

DEPARTMENT OF FISH AND GAME**OFFICE OF THE GENERAL COUNSEL**

1416 J STREET
P.O. BOX 4209
SACRAMENTO, CA 94244-2090
(916) 654-3821



July 14, 2003

RECEIVED

JUL 17 2003

Office of the County Administrator
Sutter County

Larry T. Combs
County Administrative Officer
Sutter County Administrative Office
1160 Civic Center Blvd.
Yuba City, California 95993

Re: 2003 Natomas Basin Habitat Conservation Plan California Endangered
Species Act Incidental Take Permit

Dear Mr. Combs,

At your request, enclosed are two original copies of the incidental take permit (ITP) issued to the County of Sutter (Sutter) under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) by the Department of Fish and Game on July 10, 2003. The Department issued the ITP to Sutter pursuant to Fish and Game Code section 2081 based on the Final Natomas Basin Habitat Conservation Plan dated April 2003 (2003 NBHCP). The Department issued similar permits to the City of Sacramento and the Natomas Basin Conservancy on the same day.

Sutter's ITP becomes effective under CESA once Sutter signs the acknowledgement on the last page of the permit and returns one of the duplicate originals, along with the signed acknowledgment, to my attention at the Department's Office of the General Counsel. In addition, the ITP is not effective until the Department executes Sutter's original copy of the related implementation agreement (IA) for the 2003 NBHCP. Please contact me once Sutter signs the ITP acknowledgement to coordinate a convenient time and place for the Department to execute the IA.

If you have any questions regarding this letter or Sutter's ITP, please contact me at the address above or I can be reached at (916) 651-7648.

Sincerely,

A handwritten signature in black ink, appearing to read "J. H. Mattox", written over a horizontal line.

JOHN H. MATTOX
Staff Counsel

Enclosure



California Department of Fish and Game
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
California Endangered Species Act
Incidental Take Permit No. 2081-2003-018-02
COUNTY OF SUTTER
2003 NATOMAS BASIN HABITAT CONSERVATION PLAN

Authority:

This California Endangered Species Act ("CESA") incidental take permit ("permit") is issued by the Department of Fish and Game ("Department") pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, subdivision 3, chapter 6, article 1, commencing with section 783. CESA prohibits the take¹ of any species of wildlife that is included in the list of endangered species, the list of threatened species, or the list of candidate species². However, the Department may authorize, by permit, the take of such species if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), are met.

Permittee:

County of Sutter

Contact person: Larry Combs, Chief Administrative Officer
Mailing address: 1160 Civic Center Blvd., Suite A
Yuba City, CA 95993

Agent for service of process: Larry Combs

¹Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

²"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list of threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

Project Location:

The Natomas Basin Habitat Conservation Plan dated April 2003 ("2003 NBHCP") is a conservation plan covering 53,537 acres of the Natomas Basin in northern Sacramento County and southern Sutter County. The area covered by the 2003 NBHCP is bounded on the west by the Sacramento River levee, on the north by the Natomas Cross Canal, on the east by the Natomas East Main Drainage Canal, and on the south by the American River levee. Where the Natomas Basin is defined by a levee, it extends from the toe of the levee away from the waterway. In this permit, the terms "Natomas Basin" or "Basin" are used as a specific reference to the land that is included in the 2003 NBHCP plan area as defined.

In addition to this permit for the County of Sutter ("Sutter" or "permittee"), the Department is also relying on the 2003 NBHCP to issue an incidental take permit to the Natomas Basin Conservancy and to amend a 1997 management authorization issued to the City of Sacramento. This permit, however, is limited to that portion of the Basin that lies within the jurisdictional boundaries of Sutter. This area is subsequently referred to in this permit as the "Sutter permit area."

The 2003 NBHCP and Implementation Agreement for the Natomas Basin Habitat Conservation Plan ("IA") signed by Sutter in June 2003, describe in greater detail the location of the Natomas Basin and the Sutter permit area; these descriptions are incorporated by reference into this permit.

Project Description:

The 2003 NBHCP is a multi-jurisdictional, multi-species, 50-year plan intended to protect 22 Covered Species and other biological resources within the Natomas Basin by minimizing and mitigating impacts on those species and their habitats. The conservation strategy detailed in the 2003 NBHCP and this permit are based on a limitation of urban development within the Basin to 17,500 acres, including a limit on Sutter development within the Basin of 7,467 acres. To fund protection of habitat, a mitigation fee will be paid by developers and landowners when they obtain development permits from Sutter, with revenue from the fees used to acquire, enhance and manage habitat for the Covered Species. The operating conservation program, along with the activities by Sutter covered by this permit, are fully described in the 2003 NBHCP and IA, and these descriptions are incorporated here by reference.

