



County of Yolo

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**ROBYN TRUITT DRIVON
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TO: Chair Mary Kimball and Members, Yolo County Planning Commission

FROM: Robyn Truitt Drivon, County Counsel
Philip J. Pogledich, Senior Deputy County Counsel

DATE: November 12, 2009

SUBJECT: A draft ordinance establishing limited County regulation of certain habitat projects undertaken as compensatory mitigation, and a separate draft ordinance requiring notice to the County of certain other habitat projects

RECOMMENDED ACTIONS

- 1. RECEIVE** a staff presentation regarding the draft ordinances attached hereto, which establish a use permit requirement for certain habitat projects undertaken as compensatory mitigation (**Attachment A**), and require the proponents of certain other habitat restoration, creation, and enhancement projects to participate in a non-binding County review process (**Attachment B**);
- 2. HOLD** a public hearing to receive comments from the public regarding the draft ordinances and any related issues; and
- 3. RECOMMEND** that the Board of Supervisors (a) adopt each ordinance with any changes recommended by the Planning Commission, and (b) find that adoption of each ordinance is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines §§ 15307 (actions by regulatory agencies for protection of natural resources), 15308 (actions by regulatory agencies for protection of the environment), and Public Resources Code § 15061(b)(3) (the “common sense” exemption).

REASONS FOR RECOMMENDED ACTIONS

On July 9, 2009, the Planning Commission held a public hearing on a draft ordinance authorizing County regulation of certain wetland restoration, creation, and enhancement projects (hereinafter, “wetland projects”). It recommended that the Board of Supervisors adopt the ordinance with various minor revisions recommended by the Planning Commission. Subsequently, the Board of Supervisors conducted a public workshop to consider the ordinance on September 15, 2009. It directed staff to revise the ordinance in the manner described more fully in the following section of this staff report. Under California law, the Planning Commission must review the revised ordinance—which has been converted into two distinct ordinances for administrative convenience—and provide a further recommendation to the Board of Supervisors.

BACKGROUND

At the conclusion of a public hearing on July 9, 2009, the Planning Commission recommended that the Board of Supervisors adopt a draft ordinance regulating certain wetland habitat projects. The Board considered the draft ordinance, including edits recommended by the Planning Commission, at a public workshop on September 15, 2009. A copy of the Board letter (w/o attachments) from that workshop is included as **Attachment C** hereto. The workshop was attended by a number of interested parties that also participated in the “stakeholder group” process organized by this office, including representatives of Ducks Unlimited, California Audubon, Yolo Audubon, Yolo Basin Foundation, and the California Waterfowl Association. After a staff presentation, comments by representatives of these entities, and considerable debate, the Board directed staff to revise the draft ordinance to incorporate three principal changes:

- Limit the use permit requirement to habitat projects undertaken as compensatory mitigation for impacts to habitat or other biological resources located outside of the County, as well as other habitat projects arising from activities impacting out-of-County biological resources (such as implementation of the Bay-Delta Conservation Plan (“BDCP”));
- Add an exemption from the use permit requirement for entities that enter into a memorandum of understanding (“MOU”) or similar agreement with the County that addresses the implementation of compensatory mitigation projects; and
- Require the proponents of other types of habitat creation, restoration, and enhancement projects—such as those undertaken voluntarily or to mitigate for impacts to habitat located inside of the County—to provide the County notice of such projects and allow a reasonable time for the County to provide non-binding comments and suggestions;

Each of these changes is discussed in the following section, together with a handful of other significant edits that are intended to help implement the direction of the Board. A redlined version of the ordinance previously considered by the Planning Commission on July 9, 2009, is also included as **Attachment D**.

ANALYSIS

A. The Change in Scope: A Focus on Out-of-County Mitigation.

As noted, the revised ordinance regulating habitat mitigation projects (hereinafter, the “Habitat Mitigation Ordinance”) focuses exclusively on various types of projects undertaken in connection with activities impacting habitat and other biological resources outside of the County. The first page of the Habitat Mitigation Ordinance contains two definitions that reflect this change in scope: a definition of “compensatory mitigation,” and a definition of “covered habitat mitigation project.” The definition of “covered habitat mitigation project” is the more important of the two, and reads in full as follows:

Sec. 8-2.____. Covered Habitat Mitigation Project.

A “covered habitat mitigation project” is any mitigation bank or other project undertaken as compensatory mitigation, as well as habitat restoration, creation, or enhancement activities

undertaken as part of such projects. A “covered habitat mitigation project” also includes all other habitat restoration, creation, enhancement, or preservation activities carried out within the County in connection with projects or other actions impacting habitat or biological resources in locations outside of the County. This includes, but is not necessarily limited to, projects that implement actions described in a Habitat Conservation Plan/Natural Communities Conservation Plan or in a biological opinion issued by the United States Fish and Wildlife Service.

As revised, the Habitat Mitigation Ordinance applies a use permit requirement to most “covered habitat mitigation projects.” However, exemptions in the ordinance draft considered by the Planning Commission on July 9 have been retained, and a new exemption has been added (as requested by the Board) relating to MOUs. That exemption appears on p. 8, and it reads as follows:

Any covered habitat mitigation project(s) undertaken by a person that enters into a Memorandum of Understanding or similar written agreement with the County addressing the implementation of such project(s). No such agreement shall be valid unless it is approved by the Board of Supervisors following a noticed public hearing based upon a finding that the agreement is consistent with the purposes of this Chapter.

Accordingly, the MOU exemption is not intended to offer a “free pass” to project proponents, but is instead intended as an alternate means of satisfying the purposes of the Habitat Mitigation Ordinance.

The Board directed these changes at the close of the September 15, 2009 public workshop in response to concerns about the “overly broad” scope of the draft ordinance. In particular, the Board appeared concerned with arguments by various parties that the ordinance would unduly complicate and possibly jeopardize an array of wetland restoration and similar habitat projects undertaken by non-profit groups (e.g., Ducks Unlimited, Yolo Basin Foundation). The Board concluded that such projects are generally unrelated to the main concern that it seeks to address with the ordinance: the potential for a dramatic increase in the conversion of land in the County to habitat as an externality of projects and activities that impact habitat and biological resources in other jurisdictions. These edits respond to the Board’s direction on this point.

B. Other Significant Changes Reflected in the Habitat Mitigation Ordinance.

In addition to the changes described in Section A, staff have also made a number of other edits to the Habitat Mitigation Ordinance to carry out the Board’s direction and otherwise improve upon the ordinance. Briefly, the most significant of those edits are the following:

- A definition of the term “habitat” is proposed for inclusion in Titles 8 and 10 of the Yolo County Code (see pp. 2 and 6);
- Revisions to the exemption for upland and riparian habitat creation, restoration, and enhancement projects, which has been clarified to reflect that oak woodlands, vernal pools, and native grasslands are included (see p. 8);
- A statement that reports and studies required as part of a use permit application should be uniform for applications that are similar in nature, but may vary to the extent that features of a

proposed project or the characteristics of a project site and surrounding lands are unique (see p. 9); and

- Various edits that increase the regulatory significance of an inconsistency between the developing Yolo Natural Heritage Program and a proposed habitat project. An inconsistency would now preclude “automatic approval” of a habitat project unless there is substantial evidence that the inconsistency would not be significant (pp. 10-11).

While none of these edits were directly requested by the Board, staff believes that they promote the basic intentions of the Board and are therefore appropriate for consideration.

C. The Notice and Consultation Ordinance.

At the conclusion of the September 15 workshop, the Board indicated that staff should revise the ordinance so that other habitat projects—i.e., those not undertaken as compensatory mitigation for impacts to habitat in other jurisdictions—would be obligated only to comply with a notice and non-binding consultation process rather than a discretionary permitting process. This approach is intended to ensure an opportunity for the County to comment on proposed habitat projects early in their development, when appropriate suggestions for reducing potential land use conflicts, etc., can be addressed. At the same time, it is also intended to minimize the regulatory burden on the proponents of such projects.

During the process of revising the Habitat Mitigation Ordinance, it became clear to staff that this aspect of the Board’s direction should be incorporated into a separate ordinance. Staff expect that the public will have an easier time understanding and complying with the notice and consultation requirements if they are included in a concise article in the Yolo County Code (instead of within the much more lengthy new chapter dedicated to the Habitat Mitigation Ordinance). According, this approach is reflected in Attachment B. [Note that the agenda for the Planning Commission meeting was released before the notice and consultation requirements were placed into a separate ordinance, and the agenda thus describes these requirements as part of the Habitat Mitigation Ordinance.]

SUMMARY OF AGENCY COMMENTS

As the Planning Commission is aware, various draft ordinances relating to habitat projects have been reviewed by the Planning and Public Works Department, Parks and Resources Department, and Agricultural Commissioner, as well as the other public and private entities referenced in prior staff reports (as well as in Attachment C hereto). The draft ordinances included with this staff report were initially made available for public review on November 2, 2009, and no comments have been received as of the date of preparation of this staff report.

ATTACHMENTS

- Attachment A—Draft Habitat Mitigation Ordinance
- Attachment B—Draft Notice and Consultation Ordinance
- Attachment C—September 15, 2009 Board letter (w/o attachments)

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Attachment D—Redlined comparison of Attachment A with the draft considered by the Planning Commission
on July 9, 2009

ATTACHMENT A

DRAFT

ORDINANCE NO. __ - __

An Ordinance Regulating Habitat Mitigation Projects

The Yolo County Board of Supervisors hereby ordains as follows:

Section One. Findings and Authority.

[Appropriate findings will be included in the draft submitted to the Board of Supervisors for consideration on December 8, 2009.]

Section Two. Definitions. The following definitions shall be added to Title 8, Chapter 2, of the Yolo County Code:

Sec. 8-2.____. Compensatory Mitigation.

“Compensatory mitigation” means the preservation of habitat for the purpose of compensating for unavoidable impacts to one or more habitat types resulting from projects or other actions occurring in locations outside of the County, whether as part of a mitigation bank or otherwise.

Sec. 8-2.____. Covered Habitat Mitigation Project.

A “covered habitat mitigation project” is any mitigation bank or other project undertaken as compensatory mitigation, as well as habitat restoration, creation, or enhancement activities undertaken as part of such projects. A “covered habitat mitigation project” also includes all other habitat restoration, creation, enhancement, or preservation activities carried out within the County in connection with projects or other actions impacting habitat or other biological resources in locations outside of the County. This includes, but is not necessarily limited to, projects that implement actions described in a Habitat Conservation Plan/Natural Communities Conservation Plan or in a biological opinion issued by the United States Fish and Wildlife Service.

Sec. 8-2.____. Create or Creation.

“Create” or “creation,” in the context of a habitat project, shall mean to construct or otherwise introduce new habitat area, functions, and values by excavating, flooding, or otherwise altering land not currently or historically occupied by such habitat.

Sec. 8-2.____. Enhance or Enhancement.

“Enhance” or “enhancement,” in the context of a habitat project, shall mean to rehabilitate a degraded or disturbed natural habitat area to bring back one or more functions or values that have been partially or completely lost due to natural causes or actions such as

draining, grading, or other land uses and activities. Any project that changes the function or values of an existing habitat type so that it more closely resembles the natural (i.e., prior to disturbance by human activities) or historic condition of a site shall be considered a habitat enhancement project for the purposes of this Ordinance.

Sec. 8-2.____. Habitat.

“Habitat” shall mean the environmental factors that support one or more plant or wildlife species at a particular place or region, providing food, water, cover, and space needed for survival and reproduction.

Sec. 8-2.____. Preserve or Preservation.

“Preserve” or “preservation” means the permanent protection of ecologically important habitat resources through the implementation of appropriate legal and physical mechanisms, including but not limited to conservation easements.

Sec. 8-2.____. Restore or Restoration.

“Restore” or “restoration,” in the context of a habitat project, shall mean to restore lost habitat area, generally by excavating, flooding, and otherwise manipulating the physical, chemical, or biological characteristics of a site with the goal of reestablishing the natural or historic habitat values and functions of that area.

