

CITY MANAGER'S OFFICE

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September 20, 2016

Honorable Judge Paul Richardson
Superior Court of California, County of Yolo
1000 Main Street
Woodland, CA 95695

Yolo County Grand Jury
P.O. Box 2142
Woodland, CA 95776
(via e-mail: grand-jury@sbcglobal.net)

Re: Davis City Council Response to Grand Jury Report Entitled *Yolo Habitat Conservancy:
A Never Ending Story*

Dear Judge Richardson,

On behalf of the Davis City Council, this letter responds to the findings and recommendations in the 2015-2016 Yolo County Grand Jury Report entitled "Yolo Habitat Conservancy: A Never Ending Story" dated June 23, 2016. The report makes three findings (F1, F2 and F3) and two recommendations (R1 and R2). Pursuant to Penal Code Section 933.05, the Grand Jury requested that the Davis City Council respond to Findings F2 and F3 and Recommendations R1 and R2. The City of Davis's responses are below, along with the required response form, which is attached to this letter as Exhibit 1:

GRAND JURY FINDINGS

F2. Since its inception, the YHC has yet to produce an approved HCP/NCCP plan.

The Davis City Council agrees with this finding. However, the City Council would like to note that part of this delay is due to the fact that initial efforts to produce a Habitat Conservation Plan were abandoned in favor of producing a Habitat Conservation Plan/Natural Communities Conservation Plan ("HCP/NCCP"), a far more ambitious effort.

The City Council also notes that since the restructuring in 2012, the Yolo Habitat Conservancy ("YHC") has made significant progress towards a final HCP/NCCP. Each draft of the plan since then has resulted in necessary refinements at the request of the wildlife agencies, member agencies and advisory committee members to ensure a feasible plan. The public review draft of the HCP/NCCP was submitted to the wildlife agencies for review on August 30, 2016.

F3. *The YHC performance over the last 20 years does not justify the time and money spent.*

The Davis City Council disagrees with this finding for the reasons stated in the YHC's response to Finding #3 (the "YHC Response"), which is incorporated herein by reference (Exhibit 2).

GRAND JURY RECOMMENDATIONS

R1. *By April 30, 2017 the YHC shall submit the HCP/NCCP final plan for approval.*

The Davis City Council agrees with this recommendation for the reasons stated in the YHC Response to Recommendation #1, which is incorporated herein by reference (Exhibit 2). The City Council would also like to note that the YHC delivered the public review draft of the HCP/NCCP to the wildlife agencies on August 30, 2016, as planned. Comments from the agencies were requested by September 21, 2016. In addition, all member agencies approved all permit applications. On July 19, 2016, the Davis City Council took the steps necessary to complete and execute the U.S. Fish and Wildlife Service ("USFWS") HCP Permit Application for submission by August 1, 2016, as required by USFWS for each member agency participating in the plan. The YHC delivered copies of these permits applications to the wildlife agencies.

In addition, the YHC has created monthly liaison meetings with the wildlife agencies in an effort to ensure continued timely completion of work on the Yolo HCP/NCCP and create a forum through which high-level issues can be resolved.

R2. *By September 1, 2016, the YHC shall obtain annual performance audits to measure progress.*

The Davis City Council defers to and supports the YHC's determination that this recommendation should not be implemented because it is not presently warranted for reasons stated in the YHC Response to Recommendation #2, which is incorporated herein by reference (Exhibit 2).

Sincerely,



Robb Davis
Mayor

Exhibit 1: City of Davis Completed Response Form
Exhibit 2: YHC Response to Grand Jury Report

AGENCY'S RESPONSE PROCEDURE

RESPONSE TO GRAND JURY REPORT

The governance of responses to the Grand Jury Final Report is contained in Penal Code §933 and §933.05. Responses must be submitted within 60 or 90 days. Elected officials must respond within sixty (60) days, governing bodies (for example, the Board of Supervisors) must respond within ninety (90) days. Please submit all responses in writing and digital format to the Presiding Judge and the Grand Jury Foreperson.

Report Title: Yolo Habitat Conservancy: A Never Ending Story

Report Date: June 23, 2016

Response by: City Council, City of Davis Title: Mayor

FINDINGS

I (we) agree with the findings numbered:

F2

I (we) disagree wholly or partially with the findings numbered:

F3

RECOMMENDATIONS

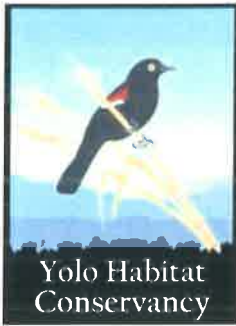
Recommendations numbered: R1
have been implemented (attach a summary describing the implemented actions).

Recommendations numbered:
require further analysis (attach an explanation of the analysis or study, and the time frame for the matter to be prepared by the officer or director of the agency or department being investigated or reviewed; including the governing body where applicable. The time frame shall not exceed six (6) months from the date of the Grand Jury Report).

Recommendations numbered: R2
will not be implemented because they are not warranted and/or are not reasonable (attach an explanation).

