Implementation Policy of the East Contra Costa County Habitat Conservancy (Conservancy) Regarding Installation of Renewable Energy Facilities on Contaminated Land

Purpose: The purpose of this Policy is to set forth guidelines on how to apply the mitigation fee provisions of the HCP/NCCP to projects involving the installation of certain types of renewable energy facilities on contaminated land.

Background: Through the RE-Powering America's Land initiative, the U.S. Environmental Protection Agency (U.S. EPA) encourages renewable energy development on currently and formerly contaminated land, including landfills and mining sites, when it is aligned with the community's vision for the site. According to EPA's materials on this initiative:

> Potentially contaminated land, landfills, and mining sites can offer significant advantages over other sites, such as open space, for renewable energy development. Some of these sites have unique attributes that can lower development costs and shorten development timeframes.
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> Potentially contaminated lands, landfills, and mining sites offer developers a unique value proposition for renewable energy deployment:
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> - Leverage existing infrastructure: Development costs and timelines can be greatly reduced because these sites are often served by existing infrastructure such as transmission lines, substations, roads, water, and rail.
> - Reduce project cycle times through streamlined permitting and zoning
> - Improve project economics with reduced land costs and tax incentives
> - Build sustainable land development strategy based on using over 15 million acres of Superfund, brownfields, and RCRA sites pre-screened for suitability with renewable energy
> - Gain community support through land revitalization efforts
> - Protect open space

Alternative energy development can also be an effective means to put contaminated land to more immediate use since alternative energy development may not require complete clean-up of the property. Alternative energy may provide a critical interim use, providing the economic activity necessary to fund the complete clean-up of the property in the future.

Renewable Energy and Contaminated Lands in Eastern Contra Costa County: Like many other areas of the state that have a long history of development there are a number of contaminated or potentially contaminated sites in eastern Contra Costa County. The U.S. EPA and the California Department of Toxic Substance Control (DTSC) provide

maps and databases identifying such sites according to various criteria and standards. A review of the DTSC Envirostor database shows several dozen sites in the HCP/NCCP Plan Area meeting one or more of the criteria in the database, with the majority located north of Highway 4. Many of these sites support an existing urban use and have either been cleaned or have a low-level of potential contamination that does not prevent continued use of the land. Any site, whether contaminated or not, with an existing "urban" land cover is exempt from requirements to comply with the HCP/NCCP. However, there are contaminated or formerly contaminated properties in the HCP/NCCP area that are not developed (e.g. do not have urban land cover) and are subject to compliance with the HCP/NCCP.

Alternative energy projects have been considered for at least one such property for several years. The USS POSCO Site LA in northern Pittsburg is a more than 100-acre vacant property on which waste products from steel mill operations were historically deposited. This property is currently being considered for 20-year solar energy project. The project would entail installation of photovoltaic solar panels throughout the property on posts drilled or driven directly into the soil. There would only be minor grading and only a small amount of paving to support electrical equipment. Vegetation on the site has been categorized as "ruderal" land cover pursuant to the HCP/NCCP definitions—ruderal is a form of disturbed or weedy grassland. Nonetheless, three special status species covered by the HCP/NCCP--western burrowing owl, Swainson's hawk and golden eagle--are among the species that have been documented utilizing the site. The project proponent was attracted to the site for many of reasons outlined in the U.S. EPA initiative: access to electrical infrastructure, proximity to electrical demand, avoidance of open space impacts and other financial incentives related to locating on a contaminated site. The cumulative amount of impact fees and the timing of fee payment has been a key consideration. The project is awaiting consideration by the Pittsburg City Council.

Application of the HCP/NCCP: Solar energy development within the Initial Urban Development Area is an eligible covered activity under the HCP/NCCP. Coverage of wind energy development is specifically excluded from the HCP/NCCP because analyzing and mitigating for the impacts of bird strikes was outside the scope of the HCP/NCCP.

In the HCP/NCCP, temporary impacts are defined as any impact on vegetation or habitat that does not result in permanent habitat removal. Therefore, projects that will conclude before the HCP/NCCP expires in 2037 and that are assured to restore the site to pre-project conditions may be considered a temporary impact under the HCP/NCCP and may be subject to payment of temporary impact fees. The HCP/NCCP contemplates a one-time payment of such temporary impact fees. However, the unusual circumstances associated with locating a solar energy project on a contaminated property, such as the extent of pre-existing disturbance and the unique type of disturbance associated with a solar project were not specifically considered by the HCP/NCCP. Therefore an Implementation Policy is warranted to better define how to apply HCP/NCCP fees in these special circumstances.

Guidelines for Collecting HCP/NCCP Mitigation Fees: Alternative energy projects on contaminated properties may pay HCP/NCCP temporary impact fees on an annual installment basis, in lieu of an upfront payment, provided all of the following conditions are met:

a) The project site can be verified as a contaminated or formerly contaminated property. Identification of the project site as a contaminated or formerly contaminated property in the DTSC Envirostor database is one acceptable form of verification.
b) The project is consistent with the HCP/NCCP definition of temporary impacts.
c) The project is located within the HCP/NCCP Initial Urban Development Area shown in Figure 3-2 of the HCP/NCCP.
d) In the most recent Annual Report, the HCP/NCCP is exceeding terrestrial land cover stay ahead requirements by at least 10%.
e) Any grading or fill of jurisdictional wetlands and waters must be considered a permanent impact and mitigated as required in the HCP/NCCP.
f) The project pays a one-year temporary impact fee each year for the life of the project. The first payment will be made before issuance of the first construction permit and one subsequent payment will be made each subsequent year on or before the anniversary of the issuance of the permit. The amount of the fee paid each year will be determined according to the following formula, which is consistent with the temporary impacts formula in Chapter 9 of the HCP/NCCP:

$$\text{fee for current year} = \frac{\left[\begin{array}{l}\text{current development}\\ \text{fee amount per acre}\end{array}\right] \times [\text{project acres}] \times \left[\begin{array}{l}\text{duration of project plus}\\ \text{de-commissioning period}\\ \text{and one year of recovery}\end{array}\right] / 30}{[\text{duration of project, not including de-commissioning period or one year of recovery}]}$$

Under this formula, the fees for the decommissioning period and the recovery period are paid incrementally during the productive life of the project, such that no fees are due during the de-commissioning period. The length of de-commissioning period must be reasonably projected and must be at least one year. The HCP/NCCP sets a minimum recovery period of one year.

g) The project site must be returned to pre-project conditions before the end of the de-commissioning period.
h) The project is required to post bonds or other acceptable form of financial assurances adequate to pay for: i) the costs of de-commissioning the project and returning the site to pre-project conditions, and ii) the temporary impact fees that would be due during the estimated time necessary to de-commission the project and return the site to pre-project conditions.
i) Conditions b, e, f, g and h are made enforceable conditions of approval of the project and/or are made enforceable conditions of a development agreement.