Species Protection in Construction Projects

Guideline for action in planning and construction at USAG Stuttgart installations

Prepared for:

U.S. Army Garrison Stuttgart
DPW, Environmental Division
Kelley Barracks
70567 Stuttgart
Germany

Prepared by:

IVL, Institut für Vegetationskunde und Landschaftsökologie
Georg-Eger-Strasse 1b
91334 Hemhofen
Germany

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INTRODUCTION

The installations of USAG Stuttgart, too, are subject to constant change over time. New buildings need to be built and existing ones need to be reconstructed, renovated, restored or even demolished time and again to make room for new tasks, units and/or their equipment. All of these structural changes entail more or less complex construction work and its impact on the environment and natural resources.

This guideline is intended to show the actors at the Garrison as easy and quick a way through the legal and specific requirements of species protection as possible.

It starts by describing the initial legal situation, listing the competent authorities and proposing an optimized chronological sequence for the individual procedural steps.

Finally, concrete action recommendations for the most common problems regarding species protection are given at the end of the guideline.

(For the original text of all legal provisions cited in the section 'Legal bases', please refer to Appendix B.)

LEGAL BASES, COMPETENT AUTHORITIES AND TYPES OF PROCEDURES

Species conservation legislation is part of the regulations under public law to be adhered to in each and every construction project, despite the fact that U.S. Army construction projects are exempt from numerous provisions of the German Construction Law.

The general audit and control mandate for the competent German construction law authority regarding specific procedures is based on Section 58 Subsection 1 Clauses 1 and 2 of the State Construction Regulation (LBO) in conjunction with the relevant nature conservation regulations.

As a rule, of the U.S. Garrison construction projects (such as new construction, demolition or new sealing of areas) where the State Construction Agency participates in both planning and implementation fall under the competence of the Regierungspräsidium (Regional Administrative Authority) that checks the project documents to be submitted within the scope of the notification procedure (Section 51 LBO) including the involvement of the Lower Nature Conservation Authority (UNB).

Furthermore, there are the "procedure-free" construction projects (Section 50 LBO) that especially include the renovation and restoration of existing buildings. The official engagement of a construction law authority is not necessary in such cases. However, there exists a binding agreement with the UNB that the U.S. Army on their own responsibility shall adhere to the laws and regulations pertaining to species protection and involve the UNB in cases of doubt.

Therefore, a more or less detailed analysis against the concerns regarding special species protection and species protection legislation will be necessary for almost all construction and renovation projects, depending on the actual facts in each individual case. These facts are influenced by the characteristics of a building to be built, reconstructed or demolished and the species occurring there. Moreover, the open areas existing at the affected site and its surroundings need to be taken into account. This is because facts pertaining to species protection legislation may be in conflict with construction or only allow construction under specific collateral clauses.

It is necessary to centrally answer the following questions and/or clarify the following issues regarding species protection prior to implementation of a construction project:

• Can the construction project cause elements of offense in accordance with Section 44 Subsection 1 BNatSchG (species-specific and offense-specific)?

• Can the occurrence of elements of offense (especially a significantly increased risk of killing) be avoided in whole or in part by taking specific mitigation or compensation measures in terms of Section 44 Subsection 5 Clause 2 Nos. 1 and 2 BNatSchG?

• Do the affected reproduction and roosting sites continue to fulfill their ecological function within the spatial context or are measures possible to preserve such functions (Section 44 Subsection 5 Clause 3 in conjunction with Clause 2 No. 3 BNatSchG)?

• May measures be required to avoid significant disturbance (Section 44 Subsection 1 No. 2 BNatSchG)?

• Is an exclusion in accordance with Section 45 BNatSchG or an exemption in accordance with Section 67 Subsection 2 Clause 1 BNatSchG required for the construction project and, if yes, are the relevant prerequisites on hand?

• What is necessary in terms of ecological construction oversight services or monitoring?

The regulation under Section 12 Subsection 4 LBO specifying that trees, hedges and other plantings to be preserved based on other legal provisions shall be protected during construction work is also relevant to species protection legislation. However, this may also apply to unplanted areas in regard to species protection.

ORGANIZATIONAL PROCEDURE

The following basic steps should be taken to avoid construction delays and elements of offense pertaining to species protection legislation[1] as soon as a new construction or renovation project takes shape and initial preliminary plannings exist (*see also flowchart in Appendix A*):

Before start of construction:

1. Compile all known and relevant information (type of construction project, intended location, dimensions, preliminary timing) and forward this information to the Environmental Division (ED).
2. ED checks if
   a) a notification procedure is necessary or
   b) the project can be implemented internally and “procedure-free”.
   when a) applies, all further steps will be performed under the leadership of the State Construction Agency (SHBA) and/or with the involvement of the competent Lower Nature Conservation Authority (UNB).
   when b) applies, the procedure can be implemented internally.

3. For internal procedures, ED performs a site visit and checks whether information relevant to protected species assessment is already available and/or whether protected species may be concerned.
   A qualified expert office can be consulted in cases of doubt.

   a) No concerns/no impact: No species protection measures are required.
   The project can be implemented.

   b) Minor concerns/minor impact: No need for additional surveys; however, necessary avoidance and compensation measures must be determined and implemented before the construction phase. Moreover, a time schedule for the measures and construction phase should be prepared.

   c) Major concerns/major impact: The customer commissions a qualified expert office with the preparation of a detailed protected species assessment for the relevant protected species (for further procedure, see Item 4.).

Important: Any changes to, and/or more detailed definitions of, the original project planning during the protected species assessment phase must immediately be forwarded to ED, (SHBA/UNB) and any qualified expert office that may be involved because such changes and more detailed definitions may have significant effects on the type and scope of the avoidance and compensation measures to be defined (and their costs).

[1] Such delays or elements of offense may have consequences under police and regulatory or criminal law (fine and penal provisions in BNatSchG Sections 69 ff) or may cause construction to be suspended for various durations.

4. If major concern/major impact is given, a protected species assessment must usually be performed with the involvement of the Lower Nature Conservation Authority (UNB).

   a) The UNB specifies the type and scope of the surveys required for this purpose. The project proponent/SHBA commissions a qualified expert office.

   b) The surveys are performed by a qualified expert office.

   c) The expert office coordinates the evaluation and assessment of the results with ED and UNB.

5. Then, the necessary avoidance, mitigation, compensation and substitution measures are determined in cooperation between ED, UNB and Engineering based on the suggestions of the expert office. A time schedule for implementation before and during the construction phase is prepared.
   Important: All “early” substitution measures must be implemented before the start of construction.

6. Implementation of early and preparatory measures before start of construction
   (for a selection of commonly necessary measures, please refer to the section “Measures”)

7. Measures regarding success control/monitoring and the permanent conservation and maintenance of compensation measures are already determined before the start of construction, if necessary, and bulk funded in advance by the project proponent based on project funds for implementation (e.g. through the Federal Forestry and/or an expert office).

During the construction phase:

8. Implementation and control of special measures during the construction phase
   (for a selection of commonly necessary measures, please refer to the section “Measures”)

After completion of the construction phase:

9. Measures regarding success control/monitoring and the permanent conservation and maintenance of compensation measures that were determined before the start of construction must now be implemented e.g. through the Federal Forestry and/or an expert office based on project funds.

Important:

- It shall be preliminarily checked for all construction projects whether protected species may be affected.
- In the entire course of the project, the entities involved in the planning and implementation such as ED, SHBA, Nature Conservation Authority and the involved expert office must immediately be informed of any changes in design, location, time schedule, etc. to avoid unnecessary delays and additional costs.
- As a rule, a lead time of at least 6 months must be anticipated for the processing of protected species assessment in projects with major impact on protected species and even up to one year in complex projects. This is due to the very different rhythms of life (breeding season, hibernation, etc.) of the species to be protected.

CHRONOLOGICAL SEQUENCE

It is crucial for the planning and implementation of any constructional measure to take into account the time periods during which

a) species relevant to species protection can/may be recorded

Survey Times

Species group / Month	1	2	3	4	5	6	7	8	9	10	11	12
Bats												
Breeding birds												
Sand lizard												
Amphibians												
Dormouse												
Willowherb Hawk-moth												

Colouring:

- Bats in winter quarter (Attics, cellars, caves)
- Bats in summer quarter (Niches and crevices on buildings)
- Species active/on site

b) species relevant to species protection live at or in the buildings.

