



East Contra Costa County Habitat Conservation Plan Association

PRELIMINARY WORKING DRAFT (1-15-04)

Framework for the East Contra Costa County HCP/NCCP

This document is intended to outline key components of the HCP/NCCP and serve as a focus of discussion for the Coordination Group. The document will record key recommendations of the Coordination Group as they are made. The Framework cannot replace the detailed information that will be contained in supporting documentation such as the Conservation Strategy and other chapters of the plan itself (these will continue to be discussed), but it can guide development of the more detailed work products and allow the Coordination Group to focus on the most important policy questions.

The Principles of Participation approved by HCPA member agencies upon joining the HCPA are included as an attachment. The Principles have been referenced to the section of this Framework that discusses the relevant subject matter.

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I Purpose of the HCP/NCCP

Mission statement (below) recommended by Coordination Group on 5-17-02 and approved by the Executive Governing Committee on 5-23-02.

The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan will provide comprehensive species, wetlands and ecosystem conservation and contribute to recovery of endangered species within East Contra Costa County, while:

- balancing open space, habitat, agriculture, and urban development;

- reducing the cost and increasing the clarity and consistency of federal and state permitting by consolidating and streamlining these processes into one, locally-controlled plan,
- encouraging, where appropriate, the multiple use of protected areas, including recreation and agriculture,
- sharing the costs and benefits of the habitat conservation plan as widely and equitably as possible, and
- protecting the rights of private property owners.

II Background: The Intersection of Natural Resources, Development, and Agriculture in East County

Language below has been refined over time to reflect suggestions made by the Coordination Group.

Eastern Contra Costa County is one of the fastest growing regions in the state--with a population that is predicted to grow by 127,000 people by 2025¹--providing important new housing for the Bay Area's growing workforce. Though efforts are underway to direct future growth toward infill opportunities (to the maximum extent practicable) and to finding more sustainable ways to grow, existing land use plans and development approvals allow significant new development on rangelands and irrigated crop lands. This new development will displace a variety of natural habitats, including valley floor and foothill grassland, oak woodland, oak woodland savannah, chaparral, riparian woodland, emergent wetland, and vernal pool habitat. Anticipated growth could also threaten key habitat corridors needed to protect a variety of state and federally listed threatened and endangered species. Approximately 154 special status species occur or could occur in the East County area, including the San Joaquin Kit Fox, California Red-Legged Frog, Alameda Whipsnake, Golden Eagle, Western Burrowing Owl, Vernal Pool Fairy Shrimp, and Diablo Helianthella. The East County area is also home to productive agricultural lands, including intensively cultivated areas with high quality soils in lower elevations and productive grazing lands in the hills that cover a large part of the region. Agriculturalists depend on these lands for income and as an important investment.

Conflict between these different land-uses or community values is, to some extent, unavoidable. However, coordinated conservation planning is an opportunity to reduce the level of conflict and to identify mutually acceptable approaches to these problems.



Scott Hein

¹ ABAG, Projections 2002. By 2025, the populations of Brentwood, Oakley, Pittsburg, and Antioch are expected to grow by 123%, 57%, 52%, and 30%, respectively.

III Mechanism: the HCP/NCCP as an Alternative to Project-By-Project Permitting and Mitigation

Current Process for Complying with Endangered Species Acts and Other Resource Protection Regulations:

Public agencies, developers, and other project sponsors currently address endangered species regulations individually on a project-by-project basis. Potential impacts to endangered species are considered and potentially mitigated within the California Environmental Quality Act (CEQA) process, but in many cases must also be addressed through individual consultation with the USFWS and CDFG. Regardless of regulatory venue, endangered species compliance typically requires:

- a) thorough field surveys of the site at appropriate times for endangered species;
- b) negotiations on mitigation, site design, and construction practices; and
- c) identification and procurement of any needed off-site mitigation and/or dedication of on-site mitigation (e.g., open space easements) and establishment of mitigation monitoring program.

The above compliance is performed individually by the landowner/developer and the USFWS and CDFG in order to obtain an individual take permit (ITP) pursuant to CESA section 2081 and FESA section 10 when a non-federal action (i.e., project or activity) may jeopardize or impact a listed species, or its habitat. In Contra Costa County, the ITP is more often issued under section 7 of FESA which applies when a project has federal funding or requires federal permits, such as for wetlands. The local land use agency is usually not involved, but does separately negotiate mitigation under CEQA.

The amount of time and funding dedicated to each of the above three tasks varies, sometimes dramatically, from one project to another. Some project proponents in East County have incurred significant expense in this process. All project proponents must contend with some uncertainty regarding how long endangered species compliance will take, how much mitigation will be required, and what will happen in the future if unforeseen circumstances arise that affect a protected species before an ITP issued.

