ORDINANCE NO. __-___

An Ordinance Regulating Habitat Mitigation Projects

The Yolo County Board of Supervisors hereby ordains as follows:

Section One. Findings and Authority.

A. The unincorporated area is increasingly becoming the subject of mitigation projects and similar efforts that arise in connection with impacts to biological resources occurring largely or entirely occurring of the County. Such projects include mitigation banks, as well as habitat projects associated with the Bay Delta Conservation Plan (“BDCP”) and the federal biological opinions for Delta smelt, salmonids, and other aquatic species. Other forms of such "out of county" mitigation—for example, the direct purchase of a fee or easement interest by a public or private entity to discharge an existing or anticipated mitigation obligation associated with an out-of-county project—are expected to be proposed in the County in the foreseeable future.

B. The conversion of local farmland to habitat or to less productive agricultural uses is a likely consequence of some proposals included in draft elements of the BDCP. For example, the draft BDCP includes a conservation measure that proposes an array of changes within the Yolo Bypass to provide benefits to aquatic species, including the enhancement of seasonal floodplain habitat. The extent of such conversions as part of the BDCP (and other projects, such as mitigation banks) could greatly impact the local agricultural economy in many ways. Habitat conversions can also alter drainage patterns and otherwise impact neighboring properties and land uses. These are just a handful of the potential effects of a large-scale conversion of local farmland to habitat or less productive agricultural uses.

C. Existing habitat for various species could also be significantly impacted by such projects. This includes habitat for species protected under state and federal endangered species laws, such as the Swainson’s hawk and giant garter snake, and habitat for migratory waterfowl. These existing habitats are directly threatened by actions and measures included within the BDCP and the federal biological opinions, as well as related projects that may proceed in advance of the completion of the BDCP.

D. The projects covered by this ordinance are likely to create a number of additional land use conflicts and challenges within the County. For example, large-scale projects within the Yolo Bypass—particularly those that could disrupt existing agricultural practices and introduce new vegetation or erosion—could compromise the flood protection function of that facility and complicate efforts to maintain and restore its conveyance capacity. Out of county mitigation projects could also reduce the assessed value of affected lands, diminishing local property tax revenues and further jeopardizing the County’s ability to provide basic services to its constituents. Many other policy concerns have also been documented in the Board letters...
presented by County staff to the Board of Supervisors in connection with prior discussions of this topic.

E. In many ways, the foregoing concerns are somewhat unique to the out of county mitigation projects that are the focus of this Ordinance. The internal mitigation needs of the County, the cities of Davis, Woodland, West Sacramento and Winters, and other local agencies are relatively modest by comparison. Such mitigation needs also pose far less risk of a significant conversion of farmland for reasons explained in the Board letter prepared in connection with the moratorium adopted on October 12, 2010. The County also has substantial input into how local mitigation needs are addressed in the unincorporated area. Finally, out of county mitigation is also unique in that mitigation banks and other forms of such mitigation facilitate urban development of some areas while restricting land uses and activities—and impacting the existing habitat values of farmland and open space—in other places such as Yolo County. Yet while jurisdictions approving such development receive additional tax revenues and other benefits, the jurisdictions hosting related habitat mitigation projects typically receive no such benefits. This furnishes yet another example of how extraterritorial mitigation differs from local or “in-county” mitigation.

F. Additional detail on these matters is included in Board letters dated October 28, 2008, September 15, 2009, September 28, 2010, October 12, 2010, November 9, 2010, October 23, 2012, and December 4, 2012, all of which shall be considered part of the record of this item.

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

Sec. 8-2. Covered Habitat Mitigation Project.

A “covered habitat mitigation project” is any mitigation bank or other project within the County that is undertaken to mitigate impacts to biological resources occurring largely or entirely outside of the County. A “covered habitat mitigation project” also includes all other habitat restoration, creation, enhancement, or preservation activities (including the sale of a conservation easement or interest therein) carried out within the County in connection with projects or other actions impacting biological resources in locations outside of the County. This includes, but is not limited to, any such project undertaken to preserve, restore, create, or enhance habitat within the County, as well as any project that implements actions described in a Habitat Conservation Plan/Natural Communities Conservation Plan or in a biological opinion issued by the United States Fish and Wildlife Service or other federal agency. This term is to be interpreted broadly, consistent with the intent of this ordinance, to include all projects, plans, and activities that are substantially similar to any of the foregoing, regardless of whether they are specifically described herein.

