

DEBATE

IS THE PCCP THE BEST WAY TO ACHIEVE CONSERVATION IN PLACER COUNTY?

OR

WHAT IS BEST FOR CONSERVATION AND WHAT IS BEST FOR PLACER COUNTY?

OR

CONSERVATION YES -- PCCP NO

This memorandum is intended to supplement debate comments made by Brigit S. Barnes. Wherever possible we have quoted directly from County Documents.

Proponents assert that the PCCP will provide for conservation of a large contiguous preserve, and developers will be allowed to impact large, complex vernal pools and obtain permits in months instead of years, with no litigation and everything is certain, and, of course, agricultural land and farmers will not be impacted, in fact, they can make a lot of money selling their land for conservation.<sup>1</sup> Important questions need to be asked – and honestly answered. Is the PCCP the best way to achieve conservation in Placer County? Does the PCCP meet the requirements of resource agencies? Does the PCCP preserve agriculture in Placer County? Does the PCCP provide certainty and timeliness for developers?

“As with most controversial issues, the public is very divided on the issue of whether or not the County should proceed with the PCCP program. Based upon comments received during the community forums, approximately 50 percent of the comments received were in favor of proceeding with the PCCP, while the other 50 percent were satisfied with the status quo and did not want to see the PCCP program move forward.” [Staff Report 1/23/07, p. 49]

“If there are no willing sellers, developer cannot proceed with project (objective is to preserve before take).” [12/7/07 County Meeting notes.] So much for certainty.

“For Program to succeed, property owners must turn over their property to conservation.” [Loren Clark, 1/5/07 County meeting notes.] So much for voluntary nature of the Plan?

I stand here opposing the PCCP as presently structured for a number of reasons - as lawyers say, the PCCP and its maps assume facts not in evidence.

Plan participants earnestly want to accomplish the goals of the Plan, but will the Plan accomplish those desired goals? There is no assurance that it accomplishes the goals needed for the development community:

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<sup>1</sup> The higher values will be for land with the desired resources, and vernal pools are scarcer in the reserve area than in the development area.

- Permit streamlining - the arbitrary drawing of the map does not follow the most likely methods of “protection of the species” (the riverine and tributary systems);
- Given the state of litigation, neither the agencies nor the County can provide any assurance to anyone that those development projects most likely to benefit from the PCCP will not have to avoid all important vernal pool clusters, especially associated with waters of the US;
- The costs of the PCCP [\$1.1 billion acquisition, \$10 million per year maintenance, and \$600,000 per year in staff time] are either transferred onto new development, thus raising the cost of housing and commercial development in the County, or on the back of the taxpayers [estimates range from a low of approximately \$4,000 per new home, to a high of \$35,000 per new home];<sup>2</sup>
- The PCCP is Phase I only, and as planned sets standards in Western Placer County which will be carried forward through the foothills and up into Tahoe, where over 90% of the land is already preserved in various types of open space.

The staff report<sup>3</sup> does not claim that the property owners in the “purple” are benefited, for good reason; these are the people whose ox is gored. It is true that parcels of sufficient size in the “purple”, with high habitat values, will probably get a good price for their easement or fee interest; but if the property is already encumbered by federal, state, or local regulations [in the flood plain or riverine system, for example], or has little or no habitat value, that owner will receive a very low offer for his easement or fee interest. The proposed PCCP underscores why this Plan is wrong. Just as district gerrymandering bears no relationship to the facts and circumstances of who actually lives in the district, or how their lives and businesses are connected with the district [e.g., Stockton], but are intended to support the party doing the line drawing, these proposed PCCP maps represent arbitrary gerrymandering, and bear no relationship to accomplishing all the underlying goals identified in Placer Legacy, or to preserving habitat values, and effect a defacto taking of the property owners’ land, and represent line drawing to benefit the City of Lincoln. County staff admits in their analysis that many of the maps presented to the Board have not even been reviewed by the resource agencies, and Alternatives 13 and 14 are admitted political compromises between Supervisor Weygandt and Primo Santini of Lincoln.

What does the PCCP *really* offer, and is it a better way to conserve resources in Placer County? Even County staff says the conservation objectives in terms of acres preserved would

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<sup>2</sup> The enormous difference has to do with two variables - what is counted against total costs, and more important, into what number of homes is the cost divided. If one assumes that in fact all remaining anticipated growth is built and constructed over the life of the Plan in western Placer County, the divisor goes up and the amount per house goes down. If one assumes that these costs will be spread only over the amount of development already in the cue, the cost per house goes up because the number of homes goes down.

<sup>3</sup> All citations are to the Placer County Staff Report dated January 23, 2007 unless otherwise noted. We have provided representative documentation supporting the contentions presented orally in the debate.

be the same with or without the PCCP, because it is based on projected growth that will have to be mitigated. [Staff Report p. 90-Q26.] So the benefit to the species comes down to the claim that the PCCP provides for a contiguous reserve system, and status quo does not. We assert that this premise is flawed, as shown on the resources maps presented at the debate.

