occur in some lands acquired under the HCP/NCCP preserves. However, land mapped as wind turbines¹ cannot be credited toward any land acquisition requirement.”

¹ The wind turbine land cover type was mapped as strips of wind turbines and 50 feet on either side; see Chapter 3 for further details. This may be a good estimate of the actual footprint of turbines and associated facilities. Grassland between sets of turbines was mapped as grassland and includes most of the access roads between sets of turbines.

Reference 2: Page 5-38 (Conservation Strategy). This section contains the only detailed provisions in the Plan for addressing wind turbines in the Preserve System:

“Land acquisition in wind turbine areas can contribute to the goals and objectives of this HCP/NCCP. However, the Implementing Entity is encouraged to consider retiring wind turbine leases on land it acquires when these leases come up for renewal, or require turbine reconfiguring (e.g., replace many old turbines with fewer turbines of new design in locations better for wildlife). Either action could significantly reduce wind turbine impacts on covered species and other native wildlife. Decisions to retire wind turbine leases will be made in consultation with CDFG and USFWS. (Note that take of covered species by wind turbines or take of migratory birds by wind turbines under the Migratory Bird Treaty Act is not covered by this Plan.)”

The HCP/NCCP does not provide any criteria by which decisions will be made to retire wind turbines, but it does require that these decisions be made in consultation with CDFG and USFWS.

Reference 3: Page 4 of Table ES-3 (Summary Evaluation of Species Proposed for Coverage by the Plan), under golden eagle. This is the last sentence of the golden eagle summary, under the heading “Conditions on Covered Activities:”

“Wind turbine leases acquired within the Preserve System will be retired to reduce injury and mortality of golden eagles and other raptors.”

This sentence is part of an executive summary of all the impacts and conservation measures within the HCP/NCCP. The summary acknowledges that some wind turbine leases will be retired but it does not say how many.

Other references: The HCP/NCCP describes the land acquisition process in the Implementation chapter. This process includes the necessary step of examining all leases.

“Examine all leases that apply to the property for consistency with HCP/NCCP goals and objectives. Inconsistent leases will be terminated or modified to conform with the HCP/NCCP.”

This step applies to wind leases as well as other types of leases. The impacts of existing wind leases were considered in the HCP/NCCP, so the presence of wind turbine leases on a property does not automatically disqualify the property from consideration for the Preserve System. On the contrary, the HCP/NCCP anticipated that wind turbines would be incorporated into the Preserve System (for example, Table 5-3 cites 150 acres of wind turbines in the Acquisition Analysis Zones which were used as the basis for the Preserve System).

WIND RIGHTS

During the creation of the HCP/NCCP it was assumed that the purchaser of a fee simple interest in a property with wind turbines would take over the role of lessor in existing wind leases and have authority to approve future wind leases. Initial land acquisition within the wind turbine areas of the inventory area has revealed that this is not always true. In *Contra Costa Water District vs. Vaquero Farms, Inc.* (1997), a case in which Contra Costa Water District (CCWD) prevailed, wind rights were expressly severed from surface rights. This severance allowed Vaquero Farms, Inc. to maintain its wind power rights, including “an easement for ingress and egress and such other access rights as may be required for the maintenance and development of these wind power rights” while allowing Contra Costa Water District (CCWD) to maintain the surface rights. This case demonstrates that the owner of the wind rights holds the authority as the lessor of the wind rights, as well as, the ability to gain royalties from use of the wind resource.