Section Three. Minor Use Permit Required. A minor use permit, as that term is defined in Yolo County Code Section 8-2.270.9, shall be required for any covered habitat mitigation project of 40 acres or less. Accordingly, the following sections of the Yolo County Code shall be amended to include this requirement by adding an appropriately-lettered subsection followed by the words “Covered habitat mitigation projects of 40 acres or less, pursuant to Title 10, Chapter 10 of this Code”:

- Section 8-2.404 (Agricultural Preserve)
- Section 8-2.504 (Agricultural Exclusive)
- Section 8-2.604 (Agricultural General)
- Section 8-2.614 (Agricultural Industry)
- Section 8-2.1914 (Public Open Space)
- Section 8-2.1922 (Open Space)

Section Four. Major Use Permit Required. A major use permit, as that term is defined in Yolo County Code Section 8-2.270.3, shall be required for any covered habitat mitigation project of more than 40 acres. Accordingly, the following sections of the Yolo County Code shall be amended to include this requirement by adding an appropriately-lettered subsection followed by the words “Covered habitat mitigation projects of more than 40 acres pursuant to Title 10, Chapter 10 of this Code”:

- Section 8-2.404.5 (Agricultural Preserve)

- Section 8-2.504.5 (Agricultural Exclusive)
- Section 8-2.604.5 (Agricultural General)

In addition, the following sections shall be added to the Yolo County Code, shall be entitled “Major Use Permit,” and shall identify “Covered habitat mitigation projects of more than 40 acres , pursuant to Title 10, Chapter 10 of this Code” as a major conditional use in subsection (a) or (b) thereof, as appropriate:

- Section 8-2.614.5 (Agricultural Industry)
- Section 8-2.1914.5 (Public Open Space)
- Section 8-2.1922.5 (Open Space)

Section Five. Addition of Chapter 10 to Title 10 of the Yolo County Code. The following Chapter is added to Title 10 of the Yolo County Code:

Chapter 10. Habitat Mitigation Ordinance

Article 1. Title and Purposes.

Sec. 10-10.101. Title.

This Chapter shall be known as the “Habitat Mitigation Ordinance” of the County.

Sec. 10-10.102. Purposes.

The County’s land use planning efforts have consistently anticipated that local landowners—often in conjunction with assistance from non-profits and state agencies—will voluntarily undertake a modest amount of habitat creation, restoration, enhancement, and preservation actions. Similarly, the County has long coordinated urban development and related land use planning matters with the incorporated cities of Woodland, Davis, Winters, and West Sacramento. Projects within these jurisdictions have occasionally impacted biological resources, and the County intends to continue to accommodate the preservation of land in the unincorporated area as compensatory mitigation for such local habitat impacts.

In the foreseeable future, however, the County expects that the unincorporated area will increasingly be the subject of compensatory mitigation projects and similar efforts that arise in connection with impacts to biological resources occurring outside the geographic boundaries of the County. Such projects include mitigation banks with service areas extending far beyond the County—of which there are already a number—as well as various other endeavors to create, restore, enhance, and preserve habitat as a consequence of projects and activities occurring in locations outside of the County. These projects are the focus of this Chapter, while other purely local preservation and mitigation efforts are generally outside of its scope.

In conjunction with the provisions of Title 8 of the Yolo County Code, this Chapter provides for limited County regulation of certain habitat projects taking place within the County in connection with projects and activities occurring outside of the County. Such compensatory

mitigation projects are unique in many respects. For example, wetland habitat projects can provide important habitat areas for fish, wildlife, and plants. They can also help maintain and enhance water quality, facilitate groundwater recharge, mitigate flooding, and control erosion. Some wetland habitat projects can also provide educational, scientific study, and recreational opportunities. The same is true of other types of habitat projects undertaken as compensatory mitigation. For these and other reasons, such compensatory mitigation projects can thus be a significant asset to the environment and the general public so long as they adequately replace the habitat area, values, and functions lost due to urban development or other projects or activities.

To assure these projects benefit the County and do not unduly interfere with its land use planning efforts or the eventual implementation of the Yolo Natural Heritage Program, careful planning is necessary. Attention to matters of location, design, construction, and long-term monitoring and management is essential. Particularly for larger projects, early consideration of ways to integrate appropriate educational, recreational, scientific, and other opportunities is also desirable. Finally, the potential local and regional environmental impact of habitat projects—such as the conversion of farmland and existing species habitat, as well as conflicts with surrounding land uses and activities—deserves close attention and consideration.

Accordingly, this Chapter is intended to promote the foregoing objectives and to achieve the following purposes:

- (a) To help ensure that compensatory mitigation projects undertaken in connection with out-of-county projects and actions are located, constructed, and managed in a manner that is consistent with the General Plan and the developing Yolo Natural Heritage Program, compatible with surrounding land uses to the extent feasible, and sensitive to the need for a strong local economy, the protection of existing biological resources, flood protection, vector control, and other appropriate local and regional concerns.
- (b) To encourage the proponents of such habitat projects—particularly large compensatory mitigation projects—to design and implement projects that achieve multiple environmental and community objectives, and that include management plans or similar means of ensuring the responsible management of such projects over time.
- (c) To expand opportunities for the County and interested citizens to participate in the process of reviewing such habitat projects by establishing a permitting process that includes public hearing requirements and other opportunities for public input.
- (d) To continue to encourage wildlife-friendly agricultural practices and voluntary habitat restoration and preservation efforts, and to continue to accommodate other habitat projects undertaken in connection with habitat impacts arising from local projects and actions. .

Nothing in this Chapter is intended to restrict or in any way affect or impair the agricultural use of land within the County. In some cases, state and federal laws may regulate

certain types or characteristics of projects covered by this Chapter. This Chapter shall be construed to provide the County with the maximum control consistent with such other laws.

Article 2. Definitions

For the purposes of this Chapter, the following terms shall have the meanings stated below:

Sec. 10-10.201. Agriculture or Agricultural.

“Agriculture” or “agricultural” shall have the meaning set forth in Yolo County Code Section 8-2.208.

Sec. 10-10.202. Applicant.

“Applicant” shall mean a person who files an application for a permit under this Chapter and who is either the owner of the site, a vendee of that person pursuant to a contract of sale for the site, or an authorized agent for either of those persons.

Sec. 10-10.203. Compensatory Mitigation.

“Compensatory mitigation” means the preservation of habitat for the purpose of compensating for unavoidable impacts to one or more habitat types resulting from projects or other actions occurring in locations outside of the County, whether as part of a mitigation bank or otherwise.

Sec. 10-10.204 Covered Habitat Mitigation Project

A “covered habitat mitigation project” is any mitigation bank or other project undertaken as compensatory mitigation, as well as habitat restoration, creation, or enhancement activities undertaken in connection with such projects. A “covered habitat mitigation project” also includes all other habitat restoration, creation, enhancement, or preservation activities carried out within the County in connection with projects or other actions impacting habitat in locations outside of the County. This includes, but is not necessarily limited to, projects that implement actions described in a Habitat Conservation Plan/Natural Communities Conservation Plan or in a biological opinion issued by the United States Fish and Wildlife Service.

Sec. 10-10.205. Create or Creation.

“Create” or “creation,” in the context of a habitat project, shall mean to construct or otherwise introduce new habitat area, functions, and values by excavating, flooding, or otherwise altering land not currently or historically occupied by such habitat..

Sec. 10-10.206. Deciding Authority.

“Deciding Authority” shall mean the public official(s) or County employee with authority to decide an application for a permit under this Chapter.

Sec. 10-10.207. Director.

“Director” shall mean the Director of the Planning and Public Works Department, or his or her designee or successor in function.

Sec. 10-10.208. Enhance or Enhancement.

“Enhance” or “enhancement,” in the context of a habitat project, shall mean to rehabilitate a degraded or disturbed natural habitat area to bring back one or more functions or values that have been partially or completely lost due to natural causes or actions such as draining, grading, or other land uses and activities. Any project that changes the function or values of an existing habitat type so that it more closely resembles the natural (i.e., prior to disturbance by human activities) condition of a site shall be considered a habitat enhancement project for the purposes of this Ordinance.

Sec. 10-10.209. General Plan.

“General Plan” shall mean the adopted General Plan of Yolo County, as may be amended from time to time.

Sec. 10-10.210. Grading.

“Grading” shall have the same meaning as in Appendix J of the California Building Code, 2007 edition, as may be amended from time to time.

Sec. 10-10.211. Habitat.

“Habitat” shall mean the environmental factors that support one or more plant or wildlife species at a particular place or region, providing food, water, cover, and space needed for survival and reproduction.

Sec. 10-10.212. Person.

“Person” shall mean an individual, firm, partnership, corporation, or local agency (as defined in Government Code Section 53090), their successors or assigns, or the agent of any of the foregoing, and shall include any applicant or permit holder under this Chapter.

Sec. 10-10.213. Preserve or Preservation.

“Preserve” or “preservation” means the permanent protection of ecologically important habitat resources through the implementation of appropriate legal and physical mechanisms, including but not limited to conservation easements.

Sec. 10-10.214. Project.

“Project” shall mean the whole of any activity or activities undertaken in connection with creating, enhancing, restoring, or preserving habitat on a site, and shall be interpreted broadly to

include all related activities such as grading, tree or vegetation removal, and the creation, restoration, or enhancement of associated buffer areas.

Sec. 10-10.215. Restore or Restoration.

“Restore” or “restoration,” in the context of a habitat project, shall mean to restore lost habitat area, generally by excavating, flooding, and otherwise manipulating the physical, chemical, or biological characteristics of a site with the goal of reestablishing the natural or historic habitat values and functions of that area.

Sec. 10-10.216. Site.

“Site” shall mean all areas of real property that are within the boundaries of a proposed project, and may include more than one legal parcel.

Sec. 10-10.217. Substantial Evidence.

“Substantial evidence” includes facts, a reasonable assumption predicated upon facts, or expert opinion supported by facts. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous.

Article 3. Permits

Sec. 10-10.301. Permit Requirement; Exemptions.

Subject to the exemptions set forth below, no person shall engage in grading, clearing, or other activities, including the recordation of a conservation easement, with the intent to implement a covered habitat mitigation project without first applying for and receiving a use permit under this Chapter, together with any other approvals required by federal, state, or local law. The following covered habitat projects and other activities shall be exempt from this permit requirement and the other provisions of this Chapter:

- (a) All projects that do not create more than 10 acres of habitat.
- (b) All projects that do not enhance, restore, or preserve more than 40 acres of habitat. This exemption may not be combined with the exemption in subsection (a), above, to exempt any covered habitat mitigation project that creates, enhances, restores, or preserves more than 40 acres of habitat.
- (c) All activities undertaken in connection with, and in furtherance of, the agricultural use of land. This includes, but is not limited to, the construction and maintenance of stock ponds and small reservoirs, tail-water ponds, irrigation canals and sloughs, rice fields, and similar activities. Upon the request of the Director, the County Agricultural Commissioner shall provide a written opinion based on substantial evidence regarding whether an activity or activities are consistent with this exemption. The County Agricultural Commissioner shall use reasonable due diligence in investigating the potential applicability of this exemption, which may

include interviews with the landowner or other responsible party, a visit to the site, and any other appropriate inquiries into the nature of the activities at issue.

- (d) The winter flooding of agricultural fields for the primary purpose of providing temporary habitat for migratory waterfowl, provided such flooding does not occur in a time or manner that prevents or substantially interferes with the reasonable agricultural use of the site or surrounding lands. Upon the request of the Director, the County Agricultural Commissioner shall provide a written opinion based on substantial evidence regarding whether the flooding of a particular site is consistent with this exemption. The County Agricultural Commissioner shall use reasonable due diligence in investigating the potential applicability of this exemption, which may include interviews with the landowner or other responsible party, a visit to the site, and any other appropriate inquiries into the nature of the activities at issue. This exemption shall not apply to any project or activity that includes the construction of new infrastructure for non-agricultural purposes and that requires a County grading permit or a flood hazard development permit.
- (e) Projects undertaken for the primary purpose of flood control, flood protection, or related matters of flood safety and the protection of life and property.
- (f) Riparian, oak woodland, vernal pool, or native grassland/prairie creation, enhancement, restoration, or preservation projects, unless any such covered habitat mitigation project also includes one or more other habitat types that exceed the acreage limits set forth in subsections (a) or (b), above. The proponent of any project that qualifies for this exemption shall provide notice to the County of the proposed project and follow the non-binding consultation procedure set forth in Title 8, Article 5, Chapter 3 of the Yolo County Code if the project is larger than 10 acres (for habitat creation projects) or 40 acres in size (for all other projects).
- (g) Activities that require discretionary approval pursuant to Chapters 3, 4, or 5 of this Title 10.
- (h) Any covered habitat mitigation project that received all necessary County approvals prior to the effective date of this Chapter, or for which a complete application for such approval(s) was submitted prior to effective date (for projects of 160 acres or less only).
- (i) Any covered habitat mitigation project(s) undertaken by a person that enters into a Memorandum of Understanding or similar written agreement with the County addressing the implementation of such project(s). No such agreement shall be valid unless it is approved by the Board of Supervisors following a noticed public hearing based upon a finding that the agreement is consistent with the purposes of this Chapter.

Notwithstanding the foregoing, any expansion or other change to a project previously covered by one or more of these exemptions shall require a use permit if the proposed expansion

or other change would remove the project, viewed as a whole, from the scope of these exemptions.