Most animal species living at or in buildings only use their roost for several months a year. They are especially susceptible to disturbance during breeding and while rearing their young. Therefore, construction and restoration work within the nesting areas and/or in the surrounding area that is still susceptible to disturbance may usually only be performed while the animals are absent.

Deviations from the construction periods shown below may be possible in individual cases after expert assessment and upon coordination with the Lower Nature Conservation Authority (for example, if the breeding season of a recorded Barn Owl occurrence is completed markedly earlier than usual). The illustrated periods are intended for orientation, only. Deviations from these periods are possible or may be necessary in individual cases.

Bats change their roosts in the course of the year (especially summer and winter roosts, and also interim roosts). They are especially susceptible to disturbance in the summer in their so-called maternity roosts where the females together rear their young, and during hibernation. Hence, construction work in the summer roosts should only be performed during the winter half-year, and – vice versa – construction work in the winter roosts should only take place during the summer months.

The periods during which the animals use and/or leave their roosts can vary markedly depending on the given bat species. The shown possible construction periods must accordingly be verified and adapted, if necessary, in each individual case. A bat specialist should definitely be consulted early for this purpose during the project.

Blocking times for construction activities at buildings

Bats / Month	1	2	3	4	5	6	7	8	9	10	11	12
Summer quarter												
Winter quarter												

Birds / Month	1	2	3	4	5	6	7	8	9	10	11	12
Pied wagtail												
Jackdaw												
Spotted flycatcher												
Black redstart												
House sparrow												
Common swift												
House martin												
Barn swallow												
Barn owl												
Kestrel												

Colouring:

Construction activities possible
Animals not at construction site

Limited construction activities possible
Crirtical transitional phase

No construction activities allowed
Animals live at construction site

c) trees and shrubs may be felled and/or cleared

Timeframe for felling und clearing of trees and shrubs

Months	1	2	3	4	5	6	7	8	9	10	11	12
Trees & shrubs												

Colouring:

No felling und clearing

Important:
An early, timely coordination of measures taking the periods of breeding and/or absence into account will enable your construction project to proceed smoothly.

NOTES ON THE INITIAL CHECK REGARDING RELEVANCE TO THE PROTECTION OF SPECIES

The following checklists for various aspects refer to residential areas characterized by buildings, gardens and other typical elements. They do not pertain to the planning of otherwise equipped outdoor areas or similar areas that, for example, are residuals of the former landscape and extend into the residential area or have remained there.

This list is not intended to be exhaustive but can serve for orientation. Relevance can in most cases be assessed by experts, only.

EXISTING BUILDINGS

A) Facade and roof (from outside)

- Relevant points of damage / access openings on the roof;
- Relevant points of damage / access openings on the facade;
- Indications of major cavities underneath boarding;
- Window shutters or roller shutter casings are present;
- Vegetation is present (facade greening, possibly also roof greening);
- Cellar windows with access option to cellar rooms (not completely and permanently closed; as far as visible from outside);
- Roof windows or skylights with access option to the roof truss (not completely and permanently closed; as far as visible from outside);
- Niches and/or raised hides (for birds) are present;
- Nesting aids are present;
- Nests are present;
- Other animal traces are visible (for example, nesting material, bat droppings on landings or below the eaves, characteristic stains from entering and leaving animals – only detectable by experts in many cases);
- Birds that land on/take off from and/or enter/leave certain parts of the building at regular intervals;
- Non-grouted wall and wooden beams with nesting options for wild bees (only relevant to species protection in certain cases).

B) Truss/cellar (inside inspection)

- Cellar windows with access option to cellar rooms (not completely and permanently closed; as far as visible from inside);
- Roof windows or skylights with access option to the roof truss (not completely and permanently closed; as far as visible from inside);
- Conditions suitable for bats (for example, dark, no draft);
- Usable niches/crevices/roosts;
- Nests are present;
- Other animal traces are visible (for example, nesting material, droppings, characteristic stains at crevices – only detectable by experts in many cases).

EXISTING OPEN AREAS WITHIN THE RESIDENTIAL AREA

C) • Rather old tree inventory;
• Tree and/or woodpecker holes/cavities;
• Cree crevices;
• Deadwood;
• Bird’s nests;
• Sun-exposed fringe structures;
• Larger areas with ruderal and spontaneous vegetation;
• Willowherb and Evening primrose communities;
• Sun-exposed walls especially those that are non-grouted;
• Sun-exposed gravel/grit areas;
• Streams, water bodies;
• Connection with special structures (for example, in the vicinity of railroad areas or larger sun-exposed road embankments).

EXAMPLES OF MEASURES TO BE USED FREQUENTLY

Evidence of impact on protected species furnished by the surveys during the planning phase refers to bats and/or birds in most projects at or in houses. Therefore, the measures to be used most frequently for the protection of these animal groups are briefly described in the following.

Legal situation:

All European bird species and our indigenous bats are protected under the Federal Nature Conservation Act. This also applies to individual projects in residential areas. It means that these animals must not be disturbed, captured, killed nor their roosts (reproduction and roosting sites) be damaged, destroyed or locked. If roosts are affected in the course of construction work, the interventions must be agreed with, and – if necessary – approved by, the Lower Nature Conservation Authority. Early planning (with the involvement of experts, as appropriate) will usually allow to find simple solutions to provide room for the affected bird and bat species despite the reconstruction or restoration work.

Bats

Situation:

The residential area is an important habitat part of many bats. However, we rarely catch sight of these animals. At night, they forage for insects and arachnids using ultrasonic calls in noiseless flight. During the day, many species roost in hiding places at or in buildings where they also rear their young in the summer. Only a few bat species hang freely from roof timbers; most rather hide in narrow gaps and crevices, for example in attics or behind cladding, and do not leave any conspicuous traces. Therefore, their presence usually goes unnoticed despite the fact that they keep returning to the same roosts over many years. Some bat species also use roosts in buildings (especially vaults, mine tunnels) as an undisturbed retreat for hibernation. However, buildings are sealed to an increasing extent within the scope of thermal insulation and restoration and, thus, many bat roosts are destroyed and made inaccessible – in many cases without noticing and with no intention at all.

Appropriate measures:

Maintain existing roosts

In general, the following applies if bat roosts are affected by construction projects:

- Do not change existing quarters or roosts;
- Maintain and/or restore traditional entry and exit openings;
- Do not change the light conditions and microclimate (e.g. by changed ventilation);
- Perform construction work only in the absence of the animals (in summer roosts: October to March; in winter roosts: April to September);
- Do not use toxic wood protection agents;
- If existing roosts cannot be preserved, there is the option in certain cases to install man-made bat nesting aids as substitute roosts upon agreement with the authorities and with expert consultation.

Substitute roost/nesting aids for bats

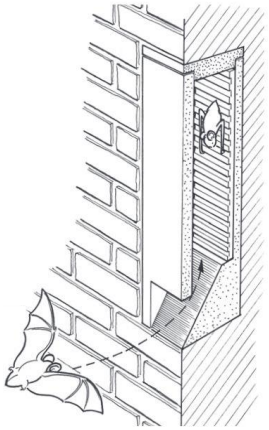
General requirements:

- Install substitute roosts near the former roosts, if possible (bats usually remain in their habitat);
- Free landing and/or flying out as high on the building as possible (for example, in the roof ridge area, below the eaves);
- Warm, windless location (south, southeast, east side of buildings), not on the weather face, not permanently in the blazing sun;
- An optimal measure would be to install several boxes on different sides of the buildings (thus allowing the animals to change roosts depending on sun exposure and weather);
- No direct lighting at night.

Examples of bat nesting aids

Integrated roosts: (cost frame: approximately 50 – 100 €)

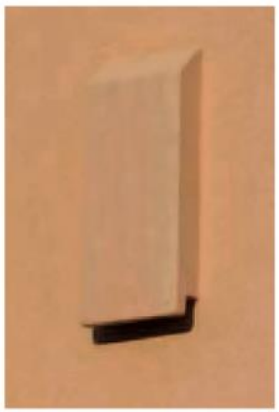
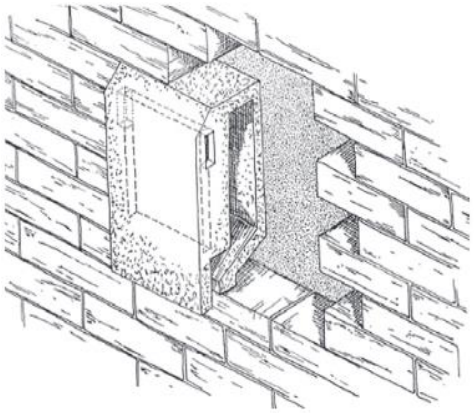
Integrated roosts are fully integrated into the facade and/or insulation; only an entry opening is visible from outside. Such roosts are available in various designs and depths and can be additionally insulated in the back, if needed. Integrated roosts are usually self-cleaning and need not be maintained.



