



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE :** December 16, 2008  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Kate Kelly, Contract Planner   
**SUBJECT:** Public Hearing To Take Action On Proposed Resolution 2008 - 46 Rescinding Resolution No. 2006 - 03 Establishing A Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program.

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**RECOMMENDATION:** Staff recommends that the City Council take the following actions:

- 1) Receive the staff report;
- 2) Conduct the public hearing;
- 3) Approve proposed Resolution 2008 - 46 rescinding Resolution No. 2006 - 03 establishing a Citywide Habitat Mitigation Program and adopting the Amended Citywide Habitat Mitigation Program as presented.

**BACKGROUND:** On May 2, 2006 the City adopted the Citywide Habitat Mitigation Program. Since then efforts have been made to implement the program's required easements. Those efforts have ceased due to the economy and the development projects coming to a halt. The initial work identified two areas in the Citywide Habitat Mitigation Program which warrant amendment:

- Area of Qualifying Land
- Review of Qualifying Conservation Entities

Qualifying Land

Currently the Citywide Habitat Mitigation Program requires mitigation to occur on lands generally located within 7 miles of Winters in Yolo County and if mitigation is not possible in Yolo County then in an approved mitigation bank in Solano County that is within 7 miles of Winters. At this time there are no approved mitigation banks in Solano County within 7 miles of Winters.

When the Citywide Habitat Mitigation Program was originally proposed, Qualifying Land included those lands located within a seven mile radius of Winters in both Yolo and Solano County. Maria Wong of the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Authority expressed concern that mitigation for Winters projects located in Solano County would not be credited to the Yolo Natural Heritage Program and that this would create a burden for that Program. Based upon Ms. Wong's concerns, the general boundary for Qualifying Lands was directed to Yolo County.

The City of Winters is a member of the Joint Powers Authority which manages the Yolo Natural Heritage Program and looks forward to continued participation in that Program. The Yolo Natural Heritage Program is currently working on a large mitigation receiving site near Winters that will potentially provide an excellent mitigation and conservation opportunities. Projects such as this

provide incentive for mitigation to occur in Yolo County and the City looks forward to required mitigation being met with such projects whenever feasible.

The past two years of work on implementing mitigation easements for recently approved Winters projects has shown that it is essential to have wide range of opportunities for mitigation. The current limitation directing mitigation to Yolo County has hindered the City's Program. As a result several otherwise excellent mitigation sites located very close to Winters in Solano County were disallowed. This has proved to be a challenge in establishing mitigation for the development projects.

The biological resources that may be impacted by development projects in Winters are part of a larger biological community that occupies both Yolo and Solano Counties. On a human scale, Solano County is also strongly a part of the Winters community. Mitigation located near Winters in Solano County would benefit both the biological and human communities. For that reason staff recommends including Solano County in the 7 mile radius for Qualifying Lands.

#### Qualifying Conservation Entity

One of the requirements of the Habitat Mitigation Program is that the entity or organization that holds the mitigation easement/land must be acceptable to the City. As the City has begun to implement the Habitat Mitigation Program, it has become apparent that it would be beneficial to clarify how potential conservation entities are reviewed and accepted by the City.

Mitigation is the most demanding form of conservation because it must fulfill regulatory requirements and uphold the public trust of a community in perpetuity. Because of these demands and responsibilities the conservation entities that hold mitigation easements/lands must have a long-term proven track record of holding and administering easements/lands. The proposed amendments to the Habitat Mitigation Program are to clarify for applicants and potential conservation entities how the City reviews and considers potential conservation entities.

The list of required information outlined in "*Required Information for Proposed Conservation Easement Holders*" is intended to assist the City in determining if the proposed entity is legitimate, has an established track record in holding and managing conservation easements/lands, and has the organizational structure to carry out the proposed mitigation in a legally defensible, perpetually sustainable manner.

The criteria listed in the Qualifying Conservation Entity section of the Habitat Mitigation Program is based upon criteria utilized by adopted by Yolo County LAFCO in their Agricultural Mitigation Program and the membership screening process used by the California Council of Land Trusts.

**PLANNING COMMISSION ACTION:** The proposed revisions to the Habitat Mitigation Program were heard by the Planning Commission on November 25, 2008. The Commission received comments from Maria Wong of the Yolo County Habitat/Natural Community Conservation Plan JPA, Tyler Wade of Granite Bay Holdings, and David Lennon of Hofmann Land. A letter of comment was also received from Tuleyome expressing concern that the proposed requirements for Qualifying Conservation Entities are too restrictive.

Ms. Wong spoke of her program's activities including the recent acquisition of conservation easements and expressed concern that the proposed expansion of Winters Citywide Habitat Mitigation Program into Solano County would create a financial burden to the Yolo Natural Heritage Program. Ms Wong also requested the City require use of the Department of Fish and

Game's Swanson's Hawk easement template and that the Citywide Habitat Mitigation Program specifically name the JPA as a Qualified Conservation Entity.

Mr. Wade spoke of his experience working to obtain required mitigation easements and expressed support for the expansion of the Program into Solano County.

Mr. Lennon requested more flexibility to the Program.

A letter of comment was also received from Tuleyome expressing concern that the requirements for Qualifying Conservation Entity are too restrictive.

The Planning Commission unanimously recommended the Council adopt the proposed revisions to the Citywide Habitat Mitigation Program as presented by staff.

**FISCAL IMPACT:** None

**RECOMMENDED ACTION:**

Staff recommends that the City Council:

**Approve proposed Resolution 2008 - 46 rescinding Resolution No. 2006 - 03 establishing a Citywide Habitat Mitigation Program and adopting the Amended Citywide Habitat Mitigation Program.**

**ATTACHMENTS:**

- 1) Resolution 2008 - 46 Rescinding Resolution No. 2006 - 03 Establishing A Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program.
- 2) Amended Habitat Mitigation Program

**CITY OF WINTERS  
RESOLUTION NO. 2008 - 46**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS  
RESCINDING RESOLUTION NO. 2006 - 03 ESTABLISHING A CITYWIDE HABITAT  
MITIGATION PROGRAM AND ADOPTING THE AMENDED CITYWIDE HABITAT  
MITIGATION PROGRAM**

WHEREAS, Resolution 2006-03 established the Citywide Habitat Mitigation Program; and

WHEREAS, the Citywide Habitat Mitigation Program is critical to maximizing community benefit from coordinated implementation of project-level habitat mitigation requirements;

WHEREAS, the City is desirous of amending the Citywide Habitat Mitigation Program to include Solano County within the 7 mile radius for Qualifying Lands and to clarify the qualifications and review process for the selection of Qualified Conservation Entities; and

WHEREAS, the attached City of Winters Habitat Mitigation Program is consistent with the direction of the City Council and with the City General Plan.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winters that:

- 1) Resolution 2006-03 establishing the Citywide Habitat Mitigation Program is rescinded.
- 2) The City of Winters Habitat Mitigation Program, as amended, is hereby adopted as official policy of the City of Winters.
- 3) The staff is directed to ensure that this program is fully implemented in the course of implementing development approvals.

I HEREBY CERTIFY THAT the foregoing resolution was duly and regularly adopted by the City Council of the City of Winters, County of Yolo, State of California, on the 16<sup>TH</sup> day of December 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Michael Martin, Mayor

ATTEST:

\_\_\_\_\_  
Nanci G. Mills, City Clerk

# CITY OF WINTERS HABITAT MITIGATION PROGRAM

The City currently faces oversight of the implementation of various habitat mitigation requirements associated with recently approved and pending development project approvals. The purpose of this program is to establish a framework for acceptable satisfaction of these requirements.

The program is formatted as follows:

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## STATE AND FEDERAL FRAMEWORK

**Swainson's Hawk** -- The Swainson's Hawk is listed as a "threatened" species under the California Endangered Species Act (CESA) and is also protected pursuant to Section 3503.5 of the State Fish and Game Code and the Federal Migratory Bird Treaty Act. Swainson's Hawk impacts are generally distinguished as nesting impacts and foraging impacts. Nesting impacts are those that remove or disturb occupied nesting habitat, including native or nonnative trees along riparian corridors, roadside trees, or isolated trees or groups of trees. Foraging habitat impacts are those that remove suitable foraging habitat, such as open grasslands and agricultural lands that are

compatible with their foraging behavior (i.e., hay, grain, and row crops and pasturelands with low vegetative height).

