

Memorandum

To: Loren Clark; Sally Nielsen

From: Sally Van Etten Date: May 11, 2009

Re: Updated PCCP funding and financing alternatives

Introduction

This memorandum provides an updated summary of potential funding and financing alternatives for the Placer County Conservation Plan (PCCP). It updates a previous memorandum that was prepared in July 2005. As with the July 2005 memorandum, it provides a preliminary evaluation of alternatives that could be considered in the PCCP Financing Plan. Much of the funding and financing alternatives are unchanged from the 2005 memorandum. However, the information reflects Willdan Financial Service's recent similar research and work, including recent work on the Santa Clara Valley Habitat Conservation Plan. The memorandum is also intended to remind PCCP decision makers about strategic issues and corresponding policy decisions that need to be made regarding the PCCP Financing Plan.

A wide variety of funding sources and financing mechanisms are available to local governments. But their applicability to the PCCP Financing Plan varies substantially because of statutory constraints and political challenges, including the need for voter approval in some cases. Additionally, there are differing legal interpretations regarding the use of several funding mechanisms for habitat mitigation. Please note that no legal review by County Counsel or outside counsel of the potential funding mechanisms has been requested or conducted at this point. Such review may be needed if certain funding sources are to be pursued in the Financing Plan.

This updated memorandum is organized under the following sections:

- Overview of Funding and Financing Alternatives;
- Potential Funding Sources; and
- Strategic and Policy Issues.

Overview of Funding and Financing Alternatives

An overview of the sources and uses of funds for HCPs and the criteria to evaluate them is helpful to understanding the funding needs and challenges of

the PCCP Financing Plan. This section briefly outlines potential funding sources and describes criteria to evaluate alternatives and meet strategic objectives. Specific costs associated with the PCCP are being updated as of the writing of this memorandum and will be provided separately.

Funding alternatives

We reviewed several Habitat Conservation Plans (HCPs) for funding and financing alternatives, including Coachella, East Contra Costa County, West Riverside County, and North Natomas Basin. Many of the financing plans for these HCPs rely on land dedications and development mitigation fees for a significant portion of one-time costs associated with the plans.

Other funding alternatives include:

- General taxes
- Special taxes
- Special Assessments
- Land or water swaps
- State bond measures

State/federal loan programs

- Property-related fees and charges
- Land/ water management agency funds
- Federal and state land acquisition
- Grants (federal, state, and private)
- Private land acquisition

Criteria for Potential Funding Sources

Funding sources should be evaluated based on specific criteria. The application of the same specific criteria to each funding sources allows the comparison of varying funding sources and identification of preferred sources. Evaluation criteria include:

Uses of funds:

Can the source of revenue be used only for one-time (capital) costs, ongoing (operating) costs, or both?

Can the revenues be used to pay back debt financing?

Are there nexus constraints on the revenue source?

- Source of funds: Is the source local or from a state or federal source? Do all users pay or only new developments?
- Revenue characteristics: Is the revenue source stable? Is the amount of funds available enough to cover a significant portion of costs?
- Approval requirements: How difficult is it to obtain approval? Does the source require voter approval?
- Legal considerations: Are there potential legal challenges to using the revenue source for an HCP?

Potential Funding Sources

A variety of potential funding sources available for HCP funding in general and PCCP funding specifically are presented in this section. Each funding source is first briefly described. Next, potential opportunities and constraints are identified. The category of costs (one-time and/or ongoing) each funding mechanism might best address is discussed.

Generally speaking, almost all of the funding mechanisms presented would be suitable for funding one-time costs. Some funding mechanisms may be restricted or be less suitable for funding ongoing costs.

A matrix summarizing the funding options by the evaluation criteria follows the descriptions and discussion.

Local sources

Parcel Tax

Parcel taxes are a type of excise tax on the use of property. Widely used throughout the state, these taxes are adopted as a special tax dedicated to specific purposes. All special taxes require two-thirds voter approval. Thus, the greatest challenge for this funding source is gaining countywide voter approval.

The greatest advantages of a parcel tax are (1) the large and stable potential funding base from a countywide tax, and (2) the flexible use of revenues. Parcel taxes are usually levied as a flat amount per parcel with variances by major land use categories. The parcel tax rate must not be correlated with assessed value to avoid being considered a property tax subject to the constraints of Proposition 13. The parcel tax on a specific property need not be correlated with the benefit received by that property from the expenditure of tax revenues.