PROPOSED POLICY

Conservancy staff and staff from CDFG and FWS developed the proposed Policy to address gaps and contradictions in how the matter of wind turbines in Preserve Lands is addressed. Please find the text of the proposed Policy below:

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“Policy on Land Acquisition in Wind Turbine Areas”

The following provisions apply to purchasing lands for the HCP/NCCP Preserve System within the wind turbine areas:

Part One

In order to reduce impacts from all wind turbines within the Preserve System, the following measures and conditions shall apply:

1. There will be no lands credited to the Preserve System with severed wind rights unless and until all the wind rights are also acquired, other than the Vaquero Farms South and Vaquero Farms North properties.
2. For all acquisitions, the Conservancy and the future fee simple owner of the subject Preserve System lands are encouraged to not renew wind leases and remove turbines as this will eliminate impacts, unless these turbines are shown to have minimal adverse impacts with FWS and DFG concurrence. Prior to the Conservancy and the future owner of the subject Preserve System lands choosing to renew wind leases on Preserve System lands, the reasons for this decision will be provided to FWS and DFG in a letter authorized by the Conservancy Board.
3. If wind leases are renewed on future acquisitions, DFG, FWS, the Conservancy and the fee simple owner of the Preserve System lands in question will meet and confer to discuss and agree on the measures that will be included in such renewal to reduce the effects of wind turbine operations on covered species, provided that the parties recognize that these measures will continue to permit reasonable generation of electricity from the Contra Costa County’s (County) wind energy resource area. The following measures will be considered to reduce

the biological effects: siting of turbines to minimize impacts, reduction in the number of turbines, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects. This measure will also apply to Vaquero Farms, should the Conservancy and the future fee simple owner of the land subsequently secure the wind rights.

4. Prior to any acquisition with wind turbines, the Conservancy, FWS, DFG and future fee simple owner will agree on i) a structure of the transaction that allows the wind turbine review process outlined above to take place at the appropriate time; and ii) how the future wind turbine review process will be conducted; to ensure the acquisition meets the intent described above.
5. The Conservancy, FWS, and DFG recognize that the Souza 1 property was identified in the HCP/NCCP as an existing acquisition and an initial component of the Preserve System. The Conservancy and the fee simple owner of this property are encouraged to pursue the range of measures outlined above.

PART TWO

The Conservancy, U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) support the following measures to address impacts related to wind turbines on Vaquero Farms South, and when applicable, on Vaquero Farms North:

1. Continue to pursue acquisition of all wind rights.
2. Cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including repowering activities.
3. Improve accounting for wind turbine infrastructure impacts. The HCP/NCCP excludes a 50-foot buffered width around each wind turbine string from land acquisition credits. If repowering projects result in substantially larger turbines, the Conservancy, FWS, and DFG will meet and agree on a larger buffer and associated reduced credit to the Preserve System.
4. The HCP/NCCP does not specify a minimum mapping unit for mapping roads and other supporting infrastructure (i.e., storage areas) in the Preserve System nor does it specify exclusion of such features from land acquisition credits. In order to more accurately account for the physical infrastructure, the area of the roads and supporting infrastructure will be mapped to a minimum mapping unit of 0.1 acre and excluded from grassland and other landcover acquisition credits (roads will generally be mapped as ruderal unless paved, in which case they will be mapped as urban; building and corporation yards will be mapped as urban). With this approved accounting, removal and reclamation of wind power infrastructure will result in an increase in land acquisition credits when natural land cover is restored. Conversely, expansion of wind turbines and supporting infrastructure will result in a decrease in land acquisition credits as natural land cover types are converted to disturbed land cover types.

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Attachments:

- Map of Landcover (Figure 3-3) from the HCP/NCCP showing the location of wind turbine strings in black. Please note that a portion of the wind turbine strings south of Vasco Road have been removed since this map was generated as a consequence of the Buena Vista Repowering Project.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: CDFG application for Local Assistance Grant Funding (LAG)

RECOMMENDATION

Consider approving Resolution No: 2009-02 which authorizes Conservancy staff to: a) submit a grant application to the California Department of Fish and Game (CDFG) for \$150,000 from the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program; and b) enter into a grant agreement to accept such grant funds as are approved by CDFG.

