

July 20, 2017

Yolo Habitat Conservancy
 Attn: Shawna Stevens, Assistant to the Director
 611 North Street
 Woodland, CA 95695

RE: Yolo Habitat Conservation Plan

Dear Ms. Stevens:

Thank you for your project notification letter dated, June 1, 2017, regarding cultural information on or near the proposed Yolo Habitat Conservation Plan, Yolo and Solano Counties. We appreciate your effort to contact us and wish to respond.

The Cultural Resources Department has reviewed the project and concluded that it is within the aboriginal territories of the Yocha Dehe Wintun Nation. Therefore, we have a cultural interest and authority in the proposed project area and wish to setup a coordination meeting with the project lead agency.

Please provide our Cultural Resources Department with a project timeline, detailed project information and the latest cultural study for the proposed project. As the project progresses, if any new information or cultural items are found, we do have a process to protect such important and sacred artifacts. Upon such a finding, please contact the following individual:

James Sarmiento, Cultural Resources Manager
 Yocha Dehe Wintun Nation
 Office: (530) 723-0452
 Email: jsarmiento@yochadehe-nsn.gov

Please refer to identification number YD - 04132016-01 in any correspondence concerning this project.

Thank you for providing us with project information and the opportunity to comment. Please contact Mr. Sarmiento at your earliest convenience to schedule a date and time for the coordination meeting.

Sincerely,

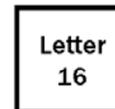
Marilyn Delgado
 Cultural Resources Director

Yocha Dehe Wintun Nation
 PO Box 18 Brooks, California 95606 p) 530.796.3400 f) 530.796.2143 www.yochadehe.org

15-1

15 Yocha Dehe
Marilyn Delgado, Cultural Resources Director
July 25, 2017

- 15-1 Thank you for submitting comments. This comment expresses interest in the geographic area of the Yolo HCP/NCCP and a request to meet with the Conservancy. The comment requests a project timeline, project information, and a copy of the cultural study. The requested timeline and project information have been previously provided. No archeological reports or cultural resource surveys have been prepared because project locations are not yet defined. The project is a programmatic action affecting an area of over 650,000 acres. The USFWS is the lead agency under NEPA and the Conservancy is the lead agency under CEQA. The project would allow for planned development and specified conservation actions to occur over the next 50 years. Details about each individual development activities and/or conservation actions, such as precise location and site conditions, are not known at the time of this programmatic action. Future development activity and conservation actions assumed within the Yolo HCP/NCCP will be subject to CEQA and each local lead agency must comply with the requirements of Assembly Bill 52 (Tribal Cultural Resources, 2014). Eligible tribes that request notice are provided the opportunity to coordinate with CEQA lead agencies on issues such as survey methodologies, monitoring, and treatment of known and newly discovered Tribal Cultural Resources, and other related aspects of meaningful consultation. Compliance with AB 52 will ensure that the coordination requested by the comment will occur at the time projects are proposed and site-specific details are known.



Public Meeting #9: Winters City Council, August 1, 6:30pm

Winters City Council Chambers, 318 1st Street, Winters

Presentation on Yolo Public Review Draft HCP/NCCP and Draft EIS/EIR

Agenda item beginning at approximately 7:08pm

Heidi Tschudin (Yolo Habitat Conservancy HCP/NCCP Project Manager) presented a series of PowerPoint slides summarizing the Public Review Draft Yolo HCP/NCCP. During Project Manager Tschudin’s presentation of slide 11, City Manager John Donlevy provided Council Members and members of the public with an example of how having a single fee payment for all species can be a significant time and cost savings. He cited the Walnut Park project, which cost over \$120,000 for 0.25 acres of impact as an example of current costs without having the Yolo HCP/NCCP in place.

Sean Behta (Ascent Environmental) presented a series of PowerPoint slides summarizing the Draft EIS/EIR. Heidi Tschudin completed the presentation with two PowerPoint slides summarizing the public comment process and schedule.

Mayor Wade Cowan opened the meeting to public comment.

Glen Holstein introduced himself as a citizen and stakeholder in the process for approximately 12 years. Mr. Holstein complimented the current team working on the Yolo HCP/NCCP. He stated that he believes there are a lot of benefits of the Plan and noted that in other areas such as East Contra Costa, existing plans have been very successful at bringing in outside funding for conservation and anticipates the same will happen for Yolo County. He also noted that the effort will ensure local control.

16-1

Roberto Valdez introduced himself as a Vacaville resident. He noted that he is supportive of the Solano HCP and has been working on it for about 15 years. He stated that HCP/NCCPs are beneficial for communities and suggested that anyone interested in learning more about them attend the Northern California Habitat Conservation Planning Workshop that is held in Vacaville every year. Mr. Valdez recommended support of the Yolo HCP/NCCP as a win-win for both the environment and development. He noted that the Solano HCP and Yolo HCP/NCCP have several of the same species in their plans and that together they can provide important habitat connectivity and corridors for species to be able to move.

16-2

No additional members of the public provided oral comment. Mayor Wade closed public comment.

Council Member Bill Biasi asked if the HCP/NCCP gets revised if a species is removed from the list of listed species. Ms. Tschudin responded that the agreement goes both ways in that the Plan provides assurances that no additional mitigation will be required and also commits to provide species conservation even if a species is no longer listed as a special status species in the future.

16-3

Council Member Biasi asked if one of the requirements is that agricultural lands enrolled are prohibited from the planting of orchards and vineyards. Ms. Tschudin responded that this is correct.

16-4

Council Member Pierre Neu stated that this effort is a win-win. It is good for conservation, development, and the community. It does come with costs, but they are known costs and provide a lot more certainty than other options.

16-5

Council Member Jesse Loren stated that if this plan was already in place, Winters would have saved money. Council Member Loren also noted that she appreciates that mitigation is done locally, that the plan would establish habitat corridors rather than silos, and appreciates the long-term nature of the plan. She stated that overall, she supports it.

16-6

Council Member Harold Anderson noted that he had experience with some of the earlier meetings and recognizes that it has turned into something more palpable. He further noted that he believes it is the best way to manage for species.

16-7

City Manager Donlevy asked if the state and federal agencies can change their minds. Project Manager Tschudin responded that this could potentially occur prior to the finalization of the Plan but it is unlikely at this point in time due to the extensive coordination that has occurred. She also noted that the wildlife agencies would not have allowed the release of the Public Review Draft of the Yolo HCP/NCCP if they didn't believe they could approve it.

16-8

Mayor Cowan asked if the committed acres included already conserved acres. Project Manager Tschudin responded that yes, it does include 8,000 acres of existing conservation lands.

16-9

Mayor Cowan stated that early on this process was a mess but it is now a much better plan. He then asked what the cost is to the City of Winters. Project Manager Tschudin responded by stating that the cost is based on if/when the city uses the permit for public projects and pays the associated fees.

16-10

Mayor Cowan stated that he feels this is a good way to go for Yolo County.

Mayor Cowan stated that prior to today's city council meeting, Bruce Guelden sent an email to each of the council members stating that Mr. Estep provided the Conservancy with an 18-page document pertaining to the conservation of Swainson's hawk in Yolo County and questioned why the document is no longer part of the Plan. Project Manager Tschudin responded that study Mr. Guelden mentions was commissioned by the Conservancy, and that Mr. Estep is a highly respected biologist who has done work in Yolo for years including biological assessments for many projects in Winters. Mr. Estep's work allowed the Conservancy to substantiate the working landscapes basis for the plan that Yolo has been advocating and is reflected in the Public Draft Plan that is currently before you for consideration. Ms. Tschudin explained that Mr. Estep was not expressing concern regarding the effectiveness of the plan, rather he was substantiating that the proposed conservation approach would not harm the hawk population – a determination necessary to convince the wildlife agencies of its efficacy.

16-11

Yolo Habitat Conservancy Deputy Director Chris Alford added that this particular document is referenced in several portions of the Yolo HCP/NCCP and that the conservation strategy for Swainson's hawk that is included in the Yolo HCP/NCCP was largely informed by the Estep report. The document is currently publicly available on the Conservancy's website as part of the Administrative Draft of the Plan and the Conservancy can post this document separately on their website so that it is more readily accessible.

Council Member Jesse Loren commented that she communicated with Chris Alford prior to the city council meeting and wanted to state for the record that the document is referenced in Section 6.3.4.6, Section 6.5.6.3.6, and Section 7.7.1.10 of the current version of the Yolo HCP/NCCP. Council Member Loren also noted that Chris Alford provided her with a summary of how the Estep report has been incorporated into the Plan.

16-11
cont.

Council Member Anderson asked for an explanation of the 3% identified in the Plan funding as being from endowment interest including the percentage and who holds the endowment. Deputy Director Alford explained that the Conservancy’s existing endowment fund is held by Yolo County in the county treasury, however the Conservancy is working with the County to transfer these funds to an endowment account held by the Silicon Valley Community Foundation, which receives a much higher rate of return than the county treasury. Deputy Director Alford noted that the Conservancy went through a “request for qualifications” process last year to identify a qualified entity to hold their endowments and selected Silicon Valley Community Foundation. This entity is very well qualified and meets the strict investment standards that the Conservancy is held to as a public agency. The specific endowment account that the Yolo HCP/NCCP endowment funds will be held in has historically had a rate of return that is consistently over 4% so the 3% listed in the Yolo HCP/NCCP is conservative.

16-12

At the close of the Council comments, the Mayor concluded the item at approximately 8:08pm.

These notes were prepared by Chris Alford, Deputy Director for the Yolo Habitat Conservancy. These are summary notes of the proceedings prepared for use in the CEQA process, and are not official minutes of the agency.

16 **Winters City Council Meeting**
Public Oral Comment
August 1, 2017

- 16-1 The comment includes statements of appreciation. These public meeting statements are not comments on the Draft HCP/NCCP or the Draft EIS/EIR. No additional response is necessary.
- 16-2 The comment includes statements of support. These public meeting statements are not comments on the Draft HCP/NCCP or the Draft EIS/EIR. No additional response is necessary.
- 16-3 A question was asked at the public meeting and answered at that time. Please see the meeting summary (i.e., Letter 16) for the question and response. No additional response is necessary.
- 16-4 A question was asked at the public meeting and answered at that time. Please see the meeting summary (i.e., Letter 16) for the question and response. No additional response is necessary.
- 16-5 The comment includes a statement of support for the HCP/NCCP. No additional response is necessary.
- 16-6 The comment includes a statement of support for the HCP/NCCP. No additional response is necessary.
- 16-7 The comment includes a statement of support for the HCP/NCCP. No additional response is necessary.
- 16-8 A question was asked at the public meeting and answered at that time. Please see the meeting summary (i.e., Letter 16) for the question and response. No additional response is necessary.
- 16-9 A question was asked at the public meeting and answered at that time. Please see the meeting summary (i.e., Letter 16) for the question and response. No additional response is necessary.
- 16-10 A question was asked at the public meeting and answered at that time. Please see the meeting summary (i.e., Letter 16) for the question and response. No additional response is necessary.
- 16-11 A question was asked at the public meeting and answered at that time. Please see the meeting summary (i.e., Letter 16) for the question and response. No additional response is necessary.
- 16-12 A question was asked at the public meeting and answered at that time. Please see the meeting summary (i.e., Letter 16) for the question and response. No additional response is necessary.

Letter
17

From: Jesse Loren <jesse.loren@cityofwinters.org>
Sent: Wednesday, August 2, 2017 6:43 AM
To: Info
Cc: Petrea Marchand; Pierre Neu; Debra DeAngelo
Subject: HCP/NCCP draft review

Re: Public Review Draft HCP/ NCCP
From : Winters City Councilmember Jesse Loren

Yolo Habitat Conservation plan is a comprehensive plan for the conservation of 12 species, and in conserving these selected species it also conserves habitat for other species that might later end up on the Endangered Species List. It's both proactive for local mitigation and aligned with State and Federal guidelines. I believe it is a boon to conservation in Yolo County.

17-1

Additionally, if it were already in place, it would have saved cities money while also keeping the mitigation local. I like the idea of local mitigation instead of saving an area far away. What is also attractive in the plan is improving habitat conservation through established corridors, it creates a tapestry instead of having a piecemeal operation. The establishment of corridors makes sense for wildlife and is also aesthetically pleasing.

On a personal note, 3 blocks from my house in Winters was a large vernal pool. It was a place where houses would be built, but until then, my kids and I explored the water as citizen scientists. For many years we brought home pollywogs, raised them, and released them. When the housing project was mitigated, that vernal pond loss was mitigated somewhere far away. It wasn't in Yolo. It was sent somewhere I would never know and the process gave our neighborhood and family a sense of loss. In this plan, the map is clear; the "takes" will be mitigated here in Yolo under very similar local conditions. It makes sense. I think the loss of my local vernal area would have made more sense if my family knew a like area would be protected locally in Yolo County. It's hard to put a value on this asset of 'preserving local', but it truly is an asset.

17-2

I'd like to acknowledge the hard work of Petrea Marchand, the County Supervisors, Conservancy staff, scientists, citizens and elected councilmembers in seeing this mighty task through. I'd also like to acknowledge the hard work of former Winters Mayor Woody Fridae and current Councilmember Pierre Neu. I know it has been an enormous project and I fully support this opportunity for local habitat conservation.

17-3

Jesse Loren
Winters City Council
Hispanic Advisory Committee
League of California Cities
Environmental Policy and Housing Committee Representative

318 First Street
Winters, Ca 95694
Cell [530-554-8087](tel:530-554-8087)

17 **Winters resident and city council member**
Jesse Loren
August 2, 2017

- 17-1 Thank you for submitting comments. The comment includes a statement of support for the HCP/NCCP. No additional response is necessary.
- 17-2 The comment includes a statement of support for the HCP/NCCP's method of preserving local resources to mitigate for local impacts. No additional response is necessary.
- 17-3 The comment includes statements of appreciation for the HCP/NCCP and the preparers. These statements are not comments on the Draft HCP/NCCP or the Draft EIS/EIR. No additional response is necessary.

Letter
18

**Yolo Habitat Conservancy Online Public Comment Submittal
for the Draft Yolo HCP/NCCP and Draft EIS/EIR**

Timestamp **8/8/2017 13:56:32**

Name Putah Creek Council Board
Email earlbyron4@gmail.com
Phone number 916-799-0555
Organization (if applicable) Putah Creek Council
Title (if applicable) Board member
Street Address, City, State, Zip 106 Main Str., Suite C, Winters, CA, 95694

Public Review Draft HCP/NCCP General Comments:

Comments Overall the project team should be commended for compiling such a comprehensive, well-organized document. The goals and objectives of the Yolo HCP/NCCP fit well with the overall mission of the protection and restoration of Putah Creek, as is the focus of the Putah Creek Council (PCC). We appreciate that the geographic scope of the HCP/NCCP logically expands slightly beyond Yolo County to include a 1,174-acre Expanded Plan Area for riparian conservation in Solano County on the south side of Putah Creek. The implementation of the HCP/NCCP will help provide long-term, consistently designed protections for the Putah Creek sensitive species and for the entire riparian and riverine ecosystem even as it provides for growth and covered activities. We anticipate that the PCC and Yolo HCP/NCCP will continue to work together as the implementation of the HCP/NCCP may impact the Putah Creek watershed and as Putah Creek restoration proceeds.

18-1

Specific Comments:

•Putah Creek is segmented by the Solano Project, which constructed Monticello Dam and Putah Diversion Dam. Typically, the segments of Putah Creek are referred to as upper (above Lake Berryessa), interdam reach, and lower (everything below Putah Diversion Dam. This plan refers to the interdam reach as Upper Putah, which is inconsistent (and thus confusing) with common usage, including Figure 2-2 and other various references in the text. We recommend changing Upper Putah Creek in the plan to Putah Creek Interdam Reach, where it refers to that segment.

18-2

•CM 1 will create a Yolo HCP/NCCP reserve system. However, there are already lands along Putah Creek (Stebbins Cold Canyon Reserve) in the UC Davis Reserve that are not mentioned. It would help the plan both to reference these other natural reserves and to explain how the multiple reserves (and others along Cache and the Yolo Bypass) would be coordinated.

18-3

•The plan refers to the LPCCC's management plan without any reference but such a plan does not exist. The reference section includes EDAW (2005), which assesses resources in the creek but does not provide a plan. Perhaps at this stage it would be more helpful to refer to the ongoing Putah Creek restoration planning (<https://www.putahcreekcouncil.org/lower-putah-creek-restoration-planning>).

18-4

•The plan refers to "Solano County Water Agency (SCWA) Lower Putah Creek Coordinating Committee (LPCCC)", but SCWA is not part of the LPCCC official name.

18-5

•The conditions of covered activities includes avoidance and minimization measures (AMMs); the development of AMMs as may be associated with Putah Creek restoration needs to be closely coordinated between LPCCC, PCC, and the Yolo HCP/NCCP (most likely for valley elderberry longhorned beetles, western pond turtles, Swainson's hawk, and white-tailed kite).

18-6

Draft EIS/EIR Comments see above.

18 Putah Creek Council Board
August 8, 2017

- 18-1 Thank you for submitting comments. The comment includes statements of appreciation for the HCP/NCCP in regards to its treatment of Putah Creek. No additional response is necessary.
- 18-2 The Putah Creek Council Board recommends in the comment that “Upper Putah Creek” be changed to “Putah Creek Interdam Reach” throughout the Yolo HCP/NCCP, including Figure 2-2. Figure 2-2, however, does not refer to Upper Putah Creek but refers to the Upper Putah Watershed, which is USGS Cataloging Unit #18020117. A change to Figure 2-2 was not made to retain the USGS-designated name. The remainder of the Yolo HCP/NCCP does not refer to Upper Putah Creek.
- 18-3 The comment recommends that the Stebbins Cold Canyon Reserve and UC Davis Reserve along Putah Creek be mentioned in Conservation Measure 1 (CM1), and that the HCP/NCCP explain how multiple reserves would be coordinated. The conservation strategy was developed in part by considering all the lands already protected (baseline public and easement lands) to assess how much more land needs to be protected to meet the NCCP standards. There are many preserves already established in Yolo County, as shown on Figure 6-2, *Baseline Public and Easement Lands*. The Yolo HCP/NCCP does not specifically call out every reserve in Yolo County. It does, however, incorporate the reserves into the conservation strategy, and describe generally how reserves will be coordinated. Draft Yolo HCP/NCCP Section 6.4.1.7, *Enrolling Baseline Public and Easement Lands into the Reserve System as Pre-permit Reserve Lands*, describes how the Conservancy will coordinate and enter into agreements with agencies, land trusts, and other organizations and individuals that manage baseline public and easement lands, which are reserves established prior to the completion of the Yolo HCP/NCCP. Chapter 6 of the Draft Yolo HCP/NCCP includes other discussion about coordinating with land managers of multiple reserves, including coordination on pollinator conservation programs (Objective L-2.2), invasive species control (Draft HCP/NCCP Section 6.4.3.4.1, *Invasive Species Control Program*), riparian natural community enhancement and management (Draft HCP/NCCP Section 6.4.3.5.3, *Valley Foothill Riparian Natural Community*), alkali prairie natural community enhancement and management (Draft HCP/NCCP Section 6.4.3.5.4, *Alkali Prairie Natural Community*), and sharing monitoring data (Draft HCP/NCCP Section 6.5.2.4, *Coordination with Other Programs*).
- 18-4 The comment states that the HCP/NCCP refers to the Lower Putah Creek Coordinating Committee’s (LPCCC’s) management plan without any reference and that no such plan exists. The Lower Putah Creek Coordinating Committee’s Watershed Management Action Plan (WMAP) (EDAW 2005) proposes a ranking of projects by landowner into three tiers. The LPCCC is developing a new, more detailed plan now, but this new plan builds on the WMAP and is not a replacement. According to Rich Marovich, Putah Creek Streamkeeper, the overarching objectives have not changed since the Committee developed the WMAP, even as the Committee has refined its methods. The HCP/NCCP will refer specifically to the WMAP instead of “management plan”. The Conservancy is looking forward to participating in the new Putah Creek restoration planning process.
- 18-5 The comment states that the HCP/NCCP refers to “Solano County Water Agency (SCWA) Lower Putah Creek Coordinating Committee (LPCCC)”, but that SCWA is not part of the LPCCC official name. The Conservancy has removed SCWA from the LPCCC name throughout the HCP/NCCP.
- 18-6 The comment states that the development of avoidance and minimization measures that may be applied to restoration projects along Putah Creek should be closely coordinated between LPCCC, PCC, and the HCP/NCCP. The Conservancy acknowledges the need to closely coordinate with LPCCC and PCC to develop site-specific measures along Putah Creek during HCP/NCCP implementation and will undertake such coordination if the HCP/NCCP is approved.

Letter
19



DELTA STEWARDSHIP COUNCIL
A California State Agency

980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
HTTP://DELTACOUNCIL.CA.GOV
(916) 445-5511

August 29, 2017

Received By
Yolo Habitat Conservancy
July 29, 2017

Chair
Randy Fiorini

Members
Frank C. Damrell, Jr.
Patrick Johnston
Susan Talayon
Skip Thomson
Ken Weinberg
Michael Gatto

Executive Officer
Jessica R. Pearson

Petrea Marchand, Executive Director
Yolo Habitat Conservancy
611 North Street
Woodland, CA 95697

Via email: info@yolohabitatconservancy.org

RE: Public Draft Yolo Habitat Conservation Plan/Natural Community Conservation Plan and the Draft Environmental Impact Statement/Environmental Impact Report, SCH#2011102043

Dear Ms. Marchand:

\$ 1,036,000.00

Thank you for the opportunity to review and comment on the Public Draft Yolo Habitat Conservation Plan/Natural Community Conservation Plan (Yolo HCP/NCCP) and the Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR). The Delta Stewardship Council (Council) applauds the Conservancy's efforts to develop a comprehensive effort to address the conservation needs and the effects of future anticipated activities on 12 sensitive species within Yolo County. We appreciate the opportunity to have had a dialogue with the Conservancy on these efforts over the past several years and look forward to continuing to work with you as you finalize and implement the Yolo HCP/NCCP.

19-1

In our previous comment letter on the Second Administrative Draft Yolo HCP/NCCP (dated 06/19/15), we requested that you consider whether the Yolo HCP/NCCP is a "covered action" under the Delta Plan. We had also highlighted several Delta Plan regulatory policies that are commonly relevant to habitat restoration projects. We appreciate that you addressed our comments in the Draft Yolo HCP/NCCP and the Draft EIS/EIR. We anticipate that these documents can be the foundation upon which the Yolo Habitat Conservancy (Conservancy) prepares a Delta Plan consistency certification. Below we offer additional information on the Delta Plan Consistency Certification process that we hope will be useful.

The mission of the Council is to promote the coequal goals of water supply reliability and ecosystem restoration in a manner that protects and enhances the unique values of the Delta as an evolving place (Water Code section 85054). The Council has a legally enforceable management framework for the Delta and Suisun Marsh called the Delta Plan, which applies a

19-2

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

— CA Water Code §85054

Petrea Marchand, Executive Director
Yolo Habitat Conservancy
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common sense approach based on the best available science to achieve the coequal goals. The Council was granted specific regulatory and appellate authority under the Delta Reform Act over certain actions that take place in whole or in part in the Delta or Suisun Marsh. The Council exercises that authority through the development and implementation of the Delta Plan.

19-2
cont.

Comments on the Draft EIS/EIR

As mentioned above, we appreciate that you addressed our June 2015 comments in the Draft EIS/EIR. Apart from the recommendation to include the Delta Reform Act as part of the "Regulatory Settings" section, mentioned below, based on our review we felt that the EIS/EIR was adequate. For example, in addition to the extensive biological goals, objectives and conservation measures that reflect the changes toward habitat improvement and restoration, the EIS/EIR appears to have done a detailed analysis on reasonable range of alternatives that are potentially feasible.