In addition to endangered species requirements, CEQA (and NEPA if a federal project), and any resource protection measures adopted by the local land use planning agency, project proponents must also comply with a number of other environmental regulations. For example, actions that could affect wetlands must have a thorough site survey and formal wetland delineation sanctioned by an appropriate regulatory agency. Such projects must also receive permits from the U.S. Army Corps of Engineers (COE), and the Regional Water Quality Control Board (RWQCB). Depending on the project, the U.S. Environmental Protection Agency (EPA), USFWS, and CDFG might be involved in processing the wetlands permit from the COE. Projects affecting streams require a streambed alteration agreement with CDFG and may also be subject to wetland regulations.

Construction activities require a separate permit from the RWQCB to control water quality impacts. Projects might also face local and other restrictions on impacts to prime agricultural lands.

How the HCP/NCCP Will Provide an Alternative Process for Compliance:

The East County HCP/NCCP establishes a coordinated process for permitting and mitigating the incidental take of endangered species that can be used in place of the current, project-by-project approach. Rather than individually surveying, negotiating, and securing mitigation, project proponents will receive an ITP by paying a fee (and/or dedicating land), performing limited surveys, and adhering to protocols to avoid and minimize impacts during construction. The fees are collected by the Implementing Entity (TBD) (often a Joint Powers Authority composed of representatives of local agencies). The Implementation Entity then uses the fee money, as well as grants and any other funding sources established in the plan, to purchase habitat lands or easements from willing sellers. Collected funds are also used for monitoring and any habitat enhancement or management actions.

The HCP/NCCP will (we hope) also offer an alternative, parallel means for complying with wetlands regulations, including the Sections 404 and 401 of the federal Clean Water Act (wetlands fill and water quality certification) and Section 1601 of the California Fish and Game Code (Streambed Alteration). The approach to complying with wetlands regulations will be similar to the approach used for endangered species compliance: coordination of off-site mitigation through the plan when impacts cannot be avoided.

Key Unresolved Issue: Will the Plan Be Able to Provide Wetland Permits?

There are a number of reasons why it is desirable for the plan to fulfill the requirements of the Federal Clean Water Act and provide permits for wetlands impacts, including better delivery of a "one-stop-shop" for natural resource permits and assurances that wetlands and species conservation objectives are achieved in a complementary fashion. Unfortunately, there is no precedent for including wetlands permits in a Regional HCP for urban development. However, the East Contra Costa HCP effort is cooperating with three similar efforts in Northern California to explore with the Army Corps of Engineers and the U.S. EPA opportunities for securing Regional General Permits for the activities covered in the HCP.

A comprehensive, landscape-level analysis of the biological resources of East County forms the basis for the permits issued and conservation actions taken under the plan. By examining conservation priorities at a regional scale, the plan is better suited for implementing key conservation biology principles than more focused work with perhaps greater detail. The biological work in this plan cannot replace the site-specific biological work that will still be required under the California Environmental Quality Act for specific projects, but it can provide a broader scientific context, assist with evaluating cumulative impacts, and should facilitate both the preparation and review of future site-specific studies.

Expected Benefits of the HCP/NCCP:

The HCP/NCCP is intended to benefit developers by improving regulatory certainty, by reducing the need for surveys and mitigation negotiations, and by providing a coordinated, more cost effective system for acquiring mitigation. HCP/NCCP's are also intended to benefit species by replacing the current project-by-project mitigation with a coordinated system more suitable for protecting connected blocks of habitat in a biologically sound manner. Larger and connected blocks of conserved lands will increase the potential to benefit and preserve multiple species. Because

conservation objectives will be achieved with purchase of land or easements from willing sellers rather than through new regulations, the HCP/NCCP may viewed more favorably by landowners.

IV Key Permit Terms and Conditions

Summarized below are key aspects of the permits to be requested through the HCP/NCCP.