Will development be allowed to impact the best and most complex remaining vernal pools in Placer County in exchange for participation in the Plan? Impacting existing vernal pools continues to be unresolved with the agencies, and lawsuits, such as that affecting the City of San Diego's MSHCP<sup>4</sup>, raise significant questions about whether the remaining 20% of the historical vernal pools in Placer County will be allowed to be reduced to 10% by development, even if it appears everyone (County, landowners, developers, and agencies) is in agreement at the time of implementation of the PCCP.

Developers are also promised streamlined permitting and certainty. Again, implemented conservation plans in California have not shown reduced timeframes for permitting large projects, and CEQA/NEPA still has to be complied with. [See The Daily Transcript, 1/10/06 and comments by Steve Holgate, Riverside County Developer.]

### **CONSERVATION IN PLACER COUNTY – IS THE PCCP REALLY BETTER THAN STATUS QUO? PRESERVATION EFFORTS?**

At this point, County staff estimated that 50 percent of comments are in favor of PCCP, and 50 percent are satisfied with status quo and do not want to see the PCCP move forward.

Conservation plans are intended to provide for large contiguous preserves. However, the minimum size for protection is 500 contiguous acres, not thousands [telecon with Ken Sanchez, USFWS 1/16/07 – determined by science committee]. The stream corridors and wetlands, alone, in Placer County comprise large contiguous preserves. The PCCP assumes “that stream corridors will be avoided throughout the white areas. An additional standard for onsite avoidance is not factored in.” [Q47, p. 77]

Most of the counties in the state do not operate under a conservation plan. [Q28, p. 105] Since there are only a few conservation plans that have been implemented in California<sup>5</sup>, what are the lessons learned from those? Is there a better way? And is Placer County taking heed?

Placer County is fortunate, in that 70-80% of the land in the entire County is already preserved by way of federal and state protected lands. Western Placer County consists of grasslands, vernal pools, and oak woodlands, in contrast to the conifer forests of Eastern Placer County. However, in Western Placer County, if the existing preserves [9,532 acres], the existing vernal

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<sup>4</sup> Southwest Center for Biological Diversity, et al. v. Jim Batch and BILD (98-CV-2234-B (JMA)).

<sup>5</sup> Southern California has a number of adopted programs. Northern California is limited to San Joaquin County and the Natomas Basin. [Q28, P. 105] Some of the lessons learned in Southern California include the necessity for stakeholder buy-in, consensus, lack of streamlining, etc.

pools [11,456 acres], and the stream system [32,774 acres] were preserved, almost 54,000 acres would be preserved in Western Placer County. The preservation of the watershed-stream system and adjacent vernal pools would create thousands of contiguous acres without the PCCP.

EXISTING PRESERVES	=	9,532 acres [only in reserve system]
VERNAL POOLS	=	11,456 acres [preserve and development areas]
STREAM SYSTEM <sup>6</sup>	=	<u>32,774 acres [preserve and development areas]</u>
TOTAL	=	53,762 acres

[Source: County Reserve Map Alternative Background and Summary, December 2006.]

The County admits that “avoidance of the existing vernal pools would eliminate the need for the PCCP reserve area.” [Q13, p. 68] Therefore, the primary reason for the PCCP is to allow development to occur and impact the areas with existing vernal pools.

[“To avoid impacts to vernal pools altogether would require a significant modification to the growth patterns that have been contemplated for western Placer County since 1967 when the County adopted its first General Plan.” P. 68]

The existing Placer Legacy Open Space and Agricultural Conservation Program (without the PCCP, which is only one part of Placer Legacy) has already successfully preserved 9,532 acres in the “purple” area.

### STATUS QUO

“... absent the PCCP, the mitigation ratios required by the resource agencies are subject to the changing regulatory environment. It is possible that the ratios, without the PCCP in place, would be higher than the ratios identified in the PCCP. In this case, it is possible that more land would be set aside for conservation without the PCCP in place.” P. 107 – Q6.

“Will the demand for the reserve/purple area increase because there is not enough mitigation land available, and will that result in an increase in value?”

“Response: The staff cannot predict whether land values will go up or down. Without the PCCP properties will still require mitigation and the area where mitigation will occur, for the most part, in the area delineated as ‘purple’ on the various reserve map alternatives.” P. 90 – Q26.

Rebuttal: Whether or not land in the “purple” has species of concern (environmental value), it still needs to be preserved as open space.

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<sup>6</sup> Includes all vegetation types located within 300 feet from centerline of the stream channel.

The County, in addition to the purple, clearly intends to preserve the stream corridors, some vernal pools, and wetlands in the white, as the following quotes indicate.

“Areas designated for development are the areas that will need the greatest amount of regulatory coverage through the PCCP. The majority of the impact will occur in the areas depicted in the white. While it is expected that development will occur to a lesser extent under current zoning and general plan designations in the purple areas, wholesale conversion of the landscape is not anticipated. Some amount of conservation and even restoration may occur in the development areas depicted in white, but real opportunities for conservation and restoration are in the areas depicted in purple.” P 91 – Q31.

