

East Contra Costa County HCP/NCCP
Summary of Substantive Changes to Draft HCP/NCCP

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
Cost				
1	Need better home price index to use as a surrogate for land costs	Switch to Home Price Index (HPI) from Office of Federal Housing Enterprise Oversight (OFHEO) instead of the California Association of Realtors Data referenced in the Draft.	Table 9-7	CA Association of Realtors may not publish the same types of data year after year whereas OFHEO is a standard government reporting index.
2	Cost estimates used 2004 dollars	Updated O&M costs by 2.0% (2005 CPI) and updated per acre land costs by 16.6% (first 3 quarters of 2005 home prices (OFHEO); last quarter of 2005 will need to be included in 2007 fee adjustments).	See "Cost History" Table. (also affects Appendix G and Tables 9-1, 9-2, and 9-8)	
3	Cost of land acquisition changed due to shifts in conservation priorities	Land cost model rerun to account for shifts in land acquisition priorities in Zones 1, 2, 4 and 5	See "Cost History" Table. (also Affects Appendix G and Tables 9-1, 9-2, and 9-8)	See conservation strategy section for explanation of proposed shifts.
Revenue				
4	Value of local, state, and federal land contributions in 2004 dollars	Value of land contributions from local, state, and federal sources increased to reflect 2005 dollars	See "Funding History" Table. Affects Table 9-8	Prior estimates needed adjustment to reflect current monetary value of projected acquisitions.
5	Development fee and rural road fee need updating to 2005 dollars	Updated fees using the same process as would occur automatically during the plan (except that land acquisition strategy also changed, which would not be the case under the Plan). Fees went up about 4%, as a result of O&M costs increasing 2%, per acre land costs	See Fee Matrix table. Affects Tables 9-4 and 9-6	Fees need to reflect new cost estimates.

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
		going up 16.6%, and the new land acquisition strategy. The fee increases in future years would occur by March 15. The fee increase after year 1 would need to reflect the final quarter of the 2005 and all of 2006 for portion of costs that are adjusted based on home prices.		
6	Wetland fee needs updating to 2005 dollars	Wetland fees from Draft HCP/NCCP updated using 2005 CPI of 2.0%	Table 9-5	Fees need to reflect new cost estimates.
7 (see map packet)	Fee Zone II (natural areas) incorrectly applied to urban areas in Bay Point	Fee Zone map updated to include urban areas in Bay Point north of the Union Pacific Railroad in Fee Zone I (agricultural zone)	Figure 9-1	Remaining undeveloped areas are very small and are essentially surrounded by development. Impacts more similar to those in ag zone than those in natural zone.
8	Draft HCP/NCCP silent on use of mitigation revenue from non-covered activities	Included a new section describing how such revenues would be spent under the Plan.	Section 9.3.2	New section incentivizes use of such funds to complement conservation required under HCP.
	Implementation			
9 (see map packet)	Interim conservation unaccounted for in Draft HCP/NCCP	Add new map and tables in Chapter 5 to account for interim conservation and ensure that these lands may be credited towards land acquisition and stay ahead requirements under the HCP.	Tables 5-21 and Figure 5-12	The NCCP Act requires that all projects that occur after the Planning Agreement is signed be tracked according to impact and conservation. Interim impacts have been tracked and those with mitigation requirements are reflected in impact estimates and take limits.
10	Stay Ahead requirements needed to be clarified.	For clarity, the Stay Ahead provisions from Chapter 5 and Chapter 8 were consolidated and occur only in Chapter 8.	Section 8.6.1	

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
11	Draft HCP/NCCP had little guidance on how to accept land in lieu of development fees	Additional guidance provided to Implementing Entity on how to evaluate proposals for land in lieu of development fees.	Section 8.6.7	Provides clearer guidance for applicants and the Implementing Entity.
12 (no attachment)	Disputes may arise between HCP/NCCP land cover mapping and field conditions regarding which areas are already urban and not subject to fees	Any such disputes will be resolved using air photos with a date up to three years prior to Plan adoption, or other evidence clearly documenting the land cover type prior to Plan adoption.	Section 9.3.1	
	Species			
13	Swainson's hawk impacts were overestimated	Adjusted Swainson's hawk model to account for lack of impact on foraging habitat within densely urbanized areas. Also some habitat developed since last model run. Impacts were reduced from 4,661 acres to 3,782 acres in Initial UDA; 5,897 acres to 4,743 acres in Maximum UDA	Table ES-3 (also affects Tables 4-4, and 4-5)	Small patches of cropland and pasture within urban areas are not suitable for Swainson's hawk according to Swainson's hawk Technical Advisory Committee
14	Swainson's hawk conservation needed to be increased and was previously underestimated	Annual grassland above 150 feet in elevation was considered suitable foraging habitat if surrounded by grassland under 150 feet (3 small plateau's just over 150 feet in elevation). Added 1,000 acres of annual grassland preservation in Subzone 5c to benefit species. Previous estimated conservation = 2,096 acres under Initial UDA and 2,757 acres under Maximum UDA. Revised estimates = 3,614 under Initial UDA and 4,451 acres under Maximum UDA.	Table 5-11 (also affects Conservation Measure 1.1 in Chapter 5)	Model made more flexible to account for unintended consequences of 150 foot model parameter for Swainson's hawk in grassland areas.
15 (no attachment)	Giant garter snake and covered invertebrate habitat	Giant garter snake and covered invertebrate preservation measures were revised to allow credit for applicant impacts against any conservation of garter	Conservation Measures 3.6 and 3.8 in Chapter 5	On-site preservation within the Cypress Corridor Specific Plan will provide,

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
	preservation is solely applicant funded and does not allow credit for preservation by Implementing Entity	snake habitat within the Preserve System.		and likely improve, habitat for giant garter snake. This preservation should be credited against HCP/NCCP impacts to this species. The Implementing Entity is likely to conserve invertebrate habitat within the Preserve System, which should offset at least some impacts of covered activities.
	Wetlands			
16	Stream setback fee requirements needed clarification	Setback areas exempt from fee if at least development rights are provided. Setback violations must restore riparian habitat or pay for riparian habitat restoration at 0.5 to 1 ratio. If riparian woodland also removed within setback, then standard 1:1 restoration ratio will apply.	Table 6-2 (also affects Conservation Measure 1.7 in Chapter 6)	Prior requirements would have been perceived as unfair.
17	Stream setback provisions needed clear rules	Limitations and exceptions more thoroughly described	Table 6-2 (also affects Conservation Measure 1.7 in Chapter 6)	Clarity of rules will be essential for smooth implementation.
18	Use of terms for wetlands and other waters inconsistent	New term “jurisdictional waters and wetlands” is introduced and used consistently: “Jurisdictional wetlands and waters: State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under Section 404 of the CWA or ,from the State Water Resources Control Board or the Regional Water Quality Control Boards under either Section 401 of the CWA or the Porter-Cologne Water Quality Act, or the California	Section 1.3.5 in Chapter 1 (also affects the glossary in Appendix A)	Clarity of rules will be essential for smooth implementation.

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
		Department of Fish and Game under Fish and Game Code Section 1602. Types of wetlands and waters in the HCP/NCCP inventory area include, but are not limited to, permanent marsh, seasonal wetlands or marsh, streams, ponds, and vernal pools.”		
19	Stay Ahead requirement application to wetlands restoration and creation is unclear	Start-up period added to stay ahead measure for wetlands creation/restoration to allow wetland fees to be collected for 2 years prior to measurements of Stay Ahead requirements for wetlands.	Section 5.3.2	A grace period is needed in which wetland funds can be collected and land can be acquired on which wetland restoration and creation can occur. Grace period concept is consistent with allowance for wetland mitigation banks.
	Impacts			
20 (fee matrix is item #5 in this packet)	Projects that have occurred since the Draft HCP/NCCP have reduced overall impacts	Impacts under the Initial UDA and Maximum UDA were adjusted to account for recent development in the inventory area. Approximately 1000 acres have recently been approved for development and land cover for these areas was changed to “future urban”.	See Fee Matrix. (also affects Tables 3-2, 4-2, and 4-3)	Fee revenue projections must be up-to-date and accurate.
21 (fee matrix is item #5 in this packet; see also map packet)	Initial Urban Development Area too conservative	Two areas that have been within the County ULL have now been added to the Initial UDA (1000 acre area east of Discovery Bay and 500 acre area west of Bay Point). These areas were not part of the Initial UDA in the Draft Plan and would have been covered under the Max UDA. Even with these changes, net impacts under Initial UDA went down due to interim development. Net impacts under Max UDA went down more.	See Fee Matrix and Figure 2-3.	This change prevents a substantial jump in fees that would otherwise occur due to interim development. Fee estimate for Max UDA now more closely tracks fee for Initial UDA. Whether development happens in the two places described or somewhere else (inside a new city ULL), it is quite likely that prior designation was too conservative.

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
	Conservation Strategy			
22 (Figure 2-1 is in map packet)	Pittsburg voters approved a ULL in Nov. 2005	Acquisition in subzone 1a less feasible than before. Discussions between wildlife agencies and property owner on-going to amend conservation strategy in Subzone 1a to focus preservation on movement corridor for California tiger salamander and to mitigate for high priority lands.	Figure 2-1 (also affects Conservation Measure 1.1 in Chapter 5)	Resource value still the same, but conservation in this area would now be more difficult and expensive. A workable compromise seems possible.
23 (Figure 2-1 is in map packet)	Antioch voters approved a ULL in Nov. 2005	Acquisition in subzone 2g less feasible than before. Discussions on-going with wildlife agencies.	Figure 2-1 and Table 5-14 (also affects Conservation Measure 1.1 in Chapter 5)	Resource value still the same, but conservation in this area would now be more difficult and expensive. A workable compromise seems possible.
24	Need flexibility in acquisition strategy in Zone 4	Conservation strategy in Subzones 4c, 4e, 4f, and 4g made more flexible to allow some conservation in any of the four Subzones to achieve similar goals. Conservation targets increased by approximately 300 acres to help offset loss in other areas.	Table 5-10 (also affects Conservation Measure 1.1 in Chapter 5)	Increased flexibility in land acquisitions will provide the Implementing Entity with a greater number of choices on which parcels to buy.
25 (Table 5-11 is item #14 in this packet)	Need to offset loss of annual grassland preservation in Zones 1 and 2 and improve movement for kit fox	Conservation strategy increases preservation of annual grassland in 5c by 1,000 acres to benefit San Joaquin kit fox, Swainson's hawk, and other grassland species.	Table 5-11 (also affects Conservation Measure 1.1 in Chapter 5)	5c is probably the only location where acquisitions could be increased to benefit Swainson's and many other species.
26	Need to increase flexibility for allowable recreational uses within HCP/NCCP preserves	Added allowance for limited picnic tables at staging areas and limited backpack camps, where compatible with HCP/NCCP goals and with the approval of CDFG and USFWS.	Conservation Measure 1.5 in Chapter 5	Greater consistency with EBRPD plans.
27 (no attachment)	Small vacant lots (as defined in the HCP/NCCP) must	Small vacant lots are exempt from all survey requirements except western burrowing owl, kit fox, Swainson's hawk nests, and land cover.	Section 6.2	The likelihood of sensitive resources occurring on infill parcels (all < 10 acres

