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A D D E N D U M #2

For the Agenda of:
May 31, 2005
Agenda Item No. 8

TO: BOARD OF SUPERVISORS

ON: **SWAINSON'S HAWK ORDINANCE - 05-POB-0230**

ASSESSOR'S PARCEL NO.: County Wide

- REQUEST:
1. **Amend** the Swainson's Hawk Impact Mitigation Fees Ordinance (Chapter 16.130).
 2. **Introduce** the attached Swainson's Hawk Impact Mitigation Fees Ordinance (Attachment B), waive the full reading and continue two weeks for adoption. This Ordinance amends Sacramento County Code, Section 16.130.
 3. **Adopt** the resolution adjusting the various fees associated with the Ordinance (Attachment C).
 4. **Direct Staff** to return at a later date to address the Agreement for Funding and Acquisition of Swainson's Hawk Foraging Habitat (Agreement) among the California Department of Fish and Game (DFG), The Nature Conservancy (TNC) and the County of Sacramento (County).

ENVIRONMENTAL DOCUMENT: **CATEGORICAL EXEMPTION**

I. BACKGROUND:

The Board of Supervisors held hearings on the Swainson's Hawk Ordinance on April 27 and May 11, 2005. Public testimony was taken at both of these hearings. A number of issues were raised and the Planning Department was directed to return with a report back on May 31, 2005.

The Board requested that the Department address the following issues in their report back:

- Place a 15 business-day decision requirement on accepting or rejecting a proposed property as suitable mitigation
- Raise the fee cut-off point from 20 acres to 40 acres
- Allow out-of-County mitigation for some specified distance into Sutter and Placer Counties
- Clarify the issue of the operations and management fee (endowment)

II. ANALYSIS:

A. 15 Business-Day Decision Period

The Board received public testimony requesting that a defined time frame be placed in the ordinance in which staff would be required to accept or reject a proposed parcel for mitigation. The Board directed staff to place a 15 business-day time period into the ordinance during which staff would be required to make a determination whether to accept or reject a parcel as adequate for mitigation. This new language has been incorporated into the Department's proposed amendment, in Section 16.130.040 (A)(1)(a)(ii), which reads as follows:

The land to be preserved shall be deemed suitable Swainson's Hawk foraging habitat by DFG and the County, who shall have fifteen (15) business-days to either accept or reject proposed land as suitable. For each approval request, an approved development project for which the proposed mitigation is to apply must be identified.

This approval process will not provide a means for applicants to receive pre-approval for possible mitigation lands bought on speculation or in anticipation of a project not currently identified through the Department of Environmental Review and Assessment as having a Swainson's Hawk impact requiring

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mitigation. For each approval request under the Swainson's Hawk Ordinance, an approved development project must be identified corresponding to the proposed mitigation site.

It is possible that the physical, cultural and biological conditions involving any specific parcel of land may change over time. Therefore, staff intends to include language for properties which the department grants approval as suitable foraging habitat pursuant to Section 16.130.040 (A)(1)(a)(ii) as described above, a description of the property and its surroundings in their current state and a disclaimer that should the property or surroundings substantially change such that the property is no longer suitable Swainson's Hawk foraging habitat, the County reserves the right to not accept the property as adequate mitigation. Therefore it is in the applicant's best interest to transfer an approved property to the Swainson's Hawk Program as soon as possible after the Planning Department grants approval.

B. 40 Acre Cutoff for Utilization of Fee Option

After taking public testimony, the Board concluded that the Ordinance should use a 40 acre cutoff such that projects less than 40 acres are eligible to pay a fee for Swainson's Hawk mitigation if the applicant chooses to use this Ordinance. These changes have been made to the proposed ordinance amendment in Sections 16.130.010 and 16.130.040.

C. Out-of-County Mitigation

In response to concerns that there was not sufficient suitable Swainson's Hawk foraging habitat available in the North Area for the communities of Rio Linda, Elverta and vicinity, the Board directed staff to modify the ordinance amendment to allow out-of-County mitigation in Sutter and Placer Counties. The Board further directed staff to identify an appropriate distance into those Counties that mitigation would be allowed to provide nearby out-of-County mitigation for the populations of hawks in northwestern Sacramento County.

Staff has consulted with DFG and run an analysis looking at location data for all known Swainson's Hawk nest sites in Sacramento, Sutter and Placer Counties. This location data was applied to a GIS data base containing the above region's waterways, roads, and preferred Blueprint scenario. In order to allow some out-of-county mitigation within a reasonable distance of the Sacramento County line, staff calculated that an approximately one mile distance was appropriate.

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This provides land in the vicinity of the nests located both in northern Sacramento County and extreme southern Placer and Sutter Counties without encroaching on the clustering of nests along the Verona Cross Canal in Sutter County about seven miles north of the county line.

For the purpose of a definable boundary, the limits of the area approximately one mile north of the Sacramento County line are defined in the ordinance as Riego/Baseline Road to the north, bounded by the Sacramento River and Watt Avenue to the west and east respectively. This language has been added to Section 16.130.010 of the proposed ordinance amendment.

While this area is suitable foraging habitat at this time, SACOGS preferred Blueprint scenario, which takes into account some of the proposed developments in Placer and Sutter Counties, shows this area slated for future development. In order to provide maximum flexibility, staff recommends that North Area projects still have the opportunity to mitigate in the south County. The out-of-county area will serve as an additional option for north area mitigation and will provide some flexibility in land acquisition. The reciprocal of this arrangement, where projects in the south County would be allowed to mitigate in the north area, is not supported by staff or DFG and the proposed ordinance is written to reflect this.

D. Operations and Management Fee

The Board heard public testimony indicating that there was no apparent nexus between staff's recommendation to base the Operations and Management Fee (O&M Fee or Endowment) on a percentage of the purchase price of the land. This percentage calculation serves to apply a ceiling to the fee that our conservation partners can require as an endowment. As Mr. Eaton from The Nature Conservancy (TNC) testified, TNC uses a computer program (PAR - Property Analysis Record) to which various site specific attributes are assigned to calculate an appropriate endowment. The Board directed staff to modify the means by which the O&M fee is calculated. Based on that direction, staff recommends that instead of a percentage of the price, the O&M fee be based on a per-acre figure.

In a study done by the Center for Natural Lands Management for the United States Environmental Protection Agency, the costs associated with management in perpetuity were analyzed for 28 preserves in California, Arizona and Oregon. This study was included with the City of Elk Grove's staff report, provided as Attachment E of County Planning's original April 27, 2005 staff report. The study introduced a capitalization rate used to calculate an appropriate amount of money used to fund an in-perpetuity endowment. This rate is applied to the

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annual per-acre cost of the activities needed to operate and manage the preserve and results in the endowment needed or in the case of our ordinance the O&M fee.

Looking at the California preserves in the study, and using only the categories of costs expected with a conservation easement as apposed to full ownership and management of a preserve, the City of Elk Grove calculated a \$47.50 per-acre, annual cost for monitoring conservation easements. An endowment providing investment income is necessary to secure this income stream in perpetuity such that the principal investment is never drawn down. A capitalization rate is applied to the annual, per-acre O&M cost to calculate an effective endowment.