Term of permit: 30 years

Permit holders: TBD (Could be the implementing entity or each individual jurisdiction (i.e., County, cities, any covered special districts, and the organization responsible for managing the Preserves)

Permit issuers: U.S. Fish and Wildlife Service
California Department of Fish and Game
Wetlands agencies like USACE and SWRCB and EPA (we hope)

Desired permits:

- a) Section 10 of FESA (Incidental Take Permit under Section 10 of the Federal Endangered Species Act)
- b) Section 2835 of CESA (Incidental Take Permit under the California Endangered Species Act through provisions of the California Natural Community Conservation Planning Act)
- c) Section 1601 (Master streambed alteration agreement under the California Fish and Game Code)
- d) Section 404 of CWA (Regional General Permit under Section 404 of the Federal Clean Water Act)
- e) Section 401 of CWA (Water Quality Certification from the State Water Resources Control Board)

(note: no-take requirements will be in place for half a dozen species that are either fully protected under the California Fish and Game Code (e.g. Peregrine Falcon), or are so rare that it would not be possible for the agencies to issue take permits (e.g. Mount Diablo Buckwheat, which is presumed extinct))

26 Species To Be Covered by the Permit:

Townsend's Western Big-eared Bat
San Joaquin Kit Fox
Tricolored Blackbird
Golden Eagle
Western Burrowing Owl
Swainson's Hawk
Silvery Legless Lizard
Alameda Whipsnake
Giant Garter Snake
California Tiger Salamander
California Red-legged Frog
Foothill Yellow-legged Frog
Longhorn Fairy Shrimp
Vernal Pool Fairy Shrimp
Midvalley Fairy Shrimp
Vernal Pool Tadpole Shrimp
Mount Diablo Manzanita
Brittlescale
San Joaquin Spearscale
Big Tarplant
Mount Diablo Fairy Lantern
Recurved Larkspur
Diablo Helianthella
Brewer's Dwarf Flax
Showy Madia
Adobe Navarretia

Listed and non-listed species are covered to provide additional regulatory assurance and to help avoid future listings.

Permit area: The permit area for urban development under the HCP/NCCP shall be adjusted by the implementing entity as follows, subject to the conditions imposed by the Implementation Agreement for the HCP/NCCP:

a) The permit area authorized by the implementing entity shall be the area within the HCP inventory area, and within the Urban Limit Line (ULL) or the city limits of participating cities, whichever is larger.

b) Should the ULL or city limits expand or contract during the term of the plan, the implementing entity would expand or contract the permit area accordingly.

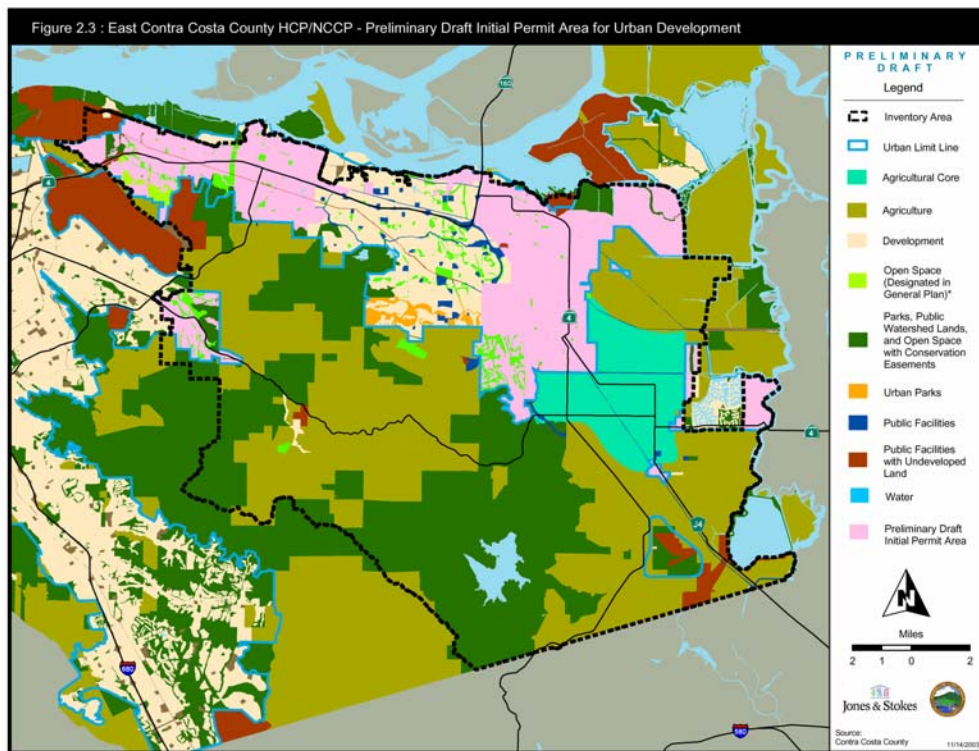
c) The HCP/NCCP shall define an area that will not be covered by the permit area for urban development, now or in the future, regardless of the location of the ULL or city limits. The area excluded from future permit coverage under the HCP/NCCP shall reflect the high and medium acquisition priorities of the Conservation Strategy for the HCP/NCCP. There shall also be an acreage limit on the amount of land that can be added to the permit area

The permit areas for preserve management, for rural infrastructure projects, and for rural residential (if covered) shall be defined separately.

