



Midpeninsula Regional
Open Space District

R-22-41
Meeting 22-10
March 23, 2022

SPECIAL MEETING AGENDA ITEM 1

AGENDA ITEM

Proposed New Mitigation Policy

GENERAL MANAGER'S RECOMMENDATION

Adopt a new Mitigation Policy and associated revisions to the Resource Management Policies to guide future decisions on outside agency mitigation requests and inform mitigation efforts for internal projects.

SUMMARY

The Midpeninsula Regional Open Space District (District) is regularly approached by outside agencies seeking to provide funding and/or request the ability to implement mitigation work on District lands required by regulatory agencies to offset impacts caused by their offsite projects. The District also very rarely has the need to purchase external compensatory mitigation credits for work occurring on District lands (e.g. for the Ravenswood Bay Trail Project [R-19-19](#)). To date, mitigation requests and mitigation purchase options have been considered on a case-by-case basis. The proposed Mitigation Policy (Attachments 1 and 2) and associated revisions to the Resource Management Policies (RMPs) Attachments (3 and 4) provide a framework and adaptive criteria to guide future District decisions. The proposed Mitigation Policy also guides mitigation practices for the District's own projects.

DISCUSSION

At past Board of Directors (Board) and Committee meetings, Board members have asked for a District policy to guide the evaluation of outside agency mitigation requests and inform mitigation efforts for District-led projects. In 2021, staff developed a draft Mitigation Policy for the Board's initial feedback ([R-21-12](#)). The Board requested formatting changes and more concise language, which is reflected in the 'redline' edit of the Policy (Attachment 2). The Board also directed staff to review the policy with partner conservation organizations and environmental advocates.

Staff extended an invitation to review the draft policy to organizations that participate in the Santa Cruz Mountains Stewardship Network (Network) on September 10, 2021. Agencies that chose to attend the presentation included: Santa Clara County Open Space Authority, Calfire, San Francisco Public Utilities Commission, Peninsula Open Space Trust, and the San Mateo County Resource Conservation District. Network participants shared their experiences with mitigation in their geographies and asked questions about how the Mitigation Policy addressed certain complex topics. None of the participants have formal mitigation policies, though many had informal

practices. No comments or suggestions were received on the draft language of the Mitigation Policy.

Staff also presented the draft policy to organizations that participate in the conservation council (an informal regular meeting of representatives of several environmental groups), hosted by Green Foothills, on February 3, 2022. Participants included: Santa Clara Valley Audubon, The Nature Conservancy, Wildlife Stewards, Green Foothills, Sierra Club, Greenbelt Alliance, Friends of Coyote Creek, and the California Native Plant Society. They asked general questions about mitigation, discussed the draft policy and were overall supportive. One participant suggested that the District consider making a finding of ‘net benefit’ to the policy to ensure the impacting project and the mitigation project would result in an overall benefit to the affected species/habitat/resource. In response, a policy directive was added to policy M-7 directing that the staff analysis and recommendation include “a finding that the project and mitigation will likely result in a long-term benefit to the affected resource.” Another asked if the Policy includes outreach to environmental advocacy groups to ensure they have no concerns with the acceptance of mitigation funding/restoration from a specific project. The evaluation of mitigation requests by District staff often includes outreach to advocacy groups, which meets criteria 3 *Public, Partner and Social Implications*. However, some requests are minor, straightforward, and/or requested directly by regulatory agencies. An example would be a mitigation request derived from maintenance activities for an existing facility that provides a benefit to a special status species yet requires mitigation (such as the Pacific Gas and Electric external project on Woodruff Creek in San Mateo County to properly size, maintain, and replace a storm damaged culvert within a fish bearing stream). In such instances, outreach may not occur if the request is limited in scope and/or provides a clear benefit (such as the above example which resulted in improved stream conditions for fish). Additionally, all external mitigation funding more than \$50,000 would be brought to the Board for approval, providing a public forum for input. Mitigation requests from controversial projects are normally denied before they reach Board review.

The original proposed evaluation criteria for third-party compensatory mitigation remains unchanged since the initial Board review. They are:

- 1) **Alignment with District Mission, Policies, and Goals**
How does the project and the mitigation align with the District’s Mission and Goals?
- 2) **Proximity to District Lands and Regional Context**
What is the geographic proximity to the external project?
- 3) **Public, Partner, and Social Implications**
What are the potential public, societal and partner implications?
- 4) **Low-impact Project Design and Appropriate Mitigation**
How has the external entity first reduced environmental impacts through project design before approaching the District with a mitigation request?
- 5) **Ecological Impact versus Value**
What is the ecological impact of the project versus the ecological value of the proposed mitigation?

Another commentor asked that the supplemental questions staff ask when applying the evaluation criteria be included in the Policy. When the Board previously reviewed the draft Mitigation Policy, they directed staff to reduce the length of the overall policy to be consistent with the high-level policy language used throughout the RMPs as a whole. These questions were removed from the written policy but remain as a standalone document (Attachment 5) that would be used by staff when forming a recommendation.

Adding a Mitigation Policy (Attachments 1 and 2) as a new chapter to the larger Board approved RMPs also necessitates updates to the RMP Glossary. New terms resulting from the Mitigation Policy that are proposed for inclusion are found in Attachment 3.

In developing the new Mitigation Chapter, it was apparent that documenting the District's project management approach into formal policy would be of value since all Mitigation Projects follow this approach. Thus, this information is proposed as a new Appendix B to the overall RMPs. See Attachment 4 detailing the District's project management approach.

The proposed Mitigation Policy is consistent with the District's focus in establishing regional and landscape-level net benefits across District lands. This focus prioritizes high resource value sites to ensure that staff capacity and funding resources are allocated to sites where the greatest natural resource benefits can be achieved. Consideration of outside mitigation funding will provide an additional funding source for regionally important restoration work and promote partnerships that support the regional health and resiliency of natural resources.

FISCAL IMPACT

Approval of the Mitigation Policy has no immediate fiscal impact but may provide additional funding for District restoration projects in the future.

BOARD AND COMMITTEE REVIEW

The Board reviewed the draft policy at the April 28, 2021 meeting and provided initial comments, requested specific edits, and directed staff to review the policy with partner conservation organizations and environmental advocates ([R-21-12](#)) ([minutes](#)).

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act (CEQA). Each project that incorporates mitigation must be evaluated either individually or programmatically under CEQA by an applicable lead agency. For internal projects, the District is the lead agency; for external projects, the lead agency is typically another local public agency.

NEXT STEPS

If approved, the Mitigation Policy will be used to evaluate mitigation funded projects and grants. Mitigation projects and grants above \$50,000 will be evaluated using this Policy and brought to

the Board for consideration. The complete revised Resource Management Policies, including this chapter with additional final formatting, will be uploaded on the District website.