Section Three. Minor Use Permit Required. A minor use permit, as that term is defined in Yolo County Code Section 8-2.270.9, shall be required for any covered habitat mitigation project of 40 acres or less. Accordingly, the following sections of the Yolo County Code shall be amended to include this requirement by adding an appropriately-lettered subsection followed by the words “Covered habitat mitigation projects, as defined in Yolo
Section Four. Major Use Permit Required. A major use permit, as that term is defined in Yolo County Code Section 8-2.270.3, shall be required for any covered habitat mitigation project of more than 40 acres. Accordingly, the following sections of the Yolo County Code shall be amended to include this requirement by adding an appropriately-lettered subsection followed by the words “Covered habitat mitigation projects, as defined in Yolo County Code Section 8-____., of more than 40 acres. Such projects are subject to Title 10, Chapter 10 of this Code”:

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

In addition, the following sections shall be added to the Yolo County Code, shall be entitled “Major Use Permit,” and shall identify “Covered habitat mitigation projects, as defined in Yolo County Code Section 8-____., of more than 40 as a major conditional use in subsection (a) or (b) thereof, as appropriate:

- Section 8-2.404.5 (Agricultural Preserve)
- Section 8-2.504.5 (Agricultural Exclusive)
- Section 8-2.604.5 (Agricultural General)

Each subsection shall state that such projects are subject to Title 10, Chapter 10 of this Code.

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

Chapter 10. Habitat Mitigation Ordinance

Article 1. Title and Purposes.

Sec. 10-10.101. Title.

This Chapter shall be known as the “Habitat Mitigation Ordinance” of the County.
Sec. 10-10.102. Purposes.

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

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

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

Nonetheless, to assure these projects benefit the County and do not unduly interfere with its land use planning efforts or the eventual implementation of the Yolo Natural Heritage Program, careful planning is necessary. Attention to matters of location, design, construction, and long-term monitoring and management is essential. Particularly for larger projects, early consideration of ways to integrate appropriate educational, recreational, scientific, and other opportunities is also desirable. Finally, the potential local and regional environmental and economic impacts of habitat projects—such as the conversion of farmland and existing species habitat, as well as conflicts with surrounding land uses and activities—deserves close attention and consideration. It is for these reasons that the Delta Reform Act of 2009 states that the goals of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem” are to be achieved in a manner “that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”
Accordingly, this Chapter is intended to promote the foregoing objectives and to achieve the following purposes:

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

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

(c) To ensure that habitat projects undertaken in furtherance of the "co-equal goals" and the habitat restoration objectives of the Delta Reform Act proceed in a manner that is faithful to the Act in its entirety, including its basic policy direction that the coequal goals of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem” are to be achieved in a manner “that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”

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

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

Nothing in this Chapter is intended to restrict or in any way affect or impair the agricultural use of land within the County. In some cases, state and federal laws may regulate certain types or characteristics of projects covered by this Chapter. This Chapter shall be construed to provide the County with the maximum control consistent with such other laws.

Article 2. Definitions

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

Sec. 10-10.201. Agriculture or Agricultural.

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

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

Sec. 10-10.203 Covered Habitat Mitigation Project

A “covered habitat mitigation project” is project within the scope of Yolo County Code Section 8-__.__.

Sec. 10-10.204 Create or Creation.

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

Sec. 10-10.205 Deciding Authority.

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

Sec. 10-10.206 Director.

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

Sec. 10-10.207 Enhance or Enhancement.

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

Sec. 10-10.208 General Plan.

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

Sec. 10-10.209 Grading.

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

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

Sec. 10-10.211. Person.

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

Sec. 10-10.212. Preserve or Preservation.

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

Sec. 10-10.213. Project.

“Project” shall mean the whole of any activity or activities undertaken in connection with creating, enhancing, restoring, or preserving habitat on a site, and shall be interpreted broadly to include all related activities. This includes, by way of example only and without limitation, activities such as pilot projects, conservation easement transactions, grading, tree or vegetation removal, and the creation, restoration, or enhancement of associated buffer areas.