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
	conduct all surveys			within dense urban areas) is extremely low and the cost burden of these survey requirements is substantial
	Implementation Agreement			
28 (no attachment)	Possible adjustments to wetlands conservation requirements needed if wetlands permit programs don't come through.	<p>New text in Implementation Agreement: 17.4 Inability to Obtain Regional Wetland Permits</p> <p>The Parties acknowledge that certain measures were included in the HCP/NCCP specifically to address impacts to jurisdictional wetlands and waters and water quality impacts, rather than to address species or habitat conservation needs. In the event that the Permittees are unable to obtain regional wetland permits or authorizations based on the HCP/NCCP, the Parties agree to consider amending the HCP/NCCP to remove such wetland or water quality related measures, provided such measures do not compromise or limit the HCP/NCCP's ability to conserve Covered Species or to achieve species or habitat related conservation goals or objectives.</p>	IA, section 17.4	
29	Land Acquisition and Assembly of General Preserve	See proposed revisions in excerpts from IA	IA, section 9.1	
30	Rough Proportionality Standards	See proposed revisions in excerpts from IA	IA, section 9.3	
31	Addition of EBRPD to IA	See proposed revisions in excerpts from IA	IA, section 9.4, 10.2, 10.2.1, 10.2.2	
32	Project Proponents, Early Extension of Take Authorization	See proposed revisions in excerpts from IA	IA, section 13.2.2. 13.2.2.1	

Reference Number	Issue	Proposed Change in Final HCP/NCCP	Location in Document	Rationale
33	General Funding Commitments	See proposed revisions in excerpts from IA	IA, section 14.1	
34	Critical Habitat Designations in the Plan Area	See proposed revisions in excerpts from IA	IA, section 15.2.3	
35	Section 7 Consultations	See proposed revisions in excerpts from IA	IA, section 16.1	
36	Plan Implementation and Interpretation	See proposed revisions in excerpts from IA	IA, section 21.1, 21.1.1, 21.1.1.1, 21.1.1.2	
37	Availability of Funds	See proposed revisions in excerpts from IA	IA, section 24.8	

Table 9-7. Fee Adjustment Indices

Fee	Annual Adjustment Index ¹	Average Annual Rate (1991–2001) Example
Development Fees, <u>Rural Road Fees</u> , and Temporary Impact Fees	Average annual increase in median home price per square foot in Contra Costa County for the prior calendar year (California Association of Realtors data) Annual Home Price Index (HPI) for the <u>Oakland-Fremont-Hayward, CA Metropolitan Division (MSAD)</u> for the prior calendar year (Office of Federal Housing Enterprise Oversight) ⁴³	5.1 <u>9</u> 4%
Portion for Land <u>Acquisition</u> ² (<u>60 % initially</u> ³) (66%)		
Portion for Preserve System Operation, Restoration, and Maintenance (<u>40% initially</u> ³) (34%)	Consumer Price Index for the <u>San Francisco-Oakland-San Jose Combined Statistical Area</u> for all urban consumers <u>Bay Region</u> for the prior calendar year (U.S. Bureau of Labor Statistics) ⁵⁴	2 <u>3.8</u> 1 <u>2</u> 5%
Wetland Fee	Same as above	2 <u>3.8</u> 1 <u>2</u> 5%

Notes:

¹ HCP/NCCP fees to be adjusted automatically by March 15 of every year based on the indices for the prior calendar year. See Appendix G for more details on methodology and sources.

² Direct land acquisition costs only. Excludes costs associated with land transaction, site improvements, and due diligence (e.g., pre-acquisition surveys).

³ The portion of the development fees, rural road fees, and temporary impact fees that will be adjusted according to the HPI and CPI will vary over time. For the first annual automatic adjustment, 60% of the initial fees will be adjusted according to the HPI and 40% will be adjusted according to the CPI. The apportionment in subsequent years will depend on the relative values of the indices.

⁴³ See <http://www.ofheo.gov/HPI.asp>. Data for the prior calendar year are published in March. For the first annual automatic adjustment, the HPI for 2006 and the fourth quarter of 2005 will be used. In all subsequent automatic adjustments, the HPI for the prior calendar year will be used. The exception for the first automatic annual adjustment is needed because estimated land acquisitions costs from the Draft HCP/NCCP were adjusted for the Final HCP/NCCP by the HPI for the first three quarters of 2005 because data for the fourth quarter of 2005 were not available in time.

⁵⁴ Consumer Price Index, All Items, with base data year of 1982-1984 (i.e., 1982-1984 = 100), for all urban consumers (CPI-U), not seasonally adjusted. See http://www.bls.gov/eag/eag.ca_sanfrancisco_msa.htm

Evolution of Cost Estimates

Type of Cost	Estimated Cost with Initial Urban Development Area		Estimated Cost with Maximum Urban development Area	
	Jun-05	Feb-06	Jun-05	Feb-06
Land Costs	\$163,470,000	\$176,970,000	\$200,380,000	\$220,000,000
Site Improvements	<u>\$5,550,000</u>	<u>\$5,660,000</u>	<u>\$5,780,000</u>	<u>\$5,900,000</u>
Land Acquisition Capital Costs (Subtotal)	\$169,020,000	\$182,630,000	\$206,160,000	\$225,900,000
Land Acquisition Operation Costs (due diligence, surveys)	<u>\$8,830,000</u>	<u>\$9,000,000</u>	<u>\$9,580,000</u>	<u>\$9,770,000</u>
Land Acquisition (Total)	\$177,850,000	\$191,640,000	\$215,740,000	\$235,680,000
Program Admin	\$17,800,000	\$18,150,000	\$17,870,000	\$18,230,000
Planning and Design	\$6,030,000	\$6,150,000	\$6,110,000	\$6,230,000
Habitat Restoration/Creation	\$19,990,000	\$20,390,000	\$22,450,000	\$22,890,000
Environmental Compliance	\$2,300,000	\$2,340,000	\$2,300,000	\$2,340,000
Preserve Management and Maintenance	\$32,390,000	\$33,040,000	\$35,720,000	\$36,440,000
Monitoring, Research, and Adaptive Management	\$18,410,000	\$18,780,000	\$20,670,000	\$21,080,000
Remedial Measures	\$1,550,000	\$1,580,000	\$1,670,000	\$1,700,000
Contingency Fund	<u>\$4,920,000</u>	<u>\$5,020,000</u>	<u>\$5,340,000</u>	<u>\$5,450,000</u>
Management costs (30 years) (all non acquisition costs)	\$103,380,000	\$105,450,000	\$112,120,000	\$114,360,000
TOTAL ESTIMATED COSTS	\$281,230,000	\$297,090,000	\$327,860,000	\$350,040,000
TOTAL ASSUMED COSTS (for fee calculations)	\$285,000,000	\$297,090,000	\$330,000,000	\$350,040,000

Evolution of Funding Plan

Type of Funding Source (1)	Estimated Amount with Initial Urban Development Area		Estimated Amount with Maximum Urban Development Area		Source Category
	Jun-05	Feb-06	Jun-05	Feb-06	
Fee Funding					
Fees on new development in Urban Development Area	\$116,100,160	\$118,182,800	\$159,358,160	\$169,722,800	Local
Wetland Impact Fees	\$21,800,000	\$22,240,000	\$23,542,000	\$24,010,000	Local
Fees on rural infrastructure (roads, detention basins, etc.)	<u>\$8,649,100</u>	<u>\$8,931,600</u>	<u>\$8,649,100</u>	<u>\$8,931,600</u>	Local
Total Projected Fee Funding	\$146,550,000	\$149,350,000	\$191,550,000	\$202,670,000	Local
Non Fee Funding					
Maintenance of Existing Conservation Effort (3)	\$80,000,000	\$85,000,000	\$80,000,000	\$85,000,000	Mixed
<i>Breakdown of above by source:</i>					
	\$52,000,000	\$55,250,000	\$52,000,000	\$55,250,000	Local
	\$24,000,000	\$25,500,000	\$24,000,000	\$25,500,000	State
	\$4,000,000	\$4,250,000	\$4,000,000	\$4,250,000	Federal
Open Space Funding Measure	n/a	n/a	n/a	n/a	Local
Byron Airport Clear Zone Acquisitions	\$6,500,000	\$6,500,000	\$6,500,000	\$6,500,000	Federal
New Wildlife Agency Funds (Section 6, park bonds, etc.)(4)	<u>\$55,000,000</u>	<u>\$58,000,000</u>	<u>\$55,000,000</u>	<u>\$58,000,000</u>	State/Fed
Total Projected Non-Fee Funding	\$141,500,000	\$149,500,000	\$141,500,000	\$149,500,000	
TOTAL PROJECTED FUNDING (Permit Term)	\$288,050,000	\$298,850,000	\$333,050,000	\$352,170,000	
TOTAL FUNDING - TOTAL COSTS (Permit Term)	\$3,050,000	\$1,760,000	\$3,050,000	\$2,130,000	
Summary of Funding by Source					
Local	\$198,550,000	\$204,600,000	\$243,550,000	\$257,920,000	
State/Federal (4)	\$89,500,000	\$94,250,000	\$89,500,000	\$94,250,000	
Local (%) (5)	68.9%	68.5%	73.1%	73.2%	
State/Federal (%) (5)	31.1%	31.5%	26.9%	26.8%	
State/Federal Contribution in Units of Acres					
Total State/Federal contribution (6)	13,350	13,350	13,350	13,350	
Wildlife agencies' share of state/federal contribution (7)	8,700	8,700	8,700	8,700	
Non wildlife agency share of state/federal contribution	4,650	4,650	4,650	4,650	

(1) Funding estimates include projected monetary contributions and the monetary value of projected in-kind contributions.

(2) "Fair Share Scenario" from Nov 2003 is shown for comparison purposes. "No funding gap scenario" from Nov 2003 not shown.

(3) Based on analysis of conservation performed over the past 30 years. Assumes 75% historic rate. See Append G.

(4) Estimates only. State and federal contributions are described in the HCP/NCCP in terms of acres.

\$3.2M per year for the initial and max UDA respectively. The net present value of these future costs is estimated at \$78M and \$87M respectively, assuming a net discount rate of 2% above inflation (expressed another way, the size of the non-wasting endowment necessary at the end of year 30 to fund these costs in perpetuity would be \$145M and \$160M respectively). It is presumed that funding for these costs will come from local sources.

(6) \$99,250,000 divided by \$6,702, the projected average per acre cost of land acquisition.

(7) New wildlife agency funds funds (\$55,000,000) plus about 15% of the state and federal component of maintenance of existing effort.

ECC HCP/NCCP Development Mitigation Fee Calculator

1. Determining Future Development's FAIR SHARE of Implementation Costs (assumes Maximum Urban Development Area)

	Urban Acres	Irrigated Ag. Acres	Total Impacted Acres (urban + 0.5*irrigated ag)	Conservation Acres	Conservation Ratio	Fair Share Ratio	Fair Share of New Conservation Acres	Fair Share
Existing	23,828	33,028	40,342	44,746	1.11	1.47	14,732	48% (public share)
Affected during HCP	15,000	(8,000)	11,000	30,950	2.81	1.47	16,218	52% (future development share)
Status after HCP	38,828	25,028	51,342	75,696	1.47	1.47	30,950	100%

2. Gross Cost Allocations

Item	Amount	
	Initial Permit Area	Max. Permit Area
a Total Plan Cost	\$297,090,000	\$350,400,000
b Wetland Mitigation Cost (Creation & Restoration) (to be paid by wetland fee)	\$22,240,000	\$24,010,000
c Adjusted Plan Cost	\$274,850,000	\$326,390,000
d Future Urban Development's "Fair Share" %	43%	52%
e=c*d Future Impacts "Fair Share" \$	\$118,182,800	\$169,722,800
f Contribution by Rural Infrastructure Projects	\$8,931,600	\$8,931,600
g=c-e-f Remaining Cost (to be funded by a variety of public sources)	\$147,735,600	\$147,735,600
i=b+e+f+g Total revenues	\$297,090,000	\$350,400,000

Key Assumptions:	
Ag. habitat & open space value relative to natural land	50%
New development's share of rural road mitigation costs	0%
Rural road mitigation costs	\$7,431,600
Other rural infra. mitigation costs	\$1,500,000
Total rural infra. mitigation costs	\$8,931,600
Fee zone ratio:	
Zone 1: Eastern and Ag:	2
Zone 2: S/W and Natural:	4
Zone 3: Infill:	1
Paying acres contingency (see note 4)	10%
Units / acre	4