19-3

Comments on the Yolo HCP/NCCP

The Council applauds the efforts of the Yolo Conservancy in the development of the Yolo HCP/NCCP and its objectives of promoting recovery of listed species and natural landscapes while improving certainty and efficiencies in environmental permitting. Because the HCP/NCCP will be used as a guide for covered activities, we encourage the Conservancy to include the Delta Reform Act under 1.4 of the "Regulatory Context" section. Covered activities under the HCP/NCCP, within the Legal Delta, should comply with the described federal and state laws and regulations.

19-4

Delta Plan Consistency Certification Information

According to the Delta Reform Act, state or local agencies approving, funding or carrying out projects, plans, or programs, upon determining their project is a "covered action" subject to regulations of the Delta Plan, must certify consistency of the project with the Delta Plan policies (Water Code section 85225). Based on the project description, Council staff believes your project meets the definition of a covered action. Generally, the California Environmental Quality Act (CEQA) lead agency, which in this case would be the Conservancy, would complete the Certification of Consistency.

19-5

The Council anticipates that the level of detail included in a Certification of Consistency for a programmatic plan such as the Yolo HCP/NCCP would be appropriate to the level of detail within the plan itself. As currently undefined projects under the Yolo HCP/NCCP are further developed and implemented over the 50-year permit term, the Delta Plan recommends that project proponents should consider whether these projects are covered actions requiring a consistency certification. Council staff looks forward to working with, and providing early consultation to, project proponents as these projects are developed. Upon our review, future

Petrea Marchand, Executive Director
Yolo Habitat Conservancy
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project activities should consider the guidance provided above with regard to Consistency Determination.

19-5
cont.

Additionally, we recommend that the Conservancy include the Delta Reform Act's regulatory framework and reflect the Delta Plan Policies in the forthcoming final EIS/EIR as part of the "Regulatory Setting", of sections listed below. This will provide the basis to support a Certification of Consistency for prospective projects.

- 4.2.2 Biological Resources
- 5.2.2 Land Use
- 6.2.2 Agricultural Resources
- 8.2.2 Recreation and Open Space
- 9.2.2 Hydrology and Water Quality

19-6

As previously stated, the Council appreciates that the Draft Yolo HCP/NCCP and the Draft EIS/EIR appears to address each of the policies highlighted from the June 2015 comment letter. To better support your Certification of Consistency, we encourage the Conservancy to revisit the following Delta Plan policies before filing:

Mitigation Measures

Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with those identified in the Delta Plan Program EIR or substitute mitigation measures that are equally or more effective. See Mitigation Measures 4-1 through 4-5 in the Delta Plan's Mitigation and Monitoring Report Program available at:
http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.

19-7

Best Available Science and Adaptive Management

Delta Plan Policy **G P1** also states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan
(<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>).

19-8

Delta Plan Policy **G P1** also requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through A) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan
(<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201B.pdf>) and B)

19-9

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documentation of adequate resources to implement the proposed adaptive management plan. Since the HCP/NCCP will be primarily funded through development fees, then it is expected that funding of monitoring and adaptive management for habitat restoration and creation of projects will be assured.

19-9
cont.

We recommend that the Conservancy's template for restoration plans require that such projects have an adaptive management strategy consistent with the framework in Appendix 1B of the Delta Plan. This could help to streamline consultation and consistency determination for projects implemented under the HCP/NCCP.

The Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance to help the Conservancy with the appropriate application of best available science and adaptive management. Please contact Karen Kayfetz (Karen.Kayfetz@deltacouncil.ca.gov) of the Delta Science Program.

Restore Habitat in a Manner Consistent with the Delta Plan - Delta Plan Policy ER P2 (23 Cal. Code Regs.5006) states that habitat restoration must be consistent with Appendix 3 (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%203.pdf>) of the Delta Plan regulations and that restoration will occur at appropriate elevations. Appendix 3, which is an excerpt from the 2011 Draft Ecosystem Restoration Program (ERP) Conservation Strategy, provides a vision for a mosaic of different habitat types within the Delta including open water, subsided lands, floodplains, and upland areas. It also includes a vision for use of Delta agricultural lands to support special-status wildlife species, which particularly relevant to the HCP/NCCP because much of the conservation plan's strategy involves widespread use of wildlife-friendly farming through conservation easements.

19-10

Protect Opportunities to Restore Habitat - Delta Plan Policy ER P3 (23 Cal. Code Regs.5007) requires that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>), significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated. Much of the overlap between the Legal Delta and the HCP/NCCP Plan Area includes the Yolo Bypass PHRA. Please analyze the extent to which any of the covered activities in the HCP/NCCP may have significant adverse impacts to the opportunity to restore habitat within the Yolo Bypass PHRA.

19-11

Land Use Conflicts - Delta Plan Policy DP P1 (23 Cal. Code Regs.5010) calls for locating new residential, commercial, and industrial development within areas designated for development in the Delta Plan, based on city and county general plans approved before adoption of the Delta Plan on May 17, 2013. Development is also permitted outside areas designated for development if it is consistent with the land uses designated in county general plans approved before adoption of the Delta Plan.

19-12

Petrea Marchand, Executive Director
Yolo Habitat Conservancy
August 29, 2017
Page 5

Delta Plan Policy **DP P2** (23 Cal. Code Regs.5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing uses when feasible, considering comments from local agencies and the Delta Protection Commission. For example, addressing the requirement to consider sites on existing public lands, when feasible and consistent with a projects purpose, before privately owned sites are purchased.

19-13

Invasive Species - Delta Plan Policy **ER P5** (23 Cal. Code Regs.5009) calls for avoiding introductions and habitat improvements for invasive nonnative species or mitigating these potential impacts in a manner that appropriately protects the ecosystem. Analysis on this matter should address both nonnative wildlife species as well as terrestrial and aquatic weeds.

19-14

To the maximum extent practicable, covered actions should avoid or mitigate for conditions that would lead establishment of nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures should be consistent with the Delta Plan Mitigation Measures 4-1 available at http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_atta ch%202.pdf.

Closing Comments

We appreciate your willingness to engage with us and look forward to continued coordination as you proceed with the consistency certification process, and as you finalize and implement the Yolo HCP/NCCP. I encourage you to contact Ron Melcer at Ronald.Melcer@deltacouncil.ca.gov or Megan Brooks at Megan.Brooks@deltacouncil.ca.gov for any questions you may have regarding Delta Plan consistency.

19-15

Sincerely,



Cassandra Enos-Nobriga
Deputy Executive Officer
Delta Stewardship Council

19 **Delta Stewardship Council**
Cassandra Enos-Nobriga, Deputy Executive Officer
August 29, 2017

- 19-1 Thank you for submitting comments. This comment includes an expression of appreciation and states that the draft HCP/NCCP and Draft EIS/EIR addresses previous comments provided to the Conservancy. The comment introduces the Delta Plan Consistency Certification process, which is addressed in detail in subsequent comments. See responses to specific items below. No additional response is necessary.
- 19-2 The comment summarizes the mission and authority of the Delta Stewardship Council. No additional response is necessary.
- 19-3 The comment states that the Delta Stewardship Council feels the EIS/EIR is adequate, although further recommendations are provided in subsequent comments. See responses to specific items below. No additional response is necessary.
- 19-4 The comment encourages the Conservancy to include the Delta Reform Act in the Draft HCP/NCCP Section 1.4, *Regulatory Context*. The Conservancy has added a description of the Delta Reform Act to the proposed Final HCP/NCCP Section 1.4, *Regulatory Context*.
- 19-5 The comment expresses the opinion of Delta Stewardship Council staff that adoption of the Yolo HCP/NCCP would be a covered action under the Delta Reform Act and that for a programmatic plan such as the Yolo HCP/NCCP the level of detail provided in the plan would be an appropriate level of detail for a Certification of Consistency under the Delta Reform Act. The Conservancy will continue to coordinate with the Delta Stewardship Council regarding the status of the Yolo HCP/NCCP as a covered action and preparation of a Certification of Consistency if appropriate. The determination of whether the Plan is a covered activity under the Delta Reform Act will be made by the Conservancy later in the process. The Conservancy will comply with all applicable elements of the Delta Reform Act in the adoption and implementation of the HCP/NCCP. The Conservancy will also continue to inform its member agencies of relevant elements of the Delta Reform Act as projects are developed and implemented over the HCP/NCCP permit term.
- 19-6 The comment requests that the Conservancy include the Delta Reform Act's regulatory framework and reflect the Delta Plan Policies in the "Regulatory Setting" of various chapters in the EIS/EIR. The Delta Reform Act is identified in the Regulatory Setting sections of the Draft EIS/EIR listed in the comment (see pages 4-22, 5-6, 6-9, 8-5, and 9-11). These discussions in the Draft EIS/EIR do not identify specific Delta Plan Policies, however any appropriate summary is provided. The Conservancy is aware of the Delta Plan Policies and will draft an analysis of consistency with the policies, as appropriate, for consideration by the Conservancy Board after certification of the EIS/EIR as directed in the Delta Stewardship Council Covered Action Checklist. See responses to Comments 19-7 through 19-14 below. Subsequent discretionary projects overseen by lead agencies throughout the County will also separately address consistency with the Delta Plan as appropriate. Certifications of Consistency are not required to be completed before a CEQA lead agency certifies an EIR.
- 19-7 This comment refers to Delta Plan Policy G P1 related to mitigation measures in the Delta Plan Program EIR. The Conservancy is aware of this policy and will draft an analysis of consistency with this policy, as appropriate, for consideration by the Conservancy Board after certification of the EIS/EIR as directed in the Delta Stewardship Council Covered Action Checklist.
- 19-8 This comment refers to Delta Plan Policy G P1 related to use of best available science. The Conservancy is aware of this policy and will draft an analysis of consistency with this policy, as appropriate, for consideration by the Conservancy Board after certification of the EIS/EIR as directed in the Delta Stewardship Council Covered Action Checklist.

- 19-9 This comment refers to Delta Plan Policy G P1 related to implementation of adaptive management. The Conservancy is aware of this policy and will draft an analysis of consistency with this policy, as appropriate, for consideration by the Conservancy Board after certification of the EIS/EIR as directed in the Delta Stewardship Council Covered Action Checklist.
- 19-10 This comment refers to Delta Plan Policy ER P2 related to habitat restoration. The Conservancy is aware of this policy and will draft an analysis of consistency with this policy, as appropriate, for consideration by the Conservancy Board after certification of the EIS/EIR as directed in the Delta Stewardship Council Covered Action Checklist.
- 19-11 This comment refers to Delta Plan Policy ER P2 related to restoration within the Yolo Bypass. The Conservancy is aware of this policy and will draft an analysis of consistency with this policy, as appropriate, for consideration by the Conservancy Board after certification of the EIS/EIR as directed in the Delta Stewardship Council Covered Action Checklist. In response to the question asked by the comment, the Conservancy does not expect implementation of HCP/NCCP to result in any adverse impacts to other opportunities to restore habitat within the Yolo Bypass.
- 19-12 This comment refers to Delta Plan Policy DP P1 related to land use conflicts. The Conservancy is aware of this policy. It applies to later actions by member agencies and would be analyzed as appropriate by those agencies during the review of individual development applications. The Conservancy has no jurisdiction over development activities.
- 19-13 This comment refers to Delta Plan Policy DP P2 related to siting restoration projects to avoid conflicts with existing uses, considering comments from local agencies and the DPC, and consideration of restoration on public lands when feasible, as opposed to private lands. The Conservancy is aware of this policy. Regarding avoiding conflicts with existing uses, the HCP/NCCP address this extensively in Chapter 7 (Plan Implementation), Appendix K (Conservation Easement Template), and Appendix Q (Management Plan Template).

Regarding considering comments from local agencies and the Delta Protection Commission (DPC), the Conservancy is comprised of the five primary local agencies in Yolo – the County and the four cities. These five entities have been extensively involved in developing the Conservation Strategy. Other local agencies in the County and the DPC have been provided the opportunity to comment on the HCP/NCCP. The DPC has expressed support for the Plan (see Letter 31).

Regarding considering sites on existing public lands, the proposed conservation strategy relies as much as possible on existing public lands. Conservation Strategy Objective L-1.3 (see Draft HCP/NCCP Section 6.3.2, *Landscape-Level Biological Goals and Objectives*) emphasizes the importance of acquiring newly protected lands for the reserve system adjacent to and between baseline protected lands, including public lands, to increase the size and connectivity of the network of protected lands in the Plan Area.

The HCP/NCCP allows up to 8,000 acres of existing baseline public and easement lands to be counted towards the HCP/NCCP conservation goals (see Draft HCP/NCCP Table 6-1(b) in Chapter 6) as pre-permit reserve lands, provided the Conservancy establishes additional easements on these properties to ensure consistency with the various requirements of the HCP/NCCP. Existing public lands that contain covered species habitat and meet the basic requirements of lands eligible to be counted as pre-permit reserve lands have been identified and are listed in Table 8-3 in Chapter 8 of the Draft HCP/NCCP.

- 19-14 This comment refers to Delta Plan Policy ER P5 related to invasive species. The Conservancy is aware of this policy and will draft an analysis of consistency with this policy, as appropriate, for consideration by the Conservancy Board after certification of the EIS/EIR as directed in the Delta Stewardship Council Covered Action Checklist.

19-15 This comment provides contact information and conclusion text. No additional response is necessary.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Letter
20

AUG 29 2017

Mike Thomas, Chief
Conservation Planning Division
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, W-2605
Sacramento, California 95825

Subject: Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the Yolo Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) (EIS No. 20170095)

Dear Mr. Thomas:

The U.S. Environmental Protection Agency (EPA) has reviewed the subject document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

This DEIS/EIR evaluates the potential impacts of implementing the Yolo Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), developed to facilitate obtaining an incidental "take" permit from the U.S. Fish and Wildlife Service and a Natural Community Conservation Plan Act permit from California Department of Fish and Wildlife for 12 covered species. The Plan develops a long-term strategy for the conservation and management of covered species in Yolo County, while allowing for development and maintenance activities that are compatible with other local policies and regulations.

20-1

Based on our review, we have rated the action alternatives as *Lack of Objections (LO)* (see enclosed "Summary of Rating Definitions"). We recommend selection of the environmentally-preferable Reduced Take Alternative, since, in addition to its substantial benefits to covered species, and to critical habitat for special-status fish species, it would protect dozens of acres of floodplains and wetlands. While EPA has no objections to the proposed project, we suggest that certain information be clarified in the Final EIS. These suggestions, as well as suggestions regarding measures that could further protect environmental resources, are provided below for your consideration.

Wetlands/Clean Water Act Section 404

We appreciate the buffers identified in the HCP/NCCP for riparian and wetland natural communities. The Plan allows for smaller buffers if the identified buffers are infeasible, with approval by the Conservancy or wildlife agency (Appendix C, pp. C-3 - C-4), but it is not clear how feasibility would be determined by the various Permittees. We suggest that the Final EIS/EIR explain how feasibility of buffers will be determined, and provide guidance to ensure consistent application of feasibility criteria.

20-2

Avoidance and Minimization Measure #10 states that, other than certain specified requirements, the HCP/NCCP does not include specific best management practices for protecting wetlands and waters because such practices may conflict with measures required by other agencies (HCP p. 4-14). We suggest including any known best management practices, with a statement that they apply unless they conflict with permit requirements by other agencies.

20-3

Floodplain Development

Development in Planning Unit 21 (West Sacramento) would account for half of all fresh emergent wetland loss in the Plan and the highest losses of valley foothill riparian, lacustrine, and riverine natural communities of any planning unit (HCP, Table 5-3). Planning Unit 15 accounts for the 2nd highest losses of these natural communities. According to the HCP/NCCP, the valley foothill riparian natural community is usually associated with floodplains (HCP, p. 2-44), and natural floodplain processes support the establishment of riparian vegetation that provides habitat for riparian associated covered species (HCP, p. 5-100). Fully functioning floodplains also offer protection from more intense rainfall and storms, which are predicted in future weather scenarios. For these reasons, we suggest considering whether developers could incorporate some of the natural features into project designs, perhaps with a reduced permit fee or other incentive, to minimize or mitigate the loss of floodplain capacity.

20-4

Pesticides

The use of pesticides is not a covered activity under the HCP/NCCP, and use in accordance with EPA labels is assumed. The HCP/NCCP prohibits the use of rodenticides on all lands in the reserve system, including cultivated lands, to avoid effects to Swainson’s hawk and white-tailed kite (HCP p. 4-31). It appears, however, that rodenticides could be used on 2,300 acres in the Neighboring Landowner Protection Program (NLPP), as “rodent control” on those lands is identified on p. 2-31 as an activity that could result in adverse effects on the giant garter snake and western pond turtle. If the use of rodenticides on NLPP lands could also have adverse effects on Swainson’s hawk and white-tailed kite, we suggest that these potential impacts be disclosed in the Final EIS, along with any measures that could mitigate such impacts; for example, consider whether incentives for NLPP participants to avoid the use of rodenticides would be effective and appropriate.

20-5

The HCP/NCCP anticipates continued use of approved pesticides other than rodenticides (i.e., insecticides, herbicides, fungicides, etc.), in accordance with EPA labels, on reserve lands (DEIS p. 19-23). The HCP/impact assessment indicates that pesticides may have negative effects on the CA tiger salamander, giant garter snake, and western yellow-billed cuckoo (Appendix D pp. D-A.3-7, 5-10, & 8-5); and that pesticides from agricultural use are contaminants of concern to water quality in the Sacramento River (p. 9-6). To minimize these impacts, we suggest that the HCP/NCCP include measures to encourage voluntary pesticide use reduction for cultivated reserve lands, consistent with Policy CO-2.19 of the Yolo County 2030 Countywide General Plan, which supports the use of sustainable farming methods that minimize the use of pesticides (DEIS, p. 4-24).

20-6

Air Quality

Air quality in the Plan area is designated as severe nonattainment for the eight-hour ozone National Ambient Air Quality Standard (NAAQS) and moderate nonattainment for the particulate matter less than 2.5 microns (PM_{2.5}) NAAQS. The air quality impact assessment concludes that no significant impacts would occur; however, it notes that the activity with the greatest potential for emissions would be grading or earth moving that is completed as part of habitat restoration or creation, and this would typically be a one-time activity at each reserve where it is conducted (p. 15-22). Based on our reviews of multiple wetland restoration projects, we are aware that such projects frequently require large amounts of imported fill, requiring thousands of truck trips to and from the site for importing off-site

20-7

materials. Since this source of emissions was not discussed in the DEIS/EIR, no mitigation measures addressing combustion-related pollutants were proposed. We recommend that the Final EIS/EIR disclose any potential need to transport off-site fill for the Plan restoration projects, and include standard construction mitigation measures (see <http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm>) to be followed to minimize emissions of NOx and PM_{2.5} in this nonattainment area.

20-7
cont.

EPA appreciates the opportunity to review this DEIS/EIR. When the Final EIS/EIR is released for public review, please send one electronic copy to the address above (mail code: ENF-4-2). If you have any questions, please contact me at (415) 972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

20-8

Sincerely,



Kathleen Martyn Goforth, Manager
Environmental Review Section

Enclosure: Summary of EPA Rating Definitions

cc: Shawna Stevens, Assistant to the Director, Yolo Habitat Conservancy

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

Category "1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category "2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category "3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

**20 United States Environmental Protection Agency, Region 9
Kathleen Martyn Goforth, Environmental Review Section Manager
August 29, 2017**

- 20-1 Thank you for submitting comments. This comment letter is addressed to the USFWS and provides comments from the Environmental Protection Agency (EPA) pursuant to NEPA. The first comment provides introductory text and states that the EPA has rated the action alternatives as “Lack of Objections”. The EPA also recommends the selection of the Reduced Take Alternative, although EPA has not objections to the “proposed project.” This introductory paragraph identifies that the letter provides suggestions for consideration by USFWS. The EPA recommendations are noted and those suggestions are responded to in responses 20-2 through 20-7 below.
- 20-2 The comment suggests that the EIS/EIR explain how feasibility of buffers will be determined, and provide guidance to ensure consistent application of feasibility criteria. Projects will be reviewed on a case-by-case basis to ensure compliance with the buffers stipulated in the HCP/NCCP. An applicant will be required to pay fees for impacts they cannot avoid, and will not be allowed to exceed the take limits stipulated in the HCP/NCCP.
- 20-3 The comment suggests that the HCP/NCCP include best management practices for protecting wetlands and waters. This HCP/NCCP, however, focuses on the 12 covered species and their habitat. Practices specifically to protect wetlands and waters of the U.S., beyond those identified in the HCP/NCCP in the context of protection of habitat for covered species, will be addressed by federal and state agencies through other mechanisms (such as the Clean Water Act, Rivers and Harbors Act, Lake and Streambed Alteration Agreements, etc.).
- 20-4 The comment suggests modifications to development in floodplains, and reduced fees to minimize riparian and related habitat effects. Effects on fresh emergent wetland, valley foothill riparian, lacustrine, and riverine natural communities in Planning Units 21 and 15 are due in large part to the implementation of flood control improvement projects and maintenance of existing flood control facilities. As identified in the HCP/NCCP and the EIS/EIR, covered activities include the development and operation of new flood control facilities, including levees, and expansion and improvements to existing facilities. Much of this activity consists of implementation of the West Sacramento Levee Improvement Program by the West Sacramento Area Flood Control Agency (WSAFCA) in Planning Unit 21. As shown in various figures in the HCP/NCCP and EIS/EIR identifying the footprint of covered activities, much of the mapped covered activities in Planning Unit 15 consists of long, linear polygons along natural and man-made waterways, consistent with flood control maintenance and improvement activities. The HCP/NCCP also provides coverage for maintenance of up to 150 acres of flood control structures and associated water conveyance infrastructure, including sediment removal, bank stabilization, vegetation management, and natural and trash debris removal. Much of these 150 acres would affect wetland, valley foothill riparian, lacustrine, and riverine natural communities as these natural communities are closely associated with flood control structures and water conveyance infrastructure (e.g., canals).

Although USFWS and the Conservancy join EPA in encouraging floodplain protection and enhancement measures being included in development projects, in the case of Yolo County and the HCP/NCCP, it is primarily flood protection projects and flood protection operation and maintenance activities that affect the natural communities typically associated with floodplains. The Conservancy has responded to input from WSAFCA, local reclamation districts, and local water management agencies as far the characterization and inclusion of flood control related covered activities in the HCP/NCCP. The Conservancy has little ability to influence the projects and activities implemented by these agencies. These flood control agencies themselves are often responding to requirements of the USACE and the Central Valley Flood Protection Board (CVFPB) as they design and implement their projects. For example, the loss of valley foothill riparian habitat assumed to result from flood

protection projects is due, in part, to USACE vegetation management policies that require the removal of existing vegetation that may have become established on a levee when USACE authorizes improvements to that levee.

However, the preservation and enhancement of floodplains is also becoming a more common component of flood control projects. For example, the West Sacramento Levee Improvement Program includes a setback levee to allow expansion of the existing floodplain, and the CVFPB is favoring the funding and approval of “multi-benefit projects” that not only improve flood protection, but also benefit natural communities and floodplain functions.

In addition, projects that affect riparian and related habitats may trigger federal Clean Water Act Section 404/401 permits. Through those permitting processes we would expect additional avoidance of these features and minimization of effects.

- 20-5 The comment addresses the potential for use of rodenticides on 2,300 acres in the neighboring landowner protection program to affect Swainson’s hawk and white-tailed kite. The use of pesticides is not a covered activity under the HCP/NCCP and the use of rodenticides is precluded in the reserve system. The reference to “rodent control” in proposed Final HCP/NCCP Section 5.4.4, *Neighboring Landowner Protection Program*, has been revised to clarify this point. The same clarifying language is included in the discussion of the neighboring landowner protection program in Section 2.3.2 of the EIS/EIR.