The City of Elk Grove applied a 2% capitalization rate; this resulted in a total endowment of \$2,375 per acre in order to manage a conservation easement in perpetuity. However for projects providing their own lands or easements as mitigation, we recommend that the maximum per acre limit be set at \$3,500 per acre, due to the possibility of having to manage properties in fee title. As the Board heard in public testimony, many land owners are reluctant to sell easements and agree to sell in fee title only. Managing fee title properties is more expensive than managing easements alone and therefore a larger endowment is required. Staff emphasizes that the actual O&M fee would be based on our conservation partner's PAR analysis (the software program mentioned above) and would be tailored to each individual parcel and would not exceed \$3,500 per acre. The purpose of the ceiling point is so that project applicants will have cost assurances. Staff emphasizes that this is a ceiling point and the actual endowment calculated by the PAR program and our conservation partners will generally be less than the ceiling point.

For projects utilizing the fee option, a set per acre fee is necessary as specific properties for which we will spend the fee have not been identified and therefore a PAR analysis is not possible in advance. Staff recommends adoption of a \$2,375 per acre fee which is consistent with the City of Elk Grove's fee which is based on research conducted by the Center for Natural Lands Management.

E. Agricultural-Residential Lots

The Board directed staff to consider a solution for the situation in Agricultural-Residential areas where a small property owner could face large mitigation fees due to the increase in land values. While the Board did not expect a solution by the May 31, 2005 report back, Planning and DERA staff have had the first of several meetings with DFG to work out a solution. Initial discussions are exploring the possibility of conducting an analysis for all five to 15 acre parcels (a statistical analysis will be conducted to determine the upper range) zoned AR-2,

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AR-1, A-1 and A-2. This analysis would result in some type of habitat suitability analysis that would identify what habitat value, if any, is present on or around individual Agricultural-Residential properties prior to any proposed development activity. This analysis would then be incorporated into the CEQA document for individual projects as they came in for approval. Staff will continue to work with DFG to provide a solution that satisfies CEQA while providing some relief from the high fees an Agricultural-Residential owner may face.

F. Time of Payment/Delivery of Easement or Title

Currently the Ordinance requires payment of the Swainson's Hawk Fees before approval of plans or issuance of permits. As a matter of practice DERA has included in their MMRP document, language stating that payment must be made before the recordation of any final maps or issuance of permits, whichever comes first. DERA has suggested this practice be codified into the Swainson's Hawk Ordinance. Planning staff recommends including the recordation of a final map as one of the triggers requiring payment and has changed the language in the proposed ordinance to reflect this. Sections 16.130.040, 060, 100 & 130 have been changed to include the following language:

... prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first.

III. CONCLUSION:

Staff recommends that your Board approve the revised ordinance as provided in Attachment B. This would allow fees to be set by resolution, provide coverage for the entire unincorporated County and require up-front land acquisition for projects 40 acres in size and larger. Additionally, staff recommends your Board adopt the resolution setting the new Swainson's Hawk Program fees (Attachment C). Finally, we ask that you direct staff to address the Agreement among the County, The Nature Conservancy and DFG and direct staff to make a similar agreement with the Sacramento Valley Conservancy as another of our conservation partners.

In the event that your Board does not amend the Swainson's Hawk Ordinance as described above, we recommend the immediate repeal of the existing Swainson's Hawk Ordinance in order to cease the collection of an inadequate mitigation fee. The steps to repeal the ordinance are described below.

Introduce the attached Swainson's Hawk Impact Mitigation Fees Ordinance (Attachment I from 4/27/05 staff report), waive the full reading and continue for two weeks for adoption. This Ordinance repeals Sacramento County Code,

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Section 16.130.

IV. ATTACHMENTS:

- A. Swainson's Hawk Ordinance Amendment (strike-through copy)
- B. Swainson's Hawk Ordinance Amendment (clean copy)
- C. Resolution of Fees for Swainson's Hawk Program

This report was prepared by John Lundgren.

5/25/05

SCC NO. _____

AN ORDINANCE AMENDING CHAPTER 16.130, SECTIONS 16.130.010 THROUGH 16.130.130, TITLE 16 OF THE SACRAMENTO COUNTY CODE RELATING TO THE SWAINSON'S HAWK IMPACT MITIGATION PROGRAM

The Board of Supervisors of the County of Sacramento, State of California,
ordains as follows:

SECTION 1: Chapter 16.130, Sections 16.130.010 through 16.130.130, of Title 16 is hereby amended to read as follows:

16.130.010 Purpose and Intent.

The Board of Supervisors finds that the continued expansion of urban and agricultural-residential uses into the agriculturally zoned lands of within the Urban Services Boundary of Sacramento County ("County") that are identified through the California Environmental Quality Act ("CEQA") process or by appropriate regulatory agencies to provide suitable foraging habitat for the Swainson's hawkHawk, a listed threatened species under the California Endangered Species Act, will, absent mitigation, result in a significant reduction of such foraging habitat. The reduction in foraging habitat can occur through requests for zoning changes of agriculturally zoned lands to land use designations that enable land to be reduced to parcel sizes too small to support Swainson's hawkHawk foraging habitat or through requests for land use entitlements for non-agricultural uses that are incompatible with the maintenance of Swainson's hawkHawk foraging habitat. The California Department of Fish and Game ("DFG") has determined that parcels of land of five acres or more in size are recognized to be the minimum acreage required for viable foraging habitat. Requests to subdivide AR-1 or AR-2 zoned property, with an original total acreage size of five (5) acres or more to the lot sizes permitted under these zoning designations can also result in the reduction of foraging habitat for the Swainson's hawkHawk. For any such requests on parcels located within the Urban Services Boundary, as the defined boundary of urban development under the 1993 General Plan, which are in excess of one mile of a Swainson's hawk nest which nest is outside of the Urban Services Boundary and which fall within the geographical scope and application of this Chapter, which are within ten (10) miles of a Swainson's Hawk nest the Board of Supervisors desires to establish an additional means of mitigating for loss of Swainson's hawkHawk foraging habitat.

The Board of Supervisors has identifieddetermined, in consultation with DFG, that suitable foraging habitat for the Swainson's Hawk exists in both established land conservation programs in SouthSacramento County which includes existing and potential foraging habitat for the Swainson's Hawk, and also in agricultural and open lands currently not part of a conservation program~~hawk~~. The Board of Supervisors finds that the most effective means of mitigation for the loss of suitable Swainson's Hawk foraging habitat is the direct preservation, in perpetuity, of equally suitable foraging habitat on an acre-per-acre basis based on gross project size. Such preservation should occur, pursuant to this Chapter, prior to the onset of development activities that

cause the impact (i.e. land clearing and site grading). Development project proponents should be responsible for locating and acquiring the appropriate land or legal instruments (such as conservation easements) that will ensure the preservation of Swainson's Hawk foraging habitat in perpetuity. The Board of Supervisors also finds that it may be infeasible to mitigate for impacts to Swainson's Hawk foraging habitat by acquiring easements for less than forty (40) acres and proponents of projects that consist of parcels less than forty (40) acres in size should have the option to mitigate adverse impacts to Swainson's Hawk foraging habitat through the payment of an impact mitigation fee. An impact mitigation fee, as established pursuant to this Chapter, will provide funds to acquire available land with suitable Swainson's hawkHawk foraging habitat values, within the boundaries of these conservation programs.