3. Estimated Development Mitigation Fee by Fee Zone

ITEM	FEE ZONES				Total/ Weighted Avg
	Eastern and Agricultural Zone I	South + West Natural Areas Zone II	Infill (less 10 acres) Zone III		
<u>Total Acres of Impacts (n/incl Rural Infrastructure)</u>					
Initial Plan Area	6,212	2,306	166		8,684
Maximum Plan Area	7,533	4,180	166		11,879
Relative Fee Weighting by Zone (1)	2	4	1		
<u>Relative Funding Burden by Zone -- Percent (2)</u>					
Initial Plan Area	57%	42%	0.8%		100%
Maximum Plan Area	47%	52%	0.5%		100%
<u>Relative Funding Burden by Zone -- Amount (3)</u>					
Initial Plan Area	\$67,310,127	\$49,973,327	\$899,347		\$118,182,800
Maximum Plan Area	\$80,027,657	\$88,813,383	\$881,760		\$169,722,800
<u>Fee Per Developed Acre (4)</u>					
Initial Plan Area	\$11,919	\$23,838	\$5,960		\$13,906
Maximum Plan Area	\$11,686	\$23,372	\$5,843		\$13,634
<u>Est. Fee Per Housing Unit for Residential Dvlpmnt (5)</u>					
Initial Plan Area	\$2,980	\$5,960	\$1,490		\$3,476
Maximum Plan Area	\$2,921	\$5,843	\$1,461		\$3,408

Notes:

- (1) Relative fee contribution of an acre in each zone.
- (2) Relative funding contribution of each zone, taking into account total zone acreage and fee weighting factor.
- (3) Relative funding burden times total fee-funded HCP costs.
- (4) Funding burden divided by zone acreage. Also includes a 10% contingency factor to account for incomplete buildout.
- (5) Assumes average housing density of 4.0 units per acre.

Table 9-5. Wetland Fee and Acreage Determination Methods

Land Cover Type	Fee per unit of Impact ¹	Required Compensation Ratio for Restoration/Creation ¹	Method for Determining Fee Boundary
Riparian woodland/scrub	\$ 57,000 58,140/a cre	1:1	Limit of tree or shrub canopy (drip line)
Perennial wetlands	\$ 78,000 79,560/a cre	1:1	Jurisdictional wetland boundary of state or federal government ² , whichever is greater
Seasonal wetland	\$ 169,000 172,380/ac	2:1	Same as above
Alkali wetland	\$ 160,000 163,200/ac	2:1	Same as above
Ponds	\$ 85,000 86,700/a cre	1:1	Jurisdictional waters boundary of state or federal government ² , whichever is greater
Aquatic (open water)	\$ 86,000 86,700/a cre	1:1	Wetted area during normal rainfall year or jurisdictional waters boundary, whichever is greater
Slough/channel	\$ 97,000 98,940/a cre	1:1	Area of impact within banks
Streams			
Streams 25 feet wide or less	\$ 465 474/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.
Streams greater than 25 feet wide ³	\$ 700 714/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.

¹ See Appendix G for calculation of fee by wetland type. Wetland fee takes required compensation ratio into account. [Fees from Draft HCP/NCCP \(in 2004 dollars\) were updated for the Final HCP/NCCP using a 2005 CPI of 2.0% per Table 9-7.](#)

² Using methods for determining state and federal jurisdictional waters and wetlands at the time of HCP/NCCP approval or the current approved methodology, whichever results in a larger boundary.

³ Impact fee for wider streams is 1.5 times the base stream fee to account for higher construction costs on wider streams.

calculations do not include the contribution of long-term management provided by EBRPD.)

Local Land Trusts

Organizations such as the Trust for Public Land, Save Mount Diablo, the Brentwood Agricultural Land Trust, and the Agricultural Trust of Contra Costa County are actively involved in land preservation and acquisition in the Plan area, though they often facilitate transfers rather than acquiring land themselves. For example, the Trust for Public land brokered the Cowell Ranch purchase in association with the CDPR. Likewise, Save Mount Diablo has been involved in numerous land acquisitions, many within the inventory area, over its more than 30-year history. For example, Save Mount Diablo has contributed substantially to the growth of Mount Diablo State Park. This summary is meant to provide context for the HCP/NCCP. No assumptions were made in the Plan that local land trusts would contribute to HCP/NCCP conservation goals or funding needs.

Other Local Funding

Other local funding could contribute to Plan costs during or after the permit term. For example, a \$175 million Open Space Funding Measure was the subject of a special mailout election in Contra Costa County in August 2004 by the Contra Costa County Open Space Funding Authority, a joint powers authority created by Contra Costa County and EBRPD. This measure would have funded approximately \$40 million in land acquisitions and land stewardship projects within the inventory area that would have been consistent with the conservation goals of the HCP/NCCP. The proposed funding source was a parcel tax.

Raw votes in favor of the Open Space Measure were 50.1%. However, when votes were weighted according to the amount of tax each voter would pay, as required by law, votes in favor dropped to 46.2%, below the needed simple majority. Despite the failure of this Open Space Measure, the Funding Authority continues to meet on a regular basis and has publicly expressed interest in proposing a similar Open Space Measure in the future. Passage of a similar Open Space Measure could provide substantial additional local funds for the HCP/NCCP.

Funding from Activities Not Covered by the Plan

There may be a number of benefits to addressing the mitigation needs of non-covered projects through the implementing structure of the HCP/NCCP. The 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 additional flexibility to implement the Plan afforded by access to revenue early in the permit term. Contributions to the HCP/NCCP from non-covered activities will be encouraged as long as the following principles are adhered to:

- The USFWS and CDFG will determine the mitigation requirements of non-covered projects on a case-by-case basis. These requirements must meet all applicable laws and regulations and may differ from the requirements of this Plan.
- Money from non-covered activities can be used to achieve the conservation targets of the HCP/NCCP as long as the mitigation obligation of the non-covered project augments the mitigation and conservation obligations of the Plan (i.e., they may not offset these requirements). To achieve this, the Implementing Entity, in consultation with USFWS and CDFG, will determine where and how much additional land will be acquired according to the priorities established in Chapter 5 in the section *Conservation in the Inventory Area beyond HCP/NCCP Requirements*.
- The Implementing Entity is encouraged to use funds from non-covered activities according to the priorities described in Chapter 5 in the section *Land Acquisition Priorities*.
- Contributions from non-covered activities must fully compensate the Implementing Entity for taking on the new mitigation obligation of the non-covered activity and should include transactional and other administrative and management costs.
- The Implementing Entity will determine on a case-by-case basis whether to accept funds or land from non-covered activities to augment the HCP/NCCP conservation strategy. If accepted, the Implementing Entity and the proponent of the non-covered activity may enter into an agreement to establish the terms of the contribution of land or money.
- The mitigation obligations of non-covered activities cannot be taken into account during the periodic audits used to recalibrate HCP/NCCP fees (see Section 9.3.1).
- Land acquired with funds from non-covered projects will be tracked and reported separately to USFWS and CDFG to ensure these requirements are kept separate from HCP/NCCP land acquisition requirements.

9.3.3 State and Federal Funding

The U.S. Congress and the California legislature have determined that conserving species and their natural habitats is an issue of both national and state importance. The federal and state governments will fulfill their responsibilities for conservation by assisting local governments and property owners to assemble, manage, and monitor the HCP/NCCP Preserve System. This assistance will contribute to the land acquisition requirements of the Plan, contribute to recovery of listed species in the Plan area, and reduce or avoid the

8.6.1 Stay-Ahead Provision

As described in Chapter 5 (Conservation Measure 1.1), ~~the~~ The Implementing Entity is required to ensure that progress towards assembling the Preserve System stays ahead of progress towards total impacts allowed under the permit. This Stay-Ahead provision applies after 1 year of Plan implementation to allow the Implementing Entity time to acquire sufficient funds and negotiate deals with willing sellers to acquire large blocks of land. To improve the chances of meeting this requirement, the Implementing Entity is encouraged to acquire land before permits are issued according to a Jump Start guideline (~~also~~ described in Conservation Measure 1.1).

~~Stay-Ahead Provision.~~ During the first year after permit issuance, the Implementing Entity will be establishing its structure, collecting initial HCP/NCCP fees, and actively pursuing land acquisition deals with willing landowners (see Chapter 8 for more details on implementation). To allow the Implementing Entity to accumulate enough funds to purchase land from willing sellers, the Stay-Ahead provision will only apply after 1 year of Plan implementation.

After 1 year of implementation, the Implementing Entity must measure its compliance with the Stay Ahead provision by one of the following two methods during the first 10 years of the permit term (i.e., from the beginning of Year 2 to the end of Year 10). Two methods are provided to give the Implementing Entity more flexibility and to provide an incentive for land acquisition in key areas of the inventory area.

The Implementing Entity will strive to achieve the Stay Ahead provision using both methods but compliance will only be measured using one of the two methods for the first 10 years (different methods can be used within the first 10 years). After Year 10, the Implementing Entity must use only the Measurement Method #1 to measure compliance with the Stay-Ahead provision. Two options will be available for land acquisition in the early stages of Plan implementation:

Stay Ahead Measurement Method #1. The amount of each land-cover type ~~acquired-conserved~~ by the Implementing Entity as a proportion of the total requirement for each land-cover type ([see Table 5-8](#)) must be equal to or greater than the proportion of the impact on that land-cover type expected under the maximum urban development area by all covered activities. For example, if 25% of the expected impacts on oak woodland have occurred, then at least 25% of the required land acquisition for oak woodland must also have occurred. The exceptions to this rule are annual grassland, ruderal ~~habitat~~land-cover, and all cultivated agriculture land-cover types (cropland, irrigated pasture, vineyard, orchard), which will be aggregated for the purposes of measuring compliance with the Stay-Ahead provision. That is, the sum of the impacts on these land-cover types will be measured for Stay-Ahead purposes against the sum of their acquisition requirements.

OR

Stay Ahead Measurement Method #2. The amount of annual grassland ~~acquired-conserved~~ by the Implementing Entity in Zone 2 as a proportion of the total requirement for annual grassland acquisition in Zone 2 (see Table 5-14) must be equal to or greater than the proportion of the impacts on annual grassland, ~~ruderal land-cover~~, and all cultivated agriculture land-cover types (cropland, irrigated pasture, vineyard, orchard) expected under the maximum urban development area ~~scenario~~ by all covered activities. For example, if 40% of the expected impacts on annual grassland and cultivated agriculture land-cover types have occurred, then at least 40% of the required acquisitions of annual grassland in Zone 2 must also have occurred. This option provides an incentive for the Implementing Entity to acquire land in Zone 2 early in Plan implementation because land in this zone is likely to be more expensive and at higher risk than land in other zones.

The Plan allows a 5% deviation from the strict requirements above without penalty to account for the likely pattern of infrequent land acquisition of large parcels. This allowable deviation will apply to either method employed by the Implementing Entity to calculate compliance with the Stay-Ahead provision.

The Implementing Entity will monitor the status of the Stay-Ahead provision throughout Plan implementation. The Stay-Ahead provision will also be evaluated on an annual basis by USFWS and CDFG. Beginning with the Year 2 annual report, the Implementing Entity will report on the status of the Stay-Ahead provision. As long as the ratio between impacts and acquisition remains within a 5% deviation (under either measurement method for the first ten years) then the Stay-Ahead provision will have been satisfied. If the annual evaluation shows that the Stay-Ahead provision is not satisfied, then the Implementing Entity and USFWS and CDFG will meet and confer to mutually develop a plan to achieve the Stay Ahead provision, ~~as further described below~~.

Land acquired in full or in part by state or federal agencies to contribute to species recovery under this Plan will also contribute to compliance with the Stay-Ahead provision. Because a portion of the Plan's conservation actions depend on commitments by the state and federal governments, the Implementing Entity's compliance with the Stay-Ahead provision will depend in part on the fulfillment of these commitments. The Implementing Entity must recognize, however, that funds from public agencies will be available on budget cycles that may or may not correspond to the timing of covered activities in the permit area. Therefore, the Implementing Entity must acquire land on its own and cannot rely solely on the timely availability of state or federal funds to acquire land.