Attachments:

1. Proposed Mitigation Policy Chapter
2. Redline edits to the Mitigation Policy Chapter compared to the draft presented to the Board on April 28, 2021.
3. New terms and definitions for the proposed Mitigation Policy Chapter to be added to the Resource Management Policies Glossary
4. Redline edits to the proposed Appendix B of the Resource Management Policies detailing the Project Management Approach
5. Questions staff ask when reviewing proposed Mitigation requests

Responsible Department Head:

Kirk Lenington, Natural Resources Department

Prepared by:

Julie Andersen, Senior Resource Management Specialist, Natural Resources Department

Aaron Hébert, Senior Resource Management Specialist, Natural Resources Department

Contact person:

Julie Andersen, Senior Resource Management Specialist, Natural Resources Department

I. MITIGATION

Mitigation refers to a suite of measures that avoids, minimizes, or effectively eliminates the impact(s) for a given activity on the environment. Project mitigations may come from a California Environmental Quality Act (CEQA) document, state and federal permits, or from county or local ordinances. This policy applies to mitigations that pertain to natural and cultural resources which may be incorporated into local, state and federal permit approvals. CEQA-related mitigation involving natural and cultural resources are considered elsewhere in District policy - specifically other chapters of the Resources Management Policies, the Basic Policy, and other Board Policies such as 4.09- Factors to Consider for Structures Disposition.

This mitigation policy creates the process by which District staff define and consider the **least environmentally damaging practicable alternative** of a project. Mitigation may result from either an **internal** or District-led project occurring on District-owned lands or an **external** project, which is a project led by another agency. Midpen's role in reviewing external projects' where Midpen may be a **CEQA Responsible Agency** is detailed in the "District Guidelines for Implementation of the California Environmental Quality Act."

BACKGROUND

Impacts to the environment come in many forms but can be broadly characterized as **temporary** and/or **permanent**. Temporary impacts are those which do not result in a durable change or are short-term in nature. Permanent impacts are those that convert habitat or affect resources in a durable fashion.

Impacts can be described as **potential** or **actual**. Potential impacts cannot be ruled out or confirmed definitively until a future assessment is completed or the project is implemented. Some permits require defining the **Area of Potential Effect**, which encompasses a larger area around the actual impact location. **Actual impacts** arise from known and

An example of a project having a direct effect may include the removal of select trees or other vegetation to construct new bridge footings within a riparian area resulting in the need for replacement plantings.

An example of a project having an indirect effect may include installation of a new trail that may cause an increase or decrease in preserve visitation.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
RESOURCE MANAGEMENT POLICIES
MITIGATION

definite impacts to a resource, whether temporary or permanent. CEQA analyzes three types of effects: direct, indirect, and cumulative. **Direct effects** occur at the place and at the same time as the project implementation (e.g., ground disturbance, tree removal, etc.). **Indirect effects** are reasonably foreseeable effects that occur at different times or places (e.g. impacts that occur due to the proposed action but beyond the footprint of a project or activity). **Cumulative effects** are two or more effects that compound together or increase other environmental impacts.

The existing condition or **environment baseline** describes the environmental setting, ecology, and resources prior to a proposed activity. **Temporal loss** is an impact arising from a delay between an impact and **compensatory mitigation**.

While CEQA and permitting agencies have different definitions and frameworks, including the precise use of the term ‘mitigation’, the principles of mitigation are shared. The main difference is that CEQA mitigations are approved, monitored, and reported by the CEQA **lead agency**, which is usually the District in the case of District-led projects. Mitigations required through permitting are ultimately approved by the permitting agencies yet monitored and reported by the lead agency.

An example of cumulative impacts using the above examples would be removal of the riparian vegetation compounded with an increase in visitor usage that may together cumulatively affect water quality and/or future wildlife usage at the project site.

MITIGATION GOALS, POLICIES, AND IMPLEMENTATION MEASURES

Goal M-	Avoid and minimize adverse impacts to natural and cultural resources to the maximum feasible extent and use mitigation for all other unavoidable impacts. Couple mitigation with high priority restoration when feasible.
----------------	--

Policy M-1 Review and consider all applicable District Policies, programmatic permits, and CEQA documents to develop the project scope, incorporating the following practices (listed in in order of priority): avoidance, minimization and/or mitigation of potential impacts.

- ◆ Refer to Board Policies, including but not limited to the Basic Policy, and other applicable Resource Management Policy Chapters.
- ◆ Review applicable resource agency programmatic permits and/or programmatic CEQA documents to determine if the project can be covered using existing avoidance, minimization or mitigation measures to reduce the need for compensatory mitigation.

Policy M-2 Identify and evaluate sensitive resources to determine the least impactful project design that meets the project goals and objectives.

- ◆ Develop a brief and inclusive project description.
- ◆ Define the maximum Area of Potential Effect.
- ◆ Survey, identify, and map sensitive ecological and cultural resources within the project area.
- ◆ Analyze how different project alternatives may avoid or impact existing resources.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
RESOURCE MANAGEMENT POLICIES
MITIGATION

The basis of design integrates engineering, constructability, costs, and environmental considerations to explain the rationale behind the selected project and why other alternatives do not sufficiently meet the project goals.

- ◆ Analyze other activities within the watershed and/or Preserve to understand the net effect of the proposed project.
- ◆ Compare potential impacts against the feasibility, cost, and project goals and objectives (including long term maintenance and monitoring).
- ◆ Document the **basis of design** and why the project is the least environmentally impactful alternative.
- ◆ The basis of design can be informed by the CEQA review process and/or an alternatives analysis conducted during permitting review.

Policy M-3 Evaluate and incorporate measures that minimize the effects of the project on the sensitive resources.

- ◆ Refine the project description into a sequential narrative and refine the resulting Area of Potential Effect.
- ◆ Conduct further detailed and site-specific surveys of natural and cultural resources as needed to adjust and refine the project design to avoid and minimize project impacts.
- ◆ Define and quantify the temporary, permanent, potential, and actual impacts of the project to the extent feasible.
- ◆ Adjust the project scope, extent, seasonality, duration, or other measures to minimize actual or potential impacts to the resources.

Policy M-4 Develop a compensatory mitigation strategy as a measure of last resort.

- ◆ Review the temporary and permanent impacts.
- ◆ Evaluate onsite mitigation for short-term and long-term cost efficiencies, habitat benefit, physical capacity, and staff resources.
- ◆ Evaluate existing voluntary restoration projects for potential use as mitigation, including vegetation management for

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
RESOURCE MANAGEMENT POLICIES
MITIGATION

resiliency work (e.g., wildland fire, climate change, and/or invasive species removal).

- ◆ If the overall impacts and associated mitigations are substantial, review other voluntary restoration work that the District may plan or conduct in the watershed or Preserve that can mitigate the impacts and/or result in a 'net environmental benefit'.
- ◆ When applying restoration and/or recovery work to compensate for project impacts, select high priority species, habitats, populations, and ecological processes first, preferably in high conservation value areas, including Conservation Management Units, to maximize the regional net environmental benefit.
- ◆ When onsite mitigation is not feasible, evaluate the appropriateness of implementing mitigation work in off-site locations (refer to 'like for like' as described above)
- ◆ Prioritize facilitating or supporting regionally significant restoration projects, as defined by a recovery plan, watershed plan, or other collaborative planning document, when using compensatory mitigation funds.
- ◆ Ensure that baseline mitigation ratios are correctly proportioned by accounting for both the uncertainty inherent in mitigation work and the anticipated probability of success.
- ◆ If no other options are cost effective and feasible, search for partner agencies or conservation organizations that may facilitate third-party mitigation. Consider those that support a Natural Community Conservation Plan, Habitat Conservation Plan, Regional Conservation Investment Strategy or other regional conservation planning.

Policy M-5 Weigh the mitigation, maintenance, monitoring, and reporting costs and impacts alongside the project benefits.

- ◆ After defining a third-party compensatory mitigation strategy, evaluate the sum of all mitigation costs (construction expenses, biological or cultural monitoring,

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
RESOURCE MANAGEMENT POLICIES
MITIGATION

revegetation, compensatory mitigation, and post-construction monitoring).