“It is expected that certain areas depicted in ‘white’ on the reserve alternative maps will be part of the conservation plan. In particular, the stream corridors with buffers would be a part of the plan and other key resources including vernal pools and wetlands associated with these stream corridors would likely be a part of the plan. Lastly, areas already protected within the ‘white’ areas would be incorporated into the overall reserve system.” P. 92 – Q33.

“Isolated and/or fragmented habitat surrounded by urban development would not qualify, nor would urban parks and other similar features. Floodplains and large, intact landscapes adjacent to PCCP reserve areas may be considered viable. The final determination will be made after a conservation strategy has been prepared which includes buffer standards, size standards and other features of the PCCP reserve areas.” P. 92 – Q34.

“The PCCP reserve area boundary includes the assumption, based upon General Plan policy, that the flood plain areas of western County will be protected and that the resources in those areas can be conserved and restored if acquisitions are made.” P. 93 – Q37.

“There will be incentives for avoiding vernal pool resources in the white areas if the avoidance areas meet certain criteria established in the PCCP and can be located within the contiguous reserve system (such as along stream buffers or adjacent to existing preserved areas).” P. 109 – Q13.

“What are the anticipated resources that will be impacted by the projected 54,000 acres of development?”

“Response: The 54,000 acres of development represents urban development and infill that essentially displaces existing habitat functions and values of a variety of natural community types including grasslands, woodlands, wetlands, and stream systems.” P. 88 – Q20.

## **IS THE PCCP THE BEST WAY TO CONSERVE HABITAT AND SPECIES IN PLACER COUNTY?**

As already stated, the PCCP is claimed to be the only way to have a large contiguous area of open space and habitat. This is simply not true, with the abundant stream system, wetlands,

and flood plains in Western Placer County. The proposed artificially-designed maps - grabbing both species beneficial and non-beneficial lands - are NOT the only way to provide contiguous habitat protection.

In Placer County, it is supposed to be willing seller/buyer. What if they don't want to sell, and instead want to continue farming patterns already established? What if they don't like the price offered? Because once they are in the "purple", the only offers they receive will be as habitat preservation, not as unrestricted agricultural with re-zoning potential.

Under status quo, the County will still have mitigation land for development located in the desired areas. A PCCP is not needed to accomplish that benefit. There is no law requiring NCCP/HCP. At the present time, no new HCPs can be promulgated with a "no surprises" policy because the Fish and Wildlife Service is enjoined pending amended rule making. Spirit of the Sage Council v. Norton, 366 US.App. D.C. 249 (2005). If the County decides not to proceed with the PCCP, the agencies cannot require the PCCP for approval of projects, because there will not be one and one is not required.

Projects that have gone ahead without the PCCP include Del Webb at Twelve Bridges and Bickford Ranch. [Q15, p. 102] The County states that such permits are typically 2-3 years in processing. The PCCP is currently holding projects hostage until it is determined if it will go forward. Even if it does, negotiations with resource agencies are expected to take another 6 months [Staff Report], and the EIR/EIS will take a minimum of a year (more likely 2-3 years). Developers are expecting streamlined processing from the PCCP, and this is an element that the County assumes will make the PCCP cost effective for developers. [Q7, p. 84] So far, implemented plans, such as San Diego and Riverside, have not reduced the permit processing time for developers, and have not brought certainty. [See The Daily Transcript, 1/10/06 and comments by Steve Holgate, Riverside County Developer.]

## **BENEFITS OF THE PCCP VS. DETRIMENTS**

"What are the benefits of preparing a conservation plan?"

"Response: The regulated community benefits with a more streamlined permitting process, increased assurances as to what will be required for project mitigation, pre-established permitting timeframes, among others. From a biological perspective, the PCCP provides for contiguous, landscape scale conservation, ongoing management and monitoring programs, in perpetuity adaptive management practices within the preserve lands, and species-specific goals and objectives. Additionally, the PCCP provides the County with an opportunity for the conservation of natural communities that do not current receive state or federal protections. Federal funding is available to the County for meeting the conservation goals the PCCP establishes for these habitat types (e.g. woodlands, waterfowl habitat, riparian).

"The regulated community can proceed with the understanding that the ratios will not be changing five, ten, or twenty years down the line. However, absent the PCCP, the mitigation

ratios required by the resource agencies are subject to the changing regulatory environment. It is possible that the ratios, without the PCCP in place, would be higher than the ratios identified in the PCCP. In this case, it is possible that more land would be set aside for conservation without the PCCP in place.” P. 107 – Q6.

Rebuttal: This is the “no surprises” policy presently enjoined in Spirit of Sage Counsel v. Norton. There is no mention of “benefits” for the property holder.