Rough Proportionality

~~Rough Proportionality.~~ The Stay-Ahead provision will also be evaluated on an annual basis (beginning at the end of Year 2) by CDFG to determine if the "rough proportionality" standard of NCCPA is being met. If the proportion of total acquisition lags the proportion of total impacts by more than a 10% deviation, then CDFG will determine whether the Plan has maintained rough proportionality. If CDFG issues a notification to the Implementing Entity that

rough proportionality has not been met, then CDFG and USFWS and the Implementing Entity will meet to develop a plan to remedy the situation. If the federal and state commitment to the Plan cannot be provided in order to meet the rough proportionality requirement, the Plan will be reevaluated in light of these limitations, with possible adjustments made to the permit coverage and assurances or adjustments to the conservation obligations.

Stay Ahead Reporting and Process For Addressing Deficits in Land Conservation

The Implementing Entity will report the status of the Stay Ahead provision in each annual report, beginning with the end of Year 2. If the Stay Ahead provision is not met for any land-cover type, the Implementing Entity, CDFG, and USFWS will meet and confer within thirty days of the annual report to develop and implement a mutually agreeable plan of action as described in Conservation Measure 1.1 and the Implementing Agreement to remedy the situation and achieve compliance with the Stay Ahead provision. If, after the exercise of all available authority and utilization of all available resources, the federal and state contribution committed to the Plan cannot be provided in order to meet the Stay-Ahead provision, the Plan and the Stay-Ahead provision will be reevaluated in light of these limitations, with possible adjustments made to the permit coverage and assurances, permit term, conservation obligations, or other aspects of the Plan given the extent of the federal/state contribution. If the Stay-Ahead provision is not being met, the Implementing Entity through local land use agencies may also require that landowners provide land instead of paying a fee, as described below.

Requirements for Providing Land Instead of Paying a Fee When Stay Ahead Provision Is Not Being Met

If the reason for the Stay-Ahead provision not being met is that the Implementing Entity is unable to acquire land from willing sellers fast enough or state or federal agencies are unable to provide their contributions fast enough, the Implementing Entity will temporarily require that applicants provide land instead of paying a fee. Land will be provided to the Implementing Entity according to the guidelines below in *Land Dedication in Lieu of Development Fee*. Developers will always have the option of providing land in lieu of the development fee, but provision of land in lieu of a fee will be required if the Implementing Entity cannot meet the Stay-Ahead provision due to a lack of willing sellers, delays in federal/state contributions, or other substantial extenuating circumstances. The requirement to provide land instead of a fee will be lifted (i.e., it will revert back to an option) as soon as the Implementing Entity meets its Stay-Ahead provision.

8.6.6 Gifts of Land

The Implementing Entity may accept land as a gift or charitable donation. The Implementing Entity will evaluate the conservation benefit of the lands donated relative to the goals, objectives, and requirements of the HCP/NCCP. Donated land that does not meet these goals, objectives, and requirements may be sold or exchanged to enable acquisition of land that does meet these goals, objectives, and requirements.

8.6.7 Land Dedication In Lieu of Development Fee

Some applicants may own land that can help to meet the conservation goals of the Plan. Applicants that own land at the edge of a conservation area may wish to donate or place a conservation easement on the portion of their property within the conservation areas to reduce or eliminate their fee for development of the remaining portion of their property. Some applicants that wish to develop wholly within the UDA may own parcels within an area targeted for conservation; dedicating or placing a conservation easement on the site within the conservation area could eliminate or substantially reduce their fee to develop their other property. ~~Finally, l~~Landowners wishing to develop parcels within the UDA may prefer to acquire their own mitigation lands within the conservation area and donate these lands to the Implementing Entity instead of paying all or a portion of the fee. Finally, local jurisdiction Permittees (e.g. Contra Costa County, County Flood Control District) may wish to dedicate land to the Implementing Entity in lieu of paying all or a portion of a development fee, temporary impact fee, or rural road fee (see Chapter 9 for details of these fees). All three situations are permissible if the following conditions are met.

Guidelines for Providing Land In Lieu of Fee

Land may be provided in lieu of all or a part of the HCP/NCCP development fee if:

- ~~t~~The land supports biological resources that meet Plan requirements and contributes to Plan biological goals and objectives,
- the land has no property encumbrances that conflict with HCP/NCCP goals and objectives (see Section 8.6 above),
- the land presents a good value to the Implementing Entity relative to the development fees that would have been provided,
- the land is ~~wholly~~ within an area designated as high or moderate priority for acquisition⁵ (see Chapter 5), ~~and~~

⁵ Land along Marsh Creek, Kellogg Creek, or adjacent to Dutch Slough (Zone 6) are ~~not~~ eligible for land dedication in lieu of development fees.

- the Implementing Entity has funding or funding commitments from the applicant or other sources to manage and monitor the dedicated land during the permit term according to the requirements of the Plan, and,
- or otherwise approved by the Implementing Entity, USFWS, and CDFG.

The Implementing Entity will consider requests for a fee reduction or waiver in exchange for land dedication (transfer or conservation easement) on a case-by-case basis. The amount of fee substitution will also be determined case-by-case and will according to the following rules and guidelines:

- Under the initial urban development area, the Implementing Entity must assemble a preserve system that is estimated to be 23,800 acres. The estimated impacts of all development-related covered activities (including rural roads) is 9,617 acres. For the Implementing Entity to fully achieve its land acquisition requirements, the amount of land dedicated per project must be equivalent to or greater than what would have been the project's proportional contribution to HCP/NCCP fee revenue.

To achieve this, the Implementing Entity must secure, on average, at least 2.1 acres of conservation land for every acre of impact in natural land cover types (Fee Zone II in Chapter 9) for all projects that contribute land in lieu of development fees. For impacts to cultivated and disturbed lands (Fee Zone I), the Implementing Entity must secure at least 1.1 acres of conservation land for every acre of impact.

- The amount of land required to fully offset the development fee can be increased or decreased depending on the conservation value of the land and the importance to the assembly of the HCP/NCCP Preserve System.

depend on factors such as the appraised value of the dedicated land, the biological value of the dedicated land to the Plan, the availability of funding for management and monitoring, and the status of the Preserve System at the time of the request.

Applicants are encouraged to provide baseline data on their offered properties that document their biological value to the Plan and explain how the site meets land acquisition requirements and biological goals and objectives. However, ~~t~~The property owner must provide access to the proposed site to allow Implementing Entity staff or their consultants to survey the site and determine verify its biological value for the HCP/NCCP Preserve System (at no cost to the applicant). The applicant will pay the cost of other due diligence (e.g., Phase 1 site assessment, appraisal, title search).

Common Name <i>Scientific Name</i> Status (Federal/State) ¹	Habitat Conserved by HCP/NCCP	Maximum Allowable Estimated Impact to Habitat from HCP/NCCP Covered Activities	General Bases for Analysis of Coverage (Conservation Measure Level)	Monitoring Methods (Monitoring Plan and/or Management Plans/Directives)	Meets State & Federal Take Authorization Standards
Swainson's hawk <i>Buteo swainsoni</i> MBTA/ST	Initial UDA: 9% (12 acres) of breeding habitat conserved <u>outside parks and open space</u> + up to 50 acres of riparian woodland/scrub created or restored <u>127% (2,096,614 acres) of foraging habitat outside parks and open space</u> Maximum UDA: 12% (16 acres) of breeding habitat conserved <u>outside parks and open space</u> + up to 55 acres of riparian woodland/scrub created or restored <u>159% (2,757,451 acres) of foraging habitat outside parks and open space</u>	Initial UDA: <u>Up to 1527% (20-16 acres) of breeding habitat outside parks and open space</u> <u>136% (4,661,378 acres) of foraging habitat outside parks and open space</u> Maximum UDA: <u>Up to 1627% (20-16 acres) of breeding of habitat outside parks and open space</u> <u>1620% (5,897,743 acres) of foraging habitat outside parks and open space</u>	Landscape Natural Community	Develop and refine species-focused model(s). Develop monitoring approach, and identify critical uncertainties. Develop pilot projects as necessary. For suggested monitoring tasks, see Ch.7 Section 7.5.5 (summarized below). Suggested Tasks: Test methods to increase prey base. Subsequently, monitor small-mammal populations to determine abundance of prey for Swainson's hawk. Monitor low-elevation grassland to refine mapping of foraging range. Monitor active nests to determine use patterns and specific habitat needs for breeding sites. Monitor species response to riparian restoration.	YES

Rationale for Identifying Species as Covered

Conservation: The inventory area is at the western edge of this species' range. This species will be covered by the HCP/NCCP because at least 9-12% of breeding habitat and ~~7-9~~12-15% of foraging habitat outside parks and open space will be conserved. The Preserve System will protect at least 12-16 acres of riparian breeding habitat and ~~2,096-2,757~~3,614-4,451 acres of foraging habitat under the initial/maximum urban development area, or an approximately 1:1 mitigation ratio (Table 5-13). The loss of riparian woodland/scrub, some of which is considered suitable nesting habitat for Swainson's hawk, will be mitigated through in-kind protection of riparian woodland (Conservation Measure 1.1 and Tables 5-5a and 5-5b) and enhancement and restoration of riparian woodland/scrub within preserves (Conservation Measures 2.9 and 2.10 and Tables 5-16 and 5-17). An estimated 50-55 acres of riparian woodland/scrub will be restored within the Preserve System (Table 5-17), much of which will be suitable breeding habitat for Swainson's hawk. ~~250-400~~ acres of cropland or pasture for Swainson's hawk foraging along Kellogg Creek, Marsh Creek, or adjacent to Dutch Slough that is suitable for riparian restoration ~~within 1 mile of the Zone 6 boundary~~ will be acquired. Additionally, acquired conservation easements will require landowners to enhance the value of agricultural lands for Swainson's hawk and other covered species (Conservation Measures 1.3 and 2.11). Extensive areas of cultivated agriculture in the inventory area that provides suitable foraging habitat for Swainson's hawk will continue to be protected through strict zoning within Contra Costa County's Agricultural Core.

Conditions on Covered Activities: ~~Project approvals must require avoidance of occupied nests during the breeding season. .-~~Development guidelines will ensure that impacts on this species from covered activities are avoided or minimized (see Conservation Measures 1.6, 1.9, and 1.10). Prior to submission of an application for coverage under the HCP/NCCP, planning surveys will identify potentially active Swainson's hawk nest sites, following established Swainson's hawk survey protocols. Preconstruction surveys are required in areas with active nests. Destruction of occupied nests is prohibited, and buffer zones during the nesting season are required (Chapter 6, Section 6.3.3). Non-riparian nest trees lost must be replaced at a ratio of 5:1 per mature tree (saplings will be planted at ratio of 15:1 to ensure this final ratio) on-site or on HCP/NCCP preserves.