Use of rodenticides on lands enrolled in the neighboring landowner protection would likely be a continuation of existing ongoing and routine agricultural activities. The implementation of the neighboring landowner protection program would not increase the volume of rodenticides used or the geographic extent of rodenticide use. 20-6 The comment suggests that the HCP/NCCP include measures to encourage voluntary reduction of pesticide use on cultivated reserve lands, consistent with Policy CO-2.19 of the Yolo County 2030 General Plan. Language to reflect this has been added to Section 6.4.3.5.1, *Cultivated Lands Semi-natural Community*, of the proposed Final HCP/NCCP.

- 20-7 The objective of most restoration efforts, as well as most earth moving efforts in general, is to achieve as close as possible to a “cut/fill balance”, where the amount of soil excavated/scraped/cut equals the amount of fill that is needed. This approach minimizes the amount of fill that must be imported and/or the amount of “waste” soil that must be disposed of; thereby minimizing project costs and expediting project schedule. With both the monetary and schedule incentives to seek a cut/fill balance, restoration efforts that import or export large amounts of soil are typically the exception in the Sacramento Valley.

As identified on page 15-18 of the Draft EIS/EIR:

“Activities associated with the establishment of protected mitigation lands would vary depending on the type of protected mitigation lands. Protected mitigation lands intended solely to protect existing habitat might require very little work to shift the existing use to reserve; however, protected mitigation land that includes habitat enhancement, restoration, or creation could include construction activities such as earth movement and grading.”

Some covered activities would involve earth moving and grading; including habitat enhancement, restoration, or creation activities; the Draft EIS/EIR anticipates these conservation related covered activities would have the greatest emissions, therefore, as noted by the EPA, the emissions estimates focused on these activities.

As also identified on page 15-18 of the Draft EIS/EIR:

Although specific details regarding the size of protected mitigation lands and types of construction activities...are unknown at this time, an estimate of emissions was conducted based on conservative assumptions of protected mitigation land size and likely construction

equipment that would be used (e.g., trucks, loaders, backhoes) for protected mitigation lands involving habitat restoration/creation. Refer to Appendix F for detailed assumptions.

As shown on the 7th page of Appendix F (labeled as Page 6 of 19 for this segment of the modelling data), the emissions modelling assumed 387.5 acres of grading during a single 4.5-month period. The maximum amount of restoration to a wetland natural community type assumed under the draft HCP/NCCP is 952 acres (see Table 2-2 in the Draft EIS/EIR). Therefore, the air quality emissions modelling applied the very conservative approach of implementing over 1/3 of the total HCP/NCCP wetland restoration, which is assumed to occur over various periods during the 50-year permit term, in a single 4.5-month period. The emissions modeling likely far over-estimates actual emissions, and still identifies that emissions would remain below applicable thresholds. Given the low probability that restoration efforts implemented as part of the Yolo HCP/NCCP will result in the need for large volumes of soil hauling, and the conservative nature of the emissions estimates, there is not a need to provide additional mitigation measures to minimize emissions associated with preserve establishment.

20-8 This comment provides contact information and concluding remarks. No additional response is necessary

Letter
21

August 30, 2017

US Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way W-2605
Sacramento, Ca 95825

To Whom It May Concern:

I am anonymously submitting comments on the Yolo Habitat Conservancy draft EIR/EIS plan.

I was told that I did not have to submit my remarks with my name and I am electing not to do so, so that I may be more candid about my comments regarding the conservancy draft.

Thank you for your time and attention.

RECEIVED
AUG 30 2017
SACRAMENTO FISH
WILDLIFE OFFICE

Comment on Yolo Habitat Conservancy Draft of EIR/EIS

Submitted August 30, 2017

This draft is utterly unfriendly to the general public, and is so convoluted and filled with "alphabet soup" references to public and private entities that it boggles the mind. 21-1

According to the draft document, \$40,000 is the amount of the expenditures for public education and awareness. Up to now, the only public information that has been widely disseminated is the Sacramento Bee article on the 2016 Grand Jury Report on the Conservancy that concludes with the recommendation that the Conservancy submit to a yearly performance audit given its troubled past. I am attaching a copy of the article. I did attend a public presentation of the conservancy plan that lasted about 15 minutes, and was pretty much incomprehensible to the average citizen. I think more public discourse and dissemination of information is in order. 21-2

At this point in time, this draft seems an elaborate mechanism to speed development of areas where wildlife, endangered and not endangered, will be sacrificed, on the promise of some future restorations and land reserves that will somehow save the designated endangered animals. By the time this plan is fully implemented, most wildlife will be decimated. Fifty years to implement a conservation plan seems unrealistic given the acceleration of development that is promised by streamlining the permit process, which seems to be the major impetus for the formation of the conservancy. 21-3

I live in a forty year old development in the rural area of Southeast West Sacramento. In the past 10 to 15 years, I have watched more and more land gobbled up by developers, and at present, a new development is inching to within 1000 feet of the banks of the Sacramento River (Newport Meadows). If residential building adjacent to this development occurs, a large part of the habitat for wildlife will be destroyed, and no amount of restoration somewhere else will replace what is being lost in this area. 21-4

I note that there is no discussion of climate change in this document, and after a six year drought that has had serious impacts on wildlife, I would think that there would be some calculations as to the cost of the potential catastrophes associated with this kind of growing environmental instability. For all indications and common sense observations, water, and its conservation, will be a key issue for conserving and preserving wildlife habitat in the near and distant future. 21-5

Water, its accessibility and treatment, should be key issue in conservation planning, but there is little mention of it in the draft document. A key problem associated with development is the disposal of storm drain water. I note the following policy not discussed in the EIR Draft, but included in the body of the complete document in the section referring to West Sacramento. It is as follows:

"Policy NRC-4.5. No Adverse Impact.
The City shall not approve new development that has a significant potential for adversely affecting water quality in the city's natural waterbodies and drainage systems including the Sacramento River, the Deep Water Ship Channel, Lake Washington, or the area's groundwater basin." 21-6

This policy is crucial to protecting habitat water from storm drain water pollution where I live. What is missing from both the draft and the complete EIR plan is that all participating cities be required to adopt and implement the California Water Resources Board phase II ordinance regarding storm drain water. Privately owned retention ponds are created for flood control purposes by developers, and then deeded Homeowners Associations within the development. They can become polluted and dangerous to animals and people if they are not properly maintained.

These ponds often become de facto habitats for wildlife, possibly including endangered species. The Water Control Board proposed city ordinance gives cities the power to inspect privately owned retention ponds, and require the owners to insure that the water is safe and meets state pollution standards.

21-6
cont.

These retention ponds can become sources of water, and survival for wildlife in drought situations when natural community water sources dry up in surrounding areas during droughts. I witnessed such a situation in a retention pond in my neighborhood during the 2015 summer of drought.

Several hundred waterfowl of all descriptions, and other animals came to this pond during the drought seeking survival. The owners of the pond chose the occasion to pump most water out to the south end of the pond to install a retention wall. This gave the animals clustered in the north end, even less water on which to survive. At night, citizens put their hoses in storm drains in an effort to keep some water in the north end of the lake.

21-7

In the end, citizens were told that water would be trucked by pond owners to refill the north end of the lake, but this was never done. The mayor publically stated that the city could do nothing to ease the situation because the pond was privately owned. I found their attitudes towards these desperate animals chilling and callous. This experience has left me convinced that those on the council now, and in 2015, have no real interest in wildlife welfare.

It is absolutely imperative that cities be required to assume the authority to police the quality of water in retention ponds, and require private owners to maintain these bodies of water to meet state water quality standards. The ordinance should include existing, as well as, any future ponds established in new developments. Failure of a city to adopt this ordinance should result in expulsion from the conservancy.

21-8

In closing, I note that the Board of Directors for the conservancy has no seats for citizens at large. I do not believe that the conservancy should be monitored by a board consists only of local government representatives. As noted above, local government representatives may not reflect the concerns of their constituencies, and can be more interested in expanding their tax bases more quickly than saving endangered wildlife.

21-9

I would like to see a conservation agency established in Yolo County that is free of potential cronyism, economic incentives to development over protection of wildlife, and a long term commitment to limiting the destruction of existing habitats that are functioning and viable now. I believe conservancy staff should have solid academic and work experience backgrounds in wildlife biology and ecology.

21-10

I am submitting these comments anonymously for obvious reasons.

Attachment: Sacramento Bee Article

The Public Eye

Grand jury criticizes leadership, delays at Yolo Habitat Conservancy

By Brad Branan

bbranan@sacbee.com



September 17, 2016 12:16 PM

A Yolo County environmental agency that was nearly disbanded in 2012 because of financial mismanagement and a lack of direction once again is facing questions about its leadership.

In a recent report, “Yolo Habitat Conservancy: A Never Ending Story,” the county’s grand jury takes aim at an agency created 14 years ago to make a local plan for protecting habitat for threatened and endangered species – a responsibility that otherwise falls to state and federal agencies. Conservancy leaders expect to have the plan approved late next year at a cost of about \$10 million.

The grand jury report comes after a 2013 audit found the conservancy had improperly spent \$1.8 million in funds intended for the Swainson’s hawk on the overall habitat plan, and generally was spending more money than it had. The agency’s executive director already had resigned in 2012 when she was confronted with questions about the agency’s dire financial situation. Most of its money has come from state and federal grants.

The conservancy’s performance “does not justify the time and the money spent,” according to the grand jury report.

The conservancy’s board of directors, which includes elected officials from Yolo County, Davis and West Sacramento, disputed that conclusion, and criticized the grand jury for failing to recognize the agency’s improvements since new leadership took over. Board chair and Yolo County Supervisor Jim Provenza predicted the conservancy would have a “model plan” approved next year.

Some of the grand jury’s most critical complaints about the conservancy concerned its new leadership. The report calls for the conservancy to take steps to address any appearance of impropriety regarding the approval of bills from two consultants who work as the conservancy’s executive director and project manager.

The grand jury found that payments to one of the consultants has the potential for conflict because she is a “decision maker” at the conservancy. The report does not specify which of the agency’s consultants is a decision maker, and jury foreman Carl Kailikole declined to comment.

Provenza said the complaint is off the mark because neither consultant is a decision maker. All key decisions are made by the board, he said.

The conservancy’s executive director is Petrea Marchand. She was working for Yolo County as manager of intergovernmental affairs in 2012 when she took a second job as interim executive director of the conservancy at the request of Provenza and other conservancy board members, according to Marchand and Provenza.

Marchand became the agency’s permanent executive director later that year, when she had left the county and started a consulting firm, Consero Solutions. She was hired as a part-time consultant at \$125 an hour and has since received a \$5 an hour raise.

According to Marchand’s invoices, she was paid \$134,000 last year for an average of 20 hours of work a week. She was paid another \$30,000 for work performed by other employees at her firm.

Marchand’s compensation was \$7,000 more than the cost of salary and benefits for the agency’s previous executive director, who worked full time.

The agency paid another \$117,000 last year to consultant Heidi Tschudin, who is the conservancy’s project manager. She is paid \$215 an hour and worked an average of 12 hours a week last year.

Provenza, who as board chair approves the bills of Tschudin and Marchand, defended the use of consultants. Even if the agency could hire full-time employees at the same cost of part-time work by consultants, the conservancy would not get the plan approved any sooner, he said.

“I really don’t think anyone could do this job but Petrea and Heidi,” he said.

Provenza said Marchand deserves a higher rate of compensation, while Tschudin’s rate is based on years of experience providing planning services to the county and other local agencies. Tschudin did not return a message seeking comment.

The grand jury report notes that Marchand’s firm was hired without a competitive bidding process. Provenza said she initially was hired in a crisis situation that precluded a formal selection process and has proved herself most qualified for the job.

Marchand cited several accomplishments since taking the reins at the conservancy, including releasing two drafts of a habitat plan in four years when the previous executive director did not complete one in 10 years. She said she has increased grant revenues.

Marchand acknowledged that she missed her original deadline of October 2015 to have the habitat plan approved, saying it should be done late next year. She said she was new when she

proposed the original deadline and did not completely understand the process, including the difficulty of getting federal and state wildlife officials to review proposals.

Marchand and Provenza said that delays by state and federal agencies are the biggest reason for missing last year's deadline, and officials at the agencies don't dispute the claims.

The plan will forecast development in Yolo County over a 50-year period, and propose mitigation for certain species that lose habitat as a result of the construction. The emphasis is on preserving Yolo County's farms and other open space, Provenza and Marchand said.

Once the plan is approved, they said, the agency intends to hire a full-time director.

Habitat conservation plans allow developers within a designated geographic area to pay a fee or donate land to a local conservancy when they build on land that affects covered species, rather than having to obtain individual permits from state and federal wildlife agencies. The Natomas Basin Conservancy, for instance, has used developer fees to acquire almost 5,000 acres to compensate for development in the Natomas area of Sacramento.

Brad Branan: [916-321-1065](tel:916-321-1065), @BradB at [SacBee](http://www.sacbee.com)

Read more here: <http://www.sacbee.com/news/investigations/the-public-eye/article102481042.html#storylink=cpy>

21
Anonymous
Letter
August 29, 2017

- 21-1 Thank you for submitting comments. The comment expresses an opinion regarding general difficulty reading elements of the Draft EIS/EIR, such as a perceived excessive use of acronyms. However, the comment provides no specific examples of text in the Draft EIS/EIR that could be edited or improved. The Draft EIS/EIR was prepared to meet applicable federal and State standards regarding readability of an environmental review document. Without specific examples of where edits can be made, no additional response can be provided.
- 21-2 The comment recommends more public disclosure and dissemination of information on the HCP/NCCP. The USFWS held two joint public meetings with the Conservancy during the 90-day public comment period on the Draft EIS/EIR and Draft HCP/NCCP. The Conservancy held an additional seven public meetings, as well as presented to multiple local groups. During the public comment period, the Conservancy also updated its web site, created public outreach materials, and established a Facebook page. The public outreach materials and the Powerpoint from public presentations are available on the Conservancy's web site at www.yolohabitatconservancy.org/documents. The Draft EIS/EIR and Draft HCP/NCCP are also available from the USFWS's web site and the Final EIS/EIR and Final HCP/NCCP will also be made available on the USFWS's web site. Information on the EIS/EIR public involvement process is also provided in EIS/EIR Section 1.10, *EIS/EIR Public and Agency Involvement*, and a report providing the results of the scoping process is provided in Appendix A, *Scoping Report and Comments*. Outside of the public comment period, the Conservancy continues to regularly hold Board of Directors meetings and Advisory Committee meetings that are open to the public, as well as present to local organizations upon request. The comment does not address the content of the HCP/NCCP or EIS/EIR and no additional response is necessary.
- 21-3 The comment expresses concern that the HCP/NCCP will allow too much development and conservation will occur too slowly. The HCP/NCCP covers 653,549 acres, including the incorporated areas of Davis, West Sacramento, Winters, and Woodland and unincorporated areas of Yolo County. Yolo County has a rural character, consisting predominantly of undeveloped land, with both existing and planned development clustered primarily in the incorporated cities. The HCP/NCCP builds on the county and city open space and responsible growth policies, which focus covered activities in clustered growth areas and promote open space protection. To date, these policies and other conservation efforts have resulted in the conservation of 90,967 acres of public and easement lands in the Plan Area, 34,282 acres of which protect natural communities and special status species habitat in permanent conservation easements. The Conservancy will expand significantly on these public and easement lands to create the HCP/NCCP reserve system. The HCP/NCCP will only provide incidental take coverage for development consistent with the General Plans of the cities and Yolo County. This growth would occur with or without the HCP/NCCP. However, the HCP/NCCP ensures local control, and improved and increased conservation. The HCP/NCCP includes provisions to require that conservation keep pace or exceed the rate of development. The Plan incorporates 8,000 acres of pre-permit reserve lands and includes stay-ahead provisions requiring that the amount of each natural community conserved, restored, or created is ahead of, and stays proportional to, effects on natural communities (see HCP/NCCP Section 7.5.3, Stay-Ahead Provision). The HCP/NCCP must also meet the Natural Community Conservation Planning Act (NCCPA) permit standards of protecting, enhancing, restoring, and managing natural communities, covered species habitats, and occurrences of covered species in excess of minimum mitigation requirements.
- 21-4 The comment expresses concern about local land use decisions regarding growth. The Conservancy Board is comprised of representatives of Yolo County and the four cities; however, the Conservancy has no independent land use authority. That authority is retained in full by each of the member

agencies. The HCP/NCCP will coordinate mitigation for planned development and will maximize benefits to each of the 12-covered species. Acknowledging that planned growth will occur with or without the HCP/NCCP, the HCP/NCCP increases ecological benefits for the species and open space benefits for residents, in part, by creating, managing, and monitoring a reserve system with large interconnected blocks of habitat.

21-5 The comment conveys the opinion that there is no discussion of climate change “in this document.” Climate change is evaluated in the Draft EIS/EIR in Chapter 16. The potential contribution of the Proposed Action Alternative to climate change through the emissions of greenhouse gases is found to be less than significant (see discussion of Effect CC-1 on page 16-16). The potential effects of climate change on the Proposed Action Alternative are evaluated under Effect CC-4. Potential effects via changes in precipitation patterns, temperature, wildfire risk, and river flows are referenced. The larger interconnected reserve system associated with the Proposed Action Alternative would be more resilient to changing climate conditions than the smaller more discrete reserves associated with the No Action Alternative.

21-6 The comment asks generally about water and conservation planning, makes reference to West Sacramento General Plan policies on water quality and development, and asks about city regulation of private retention ponds. Neither the HCP/NCCP nor the EIS/EIR are proposing to modify existing City/County regulations (except as related to the 12 covered species). Adoption of the HCP/NCCP and issuance of ITPs extends State and federal take coverage for specified covered activities by requiring compliance with the HCP/NCCP through implementing ordinances. .

The comment states that the EIR is missing a requirement that “all participating cities be required to adopt and implement the California Water Resources Board phase II ordinance regarding storm water.” Compliance with relevant State laws is a requirement regardless of whether this HCP/NCCP or another HCP is in effect. A requirement for compliance with an existing law as part of the HCP/NCCP would not alter a jurisdiction’s obligation to comply with the law. Various laws relevant to stormwater and water quality are addressed in the Draft EIR; see Section 9.2.2, *Regulatory Setting*, in Chapter 9, *Hydrology and Water Quality*.

21-7 The comment expresses an opinion regarding City of West Sacramento leadership and operation of a particular project based on personal experience. The comment does not address the content of the HCP/NCCP or EIS/EIR and no additional response is necessary.

21-8 The comment reiterates the water quality issues and suggestion of an ordinance described in Comment 21-6. See the response to Comment 21-6.

21-9 The comment expresses support for a citizen-position on the Conservancy Board of Directors. The Conservancy is a Joint Powers Agency and operates according to the 2002 agreement that created it, as amended in 2006. The agreement specifies the members of the Board of Directors. All meetings of the Board, as well as those of the Advisory Committee, are open to the public and public involvement is encouraged. Opportunities for citizen involvement may be modified and/or expanded in the future at the discretion of the Conservancy.

21-10 The comment expresses several opinions and concerns regarding the structure of the Conservancy. The comment does not address the content of the Draft HCP/NCCP or Draft EIS/EIR. The Conservancy will implement the HCP/NCCP conservation strategy for 12 special status species in close coordination with USFWS and the CDFW. The HCP/NCCP further provides funding for the permanent conservation of habitat in Yolo County, including funding for management and monitoring in perpetuity. The Conservancy employs biologists and other experts as needed to implement the program. The HCP/NCCP does not change existing land use law under which only cities and counties have land use authority.

Letter
22

**Yolo Habitat Conservancy Online Public Comment Submittal
for the Draft Yolo HCP/NCCP and Draft EIS/EIR**

Timestamp 8/29/2017 16:45:34

Name Rachel Silva
Email ventdiver@gmail.com

Phone number 530-613-9875

Organization (if applicable)

Title (if applicable)

Street Address, City, State, Zip 115 Swain Square, Folsom, CA 95630

Public Review Draft HCP/NCCP To whom it may concern,
Comments

Based on the plan funding information presented in Section 8.4 of the HCP, I am concerned that the estimates of available funds are too optimistic. This is especially true for the \$78 million in federal and state grant funding, as well as the \$10 million in funding from private non-profit organizations and charitable giving. The fact that the federal and state grant funding has been provided at certain levels in the past may not reflect the increasing competition for grant funding when other plans such as South Sacramento, Placer, Butte, Feather River, or Yuba-Sutter are completed. The HCP states in Section 8.4.4 that if funding is found to be inadequate, the Conservancy would seek out other sources of funding or re-prioritize portions of the conservation strategy. It would be helpful to have some idea of what the other sources of funding are, or any other alternatives. If alternative sources exist, please explain why they wouldn't be targeted as part of the HCP funding strategy from the beginning.

22-1

Draft EIS/EIR Comments

22 **Folsom Resident**
Rachel Silva
August 29, 2017

- 22-1 Thank you for submitting comments. This comment expresses concern regarding funding assumptions in the HCP/NCCP, particularly as related to federal and state grant funding. Appendix J of the HCP/NCCP directly addresses this comment. This appendix contains a memorandum prepared by the Conservancy's plan consultant summarizing funding sources likely to be available to the HCP/NCCP through both federal and state grants during the first ten years of implementation. The memorandum concludes that the HCP/NCCP assumptions are conservative and the funding estimates for state and federal sources are feasible. Additionally, with respect to other funding alternatives not identified, we cannot predict what future sources of funding may become available that are not available today. New grant programs maybe developed by local, state, or federal governments. Also, regulations governing existing sources of funding may change in the future. For example, state and/or federal grant programs could be expanded, funding could be increased beyond the caps currently in place, etc. However, it would be speculative at this point to attempt to predict all possible future funding sources.

Letter
23

Comment on a Few Sections of the May 2017 draft Yolo Habitat Conservation Plan / Natural Community Conservation Plan

John Hopkins
Institute for ecological Health
409 Jardin Place
Davis CA 95616
ieh@cal.net

Received By
Yolo Habitat Conservancy
July 30, 2017

Overall this is a fine plan. Note that adoption and implementation of the voluntary Local Conservation Strategy will be a great help with additional conservation of several of the covered species.

23-1

Sensitive Natural Communities

Section 4.3.3.

Are the buffers and setbacks part of the reserve system ? (I suspect that at least the lacustrine and riverine setbacks within urban planning units are not.)

23-2

Buffers and setbacks need to be protected by in-perpetuity conservation easements. If they are outside of the plan reserve system, the Habitat Conservancy must have the authority to enforce the conditions of the easements. Also management of buffers and setbacks should involve maintaining or re-establishing appropriate native vegetation,

The 25 foot setback for lacustrine and riverine systems within urban planning units is very minimal, inadequate to prevent effects on waters. 100 foot would be much better.

23-3

California tiger salamander

The species goals and objectives 6.3.4.3. provide general features such as number of acres of upland natural communities to protect.

However, it is not clear how these acreages will form effective preserves for CTS. The table text on page 6-75 “how conservation Measure 1 helps to achieve biological objectives [for CTS] does not illuminate the issue.

23-4

Thus Objective CTS1.1 provides for at least 2,000 acres of modeled upland habitat within 1.3 miles of aquatic habitat for CTS, prioritizing protection for designated critical habitat. Will this 2,000 acres be a single preserve? Is some or all of this aquatic habitat required to be occupied? How will this mesh with the minimum size for a preserve stated in the Service’s 2017 final, Central California, CTS recovery plan (3,398 acres with at least 4 breeding ponds totaling at least 3.92 acres that having ponding variation)? Note that

Trentham and Shaffer (2005) [Ecological Applications 15:1158-1168] suggest the need for upland habitat extending at least 600 meters from a breeding pond’s edge in order for substantial reductions in a CTS population to be less likely. Table 6-5, page 6-84 gives a minimum patch size of 100 acres because that is the minimum stated in Trentham (2009). But would a 100 acre patch of habitat surrounded by incompatible issues actually provide for long-term survival of CTS at that site??