San Diego County’s Multi-Species Conservation Plan (MSCP) was adopted in 1997. It takes nearly four years to process an environmental impact report and an average of 14 months to process a negative declaration. The San Diego County Planning Commission set a goal to bring the figures down to 22 months for an EIR and nine months for a negative declaration. [The Daily Transcript, 1/10/06]

In Riverside County, nothing has changed in permit processing with their conservation plan. The developers were promised (1) a quicker process, and (2) after fees were paid, they could develop the property. That is not happening. [Steve Holgate, Property Developer in Riverside County]

During planning of the Western Riverside Multiple Species Habitat Conservation Plan, they talked a lot about an efficient, streamlined regulatory process, but during implementation they just forgot about it. [Paul S. Weiland, Nossaman, Guthner, Knox & Elliott, LLC, speaker at Habitat Conservation Planning from Tahoe to the Bay, 12/6/07 (HCP Seminar)]

## VERNAL POOLS

Who has jurisdiction?

Wetlands – U.S. Army Corps of Engineers  
Endangered Species – U.S. Fish and Wildlife Service

Wetlands under the Clean Water Act are "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." [Taken from the EPA Regulations listed at 40 CFR 230.3(t)]

“The definition of a vernal pool is determined by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service, the regulatory agencies that have jurisdiction over these wetland types.” [See Staff Report p. 72 Q24.]

**“Vernal pool creation is being discouraged by the wildlife agencies as the basis of a conservation strategy.” P. 88 – Q22.**

**Therefore, the plan is supposed to be for conservation of existing vernal pools, without consideration of the possibility for creation or restoration.**

## **CORP OF ENGINEERS – CWA 404 PROCESS**

Placer County and East Contra Costa County are the first plans attempting to include wetlands permitting (404 permits) by the Corps of Engineers. In San Joaquin County, they also planned to include Corps permitting; however, the Corps walked away from the HCP process at the eleventh hour, so their permitting was not included. [Steve Mayo, San Joaquin COG.]

### PRO

Letter from Thomas J. Cavanaugh 11/27/06 – states the HCP/NCCP would reduce the timeframes associated with processing Department of Army Corps permits from years to a fully coordinated process that can be completed within a few weeks – a precedent setting accomplishment.

“The clear result of fully implementing the proposed program will be effective landscape scale conservation coupled with an ability to provide certainty and more timely coordinated responses to the regulated public.”

### CON

The scope of “waters of the US” is unclear after Rapanos v. United States (2006) 126 S. Ct. 2208. In the Rapanos case, federal regulators, states, property rights activists, and environmental groups all hoped the U.S. Supreme Court would clarify the meaning of the phrase “waters of the United States” and the extent to which the U.S. Army Corps of Engineers’ (Corps) jurisdiction under § 404 of the Clean Water Act extends to wetlands and other non-navigable waters (wetlands not physically adjacent to navigable waters). However, there was no majority opinion, so the lower courts will have to continue to decide on a case-by-case basis whether there is a significant nexus, with inconsistent results. This leaves the Corps and its mitigation of wetlands, streams, and vernal pools vulnerable to litigation.

The Corps’ national standard is no net loss of wetlands function applied on a wetland-by-wetland basis, thereby seeking avoidance to the maximum extent. Therefore, conservation plans tent to be undercut by the avoidance standard of the Corps.

## **OTHER HCP/NCCPs**

### LITIGATION

As the County states, the PCCP does not eliminate the possibility of litigation.

“The PCCP can reduce the threat and possibly the scope and scale of litigation but there is simply no means of predicting to what degree, if any this can occur. All that we have to evaluate is the current trends which involve a considerable amount of litigation, at the local, state and federal level on matters related to wetlands and endangered species regulations.” P. 100 – Q14.

Obviously, San Diego City’s plan, which is similarly concerned with vernal pools, has been stopped by litigation. Furthermore, lessons learned in Southern California emphasize the importance of choosing species wisely, because applicants are responsible for mitigation, management, and monitoring for all covered species, and will be sued on species not adequately covered. [Habitat Conservation Planning from Tahoe to the Bay, 12/6/06, Regional HCP’s Lessons Learned, Southern California Ecoregion.]

### OTHER HCPs

Most counties in the state do not operate under a conservation plan. “Southern California has a number of adopted programs similar to the PCCP. Northern California is limited to San Joaquin County and the Natomas Basin in terms of region-wide multi species plans.

### RIVERSIDE

Paul S. Weiland spoke at the HCP seminar on Early Lessons from Implementation of the Western Riverside Multiple Species Habitat Conservation Plan. Under Early Successes & Failures he stated:

- After 8 years, conservation of 23,382 acres of land previously under private ownership as of December 31, 2005 (or more than 15% of the total acreage required to meet the Plan goal of 153,000 acres).
- Rough step analysis by the Regional Conservation Authority demonstrates that the Plan is out of step for 18 of 37 key vegetation communities as of December 31, 2005.
- Efficient, streamlined regulatory process?

When asked if the HCP had resulted in an efficient, streamlined regulatory process, Mr. Weiland answered: “We talked a lot about it during the planning, but just forgot about it during implementation.”