Table 5-11. Land Acquisition Requirements in Zones 5 and 6 under Each Urban Development Area (acres)

Zone and Land Cover Type	Amount in Zone	Land Acquisition or Conservation Easement Requirement with Initial Urban Development Area	Land Acquisition or Conservation Easement with Maximum Urban Development Area ¹
Zone 5			
Annual grassland			
Subzone 5a or 5d	--	4,300 ²	--
Subzone 5a, 5b, or 5d	--	--	7,100 ²
Subzone 5c	--	1,000 ³	1,000 ³
Grassland subtotal	10,234	5,300	8,100
Alkali grassland	1,053	750 ⁴	900 ⁴
Alkali wetland	59	40 ⁴	40 ⁴
Subtotal	11,346	6,090	9,040
Zone 6			
Alkali grassland	467	100 ⁵	300 ⁵
Alkali wetland	88	20 ⁵	40 ⁵
Cropland or pasture	23,330	250 ⁶	400 ⁶
Subtotal	23,884	370	740

Notes:

- 1 Beyond the initial urban development area, land acquisition requirements for each land cover type within each Zone will increase in proportion to the amount of additional urban development permitted under the HCP/NCCP; see text for details.
- 2 Requirements for annual grassland acquisition must be met within Subzones 5a or 5d with the initial urban development area and in 5a, 5b, or 5d with the maximum urban development area.
- 3 Annual grassland acquired in Subzone 5c must also be suitable foraging habitat for Swainson's hawk according to the species model in Appendix D.
- 4 Alkali grassland and alkali wetland acquisition requirements can be met in any Subzone in Zone 5.
- 5 Acquisition of alkali grassland and alkali wetland in Zone 6 will occur in Subzones 6d or 6e
- 6 Acquisition of cropland or pasture will occur along Marsh Creek, Kellogg Creek (Subzones 6b, 6c, or 6f), or adjacent to Dutch Slough (Subzone 6a); see text for details.

Table 6-2. Stream Setback Minimum Requirements for Streams within the Urban Limit Line Development Area

Stream Reach Type and Location ^{1***}	Buffer Objective/ Function (from Figure 5-11)	Example Sites in Inventory Area	Minimum Setback (from top of bank <u>measured</u> in aerial perspective ²)	<u>Conditions and Limitations on Impacts To Streams³</u>		<u>Conditions and Limitations on Impacts Within Setbacks⁴</u>		Comments
				<u>Linear Limitations on Impacts to Streams</u>	<u>Activities for Which Stream Impacts Will Be Authorized</u>	<u>Limitations on Area of Impacts Within Setback⁵</u>	<u>Activities for Which Setback Impacts Will Be Authorized</u>	
<u>1st and 2nd order⁶ Type 4 e</u> phemeral reaches in urban and agricultural areas ^{**}	N/A	Multiple unnamed tributaries to intermittent and perennial reaches	Avoidance and <u>minimization measures for drainages must be documented</u> (<u>??</u>) but no setback <u>is required</u>	<u>No limitations NA</u>	<u>Any activities</u>	<u>No limitations NA</u>	<u>Any activities NA</u>	These reaches are located in dense urban and intensive agricultural areas, and provide low habitat function for covered species. Avoidance and implementation of Conservation Measure 1.10 will minimize impacts to water quality and hydrologic functions.
Concrete-lined channels	Enhance water quality; retain restoration potential	Reaches of Kirker Creek	20 ft [*]	<u>No limitations NA</u>	<u>Any activities</u>	<u>No limitations NA</u>	<u>Any activities All uses are allowed</u>	These reaches are located in dense urban areas and provide low habitat function for covered species. A minimal buffer width will reduce sediment and nutrient inputs from surface flows, retain some potential for stream restoration, and provide for recreational opportunities.
<u>1st and 2nd order⁶ Type 4 e</u> phemeral reaches in natural areas ^{**}	Erosion and nutrient control;	Multiple unnamed tributaries to intermittent and perennial reaches	25 ft [*]	<u>No limitations None</u>	<u>Any activities No limitations</u>	<u>No limitations None</u>	<u>No limitations, but avoidance and minimization must be documented.</u>	Although ephemeral streams play a limited role in providing habitat to covered species, these systems represent the first point of entry for sediment and other contaminants into downstream reaches. Thus, unlike the stream types below, the primary objective of the setback for ephemeral streams is to filter out sediment and contaminants before they degrade downstream habitat.

Table 6-2. Continued

Stream Reach Type and Location ¹ ***	Buffer Objective/ Function (from Figure 5-11)	Example Sites in Inventory Area	Minimum Setback (from top of bank <u>measured</u> in aerial perspective ²)	Conditions and Limitations on Impacts To Streams ³		Conditions and Limitations on Impacts Within Setbacks ⁴		Comments
				<u>Linear Limitations on Impacts to Streams</u>	<u>Activities for Which Stream Impacts Will Be Authorized</u>	<u>Limitations on Area of Impacts Within Setback⁵</u>	<u>Activities for Which Setback Impacts Will Be Authorized</u>	
Perennial, or intermittent, or 3rd or higher order⁶ ephemeral streams in urban areas except Marsh Creek mainstem and tributaries	Enhance water quality; retain restoration potential	Lower Willow Creek, Lower Kirker Creek	50 ft*	300 feet	Necessary bridges and outfalls	Up to 15% of setback area	Necessary bridges and outfalls, access and maintenance roads for flood control, c3 facilities, and trails	These reaches are located mostly in dense urban areas and provide low habitat function for covered species. However, potential may exist for restoration of riparian vegetation and minimal floodplain areas. In addition, a minimal buffer width will reduce sediment and nutrient inputs from surface flows and provide for recreational opportunities.
<u>Perennial, Intermittent, or 3rd or higher order⁶ ephemeral streams in agricultural or natural areas and Marsh Creek mainstem</u>	<u>Enhance water quality; retain restoration potential</u>	<u>See examples below⁷</u>	<u>75 ft*</u>	<u>300 feet</u>	<u>Necessary bridges and outfalls</u>	<u>Up to 15% of setback area</u>	<u>Necessary bridges and outfalls, access and maintenance roads for flood control, trails, c3 facilities, and trails (plus???)and other necessary facilities approved by wildlife wetlands agencies</u>	<u>These reaches retain the greatest habitat value and potential for restoration within the Urban Limit Line. The buffer will filter sediment and other contaminants, maintain habitat for covered species, allow for restoration of riparian vegetation and some small floodplain areas, as well as providing recreation opportunities. These reaches retain a high habitat value and potential for restoration, although perennial streams have greater habitat value for many species. The buffer will perform similar functions as those listed above.</u>
<u>Type 2 Ephemeral reaches in natural</u>	<u>Enhance water quality;</u>	<u>Sand Creek in the Lower</u>	<u>75 ft*</u>	<u>300 feet</u>		<u>Up to 1% of setback</u>	<u>These reaches are mainstem reaches, with channel width</u>	

Table 6-2. Continued

Stream Reach Type and Location ¹ ***	Buffer Objective/ Function (from Figure 5-11)	Example Sites in Inventory Area	Minimum Setback (from top of bank <u>measured</u> in aerial perspective ²)	<u>Conditions and Limitations on Impacts To Streams³</u>		<u>Conditions and Limitations on Impacts Within Setbacks⁴</u>		Comments
				<u>Linear Limitations on Impacts to Streams</u>	<u>Activities for Which Stream Impacts Will Be Authorized</u>	<u>Limitations on Area of Impacts Within Setback⁵</u>	<u>Activities for Which Setback Impacts Will Be Authorized</u>	
<u>areas***</u>	<u>retain restoration potential</u>	<u>Valley/Plain Region</u>				<u>area</u>		<u>typically greater than 10 ft and supporting woody riparian vegetation. These features offer greater potential habitat value than is present in Type 1 ephemeral reaches. In addition, the high flows carried by these reaches after storm events could carry large amounts of sediment and pollutants from the floodplain downstream. Therefore, a larger setback is needed than in Type 1 ephemeral reaches.</u>
<u>Perennial or intermittent streams in agricultural or natural areas[‡]</u>	<u>Enhance water quality; retain restoration potential</u>	<u>Kellogg Creek and Brushy Creek in the Delta geomorphic zone</u>	<u>75 ft*</u>	<u>00 feet</u>		<u>Up to % of setback area</u>		<u>These reaches retain the greatest habitat value and potential for restoration within the Urban Limit Line. The buffer will filter sediment and other contaminants, allow for restoration of riparian vegetation and some small floodplain areas, as well as providing recreation opportunities.</u>
<u>All of Marsh Creek mainstem (including urban reaches) and its tributaries (including urban reaches of Marsh Creek and</u>	<u>Enhance water quality; retain restoration potential</u>	<u>Marsh Creek downstream of the reservoir</u>	<u>75 ft*</u>	<u>00 feet</u>		<u>Up to % of setback area</u>		<u>Marsh Creek provides some of the highest stream and riparian habitat values in the inventory area and the greatest potential for restoring habitat for a variety of species. Wider buffers on urban reaches of Marsh Creek and its tributaries will retain restoration</u>

Stream Reach Type and Location ¹ ***	Buffer Objective/ Function (from Figure 5-11)	Example Sites in Inventory Area	Minimum Setback (from top of bank <u>measured</u> in aerial perspective ²)	Conditions and Limitations on Impacts To Streams ³		Conditions and Limitations on Impacts Within Setbacks ⁴		Comments
				<u>Linear Limitations on Impacts to Streams</u>	<u>Activities for Which Stream Impacts Will Be Authorized</u>	<u>Limitations on Area of Impacts Within Setback⁵</u>	<u>Activities for Which Setback Impacts Will Be Authorized</u>	
								potential, maintain habitat for covered species, and improve water quality.

¹ Location parameters (e.g., “agricultural areas”, “natural areas”, etc.) describe the setting of the stream at the time of completing this HCP/NCCP and refer to the fee zones and urban landcover shown in Figure 9-1.

² Where native woody riparian vegetation is present, minimum setbacks must extend to the outer dripline of the riparian vegetation or the specified number of feet measured from top of bank, whichever is greatest. Riparian vegetation is defined broadly to include oaks and other woody species that function as riparian corridors. Setbacks must also meet minimum setback requirements of the applicable local land use agency. Contra Costa County ~~stream has an~~ ordinance for regulating impacts near unimproved earthen channels. This Ordinance requires a “structure setback line” that varies between approximately 30 feet and 50 feet from top of bank depending on the height of top of bank above the channel invert (County Code Title 9, Division 914-14.012).

³ Mitigation is required for all impacts to streams, as described in Chapter 5. Restoration requirements are summarized in Tables 5-16, 5-17, and 9-5. Preservation requirements are summarized in Tables 5-5a and 5-5b and may be accomplished through payment of the development fee described in Section 9.3.1 or through provision of land in lieu of fees.

⁴ Impacts within setbacks must be mitigated through: a) payment of the development fee described in Section 9.3.1 over the entire property including the setback and the stream channel; and b) through payment of the riparian impact fee (see Table 9-5) for every acre of impact within the setback or through direct performance of riparian restoration at a 0.5 to 1 ratio on-site or off-site.

⁵ Restrictions will be measured as a percentage of the setback area excluding the area the of the stream channel.

⁶ Stream order refers to the numeric identification of the links within a stream network. This document follows the stream ordering system of Strahler (1964). In this system, a first order stream is a stream with an identifiable bed and bank, without any tributary streams. A second order stream is formed by the confluence of two first order streams. A third order stream is formed by the confluence of two second order streams, and so on. Addition of a lesser order stream does not change the stream order of the trunk stream.***Type 1 ephemeral streams are 1st and 2nd order streams, predominantly located in headwater areas (See Conservation Measure 1.7 for further discussion)

***Type 2 ephemeral streams are 3rd or higher order streams downstream of headwater areas (See Conservation Measure 1.7 for further discussion)

† Linear Impacts are counted towards the total area impacted within the stream setback area.

⁷ ‡ Perennial streams in agricultural or natural areas within the Inventory Area consist of the following:

- Mount Diablo Creek, Russelman Creek, Peacock Creek upstream of the Oakhurst Country Club property, and tributaries to Mount Diablo Creek within Mount Diablo State Park;

- Kellogg Creek in the Foothills/Upper Valley and Delta geomorphic zones;
- Brushy Creek in the Delta and Lower Valley/Plain geomorphic zones;
- Indian, Rock, Sand Mound, Dutch, Piper, and Taylor Sloughs, and False River (does not include reaches in concrete channels); and
- Sand Creek and Oil Canyon Creek in the Montane geomorphic zone.