The Board of Supervisors recognizes that mitigation for foraging habitat for the Swainson's hawkHawk is only feasible when replacement habitat is provided within the known foraging arearadius for the hawkhawk. The Board of Supervisors recognizes that Swainson's hawk foraging habitat that is beyond the foraging radius for those nests located along the Cosumnes and Deer Creek rivers cannot be adequately mitigated through acquisition of foraging habitat lands inside the Cosumnes or Deer Creek river preservation areas. The Board of Supervisors recognizes that acquisition options within a limited geographical boundary and constraints by uses not conducive to Swainson's hawk foraging habitat do not provide adequate mitigation opportunities. The Board of Supervisors also acknowledges that the mitigation fee amount established in this Chapter is only viable due to the existence of these specific, established land conservation programs, which include an existing system of land management practices, thus alleviating the necessity of requiring additional monies or a higher mitigation fee in order to enhance, manage and maintain foraging habitat acquired pursuant to this Chapter. Therefore, in order to provide adequate mitigation for the loss of Swainson's hawkHawk foraging habitat pursuant tounder CEQA, through the collection of a themitigation fee acquisition of mitigation habitat either by procurement of a conservation easement or by fee title is necessary. Further, the Board of Supervisors deems it necessary to include within the scope of possible mitigation sites, this mitigation fee program parcels that are located within the geographical foraging arearadius of the Swainson's Hhawk in the unincorporated County-south of the American River, outside the Urban Services Boundary, excluding the City of Galt's Sphere of Influence.16.130.010that are and that are owned and/or managed by a conservation organization at wherein the-a location of the mitigation parcel and the conservation organization are is that are acceptable to DFG. The Board of Supervisors also finds that due to limited opportunities for acquisition of mitigation lands in northern Sacramento County, that for those projects which are north of the American River only, there shall be added to the scope of possible mitigation sites, those properties in Sutter and Placer Counties which lie in the area defined by the Sacramento County Line to the south and Riego/Baseline Road to the north, bounded by the Sacramento River and Watt Avenue to the west and east respectively..

The Board further finds that the direct preservation of suitable Swainson's Hawk foraging habitat or the ispayment of an impact mitigation fee for the actual acquisition of such habitat, will meet the requirements of mitigation under CEQA by reducing the level of impact to Swainson's hawkHawk foraging habitat to a less than significant level for those parcels falling within the scope of this Chapter as set forth herein. The Board of

Supervisors intends that the [requirement of direct preservation of suitable Swainson's Hawk foraging habitat for projects forty \(40\) acres and larger and the requirement of an impact mitigation fee for projects less than forty \(40\) acres](#), in the amount set forth in this Chapter, shall be included as one of the mitigation options. Said mitigation shall arise when the environmental review process for a request falling within the scope of this Chapter concludes there would be a significant impact or a significant cumulative impact on the Swainson's ~~hawk~~[Hawk](#) foraging habitat for which mitigation, pursuant to all applicable provisions of the Public Resources Code ~~S~~[s](#)ection 21000 et seq. and the California Code of Regulations, Title 24, ~~S~~[s](#)ection 15000 et seq., is required. The Board also recognizes its continued authority to determine, based on specific economic, social, legal, technical or other considerations, that mitigation for Swainson's ~~hawk~~[Hawk](#) foraging habitat is infeasible or that evidence has been presented to the Board, which the Board determines eliminates the need for such mitigation.

16.130.020 Definitions.

"Agricultural Designation" means land which is zoned any of the following zoning designations or combinations thereof: AG-160, AG-80, AG-40, AG-20, UR, IR, AR-10, AR-5, A-80, A-20, A-10.

"CEQA" means the California Environmental Quality Act.

"DFG" means the California Department of Fish and Game.

["Habitat Conservation Plan \(HCP\)" means any plan, approved by the United States Fish and Wildlife Service \(USFWS\) designed to protect one or more species in exchange for a take permit issued by the \(USFWS\) for certain species.](#)

["Habitat Conservation Plan \(HCP\) area" means the area identified within an individual HCP including both the areas covered for take as well as for reserves for that particular HCP.](#)

["Project" shall mean the total combined gross acreage of a parcel or parcels included in a development proposal subject to CEQA review.](#)

"Urban Services Boundary" means that boundary identified in the Land Use Element of the 1993 General Plan as the ultimate boundary of the urban area in the unincorporated County for purposes of the 1993 General Plan policies and goal.

"Urban Designation" means land which is zoned any of the following zoning designations or combinations thereof: a residential land use zone as set forth in Sacramento County Zoning Code Section 201-01, a "commercial land use zone" as set forth in Sacramento County Zoning Code Section 225-10 or an "industrial land use zone" as set forth in Sacramento County Zoning Code Section 230-10; a specific plan designation or a special planning area designation encompassing any of the aforementioned zoning designations or combinations thereof.

16.130.030 Applicability.

~~aA.~~ This ~~chapter~~[Chapter](#) shall apply to any of the following requests for which all of the criteria set forth in subsection (~~Bb~~) have been satisfied:

1. To any request for a change in land use designation from an Agricultural Designation to an Urban Designation, or
2. To any request to subdivide five acres or more of contiguous land zoned AR-1 or AR-2, or
3. To any request for a land use entitlement for a non-agricultural use of land zoned with an Agricultural Designation, or

4. To any request for a land use entitlement for a non-agricultural use of land five acres or more in size zoned AR-1 or AR-2, or

5. To any public improvement project proposed by any department or agency of Sacramento County on land with an Agricultural Designation, or

6. To any request to subdivide five (5) acres or more of contiguous land zoned as an Urban Designation to less than five (5) acres.

bB. This Chapter shall apply to any request falling within subsection (aA) for which all of the following criteria have been satisfied:

1. The entire underlying parcel(s) for the request are located within the defined scope of this Chapter as set forth in subsection (Ce) hereof,

2. The underlying parcel(s) for the request are identified through the CEQA process, based on the DFG staff report regarding mitigation for impacts to Swainson's hawkHawks in the Central Valley of California, to provide suitable Swainson's hawkHawk foraging habitat, and

3. Following consultation with DFG, it has been determined through the CEQA process that the request will result in a significant impact or significant cumulative impact on Swainson's hawkHawk foraging habitat for which mitigation measures have been identified as necessary to reduce that impact to a less than significant level.