23-4
cont.

What is the minimum number of occupied breeding ponds that this plan will protect?

23-5

Objective CTS 1.3. The requirement that at least 4 new occurrences be discovered (or established) and protected in the Dunnigan Hills before there is removal of aquatic habitat is helpful. However, it does not appear to require protection of sufficient suitable upland habitat associated with the aquatic habitat, which is essential for the viability of those occurrences

23-6

Section 6.4.1.8.4 provides some details on a very large reserve system design. There is no attribution. It should be stated that this is the Service’s Final Recovery Plan for the Central California population of CTS (June 2017)

23-7

Western Burrowing Owl

Section 5.7.9.14 assumes that covered activities will not adversely affect the long-term survival and conservation of the species as the amount of habitat loss is small (3% of habitat in plan area) and implementation of avoidance and minimization measures will substantially minimize effects on occupied burrowing owl burrows.

23-8

The owls are not randomly distributed through the plan habitat. Historic known locations have been heavily weighted to within or near urban planning units. There are very few known occupied nest sites left. Very hard to argue “will not adversely effect”

Section 6.3.4.9

Objective WBO1.3 “maintain two active nesting sites in reserve system for each nesting pair displaced”. Two should be a minimum and viable over a multi-year period.

23-9

This is a very difficult species that is in huge trouble in Yolo County with greatly declining known population of breeding pairs. That is not apparent in text such as the rationale for Objective WBO 1.4

23-10

Note that the Yolo County occurrence information in the species account needs to be updated to include the recent Burrowing Owl Preservation Society survey results

23-11

Tricolored Blackbird

Those using the documents to implement the conservation will need to know about the UC Davis Tricolored Blackbird Portal (<http://tricolor.ice.ucdavis.edu/>). This will be a source of additional information, including reports of periodic state-wide surveys, in the years ahead.

23-12

7.9.1 Annual Reports

The process should include an annual Public Meeting and brief updates to local government elected bodies.

23-13

7.9.4 Ten-year Comprehensive Reviews

These are very important. Additional steps to take include - extensive discussion of the documents with the Advisory Committee (not just “making it available”). Use summary material for outreach and education of local government elected and advisory bodies and appropriate organizations throughout Yolo County

23-14

23 Institute for Ecological Health
John Hopkins
August 30, 2017

23-1 Thank you for submitting comments. This introductory comment expresses support for the HCP/NCCP as well as the Local Conservation Strategy. The comment does not address any particular element of the content of the HCP/NCCP or EIS/EIR and no additional response is necessary.

23-2 The comment questions whether the buffers and setbacks identified in Draft HCP/NCCP (addressed in Section 4.3.3, *Sensitive Natural Communities*), are part of the reserve system. These areas would be considered part of the reserve system if they meet reserve design criteria and if the landowner agrees to place a permanent conservation easement on these lands.

23-3 The comment states that a 100-foot setback would be better than the required 25-foot setback in urban planning units for lacustrine and riverine systems. The 25-foot setback for lacustrine and riverine system within urban planning units prevents development from encroaching to the very edge of the aquatic habitats, but provides a lesser buffer than for lands outside the urban planning units, consistent with the HCP/NCCP's regional conservation strategy of focusing development inside urban planning units and focusing protection outside the urban planning units.

23-4 The comment asks several questions about the California Tiger Salamander:

1. Question: Will the 2,000 acres of protected California tiger salamander habitat be a single reserve?

Answer: The 2,000 acres may consist of a single, connected reserve or several reserves. As described in Draft HCP/NCCP Section 6.4.1.4.1, *Reserve System Design Criteria*, the Conservancy will prioritize protection of large, contiguous reserves, or establish new reserves that are connected to existing reserves, to maximize habitat patch size and connectivity.

2. Question: Is some or all of the aquatic habitat required to be occupied?

Answer: As stated in Table 6-2(c) of the Draft HCP/NCCP, at least five of the protected California tiger salamander breeding pools are required to be occupied.

3. Question: How will the HCP/NCCP mesh with the minimum size for a preserve stated in the USFWS's 2017 recovery plan for California tiger salamander (3,398 acres with at least 4 breeding ponds totaling at least 3.92 acres that have ponding variation)?

Answer: As described in Draft HCP/NCCP Section 6.4.1.8.4, *California Tiger Salamander*, the HCP/NCCP will prioritize protection and restoration of California tiger salamander habitat that contributes toward achievement of the California tiger salamander recovery criteria. Baseline public and easement lands, newly protected lands, pre-permit reserve lands, and lands protected and restored through mechanisms other than the HCP/NCCP will all count toward completing this reserve design. The Conservancy's acreage commitments will contribute toward achieving this reserve design, but the Conservancy's acreage commitments will not increase beyond those specified in the biological goals and objectives.

- ▲ Protection of 13,592 acres of California tiger salamander habitat located in the Dunnigan Hills area;
- ▲ Within the 13,592 acres, include three or four preserves, each at least 3,398 acres in size;

- ▲ *Breeding habitat* – On each reserve, include at least four ponds totaling eight acres of breeding pool area; and
- ▲ *Upland habitat* – Upland habitat will contain at least one moderately-sized burrowing mammal colony [as defined by having at least 50 active burrow entrances within a 656-foot radius that occurs within the average dispersal distance of the salamander of each breeding pond. Land that is disked for fire control or other purposes will not count toward the acreage commitments for California tiger salamander.

4. Question: Would a 100-acre patch of habitat (Draft HCP/NCCP Table 6-5) surrounded by incompatible issues actually provide for long-term survival of California tiger salamander at the site?

Answer: The Conservancy has revised Table 6-5 to identify 1,000 acres as the minimum patch size (rather than 100) and to add other clarifying information.

- 23-5 The comment asks what is the minimum number of occupied breeding ponds that the HCP/NCCP will protect. As specified in Table 6-2(c), Covered Species Occupancy Commitments, at least five occupied breeding ponds must be protected under the HCP/NCCP.
- 23-6 The comment states that HCP/NCCP Objective CTS 1.3 does not appear to require protection of suitable upland habitat associated with aquatic habitat. The Conservancy has revised this objective in the HCP/NCCP to acknowledge that sufficient surrounding uplands must also be protected.
- 23-7 The comment states that details on the very large reserve design in Draft HCP/NCCP Section 6.4.1.8.4, *California Tiger Salamander*, should be attributed to USFWS’s Final Recovery Plan for the California tiger salamander. This citation has been added in the proposed Final HCP/NCCP.
- 23-8 The comment questions the analysis in Draft HCP/NCCP Section 5.7.9.1.4, *Impact of Take on the Species*, related to effects on the Western Burrowing Owl. The comment states that owls are not distributed evenly through potential habitat in the plan area, and have historically been concentrated in urban planning units. The comment states that there are few known occupied nest sites remaining and questions the conclusion that the loss of three percent of the modeled habitat in the Plan Area. The HCP/NCCP, however, allows for take of no more than four occupied sites (an occupied site is defined as a breeding or wintering burrow or burrow complex occupied by a single breeding pair or nonbreeding individual). This authorized take is for relocation of birds. Although burrowing owls may be found in urban planning units, these individuals are seldom members of established populations, and are more likely to be vagrants staying for short time periods (pers. comm. Todd Gardner, CDFW, 2015). Relocation of four to eight individuals in Yolo County is unlikely to adversely affect the survival and conservation of the species as a whole.
- 23-9 Regarding Draft HCP/NCCP Section 6.3.4.9, *Western Burrowing Owl*, Objective WBO1.3, the comment states that maintenance of two active nesting sites should be a minimum, and the nests should be viable over a multi-year period. As stated in Table 6-2(c), *Covered Species Occupancy Commitments*, the Conservancy will be required to maintain at least two active burrowing owl nest sites, and to maintain at least two additional active nest sites for each nesting pair displaced by covered activities, and one active nesting site or a single owl site for each non-breeding single owl displaced by covered activities.
- 23-10 The comment states that the rationale for Objective WBO 1.4 does not describe the decline of known populations of western burrowing owl breeding pairs in Yolo County. The Conservancy has added this language to the objective’s rationale, in the proposed Final HCP/NCCP.
- 23-11 The comment states that the Yolo County occurrence information in the species accounts should be updated to include the recent Burrowing Owl Preservation Society survey results. These results are already incorporated. The species account states, “While comprehensive surveys of the [P]lan [A]rea

have not been conducted, coordinated surveys have been undertaken in portions of Yolo County. The majority of recent information is a result of these efforts, including monitoring surveys in and around the City of Davis (McNerney, pers. comm.); surveys conducted by the California Department of Fish and Game at the Yolo Bypass Wildlife Area; and surveys coordinated by the Burrowing Owl Preservation Society in coordination with the Institute of Bird Populations on 12 selected 5-square-mile survey blocks in Yolo County in 2007 and 2014 (Wilkerson, pers. comm.; Catherine Portman pers. comm.). Additional data is gathered and reported incidentally by knowledgeable individuals from other areas of Yolo County.

The results of these surveys and incidental reports indicate that the majority of known burrowing owl breeding locations are in the southern portion of Yolo County, centered in and around the City of Davis, the Yolo Bypass Wildlife Area, and the southern panhandle. A total of 50 breeding pairs were reported in Yolo County in 2007 (Table A9-1), and surveys of these same sites in 2014 indicated that only 15 breeding pairs were present in these locations. These data represent only reported sightings from several locations in Yolo County where surveys were conducted and data were recorded and made available. This summary does not represent the total number of burrowing owl breeding pairs in Yolo County. However, it does represent the most significant known breeding areas for burrowing owl in Yolo County.”

- 23-12 The comment states that those using the HCP/NCCP during implementation will need to know about the UC Davis Tricolored Blackbird Portal. The Conservancy has added a reference to this information in Section 6.5.6.3.12, *Tricolored Blackbird*, in the Final HCP/NCCP.
- 23-13 The comment states that Draft HCP/NCCP Section 7.9.1, *Reporting*, should include an annual Public Meeting and brief updates to local government elected bodies. The Conservancy has added language to this section in the Final HCP/NCCP to reflect that annual reports will be presented to the Conservancy Board at a public meeting. This will allow for public discussion and, since the Conservancy Board is made up of representatives of each member agency, will ensure that all of the member agencies are informed regarding the annual results.
- 23-14 The comment states that the ten-year comprehensive reviews should include extensive discussion of the documents with the Advisory Committee (not just making the reports available). It also recommends that summary information from the ten-year review be used for outreach and education of local government elected and advisory bodies and appropriate organizations throughout Yolo County. The Conservancy agrees this guidance would be useful in the Implementation Handbook and will ensure that it is addressed in that document.



www.swainsonshawk.org 8867 Bluff Lane, Fair Oaks, CA 95628 email: swainsonshawk@sbcglobal.net 916-769-2857

Received By: Yolo Habitat Conservancy August 30, 2017

Letter 24

August 30, 2017

Shawna Stevens, Assistant to the Director
Yolo Habitat Conservancy
611 North Street
Woodland, CA 95695
Email delivery to: info@yolohabitatconservancy.org

Comments of the Friends of the Swainson's Hawk on the Yolo HCP/NCCP and Draft EIS/R

Dear Ms Stevens:

Friends of the Swainson's Hawk, a citizen advocacy group for this state listed species, is willing to support this HCP/NCCP with a statement to be submitted separately.

24-1

We do believe that the HCP/NCCP and implementation agreement should include a provision, to be accepted and implemented by all the parties to the agreement, that mitigation preserves for loss of Swainson's Hawk habitat located outside the County of Yolo shall not be located within Yolo County. This is important for maintaining the integrity of the species range in California. There are developer interests and public officials in at least one nearby county who view mitigation preserves as an impediment to that county's urban development and hope that Yolo County would be the depository for mitigation preserves. Sacramento County's proposed "Natomas Vision North Precinct" proposes to mitigate for its impacts on species, including Giant Garter Snake and Swainson's Hawk, in Yolo County. There are other developers and jurisdictions which would like to do the same. We do not believe that such actions are consistent with the purpose and design of the Yolo HCP/NCCP and should be explicitly denied by the Plan and its implementing agencies.

24-2

We have some concerns about the objectives and monitoring program for the conservation of the Swainson's Hawk population in Yolo County.

1. First, the HCP does not establish a baseline for the monitoring program. We think the baseline was aptly identified in March, 2008 by Jim Estep, p. vii of "The Distribution, Abundance, and Habitat Associations of the Swainson's Hawk (Buteo swainsoni) in Yolo County" and this should be referenced in the HCP. Future monitoring of the species should be designed to test variation from this baseline. The monitoring model should be the 2008 study.

24-3

"A total of 290 active Swainson's Hawk nesting territories were documented during the study, equating to a nesting territory density of 0.38 per square mile, among the highest in the species' range. Confirmed nesting status was determined at 195 (67.2%) sites. Of these, 166 (85.1%) successfully reared young to fledging. A total of 241 young were produced at a rate of 1.45 young per successful nest, which is generally consistent with other past and ongoing studies of Swainson's Hawk in the Central Valley."

Thus, monitoring should include active nesting territories, confirmed nesting status (number and percent), total young produced per successful nest (successfully fledged) (number and percent).

2. The monitoring plan for the Swainson’s Hawk population calls for specific action to be taken if the breeding population drops by 10 percent or more. We assume that by breeding population, you are referring to the already identified 290 active Swainson’s Hawk nesting territories identified in 2008. Please clarify or confirm. If you are referring to the number of successfully breeding pairs, there should be a number given as the baseline in the monitoring program. Per the 2008 study, that number would be 166. A ten percent drop in breeding population could be 29 pairs (or unoccupied breeding territories), or 17 pairs of successful breeders. Please be specific for the performance standards for the monitoring. It would probably be best to track both indicators as well as the number of successful fledges (10 percent would be 24 fledglings).

24-4

3. We have concerns that a five-year interval monitoring program for the species is not frequent enough since annual variations are likely to be large and it wouldn’t be possible to identify where in this variation each five year measurement occurs. We have noted that annual monitoring, as conducted by Natomas Basin Conservancy, has resulted in variations of more than 10 percent from year to year. This seems to depend on weather and cropping patterns. (See attached pdf of Table. 4-2 from the Natomas Basin Conservancy, Biological Effectiveness Monitoring for the Natomas Basin Habitat Conservation Plan Area 2016 ANNUAL SURVEY RESULTS [April, 2017].) In recent years, occupied territories have varied between 43 and 65 and successful nests have ranged between 24 and 51. Fledged young have ranged between 83 and 12. With this much variation, it doesn’t seem reasonable to use five years snapshots to reasonably implement adaptive management. We recommend annual monitoring for this important subpopulation of a state listed species, in order to reliably capture any declining trend line.

24-5

4. Objective SH1.5 (p. 6-115) describes monitoring for the establishment of new nesting trees at a specific density on reserve lands. Again the performance goal is not quantified. The number of trees, species, age of each species to reach 20 feet required height, target dates for planting each species would help set the parameters for the monitoring needed to assure performance. We also believe that some nest tree planting objectives should be established for off reserve areas. Nesting trees age and without stewardship, the nesting habitat supporting the current population of Swainson’s Hawk will disappear. A recent study (E. Fleishman, et al., “Space Use by Swainson’s Hawk (*Buteo swainsoni*) in the Natomas Basin, California,” *Collabra* 2(1), 5) noted that “population-level recruitment may be associated equally if not more closely with availability of nesting sites than with the current distribution of land cover.” (Abstract) While we do not necessarily agree with this assessment, it indicates that nesting habitat conservation is a key factor in species conservation.

24-6

Swainson’s Hawks often use alternate nest sites and so for every nesting territory, there should be three to five appropriate nesting sites. In Yolo, this would be approximately 900 to 1500 healthy suitable nesting trees within known nesting territories. The assessment of nesting tree availability cannot be made without more information about nesting behavior (such as annual surveys), including assessment of the condition of the existing nesting tree resource. The goal of conservation of the species will not be met without a more aggressive nesting tree planting and conservation program separate from the reserve lands conserved. Please explain why the HCP/NCCP does not establish goals to conserve nesting habitat throughout the plan area.

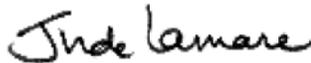
5. Please explain the difference between actual Swainson’s Hawk nesting and foraging habitat in Yolo County as established in March, 2008 by Jim Estep, “The Distribution, Abundance, and Habitat Associations of the Swainson’s Hawk (*Buteo swainsoni*) in Yolo County” and modeled Swainson’s Hawk nesting and foraging habitat as described in the HCP/NCCP and used as the basis for establishing goals for plan performance. Why did the Yolo Habitat Conservancy use modeled habitat when a reliable and thorough assessment of actual habitat is available? What difference would it make to use actual habitat rather than modeled habitat in these performance assessments?

24-7

Please keep us informed regarding future public review of the proposed application, and public hearings. We prefer to receive email notification of public review documents and hearings at swainsonshawk@sbcglobal.net.

24-8

Thank you for this opportunity to comment.



Judith Lamare, Ph.D. Co-Chair,



James P. Pachl, Co-Chair

C: Tina Bartlett, Scott Wilson, Stephanie Boss, CDFW

Attached: Table. 4-2 from the Natomas Basin Conservancy, Biological Effectiveness Monitoring for the Natomas Basin Habitat Conservation Plan Area 2016 ANNUAL SURVEY RESULTS (April, 2017).

Table 4-2. Reproductive Data for Active Swainson's Hawk Territories in the NBHCP Area, 1999–2016

Year	Occupied Territories ^b	Successful Nests	Unsuccessful Nests	Occupied but Not Nesting	Un-confirmed Nesting Status	Number Young Reared to Fledging	Number Young per Occupied Territory ^c	Number Young per Active Nest ^{c,d}	Number Young per Successful Nest ^c
1999 ^a	15	14	1	0	0	25	1.67	1.67	1.79
2000 ^a	18	10	4	4	0	20	1.11	1.43	2.00
2001	46	24	15	7	0	40	0.87	1.03	1.67
2002	43	24	11	7	1	38	0.90	1.09	1.58
2003	54	34	15	4	1	53	1.00	1.08	1.56
2004	59	39	12	4	4	54	0.98	1.06	1.38
2005	45	31	11	1	2	48	1.12	1.14	1.55
2006	45	32	9	4	0	48	1.07	1.17	1.50
2007	44	34	9	1	0	48	1.09	1.12	1.41
2008	51	42	8	1	0	64	1.25	1.28	1.52
2009	59	51	2	1	5	83	1.54	1.57	1.63
2010	52	42	4	3	3	70	1.43	1.52	1.67
2011	62	23	27	6	6	30	0.54	0.60	1.30
2012	65	42	14	3	6	59	1.00	1.05	1.40
2013	56	11	26	16	3	12	0.23	0.32	1.09
2014	59	34	11	7	7	39	0.75	0.87	1.15
2015	61	44	6	4	7	69	1.28	1.38	1.57
2016	56	43	3	6	4	63	1.21	1.37	1.47

^a Years 1999 and 2000 do not include the Sacramento River territories.

^b An occupied territory is a nesting area that was occupied by a breeding pair of raptors throughout all or a significant portion of the breeding season. Includes successful nests, unsuccessful nests, pairs with unconfirmed nesting status, and pairs not nesting.

^c Does not include pairs with unconfirmed nesting status.

^d Active nest = number of successful nests + number of unsuccessful nests.

24 **Friends of the Swainson's Hawk**
Judith Lamare and James Pachi, Co-Chairs
August 30, 2017

- 24-1 Thank you for submitting comments. This comment expresses that the commenting organization is willing to submit a separate statement in support of the HCP/NCCP. The Conservancy appreciates the support for the HCP/NCCP and looks forward to receipt of the follow-up statement of support.
- 24-2 The comment expresses the opinion that mitigation for Swainson's hawk impacts that occur outside of Yolo County should not be allowed inside Yolo County. The HCP/NCCP contains such a provision in that it does not provide take coverage for out-of-county activities. However, the HCP/NCCP does not preclude, and the Conservancy could agree to provide, management of mitigation lands within Yolo County that may be associated with non-covered activities, including projects outside of Yolo County that may provide mitigation inside Yolo County. Were the Conservancy to provide such management services, neither the services nor the mitigation land for the non-covered activities would count as meeting the mitigation or conservation obligations of the HCP/NCCP, however, this could provide the Conservancy with a valuable revenue source to assist with program expenses and would broaden the overall conservation provided throughout Yolo County. It is also relevant to note that most forms of out-of-county mitigation (including Swainson's hawk foraging habitat mitigation of 40 acres or more) presently require a use permit from Yolo County.
- 24-3 The comment suggests that the baseline for the Swainson's hawk monitoring program should be a 2008 study by Jim Estep. The Conservancy coordinated closely with Jim Estep, who was the lead in developing the methodology for the strategy outlined in the Draft HCP/NCCP Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat*. Draft HCP/NCCP Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat*, establishes a baseline of an estimated 300 pairs of Swainson's hawks in Yolo County. Jim Estep derived this baseline from the referenced 2008 survey and incorporated it into the conservation strategy document he prepared in 2015. A reference to this same baseline (300 pairs) has been added to Section 6.5.6.3.6, *Swainson's Hawk*, in the proposed Final HCP/NCCP.
- The comment also states that monitoring should include active nesting territories, confirmed nesting status (number and percent), total young produces per successful nest (successfully fledged) (number and percent). As indicated in Draft HCP/NCCP Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat*, the baseline population estimated by Jim Estep is 300 pairs. The metric used to monitor Swainson's hawks is the number of breeding pairs. Determining a breeding pair is based on a variety of physical (nest trees, nests) and behavioral factors (courtship, nest-building, territoriality, etc.). It is not based on the reproductive success of those breeding pairs.
- 24-4 The comment asks for clarification regarding the measurement of the breeding population. Please see the response to Comment 24-3.
- 24-5 The comment expresses concern that the five-year interval for Swainson's hawk monitoring may not be frequent enough because annual variation is likely to be large. This potential concern was considered in the HCP/NCCP. See Draft HCP/NCCP Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat* (, page 7-58) , second bullet from the bottom of the page, where it states as a potential remedy for not meeting population or habitat objectives: "Monitoring more frequently than every five years (if the Conservancy, wildlife agencies, and species experts determine that more frequent monitoring would be beneficial for assessing trends)."
- 24-6 This comment expresses concern that the performance goal for new nesting trees is not quantified in Objective SH1.5. A site-specific management plan will be required for each reserve. Tree species, planting design, performance standards, and other management will be included in these plans and will be based on the site-specific conditions. Goals for tree planting must be met throughout the life

of the HCP/NCCP and therefore maintenance, replacement, and meeting performance standards will continuously apply and will be described in each site-specific management plan.

- 24-7 This comment requests clarification on the difference between foraging habitat in Yolo County as established in March 2008 by Jim Estep, and modeled habitat as described in the HCP/NCCP. The Conservancy consistently used modeled habitat mapping as described in the HCP/NCCP in the species models to describe the distribution of habitat for all covered species. However, Jim Estep's data from 2007 was used in his 2015 conservation strategy report and used to establish the habitat threshold acreages. Performance assessments for the Swainson's hawk will be based on the 2007 (Estep 2008) habitat mapping.
- 24-8 The comment requests that the commenting organization be provided project notifications by electronic mail. The identified email address has been added to the Conservancy email notification list.



