



**MITIGATION POLICY**  
**6/19/17 DRAFT**

The following Mitigation Policy is intended to inform the evaluation of environmental mitigation-related proposals by the Sonoma County Agricultural Preservation and Open Space District (District) General Manager and staff. Included is a summary of the District and its land conservation work, a discussion of the District's role with respect to environmental mitigation, and the types of environmental mitigation proposals received by the District and the process for evaluating them.

**I. THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT**

The Sonoma County Agricultural Preservation and Open Space District (District) was created by the voters of Sonoma County to permanently protect the diverse agricultural, natural resource, and scenic open space lands of Sonoma County for future generations. The District was one of the first organizations in the country established with a sales tax to protect both agricultural and open space lands, and to date has protected over 100,000 acres.

Permanent protection involves conservation planning, acquisition, and perpetual stewardship of the land. The District typically will acquire an interest in land through purchase of a restrictive conservation easement. Where this is not feasible, the District may protect land through fee purchase, where the fee title is transferred to another entity at the time of project closing, or at a later date. Conservation easements are retained over all fee properties when ownership is transferred to another entity. The District works with willing landowners only.

The District strives to accomplish its mission through: Protection of the County's highest priority lands (as identified through the District's guidance documents); efficient and effective use of taxpayer dollars; diligence to ensure long-term fiscal sustainability and institutional capacity; generation of innovative solutions to accomplish the District's vision; conducting all District activities with transparency, sharing information and responding to requests and ideas from the community; engaging in high-quality planning using the best available data; and intentionally prioritizing partnerships and collaboration.

The success of the District's work depends on the continuing support of the public, and upholding the public trust. The District may decline to participate in an environmental mitigation project if participation would adversely affect District initiatives, or result in the perception of a violation of the public trust.

## **II. DISTRICT ROLE IN MITIGATION**

A project or action which results in an adverse impact to the environment may be required to complete compensatory mitigation, pursuant to local, state, or federal law. The mitigation activity (habitat preservation or restoration, payment of an in-lieu fee, or other action) is intended to compensate for the adverse impact.

Habitat mitigation typically takes the form of restoration, establishment, enhancement, or in certain circumstances preservation, of wetlands, streams, forested areas, or other types of habitats to compensate for the impacts. Habitat mitigation may be required by local, state, or federal regulations where consideration has already been given to avoidance and minimization of impacts. Review and approval of a mitigation project plan, and assuring its successful implementation, is the role of the appropriate regulatory agencies.

Another form of environmental mitigation is the payment of an in-lieu fee, or purchase of mitigation credits, to compensate for an adverse impact. After payment is completed, the project proponent is released from future obligations relating to the impact. Carbon auction revenues, intended to offset greenhouse gas emissions, are one example of an in-lieu fee payment that is collected along with other payments into a larger fund and used towards future habitat conservation and restoration projects. Purchase of seasonal wetland credits at an established wetland habitat mitigation bank is an example of a mitigation credit purchase.

The District is not a land use approval entity or regulatory agency, and thus does not set mitigation ratios or issue regulatory permits for projects that impact habitat. The District's mission is focused on land conservation, through the permanent protection of land for future generations. Yet environmental mitigation is a tool that may be utilized in the implementation of the District's land conservation priorities, to enhance and restore habitats on District-held conservation easements or fee title properties, or to acquire conservation easements over additional land.

## **III. ENVIRONMENTAL MITIGATION PROPOSALS AND EVALUATION PROCESSES**

There are two main types of environmental mitigation proposals that come to the District: (1) Proposed uses on District-held conservation easements, and (2) proposed projects, including grant funding towards District projects, new acquisitions, and partnership projects. Each type of proposal and the relevant review process is described below.

### **A. Proposed Uses on District-Held Conservation Easements and Review Process**

The District will consider a proposal for a mitigation-related activity on lands protected with a District-held easement according to the permitted use request review process as described in the Board-adopted [District Stewardship Manual](#). That process begins when a landowner submits a permitted-use request to the District describing the proposed use. District staff then reviews the conservation purpose of the easement as well as the permitted and prohibited use provisions to determine if the proposed use is consistent with the terms of the easement. In general, proposed uses must enhance the conservation values identified in the easement. Easement language prohibiting non-agricultural commercial uses will be interpreted to prohibit mitigation projects that involve sale of mitigation credits. Any additional protections required by regulatory agencies in association with a mitigation project must be consistent with and subordinate to the District-held easement. Where an easement is silent on mitigation, District staff will also give consideration to the four criteria described below

developed for review of environmental mitigation project proposals.

