

## **ORDINANCE NO. 35-2003**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING CHAPTER 16.130 OF THE ELK GROVE MUNICIPAL CODE RELATING TO SWAINSON'S HAWK IMPACT MITIGATION FEES**

The City Council of the City of Elk Grove does ordain as follows:

#### **Section 1. Purpose.**

The purpose of this ordinance is to amend Chapter 16.130 of the Elk Grove Municipal Code related to Swainson's Hawk Impact Mitigation Fees.

Section 2: 16.130.010 of Chapter 16.130, Title 16 is hereby amended to read as follows:

#### **16.130.010 PURPOSE AND INTENT.**

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

The City has identified, in consultation with the California Department of Fish and Game, that suitable foraging habitat for Swainson's Hawk in established land conservation programs in Sacramento County and also exists in agricultural and open lands currently not part of a conservation program. The City finds that an impact mitigation fee, as established pursuant to this Chapter, will provide funds to acquire available land with suitable Swainson's Hawk foraging habitat values. Such acquisition will create mitigation for the loss of this habitat through real property acquisition in fee or through conservation easements to facilitate the expansion of land conservation programs which include the preservation and management of Swainson's Hawk foraging habitat.

The City Council recognizes that mitigation for foraging habitat for the Swainson's Hawk is only feasible when replacement habitat is provided within the known foraging radius for the hawk. In order to provide adequate mitigation for the loss of Swainson's Hawk foraging habitat under CEQA through the collection of a mitigation fee, the City Council deems it necessary to expand the scope of this mitigation fee program to parcels located within the geographical foraging radius of the Swainson's Hawk that are owned and/or managed by a conservation organization where the location of mitigation parcels and the conservation organization are acceptable to the Department of Fish and Game.

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

The City Council specifically recognizes that land which is within the Urban Services Boundary but the boundaries of which are within one mile of a Swainson's Hawk nest, which nest is located beyond the Urban Services Boundary, represents an impact which would be more appropriately mitigated on a case by case basis. Therefore the provisions of this Chapter shall not be applicable as mitigation for impacts resulting from the approval of changes in land use designations or for the grant of land use entitlements on parcel(s) within the Urban Services Boundary of the County, which are within one mile of a Swainson's Hawk nest, which nest is located beyond the Urban Services Boundary. (SCC 1107 § 1, 1998; SCC 1093 § 1, 1997.)

Section 3: 16.130.030 of Chapter 16.130, Title 16 is hereby amended to read as follows:

**16.130.030 APPLICABILITY.**

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

(1) to any request for a change in land use designation from an Agricultural Designation to an Urban Designation, or

(2) to any request to subdivide five (5) acres or more of contiguous land zoned AR-1 or AR-2, or

(3) to any request for a land use entitlement for a non-agricultural use of land zoned with an Agricultural Designation or

(4) to any request for a land use entitlement for a non-agricultural use of land five (5) acres or more in size zoned AR-1 or AR-2, or

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

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

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

(3) the underlying parcel(s) for the request are identified through the CEQA process, based on the DFG "Staff Report regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California" ("Staff Report"), to provide suitable Swainson's Hawk foraging habitat, and

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

Section 4: 16.130.080 of Chapter 16.130, Title 16 is hereby amended to read as follows:

**16.130.080 USE OF IMPACT MITIGATION FEE FUNDS.**

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

(b) Monies from said fund shall be transferred pursuant to the terms and conditions acceptable to DFG and the City of Elk Grove. Monies from said fund shall be used for the specific acquisition of lands, in fee simple or through a conservation easement.

(c) Pursuant to the terms and conditions of said Agreement, said lands shall be held in perpetuity for Swainson's Hawk foraging habitat. (SCC 1093 § 1, 1997.)

Section 5: 16.130.050 of Chapter 16.130, Title 16 is hereby repealed:

Section 6: 16.130.100 of Chapter 16.130, Title 16 is hereby repealed:

Section 7: 16.130.120 of Chapter 16.130, Title 16 is hereby repealed:

Section 8: CEQA

This action qualifies as a Section 15308, Class 8 Exemption; Actions by Regulatory Agencies for the protection of the environment.

Section 9: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 10: Severability


If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

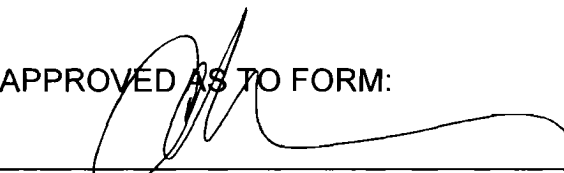
Section 11: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 17<sup>th</sup> day of September 2003.

  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:  
  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:  
  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**Effective Date: October 17, 2003**

**AYES:** Scherman, Soares, Briggs, Leary  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** Cooper