

# Conservation Strategy Implementation

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## 5.1 Overview

Implementation will be a challenging part of the Conservation Strategy, and the most critical. Effective implementation will require creativity, commitment, and flexibility. A variety of implementation methods will be needed to make this Conservation Strategy more than just a “shelf document.” This chapter describes the methods for implementing the Conservation Strategy. The Conservation Strategy distinguishes between stewardship-driven conservation (described in Chapter 3 as “Independent Conservation Actions”) and mitigation-driven conservation (described in Chapter 3 as “Using this Strategy for Projects”). The Conservation Strategy creates a structure where both types of conservation can collectively contribute to the regional goals set by the strategy.

From a regulatory perspective, this Conservation Strategy may streamline and simplify the issuance of permits for future project proponents, establish priorities for mitigation and conservation, and help maintain native biological and ecological diversity in eastern Alameda County. This Conservation Strategy also aims to standardize avoidance, minimization, mitigation, and compensation requirements to comply with federal, state, and local laws and regulations relating to biological and natural resources of the study area. Although acquiring adequate mitigation would still be the responsibility of the project applicant, the process would be streamlined and therefore more efficient, ultimately resulting in more effective conservation.

The Conservation Strategy also provides a framework for future conservation efforts unrelated to mitigation. The Conservation Strategy establishes a baseline condition for acres of protected land in the study area and establishes which land cover types and focal species should be the focus of project planning and conservation efforts. The Conservation Strategy will be used to guide conservation projects, assist in obtaining grants for conservation efforts, contribute to the implementation of the San Francisco Bay Area Upland Goals projects, and promote the protection of wildlife corridors. It is intended to be utilized by various entities including but not limited to landowners, land trusts, non-profit organizations, and municipalities developing their regional planning documents.

However, the Conservation Strategy is not creating any new regulations in Alameda County, nor is it changing the process by which a project applicant would obtain permits for impacts to biological resources. This Conservation Strategy simply provides information that can be utilized by project applicants, local jurisdictions, and state and federal regulators to increase certainty about project impacts and appropriate mitigation.

## 5.2 Implementation Structure

The Conservation Strategy can be used immediately. Guidance in the strategy can be utilized for the various permitting vehicles described in Chapter 1. The Conservation Strategy is meant to be a “living document” that will be updated as new information becomes available to the Implementation Committee and Public Advisory Committee.

As described in Chapter 1, several federal, state, and local entities have prepared this Conservation Strategy through a Steering Committee that directed its preparation. Many members of that Steering Committee will remain involved during implementation of the Conservation Strategy. Any jurisdiction that opts to utilize the guidance in the Conservation Strategy for projects or for projects under their permit authority has a role in implementing the strategy. Additionally, implementation will rely on the technical expertise and working landscape knowledge of landowners (both public and private), development community, non-profit organizations, land trusts, etc. A committee of these agencies and organization is proposed to provide technical expertise and knowledge of the East County’s working landscape necessary for effective implementation. This section describes the roles of the agencies and organizations that are anticipated to help implement the strategy.

### 5.2.1 Implementation Committee

In order to track how the strategy is working and update the strategy over time, an Implementation Committee will be formed. This committee will consist of one representative from each local agency that was a member of the Steering Committee during the planning process. Input from other local stakeholders will come from the public advisory committee described in the next section.

It is important to note that the Implementation Committee will not arbitrate or negotiate mitigation on behalf of project proponents. It is not the role of the Implementation Committee to become involved in decisions regarding project mitigation. Such responsibility will remain with the project applicant and resource agencies. However, it is the role of the committee to assess how well the strategy worked to provide guidance to project proponents and the resource agencies regarding mitigation needs.

The Implementation Committee will operate under the following mission statement:

*“The Implementation Committee will ensure that the East Alameda County Conservation Strategy is readily accessible as well as current, relevant, and practical for facilitating regional conservation and providing greater permitting certainty to local jurisdictions, project applicants, and the resource agencies.”*

The Committee will rely on input from the general public and the public advisory committee. All Implementation Committee meetings will be open to the public.

The following are the roles of the Implementation Committee.

- Publicize the strategy within participating agencies and to other entities that may use the strategy through a project web site and outreach (e.g., presentations, training sessions, and other communications).
- Answer questions from users of the strategy.
- Develop guidance as needed to clarify and refine components of the strategy.
- Track loss of natural lands and protection of natural lands in Alameda County (see Section 5.6 for details).
- Prepare annual reports for CDFG and USFWS documenting the implementation of the strategy (see Section 5.6.3 for details).
- Undertake periodic updates of the strategy based on significant new information on the focal species and their conservation.
- Maintain the Conservation Strategy web site with the most up to date biological resource information (updated annually).
- Ensure that the database is updated with new information on focal species.
- Seek federal and state grants to assist in funding implementation.
- Facilitate or participate in EACCS focused discussions and planning with the Public Advisory Committee and stakeholders to explore new concepts for mitigation and voluntary conservation.

Initially the Implementation Committee will meet monthly but eventually the committee will meet less frequently. The committee will check in with the resource agencies on the effectiveness of the strategy for their respective permitting processes and receive continual feedback from local agencies and permitting participants on implementation.

A chair of the Implementation Committee will be designated. The responsibilities of the chair will include the following.

- Organizing and preparing meeting agendas.
- Preparing meeting minutes and posting them to the Conservation Strategy web site.
- Maintaining a record of conservation or mitigation acquisitions including conservation easements that are recorded in the study area during their tenure as chair.
- Other duties determined by the Implementation Committee during implementation.

The Implementation Committee will be advised by a public advisory committee, as described below. The Implementation Committee should consider having periodic joint meetings with the public advisory committee.