To mitigate impacts to Swainson's Hawk nesting and foraging habitat, mitigation strategies are generally imposed in accordance with California Department of Fish and Game (CDFG) guidelines set forth in the "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California" (CDFG, 1994). Pre-construction nesting surveys are required to be conducted during the nesting season. If an active nest is located, or if previously active nests are documented by CDFG, mitigation measures may include delineation of no-construction buffer zones around the active nest site and/or a delay of construction until nestlings have fledged. CDFG guidelines require mitigation for losses of Swainson's hawk foraging habitat within ten miles of an active nest, and indicate that such losses can be mitigated by providing suitable habitat management (HM) lands (i.e., foraging habitat) based on the following ratios:

- a) Projects within one mile of an active nest shall provide one acre of HM land for each acre of development authorized (1:1 ratio);
- b) Projects within five miles of an active nest tree but greater than one mile from the nest tree shall provide 0.75 acre of HM land for each acre of development authorized (0.75:1 ratio);
- c) Projects within 10 miles of an active nest tree but greater than five miles from an active nest tree shall provide 0.5 acre of HM land for each acre of development authorized (0.5:1 ratio).

**Other Raptors** – Other raptors are also protected pursuant to Section 3503.5 of the State Fish and Game Code and the Federal Migratory Bird Treaty Act. In the local area, both nesting and foraging impacts are considered mitigated by the same measures that apply to the Swainson's Hawk. Pre-construction surveys for the Swainson's Hawk include identification of nests for other raptor species and Swainson's Hawk foraging mitigation provides mitigation for other raptor foraging impacts.

**Burrowing Owls** – The Burrowing Owl is designated by the CDFG as a "species of special concern" and is also protected pursuant to Section 3503.5 of the State Fish and Game Code and the Federal Migratory Bird Treaty Act. The Burrowing Owl nests and finds cover in subterranean burrows, typically those made by ground squirrels; however, man-made structures, such as culverts, pipes, and debris piles are also used. It forages primarily in open grasslands, but also uses agricultural types with low vegetative cover.

The Burrowing Owl is not a state or federally listed species; however, its status as a species of special concern indicates that populations are declining or the species is otherwise imperiled in California. Impacts to Burrowing Owls and other non-listed special-status species are typically addressed during CEQA review. To mitigate impacts to Burrowing Owl habitat, mitigation strategies are generally imposed in accordance with CDFG guidelines set forth in the "Staff Report on Burrowing Owl Mitigation" (CDFG, 1995). Surveys are required to be conducted for California Environmental Quality Act (CEQA) review to verify potential habitat and/or the existence of occupied habitat. If an active nest

is located, mitigation measures may include delineation of no-construction buffer zones around the active nest site and/or a delay of construction until nestlings have fledged. Where potential habitat exists pre-construction surveys are also required.

CDFG guidelines require mitigation for losses of Burrowing Owl nesting or foraging habitat based on acquisition and permanent protection of a minimum ratio of 6.5 acres of foraging habitat per pair or unpaired resident bird. Enhancement or creation of new burrows on the protected habitat is required at a ratio of 2:1. Avoidance buffers during the breeding and nesting season may also be required.

**Valley Elderberry Longhorn Beetle (VELB)** – The VELB is listed as a “threatened” species under the Federal Endangered Species Act (FESA). It is a wood boring beetle that depends entirely on its host plant, the elderberry shrub, for habitat. Elderberry shrubs are generally found in riparian and upland habitats throughout the Central Valley, including the City of Winters. Potentially occupied shrubs are defined as having stems greater than one inch in diameter regardless of the presence of emergence holes (an indicator of VELB use). Shrubs that do not support stems greater than one inch are not considered potential habitat. To mitigate impacts to the VELB, mitigation strategies are generally imposed in accordance with United States Fish and Wildlife Service (USFWS) “Conservation Guidelines for the Valley Elderberry Longhorn Beetle” (USFWS, 1999). Surveys are required to identify potentially occupied elderberry shrubs.

The USFWS has issued a programmatic consultation that requires mitigation as summarized below. The actual mitigation ratio applied depends on several factors including whether the host plant is located in a riparian or non-riparian area, the actual size of the branches that meet the one-inch minimum threshold, and presence of emergence (exit) holes. The guidelines provide a table to determine the appropriate mitigation ratio.

- a) Avoidance with a minimum buffer zone of 100-feet around each plant. Protection, restoration, and maintenance are required; or,
- b) Transplantation to a conservation area; new plantings at a mitigation ratio ranging from 1:1 to 8:1 (new planting to affected one-inch stems); over-story and under-story native species plantings at a mitigation ratio ranging from 1:1 to 2:1 (native tree or plant to new elderberry planting)
- c) The size of the conservation area depends on the number of plantings – approximately 1,800 square feet for every ten plantings (combined elderberry and/or natives).

**Seasonal Wetlands Habitat and Species** – A variety of state and federal regulations affect aquatic habitat and species, including the Federal Clean Water Act, the FESA, the Fish and Wildlife Coordination Act, the State Porter-Cologne Water Quality Control Act, the CESA, the California Native Plant Protection Act, the State Fish and Game Code, and State Wetlands Conservation Policy (Executive Order). Relevant agencies, depending on the circumstances, include the US Army Corps of Engineers, USFWS, CDFG, and the Central Valley Regional Water Quality Control Board (CVRWQCB).

The impact analysis and mitigation determination process for aquatic resources starts with a biological assessment of on-site features, in particular wetlands. Wetlands are defined differently at the federal and State level, with federal agencies requiring all three wetland indicators (hydrology, soils, and vegetation) and the State requiring only one of the three. Furthermore, wetlands policy differs as well. State policy is generally no net loss of wetlands acreage and values; federal policy is general no net loss of wetlands acreage or values.

If wetlands are present a delineation must be prepared and a determination must be made as to whether they are jurisdictional (meaning they fall under the jurisdiction of the US Army Corps of Engineers (ACOE) pursuant to Section 404 of the federal Clean Water Act) or "isolated" meaning they are not adjacent to navigable waters and therefore fall outside of the regulation of the ACOE pursuant to the Supreme Court's ruling in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001) ("SWANCC").

For avoided wetlands occupied or potentially occupied by federally listed invertebrates, the USFWS generally requires a 250 foot buffer. If the wetlands are jurisdictional, impacts to them will trigger either a general permit under Section 404 or an individual permit. General Permits have already received National Environmental Policy Act (NEPA) clearance. The most commonly applicable general permit that would apply to projects in Winters is Nationwide Permit #39 which covers projects that impact less than or equal to one half acre of wetlands and less than or equal to 300 linear feet of streambed. Whether or not a project can qualify for a general permit is ultimately a determination made by the ACOE. "Minimal impact" standards and compliance with general permit conditions factor into their decision. If the impacts from a project do not fall under a general permit, then an individual permit is required and separate NEPA clearance would be triggered as well.

Impacts to wetlands that contain or provide suitable habitat for federally listed species trigger a consultation requirement under FESA, before a federal Incidental Take Permit (ITP) can be issued to allow the project to move forward. If the wetlands are jurisdictional, the consultation must satisfy FESA Section 7 and requires the USFWS to render a formal Biological Opinion. If the wetlands are non-jurisdictional, the consultation must satisfy FESA Section 10 and requires the preparation of a project-level HCP.

The USFWS has issued a programmatic consultation for impacts to small areas (less than one acre) of vernal pool habitat containing invertebrates. Projects with larger impacts would not be covered by this consultation and may be subject to different mitigation requirements.

a) a "preservation" requirement of 2:1 for mitigation at a mitigation bank or 3:1 for mitigation on-site or at a non-bank location; and

b) a "creation" requirement of 1:1 for mitigation at a mitigation bank or 2:1 for mitigation on-site or at a non-bank location.

For jurisdictional wetlands, Section 401 of the Clean Water Act triggers a requirement for Water Quality Certification from the Central Valley Regional Water Quality Control Board. For isolated wetlands similar regulatory authority is provided to the Regional Board through Porter-Cologne Water Quality Control Act. The Water Quality Certification is needed for both individual and general permits from the Corps and the Certification is required before any such permit issued or authorized by the Corps can be acted upon.

It should be noted that invertebrates in general, and "rare" listed plants under the California Native Plant Protection Act, are not regulated under CESA. Therefore, unless the wetlands lie within a stream bed or channel, CDFG has no direct permitting authority except through CEQA. Through their CEQA authority, CDFG generally requires that permanent wetlands be protected by no less than 100-foot setback buffer areas, and intermittent streams and swales be protected by no less than a 50-foot non-building setback buffer established on each side of the stream. They generally advise that buffers be extended to protect riparian habitats. Where impacts to these resources will result CDFG relies on the State policy of no net loss of wetlands acreage and values for establishing mitigation. Section 1600 of the State Fish and Game Code triggers the requirement for a Lake or Streambed Alteration Agreement if activities are proposed within the bed or bank of a river, stream, or lake including wetlands or riparian vegetation associated with that stream.