- ◆ If the overall impacts and associated mitigation costs are substantial, determine whether revisiting the project goal(s) and scope is warranted.
- ◆ Consider a recommendation to alter or withdraw the project.

Policy M-6 When needed, evaluate compensatory mitigation proposed by the District for purchase or implementation on other properties.

- ◆ Confirm if the project is using the least environmentally damaging and feasible alternative.
- ◆ If no feasible option or habitat within District lands is available for which to mitigate for an impact, consider a recommendation to alter or withdraw the project.
- ◆ If after evaluation no feasible alternative or option exists, funding of or implementing off-site mitigation may be considered.

Policy M-7 When third-party compensatory mitigation is proposed by outside parties to the District, evaluate proposals using criteria that aligns with the District's Mission, Goals, and Policies.

- ◆ District analysis of third-party proposals will include a summary of the request, a description of the third-party project ("proposed project"), the required mitigation, and a finding that the project and mitigation will likely result in a long-term benefit to the affected resource.
- ◆ Evaluation criteria of third-party proposals shall include:
 - ***Alignment with District Mission, Policies, and Goals***
 - ***Proximity to District Lands and Regional Context***

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
RESOURCE MANAGEMENT POLICIES
MITIGATION

- ***Public, Partner, and Social Implications***
- ***Low-impact Project Design and Appropriate Mitigation***
- ***Ecological Impact vs Value***

Policy M-8 Recommend third-party compensatory mitigation that fulfill District goals and meet District criteria.

- ◆ Evaluation criteria will be used to determine whether to further consider outside proposals for acceptance of mitigation funds and/or mitigation work on District lands.
- ◆ Projects are ranked against the evaluation criteria. Although not all projects will meet every criterion, projects must be able to provide a clear benefit to the District to be considered for acceptance.
- ◆ The value of the outside mitigation funds or proposed mitigation work determines the level of approval authority. External mitigation valued at greater than the General Manager's signing authority requires Board approval.
- ◆ Staff findings and recommendations are forwarded to the approving authority. Recommendations will be based on the (ranked) criteria and the particulars of the proposed project and associated compensatory mitigation. Projects that do not meet minimum criteria, do not provide a clear public benefit, and/or are controversial may be denied.
- ◆ Staff will review and ensure a Mitigation Monitoring and Reporting Plan, or Program is in place before accepting funds or mitigation work.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
RESOURCE MANAGEMENT POLICIES
MITIGATION

This page intentionally blank

DRAFT

I. MITIGATION

Mitigation refers to a suite of measures that avoids, minimizes, or effectively eliminates the impact(s) for a given activity on the environment. ~~Mitigation involves using avoidance and minimization measures to reduce impacts to a less than significant amount, rectifying environmental damages or harm caused by a project or action, and compensating for temporary or permanent irreversible impacts.~~ Project mitigations may come from a California Environmental Quality Act (CEQA) document, state and federal permits ~~required by the Clean Water Act/Porter Cologne Act and Endangered Species Acts,~~ or from county or local ordinances. This policy applies to mitigations that pertain to natural and cultural resources ~~(e.g. biological resources, paleontological, hydrology and water quality, cultural resources, and tribal cultural resources),~~ which may be incorporated into local, state and federal permit approvals. ~~These permits are administered by various municipalities, counties, California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Regional Water Quality Control Board (RWQCB), United States Army Corps of Engineers (ACOE), and the State Historic Preservation Office (SHPO).~~ CEQA-related mitigation involving natural and cultural resources are considered elsewhere in District policy - specifically other chapters of the Resources Management Policies, ~~(VM, WM, IPM, WR, GS, SA, CR, RC, PI, GM, FM, ES, HC, WF, CC),~~ the Basic Policy, and other Board Policies such as 4.09-Factors to Consider for Structures Disposition.

This mitigation policy creates the process by which District staff define and consider the **least environmentally damaging practicable alternative** of a project. Mitigation may result from either an **internal** or District-led project occurring on District-owned lands or an **external** project, which is a project led by another agency ~~involving District-owned lands either for implementation and/or mitigation.~~ Midpen's role in reviewing external projects' where Midpen may be a CEQA

Responsible Agency is detailed in the “District Guidelines for Implementation of the California Environmental Quality Act.”

BACKGROUND

DEFINITIONS

~~Mitigation in this section guides project planning and design to minimize environmental impacts and to anticipate permit related mitigations from local, state, and federal agencies.~~

Impacts to the environment come in many forms but can be broadly characterized as **temporary** and/or **permanent**. Temporary impacts are those which do not result in a durable change or are short-term in nature. Permanent impacts are those that convert habitat or affect resources in a durable fashion.

Impacts can be described as **potential** or **actual**. Potential impacts cannot be ruled out or confirmed definitively until a future assessment is completed or the ~~project work~~ is implemented. Some permits require defining the **Area of Potential Effect**, which encompasses a larger area around the actual impact location. **Actual impacts** arise from known and definite impacts to a resource, whether temporary or permanent.

~~Impacts may be described as point source (i.e. highly localized) or non-point (i.e. widespread or diffuse).~~ CEQA analyzes three types of effects: direct, indirect, and cumulative. **Direct effects** occur at the place and at the same time as the project implementation (e.g., ground disturbance, tree removal, etc.). **Indirect effects** are reasonably foreseeable effects that occur at different times or places (e.g. impacts that occur due to the proposed action but beyond the footprint of a project or activity). **Cumulative effects** are two or more effects that compound together or increase other environmental impacts.

The existing condition or **environment baseline** describes the environmental setting, ecology, and resources prior to a proposed activity. ~~Capturing a broad, expansive Area of Potential Effect for analysis allows a more stable baseline to be compared against evolving concepts of what is or is not included in a proposed project.~~ **Temporal**

An example of a project having a direct effect may include the removal of select trees or other vegetation to construct new bridge footings within a riparian area resulting in the need for replacement plantings.

An example of a project having an indirect effect may include installation of a new trail that may cause an increase or decrease in preserve visitation.

An example of cumulative impacts using the above examples would be removal of the riparian vegetation compounded with an increase in visitor usage that may together cumulatively affect water quality and/or future wildlife usage at the project site.

loss is an impact arising from a delay between an impact and **compensatory mitigation**.

~~CEQA analyzes potential impacts based on whether the impact is significant or substantial and mitigation is developed to reduce those impacts to less than significant. During the CEQA process, a project is evaluated using an environmental checklist form to determine if (potential or actual) significant environmental effects require more robust environmental analysis (such as an Initial Study or Environmental Impact Report) that considers one or more reasonable alternatives. Project activities assessed under CEQA adhere to mitigation requirements through the implementation of a Mitigation Monitoring and Reporting Plan or Program.~~

~~CEQA defines mitigation as:~~

- ~~A. Avoiding the impact altogether by not taking a certain action or parts of an action.~~
- ~~B. Minimizing the impact by limiting the degree or magnitude of the action and its implementation.~~
- ~~C. Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.~~
- ~~D. Reducing or eliminating the impact over time through preservation and maintenance activities.~~
- ~~E. Compensating for the impact by replacing or providing substitute resources or environments.~~

~~Activities that require permits from local, state and federal agencies incorporate CEQA mitigations as permit related mitigations. The permitting agencies, however, have different mitigation frameworks consistent with their missions and enabling statutes and may use the CEQA mitigations where they deem them satisfactory as part of issuing permitting terms, conditions, and requirements.~~

~~Through the California Endangered Species Act and Section 1602 of the Fish and Game Code, CDFW analyzes whether a potential impact is substantial and adverse and includes measures in permit agreements to protect fish and wildlife resources. These may include administrative, construction, biological, compensatory, and reporting measures.~~

The Coastal Commission uses a mitigation framework similar to CEQA, and also incorporates special conditions such as requiring that proposed development (within the coastal zone) use the least environmentally damaging feasible alternative. This practice goes above and beyond practices by other entities that may select any project alternative as long as impacts are mitigated.