## 5.2.2 Public Advisory Committee

The Implementation Committee will form a Public Advisory Committee to discuss technical issues, any lessons learned, and recommendations to the Implementation Committee. The Public advisory Committee should include species experts with knowledge of the study area, representatives from the environmental community, development community, private landowner community, and mitigation banking community. There will also be a representative from the NRCS and ACRCO as well as a representative from the County's Partnership for Land Conservation and Stewardship (PLCS). Resource agencies and local jurisdictions may send representatives to the Public Advisory Committee who have appropriate technical expertise.

At a minimum the Public Advisory Committee will meet once a year, preferably in advance of the annual meeting. Additional meetings will be scheduled if needed. The responsibilities of the Public Advisory Committee would include the following:

- Evaluate and make recommendations to the Implementation Committee concerning the effectiveness of the Conservation Strategy and its implementation.
- Review any new information and progress in implementation.
- Monitor progress toward achieving the conservation goals and objectives for each focal species in each Conservation Zone.
- Recommend key issues to discuss during the annual meeting.

## 5.2.3 Annual Meeting

The Implementation Committee will host an annual meeting to update the general public on the progress and challenges with implementation during the previous year. It will be an opportunity to update the public on any changes that have been made to the Conservation Strategy and any new information that has been added. This meeting will be organized to coincide with the release of the annual report (discussed below). The agenda for the meeting will be determined by the Implementation Committee in cooperation with the Public Advisory Committee to ensure that key issues related to implementation are discussed.

## 5.2.4 Data Tracking and Reporting

To track the relative level of impacts within each natural community and focal species modeled habitat in the study area, a database will be established. The Implementation Committee will update the land cover map (Figure 2-8) annually to account for the loss of land covers from project activities. Similarly they will update the Protected Open Space data (Figure 2-3) to determine how many additional acres of each land cover type have been protected in the previous year. Outputs from those two data sets will be tracked in a database which will allow for easy reporting on the loss of habitat and the gain in habitat protection in a given year.

### 5.2.4.1 Database Development and Maintenance

The Implementation Committee will develop and maintain a comprehensive data repository to track implementation of all aspects of the Conservation Strategy. The data repository and any associated databases should be structured such that a trained staff person (as opposed to a technician or programmer) can enter data (e.g., data base used by the East Contra Costa Conservancy to track impacts and mitigation). Additionally, the data base will allow for future expansion and integration with external databases (e.g., linkage to agency or other GIS map libraries). Finally, the database will allow for easy tabulation and reporting for the annual report. This information will be critical to assessing the efficacy of Conservation Strategy and will help identify conservation gaps in the future.

The data repository should be structured to facilitate the following requirements.

- Data documentation such that future users can determine why, how, and where data were collected (documentation standards [i.e., data about the data] should be consistent for all types of monitoring and over time; adequate documentation will facilitate the future use of monitoring data).
- Quality assurance and quality control of the data.
- Access and use of the most current information in assessment and decision making (the database should allow repeated access to current and past information over time).
- Storage of spatial information in a GIS-linked database (a geodatabase).

The primary types of information for which the data repository will be developed and maintained are listed below.

- Monitoring and survey results.

- General tracking of activities for each of the local jurisdiction, including tracking of impacts based on an overlay of project footprints and Conservation Strategy land cover data.
- Annually update status of Conservation Strategy land cover preservation/creation/restoration acreage.
- Adopted changes to the Conservation Strategy focal species occurrence data and changes to Conservation Strategy land cover data.
- Tracking of parcels with documented conservation activities or recorded conservation easements.
- Track voluntary conservation efforts, both specific on-the-ground projects as well as non-mitigation based conservation easements in the study area. This would be best done on a regional level either for the entire study area or for each conservation zone (this many acres of grassland were managed for burrowing owl or this many ponds were restored and managed for focal species this year, etc.).

#### 5.2.4.2 Conservation Tracking

The primary purpose of maintaining a database is to track the progress that the Implementation Committee is making towards conservation goals and objectives set in the Conservation Strategy. The Implementation Committee will be responsible to track the following items.

- The location, extent, and timing of recorded conservation easements and land acquisitions within each Conservation Zone and through the entire study area.
- Descriptions of conservation agreements; lands acquired in fee title; interagency memorandums of agreement; management plans for private lands (developed in cooperation with the landowner); or any other agreements entered into for the purposes of protecting, enhancing, or restoring focal species habitat.
- An estimate of the location, extent, and timing of impacts on land cover types (based on reports submitted by project applicants).
- The location, extent, and timing of protection, enhancement, restoration, or creation of land cover types.

The purpose of monitoring this basic information will be to track the Implementation Committee's progress toward achieving the conservation goals and objectives for focal species and natural communities. This tracking will help ensure that habitats for focal species and natural communities are conserved within the study area and allow for more accurate assessment of impacts on those resources at the project level as time goes on. Tracking this information in

a database will also allow for easier and consistent generation of graphics and tables for production in the annual report.

### 5.2.4.3 Annual Reporting

The Implementation Committee will prepare an annual report at the end of each calendar year. Each annual report will summarize the previous calendar year's implementation-related activities. Annual reports will require synthesis of data and reporting on important trends such as general functionality of the Conservation Strategy, large projects that were permitted, land acquisition, and habitat restoration projects.

Annual reports will be submitted to the designated representatives of the resource agencies and discussed at the Implementation Committee meeting(s). The reports will be posted on the Conservation Strategy public web site.

The goals of the annual report are listed below.

- Providing the information and data necessary for the Implementation Committee to demonstrate to the resource agencies and the public that the Conservation Strategy is being implemented properly and functioning as anticipated.
- Disclosing any problems with Conservation Strategy implementation so they can be corrected.
- Documenting issues with Conservation Strategy implementation that may require additional coordination between the Implementation Committee and the USFWS and CDFG and/or effect changes in the Programmatic Biological Opinion and Consistency Determination.
- Document issues with the templates, management plans, etc. and their implementation that may require coordination with technical specialists and with the project partners for correction or adaptation. Document changes in technical information that should inform this topic and implementation. Document new tools that could be utilized.
- Identifying administrative or minor changes to the Conservation Strategy components required to increase the success of the strategy.