Sec. 10-10.302. Permit Contents, Processing, and Decisions

- (a) *Applications, generally.* Applications for a use permit under this Chapter shall be submitted to the Director, together with payment of all application fees established by the Board of Supervisors. Except as otherwise provided in this Chapter, all provisions of the Yolo County Code relating generally to use permits shall apply to the review, issuance, and amendment or revocation of permits covered hereunder.
- (b) *Applicant contents.* An application for a use permit shall include all of the following:
 - (i) A completed application for a permit under this Chapter, on a form provided by the County, together with payment of the application fee established by resolution of the Board of Supervisors.
 - (ii) Completed applications for any other required County approvals, such as a grading permit or Flood Hazard Development Permit, together with payment of the application fee(s) established by resolution of the Board of Supervisors. In addition, both with the initial application and thereafter, the applicant shall provide copies of all completed applications for other federal, state, and local approvals associated with the proposed project to facilitate coordination between the County and other agencies.
 - (iii) Appropriate site-specific technical reports, including but not limited to such documents as a biological resources analysis, a hydrology analysis, a geotechnical analysis, and an engineered excavation plan. The types of reports that may be required should be uniform for applications that are similar in nature, but may vary to the extent that the features of a proposed project or the characteristics of the project site and surrounding lands are unique. Upon request, the Director will advise an applicant of the types of reports that should be submitted with a permit application. In some instances, the applicant may be able to satisfy this requirement by providing documents prepared in connection with applications to other federal, state, or local agencies relating to the project.
 - (iv) A site plan showing property lines, assessor's parcel numbers, onsite and adjoining land uses, topography, access, and existing/proposed patterns of vegetation.
 - (v) A proposed management plan that identifies how the project will be operated and managed over time. Among other things, the plan should explain how the project will be actively operated and managed in perpetuity to ensure that its environmental and other benefits are realized on a continuous basis, how vector control issues will be addressed, if

applicable, and how any unanticipated events and impacts to surrounding land uses will be addressed. The proposed management plan shall also include measures to address crop depredation to the extent it is a reasonably foreseeable consequence of the proposed project. The plan should also state whether the operation and management of the project will be supported by an endowment or other established source of funds.

In addition to the foregoing, the Director may require such other and further information relevant to the project as needed to perform appropriate environmental analysis, to determine whether the proposal may affect public health, safety, and welfare, and for other good cause as determined by the Director in his or her sole discretion.

- (c) *Yolo Natural Heritage Program.* In addition to referrals to other County departments, as may be appropriate in the discretion of the Director, all permit applications shall be promptly referred to the Executive Director of the Yolo Natural Heritage Program. The referral shall include a request for comments regarding whether the application is consistent with the Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) or, prior to its adoption, other matters of consistency with the developing HCP/NCCP. The purpose of this provision is to encourage coordination between applicants and the Executive Director, who may also refer the application to his or her staff or to committees participating in the development of the HCP/NCCP. Inconsistency with any drafts or other preliminary versions of the HCP/NCCP is not a basis for denying a permit under this Chapter unless the Deciding Authority determines that any such inconsistency is reasonably expected to significantly conflict with the HCP/NCCP or its implementation following its completion.
- (d) *Deciding Authority.* The Deciding Authority for permit applications shall be as follows:
 - (i) For projects of 40 acres or less, the Zoning Administrator shall be the Deciding Authority.
 - (ii) For projects of more than 40 but less than 160 acres, the Planning Commission shall be the Deciding Authority. For projects that are over 160 acres, the Planning Commission shall act in an advisory capacity to the Board of Supervisors. Acting in such capacity, the Planning Commission shall hold at least one noticed public hearing on the project prior to making a recommendation to the Board of Supervisors. The recommendation of the Planning Commission shall be in writing and shall include a detailed statement of the grounds for the recommendation.
 - (iii) For projects that are 160 acres or more, the Board of Supervisors shall be the deciding authority. The Board of Supervisors shall hold at least one noticed public hearing on the project prior to making a final decision on the application.

- (d) *Decision.* After considering the application materials and, if applicable, the recommendations of County staff and the Planning Commission, the Deciding Authority shall issue, conditionally issue, or deny the application by a written decision supported by findings that address the criteria set forth in Section 10-10.303, below. Due to the unique nature of projects covered by this Chapter, the general conditions that typically apply to the review and approval or denial of a use permit, set forth in Yolo County Code Section 8-2.2804, shall not apply.
- (e) *Costs and expenses.* The applicant shall reimburse all costs and expenses reasonably incurred by the County in reviewing applications under this Chapter, including but not limited to staff time and costs and expenses associated with environmental review. At the discretion of the Director, the applicant may be required to provide a reasonable deposit for such costs, enter into a reimbursement agreement with the County, or both.

Sec. 10-10.303. Decisionmaking Criteria

A permit applied for under this Chapter shall be approved if, taking all feasible mitigation measures, conditions of approval, and other relevant facts into account, the Deciding Authority makes all of the following determinations based on substantial evidence in the record:

- (a) That the project applicant has substantially complied with the requirements of this Chapter, including but not limited to provisions addressing the submission and contents of a management plan;
- (b) That the project would not significantly conflict with surrounding land uses;
- (c) That the project would not have a significant adverse effect on biological resources and, in addition, is not reasonably expected to significantly conflict with the Yolo Natural Heritage Program (HCP/NCCP);
- (d) That the project would not significantly compromise flood safety and the protection of life and property;
- (e) That the project would not have a significant adverse economic effect—either by itself or cumulatively—within the the County or region. This factor shall only be considered for projects that convert more than 160 acres of farmland;
- (f) If the project site is subject to a Williamson Act contract, that the project is an “open space use” under Government Code Section 51201(o) or that it would not otherwise cause a material breach of the contract; and
- (g) That the project would not significantly conflict with other relevant considerations of public health, safety, or welfare, sufficient to require preparation of a statement of overriding considerations pursuant to the California Environmental Quality Act.

Written findings addressing each of these matters shall be prepared in connection with a decision on a permit application.

If the Deciding Authority (other than the Board of Supervisors) finds that a project cannot be approved because one or more of these determinations cannot be made, the permit shall be referred to the Board of Supervisors for consideration at a noticed public hearing. The Board of Supervisors may approve a permit even if it finds that one or more of these determinations cannot be made (with the exception of finding (f), relating to the Williamson Act, which would mandate denial), provided it finds that issuance of the permit is consistent with the purposes of this Chapter. Any decision of the Board of Supervisors following its deliberation of these issues shall include written findings based on substantial evidence that address all of the criteria and other matters set forth above, together with an explanation of any decision to approve or deny a permit.

Sec. 10-10.304. Permit Term; Amendments

- (a) *Term.* The use authorized by a permit issued under this Chapter shall commence within one year, as with other use permits issued under this Code. However, because covered habitat mitigation projects often require numerous federal, state, and local agency approvals that can take a long time to acquire, the Deciding Authority may extend the time to commence the use authorized by a use permit issued under this Chapter for up to an additional four years. Without limiting the discretionary authority of the Deciding Authority with regard to permit extension requests, the Deciding Authority may deny any request for an extension if, in its judgment, the extension would be in conflict with the original intent of the permit or if the applicant has failed to abide by the terms of the permit in any material way. Once the authorized use commences, a permit shall be perpetual in term unless otherwise indicated.
- (b) *Amendments, generally.* An amendment to an existing permit issued under this Chapter shall be required for any significant change to an approved covered habitat mitigation project. This shall include, but is not limited to, any change in the size or operation of an approved project that could have a significant effect on the environment. The Director shall have the discretion to determine whether an amendment to an existing permit is required.
- (c) *Applications for amendments; processing.* Applications for amendments to previously issued permits shall be submitted to the Director on forms provided by the County. An application to amend a previously issued permit shall also be accompanied by the appropriate fee, as established by resolution of the Board of Directors. In addition, the Director may require any or all of the additional information and documents described in Section 10-10.302(b), above, that may be reasonably necessary for consideration of the application. An application for an amendment shall be handled in the same manner as an original permit application, as described in Section 10-10.302(b)-(e), above.

Article 4. Appeals

Sec. 10-10.401. Appeal Procedure

Any decision made pursuant to this Chapter may be appealed pursuant to Yolo County Code Section 8-2.3301, which shall apply to all appeals arising under this Chapter.

Article 5. Violations

Sec. 10-10.501. Generally

Any violation of this Chapter shall be subject to the administrative code enforcement ordinance of the County, set forth in Chapter 5 of Title 1 of the Yolo County Code.

Sec. 10-10.502. Public Nuisance

Any activity in violation of this Chapter or any permit issued hereunder shall be considered a public nuisance. In his or her sole discretion, the Director may refer the public nuisance to the District attorney for civil or criminal action.

Article 6. Periodic Reviews

Sec. 10-10.601 Initial Review

Two years after this Chapter becomes effective or within sixty (60) days of the adoption of the Yolo Natural Heritage Program or the Bay Delta Conservation Plan, whichever is sooner, the Board of Supervisors shall hold a public hearing for the purpose of considering its effectiveness at achieving the purposes set forth in Article 1 hereof. During such hearing, the Board of Supervisors may identify matters that require further consideration and provide appropriate direction to staff. In addition, the Board of Supervisors may direct staff to prepare an ordinance amending, superseding, or deleting this Chapter, and it may take such other actions as may be necessary and appropriate.

Sec. 10-10.602 Future Reviews

Every five years after the initial review under Section 10-10.601, above, the Board of Supervisors shall review this Chapter at a public hearing for the reasons described in that Section, particularly to ensure its continued effectiveness in achieving the purposes described in Article 1.

Section Six. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is held by court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section Seven. **Effective Date.**

This Ordinance shall take effect and be in force thirty (30) days following its adoption and, prior to the expiration of fifteen (15) days after its adoption, it shall be published once in the Davis Enterprise, a newspaper of general circulation, printed and published in the County of Yolo, with the names of the Board members voting for and against the Ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of Yolo, State of California, this __ day of _____, 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

By _____
Mike McGowan, Chair
Yolo County Board of Supervisors

Attest:
Ana Morales, Clerk
Board of Supervisors

Approved as to Form:
Robyn Truitt Drivon, County Counsel

By: _____
Deputy (Seal)

By: _____
Philip J. Pogledich, Senior Deputy

ATTACHMENT B

ORDINANCE NO. __ - _____

An Ordinance of the Yolo County Board of Supervisors Requiring Notice and Consultation on Habitat Projects

The Board of Supervisors (“Board”) of the County of Yolo, State of California, hereby ordains as follows:

SECTION 1. PURPOSE.

The purpose of this Ordinance is to establish a notice and consultation requirement for certain habitat projects. Specifically, this Ordinance covers habitat creation projects of more than 10 acres and habitat enhancement or restoration projects of more than 40 acres unless they constitute “covered habitat mitigation projects,” which are to be regulated by a separate ordinance adopted concurrently herewith. By requiring the proponents of such projects to engage in a notice and consultation process, the Board intends to facilitate County input into the design, construction, and management of such projects with the goal of reducing potential land use conflicts and similar impacts. To avoid having a chilling effect on such projects, however, this Ordinance imposes no fee for County review and requires County departments and the Executive Director of the Yolo Natural Heritage Program to provide all comments within 90 days after submission of a completed notice.

Importantly, the notice and consultation process established by this Ordinance is in addition to other related process and permitting requirements established by local, state, and federal laws. Compliance with this Ordinance is not a substitute for compliance with other legal requirements, including compliance with the California Environmental Quality Act (“CEQA”) for projects that are subject to its provisions. Further, this Ordinance is intended to supplement, not supplant, the rights and responsibilities of the County under other provisions of law, including but not limited to its role as a lead or responsible agency under CEQA for certain projects. Nothing herein shall be interpreted to diminish or otherwise affect the County’s rights and responsibilities in this regard.

SECTION 2. ADDITION OF ARTICLE THREE TO CHAPTER 5 OF TITLE 8 OF THE YOLO COUNTY CODE.

The following Article is added to Chapter 5 of Title 8 of the Yolo County Code:

Article 3. Habitat Project Notice and Consultation Requirements

Sec. 8-5.301. Definitions.

Sec. 8-5.____. Compensatory Mitigation.

“Compensatory mitigation” means the preservation of habitat for the purpose of compensating for unavoidable impacts to one or more habitat types resulting from projects or other actions occurring in locations outside of the County, whether as part of a mitigation bank or otherwise.

Sec. 8-5.____. Covered Habitat Mitigation Project.

A “covered habitat mitigation project” is any mitigation bank or other project undertaken as compensatory mitigation, as well as habitat restoration, creation, or enhancement activities undertaken

as part of such projects. A “covered habitat mitigation project” also includes all other habitat restoration, creation, enhancement, or preservation activities carried out within the County in connection with projects or other actions impacting habitat or other biological resources in locations outside of the County. This includes, but is not necessarily limited to, projects that implement actions described in a Habitat Conservation Plan/Natural Communities Conservation Plan or in a biological opinion issued by the United States Fish and Wildlife Service.