Sec. 10-10.214. Restore or Restoration.

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

Sec. 10-10.215. Site.

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

Sec. 10-10.216. Substantial Evidence.

“Substantial evidence” includes facts, a reasonable assumption predicated upon facts, or expert opinion supported by facts. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous.
Article 3. Permits

Sec. 10-10.301. Permit Requirement; Exemptions and Excluded Activities.

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

(b) Advisory Determination Regarding Coverage. A prospective project applicant may seek a pre-application consultation regarding the need for a use permit under this Chapter or other potential County approvals. This consultation may be initiated by contacting the Planning and Public Works Department.

(c) Exemptions. The following covered habitat mitigation projects shall be exempt from the use permit requirement and the other provisions of this Chapter:

(i) All projects that do not create more than 10 acres of habitat.

(ii) All projects that do not enhance, restore, or preserve more than 40 acres of habitat. This exemption may not be combined with the exemption in subsection (a), above, to exempt any covered habitat mitigation project that creates, enhances, restores, or preserves more than 40 acres of habitat.

(iii) Riparian, oak woodland, vernal pool, or native grassland/prairie creation, enhancement, restoration, or preservation projects, unless any such project also includes one or more other habitat types that exceed the acreage limits set forth in subsections (a) or (b), above. The proponent of any project that qualifies for this exemption shall provide notice to the County of the proposed project before commencing construction or other activities in furtherance of the project.

(iv) Any covered habitat mitigation project that received all necessary County approvals prior to the effective date of this Chapter, or for which a complete application for such approval(s) was submitted prior to effective date (for projects of 160 acres or less only) of Yolo County Ordinance No. __-____, which established a moratorium on certain types of habitat projects.

(v) Any covered habitat mitigation project(s) undertaken by a person that entered into a Memorandum of Understanding or similar written agreement with the County addressing the implementation of such project(s) during the term of Yolo County Ordinance No. __-____, which established a moratorium on certain types of habitat projects. This exemption shall be limited in scope to the project and/or other activities specifically described in the Memorandum of Understanding.
Notwithstanding the foregoing, any expansion or other change to a covered habitat mitigation project previously covered by one or more of these exemptions shall require a use permit if the proposed expansion or other change would remove the project, viewed as a whole, from the scope of these exemptions.

(d) Activities Not Covered. The following activities do not constitute covered habitat mitigation projects and are not subject to regulation under this Chapter:

(i) All activities undertaken in connection with, and in furtherance of, the agricultural use of land. This includes, but is not limited to, the construction and maintenance of stock ponds and small reservoirs, tail-water ponds, irrigation canals and sloughs, rice fields, and similar activities. Upon the request of the Director, the County Agricultural Commissioner shall provide a written opinion based on substantial evidence regarding whether an activity or activities are consistent with this exemption. The County Agricultural Commissioner shall use reasonable due diligence in investigating the potential applicability of this exemption, which may include interviews with the landowner or other responsible party, a visit to the site, and any other appropriate inquiries into the nature of the activities at issue.

(ii) The winter flooding of agricultural fields for the primary purpose of providing temporary habitat for migratory waterfowl, provided such flooding does not occur in a time or manner that prevents or substantially interferes with the reasonable agricultural use of the site or adversely affect surrounding lands. Absent unusual circumstances, any such flooding that ceases (i.e., is not sustained by the applicant's intentional application of water) by February 15 of each calendar year is presumed not to substantially interfere with the reasonable agricultural use of the site. Upon the request of the Director, the County Agricultural Commissioner shall provide a written opinion based on substantial evidence regarding whether the flooding of a particular site is consistent with this exemption. The County Agricultural Commissioner shall use reasonable due diligence in investigating the potential applicability of this exemption, which may include interviews with the landowner or other responsible party, a visit to the site, and any other appropriate inquiries into the nature of the activities at issue. This exemption shall not apply to any project or activity that includes the construction of significant new infrastructure (including berms and similar water control structures) for non-agricultural purposes and that requires a County grading permit or a flood hazard development permit.

(iii) Projects undertaken for the primary purpose of flood control, flood protection, or related matters of flood safety and the protection of life and property.
Activities that require discretionary approval pursuant to Chapters 3, 4, or 5 of this Title 10.

