

YOLO COUNTY HABITAT JOINT POWERS AGENCY
YOLO NATURAL HERITAGE PROGRAM

JPA BOARD MEETING

Draft Minutes: November 10, 2008

Prepared by: Maria Wong, Executive Director

JPA Board Members present:

Wes Beers, City of West Sacramento
Matt Rexroad, Yolo County
Stephen Souza, City of Davis
Helen Thomson, Yolo County

JPA Board Alternates present:

None

Minutes

1. **The meeting was called to order at 4:05 p.m.**
2. **Approval of Agenda Order**
 - (Rexroad moved and Beers seconded 4-0)
3. **Public Comment – None.**
4. **Board Correspondence – Wong** informed the Board that a Green Summit is being held in Woodland on Saturday November 15th. JPA staff is participating on one of the panels. The event flyer will be emailed to Board members.
5. **CONSENT CALENDAR**
 - (a) **Approval of Board Minutes**
 - (b) **Adopt HCP-NCCP Planning Process Guiding Principles**
 - (c) **Approval of a Mitigation Credit Agreement elated to the Tule Ranch Swainson’s hawk Conservation Easement**
 - (d) **Executive Director Report**
 - *continued at the request of staff*

Approved as submitted (Beers moved, Rexroad seconded 4-0)

REGULAR AGENDA

6. **Approve Master Scope of Work and Consultant Contracts between JPA and the following individual firms: TAIC, SAIC< L-Studio, Berkeley Economic Consultants, and Ebbin, Moser + Skaggs, LLC for continuing work related to development of the HCP/NCCP – continued without comment at the request of staff.**
7. **Approve a Resolution authorizing the use of mitigation receiving sites to implement the Swainson’s hawk In Lieu Mitigation Program.** Staff presentation followed by public comment. Jude Lamar, Friends of Swainson’s Hawk, congratulated the Board on completing several conservation easements. Ms. Lamar expressed general agreement with the concept of mitigation receiving sites but cautioned that such

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sites could be used to meet CEQA mitigation obligations originating in neighboring counties. The Board acknowledged and committed to working with all parties to minimize that outcome. (**Rexroad** moved, **Souza** seconded 4-0).

8. CLOSED SESSION

- (a)** Conference with real property negotiator regarding price and terms of payment (Gov. Code section 54956.8) .
- Chickahominy Creek (APN: 040-160-13 & 14), Owner: Reynier Fund, LLC-

Agency Negotiators: Phil Pogledich, Maria Wong

Reportable action: Following staff presentation and Board discussion, the Board approved staff's request to work with the property owner to establish a mitigation receiving site on the Chickahominy Creek Ranch #1 (APN: 040-160-13).

- 8.** Board Adjourned at 5:15 to January 5, 2009

Accepted:

**Helen M. Thomson, Chairwoman
Board of Directors**

Staff Report

TO: Chair and Board Members
Yolo County Habitat JPA

FROM: Maria Wong
Executive Director

DATE: January 5, 2009

SUBJECT: Ratify a Reimbursement Agreement and a Mitigation Credit Agreement related to the Chickahominy Creek Ranch #1 Swainson's Hawk Conservation Easement

Requested Action:

1. That the Board Ratify the "*Reimbursement Agreement Regarding Chickahominy Creek Ranch 1*" and the "*Mitigation Credit Agreement Regarding Chickahominy Creek Ranch 1*" related to the Chickahominy Creek Ranch 1 Swainson's Hawk Conservation Easement
-

REASON FOR RECOMMENDED ACTION:

To give formal approval to agreements entered into at the close of escrow between JPA and Reynier Fund LLC regarding the Chickahominy Creek Ranch #1 Swainson's Hawk Conservation Easement.

BACKGROUND

On November 10, 2008, the Board directed staff to complete negotiations on a Swainson's hawk conservation easement on APN: 040-160-13, known as the Chickahominy Creek Ranch #1 and approved the use of the property as a mitigation receiving site utilizing the Tule Ranch Mitigation Receiving Site Agreement as a model. After consultation with the Board Chairwoman and JPA counsel, the Agreements were executed by the Executive Director in order to complete the easement transaction prior to the end of 2008.

Mitigation Credit Agreement

The Mitigation Credit Agreement (Attachment A) is similar in form and content to the Tule Ranch Agreement approved by the Board on November 10, 2008, and was reviewed and approved by JPA counsel prior to recording. The CCR#1 Agreement creates 148.9 mitigation credits that can be sold under the auspices of the JPA to discharge Swainson's hawk CEQA obligations for project impacts originating in Yolo County. The CCR#1 conservation easement is located within the City of Winters "7 mile habitat mitigation area" and is expected to provide a streamlined opportunity for projects in City of Winters.

Reimbursement Agreement

The JPA Board approved the CCR#1 easement with the understanding that the sale of mitigation credits would fund the transaction. There were no “buyers” concurrent with the escrow, and a shortfall existed in funding closing costs and establishing the Stewardship Endowment fund. The landowner and the easement holder inquired whether the JPA would be in a position to advance the funds necessary to cover these costs, which would be paid back with the sale of mitigation credits. The landowner faced increased tax liabilities if the closing was delayed to 2009, which was a disincentive to completing the transaction.

Staff sought direction from the Executive Committee, and after conferring with the Board Chairwoman and JPA legal counsel the Executive Director executed the Agreement on behalf of the JPA Board. The bulk of the advance has been returned to the JPA to fund the Stewardship Endowment. The balance of the funds paid for a property survey, the Baseline Conditions Report and escrow closing costs. Even if no mitigation credits are sold to repay the advance, the JPA will still be able to count @150 acres of protected Swainson’s hawk habitat toward the HCP/NCCP at a fraction of what would have paid.