Individual elements that are strung together and connected make large-capacity roosts and can at the same time be used as creative elements (left: example of Schwegler; right: Hasselfeldt). Manifold roosting options (including winter roosts) can be created by combining integrated building blocks of various designs. Only the entry gap is visible from outside.

Partially integrated roosts are not as deep in the insulation and partly protrude from the facade. They are hardly visible if painted in the color of the facade.

Large-capacity integrated building block suitable as year-round roost. Access is from below, the short overhang makes it easier for bats to find the roost. (Example of Naturschutzbedarf Strobel)

Surface-mounted solutions: (cost frame: approximately 50 – 200 €)
Commercially available or self-made bat boxes are installed outside on the facade at as weatherproof a location as possible (below eaves, overhangs). They can also be painted (use non-toxic paint!) to match the color of the facade.

Surface-mounted solutions are especially suited for later installation.
(Examples of Schwegler GmbH)

Birds

The following list provides an overview of possible species protection measures for bird species that are typically affected in the course of restoration, renovation or new construction of buildings. The measures actually needed should be agreed in each individual case. (cost frame for a nesting aid: approximately 20 – 50 €)

Jackdaw

Avoidance measures:

- Preserve existing nesting sites, if possible.

Temporary measures:

- Install Jackdaw nesting boxes on buildings in the vicinity.

Permanent measures:

- Integrate nesting cavities (approximate internal dimensions: at least 50 centimeters high, 35 centimeters wide and 35 centimeters deep) with a relatively large access hole (8 centimeters in diameter) in the building, for example on the facade or at chimneys;
- Install Jackdaw nesting boxes on the building (integrated or surface-mounted);
- Implement the measures at least 6 meters above the ground on the east-facing facade or on the south-facing side below the eaves; provide several boxes because the birds breed in colonies.

Barn Swallow

Avoidance measures:

- Preserve existing nesting sites, if possible.

Temporary measures:

- Open a stable in the vicinity that has been closed to date and, thus, not been usable by Barn Swallows but is generally suitable for these birds;
- In the stable: Install Barn Swallow nesting aids.

Permanent measures:

- Make sure the stable is accessible (windows, skylights) by the birds during breeding season;
- Install Barn Swallow nesting aids at a distance of at least 6 centimeters from the ceiling and 1 meter between the individual nesting aids; provide several nesting aids because the birds breed in colonies.

House Martin

Avoidance measures:

- Preserve existing nesting sites, if possible.

Temporary measures:

- Install House Martin nesting aids on buildings in the vicinity; it might also be possible to install the nesting aids on a part of the scaffolding that is shielded against visible disturbances on the inside by means of a screen (preferably near the original nesting site).

Permanent measures:

- Install House Martin nesting aids on buildings;
- Implement the measures at least 4 meters above the ground immediately below the eaves, preferably on the east to south facing sides; there must not be any approach-hindering structures in front of the facade (e.g.trees); provide several nesting aids because the birds breed in colonies;
- Soiling of the facade can be avoided by installing a board at least 50 centimeters below the nesting aids to collect the droppings.

Common Swift

Avoidance measures:

- Preserve existing nesting sites, if possible.

Temporary measures:

- Install Common Swift nesting boxes on buildings in the vicinity; it might also be possible to install the nesting boxes on a part of the scaffolding that is shielded against visible disturbances on the inside by means of a screen (preferably near the original nesting site).

Permanent measures:

- Integrate nesting cavities (approximate internal dimensions: at least 15 centimeters high, 30 centimeters wide and 20 centimeters deep) with a relatively small (usually oval-shaped) access hole (3.5 centimeters high and 6.5 centimeters wide) in the lower area of the cavity in the building, for example in the eaves box or in the verge area;
- Install Common Swift nesting boxes on the building (integrated or surface-mounted);
- Implement the measures as high as possible (at least 5 meters) above the ground on the north or east facing sides of the building; there must not be any approach-hindering structures in front of the facade (e.g.trees); provide several boxes because the birds breed in colonies.

House Sparrow

Avoidance measures:

- Preserve existing nesting sites, if possible.

Temporary measures:

- Install nesting cavity boxes or sparrow colony boxes on buildings in the vicinity.

Permanent measures:

- Integrate nesting cavities (approximate internal dimensions: at least 15 centimeters high, 10 centimeters wide and 15 centimeters deep) with a relatively small access hole (4.5 centimeters in diameter; or oval-shaped: 3 centimeters wide and 4.5 centimeters high) in the upper area of the cavity in the building, for example in the eaves box or behind/above beams;
- Install (several) sparrow colony boxes on the building (integrated or surface-mounted);
- Implement the measures as high as possible (at least 3 meters) above the ground on the east-facing facade or on the south side below the eaves; provide several boxes because the birds breed in colonies.
- Install the nesting box such, if possible, as to allow occasional cleaning.

Barn Owl

Avoidance measures:

- Preserve existing nesting sites, if possible.

Temporary measures:

- Open a barn in the vicinity that has been closed to date and, thus, not been usable by Barn Owls but is generally suitable for these birds;
- In the barn: Install a Barn Owl box.

Permanent measures:

- Make sure the building is accessible (windows, skylights) by the birds year-round;
- Install a Barn Owl box (approximate internal dimensions: at least 50 centimeters high, 100 centimeters wide and 50 centimeters deep; access opening: 12 centimeters wide and 18 centimeters high) in the darkest part of a rarely used room (attic is particularly suited).

Common Kestrel

Avoidance measures:

- Preserve existing nesting sites, if possible.

Temporary measures:

- Install Common Kestrel nesting boxes on buildings or other tall, vertical, artificial structures (e.g. power poles, electrical substations, bridges).

Permanent measures:

- Integrate nesting niches (approximate internal dimensions: at least 30 centimeters high, 50 centimeters wide and 30 centimeters deep) with a relatively large access hole (30 centimeters high and 23 centimeters wide) in the building, for example in the eaves box or on beams and ledges;
- Install Common Kestrel nesting boxes on the building (integrated or surface-mounted);
- Implement the measures at least 6 meters above the ground on the east-facing facade or on the south side below the eaves; buildings located at the periphery of residential areas are particularly suited.

Semi-cavity nesters (e.g. Pied Wagtail, Spotted Flycatcher, Black Redstart)

Avoidance measures:

- Preserve existing nesting sites, if possible.
- Temporary measures:
- Install semi-cavity nesting boxes on buildings in the vicinity.

Permanent measures:

- Integrate nesting niches, semi-cavities and cavities (approximate internal dimensions: at least 15 centimeters high, 15 centimeters wide and 15 centimeters deep) with a relatively large access hole (approximately 10 centimeters high and 15 centimeters wide) in the building, for example in the eaves box or on beams and ledges;
- Install semi-cavity nesting boxes on the building (integrated or surface-mounted);
- Implement the measures at least 2 meters above the ground on the east-facing facade or on the south side below the eaves.

SOURCES OF INFORMATION AND MATERIAL

Significant parts of the texts, figures and tables were adopted unchanged from the following sources:

- MINISTERIUM FÜR WIRTSCHAFT, ARBEIT UND WOHNUNGSBAU, Hrsg. (2019): Artenschutz in der Bauleitplanung, Handlungsleitfaden für die am Planen und Bauen Beteiligten; Broschüre 78 S. https://www.baden-wuerttemberg.de/fileadmin/redaktion/m-wm/intern/Publikationen/Bauen/Leitfaden_Artenschutz2019.pdf
- LANDKREIS TÜBINGEN, Hrsg. (2016): Artenschutz am Haus, Internetseite: https://www.artenschutz-am-haus.de/dokumente-links/dokumente/

Further and more in-depth information on the topic of species protection in construction can be obtained from the above-mentioned sources.