At the local level, the City of Winters has separate relevant policies which are discussed below.

## **GENERAL PLAN POLICY FRAMEWORK**

The Winters General Plan adopted May 19, 1992, includes a Natural Resources Element with the following goal and policies relevant to habitat values:

**Goal VI.C: To protect sensitive native vegetation and wildlife communities and habitat.**

### **Policies:**

- VI.C.1. Prior to approving public or private development projects in areas containing or adjacent to areas containing large trees, riparian vegetation, wetlands, or other significant wildlife habitat, the City shall require the project area and its environs be field surveyed for the presence of special-status plant and animal taxa. Such field surveys shall be conducted by a qualified biologist. If special-status taxa are encountered during the field surveys, appropriate measures shall be developed to minimize disturbance and protect identified populations where feasible.
  
- VI.C.2. In regulating private development and constructing public improvements, the City shall ensure that there is no net loss of riparian or wetland habitat acreage and value and shall promote projects that avoid sensitive areas. Where habitat loss is unavoidable, the City shall

require replacement on at least a 1:1 basis. Replacement entails creating habitat that is similar in extent and ecological value to that displaced by the project. The replacement habitat should consist of locally-occurring, native species and be located as close as possible to the project site. Implementation of this policy should be based on baseline data concerning existing native species. Study expenses shall be borne by development.

VI.C.3. Unless there are overriding considerations as defined in the California Environmental Quality Act, the City shall not approve any project that would cause significant unmitigatable impacts on rare, threatened, or endangered wildlife or plant species.

VI.C.4. The City shall support and participate in local and regional attempts to restore and maintain viable habitat for endangered or threatened plant and animal species. To this end, the City shall work with surrounding jurisdictions and state and federal agencies in developing a regional *Habitat Management Plan*. Such plan shall provide baseline data for the Winters area on special-status plant and animal taxa, including Swainson hawk and the valley elderberry longhorn beetle, and provide guidelines and standards for mitigation of impacts on special-status taxa.

VI.C.5. The City shall require mitigation of potential impacts on special-status plant and animal taxa based on a policy of no-net-loss of habitat value. Mitigation measures shall incorporate as the City deems appropriate, the guidelines and recommendations of the U.S. Fish and Wildlife Service and the California Department of Fish and Game. Implementation of this policy may include a requirement that project proponents enter into an agreement with the City satisfactory to the City Attorney to ensure that the proposed projects will be subject to a City fee ordinance to be adopted consistent with the regional *Habitat Management Plan*.

VI.C.6. The City shall undertake a feasibility study for the establishment of an Open Space Preserve between the Urban Limit Line and Grant Avenue west of I-505. Such preserve should be designed to provide for a combination of uses including agriculture, habitat protection, groundwater recharge, and educational and recreational activities. The Open Space Preserve should, to the maximum extent possible, be designed to function as part of the City's flood control and wastewater discharge system. The City should consider requiring developments that cannot mitigate wetlands or riparian habitat impacts on-site to make in-lieu contributions to the establishment, development, and maintenance of the Open Space Preserve or other mitigations consistent with the regional *Habitat Management Plan*.

- VI.C.7. The City shall promote the use of drought-tolerant and native plants, especially valley oaks, for landscaping roadsides, parks, schools, and private properties.
- VI.C.8. Parks, the drainage detention areas, and golf course development shall incorporate areas of native vegetation and wildlife habitat.
- VI.C.9. Large, older and historically-significant trees should not be removed unless they are diseased or represent an unavoidable obstacle to development. Development should be designed and constructed to avoid adverse impacts on such trees.
- VI.C.10. The City shall encourage and support development projects and programs that enhance public appreciation and awareness of the natural environment.

Policy VI.C.2 is most directly relevant and was used as the basis for local compensatory replacement habitat requirements applied to recent project approvals, which are discussed further herein.

## APPROVED PROJECTS

The City has recently approved four significant residential projects (Callahan Estates, Creekside Estates, Hudson/Ogando, and Winters Highlands) that required discretionary approvals and CEQA clearance. A brief summary of the habitat mitigation requirements of each is provided below.

**Callahan Estates Subdivision** (approved April 5, 2005) -- The project is a residential subdivision of 26.4 acres to create 120 single-family lots; Parcels A and D (exchange lots); Parcels E, F, and G (open space lots); and Parcel X (detention pond/well site).

Habitat mitigation summary (full text of mitigation measures attached):

Other Raptors (MM #3) – Nest survey required. Avoidance required.

Burrowing Owl (MM #4) – Nest survey required. Preservation area required per nest per DFG.

Swainson's Hawk (MM #5) – 1:1 preservation of foraging land required for 26.4 acres. Payment of MOU fee allowed.

Wetlands Invertebrates (MM #5.1) – 0.25 acres seasonal wetlands in SE corner. Avoid or do protocol surveys. Mitigation required pursuant to USFWS and DFG requirements.

Seasonal Wetlands (MM #5.2) – 0.25 acres seasonal wetlands in SE corner plus unknown acreage for Highlands Canal onsite. Local 1:1 mitigation required per

GP Policy VI.C.2 located either at the City's Community Sports Park site north of Moody Slough Road or at the wetlands site in the northeast corner of the Winters Highlands property.

**Creekside Estates Subdivision** (approved May 17, 2005) -- The project is a residential subdivision of 13.7 acres to create 40 single-family lots.

Habitat mitigation summary (full text of mitigation measures attached):

Valley Elderberry Longhorn Beetle (VELB) (MM #4) – Species survey required. Preservation area required per bush per USFWS.

Other Raptors (MM #5) – Nest survey required. Avoidance required.

Burrowing Owl (MM #6) – Nest survey required. Preservation area required per nest per DFG.

Swainson's Hawk (MM #7) – 1:1 preservation of foraging land required for 13.7 acres. Payment of MOU fee allowed.

Seasonal Wetlands – None. Not applicable.

**Hudson/Ogando Subdivision** (approved December 13, 2005) -- The project is a residential subdivision of 15.97 acres to create 72 single-family lots (47 R-1 lots on 10.06 acres; plus 25 R-3 lots on 3.63 acres), Parcel A (5,360 sf) for a small open space or well site, and Parcel Y (93,608 sf) for a proposed City Public Safety Center .

Habitat mitigation summary (full text of mitigation measures attached):

Burrowing Owl (MM #4) – Nest survey required. Preservation area required per nest per DFG.

Swainson's Hawk (MM #5) – 1:1 preservation of foraging land required for 15.97 acres. Payment of MOU fee allowed if MOU is in effect, otherwise land required.

Other Raptors (MM #6) – Nest survey required. Avoidance required.

Wetlands Invertebrates (MM #7) – 0.78 acre seasonal wetlands in the center of the northern portion of the site. Avoid or do protocol surveys. Mitigation required pursuant to USFWS, DFG, and RWQCB requirements, as applicable.

Seasonal Wetlands (MM #8) – 0.78 acre seasonal wetlands in the center of the northern portion of the site. Local 1:1 mitigation required per GP Policy VI.C.2 located either at the City's Community Sports Park site north of Moody Slough Road, at the wetlands site in the northeast corner of the Winters Highlands property, or elsewhere as directed/approved by the City Council.

**Winters Highlands Subdivision** (approved April 4, 2006) -- The project is a proposed residential subdivision of 102.6 acres to create 413 single-family lots (including 36 "duplex" lots) on 49.49 acres, a 2.01 acre multifamily lot on which 30 apartments will be developed, a 10.63 acre park site (plus a proposed 10,000 square foot well site), a 7.43 acre wetlands/open space area, an exchange parcel of 0.04 acres to the Callahan property to the south; and 32.81 acres in public roads.

Habitat mitigation summary (full text of mitigation measures attached):

Wetlands Invertebrates (MM #4.3-1a) – Protocol surveys identified 0.67 acre of populated seasonal wetlands (vernal pools) on-site. Mitigation is required pursuant to USFWS requirements.

Seasonal Wetlands On-Site Preserve (MM #4.3.2a) – Preserve and manage in perpetuity 7.43 acres in northeast corner comprised of 0.99 acres wetlands/vernal pools, 2.10 acres open space grasslands, and 4.33 acres of open space buffer.