USFWS evaluates project impacts to species on the **likelihood** the project adversely affects a species, and the likelihood the project jeopardizes the continued existence of a species. USFWS considers direct, indirect, interrelated, and interdependent effects. USFWS then issues conservation measures to avoid and minimize effects and authorizes an amount and extent of **take** of a species. Take, as defined by the Endangered Species Act, is 'to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'

Habitat Conservation Plans (HCP) are a form of permit from USFWS that authorize **incidental take** of federally listed species and establishes a formal mitigation approach, usually at a large, regional scale. HCPs are intended to fulfill the Endangered Species Act and include a conservation strategy to compensate for impacts on covered species.

Mitigation measures under an HCP include preservation via acquisition or **conservation easement** of existing habitat, enhancement or restoration of a degraded or former habitat, creation of new habitat, establishment of buffer areas around existing habitat, modifications of land use practices, and restrictions on access.

Through the Porter-Cologne Act and Clean Water Act, the SF RWQCB analyzes projects through the potentially affected beneficial uses, the significance of impacts to Waters of the State, whether the project violates state water quality standards, and determines whether the project conforms to the state's **no-net-loss policy** for wetlands. The water quality certification then includes a wide range of conditions.

The ACOE analyzes the dredge and fill of the Waters of the US and issues terms and conditions to authorize projects. Waters of the US vary widely from the innermost portion of a small stream to most of the San Francisco Bay. ACOE shares a joint responsibility with SF RWQCB to administer the Clean Water Act in California in wetlands and stream systems. Most District projects qualify for a Nationwide Permit (a standardized permit) and must adhere to the relevant conditions. All projects must demonstrate they have first avoided, then minimized, and finally compensated for impacts to waters. ACOE also must consult with USFWS and SHPO. SHPO reviews the ACOE consultation and evaluates whether projects will adversely affect a historic resource.

Incidental take is an authorization and permit from USFWS that allows take of listed species where the activity's take is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. An HCP must accompany an application for an incidental take permit.

The state and federal agencies responsible for the environment issue two types of permits: individual permits that cover a discrete project and 'programmatic' permits that cover large areas, many types of activities, and last 5 or more years.

While CEQA and permitting agencies have different definitions and frameworks, including the precise use of the term ‘mitigation’, the principles of mitigation are shared. The main difference is that CEQA mitigations are approved, monitored, and reported by the **CEQA lead agency**, which is usually the District in the case of District-led projects. Mitigations required through permitting are ultimately approved by the permitting agencies yet monitored and reported by the lead agency.

~~Although not expressly mitigation measures, implementation measures from other chapters of these RM policies and other BMPs can act as mitigations outside of the CEQA/permitting framework. That is, work done in conformance with the RM policies achieves the objectives of the mitigation policy, even where no mitigation is required by law, CEQA, or permit.~~

MITIGATION GOALS, POLICIES, AND IMPLEMENTATION MEASURES

Goal M-	Avoid and minimize adverse impacts to natural and cultural resources to the maximum feasible extent and use mitigation for all other unavoidable impacts. Couple mitigation with high priority restoration when feasible.
----------------	--

Policy M-1 Review and consider all applicable District Policies, programmatic permits, and CEQA documents to develop the project scope, incorporating the following practices (listed in in order of priority): avoidance, minimization and/or mitigation of potential impacts.

- ◆ Refer to Board Policies, including but not limited to the Basic Policy, and other applicable Resource Management Policy Chapters.
- ◆ Review applicable resource agency programmatic permits and/or programmatic CEQA documents to determine if the project can be covered using existing avoidance,

minimization or mitigation measures to reduce the need for compensatory mitigation.

Policy M-2 Identify and evaluate sensitive resources to determine the least impactful project design that meets the project goals and objectives.

- ◆ Develop a brief and inclusive project description.
- ◆ Define the maximum Area of Potential Effect.
- ◆ Survey, identify, and map sensitive ecological and cultural resources within the project area.
- ◆ Analyze how different project alternatives may avoid or impact existing resources.
- ◆ Analyze other activities within the watershed and/or Preserve to understand the net effect of the proposed project.
- ◆ Compare potential impacts against the feasibility, cost, and project goals and objectives (including long term maintenance and monitoring).
- ◆ Document the **basis of design** and why the project is the least environmentally impactful alternative.
- ◆ The basis of design can be informed by the CEQA review process and/or an alternatives analysis conducted during permitting review.

The basis of design integrates engineering, constructability, costs, and environmental considerations to explain the rationale behind the selected project and why other alternatives do not sufficiently meet the project goals.

Policy M-3 Evaluate and incorporate measures that minimize the effects of the project on the sensitive resources.

- ◆ Refine the project description into a sequential narrative and refine the resulting Area of Potential Effect.
- ◆ Conduct further detailed and site-specific surveys of natural and cultural resources as needed to adjust and refine the project design to avoid and minimize project impacts.
- ◆ Define and quantify the temporary, permanent, potential, and actual impacts of the project to the extent feasible.

- ◆ Adjust the project scope, extent, seasonality, duration, or other measures to minimize actual or potential impacts to the resources.

Policy M-4 Develop a compensatory mitigation strategy as a measure of last resort.

- ◆ Review the temporary and permanent impacts.
- ◆ Evaluate onsite mitigation for short-term and long-term cost efficiencies, habitat benefit, physical capacity, and staff resources.
- ◆ Evaluate existing voluntary restoration projects for potential use as mitigation, including vegetation management for resiliency work (e.g., wildland fire, climate change, and/or invasive species removal).
- ◆ If the overall impacts and associated mitigations are substantial, review other voluntary restoration work that the District may plan or conduct in the watershed or Preserve that can mitigate the impacts and/or result in a 'net environmental benefit'.
- ◆ When applying restoration and/or recovery work to compensate for project impacts, select high priority species, habitats, populations, and ecological processes first, preferably in high conservation value areas, including Conservation Management Units, to maximize the regional net environmental benefit.
- ◆ When onsite mitigation is not feasible, evaluate the appropriateness of implementing mitigation work in off-site locations (refer to 'like for like' as described above)
- ◆ Prioritize facilitating or supporting regionally significant restoration projects, as defined by a recovery plan, watershed plan, or other collaborative planning document, when using compensatory mitigation funds.
- ◆ Ensure that baseline mitigation ratios are correctly proportioned by accounting for both the uncertainty inherent in mitigation work and the anticipated probability of success.

- ◆ If no other options are cost effective and feasible, search for partner agencies or conservation organizations that may facilitate third-party mitigation. Consider those that support a Natural Community Conservation Plan, Habitat Conservation Plan, Regional Conservation Investment Strategy or other regional conservation planning.

Policy M-5 Weigh the mitigation, maintenance, monitoring, and reporting costs and impacts alongside the project benefits.

