

**AGREEMENT REGARDING  
MITIGATION FOR IMPACTS TO  
SWAINSON'S HAWK FORAGING HABITAT  
IN YOLO COUNTY**

This Agreement ("Agreement") is entered into by and between the California Department of Fish and Game ("Department"), and the Yolo County HCP/NCCP Joint Powers Agency ("Habitat JPA") (collectively, "the Parties").

**RECITALS**

**WHEREAS**, the members of the Habitat JPA have authority and responsibility under the California Environmental Quality Act ("CEQA") and general land use authority or responsibility under State planning and zoning law, including the Subdivision Map Act; and

**WHEREAS**, the Department exercises regulatory authority over fish and wildlife resources through the California Endangered Species Act, Fish and Game Code sections 2050 et seq. ("CESA"), and other regulatory programs, and acts as trustee agency for fish, wildlife and native plants under Fish and Game Code section 1802 and the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"); and

**WHEREAS**, the Parties executed an agreement dated February 2, 1993 and amended November 2, 1993 to provide for development of a county-wide habitat management program and for interim conservation of threatened and endangered species and their habitat; and

**WHEREAS**, on April 5, 1994, the Parties entered into a Management Authorization under former section 2081 of the Fish and Game Code to further address mitigation of impacts to certain threatened and endangered species as a result of urban development within the Yolo County Habitat Conservation Planning Area and to authorize any incidental take of Swainson's hawks resulting from urban development carried out in a manner consistent with the Management Authorization; and

**WHEREAS**, the Management Authorization, after a three-year extension approved in 1997, expired on December 31, 2000 and cannot be renewed under CESA as that statute was revised effective 1998; and

**WHEREAS**, in January 2001 the County of Yolo published a Preliminary Draft Yolo County Habitat Conservation Plan ("Draft HCP") that the Parties believe may provide a basis for

preparation of an Natural Community Conservation Plan (“NCCP”) under the Natural Community Conservation Planning Act, Fish and Game Code sections 2800 et seq.; and

**WHEREAS**, the Parties desire to continue to provide for mitigation of impacts to Swainson’s hawk consistent with CEQA through acquisition and protection of Swainson’s hawk foraging habitat while work continues on a county-wide NCCP, and desire to ensure that activities that may result in incidental take of Swainson’s hawk obtain any necessary take authorization under section 2081(b) of the Fish and Game Code,

**NOW, THEREFORE**, the Parties agree as follows:

**AGREEMENT**

1. **Implementation of Mitigation Measures**

- a. Except as provided in this paragraph, the Habitat JPA agrees not to issue any discretionary permit that allows for urban development of open land within the HCP/NCCP planning area (Exhibit B—“HCP/NCCP Planning Area”) unless the Habitat JPA and the permittee first comply with the applicable measures in this Agreement. The Habitat JPA will implement administrative controls sufficient to ensure that urban development permittees comply with all of the requirements set forth in this Agreement.
  
- b. For purposes of this Agreement, “urban development” includes all discretionary changes in land use or land use designation from open land to any other land use, including but not limited to approval of General Plan amendments, zone changes, variances, use permits, planned unit developments, specific plans, tentative maps and projects undertaken directly by the County or one of the Cities, except that for the purposes of this Agreement, “urban development” does not include the following:
  - I. Projects the primary purpose of which, as determined by the Habitat JPA, is to enhance habitat values of land, and in such cases the Habitat JPA shall consult with the Department prior to making a determination that a project’s primary purpose is to enhance habitat values of land,
  
  - II. Agricultural uses, defined as the cultivation of land for the production of food or fiber and construction of accessory structures incidental to such uses,
  
  - III. Flood control activities requiring notification to the Department pursuant to Fish and Game Code section 1600 et seq.,

- IV. Erection of a single family dwelling unit, including mobile homes, on an existing lot of record that is at least five (5) gross acres in size, provided such activity is not associated with a subdivision or lot split,
- V. Additions or remodels totaling not more than 50 percent of the original footprint, and replacement or reconstruction of structures in the same location totaling not more than the square footage of the footprint of preexisting structures, and which will not result in the disturbance of open agricultural land or grassland,
- VI. Urban development of any parcel of less than one (1) gross acre where at least half of the adjacent parcels were developed as of April 5, 1994,
- VII. Any subsequent discretionary approvals by the County or one of the Cities of a project or activity for which General Plan designations and all land use entitlements, including but not limited to Development Agreements and CEQA document approval, were approved prior to April 5, 1994, provided the project will not increase the total area of previously disturbed grassland.
- VIII. Any project or activity which has obtained an incidental take permit or other take authorizations under CESA for Swainson's hawk, and
- IX. Any other activity that the Department agrees in writing should be exempt from the requirements of this Agreement.