(from 1.3.5 of the HCP/NCCP)

Jurisdictional wetlands and waters. State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from the U.S. Army Corps of Engineers under Section 404 of the CWA, the State Water Resources Control Board or the Regional Water Quality Control Boards under either Section 401 of the CWA or the Porter-Cologne Water Quality Act, or the California Department of Fish and Game under Fish and Game Code Section 1602. Types of wetlands and waters in the HCP/NCCP inventory area include, but are not limited to, permanent marsh, seasonal wetlands or marsh, streams, ponds, and vernal pools.

The U.S. Army Corps of Engineers promulgates protocols for delineating waters of the U.S. and certifies the adequacy of such delineations. The Corps delineation protocols require 3 criteria to be met for an area to be designated as a wetland 1) wetland hydrology (inundation or saturation), 2) hydric soils, and 3) wetland vegetation. Streams and other drainages and water bodies such as lakes or ponds do not have to meet these three criteria.

Federal regulations define the waters that are subject to federal jurisdiction (that is, waters that cannot be filled without permits from the U.S. Army Corps of Engineers under Section 404 of the CWA) as follows:

- (1) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) all interstate waters including interstate wetlands;
- (3) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters...;
- (4) all impoundments of waters otherwise defined as waters of the United States under the definition;
- (5) tributaries of waters identified in paragraphs (a)(1)–(4) of this section;
- (6) the territorial seas; and
- (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)–(6) of this section. (33 Code of Federal Regulations [CFR] § 328.3.)

The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) regulate waters covered by federal regulations as well as additional waters. The SWRCB and RWQCBs also regulate the fill of wetland areas that meet the federal definition in [CFR] § 328.3, above, but are outside of federal jurisdiction because they are isolated, intrastate, nonnavigable waters, as stated in the U.S. Supreme Court ruling in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC).. The California Department of Fish and Game regulates impacts to lakes and within the banks of streams. Waters subject to state regulation but not federal regulation are typically also delineated during the Corps-supervised delineation process, and state agencies can rely on such delineations for application of state regulations.

The standards to be used in this Plan to measure the size of various types of jurisdictional wetlands and waters are described in Table 9-7. In general, this Plan relies on the standards in place at the time this Plan was completed or those in place at the time a particular project is being constructed, whichever results in the larger measurement of the feature in question.

Implementing Entity. Every effort will be made to find suitable restoration or creation sites in HCP/NCCP preserves.

Restoration or creation conducted as mitigation for impacts must stay ahead of impacts, just as land acquisition must stay ahead of impacts (see ~~Conservation Measure 1.1~~Section 8.6.1). Restoration or creation that contributes to recovery effects can be implemented at any time. Restoration or creation conducted to mitigate impacts must be initiated so that mitigation requirements are ahead of impacts on each land-cover type by at least 5%. For example, if after 5 years, impacts on oak savanna total 20 acres, the Implementing Entity must initiate at least 22 acres of oak savanna restoration. If restoration or creation cannot keep pace with impacts, then impacts cannot be permitted under the HCP/NCCP.

Measurement of this stay ahead provision for restoration will begin 2 years after permit issuance to allow the Implementing Entity to establish the HCP/NCCP Preserve System and initiate land cover restoration and creation. However, during this 2 year period the Implementing Entity may not fall behind on the restoration required to mitigate for impacts to jurisdictional wetlands and waters by more than the restoration necessary for 20 acres of impact.

As described in the preserve assembly measure (Conservation Measure 1.1), a major focus in Zone 6 is acquisition of land along Marsh Creek, Kellogg Creek, or adjacent to Dutch Slough to provide opportunities for restoration of riparian woodland/scrub. Most of the riparian woodland/scrub restoration required by this Plan is expected to occur on these sites (see Figures 5-2 and 5-3). The Implementing Entity must also consider investing habitat restoration effort on Dutch Slough. According to preliminary assessments, there are opportunities for extensive restoration on the site for wetland and upland habitat consistent with the restoration requirements of this Plan (see Conservation Measures 2.1, 2.3, 2.7, and 2.10) including seasonal marsh and floodplain (137 acres), mixed riparian-oak woodland (82 acres), and emergent marsh (224 acres) (California Coastal Conservancy 2002). The Implementing Entity could contribute significantly to the goals of the Dutch Slough project and help meet HCP/NCCP requirements for restoration. Several covered species have been observed on or near Dutch Slough, including Swainson's hawk, western pond turtle, and silvery legless lizard; the site also provides suitable habitat for giant garter snake. Restoration at this site could enhance habitat for these covered species.

Restoration procedures and guidelines for specific vegetation communities are found in the conservation measures listed in Table 5-18. Restoration actions are covered activities because some of the restoration techniques are expected to have temporary adverse impacts on covered species and may result in take of these species. Mitigation for these impacts is included in the conservation strategy.

Almost all restoration or creation projects within the Preserve System are expected to be completed (i.e., reach project success criteria) within the permit term (30 years) because

- almost all restoration or creation is linked to impacts of covered activities,

Table 5-14. Minimum Land Acquisition Requirements for Annual Grassland in Zone 2 (acres)

Subzone	Subzone Size	Annual Grassland in Subzone	Min. Acquisition Requirement (acres)
2a	1,841	1,202	850 (71%)
2b	1,782	740	450 (61%)
2c	1,105	575	400 (70%)
2d	1,953	1,127	800 (71%)
2e	1,173	1,013	800 (79%)
2f	1,762	1,253	1,000 (80%)
2g	472	426	0* (0%)
2h	1,300	1,036	600 (58%)
2i	3,195	2,796	0* (0%)
Total	14,583	10,168	4,900 (48%)

* Although there is no requirement for annual grassland acquisition in Subzones 2g or 2i, any annual grassland acquired within these Subzones can count towards overall annual grassland requirements in Tables 5-7 and 5-8.

Table 5-10. Land Acquisition Requirements for Zone 4 for Natural Land-Cover Types (acres)

Subzone	Subzone Size	Min. Acquisition Requirement with Initial Urban Development Area ¹ (%)	Min. Acquisition Requirement with Maximum Urban Development Area ¹ (%)
4a	2,870	1,700 (75%)	1,700 (75%)
4b	1,639	0 (0%)	0 (0%)
4d	1,619	953 (60%)	953 (60%)
4h	1,033	791 (75%)	791 (75%)
4c	4,129	--	--
4e	755	--	--
4f	2,055	--	--
4g	757	--	--
Subtotal of 4c, 4e, 4f, 4g	7,696	1,400 ² (18%)	3,000 ² (39%)
Total	14,857	4,844	6,444

Notes:

¹ Only natural land cover types count towards acquisition requirements in these zones (i.e., orchard, pasture, urban land cover types do not count).

² This requirement can be met within Subzones 4c, 4e, 4f, or 4g and applies to the four Subzones as a whole.

been acquired, the program will be reviewed for effectiveness at least every 5 years.

Rationale

Exotic plants pose a serious threat to ecosystem function, native biological diversity, and many covered plant species. However, the number of exotic plants in the inventory area is unknown, as is the number of highly invasive noxious weeds. Within the Los Vaqueros Watershed alone, biologists identified 13 noxious weeds during surveys between 1987 and 1995 (Jones & Stokes Associates 1989; Brady & Associates 1996). Since these surveys were conducted, new noxious weeds may have invaded the area. For example, stinkweed (*Dittrichia graveolens*), an invasive species not recorded in *The Jepson Manual* (Hickman 1993), has been recently identified in the inventory area (HCPA Science Advisory Panel 2003). Furthermore, many exotic plants cannot be effectively controlled due to their great abundance, high reproduction rate, and proficient dispersal ability; the high cost of control measures; or unacceptable environmental impacts of control measures.

The spread of exotic plants may be exacerbated by covered activities (e.g., increased human and pet populations that serve as dispersal vectors, increase in roads and other dispersal corridors). Accordingly, an aggressive Exotic Plant Control Program is needed to minimize the adverse impacts of exotic plants and to enhance natural communities. Moreover, improved management within the preserves is expected to increase the resilience of natural communities to invasion by new exotic plants.

A system-wide Exotic Species Control Program will allow the Implementing Entity to evaluate the threat of exotic plants across the Preserve System and then determine the sites in greatest need of control measures and the sites where control measures will be most effective and efficient.

Conservation Measure 1.5. Prepare and Implement a System-wide Recreation Plan for the Preserve System

A recreation plan will be developed by the Implementing Entity and reviewed and approved by CDFG and USFWS. This plan will address lands that are acquired for the Preserve System where ~~passive~~ recreational and educational uses are compatible with the preservation and enhancement of natural communities, covered species, and biological diversity. When completed, applicable elements of the system-wide plan will be incorporated into the individual preserve management plans (see Conservation Measure 1.2).

Generally, the Implementing Entity will discourage new public access on conservation easements acquired for the Preserve System except in cases where a regional trail connection ~~and related facilities~~ such as ~~backpack camps~~ may be needed and they do not adversely impact the Biological Goals and Objectives of the Plan. Public access to privately owned land under conservation easements

will only be permitted with the landowner's consent. See Chapter 10, *Assurances*, for more details.

Recreational uses will be designed to minimize impacts on biological resources and must adhere to the guidelines listed below:

- In all preserves, recreation is of secondary importance and must defer to the biological goals and objectives of this HCP/NCCP.
- Recreation will only be allowed where it is compatible with the biological goals of the HCP/NCCP and has less-than-significant impacts on biological resources after implementation of necessary mitigation measures, as described in the EIR/EIS.
- Recreational use and impacts will be monitored by the Implementing Entity to ensure that uses do not adversely affect biological resources. If uses are found to be adversely affecting biological resources, the use will be discontinued until adjustments in the use can be made to reduce or eliminate impacts (see Chapter 7 for details on monitoring).
- Recreational uses allowed in preserves including hiking, non-motorized bicycle riding, walking, horseback riding, wildlife observation and photography, and environmental education and interpretation on designated trails at appropriate sites. If determined to be compatible by USFWS and CDFG, up to four staging areas, four small day-use picnic areas and two small backpack camps shall be allowed within the preserve areas (see below for design restrictions on these facilities). Activities will be allowed based on the ecological needs of the given habitat. Camping, picnicking facilities, and other active recreation not listed above (e.g., outdoor sports) are will be prohibited.
- As approved by USFWS and CDFG, new picnic areas shall be operated during daylight hours only and limited to six standard picnic benches, restrooms, potable water and trash receptacles. No irrigated turf or landscaping shall be allowed in picnic areas. To the extent feasible, picnic areas will be located on the perimeter of preserve areas and will be sited in already disturbed areas. No private vehicles shall be allowed in picnic areas. Maintenance and emergency vehicles shall be permitted access to picnic areas.
- As approved by USFWS and CDFG, new backpack camps shall be limited to use by no more than 25 people. Restrooms, potable water and trash receptacles shall be provided. When feasible, campsites will be sited in already disturbed areas. Private vehicles may be allowed to drive into camps only during daylight hours, and only for the purpose of delivering supplies or providing access for campers with disabilities. This restriction shall not apply to maintenance and emergency vehicles. With the exception of Americans with Disabilities Act (ADA) service animals, dogs shall only be allowed in backpack camps on-leash and during daylight hours only.
- The up to four new Recreation staging areas will be developed only in areas within preserves that are already disturbed and not suitable for habitat

restoration, and that do not contribute to the conservation objectives for covered species habitats and natural communities. Sites at the edges of preserves will be chosen over sites on the interior of preserves.