- ◆ After defining a third-party compensatory mitigation strategy, evaluate the sum of all mitigation costs (construction expenses, biological or cultural monitoring, revegetation, compensatory mitigation, and post-construction monitoring).
- ◆ If the overall impacts and associated mitigation costs are substantial, determine whether revisiting the project goal(s) and scope is warranted.
- ◆ Consider a recommendation to alter or withdraw the project.

Policy M-6 When needed, evaluate compensatory mitigation proposed by the District for purchase or implementation on other properties.

- ◆ Confirm if the project is using the least environmentally damaging and feasible alternative.
- ◆ If no feasible option or habitat within District lands is available for which to mitigate for an impact, consider a recommendation to alter or withdraw the project.
- ◆ If after evaluation no feasible alternative or option exists, funding of or implementing off-site mitigation may be considered.

Policy M-7 When third-party compensatory mitigation is proposed by outside parties to the District, evaluate proposals using criteria that aligns with the District's Mission, Goals, and Policies.

- ◆ District analysis of third-party proposals will include a summary of the request, a description of the third-party project ("proposed project"), ~~and the required mitigation,~~ and a finding that the project and mitigation will likely result in a long-term benefit to the affected resource.

- ◆ Evaluation criteria of third-party proposals shall include:

- ***Alignment with District Mission, Policies, and Goals***

- ◆ ~~Does the proposed project support the District's mission?~~
- ◆ ~~Does the proposed project provide a public benefit?~~
- ◆ ~~Does the proposed project align with the Basic Policy and Good Neighbor policy?~~
- ◆ ~~Is the project proponent's mission aligned with the District and do they have a track record of environmentally sensitive projects?~~

- ***Proximity to District Lands and Regional Context***

- ◆ ~~Is the proposed project located within the District's boundaries or sphere of influence, or within the larger nine-county Bay Area region?~~
- ◆ ~~Is the proposed project at an appropriate scope and scale for the site and/or region?~~
- ◆ ~~Will the proposed project directly affect District lands or surrounding ecosystems?~~

- ***Public, Partner, and Social Implications***

- ◆ ~~What are the potential impacts and/or benefits to the public and our partners? What are the potential impacts and/or benefits to under-~~

~~resourced and/or vulnerable communities and to Native American tribes?~~

~~* Is there public support for or opposition to the project and/or to the proposed mitigation?~~

~~* Does the project offer opportunities to strengthen relationships or partner with outside agencies, non-profit organizations, and other groups?~~

~~* Does the project improve or reduce public access opportunities?~~

○ ***Low-impact Project Design and Appropriate Mitigation***

~~* Does the proposed project use the least impactful, practicable alternative and if not, did the proponent first consider how to avoid and minimize impacts to the greatest feasible extent? Are impacts temporary or permanent? Are the impacts too large to offset?~~

~~* What are the sources of funding, conditions imposed, monitoring and oversight requirements, and timeline?~~

~~* Are the mitigation funds too small to be useful?~~

~~* Is the mitigation project consistent with an existing Preserve Plan, Use and Management Plan and/or an existing CEQA document?~~

~~* Will the mitigation project require the District to allocate resources to design, peer review, or monitor the mitigation work?~~

~~* Does the District already have a voluntary restoration project in mind or one that requires additional funding that would be a good match?~~

○ ***Ecological Impact vs Value***

- ~~• Is the affected species for which mitigation is proposed present at the area of impact or do they only have the potential to occur in the area?~~
- ~~• Does the Area of Potential Effect and the proposed off-site mitigation fall within critical habitat, or is part of a habitat linkage, climate refugia, or another sensitive habitat?~~
- ~~• Does the proposed mitigation:~~
 - ~~❖ benefit a sensitive species population, habitat assemblage, and/or multiple species?~~
 - ~~❖ facilitate regional restoration priorities and/or recovery of species?~~
 - ~~❖ restore or provide ecological system function(s)?~~
 - ~~❖ promote long-term health of the ecosystem or provide resource benefits?~~
 - ~~❖ help meet priority land conservation and management goals?~~
 - ~~❖ support the goals of a Natural Community Conservation Plan, Habitat Conservation Plan, Regional Conservation Investment Strategy or other regional conservation plan?~~

Policy M-8 Recommend third-party compensatory mitigation that fulfill District goals and meet District criteria.

- ◆ Evaluation criteria will be used to determine whether to further consider outside proposals for acceptance of mitigation funds and/or mitigation work on District lands.
- ◆ Projects are ranked against the evaluation criteria. Although not all projects will meet every criterion, projects

must be able to provide a clear benefit to the District to be considered for acceptance.

- ◆ The value of the outside mitigation funds or proposed mitigation work determines the level of approval authority. External mitigation valued at greater than the General Manager's signing authority requires Board approval.
- ◆ Staff findings and recommendations are forwarded to the approving authority. Recommendations will be based on the (ranked) criteria and the particulars of the proposed project and associated compensatory mitigation. Projects that do not meet minimum criteria, do not provide a clear public benefit, and/or are controversial may be denied.
- ◆ Staff will review and ensure a Mitigation Monitoring and Reporting Plan, or Program is in place before accepting funds or mitigation work.

This page intentionally blank

DRAFT

Mitigation Chapter

New terms and definitions proposed to be added to the Resource Management Policies Glossary:

Actual impacts - arise from known and definite impacts to a resource, whether temporary or permanent.

Advance mitigation - 1) a form of mitigation (compensation) implemented before an impact occurs. 2) a science-based approach to identify mitigation opportunities early in the planning process prior to the design and permitting phases to identify higher-quality mitigation opportunities and/or those that support regional conservation priorities.

Alternatives analysis - 1) the evaluation of the different project choices or actions available to achieve a desired objective. It is an analytical comparison of different factors, including environmental impacts, operational cost, risks, effectiveness etc. 2) A process of completing an alternatives analysis under the Clean Water Act that requires demonstration and determination that the proposed project is the least environmentally damaging practicable alternative. 3) Under the California Environmental Quality Act, when completing an Environmental Impact Report, an alternatives analysis is required and describes a reasonable range of alternatives that could feasibly avoid or lessen any significant environmental impacts while substantially attaining the basic objectives of the Project or Program.

Area of Potential Effect (APE) - the larger area surrounding the project activity location that encompasses ancillary features such as staging, access routes, refueling stations and other features that may be affected incidentally.

Avoidance - to cause no potential impact while undertaking a proposed action. Avoidance involves deliberate and thoughtful planning to evaluate and document the strategies that will be used to prevent impacts to the resources as a result of a proposed activity.

Basis of design - documents the principles, assumptions, rationale, criteria, and considerations used for the calculations and decisions required during design of a project, system, or other activity.

Compensatory mitigation - measures taken to offset the unavoidable impact remaining after avoidance and minimization actions are taken. Compensatory mitigation involves either the restoration, establishment, enhancement and/or preservation of impacted habitats or waters on or off site.

Conservation easement – a voluntary, legal agreement that permanently limits uses of the land in order to protect its conservation values. A conservation easement is one option to protect a property for future generations absent of having fee title to that land.

Cumulative effects - changes to the environment caused by the combined impact of past, present and future human activities and natural processes. Cumulative effects to the environment are the result of multiple activities whose individual direct (or indirect) impacts may be relatively minor but in combination with others result in significant environmental effects.