eC. The scope of this Chapter encompasses any projectparcel located entirely within that portion of the unincorporated area of Sacramento County ~~bounded by the American River to the north and the county to the west, south and east., not in an approved Habitat Conservation Plan area that addresses Swainson's Hawk.~~

16.130.040 Conditions.

aA. On and after the effective date of this Chapter, for any request falling within the provisions of Section 16.130.030 of this Chapter, one of the following two mitigation measures shall be included within the mitigation measure options identified to reduce the impact to Swainson's Hawk foraging habitat of that particular request to a less than significant level: ~~Prior to Improvement Plan approval or Building Permit issuance, whichever occurs first, the property owner/developer shall submit payment of the Swainson's hawk impact mitigation fee per acre impacted to the Department of Planning and Community Development in the amount as set forth in Chapter 16.130 of the Sacramento County Code as such may be amended from time to time and to the extent that said Chapter remains in effect.~~

1. For projects 40 acres or more in size:

a. Prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first, the project applicant shall acquire suitable Swainson's Hawk foraging habitat, as determined by DFG and approved by the County.

i. The project applicant shall preserve through conservation easement(s) or fee title one (1) acre of similar habitat for each acre developed.

ii. ———ii.———The land to be preserved shall be deemed suitable Swainson's Hawk foraging habitat by DFG and the County, which shall make all reasonable efforts to either accept or reject the proposed land as suitable within fifteen (15) business days. However, failure to act within such time shall not be deemed as acceptance or rejection of the proposed land. For each request for approval by the

County and Fish and Game, there must be an approved development project and corresponding MMRP identified for which the proposed mitigation site is to be used.

iii. The project applicant shall transfer said easement(s) or title to the County, DFG and a third party conservation organization as acceptable to the County and DFG. The County may, at its discretion, waive the requirement for a third party conservation organization to be party to the easement or fee title. Such third party conservation organizations shall be characterized by non-profit 501(c)(3) status with the Internal Revenue Service and be acceptable to both the County and DFG.

iv. All owners of the mitigation land shall execute the document encumbering the land, including lien holders with right of foreclosure senior to the conservation easement.

v. The document shall be recordable and contain an accurate legal description of the mitigation land.

vi. The document shall prohibit any activity which substantially impairs or diminishes the land's capacity as suitable Swainson's Hawk foraging habitat and the content and form of the document must be acceptable to the County and DFG.

vii. If the land's suitability as foraging habitat is related to existing agricultural uses on the land, the document shall protect any existing water rights necessary to maintain such agricultural uses on the land covered by the document, and retain such water rights for ongoing use on the mitigation land.

viii. The applicant shall pay to the County a mitigation operations and maintenance fee to cover the costs of administering, monitoring and enforcing the document or managing the property in fee title in an amount determined by the receiving entity, not to exceed \$3,500 per acre. The actual amount will be calculated by the receiving entity by the use of the Property Analysis Record (PAR) software program or other generally accepted, attribute based, site specific method for calculating in perpetuity endowments for preserves.

ix. The entity shall not sell, lease, or convey any interest in mitigation land which it acquires without the prior written approval of the County and DFG and the County shall be named a beneficiary under any document conveying the interest in the mitigation land to an entity acceptable to the County.

x. If any qualifying entity owning an interest in mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall be transferred to another entity acceptable to the County or transferred to the County itself.

xi. Before committing to the preservation of any particular land pursuant to this measure, the project proponent shall obtain the County's and DFG's approval of the land proposed for preservation. This mitigation option may be fulfilled in combination with a mitigation measure imposed on the project requiring the preservation of agricultural land as long as the agricultural land is determined by DFG to be suitable Swainson's Hawk habitat.

2. For projects less than forty (40) acres in size:

a. Prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or the recordation of a final map, whichever occurs first, the project applicant shall acquire suitable Swainson's Hawk foraging habitat, as determined by DFG and approved by the County.

i. The project applicant shall preserve through conservation easement(s) or fee title one (1) acre of similar habitat for each acre developed.

ii. The land to be preserved shall be deemed suitable Swainson's Hawk foraging habitat by DFG and the County, which shall make all reasonable efforts to either accept or reject the proposed land as suitable within fifteen (15) business days. However, failure to act within such time shall not be deemed as acceptance or rejection of the proposed land. For each request for approval by the County and Fish and Game, there must be an approved development project and corresponding MMRP identified for which the proposed mitigation site is to be used.

iii. The project applicant shall transfer said easement(s) or title to the County, DFG and a third party conservation organization as acceptable to the County and DFG. The County may, at its discretion, waive the requirement for a third party conservation organization to be party to the easement or fee title. Such third party conservation organizations shall be characterized by non-profit 501(c)(3) status with the Internal Revenue Service and be acceptable to both the County and DFG.

iv. All owners of the mitigation land shall execute the document encumbering the land.

v. The document shall be recordable and contain an accurate legal description of the mitigation land.

vi. The document shall prohibit any activity which substantially impairs or diminishes the land's capacity as suitable Swainson's Hawk foraging habitat.

vii. If the land's suitability as foraging habitat is related to existing agricultural uses on the land, the document shall protect any existing water rights necessary to maintain such agricultural uses on the land covered by the document, and retain such water rights for ongoing use on the mitigation land.

viii. The applicant shall pay to the County a mitigation operations and management fee to cover the costs of administering, monitoring and enforcing the document or managing the property in fee title in an amount determined by the receiving entity, not to exceed \$3,500 per acre. The actual amount will be calculated by the receiving entity by the use of the Property Analysis Record (PAR) software program or other generally accepted, attribute based, site specific method for calculating in perpetuity endowments for preserves.

ix. The entity shall not sell, lease, or convey any interest in mitigation land which it acquires without the prior written approval of the County and DFG and the County shall be named a beneficiary under any document conveying the interest in the mitigation land to an entity acceptable to the County.

x. If any qualifying entity owning an interest in mitigation land ceases to exist, the duty to hold, administer, monitor, and enforce the interest shall be transferred to another entity acceptable to the County or to the County.

xi. Before committing to the preservation of any particular land pursuant to this measure, the project proponent shall obtain the County's approval of the land proposed for preservation. This mitigation measure may be fulfilled in combination with a mitigation measure imposed on the project requiring the preservation of agricultural land as long as the agricultural land is determined by DFG to be suitable Swainson's hawk habitat.

b. Or, as an alternative, for projects less than forty (40) acres in size, prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements or recordation of a final map, whichever occurs first, the project applicant shall submit payment of a Swainson's Hawk impact mitigation fee per acre of calculated habitat impact habitat to the County in the

amount set forth in Chapter 16.130.050 of the Sacramento County Code as such may be amended from time to time and to the extent that said chapter remains in effect.

~~bB.~~ The requirement for direct land preservation or payment of an impact mitigation fee established pursuant to this Chapter is also applicable to those requests for a change in land use designations or grants of land use entitlements that were granted prior to the effective date of this Chapter and which are conditioned to require mitigation for impacts to Swainson's Hawk foraging habitat to include the option to participate in a future Swainson's Hawk mitigation policy/program adopted by the Board of Supervisors, provided the property owner/developer of any such project has not yet completed an alternative mitigation measure for impacts to Swainson's Hawk foraging habitat and provided that the parcel(s) included in such a previously granted request fall within the scope of this Chapter as set forth in Section 16.130.030.