Limited term pilot projects undertaken for scientific research and related purposes, including feasibility assessments, in connection with the potential future implementation of a covered habitat mitigation project. Such projects are not covered by this Chapter so long as they occur in a time and manner that does not substantially interfere with the reasonable agricultural use of the pilot project site or adversely affect surrounding lands. Upon the request of the Director, the County Agricultural Commissioner shall provide a written opinion based on substantial evidence regarding whether an activity or activities are consistent with this exclusion. The County Agricultural Commissioner shall use reasonable due diligence in investigating the potential applicability of this exclusion, which may include interviews with the landowner or other responsible party, a visit to the site, and any other appropriate inquiries into the nature of the activities at issue.

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

(a) Applications, generally. Applications for a use permit under this Chapter shall be submitted to the Director, together with payment of all application fees established by the Board of Supervisors. Except as otherwise provided in this Chapter, all provisions of the Yolo County Code relating generally to use permits shall apply to the review, issuance, and amendment or revocation of permits covered hereunder.

(b) Application contents. An application for a use permit shall include all of the following:

(i) A completed application for a permit under this Chapter, on a form provided by the County, together with payment of the application fee established by resolution of the Board of Supervisors.

(ii) Completed applications for any other required County approvals, such as a grading permit or Flood Hazard Development Permit, together with payment of the application fee(s) established by resolution of the Board of Supervisors. In addition, both with the initial application and thereafter, the applicant shall provide copies of all completed applications for other federal, state, and local approvals associated with the proposed project to facilitate coordination between the County and other agencies.

(iii) Appropriate site-specific technical reports, including but not limited to such documents as a biological resources analysis, a hydrology analysis, a geotechnical analysis, and an engineered excavation plan. The types of reports that may be required should be uniform for applications that are similar in nature, but may vary to the extent that the features of a proposed
project or the characteristics of the project site and surrounding lands are unique. Upon request, the Director will advise an applicant of the types of reports that should be submitted with a permit application or, in appropriate instances, in connection with environmental review of a proposed project or at other times as specified by the Director in his or her sole discretion. In some instances, the applicant may be able to satisfy this requirement by providing documents prepared in connection with applications to other federal, state, or local agencies relating to the project.

(iv) A site plan showing property lines, assessor’s parcel numbers, onsite and adjoining land uses, topography, access, and existing/proposed patterns of vegetation.

(v) A proposed management plan that identifies how the project will be operated and managed over time. Among other things, the plan should explain how the project will be actively operated and managed in perpetuity to ensure that its environmental and other benefits are realized on a continuous basis, how vector control issues will be addressed, if applicable, and how any unanticipated events and impacts to surrounding land uses will be addressed. The proposed management plan shall also include measures to address crop depredation to the extent it is a reasonably foreseeable consequence of the proposed project. The plan should also state whether the operation and management of the project will be supported by an endowment or other established source of funds.

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

(c) **Yolo Natural Heritage Program.** In addition to referrals to other County departments, as may be appropriate in the discretion of the Director, all permit applications shall be promptly referred to the Executive Director of the Yolo Natural Heritage Program. The referral shall include a request for comments regarding whether the application is consistent with the Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) or, prior to its adoption, other matters of consistency with the developing HCP/NCCP. The purpose of this provision is to encourage coordination between applicants and the Executive Director, who may also refer the application to his or her staff or to committees participating in the development of the HCP/NCCP.

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

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

(iii) For projects that are 160 acres or more or that a proposed alternative approach to addressing the conversion of farmland (as set forth in Section 10-10,303(g), below), the Board of Supervisors shall be the deciding authority. The Board of Supervisors shall hold at least one noticed public hearing on the project prior to making a final decision on the application.

d) Decision. After considering the application materials and, if applicable, the recommendations of County staff and the Planning Commission, the Deciding Authority shall issue, conditionally issue, or deny the application by a written decision supported by findings that address the criteria set forth in Section 10-10.303, below. Due to the unique nature of projects covered by this Chapter, the general conditions that typically apply to the review and approval or denial of a use permit, set forth in Yolo County Code Section 8-2.2804, shall not apply.

e) Costs and expenses. The applicant shall reimburse all costs and expenses reasonably incurred by the County in reviewing applications under this Chapter, including but not limited to staff time and costs and expenses associated with environmental review. At the discretion of the Director, the applicant may be required to provide a reasonable deposit for such costs, enter into a reimbursement agreement with the County, or both.