Developers within the region have confirmed that with adoption of the Plan, their projects are still taking 6-8 years to process, even though the County is collecting \$10,000 per unit on average.

### CITY OF SAN DIEGO FEDERAL COURT DECISION

In October 2006, U.S. District Court Judge Brewster issued an immediate injunction requested by the Center for Biological Diversity’s challenge to all development plans within the City of San Diego’s multi-species habitat conservation plan [MSHCP] which were not substantially

complete. The City sent out notice to all participating developers, including Pardee Homes, to stop processing. The District Court refused the Building Industries request for a stay pending appeal, ordering immediate enforcement of the injunction.

The basis for the District Court's decision is that Fish and Wildlife Service (FWS) inadequately protected seven species, including fairy shrimp, because no "incidental take" permit should have been issued for these species because so little habitat was left within the plan, and because the financial assurances to provide funding for acquiring conservation property was vague and noncommittal. Sound familiar? To make matters worse, the City Attorney for San Diego has interpreted the District Court's order to apply to all incomplete development applications pending under the MSHCP, even those where no destruction of vernal pools was planned, and even where the developers had sought and obtained separate section 7 incidental take permits.

This means that at least one federal court believes even limited destruction of species and habitat is unacceptable. Similarities to the assumptions of the Placer County Conservation Plan are: San Diego 97% vernal pool complexes already destroyed / Placer County 90% already destroyed or degraded. The case is being heralded by the environmental community as the basis for successful attack against conservation plans nationwide.

Copies of FWS letters of interpretation, the City Attorney's letter, an analysis of the ruling and its impact on development interests in San Diego, and the local newspaper article are included in the documents attached. See also, Southwest Center for Biological Diversity, et al. v. Jim Bartel, Gale Norton and Building Industry Legal Defense Foundation, Case No. 98-CV-2234-B(JMA).

## AGRICULTURE/PROPERTY RIGHTS

The PCCP overlays a preserve on the agriculture-zoned land in Western Placer County. This preserve directly affects the property value and dictates land use, conversion of agriculture land to a biological preserve. Placer County claims "The PCCP does not change the general plan land use or zoning designation of any property. However, properties acquired through the program in fee title may see a change in zoning and general plan to accurately reflect their conservation value. Lands within the boundary of the reserve area can continue to conduct activities allowed under the zoning and general plan designations over time." P. 93 – Q36.

Converting agricultural land to a biological preserve, attracting migratory birds to feed on the crops, and preventing pesticide spraying **in essence eliminates agricultural resources in favor of biological resources**. "Agriculture economies and cultures need equal footing with species biology." [Paul Henson, USFWS, speaker at Habitat Conservation Planning from Tahoe to the Bay, 12/6/07]

Although the County says there will be no General Plan or zoning changes in the purple area currently zoned agriculture, areas in the white are currently designated “Agriculture” on the County’s General Plan—Map 1, and will have to be rezoned for development.

“Approximately 1,125 property owners are located in the purple boundary. Of this total approximately 445 property owners own land most suitable for the reserve system (i.e. parcels >20 acres in size).” P. 85 – Q10. What happens to the 680 owners whose land is not suitable for ecological preserve treatment?

The County says: “Property owners in the purple areas will still have the ability to farm their property (or conduct any activity permitted by the County’s Zoning Ordinance) or sell to an interested party if so desired. If a property owner in the purple area wishes to sell their property or an easement on their property for incorporation into the PCCP reserve system, they would have the ability to do so.” P. 106-107 – Q3.

Rebuttal: This ignores market realities of what a PCCP reserve designation does to the value and prospective use of the property.

The imposition of the “purple” designation means that in perpetuity, that property can only be used for those types of agriculture which the agencies perceive as not conflicting with the recovery of targeted species [grazing land may be compatible with vernal pools, but disking for crops (row and field crops) is not compatible; then there is the issue of herbicides and pesticides].

Statements by Steve Mayo, San Joaquin COG at the HCP seminar regarding the San Joaquin County HCP: “Agriculture is huge in the area—it’s a rub that has to be resolved.” And “Always have to have consensus with agriculture, environmental, and building.”

“Has the County calculated the loss in value to properties that are placed in the reserve/purple area?

“Response: Staff does not agree that land located within the purple areas would be devalued. Land in the purple areas on the reserve maps will not be rezoned. The majority of these lands are zoned for agricultural uses. Property owners in the purple areas will still have the ability to farm their property or sell to an interested party if so desired.” P. 86 Q-15.

Rebuttal: But Government Code §65913.2(a) requires local agencies to zone adequate land for housing needs as identified in the general plan. The County states that the alternative maps accommodate the projected SACOG growth in Western Placer County to 2050. Staff also states that growth in the foothills is very unlikely. However, 65% of land conversion and 36% of the population are projected to occur in the infill areas of east Western Placer County. How can this be accommodated? Implementation of the PCCP will require new or amended land use policies and land use regulations. Densities in the urban and rural residential areas will need to be increased to achieve the projected new growth in the eastern infill areas, requiring rezoning and General Plan Amendments. [PCCP p. 6-6] Infrastructure is also lacking for

development in those areas. The County claims population needs are merely shifted east to the balance of Western Placer County. This ignores the topography of Placer County, the lack of infrastructure and rural/urban population conflicts, resulting in no place for adequate housing [see Map 14 as marked up].