Several sources of supply for possibly necessary nesting boxes, nesting cavities and other material are listed in the following:

Vendors of nesting aids for birds, bats and other animal species

Gronenfelder Werkstätten

Integrated nesting bricks of various brick clays and wooden nesting aids for birds and bats
Gronenfelder Weg 22
15234 Frankfurt (Oder)
Phone: 0335/6838920
E-mail: handwerk@gronenfelder-werkstaetten.de
Internet: www.gronenfelder-werkstaetten.de

Hasselfeldt Nisthilfen und Artenschutzprodukte e.K.

Comprehensive assortment of various nesting aids for birds, bats and other animal species
Dorfstrasse 10
24613 Aukrug
Phone: 04873/9010958, fax: 04873/2033698
E-mail: info@nistkasten-hasselfeldt.de
Internet: www.hasselfeldt-naturschutz.de

Naturschutzbedarf Strobel, Fa. Pröhl

Comprehensive assortment of various nesting aids for birds, bats and other animal species
Nitzschkaerstrasse 29
04626 Schmölln-Kummer
Phone: 034491/81877, fax: 034491/55618
E-mail: info@naturschutzbedarf-strobel.de
Internet: www.naturschutzbedarf-strobel.de

Schwegler Vogel- und Naturschutzprodukte GmbH

Comprehensive assortment of various nesting aids for birds, bats and other animal species
Heinkelstrasse 35
73614 Schorndorf
Phone: 07181/97745 0, fax: 07181/97745 49
E-mail: info@schwegler-natur.de
Internet: www.schwegler-natur.de

Weinhardt Artenschutz

Integrated building blocks for bats, Common Swift and other birds; custom-made products to order
Gauchsdorfer-Hauptstrasse 17
91186 Büchenbach
Phone and fax: 09178/1754
E-mail: Weinhardt-artenschutz@gmx.de

Wildbiene.com – Volker Fockenberg

Nesting aids for wild bees
Heimersfeld 77
46244 Kirchhellen
Phone: 02045/84422
E-mail: kontakt@wildbiene.com
Internet: www.wildbiene.com

Regional sources of supply

Karl-Georg-Haldenwang-Berufsschule, Mariaberg e.V.

Wooden nesting boxes for various bird species, swallows' nests and nesting aids for wild bees and bumblebees (made to order in the shop of the school)
Oberer Torackerweg 9
72501 Gammertingen
Phone (shop): 07124/923382
Phone (office): 07124/923216
Fax: 07124/9237254
E-mail: l.heiner@mariaberg.de
Internet: www.mariaberg.de/angebote/sonderberufsschule.html

Umweltbildungszentrum Listhof

Wooden nesting boxes for birds, bats and hornets; custom-made products to order
Friedrich-List-Hof 1
72770 Reutlingen
Phone: 07121/270392
Fax: 07121/209852
E-mail: info@listhof-reutlingen.de
Internet: www.listhof-reutlingen.de

Naturschutzcenter Markus Lohmüller

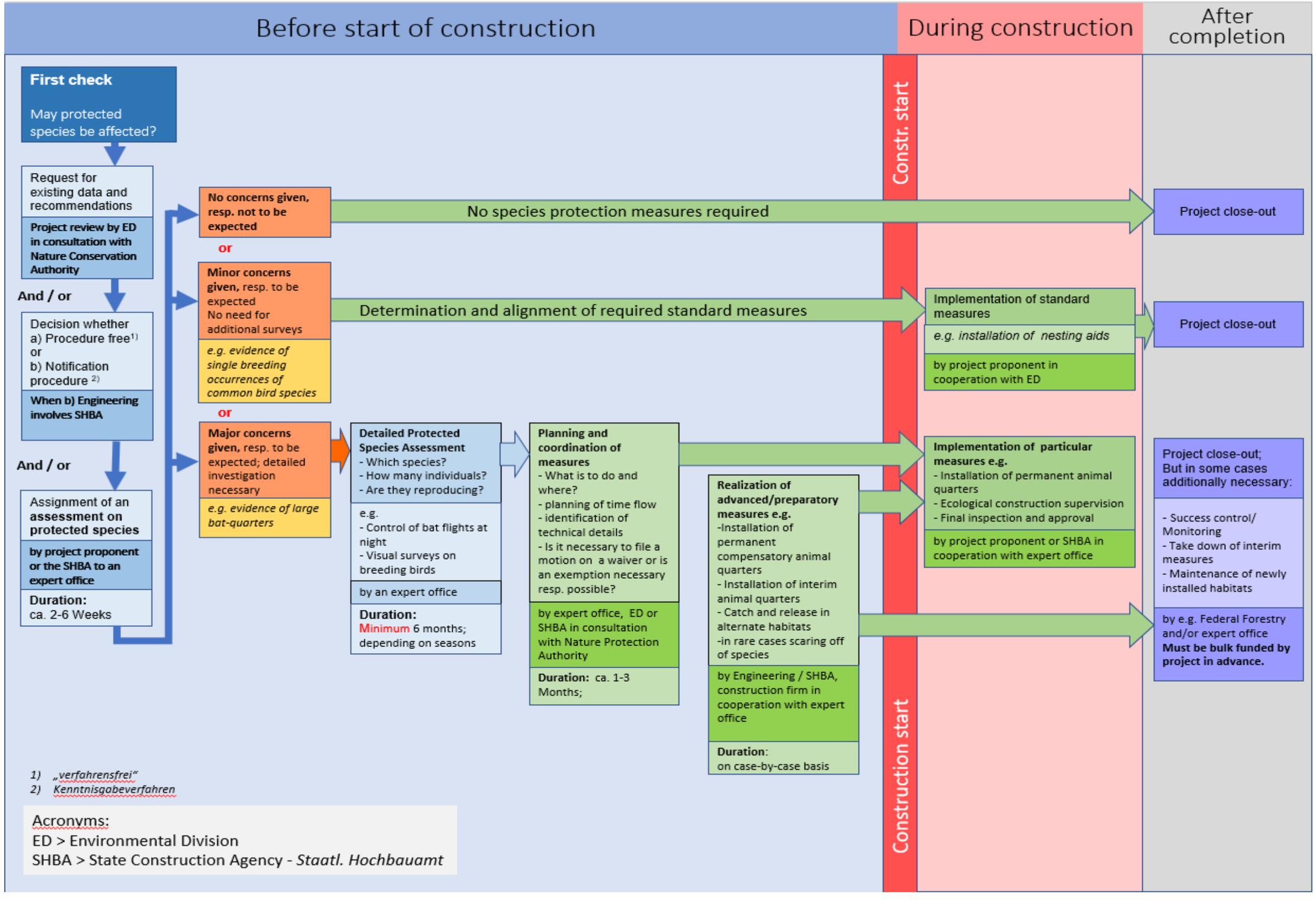
Nesting aids for birds, bats, bumblebees, hornets and other animal species
Graf-Wolfegg-Str. 71
72108 Rottenburg
Phone: 07472/9249004
Fax: 07472/9249003
E-mail: info@naturschutzcenter.de
Internet: www.naturschutzcenter.de

Der Wildbienenschreiner, Manfred Frey

Nesting and observation aids for wild bees
Hauptstrasse 27
75305 Neuenbürg
Phone: 07082/41190
E-mail: info@wildbienenschreiner.de
Internet: www.wildbienenschreiner.de

Appendix A

SCHEDULE


Before start of construction
During construction
After completion
Constr. start
Construction start
First check
May protected species be affected?
Request for existing data and recommendations
Project review by ED in consultation with Nature Conservation Authority
And / or
Decision whether
a) Procedure free[1]
or
b) Notification procedure [2]
When b) Engineering involves SHBA
And / or
Assignment of an assessment on protected species
by project proponent or the SHBA to an expert office
Duration:
ca. 2-6 Weeks
No concerns given, resp. not to be expected
or
Minor concerns given, resp. to be expected
No need for additional surveys
e.g. evidence of single breeding occurrences of common bird species
or
Major concerns given, resp. to be expected; detailed investigation necessary
e.g. evidence of large bat-quarters
Detailed Protected Species Assessment
- Which species?
- How many individuals?
- Are they reproducing?
e.g.
- Control of bat flights at night
- Visual surveys on breeding birds
by an expert office
Duration:
Minimum 6 months;
depending on seasons
Planning and coordination of measures
- What is to do and where?
- planning of time flow
- identification of technical details
- Is it necessary to file a motion on a waiver or is an exemption necessary resp. possible?
by expert office, ED or SHBA in consultation with Nature Protection Authority
Duration: ca. 1-3 Months;
Realization of advanced/preparatory measures e.g.
-Installation of permanent compensatory animal quarters
- Installation of interim animal quarters
- Catch and release in alternate habitats
-in rare cases scaring off of species
by Engineering / SHBA, construction firm in cooperation with expert office
Duration:
on case-by-case basis
No species protection measures required
Determination and alignment of required standard measures
Implementation of standard measures
e.g. installation of nesting aids
by project proponent in cooperation with ED
Implementation of particular measures e.g.
- Installation of permanent animal quarters
- Ecological construction supervision
- Final inspection and approval
by project proponent or SHBA in cooperation with expert office
Project close-out
Project close-out
Project close-out;
But in some cases additionally necessary:
- Success control/ Monitoring
- Take down of interim measures
- Maintenance of newly installed habitats
by e.g. Federal Forestry and/or expert office
Must be bulk funded by project in advance.
1) „verfahrensfrei"
2) Kenntnisgabeverfahren
Acronyms:
ED > Environmental Division
SHBA > State Construction Agency - Staatl. Hochbauamt