Swainson's Hawk and Other Foraging Raptors (MM #4.3-3a) – 1:1 preservation of foraging land required for 102.6 acres. Payment of MOU fee allowed if MOU is in effect, otherwise land required.

Burrowing Owl (MM #4.3-4a/b) – Three owl pair/individuals identified. Pre-construction nest survey required. 19.5 acres of habitat required to be preserved and enhanced per DFG.

Seasonal Wetlands (MM #4.3-5a) – Local 1:1 mitigation required per GP Policy VI.C.2 for the 0.54 acre of seasonal wetlands that occur in the Highlands Canal. Local 2:1 mitigation required per GP Policy VI.C.2 for the 0.81 acre of wetlands that occur outside the Highlands Canal. Total mitigation requirement 2.16 acres. See specified performance criteria.

Other Raptors (MM #4.3-6a) – Nest survey required. Avoidance required.

Riparian Corridor Adjoining Dry Creek (MM #4.3-9a) – Restoration plan required for 50 foot section on either side of Highlands Canal outlet (0.05 acre).

### **Summary of Habitat Preservation Acreage Requirements**

Based on the information provided above by project, aggregate preservation requirements by resources (as currently known) are as follows:

Burrowing Owl – 19.5 acres for Highlands (additional acreage may be required depending on results from site surveys to be completed).

VELB -- 0 acres (additional acreage may be required depending on results from site surveys to be completed).

Swainson's Hawk – 158.7 acres (Callahan 26.4, Creekside 13.7, Hudson 15.97, Highlands 102.6).

Wetlands Invertebrates – 0.67 acre for Highlands (additional acreage may be required depending on results from protocol surveys to be completed at Callahan project sites).

Seasonal Wetlands – 3.19 acres (Callahan 0.25 +      for Canal, Creekside 0.0, Hudson 0.78, Highlands 2.16 comprised of 0.54 at 1:1 and 0.81 at 2:1) (additional acreage may be required depending on results from delineation of Highlands Canal on Callahan site to be completed).

Total – 182.1 acres (additional acreage may be required depending on results from site surveys to be completed as noted above).

## **STATEMENT OF GUIDING VALUES**

It is the goal of the City to achieve the greatest possible social and habitat value from the implementation of the City's habitat mitigation requirements. This is another way to achieve community gains from the various projects, in exchange for the right to develop and the approval to convert these properties to new neighborhoods. Although these development approvals have been planned in the General Plan to convert to residential uses, there are still important community values to be gained in maximizing the mitigation. The General Plan goal and policies listed above support this concept. In light of this, the City will oversee the implementation of mitigation requirements based on the following guiding values:

- Consolidate single-project mitigation into a large and biologically meaningful preserve.
- Maximize open space and habitat value for Winters' community.
- Coordinate with other cities and agencies to maximize land preservation opportunities. This shall include coordination with the JPA to maximize opportunities for joint benefit. It is the intent of the City to remain a partner and participant in the JPA and that this program be consistent with the efforts of the JPA.
- Be flexible, practical, and efficient with resources and opportunities.
- Ensure that this Habitat Mitigation Program (HMP) has been satisfied as early as possible and no later than prior to issuance of building permits. Require mitigation implementation to be consistent with this program.
- Require land dedications generally, but allow use of established mitigation banks under specified circumstances, where the habitat and monitoring requirements are particularly complicated, regulated, or technical.

- Where Swainson's Hawk mitigation for less than 40 acres is a requirement of a project, as a last resort where the developer has made a compelling case to demonstrate their inability to purchase land or easements pursuant to the program, the City retains the authority to allow that developer to pay in-lieu fees through the JPA.

## **MITIGATION STRATEGY BY RESOURCE**

**Overall Vision --** Strategies for each impacted biological resource are provided below. If properly implemented, it is the intent that these strategies will result in contiguous acreage of preserved land in proximity to the City comprised of open space and/or cropland adjoining a local creek or slough with significant riparian values. The open space or crop land would be used for Swainson's Hawk mitigation. Mitigation for Burrowing Owl, VELB, and/or seasonal wetlands would be incorporated into the open space or located between the open space/cropland (depending on the presence of existing resources and physical characteristics) and the slough or creek area which would be accepted as mitigation under General Plan Policy VI.C.2. Furthermore, this land would be managed in a manner allowing for controlled open space recreational value to be gained for Winters residents and children, in the form of education programs, trails, viewing points, event gathering areas, etc.

In all cases, the mitigation land must not only be acquired and put under a conservation easement, but the applicant must provide an appropriate endowment to cover management of the land in perpetuity. The applicant must, therefore, provide a management plan acceptable to the agencies and City that identifies the management actions required for the land being set aside.

**Swainson's Hawk and Other Raptors –** Swainson's Hawk foraging land is easily located throughout the local area and in proximity of the City. As such where mitigation for Swainson's Hawk is triggered, the City will generally not allow it to occur through a mitigation bank, but rather require that it occur on land placed under easement by the applicant, under the management of a local established land trust approved by the City and acceptable to CDFG. In addition, preservation of Swainson's Hawk land generally has the dual effect of preservation of agricultural land in those cases where the foraging land is agricultural row crop land.

The County and all cities within the County have a Memorandum of Understanding executed with CDFG that allows for the payment of in-lieu fees to the Yolo County Habitat Joint Powers Agency (JPA) as mitigation for the Swainson's Hawk. These fees are to be used to make purchases of Swainson's Hawk foraging land and/or easements on such land, for permanent conservation as a precursor to adoption of the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The JPA has recently begun to acquire Swainson's Hawk easements.

As written, the City approvals for the Callahan and Creekside projects defer to payment of the in-lieu fees to the JPA for mitigation of Swainson's Hawk. Whereas, the City's

approval of the Hudson and Highlands projects indicate that unless the MOU and/or the countywide HCP/NCCP are approved and in effect, the applicants must directly secure land dedications, and can not rely on payment of the in-lieu fee.

Therefore, for all four projects the City position is that the applicants will purchase and set aside in perpetuity the appropriate acreage of Swainson's Hawk foraging land consistent with the parameters of this report, through the purchase of the underlying land and/or the development rights and execution of an irreversible conservation easement to be managed by a local established land trust approved by the City.

**Burrowing Owl** – It is possible to successfully create Burrowing Owl habitat and encourage use by Burrowing Owls. Additionally, this species shares some of the same habitat requirements as the Swainson's Hawk, primarily open grasslands. As such, where mitigation for Burrowing Owls is required, the City will not generally allow it to occur through a mitigation bank, but rather require that it occur on land placed under easement by the applicant, adjacent to Swainson's Hawk mitigation land (see discussion above), and under the management of a local established land trust approved by the City and acceptable to CDFG. "Stacking" of Burrowing Owl and Swainson's Hawk habitat on the same acreage is not supported by the City.

**Valley Elderberry Longhorn Beetle** – A similar situation exists for the VELB. The host plant for this beetle is fairly easy to transplant. Similarly, the success rate for new plantings is high. As such, where mitigation for VELB is triggered, the City will not generally allow it to occur through a mitigation bank, but rather require that it occur on land placed under easement by the applicant, adjacent to and on the fringes of Swainson's Hawk mitigation land (see discussion above), and under the management of a local established land trust approved by the City and acceptable to the USFWS.

**Seasonal Wetlands Habitat/Species** – The technology for preservation and creation of riparian and wetlands habitat is fairly standard and well understood but in many cases poorly implemented, managed and monitored. Where permitting approval from State or federal agencies is required (as is the case for example where protected invertebrates would be impacted) the mitigation requirements generally become no more technically difficult, however the regulatory requirements seem to increase significantly in the form of bureaucratic oversight. For this reason the City sees a logical distinction between mitigating riparian and wetlands habitat losses pursuant solely to local General Plan Policy VI.C.2 verses satisfaction of State and federal agencies requirements for mitigation of impacts to jurisdictional wetlands and/or protected species.

Pursuant to the General Plan requirements, projects with impacts to riparian or wetland features must mitigate those impacts with land acquisition in the same fashion described above for the Swainson's Hawk. There then needs to be new habitat created on this land that replaces the habitat that was lost due to the project. This General Plan mitigation will not be allowed to occur in a mitigation bank as that removes it from City proximity and does not fully take advantage of the potential to permanently preserve open space around the city.

To the extent that State or federal mitigation is also triggered for jurisdictional wetlands and/or protected species, this may be allowed to be satisfied within the same land acquisition but on separate acreage, but not to the extent that it limits or impairs full satisfaction of the City's General Plan requirements and not to the extent that it might limit the ability of the City and its residents to gain open space recreational value from the dedicated lands and have management autonomy over them. The City recognizes that at both the State and federal level, agencies generally do not support "multi-use" management due to concerns regarding incompatibilities between human activities (even passive) and habitat preservation. Should this be the case, then mitigation for State and federal purposes must occur on separate land.