- Public Access to caves, abandoned mines, or abandoned structures will be prohibited to maintain habitat for Townsend's western big-eared bat and reduce liability. Management of caves, mines and structures may be necessary periodically to maintain bat habitat and to protect public safety.
- No motorized vehicles or boats will be allowed in preserves, except for use by the preserve manager or with the prior approval of the preserve manager (e.g., contractors implementing HCP/NCCP conservation measures such as habitat restoration and monitoring, grazing tenants, fire-suppression personnel, and maintenance contractors). For preserves under conservation easements, vehicle use will be allowed as part of the regular use of the land (e.g., agricultural operations, permanent residents, utilities, police and fire departments, other easement holders), as specified in the easement.
- When compatible with HCP/NCCP biological goals and objectives, dogs may be allowed in daylight hours in designated preserves or in designated areas of preserves but only on leash. Leash laws will be strictly enforced by preserve managers and staff because of the potential impact of dogs on ~~livestock and~~ biological resources, including covered species such as San Joaquin kit fox, western burrowing owl, Alameda whipsnake, and California red-legged frog. Leash enforcement may include citations and fines. Dogs used for herding purposes by grazing lessees must be under verbal control and show proof of vaccination.
- Recreational hunting or fishing within preserves will be prohibited. However, hunting for management purposes (e.g., feral pigs, bullfrogs) is encouraged where it will contribute to achieving the goals and objectives of the HCP/NCCP. The Implementing Entity will coordinate with CDFG to develop hunting protocols.
- Public collecting of native species will be prohibited within preserves.
- Introduction of domestic or feral animals, including ducks, fish, reptiles, and any exotic, non-naturalized species, is prohibited within the preserves to prevent interference with and mortality of native species, except by the preserve manager for management purposes.
- Trails will be established on existing roads or trails wherever possible to minimize the need for new ground-disturbing activities and to reduce new and ongoing maintenance costs.
- New trails will be sited to minimize impacts on sensitive species (including covered species) and communities including covered species, as well as disturbance to adjacent landowners and land uses. Wetlands will be avoided, and trails through woodland or riparian habitat will not require tree removal or substantial pruning.
- Recreational uses will be controlled using a variety of techniques including fences, gates, clearly signed trails, educational kiosks, trail maps and brochures, ranger and police patrols, and interpretive programs.

- Construction of recreational facilities within preserves will be limited to those structures necessary to directly support the authorized recreational use of the preserve. Existing facilities will be used where possible. Facilities that support recreation and that may be compatible with the preserve include parking lots (e.g., small gravel lots), trails, educational and informational kiosks, and portable restrooms. Picnic areas, irrigated turf, campgrounds, off-highway vehicle trails, and other facilities that are incompatible with the goals and objectives of this HCP/NCCP will not be constructed.
- Signs and informational kiosks will be installed to inform recreational users of the sensitivity of the resources in the preserve, the need to stay on designated trails, and the danger to biological resources of introducing wildlife or plants into the preserve.
- New trails will not be constructed through chaparral patches in order to minimize disturbance to and prevent mortality of Alameda whipsnakes and reduce the likelihood of wildfire ignition. If possible, existing trails through chaparral should be rerouted around chaparral patches.
- The Implementing Entity will prohibit or limit bicycle use on trails within 500 feet of core habitat for Alameda whipsnake to minimize impacts on this species.
- Trails, picnic areas, and backpack camps will be closed between January 15 and August 1 within 0.5 mile of active golden eagle nests to prevent disturbance or harassment.
- Trails, picnic areas, and backpack camps will be prohibited within 300 feet of wetlands and streams that provide suitable habitat for covered amphibians or tricolored blackbird.
- When compatible with HCP/NCCP biological goals and objectives, recreation plans for preserves adjacent to existing public lands will try to ensure consistency in recreational uses across open space boundaries to minimize confusion among the public. Preserves adjacent to non-HCP/NCCP public lands with different recreational uses will provide clear signage to explain these differences to users that cross boundary lines.
- Preserves will be closed to all recreational uses until a recreation plan for the Preserve System is developed and approved by the Implementing Entity Governing Board, CDFG, and USFWS. If recreational activities will occur near aquatic features, then EPA and USACE will be asked to comment on the plan.

Exceptions to the guidelines listed above will be considered by the Implementing Entity on a case-by-case basis and will also require approval of the resource agencies.

At a minimum, the recreation plan will contain the following elements:

- Identification of sites within preserves where recreational use is compatible with the goals and objectives of the HCP/NCCP.

- Maps of existing and proposed recreational trails, staging areas, and facilities and of habitat types impacted.
- Site-specific methods of recreational use controls.
- Trail and use monitoring methods, schedules, and responsibilities.
- A framework for enforcement of recreational restrictions.
- An evaluation of whether the impact of planned recreational use is below the limits set in the EIR/EIS, and whether planned recreation is compatible with the biological goals and objectives of the HCP/NCCP.
- Clear triggers for use restrictions or closure based on sensitive biological indicators (e.g., seasonal closures of some trails based on covered or sensitive species activity periods).

The recreation plan will be prepared within no more than 3 years after acquisition of the first parcel or when 25% of the Preserve System has been acquired, whichever comes first. Recreation will not be allowed on HCP/NCCP preserves until a recreation plan has been prepared and adopted for that site by the Implementing Entity, CDFG, and USFWS. The recreation plan will be revised as needed as the Preserve System expands. Formal evaluations and revisions must occur at least every 5 years until all preserve acquisition has been completed. Once the entire preserve system has been acquired, the recreation plan will be reviewed for effectiveness (i.e., compatibility with the preservation of vegetation communities, covered species, and biological diversity) at least every 5 years.

Rationale

Recreational uses may have impacts on biological resources, including vegetation communities and covered species. However, the societal benefit of recreational uses within limited areas of the preserves justifies accepting some minimal level of impact on these resources. Allowing limited recreational use within preserves will broaden the appeal of this HCP/NCCP; such access can be an important tool in educating the public about the value of protecting and properly managing biological resources. An educated and supportive public is essential for securing additional funds for HCP/NCCP implementation.

Recreational users who understand the sensitivity of the resources in the preserves may help patrol the preserves and provide valuable assistance to preserve managers in ensuring that users follow the rules. Responsible users can also become volunteers to assist preserve managers in maintaining preserves (e.g., trail maintenance) and in complying with the terms of the HCP/NCCP (e.g., covered species monitoring and habitat stewardship). This involvement will-may reduce the overall cost of HCP/NCCP implementation.

Recreation within HCP/NCCP preserves is limited to low-intensity uses because of the primary function of the preserves as habitat for covered species. A wide variety of recreational opportunities are already available in rural parks throughout the inventory area; these include Black Diamond Mines, Round Valley, and Morgan Territory Regional Preserves; Mount Diablo State Park; and

8.09.0 LAND ACQUISITION & ASSEMBLY OF PRESERVE SYSTEM

8.19.1 General Framework

The Implementing Entity shall create a Preserve System by acquiring land and dedicating it in perpetuity to the Preserve System through either a fee interest or conservation easement. The Implementing Entity may also include in the Preserve System lands acquired by the Park District in accordance with Section 98.4, below, and lands acquired through partnerships with other entities in accordance with Section 98.5. Where the Implementing Entity itself acquires a fee interest in land, preservation shall be ensured through restrictive covenants, deed restrictions, or equivalent title restrictions, recorded in favor of the Wildlife Agencies. Where acquisition is by conservation easement, each conservation easement shall provide for the permanent protection and dedication of the land to the Preserve System, consistent with the criteria listed in Chapter 8.6.3 of the HCP/NCCP. 4, below All acquisitions shall adhere to the principles and priorities for preserve design, and for species population and habitat preservation and enhancement, as set in Conservation Measure 1.1 of the HCP/NCCP, including any Zone and Subzone Requirements detailed in Conservation Measure 1.1 and the acreage requirements set in Tables 5-7 and 5-8 of the HCP/NCCP. The creation of the Preserve System shall ~~also~~ follow the process contained in the Conservation Measure 1.1, which the Parties acknowledge allows for some flexibility in how the Preserve System is ultimately assembled, including the acceptance of credits from approved mitigation or conservation banks, to account for availability and funding. The Implementing Entity shall ~~further~~ also comply with the steps and guidelines for land acquisition described in Chapters 5.2 and 5.3 of the HCP/NCCP.

As detailed in Table 5-9 of the HCP/NCCP, the Preserve System will contain ~~an estimated~~ minimum of 21,450 ~~21,150~~ acres under the Initial Urban Development Area scenario, or ~~an estimated~~ minimum of 26,050 ~~25,850~~ acres under the Maximum Urban Development Area scenario.

8.39.3 Rough Proportionality Standard

Pursuant to ~~s~~Section 2820, ~~subdivision~~ (b)(9) of the ~~NCCPA~~California Fish and Game Code, the Permittees must “ensure that the implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or Covered Species.” Section 2820, ~~subdivision~~ (b)(9) also requires a statement of consequences of the failure to acquire lands in a timely manner.

For purposes of the HCP/NCCP, whether “rough proportionality” is met shall be determined pursuant to ~~Chapter 8.6.1 of the HCP/NCCP~~Conservation Measure 1-1. If at any time CDFG provides a written notification that rough proportionality on a plan basis has not been met, then the Permittees will either: 1) regain rough proportionality ~~cure the default~~ within forty-five (45) days; or 2) enter into an agreement with CDFG within forty-five (45) days, which will set a course of action to expeditiously regain rough proportionality ~~cure the default~~. The agreement may include any of a variety of commitments or adjustments to the NCCP designed to regain rough proportionality ~~cure the default~~, including but not limited to, a plan to acquire, restore, or enhance lands of appropriate vegetation or land-cover type expeditiously; ~~1) adjustment to the permit coverage and assurances; 2) adjustment to the conservation obligations; and/or 3) consideration of an application for a Section 2081(b) permit under CESA instead of maintaining the Section 2835 permit under NCCPA. In the event that the Permittees fail to cure the default or enter an agreement with CDFG to cure the default, CDFG will either suspend or revoke the state permit pursuant to Fish and Game Code section 2820(e).~~

If the Permittees do not regain rough proportionality within forty-five (45) days or enter into an agreement with CDFG within forty-five (45) days setting a course of action to regain rough proportionality, CDFG will suspend or revoke the State Permit, in whole or in part, pursuant to ~~Fish and Game Code~~California Fish and Game Code sectionSection 2820, subdivision (c). The Parties agree that partial suspension or revocation may include removal of one or more species from the Covered Species list for purposes of the State Permit or reducing the geographic scope of the take authorization provided by the State Permit. Before suspending or revoking the State Permit *in whole* due to a failure to maintain rough proportionality, DFG shall meet with the Permittees to determine whether mutually agreeable modifications to the HCP/NCCP would obviate a suspension or revocation in whole. The Parties agree that if CDFG suspends or revokes the State Permit, the Permittees may, based on the HCP/NCCP, apply for one or more CESA incidental take permits under ~~section~~Section 2081, subdivision (b) of the ~~Fish and Game Code~~California Fish and Game Code to replace the State Permit, in which case CDFG shall expeditiously review the application in accordance with CESA and its implementing regulations.

9.4 Land Acquired by the Park District

The Park District's acquisitions within the Plan Area will be formally credited towards the obligations set in Conservation Measure 1.1 and added to the Preserve System where the acquisition contributes to meeting the goals and objectives of the HCP/NCCP, is approved by the Implementing Entity in consultation with the Wildlife Agencies, ensures preservation through restrictive covenants, deed restrictions, or equivalent title restrictions, recorded in favor of the Wildlife Agencies, and will be managed in perpetuity pursuant to a Preserve Management Plan as described in Section 109.32.2 of this Agreement. Subject to the availability of funding, the Park District agrees to maintain its historical level of land acquisition within the Plan Area, which the Park District estimates will result in the acquisition of approximately 10,000 acres over the initial 30-year term of this Agreement, the Permits and the HCP/NCCP. The Park District agrees to collaborate with the Implementing Entity to maximize the extent and ecological value of jointly-funded land acquisitions in the Plan Area and further agrees that development fees and other HCP/NCCP-related funding sources for land acquisition and management within the Plan Area will be used to augment, rather than replace or redirect, Park District expenditures within the Plan Area; provided, however, that nothing in this Agreement shall be construed to commit the Park District to acquire more than 10,000 acres of land within the Plan Area over the initial 30-year term of this Agreement, the Permits or the HCP/NCCP.