Appendix B

CITED LAWS

(Affected sections are highlighted in yellow)

Excerpt from Building Code (BauGB**)** *Federal Law*

§ 1 - Task, concept and principles of land use planning

(6) When drawing up the land use plans, the following must be taken into account in particular:

7. the concerns of environmental protection, including nature conservation and landscape conservation, in particular

a) the effects on animals, plants, land, soil, water, air, climate and the interaction between them as well as the landscape and biological diversity,

b) the conservation goals and the protective purpose of the Natura 2000 areas within the meaning of the Federal Nature Conservation Act,

c) environmental impacts on humans and their health as well as the population as a whole,

d) environmental impacts on cultural assets and other property,

e) the avoidance of emissions and the proper handling of waste and waste water,

f) the use of renewable energies and the economical and efficient use of energy,

g) the presentation of landscape plans and other plans, in particular water, waste and immission control law,

h) maintaining the best possible air quality in areas in which the immission limit values set by statutory order to comply with legal acts of the European Union are not exceeded,

i) the interactions between the individual concerns of environmental protection according to letters a to d,

j) without prejudice to Section 50 sentence 1 of the Federal Immission Control Act, the effects that are to be expected due to the susceptibility of the projects permitted under the development plan to serious accidents or disasters, on the concerns under letters a to d and i.

Excerpt from State Construction Regulation Baden-Württemberg (LBO)

Section 12 - Construction site

(1) Construction sites shall be established such as to allow proper erection or demolition of the physical structure without causing dangers or avoidable substantial disturbances.

(2) During implementation of construction projects that are subject to approval, the owner shall put up the construction permit certificate issued by the construction law authority pursuant to Section 59 Subsection 1 at the construction site. The owner shall enter the name, address and telephone number of the carcass work contractor in the construction permit certificate by no later than the start of construction work; this shall not apply if a special sign is put up at the construction site that shows the above-mentioned information. The construction permit certificate shall be put up permanently, well readable and visible from public traffic areas.

(3) In projects within the scope of the notification procedure, the owner shall put up the following information permanently, well readable and visible from public traffic areas by no later than the start of construction work:

1. The designation of the project,

2. the name and address of the design author and construction site manager,

3. the name, address and telephone number of the carcass work contractor.

(4) Trees, hedges and other plantings to be preserved based on other legal provisions shall be protected during construction work.

Section 58 - Construction permit

(1) The construction permit shall be issued if the project that is subject to approval is not in conflict with any regulations under public law which is to be verified by the construction law authority. Except where Section 52 applies, all regulations under public law shall be verified that include requirements with regard to the construction project and the adherence to which is not decided upon by a different authority based on administrative order in a separate procedure.

Section 70 - Proceedings on the granting of approval, projects of national defense

(1) The construction permit shall be replaced by approval if

1. the owner is the Federal Government, a Land (Federal State), any other territorial authority under public law or a church, and

2. the owner has transferred design work management and construction supervision to qualified professionals in their construction authority.

This shall apply by analogy to third party projects performed by the Land in compliance with a statutory building obligation.

(2) The application for approval shall be submitted to the lower construction law authority. The audit scope is governed by Section 52 Subsection 2. Section 52 Subsection 3, Section 53 Subsections 1, 2 and 4, Section 54 Subsections 1 and 4, Section 55 Subsections 1, 2 and 4, Sections 56, 58, 59 Subsection 1 to 3, Sections 61, 62, 64, 65 and Section 67 Subsection 5 shall apply accordingly. The name of the professionals according to Subsection 1 Clause 1 No. 2 shall be communicated to the construction law authority. Constructional audit, construction supervision and acceptance of construction work shall not be performed.

(3) Projects for the purpose of national defense shall not require a construction permit nor shall they be subject to a notification procedure pursuant to Section 51 or an approval pursuant to Subsection 1. Instead, they shall be brought to the higher construction law authority's attention as appropriate before the start of construction.

(4) It is the owner’s responsibility to ensure that the design and implementation of projects pursuant to Subsections 1 and 3 comply with the regulations under public law.

Excerpt from Federal Nature Conservation Act (BNatSchG):

Chapter 3

General protection of nature and landscape

Article 13 - General principle

Intervening parties shall primarily avoid any significant adverse effects on nature and landscape. Unavoidable significant adverse effects are to be offset via compensation measures (Ausgleichsmassnahmen) or substitution measures (Ersatzmassnahmen) or, where such offset is not possible, via monetary substitution.

Article 14 - Interventions in nature and landscape

(1) Interventions in nature and landscape, as defined in this Act, shall refer to any changes affecting the shape or use of areas, or changes in the groundwater level associated with the active soil layer, which may significantly impair the performance and functioning of the natural balance or landscape appearance.

(2) The use of soil for agricultural, forestry and fishing purposes shall not be deemed an intervention, provided the purposes of nature conservation and landscape management are taken into account. The use of soil for agricultural, forestry and fishing purposes corresponding to the requirements specified in Article 5 (2) to (4) of this Act, and to the rules of good practice as defined in the laws on agriculture, forestry and fishing as well as in Article 17 (2) of the Federal Soil Conservation Act, does not, as a general rule, contradict the purposes of nature conservation and landscape management.

(3) Resumption of use of soil for agricultural, forestry and fishing purposes shall not be deemed an intervention if such use was temporarily restricted or interrupted

1. on the basis of contractual agreements or on the basis of participation in public programmes for restriction of cultivation, and if the resumption takes place within ten years after the relevant restriction or interruption has expired,

2. on the basis of the implementation of advance offset measures, where the relevant advance measure is not claimed as an offset.

Article 15 - Obligations of the intervening party, inadmissibility of intervention; authorisation to issue statutory ordinances

(1) The intervening party is obligated to refrain from causing any avoidable adverse effects on nature and landscape. Adverse effects shall be considered avoidable if reasonable alternatives are available for achieving the purpose of the intervention, at the same location, with lesser or no adverse effects on nature and landscape. Where adverse effects cannot be avoided, reasons for such unavoidability must be provided.

(2) The intervening party is obligated to compensate for any unavoidable adverse effects by means of nature conservation and landscape management measures (compensation measures) or to substitute them in some other way (substitution measures). An adverse effect shall be considered to have been compensated as soon as the impaired functions of the natural balance have been restored in an equivalent way and landscape appearance has been restored or re-designed in a manner consistent with the landscape. An adverse effect shall be considered to have been substituted as soon as the impaired functions of the natural balance, in the relevant natural area, have been restored to an equivalent value and landscape appearance has been re-designed in a manner consistent with the landscape. Designations of development and restoration measures for areas within the meaning of Article 20 (2) Nos 1 through 4 and in management plans pursuant to Article 32 (5), of measures pursuant to Article 34 (5) and Article 44 (5) Sentence 3 of this Act and of measures in programmes of measures within the meaning of Article 82 of the Federal Water Act shall not hinder the recognition of

such measures as compensation and substitution measures. In determination of the nature and scope of compensation and substitution measures, the programmes and plans pursuant to Articles 10 and 11 shall be taken into account.

(3) In use of agriculturally or silviculturally used areas for compensation and substitution measures, concerns pertaining to agricultural structures shall be taken into account; in particular, areas with soil especially suited for agricultural use are to be used only to the necessary extent. Priority shall be given to review of whether relevant compensation or substitution can also be achieved via measures for unsealing soil, via measures for relinking habitats or via cultivation or management measures supporting lasting improvements of the natural balance or of landscape appearance, in the interest of making it unnecessary, if at all possible, for land areas to be taken out of use.