District staff may approve the request, approve the request with conditions, or deny the request. Additional conditions pursuant to County ordinance and State law may be required for District approval. The District's consistency determination may be appealed by submitting a written request to the District Board of Directors.

## **B. Environmental Mitigation Project Proposals**

The District is eligible to receive funding towards planning, acquisition, and stewardship of easement or District-owned properties, or other District projects, through public agency grant programs, such as the Sustainable Agricultural Land Conservation (SALC) Program, California Regional Water Quality Control Board remediation funds, and the California Department of Transportation's Environmental Enhancement and Mitigation Program. For example, the SALC Program funds originate from the Greenhouse Gas Reduction Fund (established to receive Cap and Trade auction proceeds pursuant to AB32 and SB375) and may be used to purchase agricultural conservation easements, development of agricultural land strategy plans, and other mechanisms that result in greenhouse gas reductions and a more resilient agricultural sector.

District may accept habitat mitigation-related funds to be used towards District acquisition of new conservation easements or fee title lands only where acceptance and use of those funds is determined to be consistent with Measure F and existing acquisition priorities. District may accept habitat mitigation-related funds towards District enhancement or restoration projects on District-owned land, where acceptance of the funds both (a) supports identified District acquisition purposes and stewardship priorities, (b) is consistent with planned conveyance or disposition of the property, and (c) does not create an immediate or long term fiscal impact for the District. The District will not operate a habitat mitigation bank, nor will the District allow third parties to undertake mitigation projects on District-owned lands. District may complete mitigation projects on fee title properties to mitigate for unavoidable impacts resulting from a District maintenance or construction project (such as a road culvert replacement) if all land use and regulatory approvals are secured, and the mitigation is consistent with the identified acquisition purpose and stewardship priorities for the property.

Habitat mitigation may be specifically permitted in new conservation easements if it is identified during initial acquisition or land transfer negotiations as a necessary or appropriate use of the property in order to assure protection and/or enhancement of a conservation value of critical importance to the District. The District will also negotiate explicit language regarding mitigation in new 'open space' easements, which are considered regulatory as they are accepted by the District as a condition of the County of Sonoma development approval process.

### **B.1. Process for reviewing Environmental Mitigation Project Proposals**

District staff will conduct an initial review of each proposed environmental mitigation project according to the criteria below. If the proposed project meets all of the criteria, and there are sufficient District staff resources available, the General Manager shall make a determination to move forward with the project. If the General Manager determines that a proposed project does not meet the criteria below, the project will be declined. The General Manager's determination may be appealed by submitting a written request to the District Board of Directors.

Individual mitigation-related proposals may be brought to the District Advisory Committee and/or Fiscal Oversight Commission for consideration, as deemed appropriate by the General Manager. During the first year of the initial implementation period for this Mitigation Policy, a brief summary of the mitigation project proposals that have come forward will be included in the General Manager's report to the Committee and the Commission, provided at each meeting of those oversight bodies.

Acceptance of mitigation-related grant funding or an interest in real property (conservation easement or fee title) must be approved by the Board of Directors, certifying by resolution that all of the criteria below are met. If approved by the Board, the District will enter into a cooperative agreement with all relevant parties that details all legal, financial, and implementation responsibilities of each party. This will include recovery of all District costs associated with the project. The District would retain control of its own projects, including all aspects of project design and selection of contractors.

The criteria include:

***Criterion 1. The proposed project must be consistent with District's enabling legislation***

The District was created in 1990 through approval of Measures A and C by the voters of Sonoma County. Measure F was passed in 2006, which reauthorized a ¼ cent sales tax to support the District through 2031. Open space designations eligible for protection under Measure F's 2006 Expenditure Plan include community separators, greenbelts, scenic landscape units, scenic corridors, agriculturally-productive lands, biotic habitat areas, riparian corridors and other areas of biotic significance, and other open space projects. Protection is accomplished primarily through the purchase of development rights from willing sellers in areas designated in the County's and Cities' General Plan open space elements, but may also include the purchase of fee interests consistent with the Expenditure Plan open space designations.