Key Issue: Defining the Permit Area for Urban Development

The Working Draft NCCP/HCP incorporates a more flexibly-defined permit area for urban development. This preliminary approach was chosen because there is uncertainty in East Contra Costa County over where growth should or will occur over the next 30 years. This issue will be resolved over time and in different forums that consider not only habitat needs, but also transportation, jobs, economic growth, housing, and quality of life.

Figure 2.3: Initial Permit Area for Urban Development



Covered activities:

Working Draft Covered Activities List²

1. Residential, commercial, and industrial development (and other development activities, such as described in items 2 thru 4, inside the Urban Limit Line)
2. Road and highway construction and maintenance outside the ULL
3. Water infrastructure construction and maintenance outside the ULL
4. Flood control project construction and maintenance outside the ULL
5. Sanitary system infrastructure construction and maintenance
6. Rural recreational facility construction, maintenance, and operation
7. Recreational use of rural parks and preserves
8. Mining facility construction, operation, and maintenance (if requested by mining companies)
9. Miscellaneous development outside the ULL (to be defined later)
10. Population surveys, species relocation, habitat restoration, management, and scientific research on preserve lands or potential preserve lands

Preliminary List of Rural Infrastructure Projects Proposed for Permit Coverage (see Chapter 2 for more details; many items are listed as placeholders pending further discussion)

Armstrong Road Extension
Balfour Road Shoulders
Buchanan Bypass
Byron Airport Commercial Services (105 acres)
Byron Highway Northern Extension and Widening
Byron Highway South Improvements / Re-designation as State Route 237 (info pending)
Byron Sewer Line (info pending)
EBART
Kirker Pass Road Widening (truck climbing lane)
Marsh Creek Road Realignment at Selected Curves
State Route 4 Bypass
Vasco Road Improvements (info pending)

Key Issues Regarding Covered Activities:

- Agricultural operations have not been recommended for permit coverage by the Coordination Group because no request was received for coverage from the agricultural community and the Coordination Group saw little need for covering an activity that traditionally has not received ESA permits.
- Wind turbine construction and re-powering has not been covered because these activities have a very different suite of impacts that are outside the scope and budget of this planning effort. Purchase of conservation easements in existing wind turbine areas and consistent with continued wind turbine operations is contemplated.
- Rural residential permit coverage is an unresolved issue

Voluntary participation: participation principle #12 needs to be articulated more fully here in conjunction with refinement of the funding plan.

² The introductory text on this subject should explain the difference between Section 7 and Section 10 of the Federal Endangered Species Act and make clear that, while an HCP can only provide coverage under section 10, HCPs can be an instrument for identifying permit conditions under Section 7.

V Biological Commitments

Qualitative Conservation Requirements:

The conservation strategy will be designed to meet the biological goals and objectives of the plan. The strategy will be based on four fundamental regulatory goals: mitigate the impacts to the covered species to the maximum extent practicable, contribute to the recovery of the covered species, maintain ecosystem processes, and conserve biological diversity.

Preserve Design Principles*

Maximum Size
 Minimize the Number of Preserve Units **
 Link Preserves
 Include Urban Buffer
 Minimize Edge
 Maximize Environmental Gradients
 Consider Watersheds
 Consider Full Ecological Range of
 Communities

*See Chapter 5 for a description of each of these principles

** JH may suggest alternative language

- Conservation dollars must be spent efficiently and effectively. Conservation easements may be an effective tool in this regard, though the funding strategy for the plan should not assume that such transactions will be as common as they might be in an ideal situation. Conservation easements have not been common in this area in the past and factors that have limited their use may continue to be limiting in the future.
- Habitat restoration should be included in the conservation strategy for habitats that have historically been lost or degraded such as riparian woodland, seasonal wetlands, and native grasslands.
- Habitat restoration should only occur within HCP/NCCP Preserves except in cases where there are no restoration opportunities within the new preserves. If restoration must occur outside preserves, it will occur only on public lands adjacent to or near HCP/NCCP preserves and in direct support of these preserves (e.g., along the same stream).
- The plan will include “stay ahead” provisions to ensure that land acquisition and restoration occurs ahead of development. The plan will also include a “jump start” provision to ensure that the implementing entity acquires and begins to restore some land before any impacts occur.
- Agriculture can be compatible with conservation. Many agricultural activities, such as grazing, will be critical for maintaining and restoring habitat values in some areas.
- The impacts of development close to the proposed HCP/NCCP Preserves will be minimized through the use of planning surveys (as described in the conservation strategy), creation of buffer zones, and more intensive management along the urban-wildland interface. The plan assumes that minimization measures will not be required for most species in isolated areas such as urban infill.
- Development will not take “no take” species (see Key Permit Terms and Conditions)
- HCP/NCCP Preserves will conserve biological resources at all scales including small-scale features such as rock outcrops, native grassland vegetation associations, seeps, springs, and other features determined to be important to native biological diversity.