Sec. 8-5.____. Create or Creation.

“Create” or “creation,” in the context of a habitat project, shall mean to construct or otherwise introduce new habitat area, functions, and values by excavating, flooding, or otherwise altering land not currently or historically occupied by such habitat.

Sec. 8-5.____. Enhance or Enhancement.

“Enhance” or “enhancement,” in the context of a habitat project, shall mean to rehabilitate a degraded or disturbed natural habitat area to bring back one or more functions or values that have been partially or completely lost due to natural causes or actions such as draining, grading, or other land uses and activities. Any project that changes the function or values of an existing habitat type so that it more closely resembles the natural (i.e., prior to disturbance by human activities) or historic condition of a site shall be considered a habitat enhancement project for the purposes of this Ordinance.

Sec. 8-5.____. Habitat.

“Habitat” shall mean the environmental factors that support one or more plant or wildlife species at a particular place or region, providing food, water, cover, and space needed for survival and reproduction.

Sec. 8-5.____. Preserve or Preservation.

“Preserve” or “preservation” means the permanent protection of ecologically important habitat resources through the implementation of appropriate legal and physical mechanisms, including but not limited to conservation easements.

Sec. 8-5.____. Restore or Restoration.

“Restore” or “restoration,” in the context of a habitat project, shall mean to restore lost habitat area, generally by excavating, flooding, and otherwise manipulating the physical, chemical, or biological characteristics of a site with the goal of reestablishing the natural or historic habitat values and functions of that area.

Sec. 8-5.302. Generally.

At the earliest reasonable time, and in no event more than 30 days after filing a complete application with another local, state, or federal agency for permits, grant assistance, or other approvals, any person seeking to implement a habitat creation, restoration, or enhancement project that does not constitute a “covered habitat mitigation project” shall provide notice to the County on a form to be provided by the Director. The notice shall include at least the following information:

- (a) A description of the proposed project, including but not limited to its location, size, the current and historic use of the project site, and the habitat type(s), values, and functions that the project seeks to create, restore, or enhance;
- (b) A summary of any local, state, or federal permits or other approvals that the applicant expects will be necessary for project implementation;
- (c) A summary of any anticipated private entity or public agency financial assistance or other involvement in the project; and
- (d) A summary of how the project will be constructed, operated, and managed over time. Among other things, this summary should address how the project will be actively operated and managed for its intended duration, how any vector control issues will be addressed, and how any conflicts with surrounding land uses will be minimized or otherwise addressed.

Sec. 8-5.303. Review Process.

The Director shall promptly refer any notice received pursuant to this Article to the Yolo County Agricultural Commissioner, the Executive Director of the Yolo Natural Heritage Program, and the Directors of any other County departments that may be appropriate for review and comment. Within a reasonable time of receiving a notice completed as provided for in this Article, the Director shall provide the applicant and any relevant local, state, or federal agency with a summary of any County permits or other approvals that may be required in connection with the project, together with any other appropriate comments. With the exception of comments regarding other required County permits or approvals, comments provided in response to the notice are not binding on the project proponent but shall be merely advisory in nature.

The project may proceed once comments have been received from the Director, the Yolo County Agricultural Commissioner, the Executive Director of the Yolo Natural Heritage Program, and any other departments that the Director advises the applicant that the notice has been referred to for review and comment. Alternatively, the project may proceed once 90 days have passed since the submission of a completed notice, regardless of whether all comments have been provided. In the event of a substantial change to the proposed project after notice has initially been provided to the County, the project proponent shall notify the Director of the change and allow the County and the Executive Director of the Yolo Natural Heritage Program an additional 15 days to submit comments relating to the change.

Sec. 8-5.304. Exemptions.

Any habitat creation project of 10 acres or less, and any habitat enhancement or restoration project of 40 acres or less, shall be exempt from the requirements of this Article.

Sec. 8-5.305. Other Laws.

The notice and consultation process established by this Ordinance is in addition to other related process and permitting requirements established by local, state, and federal laws. Compliance with this Ordinance is not a substitute for compliance with other legal requirements, including compliance with the California Environmental Quality Act (“CEQA”) for projects that are subject to its provisions.

Further, this Ordinance is intended to supplement, not supplant, the rights and responsibilities of the County under other provisions of law, including but not limited to its role as a lead or responsible agency under CEQA for certain projects. Nothing herein shall be interpreted to diminish or otherwise affect the County's rights and responsibilities in this regard.

Sec. 8-5.306. Miscellaneous.

All notices provided pursuant to this Section are public records, and shall be made available to the public upon request. No charge or fee shall be imposed on the project proponent in connection with this Section.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is held by court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect and be in force thirty (30) days following its adoption and, prior to the expiration of fifteen (15) days after its adoption, it shall be published once in the Davis Enterprise, a newspaper of general circulation, printed and published in the County of Yolo, with the names of the Board members voting for and against the Ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of Yolo, State of California, this __ day of _____, 2009, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

By _____
Mike McGowan, Chair
Yolo County Board of Supervisors

Attest:
Ana Morales, Clerk
Board of Supervisors

Approved as to Form:
Robyn Truitt Drivon, County Counsel

By: _____
Deputy (Seal)

By: _____
Philip J. Pogledich, Senior Deputy



County of Yolo

Office of the County Counsel

625 COURT STREET, ROOM 201 WOODLAND, CALIFORNIA 95695 TELEPHONE: (530) 666-8172
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**ROBYN TRUITT DRIVON
COUNTY COUNSEL**

TO: Supervisor Mike McGowan, Chair, and Members of the Board of Supervisors

FROM: Robyn Truitt Drivon, County Counsel
Philip J. Pogledich, Senior Deputy County Counsel

DATE: September 15, 2009

SUBJECT: A public workshop to review a draft ordinance regulating wetland habitat projects and discuss alternatives thereto (No general fund impact)

RECOMMENDED ACTIONS

- 1. RECEIVE** a staff presentation on a draft ordinance (**Attachment A**) regarding wetland creation, restoration, and enhancement projects as well as various alternatives thereto, including an ordinance focused primarily on regulating projects undertaken for mitigation;
- 2. CONDUCT** a workshop to receive comments from the public regarding the draft ordinance and other matters relating to potential County regulation of wetland and other habitat projects;
- 3. PROVIDE** direction to staff regarding any revisions to the draft ordinance, including but not limited to changes in scope and any other related matters.

STRATEGIC PLAN GOALS

The recommended actions support the strategic plan goal of preserving agriculture and open spaces with planned development, as County regulation of wetland and potentially other habitat projects would help ensure that—like other substantial changes in land use—such projects are built and operated in appropriate locations with restrictions tailored to address any special problems that such uses could introduce.

FISCAL IMPACT

The adoption of an ordinance regulating some or all habitat projects is not expected to have any general fund impact, as staff time and all related costs would be reimbursed by project applicants.

REASONS FOR RECOMMENDED ACTIONS

On October 28, 2008, the Board of Supervisors directed the Office of the County Counsel to consider drafting an ordinance authorizing County regulation of wetland creation, restoration, and enhancement projects. A

proposed ordinance is attached hereto. The attached ordinance establishes a use permit requirement for certain wetland projects, describes the required contents of permit applications, identifies seven discrete criteria to govern permit approval, and provides for the Board of Supervisors to review the effectiveness of the ordinance at established intervals. Subject to certain exemptions, it would apply to all wetland projects within the County's regulatory jurisdiction (i.e., all but those undertaken by the state or federal governments).

This office believes that the ordinance authorizes an appropriate level of County oversight of wetland projects that is consistent with the concerns and objectives of the Board of Supervisors. The Planning Commission held a public hearing on a prior draft of the ordinance at its July 9, 2009 meeting, and voted unanimously (7-0) to recommend adoption of the ordinance with a handful of changes that have since been incorporated (reflected in **Attachment B** hereto). Accordingly, this office recommends that the Board of Supervisors receive a report from staff and conduct a public workshop on the draft ordinance and potential alternatives thereto. Such alternatives include expanding or narrowing the scope of the ordinance, potentially by amending it to require a discretionary permit only for projects undertaken to mitigate for out-of-county impacts. This alternative is introduced for consideration below in Section E of the "Background" discussion.

BACKGROUND

The Board of Supervisors considered potential County regulation of wetland projects during its October 28, 2008 meeting. A copy of the Board letter for that item is included as **Attachment C**. At the end of that discussion, the Board of Supervisors asked this office to further consider the appropriate role of the County with regard to such projects, including whether to adopt an ordinance providing for limited County regulation thereof.

This office has taken a number of steps in response. Those steps include:

- Compiling and reviewing various articles, reports, and other resources on wetland habitat projects, mitigation banking, and related matters;
- Meeting on different occasions with the Agricultural Commissioner and various County staff, including staff in the Planning and Public Works Department, Parks and Resources Department, and County Administrator's office;
- Meeting with the Executive Director (Maria Wong) of the Yolo Natural Heritage Program, a county-wide Natural Communities Conservation Plan/Habitat Conservation Plan;
- Providing a summary of the matter to the Planning Commission at its May 14, 2009 meeting, and holding a public hearing on the draft ordinance during the July 9, 2009 meeting of the Planning Commission;
- Convening meetings of a "stakeholder group" with about 20 participants (identified below) on May 27 and June 25, 2009, to discuss the appropriate regulatory role of the County and review a preliminary draft of the ordinance; and

- Speaking on many occasions with other interested parties, including Department of Fish and Game staff and various private organizations and landowners, regarding the appropriate regulatory role of the County.

The attached ordinance is the end result of this effort. The following section details why County regulation of wetland projects may be appropriate and explains how the ordinance is one way of achieving this goal. It also identifies some concerns with the ordinance that various stakeholders have raised and proposes an alternative approach for Board consideration.

A. Wetlands in Yolo County—Past, Present, and Future.

Historically, large portions of the County consisted of diverse wetland and riparian habitats. Most of these natural wetland and riparian areas were converted over time to agricultural, urban, or other uses, and few natural wetlands remain today.

Over time, however, many efforts to create, restore, enhance, and preserve wetland habitat in the County have emerged. One of the leading programs in this regard is the federal Wetland Reserve Program (“WRP”), implemented by the Natural Resources Conservation Service (“NRCS”). The County ranks fifth among all counties in the state in terms of total WRP acreage. About 7,700 acres of land in the County—an area larger than the City of Davis—are currently part of the WRP. Most of that acreage consists of wetlands that have been restored or enhanced and preserved with a conservation easement. The largest single WRP project is the Roosevelt Ranch, near Knight’s Landing, which covers about 2,527 acres. Many smaller WRP projects are located in the southern portion of the 54,000-acre Yolo Bypass, west of Clarksburg.

In addition, the Yolo Bypass Wildlife Area (about 16,000 acres) and other nearby lands have been the subject of extensive habitat restoration, enhancement, and preservation efforts. These projects have generally been carried out by (or with substantial funding from) the Department of Fish and Game (“DFG”) and the Wildlife Conservation Board (“WCB”), sometimes working with other groups such as Ducks Unlimited and the California Waterfowl Association as well as private landowners. Altogether, several thousand acres of grassland, riparian, wetland and other habitat types have been restored, enhanced, and preserved in the Bypass. These restored habitats have been integrated successfully with agricultural uses in some instances. They are an important environmental, open space, and recreational resource.

The County has generally supported these efforts. Today, however, it is clear that wetland and other habitat restoration, enhancement, and preservation activities are increasing in the unincorporated area. This trend was identified in the October 28, 2008 meeting, which identified a number of large wetland projects that are pending or reasonably foreseeable. Briefly, those projects included the following:¹

- **Liberty Island Conservation Bank**—A 165-acre project to preserve, restore, and enhance habitat for native fish species on Liberty Island, at the southern end of the Yolo Bypass. The project will create mitigation credits for sale to offset the loss of similar habitat elsewhere in

¹ The October 28 Board letter also mentioned a project on the Roosevelt Ranch, but it was later determined that this project involves a Swainson’s hawk conservation easement and, accordingly, farmland will be preserved rather than converted to wetlands habitat.

the Delta. Other related potential future projects have also been identified by the project proponent: projects to restore 440 and 120 acres of similar habitat on other portions of Liberty Island; the “West Property” project, which would restore another 278 acres of property on the island; and a project to restore similar habitat on about 160 acres to the southwest in an area known as Little Hastings Island.