Direct effects - effects that occur at the place and at the same time as project implementation (e.g., ground disturbance, tree removal etc.)

Direct take - immediate injury or death to one or more individuals of one or more species as a result of project activities.

Ecological Resiliency- the ability of an ecosystem to maintain a dynamic equilibrium of nutrient cycling and biomass production after being subjected to damage caused by an ecological disturbance.

Ecological Restoration - the process of returning land that has been degraded or disturbed into functional habitat and processes to accelerate the recovery of an ecosystem.

Enhancement - the process of altering a habitat to improve one or more specific ecosystem condition(s) and/or function(s).

Environment baseline - the existing condition that describes the environmental setting, ecology, and resources prior to a proposed activity.

External mitigation - mitigation that results from a project led by another agency involving District-owned lands either for project implementation (such as the flood detention basin at Rancho San Antonio) and/or as a site to implement mitigation required from one of their offsite projects (such as Valley Water mitigation implementation at Hendrys Creek).

Formal mitigation banks - areas of potential restoration that consolidate compensatory mitigation of many upcoming projects, thus avoiding temporal loss, and are regulated by the agencies that oversee them.

Habitat Conservation Plans (HCP)- a form of permit from USFWS that authorize **incidental take** of federally listed species and establishes a formal mitigation approach, usually at a regional, large scale.

Indirect effects - are reasonably foreseeable effects that occur at different times or places (e.g. impacts that occur due to the proposed action but beyond the footprint of a project or activity).

Informal mitigation banks - areas of potential restoration that consolidate compensatory mitigation of many upcoming projects, thus avoiding temporal loss, without being regulated as a formal mitigation bank.

Internal mitigation- results from either a District-led project occurring on District-owned lands or from a District-led project not on District lands (such as the Highway 17 Wildlife and Regional Trails Project).

Least environmentally damaging and feasible alternative - a term that comes from the Clean Water Act for a practicable alternative that would have less adverse impact on the aquatic ecosystem than other proposed project alternatives.

Lead Agency - the public agency that has the principal responsibility for carrying out or approving a project. The lead agency will decide whether a project is subject to the California Environmental Quality Act (CEQA) or is categorically exempt, and if subject to CEQA, what level of environmental analysis/document will be required for the project. The lead agency is responsible for preparing the appropriate CEQA document.

Like for like mitigation - meaning impacts to one habitat, species, or function are compensated for with a similar (if not identical) replacement (e.g. if one large oak tree is removed it is replaced with one large oak tree at a suitable site - most likely onsite, but in some instances may be located offsite).

Minimization - modifying the way an activity is to be undertaken in order to reduce the potential or actual impact to a resource. Minimization is the next preferred method to reduce project impacts when a potential impact cannot be completely avoided.

Mitigation - a single or a suite of measures that minimizes, or effectively eliminates the impact(s) of a given activity on the environment. Project mitigations may come from California Environmental Quality Act (CEQA), state and federal permits, or county or local ordinances.

Mitigation (or Conservation) banks - a system where landowners can permanently create certain habitats targeting specific listed species or other regulated features such as wetlands in order to use these features for actions anticipated to occur in the future for which mitigation will be required. Landowners can create banks to offset their own impacts or may sell the mitigation credits to other parties causing impacts in similar ecosystems elsewhere.

Mitigation credits - units of habitat that are preserved or protected (typically measured in area) that may be used, purchased or sold to offset impacts from an action for which mitigation is required.

Mitigation Credit Agreement (MCA) - formal agreement that creates mitigation credits by implementing conservation or habitat enhancement actions identified in a California Department of Fish and Wildlife (CDFW) approved Regional Conservation Investment Strategy. Credits developed under an MCA may be used as compensatory mitigation for impacts under CEQA, the California Endangered Species Act, and the CDFW Lake and Streambed Alteration Program.

Mitigation Monitoring and Reporting Plan or Program (MMRP) - specifies what the mitigation is, the entity responsible for monitoring the program, and when in the process it should be accomplished. The MMRP is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures which requires the Lead Agency, for each project that is subject to the California Environmental Quality Act (CEQA), to monitor performance of the mitigation measures included in any environmental document to ensure that mitigation does, in fact, take place.

Mitigation ratio - defined as the number or extent of compensatory restoration efforts, relating the scale of impact to a greater scale of restoration.

No-net-loss policy - a principle by which counties, agencies, and governments strive to balance unavoidable habitat, environmental and resource losses with replacement of those items on a project-by-project basis so that further reductions to resources may be prevented.

No project alternative - refers to 1) a project alternative whereby the impacts, costs, and staff resources necessary to implement the project consistent with the project goals outweigh the benefit to the District, resulting in a recommendation to not implement the project. 2) the potential impacts that may result from not undertaking the project (e.g. a culvert continuing to cause erosion without replacement).

On-site mitigation - refers to working within or immediately adjacent to the Area of Potential Effect to implement the compensatory restoration and is the generally preferred standard for both the District and most permitting agencies.

Off-site mitigation - refers to compensatory mitigation distant from the area of impact.

Permanent impacts - those impacts that convert habitat or affect resources in a durable fashion.

Potential impacts - impacts that cannot be ruled out or confirmed definitively until some future assessment is completed or the work is implemented.

Potentially significant impact(s) - based on substantial evidence, a project (or portion of project) is determined to have a significant effect on the environment under CEQA and therefore the environmental impact requires mitigation to reduce the impact to less than significant.

Recovery - is the process that *stops the decline* of an endangered or threatened species by removing or reducing threats and ensures the long-term survival of the species. Recovered habitat (natural or restored) has documented use by target and non-target native organisms within a suite of healthy ecosystem functions. Once a target species is recovered, protection under the Endangered Species Act is no longer necessary.

Regional Conservation Investment Strategy - a voluntary, non-regulatory, non-binding conservation assessment that includes information and analyses of important species, ecosystems, protected areas, and habitat linkages at the USDA ecoregion scale and may include more than one ecoregion regional and must be approved by the California Department of Fish and Wildlife.

(Regional) net environmental benefit (net benefit) - the gains in value of environmental services (such as species and/or habitat enhancements) or other ecological properties (ecologic functions such as improved hydrologic connectivity) that are attained by an action minus the value of adverse environmental effects caused by the action that result in an overall improvement or net benefit to the environment at a regional scale.

Restoration action, activity, or project - An action, activity, or project whose primary purpose is to improve habitats and/or waters and has measurable environmental benefits.

Temporary impacts - those which do not result in a durable change or are short-term in nature.

Temporal loss - is an impact arising from a delay between impact and compensatory mitigation.

Third-party mitigation - refers to another entity either causing an impact requiring compensatory mitigation that is facilitated on District lands or facilitating compensatory mitigation outside of District lands on the District's behalf.

Voluntary restoration - restoration undertaken for the sake of the underlying species, habitat, or process that is not a result of a CEQA and/or regulatory required mitigation.