Sales Tax

A sales tax is another type of jurisdiction-wide excise tax, in this case imposed on retail sales transactions within the jurisdiction. Voters can elect to increase the sales tax in one-eighth of a cent increments. The sales tax would share the same advantages (broad-based, steady, and flexible funding source) and disadvantages (voter approval) as the parcel tax discussed above.

An increase in the sales tax for general uses requires voter approval by a simple majority. For a special sales tax, two-thirds voter approval is required. A potentially effective approach would be to include some habitat mitigation funding in a broader sales tax measure to fund popular transportation improvements. Santa Clara County has been successful in passing a split ballot measure sales tax for regional transportation funding.

In the Coachella Valley area of Riverside County, approximately \$30 million from a half-cent sales tax measure for transportation improvements is being allocated to habitat mitigation as is approximately \$121 million in the Western Riverside

Multiple Species Habitat Conservation Plan. This funding offset costs attributable to the direct, indirect, and cumulative effects of transportation projects on natural habitats.

Local/Regional Infrastructure Mitigation Payments

This revenue source is generated by local public agencies in connection with mitigation of infrastructure projects. Individual cities or other public agencies (parks district, water district) would make payments or acquire land to offset the impacts of projects. For example, the Coachella Valley HCP includes the acquisition of 550 acres by the Coachella Valley Water District to mitigate habitat impacts of the Whitewater River Flood Control Project.

Land Dedication / In Lieu Habitat Mitigation Fee

These funding sources are exactions imposed on new development by the local agency with land use regulatory power. The County has this authority in the unincorporated areas and each city has this authority within their respective jurisdictions. Conditions of approval for a development project would include dedication of adequate habitat land in perpetuity sufficient to mitigate the negative impacts of the project based on the requirements of the PCCP.

As an alternative to or in addition to land dedication, the project could pay a habitat mitigation fee. The fee would be calculated to fund the one-time costs of acquiring and restoring the land that otherwise would have been dedicated. The County has this authority in the unincorporated area and each city has this authority within their respective jurisdiction.

Important considerations regarding land dedication and in lieu habitat mitigation fees as they relate to the PCCP or any other HCP Financing Plans include:

- Authority to impose this type of exaction may be derived from several sources including state and federal regulatory requirements to preserve threatened and endangered species, the Subdivision Map Act², and the mitigation of environmental impacts identified through the California Environmental Quality Act (CEQA).³
- Infill development on existing lots not requiring further discretionary approval for development would not be covered. (Note that infill on existing lots represents a relatively small share of total development projected by the PCCP.)

Land dedications and/or fees are one of the most commonly used funding mechanisms for habitat conservation plans in California.

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¹ MuniFinancial, Local Development Mitigation Fee, fee study completed for the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan, 2007. Western Riverside Multiple Species Habitat Conservation Plan (June 2003).

² California Government Code Section 65913.8.

³ Exactions must conform to the "dual nexus" and "rough proportionality" constitutional tests described in case law.

Land dedication has a distinct advantage over other funding sources. Although recently land prices may have decreased, historically land prices are highly variable and frequently annual increases in land prices can be significant in areas subject to development pressure such as Placer County. Land dedication avoids the need to incur appraisal and other costs necessary to continually update land values to ensure that the habitat mitigation fee and any other funding sources for land acquisition will increase with land price escalation over time.

One-time fees could be justified to fund ongoing costs in perpetuity through contributions to an endowment, though the statutory authority is unclear. A clear justification exists to augment habitat mitigation fees sufficient to fund management of the habitat required to mitigate impacts of the development project paying the fee. Indeed some fees imposed on new development as part of existing habitat conservation plans fund ongoing costs.⁴

However, in general one-time fees on new development, including in lieu mitigation fees and development impact fees (discussed below) rarely fund ongoing costs. Furthermore, there may be a statutory constraint on the use of fee revenues for operations and maintenance.⁵ Further legal analysis is needed to determine whether fee revenues could be used for ongoing costs.