- **Ridge Cut Giant Garter Snake Conservation Bank**—A 185-acre conservation bank to restore giant garter snake habitat, including associated wetlands, on farmland located near Zamora. Like the Liberty Island Conservation Bank, this project will create mitigation credits for sale to offset the loss of giant garter snake habitat in other locations in the region.
- **Fremont Landing Conservation Bank**—A project to restore 112 acres of salmonid habitat near Knight’s Landing. This project will also create mitigation credits for sale to offset habitat losses elsewhere.
- **Putah Creek Mitigation Bank**—A project to restore vernal pools (72 acres) and a small amount of wetland and riparian habitat (4 acres) on a 437-acre site located south of Davis, near Grasslands Park, together with preservation of 318 acres of Swainson’s hawk habitat.
- **Yolo Ranch**—Immediately north of Liberty Island, the Yolo Ranch consists of approximately 3,400 acres intended to be restored to tidal wetlands and similar habitats for the Delta smelt and other fish species. Westlands Water District, a large water district that primarily serves agricultural users in Fresno County, owns the Ranch. It will likely partner with other water districts in carrying out habitat restoration projects on the Ranch. Specific project proposals are expected in the near future.

These mitigation projects are only part of what the near future appears to hold for the County. The October 28, 2008 Board letter mentioned two major state planning efforts—Delta Vision and the Bay-Delta Conservation Plan (“BDCP”)—that propose the creation, restoration, and enhancement of tens of thousands of additional acres of wetlands in the County. Each effort is in a relatively early stage, but some specific proposals affecting Yolo County have emerged.

For example, the BDCP appears likely to require modifications to the Fremont Weir (at the northern end of the Yolo Bypass) to increase the frequency, extent, and duration of flood events in the Yolo Bypass to benefit various aquatic species. Flood events will probably vary from 3,000 to 6,000 cubic feet per second (cfs), which would inundate between 7,881 (3,000 cfs) and 18,371 acres (6,000 cfs) of the Yolo Bypass (out of 54,448 total acres in the Bypass) between January and April in certain years. Potential impacts on biological resources and the agricultural uses of such lands could be significant, and are currently under review.

This is only one expected component of BDCP. Other components of BDCP and similar state efforts are expected to lead eventually to additional wetland projects in the County. Together with projects undertaken by private mitigation bankers, local water districts, and others, in coming years the County will likely see a significant increase in total wetland acreage.

It is important to understand that there are some differences between these mitigation projects (i.e., the bulleted projects and BDCP) and the others mentioned above. The biggest difference lies the purpose for which they are undertaken. On the one hand, projects undertaken in the Yolo Bypass Wildlife Area—like many projects on private property supported by Ducks Unlimited and others—are intended to restore habitat for the sake of benefiting the environment, generally focusing on habitat for migratory waterfowl. But the projects described in the bullets and what comes out of BDCP, on the other hand, arise in connection with the need to mitigate for the conversion of species habitat and other impacts to endangered, rare, and sensitive species, mostly occurring outside of Yolo County. They are undertaken for commercial purposes or, in some instances, to discharge mitigation obligations arising in connection with the activities of public agencies (as in the case of the Yolo Ranch).

This distinction, in turn, ties into a number of other differences that could support different regulatory treatment for “restoration projects” than for “mitigation projects.” This is explored further in the “alternatives” discussion in Section E, below.

B. The Case For County Regulation.

Due in part to the potential increase in the rate of wetland and other habitat conversions (particularly due to the increase in mitigation projects), it is appropriate to consider whether some County oversight of some or all habitat projects is necessary. This is true even though the County cannot regulate most aspects of projects undertaken directly by the state or federal government. There are still a large number of other habitat projects—likely including all of those mentioned in the bullet points above—that are within its regulatory reach. And there are many reasons to consider limited County oversight of habitat projects. Some of the most compelling grounds are as follows.

To Ensure Appropriate Environmental Review

County oversight will ensure that such projects are properly reviewed under the California Environmental Quality Act (“CEQA”). This is important and it ties into many other potential benefits. Though not technically a “planning” statute, CEQA is integral to the planning process because it allows for potential land use conflicts and other environmental impacts to be identified and avoided (if feasible) through changes in project design, operation, and management. Where meaningful CEQA review does not occur, such impacts may not be properly addressed (or addressed at all) and interested agencies and members of the public lose an opportunity to raise their concerns for consideration.

As noted, DFG and WCB are the state agencies with a prominent role in many wetland habitat projects. They approve mitigation and conservation banks, provide grant funding for habitat restoration, and enhancement, and otherwise have an active role in most private wetland projects. As part of this role, both agencies have a legal duty to comply with CEQA in reviewing proposed projects. But on at least some occasions, both agencies have not carried out this duty as thoroughly as they (at least arguably) should have. In fact, both agencies have lost lawsuits involving instances of disregard for CEQA in connection with wetland habitat projects, including a lawsuit resolved on appeal just a couple of months ago. *Friends of the Northern San Jacinto Valley v. California Department of Fish and Game*, 2009 Cal. App. Unpub. LEXIS 5226 (June 25, 2009).

This could change over time, but the County is in a good position to address this problem right now. It can do so adopting a use permit requirement for some or all habitat projects, thus creating a clear legal basis for the County to conduct full CEQA review of such projects. This is one of the key reasons why County regulation is appropriate. And as noted above, it ties into some of the other sound reasons for County regulation.

To Protect Agriculture and the Agricultural Industry

Wetland and other habitat projects can greatly benefit the environment, and in some instances they have been successfully integrated with agricultural uses and activities. But such projects also have the potential to adversely affect agriculture in the County in a number of ways. Among those are the following:

- **The loss of farmland.** The loss of farmland is an obvious consequence of some habitat projects. The conversion of farmland to wetlands and other habitat types on a large scale is thus a significant resource issue.
- **Crop depredation.** The County Agricultural Commissioner has received many reports of crop losses to waterfowl drawn to an area by wetlands projects. This issue is not unique to Yolo County, and has been reported in other areas as well.
- **Land use conflicts.** Many habitat projects can be successfully integrated with surrounding land uses. But there may be instances where a project could impact farm infrastructure (e.g., roads, irrigation facilities, drainage) or otherwise interfere with the ability of landowners to fully use or expand their agricultural operations. A good discussion of potential impacts on agricultural land uses and other neighboring lands appears in the “Good Neighbor Policy” adopted by the Sacramento River Conservation Area Forum, included herewith as **Attachment D**.
- **Other impacts on the agricultural economy.** There is concern—supported in part by a report prepared for Solano County—that the conversion of a significant amount of County farmland to wetlands or other habitat types could severely disrupt certain sectors of the agricultural industry, such as rice, and cause job losses and a large decline in annual production revenues.

These are all valid reasons for the County to establish some regulatory oversight of wetland projects. Simply assuring the performance of meaningful CEQA review will help identify whether some of these impacts may occur. A discretionary permitting process will also provide an avenue for concerned individuals (such as the Agricultural Commissioner) to raise questions—and offer solutions—regarding crop depredation and other matters.

To Protect Biological Resources

The existing biological resources of the County—including endangered, threatened, and rare species and their habitats—can also be adversely affected by wetland and other habitat projects. This may not be the case with every such project. But a recent study on potential effects of increasing flooding in the Yolo Bypass (as part of the BDCP) to create aquatic habitat identified the following estimated impacts to various habitats:

- At flows of 3,000 cfs through the Bypass (the lower end of the proposed range): The temporary conversion of 4,805 acres of farmland, 2,501 acres of riparian and wetland habitats, and 554 acres of grasslands; and
- At flows of 6,000 cfs through the Bypass (on the higher end of the proposed range): The temporary conversion of 11,391 acres of farmland (including 4,433 acres of rice fields), 5,207 acres of riparian and wetland habitats, and 1,659 acres of grasslands. In addition, at this rate of flow, the following species habitat types would be inundated: 31% of the black tern freshwater marsh complex habitat, 21% of the northern harrier primary breeding habitat, 22% of the short-eared owl suitable breeding habitat, 25% of the California black rail potential habitat, 30% of the least bittern primary habitat, 28% of the tricolored blackbird suitable breeding habitat, 30% of the yellow-headed blackbird suitable breeding habitat, and 27% of the delta tule pea potentially suitable habitat.

The study also documents a variety of potential impacts to the giant garter snake and Swainson's hawk, which are found in many locations throughout the County. While this study is confined to the Yolo Bypass and a specific proposal included in the BDCP, it provides good evidence that wetland projects can significantly impact areas relied on by many endangered, threatened, and rare species. Such impacts deserve careful study and consideration. Not only is it good public policy, it is also integral to the timely completion and successful implementation of the Yolo Natural Heritage Program (as explained more fully in the October 28 Board letter, previously provided to the Planning Commission).

To Avoid Other Land Use Conflicts and Significant Conflicts with Public Health, Safety, or Welfare

While potential conflicts with agriculture and biological resources are perhaps the most likely complications of a wetland project, there is some chance that a wetland project could otherwise conflict with public health, safety, or welfare. Vector control issues are one concern (though there has reportedly been widespread success in dealing with such issues through careful management practices). Potential impacts on flood protection and related matters of public safety are another. There may also be instances where the potential effects of climate change on a project deserve attention—such as instances where a relatively small change in sea level could result in habitat “migration” and related effects (as noted in many Delta Vision and BDCP documents) on surrounding lands. The County also has a legitimate interest in ensuring that adequate measures are in place to provide for the responsible operation and management of a wetland or other habitat project over time. A use permit process and CEQA review will position the County to take a meaningful role in regulating such projects to ensure that such issues are identified, considered, and resolved to the greatest feasible extent during the planning process.

C. The Draft Ordinance.

The attached ordinance creates a regulatory scheme that requires the proponent of a “wetland habitat project” to obtain a use permit prior to commencing work. The permitting requirement is critical because it triggers the application of CEQA and the need for environmental review. The ordinance also includes the following additional key elements:

- **Limited exemptions**—The ordinance exempts several types of wetland projects that are relatively modest in size (e.g., wetland restoration and enhancement projects of less than 40 acres), undertaken primarily for agricultural or flood control purposes, or that otherwise are unlikely to have a significant environmental impact.
- **Application contents and processing**—The ordinance identifies the documents that will constitute a complete application, leaving some room for flexibility depending on the characteristics of a particular project. Importantly, the ordinance requires the applicant to provide a proposed management plan that identifies how vector control issues will be addressed, how the project will be responsibly managed over time, and how crop depredation may be addressed to the extent it is a foreseeable consequence of the proposal.
- **Coordination with other agencies.** Copies of all related project applications to federal, state, and other local agencies are required so that the County can coordinate with those entities and minimize delays and the duplication of work. The ordinance also requires all permit applications to be referred to the Executive Director of the Yolo Natural Heritage Program to encourage coordination with the developing HCP/NCCP.
- **Deciding authority**—The Zoning Administrator will be the “deciding authority” for projects under 40 acres, as with other minor use permits. The Planning Commission will be the decisionmaker for projects between 40 and 160 acres, as with other major use permits. For projects over 160 acres, and for projects of a smaller size that do not meet the “automatic” approval criteria mentioned below, the Board of Supervisors will be the deciding authority.
- **Permit approval criteria**—The ordinance identifies seven criteria that, if satisfied, assure approval of a use permit. Most of the criteria are closely related to the results of environmental review under CEQA. Projects larger than 160 acres, however, will only be eligible for “automatic” approval if they can also provide substantial evidence that they will not have a significant adverse economic effect on the agricultural industry of the County or the region. If such evidence does not exist, or if any other criteria are not satisfied, the Board of Supervisors can nonetheless approve a use permit if it finds that doing so is consistent with the purposes of the ordinance.

It is important to understand that in comparison with a traditional use permit, this approach limits the discretion of the deciding authority. Ordinarily, a deciding authority can deny a use permit for any reason relating to considerations of public health, safety, or welfare. For wetland habitat projects, however, the ordinance circumscribes that discretion by mandating permit approval if the seven criteria are met, taking all conditions and mitigation measures into account.

- **Permit term**—Most use permits expire automatically within one year of issuance if the use has not commenced. The ordinance authorizes the deciding authority on a wetland project permit to extend the time to commence the use for up to four additional years, recognizing that wetland projects often require numerous agency approvals that take some time to acquire.

- **Periodic review**—Like a handful of other County ordinances, this ordinance includes a provision that commits the Board of Supervisors to review the effectiveness of the ordinance at certain intervals. The first such review will take place two years after the ordinance takes effect, upon adoption of the Yolo Natural Heritage Program, or upon adoption of the BDCP, whichever is sooner. Subsequent reviews will occur every five years thereafter.

Altogether, this office believes that the ordinance will establish streamlined but effective County regulation of wetland habitat projects. It does not address other types of habitat projects, however, which is an alternative for consideration (discussed in Section E, below).