DISCUSSION

The California Department of Fish and Game (CDFG) administers grants from CDFG's Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) Program. CDFG offers these grants to eligible applicants on an annual basis for high priority tasks urgently needed to implement approved NCCP's. The Conservancy has applied for and received LAG grants several times in the past, including a grant approved last year that is providing \$150,000 toward the Souza II Wetland restoration Project. In order to apply for funds and enter into an agreement to receive grant funding, CDFG requires an approved resolution from the Conservancy's Governing Board. The procedures established by CDFG require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the CDFG to implement the critical activities related to the NCCP Program.

CONTINUED ON ATTACHMENT: X YES
 ACTION OF BOARD ON: September 16, 2009
 OTHER: _____

APPROVED AS RECOMMENDED: _____

VOTE OF BOARD MEMBERS

UNANIMOUS

AYES: _____
 NOES: _____
 ABSENT: _____
 ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
 CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

CDFG announced the availability of LAG funds within the last two weeks. Conservancy staff are in contact with CDFG to discuss the type of grant project that is best suited for a LAG grant this year. Applications will be due prior to the next Conservancy Board meeting. Consequently, staff is recommending that the Board resolution approve broad categories of activities that will cover the specific project ultimately proposed by staff in consultation with CDFG. The LAG grant for 2009 will go toward providing fiscal assistance in one or more of the following critical areas of NCCP implementation: land acquisition assessment, habitat restoration, management, or monitoring. Habitat restoration focuses on all facets of restoration activities. Monitoring and management may apply to enhanced, created, and restored habitat or to the Preserve System generally. Land acquisition assessment includes fair market value appraisals on properties considered for the preserve system, creating purchase agreements, conducting Phase I environmental assessments and other tasks needed to evaluate potential acquisitions under the NCCP. As approximately \$500,000 is available statewide and \$150,000 is the largest grant amount the Conservancy has received from this source in the past, staff proposes to file an application for LAG in the amount of \$150,000.

Resolution No: 2009-02

RESOLUTION OF THE EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY AUTHORIZING THE APPLICATION AND ACCEPTANCE OF
GRANT FUNDS FOR URGENT NATURAL COMMUNITY CONSERVATION
PLAN IMPLEMENTATION TASKS, INCLUDING LAND ACQUISITION
ASSESSMENT, HABITAT RESTORATION, MANAGEMENT AND
MONITORING, IN EASTERN CONTRA COSTA COUNTY

WHEREAS, certain local assistance grant funds are made available annually on a competitive basis by the California Department of Fish and Game for Natural Community Conservation Planning (NCCP) Program urgent implementation tasks; and

WHEREAS, the grants are awarded pursuant to guidelines established by the California Department of Fish and Game for determination of project eligibility for funds; and

WHEREAS, said procedures established by the California Department of Fish and Game require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the California Department of Fish and Game to implement urgent activities related to the NCCP Program.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy approves the filing of an application for local assistance for the above project in the amount of \$150,000.

IT IS FURTHER RESOLVED that the East Contra Costa County Habitat Conservancy appoints the Executive Director as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved by the following vote on September 16, 2009.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Executive Director

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Use of Conservancy Restoration Sites for Mitigation of Non-Covered Projects

RECOMMENDATION

- 1) REFER to the Public Advisory Committee (PAC) for review and recommendation the question of whether and under what conditions the Conservancy should allow proponents of projects not covered by the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation (HCP/NCCP) to seek permission from state and federal regulatory agencies to purchase mitigation credit from the Conservancy, thereby using a portion of the Conservancy's restoration project sites toward their mitigation obligations.
- 2) DIRECT staff to also discuss this issue with agencies that are party to the HCP/NCCP Implementing Agreement.

DISCUSSION

Conservancy staff has been approached on several occasions by proponents of non-covered activities to utilize existing preserve system restoration sites for mitigation purposes. Interested parties include those within the inventory area with non-covered projects (e.g. projects in Antioch and projects that restored habitat in the past to mitigate for impacts but the restorations failed or were destroyed), as well as those outside of the inventory area seeking mitigation alternatives in order to meet obligations under a variety of state and federal regulations. None of the inquiries received thus far appears (continued on next page)

CONTINUED ON ATTACHMENT: <u>YES</u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u>September 16, 2009</u>	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
<u>UNANIMOUS</u>	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
AYES: _____	ATTESTED _____
NOES: _____	<i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
ABSENT: _____	BY: _____, DEPUTY
ABSTAIN: _____	

likely to be pursued further by the project proponent because of issues such as timing, habitat type and location. However, staff anticipates that the issue will continue to come up.