FISCAL IMPACT

Fiscal impacts are temporary. The JPA will be paid back in full prior to the sale of 3/4 of the available mitigation credits.

Attachment A: “*Mitigation Credit Agreement Regarding Chickahominy Creek Ranch 1*”

Attachment B: “*Reimbursement Agreement Regarding Chickahominy Creek Ranch 1*”

ATTACHMENT A

Recording Requested by:
Yolo Habitat Joint Powers Agency

When Recorded, Mail to:
Yolo Habitat Joint Powers Agency
120 W. Main Street, Suite C
Woodland, Ca. 95695

Space above line for Recorder's use only

**MITIGATION CREDIT AGREEMENT REGARDING
CHICKAHOMINY CREEK RANCH 1**

This Agreement is entered into as of December 30, 2008, by and between the Yolo County Habitat Joint Powers Authority ("Habitat JPA") and Reynier Fund, LLC ("Landowner") (collectively with the Habitat JPA, the "Parties").

RECITALS

A. Landowner owns that certain real property described and depicted in Exhibits A and B attached hereto and commonly known as the Chickahominy Creek Ranch 1 (the "Ranch"). The Ranch has unique qualities which make it a valuable resource for mitigating the loss of Swainson's hawk habitat to urban uses; and

B. The Habitat JPA is developing a county-wide multi-species conservation plan which will address the conservation needs of several special status species, including Swainson's hawk, and has been pursuing Swainson's hawk conservation easements in the vicinity of the Ranch; and

C. On April 15, 1994 California Department of Fish and Game, Yolo County, and the cities of West Sacramento, Davis, Woodland and Winters entered into a Management Authorization under former section 2018 of the Fish and Game Code to address mitigation of impacts to Swainson's hawk as a result of urban development within Yolo County, including the authority to collect mitigation in lieu fees; and

D. The Management Authorization, after a three year extension approved in 1997, expired on December 31, 2000 and could not be reviewed under CESA as that statute was revised effective 1998; and

E. On or about July 22, 2002, the Habitat JPA Member Agencies entered into an agreement establishing the Yolo County Natural Community Conservation Plan Joint Powers Agency, which Agreement was amended and restated in 2006; and

F. Since the expiration of the Management Authorization, the Habitat JPA has continued to routinely consult with CDFG regarding the biological suitability of land proposed for acquisition and related matters, but the Habitat JPA retains sole discretion over the implementation of Swainson's hawk mitigation in Yolo County in connection with mitigation under the California Environmental Quality Act; and

G. The Amended and Restated Joint Powers Agreement sets forth the requirements for the collection of Swainson's hawk in lieu fees by Habitat JPA Member Agencies and use of said fees by Habitat JPA; and

H. On January 9, 2006, as a condition of approval for urban development approved by JPA Member Agencies, the Habitat JPA adopted Resolution 2006-01 updating the Swainson's Hawk Interim Mitigation Fee and adopting revisions to the Swainson's Hawk Interim Mitigation Fee program; and

I. On November 10, 2008, the Habitat JPA Board of Directors adopted Resolution 2008-02, titled "Resolution Supporting the Creation of Receiving Sites for Swainson's Hawk Mitigation and the Subsequent Sale of Mitigation Credits"; and

J. The Ranch has been identified as a valuable parcel for mitigation purposes; and

K. Landowner intends to grant the Conservation Easement (as defined below) for the purposes set forth therein and the Parties contemplate the creation of mitigation credits which can be utilized by others; and

L. Through this transaction, Landowner will receive Mitigation Credits, as defined below, and this Agreement is necessary to provide the terms and conditions governing the future use or sale of such Mitigation Credits.

Based on the foregoing recitals, the Parties hereby agree as follows:

AGREEMENT

1. Grant of easement. Landowner agrees to grant to the California Waterfowl Association a Conservation Easement concurrent with the recording of this Agreement ("Conservation Easement").

2. Mitigation Credits.

a. Mitigation Credits. The Ranch consists of 151.9 acres. The parties agree that upon the recording of the Conservation Easement, a total of 148.9 acres of Swainson's hawk foraging habitat on the Ranch will be preserved as generally shown in Exhibit C. This preserved acreage shall constitute "Mitigation Credits" which may be sold by the Landowner (including its heirs, successors, and assigns) in the manner described in this Agreement to enable other parties to discharge their mitigation obligations arising from projects located within the County of Yolo. The Mitigation Credits may be sold or otherwise used following the recording of the Conservation Easement and this Agreement to mitigate for the impact of projects within the County of Yolo. Mitigation Credits may be used to discharge Landowner's own mitigation obligations, or may be sold or otherwise conveyed to any other person or entity in connection with development located in the County of Yolo.

b. Habitat JPA Obligations. The Habitat JPA shall advise the County of Yolo and the cities of Winters, Woodland, Davis and West Sacramento that Mitigation Credits on the Ranch are available for those needing to discharge mitigation obligations in

connection with projects in those jurisdictions. The Habitat JPA will make a good faith effort to encourage the use of all such available Mitigation Credits.

c. Certificate of Mitigation Credits. The Habitat JPA shall maintain an accounting of the Mitigation Credits available to Landowner and any other heir, successor, or assignee ("Credit Holders") under the Agreement. Upon reasonable notice, the Habitat JPA shall provide the Credit Holders and the general public with a copy of said accounting. The Credit Holders shall provide the Habitat JPA with notice of any pending transaction regarding the sale of credits or use of credits to the Habitat JPA at least ten (10) calendar days prior to the anticipated close of each such transaction, and the Habitat JPA shall prepare a Certificate of Mitigation Credits in connection therewith. The accounting provided by the Habitat JPA shall reflect a complete history of the sale and use of all Mitigation Credits, including a running account of the Mitigation Credits that remain available for future projects. Said Certificate of Mitigation Credits shall be in a form which shall be recorded in the Official Records of Yolo County concurrent with the close of any sale or other use of Mitigation Credits.