Development Impact Fee

Another type of exaction on new development is the development impact fee imposed under the Mitigation Fee Act⁶. Similar to the in lieu habitat mitigation fee, this fee could be based on the type of habitat being developed ("taken") by the project. Unlike the in lieu habitat mitigation fee, this approach would not be based on a land dedication requirement. However, a development project could choose to dedicate habitat and receive a credit against the impact fee due.

An advantage of the impact fee compared to the land dedication/habitat mitigation fee is the possibility to impose the fee on all new development including infill projects. Impact fees must be adopted based on findings of reasonable relationships between the development paying the fee, the need for the fee, and the use of fee revenues. Further technical and legal analysis is required to establish this relationship for infill development, though this probably could be done based on the indirect and induced impacts of growth on the loss of habitat.

As discussed above regarding habitat mitigation fees, further legal analysis is also needed to determine whether fee revenues could be used for ongoing costs.

⁴ See for example mitigation fees adopted for the Western Riverside County Multiple Species Habitat Conservation Plan and the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan.

⁵ California Government Code Section 69513.8.

⁶ California Government Code Sections 66000 through 66025.

Conservation Easements

Conservation easements are a funding source in the sense that they reduce the cost of land acquisition. A conservation easement purchased from a landowner requires that the land remain in its current state in perpetuity. Easements preserve habitat without transferring title to a public entity. The landowner can continue certain farming or grazing activities if those activities are compatible with habitat requirements.

This funding source is only for land acquisition and does not fund any ongoing costs such as reserve management or biological monitoring.

Community Facilities Districts (Special Tax)

The Mello-Roos Community Facilities Act of 1982 enables the formation of Community Facilities Districts (CFDs) by local agencies for the purpose of imposing special taxes on property owners. CFDs are primarily used as a way to finance public facilities with debt financing secured by a lien on property within the district, though certain ongoing public service costs may be funded as well.

Important considerations regarding CFDs as they relate to the PCCP Financing Plan include:

- CFD approval requirements make this funding source primarily attractive to development projects on undeveloped land.⁸
- A key advantage of this funding source compared to benefit assessment districts is flexibility. CFDs impose special taxes on property owners not special assessments discussed below with regards to benefit assessment districts.

The amount of special tax paid by land use type can be based on any type of rate and method approved by the property owners when forming the CFD. This allows the developer significant flexibility to spread the burden of the special tax across different land uses within the district as economic factors warrant.

Special tax revenue may be used for a broad range of public capital facilities and services designated in the law. Unlike special assessments, special taxes are not constrained by the special benefit received by a property.

CFDs can fund open space whether located inside or outside the district.

 One possible limitation of the use of special tax revenue may be for ongoing costs. Further legal analysis is needed to evaluate this issue.

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⁷ California Government Code Sections 53311 through 53368.

⁸ Areas with fewer than 12 registered voters can form a district with a two-thirds property owner vote based on acreage essentially allowing the developer(s) to form the district. Areas with 12 or more registered voters require two-thirds registered voter approval making this approach less attractive for developed areas.

 Similar to benefit assessments, CFD special tax liens on property may be used to secure debt financing. Debt capacity is limited by:

A minimum ratio of the value of a property to the property's share of debt in case of default, typically no less than 3:1.

A maximum annual property tax rate of two percent of market value, including the base property tax, the CFD special tax, and all other overlapping debt, assessments, and charges.

There are several examples of CFDs funding open space and habitat preservation. Solano County and the City of Fairfield have used a CFD to fund open space acquisition. The Fort Ord Reuse Authority uses a CFD to fund all costs associated with the habitat mitigation requirements of redevelopment of the former military base, including contributions to an endowment to fund ongoing costs.

Benefit Assessment Districts

Benefit assessment districts allow for the imposition of annual benefit assessments on property owners commensurate with the annual costs of an identified special benefit to that property. There are a number of different types of benefit assessment district authorized by California State law. Some are limited to provision of public facilities (often using debt financing secured by a lien on property within the district) and some allow funding of operations and maintenance. The lighting and Landscaping District (L&L or L & LD) is an example of one commonly used benefit assessment district.

Benefit assessment districts have certain requirements that limit, but not eliminate, their applicability to the PCCP:

- Benefit assessments can only fund facilities or services that provide a special benefit to a distinct group of property owners. Special benefits must be in addition to any general benefits accruing to all properties in a jurisdiction. An increase in property value alone does not qualify as a special benefit.
- Property owners must approve a benefit assessment by majority vote.⁹
 This constraint means that assessments are easier to impose on new development projects as a condition of approval, rather than more broadly on all property owners.
- Property owners can repeal an existing benefit assessment using an initiative process unless the assessment is funding repayment of debt.