2. Mitigation Fee

- a. The Habitat JPA agrees to require urban development permittees to pay an acreage-based mitigation fee in an amount, as determined by the Habitat JPA Board, sufficient to fund the acquisition, enhancement and long-term management of one acre of Swainson's hawk foraging habitat for every one acre of foraging habitat that is lost to urban development. The Parties agree that a fee in the amount calculated in Exhibit A is sufficient for the purpose of habitat acquisition and preservation at the time this Agreement is executed. The Parties further agree to review the adequacy of the fee on an annual basis and to adjust it as necessary by amending Exhibit A to reflect updated costs for acquisition of habitat. With written approval of and subject to conditions determined by the Department, an urban development permittee may transfer fee simple title or a conservation easement over Swainson's hawk foraging habitat, along with appropriate enhancement and management funds, in lieu of paying the acreage-based mitigation fee.

- b. The Habitat JPA agrees to require all fees for habitat acquisition be paid into the Wildlife Mitigation Trust Account (“Trust Account”) established by the Habitat JPA. The Habitat JPA agrees to use all funds deposited into this account for the sole purpose of acquiring for preservation Swainson’s hawk habitat in Yolo County. The Trust Account will not be used to pay overhead or other administrative costs incurred by the Habitat JPA, except that funds specifically collected for these purposes as described in Exhibit A may be used for such purposes. The Trust Account will not be used to pay costs of preparing and revising the Draft HCP or planned NCCP.
- c. The Habitat JPA agrees to require that all fees for enhancement and long-term management of habitat be paid to the Department. The Department agrees to deposit fees received for long-term management of the habitat into a special deposit account pursuant to Government Code section 16370, and to make enhancement funds and earned interest on the management funds available to the Habitat JPA or other entity selected to hold and manage the habitat lands for expenditure in enhancement and management of the lands. The Habitat JPA agrees to use the funds to manage and enhance lands in accordance with Section 8 of this Agreement.

3. Use of Trust Account for Acquisition of Habitat Lands

- a. Fees collected by the County under the now-expired Management Authorization and still held by the County will be added to the Trust Account and used for habitat acquisition pursuant to the terms of this Agreement.
- b. The Habitat JPA agrees to use all funds in the Trust Account to acquire, for preservation in perpetuity, Swainson’s hawk foraging habitat. Acquisitions may be in the form of transfer of fee title with a conservation easement or of a conservation easement acceptable to the Department. All conservation easements acquired with Trust Account funds will either be granted to the Department or, with Department approval, to another entity qualified to hold conservation easements under state law. Easements that are transferred to an entity other than the Department will name the Department as third party beneficiary with the right to enforcement of the easement.
- c. In the interest of preventing long delays between approval of urban development projects and mitigation of those projects’ impacts, and to ensure inflating land values do not undermine habitat conservation strategies in Yolo County, the Habitat JPA agrees to expend fee revenues to acquire suitable habitat within eighteen (18) months of when the fees were collected and added to the Trust Account. If the Habitat JPA is diligently pursuing acquisitions that require additional time to complete, the time limitation for acquisitions may be extended an additional six months, to a total of twenty-four (24) months from the time fees

are collected, with the Department's written consent. The Trust Account funds collected prior to the execution of this Agreement will be expended for habitat acquisitions no more than twenty-four (24) months after execution of this Agreement, unless the Department agrees in writing to extend this period.

- d. The Habitat JPA agrees to obtain the Department's prior written approval for expenditures from the Trust Account, including approval of the biological suitability of the habitat proposed for protection. The Department shall consider relevant recommendations of the Technical Advisory Committee prior to approving any expenditure from the Trust Account.

4. Projects in Proximity to Nest Trees

Before issuing an urban development permit for a project that will be located within 0.5 mile of a Swainson's hawk nest tree, including any project that will result in loss or damage to a nest tree, and before issuing a permit for any other project for which the Department has notified the County that take of Swainson's hawk may occur, the Habitat JPA will require the project proponent to consult with the Department regarding potential impacts on Swainson's hawk. As part of the consultation, the Department will provide the relevant Parties and project proponent with information about whether the project may result in incidental take of Swainson's hawk (thereby requiring CESA take authorization), or whether special take avoidance measures should be included in the urban development permit. The mitigation measures contained in this Agreement will be required for any urban development project when incidental take authorization is not obtained from the Department.

5. No Authorization of Incidental Take

- a. This Agreement in no way authorizes the incidental take of Swainson's hawk or any other species protected by CESA. Any project that threatens to result in take of Swainson's hawk or other species listed under CESA must obtain an incidental take permit from the Department pursuant to section 2081(b) of the Fish and Game Code or otherwise comply with CESA. In addition to any CESA requirements, project proponents must comply with other applicable state and federal laws, including the federal Endangered Species Act, in carrying out their projects. The Habitat JPA will cooperate with the Department and federal resource agencies to ensure that land use projects that may result in take of species protected by the federal Endangered Species Act or by CESA receive necessary take authorizations.
- b. When the Department issues an incidental take permit for Swainson's hawk within Yolo County, the Department will consider requiring the project proponent to pay the acreage-based mitigation fee as one of the permit's conditions of approval.