3. Applicable Law. This Agreement has been made and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with California law.

4. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective representatives, heirs, predecessors, affiliated entities, transferees, assigns and successors in interest.

5. Severability. Should any paragraph, clause or provision of this Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid or unenforceable, such construction and decisions shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clauses or provisions of this Agreement, which shall remain in force.

6. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

7. Authority to Execute; Counterparts. Each party represents that it has legal authority to enter into this Agreement and to perform its obligations hereunder. This Agreement may be signed in counterparts, and all counterparts when taken together shall constitute one document.

8. Cooperation. Each party agrees to cooperate with the other to ensure that the terms, provisions, and purpose of this Agreement are effectively carried out at all times. To that end, each party agrees to execute any and all documents that may be reasonably necessary, helpful, or appropriate to carry out the terms, provisions, and purpose of this Agreement.

9. Conflicts of Interest. No member, official or employee of either party hereto shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement with affects his or her personal interests or the interests of any corporation, partnership, association, or other entity in which he or she is directly or indirectly interested.

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10. Entire Agreement; Modification. This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each party has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be construed against any party on the basis of drafting. This Agreement may be amended only by an agreement in writing, signed by each of the parties hereto.

11. Recording. This Agreement shall be recorded in the Official Records of Yolo County.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

YOLO COUNTY HCP/NCCP JOINT
POWERS AGENCY

REYNIER FUND, LLC

By _____
Maria Wong, Executive Director

By _____

By _____

Exhibit A—Legal Description of the Chickahominy Creek Ranch

Exhibit B—Map of the Chickahominy Creek Ranch

Exhibit C—Map Depicting the Easement Area

ATTACHMENT B

**REIMBURSEMENT AGREEMENT REGARDING
CHICKAHOMINY CREEK RANCH 1**

This Agreement is entered into as of December 30, 2008, by and between the Yolo County Habitat Joint Powers Authority (“Habitat JPA”) and Reynier Fund, LLC (“Landowner”) (collectively with the Habitat JPA, the “Parties”).

RECITALS

A. Landowner owns that certain real property commonly known as the Chickahominy Creek Ranch 1, and more specifically as APN: 040-160-13-1 (the “Ranch”). The Ranch has unique qualities which make it a valuable resource for mitigating the loss of Swainson’s hawk habitat to urban uses; and

B. The Habitat JPA is developing a county-wide multi-species conservation plan which will address the conservation needs of several special status species, including Swainson’s hawk, and has been pursuing Swainson’s hawk conservation easements in the vicinity of the Ranch; and

C. On November 10, 2008, the Habitat JPA Board of Directors adopted Resolution 2008-02, titled “Resolution Supporting the Creation of Receiving Sites for Swainson’s Hawk Mitigation and the Subsequent Sale of Mitigation Credits”; and

D. The Ranch has been identified as a valuable parcel for mitigation purposes; and

E. Landowner intends to grant a Swainson’s Hawk Conservation Easement concurrent with this Agreement for the purposes set forth therein and the Parties contemplate the creation of mitigation credits which can be utilized by others; and

F. Landowner and JPA will enter into a separate Mitigation Credit Agreement regarding the terms and conditions governing the future use or sale of such Mitigation Credits; and

G. Landowner intends to capitalize the Stewardship Endowment Fund and easement transaction costs with the sale of mitigation credits, but as of the date of this Agreement no credits have been sold.

Based on the foregoing recitals, the Parties hereby agree as follows:

AGREEMENT

3. Grant of easement. Landowner agrees to grant to the California Waterfowl Association a Swainson’s hawk Conservation Easement (“Conservation Easement”) concurrent with this Agreement.

4. Funds Advanced.

d. Habitat JPA Obligations. The Habitat JPA shall advance the sum of \$51,260.05 (Fifty-One Thousand Two Hundred Sixty dollars and Five Cents) toward transaction and closing costs related to the Conservation Easement. Thirty-Nine Thousand Two Hundred Sixty Dollars and Five Cents (\$39,260.05) of said funds will be deposited into escrow no later than December 31, 2008. The remainder will be dispersed directly to pay for costs associated with the Property Survey and legal fees.

e. Landowner obligations. The parties agree that upon the recording of the Conservation Easement and the Mitigation Credit Agreement, a total of 148.9 acres of Swainson's hawk foraging habitat on the Ranch will be preserved. This preserved acreage constitutes "Mitigation Credits" which may be sold by the Landowner (including its heirs, successors, and assigns) in the manner described in the Mitigation Credit Agreement, attached hereto. Landowner agrees to reimburse Habitat JPA for the funds advanced in an amount equal to or greater than \$344.26 per acre for each Mitigation Credit recorded, and reserves the right to prepay any or all of the funds advanced. Landowner further agrees to fully reimburse Habitat JPA prior to the sale or reservation of 110 (one hundred and ten) mitigation credits.

3. Applicable Law. This Agreement has been made and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with California law.

4. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective representatives, heirs, predecessors, affiliated entities, transferees, assigns and successors in interest.