Benefit assessments are often imposed as a condition of approval for development projects, similar to land dedication requirements, habitat mitigation fees, and development impact fees discussed above. The key difference is that benefit assessments allow for an ongoing revenue stream and therefore make

⁹ The vote is based on acreage weighted by the amount of the assessment.

them more suitable to fund ongoing costs. Unlike one-time fees paid by the developer, the funding burden falls on future property owners.

Several independent special districts have received majority property owner approval in existing developed areas to fund benefit assessments to preserve open space. This approach can provide a substantially higher level of funding compared to assessments imposed only on new development projects. However, at least one of these assessments for open space, in Santa Clara County, has recently been successfully challenged in the courts based in part on the assertion that they fail to comply with the special benefits and proportionality requirements of Proposition 218.¹⁰ Further legal analysis is needed to determine the appropriateness of this funding mechanism for the PCCP, but the recent decision seems to limit the probable applicability unless special benefits can be reasonably demonstrated.

Habitat Maintenance Assessment Districts

Habitat maintenance assessment districts, enabled in 1994 by the State Legislature, are a type of benefit assessment district that could be appropriate for programs such as the PCCP. Habitat maintenance assessment districts can be used to fund improvements including "[t]he acquisition, construction, or rehabilitation of any facilities needed to create, restore, enhance, or maintain natural habitat" and can also be used to cover "incidental expenses" including but not limited to the costs of "biological monitoring and evaluation of collected data related to the establishment or operation of natural habitat." These districts can be formed to implement "a long-term natural habitat maintenance plan approved by the Department of Fish and Game."

We do not know of any existing habitat maintenance districts so this funding source appears to be untested. This lack of use may be caused by the difficulty of demonstrating special benefit to certain property owners separate from general benefits to all property owners, as discussed above. Further legal analysis is needed to determine the applicability of this funding source.

Habitat maintenance districts have other constraints. Current law limits assessments to \$25 per parcel (this amount could presumably be inflated to around \$36 per parcel in 2008 dollars)¹⁵. Habitat maintenance assessment districts are also limited to 30-year durations and imposition of the assessment upon most agricultural land is prohibited. The law could be amended to reduce these constraints. If so, habitat maintenance assessment districts could be a useful funding source for the Santa Clara HCP Financing Plan, particularly for ongoing costs.

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¹⁰ Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority; S136468, filed July 14, 2008.

¹¹ California Government Code Sections 50060 through 50070.

¹² Ibid. Section 50060(b)(1).

¹³ Ibid. Section 50060(c)(7).

¹⁴ Ibid. Section 50060.5(a).

¹⁵ Inflation calculated using Consumer Price Index – All Urban Users historic annual averages.

Community Services Districts

Community Services Districts (CSDs) are an alternative local governance structure for providing municipal facilities and services to an area. ¹⁶ CSDs may be seen as an alternative or complement to the typical roles played by cities (in incorporated areas) or counties (in unincorporated areas). Important considerations regarding CSDs as they relate to the PCCP Financing Plan include:

- Initiation of the formation process may be done by petition submitted by residents located within the proposed district, or by a city or county within which the district will be located.
- Formation of a CSD requires approval of the Local Agency Formation Commission (LAFCO) and a majority vote of registered voters within the proposed district.
- An independent board elected by registered voters within the district governs the CSD.
- Implementation of a benefit assessment or property related charge requires a majority vote of property owners. Imposition of a special tax requires two-thirds approval by registered voters.

Placer County likely would have to seek special state legislation to provide for a CSD with the power to acquire, restore, and maintain habitat. The law does not appear to grant CSDs a general power for these purposes. Thowever, the CSD law includes special authorizations for specific CSDs throughout the State. One special authorization allows formation of the Mountain House CSD in San Joaquin County in part for the ability to "[a]cquire, own, maintain, and operate land for wildlife habitat mitigation or other environmental protection or mitigation within or without the district."