D. Stakeholder Input on the Ordinance.

The development of the draft ordinance was particularly influenced by the discussion at two recent “stakeholder” meetings of about three hours each. Participants in those meetings included representatives of the following:

Natural Resources Conservation Service	Audubon California	Yolo Audubon Society
Ducks Unlimited	Wildlife Conservation Board	Department of Fish and Game
Yolo Basin Foundation	California Waterfowl Association	Westervelt Ecological Services
Yolo County Farm Bureau	Yolo Land Trust	Yolo Natural Heritage Program
Sierra Club (Yolano Group)	Cache Creek Conservancy	Yolo Land and Cattle Company
Tuleyome	B&L Properties	Yolo County Resource Conservation District
Yolo County Planning and Public Works Department	Yolo County Agriculture Department	Yolo County LAFCO
Yolo County Parks Dept.		

An earlier draft of the proposed ordinance was reviewed by the participants and discussed during the second stakeholder meeting. Several participants expressed concern about aspects of the earlier draft. Their comments focused in particular on the “decisionmaking criteria” included in that draft. In preparing the attached version of the ordinance, this office made two major changes to that section of the ordinance in response.

First, we deleted most of the original criteria. The remaining criteria—and in particular, those relating to land use conflicts, biological resources, and agriculture—reflect the areas where meeting participants tended to

agree that the County had legitimate interests. This is a substantial change, yet it preserves a sound regulatory role for the County.

Second, we changed the basic purpose of the remaining criteria. In the original draft, the criteria functioned merely as “considerations” for the deciding authority to balance in deciding whether to approve an application. This is no longer the case. If the criteria in this version of the ordinance are satisfied, the permit is to be approved. The end result of this approach is that regardless of the size of the project, it will be approved so long as the County concludes there is substantial evidence that it will not have a significant adverse affect on surrounding land uses, biological resources, flood safety, or other relevant considerations of public health, safety or welfare. Projects larger than 160 acres will also have to provide evidence relating to potential economic effects on the agricultural industry to qualify for “automatic” approval.

Even if these criteria cannot be satisfied, the application is referred to the Board of Supervisors for further consideration. It is not automatically denied. The Board may then decide whether to approve the project, taking into account whether issuance of the permit would be consistent with the purposes of the ordinance. This broad discretion is appropriate in light of the complex task the Board will likely have before it on a project that fails to meet the criteria in the ordinance.

In addition to the comments and concerns that led to these changes to the ordinance, some stakeholders raised a variety of other concerns with respect to County regulation of wetland habitat projects. Their principal concerns and some initial responses are as follows:

Concern	Initial Response
<i>Increased cost</i> —Environmental review, engineering studies, and similar project obligations will drive up the cost of some wetland habitat projects and jeopardize their feasibility.	County costs associated with reviewing and processing applications will be a new project cost, just as for all other projects that require a County permit or approval. However, for any project that receives federal or state approvals, funding, or other support neither environmental review nor engineering studies should be a significant new cost. Such review and studies should already be part of any project in accordance with CEQA and/or NEPA (the federal CEQA equivalent).
<i>Delays and inefficiency</i> —County review will add to overall permitting time and increase uncertainty, jeopardizing grant applications (particularly with WCB). County review will also duplicate work already performed by other agencies.	County review should not add significantly, if at all, to overall processing time for a wetland habitat project. At the County level, most processing time will likely relate to the preparation of an appropriate environmental review document. As noted, this should already be occurring at the federal or state level and thus it does not properly constitute a delay of any sort. Unfortunately, it appears accurate that WCB’s grant processing policies require all other agency approvals to be in place before WCB acts on an application. A new County approval requirement will, therefore, place another regulatory hurdle in front of landowners interested in undertaking a wetland habitat project.

Whether this may be enough to discourage such individuals in pursuing such projects is difficult to predict.

Finally, the ordinance includes provisions to facilitate coordination with other responsible agencies and minimize duplicative work. This concern has thus been addressed to the extent feasible.

Wrong target—The County cannot regulate the very largest projects since they will be implemented by the state or federal government, so it should not regulate any wetland habitat projects at all.

The premise of this argument is not necessarily accurate. A recent BDCP document indicates that local agencies may carry out some of the habitat projects included in that plan.² And even if the premise were accurate, there are many other projects—including WRP easements and wetland mitigation banks—that will collectively bring about permanent change to thousands of acres of farmland and open space, thus supporting a decision by the County to exercise limited oversight consistent with its constitutional role as the entity with general land use planning authority in the unincorporated area.

Voluntary coordination is adequate—The County should forego regulating wetland habitat projects in favor of a coordinated program that gives the County a voice in wetland projects without the increased costs, uncertainty, and other problems attendant in a use permit process.

This office reviewed the concept of such an approach with the Board of Supervisors in its October 28, 2008 Board letter. It noted that while such an approach has some merit, its nonbinding nature affords no certainty that County concerns, environmental impacts, or land use conflicts will be addressed. An ordinance is likely necessary to establish, at a minimum, a requirement that project proponents initiate contact with the County early in the planning process.

Ultimately, if the ordinance is adopted, its performance over time may be the best response to these concerns. The first periodic review (at two years, or potentially sooner) will be an opportunity to revisit these concerns and evaluate whether the ordinance should be amended or even repealed in favor of a voluntary program.

E. Alternatives for Consideration.

When this item came before the Board on October 28, 2008, the Board letter identified various alternatives ranging from non-regulatory approaches (i.e., discussions with proponents on a project-by-project basis) to a moratorium of up to two years on some or all habitat projects. All of those alternatives remain open for consideration. At the upcoming public workshop, however, staff intends to focus on discussing the following options to the draft ordinance.

As noted above, habitat projects fall into two broad categories: those undertaken for restoration, and those undertaken for mitigation. The “restoration” category includes projects undertaken to date in the Yolo Bypass

² “Revised Preliminary Recommendations for Governance Structure,” Bay Delta Conservation Plan Governance Working Group (March 25, 2009).

Wildlife Area as well as other projects on private land for the purpose of restoring habitat for migratory waterfowl and other species. The “mitigation” category includes projects undertaken, in many instances, to restore habitat to benefit one or more target species that are detrimentally impacted by actions elsewhere—often in other jurisdictions many miles distant. The draft ordinance included with this Board letter does not distinguish between the two, and focuses equally on all wetland projects. However, aside from the basic difference in purpose described in this paragraph, there are also at least two other key differences between restoration and mitigation projects:

The first key difference relates to the underlying incentive and related considerations of cost. Restoration projects are generally undertaken to restore habitat at least partly for altruistic purposes, and often with some expectation that a net environmental benefit will result. Landowners may receive some financial benefit by hosting such projects, such as compensation from duck hunting or from the sale of an easement, but it is not clear that a “profit motive” drives landowner participation in such projects. In fact, such projects are often undertaken with considerable support from non-profit groups on very tight budgets, and some (such as Ducks Unlimited) have expressed concern that County regulation may increase costs and jeopardize many restoration projects. Accordingly, whether County regulation could effectively eliminate or severely limit such projects is important to consider.

On the other hand, mitigation projects are undertaken in response to the destruction of habitat by various projects and activities—as noted, typically in other jurisdictions—and the need for project proponents to discharge a regulatory mitigation obligation. No “net benefit” for the environment is assured—in fact, through 1:1 mitigation requirements and similar approaches, a “wash” is the goal. And importantly, mitigation bankers and agencies discharging mitigation obligations in the County should be able to pass along costs associated with any new regulatory burdens to their customers.

The second key difference relates to the likely increase in the rate of habitat conversions discussed earlier in this Board letter. This office has no reason to believe that the pace of restoration projects is likely to increase significantly in the foreseeable future. However, the pace of mitigation projects will almost certainly accelerate in coming years. Land in Yolo County is relatively inexpensive and suitable for restoration to a variety of habitat types with value for mitigation. Hence, the prevalence of mitigation banks and similar efforts appears to be rising significantly in the County. This is evidenced by the volume of projects currently proposed by Wildlands and other for-profit mitigation banks. And BDCP seems almost certain to cause the conversion of significant additional acreage to habitat (primarily wetlands) in the foreseeable future.

While the attached draft ordinance does not distinguish between restoration and mitigation projects, these two factors support some consideration of different regulatory treatment for mitigation projects. Two specific alternatives to consider are as follows:

- **Discretionary approval required only for wetlands projects carried out as mitigation.** Rather than regulating all wetland projects equally, one alternative would be to regulate only those carried out for mitigation. This approach would essentially take the attached draft ordinance and limit its scope to mitigation projects, possibly with other changes to decisionmaking criteria and other factors. “Mitigation” could be defined broadly or narrowly, depending on whether the intent is to capture all projects carried out to offset the loss of habitat

and similar impacts (i.e., including public agency projects), or only those carried out for commercial profit (i.e., only private mitigation banks).

- **Discretionary approval required only for habitat projects (of any type) carried out as mitigation.** This would essentially mirror the approach outlined in the previous bullet point, above, but would expand it to include all habitat projects of any type. This approach is similar to that taken in Solano County, which requires a use permit for any conservation bank (excluding those where agricultural activities may continue unaffected, such as with Swainson's hawk easements).

This office looks forward to discussing these alternatives with the Board during the upcoming workshop. If one of these alternatives is selected for further review, however, this office recommends that—at a minimum—the proponents of other significant habitat projects be required by separate ordinance to notify the County of their proposals and consult with the Yolo Natural Heritage Program in an effort to encourage consistency with the development HCP/NCCP. Such an approach will afford the County and the Yolo Natural Heritage Program an opportunity to identify relevant concerns and work cooperatively with landowners and other agencies to address those concerns on a project-by-project basis.

SUMMARY OF AGENCY COMMENTS

A preliminary version of the draft ordinance was reviewed by the Planning and Public Works Department, Parks and Resources Department, and Agricultural Commissioner, as well as the other public and private entities listed above. They provided extensive feedback regarding that draft and other issues, including whether the County should regulate wetland projects at all. A revised version was reviewed by the Planning Commission during a public hearing on July 9, 2009, which unanimously recommended adoption of the ordinance with certain revisions incorporated in the version included as Attachment A.

ATTACHMENT

Attachment A—Draft Ordinance

Attachment B—Redlined Version of Attachment A (reflecting post-Planning Commission edits)

Attachment C—October 28, 2008 Board letter

Attachment D—SCRAF “Good Neighbor Policy”

ATTACHMENT D

DRAFT

ORDINANCE NO. __-__

An Ordinance Regulating Habitat Mitigation Projects

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Restoration, and Enhancement

The Yolo County Board of Supervisors hereby ordains as follows:

Section One. Findings and Authority.

[Appropriate findings will be included in the draft submitted to the Board of Supervisors for consideration on December 8, 2009.]

Section Two. Definitions. The following definitions shall be added to Title 8, Chapter 2, of the Yolo County Code:

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Sec. 8-2. Compensatory Mitigation.

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"Compensatory mitigation" means the preservation of habitat for the purpose of compensating for unavoidable impacts to one or more habitat types resulting from projects or other actions occurring in locations outside of the County, whether as part of a mitigation bank or otherwise.

Sec. 8-2. Covered Habitat Mitigation Project.

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A "covered habitat mitigation project" is any mitigation bank or other project undertaken as compensatory mitigation, as well as habitat restoration, creation, or enhancement activities undertaken as part of such projects. A "covered habitat mitigation project" also includes all other habitat restoration, creation, enhancement, or preservation activities carried out within the County in connection with projects or other actions impacting habitat or other biological resources in locations outside of the County. This includes, but is not necessarily limited to, projects that implement actions described in a Habitat Conservation Plan/Natural Communities Conservation Plan or in a biological opinion issued by the United States Fish and Wildlife Service.

Sec. 8-2. Create or Creation.

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"Create" or "creation," in the context of a habitat project, shall mean to construct or otherwise introduce new habitat area, functions, and values by excavating, flooding, or otherwise altering land not currently or historically occupied by such habitat.

¶
"Wetland habitat projects" shall mean projects to create, restore, or enhance wetlands, as those terms are defined in Title 10, Chapter 10 of this Code.

Sec. 8-2. Enhance or Enhancement.

"Enhance" or "enhancement," in the context of a habitat project, shall mean to rehabilitate a degraded or disturbed natural habitat area to bring back one or more functions or values that have been partially or completely lost due to natural causes or actions such as

draining, grading, or other land uses and activities. Any project that changes the function or values of an existing habitat type so that it more closely resembles the natural (i.e., prior to disturbance by human activities) or historic condition of a site shall be considered a habitat enhancement project for the purposes of this Ordinance.

Sec. 8-2. Habitat.

“Habitat” shall mean the environmental factors that support one or more plant or wildlife species at a particular place or region, providing food, water, cover, and space needed for survival and reproduction.

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Sec. 8-2. Preserve or Preservation.

“Preserve” or “preservation” means the permanent protection of ecologically important habitat resources through the implementation of appropriate legal and physical mechanisms, including but not limited to conservation easements.

Sec. 8-2. Restore or Restoration.