The HCP/NCCP specifically allows such an arrangement, noting potential advantages to resources, project proponents and the Conservancy of maximizing use of the HCP/NCCP Conservation Strategy. The sections that discuss this topic even provide guidelines on how such arrangements are to be pursued.

The issue staff recommends exploring further with the PAC and other HCP/NCCP partner agencies is not if the Conservancy *can* pursue restoration credit arrangements, but if it *should* and under what circumstances. The types of issues that need to be addressed are:

- How much if any of the valuable acreage the Conservancy and its partners have worked hard to restore should be available for use by non-covered activities? Acreage that is made available for non-covered projects cannot be used for covered projects.
- How should the Conservancy determine a fair price that compensates for the opportunity cost of allowing restored acreage to go to third parties while also reflecting policy goals memorialized in the HCP/NCCP regarding keeping mitigation local rather than driving it away?
- Will such arrangements help or hinder efforts to secure regional wetlands permits coordinated with the HCP/NCCP?
- How can tracking mechanisms be put in place to ensure that no double-dipping of restoration credit occurs?

The topic is complicated and staff is recommending undertaking a broad evaluation now before a specific case must be decided upon. Similar questions may arise in the case of land preservation arrangements, but staff suggests the primary focus be on restoration credit for the time-being because the issue is more complicated and timely.

Provisions in the HCP/NCCP: The HCP/NCCP contains two sets of provisions for dealing with mitigation for non-covered projects. One is the contribution of land and the other is contribution of funds. Neither mechanism offers the project proponent take coverage under the HCP/NCCP. Rather, each makes use of aspects of HCP/NCCP implementation as resources for mitigation in order to meet state and federal obligations. Excerpts from the relevant sections of the HCP/NCCP are provided below.

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HCP/NCCP Chapter 8, Section 8.6.2

Mitigation for Activities Not Covered by the HCP/NCCP

By creating a framework for habitat conservation, the HCP/NCCP could attract additional mitigation to the HCP/NCCP inventory area by projects located in or around the inventory area but not covered by the HCP/NCCP. Land acquired, preserved in perpetuity, and managed for natural resource purposes to mitigate for the impacts of activities not covered by the HCP/NCCP may complement and augment the conservation achieved by the HCP/NCCP if the location and

management of the land is consistent with the goals of the HCP/NCCP. For example, mitigation from non-covered activities may preserve areas that would not have been preserved under the HCP/NCCP. Alternatively, mitigation may accomplish conservation objectives of the HCP/NCCP, enabling conservation under the HCP/NCCP to be redirected to other areas or conservation purposes (as described in Chapter 5 Conservation Measure 1.1, in the section *Conservation in the Inventory Area beyond HCP/NCCP Requirements*).

Project proponents with projects in or near the inventory area that are not covered by the Plan but that affect covered species may be interested in using the HCP/NCCP as a vehicle to mitigate their projects. These projects may be required to conduct mitigation or conservation actions under a variety of state and federal regulations, including ESA, CESA, CWA, Porter-Cologne Water Quality Control Act, NEPA, or CEQA. If these actions are compatible with the HCP/NCCP, there are advantages to using the conservation strategy of the Plan East Contra Costa County Habitat Conservation Plan Association as a guide to mitigating non-covered projects because of lower costs and greater conservation benefits. Some non-covered project proponents may be interested in contributing land to the HCP/NCCP as their mitigation. See also *Mitigation Funding from Activities Not Covered by the Plan* in Chapter 9, section 9.3.2, regarding the contribution of mitigation funds to the HCP/NCCP.