Finally, governance by an independently elected board could create overly complex relationships for implementation of the PCCP. Placer County and cities included in the PCCP would need the CSD to provide adequate funding for the PCCP to enable development to proceed and support implementation of their General Plans. Accountability to state and federal wildlife agencies for implementation would now be spread among more local agencies. This issue could be addressed in the special legislation mentioned above by making the CSD a dependent district and having the Board of Supervisors act as the CSD board.

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¹⁶ California Government Code Section 61000.

¹⁷ Ibid. Section 61600.

¹⁸ Ibid. Section 61601.26(e).

Agricultural Lease Revenues

Some land may be suitable for farming or grazing without compromising the preservation of habitat for endangered or threatened species. This type of land could generate lease revenue if it is acquired in fee title rather than maintained through an easement. Lease revenue could be used for any one-time or ongoing cost. However, this funding source is not expected to yield a significant amount of revenue for the PCCP Financing Plan.

Other Local Sources

Some opportunities for inter-agency cooperation regarding funding implementation of the PCCP may exist. Possible partner agencies include the South Placer Regional Transportation Authority, Placer County Water Agency (PCWA) and the Placer County Flood Control & Water Conservation District. These agencies will be engaged in "covered activities" – actions that will potentially require habitat mitigation. Consequently, there is an incentive for them to cooperate in finding funding sources for the PCCP.

There may be some activities, especially those involving watershed protection, that may further both the goals of the PCCP and the Placer County Flood Control & Water Conservation District. The County should communicate and coordinate with the District to identify any potential common efforts that could share funding.

Other local sources of revenue used by other habitat conservation plans include landfill tipping fees. The Western Riverside County Multiple Species Conservation Plan and the Coachella Valley Habitat Conservation Plan rely on a share of fees generated at a landfill being used to accommodate waste from outside the County.

State and Federal Sources

Critical to funding of the PCCP is the participation of state and federal agencies. State and federal agencies may direct their contributions towards the acquisition of specific acres of habitat unrelated to new development impacts. The objective of these agencies is to fulfill species recovery and natural communities conservation policy objectives by expanding the total amount of habitat protected, thereby supplementing local mitigation to provide for ecosystem integrity. Unless specifically noted, federal and state funds cannot be used to fund the mitigation required of an HCP permittee, unless a state or federal agency seeks permit coverage under the HCP.

State/Federal Infrastructure Mitigation

Similar to local and regional infrastructure mitigation, this revenue source is provided by public agencies in connection with mitigation of infrastructure projects. It can be used to fund the mitigation required of an HCP permittee. For example, under the Coachella HCP, Caltrans has an obligation to acquire 5,791 acres of habitat to mitigate non-interchange highway projects in the Coachella Valley.

State bond measures

Various State grant programs distribute bond proceeds for habitat acquisition and restoration. The programs are administered by state agencies including: California Department of Parks and Recreation, Department of Fish and Game, Wildlife Conservation Board, California Department of Conservation, California Bay Delta Authority, and California Coastal Conservancy.

State bond funds for land acquisition include:

- Proposition 40 Resources Bond act of 2002, provides a total of \$2.6 billion in bond proceeds, including \$745 million for acquisition, development, and restoration projects.
- Proposition 50 Water Quality, Supply and Safe Drinking Water Projects. Coastal Wetlands Purchase and Protection Bond act of 2002 provides \$3.4 billion for the state water supply, including \$750 million for acquisition, protection and restoration of coastal wetlands, upland areas adjacent to coastal wetlands, and coastal watershed lands.
- Proposition 12 Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Act of 2000, provided funds for local assistance grants.

We reviewed state and federal funding sources used by other HCPs and generally available for habitat projects. In our review we found that some of the bond proceeds listed above and included in other plans are designated for specific areas or have already been encumbered.

Other State Grant Programs

The California Department of Parks and Recreation administers several grant programs that could provide funds for land acquisition. The Recreational Trails Program provides federal funds for non-motorized trail projects. The Land and Water Conservation Fund provides federal funds for 50% matching grants for planning, acquisition, and development of outdoor recreation areas and facilities.

Federal Grants

Under the Cooperative Endangered Species Conservation Fund (Section 6 of the Endangered Species Act) the U.S. Fish and Wildlife Service provides funding to States and Territories for species and habitat conservation. These Section 6 Grants typically require a 25% match of non-federal funds. There are three types of grants:

 Recovery Land Acquisition Grants - These grants provide funds to states and territories for acquisition of threatened and endangered species habitat in support of approved recovery plans.