16.130.050 Impact Mitigation Fee.

~~The fee of two thousand five hundred dollars (\$2,500.00) per acre of impact is hereby established~~The Impact Mitigation Fee will be established by resolution of the Board of Supervisors. This fee may from time to time be amended by resolution of the Board of Supervisors.

16.130.060 Time of Payment.

Payment in full of the impact mitigation fee established pursuant to this Chapter shall be required prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or the recordation of a final map, whichever occurs first. ~~approval of site improvement plans unless site improvement plan approval is not required, in which case payment in full shall be required prior to issuance of any building permits.~~ For projects falling under Section 16.130.040(~~bB~~), payment in full of the impact mitigation fee established pursuant to this Chapter shall be required prior to approval of site improvement plans unless such site improvements plans have already received final approval prior to the effective date of this ~~e~~Chapter, in which case payment in full shall be required prior to issuance of any building permits. Election to mitigate impacts through payment of the impact mitigation fee must occur prior to the initiation of alternative mitigation measures.

16.130.070 Impact Mitigation Credit.

Mitigation credit may be given for vernal pool or other preserves which contain suitable Swainson's Hawk foraging habitat, including preserves ~~that are~~ established pursuant to a previously approved Mitigation Monitoring and Reporting Program for the subject parcel(s). Prior determination by DFG of the viability of the preserve for Swainson's Hawk foraging habitat is required and ~~-pP~~Preserves deemed viable by DFG shall receive credit on a 1:1 ratio. In the event that the credit received does not satisfy the acreage required for the mitigation obligation, additional mitigation shall be required through any of the other mitigation measure options identified in the applicable environmental report to the extent necessary to reduce impacts on Swainson's Hawk foraging habitat to a less than significant level.

16.130.080 Use of Impact Mitigation Fee Funds.

~~aA.~~ The County shall establish a separate interest-bearing fund within the County Treasury, in which monies collected pursuant to this Chapter shall be deposited.

~~bB.~~ Monies from said fund shall be transferred pursuant to the terms and conditions of the agreement entitled "Agreement for the Funding and Acquisition of Swainson's Hawk Foraging Habitat." Monies from said fund shall be used for the specific acquisition of lands, in fee simple or through a conservation easement, ~~that~~ which is area located in the unincorporated County, ~~south of the American River,~~ outside the Urban Services Boundary, ~~excluding the City of Galt's Sphere of Influence.~~

~~cC.~~ Pursuant to the terms and conditions of said Agreement, said lands shall be held in perpetuity for Swainson's Hawk foraging habitat.

16.130.090 Exemption.

Parcels included within the boundaries of an established habitat conservation plan area which provides for mitigation for Swainson's Hawk foraging habitat shall be subject to the mitigation provisions and requirements of that plan and shall not be subject to the provisions of this Chapter.

16.130.100 Administrative Fee.

An administrative fee ~~charged not to exceed \$382.00~~ per impact mitigation fee, easement or fee title submitted to the County will be established by resolution of the Board of Supervisors ~~is hereby established~~ for the purpose of funding the costs of administering the Swainson's Hawk impact mitigation ~~fee~~ program established pursuant to this ~~cC~~ chapter. Payment of this fee is in addition to fee obligations established pursuant to Section 16.130.050 and 16.130.130 and shall be due and payable prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first, at the time of approval of site improvement plans, unless site improvement plan approval is not required, in which case payment in full shall be required prior to issuance of any building permits. For projects falling under Section 16.130.040(~~bB~~), payment of this fee is in addition to the fee obligations established pursuant to Section 16.130.050 and shall be due and payable at the time of approval of site improvement plans unless such site improvements plans have already received final approval prior to the effective date of this Chapter, in which case payment of this fee in addition to the fee obligations established pursuant to Section 16.130.050 shall be required prior to issuance of any building permits. This fee may from time to time be amended by resolution of the Board of Supervisors.

16.130.110 Authority of Board to Override Mitigation Measures.

Nothing herein shall be construed to preclude the Board of Supervisors' consideration or approval of other means of mitigating significant impact or significant cumulative impact on Swainson's Hawk foraging habitat or to limit the Board's authority to override mitigation measures for reasons permitted by CEQA.

16.130.120 Authority of Director of Planning and Community Development Department to Accept Easements.

Authority on behalf of the County to accept easements or fee title granted pursuant to the terms and conditions of the agreement entitled "Agreement For The Funding And Acquisition Of Swainson's Hawk Foraging Habitat" is hereby delegated to the Director of the Planning and Community Development Department, subject to approval of County Counsel as to form.

16.130.130 Operations and Management Fee.

For projects utilizing the fee option of 16.130.050 an operations and management fee will be established by resolution of the Board of Supervisors of three hundred thirty-three dollars (\$333.00) per acre is hereby established for the purpose of reimbursing conservancies for their administrative costs incurred in acquiring and monitoring easements or managing properties in fee title. Payment of the fee is in addition to the fee obligations established pursuant to Sections 16.130.050 and 16.130.100 and shall be due and payable prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first, at the time of approval of site improvement plans, unless site improvement plan approval is not required, in which case payment in full shall be required prior to issuance of any building permits. For projects falling under Section 16.130.040(B), payment of this fee is in addition to the fee obligations established pursuant to Section 16.130.050 and shall be due and payable at the time of approval of site improvement plans unless such site improvement plans have already received final approval prior to the effective date of this Chapter, in which case payment of this fee in addition to the fee obligations established pursuant to Section 16.130.050 shall be required prior to issuance of any building permits. This fee may from time to time be amended by resolution of the Board of Supervisors.

SECTION 2. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Supervisors on _____ and on _____ further reading was waived by the unanimous vote of the Supervisors present.

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this ____ day of _____, 2005, by the following vote:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

Chairperson of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk of the
Board of Supervisors

SCC NO. _____

AN ORDINANCE AMENDING CHAPTER 16.130, SECTIONS 16.130.010 THROUGH 16.130.130, TITLE 16 OF THE SACRAMENTO COUNTY CODE RELATING TO THE SWAINSON'S HAWK IMPACT MITIGATION PROGRAM

The Board of Supervisors of the County of Sacramento, State of California,
ordains as follows:

SECTION 1: Chapter 16.130, Sections 16.130.010 through 16.130.130, of Title 16 is hereby amended to read as follows:

16.130.010 Purpose and Intent.

The Board of Supervisors finds that the continued expansion of urban and agricultural-residential uses into the agriculturally zoned lands of Sacramento County ("County") that are identified through the California Environmental Quality Act ("CEQA") process or by appropriate regulatory agencies to provide suitable foraging habitat for the Swainson's Hawk, a listed threatened species under the California Endangered Species Act, will, absent mitigation, result in a significant reduction of such foraging habitat. The reduction in foraging habitat can occur through requests for zoning changes of agriculturally zoned lands to land use designations that enable land to be reduced to parcel sizes too small to support Swainson's Hawk foraging habitat or through requests for land use entitlements for non-agricultural uses that are incompatible with the maintenance of Swainson's Hawk foraging habitat. The California Department of Fish and Game ("DFG") has determined that parcels of land of five acres or more in size are recognized to be the minimum acreage required for viable foraging habitat. Requests to subdivide AR-1 or AR-2 zoned property, with an original total acreage size of five (5) acres or more to the lot sizes permitted under these zoning designations can also result in the reduction of foraging habitat for the Swainson's Hawk. For any such requests on parcels which are within ten (10) miles of a Swainson's Hawk nest the Board of Supervisors desires to establish an additional means of mitigating for loss of Swainson's Hawk foraging habitat.