As the District is a sales tax-funded organization with a voter-approved expenditure plan, the District must be certain that all expenditures are appropriate. Towards that end, the District receives an independent audit each year of the District's expenditures, which is reviewed by the Fiscal Oversight Commission, pursuant to Board Resolution 10-0832.

The District's actions must also be consistent with state and federal law. For example, Section 5540 of the California Public Resources Code limits the District's ability to reconvey an interest in any real property that has been dedicated for park or open space purposes. Such a reconveyance requires approval of the State legislature **and** approval by the District's Board of Directors, **or** a vote of the people of Sonoma County in a special election. In some cases, the District may exchange a limited amount (up to forty acres) of interest in real property each year, with unanimous approval of its board of directors, for interest in real property that the board determines to be of equal or greater value and is necessary for park or open space purposes.

***Criterion 2. The proposed project must be aligned with the District's objectives and goals***

The goals from the District's Board-adopted Acquisition Plan, *Connecting Communities and the Land*, currently guide the actions of the District. They are:

- Maintain the county's rich rural character and the unique qualities of each city and areas throughout the county that help provide our sense of community.

- Support the economic vitality of working farms to preserve the agricultural heritage and diversity of the county.
- Protect the ridgetops, coastal bluffs, hillsides, and waterways that create the county's striking natural beauty.
- Provide connections between urban areas, parks and natural areas throughout the county for both people and wildlife.
- Preserve diverse natural areas that provide habitat for wildlife.
- Protect the waterways and associated natural lands that maintain water quality and supply.
- Partner with local agencies and organizations to leverage funding for land protection, foster stewardship, and provide opportunities for recreational and educational experiences.

As the Board adopts future guidance documents (including the District's Comprehensive Plan which is currently in preparation), the approved goals and objectives therein will be used to guide a determination with this criterion.

***Criterion 3. The proposed project must not present a risk to the District's long term fiscal stability***

The District's sales tax funding is authorized through 2031. At that point, if the District is not reauthorized, the District will need to fund its perpetual easement stewardship obligations through the annual interest earnings from the Stewardship Reserve Fund. The financial planning that guides the investment strategy for this fund relies on certain assumptions of the nature and extent of required easement stewardship and land maintenance tasks.

Therefore, the District will not participate in a mitigation project that requires a long-term habitat monitoring commitment (as a consequence of the mitigation) that requires the District to undertake activities beyond the scope of the District's typical easement monitoring program. Specific success criteria and performance standards for a mitigation project are determined by regulatory agencies as part of their approval of that project. In addition, the District can not take on the liability and responsibility for project success; this liability needs to remain with the original project proponent. For example, if a riparian planting project did not meet a required 85% planting survival performance standard by the end of the mitigation monitoring period, the project proponent would be responsible for ensuring that the success criteria are met to the satisfaction of the regulatory agencies.

For mitigation funding proposals, a cooperative agreement with all involved parties that describes legal, financial, and implementation responsibilities, must be approved by the Board of Directors before a project can move forward. If the District's costs related to review and implementation of mitigation-related proposals is beyond the scope of the District's standard practice, the District must recover those costs. On District-owned properties and on new easements, the District must recover the cost to acquire the land proposed for use as mitigation. The District may then use these funds to protect additional land.

***Criterion 4. The proposed project must be consistent with other District commitments***

District participation in an environmental mitigation project must be consistent with the District's other obligations. For example, participation in or approval of a mitigation project, or acceptance of mitigation-related funds, must not compromise the ability of the District to secure grants or other outside funding sources for District projects and programs, and the mitigation project or funding must be consistent with any grants that funded the acquisition or development of a property.

The District will not accept mitigation funds towards District projects on fee properties if the use of those funds will require encumbrances in addition to those typically included (such as a Forever Wild designation) in District-held conservation easements or in any other document (such as a transfer agreement, agricultural or recreational covenant) required upon transfer of fee title to a receiving entity. The proposal must be consistent with the planned disposition or conveyance option for the property.

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