Date: 9/20/2016 Signed:

Total number of pages attached 6



Yolo Habitat Conservancy

County of Yolo • City of Davis • City of Winters • City of West Sacramento
City of Woodland • University of California, Davis

July 18, 2016

TO: Honorable Judge Paul Richardson
Superior Court of California, County of Yolo
1000 Main Street Street
Woodland, CA 95695

TO: Yolo County Grand Jury
P.O. Box 2142
Woodland, CA 95776
via e-mail: grand-jury@sbcglobal.net

Re: 2015-2016 Yolo County Grand Jury Report – Yolo Habitat Conservancy: A Never Ending Story

Dear Judge Richardson:

This letter responds to the findings and recommendations in the 2015-2016 Yolo County Grand Jury Report entitled “Yolo Habitat Conservancy: A Never Ending Story,” as well as provides some corrections to the report. This response is provided by the Board of Directors of the Yolo Habitat Conservancy and its Executive Director. For purposes of readability, we have included the Grand Jury’s recommendations in **bold**.

Corrections to the Report:

On Page 1, Paragraph 1, there was no JPA prior to 2002 and therefore no Yolo Natural Heritage Program. The previous Board of Directors rebranded the Yolo County HCP/NCCP Joint Powers Agency to the “Yolo Natural Heritage Program” in about 2007. The Board of Directors dropped the Yolo Natural Heritage Program name in 2014 in favor of the “Yolo Habitat Conservancy.” In addition, the efforts in the early 1990s focused only on developing an HCP, not an NCCP (which is significantly more ambitious and guided by the Natural Communities Conservation Planning Act, a state law). After the City of Davis did not adopt the HCP in the late 1990s, the effort was on hiatus until formation of the JPA in 2002. At this time, the JPA elected to pursue an HCP/NCCP.

On Page 1, Paragraph 2, \$6.53 million is the exact amount of expenditures between 2002 and 2012. It was not well in excess of this amount, as the Conservancy has clear records from the financial system and it is documented in audits.

On Page 3, Paragraph 6, the statement referring to a decision maker of the YHC is inaccurate for two reasons: 1) although the Executive Director and the Project Manager both own consulting firms, they are not decision makers, as all decisions are brought to the Board of Directors; 2) the Chair approves the invoices of the Project Manager and Executive Director through a formal process approved by the Board of Directors.

On Page 4, Paragraph 2, the statement that invoices are frequently submitted in an untimely manner is inaccurate. Contractors rarely miss a deadline to submit by the 7th of the month.

F2. Since its inception, the YHC has yet to produce an approved HCP/NCCP plan.

Response: The respondents agree with this finding.

F3. The YHC performance over the last 20 years does not justify the time and money spent.

Response: The respondents disagree with this finding. Initially, the respondents note the finding is not supported by any evidence relevant to the value of a completed HCP/NCCP or other elements of the Conservancy's performance since its formation in 2002. The finding thus does not meet the requirements of Penal Code § 916, which states in part: "Each grand jury shall choose its officers, except the foreman, and shall determine its rules of proceeding. . . . Rules of procedure shall include guidelines for that grand jury to ensure that all findings included in its final reports are supported by documented evidence[.]" The finding expresses the Grand Jury's policy judgment, rather than a factual conclusion, and is difficult to address as a consequence.

Nonetheless, there are many reasons why the Board and Executive Director disagree with the finding, including:

- The past 20 years is not the relevant timeframe for evaluating the Conservancy's performance. The Conservancy did not exist prior to 2002, and virtually all of its work on the HCP/NCCP occurred over the past decade;
- The total cost from 2002-2017 to complete the plan is estimated to be \$10.3 million. This is similar in cost and duration to other HCP/NCCP planning efforts, including the Placer County HCP/NCCP (same stage of development; under development for 15 years at a cost of \$10.5 million to date);
- The Conservancy is now a year away from completing the final HCP/NCCP and submitting it to the California Department of Fish and Wildlife and the United States Fish and Wildlife Service for approval; and
- The Conservancy's Board of Directors and Executive Director anticipate that implementation of the final plan will benefit public agencies and private entities by reducing the cost and uncertainty of project-by-project species permitting issues, and that the twelve species covered by the HCP/NCCP will also benefit from additional, coordinated conservation of habitat.

R1. By April 30, 2017, the YHC shall submit the HCP/NCCP final plan for approval.



This recommendation will be implemented, as it is already included in the Board's adopted timeframe for completing the planning effort. The respondents note that good faith cooperation from other agencies is required on numerous remaining tasks, including the United States Fish and Wildlife and the California Department of Fish and Wildlife to assure submission of the completed plan by April 30, 2017. This cooperation is expected but is not within the Conservancy's control, and it depends upon the allocation of staff resources and other factors within the purview of the federal and state agencies.

R2. By September 1, 2016, the YCH shall obtain annual performance audits to measure progress.

This recommendation will not be implemented because it is not presently warranted. The Conservancy's performance is measured by the Board of Directors based on organizational and budget goals established every year as part of the regular budget process, including a detailed schedule for deliverables related to the Yolo HCP/NCCP. As discussed below, however, the Board of Directors and Executive Director intend to implement one or more alternative methods of enhancing Conservancy oversight and accountability to achieve the underlying purpose the Grand Jury's recommendation.

- The Yolo Habitat Conservancy will consider regular performance audits or reviews of similar intent during the implementation phase of the Yolo HCP/NCCP, which will commence in 2018 after issuance of permits in 2017.
- In coordination with Yolo County's internal auditor, the Yolo Habitat Conservancy will develop performance measures around the organizational and budget goals adopted by the Board of Directors. Yolo County's internal auditor will review these performance measures every six months.