If mitigation by non-covered projects occurs in areas that are a priority for conservation in the HCP/NCCP, the Implementing Entity, CDFG, and USFWS will confer and determine how to redirect HCP/NCCP resources to other objectives. In such circumstances, HCP/NCCP resources may be redirected toward other areas such as the following.

- Additional land acquisition that will be prioritized as described in Chapter 5 Conservation Measure 1.1, in the section *Conservation in the Inventory Area beyond HCP/NCCP Requirements* (note that such additional land acquisition may not match the size and extent of such non-Plan mitigation acre for acre due to differences in land cover types, conservation value, cost, and other factors).
- Other measures necessary to achieve the objectives of the Plan. Mitigation for covered species by non-covered projects cannot be counted towards either the mitigation requirements or the Stay-Ahead provision of the HCP/NCCP and must result in a redirection of HCP/NCCP resources toward other conservation purposes as described above.

CDFG and USFWS will, to the extent consistent with their responsibility to ensure effective mitigation proximate to the location of impact, promote mitigation in the HCP/NCCP inventory area by non-covered projects to complement and augment the conservation to be achieved by the HCP/NCCP.

HCP/NCCP Chapter 9, Section 9.3.2

Mitigation Funding from Activities Not Covered by the Plan

There may be a number of benefits to addressing the mitigation needs of noncovered projects through the implementing structure of the HCP/NCCP. USFWS and CDFG may wish to use the conservation strategy and implementing structure of the Plan to maximize the conservation benefits to covered species and natural communities. Project proponents may wish to utilize the mitigation approach of the Plan to facilitate their mitigation obligations under a variety of state and federal regulations. The HCP/NCCP Implementing Entity may benefit from the additional flexibility to implement the Plan afforded by access to revenue early in the permit term. See also *Mitigation Acquisitions by Activities Not Covered by the HCP/NCCP* in Section 8.6.2, *Land Acquired by Other Organizations or through Partnerships*.

Mitigation funds collected from non-covered activities must augment the mitigation and conservation obligations of the Plan (i.e., they may not offset these requirements). To achieve this, the Implementing Entity, the project proponent, USFWS, and CDFG will meet to discuss a mutually acceptable mitigation funding arrangement. Such an arrangement will rest on a description of conservation actions (e.g., land acquisition, restoration) over and above those required by the HCP/NCCP that must be performed to mitigate the non-covered activity. The subsection of Conservation Measure 1.1 entitled *Conservation in the Inventory Area beyond HCP/NCCP Requirements* in Chapter 5 entitled will help guide the identification of the expanded conservation requirements. The expanded conservation requirements must be approved by CDFG and USFWS. The Implementing Entity must be willing to perform the additional conservation with the funds offered, and the funding arrangement must be acceptable to the project proponent. It is likely that an agreement involving all four parties will be necessary to implement such mitigation funding arrangements.

To facilitate successful implementation of the HCP/NCCP and to ensure that mitigation from non-covered activities is coordinated with the HCP/NCCP, mitigation funding arrangements will include the provisions described below.

- Flexibility to use the additional revenue to meet existing HCP/NCCP requirements and to use future HCP/NCCP revenue to meet the expanded conservation requirements of the non-covered activity. This will enable the Implementing Entity to use the additional funds in an opportunistic fashion and to meet urgent Plan requirements, such as habitat connectivity requirements in Acquisition Analysis Zone 2, faster than it could otherwise do.
- Flexibility in adapting the Stay-Ahead provision to the expanded conservation requirements. In measuring compliance with the Stay-Ahead provision in annual reports, the Implementing Entity will be able to choose either to (a) disregard the expanded the conservation requirements and the land purchased with additional revenue from the non-covered activities when measuring compliance, or (b) include both the expanded conservation requirements (i.e., the HCP/NCCP requirements plus the requirements of the non-covered activities and any continued land acquisition obligations) and the land purchased with additional revenue from non-covered activities when calculating compliance.