The mitigation text for the Callahan and Hudson projects specify that mitigation under City General Plan Policy VI.C.2 is to take place at the City's community sports park site north of Moody Slough Road or at the preserved wetlands in the northwest corner of the Highlands project site. However all non-mounded land at the community sports park site will be needed for sports fields and the mounded areas will likely not be suitable for surface wetlands creation due to the underlying landfill cells and hazardous materials concerns. As part of the recent approval of the Highlands project a decision was made not to preserve the wetlands in the northwest corner of the project. Therefore, the City will exercise its discretion to direct that the wetlands mitigation for Callahan and Hudson be satisfied pursuant to this program in the same manner as will be required of the Highlands project.

## **FRAMEWORK FOR MITIGATION**

The City hereby establishes the following framework for habitat mitigation in Winters:

### **Qualifying Land**

- Establish mitigation areas as close to town as practicable without detrimentally affecting likely direction of future growth. The precise acceptability of a particular mitigation property shall be decided on a case-by-case basis to avoid manipulating the market. Generally favorable areas are those that occur in Yolo County within a seven-mile radius of the current City limits (see Exhibit A). Priority shall be given to mitigation sites in Yolo County.
- Isolated mitigation areas should be avoided. They should be contiguous to one another or to other existing preserved land, or as a part of a larger conservation strategy.
- Preserved areas must have equal or better habitat values for the subject species, or must be restored and maintained in perpetuity to such level as part of the mitigation. This shall be demonstrated through the submittal of an assessment of biological value prepared by a qualified biologist acceptable to the City.
- Agricultural land may not be taken out of production for the purposes of qualifying land for this program.

- The property may be zoned or designated for any use but must be redesignated to Agriculture, Open Space, or equivalent designation at the applicant's expense.
- The mitigation area shall be comprised of units of land that meet minimum size (40 acres) and shape requirements (grossly irregular parcels that preclude efficient operation are not acceptable) so as to ensure efficient management. Whether or not particular parcels of land proposed for mitigation are acceptable under these requirements shall be evaluated by the City based on geographic and soil characteristics, natural features (including topography, hydrology, and vegetation), habitat values, adjacent property ownership and land use, etc.
- Existing rural development on mitigation parcels is not acceptable and shall be rejected or discounted from the calculation of net mitigation credit. Planned or proposed rural residential development on mitigation land shall render it unacceptable for this program.
- The mitigation land shall have adequate water supply to support the agricultural use and the water supply shall be protected in the conservation easement.
- Proposed mitigation land shall be examined through a title search for easements or other prior encumbrances and the City and conservation entity shall be satisfied that any such encumbrances will not adversely affect the intended use and management of the parcel for habitat mitigation purposes.

#### **Qualifying Conservation Entity**

- The applicant shall identify an appropriate and qualified "conservation entity" to hold and manage the conservation easement.
- The conservation entity and the inclusion of any other signatories on the agreement must be acceptable to the City. The conservation entity is expected to have an established track record in holding and managing conservation easements for the purposes of conserving and maintaining lands habitat values.
- The City favors the use of a local non-profit habitat conservation entity or the regional branch of a nationally recognized non-profit habitat conservation entity as the easement holder.
- This entity must satisfy the definition of a "qualified organization" under Internal Revenue Code Section 170(h) related to conservation easements and their treatment in the federal tax laws.
- The proposed entity shall submit the information outlined in the "Required Information for Proposed Conservation Entity" (Exhibit A), along with any other information requested by the City, to assist the City in their review of the proposed entity's qualifications.

- The City will use the following criteria when approving the non-profit habitat conservation entity for these purposes:
  - a. Whether the entity is a non-profit organization that is either based locally or is a regional branch of a national non-profit organization whose principal purpose is holding and administering habitat conservation easements for the purposes of conserving and maintaining habitat values;
  - b. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands habitat values;
  - c. Whether the entity has a history of holding and administering easements in Yolo County for the foregoing purposes;
  - d. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards;
  - e. Whether the entity is a member in good standing of the California Council of Land Trusts;
  - f. Whether the entity has been accredited by the Land Trust's Alliance's Land Trust Accreditation Commission; and
  - g. Any other information that the City finds relevant under the circumstances.
- The City retains the discretion to determine whether the habitat conservation entity identified by the applicant has met the criteria delineated above.

#### **Minimum Standards for the Agreement**

- The method of preservation must ensure permanent protection of the mitigation land for the habitat uses.
- Control of the land shall be established either through outright purchase (fee title) or through acquisition of development rights.
- As a courtesy, notice of the transaction shall be provided by the applicant to the City or County with land use jurisdiction and the Yolo Natural Heritage Program. Evidence of this shall be provided to the City of Winters.
- Preservation shall be ensured through the use of a conservation easement, deed restriction, or other equivalent mechanism, for specified habitat purposes in perpetuity.

- Develop a standard conservation easement agreement to serve as a template throughout the program.
- The agreement shall address funding for ongoing management fees for stewardship, property-specific management, record keeping, transfers, and legal defense. This shall be in the form of a long-term "non-wasting" endowment that comprises a minimum of five percent of the value of the easement, unless a lesser amount is acceptable to the conservation entity.
- All ownership interests in the land must execute the instrument.
- The agreement must be recorded and contain an accurate legal description of the mitigation property.
- The agreement must prohibit any activity which adversely affects the habitat value of the mitigation land.
- The City shall be named as a beneficiary under any instrument conveying the interest in the mitigation land to a management entity.
- The interest in the mitigation land shall be held in trust by the conservation entity in perpetuity.
- The conservation entity may not sell, lease, or convey any interest in the mitigation land except for fully compatible agricultural or open space uses.
- If the conservation entity ceases to exist, the duty to hold, administer, monitor, and enforce the interest shall be reassigned to another qualified conservation entity.
- The agreement shall specifically address the monitoring requirements of the property including specific performance criteria for the species or habitats being mitigated, contingencies and short-term adaptive management measures (e.g. replanting riparian trees that die in the first three years), monitoring time periods, etc.
- "Stacked easements" refer to the concept of allowing mitigation for one species to occur on the same land (or portion thereof) as mitigation for another species. For example, Swainson's Hawk and Burrowing Owl. While adjacency and contiguity of mitigation property is required as noted elsewhere, it is the City's position that the greatest social and habitat value of the mitigation is achieved by having each impacted species/habitat mitigated through separate acreage. Similarly stacking of the General Plan wetlands mitigation with other State/federal wetlands mitigation requirements is not allowed. Though it may be located within the same land acquisition, it must be located on separate acreage.
- Other specific requirements of the approved project mitigation measures shall be implemented unless otherwise modified herein.

## Required Submittals

In order to satisfy the mitigation requirements of the City, the developer must submit appropriate evidence that all requirements of this program have been satisfied. This information will be used by the City to determine whether or not the proposed mitigation property is located strategically to allow maximum benefit from the preservation program. This shall include the following:

- A legal description of the property including water rights and water supply.
- Evidence of control of the land (e.g. title report) and documentation regarding any outstanding loans.
- Disclosure of any easement (including mineral rights), physical condition, or other material fact that would preclude or substantially impair the intended use.
- Required Information for Proposed Conservation Easement Holders (Exhibit B)
- A letter from the proposed conservation entity confirming their qualifications to manage the property, their interest in the property, and agreement to accept the conservation easement.
- A draft conservation easement or other proposed mechanism. The draft easement shall be provided to the City for review prior to being circulated to any other responsible agencies.
- The agreement must contain language that requires outstanding loans and mineral rights to be subordinated to the mitigation interests.
- A letter of acceptance from the State Department of Fish and Game if necessary to satisfy State mitigation requirements.
- Letters of acceptance from other responsible agencies if appropriate.
- Information on soils, topography, hydrology, and vegetation prepared by a qualified professional, as determined by the City.
- A history of use and practices on the property included as part of a Phase I Environmental Site Assessment that meets applicable standards in the industry.
- A map of the property and surrounding area depicting the following:
  - Lands in the vicinity of the proposed mitigation property that have restricted development rights such as a conservation or habitat easement, flowage or flood easement, etc., already in place.

