

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:

State and Federal Framework	page 1
Swainson's Hawk	
Other Raptors	
Burrowing Owls	
Valley Elderberry Longhorn Beetle (VELB)	
Seasonal Wetlands Habitat and Species	
General Plan Policy Framework	page 5
Approved and Proposed Projects	page 6
Callahan Estates	
Creekside Estates	
Hudson/Ogando Subdivision	
Winters Highlands Subdivision	
Summary of Habitat Preservation Acreage Requirements	
Statement of Guiding Values	page 9
Mitigation Strategy by Resource	page 10
Swainson's Hawk	
Other Raptors	
Burrowing Owls	
Valley Elderberry Longhorn Beetle (VELB)	
Seasonal Wetlands Habitat and Species	
Framework for Mitigation	page 12
Qualifying Land	
Minimum Standards for the Agreement	
Requirements for the Submittal	

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 AND PROPOSED 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. The full text of the adopted habitat mitigation measures for each project is attached to this analysis (see Appendix A).

As evident below, the mitigation requirements for the Swainson's Hawk are not consistent between project approvals. This is due to the City becoming aware of the lapse in the status of the Memorandum of Understanding between Yolo County, the cities, and the State Department of Fish and Game for this species. As a result, the mitigation wording for Hudson/Ogando and Winters Highlands was modified from the wording used for the earlier projects. This is discussed further 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 for properties 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). To date no purchases of mitigation land have been made by the JPA and the MOU has expired.

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.

In light of the situation and in particular the expiration of the JPA on which the Callahan and Creekside Swainson's Hawk mitigations are based, the City will exercise its discretion on the Callahan and Creekside Swainson's Hawk mitigation requirements by

determining that they can only be properly discharged by land dedication, as would be required of the Hudson and Highlands projects (assuming final approvals for Highlands).

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 Appendix B) as of May 2, 2006. Where mitigation is not possible in Yolo County, the first priority shall be mitigation in an approved mitigation bank in Solano County located within a seven-mile radius of the current City limits as of May 2, 2006.
- 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 managing entity shall be satisfied that any such encumbrances will not adversely affect the intended use and management of the parcel for habitat mitigation purposes.

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. 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.
- Identify an appropriate and qualified "managing entity" to hold and manage the conservation easement (e.g. Yolo Land Trust, American Farmland Trust, Trust for Public Land, Nature Conservancy, etc.). 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. This entity and the inclusion of any other signatories on the agreement must be acceptable to the City.

- 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 managing entity.
- All owners of 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 managing entity in perpetuity.
- The managing entity may not sell, lease, or convey any interest in the mitigation land except for fully compatible agricultural or open space uses.
- If the managing entity ceases to exist, the duty to hold, administer, monitor, and enforce the interest shall pass to the City to be retained or reassigned.
- 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.
- A draft conservation easement or other proposed mechanism. The agreement must contain language that requires outstanding loans and mineral rights to be subordinated to the mitigation interests.
- A letter from the proposed managing entity confirming their qualifications to manage the property, their interest in the property, and agreement to accept the conservation easement.
- 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.

APPENDICES

A – Project-Level Biological Mitigation Measures (verbatim)

B – 7-Mile Radius Map