At a minimum, annual reports will include the following information.

- A year-to-date and cumulative summary (i.e., from the start of Conservation Strategy implementation) of impacts on land cover types associated with implementation of project activities that have utilized the Conservation Strategy.
- A year-to-date and cumulative summary of the extent of land cover types protected, enhanced, restored, or created.



- A map containing this information will also be generated. This will include an assessment of the progress toward all land cover acquisition goals reported by conservation zone and for the entire study area.

## 5.3 Funding

It is assumed that the administrative costs associated with the Implementation Committee will be shared between all members of the Implementation Committee. This will mostly be contributions in staff time from each entity. External funding will likely be needed for the implementation database, web site maintenance, and annual report preparation.

The Implementation Committee will also seek grants to assist in implementation cost sharing. A small fee could be imposed by local land use agencies on project utilizing the strategy to help pay for the administrative costs of implementing the strategy. The need for the fee and the amount of the fee will be determined by a separate cost analysis conducted by the Committee.

## 5.4 Participating Entities

### 5.4.1 Local Governments

The local governments participating in the Conservation Strategy (Cities of Dublin, Livermore, and Pleasanton; Alameda County) have an important responsibility to assist with implementation of the strategy because of their authorities over land use in the study area. Each jurisdiction and/or organization will present the Conservation Strategy to their respective Boards and Councils for acceptance within six months of completion. Upon acceptance, members of the Implementation Committee and participating agencies and organizations will direct project applicants operating within their jurisdiction to the Conservation Strategy for guidance on how projects should avoid, minimize, and mitigate for impacts on biological resources in the study area.

The participating local governments also have an important role in promoting the use of the strategy to their own staff for public infrastructure projects. Local governments may individually or collectively hold training sessions periodically on the background and mechanics of the Conservation Strategy so that their staff understands when and how to use it for planning and permitting purposes. Further, each agency has an obligation to implement long range plans and/or general plans that include Open Space Elements. Open Space Elements establish goals, objectives, and policies for the preservation and conservation of open space lands, including open space for the preservation of natural resources, the

managed production of resources (including agricultural lands), outdoor recreation, and public health and safety.

## **5.4.2 State and Federal Resource Agencies**

Representatives from the state and federal resource agencies may serve on the Implementation Committee. Resource agencies may, in part, be responsible for providing guidance to the Implementation Committee on how to fulfill the requirements of programmatic permits.

USFWS and CDFG are the resource agencies that issue the federal and state authorizations and permits for incidental take of the focal species listed under the federal and/or state Endangered Species Acts. Thus, they may continue providing feedback on updates to the Conservation Strategy as it relates to the permitting process, critical habitat, and recovery of listed species. USFWS and CDFG will also receive and may assess the annual reports from the Implementation Committee.

Other resource agencies may rely on information in the Conservation Strategy when issuing permits for impacts on resources within their jurisdiction. These other agencies may include the SFRWQCB, the Corps, Environmental Protection Agency, etc. These agencies will also participate on the Implementation Committee.

## **5.4.3 Special Districts and Agencies**

Special districts and agencies participating in the Conservation Strategy (Alameda County Congestion Management Authority, Alameda County Waste Management Authority, Alameda County Resource Conservation District, East Bay Regional Park District, Livermore Area Recreation and Park District, Natural Resources Conservation Service, East Bay Municipal Utility District, Zone 7 Water Agency, the U.S. Federal Highway Administration, and Caltrans) have an important responsibility to assist with the implementation of the strategy because of their authorities, resources, and programs. These special districts additionally have an important role in promoting the use of the strategy for their own projects, land management, and outreach to public and private landowners.

Conservation Strategy mitigation lands and conservation areas will often border lands owned and operated by regional public agencies such as EBRPD, DWR, and SFPUC. These agencies will be invited to help guide implementation of the strategy by participating as a member of the Implementation Committee. In addition, representatives with species or land management expertise may also participate on the Public Advisory Committee.

## 5.5 Project-by-Project Regulatory Compliance

Approval of the Conservation Strategy will not change any existing regulations that govern development or infrastructure projects in the study area. Instead, the strategy will provide a regional framework for more effective and efficient permitting decisions. The following section provides a guide to how project applicants should utilize information in the Conservation Strategy when meeting existing regulatory requirements. Additional details on federal, state, and local laws and regulation are found in Section 1.4, “Regulatory Setting,” in Chapter 1.

The intent of the Conservation Strategy is to ensure that all the jurisdictions and agencies coordinate their permitting responsibilities to implement the Conservation Strategy. Participating agencies may modify specific action and agreements to reflect their regulatory authority. Lands that are protected to meet the conservation objectives of the Conservation Strategy would be tracked, provided the information is made available to the Implementation Committee.

### 5.5.1 National Environmental Policy Act

When federal agencies are completing the NEPA review process for projects inside of the study area they should rely on the Conservation Strategy for the natural environment section of their document. The Conservation Strategy provides extensive information for federal agencies to consider in their analysis of the effects of their proposed action and alternatives on biological resources of the study area at the species, natural community, and regional (landscape) levels.

### 5.5.2 California Environmental Quality Act

The information provided in the Conservation Strategy may contribute to baseline information for the analysis of biological resources under CEQA. Once project impacts are assessed, the Conservation Strategy’s avoidance and minimization measures, mitigation standards, and conservation actions may be used to develop mitigation measures.

Many of the conservation measures will also benefit other special-status species (i.e., species that are not focal species under the Conservation Strategy) and may be sufficient to meet CEQA standards for these species as well.

### 5.5.3 Federal Endangered Species Permitting

This section includes a description of how permitting under Section 7 and 10 of the federal ESA would interface with the Conservation Strategy. Any project with a federal lead agency or federal involvement (e.g., a federal permit, federal funding, or a project on federal land) must obtain its take authorization through Section 7. All nonfederal projects obtain take authorization through Section 10 and an HCP, as described in Chapter 1.