6. Reports

The Habitat JPA agrees to submit to the Department no later than April 1 every year that the Agreement remains in effect a report that includes, at a minimum, the following information:

- a. The amount of land in each jurisdiction on which urban development permits were issued and on which mitigation fees were collected pursuant to this Agreement during the previous year, as well as cumulative totals that include projects processed pursuant to the now-expired Management Authorization;
- b. The total fees collected by the County pursuant to this Agreement during the previous year, the Trust Account money expended by the Habitat JPA for habitat acquisition during the year, and the running totals for fees collected and funds expended during the term of the Management Authorization and this Agreement; and
- c. Information about the location of habitat lands acquired, whether the land is held in fee title or through a conservation easement, the identity of entities holding interests in the land, and the identity of entities having management responsibilities over the land.

7. Term

Unless extended by mutual agreement of the Parties, this Agreement will remain in effect until December 31, 2003 or until a county-wide conservation plan is approved by the Parties and by the U.S. Fish and Wildlife Service, whichever occurs first, except that all provisions of this Agreement governing the handling and expenditure of funds in the Trust Account and any related endowment and enhancement funds held by the Department will survive expiration of this Agreement and continue to bind the Parties unless and until the Parties provide otherwise in a subsequent agreement.

8. Cancellation of the Agreement

Either of the Parties may cancel this Agreement through a writing delivered to all of the other Parties giving the reason for the cancellation, except that in the event this Agreement is canceled, all provisions of this Agreement governing the handling and expenditure of funds in the Trust Account and any related endowment and enhancement funds held by the Department will survive cancellation and continue to bind the Parties unless and until the Parties provide otherwise in a subsequent agreement.

9. Binding Agreement

This Agreement is binding upon the Parties. All of the covenants, stipulations, promises, and agreements contained in this Agreement by or on behalf of, or for the benefit of any of the Parties, shall bind or inure to the benefit of their respective successors or assigns.

10. Modification and Waiver

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Parties. No waiver of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions whether or not similar nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11. NCCP Planning Agreement, Complete Agreement

The Parties may decide to prepare and execute a separate planning agreement regarding the preparation of an NCCP for Yolo County. This Agreement, however, constitutes the entire agreement between the Parties with respect to the matters addressed in this Agreement, and supersedes any and all agreements, either oral or in writing, between the Parties with respect to those matters.

12. Interpretation

In the event of a controversy or dispute between the Parties concerning the provisions of this Agreement, this Agreement will be construed in accordance with the plain meaning of the provisions used. The Parties agree that presumptions relating to draftsmanship of this Agreement are not appropriate and will not be applied in the interpretation of this Agreement's provisions.

13. Further Actions

The Parties agree to do all things necessary to carry out and effectuate the terms and intent of this Agreement, including the prompt execution of any further papers or documents that may be reasonably necessary to carry out the letter and spirit of this Agreement.

14. California Law

The Parties acknowledge and agree that the terms of this Agreement and all attachments have been negotiated and executed within the State of California and shall be governed by, and interpreted under, the laws of the State of California.

15. Duplicate Originals and Signatures in Counterparts

This Agreement may be executed in any number of duplicate originals and may be signed in counterparts. A complete original of this Agreement shall be returned to each of the Parties upon execution.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be properly executed, as of the latest of the dates set forth below:

**CALIFORNIA DEPARTMENT OF FISH AND GAME**

By: \_\_\_\_\_  
BANKY B. CURTIS, Regional Manager

\_\_\_\_\_ Date

Approved as to Legal Form:

\_\_\_\_\_  
MICHAEL R. VALENTINE, General Counsel

**HABITAT JPA:**

**COUNTY OF YOLO**

By: \_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_ Date

**CITY OF WOODLAND**

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_ Date

**CITY OF WEST SACRAMENTO**

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_ Date

**CITY OF DAVIS**

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

**CITY OF WINTERS**

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

## EXHIBIT A

An analysis of the amount of the mitigation fee necessary to adequately fund all functions of the Yolo County HCP was prepared by Economic & Planning Systems in 1994, and updated in 2000 (January 2001 Preliminary Draft Yolo Habitat Conservation Plan, Appendix D). The HCP sets the Habitat Mitigation Fee for Swainson's Hawk foraging habitat impacts at \$2,509.00 per acre.

This fee is based on the cost estimates determined by the Habitat JPA for enhancement of lands, endowment for long-term management, county administrative costs (15 percent), and acquisition processing for a total acre estimated acquisition cost.

NOTE: By mutual agreement of the parties and the Department, the endowment fee may be adjusted based on the experience of actual costs of managing the land.

EXHIBIT B

HCP/NCCP Proposed Planning Area (map)