- The plan will contribute substantially to the recovery of the Alameda whipsnake despite relatively low impacts to this species because the inventory area includes such a large proportion of this species' entire range (approximately 20%).
- The implementing entity will acquire and manage land in key areas to maintain connectivity between Contra Costa County and neighboring counties to support landscape-level ecological functions such as the long-term survival of the San Joaquin kit fox in Contra Costa County.
- Recreational use of HCP/NCCP Preserves will be limited to areas and types of uses that have negligible impacts on covered species and habitats.
- All relevant elements of this plan will be monitored in the field to ensure that the biological goals and objectives will be achieved and to inform the on-going adaptive management process.

Partially-Scaling Conservation to Keep Pace with Development:

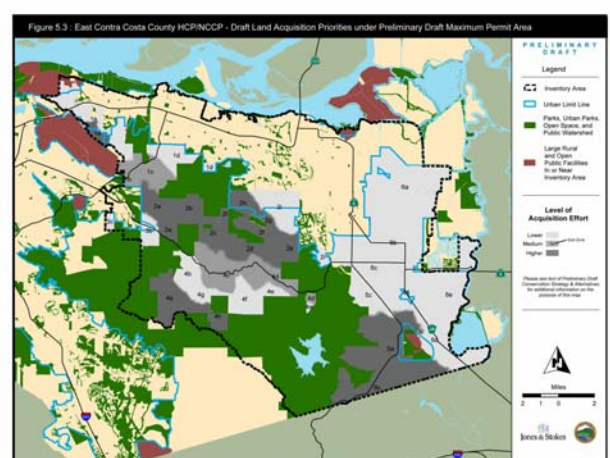
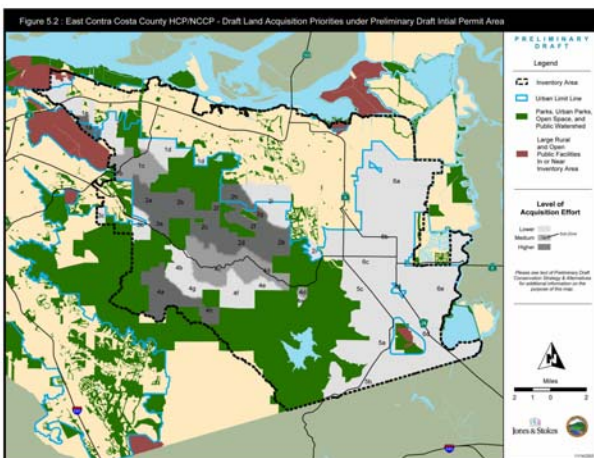
To reflect the phased approach to the permit area for urban development and the uncertainty over how much development and how much habitat impact will occur over the life of the plan--and therefore how much money will be raised from development fees—staff propose introducing an element of scalability to the Conservation Strategy. For example, the Conservation Strategy would include a baseline of required conservation actions, including acreage requirements for habitat protection, but some of the conservation requirements could increase as the level of impact increases. Such scaling would need to have a strong geographic component so conservation actions establish a base of preserves and build on these over time.

Advantages and Challenges of Scaled Conservation Requirements

Advantages: 1) more assurance that funding levels will match conservation requirements; and 2) more assurance that if growth stops unexpectedly, the preserve system will have integrity.

Challenges: Distinctive requirements of the state and federal laws with which the HCP/NCCP must comply and the associated tension between mitigation-based requirements and requirements for general conservation of species and ecological processes.

Figures 5.2 and 5.3: Preliminary Acquisition Priorities for the Initial Permit Area (left) and Max Permit Area (right)



Quantitative Conservation Requirements:

Table 5-10. Estimated Minimum and Maximum Size of Preserve System under each Permit Area (acres)

Zone	Preliminary Draft Initial Permit Area		Preliminary Draft Maximum Permit Area	
	Est. Minimum ¹	Est. Maximum ¹	Est. Minimum ¹	Est. Maximum ¹
1	2,050	2,700	2,050	2,700
2	8,250	10,350	8,250	10,350
3	400	750	400	750
4	6,500	8,150	6,500	8,150
5	2,150	2,700	8,000	10,350
6	1,300	1,750	1,900	2,500
Total	20,650	26,400	27,100	34,800

Notes:

¹ Numbers rounded to the nearest 50 acres.

