UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

December 1, 2005

Lori Rinek
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John Kopchik
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Contra Costa County
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Subject: Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan, Contra Costa County, California (CEQ #20050351)

Dear Ms. Rinek and Mr. Kopchik:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

EPA supports integration of regional planning efforts that conserve biological resources while providing for future growth. We commend the U.S. Fish and Wildlife Service (USFWS) and the East Contra Costa County Habitat Conservation Plan Association (Association) on this effort. The establishment of a preserve system for protection of habitat not already protected and publicly managed is especially praiseworthy.

Public input elements of the Habitat Conservation Plan (HCP) are prominent, including a public advisory committee and an annual public workshop. Uncertainties should be addressed through the adaptive management program, an especially strong element of which is its advisory structure, including an Independent Conservation Assessment Team composed of nationally recognized scientists and resource managers that will perform conservation audits every 5 years. A commitment to this audit frequency and the other elements of the governing structure should be included in the Record of Decision (ROD).

While EPA fully supports the project, we have concerns regarding the uncertainties of preserve land acquisition in areas with conflicting General Plan zoning or in nonparticipating jurisdictions. We request additional information regarding acquisition alternatives to protect covered species, and additional discussion of the impacts of recent urban line limit expansions. Because of the above concerns, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions"). We also have some additional recommendations for mitigation, including the incorporation of smart-growth principles as mitigation for "take" of covered species in developed areas, and some additional protection in the preserves for human disturbance-sensitive species.

EPA appreciates the opportunity to review this DEIS. When the Final EIS is released for public review, please send one copy to the address above (mail code: CED-2). If you have any questions, please contact me or Karen Vitulano, the lead reviewer for this project. Karen can be reached at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

/S/
Duane James, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosure: EPA's Detailed Comments
Summary of EPA Rating Definitions

Preserve land acquisition and local land use plans/policies

The DEIS states that acquisition of preserve lands within the urban limit line (ULL) or within planned areas outside the ULL may conflict with the policy and planning objectives that have been set forth in the city general plans (p. 4-27). Land designated Subzone 2h is high priority for acquisition. Three-fourths of this area overlaps with the City of Antioch General Plan's Sand Creek Focus Area, half which is zoned "Hillside and Estate Residential" or "Golf Course/Senior Housing/Open Space".

The DEIS states there is sufficient flexibility in the descriptions of land use in the Antioch General Plan so that the goals and objectives of both the HCP and General Plan can be met in the overlap areas. Since Antioch is not part of the East Contra Costa County HCP Association (Association), it is not clear what incentive Antioch would have in interpreting descriptions of land use favorable to HCP goals and objectives. A discussion should be included outlining the likely development outcome of this area and how this impacts the preserve system.

Adjustments to the ULL should be thoroughly discussed in the Final Environmental Impact Statement (FEIS). Acquisition of land in subzones 1a, 2e, 2f, and 2g would have moderate or high conflict with the long-range development objectives of the Cities of Pittsburg, Antioch and Brentwood for areas outside the current ULL (p. 4-29). Recent efforts to expand the ULL's of Antioch, Brentwood and Pittsburg should be evaluated in terms of impacts on the HCP.

Recommendation:

The FEIS should discuss what provisions and assurances are available to ensure HCP goals and objectives are met in target acquisition land areas not protectively zoned. Discuss the sufficiency of the preserve system for HCP species without the inclusion of land with high or moderate compatibility conflict. Discuss recent expansion efforts of the ULL in the Cities of Brentwood, Antioch and Pittsburg, and their impact on the HCP goals and objectives. Identify alternatives to protect covered species if acquisition areas in conflict are not available. Explore incentives for cities to rezone key areas of zoning conflict.

Incorporate Smart Growth Principles

The Draft Environmental Impact Statement (DEIS) considered but eliminated an alternative that assumes a "smart-growth" model for eastern Contra Costa County, stating that the proposed project is not intended to direct local land use policy, and that the current general plans are the current guide to future development in eastern Contra Costa County (p. 2-43). The HCP is not intended to supersede general plans, but rather impose restrictions on the general plan

implementation through consideration of regional conservation requirements necessary to protect covered species (p. 2-42).

Smart-growth encourages planned growth which is town-centered, transit and pedestrian oriented, and has a greater mix of housing, commercial and retail uses. While the DEIS dismisses a smart-growth project alternative, it is unclear why smart-growth principles were not included in the HCP as mitigation. The HCP is required to assess and mitigate for impacts of the "covered activities" on "covered species" (p. 2-42). Projects associated with urban growth are a covered activity, and impacts from urban growth activities can be mitigated using smart-growth principles.

Smart-growth principles would significantly enhance the benefits of this regional conservation planning effort, providing habitat corridors, open space, and reducing air and water pollution resulting in significant benefits for both the community and covered species. We recommend the integration of these smart-growth principles into the proposed HCP as nonmonetary "take" mitigation measures. We also suggest a focus on in-fill opportunities and development near existing infrastructure which would be less costly and would reduce the need to utilize undeveloped lands for new development.

Recommendation:

Include smart-growth principles as a conservation measure for mitigation of covered activities in areas where it will benefit covered species, especially for development in areas identified as priority Acquisition Analysis Zones. Explore incentives that will encourage the adoption of smart-growth principles by developers, such as discounts on permit fees or other incentive mechanisms. Add compliance with this smart-growth conservation measure to the procedures of the model implementing ordinance as an avoidance and minimization measure. Encourage the integration of smart-growth principles into local General Plans at their next scheduled update.

Protection of the San Joaquin Kit Fox

The DEIS describes conflicts with the protection of the federally-endangered San Joaquin Kit Fox. Lands identified as high acquisition priority within the City of Antioch also have a high land use compatibility conflict (p. 4-28). The City of Antioch is not part of the East Contra Costa County Habitat Conservation Plan Association. Because of the high likelihood of development in these parts of Antioch, these areas cannot be relied upon for conserving kit fox movement corridors. Mineral extraction in the sector GG mineral resource area is also likely to impact key migration corridors for the fox (p. 5-6).

Recommendation:

The FEIS should indicate if the preserve system is likely to contain sufficient movement corridors for the San Joaquin Kit Fox in light of these limitations. Additional information regarding provisions for the fox should be included in the FEIS, including alternative sites needed for preserving movement corridors in the northern occurrence

areas. When individual take permits for Antioch's Roddy Ranch and other areas with habitat value outside the HCP boundaries are considered, the Implementing Entity should coordinate with these developers to explore potential mitigation in reference to these land areas.

Preserve Recreation Plan

The HCP will include a preserve recreation plan that will allow "passive recreation" including hiking, bicycling and equestrian use (HCP p. ES-6). While the DEIS states that impacts will be minimized and recreational uses will be consistent with HCP goals and objectives, some take (harassment) is expected to occur to covered species sensitive to human disturbance, such as the San Joaquin Kit Fox, Townsend's big-eared bat, and the western pond turtle (HCP p. 4-8). The HCP states that the recreation plan will prohibit access to caves, abandoned mines and abandoned structures to maintain habitat for the Townsend's big-eared bat. Similar protections should be included for the disturbance-sensitive San Joaquin Kit Fox and the western pond turtle.

Recommendation:

As an additional mitigation measure for these disturbance-sensitive species, some portion of the preserve area containing high habitat value for the San Joaquin Kit Fox and the western pond turtle should be closed to public access to avoid take of these covered species.

Miscellaneous

1. Page 3-8: Permits for Fill Placement in Waters and Wetlands (Section 404). First sentence should read "Under CWA, Section 404, the U.S. Army Corps of Engineers (USACE) <u>and the United States Environmental Protection Agency (USEPA)</u> ~~regulates~~ regulate the discharge…"

2. Page 3-9: first sentence on page should read "Compliance with CWA Section 404 requires compliance with <u>the section 404 (b)(1) Guidelines and</u> several other environmental laws and regulations.

3. Page 3-50: 2nd full paragraph, 1st sentence should read "Placement of ~~clean~~ fill materials into waters of the United States is regulated by Section 404 of the CWA, which is administered by USACE <u>and USEPA</u>"