Mitigation funding arrangements will describe the specific application of these provisions in each instance. The additional revenue received from non-covered activities cannot be taken into account during the periodic audits used to recalibrate HCP/NCCP fees.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: September 16, 2009
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Mitigation Fees as Match Update

RECOMMENDATION

ACCPET update from staff on the issue of using HCP/NCCP mitigation fees as match for U.S. Department of the Interior Section 6 grants. AUTHORIZE additional action by staff to represent the Conservancy's views on this matter.

DISCUSSION

At various prior Governing Board meetings, staff has reported on the mitigation funding as match issue. The issue stems from the administrators of the Section 6 grant program at the U.S. Fish and Wildlife Service (USFWS) in Washington D.C. instituting a policy prohibiting the use of mitigation funds as match monies. This policy was not evident in any of the prior requests for proposals for the grant program, and staff had previously been informed that mitigation funds could be used as match. Conservancy staff has met with the administrator of the Section 6 grant program in Washington D.C. twice to discuss this prohibitive policy. The rationale provided by the USFWS for prohibiting such match was that local fees were a mitigation requirement of HCPs and use of such fees as match did not result in a meaningful leveraging of the federal funds.

CONTINUED ON ATTACHMENT: X YES
 ACTION OF BOARD ON: September 16, 2009
 OTHER: _____

APPROVED AS RECOMMENDED: _____

VOTE OF BOARD MEMBERS

UNANIMOUS

AYES: _____
 NOES: _____
 ABSENT: _____
 ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

On January 28, 2009 the Governing Board adopted the 2009 Federal & State Legislative Platform which included the following provision on this issue: “Advocate amendment of the grant guidelines for the U.S. Fish and Wildlife Service (USFWS) Section 6 Grant Program to once again allow the use of local fee funds as match when such funds are collected as part of a local government-led regional HCP/NCCP.” Furthermore, the Conservancy has been a part of the California Habitat Conservation Planning Coalition, which has adopted as a key tenant the revision or rescission of this prohibitive policy on the following grounds:

- The policy is not evident in the grant application guidelines and is not required by law or regulation.
- It is not logical or reasonable for a grant program designed for HCPs to prohibit the major source of HCP funding from serving as match.
- Section 6 grants leverage huge amounts of conservation whether or not mitigation funds are used as match because the very existence of the Section 6 program has been an incentive to develop regional HCPs which are far better for conservation than the project-by-project permitting process. Without local governments, such as those in East Contra Costa County, voluntarily agreeing to approve and implement HCPs and requiring mitigation through their land use authority, the amount and quality of mitigation efforts would be substantially reduced.
- The new policy has the potential to derail conservation planning efforts in many parts of California and severely hamper the efforts of existing HCPs to spend current and future Section 6 grants.
- The policy also could have a chilling effect on access by HCPs to other federal, state and private grant programs if the USFWS is seen to shy away from consideration of local fee funds as a credible source of matching funds for its own HCP grant program.

Some progress has been made on this effort. The Director of the California Department of Fish and Game (CDFG) sent a letter to USFWS last year requesting this prohibitive policy be overturned and specifically mentioning the ECCC HCP/NCCP. This year, the Western Riverside County Regional Conservation Authority, administrators of a large HCP in Riverside County, has led a dedicated effort to outreach to the new Administration to remove the prohibition. On August 3, 2009, a letter from members of the California Habitat Conservation Planning Coalition, including the Conservancy, was sent to Mr. David Hayes, Deputy Secretary of the Department of Interior. The letter asks for assistance in altering grant administrative practices to allow fees collected pursuant to regional land use HCPs to be eligible as matching funds. Similar letters were sent to Senators Boxer and Feinstein asking them to convey their opinion to the Administration. The letters and outreach seem to be gaining traction and a delegation may travel to Washington in the coming weeks to further pursue the issue. Staff proposes to be part of this delegation. The restrictive policy is a huge obstacle to the Conservancy’s expenditure of approximately \$22 million in approved Section 6 HCP Land Acquisition grants. Costs of the trip can be covered within the existing approved Budget. Staff is seeking guidance from the Board as we continue to press this issue and authorization to travel to Washington D.C. on the matter.