Letter
25

Received By:
Yolo Habitat Conservancy
August 30, 2017

August 30, 2017

Shawna Stevens, Assistant to the Director
Yolo Habitat Conservancy
611 North Street, Woodland, CA 95695
info@yolohabitatconservancy.org

RE: Yolo HCP/NCCP comments

Dear Ms. Stevens:

Here are the comments of the Yolo Land Trust to the Yolo Habitat Conservation Plan/Natural Communities Conservation Plan.

Table 8-1. Yolo HCP/NCCP Implementation Cost Summary

- It does not appear that conservation easement defense costs were included in the Summary. Easement defense costs are significant and failing to budget for them is a serious omission.
- As reported by the Land Trust Alliance in 2011, "Nearly half of surveyed land trusts (47%, 97 of 205) reported at least one legal challenge or violation of any size or significance. Of these 97 land trusts, 17 prevailed in court at least once and 15 recovered expenses in negotiation out of court. Notably, one-quarter (27%, 26 of 97) of the land trusts that ever experienced a legal challenge or violation would have considered pursuing legal action in at least one instance if more funding had been available. For major legal challenges or violations costing more than \$5,000, the average legal or non-staff cost incurred by land trusts was \$37,700. However, one dispute cost more than \$400,000, and two were between \$100,000 and \$300,000. Overall, the 205 land trusts reported 43 major challenges and violations, costing those organizations a total of \$1.6 million. Costs reported in this survey are underestimates because they do not include most staff time or pro-bono legal work. Non-staff costs included outside attorney fees, additional legal costs and other costs, such as restoration, boundary surveys and third party monitoring."

25-1
25-2

Table 8-3. Yolo HCP/NCCP Pre-Permit Reserve Lands

- The following Easement Lands inaccurately list the Yolo Habitat Conservancy as the Managing Agency. These easements are held by Yolo Land Trust.
 - Lara West, Lara East, Los Rios {now owned by Schmid}, Schmid, Los Rios North

25-3

221 West Court Street, Suite 5, Woodland, CA 95695
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Shawna Stevens
 August 30, 2017
 Page 2

- The following Easement Lands are planted in orchards and thus are not eligible for Swainson Hawk mitigation: | 25-4
 - Barger, Mclsaac, Wasserman – partial orchard, Hershey Woods – partial orchard
- The following Easement Lands were farmland mitigation easements and thus cannot be further restricted for Swainson Hawk mitigation | 25-5
 - Cache Creek – Best Ranch
 - Barger
 - Capay Farm
 - Mclsaac
 - Wasserman

8.3.1.1 – Acquisition Costs

With respect to the pre-permit reserve lands, the cost model has assumed an average cost of \$2,500 per acre to enroll this sub-group of pre-permit lands. We believe that assumed cost is too low a per acre cost to convert unrestricted agricultural lands to restricted agricultural lands for Swainson Hawk given the current price of walnuts and almonds. It also seems unrealistic to assume these owners will be interested in modifying their existing easements to incorporate new terms and a management plan without substantial compensation, if at all. If modifications are negotiated, then the cost to monitor these pre-permit lands will increase as the result of the new restrictions that are imposed. **Section 8.3.4** however, states “the Conservancy assumes no additional monitoring (or management) costs for the pre-permit reserve lands that are covered by existing endowments (about 4,200 acres of the 8,000 acres of pre-permit reserve lands).” The existing endowments for the easements held by the Yolo Land Trust were determined based on compliance monitoring for unrestricted agriculture. If those easements are modified and agriculture is restricted, the monitoring costs will increase. | 25-6

8.3.8 – Costs in Perpetuity

The Plan assumes an endowment fund of approximately \$12.5 million in 2015 dollars would be needed at the end of the permit term to generate average real returns (i.e., inflation adjusted) that would be adequate for funding post-permit term reserve system management and monitoring, and that the endowment will be built over the entire permit term through allocation of a percentage of HCP/NCCP fee revenue. The Yolo Land Trust has been monitoring conservation easements since 1995. It is our strong belief that the Plan should collect monitoring funds upon the closing of each conservation easement and not depend on the allocation of a percentage of HCP/NCCP fee revenue to pay for monitoring costs. Annual compliance monitoring and easement defense must be performed regardless of whether the funds are available or not. There is a risk the Plan will have unfunded obligations to monitor and defend the conservation easements, thereby undermining the credibility of the Conservancy to fulfill its legal obligations. The Conservancy should secure dedicated revenue to meet the immediate need to monitor and defend its easements. Without that, public | 25-7

Shawna Stevens
August 30, 2017
Page 3

confidence in easements (and the Plan) may erode and ultimately the conservation of the land and its resources is threatened.

25-7
cont.

Sincerely,



Michele Clark
Executive Director

25 Yolo Land Trust
Michele Clark, Executive Director
August 30, 2017

- 25-1 Thank you for submitting comments. The comment notes that legal costs are likely to exceed assumptions made in the Draft HCP/NCCP. They recommend that legal challenges and/or violations of easements should be assumed and legal funds should be adequate to cover staff time, attorney fees, unanticipated legal costs, and potential other costs including restoration, boundary surveys, and third-party monitoring.

The Draft HCP/NCCP makes modest assumptions regarding future legal costs which merit reevaluation as a result of this comment. The Conservancy added funding to the HCP/NCCP budget to join the Legal Defense Pool (known as Terrafirma) formed by the Land Trust Alliance. This program was established to help land trusts defend their conserved lands from legal challenges, insure the costs of upholding conservation easements and fee lands held for conservation purposes when they have been violated, and advise land trusts regarding risk management.

The cost for this service includes a registration fee, per parcel fee, and annual dues based on a percentage of operating expenses. Conservancy consultants have prepared a preliminary estimate of costs for participation in the program over the 50-year period of the permit. The total cost is estimated at just over \$550,000 over the 50-year permit term which would be just under \$20,000 annually.

- 25-2 This comment is a continuation of Comment 25-1. Please see response to Comment 25-1.
- 25-3 This comment points out that Table 8-3, *Yolo HCP/NCCP Pre-Permit Reserve Lands*, in the Draft HCP/NCCP incorrectly names some of the land managers for pre-permit reserve lands. The Conservancy has revised the proposed Final HCP/NCCP to correct these errors.
- 25-4 This comment notes that the Barger, McIssac, Wasserman, and Hershey Woods properties are currently planted in orchards and thus not eligible for Swainson's hawk mitigation. These properties were listed in Table 8-3 as potential HCP/NCCP pre-permit reserve lands. The Conservancy appreciates the updated information regarding the status of these properties. The HCP/NCCP conservation easement template prohibits orchards so the Conservancy has removed these properties from Table 8-3.
- 25-5 This comment clarifies that the following easements held by the Yolo Land Trust are farmland mitigation easements and therefore cannot be further restricted for Swainson's hawk mitigation: Cache Creek – Best Ranch, Barger, Capay Farm, McIsaac, and Wasserman. The Conservancy has removed these properties from Table 8-3.
- 25-6 This comment states that the cost model assumption for enrolling pre-permit reserve lands may be too low due to the cost per acre to convert unrestricted agricultural lands to restricted agricultural lands and additional costs to monitor easements.

The \$2,500 per acre cost of acquisition (\$2,648 in 2017 dollars) is based on the recognition that the conditions on the more than 20 sites in the pool from which the Conservancy would enroll additional pre-permit reserve lands, as well as other sites that may be considered for enrollment if they qualify, vary greatly. For example, some of the sites already have agricultural restrictions in place or other land use restrictions that limit the ability to plant high-value crops such as walnuts and almonds. The cost model assumption recognizes that there are some sites that will cost more than the average; however, the Conservancy intends to target those sites that can be enrolled in a cost-effective manner so the current cost model assumptions are considered a reasonable estimate for planning purposes. The Conservancy will closely monitor these transactions and will be able to

update the cost and budget assumptions based on implementation experience at each five-year cost and funding update.

The monitoring costs associated with easement compliance are not anticipated to increase because the frequency of monitoring and the type of reporting for easement compliance purposes will not change. The Conservancy assumes only limited additional biological monitoring activities for sites 1 – 19. These costs are accounted for in the Conservancy monitoring oversight and management cost line item. These staff and overhead costs are detailed in Appendix H. Cost Supporting Material, Table 12.

- 25-7 The Conservancy agrees with the comment that annual compliance monitoring and easement defense must be performed. Annual easement monitoring for compliance is a very low cost and can be performed by the Conservancy as part of its annual operating costs. The Conservancy has budgeted approximately \$1.5 million in legal services over the permit term to cover costs such as easement defense and is deliberating the addition of an insurance plan to supplement that budget (see response to Comment 25-1 for details). The comment suggests establishing separate endowments for each conservation easement at the time each easement closes. This approach is typically used for individual mitigation projects. However, it is impractical on the scale of the entire HCP/NCCP program due to the number of easements that the Conservancy is expected to acquire. Instead, the HCP/NCCP will fund easement monitoring and defense during the permit term through its local funding sources (mostly HCP/NCCP fees). A portion of each land cover fee paid will be set aside to build a permanent endowment for all conservation easements that will be utilized at the end of the permit term. This approach has the benefit of spreading the costs of in-perpetuity funding across all fee payers evenly and fairly.

Costs during the permit term will vary on an annual basis depending on the pace of impacts and acquisition of reserve easements and lands. Costs after the permit term (post-permit) are assumed to be constant on an annual basis.

The consultant team specifically modeled the funding option of establishing a "terminal" account as a part of each land cover fee payment. The terminal account would receive a share of each land cover fee payment, earn investment returns similar to the endowment account, and be steadily drawn down until the end of the permit term to support operating costs. The endowment account would provide funding post-permit. Payments into the terminal account would represent each associated development project's fair share of monitoring and other operating costs from the time of the land cover fee payment through the remainder of the permit term. Projects occurring earlier in the permit term would pay a higher fee because of the longer period and therefore higher costs through the remainder of the permit term. Projects occurring later would therefore pay less.

Results of the modeling conducted to examine this option identified two major drawbacks. First, development projects earlier in the permit term would pay a fee of up to 40 percent higher than projects later in the permit term in real terms (not adjusted for inflation). This result raises a fairness issue based on project timing, i.e. just because a project occurred later in the permit term should it pay a lower fee?

Second, concurrently accumulating, investing, and drawing down the terminal account fund balance injects an additional risk to the funding plan associated with investment returns on the terminal account balance. The Conservancy will already be monitoring returns on the endowment fund and adjusting land cover fees accordingly during HCP/NCCP implementation. Managing the terminal account will only add to potential investment risks and therefore HCP/NCCP funding.

For the reasons stated above the use of a terminal account to fund monitoring costs was rejected as a HCP/NCCP funding approach.



Yolo County Farm Bureau

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**Letter
26**

August 30, 2017

**Received By:
Yolo Habitat Conservancy
August 30, 2017**

Yolo County HCP/NCCP
ATTN: Petrea Marchand
625 Court Street
Woodland, CA 95695

RE: General Comments on the Yolo County HCP/NCCP

As a policy matter and a matter of basic philosophy, Yolo County Farm Bureau ("Farm Bureau") opposes the HCP/NCCP as a regulatory vehicle to protect species and allow development in light of the many adverse impacts and burdens such arrangements inevitably impose on agriculture.

26-1

At the same time, Farm Bureau acknowledges the enormous amount of time, expense and effort that has gone into the Yolo HCP/NCCP over the last 25+ years and we are, therefore, also realistic and pragmatic in our recognition the HCP/NCCP may one day move forward, even despite our profound doubts as to the wisdom and efficacy of such an approach. From that perspective, and in the event the HCP/NCCP is one day adopted and implemented, and to the extent the HCP/NCCP can align with and be achieved with minimal disruption alongside agriculture, Farm Bureau nonetheless hopes to work constructively with the County in relation to the proposed HCP/NCCP, to the greatest extent possible.

Long-term Effects on Economic Viability and Productive Capacity of Existing Agricultural Land Base

A fundamental mission of Farm Bureau is to conserve and protect the economic viability and productive capacity of the maximum amount of suitable agricultural land throughout the county possible. To the extent the goals of the HCP/NCCP may conflict with this fundamental objective, Farm Bureau has major reservations concerning the HCP/NCCP.

26-2

Farm Bureau wishes to make it absolutely clear that our organization categorically opposes any process or requirement that would, either now or in the future, in any way restrict or limit the ability of any landowner not a part of the HCP/NCCP or its reserve system to freely manage and utilize his land, including the ability to change crop types as changing market conditions or other circumstances may require.

Similarly, on private agricultural lands voluntarily placed within any future HCP/NCCP reserve, Farm Bureau would ask that the Conservancy work, in every case, with individual landowners and the larger agricultural community to foster and protect reasonable flexibility and economic viability over time.

26-3

Consistency with the County's General Plan Policies

Farm Bureau believes that a thriving agricultural economy is an essential feature of our county's local culture and existing landscape. Generally speaking, Farm Bureau appreciates that Yolo County has consistently embraced smart growth principles over time and has historically been an 'ag-friendly' county.

26-4

We sincerely believe that these policies are a large part of what make Yolo County a desirable place to live and work, and that they positively distinguish Yolo County from many other parts of the state.

Yolo County HCP/NCCP
ATTN: Petrea Marchand
August 30, 2017
Page 2

Farm Bureau urges the County to maintain continuity in this regard, and not to back away from or otherwise break with a wise historical tradition that has served the County and its citizens exceptionally well. If adopted and implemented over the next 50 years, the HCP/NCCP must, under no circumstance usurp, depart from or in any way conflict the General Plan's established policies.

26-4
cont.

Agricultural Practices within the Reserve System (Section 3.5.4.5)
It is not clear that the "agricultural practices" identified in the HCP/NCCP in fact align (and do not conflict) with the many prohibited uses included in the Conservation Easement and Management Plan templates.

Similarly, the HCP/NCCP's overlay of separate "AMMs for Agricultural Practices" creates further confusion and may become a source of potential conflict in relation to competing easement and management plan terms and supposedly covered "Yolo County Agricultural Practices."

26-5

Since the "agricultural practices" appear intended to provide at least some floor of regulatory certainty, the HCP/NCCP should establish as a general rule that where covered agricultural practices conflict with some stricter requirement in an easement or management plan or the AMMs for agricultural practices, the covered practices should control. In other words, covered activities on reserve lands enrolled in the HCP/NCCP should not simultaneously be prohibited uses under any AMM, easement or management plan term.

Avoidance and Minimization Measures within the Reserve System (Section 4.3.6)

While the HCP/NCCP's proposed "avoidance and minimization measures" apply only to lands included in the reserve system, to the extent many such lands are expected to remain in agricultural use, Farm Bureau is concerned about the restrictiveness of the measures and how they will affect the long-term management and productivity of such lands.

As noted previously, Farm Bureau is also concerned about the complex interplay and overlapping responsibilities imposed on landowners in terms of competing and potential conflicting AMMs, specified agricultural practices as "covered activities," easement terms, and management plans.

26-6

Landowners must be clear on expectations, obligations, and potential liabilities and should be provided clear guidance, direction, and assistance in this regard. To meet this need, any future HCP/NCCP will need some simplified structure for common understanding and greater consistency.

In addition to these concerns, Farm Bureau is concerned that several of the described AMMs appear, in some cases, to dictate or limit normal agricultural practices.

Advisory Committee (Section 7.2.4.1)

Agriculture is a unique community with an out-sized stake in the HCP—and, from that perspective, needs its own dedicated communication channel. An agricultural ombudsman or liaison, regular reports and periodic meetings are potential options here.

26-7

At the same time, due to limited staff and capacity, as well as the many obstacles to on-going involvement from those in agriculture, ag-focused meetings must be efficient and specifically targeted to identified issues of direct concern to agriculture.

Yolo County HCP/NCCP
ATTN: Petrea Marchand
August 30, 2017
Page 3

Along with any other important agriculture-related issues that may emerge or arise over time, areas of potential on-going concern may include implementation issues, easements and management plans, adaptive management and flexibility for agriculture over time, development of agricultural avoidance and minimization principles, and consistency with general plan policies including the County's Williamson Act program and agricultural mitigation requirements.

26-7
cont.

Real Estate Activities (Section 7.3.2)

What protections or procedures will be utilized to ensure agricultural landowners entering easements are fully apprised of their rights, and of the many restrictions and responsibilities that come with an easement? Who will work with agriculturalists under easements and management plans to maintain maximal flexibility over time, without compromising core conservation values of a property?

26-8

Reserve Management and Monitoring (Section 7.3.6)

How can the Conservancy fairly and consistently facilitate communications and conflict resolution between the Conservancy, regulators and landowners?

26-9

Is an arbitration procedure possible and/or potentially desirable?

Public Outreach and Education (Section 7.3.7)

Education should include measures to ensure full knowledge and understanding on the part of agricultural landowners upon entering easements, including a full understanding of potential liabilities and on-going restrictions and responsibilities associated with easements and site-specific management plans.

26-10

Responsibilities of the Local Jurisdictions (Section 7.3.10)

It is important that the governing boards and rate-, fee-, levy- and assessment-paying constituencies of the local agencies be fully informed and updated as to the cost of their agencies' participation in the HCP and concerning on-going implementation and the specific project and permitting outcomes flowing from this arrangement.

26-11

Acquisition Process (Section 7.5.2)

Landowner confidentiality, including information regarding species presence and baseline conditions during land acquisition and negotiation process, is a concern.

Some type of confidential agreement and filter on information provided by the Conservancy to the regulatory agencies is highly desirable, at least until the process has advanced to a point where the landowner is comfortable with all major terms and the transaction is all but certain to occur.

26-12

Land Acquired by Other Organizations or through Partnerships (Section 7.5.4)

The HCP/NCCP does not appear to discuss (at least in any prominent way) the relationship between the HCP/NCCP and potential private mitigation banking as part of Yolo County's pilot Regional Conservation Investment Plan—including potential market-based voluntary for-term credits for "dynamic conservation" practices or habitat values on private lands remaining in agricultural production. This is a topic of keen interest to the agricultural community in Yolo County, and a potential desirable alternative to fee-title land acquisition or easements in perpetuity. More information on potential interplay between the proposed HCP/NCCP and the Yolo RCIS is needed.

26-13

Yolo County HCP/NCCP
 ATTN: Petrea Marchand
 August 30, 2017
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Conservation Easements (Section 7.5.5)

Yolo County Farm Bureau is concerned about the restrictiveness of the HCP/NCCPs easement and management plan terms, about the long-effect on the economic viability of affected lands, and the many attendant obligations, responsibilities, and potential liabilities for affected landowners

26-14

Easement Stacking (Section 7.5.5.5)

Where agricultural conservation easements already exist, Farm Bureau is concerned that the agricultural purposes of such existing easements may be undercut, subsumed, or may otherwise come into conflict with new conservation easements put in place under the proposed HCP/NCCP.

26-15

Willing Sellers (Section 7.5.7)

That land and easement acquisition be from willing sellers only is, for Farm Bureau, essential. Beyond the obvious surface meaning of this phrase, for a real estate transaction to be a "willing seller" transaction in fact and not only in name, the Yolo HCP/NCCP must adopt mechanisms to ensure the landowners entering such transactions are fully apprised of the rights, burdens, limitations, and obligations involved. Such features as public education, a dedicated agricultural advisory committee, maximal flexibility, and goodwill coordination and cooperation with individual landowners are important elements of such an approach.

26-16

Beyond this, Farm Bureau opposes any approach whose direct or indirect effect would be to indirectly turn unwilling sellers into "willing sellers" through any explicit targeting of particular lands in the HCP/NCCPs Conservation Strategy. To avoid this, the Conservation Strategy and Reserve Design should be left sufficiently "loose" or non-specific to cover a range of potentially suitable and eligible lands. In this way and this way only can landowners be spared from becoming "unwilling willing sellers," instead selling only with a full knowledge of their choice, and under no form of undue pressure or coercion.

Use of Mitigation Banks (Section 7.5.10)

See previous comment (re: Yolo County Regional Conservation Investment Strategy). If eligibility for credits within the context of the HCP/NCCP requires assumption of additional restrictions (including HCP easement terms in perpetuity, etc.), this would appear, potentially, to remove much of the desirable flexibility, as well as many of the potential "dynamic conservation" benefits of the Yolo RCIS. This would in turn tend to make the HCP/NCCP less attractive from a private landowner and agricultural perspective.

26-17

Regional Loss of Swainson's Hawk Habitat (Section 7.7.1.10)

Farm Bureau generally opposes any conservation strategy or approach that reduces grower flexibility and economic viability by tending to freeze in time or limit grower crop choice over time. In addition to "sustaining" local Swainson's hawk populations (and other species), Farm Bureau is anxious to "sustain" and maintain a viable agricultural economy from the standpoint of the farmer and rancher.

26-18

The proposed "landowner incentive" program as a potential means to influence cropping patterns outside of the HCP reserve through financial incentives for a term could help to alleviate this concern, at least in some degree. Notably, an analogous approach was successfully taken over the first 15 years of the Imperial Irrigation District ("IID")'s San Diego County Water Authority ("SDCWA") or Quantification Settlement Agreement ("QSA") transfer with the IID's fallowing program (now transitioning from a fallowing program to an agricultural water conservation program). Under this program, lands were enrolled for temporary fallowing on an annual basis, as a way to generate transfer water under the IID's long-term agreement with the

Yolo County HCP/NCCP
ATTN: Petrea Marchand
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SDCWA. Farmers could participate in years they chose, and in other years were free to go on planting crops and farming as they normally would.

In addition to the proposed "landowner incentive" program, it may be helpful to explore whether some such approach could be incorporated in (or through) the Yolo RCIS.

As with the IID's QSA voluntary fallowing and agricultural water conservation program, under a future Yolo HCP/NCCP as proposed with the "landowner incentive program," willing landowners could be paid to grow certain crops or to undertake certain practices for some set term, without being locked into a single practice or crop type in perpetuity. Normal cropping patterns within the County could be monitored over time to assess whether Swainson's hawk (or other) habitat values are being already met. If not, a "landowner incentives" - or RCIS-type program could supplement any shortfall year-to-year with permanent easements and land acquisition being reserved as a last resort or second-tier feature, in the event the latter proves inadequate.

26-18
cont.

Assurances for Private Landowners (Section 7.7.7)

Unfortunately, Neighboring Landowner Protection mechanisms as proposed in the HCP/NCCP place significant burdens and risks on landowners, which in turn serve as a disincentive and obstacle to participation.

In addition to the proposed Neighboring Landowner Protection Program, Farm Bureau strongly encourages the Yolo Conservancy to consider alternative mechanisms to extend a basic measure of protection and consideration to neighboring landowners in the form of reserve-side buffers and other "Good Neighbor" policies and practices. Provisions such as these will make courtesy and respect a built-in feature of the HCP/NCCP reserve design.

In the long run, proactive adoption of such practices can only facilitate the Conservancy's work by reducing and avoiding landowner mistrust and opposition to Conservancy activities. If, given time and experience, landowners come to see that proactive measures adopted by the HCP/NCCP prevent and avoid unpleasant, and expensive, conflicts with adjacent neighbors, conservation lands and activities might eventually secure a more a comfortable and accepted place alongside other uses on the landscape.

26-19

In contrast, so long as the burden remains on the landowners to protect against threats and burdens brought to the landowner by the HCP/NCCP, for better or for worse, many landowners will be very understandably inclined to perceive habitat lands and endangered species as a nuisance, an annoyance, and a potential threat to their livelihoods.

Appendix G – Pollinator Conservation Strategy (November 2009)

The pollinator strategy provides some potential benefits to agriculture, but also comes with many restrictions. The Strategy should not result in any additional restrictions beyond those required under the ESA generally.

26-20

Appendix M - Yolo County Agricultural Practices

See related comments on Yolo County agricultural practices as generic "covered activities" above.

26-21

Appendix K - Conservation Easement Template

See related comments relating to concerns about restrictiveness of easement and management plan terms, potential liabilities and burdens, agricultural sustainability, etc.

26-22

Yolo County HCP/NCCP
ATTN: Petrea Marchand
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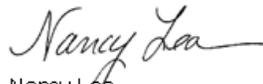
Appendix Q - Management Plan Template

See preceding comment.

I 26-23

Thank you for the opportunity to provide comments.

Sincerely,



Nancy Lea
President

cc: California Farm Bureau Federation

26 Yolo County Farm Bureau
Nancy Lea, President
August 30, 2017

- 26-1 Thank you for submitting comments. The comment expresses opposition to the HCP/NCCP. This position is noted. The comment does not address the content of the HCP/NCCP or EIS/EIR and no additional response is necessary.
- 26-2 This comment expresses concern regarding any restrictions on landowners not participating in the HCP/NCCP. The HCP/NCCP only affects participants. All landowner participation would be voluntary. All landowners provided easements would be compensated for property easements.
- 26-3 The comment asks the Conservancy to work to ensure flexibility and economic viability. The Conservancy has worked with the permitting agencies to provide reasonable management terms for the properties within the conservation reserve. The two criteria of flexibility and economic viability have been at the forefront of Conservancy negotiations with the wildlife agencies.
- 26-4 The comment urges consistency with the agricultural-friendly policies of the Yolo County General Plan. The HCP/NCCP is entirely consistent with the Yolo County General Plan. Yolo County will have the opportunity to independently confirm this when it considers a finding of consistency with the Yolo County General Plan in support of its actions on the HCP/NCCP next year.
- 26-5 This comment expresses concern about the effects of AMMs on agricultural land, and the potential for conflict between AMMs, covered activities, easement terms, and management plans. While the HCP/NCCP contains restrictions applicable to agricultural practices within the reserve system, agricultural practices occurring on a neighboring property are not similarly restricted, and would be protected for those neighboring landowners that participate in the Neighboring Landowner Protection Program.

Appendix M, *Yolo County Agricultural Practices* is informational only and does not supersede the executed Conservation Easement and Management Plan for any given property. Appendix M has been clarified to distinguish in Section M-1 typical agricultural practices that might occur on properties within the Reserve System, and in Section M-2 typical agricultural practices that might occur on lands covered under the Neighboring Landowner Protection Program.

- 26-6 The comment expresses concern regarding the long-term economic effects of AMMs on lands within the reserve system, whether landowners will understand the obligations of participation in the HCP/NCCP, and that the AMMs will limit agricultural practices. In some instances, the AMMs could/would serve to limit agricultural practices on a given property. These requirements have been extensively negotiated with the wildlife agencies and have been determined by all parties to be necessary for the HCP/NCCP to ensure species conservation and support issuance of ITPs. As noted above, the executed conservation easement and management plan for any given property will be the defining legal document in terms of allowable activities and practices. The Conservancy will only be negotiating with willing participants who volunteer to sell easements/property rights. Landowners should seek out appropriate legal representation prior to executing contracts and/or agreements. As a matter of good practice, the Conservancy will encourage them to do so.
- 26-7 This comment expresses support for focused communication with the agricultural community throughout implementation of the HCP/NCCP. Conservancy staff support this idea. Regular meetings with the agricultural community will be included as a component of the proposed Final HCP/NCCP in Section 7.3.7, *Public Outreach and Education*, to be further detailed in the Implementation Handbook.

- 26-8 The comment inquires as to how landowners will be advised regarding potential participation in the HCP/NCCP. Participation in the HCP/NCCP reserve system is entirely voluntary. Negotiations will occur directly between the Conservancy and the landowner or his/her representatives – the state and federal agencies will not be involved. The conservation easement, management plan, and related documentation are legally binding contracts. Landowners choosing to participate must determine appropriate representation for their individual circumstances. The Conservancy will actively encourage all landowners to secure adequate representation of their interests during negotiations, and through and including execution of these legal documents. Ultimately however, it is the responsibility of participating landowners to protect and advocate for their interests. Section 6.4.3.3, *Management Plans*, of the Draft HCP/NCCP describes circumstances that allow for updates and minor modifications to the management plan.
- 26-9 The comment inquires regarding procedures for conflict resolution. The HCP/NCCP does not assume costs for formal arbitration which can be very expensive. Conservancy staff support the idea of using the existing Yolo Conflict Resolution Center or another appropriate third party to assist with mediation and conflict resolution between landowners and other parties. Also, HCP/NCCP budget assumptions have been modified to reflect that the Conservancy's legal costs are likely to be higher than what was assumed in the Draft HCP/NCCP.
- 26-10 The comment requests education for landowners regarding participation in the HCP/NCCP. The Conservancy will create summary and educational materials such as Frequently Asked Questions (FAQs) to assist with general understanding of the program including landowner opportunities and responsibilities. Please refer to modifications to Section 7.3.7, *Public Outreach and Education*, of the HCP/NCCP. However, this will not substitute for responsible participation on the part of landowners who seek to sell easements. Please also see response to Comment 26-8
- 26-11 The comment notes the importance of ensuring that member agencies fully understand the cost of participating in and implementing the HCP/NCCP. This information is provided in the HCP/NCCP. The Conservancy Board, comprised of representatives of Yolo County and four cities as member agencies, meets regularly regarding the development of the HCP/NCCP. The Board receives information at every meeting regarding Conservancy finances, and periodic updates regarding the cost of implementing the HCP/NCCP. Regular meetings of member agency staff to prepare for implementation of the HCP/NCCP will begin soon. In addition, the Conservancy has committed to the development of a detailed Implementation Handbook to guide implementation of the HCP/NCCP.
- 26-12 This comment expresses concern for landowner confidentiality. The Conservancy will respect landowner confidentiality concerns to the extent possible based on applicable laws. However, it is a public agency and is governed by state, and occasionally federal laws, related to transparency, public information, and meeting protocol. While there may be some situations and/or points in negotiations with landowners where information is not public and can be maintained as confidential, confidentiality cannot generally be assured. Landowners that undertake various studies such as biological surveys may choose to keep this information confidential until submission to the Conservancy.
- 26-13 This comment requests that information be added to the Yolo HCP/NCCP about the RCIS and its relationship to the HCP/NCCP. Additional text is included in proposed Final HCP/NCCP Section 1.1.2, *Background*, to provide more detail about the LCP, which has been expanded pursuant to Assembly Bill 2087 (2016) to also qualify as an RCIS. The LCP/RCIS would not serve as a substitute to the HCP/NCCP, nor is it a part of the HCP/NCCP. Only the HCP/NCCP will provide incidental take coverage. The HCP/NCCP Conservation Strategy does include an innovative Swainson's Hawk Incentive Program described in proposed Final HCP/NCCP Section 7.7.1.2.8, *Regional Loss of Swainson's Hawk Habitat*.
- 26-14 The comment expresses concern regarding the long-term economic effects of AMMs on lands within the reserve system. Please see response to Comment 26-6.

- 26-15 The comment expresses concern regarding the placement of new easement on existing agricultural conservation easement. The decision whether to place an additional more restrictive habitat easement on lands encumbered by an existing agricultural conservation easement would be made voluntarily by individual landowners. Potential conflicts, if any, would be resolved during that process.
- 26-16 The comment reiterates that landowner participation must be voluntary and that landowners be fully informed regarding participation. The HCP/NCCP is premised on the concept of voluntary participation. Please see responses to Comments 26-8 and 26-10 regarding landowner participation and education. Although the HCP/NCCP identifies portions of the County as higher priority for conservation based on biological resource values, the HCP/NCCP does not generally target particular parcels for conservation.
- 26-17 This comment references Draft HCP/NCCP Section 7.5.10, *Use of Mitigation Banks*, and the RCIS. However, these two items are entirely distinct. Draft HCP/NCCP Section 7.5.10, *Use of Mitigation Banks*, does not apply to the LCP/RCIS. It applies to mitigation banks that want to sell credits as mitigation for covered activities, in which case the bank would be required to upgrade their conservation easements to be consistent with the requirements of the HCP/NCCP. Please also see response to Comment 26-13 regarding the LCP/RCIS. Activities covered by the HCP/NCCP must mitigate through the HCP/NCCP.
- 26-18 This comment expresses opposition for any conservation strategy or approach that reduces grower flexibility. Please see response to Comment 26-6. The comment also expresses support for a “landowner incentive” program. The conservation easements that will be established on working agricultural lands pursuant to implementation of the HCP/NCCP are intended to provide flexibility needed to maintain ongoing management of agricultural lands, including the ability to change crop types, in a manner that supports identified species habitat. Some conservation easement restrictions on agricultural crop types, such as the prohibition of orchards and vineyards, are necessary to conserve the habitat conservation values of the property. The HCP/NCCP will rely solely on conservation easements sold or donated by willing landowners. Conservancy staff will coordinate with interested landowners and their chosen representatives to help ensure full understanding of the terms and conditions of the easement. The Swainson’s Hawk Incentive Program described in proposed Final HCP/NCCP Section 7.7.1.2.8, *Regional Loss of Swainson’s Hawk Habitat*, is the only incentive program in the HCP/NCCP. As suggested by the comment, this program involves monitoring county-wide cropping patterns and Swainson’s hawk populations over time and initiating a program of incentives for improved habitat values if required outcomes are not being achieved. During the process of development the HCP/NCCP, a program that would pay landowners to ensure certain crop patterns over time in a manner similar to the recommendation of the comment was considered. This idea was ultimately abandoned because the wildlife agencies informed Yolo County that such a program would not fulfill their requirements for issuance of ITPs. The agencies do not view such a program as providing permanent mitigation for permanent impacts. Conservancy staff agree that there are other programs outside of the HCP/NCCP that may be an appropriate place to explore such a program.
- 26-19 This comment expresses concern regarding the Neighboring Landowner Protection Program and recommends alternatives for providing similar protections. The Neighborhood Landowner Protection Program is described in Draft HCP/NCCP Section 7.7.7.1, *Neighboring Landowner Protection Program*. The comment expresses concern that implementation of the HCP/NCCP will place a burden on neighboring landowners, from habitat lands and endangered species. The Neighboring Landowner Protection Program is a voluntary program that provides neighboring landowners with take protections and certainty. The comment suggests the use of reserve-side buffers and other “good neighbor” policies as an alternative to the Neighboring Landowner Protection Program. The Conservancy does not find the concept of reserve-side buffers to be feasible or advisable. To incorporate a reserve-side buffer for species, approximately 50 to 100 feet would be needed to establish the buffer around each easement or fee title acquisition. This land would not be enhanced for wildlife, but would presumably be enhanced for some purpose. To be effective, such a buffer

would require installed barriers to prevent movement of species off the reserve lands. Neither the buffer or barrier would be practical or financially feasible. The HCP/NCCP could not absorb the costs of creating or maintaining these features and remain viable. It should be noted that in the 15 years the Conservancy and its predecessor have been purchasing easements on agricultural land for permanent protection of Swainson's hawk there are no known complaints from neighboring landowners. The comment does not elaborate regarding other possible "good neighbor" policies, however, we have proposed the addition of funding to support subsidies for the costs of biological surveys to determine baseline conditions on neighboring lands. We concur that the addition of regular meetings with the agricultural community is a good idea and have included this in the proposed Final HCP/NCCP, as noted in response to Comment 26-7.

- 26-20 The Comment expresses concerns regarding the pollinator strategy (Appendix G). Participation in this program is voluntary. Please see proposed Final HCP/NCCP Section 6.4.3.4.3, *Pollinator Strategy*.
- 26-21 This comment refers to earlier comments on Appendix M, *Yolo County Agricultural Practices*. Please see response to Comment 26-5.
- 26-22 This comment expresses concern regarding restrictions in the conservation easement and management plan. Please see responses to Comments 26-6 and 26-8.
- 26-23 This comment refers to the comment above. Please see responses to Comments 26-6 and 26-8.



August 30, 2017

Received By:
Yolo Habitat Conservancy
August 30, 2017

Letter
27

Yolo HCP/NCCP Board of Directors,

RE: Comment Letter for the Yolo County Habitat Conservation Plan/Natural Communities Conservation Plan

The North State Building Industry Association (BIA) would like to express its appreciation for the ongoing outreach and coordination with members of the building industry during the development of the draft Yolo County Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP). Specifically, the BIA appreciates the efforts by your agency's staff to include stakeholders, including members of the development community, as part of your Advisory Board.

27-1

The BIA recognizes the importance of ensuring that regional HCPs such as the Yolo HCP/NCCP provide conservation and economic certainty for project applicants. We look forward to a continued working relationship to ensure the draft Yolo HCP/NCCP as well as its implementing actions provide project permit streamlining and assurances for projects covered by the Plan.

Sincerely,

A handwritten signature in black ink that reads "Chris Norem".

Chris Norem
 Government Affairs Director
 North State Building Industry Association

27 **North State Building Industry Association**
Chris Norem, Government Affairs Director
August 30, 2017

27-1 Thank you for submitting comments. The comment consists of a statement of expressed appreciation and noting benefits of the HCP/NCCP. This does not include specific comments on the Draft HCP/NCCP or the Draft EIS/EIR. No additional response is necessary.

Letter
28

**Yolo Habitat Conservancy Online Public Comment Submittal
for the Draft Yolo HCP/NCCP and Draft EIS/EIR**

Timestamp 8/30/2017 21:17:11

Name Mark Young
Email myoung@westervelt.com
Phone number 916.646.3644
Organization (if applicable) Westervelt Ecological Services
Title (if applicable) Restoration Design Manager
Street Address, City, State, Zip 600 North Market Boulevard, Suite #3, Sacramento, CA 96834

Public Review Draft HCP/NCCP Comments Westervelt Ecological Services (Westervelt) supports the goals and objectives of the proposed Yolo HCP / NCCP. Our comments are intended to strengthen the document for the protection of listed species and vulnerable habitats, while providing sound direction for responsible economic growth. Staff at Westervelt has been successfully implementing large-scale species and natural habitat restoration projects for over 25 years. Our focused review was on the implementation portion of the draft Yolo HCP / NCCP.

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28-1
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In Chapter 7: Plan Implementation, please add the Bullock Bend Mitigation Bank (Bullock Bend) to "Table 7-3: Status of Mitigation Banks in Yolo County" as the Bullock Bend preserve is located in the northeastern corner of Yolo County, along the Sacramento River. Bullock Bend, owned and operated by Westervelt, was approved by the Interagency Review Team (IRT) in 2016, which consists of representatives from the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration Fisheries, U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. Bullock Bend is 116.15 acres and provides compensatory mitigation for unavoidable impacts to Chinook (fall, winter and spring-run), steelhead, Swainson's hawk nesting, other waters of the U.S., and regulated riparian habitat. The project site will also provide benefits to other species likely including, but not limited to, red-tail hawk, great horned owl and yellow-billed cuckoo. Of the 116.15 approved credits, 58.65 credits remain for use on future projects requiring applicable mitigation.

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28-2
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While the Yolo HCP / NCCP document is focused on species protection in Yolo County, Westervelt's Colusa Basin Mitigation Bank (Colusa Basin) is an IRT-approved preserve that provides compensatory mitigation for both giant garter snake (GGS) and Clean Water Act, Section 404 jurisdictional wetlands (404 wetlands), and has service areas covering most of Yolo County. Colusa Basin is 167.78 acres and of these approved credits, 78.9 credits remain for GGS and 30.45 credits remain for 404 wetlands for use on future projects requiring applicable mitigation. As part of the broader species recovery effort, Westervelt Ecological Services requests inclusion of Colusa Basin as a viable mitigation site for use in the Yolo HCP / NCCP effort. We think there are mechanisms to allow credit sales at Colusa Basin and still have the County meet the Yolo HCP / NCCP goals.

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28-3
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The dollar amounts identified in the Chapter 8: Cost and Funding, specifically the "Table 8-4: Yolo HCP / NCCP Cost per Acre to Restore Natural Communities, by Natural Community Type" and "Table 8-9: Wetland Fee" appears to underestimate the probable cost of natural habitat re-establishment (i.e., creation) in the landscape. The broader concern is twofold. First, if this user fee is not sufficient to implement the mitigation, then Yolo County, and perhaps ultimately the residents through diversion of collected taxes, would be subsidizing the entities causing the impacts. Secondly, insufficient funding may jeopardize the implementation requirements of the specified habitat, to where the cost is driving the creation and not the necessary constituent elements for either that particular species or natural community. Too often Westervelt has seen mitigation projects being located where the land (a primary driver of quality control) is relatively inexpensive verses where the species would have the higher probability to recover or be a viable habitat. While the preservation maps in habitat areas have been identified, the probable costs associated with these landscapes appear to be based on land values and not willing sellers. In our experience, high

28-4

Westervelt has experienced that costs in Lacustrine and Riverine environments are typically higher than in Fresh Emergent Wetland areas due to a higher need for erosion control, a higher vegetation community requirement and additional technical studies (e.g, hydraulic modeling). We are unclear where these additional costs are being accounted for in the funding summary.

Westervelt is also concerned that the GGS mitigation for the loss of aquatic habitat appears to be planned on the same footprint as the restored freshwater emergent wetland and aquatic habitats. Our understanding is that the restored wetlands are for compensation for 404 wetland impacts. Stacking GGS habitat on top of 404 wetlands will likely reduce the overall quality of the GGS habitat value. GGS mitigation typically requires the development of a "managed-marsh" system that can be maintained to continually optimize the life-cycle requirements for the GGS. In general, 404 wetlands are required to function on their own after establishment and not need perpetual maintenance. GGS mitigation also requires a higher intensity of monitoring and land management. We are unclear where those costs are being accounted for in the funding summary and where combining the two very different habitat types would be justified.

28-5

Yolo County has an agriculture preservation ordinance that requires land conversions from agriculture to other land uses, including open space or habitat requires an easement to mitigate for the loss. While the HCP / NCCP includes agricultural easements as mitigation for the land conversion, Westervelt was unclear where the costs for agriculture preservation mitigation was being accounted for in the funding summary, specifically in the itemized natural communities restoration cost table when creating wetland-related habitats.

28-6

Westervelt appreciates the opportunity to comment on the draft Yolo HCP / NCCP and hopes that our limited responses will assist the Yolo Habitat Conservancy in successfully implementing the goals and objectives of the plan. We are open and willing to meet and discuss our comment. Thank you again.

28-7

Draft EIS/EIR Comments

**28 Westervelt Ecological Services
Mark Young, Restoration Design Manager
August 30, 2017**

- 28-1 Thank you for submitting comments. The comment expresses support for the HCP/NCCP and provides context for the subsequent comments. No additional response is necessary.
- 28-2 The comment requests that the approved 116.15-acre Bullock Bend Mitigation Bank, located in the northeastern corner of Yolo County, be added to Table 7-3 of the HCP/NCCP. This site was not approved at the time that Table 7-3 was initially prepared. The Conservancy has added the Bullock Bend Mitigation Bank to Table 7-3.
- 28-3 This comment proposes use of credits at the Colusa Basin Mitigation Bank in Colusa for meeting the conservation goals of the HCP/NCCP. Although the approved service area for this bank includes portions of Yolo County, because the bank itself is physically located outside of the HCP/NCCP boundary, purchase of credits at this bank would not satisfy the mitigation/conservation requirements of the HCP/NCCP nor would it help meet the biological goals and objectives identified in the conservation strategy.
- 28-4 The comment states that Table 8-4 of the HCP/NCCP appears to underestimate the probable cost of natural community re-establishment. The comment states that if the user fee is insufficient, others may need to make up for the cost deficit. The comment also states that if the estimated cost is insufficient, the Conservancy should consider making up the difference by seeking lands with low acquisition costs that may be inappropriate for successful restoration.
- Regarding the first point, the Conservancy has re-examined the restoration cost assumptions in the HCP/NCCP. Approximately ten percent of the lacustrine/riverine restoration would consist of lacustrine and approximately 90 percent would consist of riverine. Assuming these percentages, the combined \$29,482 per acre cost estimate appears adequate for a wide variety of projects that would be expected under this conservation strategy.
- Regarding the second point, we have added to Section 6.4.2.3.2, *Restoration Plans*, in the proposed Final HCP/NCCP, that restoration plans must demonstrate that the site identified for restoration has appropriate soil, hydrologic, and other environmental factors for successfully supporting the restored natural community or covered species habitat.
- 28-5 This comment expresses concern that compensation for 404 wetland impacts is stacked on top of compensation for giant garter snake restoration. The HCP/NCCP, however, does not provide 404 permitting. Compensation for wetlands and waters of the U.S. pursuant to Section 404 of the Clean Water Act will be addressed as needed through subsequent coordination with the USACE.
- 28-6 This comment references the Yolo County Agricultural Mitigation ordinance and asks where funding for agricultural preservation required by the Yolo County ordinance is addressed in the HCP/NCCP funding summary. Please see the discussion of agricultural impacts starting on page 6-20 of the Draft EIS/EIR. The HCP/NCCP would impact 912 acres of agricultural land but permanently protect over 21,000 acres. This would result in a net increase in protected agricultural lands and far exceed the mitigation ratio in Yolo County's ordinance thus satisfying the ordinance requirements. The funding for the HCP/NCCP is described in Chapter 8.
- 28-7 This comment expresses appreciation for the ability to comment. The Conservancy looks forward to coordinating with the commenting organization pursuant to proposed Final HCP/NCCP Section 7.5.10, *Use of Mitigation Banks*.

JOHN M. TAYLOR
JAMES B. WILEY
JESSE J. YANG
KATE A. WHEATLEY
MATTHEW S. KEASLING

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**Letter
29**

**Received By:
Yolo Habitat Conservancy
August 30, 2017**

August 30, 2017

Shawna Stevens, Assistant to Director
Yolo Habitat Conservancy
611 North Street
Woodland, CA 95695
shawna@yolohabitatconservancy.org

Re: Comments on Public Review Draft HCP/NCCP and Draft EIS/EIR

Dear Ms. Stevens:

Our firm represents Teichert Aggregates (“Teichert”) with respect to various land use matters. Thank you for the opportunity to comment on the Public Review Draft Yolo Habitat Conservation Plan/Natural Community Conservation Plan (“Plan”) and related Public Review Draft Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”). Teichert commends the Conservancy and its Plan partners for their work developing a more streamlined approach to permitting under the Federal and State Endangered Species Acts. We believe that the Plan has the potential to result in more expeditious permit decisions and better assurances for the regulated community, while protecting the highest quality habitat in an ecologically beneficial matter.

29-1

We offer the following comments for consideration by the Conservancy and its Plan partners:

1. Mining Impacts and Footprint – Teichert appreciates that the Plan recognizes existing and future aggregate mining, including reclamation activities, as a covered activity. (Section 3.5.2.5.) We would, however, like to suggest a revision to the Conservancy’s assessment of mitigation for mining operations, given the unique nature of these projects. Specifically, mining projects typically occur in a number of sequential phases over the course of several years. As soon as one phase of mining is complete, mining of the next phase begins, and, concurrently, reclamation of the first phase commences. Most mining sites in Yolo County are ultimately reclaimed back to some “undeveloped” use, such as open space, agriculture or habitat for wildlife. What this means is that, as mining progresses, certain phases will be fully reclaimed – i.e., returned to agriculture, open space or habitat - before the mining of some subsequent phases even begins. As such, Teichert believes it would be appropriate for the Plan to require the Conservancy to assess appropriate mitigation for each individual phase of mining operations prior to the commencement of that phase, instead of the current approach of assessing fees for the entire mining operation up front. As part of this assessment, if the

29-2

Ms. Shawna Stevens
August 30, 2017
Page 2

Conservancy determines that a prior phase has been fully reclaimed to agriculture, open space or some other species-compatible habitat, the operator should only be required to pay fees for the next mining phase if the acreage of that phase exceeds the acreage of the fully reclaimed area.