5. Severability. Should any paragraph, clause or provision of this Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid or unenforceable, such construction and decisions shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clauses or provisions of this Agreement, which shall remain in force.

6. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

7. Authority to Execute; Counterparts. Each party represents that it has legal authority to enter into this Agreement and to perform its obligations hereunder. This Agreement may be signed in counterparts, and all counterparts when taken together shall constitute one document.

8. Cooperation. Each party agrees to cooperate with the other to ensure that the terms, provisions, and purpose of this Agreement are effectively carried out at all times. To that end, each party agrees to execute any and all documents that may be reasonably necessary, helpful, or appropriate to carry out the terms, provisions, and purpose of this Agreement.

9. Conflicts of Interest. No member, official or employee of either party hereto shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement with affects his or her personal interests or the interests of any corporation, partnership, association, or other entity in which he or she is directly or indirectly interested.

Agenda Item 6(b)

10. Entire Agreement; Modification. This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each party has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be construed against any party on the basis of drafting. This Agreement may be amended only by an agreement in writing, signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

YOLO COUNTY HCP/NCCP JOINT
POWERS AGENCY

REYNIER FUND, LLC

By _____
Maria B. Wong, Executive Director

By _____

By _____

Attachment A: Mitigation Credit Agreement

Staff Report

TO: Chair and Board Members
Yolo County Habitat JPA

FROM: Maria Wong
Executive Director

DATE: January 5, 2009

SUBJECT: Approval of a Cooperating Agreement between the JPA and Tuleyome

Requested Action:

1. That the Board approve the “*Cooperative Agreement Between the Yolo County HCP/NCCP Joint Powers Agency and Tuleyome*” as to form and authorize the Chair to execute said Agreement pending final approval by JPA counsel.
-

REASON FOR RECOMMENDED ACTION:

Approval of this Agreement provides a structure for future efforts between the JPA and Tuleyome.

BACKGROUND

The JPA previously entered into similar cooperating agreements with the Yolo Land Trust and the California Waterfowl Association. Staff continues to support a close connection with local conservation partners as a way to create capacity for the JPA, and to vest the local conservation community in completion and implementation of the Yolo Natural Heritage Program. The subject cooperating agreement is a non-exclusive cooperating agreement that sets out the terms by which the JPA and Tuleyome agree to do business with respect to conservation easements that may result from this Agreement.

Tuleyome was founded in 2002 as a volunteer advocacy-oriented nonprofit organization focused on protecting both the wild and agricultural heritages of the Putah-Cache bioregion, including all or parts of Yolo, Lake, Napa, Colusa, and Solano counties in northwestern California. Tuleyome lists protecting the Putah Creek and Cache Creek region, development of recreation programs (such as the Capay Valley Hiking Club), and opportunities to provide under-served youth with passive and active recreational opportunities as program objectives. Tuleyome received its CDFG certification to hold conservation easements last year.

FISCAL IMPACT

Fiscal impacts resulting from this Agreement will be limited to staff costs related to future conservation easements. Activities resulting from easement acquisition and related on-going monitoring and reporting activities will be funded by in lieu developer fees or grant funds.

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Attachment: Draft "*Cooperative Agreement Between the Yolo County HCP/NCCP Joint Powers Agency and Tuleyome*"

ATTACHMENT A

DRAFT AGREEMENT NO. 2009-03

Cooperative Agreement Between the Yolo County HCP/NCCP Joint Powers Agency and Tuleyome

THIS FIRST AMENDED AND RESTATED AGREEMENT is made this __ day of January, 2009, by and between the Yolo County HCP/NCCP Joint Powers Agency (“Habitat JPA”) and Tuleyome, a State of California non-profit corporation (“Tuleyome”).

RECITALS

WHEREAS, the Habitat JPA has authority to pursue the acquisition of fee interests and conservation easements for the purpose of permanently preserving open space, natural areas, agricultural land, and other landscapes and environmental qualities of the County of Yolo, including but not limited to foraging habitat for the Swainson’s hawk; and

WHEREAS, it is consistent with the purposes of the Habitat JPA to work in a cooperative and non-exclusive manner with local land trusts to ensure that real property interests acquired by the Habitat JPA are managed effectively and maintained in perpetuity; and

WHEREAS, Tuleyome is a private, non-profit corporation that is tax-exempt under Internal Revenue Code section 501(c)(3) that conducts a land conservation program which includes the acceptance, holding, and monitoring of lands subject to conservation easements, as well as the management of lands acquired in fee simple for conservation and related purposes; and

WHEREAS, the Habitat JPA and Tuleyome desire to set forth the specific terms under which they will cooperatively manage conservation easements and other real property interests acquired by the Habitat JPA for conservation and related purposes;

NOW, THEREFORE, the parties hereby agree as follows:

AGREEMENT

1. Purpose: Non-Exclusivity. As noted above, the purpose of this Agreement is to establish a framework for the management of conservation easements and other real property interests to be acquired by the Habitat JPA. In accordance with the terms and provisions of this Agreement, the parties intend to work together in good faith to ensure that the purposes for which the Habitat JPA acquires conservation easements and other real property interests are achieved and sustained in perpetuity. Except as expressly limited by this Agreement, nothing herein shall limit the authority of the Habitat JPA and Tuleyome to work independently or with other private and public entities to accomplish their respective goals and purposes. This Agreement does not obligate the Habitat JPA to offer Tuleyome any role in connection with conservation easements or other real property interests subsequently acquired by the Habitat JPA, nor does it obligate Tuleyome to accept any role that may be offered by the Habitat JPA.