If the County runs out of willing sellers, we are stuck—cannot deliver on conservation—will hear from agencies in time. [Loren Clark, 1/5/07 County meeting notes.]

“[M]any agricultural interests support plans such as the PCCP because they are viewed as implementation of agricultural conservation policies—reducing the intrusion of incompatible land uses and allowing agricultural landowners to capitalize the habitat/mitigation value of their property.” P. 86 Q17.

Rebuttal: But in San Joaquin County the Farm Bureau walked away and does not support the plan, because it felt the habitat is contradictory to farming land. [Steve Mayo, San Joaquin COG.]

“ 24. If a developer is required to provide off-site mitigation for vernal pools, will the receiving area be required to stop agricultural uses and have the land converted to vernal pools?”

“Response: Much of the potential PCCP reserve system would be located within the County’s farm lands. Some level of restoration may occur through the PCCP; however, a focus of the proposed PCCP has been on the conservation of existing vernal pool resources. Once vernal pools are restored on a landscape, those areas can continue to be grazed.” P. 90 – Q24.

Rebuttal: The PCCP is looking for existing vernal pools in farm lands for mitigation, and traditional farming (row and field crops) will not be consistent with conserving vernal pools, but grazing is consistent.

“With the PCCP, can I still farm my property in rice?”

“Response: Property owners in the purple areas will still have the ability to farm their property (or conduct any activity permitted by the County’s Zoning Ordinance) or sell to an interested party if so desired. Agricultural activities are not covered under the PCCP. As such, regulatory permits that may be required as a result of rice farming activities would need to be obtained individually, as in the status quo regulatory environment.” P. 110 – Q20.

So this means farmers are fully regulated under their zoning; there is no regulatory relief for farmers under PCCP.

Agriculture land was chosen for conservation because it is not highly fragmented and is less costly. More fragmented, higher cost land in the foothills was not considered for conservation, regardless of habitat values. “[A]pproximately 243 parcels (27,000 acres) are under a Williamson Act contract in the Alternative 14 purple reserve map area.” P. 113 – Q35.

## SPRAYING

“Is it true you are not allowed to spray for mosquitoes?”

“Response: An answer for this question is not known at this time.” P.110 – Q19.

San Joaquin County HCP – Steve Mayo, Joint Powers Authority stated: agriculture is huge in the area – “the rub that has to be resolved.”

## **COSTS**

Applicants (developers) are responsible for mitigation, management, and monitoring (funding) for all covered species.

“Is a program such as the PCCP cost effective for developers?”

“Response: Unfortunately this question is nearly impossible to answer because there are so many variables associated with status quo costs and they change from project to project. It is assumed that the PCCP is cost effective because it reduces the time to get permits, has the potential to reduce mitigation ratios and creates a more predictable and certain regulatory environment.” P. 84 – Q7.

Cost assumptions: “Conservations easement values would be approximately 50% of the fee title acquisition value. There is an overall assumption that 60% of the acquisitions would be fee title and 40% would be conservation easements.” P. 87 – Q18.

“Small parcels are typically too fragmented and too expensive to acquire as part of the reserve system.” P. 88 – Q21.

“Who pays for the maintenance and management costs (the ongoing costs)?”

“Response: Many of the ongoing costs will be financed by the individual projects requesting coverage under the County’s PCCP permits; however, the specifics of funding the ongoing costs has not been determined and will ultimately be a decision made by the Board of Supervisors. The *Preliminary PCCP Financing Plan Discussion*, dated July 11, 2005, provides a range of public and private financing alternatives for implementation of the one-time and ongoing costs associated with the PCCP. The PCCP Finance Plan can not be prepared until such time that the conservation strategy is complete, which in turn is based upon the selection of a reserve alternative map.” P. 114 – Q38

Rebuttal: However, Hausrath Economics Group prepared a draft “Local Government Impacts of the Placer County Conversation Plan” [8/12/05]. In it the consultant identified the following costs: \$1.3 billion in acquisition costs; and \$8-10 million in annual maintenance. Information we have received indicated Placer County has already spent under Placer Legacy a net of about \$8 million as of June 2006, plus a net in staff expenditures of \$3.2 million under the PCCP, for

a total of over \$11 million since 1998 [\$1.1 million allocated to Placer Legacy staff time since 1998, which is \$140,000 per year, and \$869,000 so far on PCCP, which is about \$174,000 per year = \$314,000 combined per year].

According to the Hausrath report, PCCP will spend \$1.3 billion to acquire preserve in Western Placer County, compared to \$1.6 billion to build and maintain roads in the same area during the same time period. The question becomes, is this how the taxpayers want their money spent? When the voters were asked to vote on Placer Legacy, they refused to pay for it. [Source: Hausrath report, attached.]