The Board of Supervisors has determined, in consultation with DFG, that suitable foraging habitat for the Swainson's Hawk exists in both established land conservation programs in Sacramento County which includes existing and potential foraging habitat for the Swainson's Hawk, and in agricultural and open lands currently not part of a conservation program. The Board of Supervisors finds that the most effective means of mitigation for the loss of suitable Swainson's Hawk foraging habitat is the direct preservation, in perpetuity, of equally suitable foraging habitat on an acre-per-acre basis based on gross project size. Such preservation should occur, pursuant to this Chapter, prior to the onset of development activities that cause the impact (i.e. land clearing and site grading). Development project proponents should be responsible for locating and acquiring the appropriate land or legal instruments (such as conservation easements) that will ensure the preservation of Swainson's Hawk foraging habitat in perpetuity. The Board of Supervisors also finds that it may be infeasible to mitigate for impacts to

Swainson's Hawk foraging habitat by acquiring easements for less than forty (40) acres and proponents of projects that consist of parcels less than forty (40) acres in size should have the option to mitigate adverse impacts to Swainson's Hawk foraging habitat through the payment of an impact mitigation fee. An impact mitigation fee, as established pursuant to this Chapter, will provide funds to acquire available land with suitable Swainson's Hawk foraging habitat values.

The Board of Supervisors recognizes that mitigation for foraging habitat for the Swainson's Hawk is only feasible when replacement habitat is provided within the known foraging area for the hawk. In order to provide adequate mitigation for the loss of Swainson's Hawk foraging habitat pursuant to CEQA, the acquisition of mitigation habitat either by procurement of a conservation easement or by fee title is necessary. Further, the Board of Supervisors deems it necessary to include within the scope of possible mitigation sites, parcels that are located within the geographical foraging area of the Swainson's Hawk in the unincorporated County outside the Urban Services Boundary, and that are owned and/or managed by a conservation organization at a location that are acceptable to DFG. The Board of Supervisors also finds that due to limited opportunities for acquisition of mitigation lands in northern Sacramento County, that for those projects which are north of the American River only, there shall be added to the scope of possible mitigation sites, those properties in Sutter and Placer Counties which lie in the area defined by the Sacramento County Line to the south and Riego/Baseline Road to the north, bounded by the Sacramento River and Watt Avenue to the west and east respectively.

The Board further finds that the direct preservation of suitable Swainson's Hawk foraging habitat or the payment of an impact mitigation fee for the actual acquisition of such habitat, will meet the requirements of mitigation under CEQA by reducing the level of impact to Swainson's Hawk foraging habitat to a less than significant level for those parcels falling within the scope of this Chapter as set forth herein. The Board of Supervisors intends that the requirement of direct preservation of suitable Swainson's Hawk foraging habitat for projects forty (40) acres and larger and the requirement of an impact mitigation fee for projects less than forty (40) acres, in the amount set forth in this Chapter, shall be included as one of the mitigation options. Said mitigation shall arise when the environmental review process for a request falling within the scope of this Chapter concludes there would be a significant impact or a significant cumulative impact on the Swainson's Hawk foraging habitat for which mitigation, pursuant to all applicable provisions of the Public Resources Code section 21000 et seq. and the California Code of Regulations, Title 24, section 15000 et seq., is required. The Board also recognizes its continued authority to determine, based on specific economic, social, legal, technical or other considerations, that mitigation for Swainson's Hawk foraging habitat is infeasible or that evidence has been presented to the Board which the Board determines eliminates the need for such mitigation.

16.130.020 Definitions.

"Agricultural Designation" means land which is zoned any of the following zoning designations or combinations thereof: AG-160, AG-80, AG-40, AG-20, UR, IR, AR-10, AR-5, A-80, A-20, A-10.

"CEQA" means the California Environmental Quality Act.

"DFG" means the California Department of Fish and Game.

"Habitat Conservation Plan (HCP)" means any plan, approved by the United States Fish and Wildlife Service (USFWS) designed to protect one or more species in exchange for a take permit issued by the (USFWS) for certain species.

"Habitat Conservation Plan (HCP) area" means the area identified within an individual HCP including both the areas covered for take as well as for reserves for that particular HCP.

"Project" shall mean the total combined gross acreage of a parcel or parcels included in a development proposal subject to CEQA review.

"Urban Services Boundary" means that boundary identified in the Land Use Element of the 1993 General Plan as the ultimate boundary of the urban area in the unincorporated County for purposes of the 1993 General Plan policies and goal.

"Urban Designation" means land which is zoned any of the following zoning designations or combinations thereof: a residential land use zone as set forth in Sacramento County Zoning Code Section 201-01, a "commercial land use zone" as set forth in Sacramento County Zoning Code Section 225-10 or an "industrial land use zone" as set forth in Sacramento County Zoning Code Section 230-10; a specific plan designation or a special planning area designation encompassing any of the aforementioned zoning designations or combinations thereof.

16.130.030 Applicability.

A. This Chapter shall apply to any of the following requests for which all of the criteria set forth in subsection (B) have been satisfied:

1. To any request for a change in land use designation from an Agricultural Designation to an Urban Designation, or
2. To any request to subdivide five acres or more of contiguous land zoned AR-1 or AR-2, or
3. To any request for a land use entitlement for a non-agricultural use of land zoned with an Agricultural Designation, or
4. To any request for a land use entitlement for a non-agricultural use of land five acres or more in size zoned AR-1 or AR-2, or
5. To any public improvement project proposed by any department or agency of Sacramento County on land with an Agricultural Designation, or
6. To any request to subdivide five (5) acres or more of contiguous land zoned as an Urban Designation to less than five (5) acres.

B. This Chapter shall apply to any request falling within subsection (A) for which all of the following criteria have been satisfied:

1. The entire underlying parcel(s) for the request are located within the defined scope of this Chapter as set forth in subsection (C) hereof,
2. The underlying parcel(s) for the request are identified through the CEQA process, based on the DFG staff report regarding mitigation for impacts to Swainson's Hawks in the Central Valley of California, to provide suitable Swainson's Hawk foraging habitat, and
3. Following consultation with DFG, it has been determined through the CEQA process that the request will result in a significant impact or significant cumulative impact on Swainson's Hawk foraging habitat for which mitigation measures have been identified as necessary to reduce that impact to a less than significant level.

