February 14, 2003

Supervisor Illa Collin, Chair
Sacramento County Board of Supervisors
700 H St.
Sacramento, CA. 95814

RE: Mitigation for County Airport Destruction of Trees, Wetlands, and Endangered Species Habitat on County Property

Dear Chairperson Collin,

I am writing on behalf of Friends of the Swainson’s Hawk, Sierra Club – Mother Lode Chapter, Environmental Council of Sacramento, Sacramento Audubon Society, Habitat 2020, and Urban Creeks Council.

In April, 2002, it was discovered that County staff had removed approximately 100 trees on County Airport buffer land in Natomas Basin, outside of the Airport fence, including three Swainson’s Hawk nest trees protected by the California Endangered Species Act. The locations of the nesting trees were known to Airport management, who had earlier received the 2001 Annual Survey of Nesting Swainson’s Hawks in Natomas Basin, by the Natomas Basin Conservancy. In May 2002, the County was discovered to be illegally filling Prichard’s Lake marsh, which is occupied habitat of Giant Garter Snake, a species protected by the Federal and State Endangered Species Acts. Federal and State regulatory agencies then discovered that the County had illegally bulldozed another 20 – 30 acres of jurisdictional wetlands, Jacobs Slough, and occupied Giant Garter Snake habitat. The County’s actions violated Federal and State law and the Airport’s own adopted Wildlife Hazards Management Plan.

On June 14, 2002, our organizations sent a letter to the Board of Supervisors asking the Board to take prompt actions to remediate and mitigate, summarized below:

a. Discipline and redirect employees responsible for these actions.
b. Purchase at least 900 acres of additional buffer land adjacent to Airport, to be managed for wildlife habitat values compatible with airport needs.
c. Manage Airport buffer lands for habitat values compatible with Airport needs.
d. Restore filled wetlands.
e. Replant trees at sites of recent tree removals.
f. Join the regional habitat conservation plan in the Natomas Basin

g. Suspend all removals of trees on County lands in Natomas Basin.

h. County Board of Supervisors should pass a resolution stating that it is the policy of the Board to protect trees on County-owned property, and that tree removal is not a routine maintenance activity.

Our letter of June 14, 2002, emphasized that “It is extremely important that the County act quickly to rectify its very serious mistake.” (Id., p. 7.) We asked that the County “please respond in writing within two weeks.” Representatives of the environmental organizations thereafter talked to several Supervisors, top-level staff of the County and County Airport, representatives of U.S. Fish and Wildlife Service, California Department of Fish and Game, U.S. Army Corps of Engineers, Regional Water Quality Control Board, and FAA.

It has been ten months since we first brought these issues to the County’s attention in April 2002. The County has not responded to the June 14, 2002, letter. There has been some progress by Airport staff. The illegal fill in Prichards Lake has been removed and a restoration proposal submitted to the wildlife agencies. Resolution of other issues languishes. Delay simply compounds the negative impacts of the actions, and creates more problems for the County. These issues will not disappear with the passage of time.

The status of matters, and our assessment of where the County is on these issues, appears to us to be as follows:

The County has removed fill illegally placed at Prichard’s Lake, and has said that it will restore the Prichards Lake wetland and create or restore as-yet undetermined additional wetland areas as mitigation, which is required by law. Restoration or creation of wetlands requires specialized knowledge and expertise that is not common within the engineering community. Re-doing a failed wetland restoration can be very expensive. We strongly urge that the County promptly retain a consultant with a proven track record of successful restoration of wetlands, and that the restoration project, after approval by the Federal and State regulatory agencies, commence this Spring.

The County’s illegal filling of wetlands and bulldozing of occupied habitat of endangered species at Jacobs Slough is the subject of criminal investigations by the Law Enforcement Divisions of the U.S. Fish and Wildlife Service and the Federal EPA. We believe that the County’s illegal actions were intended to avoid future regulatory requirements by surreptitiously remove wetlands and endangered species in the path of potential runway extension. Regardless of pending criminal investigations, the County’s liability is clear, and the County should now plan for removal of illegal fill and mitigation, including the restoration or creation of additional wetlands in Natomas Basin, required by law to compensate for temporal loss of wetlands.

The Airport, in its letter of December 5, 2002, to Banky Curtis, Regional Manager, California Department of Fish and Game, has proposed to establish a DFG-approved conservation easement affecting 496 acres of County-owned Airport buffer lands bounded on the east by Powerline Rd, on the north by a dirt road extension of Del Paso Blvd, and by Garden Highway, to be farmed with crops compatible with foraging needs of Swainson’s Hawk. Conservation easements are also proposed for 31 parcels, formerly residential, between the
Garden Highway and the Sacramento River, west of Powerline Road, next to the larger proposed conservation easement. These easements would permanently prohibit future development. Trees would be planted where appropriate on the 31 parcels west of the Garden Highway. Much of that area is heavily forested now, and well-populated with nesting sites of Swainson’s Hawks. The riverside tree plantings, which we support, will not undo the damage resulting from the loss of 100 trees from the interior of the Basin.