2. Fee Acquisitions. If the Habitat JPA acquires a fee interest in real property for the purpose of permanently preserving its conservation values, it may elect to offer to grant and record on part or all of such real property a conservation easement in favor of Tuleyome. Any

such offer shall be made by the Habitat JPA and considered by Tuleyome in accordance with the terms and provisions of this Agreement relating to conservation easements, including but not limited to Section 3, below. Alternatively, in lieu of granting a Conservation Easement to Tuleyome under this Section 2, the Habitat JPA may instead seek to negotiate an alternative arrangement with Tuleyome for the management of lands acquired by the Habitat JPA in fee simple. Either party may withdraw from such negotiations at any time, in its sole discretion, and nothing in this Section 2 obligates Tuleyome to accept any conservation easement or other real property interest that may be offered by the Habitat JPA.

3. Easement Acquisitions. At any time during negotiations by the Habitat JPA to acquire a conservation easement, it may provide the Land Trust with a request in writing to hold or co-hold the easement on the terms set forth in this Agreement, including the following:

A. Form and Content of Easement. Tuleyome shall be afforded a reasonable opportunity to review the form and content of a conservation easement negotiated by the Habitat JPA before it responds to a request to hold or co-hold the easement. Tuleyome may request changes or additions to the form and terms of any such conservation easement, and shall advise the Habitat JPA at the earliest reasonable opportunity of the changes and additions it will require if it is to serve as the easement holder. The Habitat JPA retains sole discretion over the final form and content of conservation easements, and it may refuse to incorporate the changes and additions requested by Tuleyome and instead seek another easement holder.

B. Baseline Report. If Tuleyome agrees to hold or co-hold a conservation easement, Tuleyome and the JPA shall jointly identify and negotiate the scope of coverage and associated cost for preparing a baseline documentation report that accurately documents the current environmental and other conditions of the property under consideration. The cost for preparing the easement documentation report initially shall be borne by Tuleyome, but shall be fully reimbursed by the JPA. Before incurring any actual costs in connection with the baseline report, Tuleyome shall obtain the Habitat JPA's written approval to proceed. The Habitat JPA shall reimburse Tuleyome for all approved costs paid by Tuleyome for preparation of the Baseline Report within 30 days of receiving an invoice. Tuleyome shall provide to the JPA a draft of the easement documentation report at least 10 days prior to the anticipated closing date of a conservation easement, unless the easement documentation report requires seasonally relevant studies that cannot be completed within this time frame, in which case all parts of the documentation report other than the results of the seasonally relevant studies shall be incorporated into a draft report that shall be provided to the JPA at least 10 days prior to the anticipated closing date of the easement.

C. Stewardship Fund; Accounting. Concurrent with the recordation of a conservation easement, the Habitat JPA shall make a deposit into a fund ("Stewardship Fund") account established for operations, management, and enforcement activities (endowment) of Tuleyome in connection with conservation easements covered by this Agreement. The Stewardship Fund established under this Agreement shall be an account in the County Treasury, and shall be maintained in a separate account from all other accounts maintained in the Treasury. The amount of each deposit by the JPA to the Stewardship Fund account, investment and management practices, and the withdrawal of any monies in the Stewardship Fund account shall be handled in the following manner:

- a. Investment and Management. The Habitat JPA shall require the County Treasurer to maintain the Stewardship Fund account as a pooled Stewardship Fund that includes all other endowment amounts provided by the Habitat JPA in connection with other conservation easements held by Tuleyome and funded by the Habitat JPA under this Agreement. The Habitat JPA shall also require the County Treasurer to invest the funds deposited in a Stewardship Fund account in legally allowable investments and shall ensure that the investment risk for each such fund does not exceed the level of risk for other County investments. The Habitat JPA shall not, and is prohibited under this Agreement from, withdrawing funds maintained in such accounts, commingling such funds with other Habitat JPA funds, or otherwise transferring Stewardship Fund monies into other Habitat JPA funds. The Habitat JPA shall direct the County Treasurer that he or she may transfer or commingle monies in the Stewardship Fund account with other County funds for investment purposes only.
- b. Withdrawals from Stewardship Fund. Except as otherwise specified in this Section, Tuleyome shall have the exclusive right to withdraw monies from the Stewardship Fund account. Such monies shall be used by Tuleyome solely in connection with the real property covered by the conservation easements for which the Fund was established. All expenditures by Tuleyome shall be for purposes consistent with the conservation easement(s) and this Agreement. Tuleyome agrees to withdraw funds from the Stewardship Fund account only for the exclusive purpose of managing a conservation easement, which includes, but is not limited to, monitoring (see Section 4.A, below), reporting, consulting services, and enforcement activities. Except in extraordinary circumstances, Tuleyome shall make withdrawal requests no more often than once per quarter. Upon receiving a withdrawal request, the Habitat JPA shall review the request and, unless it reasonably denies the request or advises Tuleyome that it needs additional information or documentation to support the request, it shall transmit the request to the County Treasurer within twenty-one (21) days of receipt for payment.
- c. Calculation of Endowment. The amount of any Stewardship Fund deposit by the JPA in connection with the recording of a conservation easement shall be based on a mutually accepted analysis, such as a PAR. Should the JPA and Tuleyome not initially agree on the necessary and appropriate content of the PAR analysis, the JPA and Tuleyome mutually agree to identify the content of the PAR analysis before calculating the endowment. The JPA and Tuleyome shall then work cooperatively using the PAR analysis as a guide to calculate a fee amount that is anticipated to be sufficient to ensure the permanent operation, management, and enforcement of the conservation easement in accordance with its terms. For conservation easements acquired primarily or solely to preserve Swainson's hawk foraging habitat, the amount of the fee shall not exceed the endowment cost adopted by the Habitat JPA Board as a component of the Swainson's hawk interim mitigation fees existing at the time of easement recordation.
- d. Administrative Costs. Pursuant to Government Code section 27103, the parties both recognize and agree that the County may deduct from the Stewardship Fund account's interest or income, before any distribution thereof, the actual administrative cost of such investing, depositing or handling of funds and of distribution of such interest or income.