Attachments:

- August 3, 2009 letter to Deputy Secretary of the Interior Mr. David Hayes

**Coachella Valley Conservation Commission
Development and Conservation Management, Inc.
East Contra Costa County Habitat Conservancy
Endangered Habitats League
Institute for Ecological Health
Solano County Water Agency
The Nature Conservancy
Western Riverside County Regional Conservation Authority**

August 3, 2009

David Hayes
Deputy Secretary
Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Re: Applying Regional Land Use Habitat Conservation Plan (HCP) Fees as Match for Federal HCP Land Acquisition Grants

Honorable Deputy Secretary Hayes:

We are writing to ask for your assistance with a matter of significant interest to a broad coalition of Californians—including local agencies administering HCPs in several of the most populous and fastest growing counties, developers and conservation organizations.

Specifically, we are writing to request that the Department of the Interior (DOI) alter grant administration practices to allow fees collected by land use agencies as part of a Regional Land Use HCP (defined below) to be applied as match for HCP Land Acquisition Grants under the Cooperative Endangered Species Conservation Fund. Absent such a correction, the success of a longstanding, highly successful, and heavily leveraged federal conservation partnership with local governments will be difficult to sustain. We understand the general concept behind this request has been raised with you by others in some recent meetings and we appreciate your willingness to consider the matter further. A detailed rationale for this request and suggested language for the proposed change to grant administration practices follows.

Grants from the Section 6 Cooperative Endangered Species Conservation Fund, HCP Land Acquisition Grant Program (HCP Land Acquisition Grants) play an essential role in regional Habitat Conservation Plans led by local land use agencies (Regional Land Use HCPs) in California and elsewhere. The potential to receive HCP Land Acquisition Grants has been a key incentive for local agencies to complete the arduous planning process necessary to develop an HCP, to assume responsibility from the state and federal governments for enforcing endangered species regulations and to accept the task of assembling and maintaining vast new preserve

systems that far exceed federal regulatory requirements in terms of the quality and quantity of conservation. The HCP Land Acquisition Grant program demonstrates to local agencies that the federal government recognizes the enormous challenge of developing a Regional Land Use HCP and is willing and able to support their implementation.

Regional Land Use HCPs are voluntary initiatives of local agencies. When local agencies agree to develop and adopt such plans, the conservation benefits are enormous. In California alone, Regional Land Use HCPs are expected to conserve more than 1.4 million acres of land. Some key conservation benefits that are not possible absent a Regional Land Use HCP are:

- Enables conservation planning and implementation at the landscape level in growing metropolitan areas;
- Endangered species conservation measures become a local land use mandate that is enforced at the local agency planning counter;
- Habitat acquisitions can be performed strategically and on a grand scale;
- Habitat can be monitored and adaptively managed in a coordinated, regional manner; and
- Regional Land Use HCPs provide conservation above and beyond Federal Endangered Species Act (FESA) mitigation requirements and contribute to species recovery.

In late 2007, local agencies in California became aware that the U.S. Fish and Wildlife Service (FWS) was not willing to consider local fees collected from project proponents as a suitable form of the required non-federal match for Section 6 grants. Prior to this time, local agencies administering HCPs had understood the fees could be used as match. The rationale provided by FWS for prohibiting such match was that local fees were a mitigation requirement of HCPs and use of such fees as match did not result in a meaningful leveraging of the federal funds. Based on our experiences with preparing and approving Regional Land Use HCPs, and for the reasons outlined above, we believe these types of plans are very different from a typical landowner-driven HCP. They provide a huge return on the federal investment regardless of the specific source of non-federal match. Perhaps the most important benefit of HCP Land Acquisition Grants has been the way they have spurred the development of Regional Land Use HCPs that produce conservation benefits that far exceed the requirements of FESA.