APPENDIX B. PROJECT MANAGEMENT APPROACH

This appendix outlines the Project Management Approach to prevent and/or reduce environmental impacts that may occur with District Projects:

District projects should be managed to prevent and/or reduce environmental impacts through 1) **avoidance**, 2) **minimization**, 3) **internal mitigation** and 4) **purchase of external mitigation credits** (in that order). ~~Under the Clean Water Act, the Environmental Protection Agency and ACOE apply these mitigation types sequentially. This sound management practice is also undertaken by the District to proactively reduce the need for mitigation by using best management practices and designing projects to first avoid impacts, and if impacts cannot be avoided, minimize those impacts through the use of mitigation.~~

AVOIDANCE

The first principle of the policy is **avoidance**, which directs District staff to document potential impacts to the resources and then to consider how to avoid those resources during the planning process. Avoidance is achieved through an analysis of appropriate and practicable alternatives and evaluating the impact footprint. This can mean physically working around a given resource or shifting the timing of the project. At times, a potential impact cannot fully be avoided regardless of how the project is designed or implemented. The same biological and cultural richness that motivated the District to protect and restore the land also creates a sensitive ecological and complex regulatory environment within which to operate. Full avoidance is often more achievable in degraded areas.

MINIMIZATION

If a potential impact cannot be totally avoided, then **minimization** is a way of modifying an activity to reduce the potential or actual impact to a resource. Minimization directs District staff to consider how to alter the project's scope, scale, or duration to lessen a potential or actual impact.

Common avoidance measures include conducting activities away from avian nesting locations or deferring implementation until nesting season is over or until young have fledged.

A common example of an unavoidable potential impact is encountering a dispersing adult California red-legged frog in upland habitat. Although the federally threatened frogs are rarely encountered in that ecosystem, the potential for an encounter cannot be eliminated.

A n-environmentally beneficial pond restoration project can minimize potential impacts through careful planning within an inherently sensitive and highly regulated area: complex mitigation measures may include biological monitoring and species relocations. Other times, a one-hour training from a biologist to construction staff can fulfill a minimization measure. may be required.

Measures include shifting where or when the activities occur, changing the type of equipment to be used, or modifying the project scope or scale. The extent to which an activity or project can be modified to minimize impacts while meeting the project goals varies considerably. Some permits call for an **alternatives analysis** requiring demonstration and determination that the proposed project is the **least environmentally damaging practicable alternative**.

COMPENSATORY MITIGATION

The extent of avoidance and minimization directly affects the scale and cost of **compensatory mitigation**, i.e. measures taken to offset the unavoidable impact(s) remaining after avoidance and minimization actions are taken. Multiple types of mitigation are available to minimize, compensate, and/or restore the environment.

There is inherent uncertainty in whether mitigation will fully replace the functions that are lost from an impact. As a result, mitigation ratios must be increased commensurately with the risk that a one-to-one mitigation ratio will not achieve the designated compensatory goal (e.g. planting two trees to replace the loss of one mature tree hedges against the loss of a replacement tree over time due to drought, competition, etc.). Baseline mitigation ratios account for the uncertainty inherent in all mitigation work to achieve “no net loss” of sensitive community functions even if some (relatively small) portions of the mitigation fail to achieve the desired conditions.

TYPES OF COMPENSATORY MITIGATION

When a potential or actual impact is deemed necessary, unavoidable, and has been minimized to the greatest practical extent by the District, compensatory restoration measures are taken.

Compensatory mitigation ~~can be the most expensive form of mitigation,~~ and involves either the restoration, establishment, enhancement and/or preservation of impacted habitats or waters either onsite, offsite, or a combination of the two. It frequently takes the form of revegetation and plantings. ~~Growing pathogen-free nursery plants, collecting native, local seed onsite, weeding, watering, monitoring, ensuring plant survival, and reporting on the effectiveness of the compensatory mitigation all require time and money.~~

~~An environmentally beneficial pond restoration can minimize potential impacts through careful planning within an inherently sensitive and highly regulated area; complex mitigation measures may include biological monitoring and species relocations. Other times, a one-hour training from a biologist to~~

Compensatory mitigation concepts include:

- A. **Like for like**, meaning impacts to one habitat, species, or function must be compensated for with a similar if not identical replacement. For example, if a project removes riparian vegetation, planting riparian vegetation will likely be required as mitigation. This is also known as 'In Kind' mitigation. 'Out of Kind' is the direct opposite, where different habitat types are recreated than those impacted.
- B. A **Mitigation ratio** can be defined as the number or extent of compensatory restoration efforts, relating the scale of impact to a greater scale of restoration. Usually 1:1 for low quality habitats or temporary impacts and as high as 10:1 for difficult to replace habitats. For example, removal of a large, mature tree could require planting three to six times as many seedlings.
- C. **On-site mitigation** refers to working within or immediately adjacent to the area of impact to implement the compensatory restoration and is generally preferred by most permitting agencies. This can be the simplest method of compensatory mitigation but may not be feasible if the site is not practical for restoration (e.g. the area is too remote for efficient management, or the site does not have the space for the required restoration).
- D. **Off-site mitigation** refers to compensatory mitigation distant from the area of impact. The general permitting agency preference is to mitigate as close as possible to the area of impact, preferably within the same watershed or Preserve if on-site mitigation is not possible.
- E. **Third-party mitigation** refers to another entity either causing an impact requiring compensatory mitigation that is facilitated on District lands or facilitating compensatory mitigation outside of District lands on the District's behalf. Third-party mitigation is discussed in greater detail below.

Mitigation for impacts to species that do not or are not likely to occur in highly degraded areas result in less efficient use of mitigation funds. In this case, using off-site mitigation can fulfill the permitting and mitigation requirement and result in higher net environmental benefits.

No mitigation banks exist within the District's service boundary except for saltwater wetlands in San Francisco Bay. The Central Valley, by contrast, has many privately held mitigation banks for vernal pools and other species. California has the most mitigation banks in the nation.

The Santa Clara Valley Habitat Plan and Habitat Agency function similarly to a mitigation bank within their defined ~~HCP~~ area.

- F. **Conservation or Mitigation banks** are a system where landowners can permanently create certain habitats targeting specific listed species or other regulated features such as wetlands to anticipate mitigations that may be required in the future or to sell as **credits**. This can be achieved through an informal process (e.g. defining a tree restoration area) or to sell the credits (i.e. units of habitat typically measured in area) created by the mitigation (or conservation) bank through a formal process to other parties who are causing impacts elsewhere in the region. **Informal mitigation banks** are areas of potential restoration that consolidate compensatory mitigation of many upcoming projects, thus avoiding temporal loss, without being regulated as a bank. **Formal mitigation banks** are regulated by the agencies that oversee them.
- G. **Regional Conservation Investment Strategy and Mitigation Credit Agreements** A mitigation credit agreement (MCA) is developed under a California Department of Fish and Wildlife-approved Regional Conservation Investment Strategy (RCIS). The RCIS Program encourages a voluntary, non-regulatory regional planning process to facilitate higher quality conservation outcomes and includes an **advance mitigation** tool. ~~An MCA is developed in collaboration with CDFW to create mitigation credits by implementing conservation or habitat enhancement actions identified in an RCIS. MCAs create credits that may be used as compensatory mitigation for impacts under CEQA, the California Endangered Species Act and the CDFW Lake and Streambed Alteration Program. Any person or entity (including the District) may enter into an MCA with CDFW to create credits and then use, sell or otherwise transfer these mitigation credits upon CDFW's finding that the credits were created in accordance with the RCIS program requirements. A CDFW-approved Santa Clara County RCIS was developed to help ensure that conservation and habitat enhancement actions are occurring in an informed and strategic manner to achieve the highest degree of conservation benefit at a regional scale.~~
- H. **No project alternative** refers to a staff recommendation whereby the impacts, costs, and staff resources necessary to implement the project consistent with the project goals

outweigh the benefit to the District, resulting in a recommendation to not implement the project or to substantially revise the project goals.