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- e. Withdrawal by Habitat JPA or Other Entities. In the event that, pursuant to the terms of this Agreement, the Habitat JPA or another entity assumes Tuleyome's responsibilities in connection with one or more conservation easements for which the Stewardship Fund account has been established, the Habitat JPA or such other entity shall be entitled to withdraw funds from the Stewardship Fund to carry out the purposes for which the Fund was established.
- D. Other Costs.
 - a. Generally. In conjunction with Tuleyome's review of a conservation easement pursuant to this Agreement, the parties shall discuss and agree upon a budget for Tuleyome staff, attorney, and consultant review of the proposed conservation easement. The budget shall represent a reasonable estimate of the costs and expenses Tuleyome expects to incur in reviewing each conservation easement. The JPA shall pay all costs and expenses incurred by Tuleyome in accordance with this budget, as may be amended from time to time by mutual agreement, within thirty (30) days of its receipt of an invoice from Tuleyome, together with any supporting information that may be reasonably requested by the Habitat JPA.
 - b. Reimbursement if Participation Ceases. If the JPA decides not to use Tuleyome as an easement holder after Tuleyome has commenced easement review under this Agreement, the JPA shall pay all costs and expenses incurred by Tuleyome in accordance with the budget prior to the date that the participation of Tuleyome ceases. If instead Tuleyome decides to withdraw from participating in an easement transaction after commencing the review process, Tuleyome is entitled to reimbursement only for costs and expenses reasonably incurred in providing work product or services of material benefit to the JPA in connection with said transaction.
 - c. Except as expressly provided herein or as may otherwise be agreed in writing between the parties, neither party shall be entitled to any compensation or reimbursement from the other for costs incurred in connection with conservation easements.
- 4. Management; Enforcement Rights.
 - A. Monitoring. The Habitat JPA shall ensure that all conservation easements held or co-held (with the Habitat JPA) by Tuleyome pursuant to this Agreement require that the property be maintained, managed, and used in a manner consistent with the purpose(s) and conservation values set forth in the conservation easement. All such easements shall contain a provision that allows for an annual monitoring to review compliance, which Tuleyome shall be responsible for conducting. The specific elements in the annual monitoring program shall be negotiated by mutual agreement between the JPA and Tuleyome. Tuleyome shall perform the annual monitoring in accordance with the standards of other well-established land trusts in California holding similar conservation easements. By mutual agreement, Tuleyome may modify the monitoring program to assure compliance with the monitoring requirements of state or federal regulatory agencies (including but not limited to the California Department of Fish and Game) relating to the HCP/NCCP. Within 30 days of each annual inspection, Tuleyome shall provide to the Habitat JPA a draft report of the inspection for its review. The

Habitat JPA shall promptly inform Tuleyome if it has questions or if it desires changes to the method of monitoring or the format of the report. In that event, the parties shall work together to satisfy the Habitat JPA's reasonable concerns. Tuleyome shall specifically address all reporting obligations arising in connection with the HCP/NCCP. Tuleyome shall keep a copy of the monitoring reports in its files and send or otherwise deliver a copy of each report to the landowner(s) and other easement co-holders, if any.

B. Financial Reporting. Within sixty (60) days after each yearly anniversary of the execution of this Agreement, the Habitat JPA agrees to submit to Tuleyome a report that summarizes the status of the Stewardship Fund(s), including its present balance and a list of all deposits and withdrawals from the Stewardship Fund(s) in the previous year.

C. Enforcement. The Habitat JPA shall ensure that any conservation easement held or co-held by Tuleyome pursuant to this Agreement includes a provision that authorizes both parties to act, jointly or independently, to enforce its terms and provisions. The Habitat JPA and Tuleyome each agree to notify the other in the event that either receives information suggesting any actual or prospective change in the ownership of property subject to a conservation easement or any actual or threatened violation of any such conservation easement. As between the Habitat JPA and Tuleyome, unless otherwise expressly provided in a specific conservation easement, Tuleyome shall have primary responsibility for promptly investigating any alleged violation of a conservation easement covered by this Agreement and, if necessary, taking appropriate steps to prevent or remedy such violations. If requested by Tuleyome, the Habitat JPA shall consider in good faith any proposal for Habitat JPA assistance and support in enforcement actions, including a proposal for financial assistance to the extent the Stewardship Fund has been exhausted. If Tuleyome recovers monetary damages for any such breach, the Habitat JPA shall be entitled to:

- (1) The balance of monetary damages remaining after Tuleyome applies amounts recovered to the costs of restoring the property at issue and to offset all costs of enforcing the easement (including reasonable attorneys' and expert witness fees); or
- (2) If less than the amount payable under (1), above, the per-acre amount paid by the Habitat JPA for acquisition of the easement.