For many local agencies in California and elsewhere, constitutional restrictions make local fees the only viable source of local funds for implementing conservation actions under a Regional Land Use HCP. If local fees cannot be used as match, local agencies that have been preparing and implementing such plans may not be able to access the federal funding that was a key inducement for adopting their regional HCPs. Regional Land Use HCPs in California alone have more than \$30 million in approved HCP Land Acquisition Grants. If unable to use fee revenues, the primary source of HCP funding, spending even already approved federal funds will be a substantial challenge. For local governments that have not yet approved their HCPs, prohibiting their use of local fee revenues as the non-federal match could eliminate the prospect of future grants and remove a critical incentive for completing the HCPs.

In addition, FWS may be unable to fulfill its end of the bargain in implementing HCPs. Most Regional Land Use HCPs that include land reserve systems that exceed FESA mitigation requirements rely on federal funding to cover a portion of the costs of the additional reserve

system lands. HCP Land Acquisition Grants are the primary source of funding available to the FWS for such land acquisitions. Without an eligible source of local or state matching funds, the FWS will be unable to contribute to the local, state and federal partnership that is the hallmark of Regional Land Use HCPs.

We would like to suggest alternative grant criteria that would acknowledge the unique importance of Regional Land Use HCPs and ensure effective leveraging of federal HCP Land Acquisition Grants. We suggest that DOI allow local fees to be used as match if collected pursuant to an approved HCP that meets the following criteria:

- The HCP includes local or tribal land use planning agencies as permittees and relies on the land use authority of these agencies to impose the endangered species conservation measures of the HCP on third parties through the land use permitting process;
- The HCP provides for conservation over and above FESA mitigation requirements and contributes to recovery of endangered species;
- FWS determines that the HCP is providing a substantial conservation benefit that meets the leveraging objectives of the Section 6 Program.

Under this proposal, the federal funds could not and would not be used to pay for the mitigation obligations of developers or local agencies.

We would greatly appreciate your consideration of such a revision. We would be happy to provide any assistance or additional information that would be helpful to you and your staff. The points of contact for our coalition are Mark Kramer at the Nature Conservancy (415-515-8248, mkramer@tnc.org), Charles Landry at the Western Riverside County Regional Conservation Authority (951-955-9700, clandry@wrcrca.org) and John Kopchik at the East Contra Costa County Habitat Conservancy (925-335-1227, jkopc@cd.cccounty.us). Thank you very much for your consideration of this request.

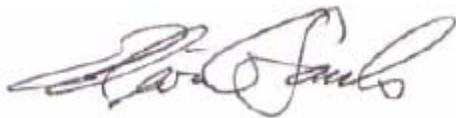
Sincerely,



Tom Kirk, Executive Director
Coachella Valley Conservation Commission



John Kopchik, Executive Director
East Contra Costa County Habitat
Conservancy



Ed Sauls, President
Development and Conservation Management,
Inc.



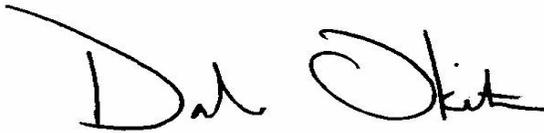
Dan Silver, Executive Director
Endangered Habitats League



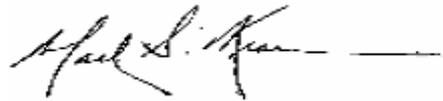
John Hopkins, Executive Director
Institute for Ecological Health



Charlie Landry, Executive Director
Western Riverside County Regional
Conservation Authority



David B. Okita, General Manager
Solano County Water Agency



Mark Kramer, Director
Federal Government Relations
California Chapter, The Nature Conservancy

cc: Tom Strickland, Assistant Secretary for Fish, Wildlife and Parks
Jane Lyder, Deputy Assistant Secretary for Fish, Wildlife and Parks
Will Shafroth, Deputy Assistant Secretary for Fish, Wildlife and Parks
Michael Bean, Counselor to Assistant Secretary for Fish, Wildlife and Parks