## MAP SELECTION

In terms of the proposed maps, it is a matter of which developers, including the City of Lincoln, win. Is the County really willing to decide this by implementing a PCCP that will have to favor some developers over others from the get go? This situation does not arise under a status quo scenario. So which is really fair?

Staff summary/action requested for 1/23/07 states staff has concluded that **Maps 4, 6, 12, and 14** are the best alternative reserve maps that meet the current and future needs of Placer County and the City of Lincoln, while still meeting the LEDPA requirement, p.1. This is very carefully worded, because the Staff Report provides the below information.

Resource agencies have indicated the following maps may be a sufficient reserve design: 2, 4, 6, 7. [Although not reviewed by the resource agencies, staff considers Map 12 is not likely to be acceptable and Map 14 has already protected mitigation land slated for development, which is also not likely to be acceptable.] Staff Report 1/23/07, pages 13, 21, 25, 27, 37, 41. Therefore, only Maps 4, 6, and 12 are likely to be acceptable to both agencies and the City of Lincoln. So why is Map 14 even being considered?

Map 12. “Obtaining Clean Water Act permits would not be possible with this reserve design.” “While the resource agencies have not reviewed this alternative, it is staff’s opinion that the reserve system identified in alternative 12 proposes too much urban edge along the reserve system boundary and does not preserve sufficient wetlands, including vernal pools, to achieve a LEDPA determination under the federal Clean Water Act. Thus, permits could not likely be obtained with this alternative.” [Staff Report 1/23/07, page 37.] Note: The Corps’ concern about urban edge needs to be considered. The hard urban edge on the maps is an outline that simply represents the area from within which reserve parcels would be acquired. A hard line urban edge presents concerns to the wildlife agencies because of the incompatible nature of the two land uses. Even adjacent white property is at risk. Alternative Map 12 was prepared by the City of Lincoln and County staff, and accommodates all the growth objectives of all the Specific Plan applications under review by the County, as well as growth in the Curry Creek Community Plan area and in the Sunset Industrial Area. The City of Lincoln could achieve most of the growth levels it desires.

Map 14. “The resource agencies have not reviewed this alternative. Of greatest concern to staff is that approximately 800 acres of currently protected mitigation land is proposed to be unencumbered and made available for development. Based upon comments from staff at the wildlife agencies, the potential for the wildlife agencies to allow for mitigation property to be unencumbered is highly unlikely.” Staff Report 1/23/07, page 41. Why should the Board of Supervisors consider a map which intends to allow development of previously protected habitat?

Map 4 was prepared by the environmental stakeholder subcommittee. This alternative would not allow the proposed Placer Ranch Specific Plan or Brookfield projects to proceed. Portions of the Sunset Industrial Area are proposed for the reserve.

Map 6 was prepared with input from resource agencies, and although it accommodates growth in the Regional University Specific Plan and Curry Creek Community Plan areas, it limits growth in portions of Placer Vineyards Specific Plan, and completely removes urban growth in the Placer Ranch Specific Plan and within the Brookfield project site.

Why Map 14 over Map 13? Both identify Curry Creek Community Plan area for land conservation; but in Map 13, no already protected land is proposed to be unencumbered. Therefore, Map 13 has greater potential to meet the requirements for the environmental permits the County is seeking.

Question: Any criteria for why in purple (especially if purple can be in white) or why in white? Answer: Rural residential versus agriculture. White so fragmented, unlikely to have conservation value. Very little white is zoned agricultural – zoned rural residential. [Loren Clark, 1/4/07 County meeting notes.] But go back to vernal pool maps – are those to be avoided or developed over, even if designated rural residential?

Which maps have had agency input? Answer: Maps 2, 4, 6, 7. Map 14 has no input from wildlife agencies, but can be baseline for negotiations. [Loren Clark, 1/4/07 County meeting notes.]

Why was Map 14 submitted to the Board of Supervisors as baseline? Answer: Staff decided it was a good compromise map and a starting point. [Michael Johnson, 1/4/07 County meeting notes.] The compromise is between the City of Lincoln and Placer County. Primo Santini and Supervisor Weygandt selected Map 14 (according to Weygandt 12/20/06 meeting). “Why did staff endorse Alternative 14 in November? Response: Alternative 14 represents a map that is a compromise between the growth objectives of the city of Lincoln and the proposed projects in the County.” P. 112 – Q30.

But the County says the reserve map is wildlife agency driven: “The primary concern raised at the interagency working group was the need for the County to select a reserve map that can serve as the basis for refinement and more importantly to serve as the basis of a conservation strategy. This reiterates the position the agencies took when they wrote their June 2005 letter regarding the need for a reserve map that specifically depicted where conservation and

mitigation was to occur and where development was anticipated.” [Staff Report 1/23/07, p. 7.] So why would it propose Map 14? Map 14 will preserve 55% of Vernal Pools regardless of value (according to Weygandt 12/20/06 meeting). Based on the San Diego case holding, 55% of 20% will not be enough.