Covered Species:

This permit covers the following species that are listed under CESA as

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COUNTY OF SUTTER

threatened or endangered:

Name	Status ³
<u>Birds</u>	
1. Bank swallow (<i>Riparia riparia</i>)	ST
2. Swainson's hawk (<i>Buteo swainsoni</i>)	ST
<u>Reptiles and amphibians</u>	
1. Giant garter snake (<i>Thamnophis gigas</i>)	ST
<u>Plants</u>	
1. Boggs Lake hedge-hyssop (<i>Gratiola heterosepala</i>)	SE
2. Sacramento Orcutt grass (<i>Orcuttia viscida</i>)	SE
3. Slender Orcutt grass (<i>Orcuttia tenuis</i>)	SE

The following species are also covered in the 2003 NBHCP and this amended permit, but are not presently protected under CESA: Aleutian Canada Goose (*Branta canadensis leucopareia*), tricolored blackbird (*Agelaius tricolor*), northwestern pond turtle (*Clemmys marmorata marmorata*), white-faced ibis (*Plegadis chihi*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), western spadefoot toad (*Scaphiopus hammondi*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), Midvalley fairy shrimp (*Branchinecta mesovallensis*) Vernal pool fairy shrimp (*Branchinecta lynchi*), Vernal pool tadpole shrimp (*Lepidurus packardii*), california tiger salamander (*Ambystoma californiense*), Colusa grass (*Neostaphia colusana*), Delta tule pea (*Lathrus Jepsonii* ssp. *Jepsonii*), Legenere (*Legenere limosa*), and Sanford's arrowhead (*Sagittaria Sanfordii*).

The species listed above, including both those listed under CESA and those that are not presently listed, are referred to in this permit as "Covered Species."

Impacts to Covered Species:

Land use development in the Sutter permit area could result in impacts to as many as 7,467 acres of habitat for the Covered species. Individuals of the Covered Species may be incidentally taken as a result of mortality during construction; project-

³Refers to status under CESA. Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. All other species are "unlisted."

caused habitat losses; project-caused changes in the habitat that make the species more vulnerable to competition, disease or predation; take during trapping and relocation of individuals from the project site; and take during habitat restoration and management activities and monitoring. Impacts to these species are more fully described in the 2003 NBHCP and the Final Environmental Impact Report/Environmental Impact Statement dated April 2003, and these descriptions are incorporated here.

Effective Date and Expiration Date of the Permit:

This permit shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by applicant (see below) and returned to the Department's Office of the General Counsel, and upon execution of the IA by the Department. Unless renewed by the Department, this permit's authorization to take the Covered Species shall expire on July 10, 2053.

Incidental Take Authorization:

The Department authorizes the County and its employees, contractors, and agents to incidentally take Covered Species within the Sutter permit area in carrying out activities identified in the IA and in Chapter 1, Section N.1, of the 2003 NBHCP, subject to the limitations described in this section and the conditions of approval identified below. This authorization also applies to landowners and developers with land use projects within the Sutter permit area, subject to the conditions and limitations on such use that are set forth in the 2003 NBHCP and IA. The permit does not authorize any intentional take of Covered Species, take of Covered Species from activities outside the scope of the project as described above, or take of Covered Species resulting from a violation of the permit.

The permit authorizes the incidental take of each Covered Species that is currently listed as a threatened or endangered species pursuant to CESA, or is a candidate for such listing. For any Covered Species that is not listed or a candidate for listing under CESA at the time this permit is issued ("unlisted Covered Species"), incidental take will be authorized as of the date the species is accepted as a candidate species pursuant to Fish and Game Code section 2074.2 or is listed as threatened or endangered pursuant to Fish and Game Code section 2076.5 provided the Department confirms in writing that substantial evidence demonstrates the permit continues to meet the standards in Fish and Game Code section 2081(b) and (c) and in the California Code of Regulations, Title 14, section 783.4 for that species. In the event the Department confirms there is evidence demonstrating the standards are still being met, no amendment of the permit will be required and incidental take of the previously

unlisted Covered Species is authorized by this permit. If the Department cannot confirm that permit issuance standards are still being met, Sutter will need to apply for an amendment to this permit or for a new permit if it needs to obtain take authorization for the previously unlisted Covered Species. In considering such an application, the Department will accept and give due consideration to the minimization and mitigation measures in this permit, and will make reasonable efforts to review and process the application to ensure, to the extent it can consistent with CESA, that take authorization for the previously unlisted Covered Species is provided in a timely manner. To the extent permitted under CESA, the Department shall consider this permit when determining whether to recommend that an unlisted Covered Species be listed as threatened or endangered under CESA.