Sec. 10-10.303. Decisionmaking Criteria

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

(a) That the project applicant has substantially complied with the requirements of this Chapter, including but not limited to provisions addressing the submission and contents of a management plan;

(b) That the project would not significantly conflict with surrounding land uses;

(c) That the project would not have a significant adverse effect on biological resources and, in addition, is not reasonably expected to significantly conflict with the Yolo Natural Heritage Program (HCP/NCCP);
(d) That the project would not significantly compromise flood safety and the protection of life and property;

(e) That the project would not have a significant adverse economic effect—either by itself or cumulatively—within the County or region. This factor shall only be considered for projects that convert more than 160 acres of farmland;

(f) That the project, if undertaken in furtherance of the "co-equal goals" and the habitat restoration objectives of the Delta Reform Act, will proceed in a manner that is faithful to the Act in its entirety, including its basic policy direction that the coequal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem” are to be achieved in a manner “that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”

(g) If the project site is subject to a Williamson Act contract, that the project is an “open space use” under Government Code Section 51201(o) or that it would not otherwise cause a material breach of the contract. Any project that is an “open space” use under Section 51201(o) shall also require approval of an amended Williamson Act contract or other appropriate action to authorize the open space use; and

(g) That mitigation will be provided for any conversion of farmland to habitat or other non-agricultural uses in accordance with Yolo County Code Section 8-2.2416 or, subject to the approval of the Board of Supervisors, that the applicant will implement an alternative approach to addressing the conversion of farmland that provides an equal or greater level of mitigation.

(h) That the project would not significantly conflict with other relevant considerations of public health, safety, or welfare, sufficient to require preparation of a statement of overriding considerations pursuant to the California Environmental Quality Act.

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

If the Deciding Authority (other than the Board of Supervisors) finds that a project cannot be approved because one or more of these determinations cannot be made, the permit shall be referred to the Board of Supervisors for consideration at a noticed public hearing. The Board of Supervisors may approve a permit even if it finds that one or more of these determinations cannot be made (with the exception of finding (f), relating to the Williamson Act, which would mandate denial), provided it finds that issuance of the permit is consistent with the purposes of this Chapter. Any decision of the Board of Supervisors following its deliberation of these issues shall include written findings based on substantial evidence that address all of the criteria and other matters set forth above, together with an explanation of any decision to approve or deny a permit.
Sec. 10-10.304. Permit Term; Amendments

(a) Term. The use authorized by a permit issued under this Chapter shall commence within one to five years, as may be appropriate taking all circumstances relating to the project into account. In particular, covered habitat mitigation projects that require numerous federal, state, and local agency approvals that can take a long time to acquire may warrant an initial permit term of up to five years, in the sole discretion of the Deciding Authority. Once the authorized use commences, a permit shall be perpetual in term unless otherwise indicated at the time of its original approval.

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

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

Article 4. Appeals

Sec. 10-10.401. Appeal Procedure

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

Article 5. Violations

Sec. 10-10.501. Generally

Any violation of this Chapter shall be subject to the administrative code enforcement ordinance of the County, set forth in Chapter 5 of Title 1 of the Yolo County Code.
Sec. 10-10.502. Public Nuisance

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

Article 6. Periodic Reviews

Sec. 10-10.601 Initial Review

Five years after this Chapter becomes effective, whichever is sooner, the Board of Supervisors shall hold a public hearing for the purpose of considering its effectiveness at achieving the purposes set forth in Article 1 hereof. During such hearing, the Board of Supervisors may identify matters that require further consideration and provide appropriate direction to staff. In addition, the Board of Supervisors may direct staff to prepare an ordinance amending, superseding, or deleting this Chapter, and it may take such other actions as may be necessary and appropriate.

Sec. 10-10.602 Future Reviews

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

Section Six. Severability

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

Section Seven. Effective Date

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

PASSED AND ADOPTED by the Board of Supervisors of the County of Yolo, State of California, this ___ day of _____________, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN: