



C/O Michael Bradbury  
 Department of Water Resources  
 1725 23<sup>rd</sup> Street, Suite 220  
 Sacramento, CA 95816  
 (916) 445-6233

RE: Swainson's hawk protections within the East Contra Costa

Dear Mr. Kopchik,

As a representative of the Swainson's Hawk Technical Advisory Committee (TAC), I have completed an initial perusal of the East Contra Costa County HCP/NCCP, and I am submitting brief comments regarding the protection of said document. I apologize for the lateness and incompleteness of these comments, but no member of the TAC was aware that the document was in this stage, as we were not invited to participate in the development of the Plan.

From the initial review, it is our opinion that the Plan does not adequately address Swainson's hawk needs, nor sufficiently protect it from decline in Contra Costa County. The following are major issues that need to be addressed before the protection of the species can be achieved in the County:

- The nesting data on which the Plan relies is inadequate for the baseline analysis of impacts. The TAC has nesting and territory data for Contra Costa County that likely doubles the number of nest sites delineated on the Plan's SWHA habitat map, and in no way has the TAC completely or adequately surveyed ( for baseline purposes) the County for Swainson's hawk nests. The data we have is from intense surveys of small census blocks, or project sites within the County, or data collected while traveling through the County. In addition, although the draft Plan alludes to the responsibility of the Plan developers to consider nesting Swainson's hawks outside the County that likely forage within the County, no nest sites outside the Plan area are included in the analysis of important foraging areas and habitat. All nest sites within *at least* 5 miles of proposed development should be included in the analysis. Failure to adequately provide for the entire local population will result in the decline of the population, in and out of the County boundaries. P-1
- Because the impact analysis relies on incomplete data and land uses outside its jurisdiction, it concludes that LESS THAN a ½ to 1 mitigation ratio is adequate to protect the existing local Swainson's hawk population. The TAC will not support any mitigation ratio lower than 1 to 1, in part because there are far more nesting Swainson's hawks in the County than the Plan identifies, because it is not possible to improve the quality and usability of foraging habitat by a factor of 3X (as is needed when only one acre of habitat is preserved for two developed), because Plan operators have no control over lands outside the HCP jurisdiction, and because P-2

thousands of acres of Swainson’s hawk foraging habitat has already been lost to development in just the last decade, with no quantifiable mitigation to protect the species.

P-2 (Cont.)

- Plan operators have virtually no control over how land outside the jurisdiction of the Plan is used. Although the Plan developers indicate that many more acres of foraging habitat will be reserved due to agricultural restrictions, the Plan operators have no ability to enforce those restrictions, or the ability to manage those lands for usefulness to Swainson’s hawks. In addition, that land outside the Plan-defined urban limit lines, although considered to be in agricultural zoning, can be carved into ranchettes, and “habitat” on those parcels is inadequate to sufficiently support the existing Swainson’s hawk population.
- The Plan does not adequately identify all potential foraging habitat. According to the distribution and habitat map, some nest sites have virtually no foraging habitat near them. The Plan appears to have excluded much of the natural grassland within the urban boundary.

P-3

P-4

The Department of Fish and Game (and US Fish and Wildlife Service) requires that your Plan adequately protect the existing Swainson’s hawk population under the Plan’s jurisdiction, not to mention any additional requirements that would lead to the *recovery* of the species. This plan does not meet the needs of Swainson’s hawks in Contra Costa County, and we urge you to work with the TAC to improve it to meet that goal.

Thank you for your consideration in this matter.

Sincerely,

Michael Bradbury

cc.	Lori Rinek	US Fish and Wildlife Service
	Carl Wilcox	Department of Fish and Game
	Gail Presley	Department of Fish and Game
	David Zippin	Jones and Stokes Associates, Inc.
	Jim Estep	Swainson’s Hawk Technical Advisory Committee
	Dick Anderson	Swainson’s Hawk Technical Advisory Committee
	Waldo Holt	Swainson’s Hawk Technical Advisory Committee
	Craig Swolgaard	Swainson’s Hawk Technical Advisory Committee

## Response to Letter P, from Swainson's Hawk Technical Advisory Committee (TAC)

### Response to Comment P-1

In response to the HCP/NCCP, the commenter states that the nesting data on which the Plan is based is inadequate because it failed to include data available from the Swainson's Hawk Technical Advisory Committee (TAC). The commenter also states that all foraging habitat outside the County within at least 5 miles of proposed development should be included in the analysis.

The East Contra Costa County Habitat Conservation Plan Association (HCPA) has received the new occurrence data provided by Michael Bradbury and incorporated into the revised habitat distribution model for Swainson's hawk. This new data set consisted of the following new occurrence records:

- 6 new nest sites within the Plan area (one record may be the same as a previous record already known);
- 8 nest sites adjacent to the Plan area and within Contra Costa County;
- 7 sightings of territorial behavior indicating a nest or nest building nearby (occurrences may be coincident with new nest sightings); and
- 11 nest sites outside Contra Costa County.

All new occurrence records are consistent with and confirm the revised habitat model for Swainson's hawk in the final HCP/NCCP. These additional records are helpful but do not change the conclusions of the Plan regarding this species.

The analysis in the HCP/NCCP evaluates the impacts and availability of foraging habitat only within the inventory area, not within adjacent counties. This restriction to the inventory area is due to the fact that the Permittees only have land use control over sites within Contra Costa County. Sites in adjacent San Joaquin County are subject to an approved HCP/NCCP, so the assumption is that the loss of foraging habitat for Swainson's hawk is being adequately addressed by that HCP/NCCP. Solano and Sacramento Counties to the north and northeast are currently developing regional HCPs and an NCCP (for Sacramento County only). It is our assumption that these plans will adequately mitigate the loss of Swainson's hawk foraging habitat within their jurisdictions under their HCPs. It is also our assumption that the cumulative effects of these approved and in process regional HCPs, including the proposed East Contra Costa County HCP/NCCP, will be to provide for the regional conservation of Swainson's hawk.

#### *Revisions to the HCP/NCCP*

The new occurrence data for Swainson's hawk has been incorporated into the HCP/NCCP habitat model.

### Response to Comment P-2

In response to the HCP/NCCP, the commenter states that the impact analysis relies on incomplete data and land uses outside its jurisdiction and a less than 0.5 to 1 mitigation ratio is inadequate to protect the local Swainson's hawk population.

See response to comment P-1 regarding the adequacy of the available data and response to comment K-10 regarding the adequacy of the conservation strategy to protect the local Swainson's hawk program. Note that there are no mitigation ratios in this Plan, stated or implied, for Swainson's hawk or its habitat. The Plan includes measures that both mitigate impacts and contribute to species recovery, as required by the Natural Community Conservation Planning Act. As such, no mitigation ratios are applied specifically for the loss of Swainson's hawk habitat. (Mitigation ratios are applied to the loss of wetland and riparian habitat, some of which is also Swainson's hawk habitat.) However, if one wishes to calculate the ratio of the revised impacts of the Plan from covered activities relative to the revised conservation under the Plan, that ratio is 0.96:1 under the initial urban development area and 0.94:1 under the maximum urban development area. In addition, several preserve management measures will benefit Swainson's hawk including enhancement of the prey base for raptors (Conservation Measure 2.5), decreasing the cover and extent of exotic plants in annual grasslands (Conservation Measure 1.4), increasing the cover and extent of native grasslands (Conservation Measures 1.2 and 2.4), and designing agricultural lands to enhance and increase foraging and nesting habitat (Conservation Measures 1.3 and 2.11).

The Swainson's hawk model in the draft HCP/NCCP took an overly conservative approach to defining suitable habitat for this species. The new model eliminates land within dense urban areas as suitable foraging habitat consistent with the recommendations of the Swainson's hawk TAC. The western range boundary within the inventory area was also revised to better coincide with the occurrence records assumed to be still extant (e.g., the westernmost occurrence record along Sand Creek is thought to be erroneous). In addition, annual grassland above 150 feet was considered suitable foraging habitat if that grassland is contiguous with grassland below 150 feet and within the expected line-of-sight of foraging birds. These changes resulted in a net reduction of 664 acres (2%) of modeled suitable foraging habitat and a net reduction of 95 acres (54%) of modeled breeding habitat in the inventory area. The revised habitat model is found in Appendix D of the Final HCP/NCCP. The revised model also includes the additional breeding and foraging occurrence records provided by the Swainson's hawk TAC.

The estimated impacts to Swainson's hawk from covered activities have declined for the final HCP/NCCP as a result of changes in the habitat model and urban development that has occurred in Oakley and Brentwood since the draft HCP/NCCP was released. Estimated impacts to Swainson's hawk foraging habitat are now estimated to be 3,782 acres under the initial urban development area (UDA) (a reduction of 879 acres, or 19%) and 4,743 acres under the maximum UDA (a reduction of 1,154 acres, or 20%). Estimated impacts to breeding habitat have also declined, to 16 acres under each urban development scenario (a reduction of 4 acres, or 20%). The magnitude of the impact to foraging and breeding habitat as a proportion of the habitat available outside parks and open space has increased in all cases. For example, under the maximum urban development area, impacts to foraging habitat have increased to 15% of unprotected foraging habitat (from 9%) and impacts to breeding habitat have increased to 27% (from 16%).

Conservation of suitable Swainson's hawk habitat in the final HCP/NCCP has been increased substantially. An additional 1,000 acres of annual grassland and other land cover types suitable for Swainson's hawk foraging will be acquired in Subzone 5c near Vasco Road. This and other changes result in protection of at least 3,614 acres under the initial UDA (a net increase of 1,518 acres over the draft HCP/NCCP, or 72% more land) and at least 4,451 acres (a net increase of 1,694 acres, or 61% more land) under the maximum UDA. The additional conservation of foraging habitat results in a nearly 1:1 ratio of expected impacts of foraging habitat to conservation, which is consistent with the guidelines established by the Swainson's Hawk TAC for Swainson's hawk mitigation throughout northern California.

The estimated conservation of breeding habitat is unchanged from the draft HCP/NCCP (12 and 16 acres under the initial and maximum UDA, respectively). The final conservation strategy also continues to include the restoration of an expected 50-55 acres of riparian woodland that will provide suitable breeding habitat for Swainson's hawk. This would now increase available nesting habitat in larger stands by 61-67% (up from 35%).

Greater preservation of foraging habitat in the inventory area is not practicable because it would be prohibitively expensive. For example, preservation of cropland or pasture at a ratio of 2:1 would require an additional 3,950 - 5,035 acres of the same habitat. Assuming a per acre cost of \$20,000/acre (see Appendix G memo on land cost estimates), the cost of this additional conservation would be \$79 million to \$101 million in land acquisition costs only, or 27-29% of the total estimated cost of the HCP/NCCP. This preserved land would not substantially benefit any other covered species.

The Wildlife Agencies believe that the revised conservation strategy represents a cost-effective method of preserving and enhancing Swainson's hawk in the inventory area by investing in a combination of foraging habitat preservation at approximately 1:1 and riparian woodland restoration to increase nesting opportunities. The Wildlife Agencies believe that the combination of foraging habitat preservation, riparian woodland preservation, and riparian woodland restoration proposed in the Plan will adequately mitigate and conserve Swainson's hawk in the inventory area, that this mitigation is the maximum extent practicable, and that the impacts to the species are reduced to a level below significance.

It is unclear to what the commenter is referring when stating that the Plan operators do not have control over lands outside the HCP/NCCP jurisdiction. The HCP/NCCP makes no claims of the impacts or availability for conservation of lands outside Contra Costa County. Impacts and conservation will occur within the inventory area, which is under the land use control of the Permittees.

#### *Revisions to the HCP/NCCP*

See response to comment P-1 above.

### **Response to Comment P-3**

In response to the HCP/NCCP, the commenter states that Plan operators have virtually no control over land outside the jurisdiction of the Plan, and that Plan operators have no ability to enforce agricultural restrictions or manage these lands for the benefit of Swainson's hawk.

The proposed acquisition of Swainson's hawk habitat, in the view of the HCPA and the wildlife agencies, is sufficient to meet the biological goals and objectives of the plan concerning this species. The strong agricultural protection efforts employed by the County and others in the east county area complement the proposed actions in the HCP/NCCP and provide additional benefits to the Swainson's hawk. While the commenter is correct that the Plan operators will not exert control over land outside the jurisdiction of the HCP/NCCP, this does not undermine the value of the actions that are included within the Plan itself. It should also be noted that the Permittees do have control over land use decisions within Contra Costa County and the cities of Brentwood and Oakley that support almost all of the suitable Swainson's hawk habitat in the county.

*No changes to the HCP/NCCP or EIS/EIR are required.*

## **Response to Comment P-4**

In response to the HCP/NCCP, the commenter states that the Plan does not adequately identify suitable foraging habitat for Swainson's hawk and the Plan appears to have excluded much of the natural grassland within the urban boundary.

The original habitat model developed for Swainson's hawk (see Appendix D of the draft HCP/NCCP) assumed that foraging habitat extended into annual grassland to up to 150 feet in elevation (the model description in the draft HCP/NCCP erroneously stated 200 feet). This value was based on expert opinions of ornithologists Jim Estep (at Jones & Stokes at the time, and a member of the Swainson's Hawk Technical Advisory Committee[TAC]), Steve Glover (local ornithologist), and John Sterling (at Jones & Stokes at the time).

The Swainson's hawk model in the draft HCP/NCCP took an overly conservative approach to defining suitable habitat for this species. The new model eliminates land within dense urban areas as suitable foraging habitat consistent with the recommendations of the Swainson's hawk TAC. The western range boundary within the inventory area was also revised to better coincide with the occurrence records assumed to be still extant (e.g., the westernmost occurrence record along Sand Creek is thought to be erroneous). In addition, annual grassland above 150 feet was considered suitable foraging habitat if that grassland is contiguous with grassland below 150 feet and within the expected line-of-sight of foraging birds. These changes resulted in a net reduction of 664 acres (2%) of modeled suitable foraging habitat and a net reduction of 95 acres (54%) of modeled breeding habitat in the inventory area. The revised habitat model is found in Appendix D of the Final HCP/NCCP. The revised model also includes the additional breeding and foraging occurrence records provided by the Swainson's hawk TAC.

The HCPA also received new data from Michael Bradbury of the TAC on his recent Swainson's hawk observations (see response to comment P-1 above). Based on these discussions, new data, and a site visit with TAC member Waldo Holt and CDFG and USFWS staff in February, the HCP/NCCP species habitat model, impact analysis, and conservation strategy for Swainson's hawk has been substantially revised. See response to comment K-10 for a description of these revisions and the resulting change to the impact analysis and conservation strategy.

*Revisions to the HCP/NCCP.*

The impact analysis and conservation strategy for Swainson's Hawk has been revised accordingly in the HCP/NCCP. See responses to comment P-1