- Habitat Conservation Planning Assistance Grants These grants provide funds to states and territories to support the development of HCPs.
- HCP Land Acquisition Grants These grants provide funds to states and territories to acquire land associated with approved HCPs.¹⁹

Habitat Restoration Program grant funds and Conservation & Restoration Program grant funds may potentially be available for land acquisitions in Placer County. Additional research will be required. Similar to Section 6 Grants, these funds cannot by used for mitigation required of a HCP permit holder Based on our research for the Santa Clara HCP we assume that they may only be used for land acquisitions above and beyond the requirements of the PCCP.²⁰

Summary

The matrix on the following pages summarize the key characteristics of the potential PCCP Financing Plan funding sources described above.

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¹⁹ U.S Fish & Wildlife Service, http://www.fws.gov/endangered/grants/section6/, downloaded January 12, 2007.

²⁰ Personal communication with Caroline Prose, U.S. Fish & Wildlife Service, January 16, 2007.

Potential Funding Sources Key Characteristics

	Use of Funds ¹			Source of Funds		Characteristics			Other Issues	
				New	Broad				Add'l	
	One-time	Ongoing	Debt	Develop-	Geogra-	Potential		Voter	Legal	Special
Funding Source	Costs	Costs	Financing	ment Only	phic Areas	Amount	Stability	Approval	Analysis	Legislation
Local Sources										
						Moderate /				
Parcel Tax	Yes	Yes	Yes	No	Yes	High	Stable	Voter ²	No	No
						Moderate /				
Sales Tax	Yes	Yes	Yes	No	Yes	High	Stable	Voter ²	No	No
Local/Regional		Use				Moderate /				
Infrastructure Mitigation	Yes	Endowment	No	Yes	Yes	High	Variable	No	No	No
Land Dedication / Habitat		Use				Low /				
Mitigation Fee	Yes	Endowment	No	Yes	No	Moderate	Variable	No	No	No
		Use				Low /				
Development Impact Fee	Yes	Endowment	No	Yes	No	Moderate	Variable	No	Yes	No
Conservation Easements	Yes	No	No	No	Yes	Low	Variable	No	No	No
Community Facilities						Low /		Landowner		
District	Yes	Maybe	Yes	Yes	Yes	Moderate	Stable	or Voter ³	Yes	no
Benefit Assessment						Low /		Land-		
Districts	Yes	Yes	Yes	Yes	Yes	Moderate	Stable	owner ⁴	Yes	No
Habitat Maintenance						Low /		Land-		
Assessment Districts	Yes	Yes	No	Yes	Yes	Moderate	Stable	owner ⁴	Yes	Yes
Community Services						Low /		Landowner		
Districts	Yes	Yes	Yes	No	Yes	Moderate	Stable	or Voter ⁵	No	Yes
Sale of Property		Use				Low /				
Conveyance Fee	Yes	Endowment	Yes	Yes	No	Moderate	Variable	No	Yes	No
Agricultural Leases	Yes	Yes	No	No	Yes	Low	Stable	No	No	No
Other Local Sources	Yes	Yes	TBD	No	Yes	TBD	TBD	TBD	TBD	TBD

State/Federal Sources										
State/Federal Infrastructure Mitigation	Yes	Use Endowment	No	Yes	Yes	Moderate	Variable	No	No	No
State Proposition 12	Yes	No	No	No	Yes	Very Low	Variable	No	No	No
State Proposition 40 State Proposition 50	Yes Yes	No No	No No	No No	Yes Yes	Low / Moderate Low	Variable Stable	No No	No No	No No
Recreational Trails Program	Yes	No	No	No	Yes	Very Low	Variable	No	No	No
Land and Water Conservation Fund	Yes	No	No	No	Yes	Very Low	Variable	No	No	No
ESA Section 6 Grants	Yes	No	No	No	Yes	Low	Variable	No	No	No

Note: "TBD" is To Be Determined.

Source: Willdan Financial Services.

¹ State and federal funding cannot be used to fund the mitigation required of an HCP permittee, unless a state or federal agency seeks permit coverage under the HCP.