The Conservation Strategy will also enable endangered species permitting to be coordinated with other regional permitting efforts in and adjacent to Alameda County. Those efforts include:

- East Contra Costa County HCP/NCCP
- Santa Clara County HCP/NCCP
- San Joaquin County MSHOSP
- Altamont Pass Wind Resources Area HCP/NCCP
- East Bay Regional Park District HCP/NCCP
- San Francisco Public Utilities Commission HCP

The baseline information available in each of these planning areas is similar as is level of detail expected in the permitting process. For project applicants operating in more than one of these regional planning jurisdictions consistency permit requirements will streamline the permit process. The conservation goals in this Conservation Strategy are consistent with these other plans. If conflicts between plans arise, then the USFWS and CDFG will be involved in reconciling those differences.

#### 5.5.3.1 Endangered Species Act Section 7

The information provided in the Conservation Strategy for federally listed focal species would provide baseline information for an analysis of how the proposed project could affect the species in question. This information would be utilized by the project applicant during preparation of the biological assessment that would support their consultation application. It would also be utilized by the USFWS or NMFS when making their finding on how the project would affect the species. The strategy also provides guidance on avoidance, minimization, and mitigation/compensation measures that can be used to meet regulatory standards.

## Programmatic Biological Opinion

At the conclusion of the planning process for the Conservation Strategy, the USFWS will prepare a Programmatic Biological Opinion for federally listed species within the study area. The Programmatic Biological Opinion will be completed by the USFWS through a consultation with the Corps. That opinion will assess the effect that various activities or projects could have on federally listed focal species, the effectiveness of avoidance and minimization outlined in the Conservation Strategy for each species, and conservation actions that should be incorporated into project design in order for a project to “qualify” for permit inclusion under the Programmatic Biological Opinion. Future projects with the need for permits from the Corps would then “tier” off of that initial analysis with future project specific biological opinions appended to the Programmatic Biological Opinion. This would greatly streamline the ESA Section 7 process for a large subset of future projects in the study area and facilitate implementation of the strategy. An additional programmatic opinion may be developed with the Federal Highway Administration for transportation projects.

## Individual Biological Opinion

Individual biological opinions will be prepared for projects that initiate consultation prior to the completion of the programmatic opinion(s) or have a different action agency than the Corps or Federal Highway Administration. These projects will incorporate the Conservation Strategy and will require the same individual review but instead of “tiering” off of a programmatic opinion, a full project specific biological opinion will be prepared. Because the project will have incorporated the goals, objectives, avoidance, minimization, and mitigation/compensation measures of the Conservation Strategy the consultation and preparation of the biological opinion will be streamlined.

Projects that do not incorporate the Conservation Strategy or only parts of the Conservation Strategy will not benefit from a streamlined process.

### 5.5.3.2 Endangered Species Act Section 10

As is described above for Section 7, the information provided in the Conservation Strategy for federally listed focal species would provide baseline information for an analysis of how the proposed covered activities could affect the species in question. This information would be utilized by the project applicant during preparation of the HCP that would support their Section 10 permit application. It would also be utilized by the USFWS or NMFS when making their finding on the adequacy of the HCP at addressing and offsetting project-level impacts in the HCP.

## 5.5.4 State Endangered Species Permitting

The Conservation Strategy provides information on state-listed species that would be used by project proponents and local jurisdictions to determine whether a proposed project could result in take of a state-listed species. In addition, avoidance and minimization measures and mitigation practices outlined in the Conservation Strategy would be referenced by the project applicant when creating a plan that minimizes and fully mitigates the impacts of the project. By utilizing mitigation practices in this Conservation Strategy and linking mitigation to the conservation goals and objectives of the Conservation Strategy, CESA take authorization could be streamlined through a programmatic consistency determination coordinate with the USFWS programmatic biological opinion.

## 5.5.5 Federal Clean Water Act Permitting

### 5.5.5.1 Clean Water Act Section 404

Although the Conservation Strategy will not provide permits under Section 404 of the CWA for impacts on wetlands or other waters, Section 404 permitting is expected to be streamlined substantially as a result due to the amount of background material included in the Strategy and conservation action aimed at aquatic resources. Issuance of a Section 404 permit often requires the Corps to consult with USFWS and/or NMFS to comply with Section 7 of the ESA. This consultation would address the federally listed species that could be affected as the result of changes to or loss of wetland habitat. As discussed above, the USFWS plans to write a Programmatic Biological Opinion for activities that need Section 404 permit issuance and are within the study area.

## 5.5.6 Clean Water Act Section 401 and the Porter-Cologne Water Quality Control Act

The Conservation Strategy does not include certifications under Clean Water Act Section 401 or waste discharge requirements under the Porter-Cologne Water Quality Control Act. These authorizations, if required, must be obtained separately from the Regional Water Quality Control Board (Water Board). The Water Board is charged with maintaining the beneficial uses of waters of the state in the San Francisco Bay Region, as presented in the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), which is the Board's master water quality control planning document ([http://www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.shtml#2004basinplan](http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan)). Project proponents implementing activities that comply with the terms of the Conservation Strategy should find their permit process streamlined

with the Water Board for projects that may impact waters of the State with the assigned Beneficial Use of preservation of rare and endangered species, because this Conservation Strategy provides a comprehensive means to address the needs of threatened and endangered species in the study area.

Project proponents should also consult Appendix G (Water Quality Objectives for Use in Designing and Implementing Projects with Impacts to Creeks or Wetlands) for guidance in designing projects in a manner that minimizes impacts to waters of the State.