- A delineation of the proposed mitigation property
- Parcel numbers, ownership, zoning, and acreage.
- Soils, topography, hydrology, and vegetation for the mitigation property and surrounding parcels in the vicinity.
- 100-year floodplain, landfills, or other such limiting features.
- Known areas of special status species habitat.
- Structures and residences.
- Any other information required by the City.

#### EXHIBITS

A – 7-Mile Radius Map

B – Required Information for Proposed Conservation Easement Holders

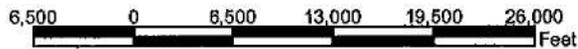
C – Habitat-Related Mitigation Measures For Recent New Development

# Seven-Mile Radius CITY OF WINTERS

Date: 4/3/2006

Customer(s): YOLO LAND TRUST  
District: Yolo County RCD  
Approximate Acres: 93,432.6  
42.83 Mile Perimeter

Field Office: WOODLAND SERVICE CENTER  
Agency: USDA NRCS  
Assisted By: PHIL HOGAN



### Legend

-  County Boundary
-  Seven-mile Radius - 93,432.6 ac
-  City of Winters



Image: 2005 Aerial Yolo Co. & Solano Co.





## EXHIBIT B

### Required Information for Proposed Conservation Easement Holders

Please submit the following information about your organization and its experience in acquiring, holding, and managing conservation easements. This information will be used to evaluate your organization's qualifications to hold conservation easements intended to fulfill mitigation requirements for projects approved by the City of Winters.

**Board Composition** Please provide biographical information for board of directors and executive officer or director. Specifically, this must include a (1) list of all board members and staff, (2) biographical statement for each including a list of other key affiliations for each, and (3) identification of all officers of the organization.

**Organizational Structure** Please identify and describe the structure and composition of the organization, such as officer positions, committees, staff (titles and percentage time, committee members who are not board members, number of volunteers, groups of volunteers (such as monitoring volunteers; if applicable), and so forth.

**Financial** Please provide your IRS 990 statements for the last three years. If your land trust holds land or conservation easements, please describe how their immediate and long-term management and defense are funded, the approximate amount available and how those funds are managed. Please provide copies of financial policies, the dates of adoption and dates of any amendments to these policies.

**Key Legal and Policy Documents** Legal documents: (1) IRS letter, (2) articles of incorporation, (3) by-laws, and (4) most recent filing with the California Attorney General. Please provide copies of policies related to board membership, board participation and decision-making, and transactional matters. Examples include: board member job description, conflict of interest policy, land protection criteria, and transaction approval process. Please provide the dates of adoption and dates of any amendments to these policies.

**Geographic Area of Operations and Resource Focus** List geographic area of land protection activities and all counties in which the land trust has worked or would consider working. Also identify any particular resource(s) (e.g., oak woodlands) in which the land trust focuses upon.

**Activities** Please describe your organization's activities and relative percentages of *time spent* (e.g., land/easement transactions 75%, land management 10%, education and community outreach 10%, restoration 60%, administration 5%, land use or policy advocacy 25%).

**Conservation Accomplishments** Please describe specifically (1) acres protected and the protection mechanism (e.g., "X" acres in fee title), (2) acres of land, easement or currently held, (3) acres for which the land trust holds a responsibility (e.g., stewardship) although it may not hold a property interest, (4) miles of trails constructed, and (5) acres held that originated through the mitigation process. These figures should include lands that you may have protected even if ownership was subsequently transferred to another. Please share any other accomplishments of note, e.g., assisting with transactions, annual educational program for local 3rd graders, etc.

**Model Conservation Easement** Please provide copy or copies of the model conservation easement(s) which your organization is currently using as a basis for your easement negotiations and easement drafting. Model easement should be relevant to proposed mitigation easement (e.g. model Swainson's Hawk easement)

**Conservation Easement Management** Please provide a list of conservation easements held by your organization including: (1) location, (2) purpose, (3) acreage, (4) date acquired, (5) how acquired (e.g. purchase, donated, mitigation), (6) funding sources (e.g. grant sources, in lieu fees). Please provide example monitoring report(s) prepared by your organization for easement(s) similar to the proposed easement. Also provide your amendment policy for conservation easements, and enforcement policy for conservation easements. Please provide the dates of adoption and dates of any amendments to these policies.

**Community Support** For the past year, please provide (1) number in each category that have contributed funds (e.g., individuals, organizations and public "agencies"), (2) number of volunteers, (3) number on your mailing list, and (4) any other examples of community support you would like to share. Is there any particular way that you "market" or describe your organization to others? Please provide examples of your key communication materials, e.g., brochures, website, newsletters, annual appeal.

## EXHIBIT C

### HABITAT-RELATED MITIGATION MEASURES FOR RECENT NEW DEVELOPMENT

#### CALLAHAN ESTATES SUBDIVISION:

**Mitigation Measure #3:** The project proponent shall mitigate for potential project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests (e.g. Swainson's hawk or white-tailed kite) are found during the preconstruction survey, a 0.25-mile (1,320-feet) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

**Mitigation Measure #4:** The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving 6.5 acres of suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

**Mitigation Measure #5:** The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat. The MOU requires the project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. A fee shall be collected by the City of Winters for impacts to 26.4 acres of potential Swainson's hawk foraging habitat. The fee shall be payable to the Wildlife Mitigation Trust Account. Funds paid into the trust account shall be used to purchase or acquire a conservation easement on suitable Swainson's hawk foraging habitat and for maintaining and managing said habitat in perpetuity. The cost per acre for acquisition and maintenance of foraging habitat is reviewed annually and the project proponent shall be charged at the rate per acre at the time of project approval. Payment shall be made to the trust account prior to the initiation of construction activity and shall be confirmed by the City of Winters prior to the issuance of a grading permit.

**Mitigation Measure #5.1:** (a) If the project can avoid ground disturbing activities that would affect the hydrology of the wetland or avoid fill into the wetland, then no mitigation for impacts to special status invertebrates is required. A buffer around the seasonal wetland would be required to ensure that any possibility of take is avoided. The amount of this buffer would be determined by a qualified biologist based on a site-specific determination of hydrology and shall not be less than 20-feet. If impacts to the wetland will not be avoided, then consultation and on-site inspection with USFWS shall determine whether the Service will require protocol surveys to be conducted to determine presence or absence of the listed species. If as a result of the consultation or protocol level surveys it is determined that the species are absent, then no mitigation is required. If the species are present, or if the project proponent

decides to assume presence by not conducting the surveys if such surveys are required by USFWS, then compensatory mitigation will be required. If compensatory mitigation is required and there is no federal regulatory lead agency (as is the case with this project), the project proponent, through coordination with the USFWS, would prepare a project-level Habitat Conservation Plan under Section 10 of the federal Endangered Species Act. The project-level HCP will identify specific actions including the amount of compensation that is required. Typically, impacts on these species require replacement of the habitat acreage at a 3:1 ratio (1:1 preservation and 2:1 creation). The City of Winters shall confirm implementation of this mitigation measure prior to the issuance of a grading permit.

(b) Notwithstanding the Corps' determination, the California Department of Fish and Game (CDFG) retains jurisdiction over State biological resources including wetlands, and should be contacted regarding any separate regulatory authority or requirement they may have for vernal pool species. Prior to the commencement of work on the Callahan Estates project site, the applicant shall contact the CDFG regarding their potential jurisdiction over wetlands that exist on the project site and comply with all requirements, if any, established by CDFG arising from this consultation with the Department.

**Mitigation Measure #5.2:** (a) Pursuant to General Plan Policy VI.C.2, the applicant must replace loss of riparian and wetland habitat acreage and/or value on at least a 1:1 basis. Replacement entails creating habitat that is similar in extent and ecological value to that displaced by the project. The replacement habitat must consist of locally-occurring, native species and be located either at the City's Community Sports Park site north of Moody Slough Road or at the wetlands site in the northeast corner of the Winters Highlands property. Implementation of this condition shall be based on baseline data concerning existing native species. Study expenses shall be borne by development.

(b) Additional field investigation shall be undertaken by a qualified wetlands specialist to establish the condition of the Highland Canal and to determine the potential for it to be subject to CDFG jurisdiction. The following information shall be provided: the source and terminus of the drainage, whether the feature is natural or artificial, and what its current and historical purpose is relative to water delivery. Prior to the commencement of work on the Callahan Estates project site, the applicant shall contact the CDFG regarding their potential jurisdiction over habitat or species within the Highland Canal and comply with all requirements, if any, established by CDFG arising from this consultation with the Department. If the Highland Canal is found to be subject to CDFG jurisdiction, it shall also be included in the calculation of total loss of habitat for which City General Plan Policy VI.C.2 requires 1:1 mitigation.