² Approval requires two-thirds majority for a special tax and a simple majority for a general tax.

³ Approval requires a two-thirds vote of property owners based on acreage, or if 12 or more voters are registered within the proposed district then approval requires a two-thirds vote of registered voters.

⁴ Approval requires a majority vote of property owners weighted by the amount of the assessment.

⁵ Approval of district formation requires a majority vote of registered voters. Approval of a new assessment or charge requires a majority vote of .property owners weighted by the amount of the assessment.

Strategic and Policy Issues

This concluding section highlights key strategic and policy issues for consideration. All strategic and policy issues presented here will eventually need to be addressed to guide preparation of the financing plan for the PCCP.

Strategic Issue 1: Financing Development Impact Fees

One-time exactions such as habitat mitigation fees and development impact fees could be financed through on-going taxes and assessments. This gives development projects the flexibility to pay the onetime fee or form a special district that passes the burden of providing facilities on to future property owners.

For development projects too small to justify the formation of a district and issuance of land-secured debt, the state has developed the Statewide Community Infrastructure Program (SCIP), a relatively new program made available through the California Communities Joint Powers Authority. The SCIP allows for financing of development impact fees through issuance of 1913/1915 Act special assessment bonds. Instead of developers paying the fee, the local jurisdiction receives funding through SCIP and future property owners pay the fee over time as an assessment. SCIP is designed for development projects that are too small to efficiently form a financing district and issue debt to fund impact fees.

The SCIP provides two program alternatives, an Impact Fee Reimbursement Program or an Impact Fee Pre-Funding Program. Under both programs the developer must agree to form an assessment district to pass the costs of the program onto future property owners within the development.

- Impact Fee Reimbursement Program: The developer pays the impact fees at the time a building permit is issued. SCIP then reimburses the developer.
- Impact Fee Pre-Funding Program: The local jurisdiction receives impact fee revenue when the tentative map is approved for all lots recorded on the map. The developer does not pay a fee at time of building permit.

The Pre-Funding Program would generate funds earlier in the development process compared to the payment of habitat mitigation or impact fees. This would enable earlier acquisition of habitat land, as described below. To date all SCIP financings have been for the Impact Fee Reimbursement Program. Incentives may be needed for developers to participate in the Pre-Funding Program.

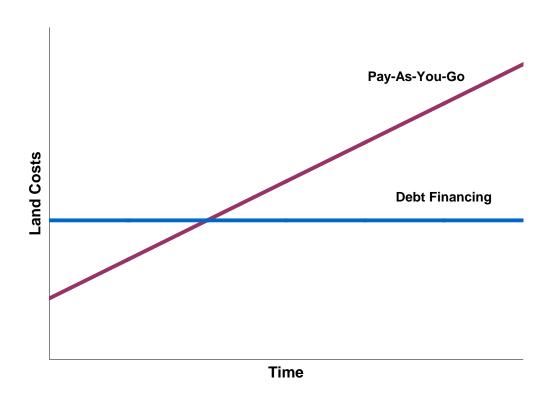
Strategic Issue 2: Facilitating Early Land Acquisition

Upfront purchase of conservation lands should be considered. Without the use of financing mechanisms, the PCCP Financing Plan would have to rely on a "payas-you-go" approach. As mentioned above regarding land dedication, future land

price escalation is difficult to estimate, highly variable, and can be significant (over 10 percent annually). Despite the recent downturn in the economy and the lowering of land prices, over time mitigation land will become increasingly scarce and therefore more costly. To the extent that land prices would escalate faster than the cost of debt financing, total land acquisition costs would be lowered by borrowing funds to acquire land sooner compared to a "pay-as-you-go" approach.

The graph below illustrates these points.

Financing Land Acquisition



A "pay as you go" approach initially requires less revenue compared to a debt financing approach, but funding needs rise in the later years due to land price escalation. Under the debt financing approach, funding needs are greater initially to acquire more land sooner and fund the cost of debt. However, funding needs remain constant over time under this approach assuming a typical debt structure that generates level debt service costs.

Additional financing costs should be weighed against the estimated future cost of increasingly scarce land. Early land acquisition will diminish the possibility that conservation land prices will outpace the funding available for land acquisition.

Below are strategies for facilitating early land acquisition.