(4) Compensation and substitution measures shall be maintained throughout the relevant required period and shall be legally protected. The relevant maintenance period shall be set forth by the competent authority in the relevant official approval notice. The intervening party, or his legal successor, shall be responsible for carrying out, maintaining and securing compensation and substitution measures.

(5) An intervention may not be permitted or carried out if the relevant adverse effects are unavoidable or cannot be compensated for or substituted in some other way within an appropriate period of time, and the interests of nature conservation and landscape management take precedence over other concerns in a weighing-up of all the requirements applying to nature and landscape.

(6) If an intervention pursuant to (5) is permitted or carried out, even though the relevant adverse effects cannot be avoided or cannot be compensated for or substituted within an appropriate period of time, the intervening party shall provide monetary substitution. The amounts of such substitution payments shall be determined in accordance with the average costs of the unfeasible compensation and substitution measures, including the necessary average costs for planning and maintaining such measures and for providing the necessary areas, also taking account of relevant personnel costs and other administrative costs. If such costs cannot be determined, the amount of a substitution payment shall be determined in accordance with the duration and severity of the intervention, taking account of the resulting advantages accruing to the intervening party. The substitution payment shall be set forth by the competent authority in the relevant official approval notice or, if the intervention is carried out by an authority, shall be determined before the intervention is carried out. The payment is to be made prior to the implementation of the intervention. A different time for the payment may be set; in such cases, provision of security should be required. The substitution payment is to be earmarked for measures, of nature conservation and landscape management, and within the affected natural area if at all possible, for which no legal obligation is already in place under other provisions.

(7) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) is hereby authorised, in consultation with the Federal Ministry of Food, Agriculture and Consumer Protection (Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz, BMELV) and the Federal Ministry of Transport, Building and Urban Development (Bundesministerium für Verkehr, Bau und Stadtentwicklung, BMVBS), and with the consent of the Bundesrat, to specify the details of offsetting interventions, particularly

1. regarding the content, nature and extent of compensation and substitution measures, including measures for unsealing soil, for relinking habitats and for cultivation and management, and to define relevant standards, especially standards applying to comparable types of interventions,

2. regarding the amounts of substitution payments and the procedures for imposing them. As long as, and to the extent that, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) does not make use of such authorisation, the details of offsetting interventions shall be determined pursuant to the legislation of the Länder, except where such legislation contradicts the above paragraphs.

Article 16 - Stocking of offsetting measures

(1) Nature conservation and landscape management measures that have been carried out with regard to anticipated interventions are to be recognised as compensation or substitution measures if

1. the prerequisites of Article 15 (2) are fulfilled,

2. they have been carried out at no legal obligation,

3. no public funding has been claimed for them,

4. they do not contradict programmes and plans pursuant to Articles 10 and 11, and

5. records showing the original condition of the relevant areas are available; Länder regulations pertaining to requirements for such records shall not be affected.

(2) Stocking of advance compensation and substitution measures, via "eco accounts", pools of areas or other measures; and, especially, recording, assessment or accounting of advance compensation and substitution measures in "eco accounts"; requirements pertaining to approval of such accounts and their tradability; and transfer of responsibility pursuant to Article 15 (4) to third parties that carry out advance compensation and substitution measures, shall be determined pursuant to the legislation of the Länder.

Article 17 - Procedures; authorisation to issue statutory ordinances

(1) Where an intervention, pursuant to other legal provisions, is subject to regulatory approval or necessitates notification to an authority or is carried out by an authority, the relevant authority must also take the decisions and measures necessary for execution of Article 15 in consultation with the competent authority for nature conservation and landscape management, except where Federal laws or the legislation of the Länder provide for a more extensive form of participation or the competent authority for nature conservation and landscape management itself takes the relevant decision.

(2) If, in the case of interventions approved or carried out by Federal authorities, a departure is to be made from the position of the competent authority for nature conservation and landscape management, the Federal authority with the relevant specialised responsibility shall decide, in consultation with the highest authority for nature conservation and landscape management of the Land, except where a more extensive form of participation is provided for.

(3) An intervention that is not carried out by an authority, and does not require regulatory approval or notification pursuant to other legal provisions, shall require a permit from the authority responsible for nature conservation and landscape management. Such a permit must be applied for in writing. Such a permit is to be issued if the requirements pursuant to Article 15 are fulfilled. The competent authority for nature conservation and landscape management shall take the decisions and measures necessary for execution of Article 15.

(4) For purposes of preparation of the decisions and measures for execution of Article 15, the intervening party shall provide the information, to an appropriate extent in light of the nature and scope of the intervention, needed to assess the intervention; in particular, such information shall include information about

1. the location, nature, extent and chronological progression of the intervention, and

2. the planned measures for avoidance, compensation and substitution of adverse effects on nature and landscape, including information regarding the actual and legal availability of the areas required for compensation and substitution.

The competent authority may require submission of expert opinions, where such opinions are needed for assessing the impacts of the relevant intervention and compensation and substitution measures. In the case of an intervention that is to take place on the basis of a specialised plan provided for under public law, the body charged with the relevant planning shall provide the necessary information pursuant to Sentence 1 in the specialised plan or in an accompanying landscape-management plan, and in the form of both text and a map. Such plan shall also include information relative to the necessary measures

for assuring the coherence of the "Natura 2000" network pursuant to Article 34 (5) and to advance compensation measures pursuant to Article 44 (5), where these provisions are of relevance for the project. The accompanying landscape-management plan shall constitute a part of the specialised plan.

(5) The competent authority may require payment of a security in an amount no greater than the anticipated costs for the compensation or substitution measures, where such security is needed to ensure fulfilment of obligations pursuant to Article 15. Security shall be subject to Articles 232 through 240 of the German Civil Code (Bürgerliches Gesetzbuch).

(6) The compensation and substitution measures, and the areas on which they are carried out, shall be recorded in an offset directory. The competent authorities pursuant to (1) and (3) shall provide the necessary information to this end.

(7) The competent authority pursuant to (1) or (3) shall review whether the prevention measures, and the designated compensation and substitution measures, including the necessary maintenance measures, are carried out properly and on time. To this end, the authority may require the intervening party to submit a pertinent report.

(8) Where an intervention is carried out without the necessary approval or notification, the competent authority shall prohibit further implementation of the intervention. Where a legally conformal condition cannot be achieved by other means, the authority should require either measures pursuant to Article 15 or restoration of the earlier condition. Article 19 (4) is to be observed.

(9) The competent authority is to be notified of termination of an intervention, and of interruptions that last longer than one year. An insignificant continuation of an intervention shall be deemed equivalent to an interruption. If an intervention is interrupted for longer than one year, the authority may require the intervening party to carry out preliminary measures for ensuring that compensation and substitution measures can be carried out, or, if completion of the intervention cannot be expected within a reasonable period of time, to offset the extent of the intervention carried out until the time in question.

(10) If the intervention is a project subject to an environmental impact assessment under the Act on the Assessment of Environmental Impact (Gesetz über die Umweltverträglichkeitsprüfung), then the procedure in which decisions pursuant to Article 15 (1) through (5) are made must comply with the requirements of the aforementioned Act.

(11) The Länder governments are authorised to issue statutory ordinances to define the details of the procedure set forth in (1) through (10), including the offset directory. Via statutory ordinances, they may transfer the authorisation pursuant to Sentence 1 to other Länder authorities.

Article 19 Damages to certain species and natural habitats

(1) Any damage that has significant adverse effects on the achievement or maintenance of the favorable conservation status of habitats or species is damage to such species and natural habitats within the meaning of the Environmental Damage Act (Umweltschadensgesetz). In derogation of Sentence 1, no damage shall be deemed to have occurred in the case of previously determined adverse effects of activities of a responsible person that were approved by the competent authority, or are permissible, pursuant to Articles 34, 35, 45 (7) or Article 67 (2) or, if such review is not required, pursuant to Article 15 or, on the basis of preparation of a binding land-use plan, pursuant to Article 30 or Article 33 of the Federal Building Code.