29-2
cont.

2. Impacts to Reclaimed Mining Sites – With respect to mining operations, another issue arises relative to the Plan’s definition of “temporary loss” as “the alteration of land cover for less than one year that allows the disturbed area to recover to pre-project or ecologically improved conditions within one year.” (Section 5.3.) Reclamation of a typical mining site takes much longer than one year. Presumably, then, Yolo County would treat these impacts as permanent and require an operator to pay the full land cover fee. However, as mentioned above, most mining sites in the County are ultimately reclaimed back to open space, agriculture or habitat for wildlife. This begs the question: if a fully-reclaimed site, for which an operator has already paid Plan fees, is later developed or impacted such that a new discretionary permit is required from the County, are fees once again due to the Conservancy? The answer, it seems, should be “no”; otherwise the Conservancy would be recovering mitigation fees twice for the same property. Teichert therefore requests that the Plan be revised to clarify that Plan fees will be due for a mining property once, and that any future proposals for a site which has been fully reclaimed to agriculture, open space or another “undeveloped” use would not require payment of Plan fees.

29-3

3. Easement Stacking – As drafted, the Plan does not allow for the stacking of easements used to provide mitigation for impacts to agricultural resources and species foraging habitat. (Section 7.5.5.5.) The rationale for this restriction is not clear. From a biological and legal standpoint, there is no apparent reason to prohibit stacking, particularly if a landowner is willing to restrict his or her current agricultural practices to render an agricultural area suitable for species’ foraging. In fact, as mitigation for impacts associated with a mining project in Sacramento County, Teichert recently purchased a conservation easement over a property in the eastern part of that County which (1) protects prime farmland and (2) restricts agricultural practices to those compatible with Swainson’s hawk foraging. This easement was approved by both the California Department of Fish and Wildlife and the County of Sacramento. It is unclear why the Conservancy and the Plan Partners would not allow the same to occur within the Plan area.

29-4

4. Wetland Impact Fee - The Plan requires that project proponents map all land cover types within their project area, including fresh emergent wetland, valley foothill riparian, lacustrine and riverine. (Section 8.4.1.3.) If a project will affect one of these “wetland cover types,” the Plan requires the applicant to pay a “wetland fee” in addition to the “base” land cover fee. The Plan notes that “[t]he wetland fee is intended to pay the full cost of restoration of these land cover types off-site, including design, implementation, post-construction monitoring, management and remediation throughout the permit term.”

29-5

Ms. Shawna Stevens
August 30, 2017
Page 3

Currently, a landowner who impacts wetland resources must obtain a Clean Water Act (“CWA”) Section 404 permit from the U.S. Army Corps of Engineers and/or Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Act (“Porter-Cologne”) from the Regional Water Quality Control Board. As a part of these permitting processes, those agencies will require compensatory mitigation - either the purchase of credits from a mitigation bank or the construction/restoration of “like” habitat – to ensure “no net loss” of wetland resources. Because the Plan does not include currently provide applicants with coverage under the CWA or Porter-Cologne, Section 8.4.1.3 essentially requires that applicants double mitigate for any wetland impacts (i.e., provide compensatory mitigation to the Corps/RWQCB and pay the wetland fee to the Conservancy.) Teichert requests that the Plan be revised to provide that the wetland fee is not required in a circumstance where an applicant obtains a permit under the CWA and/or Porter-Cologne and is providing compensatory wetland mitigation pursuant to that permit.

29-5
cont.

5. Impacts to Valley Elderberry Longhorn Beetle (“VELB”) Habitat – In order to avoid the take of VELB, the Plan requires applicants to maintain a minimum 100-foot setback from any elderberry shrubs with stems greater than one inch in diameter at ground level. (Section 4.3.4.) If this 100-foot setback cannot be maintained, the Plan requires, among other things, that the applicant transplant the elderberry shrubs to a location within the Plan’s reserve system that is approved by the Conservancy. In practice, however, applicants frequently consult with the U.S. Fish and Wildlife Service (“Service”) to determine whether, based on the particular characteristics of a site, a reduced buffer (i.e., less than 100 feet) is appropriate. This flexible approach is often preferable from an ecological standpoint since, in some situations, leaving the shrubs in place with an appropriate buffer may have a reduced risk of species mortality and/or impacts to the shrub when compared to transplantation. Teichert therefore suggests that the Plan be revised to allow applicants an opportunity to consult with the Service, on a project-by-project basis, to determine whether an avoidance buffer of less than 100 feet may be appropriate.

29-6

In addition, in May 2017, the Service released a document entitled “Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle” (“Framework”) which can be found at: https://www.fws.gov/sacramento/documents/VELB_Framework.pdf. The purpose of this Framework is to assist Federal agencies and non-federal parties in evaluating the effects of their projects on VELB. The Plan’s approach for determining effects to VELB should be consistent with that in the Framework.

29-7

Ms. Shawna Stevens
August 30, 2017
Page 4

Thank you, again, for the opportunity to comment on the Plan. Please feel free to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kate A. Wheatley", with a long horizontal flourish extending to the right.

Kate A. Wheatley

cc: Jason Smith
Barry Baba
Jasmine Greer

29 Taylor & Wiley
Kate Wheatley
August 30, 2017

- 29-1 Thank you for submitting comments. The comment identifies potential benefits of the HCP/NCCP and provides context for the subsequent comments. No additional response is necessary.
- 29-2 This comment asks that mitigation for large projects occurring over an extended period be phased consistent with approved phases of the project. The HCP/NCCP does not preclude the phased payment of fees as requested by the comment. Mitigation would be triggered by any disturbance of land or effects to species within a geographically defined phase. This option will be described in the proposed Implementation Handbook.
- 29-3 This comment inquires regarding impacts to reclaimed mining sites and whether subsequent mitigation fees can be waived for impacts that occur to a reclaimed site for which mitigation fees have already been paid. The wildlife agencies have indicated that if a mining site is reclaimed to habitat and then impacted again, the Conservancy must charge the impact fee again. Therefore, the Conservancy is not able to make this change. If subsequent impacts occur to a site for which mitigation fees have already been paid and reclamation to habitat has occurred, new mitigation fees would likely be required.
- 29-4 This comment asks for the rationale behind Draft HCP/NCCP Section 7.5.5.5, *Easement Stacking*. The rationale is that the use of scarce mitigation funding to purchase additional protections for a property that is already substantially protected achieves lower overall public and ecological benefit than the use of that same money to preserve a property that has no protection at all.
- 29-5 This comment expresses concern that the USACE may require wetland mitigation in addition to the restoration provided under the Draft HCP/NCCP. Proposed Final HCP/NCCP Section 8.4.1.3, *Wetland Fee*, has been modified to state that the wetland fee can be waived if the applicant conducts wetland mitigation through restoration at a ratio of at least 1:1, and if the Conservancy and wildlife agencies agree that this restoration can be counted toward the restoration commitments in the HCP/NCCP
- 29-6 The comment requests flexibility in the requirement for a 100-foot buffer for elderberry bushes with large stems. AMM1 on page 4-11 (paragraph 4) of the Draft HCP/NCCP already allows this flexibility. The buffers for covered species required in other AMMs such as AMM12 for the valley elderberry longhorn beetle will be modified to point to this flexibility in AMM1.
- 29-7 The comment states that the HCP/NCCP should be consistent with the USFWS 2017 “Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle.” The HCP/NCCP strategy for this species was developed, and negotiated with the wildlife agencies, prior to the release of the 2017 guidelines and incorporate primarily the 199 Guidelines. The Conservancy evaluated the new guidelines against the 1999 guidelines to assess the differences between them. The mitigation buffer size is more flexible with the new guidelines; however, the HCP/NCCP allows for this flexibility and we are proposing modified text to further clarify this (please see response to Comment 29-6). Conservancy consultants have advised that the 1999 guidelines are more consistent with the HCP/NCCP’s conservation strategy for riparian restoration, therefore we do not propose to change this approach. However, there are also differences between the two guidelines related to isolated shrubs, transplanted requirements, and success monitoring. The HCP/NCCP has been modified in Chapters 4 and 6 to address these differences.

Letter
30

Yolo HCP/NCCP Comment Card

Fill out this form to submit your comments for the Yolo HCP/NCCP or the EIS/EIR by August 30, 2017.

Name
Bruce Guelden

Email
winters@pacbell.net

Phone number
530-795-4919

Organization (if applicable)
X

Title (if applicable)
X

Street Address, City, State, Zip
430 Main, Winters, California, 95694

Public Review Draft HCP/NCCP Comments
see attached documents

Draft EIS/EIR Comments
see attached documents

SUBMIT

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RECEIVED

AUG 30 2017

SACRAMENTO FISH & WILDLIFE OFFICE

August 25, 2017

To The United States Department of Fish and Wildlife,

This letter is a response to the Yolo Habitat Conservancy Plan that is currently under review by the U.S. Department of Fish and Wildlife. There is a 90-day period where the public is encouraged to submit their comments.

My primary concern is the omission of a consultant’s report that has been deleted from the 2017 YHC documents. By standard practice, it is the obligation of a Habitat Conservation Plan to present all relevant and current findings available—whether those findings are supportive of a plan’s agenda or not. The YHC has failed to do so.

30-1

#

In 2014, James Estep was commissioned by the YHC to submit an updated report on the status of the Swainson’s hawk. This is standard procedure needed to justify the program being developed.

James Estep is the in-house expert on the Swainson’s hawk for the YHC. He is also Chairman of the Science and Technical Advisory Committee. Estep has been studying the hawk in Yolo County for the past 25 years. He is a major contributor to the Swainson’s hawk Five-year Status Report currently on file with the California Department of Fish and Wildlife. There is no question that he is the most qualified expert on the hawk in this region.

30-2

When Estep submitted his report, he expressed his concerns about the YHC plan.

The title of Estep’s 18-page report is;
“A Proposed Conservation Strategy for the Swainson’s Hawk in Yolo County.”

In Mr. Estep’s highly detailed report, he makes the following statements:

- *The Hawk has reached “carrying capacity” in Yolo County. (Saturation point)*
- *The hawk’s population is “the most dense nesting population reported within the range of the species.” (North America)*
- *“Agricultural patterns in the plan have provided sufficient, suitable, and high value foraging habitat for Swainson’s hawks over the last 25 year.”*
- *“Suitable agricultural foraging habitat will be consistently available during the permit period to maintain the population.” (~50 years w/o government assistance)*
- *“Attempting to manage agricultural lands in order to meet NCCP requirements has proven to be problematic.”*

By all standards, the hawk is doing very well in Yolo County. This county has 1% of the total landmass of California and yet it is home to 14% of the hawks. This population is not expected to increase beyond its current 300 nests. It has reached a maximum instinctual/population level. By applying the findings within the Estep report, the 300 nests are producing over 400 offspring each year. These hawks leave Yolo County in search of a less populated hunting arena. In the past 10 years, Yolo County has added to the hawk population in California by over 4000. This is not a species in need of an expensive government assistance program for its survival.

From Mr. Estep's report, it is clear this raptor is stable and thriving in Yolo County. Estep summarizes his report with the following statement:

“The impacts of implementing the HCP/NCCP would have a relatively minor effect on the Swainson’s hawk population.”

Estep expresses his concern that the YHC plan is an over-reach. He is professionally saying: “if it ain’t broke, don’t fix it.” Estep questions the YHC plan for trying to solve a problem that does not exist.

30-2
cont.

In the final 6 pages of his report, James Estep proposes his own plan that is more pragmatic. This is the backbone of the Estep report. His suggestion is to simply monitor the hawk on a 5-year basis. That is all...just monitor the hawk. If the population were to fall below a certain threshold, then modest corrective steps can be taken. He believes that these “corrective steps” will not be necessary for the entire 50-year term. He also discounts the purchase of 12,000+ acres as being unnecessary. His proposal would reduce the cost of the YHC Plan by over \$150 million and drastically simplify the entire hawk program.

In contrast, the YHC Plan to address the hawk involves encumbering 12,000+ acres at a cost of \$12,500/acre. It involves the planting/monitoring of oak trees, land appraisals, title reports, regulated farm production, and restricts farming practices in perpetuity.

Simply put, Yolo County is going into the farming business. An escalator clause would increase development fees if funding were to fall short. Half of the funding for this plan is expected to come from State and Federal grants. There are no promissory notes to guarantee these grants. Considering the current actions of the Trump administration, environment funding is questionable.

The unintended consequences within the YHC are many. The subsidizing of Yolo farmers to grow alfalfa would put farmers outside this county at an economic disadvantage. This would obvious effect the open market and the basic supply-and-demand concept.

According to the YHC, the 300 pairs of Swainson’s hawk are not capable of finding a tree for nesting or an adequate food supply within Yolo County’s 1000 square miles. The YHC believes that the hawk must have government assistance for its survival.

30-2
cont.

Instead of streamlining the process, the YHC Plan is extremely complex and highly regulated. Nowhere in the 677-page Plan is a disclosure that the Swainson’s hawk has reached “carrying capacity” in Yolo County. This single fact should be of highest consideration when developing a Habitat Conservation Plan.

#

The Estep document is the most current and detailed report ever written on the Swainson’s hawk in Yolo County. That report was not well received by the YHC planners.

Estep was never asked to present his report to the Executive Board. His report was never scheduled as an agenda item or open to public discussion. It appears that the YHC wanted nothing to do with it. At that time, the YHC had already spent millions, and invested years, on the planning process. They were moving in one direction and refused to consider an alternative approach. They were not anxious to change a thing.

The Estep paper was quietly buried within the YHC document called: *Appendices: 2015*—(434 pages). Two years later, with the addition of more consultants’ reports, the *Appendices Document* had grown by another 150 pages.

30-3

At this point, the YHC made a troubling and unprecedented decision.

Instead of addressing the Estep report, they chose to delete it. The Estep report was removed from the 2017 *Appendices Document*. This abridged document was then delivered to the Cal Dept of Fish and Wildlife and the US Dept of Fish and Wildlife for their review and approval. The YHC packet was presented without the full 18-page Estep report. It is unclear when or who removed it.

I emailed Mr. Estep and asked why his document was deleted from the YHC Packet. His rather dry response was:

“Not sure why it isn’t included in this version... You might check with the Conservancy folks”

#

A Habitat Conservation Plan is required by regulation to include the most current scientific findings available. It is required to present *all* findings--even though that data may not support their agenda. They have failed to do so.

From US HCP Handbook
Standard Practices

To assure the quality of the biological, ecological, and other information used in the implementation of the Act, it is the policy of the Services to:

- (1) evaluate all scientific and other information used to ensure that it is reliable, credible, and represents the best scientific and commercial data available;
- (2) gather and impartially evaluate biological, ecological, and other information disputing official positions, decisions, and actions proposed or taken by the Services;
- (3) document their evaluation of comprehensive, technical information regarding the status and habitat requirements for a species throughout its range, whether it supports or does not support a position being proposed as an official agency position;
- (4) use primary and original sources of information as the basis for recommendations;
- (5) retain these sources referenced in the official document as part of the administrative record supporting an action;
- (6) collect, evaluate, and complete all reviews of biological, ecological, and other relevant information within the schedules established by the Act, appropriate regulations, and applicable policies; and
- (7) require management-level review of documents developed and drafted by Service biologists to verify and assure the quality of the science used to establish official positions, decisions, and actions taken by the Services during their implementation of the Act."

30-3

The Estep report is possibly the most important document commissioned by the YHC. Without question, Estep's proposal would dramatically simplify the Plan and reduce the cost by millions.

#

When the YHC received the Estep report, they made two critical decisions. First, they never openly discussed his findings. Secondly, they withheld his report from public and outside government review. These two issues are in violation of standard HCP practices.

On August 1, 2017, the City Manager of Winters formally asked the YHC staff why the Estep report was not available for public view. The next day the YHC posted a link to the Estep report which is currently found deep within the YHC website. However, they did not send that report to the reviewing agencies nor did they return it to the *Appendices 2017* Document. At that time, 60 days had passed of the 90-day review period.

If the YHC insists on discounting the Estep report, then they should justify their action by submitting additional consultants' reports that dispute the Estep findings.

Since the public is encouraged to submit input on the YHC Plan, they should have easy access to Mr. Estep's report. All public comments received without access to the Estep report should be considered invalid. There still remains a question on whether the USF&W and the CDF&W were ever exposed to the Estep report.

30-4

I do not have an issue with Yolo County adopting a habitat conservation plan. This appears to be a reasonable compromise to a very complex system of government regulations. My concern is the approach taken by the YHC concerning the Swainson's hawk. They are proposing a very complex and expensive plan that is loaded with regulations and unintended consequences. The Estep paper proposes a manageable plan, reduces the cost, and address the species with consideration of its current standings.

I have included Mr. Estep's report with this letter.

Sincerely,

Bruce Guelden
Winters, California
winters@pacbell.net
530-795-4919

30-5

History of the Swainson's Hawk in California.

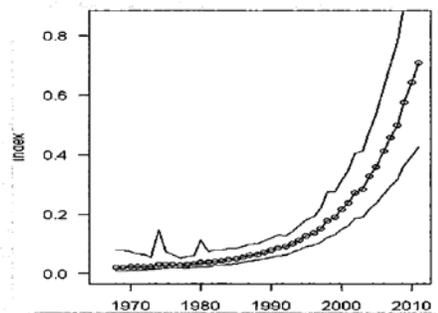
The one issue that Government agencies have failed to properly address is what caused the decline of the Swainson's hawk in the 1980s and 90s. This decline was not unique to Yolo County or to California. It was recorded across the entire United States.

In 1995, researchers from Cornell University exposed massive poisonings in South America caused by an insecticide called monocrotophos. This inexpensive chemical is frequently used in Third World Countries—although it had been banned in the United States for years. The hawk's winter migration is mostly south of the equator.

The Cornell researchers hand-counted 5000 dead hawks with estimates of 35,000 killed in that one season alone. Other estimates run as high as 100,000 hawks killed. The insecticide monocrotophos had been sprayed on the crops for years.

Soon after the Cornell findings, the USDF&W had a serious talk with Argentine officials. The insecticide was eventually banned in that country. Subsequently, the hawk population increased at quadratic pace.

Swainson's hawk population in California, USGS



Peter Bloom's theory (1979) of "canopy crops" (orchards, vineyards) as being harmful to the hawk is unfortunately still referenced today in the Swainson's hawk Five-year Status Report. There is little mention of insecticide poisonings. Mr. Bloom uses anecdotal information from 1902 (Sharp) and mathematical templates that have not undergone peer review. His theory should be questioned. The data presented by James Estep in his recent study of Yolo County hawks have proven Peter Bloom's theory to be invalid.

In the years between 1988 and 2012, the canopy crops in Yolo County have more than doubled in acreage from 20,000 to 45,000. At the same time, the Swainson's hawk experienced its fastest growth rate in recorded history. There is little relationship between canopy crops and the Swainson's hawk status. The foundation of the YHC plan, which was initiated in 1993, is the flawed assumption that canopy crops are harmful to the hawk. It could be argued that orchards/vineyards are beneficial to the hawk.

Further studies by Estep again deny the canopy crop theory. In those years when alfalfa production is suppressed, the hawk continued its aggressive growth rate. Once again, there appears to be no relationship between crop selection and the status of the hawk in Yolo County.



SUCCESS STORY

SCIENTIFIC RESEARCH RESCUES SWAINSON'S HAWK BEFORE THREATENED OR ENDANGERED STATUS LISTING IS NEEDED

CCRT's Legacy project contributed significantly to radio tracking of Swainson's Hawks (SWHA) with satellite-based technology during 1995 and 1996. We monitored their distribution on and off military installations in the western U.S., where their numbers had been diminishing at an alarming rate for unknown reasons. The Swainson's Hawk is listed as a species of concern by five states and the Bureau of Land Management, and as a special emphasis species by the U.S. Forest Service. Nesting population declines had been reported over much of the hawks' range, including Dugway Proving Grounds. With no obvious reason for this decline, scientists postulated that problems along migration routes or on wintering areas were responsible.

Four SWHA were marked with PTTs near the Idaho Army National Guard Orchard Training Area. SWHAs were also marked near Dugway Proving Ground, UT, Navy land holdings in Oregon, and the Rocky Mountain Arsenal (now a Fish and Wildlife Service refuge) in Colorado. The locations of these hawks were monitored on their North American breeding grounds, Argentinean wintering grounds, and along migration routes. Results of the satellite telemetry study revealed that large numbers of this species, in fact thousands at a time, were being killed on their South American

wintering grounds.

In January of 1996, scientists visited different areas indicated by the satellite derived location data. They counted over 4,000 dead SWHA, killed as an apparent side effect of pesticide applications to croplands, and these scientists believed the actual mortality numbers may have exceeded 20,000. Since adults represented nearly 90% of the dead birds and the entire Canadian SWHA population is estimated between 20-40,000 pairs, this loss represented a serious threat to the survival of the species.

If turned out that this catastrophic population decline resulted from the use of a toxic organophosphate pesticide, recently brought into use on the pampas of Argentina where these hawks winter in communal roosts.

Through the use of remote tracking and monitoring technology, this environmental problem was identified and, within 18 months, remedied through collaborative government and private sector management and education. Keeping this raptor off the endangered species list saved millions of federal dollars by avoiding costly large-scale research and recovery programs and related habitat management activities in North America. This application of wildlife tracking via satellite is a perfect demonstration of the unique advantage this technology can provide in the study of a wide ranging species.



Swainson's Hawks outfitted with a satellite PTT



**The following reports explain the decline of the Swainson's hawk.
There is no mention of crop selection as being harmful to the hawk.**

...And followed them to Argentina. Once there, they discovered mass die-offs of Swainson's Hawks, at times finding piles of over 1000 dead individuals (Woodbridge et al. 1995, Goldstein et al. 1997). One individual banded in Butte Valley was discovered among the dead. The die-offs were caused by monocrotophos, an organophosphate pesticide used on several crop types to control insect outbreaks (Woodbridge et al. 1995, Goldstein et al. 1997). As much as 5% of the global Swainson's hawk population may have died as a direct result of these poisonings in that one year alone. (Goldstein et al. 1997). (Briggs, 2007)

The American Bird Conservancy explains the situation: *"In the 1990s, these amazing hawks showed an alarming decline in population in the western United States. This decline was traced to heavy mortality on their wintering grounds. An estimated 35,000 birds had died in Argentina in one season alone, carpeting the ground with dead birds in some places. This represented fully 5% of all Swainson's Hawk in the world at the time. This disastrous die-off turned out to be due to the toxic pesticide monocrotophos, which was used to control insects in sunflower fields. The hawks were eating poisoned grasshoppers and dying in huge numbers. Although this pesticide was removed from use in the U.S. in 1989, it was still widely used in Latin America."* (ABC). (An added note: Mexico is currently the largest importer of the insecticide monocrotophos in the world). (American Bird Conservancy 2013)

"Monocrotophos caused notable bird kills elsewhere, including an incident in Argentina where 100,000 birds were killed after one heavy application in 1996". (wired/2013)

Survival estimates demonstrated a strong quadratic effect, with survival decreasing from 1979 through 1996, and increasing thereafter, when monocrotophos was limited. (Briggs 2007)

And Today: March 2017:

Hal Cohen's blog shows staggering numbers of the birds this year (2017). On March 18, 3,713 hawks– the most spotted in one day ever. Hawkwatch is just 73 hawk-sightings away from the highest recorded number of hawks in the region ever.

He chocks up the high volume of birds to rising Swainson's hawk populations globally.