VI Landowner Commitments

This section still needs more work, though several comments were made on March 20 that seem appropriate for including here as we start to fill this section out. Likewise, the work of the Agricultural Subcommittee has generated material for this section and should continue to do so.

Fundamental assurances:

- The plan should respect and protect the rights of property owners.
- All land or easements purchased by the implementer of the plan must be from willing sellers. Eminent domain cannot be used.
- The plan should assume that agricultural lands not purchased for conservation will not necessarily continue to be operated and to function as they do now.

Neighboring landowner assurances:

- The plan must consider the interests of property owners adjacent to HCP/NCCP Preserves. Such land owners should be offered assurances that any proliferation of endangered species on the Preserves will not hinder their existing operations (i.e., beyond conditions before the Preserves are established).
- Questions to be worked out: “opt-in” vs. “opt-out” (i.e., whether all neighboring lands are automatically covered and landowners can choose to opt out, or whether all neighboring lands must choose to receive protection) and how the pre-preserve baseline of endangered species is established

Financial assurances:

- HCP/NCCP fees and other funding sources must fully fund the cost of land acquisition and maintenance, but must not be so high as to discourage development.
- The plan should provide the option of purchasing either conservation easements or fee title, but, given the limited use of easements in this area to date, the economic analysis should be fiscally conservative and assume that easement purchases will be rare.
- The plan will operate in and affect the local real estate market. This role must be undertaken sensitively to avoid significant disruptions of the private marketplace.

Agricultural assurances:

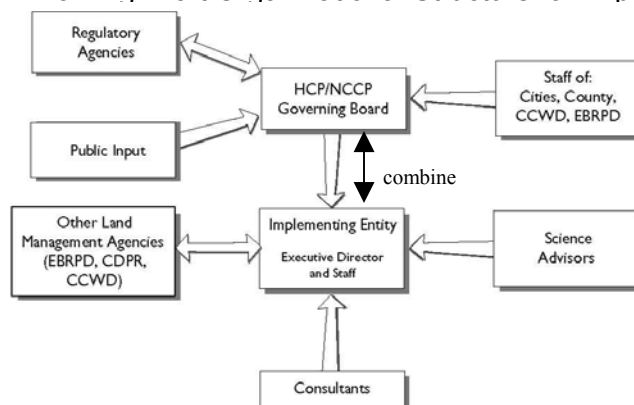
- The plan should contribute to keeping grazing viable, both as an economical agricultural activity and as a necessary habitat and species management tool.
- Lands conserved for habitat may constitute an increasingly significant portion of the agricultural resource in the area. Land management practices must maximize the compatibility of agriculture with conservation, avoid all unnecessary restrictions of agricultural operations, and generally support the viability of agriculture in East County.
- The plan will include a provision to allow for a transfer of agricultural conservation easements to lands with equal or greater biological value to allow for flexibility in future agricultural operations

VII Implementing Entity

General Principles discussed (but not necessarily recommended) by Coordination Group:

- The Working Draft Plan is quite flexible with respect to the structure of the Implementing Entity (IE). The IE is given the flexibility to evolve “organically” over time to develop structures and relationships necessary at different phases of the implementation process.
- The Implementing Entity is likely to act through partnerships and to rely on the experience and resources of existing institutions. For instance, it is foreseeable that the Implementing Entity may not actually own any of the lands purchased according to the requirements of the plan, relying instead on partnerships with existing institutions.
- Flexibility in the structure of the IE must not compromise its ability to meet its requirements under the plan. If responsibilities are passed on to other organizations (e.g., for land management), this must be done in a binding and effective manner.

Figure 7.1: Working Draft Organizational Structure for Implementation



Advisory Committee to Assist Implementation: Members will be appointed to represent a broad array of interests and organizations. Opportunities for participation by non-members will be provided.

VIII Funding to Implement HCP/NCCP

Costs:

The preliminary cost estimates for implementing the HCP/NCCP have been estimated both for the Preliminary Draft Initial Permit Area and for the Preliminary Draft Maximum Permit Area. Cost estimates include the costs of land acquisition, land management, restoration, monitoring, administration and other actions required by the Implementing Entity over the 30 year life of the Plan. Detailed information on these estimates is provided in Chapter 8 and in Appendix g. The preliminary grand total estimates are:

Preliminary Draft Initial Permit Area
\$233 million

Preliminary Draft Maximum Permit Area
\$287 million

Funding:

Funding scenarios have been developed in parallel with the cost estimation process and have assumed an overall implementation cost of \$300 million (which now appears slightly high, but the Plan is not finalized yet...). Additional detail on the funding strategy may be rfound in Chapter 8 and in Appendix H. The 2 scenarios under consideration are described below.