Reserve debt capacity

To the extent that a development project will not be dedicating land for habitat, the County should seek the ability to finance land acquisition through a benefit assessment district, CFDs, or the SCIP pre-funding program.

To implement this policy the County will need to ensure that some share of total estimated debt capacity for the development project (e.g. 5 to 20 percent) is reserved as a condition of approval. This ensures that local facility needs do not absorb all available debt capacity. The County may want to require initial projects to fund more land acquisition than their direct mitigation needs and use fee revenues from future projects for reimbursement.

Encourage land dedication by new development

Land dedication of habitat should be encouraged. To the extent that land is dedicated, overall PCCP implementation costs will be lower. Land dedication also reduces the chance that plan implementation will be flawed because impact fee revenues do not keep pace with escalating land prices and funding becomes insufficient for PCCP implementation. The Natomas Basin conservation effort encountered this problem so severely that it has since switched to a policy of land dedication only.

Some landowners likely will not be able to fulfill their mitigation requirements through land dedication alone. Consequently the PCCP should retain a habitat mitigation fee option. Care should be taken to assure that the fee is adjusted as often as is necessary to keep pace with rising land costs. If fees lag behind current land acquisition costs landowners will have an economic incentive to pay the fee and not dedicate land, and the PCCP will lack the funds needed for full implementation.

Seek Upfront Mitigation Payments From Public Agencies

Upfront mitigation payments from local, state, and federal agencies should be encouraged. Costs of regional impacts from major infrastructure projects could be included in a Countywide sales tax initiative. The County could then secure a bond with the sales tax revenue allowing for early acquisition of land.

Strategic Issue 3: Balance Risk and Return on Investments

Policy direction is needed regarding the balance between risk and return on funding sources for ongoing PCCP costs. Both investment risk and political risk should be considered here.

The PCCP Financing Plan could recommend establishment of an endowment to pay for some or all of the ongoing costs in perpetuity. This is a common approach for funding habitat conservation plans. As mentioned above, endowments can provide a vehicle for converting one-time habitat mitigation and development impact fees into an ongoing funding source. Any of the other local funding sources could be used as well to establish an endowment.

Typically a large endowment would be required to generate enough income for ongoing costs once land acquisition and restoration has been completed.

Funding Ongoing Costs With An Endowment Versus Other Sources

Advantages of an endowment include a stable stream of income for ongoing PCCP costs, and the ability to demonstrate to state and federal wildlife agencies that the PCCP is fully funded. Disadvantages include exposure to investment risk and the cost of investment management. The level of these risks and costs would depend on the structure or entity managing the funds, as discussed below.

Alternatively, ongoing costs could be funded on a "pay-as-you-go" basis with annual special benefit assessments or CFD special taxes. These revenue streams would also be relatively stable but would only grow incrementally over time as development proceeds. There is virtually no investment risk associated with assessments or special taxes, and investment management costs are negligible. However, assessments are more difficult to approve and are subject to repeal by landowners or the electorate.

Finally, other revenue sources such as parcel taxes or sales taxes could provide a more stable source for endowments.

Public vs. Private Endowment Management

To the extent that the County is willing to accept higher risk on investments, the potential for greater return on those investments increases. A prudent approach could likely reduce overall PCCP costs while keeping investment risk within acceptable boundaries. Conversely, if the County is uncomfortable with higher risk investments, any endowment created for PCCP implementation will require more funding.

Current legal constraints imposed on public agencies typically result in investment yields of approximately two percent annually (after inflation). Alternatively, fund management could be transferred to:

- A separate local private entity such as a Land Trust;
- Another existing entity that provides endowment management service such as the Center for Natural Lands Management; or
- An entirely new non-profit entity formed specifically for this purpose.

As of 2007, the Center for Natural Lands Management reports that its investment programs yield about 4.5 percent annually compared with the two percent yields associated with local government management.²¹ Although investment yields have declined in general, in any of these cases, a separate non-profit entity could operate under less restrictive investment policies.

The designated entity would act independently to implement the mission of the PCCP financial management would be controlled by the entity and investments would not be subject to the County's current investment policy, hence investment

²¹ Personal communication with Mike Stroud, Center for Natural Lands Management, January 2, 2007.

could be subject to higher risk and returns. Higher returns would lower the overall cost of the PCCP by decreasing the size of the endowment.