Project proponents are encouraged to contact the SFRWQCB early in the development of mitigation proposals. Guidance on developing mitigation for impacts on waters of the State is provided on the SFRWQCB's web site, at [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/401\\_certs/fact\\_sheet\\_wetland\\_projects\\_12-1-06.doc](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/401_certs/fact_sheet_wetland_projects_12-1-06.doc). In general, mitigation for impacts on waters of the state will focus on creating, restoring, enhancing, and/or preserving waters of the state, with less emphasis on the upland components of habitat that are addressed in mitigation measures developed for compliance with CDFG and USFWS oversight of impacts on special-status species. It is often possible to provide mitigation for impacts on waters of the state within mitigation lands that also satisfy the habitat requirements of the CDFG and USFWS. Early consultation with the SFRWQCB may assist project proponents in identifying parcels that satisfy SFRWQCB mitigation requirements, in addition to the mitigation requirements of CDFG and USFWS.

### **5.5.7 State Streambed and Lake Alteration Agreement**

A project proponent must submit a notification of streambed or lake alteration to CDFG before construction of projects with impacts to biological resources associated with rivers, streams and lakes. The notification requires an application and fee for a streambed alteration agreement. Many of the concerns raised by CDFG during streambed alteration agreement negotiations are related to special-status species. Activities that need a streambed alteration agreement are expected to partially or fully meet the standards of the streambed alteration agreement through the inclusion of avoidance and minimization measures and mitigation standards outlined in the Conservation Strategy.

## **5.6 Conservation through Mitigation**

The Conservation Strategy provides information necessary to inform permitting decisions at a regional scale. In addition, the Conservation Strategy provides information at many spatial scales that will enable project applicants and regulatory personnel to make consistent determinations about how a project

might affect focal species or their habitats. Project applicants and permitting agencies will have to engage at a smaller scale and more detailed analyses in order to directly link project impacts and the terms and location of the mitigation. This section describes the expected process to use the Conservation Strategy.

## **5.6.1 Roles and Responsibilities of Project Applicants**

The ability of the Conservation Strategy to streamline project permitting depends upon the applicant's use of the document. The Conservation Strategy provides the background information, avoidance and minimization measures, and mitigation guidelines necessary for applicants to assess the sensitivity of their project location with respect to biological resources. Based on that information, applicants should use the Conservation Strategy by incorporating avoidance, minimization, and mitigation into their project design, before they approach local jurisdiction or resource agencies with a plan proposal.

### **5.6.1.1 Use of the Conservation Strategy for Project Planning and Mitigation**

Typical steps in the development review process are outlined below as they relate to Conservation Strategy. Note that variations are likely between local jurisdiction and state and federal resource agencies. Management plans for individual parcels or groups of parcels intended to provide mitigation for individual projects should be completed prior to project implementation and concurrent with the acquisition of the land, unless otherwise specified by federal and state resource agencies. Additionally, the mitigation standards and analysis presented in the Conservation Strategy should not apply to projects that do not incorporate the conservation goals, objectives, and priorities of the strategy. Those projects will require additional analysis and most likely increased mitigation.

Suggested steps are:

1. Determine location of project site within study area. Submit a request to local jurisdiction with permit authority (city or county) for land cover and focal species information for that parcel from the GIS information generated for the Conservation Strategy.
2. Quantify the total acres of habitat on the parcel that will be lost as the result of the project. This should be quantified by Conservation Strategy land cover type (Table 2-1). If desired, verify regional data with site-specific survey data on land cover type.
3. Conduct site assessment by a qualified biologist of focal species occurrence using accepted survey protocols for listed and special-status species, if



available. An applicant may also assume presence of focal species with suitable habitat that are difficult to detect.

4. Using the Focal Species Impact/Mitigation Score Sheets (Appendix E), a qualified biologist will determine the habitat quality score of the parcel for each applicable focal species.
5. Discuss site assessment and Focal Species Impact/Mitigation Score Sheets with local jurisdiction and USFWS and CDFG to verify approach (optional).
6. Based on the land cover impact acres quantified in Step 2, seek mitigation for all of the focal species that could occur on the parcel based on Conservation Strategy data and Species Score Sheets. Assess mitigation parcel(s) using the Focal Species Impact/Mitigation Score Sheets to ensure that the score for each species in question is equal to or higher than the score that was calculated for the project site.
7. Ensure that acreage of potential mitigation parcel(s) is enough to satisfy the Standardize Mitigation Ratio for each focal species found or assumed to be present on the project site. Derive ratios using Tables 3-4 through 3-12 and Figures 3-6 through 3-14.
8. Procure initial agreements with owner of potential mitigation parcel (this step could occur earlier if the project proponent wishes to secure a mitigation option).
9. Include all appropriate avoidance and minimization measures in the design and description of the project that will be presented to the local permitting jurisdiction and resource agencies (see Tables 3-2 and 3-3).
10. Present a completed project application package that includes the project description (including avoidance and minimization measures) and proposed mitigation with appropriate land protection (conservation easement, endowment and management plan) to the local permitting agency and to the state and federal resource agencies that have jurisdiction of the resources that could be affected.
11. Continue through standard permitting channels (i.e., CEQA, ESA, CESA) depending on the resources in question including specific information about avoidance and mitigation. If the avoidance and mitigation package is rejected by the resource agencies, then work with the agencies to identify the deficiencies in that proposal and if needed procure agreements on another property that meets their needs starting with Step 5 in this list.
12. Upon completion of permitting process and final approvals, implement mitigation prior to or concurrent with project construction or commencement.
13. Once final project design is approved and mitigation agreements are made, report the final acres lost on the parcel and the final acres protected through mitigation, by location and land cover type, to the local permitting

jurisdiction, which will in turn be responsible for reporting it to the Implementation Committee.

14. The local jurisdiction will report the project information to the Implementation Committee. This information will be entered and stored in the Conservation Strategy Tracking Database.