Conditions of Approval:

The Department's issuance of this permit and permittee's authorization to take the Covered Species are subject to permittee's compliance with and implementation of the following conditions of approval:

- 1) Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this permit or adopted thereafter.
- 2) Permittee shall fully implement and adhere to the 2003 NBHCP and the IA signed by Sutter. Except as provided in these conditions of permit approval, in the event of a conflict between the requirements of the 2003 NBHCP and the IA, the terms of the IA shall control as provided in section 8.10 of the IA.
- 3) Permittee shall implement and adhere to requirements in Attachment 3, the Mitigation Monitoring and Reporting Program ("MMRP"). The MMRP is a tool to assist the Department in determining whether the mitigation measures contained in the 2003 NBHCP are being successfully implemented, and as such it summarizes requirements of the 2003 NBHCP and IA, identifies the party responsible for implementing each requirement, and sets forth the time period for implementation of the requirements. In the event of any conflict between a requirement set forth in the MMRP and the terms of the IA and 2003 NBHCP, the IA and 2003 NBHCP shall control. Furthermore, an omission from the MMRP of certain requirements from the IA and 2003 NBHCP does not relieve the permittee of its obligation to comply with all the terms of the IA and 2003 NBHCP.
- 4) Permittee shall provide Department representatives with reasonable assistance in gaining access to lands within the area covered by the 2003 NBHCP and shall otherwise fully cooperate with Department efforts to verify compliance with or

effectiveness of the permit's mitigation measures and other requirements of the 2003 NBHCP and IA.

- 5) Pursuant to 14 C.C.R. section 783.6, subdivision (c)(2), the Department may revise the permit at any time without the concurrence of Sutter if the Department determines that an amendment is required by law. Circumstances that would trigger such an amendment include, but are not limited to, those that result in a Department determination that continued use of the permit will jeopardize the continued existence of a Covered Species. Revision of the permit in response circumstances triggering an amendment by the Department as a matter of law may include, but is not limited to, a requirement that Sutter convert habitat reserve land in rice production under the 2003 NBHCP to upland habitat reserves.
- 6) Sutter shall limit urban development within its permit area to 7,467 acres as described in the 2003 NBHCP.

Compliance with Other Laws

This permit contains the Department's requirements of Sutter for specified land use changes within the Sutter permit area. This permit does not necessarily create an entitlement for Sutter or landowners and developers within the Sutter permit area to proceed with activities covered by this permit. The permittee is responsible for complying with all other applicable state, federal, and local laws.

Notices

Written notices, reports and other communications relating to this permit shall be delivered to the Department by first class mail at the following addresses, or at addresses the Department may subsequently provide the permittee. Notices, reports, and other communications should state the name of the permittee, the project, and the permit number (2081-2003-018-02)

Original with all attachments to:

Regional Manager
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2900
(916) 358-2912 (fax)

Copies of notice/correspondence without attachments to:

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COUNTY OF SUTTER
NATOMAS BASIN HABITAT CONSERVATION PLAN

Office of the General Counsel
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

And:

Chief
Habitat Conservation Planning Branch
Department of Fish and Game
1416 Ninth Street, Suite 1260
Sacramento, CA 95814

Unless Sutter is notified otherwise, the Department's Regional Representative for purposes of addressing issues that arise during implementation of permit conditions is the Habitat Conservation Planning Supervisor, who can be reached at (916) 358-2382.

Attachments:

ATTACHMENT 1	Department CESA Findings
ATTACHMENT 2	Department CEQA Findings
ATTACHMENT 3	Mitigation Monitoring and Reporting Program

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME ON
JULY 10, 2003.



for RON REMPEL, DEPUTY DIRECTOR
Habitat Conservation Division

APPROVED AS TO FORM:


MICHAEL R. VALENTINE, General Counsel

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ACKNOWLEDGMENT

The undersigned: 1) warrants that he or she is acting as a duly authorized representative of the permittee, 2) acknowledges receipt of this permit, and 3) agrees on behalf of the permittee to comply with all terms and conditions of the permit.

Signed:  Date: 7/21/03

Printed Name: Harry T. Combs Title: CAO