C. The scope of this Chapter encompasses any project located entirely within that portion of the unincorporated area of Sacramento County, not in an approved Habitat Conservation Plan area that addresses Swainson's Hawk.

16.130.040 Conditions.

A. On and after the effective date of this Chapter, for any request falling within the provisions of Section 16.130.030 of this Chapter, one of the following two mitigation measures shall be included within the mitigation measure options identified to reduce the impact to Swainson's Hawk foraging habitat of that particular request to a less than significant level:

1. For projects 40 acres or more in size:
 - a. Prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first, the project applicant shall acquire suitable Swainson's Hawk foraging habitat, as determined by DFG and approved by the County.
 - i. The project applicant shall preserve through conservation easement(s) or fee title one (1) acre of similar habitat for each acre developed.
 - ii. The land to be preserved shall be deemed suitable Swainson's Hawk foraging habitat by DFG and the County, which shall make all reasonable efforts to either accept or reject the proposed land as suitable within fifteen (15) business days. However, failure to act within such time shall not be deemed as acceptance or rejection of the proposed land. For each request for approval by the County and Fish and Game, there must be an approved development project and corresponding MMRP identified for which the proposed mitigation site is to be used.
 - iii. The project applicant shall transfer said easement(s) or title to the County, DFG and a third party conservation organization as acceptable to the County and DFG. The County may, at its discretion, waive the requirement for a third party conservation organization to be party to the easement or fee title. Such third party conservation organizations shall be characterized by non-profit 501(c)(3) status with the Internal Revenue Service and be acceptable to both the County and DFG.
 - iv. All owners of the mitigation land shall execute the document encumbering the land, including lien holders with right of foreclosure senior to the conservation easement.
 - v. The document shall be recordable and contain an accurate legal description of the mitigation land.
 - vi. The document shall prohibit any activity which substantially impairs or diminishes the land's capacity as suitable Swainson's Hawk foraging habitat and the content and form of the document must be acceptable to the County and DFG.
 - vii. If the land's suitability as foraging habitat is related to existing agricultural uses on the land, the document shall protect any existing water rights necessary to maintain such agricultural uses on the land covered by the document, and retain such water rights for ongoing use on the mitigation land.
 - viii. The applicant shall pay to the County a mitigation operations and maintenance fee to cover the costs of administering, monitoring and enforcing the document or managing the property in fee title in an amount determined by the receiving entity, not to exceed \$3,500 per acre. The actual amount will be calculated by the receiving entity by the use of the Property Analysis Record (PAR) software program

or other generally accepted, attribute based, site specific method for calculating in perpetuity endowments for preserves.

ix. The entity shall not sell, lease, or convey any interest in mitigation land which it acquires without the prior written approval of the County and DFG and the County shall be named a beneficiary under any document conveying the interest in the mitigation land to an entity acceptable to the County.

x. If any qualifying entity owning an interest in mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall be transferred to another entity acceptable to the County or transferred to the County itself.

xi. Before committing to the preservation of any particular land pursuant to this measure, the project proponent shall obtain the County's and DFG's approval of the land proposed for preservation. This mitigation option may be fulfilled in combination with a mitigation measure imposed on the project requiring the preservation of agricultural land as long as the agricultural land is determined by DFG to be suitable Swainson's Hawk habitat.

2. For projects less than forty (40) acres in size:

a. Prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or the recordation of a final map, whichever occurs first, the project applicant shall acquire suitable Swainson's Hawk foraging habitat, as determined by DFG and approved by the County.

i. The project applicant shall preserve through conservation easement(s) or fee title one (1) acre of similar habitat for each acre developed.

ii. The land to be preserved shall be deemed suitable Swainson's Hawk foraging habitat by DFG and the County, which shall make all reasonable efforts to either accept or reject the proposed land as suitable within fifteen (15) business days. However, failure to act within such time shall not be deemed as acceptance or rejection of the proposed land. For each request for approval by the County and Fish and Game, there must be an approved development project and corresponding MMRP identified for which the proposed mitigation site is to be used.

iii. The project applicant shall transfer said easement(s) or title to the County, DFG and a third party conservation organization as acceptable to the County and DFG. The County may, at its discretion, waive the requirement for a third party conservation organization to be party to the easement or fee title. Such third party conservation organizations shall be characterized by non-profit 501(c)(3) status with the Internal Revenue Service and be acceptable to both the County and DFG.

iv. All owners of the mitigation land shall execute the document encumbering the land.

v. The document shall be recordable and contain an accurate legal description of the mitigation land.

vi. The document shall prohibit any activity which substantially impairs or diminishes the land's capacity as suitable Swainson's Hawk foraging habitat.

vii. If the land's suitability as foraging habitat is related to existing agricultural uses on the land, the document shall protect any existing water rights necessary to maintain such agricultural uses on the land covered by the document, and retain such water rights for ongoing use on the mitigation land.

viii. The applicant shall pay to the County a mitigation operations and management fee to cover the costs of administering, monitoring and enforcing the document or managing the property in fee title in an amount determined by the

receiving entity, not to exceed \$3,500 per acre. The actual amount will be calculated by the receiving entity by the use of the Property Analysis Record (PAR) software program or other generally accepted, attribute based, site specific method for calculating in perpetuity endowments for preserves.

ix. The entity shall not sell, lease, or convey any interest in mitigation land which it acquires without the prior written approval of the County and DFG and the County shall be named a beneficiary under any document conveying the interest in the mitigation land to an entity acceptable to the County.

x. If any qualifying entity owning an interest in mitigation land ceases to exist, the duty to hold, administer, monitor, and enforce the interest shall be transferred to another entity acceptable to the County or to the County.

xi. Before committing to the preservation of any particular land pursuant to this measure, the project proponent shall obtain the County's approval of the land proposed for preservation. This mitigation measure may be fulfilled in combination with a mitigation measure imposed on the project requiring the preservation of agricultural land as long as the agricultural land is determined by DFG to be suitable Swainson's hawk habitat.

b. Or, as an alternative, for projects less than forty (40) acres in size, prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements or recordation of a final map, whichever occurs first, the project applicant shall submit payment of a Swainson's Hawk impact mitigation fee per acre of calculated habitat impact habitat to the County in the amount set forth in Chapter 16.130.050 of the Sacramento County Code as such may be amended from time to time and to the extent that said chapter remains in effect.

B. The requirement for direct land preservation or payment of an impact mitigation fee established pursuant to this Chapter is also applicable to those requests for a change in land use designations or grants of land use entitlements that were granted prior to the effective date of this Chapter and which are conditioned to require mitigation for impacts to Swainson's Hawk foraging habitat to include the option to participate in a future Swainson's Hawk mitigation policy/program adopted by the Board of Supervisors, provided the property owner/developer of any such project has not yet completed an alternative mitigation measure for impacts to Swainson's Hawk foraging habitat and provided that the parcel(s) included in such a previously granted request fall within the scope of this Chapter as set forth in Section 16.130.030.