10.2 Management of Park District Lands in Preserve System

The Park District agrees to manage all of its lands that are formally credited toward the obligations in Conservation Measure 1.1 and added to the Preserve System in accordance with a Preserve Management Plan, as described in Section 109.3.2, below, provided that the Implementing Entity or other Permittee provides sufficient funds to pay for additional land management costs incurred to meet the land management standards set forth in Conservation Measure 1.1 in the HCP/NCCP. The Park District will continue to fund the management of all of its lands within the Plan Area to achieve its internal management standards and will seek additional funding from the Implementing Entity or other Permittees only for additional costs attributable to more rigorous standards imposed by the HCP/NCCP. Similarly, the Park District will assume long-term (i.e., beyond the 30-year initial term of this Agreement, the Permits and the HCP/NCCP) provided it receives such supplemental funding for long-term management. The Implementing Entity and the Park District may enter into one or more cooperative agreements to normalize the cost-sharing arrangements and other coordination with regard to land acquisition and management within the Plan Area.

10.2.1 Recreational Uses

The Parties acknowledge that providing recreational opportunities on its lands is integral to the Park District's mission. The Parties further acknowledge that certain low-intensity recreational uses are appropriate within the Preserve System, subject to appropriate constraints to protect Covered Species and natural communities. The Parties therefore agree that it is appropriate for the Implementing Entity, in consultation with the Park District, to integrate the Park District's recreation planning goals and objectives into the system-wide preserve management plans and parcel-specific Preserve Management Plans described in Section 109.3, below, for Park District lands within the Plan Area, to the extent consistent with the HCP/NCCP's land management goals and objectives and the requirements of this Agreement and the Permits.

10.2.2 Coverage for Park District Land Management in Plan Area

The Park District's management of lands that are formally credited toward the obligations in Conservation Measure 1.1 and added to the Preserve System in accordance with Section 98.4, above, shall be a Covered Activity. The Parties acknowledge that the Park District may in the future seek State and Federal take authorization for management of its other lands within the Plan Area and may elect to prepare a separate habitat conservation plan, a subarea habitat conservation plan/natural community conservation plan designed to be integrated with the HCP/NCCP, or other conservation planning document, for that purpose.

13.2.2 Project Proponents

Any project that is a Covered Activity shall be eligible to participate in the HCP/NCCP and to receive Take authorization in accordance with the HCP/NCCP and the Permits. To receive Take authorization under the Permits, the project's proponent must enter into an agreement with a Permittee that has approval authority over the project and assume the obligation to comply with all terms and conditions of this Agreement, the HCP/NCCP and the Permits that apply to the project. Alternatively, the Permittee may impose such terms and conditions as conditions of project approval. Provided the project proponent is obligated under an agreement or conditions of project approval to comply with such terms and conditions, the Permittee shall extend the Take authorization to the project proponent upon issuance of a grading permit for the project or, if a grading permit is not required, issuance of the first construction permit.

Once the Take authorization has been extended to the project, it shall remain in effect with regard to the project, regardless of whether the Permits are suspended or revoked, for as long as the project proponent fully complies with the applicable terms and conditions of this Agreement, the HCP/NCCP, and the Permits; provided, however, that the USFWS or CDFG may suspend or revoke the extension of Take authorization if the USFWS or CDFG determines that implementation of the project would likely jeopardize the continued existence of a Covered Species. Before making such a determination, the USFWS and CDFG will meet and confer with the project proponent and the Permittee to discuss the threat of jeopardy and possible ways to avoid it short of suspending or revoking the extension of Take authorization to the project.

13.2.2.1 Early Extension of Take Authorization

As an incentive to expedite assembly of the Preserve, the Take authorization may be extended upon the Permittee's approval of the project and the project proponent's conveyance of land into the Preserve in accordance with Chapter 8.6.7. Early extension of Take authorization shall only be allowed when land is conveyed in lieu of a development fee as described in Chapter 8.6.7. In order to obtain this early extension of Take authorization, the project proponent must agree to all other applicable terms and conditions of this Agreement, the HCP/NCCP, and the Permits at the time of project approval, and the conveyance of land into the Preserve must be completed before ground-disturbing project activities commence.

13.114.1 General Commitment

The ~~Permits require the~~ Permittees ~~to~~ shall ensure that all required mitigation, conservation, monitoring, reporting and adaptive management are adequately funded throughout the Term ~~term~~ of this Agreement, monitoring, reporting and adaptive management are adequately funded and in perpetuity ~~where required by the HCP/NCCP~~. ~~The Permittees commit to funding the costs of the Conservation Strategy, which are estimated in Chapter 9.2 of the HCP/NCCP~~. The Permittees do not intend to use funds from their respective general funds to implement the Conservation Strategy; rather they intend to obtain these sufficient funds through a comprehensive strategy further described in Chapter 9.3 of the HCP/NCCP, primarily depending on developer fees, dedications and transfer of development rights, assessments and real estate transfer fees from future developments, and further supplemented by federal and state grants pursuant to Section 98.1.2 of this Agreement, and maintenance of existing conservation effort by local and state agencies that have a demonstrated record of acquiring and managing lands for recreational and conservation purposes in Contra Costa County. The Permittees may use or establish other ~~and~~ local funding measures, including utility surcharges, special taxes or assessments, or bonds. The Permittees are each responsible to seek all feasible increases in revenues pursuant to that are necessary to keep pace with rising costs, as described in Chapter 9.3.1 of the HCP/NCCP ~~so that collections keep pace with rising costs~~. The Permittees will promptly notify the Wildlife Agencies of any material change in the Permittees' financial ability to fulfill their obligations. In addition to providing any such notice, the Implementing Entity will include in its Annual Monitoring Report to the Wildlife Agencies such reasonably available financial information to demonstrate the Permittees' ability to fulfill their obligations.

14.2.315.2.3 Critical Habitat Designations in the Plan Area

Provided that the Permittees have complied with ~~its~~their obligations under this Agreement, the HCP/NCCP and the Federal Permit, USFWS ~~shall ensure~~agrees that, ~~unless otherwise required by law, to the maximum extent allowable~~ after public review and comment, lands within the Inventory Area of the HCP/NCCP will not be designated as critical habitat for any Covered Species that is federally listed, including but not limited to California red-legged frog, California tiger salamander and Alameda whip snake. Subject to available funding, USFWS ~~shall agree~~agrees, unless otherwise required by law after public review and comment, to reassess and revise the boundaries of any existing designated critical habitat of Covered Species to exclude the HCP/NCCP Inventory Area, ~~within agency funding limits~~, including but not limited to critical habitat designated for vernal pool fairy shrimp, longhorn fairy shrimp, and Contra Costa goldfields. ~~The assurances provided by~~ this Section ~~14~~15.2.3 shall not apply to lands within the city limits of the City of Antioch or within the action area of any proposed expansion of Los Vaqueros Reservoir.

15.116.1 Section 7 Consultations with USFWS

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult USFWS pursuant to Section 7 of ~~the~~ FESA (16 U.S.C. § 1536(a)). Unless otherwise required by law or regulation, in any consultation under Section 7 involving the Permittees or an existing or prospective Third Party Participant and a proposed public or private development project in the Permit Area that may adversely affect one or more Covered Species that are Federal Listed Species, USFWS shall ensure that the biological opinion for the proposed project is consistent with the biological opinion issued for the HCP/NCCP and the Federal Permit, provided that the proposed project is consistent with the HCP/NCCP and the Federal Permit. Unless otherwise required by law or regulation, USFWS shall not impose measures on an existing or prospective Third Party Beneficiary in excess of those that have been or will be required by this Agreement, the HCP/NCCP, and the Permits.

21.1 Plan Implementation and Interpretation

The Parties recognize that disputes concerning implementation or interpretation of this Agreement, the HCP/NCCP, and the Permits may arise from time to time. The Parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedure set forth in this section or such other procedures upon which the Parties may later agree. Any Party may seek any available remedy without regard to this Section 210.1 if the Party concludes that circumstances so warrant. However, unless the Parties agree upon another dispute resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal or state court, the Parties agree to use the following procedures to attempt to resolve disputes.

21.1.1 Meet and Confer

If the USFWS or CDFG objects to any action or inaction by the Permittees or the Implementing Entity on the basis that the action or inaction is inconsistent with the HCP/NCCP, the Permits, or this Agreement, it shall so notify the Permittee(s) and the Implementing Entity in writing, explaining the basis of such objection. The Permittee(s) or Implementing Entity shall respond to the notice within thirty (30) days of receiving it, stating what actions the Permittee(s) or Implementing Entity proposes to take to resolve the objection or, alternatively, explaining why the objection is unfounded. If the response resolves the objection to the satisfaction of the objecting agency, the agency shall so notify the Permittee(s) and the Implementing Entity, and the Permittee(s) or Implementing entity, as appropriate, shall implement the actions, if any, proposed in the response to the agency. If the response does not resolve the objection to the agency's satisfaction, the agency shall notify the Permittee(s) or Implementing Entity accordingly, and the agency, the Permittee(s) and the Implementing Entity shall meet and confer to attempt to resolve the dispute. The meeting shall occur within 30 (days) after the Permittee(s) or Implementing Entity receives the objecting agency's response, or at such later time as the Permittee(s), the Implementing Entity and the agency may agree. The Implementing Entity shall take notes at the meeting, summarize the outcome, and distribute meeting notes to each Party in attendance.

The Implementing Entity or any other Permittee shall use the same procedure to resolve objections to any action or inaction of the USFWS or CDFG, and the USFWS and CDFG shall respond in the same manner to notices delivered by the Permittees.

21.1.1.1 Disputes Regarding Specific Projects

If the dispute among the Parties pertains to a specific project, the proponent of the project shall be allowed to provide input into the dispute resolution process by reviewing the initial notice of objection and submitting its own response and, if applicable, by participating in the meeting among the Permittee(s), the Implementing Entity and the USFWS and/or CDFG. For purposes of this provision, a dispute pertains to a specific

project if the USFWS or CDFG object to an action or inaction by a Permittee with regard to a specific project, such as the Permittee's determination of appropriate mitigation requirements for the project, or a Permittee objects to an action or inaction by the USFWS or CDFG with regard to a specific project.

21.1.1.2 Elevation of Dispute

If the Parties do not resolve a dispute after completing the dispute resolution procedure in Section 210.1.1, any one of the Parties may elevate the dispute to a meeting of the chief executives of the involved Parties. For purposes of this provision, "chief executive" shall mean the city manager of a city, the county executive of the County, the executive director of a special district, the executive director of the Implementing Entity, the CDFG Regional Manager, and the USFWS Field Supervisor. Each Party shall be represented in person by its chief executive at the meeting, and the meeting shall occur within forty-five (45) days of a request by any Party following completion of the dispute resolution procedure.

23.824.8 Availability of Funds

Implementation of this Agreement and the HCP/NCCP by USFWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Parties acknowledge and agree that USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

Implementation of this Agreement and the HCP/NCCP by CDFG is subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge and agree that CDFG shall not be required under this Agreement to expend any state appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditure as evidenced in writing.

Implementation of this Agreement and the HCP/NCCP by the County and the Cities is subject to the availability of appropriated funds, including but not limited to the special purpose revenues dedicated to implement the HCP/NCCP. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money ~~from the general funds of the County or Cities, which requires~~without express authorization by the County Board of Supervisors and/or appropriate City Councils. Notwithstanding these requirements and limitations, the Permittees are required to fund ~~all their~~ obligations under this Agreement, the HCP/NCCP and the Permits pursuant to Section ~~1314~~.1 of this Agreement. The Parties acknowledge that if the Permittees fail to provide adequate funding for ~~its~~their obligations under this Agreement, the HCP/NCCP and the Permits, the Permits may be suspended or revoked pursuant to Sections ~~198~~.0 and ~~2021~~.0 of this Agreement.