## 5.6.2 Land Acquisition for Mitigation

A central component of mitigation is the requirement that resources be protected in perpetuity. Protection in perpetuity generally requires the property have a conservation easement conveyed to a third party that is approved by the resource agencies to hold conservation easements. CDFG and USFWS are typically third-party beneficiaries depending upon their jurisdiction over the focal species requiring mitigation. Public agencies, such as cities or park districts, may acquire lands suitable for mitigation upon approvals from federal and state resource agencies. In addition public agencies may act in favor for the project applicant (e.g, agreement between applicant and special district where special district acquires land and applicant conveys a conservation easement on land for mitigation purposes). Mitigation for listed species or natural resources under CDFG or USFWS jurisdiction often includes compensation lands with a conservation easement, management plan, and funded endowment to ensure management in perpetuity. In addition to having a permanent conservation easement placed on the mitigation lands, a resource management plan and long-term maintenance and monitoring endowment must also be established and all documents approved by the resource agency(ies) requiring the mitigation.

East Alameda County is largely undeveloped, with the exception of the Cities of Dublin, Pleasanton, and Livermore. Because the majority of species' habitat occurs on lands under private or public ownership outside of the three cities, the bulk of conservation opportunities that will support the goals and objectives of the Conservation Strategy will need to occur on those lands. The land acquisition process should generally follow the steps listed below for land acquired in fee title or through conservation easements. The steps to procuring a conservation easement on a property are discussed later in this document.

A project applicant (i.e., the entity in need of mitigation) could perform these steps on their own or in conjunction with a variety of partners including, but not limited to the resource agencies, local jurisdiction(s), the RCD, the Alameda County PLCS, special districts (LARPD, EPRPD, etc.), and land trusts.

- Identify sites that have the potential to meet conservation goals within a given Conservation Zone.

- Approach property owners and or local entities such as the RCD or PLCS who have active lists of landowners interested in mitigation with a proposal to acquire land through conservation easement or fee title.
- If the property owner is willing, enter into an agreement with them to conduct pre-acquisition surveys of property for land cover types (including jurisdictional wetlands and waters) addressed in the Conservation Strategy and habitat for focal species. These surveys are typically conducted at the project applicant's (i.e., entity in need of mitigation) expense. If landowner has been working with RCD or PLCS, much of this information may already exist.
- For conservation acquisitions in fee or as conservation easements, develop Baseline Conditions Report to document existing conditions on the site prior to conveyance of the conservation easement.
- Determine if site meets Conservation Strategy conservation goals and objectives and ensure that property encumbrances (e.g., existing conservation easements, property title, resource extraction rights, presence of hazardous materials [Phase I environmental assessment]) do not conflict with Conservation Strategy goals and objectives. For conservation easements, use the agency template to determine conservation easement terms and management prior to purchase.
- Acquisition may require an appraisal of property rights (conservation easement or fee) subject to negotiation between the property owner and project applicant.
- If the project applicant evaluates multiple mitigation sites, then rank available sites on the basis of cost versus ability to meet Conservation Strategy conservation goals and objectives.
- Make offer to property owner and develop acquisition terms, purchase and conservation easement conditions, if appropriate. If the site will be proposed as mitigation for listed species impacts, recommend consultation with USFWS and CDFG prior to commitment of financial resources and document language to the property owner.
- Prepare a draft a conservation easement if the project affects federally or state listed species and prepare a management plan for the site based on site conditions. Management plans will be consistent with the Conservation Strategy and will need to be approved by the resource agencies. Conservation easements will be consistent with the resource agencies' templates and are subject to review and approval by resource agencies.
- Examine all leases that apply to the property for consistency with Conservation Strategy conservation goals and objectives. Inconsistent leases will be terminated, subordinated, or modified to conform.
- Execute sale of fee-title or conservation easement and complete all related documents and processes, including funding the endowment for the long-term management plan.

- Initiate management plan and monitoring, and conduct habitat restoration (if applicable).

### 5.6.2.1 Willing Sellers

A key principle of the Conservation Strategy is that mitigation land will only be acquired by the project applicants from willing sellers. However, the implementation of the Conservation Strategy does not change the terms under which private lands can be condemned for the public good. The acquisition of sensitive resources and habitat, regardless of the method, may contribute to regional conservation and the implementation of the Conservation Strategy. However, utilizing eminent domain to acquire lands for mitigation is contrary to the intent of the Conservation Strategy to facilitate mitigation only through willing sellers.

## 5.6.3 Conservation Easements for Mitigation

A conservation easement is a legal agreement a property owner makes with another entity, in this case an entity needing mitigation (mitigator), to voluntarily sell certain property rights and protect the specific resources in question to meet the mitigation need. To understand the conservation easement concept, think of owning land as holding a bundle of rights (i.e., development rights, water rights, timber harvest rights, mineral rights, etc). Through a conservation easement, a landowner may sell the whole bundle of rights, or just the particular rights necessary to protect the resources in question in perpetuity. These rights may include, for example, land management techniques, the right to construct buildings, to subdivide the land, or to restrict access. In the study area, conservation easement restrictions typically permit landowners to continue traditional uses of their land such as livestock grazing, subject to management plan vegetation performance standards.

For a mitigation transaction, the Deed of Conservation Easement, which clearly spells out the goals, restrictions, obligations, rights maintained, monitoring requirements, and enforcement procedures, will be based on existing legal templates developed by the resource agencies. These templates (attached in the Conservation Easement Toolkit, Appendix F) provide both the resource agencies, mitigators, landowners, and conservation easement holders with a clear understanding of the basic expectations involved in a conservation easement. The templates can be tailored, to a limited extent, to the particular property and/or the particular needs of the conservation easement purchaser/mitigator as well as the habitat goals for and other conservation values on that property. Conservation easements not following the agency templates, or that have been modified, will require significant review by agency attorneys and may not be appropriate for certain mitigation purposes.