16.130.050 Impact Mitigation Fee.

The Impact Mitigation Fee will be established by resolution of the Board of Supervisors. This fee may from time to time be amended by resolution of the Board of Supervisors.

16.130.060 Time of Payment.

Payment in full of the impact mitigation fee established pursuant to this Chapter shall be required prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or the recordation of a final map, whichever occurs first. For projects falling under Section 16.130.040(B), payment in full of the impact mitigation fee established pursuant to this Chapter shall be required prior to approval of site improvement plans unless such site improvements plans have already received final approval prior to the effective date of

this Chapter, in which case payment in full shall be required prior to issuance of any building permits. Election to mitigate impacts through payment of the impact mitigation fee must occur prior to the initiation of alternative mitigation measures.

16.130.070 Impact Mitigation Credit.

Mitigation credit may be given for vernal pool or other preserves which contain suitable Swainson's Hawk foraging habitat, including preserves established pursuant to a previously approved Mitigation Monitoring and Reporting Program for the subject parcel(s). Prior determination by DFG of the viability of the preserve for Swainson's Hawk foraging habitat is required and preserves deemed viable by DFG shall receive credit on a 1:1 ratio. In the event that the credit received does not satisfy the acreage required for the mitigation obligation, additional mitigation shall be required through any of the other mitigation measure options identified in the applicable environmental report to the extent necessary to reduce impacts on Swainson's Hawk foraging habitat to a less than significant level.

16.130.080 Use of Impact Mitigation Fee Funds.

A. The County shall establish a separate interest-bearing fund within the County Treasury, in which monies collected pursuant to this Chapter shall be deposited.

B. Monies from said fund shall be transferred pursuant to the terms and conditions of the agreement entitled "Agreement for the Funding and Acquisition of Swainson's Hawk Foraging Habitat." Monies from said fund shall be used for the specific acquisition of lands, in fee simple or through a conservation easement which is located in the unincorporated County, outside the Urban Services Boundary.

C. Pursuant to the terms and conditions of said Agreement, said lands shall be held in perpetuity for Swainson's Hawk foraging habitat.

16.130.090 Exemption.

Parcels included within the boundaries of an established habitat conservation plan area which provides for mitigation for Swainson's Hawk foraging habitat shall be subject to the mitigation provisions and requirements of that plan and shall not be subject to the provisions of this Chapter.

16.130.100 Administrative Fee.

An administrative fee charged per impact mitigation fee, easement or fee title submitted to the County will be established by resolution of the Board of Supervisors for the purpose of funding the costs of administering the Swainson's Hawk impact mitigation program established pursuant to this Chapter. Payment of this fee is in addition to fee obligations established pursuant to Section 16.130.050 and 16.130.130 and shall be due and payable prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first. For projects falling under Section 16.130.040(B), payment of this fee is in addition to the fee obligations established pursuant to Section 16.130.050 and shall be due and payable at the time of approval of site improvement plans unless such site improvements plans have already received final approval prior to the effective date of this Chapter, in which case payment of this fee in addition to the fee obligations established pursuant to Section 16.130.050

shall be required prior to issuance of any building permits. This fee may from time to time be amended by resolution of the Board of Supervisors.

16.130.110 Authority of Board to Override Mitigation Measures.

Nothing herein shall be construed to preclude the Board of Supervisors' consideration or approval of other means of mitigating significant impact or significant cumulative impact on Swainson's Hawk foraging habitat or to limit the Board's authority to override mitigation measures for reasons permitted by CEQA.

16.130.120 Authority of Director of Planning and Community Development Department to Accept Easements.

Authority on behalf of the County to accept easements or fee title granted pursuant to the terms and conditions of the agreement entitled "Agreement For The Funding And Acquisition Of Swainson's Hawk Foraging Habitat" is hereby delegated to the Director of the Planning and Community Development Department, subject to approval of County Counsel as to form.

16.130.130 Operations and Management Fee.

For projects utilizing the fee option of 16.130.050 an operations and management fee will be established by resolution of the Board of Supervisors for the purpose of reimbursing conservancies for their administrative costs incurred in acquiring and monitoring easements or managing properties in fee title. Payment of the fee is in addition to the fee obligations established pursuant to Sections 16.130.050 and 16.130.100 and shall be due and payable prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first. For projects falling under Section 16.130.040(B), payment of this fee is in addition to the fee obligations established pursuant to Section 16.130.050 and shall be due and payable at the time of approval of site improvement plans unless such site improvement plans have already received final approval prior to the effective date of this Chapter, in which case payment of this fee in addition to the fee obligations established pursuant to Section 16.130.050 shall be required prior to issuance of any building permits. This fee may from time to time be amended by resolution of the Board of Supervisors.

SECTION 2. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Supervisors on _____ and on _____ further reading was waived by the unanimous vote of the Supervisors present.

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this ____ day of _____, 2005, by the following vote:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

Chairperson of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk of the
Board of Supervisors

RESOLUTION NO. _____

RESOLUTION ESTABLISHING SWAINSON'S HAWK FEE, SWAINSON'S HAWK OPERATIONS AND MANAGEMENT FEE AND SWAINSON'S HAWK ADMINISTRATION FEE

WHEREAS, the Sacramento County Board of Supervisors amended the Swainson's Hawk Ordinance (SCC No. _____) in 2005 to allow periodic updates to the Swainson's Hawk Fee, operations & management fee, and administration fee by resolution, and

WHEREAS, the Sacramento County Board of Supervisors finds the existing Swainson's Hawk Fee to be inadequate due to rising costs of land acquisition, and

WHEREAS, the Sacramento County Board of Supervisors finds the existing operations and management fee to be inadequate, and

WHEREAS, the Sacramento County Board of Supervisors finds the existing administration fee does not adequately recover administrative costs.

NOW, THEREFORE BE IT RESOLVED, that the Sacramento County Board of Supervisors hereby establishes the Swainson's Hawk mitigation fee to be \$16,000 per acre, and

BE IT FURTHER RESOLVED, that the Sacramento County Board of Supervisors establishes the operations and management fee to be \$2,375 per acre.

BE IT FURTHER RESOLVED, that the Sacramento County Board of Supervisors establishes the administrative fee to be \$500.

BE IT FURTHER RESOLVED, that the above fees shall become effective upon the effective date of the Ordinance Amending Section 16.130.010 through Section 16.130.130 of Chapter 16.130, Title 16 of the Sacramento County Code Relating to Swainson's Hawk Impact Mitigation Fees.

ON A MOTION by Supervisor _____, and seconded by Supervisor _____, the foregoing resolution was passed and adopted by the Board of Supervisors of the County of

Sacramento, State of California, this ____ day of _____, 2005, by the following vote, to wit:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

Chairperson of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk of the
Board of Supervisors