(2) Species within the meaning of (1) are species that are listed in

1. Article 4 (2) or Annex I of Directive 79/409/EEC or

2. Annexes II and IV of Directive 92/43/EEC.

(3) Natural habitats within the meaning of (1) are

1. habitats of species that are listed in Article 4 (2) or Annex I of Directive 79/409/EEC or in Annex II of Directive 92/43/EEC,

2. natural habitat types of Community interest and

3. breeding and resting sites of species listed in Annex IV of Directive 92/43/EEC.

(4) If a responsible person pursuant to the Environmental Damage Act has caused damage to protected species or natural habitats, that person shall take the necessary remedial measures pursuant to Annex II No 1 of Directive 2004/35/EC

(5) The question of whether effects pursuant to (1) are significant shall be determined with regard to the original condition, taking account of the criteria of Annex I of Directive 2004/35/EC. As a rule, significant damage shall not be deemed to have occurred in the case of

1. negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,

2. negative variations due to natural causes or resulting from intervention relating to the normal management of the respective areas, as defined in habitat records or documents on conservation targets or as carried on previously by owners or operators,

3. damage to species or habitats for which it is established that they will recover, within a short time and without intervention, in such a way that either the baseline condition is reached, or, solely by virtue of the dynamics of the species or habitat, a condition deemed equivalent or superior to the baseline condition.

Chapter 5 - Protection of wild fauna and flora species, of their living sites and of their biotopes

Section 1 - General provisions

Article 37 Tasks of species protection

(1) The provisions of this Chapter, and Article 6 (3), serve the purpose of protecting wild fauna and flora species. Species protection comprises the following tasks:

1. protecting wild fauna and flora species, and their communities, against impairments caused by human beings, and protecting their other necessary living conditions,

2. protecting living sites and biotopes of wild fauna and flora species, and

3. re-establishing displaced wild fauna and flora species in suitable biotopes within their natural range of distribution.

(2) The provisions of laws on plant protection, animal welfare, contagious diseases and forestry, hunting and fishing shall remain unaffected by the provisions of this Chapter and any statutory provisions adopted on the basis of this Chapter. Where no particular provisions relating to the protection and management of affected species exist or are adopted in hunting and fishing law provisions, then the provisions of this Chapter, together with any statutory provisions adopted on the basis of this Chapter, shall apply, subject to the rights of those who are licensed to practise hunting and fishing.

Section 2 - General protection of species

Article 39 General protection of wild fauna and flora; authorisation to issue statutory ordinances

(1) It is prohibited:

1. willfully to disturb wild animals or to capture, injure or kill them without good cause,

2. to remove, without good cause, wild plants from their locations, or to use them, cut down their populations, or destroy them in any way,

3. to impair or destroy, without good cause, the living sites of wild animals and plants.

(2) Subject to the provisions of laws on hunting and fishing, it shall be prohibited to remove wild plants and animals of species listed in Annex V of Directive 92/43/EEC from nature. The Länder may grant exceptions to Sentence 1 under the conditions set forth in Article 45 (7) or Article 14 of Directive 92/43/EEC.

(3) In derogation from (1) No 2, anyone may carefully remove from nature and take possession of, at sites not subject to any prohibitions on access, and for their own personal needs, small amounts of wild flowers, grasses, ferns, mosses, lichens, fruits, mushrooms, herbs for tea and medicinal herbs and branches of wild plants.

(4) Notwithstanding the rights of owners and other parties entitled to use, commercial removal and treatment or processing of wild plants shall require a permit from the competent authority for nature conservation and landscape management. Such a permit shall be granted if the population of the relevant species, at the removal site, is not endangered and such collection will not significantly impair the natural balance. Such removal must be carried out with care. In decisions regarding collection for purposes of production of regional seeds, the relevant favourable impacts on objectives of nature conservation and landscape management shall be taken into account.

(5) It is prohibited:

1. to burn off the soil cover on meadows, field boundaries, field dikes and unused soil areas, and on hedges and slopes, and to treat areas not used for agriculture, forestry or fishing purposes in such a manner as to impair the pertinent fauna and flora,

2. to cut or graft trees located outside of forests, short-rotation forestry operations or horticulturally used soil areas, and hedges, living fences, shrubs and other woody plants, in the period from 1 March to 30 September; gentle pruning for form and care, for removal of additional growth or for maintenance of tree health, is permitted,

3. to cut back reeds in the period from 1 March to 30 September; outside of that period, reeds may be cut back only section-wise,

4. to use trenchers to clear ditches with continual water flow, where such action would significantly impair the natural balance, and especially the local fauna.

The prohibitions of Sentence 1 Nos 1 through 3 shall not apply for

1. measures ordered by authorities,

2. measures that, in the public interest, cannot be carried out by other means or at other times, where such measures

a) are carried out by authorities,

b) have been approved by authorities, or

c) serve the purpose of maintaining safety,

3. measures that, pursuant to Article 15, are permissible interventions in nature and landscape,

4. permissible construction projects, if only small amounts of shrubbery have to be removed in order to carry out the relevant construction measures.

The Länder governments are authorized to issue ordinances providing for expanded prohibition periods, with regard to the prohibitions set forth in Sentence 1 Nos 2 and 3, for all or parts of the territory of a Land. Via ordinances, they may transfer the authorization pursuant to Sentence 3 to other Land authorities.

(6) In the period from 1 October to 31 March, it is prohibited to visit caves, mine tunnels, earth cellars or similar rooms and spaces that serve as winter roosts of bats; this shall not apply to the execution of unpostponable actions that cause only slight disturbances, nor shall it apply to areas developed for tourism or to heavily used areas.

(7) More extensive protection provisions, especially the provisions of Chapter 4 and of Section 3 of Chapter 5, including the provisions on exceptions and exemptions, shall not be affected.

Article 40 Non-native, alien and invasive species

(4) Planting of alien species of plants, and release of alien species of animals, in natural surroundings shall require a permit from the competent authority. Artificially propagated plants shall not be deemed alien if their genetic origins are found in the relevant area. Such a permit shall be denied if a threat to Member States' ecosystems, biotopes or species cannot be ruled out. The following shall be exempt from the permit requirement:

1. the cultivation of plants in agriculture and forestry,

2. the release of animals

a) of non-alien species,

b) of alien species, provided their release requires a permit under plant protection legislation which makes allowance for the interests of species conservation, for the purposes of biological plant protection,

4. the planting of woody plants and seeds outside of their natural ranges, through 1. March 2020; until that time, preference should be given to planting woody plants and seeds, in natural surroundings, only within their natural ranges.

Article 22 of Directive 92/43/EEC must be observed.

Article 41 Bird protection in connection with overhead power lines

With the aim of protecting bird species, all newly constructed utility poles and technical components of medium-voltage lines shall be designed in such a way that birds are protected from electric shock. On existing utility poles and technical components of medium-voltage lines which pose a high risk to birds, the necessary measures to protect against electric shock shall be implemented by 31 December 2012. Sentence 2 shall not apply to overhead line systems of railways.

Section 3 - Special protection of species

Article 44 Provisions for specially protected fauna and flora species and certain other fauna and flora species

(1) It is prohibited:

1. to pursue, capture, injure or kill wild animals of specially protected species, or to take from the wild, damage or destroy their developmental stages,

2. to significantly disturb wild animals of strictly protected species and of European bird species during their breeding, rearing, moulting, hibernation and migration periods; a disturbance shall be deemed significant if it causes the conservation status of the local population of a species to worsen,

3. to take from the wild, damage or destroy breeding or resting sites of wild animals,

4. to take from the wild wild plants of specially protected species, or their developmental stages, or to damage or destroy them or their sites,

(prohibitions on taking).

(2) It is furthermore prohibited:

1. to gain possession or take custody of, have possession or custody of, handle or process animals or plants of specially protected species,

(prohibitions on possession),

2. with regard to animals and plants of specially protected species within the meaning of Article 7 (2) No 13 Letters b and c,

a) to sell, purchase, offer to sell or purchase, keep in stock or ship for purposes of sale, exchange or loan, for a fee, for purposes of use, such animals and plants,

b) to acquire, display to the public or use in some other manner for commercial purposes, such animals and plants,

(prohibitions on marketing).

Article 9 of Council Regulation (EC) No. 338/97 shall not be affected.