For USFWS, conservation easement holders must have third party oversight by a qualified non-profit or government agency. Qualifications include:

- Organized under Internal Revenue Code 501(c)(3);
- Qualified under California Civil Code § 815;
- Bylaws, Articles of Incorporation, and biographies of Board of Directors on file at, and approved by USFWS. Must meet requirements of USFWS, including 51% disinterested parties on the Board of Directors; or
- Additionally conservation easement holders must have satisfactorily completed CDFG due diligence process for conservation easement holders and/or be accredited by the Land Trust Accreditation Commission.
- The conservation easement holder cannot be the same as the fee title holder

The specific terms of the conservation easement will be developed and negotiated using the templates provided by each resource agency. Each conservation easement will be drafted to protect the existing conservation values of the property forever, and to confine the allowable uses of the property to those activities that ensure or promote the preservation or enhancement of those conservation values consistent with the Management Plan. The terms of the conservation easement also prevent any use of the property that would impair or interfere with the conservation values of the property. The conservation values will be specifically described in terms of both the native species and their habitat, and other natural communities on the property. Conservation easements are typically recorded prior to project commencement.

Except as necessary to maintain or enhance conservation values, each conservation easement will be consistent with the template shown in Appendix F.

Any owner of property with conservation values may sell a conservation easement. If the property belongs to more than one person, all owners must consent to selling a conservation easement. If the property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests to those of the conservation easement holder so that the conservation easement cannot be extinguished in the event of foreclosure. Once executed, the landowner conveys the right to enforce the negotiated stewardship plan, including land use restrictions to a qualified conservation recipient, such as a public agency, a land trust, RCD, or approved conservation organization. Finally, a conservation easement remains tied to the land—that is, the original owner and all subsequent owners are bound by the restrictions of the conservation easement. The conservation easement is recorded at the county or city records office so that all future owners and lenders will learn about the restrictions when they obtain title reports.

### 5.6.3.1 Conservation Endowment

Another key component of the conservation easement process is development of the conservation endowment. This nonwasting endowment is designed to provide funding in perpetuity to implement management recommendations, adaptively manage the conservation easement area to meet management plan goals, to cover monitoring expenses. When determining the appropriate amount of funds necessary to manage the conservation easement land in perpetuity, the land manager must analyze the characteristics and needs of the specific property from which management requirements are derived. The endowment should include management tasks and their costs as well as the necessary administrative costs to provide the full cost of managing the property. Funding for the management is derived from the interest of the endowment only. Therefore, the principal needs to be sufficient to generate adequate interest for the management and monitoring activities and to account for inflation. The endowment will be fully funded prior to project commencement. CDFG has a specific process for approving endowment holders. That process is currently undergoing revision. This section will be updated once a final process is agreed upon. For now, project proponents and landowners should contact their local CDFG representative if they have questions.

### 5.6.3.2 Long-Term Management Plans

Any property that is purchased and/or placed under conservation easement for the purpose of providing mitigation will need to have a long-term management plan. The purpose of this long-term management plan is to ensure the mitigation parcel(s) or bank is managed, monitored, and maintained in perpetuity as required by the conservation documents. This management plan establishes objectives, priorities, and tasks to monitor, manage, maintain, and report on the waters of California and the United States, focal species, and natural communities or other resources that are being provided as mitigation on the site. One of the intended outcomes of this Strategy is to have consistent management across the study area for similar land cover types and species to the degree possible. Ultimately this responsibility falls to the resource agencies.

The management plan is a binding and enforceable instrument, implemented by the conservation easement covering the property. It is to ensure management of the site in perpetuity and becomes a binding “contract” between the land owner and the resource agencies that give the agencies the assurances that they need to allow a parcel to be used as mitigation. A template of a typical management plan is included in Appendix F. The landowner is responsible for implementing the management plan in perpetuity, and may contract this work if desired. If changes to the program are needed based on monitoring data the long-term management plan can be updated through an adaptive management process.

### **5.6.3.3 Monitoring**

The third-party organization or agency that holds the conservation easement is responsible for enforcing the restrictions contained in the conservation easement document. To do this, the conservation easement holder monitors the property on a regular basis, and typically prepares a report once a year. Representatives of the holder visit the property, usually accompanied by the owner, to determine whether the property remains in the condition prescribed or enhanced by the conservation easement and documented at the time of the conservation easement is recorded. The holder maintains written records of the monitoring visits. The visits also serve to keep the holder and the property owner in regular communication. If a monitoring visit reveals that the conservation easement has been violated, the conservation easement holder has the legal right to require the owner to correct the violation and restore the property to its condition prior to the violation as prescribed in the negotiated easement and/or management plan.

### **5.6.3.4 Partnership for Land Conservation and Stewardship: Conservation Easement Facilitation**

The PLCS was developed under Alameda County's Measure D that required the County to develop a "Land Trust" to support conservation of open spaces in eastern Alameda County. The Alameda County Board of Supervisors, acting upon recommendations from the County Agricultural Advisory Committee, created PLCS as a program intended to facilitate bringing together landowners interested in selling conservation easements and offering resource enhancement projects on their property with funding sources interested in buying those conservation easements or in constructing the enhancements. Rather than develop a new land trust, the Board of Supervisors elected to develop a facilitating entity that would work cooperatively with landowners, conservation organizations, and others to coordinate protection of the county's natural resources. The Alameda County RCD is the fiscal agent for PLCS and also provides technical and educational support for PLCS related to natural resource conservation and agriculture enhancement.

PLCS will develop a table to provide a list of the key steps and documents to complete a conservation easement transaction. When complete, this table will be included in the Conservation Toolkit (Appendix F). This table also provides guidance of responsible parties for each step and puts these steps in sequential order for ease of use. PLCS educates landowners about conservation easements, while connecting the landowners, mitigating entities, and conservation easement holding entities to complete a mitigation transaction on private lands. The agreements between the parties involved are reached voluntarily.

## 5.6.4 Conservation or Mitigation Banks

A conservation or mitigation bank is privately or publicly owned land managed for its natural resource values. In exchange for permanently protecting and managing the land, the bank operator is allowed to sell habitat credits to project proponents who need to satisfy legal requirements for compensating environmental impacts of development projects.<sup>1</sup> A conservation or mitigation bank is a free-market enterprise that performs the following functions.