#### **CREEKSIDE ESTATES SUBDIVISION:**

**Mitigation Measure #4:** Focused surveys for Valley Longhorn Elderberry Beetles (VELB) shall be conducted by a qualified biologist to determine presence of the species. The surveys shall be conducted, data collected, and mitigation required according to the USFWS' guidance document Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USFWS 1999). If no plants are found then no further mitigation is required. If plants are found they shall be avoided and a 20-foot buffer from the dripline is required. If the plants can not be avoided then consultation with the USFWS is required and a mitigation plan should be prepared for approval by the Service. At a minimum the mitigation plan should include acquisition of credits at an approved mitigation bank or implementation of onsite mitigation and monitoring plan that includes transplantation of plants and planting elderberry seedlings. If the potential for take is identified following surveys, the project proponent will implement the referenced guidelines through coordination with the USFWS under Section 10 of the federal Endangered Species Act.

**Mitigation Measure #5:** The project proponent shall mitigate for potential project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests (e.g. Swainson's hawk or white-tailed kite) are found during the preconstruction survey, a 0.25-mile (1,320-foot) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines

that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

**Mitigation Measure #6:** The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving 6.5 acres of suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

**Mitigation Measure #7:** The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat. The MOU requires the project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. The City shall review the MOU with DFG to determine whether or not the portion of the project area that was planted in orchard is subject to the mitigation fee. A fee shall be collected by the City of Winters for impacts to up to 13.7 acres of potential Swainson's hawk foraging habitat. The fee shall be payable to the Wildlife Mitigation Trust Account. Funds paid into the trust account shall be used to purchase or acquire a conservation easement on suitable Swainson's hawk foraging habitat and for maintaining and managing said habitat in perpetuity. The cost per acre for acquisition and maintenance of foraging habitat is reviewed annually and the project proponent shall be charged at the rate per acre at the time of project approval. Payment shall be made to the trust account prior to the initiation of construction activity and shall be confirmed by the City of Winters prior to the issuance of a grading permit.

#### **HUDSON/OGANDO SUBDIVISION:**

**Mitigation Measure #4 –** The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving equivalent suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

**Mitigation Measure #5 –** The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with one of the following:

If the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat is in full force and effect at the time the applicant seeks to satisfy this mitigation, the applicant may pay the appropriate fees allowed by this agreement. The MOU requires the project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. A fee is collected by the City of Winters for impacts to 15.97 acres of potential Swainson's hawk foraging habitat. The fee shall be payable to the Wildlife Mitigation Trust Account. Funds paid into the trust account shall be used to purchase or acquire a conservation easement on suitable Swainson's hawk foraging habitat and for maintaining and managing said habitat in perpetuity. The cost per acre for acquisition and maintenance of foraging habitat is reviewed annually and the project proponent shall be charged at the rate per acre at the time. Payment shall be made to the trust account prior to the initiation of construction activity and shall be confirmed by the City of Winters prior to the issuance of a grading permit.

If the Yolo County NCCP/HCP has been adopted, the applicant shall mitigate for Swainson's hawk impacts by complying with the terms and requirements of the Plan. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit.

If the MOU is not in full force and effect, and if the NCCP/HCP has not yet been adopted, the project applicant shall purchase and set aside in perpetuity, 15.97 acres of Swainson's hawk foraging land in proximity to the City of Winters (as approved by the City) through the purchase of development rights and execution of an irreversible conservation easement to be managed by a qualified party (e.g. Yolo Land Trust). Mitigation shall include an annuity or other mechanism to pay for permanent maintenance and management by the managing entity. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit.

**Mitigation Measure #6** -- The project proponent shall mitigate for potential project-related impacts to nesting raptors (White-tailed Kite, Northern Harrier, and Loggerhead Shrike) by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests are found during the preconstruction survey, a 0.25-mile (1,320-foot) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lath, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

**Mitigation Measure #7** -- If special-status vernal pool invertebrates are not found at the completion of a full protocol-level survey conducted by qualified biologists, and the USFWS agrees with the findings of the survey, then no further mitigation would be required. If special-status vernal pool invertebrates are found onsite, or if the USFWS disagrees then the mitigation specified below would still be required. The City of Winters shall confirm implementation of this mitigation measure prior to the issuance of a grading permit. The project proponent shall mitigate for potential project-related impacts to federally listed vernal pool invertebrates by complying with U.S. Fish and Wildlife Service (USFWS) guidelines regarding mitigation for project-related impacts to vernal pool invertebrate habitat. The USFWS typically requires a 250-foot setback from the edge of vernal pools to be avoided, however, this setback may be reduced if pools are degraded or no potential adverse effects to the habitat are anticipated with a decreased setback. If vernal pools onsite cannot be avoided, a mitigation plan shall be developed in conjunction with the USFWS to ensure no net negative effect to these species occurs. Likely mitigation measures include onsite or offsite preservation and creation of vernal pools at a ratio acceptable to the USFWS or purchase of credits at a qualified proximate vernal pool mitigation bank as specified by the USFWS and agreed to by the City. Typically, the USFWS in coordination with the Corps requires a 3:1 combination ratio (1:1 preservation and 2:1 creation) of vernal pools that potentially, or are known to support listed invertebrates.

Notwithstanding other federal jurisdiction, the Regional Water Quality Control Board may have jurisdiction over the wetlands, and shall be contacted regarding any separate regulatory authority or requirement they may have. Prior to the commencement of work on the project site, the applicant shall contact the RWCQB regarding their potential jurisdiction over wetlands that exist on the project site and comply with all applicable requirements, if any, established by that agency.

The California Department of Fish and Game (CDFG) retains jurisdiction over State biological resources including wetlands, and shall be contacted regarding any separate regulatory authority or requirement they may have for vernal pool species. Prior to the commencement of work on the project site, the applicant shall contact the CDFG regarding their potential jurisdiction over wetlands that exist on the project site and comply with all requirements, if any, established by CDFG arising from this consultation with the Department.

**Mitigation Measure #8** -- (a) Pursuant to General Plan Policy VI.C.2, the applicant must replace loss of riparian and wetland habitat acreage and/or value on at least a 1:1 basis. Replacement entails creating habitat that is similar in extent and ecological value to that displaced by the project. The replacement habitat must consist of locally-occurring, native species and be located either at the City's Community Sports Park site north of Moody Slough Road, at the wetlands site in the northeast corner of the Winters Highlands property, or elsewhere as directed/approved by the City Council. Implementation of this condition shall be based on baseline data concerning existing native species. Study expenses shall be borne by development.

#### **WINTERS HIGHLANDS SUBDIVISION:**

**Mitigation Measure 4.3-1(a).** The applicant shall mitigate for Project-related impacts to 0.67 acre of habitat for federally listed vernal pool invertebrates by complying with U.S. Fish and Wildlife Service (USFWS) guidelines regarding mitigation for Project-related impacts to vernal pool invertebrate habitat. A mitigation plan shall be developed in conjunction with the USFWS to ensure no net negative effect to these species occurs.

**Mitigation Measure 4.3-2(a).** The applicant will develop and implement a plan to manage the Preserve with the objective of ensuring that the wetland and upland habitats within the Preserve core zone are maintained in perpetuity at their present condition or better, and ensuring that any activities or structures authorized within the Preserve buffer zone are consistent with preserving the integrity of the Preserve core zone.

The Preserve shall cover approximately 7.43 acres in the northeast portion of the Project site and will include both a core zone ("wetlands area") and a buffer zone ("open space area"). The Preserve core zone shall be approximately 3.10 acres and include the 0.99 acre of seasonal wetland/vernal pool habitat and 2.10 acres of immediately adjacent annual grassland habitat. The Preserve buffer zone will cover approximately 4.33 acres and border the Preserve core zone to the north and west and provide an upland buffer to protect the Preserve core zone from adjacent land uses.

The Management Plan shall be consistent with the terms proposed by the applicant as outlined in the EIR, with the following modifications:

1. The conservation easement shall protect the entire 7.43 acres, not just the 3.10-acre core zone.
2. The buffer zone shall be maintained in a natural condition and shall not be planted with non-native vegetation. Irrigation will occur only during the initial establishment of any vegetation planted at the Preserve.
3. The U.S. Army Corps of Engineers does not need to be involved in the decision-making for removal of problematic non-native plant species.
4. No surface runoff from other sources shall be allowed.
5. Approval for the use of pesticides and other chemical agents must go through the U.S. Fish and Wildlife Service but need not go through the U.S. Army Corps of Engineers.