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“Restore” or “restoration,” in the context of a habitat project, shall mean to restore lost habitat area, generally by excavating, flooding, and otherwise manipulating the physical, chemical, or biological characteristics of a site with the goal of reestablishing the natural or historic habitat values and functions of that area.

Section Three. Minor Use Permit Required. A minor use permit, as that term is defined in Yolo County Code Section 8-2.270.9, shall be required for any covered habitat mitigation project of 40 acres or less. Accordingly, the following sections of the Yolo County Code shall be amended to include this requirement by adding an appropriately-lettered subsection followed by the words “Covered habitat mitigation projects of 40 acres or less, pursuant to Title 10, Chapter 10 of this Code”:

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- Section 8-2.404 (Agricultural Preserve)
- Section 8-2.504 (Agricultural Exclusive)
- Section 8-2.604 (Agricultural General)
- Section 8-2.614 (Agricultural Industry)
- Section 8-2.1914 (Public Open Space)
- Section 8-2.1922 (Open Space)

Section Four. Major Use Permit Required. A major use permit, as that term is defined in Yolo County Code Section 8-2.270.3, shall be required for any covered habitat mitigation project of more than 40 acres. Accordingly, the following sections of the Yolo County Code shall be amended to include this requirement by adding an appropriately-lettered subsection followed by the words “Covered habitat mitigation projects of more than 40 acres, pursuant to Title 10, Chapter 10 of this Code”:

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- Section 8-2.404.5 (Agricultural Preserve)

- Section 8-2.504.5 (Agricultural Exclusive)
- Section 8-2.604.5 (Agricultural General)

In addition, the following sections shall be added to the Yolo County Code, shall be entitled “Major Use Permit,” and shall identify “Covered habitat mitigation projects of more than 40 acres, pursuant to Title 10, Chapter 10 of this Code” as a major conditional use in subsection (a) or (b) thereof, as appropriate:

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- Section 8-2.614.5 (Agricultural Industry)
- Section 8-2.1914.5 (Public Open Space)
- Section 8-2.1922.5 (Open Space)

Section Five. Addition of Chapter 10 to Title 10 of the Yolo County Code. The following Chapter is added to Title 10 of the Yolo County Code:

Chapter 10. Habitat Mitigation Ordinance

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Article 1. Title and Purposes.

Sec. 10-10.101. Title.

This Chapter shall be known as the “Habitat Mitigation Ordinance” of the County.

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Sec. 10-10.102. Purposes.

The County’s land use planning efforts have consistently anticipated that local landowners—often in conjunction with assistance from non-profits and state agencies—will voluntarily undertake a modest amount of habitat creation, restoration, enhancement, and preservation actions. Similarly, the County has long coordinated urban development and related land use planning matters with the incorporated cities of Woodland, Davis, Winters, and West Sacramento. Projects within these jurisdictions have occasionally impacted biological resources, and the County intends to continue to accommodate the preservation of land in the unincorporated area as compensatory mitigation for such local habitat impacts.

In the foreseeable future, however, the County expects that the unincorporated area will increasingly be the subject of compensatory mitigation projects and similar efforts that arise in connection with impacts to biological resources occurring outside the geographic boundaries of the County. Such projects include mitigation banks with service areas extending far beyond the County—of which there are already a number—as well as various other endeavors to create, restore, enhance, and preserve habitat as a consequence of projects and activities occurring in locations outside of the County. These projects are the focus of this Chapter, while other purely local preservation and mitigation efforts are generally outside of its scope.

In conjunction with the provisions of Title 8 of the Yolo County Code, this Chapter provides for limited County regulation of certain habitat projects taking place within the County in connection with projects and activities occurring outside of the County. Such compensatory

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mitigation projects are unique in many respects. For example, wetland habitat projects can provide important habitat areas for fish, wildlife, and plants. They can also help maintain and enhance water quality, facilitate groundwater recharge, mitigate flooding, and control erosion. Some wetland habitat projects can also provide educational, scientific study, and recreational opportunities. The same is true of other types of habitat projects undertaken as compensatory mitigation. For these and other reasons, such compensatory mitigation projects can thus be a significant asset to the environment and the general public so long as they adequately replace the habitat area, values, and functions lost due to urban development or other projects or activities.

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To assure these projects benefit the County and do not unduly interfere with its land use planning efforts or the eventual implementation of the Yolo Natural Heritage Program, careful planning is necessary. Attention to matters of location, design, construction, and long-term monitoring and management is essential. Particularly for larger projects, early consideration of ways to integrate appropriate educational, recreational, scientific, and other opportunities is also desirable. Finally, the potential local and regional environmental impact of habitat projects—such as the conversion of farmland and existing species habitat, as well as conflicts with surrounding land uses and activities—deserves close attention and consideration.

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Accordingly, this Chapter is intended to promote the foregoing objectives and to achieve the following purposes:

(a) To help ensure that compensatory mitigation projects undertaken in connection with out-of-county projects and actions are located, constructed, and managed in a manner that is consistent with the General Plan and the developing Yolo Natural Heritage Program, compatible with surrounding land uses to the extent feasible, and sensitive to the need for a strong local economy, the protection of existing biological resources, flood protection, vector control, and other appropriate local and regional concerns.

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(b) To encourage the proponents of such habitat projects—particularly large compensatory mitigation projects—to design and implement projects that achieve multiple environmental and community objectives, and that include management plans or similar means of ensuring the responsible management of such projects over time.

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(c) To expand opportunities for the County and interested citizens to participate in the process of reviewing such habitat projects by establishing a permitting process that includes public hearing requirements and other opportunities for public input.

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(d) To continue to encourage wildlife-friendly agricultural practices and voluntary habitat restoration and preservation efforts, and to continue to accommodate other habitat projects undertaken in connection with habitat impacts arising from local projects and actions.

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Nothing in this Chapter is intended to restrict or in any way affect or impair the agricultural use of land within the County. In some cases, state and federal laws may regulate

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certain types or characteristics of projects covered by this Chapter. This Chapter shall be construed to provide the County with the maximum control consistent with such other laws.

Article 2. Definitions

For the purposes of this Chapter, the following terms shall have the meanings stated below:

Sec. 10-10.201. Agriculture or Agricultural.

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“Agriculture” or “agricultural” shall have the meaning set forth in Yolo County Code Section 8-2.208.

Sec. 10-10.202. Applicant.

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“Applicant” shall mean a person who files an application for a permit under this Chapter and who is either the owner of the site, a vendee of that person pursuant to a contract of sale for the site, or an authorized agent for either of those persons.

Sec. 10-10.203. Compensatory Mitigation.

“Compensatory mitigation” means the preservation of habitat for the purpose of compensating for unavoidable impacts to one or more habitat types resulting from projects or other actions occurring in locations outside of the County, whether as part of a mitigation bank or otherwise.

Sec. 10-10.204. Covered Habitat Mitigation Project

A “covered habitat mitigation project” is any mitigation bank or other project undertaken as compensatory mitigation, as well as habitat restoration, creation, or enhancement activities undertaken in connection with such projects. A “covered habitat mitigation project” also includes all other habitat restoration, creation, enhancement, or preservation activities carried out within the County in connection with projects or other actions impacting habitat in locations outside of the County. This includes, but is not necessarily limited to, projects that implement actions described in a Habitat Conservation Plan/Natural Communities Conservation Plan or in a biological opinion issued by the United States Fish and Wildlife Service.

Sec. 10-10.205. Create or Creation.

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“Create” or “creation,” in the context of a habitat project, shall mean to construct or otherwise introduce new habitat area, functions, and values by excavating, flooding, or otherwise altering land not currently or historically occupied by such habitat.

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Sec. 10-10.206. Deciding Authority.

“Deciding Authority” shall mean the public official(s) or County employee with authority to decide an application for a permit under this Chapter.

Sec. 10-10.207, Director.

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“Director” shall mean the Director of the Planning and Public Works Department, or his or her designee or successor in function.

Sec. 10-10.208, Enhance or Enhancement.

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“Enhance” or “enhancement,” in the context of a habitat project, shall mean to rehabilitate a degraded or disturbed natural habitat area to bring back one or more functions or values that have been partially or completely lost due to natural causes or actions such as draining, grading, or other land uses and activities. Any project that changes the function or values of an existing habitat type so that it more closely resembles the natural (i.e., prior to disturbance by human activities) condition of a site shall be considered a habitat enhancement project for the purposes of this Ordinance.

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Sec. 10-10.209, General Plan.

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“General Plan” shall mean the adopted General Plan of Yolo County, as may be amended from time to time.

Sec. 10-10.210, Grading.

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“Grading” shall have the same meaning as in Appendix J of the California Building Code, 2007 edition, as may be amended from time to time.

Sec. 10-10.211, Habitat.

“Habitat” shall mean the environmental factors that support one or more plant or wildlife species at a particular place or region, providing food, water, cover, and space needed for survival and reproduction.

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Sec. 10-10.212, Person.

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“Person” shall mean an individual, firm, partnership, corporation, or local agency (as defined in Government Code Section 53090), their successors or assigns, or the agent of any of the foregoing, and shall include any applicant or permit holder under this Chapter.

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Sec. 10-10.213, Preserve or Preservation.

“Preserve” or “preservation” means the permanent protection of ecologically important habitat resources through the implementation of appropriate legal and physical mechanisms, including but not limited to conservation easements.

Sec. 10-10.214, Project.

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“Project” shall mean the whole of any activity or activities undertaken in connection with creating, enhancing, restoring, or preserving habitat on a site, and shall be interpreted broadly to

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include all related activities such as grading, tree or vegetation removal, and the creation, restoration, or enhancement of associated buffer areas.

Sec. 10-10.215. Restore or Restoration.

“Restore” or “restoration,” in the context of a habitat project, shall mean to restore lost habitat area, generally by excavating, flooding, and otherwise manipulating the physical, chemical, or biological characteristics of a site with the goal of reestablishing the natural or historic habitat values and functions of that area.

Sec. 10-10.216. Site.

“Site” shall mean all areas of real property that are within the boundaries of a proposed project, and may include more than one legal parcel.

Sec. 10-10.217. Substantial Evidence.

“Substantial evidence” includes facts, a reasonable assumption predicated upon facts, or expert opinion supported by facts. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous.

Article 3. Permits

Sec. 10-10.301. Permit Requirement; Exemptions.

Subject to the exemptions set forth below, no person shall engage in grading, clearing, or other activities, including the recordation of a conservation easement, with the intent to implement a covered habitat mitigation project without first applying for and receiving a use permit under this Chapter, together with any other approvals required by federal, state, or local law. The following covered habitat projects and other activities shall be exempt from this permit requirement and the other provisions of this Chapter:

- (a) All projects that do not create more than 10 acres of habitat.
- (b) All projects that do not enhance, restore, or preserve more than 40 acres of habitat. This exemption may not be combined with the exemption in subsection (a), above, to exempt any covered habitat mitigation project that creates, enhances, restores, or preserves more than 40 acres of habitat.
- (c) All activities undertaken in connection with, and in furtherance of, the agricultural use of land. This includes, but is not limited to, the construction and maintenance of stock ponds and small reservoirs, tail-water ponds, irrigation canals and sloughs, rice fields, and similar activities. Upon the request of the Director, the County Agricultural Commissioner shall provide a written opinion based on substantial evidence regarding whether an activity or activities are consistent with this exemption. The County Agricultural Commissioner shall use reasonable due diligence in investigating the potential applicability of this exemption, which may

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“Wetland” or “wetlands” shall include tidal and intertidal marshes, non-tidal marshes (such as vernal pools), floodplains inundated for non-agricultural purposes on an annual, semi-annual, or other regular basis, and any other area which meets one or more of the following criteria:¶

(a) . Lands that meet the definitions provided in any of the following sources: Title 14 of the California Code of Regulations at Section 13577; California Fish and Game Code Section 2785; Title 16 of the United States Code at Section 3801(a)(27); Title 33 of the Code of Federal Regulations at Section 328.3(b); Title 40 of the Code of Federal Regulations at Section 320.3(t); or¶

(b) . Any other lands that are inundated or saturated by water at a frequency and duration sufficient to support, and ... [1]

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include interviews with the landowner or other responsible party, a visit to the site, and any other appropriate inquiries into the nature of the activities at issue.

(d) The winter flooding of agricultural fields for the primary purpose of providing temporary habitat for migratory waterfowl, provided such flooding does not occur in a time or manner that prevents or substantially interferes with the reasonable agricultural use of the site or surrounding lands. Upon the request of the Director, the County Agricultural Commissioner shall provide a written opinion based on substantial evidence regarding whether the flooding of a particular site is consistent with this exemption. The County Agricultural Commissioner shall use reasonable due diligence in investigating the potential applicability of this exemption, which may include interviews with the landowner or other responsible party, a visit to the site, and any other appropriate inquiries into the nature of the activities at issue. This exemption shall not apply to any project or activity that includes the construction of new infrastructure for non-agricultural purposes and that requires a County grading permit or a flood hazard development permit.