5. Transfer of Easement Interests. If Tuleyome elects to transfer any easement interest acquired in connection with this Agreement, such transfer shall be subject to the terms and conditions regarding transfer contained in the relevant conservation easement. Tuleyome shall provide the Habitat JPA with at least thirty (30) days advance notice of any such transfer. The Habitat JPA shall have the right to approve the transfer, which shall not be unreasonably withheld. The Habitat JPA agrees to deliver written approval or disapproval of the transfer within 30 days after written request by Tuleyome. Prior to or concurrent with any such transfer, Tuleyome agrees to ensure that the transferee executes a written acknowledgement of, and agreement to assume, all of the duties and obligations of Tuleyome under this Agreement and the conservation easement. Should the amount of money in the Stewardship Fund ever become insufficient for Tuleyome to fulfill its obligations under this Agreement, due to the Habitat JPA's breach of the introductory paragraph of Section 3.C or subsection 3.C(1) of this Agreement, or due to the County Treasurer not complying with the requirements set forth in the introductory paragraph of Section 3.C or subsection 3.C(1) of this Agreement, then Tuleyome

may transfer to Habitat JPA and Habitat JPA shall accept Tuleyome, any or all of the easement interests acquired in connection with this Agreement.

6. Breach. The failure of either party to this Agreement to comply with the terms hereof shall constitute a breach of this Agreement. In the event of a breach of this Agreement, the party declaring such breach shall notify the breaching party in writing of the nature of the breach. If the breaching party does not cure the breach or provide sufficient evidence of the commencement and diligent pursuit of the cure within thirty (30) days of deliver of such notice of breach, the non-breaching party shall be entitled to pursue all remedies available at law or in equity, and such remedies shall be in addition to any remedies the parties may have under this Agreement or any other documents executed in accordance with this Agreement. All remedies shall be cumulative, and the exercise of one remedy shall not preclude the exercise of any other remedy.

In addition to the foregoing, if Tuleyome fails to carry out its responsibilities under the terms of any easement held pursuant to this Agreement, after allowing the opportunity for cure set forth in the preceding paragraph or such additional time as the parties mutually agree may be appropriate under the circumstances, the Habitat JPA may assign Tuleyome's responsibilities under such deed of easement to another qualified easement holding organization. If such an assignment occurs, all amounts held in the Stewardship Fund(s) for that easement, after paying remaining sums due to Tuleyome pursuant to Tuleyome's obligations under the Conservation Easements and this Agreement, shall be available to the new easement holder for appropriate purposes and Tuleyome shall have no further duties or obligations as the easement holder. If the provisions of this Section 6 regarding the assignment of Tuleyome's responsibilities conflict with the terms of a conservation easement or other recorded document conveying an interest in real property to Tuleyome in connection with this Agreement, the conservation easement or other recorded document shall govern. If a termination under this paragraph occurs, Tuleyome shall cooperate with and take all steps reasonably necessary to effectuate the transfer.

7. Termination. Either party to this Agreement may terminate the Agreement upon thirty (30) days written notice to the other party. Any such termination shall extinguish the obligations of the parties with regard to any conservation easement or other property interest that may be acquired by the Habitat JPA after the date of termination. However, any conservation easements entered into prior to the termination date shall remain subject to the terms and provisions of this Agreement unless otherwise agreed in writing by the parties hereto.

8. Notice. Notices given pursuant to this Agreement, including notices for enforcement purposes, shall be deemed delivered with deposited in the United States Mail, postage prepaid and addressed as follows:

HABITAT JPA
Executive Director
Yolo County HCP/NCCP Joint Powers Agency
292 West Beamer Street
Woodland, CA 95695

TULEYOME
Attention: President of the Board
607 North Street
Woodland, CA 95695

9. Applicable Law. This Agreement has been made and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with California law.

10. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective representatives, heirs, predecessors, affiliated entities, transferees, assigns and successors in interest.

11. Severability. Should any paragraph, clause or provision of this Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid or unenforceable, such construction and decisions shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clauses or provisions of this Agreement, which shall remain in force.

12. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

13. Authority to Execute; Counterparts. Each party represents that it has legal authority to enter into this Agreement and to perform its obligations hereunder. This Agreement may be signed in counterparts, and all counterparts when taken together shall constitute one document.

14. Cooperation. Each party agrees to cooperate with the other to ensure that the terms, provisions, and purpose of this Agreement are effectively carried out at all times. To that end, each party agrees to execute any and all documents that may be reasonably necessary, helpful, or appropriate to carry out the terms, provisions, and purpose of this Agreement.

15. Conflicts of Interest. No member, official or employee of either party hereto shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement with affects his or her personal interests or the interests of any corporation, partnership, association, or other entity in which he or she is directly or indirectly interested.

16. Entire Agreement; Modification. This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and

contemporaneous oral and written agreements and discussions. Each party has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be construed against any party on the basis of drafting. This Agreement may be amended only by an agreement in writing, signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

YOLO COUNTY HCP/NCCP JOINT
POWERS AGENCY

TULEYOME

By _____
Helen M. Thomson, Chairwoman
Board of Directors

By _____
Robert Schneider, President
Board of Directors

Approved as to Form:
Robyn Truitt Drivon, County Counsel

By Philip J. Pogledich, Senior Deputy
Attorneys for the Yolo County
Habitat/Natural Community Conservation Plan
Joint Powers Agency

Staff Report

TO: Chair and Board Members
Yolo County Habitat JPA

FROM: Maria Wong
Executive Director

DATE: January 5, 2009

SUBJECT: Executive Director Report

1. Update on Swainson's hawk conservation easement acquisitions

The JPA completed conservation easements in 2008 totaling 351 acres. Two additional easements will close in January bringing the total number of acres conserved to date to 1,160 acres. This spring staff expects to finalize a 435 acre Swainson's hawk easement on lands near Grasslands Park that were purchased in 2006 to mitigate a large development in West Sacramento.

Staff is currently working with Tuleyome on two proposed easements. Both are located in strategically important oak woodland areas; one of the properties also supports Swainson's hawk foraging habitat. Landowner interest in Swainson's hawk easements is still strong.

2. Public outreach efforts

Staff participated in the Green Summit and the Northern California Conservation Planning Partners Workshop in November, 2008. In addition, staff made a presentation to the Lower Yolo Bypass Planning Forum regarding the Yolo Natural Heritage Program.

Beginning in January staff will begin a series of focused meeting with the various community and special interest groups in Yolo County.

3. Asilomar NCCP Summit

In October staff participated in a state-wide NCCP summit in Asilomar. Participants included a cross section of individuals and organizations who have worked on NCCPs and who were in a position to make recommendations on how the program could be improved. Several sub-committees were formed and staff agreed to serve on one that will pursue increased federal funding for HCPs. The sub-committee is making good progress on building a state-wide campaign to increase federal funding and expects to undertake a federal lobbying trip in March, 2009.

4. Steering Advisory Committee

The Steering Advisory Committee completed a series of informational presentations in December and will begin discussions regarding conservation strategies in January. The Committee meets twice monthly.

5. Related Planning Efforts

Staff continues to coordinate with several on-going planning efforts that have the potential to impact the Yolo Natural Heritage Program.

Lower Yolo Bypass Planning Forum: attend meetings and serve on two sub-committees: the charter committee and the membership committee.

Yolo County General Plan Update: continued coordination with the General Plan Update team.

SaCOG Rural Urban Connector Study: intermittent coordination and review of draft documents will continue into 2009.

Northern California Conservation Planning Partners: attend monthly meetings and participate in the effort to increase federal funding for HCPs.

6. Pollinator Study

The Pollinator Study was initiated in November and is expected to be complete in March 2009.

Staff Report

TO: Chair and Board Members
Yolo County Habitat JPA

FROM: Maria Wong
Executive Director

DATE: January 5, 2009

SUBJECT: Presentation regarding the Bay Delta Conservation Plan – Karla Nemeth,
Resources Agency

Requested Action:

Allow presentation and direct JPA staff to work with interested JPA Member Agencies and stakeholders to develop a range of beneficial outcomes for the Board's consideration in March.

REASON FOR RECOMMENDED ACTION:

Opportunities to negotiate mutually acceptable outcomes within the Yolo Natural Heritage Program ("YNHP") and Bay Delta Conservation Plan ("BDCP") overlap area are desirable and possible.

BACKGROUND:

The Bay Delta Conservation Plan will address the conservation needs of several at risk fish species currently experiencing critical population decline in the Delta. This decline is attributed to a combination of stressors including degraded habitat, water exports, constituents of concern, and invasive species.

JPA staff has monitored the progression of the BDCP over the last 1-1/2 years because the planning areas for the YNHP and the BDCP overlap within the legal Delta. This overlap creates the potential for opportunity as well as conflict, as the terrestrial needs of the YNHP are weighed against the aquatic needs of the BDCP.

Staff also participates in the Lower Yolo Bypass Planning Forum. The LYB Planning Forum is a coalition of interested stakeholders from the Lower Yolo Bypass/Cache Slough area. This area has recently been identified in the December 2008 biological opinion for the State Water Project as ideal for the creation and enhancement of 8,000 acres of smelt habitat; approximately 4,000 of that is expected to take place on the Yolo Ranch and Liberty Island in the Lower Bypass in both Yolo and Solano Counties.

ANALYSIS:

The Bay Delta Conservation Plan planning process is managed by the California Resources Agency. The BDCP/YNHP overlap area stretches the length of the Yolo Bypass and is bounded

on the east by the Sacramento River. Several species of interest to the YNHP utilize the overlap area for all or part of their life cycle. Conservation strategies proposed by BDCP have the potential to alter the physical characteristics and processes in the Bypass, which many believe will have a negative impact on those species. These actions include lowering the Fremont Weir to allow the Bypass to be inundated more frequently and for longer periods of time. This change is expected to benefit salmonids, sturgeon and Delta Smelt.

Resources Agency staff will provide background information on the BDCP in this initial presentation and propose to return in March with an update and more specific information on how BDCP actions will affect the Bypass.

The following general concerns regarding current BDCP proposals, as expressed by a range of stakeholders, is provided in preparation of this first discussion.

- Loss of Agriculture in the Bypass (includes County revenue streams as well as jobs)
- Reduction in agricultural operations that have maintained flood capacity in the Yolo Bypass.
- Increased vegetation types and densities from aquatic restoration, resulting in decreased flow capacity in the Yolo Bypass.
- Potential increases of methyl mercury, which will be transported to the Delta during flood events.
- Elimination of valuable waterfowl and shorebird habitat on private lands and the DFG Yolo Bypass Wildlife Area.
- Elimination of public use and education programs at the DFG Yolo Bypass Wildlife Area (these programs that are the most popular of their kind in the Delta during the prime winter/spring waterfowl migration).
- Increased production of mosquitoes during warm spring days, requiring increased vector control methods and costs.
- Legal, institutional, and contractual implications related to potential renegotiation and modification of existing Yolo Bypass flowage easements.
- Conflicts with land management practices and infrastructure resulting from increased abundance of special status species in the Yolo Bypass/Cache Slough region.
- Increased opportunity for scour and erosion damage to unarmored Bypass levees.