The proposed conservation easements are highly commendable and are strongly supported by the environmental organizations. It should be noted, however, that these easements basically retain the existing use of the properties, which does not offset the losses caused by the County’s actions. County proposes to pay a maintenance fee to CDFG to maintain foraging values on the conservation easement lands. We believe that a locally-based steward with knowledge of local conditions might be better, including the Natomas Basin Conservancy or the Sacramento Tree Foundation.

The conservation easements do not remediate the County’s removal of nearly 100 trees within the interior of the Basin. In recent years, some landowners in Natomas Basin have removed trees from their properties in the mistaken hope that pre-development removal of habitat will avoid mitigation requirements if their lands are later developed. This practice has impacted Swainson’s Hawks and other bird species. The County’s tree removals have worsened the problem, and set an undesirable example to be emulated by private landowners. Private landowners on parcels within one mile of the destroyed nesting trees will now likely argue that their hoped-for future development projects should have reduced mitigation responsibilities because the nesting sites are gone. The cumulative impacts of these nest site removals are not trivial.

Remediation of the environmental impacts of tree removals must include planting of numerous trees on County property within the interior of the Basin, outside of the Airport fence. Our suggestion is that trees, native to the area and suitable for the location, be planted alongside existing canals on County Airport buffer land, north of Elverta Road and south of I-5, set back from the canal edge to avoid blocking drainage. Reclamation District 1000 maintains most canals from one side only. Therefore trees can be planted on the opposite side without interfering with canal maintenance and access. There were formerly many more trees alongside the canals than at present. Trees can also be planted alongside roads. Planting with sufficient spaces between trees would alleviate concerns about trees allegedly concealing undesirable activities. The trees would need to be stewarded for several years until established, and would likely thrive because of good growing conditions in the Basin. Our suggestion is planting of several hundred or more trees, which takes tree mortality into account. The Sacramento Tree Foundation has the expertise to assist the Airport in such a tree-planting effort, and is eager to find planting sites for native trees north of the American River.

Mitigation should also include dedication of another conservation easement on County land paralleling Garden Highway, between Elverta Road and Rio Ramaza. A strip of that land, approximately 1/2 mile wide, is currently farmed in crops suitable as Swainson’s Hawk foraging habitat. It has no development value due to low-flying jets directly overhead.
We also suggest locking the gates on the dirt roads on Airport property, which are usually left unlocked except during the rainy season. Locking the gates would alleviate much of the alleged concern about “security”, claimed as a reason for the tree removals.

We are disappointed that the County intends to acquire no lands for habitat to mitigate for impacts of the nest tree removals. A private developer, Metro Air Park, agreed to acquire 200 acres for Swainson’s Hawk foraging habitat to mitigate for the removal of one Swainson's Hawk nest tree under the Metro Air Park HCP. It is highly unfair for the County to exempt itself from the mitigation required of private developers who obey the law. Of particular benefit would be acquisition of land south of I-5 and east of Powerline Road, which would also protect the Airport approach area from urban encroachment. The County will eventually want to acquire this land to prevent inappropriate urban development which would generate issues of aircraft-related noise and safety that may impede the Airport’s plan to greatly increase the number of flights. These landowners are now seeking inclusion within the City’s Sphere of Influence for future urban development, and there is no reason to expect the City to refuse. The landowners will pressure to develop the area for housing, because there will much more demand for housing than for commercial use in the foreseeable future. If not acquired now, these lands will be much more expensive in the future.

The County is in no position to try to compromise or delay further on restoration and mitigation. The County’s own adopted Airport Wildlife Hazard Plan clearly identifies the Airport’s responsibility to contact wildlife agencies and obtain permits for any activities affecting wetlands and protected species, including Swainson’s Hawks and Giant Garter Snakes. Airport personnel made no effort to obtain permits. The varying reasons given for the operations are irrelevant in the absence of compliance with law and the County’s own policies. Reasons given for the damage have been inconsistent, lacking documentation, and in some cases completely lacking credibility.

Imperiled Giant Garter Snakes and Swainson’s Hawks pose no threat to Airport operations. Maintenance of properly-managed habitat, (other than open water during the waterfowl migration season), in conjunction with agriculture, on buffer lands outside of the Airport fence, poses no hazard to aircraft, and fulfills the County’s responsibility to maintain its lands for the public trust. Fortunately, Airport staff and the FAA recognize this and are now supportive of maintaining habitat values and helping to protect those rare species on Airport buffer lands. However, substantial measures needed to remediate and mitigate for the damage are not yet done. What remains is for the Chair of the Board to keep staff closely on track and expeditiously finish the job of remediation and mitigation. My clients wish to meet with you to discuss what remains to be completed.

Very Truly Yours,

James P. Pachl

cc: Rob Leonard, Assist. Airport Director
Greg Rowe, Sr. Environmental Analyst, Airport
Ron Remple, Deputy Director CDFG
Banky Curtis, Regional Director CDFG
Vicki Lee (Sierra Club)
Andy Sawyer (ECOS)
Tim Fitzer (Habitat 2020)
Alta Tura (Urban Creeks Council)
Mary Bisharat (Audubon)
Kevin McRae (Friends Of the Swainson’s Hawk)
Roberta Gerson, U. S. Fish & Wildlife Service