(3) The prohibitions on possession and marketing shall also apply to:

1. goods within the meaning of the Annex to Council Directive 83/129/EEC that, in contravention of Articles 1 and 3 of this Directive, entered the Community after 30 September 1983.,

(4) If use of soil for agricultural, forestry and fishing purposes, and use of the products obtained in the process, fulfils the requirements specified in Article 5 (2) to (4) of this Act, and the rules of good practice as defined in Article 17 (2) of the Federal Soil Conservation Act and in laws on agriculture, forestry and

fishing, it shall not be deemed to violate the prohibitions on taking, possession and marketing. Where species listed in Annex IV of Directive 92/43/EEC, European bird species or species listed in an ordinance pursuant to Article 54 (1) No 2 are affected, this shall apply only to the extent that the conservation status of the local population of a species does not worsen as a result of the relevant cultivation or management. Where such is not assured by means of other protection measures, especially area protection measures, species protection programmes, contractual agreements or targeted awareness measures, the competent authority shall specify, to the farmers, forest managers or fish farmers responsible for such worsening, the necessary applicable cultivation or management requirements. Authorisations pursuant to the legislation of the Länder to ordain or issue relevant provisions, via general decree or ordinance, shall not be affected.

(5) The taking, possession and marketing prohibitions pursuant to Sentences 2 through 5 shall apply with regard to permissible interventions in nature and landscape pursuant to Article 15, and to projects within the meaning of Article 18 (2) Sentence 1, that are permissible under the provisions of the Federal Building Code. If animal species listed in Annex IV Letter a of Directive 92/43/EEC, European bird species or species listed in an ordinance pursuant to Article 54 (1) No 2 are affected, the prohibition of (1) No 3 and, with regard to pertinent unavoidable adverse effects on wild animals, the prohibition of (1) No 1, shall not be deemed to have been violated if the ecological function of the breeding or resting sites affected by the intervention or project continues to be fulfilled within a spatial context.

Where necessary, advance compensation measures may be ordained. Sentences 2 and 3 shall apply mutatis mutandis with regard to sites of wild plants of the species listed in Annex IV Letter b of Directive 92/43/EEC. If other specially protected species are affected, actions for the implementation of an intervention or project shall not be deemed to violate prohibitions on taking, possession and marketing.

(6) The prohibitions on taking and possession shall not apply with regard to actions for preparation of legally required inspections carried out, to the necessary extent, by competent persons who take the greatest possible care not to harm or damage the specimens studied or the other animals and plants in the relevant area. The numbers of specimens of European bird species, and of individuals of the animal species listed in Annex IV Letter a of Directive 92/43/EEC, that are injured or killed are to be communicated by such competent persons to the competent authority for nature conservation and landscape management.

Article 45 Exceptions; authorisation to issue statutory ordinances

(1) Except where an ordinance pursuant to Article 54 (5) provides otherwise, the following shall be excepted from the prohibitions on possession:

1. animals and plants of specially protected species that were legally

a) bred in captivity within the Community and that have not been abandoned, and were not produced through artificial propagation or removed from the wild,

b) imported into the Community from third countries,

2. animals and plants of species listed in an ordinance pursuant to Article 54 (4) that, prior to the species' inclusion in the relevant ordinance, were legally acquired within the Community.

Sentence 1 No 1 Letter b shall not apply with regard to animals and plants of species within the meaning of Article 7 (2) No 13 Letter b that, after 3 April 2002, arrived in the country directly from a third country, without an exception or exemption pursuant to Article 43 (8) Sentence 2 or Article 62 of the Federal Nature Conservation Act in the version applicable until 1 March 2010, or that, after 1 March 2010, arrived in the country directly from a third country without an exception pursuant to (8). In derogation from Sentence 2, dead birds of European bird species within the meaning Article 7 (2) No 13 Letter b Double Letter bb, where such birds, pursuant to Article 2 (1) of the Federal Hunting Act, are subject to laws on hunting, may be transported into the country directly from a third country, without an exception or exemption, for purposes of personal use or as household effects.

(2) Where fauna and flora of specially protected species are not subject to the prohibitions on possession pursuant to (1), they shall also be exempt from the prohibitions on marketing. Subject to an ordinance pursuant to Article 54 (5), this shall not apply to the following taken from the wild:

1. fauna and flora of strictly protected species, and

2. individuals of European bird species.

(3) The following shall also be exempted from prohibitions on marketing:

1. fauna and flora of strictly protected species which, prior to being placed under protection as species threatened with extinction or strictly protected species, were legally acquired,

2. birds of European species that were legally acquired prior to 6 April 1981 or that are listed in Annex III Part 1 of Directive 79/409/EEC,

3. animals and plants of species that are subject to Directives 92/43/EEC and 79/409/EEC and that, in a Member State, and in accordance with the Directives, have been approved for the actions mentioned in Article 44 (2) Sentence 1 No 2.

(4) In derogation from the prohibitions on possession and marketing, it shall be permissible, subject to the provisions of laws on hunting and fishing, to take from the wild fauna and flora that have been found dead and to deliver them to a place designated by the competent authority for nature conservation and landscape management, or, provided they do not belong to a strictly protected species, to use them for purposes of research and teaching or for preparation for such purposes.

(5) In derogation from the prohibitions of Article 44 (1) No 1, and from prohibitions on possession, it shall also be permissible, subject to the provisions of laws on hunting, to take in injured, helpless or sick animals in order to restore them to health. Such animals are to be released immediately as soon as they are able to survive on their own. Otherwise, they are to be delivered to a place designated by the competent authority for nature conservation and landscape management. Where the animals concerned are members of a strictly protected species, the person who takes in the animal in must notify the competent authority for nature conservation and landscape management of this fact. That authority may require the surrender of the animal taken in.

(6) The authorities responsible for impounding or confiscation may grant exemptions from prohibitions on possession and marketing, where this is necessary for the utilisation of confiscated or impounded fauna and flora and provided this does not conflict with legal instruments of the European Communities.

(7) The competent authorities for nature conservation and landscape management, pursuant to the legislation of the Länder, and, in the case of introduction from other countries, the Federal Agency for Nature Conservation (BfN), may grant further exceptions from the prohibitions of Article 44, in individual cases,

1. in order to prevent considerable damage to agriculture, forestry, fisheries, water resources or other considerable economic damage,

2. in order to protect naturally occurring animals and plants,

3. for purposes of research, teaching, education, or reintroduction, or for the breeding operations or artificial propagation measures necessary for these purposes.

4. in the interest of public health, public safety, including defence and protection of the civilian population, or of beneficial consequences of primary importance for the environment, or

5. for other imperative reasons of overriding public interest, including those of a social or economic nature.

An exception may be granted only if no reasonable alternatives exist and the conservation status of a species' population is not worsened, except where Article 16 (1) of Directive 92/43/EEC contains more extensive provisions. Article 16 (3) of Directive 92/43/EEC and Article 9 (2) of Directive 79/409/EEC shall be observed. The Länder governments may also grant exceptions on a general basis, via statutory

ordinance. Via statutory ordinance, they may transfer the authorisation pursuant to Sentence 4 to other Land authorities.

(8) In the case of introduction from other countries, the Federal Agency for Nature Conservation (BfN) may grant additional exceptions, in individual cases, to the prohibitions of Article 44, if the conditions specified in (7) Sentences 2 and 3 are fulfilled, in order to facilitate prudent use, under controlled conditions and to a limited extent, of animals and plants of certain species within the meaning Article 7 (2) No 13 Letter b and of bred and artificially propagated animals or plants of such species.

Chapter 9 -Obligations pertaining to property; exemptions

§ 67 Exemptions

(1) An exemption from the requirements and prohibitions of this Act, in a statutory ordinance on the basis of Article 57 and pursuant to the nature conservation laws of the Länder may be granted, upon application, if

1. this is necessary for reasons of overriding public interest, including those of a social or economic nature, or

2. execution of the provisions, in an individual case, would lead to an unreasonable burden and the deviation is reconcilable with the interests of nature conservation and landscape management.

In the framework of Chapter 5, Sentence 1 shall apply only for Articles 39 and 40, 42 and 43.

(2) An exemption from the prohibitions of Article 33 (1) Sentence 1 and Article 44, and from requirements and prohibitions within the meaning of Article 32 (3), may be granted, upon application, if execution of the provisions, in an individual case, would lead to an unreasonable burden. In the case of introduction of animals or plants from other countries, the exemption is granted by the Federal Agency for Nature Conservation (BfN).

(3) Collateral clauses may be attached to the exemption. Article 15 (1) through (4) and (6), and Article 17 (5) and (7) shall also apply if no intervention in nature and landscape within the meaning of Article 14 has occurred.