### NO CONSENSUS ON MAP PREPARATION

All undeveloped land located within the future PCCP reserve system would be considered important for the ecological viability of the reserve, providing foraging, shelter, dispersal, and breeding opportunities for wildlife species covered under the PCCP Program. [Community Forum 1/7/07 p. 65.]

Statements by representatives of the Southern California Ecoregion at the HCP seminar: “Involve the stakeholders early and often. Ownership and buy-in from participation are essential.”

“What are the criteria used to determine whether a property is shown in purple or what makes you white?

“Response: ... After integrating the core reserve areas with additional buffer lands to provide for flexibility in the system, the land development objectives of the City of Lincoln and the growth footprints of the Specific Plan applications under review by the County were incorporated. These development footprints were shifted based on various growth or conservation objectives in order to create Alternative maps 1-14.” P. 111 – Q25; and “It will be necessary to make a compromise on the alternative selected as no one alternative meets the needs of every interest group.” P. 81 – Q6. But there is no consensus of stakeholders on an alternative map.

“The goal has been to have a reserve map that can be endorsed by the stakeholders but we have not successfully identified a map to which all can agree.” P. 96 – Q1.

“It is extremely challenging to accommodate the proposed projects in the County and the proposed growth in Lincoln while still maintaining a reserve map footprint that meets the requirements of a regional LEDPA and serves as a regional conservation strategy. Ultimately it will be the decision of the County Board of Supervisors and the City Counsel which reserve map the PCCP will proceed with.” P.85 – Q8. [So much for buy-in of stakeholders.]

Agriculture, developers, environmentalists, the City of Lincoln, and the County have not sat down in one room together to even attempt to slug out a consensus. What is needed is buy-in, but the various groups were kept separated until December 2006.

## **GROWTH / GENERAL PLAN AMENDMENTS**

The County consistently responded to agriculture's concerns that there would be no General Plan or zoning changes to agriculture land. However, on one occasion, it was stated: "Properties acquired through the program in fee title may see a change in zoning and general plan to accurately reflect their conservation value." QED "down-zoning". [P. 93 Q36]

### GENERAL PLAN AMENDMENTS

The PCCP 6-6, paragraph 15 states: As a result of the PCCP, the general plans of the county and any participating cities will likely be supplemented by policy amendments, specific implementing ordinances such as zoning ordinances, and procedural requirements for development permitting and CEQA compliance.

### DIRECT CONFLICT

"The PCCP reserve area does not change the General Plan or zoning designations on any property, either inside or outside the reserve boundary. Consequently, property can be developed consistent with its current land use designations with or without the PCCP." P. 70 – Q19. "The reserve area does not change the General Plan or zoning designations on any property either inside or outside the reserve boundary." P. 71 – Q22, P. 74 – Q32.

But, "Portions of the Regional University project and the Placer Ranch project will require General Plan amendments. However, the impacts to vernal pools in these areas are limited. While the Placer Vineyards project has significant vernal pool impacts, the General Plan designation for Placer Vineyards for approximately 14,500 units dates back to 1994. To avoid impacts to vernal pools altogether would require a significant modification to the growth patterns that have been contemplated for western Placer County since 1967 when the County adopted its first General Plan." P. 68

It is still unclear what General Plan and zoning changes will be necessary under PCCP.

### GROWTH/DEVELOPMENT OPPORTUNITY

The white are dominant areas of development and accommodate 50 years of growth. We believe they can accommodate 50 years of growth—densities will get higher. [Loren Clark, 1/5/07 County meeting notes.]

"The PCCP accommodates growth through the year 2050, accommodating population numbers beyond which is identified in the SACOG Blueprint." P. 109 – Q 17.

Rebuttal: But who comes to the County to live densely populated? People move to cities for that.

*See next page for list of attachments*

***ATTACHMENTS:***

- Excerpts from Spirit of the Sage Council, et al v. Gale A. Norton
- Excerpts from Hausrath Economics Group 8/12/05 Draft Report
- The Daily Transcript 1/10/06 Article regarding San Diego Plan
- Placer County Conservation Plan – Update prepared by Brigit S. Barnes and Susan M. Vergne, dated 2/8/06
- Brigit S. Barnes & Associates, Inc. letter to Board of Supervisors comparing Placer Legacy and PCCP, dated 1/24/06
- Brigit S. Barnes & Associates, Inc. memo to Board of Supervisors, dated 11/17/05
- Trends Articles regarding Rapanos v. US
- North County Times 7/31/06 Article regarding San Diego County Habitat Plan
- Excerpts regarding Southwest Center v. Batel (San Diego multi-species litigation), 10/16/06
- Maps:
- PCCP Alternatives 1, 2, 3, 3A, 3B, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14
- Protected Open Space in Eastern Placer County, Map 28
- Public Land Ownership Map No. 10