THIRD-PARTY MITIGATION

Third-party mitigation is complex and nuanced because it can involve impacts to habitats outside of District lands (or potentially the District's sphere of influence). Off-site compensatory mitigation for these impacts may be the only possible or most preferable mitigation approach especially for private landowners or other government agencies who do not own multiple areas of similar habitat. District lands could benefit from receiving compensatory mitigation from a third party to facilitate additional restoration beyond the current capacity of the District. Third-party mitigation can also come in the form of grant funding, matching funds, or other measures that support District activities to acquire conservation easements and/or fee-title or pursue **voluntary restoration** projects.

Historically, the District has, with a few exceptions, completed its compensatory mitigation within District lands. Defining the circumstances in which off-site, third-party mitigation is preferable requires consideration of the nature of the impacts, the cost of restoration, the benefit of restoration, and other factors. While the primary focus of the RM policies is on District activities and practices, it is also the primary lens through which to evaluate outside parties' activities and policies. The same drivers that may cause the District to involve a third-party in compensatory mitigation can be used to evaluate a request from an outside party to support or conduct mitigation on District lands.

RESTORATION

Site specific mitigation may reduce impacts of a specific action or improve a site-specific condition, but rarely provides regional or ecosystem-wide benefit. However, **ecological restoration** is an intentional activity initiated by the District that accelerates the **recovery** of an ecosystem with respect to its health, integrity, and sustainability and goes above and beyond mitigation or **enhancement** of a localized site. To fulfill the District's mission *to protect and restore the natural environment* and provide regional **net-positive** environmental benefits (producing greater

Stanford University has funded trail projects on lands outside of the university, including District lands, through its General Use permit with the County of Santa Clara to mitigate for the loss of public recreation and open space opportunities on Stanford lands resulting from their development.

Restoration encompasses all activities that restore an ecosystem, including those required by a mitigation and **voluntary restoration**, which is implemented solely for the purpose of resource enhancement.

Opening Mount Umunhum involved both a development project (new site amenities, parking and trails) that required mitigation, as well as a habitat restoration project (recontouring the summit and repopulating with native plants). Installing regulatory-required mitigation plantings within the native plant restoration area reduced the need for additional mitigation planting sites and furthered two parts of the District's mission: natural resource restoration and public enjoyment and education.

benefits at a landscape scale), the District places strong emphasis on implementing high priority restoration and recovery work focused on specific sensitive habitats, populations, and ecological processes in high conservation value areas.

Whereas mitigation must offset impacts from a project to ensure no net loss of habitats or waters, **a restoration project** has the primary purpose of improving habitats and waters and has measurable environmental benefits. When coupled with a restoration project or component, a compensatory mitigation action may include additional habitat or watershed improvements beyond what are required by permits or CEQA to seek a 'net positive' benefits to the environment. Some of the factors that affect whether restoration actions are feasible or advisable include available physical space, cost, and ecological benefit. High quality restoration and habitat enhancement sites are carefully evaluated and prioritized before selection. As a result, high priority sites may not always be located near or within the footprint of the project that causes the original ground disturbance, and instead may be located elsewhere in areas of high conservation value where restoration would be the most beneficial at regional, watershed, and ecosystem scales to achieve a high net positive environmental benefits.

Restoration projects are frequently located in or adjacent to rich habitats and often require avoidance and minimization measures for incidental impacts and at times compensatory mitigation to complete, even though the project action itself is overall beneficial for the environment (i.e. even a voluntary restoration project can include a mitigation component if a resource will be affected by the restoration work). An important planning strategy is to combine various public access and/or repair projects with habitat restoration projects to allow the District to focus its mitigation work on high-value restoration sites for the highest net-positive environmental return for the time and funding allocated toward the mitigation work.

The District conducts many voluntary restoration projects each year, from small scale invasive plant removal to large scale restoration with heavy equipment. Some of these projects may require mitigation and some may not. A small-scale volunteer activity removing invasive plant species such as French broom by hand may not have any adverse impacts to the environment and may be able to move ahead without mitigation. Larger restoration projects, such as decommissioning an old road, may involve heavy equipment working near a stream and require mitigation to offset incidental impacts. At times, public access or other development projects require

compensatory mitigation often in the same areas as voluntary restoration projects.

Conservation Management Units (CMUs) are protected areas designated by the District as areas of high restoration and conservation priority. CMUs are defined in Board Policy 4.01 "Acquisition & Maintenance of District Lands", Section E as: "areas within preserves, or possibly entire preserves, which because of certain criteria limiting their use, are planned and subsequently managed primarily for preservation of natural resources and viewshed." CMUs are frequently the focus of voluntary restoration projects and off-site compensatory mitigation because of their high-quality habitats.

Questions staff may ask to determine how well a proposed mitigation project meets Midpen Board approved evaluation criteria:

- ***Alignment with District Mission, Policies, and Goals***
 - Does the proposed project support the District's mission?
 - Does the proposed project provide a public benefit?
 - Does the proposed project align with the Basic Policy and Good Neighbor policy?
 - Is the project proponent's mission aligned with the District and do they have a track record of environmentally sensitive projects?
- ***Proximity to District Lands and Regional Context***
 - Is the proposed project located within the District's boundaries or sphere of influence, or within the larger nine-county Bay Area region?
 - Is the proposed project at an appropriate scope and scale for the site and/or region?
 - Will the proposed project directly affect District lands or surrounding ecosystems?
- ***Public, Partner, and Social Implications***
 - What are the potential impacts and/or benefits to the public and our partners? What are the potential impacts and/or benefits to under-resourced and/or vulnerable communities and to Native American tribes?
 - Is there public support for or opposition to the project and/or to the proposed mitigation?
 - Does the project offer opportunities to strengthen relationships or partner with outside agencies, non-profit organizations, and other groups?
 - Does the project improve or reduce public access opportunities?
- ***Low-impact Project Design and Appropriate Mitigation***
 - Does the proposed project use the least impactful, practicable alternative and if not, did the proponent first consider how to avoid and minimize impacts to the greatest feasible extent? Are impacts temporary or permanent? Are the impacts too large to offset?
 - What are the sources of funding, conditions imposed, monitoring and oversight requirements, and timeline?
 - Are the mitigation funds too small to be useful?
 - Is the mitigation project consistent with an existing Preserve Plan, Use and Management Plan and/or an existing CEQA document?
 - Will the mitigation project require the District to allocate resources to design, peer review, or monitor the mitigation work?

- Does the District already have a voluntary restoration project in mind or one that requires additional funding that would be a good match?
- ***Ecological Impact vs Value***
 - Is the affected species for which mitigation is proposed present at the area of impact or do they only have the potential to occur in the area?
 - Does the Area of Potential Effect and the proposed off-site mitigation fall within critical habitat, or is part of a habitat linkage, climate refugia, or another sensitive habitat?
 - Does the proposed mitigation:
 - ❖ benefit a sensitive species population, habitat assemblage, and/or multiple species?
 - ❖ facilitate regional restoration priorities and/or recovery of species?
 - ❖ restore or provide ecological system function(s)?
 - ❖ promote long-term health of the ecosystem or provide resource benefits?
 - ❖ help meet priority land conservation and management goals?
 - ❖ support the goals of a Natural Community Conservation Plan, Habitat Conservation Plan, Regional Conservation Investment Strategy or other regional conservation plan?