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(e) Projects undertaken for the primary purpose of flood control, flood protection, or related matters of flood safety and the protection of life and property.

(f) Riparian, oak woodland, vernal pool, or native grassland/prairie, creation, enhancement, restoration, or preservation projects, unless any such covered habitat mitigation project also includes one or more other habitat types that exceed the acreage limits set forth in subsections (a) or (b), above. The proponent of any project that qualifies for this exemption shall provide notice to the County of the proposed project and follow the non-binding consultation procedure set forth in Title 8, Article 5, Chapter 3 of the Yolo County Code if the project is larger than 10 acres (for habitat creation projects) or 40 acres in size (for all other projects).

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(g) Activities that require discretionary approval pursuant to Chapters 3, 4, or 5 of this Title 10.

(h) Any covered habitat mitigation project that received all necessary County approvals prior to the effective date of this Chapter, or for which a complete application for such approval(s) was submitted prior to effective date (for projects of 160 acres or less only).

(i) Any covered habitat mitigation project(s) undertaken by a person that enters into a Memorandum of Understanding or similar written agreement with the County addressing the implementation of such project(s). No such agreement shall be valid unless it is approved by the Board of Supervisors following a noticed public hearing based upon a finding that the agreement is consistent with the purposes of this Chapter.

Notwithstanding the foregoing, any expansion or other change to a project previously covered by one or more of these exemptions shall require a use permit if the proposed expansion

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or other change would remove the project, viewed as a whole, from the scope of these exemptions.

Sec. 10-10.302. Permit Contents, Processing, and Decisions

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- (a) *Applications, generally.* Applications for a use permit under this Chapter shall be submitted to the Director, together with payment of all application fees established by the Board of Supervisors. Except as otherwise provided in this Chapter, all provisions of the Yolo County Code relating generally to use permits shall apply to the review, issuance, and amendment or revocation of permits covered hereunder.
- (b) *Applicant contents.* An application for a use permit shall include all of the following:
 - (i) A completed application for a permit under this Chapter, on a form provided by the County, together with payment of the application fee established by resolution of the Board of Supervisors.
 - (ii) Completed applications for any other required County approvals, such as a grading permit or Flood Hazard Development Permit, together with payment of the application fee(s) established by resolution of the Board of Supervisors. In addition, both with the initial application and thereafter, the applicant shall provide copies of all completed applications for other federal, state, and local approvals associated with the proposed project to facilitate coordination between the County and other agencies.
 - (iii) Appropriate site-specific technical reports, including but not limited to such documents as a biological resources analysis, a hydrology analysis, a geotechnical analysis, and an engineered excavation plan. The types of reports that may be required should be uniform for applications that are similar in nature, but may vary to the extent that the features of a proposed project or the characteristics of the project site and surrounding lands are unique. Upon request, the Director will advise an applicant of the types of reports that should be submitted with a permit application. In some instances, the applicant may be able to satisfy this requirement by providing documents prepared in connection with applications to other federal, state, or local agencies relating to the project.
 - (iv) A site plan showing property lines, assessor’s parcel numbers, onsite and adjoining land uses, topography, access, and existing/proposed patterns of vegetation.
 - (v) A proposed management plan that identifies how the project will be operated and managed over time. Among other things, the plan should explain how the project will be actively operated and managed in perpetuity to ensure that its environmental and other benefits are realized on a continuous basis, how vector control issues will be addressed, if

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applicable, and how any unanticipated events and impacts to surrounding land uses will be addressed. The proposed management plan shall also include measures to address crop depredation to the extent it is a reasonably foreseeable consequence of the proposed project. The plan should also state whether the operation and management of the project will be supported by an endowment or other established source of funds.

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In addition to the foregoing, the Director may require such other and further information relevant to the project as needed to perform appropriate environmental analysis, to determine whether the proposal may affect public health, safety, and welfare, and for other good cause as determined by the Director in his or her sole discretion.

(c) *Yolo Natural Heritage Program.* In addition to referrals to other County departments, as may be appropriate in the discretion of the Director, all permit applications shall be promptly referred to the Executive Director of the Yolo Natural Heritage Program. The referral shall include a request for comments regarding whether the application is consistent with the Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) or, prior to its adoption, other matters of consistency with the developing HCP/NCCP. The purpose of this provision is to encourage coordination between applicants and the Executive Director, who may also refer the application to his or her staff or to committees participating in the development of the HCP/NCCP. Inconsistency with any drafts or other preliminary versions of the HCP/NCCP is not a basis for denying a permit under this Chapter unless the Deciding Authority determines that any such inconsistency is reasonably expected to significantly conflict with the HCP/NCCP or its implementation following its completion.

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(d) *Deciding Authority.* The Deciding Authority for permit applications shall be as follows:

- (i) For projects of 40 acres or less, the Zoning Administrator shall be the Deciding Authority.
- (ii) For projects of more than 40 but less than 160 acres, the Planning Commission shall be the Deciding Authority. For projects that are over 160 acres, the Planning Commission shall act in an advisory capacity to the Board of Supervisors. Acting in such capacity, the Planning Commission shall hold at least one noticed public hearing on the project prior to making a recommendation to the Board of Supervisors. The recommendation of the Planning Commission shall be in writing and shall include a detailed statement of the grounds for the recommendation.
- (iii) For projects that are 160 acres or more, the Board of Supervisors shall be the deciding authority. The Board of Supervisors shall hold at least one noticed public hearing on the project prior to making a final decision on the application.

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- (d) *Decision.* After considering the application materials and, if applicable, the recommendations of County staff and the Planning Commission, the Deciding Authority shall issue, conditionally issue, or deny the application by a written decision supported by findings that address the criteria set forth in Section 10-10.303, below. Due to the unique nature of projects covered by this Chapter, the general conditions that typically apply to the review and approval or denial of a use permit, set forth in Yolo County Code Section 8-2.2804, shall not apply.
- (e) *Costs and expenses.* The applicant shall reimburse all costs and expenses reasonably incurred by the County in reviewing applications under this Chapter, including but not limited to staff time and costs and expenses associated with environmental review. At the discretion of the Director, the applicant may be required to provide a reasonable deposit for such costs, enter into a reimbursement agreement with the County, or both.

Sec. 10-10.303. Decisionmaking Criteria

A permit applied for under this Chapter shall be approved if, taking all feasible mitigation measures, conditions of approval, and other relevant facts into account, the Deciding Authority makes all of the following determinations based on substantial evidence in the record:

- (a) That the project applicant has substantially complied with the requirements of this Chapter, including but not limited to provisions addressing the submission and contents of a management plan;
- (b) That the project would not significantly conflict with surrounding land uses;
- (c) That the project would not have a significant adverse effect on biological resources and, in addition, is not reasonably expected to significantly conflict with the Yolo Natural Heritage Program (HCP/NCCP);
- (d) That the project would not significantly compromise flood safety and the protection of life and property;
- (e) That the project would not have a significant adverse economic effect—either by itself or cumulatively—within the the County or region. This factor shall only be considered for projects that convert more than 160 acres of farmland;
- (f) If the project site is subject to a Williamson Act contract, that the project is an “open space use” under Government Code Section 51201(o) or that it would not otherwise cause a material breach of the contract; and
- (g) That the project would not significantly conflict with other relevant considerations of public health, safety, or welfare, sufficient to require preparation of a statement of overriding considerations pursuant to the California Environmental Quality Act.

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Written findings addressing each of these matters shall be prepared in connection with a decision on a permit application.

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If the Deciding Authority (other than the Board of Supervisors) finds that a project cannot be approved because one or more of these determinations cannot be made, the permit shall be referred to the Board of Supervisors for consideration at a noticed public hearing. The Board of Supervisors may approve a permit even if it finds that one or more of these determinations cannot be made (with the exception of finding (f), relating to the Williamson Act, which would mandate denial), provided it finds that issuance of the permit is consistent with the purposes of this Chapter. Any decision of the Board of Supervisors following its deliberation of these issues shall include written findings based on substantial evidence that address all of the criteria and other matters set forth above, together with an explanation of any decision to approve or deny a permit.

Sec. 10-10.304. Permit Term; Amendments

(a) *Term.* The use authorized by a permit issued under this Chapter shall commence within one year, as with other use permits issued under this Code. However, because covered habitat mitigation projects often require numerous federal, state, and local agency approvals that can take a long time to acquire, the Deciding Authority may extend the time to commence the use authorized by a use permit issued under this Chapter for up to an additional four years. Without limiting the discretionary authority of the Deciding Authority with regard to permit extension requests, the Deciding Authority may deny any request for an extension if, in its judgment, the extension would be in conflict with the original intent of the permit or if the applicant has failed to abide by the terms of the permit in any material way. Once the authorized use commences, a permit shall be perpetual in term unless otherwise indicated.

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(b) *Amendments, generally.* An amendment to an existing permit issued under this Chapter shall be required for any significant change to an approved covered habitat mitigation project. This shall include, but is not limited to, any change in the size or operation of an approved project that could have a significant effect on the environment. The Director shall have the discretion to determine whether an amendment to an existing permit is required.

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(c) *Applications for amendments; processing.* Applications for amendments to previously issued permits shall be submitted to the Director on forms provided by the County. An application to amend a previously issued permit shall also be accompanied by the appropriate fee, as established by resolution of the Board of Directors. In addition, the Director may require any or all of the additional information and documents described in Section 10-10.302(b), above, that may be reasonably necessary for consideration of the application. An application for an amendment shall be handled in the same manner as an original permit application, as described in Section 10-10.302(b)-(e), above.

Article 4. Appeals

Sec. 10-10.401. Appeal Procedure

Any decision made pursuant to this Chapter may be appealed pursuant to Yolo County Code Section 8-2.3301, which shall apply to all appeals arising under this Chapter.

Article 5. Violations

Sec. 10-10.501. Generally

Any violation of this Chapter shall be subject to the administrative code enforcement ordinance of the County, set forth in Chapter 5 of Title 1 of the Yolo County Code.

Sec. 10-10.502. Public Nuisance

Any activity in violation of this Chapter or any permit issued hereunder shall be considered a public nuisance. In his or her sole discretion, the Director may refer the public nuisance to the District attorney for civil or criminal action.

Article 6. Periodic Reviews

Sec. 10-10.601 Initial Review

Two years after this Chapter becomes effective or within sixty (60) days of the adoption of the Yolo Natural Heritage Program or the Bay Delta Conservation Plan, whichever is sooner, the Board of Supervisors shall hold a public hearing for the purpose of considering its effectiveness at achieving the purposes set forth in Article 1 hereof. During such hearing, the Board of Supervisors may identify matters that require further consideration and provide appropriate direction to staff. In addition, the Board of Supervisors may direct staff to prepare an ordinance amending, superseding, or deleting this Chapter, and it may take such other actions as may be necessary and appropriate.

Sec. 10-10.602 Future Reviews

Every five years after the initial review under Section 10-10.601, above, the Board of Supervisors shall review this Chapter at a public hearing for the reasons described in that Section, particularly to ensure its continued effectiveness in achieving the purposes described in Article 1.

Section Six. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is held by court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section Seven. Effective Date.

This Ordinance shall take effect and be in force thirty (30) days following its adoption and, prior to the expiration of fifteen (15) days after its adoption, it shall be published once in the Davis Enterprise, a newspaper of general circulation, printed and published in the County of Yolo, with the names of the Board members voting for and against the Ordinance.

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PASSED AND ADOPTED by the Board of Supervisors of the County of Yolo, State of California, this __ day of _____, 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

By _____
Mike McGowan, Chair
Yolo County Board of Supervisors

Attest:
Ana Morales, Clerk
Board of Supervisors

Approved as to Form:
Robyn Truitt Drivon, County Counsel

By: _____
Deputy (Seal)

By: _____
Philip J. Pogledich, Senior Deputy

Sec. 10-10.20(). Wetland or wetlands.

“Wetland” or “wetlands” shall include tidal and intertidal marshes, non-tidal marshes (such as vernal pools), floodplains inundated for non-agricultural purposes on an annual, semi-annual, or other regular basis, and any other area which meets one or more of the following criteria:

- (a) Lands that meet the definitions provided in any of the following sources: Title 14 of the California Code of Regulations at Section 13577; California Fish and Game Code Section 2785; Title 16 of the United States Code at Section 3801(a)(27); Title 33 of the Code of Federal Regulations at Section 328.3(b); Title 40 of the Code of Federal Regulations at Section 320.3(t); or
- (b) Any other lands that are inundated or saturated by water at a frequency and duration sufficient to support, and that under normal circumstances do support on at least a temporary basis, a prevalence of vegetation or other biota typically adapted for life in saturated soil conditions.