6. "Low impact" activities shall be defined and guidance on activities not allowed shall be provided. The U.S. Army Corps of Engineers need not be involved in the decision-making.
7. The structure of the conservation easement, including parties to the agreement, shall be to the satisfaction of the City of Winters.
8. The U.S. Fish and Wildlife Service rather than the U.S. Army Corps of Engineers shall be given authority to enforce provisions of the Management Plan and conservation easement.
9. The Management Plan shall include provisions for access by the Sacramento-Yolo Mosquito & Vector Control District personnel for routine surveillance of the ponded area(s) and shall identify a procedure for addressing possible vegetation management concerns should the District determine that dense vegetation growth in the wetland(s) may contribute to future mosquito outbreaks.

**Mitigation Measure 4.3-3(a).** The applicant shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with one of the following:

- i) If the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat is in full force and effect at the time the applicant seeks to satisfy this mitigation, the applicant may pay the appropriate fees allowed by this agreement. The MOU requires the applicant to mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. A fee will be collected by the City of Winters for impacts to 102.6 acres of potential Swainson's hawk foraging habitat. The fee shall be payable to the Wildlife Mitigation Trust Account. Funds paid into the trust account shall be used to purchase or acquire a conservation easement on suitable Swainson's hawk foraging habitat and for maintaining and managing said habitat in perpetuity. The cost per acre for acquisition and maintenance of foraging habitat is reviewed regularly and the applicant shall be charged at the rate per acre in effect at the time. Payment shall be made to the trust account prior to the initiation of construction activity and shall be confirmed by the City of Winters prior to the issuance of a grading permit.
- ii) If the Yolo County NCCP/HCP has been adopted, the applicant shall mitigate for Swainson's hawk impacts by complying with the terms and requirements of the Plan. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit.
- iii) If the MOU is not in full force and effect and if the NCCP/HCP has not yet been adopted, the project applicant shall purchase and set aside in perpetuity 102.6 acres of Swainson's hawk foraging land in proximity to the City of Winters (as approved by the City) through the purchase of the underlying land and/or the development rights and execution of an irreversible conservation easement to be managed by a qualified party (e.g. Yolo Land Trust). Mitigation shall include an endowment or other mechanism to pay for permanent maintenance and management by the managing entity. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit. To the extent feasible as determined by the City, identification of acceptable mitigation land shall be coordinated with the Yolo County Habitat Conservation Joint Powers Agency.

**Mitigation Measure 4.3-4(a).** The applicant shall conduct pre-construction surveys of suitable habitat at the Project site and buffer zone(s) within 30 days prior to initiation of construction activity. If ground disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the Project site shall be resurveyed.

Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the California Department of Fish and Game verifies through non-invasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

If owls must be moved away from the Project site, passive relocation techniques shall be used rather than trapping. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows.

**Mitigation Measure 4.3-4(b).** The loss of foraging and nesting habitat on the Project site will be offset by either acquiring and permanently protecting off-site at a location satisfactory to the City a minimum of 6.5 acres of foraging habitat (calculated on a 100 m {approx. 300 ft.} foraging radius around the burrow) per pair or unpaired resident bird or acquiring the requisite number of acres of credit at an approved mitigation bank satisfactory to the City.

The applicant shall either acquire and protect, or mitigation credits purchased at an approved mitigation bank 19.5 acres of burrowing owl habitat. If the applicant chooses to acquire and protect land for the burrowing owl, the protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to the California Department of Fish and Game and the City.

If the applicant chooses to acquire and protect land for the burrowing owl, existing unsuitable burrows at the protected land shall be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1. This will require that the applicant have the Project site surveyed to determine the number of active burrows being used by the burrowing owl.

The applicant shall provide funding for long-term management and monitoring of the protected lands should the applicant choose to pursue that option. The monitoring plan shall include success criteria, remedial measures, and an annual report to the California Department of Fish and Game and the City of Winters.

**Mitigation Measure 4.3-5(a).** Pursuant to General Plan Policy VI.C.2 the applicant must replace loss of riparian and wetland habitat acreage and ecological value on at least a 1:1 basis. Replacement entails creating habitat that is similar in extent and ecological value to that displaced by the Project. The replacement habitat must consist of locally occurring, native species and be located either at the City's Community Sports Park site north of Moody Slough Road or elsewhere as directed and approved by the City. Study expenses shall be born by the applicant.

The mitigation ratio for the 0.54 acre of seasonal wetlands that occur in the Highlands Canal shall be at a 1:1 ratio but the mitigation ratio for the 0.81 acre of wetlands that occur outside the Highlands Canal shall be mitigated at a 2:1 ratio (creation of 1.62 acres of new wetlands). The 0.81 acre of seasonal wetlands are dominated by native species and either provide known habitat or potential habitat for federally listed vernal pool crustaceans. These seasonal wetlands represent one of the few areas in the western part of Yolo County and nearby area of Solano County known to support federally listed vernal pool crustaceans.

The applicant shall develop and submit to the City of Winters a written plan that describes the actions to be taken to identify an appropriate site to construct 2.16 acres of seasonal wetlands, the construction procedures and a monitoring plan with performance criteria to document that the constructed seasonal wetlands achieve the desired habitat conditions.

The format of the plan shall follow the format prescribed by the Corps of Engineers for wetland mitigation and monitoring plans. The plan shall contain the following sections:

- Detailed description of the proposed mitigation site, including the location, ownership status, presence of any jurisdictional areas, topography and hydrology of the proposed site, soils (subsurface soil information to confirm that the soils are appropriate for wetland construction), vegetation and wildlife habitat and use of the proposed site, present and historical uses of the proposed mitigation site, and present and planned use of areas adjacent to the proposed mitigation site.
- Description of the seasonal wetland habitat to be created, including the mitigation ratio, long-term goals, anticipated future site topography and hydrology, vegetation, and anticipated wildlife habitat on the proposed mitigation site.
- Performance criteria and monitoring protocol to document that the constructed seasonal wetland habitat are meeting or exceeding the performance criteria, including a detailed description of the monitoring methods and justification of the methods, the monitoring schedule and other means of documenting the development of the mitigation (e.g., photo documentation).
- An implementation plan that describes in detail the physical preparation of the site, the planting plan, irrigation (if necessary) and the implementation schedule. The surface soils at the seasonal wetlands at the Project site that support primarily native species shall be collected and used to inoculate the constructed pools, especially the three largest pools at the Project site.
- A maintenance plan that describes the actions to be taken to address or prevent adverse conditions, such as invasion by undesirable vegetation, control of erosion of bare ground. This plan shall present a maintenance schedule and identify the party responsible for the

maintenance, which will be the applicant unless another party agreeable to the City of Winters is selected.

- A contingency plan that identifies measures to be taken if the constructed seasonal wetlands are not performing according to the established standards. This plan shall be adaptive and identify how monitoring data will be used to define future actions to achieve the performance criteria. The contingency plan shall also identify the funding mechanism for the initial monitoring period and the endowment that will be provided by the applicant for the long-term management of the site.

The applicant shall work with the City of Winters to identify an acceptable third-party entity (e.g., Yolo Land Trust, Wildlife Heritage Foundation) to manage the mitigation site once the initial monitoring period has been completed. The applicant will be responsible for the site until the performance criteria have been met and will work with the third-party entity to develop the long-term management endowment.

**Mitigation Measure 4.3-6(a).** The applicant shall mitigate for potential Project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the Project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active raptor nests are found during the preconstruction survey, a 500-foot buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

If an active Swainson's hawk nest is encountered during the pre-construction surveys, the buffer zone shall be 0.25 miles (1,320 feet) and it shall be fenced. This exclusion zone shall remain active until fledglings have left the nest or until such time that the biologist determines that the nest is no longer active.

**Mitigation Measure 4.3-7(a).** Implement Mitigation Measure 4.3-3(a).

**Mitigation Measure 4.3-8(a).** Implement Mitigation Measure 4.3-3(a).

**Mitigation Measure 4.3-9(a).** The applicant shall prepare and submit to the City for its approval a riparian restoration plan for restoring riparian trees and shrubs along a 50-foot section of Dry Creek on either side of where the outlet from the Highlands Canal is constructed.

This plan shall be similar in content to the wetland mitigation and monitoring plan described for Mitigation Measure 4.3-5(a) and shall be approved by the City prior to issuance of the grading permit. The proposed modifications to Dry Creek shall be coordinated with representatives of the California Department of Fish and Game, U.S. Army Corps of Engineers, and Central Valley Regional Water Quality Control Board, as necessary, to obtain the required permits and authorizations.