Cohen explained that pesticides decimated the hawk population in the 1990s. "Across the board, Swainson's hawks are starting to do pretty darn well." (Hal Cohen 2017)

30
Winters resident
Bruce Guelden
August 30, 2017

- 30-1 Thank you for submitting comments. The comment suggests that the Conservancy has not presented the findings of the report titled *A Proposed Conservation Strategy for the Swainson's Hawk in Yolo County* (Estep 2015). This is not accurate. As noted by the comment, this report was commissioned by the Conservancy. It is explicitly referenced in the following locations in the Draft HCP/NCCP: Section 5.7.6.2, *Beneficial Effects* (page 5-78); Section 6.3.4.6.3, *Species-Specific Goals and Objectives* (page 6-57); Section 6.4.1.8.2, *Swainson's Hawk* (page 6-95); and Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat* (page 7-57). This report was relied upon by the Conservancy in the development of the HCP/NCCP conservation strategy for Swainson's hawk, as described in Section 6.3.4.6, *Swainson's Hawk*, of the Draft HCP/NCCP, as well as the strategy for addressing a potential future regional loss of Swainson's hawk, as described in Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat*, of the Draft HCP/NCCP. Draft HCP/NCCP Section 6.3.4.6, *Swainson's Hawk*, (page 6-56) outlines the HCP/NCCP conservation strategy goals and objectives specific to the Swainson's hawk, including the maintenance of crop types that support Swainson's hawk (Objective SH1.1) and the protection and establishment of nest trees (Objective SH1.3 and Objective SH1.5). This approach was adopted from a recommendation made in the Estep report. Draft HCP/NCCP Section 6.5.6.3.6, *Swainson's Hawk* (page 6-176), describes the proposed approach for Swainson's hawk and crop cover type monitoring in the same manner suggested in the Estep report. Draft HCP/NCCP Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat* (page 7-57), describes the proposed approach for developing a landowner incentive program if foraging habitat falls below certain acreage thresholds. Both the landowner incentive program and the specific thresholds identified in Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat*, of the Draft HCP/NCCP are derived from the findings of the Estep report. As described above, the findings of the report are already integrated into the HCP/NCCP. Additionally, all documents referenced in the HCP/NCCP, including the abovementioned report, are available upon request. The HCP/NCCP presents all relevant and current findings. No further changes are merited.
- 30-2 This comment refers to the report: *A Proposed Conservation Strategy for the Swainson's Hawk in Yolo County* (Estep 2015).

The comment provides a number of quotes from the Estep report that recognize that the Swainson's hawk population is high in Yolo County and that the current agricultural landscape in Yolo County provides suitable habitat for Swainson's hawk. The comment provides additional information that speaks to the success of Swainson's hawk populations within Yolo County. The HCP/NCCP species account for Swainson's hawk (Appendix A.6) provides data that is consistent with these statements.

The comment includes the following quote from the Estep report: "The impacts of implementing the HCP/NCCP would have a relatively minor effect on the Swainson's hawk population" and goes on to imply that in this statement Mr. Estep is expressing his concern that the HCP/NCCP is an "over-reach." The comment is mischaracterizing the statement and does not provide important context. This quote was taken from the section of the Estep report that describes how the proposed covered activities may adversely impact Swainson's hawk populations. The Estep report states that the amount of suitable habitat loss is relatively small and that assuming a mitigation ratio of 1:1, a replacement acre of suitable habitat would be acquired, protected, and managed to provide suitable conditions for Swainson's hawk for every acre of suitable agricultural land removed, "Thus, the impacts of implementing the HCP/NCCP would have a relatively minor effect on the Swainson's hawk population." This statement substantiates the finding that implementation of the HCP/NCCP will be beneficial for Swainson's hawk populations rather than adverse.

The comment also states that “Estep questions the [Conservancy] plan for trying to solve a problem that doesn’t exist.” The Conservancy does not agree with this interpretation of the content of the Estep report. The Estep report does not question the HCP/NCCP, rather it was commissioned by the Conservancy to inform the conservation strategy. The Swainson’s hawk has been listed by the California Fish and Game Commission as a threatened species throughout its range. The Estep report concludes, among other things, that the Swainson’s hawk nesting population in Yolo County is the densest nesting population reported within the range of the species. It is one of 12 species for which the HCP/NCCP, if adopted and permitted, would provide important conservation.

The comment states: “In the final 6 pages of his report, James Estep proposes his own plan that is more pragmatic. This is the backbone of the Estep report. His suggestion is to simply monitor the hawk on a 5-year basis. That is all...just monitor the hawk.” This mischaracterizes the report which recommends a multi-faceted approach that has been integrated into the proposed HCP/NCCP. For example, the following language appears on page 10 of the report: *“the goal of the strategy can be generally stated as follows: Develop and implement a strategy that preserves sufficient agricultural and natural landscapes to protect the Swainson’s hawk nesting population and that is not inconsistent with maintaining an economically viable agricultural landscape in Yolo County.”*

- 30-3 This comment includes a statement that the Estep report is the most current and detailed report written on the Swainson’s hawk in Yolo County. The Conservancy concurs that the report provides valuable analysis. The comment asserts that the Estep report “was not well received by the [Conservancy] planners.” The Conservancy finds no basis for this comment. To the contrary, the recommendations of the report were used to develop the HCP/NCCP conservation strategy for Swainson’s hawk (see response to Comment 30-1). The comment notes that Mr. Estep was never asked to present his report to the Executive Board or specifically identified as an agenda item open to public discussion. The report is a public document and available to any interested party. It was not commissioned as a stand-alone report but was utilized extensively in developing the final proposed conservation strategy. The conservation strategy has been presented to the Board and to multiple interested parties and stakeholders. The Conservancy held nine public meetings on the Public Draft HCP/NCCP throughout Yolo County at which the conservation strategy was discussed and public comments were received.

The comment states that the HCP is required by regulation to include the most current scientific findings available and is required to present all findings but failed to do so. The Conservancy does not agree and the record does not support this conclusion. As has been demonstrated in these responses and elsewhere, the HCP/NCCP reflects the best available scientific data. The fact that the HCP/NCCP has incorporated included the findings of Estep report supports this.

The comment notes that “Without question, Estep’s proposal would dramatically simplify the [HCP/NCCP] and reduce the cost by millions.” The Estep report is the foundation of the conservation strategy upon which Chapter 8 (Cost and Funding) is based. The proposed plan has been extensively negotiated with the permitting agencies to reflect the best possible plan, that will balance all required considerations, and can be feasibly funded.

- 30-4 This comment suggests that the Conservancy: 1) decided not to discuss the findings of the Estep report and 2) has withheld this report from public and outside government review.

The findings made in the Estep report have been incorporated into the HCP/NCCP (see response to Comment 30-1 for specific examples). The Public Review Draft HCP/NCCP was made available during the 90-day public comment period which took place from June 1, 2017 through August 30, 2017. During this period, the HCP/NCCP was made available electronically on the Conservancy’s website, in hardcopy form at five public libraries and at the Conservancy’s office. The HCP/NCCP was available to any interested party on flash drive free of charge, and provided in printed form for the cost of printing.

The Conservancy has not made any attempts to withhold the Estep report. This document is part of the public record and has been available on the Conservancy's website since July 2013 as Appendix H of a prior Administrative Draft of the HCP/NCCP. The Estep report was posted on the Conservancy's website (<https://www.yolohabitatconservancy.org/documents>) as a standalone document on August 2, 2017.

This comment also states that "If the [Conservancy] insists on discounting the Estep report, then they should justify their action by submitting additional consultants' reports that dispute the Estep findings." The Conservancy does not dispute the Estep report. The Conservancy has incorporated the recommendations of the report in the HCP/NCCP (see response to Comment 30-1).

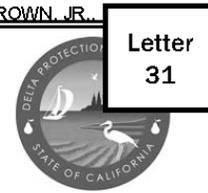
- 30-5 The comment notes that the HCP/NCCP appears to be a reasonable compromise to a very complex system of government regulations. The comment summarizes points conveyed in the previous comments. See responses to comments 30-1 through 30-4 above.

The comment noted that they included Mr. Estep's report with their letter, however the report was not attached. As stated above, the report can be found via a link on the documents page of Conservancy website (<https://www.yolohabitatconservancy.org/documents>), with the direct web address for the report being https://docs.wixstatic.com/ugd/8f41bd_2d607d3d589c4855af8aefada3677216.pdf

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY

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Honorable Susan Talamantes Eggman
California State Assembly

Honorable Cathleen Gaigiani
California State Senate

August 30, 2017

Shawna Stevens
Assistant to the Director
Yolo Habitat Conservancy
611 North Street
Woodland, CA 95695

Re: Draft Yolo Habitat Conservation Plan/Natural Community Conservation Plan and Related Draft Environmental Impact Statement/Environmental Impact Report (SCH# 2011102043)

Dear Ms. Stevens:

Thank you for providing the Delta Protection Commission (Commission) the opportunity to review the Draft Yolo Habitat Conservation Plan/Natural Community Conservation Plan and Related Draft Environmental Impact Statement/Environmental Impact Report (Project). The Project is a comprehensive, county-wide plan to conserve 12 sensitive species and the natural communities and agricultural land on which they depend.

The Commission is a state agency charged with ensuring orderly, balanced conservation and development of Delta land resources and improved flood protection. The Project is subject to the Commission's land use jurisdiction because it is located in the Primary Zone of the Legal Delta and meets the definition of "development" as described in Public Resources Code Section 29723(a). State law requires local government general plans in the Primary Zone to be consistent with the Commission's Land Use and Resource Management Plan (LURMP). The Commission has found the Yolo County General Plan to be consistent with the LURMP. Local government actions concerning development projects in the Primary Zone can be appealed to the Commission.

The Commission is supportive of projects that protect the natural resources of the Delta while preserving agriculture as a critical part of the region's economy. We appreciate the Conservancy's efforts to review the Project for compliance with LURMP policies, particularly those related to agriculture, biological resources, flood protection, and recreation. We urge the Conservancy to prioritize use of existing public lands for habitat and to consider incentives for

31-1

31-2

Page 2
August 30, 2017

private landowners to provide habitat where possible.

Thank you for the opportunity to provide input. Please contact Blake Roberts, Senior Environmental Planner, at (916) 375-4237 for any questions regarding the comments provided.

31-2
cont.

Sincerely,



Erik Vink
Executive Director

cc: Oscar Villegas, Yolo County Board of Supervisors and Commission Vice Chair

31 **Delta Protection Commission**
Erik Vink, Executive Director
August 31, 2017

- 31-1 Thank you for submitting comments. The comment is a summary statement noting that the HCP/NCCP is subject to the Delta Protection Commission's (Commission's) land use jurisdiction. The comment also identifies that the Commission has found the Yolo County General Plan to be consistent with the Commission's Land Use and Resource Management Plan (LURMP). These statements are not comments on the Draft HCP/NCCP or the Draft EIS/EIR, although the content of both of these documents is in alignment with the information in the comment. No additional response is necessary.
- 31-2 The comment expresses appreciation for the Conservancy's efforts to review the HCP/NCCPs compliance with the LURMP and expresses preferences regarding general approaches to natural resources protection. The Conservancy will take the Commission's suggestions into consideration during both implementation of the HCP/NCCP (if approved) and other Conservancy activities beyond the HCP/NCCP. The comment does not address the content of the Draft HCP/NCCP or the Draft EIS/EIR and no additional response is necessary. See also response to comment 19-13.

Letter
32

August 31, 2017

TO: Petrea Marchand, Executive Director, Yolo Habitat Conservancy

FROM: Steven Greco, Professor, Department of Human Ecology, UC Davis
YHC Advisory Committee member

RE: Review comments on the Yolo HCP/NCCP Public Review Draft

My comments and recommendations fall into main two categories: content and minor edits to the text. The content comments have more substantial weight in terms of importance to conservation while the text edits improve clarity and accuracy of the report. Throughout my comments I refer to the Yolo HCP/NCCP Public Review Draft as 'the Plan.' Overall, the portions of the Plan that I reviewed look good as a first draft and it is well-written, but it could be improved with consideration of the following points.

32-1

Content comments:

1. Chapter 1, Section 1.1.2: Add a description of the RCIS in addition to the LCP.

32-2

2. Chapter 2, p. 2-31: Replace the term "Grassland" with "California Prairie"

32-3

3. Chapter 2, Figure 2-8, Woodland and Forest Natural Communities map: the map is missing two important valley oak woodland natural community areas in Yolo County located at Nelson's Grove near Highway 113 (south of the Cache Creek bridge crossing) and the Fremont Weir State Wildlife Area.

32-4

4. Chapter 5, Section 5.9 Critical Habitat, pp. 5-104 to 5-105: Critical habitat is only addressed for the California tiger salamander (CTS). If new critical habitat areas are designated for other listed species covered under the plan (e.g., giant garter snake and yellow-billed cuckoo), how does the Plan incorporate those in the future? Will the plan be amended to reflect these new areas in Yolo County? The report should state how future critical habitat designations will be incorporated into the Plan. This issue should also be addressed in Section 7.7.1.2 (Changed Circumstances) if it rises to this level of importance.

32-5

5. Chapter 6: The most serious omission in the Plan is the sheer lack of any goals and objectives for the natural community of "valley oak woodland" (VOW). The VOW natural community provides important habitat for 30-40% of the covered species in the Plan and it is, arguably, the one of the most impacted natural communities in the entire county by human land uses. The extent of valley oak woodland has been greatly

32-6

diminished in the California's Central Valley since European settlement began in the mid-1800s. The historical geographic extent of valley oak woodland in the Sacramento Valley, the northern portion of the Central Valley, was 584,773 ha as mapped and measured by the Bay Institute (1998; p. 2-30). Within this area, only 5,967 ha currently remains (CDFWVCMF & GIC, 2013) thus indicating that 99% of the historical valley oak woodlands have been removed and replaced by human land uses in the Sacramento Valley. Within the San Joaquin Valley (the southern portion of the Central Valley) approximately 95% of historical valley oak woodlands have been lost (Kelley, Phillips, & Williams, 2005). According to the California Wildlife Habitat Relationship system database (CDFW 2014) the VOW natural community provides high quality habitat for the western burrowing owl (early successional stages), the Swainson's hawk (late successional stages) and white-tailed hawk (early and late successional stages), and medium quality habitat for the California tiger salamander. The VELB may also benefit from the VOW natural community since elderberry savanna is closely associated with upland valley oak in a topographic sequence. Once the VOW natural community type is added to the Plan it should be cross-referenced in the various sections of chapter 6 that deal with each of the four or five listed (plan-covered) species this natural community would benefit. For example, on p. 6-127, the planting of nest trees for Swainson's hawk and white-tailed kite should include a discussion of the role of VOW for these species' reproductive habitat. The VOW natural community deserves more effective conservation treatment in the Plan and should be added to the Conservation Strategy in Chapter 6, Section 6.3.3. There really is no rational basis for excluding it; to me it seems to be a glaring error of omission.

32-6

6. Chapter 6, Section 6.3.2, pp. 6-29 to 6-34: Related to the comment above, a valley oak woodland (VOW) "stepping stone" corridor should be designated on the Yolo-Brentwood soil association between Cache Creek and Putah Creek and the Sacramento River. This corridor of dispersed valley oak trees should be shown on the "Ecological Corridors" map in Chapter 6. The recent draft of Chapter 2 of the Yolo RCIS/LCP provides a strong rationale for this corridor based on genetics and several cited studies (see Grivet et al. 2007, 2008; Gugger et al. 2013; also see p. 2-64 of the draft RCIS/LCP).

32-7

7. Chapter 6, Section 6.3.4.8.2, pp. 6-60: Footnote numbers 10 and 12 can be replaced by a published paper (see Greco 2013 in the references section of this review) that documents these facts. Footnote number 13 can be replaced by another published paper (see Greco and Larsen 2014 in the references section of this review). It also should be noted that if cottonwood trees can be permitted to grow or are planted in a large block through a restoration effort in the Yolo Bypass, especially in the area near the Putah Creek Sinks, or in the Cache Creek Settling Basin-- these would provide prime locations for future yellow-billed cuckoo reproduction and foraging. The Greco and Larsen (2014) paper also

32-8

- discusses the need for constructing upland refugia islands in the Yolo Bypass for giant garter snakes to mitigate for flooding of the bypass that causes mortality of the snakes. I'd be glad to provide pdf copies of these articles if desired. 32-8

- 8. Chapter 7, Section 7.7.1.2 (Changed Circumstances), p. 7-45: The list of changed circumstance types (e.g., New species listings, climate change, etc.) imply that the following sections should fall under it. Therefore the following sections numbering should be changed from 7.7.1.3 (New species listing) to 7.7.1.2.1; and 7.7.1.4 (climate change) to 7.7.1.2.2; and so on up to 7.7.1.10 (Regional Loss...) to 7.7.1.2.8. I realize this is a rather fine point of report organization, but worth mentioning. 32-9

- 9. Chapter 7, Section 7.7.1.10 (Regional Loss of Swainson's Hawk Habitat), p. 7-57: In the first paragraph it talks about the foraging needs only, however, nesting and the presence of suitable nesting trees is also an important consideration (see next comment). 32-10

- 10. Chapter 7, Section 7.7.1.10 (Regional Loss of Swainson's Hawk Habitat), p. 7-58: The second bullet describes the need to monitor ag land conversions and it might be worth mentioning that two important resources are the Dept. of Conservation's Farmland Mapping Program and the DWR land use mapping program. The fourth bullet talks about nest trees and a future risk of a "lack of suitable nest trees." The Yolo-Brentwood soil association ecological corridor (discussed above in comment #6) would be a perfect place to retain nest trees or plant new nest trees and should be discussed in the fourth bullet. 32-11

Report text edits and clarifications comments:

- 1. Contents page i: ES.8.2 and ES.8.3: replace commas with colons 32-12

- 2. Contents page i: add RCIS to 1.1.2 LCP section 32-13

- 3. Section 6.3.2, pp. 6-31, 33, 41: Throughout Chapter 6, figures 6-3 and 6-4 (the Ecological Corridors map and the Alkali Prairie map) are consistently cited mistakenly or reversed. Do a search and replace of all instances of both figures in the Plan and verify their proper use. Also switch their current respective locations in the report to match the text. 32-14

- 4. Section 10-3, p. 10-2: Remove the bullet "University of California, Davis" and please use my full formal first name "Steven" for my name entry at the top. 32-15

- 5. Section 11, p. 11-6: In the References section, "Grecco" is misspelled, it should be "Greco." 32-16

References Cited

- Bay Institute. (1998). From Sierra to the sea: the ecological history of the San Francisco Bay-Delta watershed. San Rafael, CA - The Bay Institute of San Francisco.
- California Department of Fish and Wildlife (CDFW) and the California Interagency Wildlife Task Group (CIWTG). (2014). California Wildlife Habitat Relationships (CWHR), Version 9.0, personal computer program. California Department of Fish and Wildlife, Sacramento, CA.
- CDFWVCMP & GIC (California Department of Fish and Wildlife Vegetation Classification and Mapping Program & Geographical Information Center). (2013). Fine-Scale Riparian Vegetation Mapping of the Central Valley Flood Protection Plan Area, Final Report. Chico - Geographical Information Center, California State University.
- Greco, S. E., and E. W. Larsen. (2014). Ecological design of multifunctional open channels for flood control and conservation planning. *Landscape and Urban Planning* 131:14-26. DOI: 10.1016/j.landurbplan.2014.07.002
- Greco, S. E. (2013). Patch Change and the Shifting Mosaic of an Endangered Bird's Habitat on a Large Meandering River. *River Research and Applications* 29(6): 707-717.
- Kelly, P. A., Phillips, S. E., & Williams, D. F. (2005). Documenting ecological changes in time and space: The San Joaquin Valley of California. In E. A. Lacey & P. Myers (Eds.), *Mammalian Diversification: From chromosomes to phylogeography; a celebration of the career of James L. Patton*. Berkeley - UC Publication in Zoology.

**32 Professor in the Dept. of Human Ecology, UC Davis and Conservancy Advisory Committee member
Steve Greco
August 31, 2017**

- 32-1 Thank you for submitting comments. This comment provides an introduction to the letter. See responses to specific comments below. No additional response is necessary.
- 32-2 The comment requests a revision to Draft HCP/NCCP Section 1.1.2, *Background*, to describe the RCIS. The Conservancy has made this revision in the proposed Final HCP/NCCP.
- 32-3 The comment requests a revision to page 2-31 to replace “grassland” with “California prairie”. The Conservancy has made this revision in the proposed Final HCP/NCCP.
- 32-4 The comment states that Figure 2-8 is missing two oak woodland natural community areas. The Conservancy will update the land cover mapping during HCP/NCCP implementation.
- 32-5 The comment asks how future critical habitat designations will be incorporated into the HCP/NCCP. Critical habitat designations are relevant only to projects with a federal nexus, which triggers a process under Section 7 of the Endangered Species Act to determine whether the project would adversely modify critical habitat. When the USFWS approves an HCP, they must undergo an internal Section 7 consultation to ensure that authorizing the requested take would not adversely modify existing critical habitat. After the HCP is completed, future critical habitat designations do not affect the HCP, but may affect projects within the Plan Area that have a federal nexus. Under the no surprises assurances provided by an HCP, USFWS will not require additional conservation for a Covered Species if critical habitat is designated for that species in the future.
- 32-6 The comment expresses concern that the HCP/NCCP does not include a strong oak woodland conservation component. The HCP/NCCP focuses on natural communities and species that would be impacted by Covered Activities under the HCP/NCCP, and very little oak woodland would be affected. The Conservancy is also preparing the Yolo RCIS/LCP to address conservation for additional natural communities and species, including oak woodland. The Yolo RCIS/LCP places a strong emphasis on oak woodland conservation in Yolo County.
- 32-7 The comment requests that a valley oak woodland corridor be shown between Cache Creek and Putah Creek on the Sacramento River. The Conservancy has added this as an ecological corridor to Figure 6-4 in the proposed Final HCP/NCCP.
- 32-8 The comment requests revisions to cited published papers. The Conservancy has made these revisions in the proposed Final HCP/NCCP. The comment also requests modification to the HCP/NCCP to reflect that restoring large blocks of cottonwood trees in select locations within the Yolo Bypass would provide prime locations for western yellow-billed cuckoo. This information has been added to Section 6.4.2.4, *Valley Foothill Riparian Natural Community*, of the proposed Final HCP/NCCP. The comment states that the Greco and Larsen (2014) paper also discusses the benefit of providing mounded refugia for giant garter snake in the Yolo Bypass. The Conservancy staff have added a reference to this paper to the discussion of this measure in Section 6.4.3.6.4, *Giant Garter Snake*, of the proposed Final HCP/NCCP.
- 32-9 The comment points out an error in formatting in Chapter 7. The Conservancy has revised the formatting in the proposed Final HCP/NCCP to correct this error.
- 32-10 This comment refers to language in Draft HCP/NCCP Section 7.7.1.10, *Regional Loss of Swainson’s Hawk Habitat*, and points out that loss of nesting trees is important as well as loss of foraging habitat. This comment is noted, however, this section of the HCP/NCCP was meant to specifically

address conversion of agricultural lands to orchards and vineyards, which is not subject to County ordinance or controls and could threaten Swainson's hawk foraging habitat in the future.

- 32-11 The comment provides some suggested additional points to be made in Section 7.7.1.10, *Regional Loss of Swainson's Hawk Habitat*, of the Draft HCP/NCCP. The Conservancy has added language to the proposed Final HCP/NCCP to address these suggestions.
- 32-12 The comment identifies grammar edits. The Conservancy has made these revisions in the proposed Final HCP/NCCP.
- 32-13 The comment suggests a clarifying edit. The Conservancy has made this revision in the proposed Final HCP/NCCP.
- 32-14 The comment identifies various errata. The Conservancy has made these revisions in the proposed Final HCP/NCCP.
- 32-15 The comment identifies various errata. The Conservancy has made these revisions in the proposed Final HCP/NCCP.
- 32-16 The comment identifies a spelling error. The Conservancy has made this revision in the proposed Final HCP/NCCP.

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