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<http://qcode.us/codes/sacramentocounty/> Once at the website, click on "Title 16 BUILDINGS AND CONSTRUCTION", then "Chapter 16.130 SWAINSON'S HAWK IMPACT MITIGATION FEES". Click "Show All" to view complete document.

Chapter 16.130 SWAINSON'S HAWK IMPACT MITIGATION FEES

Note

* Prior ordinance history: Ords. 1093, 1107, 1234 and 1249.

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 value can occur gradually or immediately through requests for zoning changes of agriculturally designated lands to agricultural zones that allow for smaller parcel size or through changes to agriculturally designated lands to an urban land use designation or through requests for land use entitlements for non-agricultural uses that are incompatible with the maintenance of Swainson's Hawk foraging habitat. Reduction in foraging habitat can also occur as the result of public projects or as the result of development on large undeveloped commercial and industrial lands. For any such projects 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 the project's determined acreage impact. Such preservation should occur, pursuant to this chapter, prior to onset of development activities that cause the impact (i.e., land clearing and site grading) or the recordation of a final map, whichever occurs first, or the final adoption of a zoning ordinance if only a rezone was approved.

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 determined to impact less than forty (40) acres 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 restrict the scope of possible mitigation sites to 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 locations 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 determined to impact forty (40) acres or more and the option of an impact mitigation fee for projects determined to impact 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. (SCC 1328 § 1, 2006: SCC 1299 § 1 (part), 2005.)

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, 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. (SCC 1328 § 2, 2006; SCC 1299 § 1 (part), 2005.)

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 of this section have been satisfied:

1. To any request for a change in land use designation from an Agricultural Designation to AR-1, AR-2, or AR-5 zoning or an Urban Designation; or

2. To any request to rezone agriculturally designated lands to an agricultural designation which permits smaller minimum parcel sizes; 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/or public project located within the boundaries of the Elverta Specific Plan or Rancho Murieta's Urban Services Boundary; 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 acres or more of contiguous land zoned as an Urban Designation to less than five acres.

B. This Chapter shall apply to any request falling within subsection A of this section 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 of this section;

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. (SCC 1328 § 3, 2006: SCC 1299 § 1 (part), 2005.)

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 determined to impact forty (40) acres of habitat or more:

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

whichever occurs first, or the final adoption of a zoning ordinance if only a rezone was approved, 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 acre of similar habitat for each acre impacted.

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 DFG, there must be an approved rezone or 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 three thousand five hundred dollars (\$3,500.00) 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 determined to impact less than forty (40) acres:

a. Prior to any site disturbance, such as clearing or grubbing, the issuance of any permits for grading, building, or other site improvements, or the recordation of a final map, whichever occurs first, or the final adoption of a zoning ordinance if only a rezone was approved, 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 acre of similar habitat for each acre impacted.

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 DFG, there must be an approved rezone or 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 three thousand five hundred dollars (\$3,500.00) 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 determined to impact less than forty (40) acres, prior to any site disturbance, such as clearing or grubbing, the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first, or the final adoption of a zoning ordinance if only a rezone was approved, 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 Section 16.130.050 of this chapter 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 designation 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. (SCC 1328 § 4, 2006; SCC 1299 § 1 (part), 2005.)

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. (SCC 1299 § 1 (part), 2005.)

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, the issuance of any permits for grading, building, or other site improvements, or the recordation of a final map, whichever occurs first, or the final adoption of a zoning ordinance if only a rezone was approved. 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. (SCC 1328 § 5, 2006; SCC 1299 § 1 (part), 2005.)

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. (SCC 1299 § 1 (part), 2005.)

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. (SCC 1299 § 1 (part), 2005.)

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. (SCC 1299 § 1 (part), 2005.)

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 Sections 16.130.050 and 16.130.130 and shall be due and payable prior to any site disturbance, such as clearing or grubbing, the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first, or the final adoption of a zoning ordinance if only a rezone was approved. 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. (SCC 1328 § 6, 2006: SCC 1299 § 1 (part), 2005.)

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. (SCC 1299 § 1 (part), 2005.)

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. (SCC 1299 § 1 (part), 2005.)

16.130.130 Operations and Management Fee.

For projects utilizing the fee option of Section 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, the issuance of any permits for grading, building, or other site improvements, or recordation of a final map, whichever occurs first, or the final adoption of a zoning ordinance if only a rezone is approved. 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. (SCC 1328 § 7, 2006; SCC 1299 § 1 (part), 2005.)