Hypothetical Funding Scenarios and Funding Gap Analysis

Item	Scenario 1: No Funding Gap	Scenario 2: “Fair Share” Apportionment
Total Plan Costs	\$300m	\$300m
Non-Fee Funding		
Maintenance of existing Conservaion Effort*	\$54m	\$54m
New State and Federal Contribution**	\$10m	\$10m
FAA Airport Clear Zone Match	\$6.5m	\$6.5m
Contra Costa Open Space Funding Measure***	<u>\$30m</u>	<u>\$30m</u>
Total Non-Fee Funding	\$100m	\$100m
Remaining	\$200m	\$200m
Fee per Acre****	\$18,000	\$11,000
Fee Funds	\$200m	\$120m
Fee % of Total Cost	67%	40%
Funding Gap	\$0	\$80m

* Includes continued private, local, regional, state, and federal conservation efforts.

Conservatively estimated by assuming continued acquisitions at approximately one-half of EBRPD’s acquisition rate over the past 30 years.

** Mainly from Federal Endangered Species Act Section 6 land acquisition funds

*** Open Space Measure must pass for these funds to be available.

**** The question of whether to scale fees based on type of habitat impacted has not yet been addressed. Preliminary fee per acre calculations are rough estimates of what the fee might be for impacts to natural lands if agricultural impacts were charged 50% as much.

IX Regulatory Assurances

This section will summarize & expand on key assurances such as described in principles 6 and 7.

No Surprises Assurances:

- The permittees will obtain “No Surprises” assurances so that the implementing entity will not be responsible for additional land, water, money, or other restrictions beyond that provided in the plan for any unforeseen circumstances or changed circumstances not provided for in the plan.
- The unlisted covered species are addressed in the plan as if they were listed, so if the unlisted covered species are listed in the future, the permit will be amended to include these species with no additional mitigation requirements.
- The plan should not impose costs of any contingent mitigation on private property owners. However, the plan may include inflation corrections in the mitigation fee, different fees for different types of impacts, and assurances that funding keeps pace with habitat protection benchmarks established in the plan.

IX Amendment

Consideration of the amendment process may help us balance the desire to resolve all issues in the plan with the need to maintain some flexibility over the long term.

X Next Steps and Schedule

January 31, 2004	Comments requested from Stakeholders on Preliminary Working Draft HCP/NCCP
Spring 2004	Draft HCP/NCCP, EIR/EIS, and Implementation Agreement
Fall 2004	Final Draft HCP/NCCP, EIR/EIS, and Implementation Agreement and local agency decisions on approving the Plan
Spring 2005	Expected Completion of Wildlife Agency Review and Permit Issuance
Spring 2005	Local agency’s form an Implementing Entity (likely a JPA of permit holders) and likely adopt Implementing Ordinance

**PRINCIPLES OF PARTICIPATION:
EAST CONTRA COSTA COUNTY REGIONAL HABITAT
CONSERVATION PLAN REFERENCED TO THE HCPA FRAMEWORK
DOCUMENT**

Compiled for the June 6, 2000 meeting of the Contra Costa County Board of Supervisors by Community Development Departments staff based on comments received from the Contra Costa Council, Save Mount Diablo/Greenbelt Alliance, and the CCC Citizens Land Alliance. Please see staff report for details.

1. The U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) should allow development consistent with local plans to proceed as before (in accordance with existing permitting requirements) until any HCP is implemented.
2. The plan must be based on respectable and credible biological information on the presence of endangered species and on sound scientific analyses, i.e. the need exists and the program will produce the intended result. A scientific advisory committee should be created and there should be independent peer review by scientists specializing in conservation biology.
3. USFWS and CDFG must agree in advance not to unreasonably withhold approval of the HCP nor insist on modification after all parties have agreed to the process and local agencies have approved the resultant HCP.
4. USFWS, CDFG and the plan sponsors should agree to hold periodic reviews during the development of the plan to avoid any major disagreements later.
5. The Incidental Take Permit must be totally consistent with the approved HCP.
6. Any HCP must have a "no surprises" clause consistent with the current federal policy. Should the no surprises clause be invalidated by court action, the HCP implementing agreement should be terminable by local agencies. **(Framework Part IX)**
7. Consistent with the "no surprises" policy which precludes changes to the terms of permits based on future biological conditions, the plan should not impose costs of any contingent mitigation on private property owners. However, the plan may include inflation corrections in the mitigation fee, different fees for different specific impacts, and assurances that funding keeps pace with habitat protection benchmarks established in the HCP conservation strategy. **(Framework Part VIII—more detail needs to be added)**
8. The plan should not include any provision for the use of eminent domain. **(Framework Part VI)**
9. Habitat areas acquired through the plan must be within Contra Costa County. Expenditure of funds collected to protect habitat should be guided primarily by biological considerations. Economic development opportunities and public open space value should be secondary considerations in spending habitat protection funds. **(Framework Part V)**
10. Properties bordering lands to be used as mitigation must be protected from any impacts caused by the mitigation program. **(Framework Part VI)**
11. Participation in the planning process by any property owner does not constitute agreement that use of the property produces any impact on endangered species. **(Framework Part VI—more work needed)**
12. Opportunities for site-by-site planning and permitting by individual property owners should be continued. **(Framework Part IV)**
13. The plan must be economically feasible to implement and the total cost of

- implementation of the plan, including soft costs, land acquisition, maintenance and monitoring must be known prior to adoption. **(Framework Part VIII)**
14. The plan should provide for the issuance of a programmatic 404 permit and identify any required wetlands mitigation. Alternatively, the HCP must be accepted as tacit approval by USFWS of any 404 permit application to the U.S. Army Corps of Engineers within the affected area and consistent with the HCP. **(Framework Part III & IV)**
 15. There must be a committee of stakeholders established in advance of the planning process which includes landowner representatives, environmental organizations, and other interested parties. A similar committee should be established for implementation of any approved HCP. **(Framework Part VIII)**
 16. Funding of the HCP proposed for East Contra Costa County should be as broadly based as is justified by the purpose and content of the plan when written. Cost allocations should be guided by regulatory obligations, cumulative responsibility for impact, and by who benefits from non-regulatory components of the plan. Developer fees for permits and public funds, possibly including water rates and/or bond funds, should be included. **(Framework Part VIII)**
 17. The HCP's conservation strategy should provide full recognition of past and future public and private habitat and open space acquisition and other mitigation efforts. Existing public lands should not be considered for future species mitigation, since many of these areas were acquired for other purposes. Certainly such areas can be considered for limited species enhancement projects, but the focus should be on preservation of habitat not already protected or publicly managed. Mitigation should result in expansions and enhancements of preserved habitat rather than restrictions on use of existing public lands. **(Framework Part V and VIII)**
 18. There should be federal participation in HCP funding since this effort is a pass-through of obligations imposed by USFWS on other federal agencies under Section 7 of the Endangered Species Act. **(Framework Part VIII)**
 19. The plan should rely on avoidance as the primary means for addressing irreplaceable resources such as creeks, wetlands, and endangered native plant communities. **(Framework Part V)**
 20. The HCP should not lock in permanent uses before conservation easements or fee title land interests are purchased. **(Framework Part VI)**
 21. USFWS and CDFG should allow public infrastructure projects, such as those for roads, highways, water delivery, sanitation, storm drainage, and flood control to proceed in accordance with existing permit requirements in an expeditious and timely manner before an HCP is implemented. **(Framework Part IV)**

Key to how the above principles were compiled:

- 1) Based on CC Council #1
- 2) Combines CC Council #2, CC Council introductory sentence, and SMD/Greenbelt #2
- 3) Based on CC Council #3

- 4) *Based on CC Council #4*
- 5) *Based on CC Council #5*
- 6) *Based on CC Council #6*
- 7) *Combines CC Council #7 and SMD/Greenbelt #6*
- 8) *Based on CC Council #8*
- 9) *Combines CC Council #9 and SMD/Greenbelt #3*
- 10) *Based on CC Council #10, but also attempts to address specific comments of CLA*
- 11) *Based on CC Council #11*
- 12) *Based on CC Council #12, but language adopted from East County Task Force Report*
- 13) *Based on CC Council #13*
- 14) *Based on CC Council #14, but also attempts to address specific comments of CLA*
- 15) *Combines CC Council #15 and SMD/Greenbelt #8*
- 16) *Combines CC Council #16 and SMD/Greenbelt #5*
- 17) *Combines CC Council #17 and SMD/Greenbelt #4*
- 18) *Based on CC Council #18*
- 19) *Based on SMD/Greenbelt #1*
- 20) *Attempts to address specific comments of CLA*
- 21) *Developed by staff*