- Offers landowners economic incentives to protect natural resources.
- Provides permanent protection of resources prior to impacts (i.e., a conservation easement is executed for the bank prior to any credits being sold on the market).
- Saves project applicant's time and money by providing them with the certainty of preapproved compensation lands that have existing management plans and funding.
- Provides protection and management of habitat in perpetuity.

The goals of private mitigation banks are generally compatible and supportive of regional conservation plans such as the Conservation Strategy. Mitigation banks provide entities in need of mitigation with a simple solution to meeting some or all of their mitigation needs, which in turn helps the Implementation Committee achieve the goals and objectives in the strategy. Each bank holds "credits," typically by species, that are based on the resources protected within the bank and that the resource agencies that have granted to the bank. Because of the limitations on available credits, it is not always possible for a mitigator to have all of their projects mitigation needs met through one bank or even multiple banks. For example, a given bank may have California tiger salamander credits but not burrowing owl credits, or it may have California red-legged frog credits but not riparian habitat credits. There are a few approved banks operating in the study area.

Because land and resources are protected up-front for mitigation banks, these areas within the study area will be counted toward the conservation goals and objectives in Conservation Strategy as they are approved. Banks that have already been approved have already been accounted for in Table 3-1 and are considered Type 1 Open Space. Credits sold by banks outside the study area cannot count towards meeting the Conservation Strategy's goals even if the bank's service area is within the Conservation Strategy planning area.

Private parties wishing to develop and establish a new mitigation bank in the study area should consult guidance and instructions provided by CDFG

<sup>1</sup> For additional information on banking see the following web sites: <[www.dfg.ca.gov/hcpb/conplan/mitbank/mitbank.shtml](http://www.dfg.ca.gov/hcpb/conplan/mitbank/mitbank.shtml)> and <[www.fws.gov/sacramento/es/cons\\_bank.htm](http://www.fws.gov/sacramento/es/cons_bank.htm)>.



(<http://www.dfg.ca.gov/habcon/conplan/mitbank/>) and USFWS ([http://www.fws.gov/sacramento/es/cons\\_bank.htm](http://www.fws.gov/sacramento/es/cons_bank.htm)).

## 5.6.5 New Concepts for Mitigation Planning

Listed below are additional mechanisms or agreements that could be entered into with federal, state, or local jurisdictions that would guarantee conservation on lands within the study area. While mitigation typically occurs between one project applicant and one landowner there are additional ways to accomplish the same goal. For example, the development of a mitigation bank can be done on a different scale and with potentially better results than the project-by-project mitigation alternative. Below is a list of additional ideas that the Implementation Committee will continue to explore. This is intended to be a running list of ways to increase the efficiency and effectiveness of mitigation in the study area and to continue to engage private landowners in the act of conserving natural resources on their lands.

1. **Early Coordination.** Work with resource agencies and local and state infrastructural/utility agencies (i.e., Zone 7, California Department of Transportation (Caltrans), SFPUC, etc.) to develop early-mitigation planning efforts that would facilitate implementation of mitigation prior to anticipated impacts. This type of effort would facilitate pre-mitigation and allow utilities or other infrastructure agencies with large capital improvement plan portfolios to address permitting requirements well in advance of project implementation. By enabling this type of conservation, mitigation monies can be figured into annual budgets, monies can be pooled, and larger tracts of land can be protected. Advanced mitigation also ensures that mitigation will offset the temporal loss of habitat that occurs between the time that the impacts occur and the time when mitigation reaches full maturity.
2. **Facilitate Mitigation Banks.** Establish framework that enables the establishment of one or more co-operatives between two or more private landowners to establish a mitigation bank on multiple parcels of land at one time. In theory this would allow private landowners to lower the start up cost of a mitigation banking effort by pooling their resources and consolidating interactions with the resource agencies.
3. **Revolving Funds.** Utilize local open space funds (Altamont Landfill Open Space Fund, Vasco Road Landfill Open Space fund etc.) as revolving fund to acquire high-priority land from willing sellers with an immediate deadline. Local agency could hold the land with an option to reimburse the originating open space fund with future mitigation funds. (Once a permanent conservation easement is established to mitigate a specific project, the originating open space fund is no longer eligible for reimbursement unless surplus mitigation is available on the site.)

4. **Fund Coordination.** To increase efficiency of funds and to contain project and acquisition costs, Strategy encourages cooperative projects from multiple funders.
5. **Reduce Mitigation Cost.** Work with stakeholders to develop new tools and processes that will reduce the cost of mitigation (e.g., pre-certifying mitigation lands to reduce costs of surveys). Any investigations necessary to pre-certify lands for mitigation will remain the responsibility of a the land owner and will not be subsidized by the EACCS Implementation Committee.

## 5.7 Conservation Actions Unrelated to Mitigation— Voluntary Conservation Actions

East Alameda County is largely undeveloped, with the exception of the Cities of Dublin, Pleasanton, and Livermore. With growth controls in place in this part of the county (city UGBs and Measure D), it is expected that the portion of conservation that would occur as the result of mitigation for project impacts is less than other conservation opportunities. Because the majority of species' habitat occurs on lands under private or public ownership outside of the three cities, the bulk of conservation opportunities that will support the goals and objectives of the Conservation Strategy will need to occur on those lands. Some of these conservation efforts will be funded by mitigation money, but most will not.

To maximize the use of public and private lands for focal species habitat, this strategy includes a focus on use of existing, incentive-based stewardship programs, and suggests developing new stewardship programs to increase the number of ways that conservation actions can occur on private or public lands. The Implementation Committee is committed to supporting voluntary actions that further conservation in the study area. The Implementation Committee, when and where appropriate, will look for innovative ways to support others taking the lead in implementing voluntary conservation actions provided that it is consistent with the goals/objectives outlined in the strategy.

This section specifically addresses conservation actions that are not funded or driven specifically by mitigation, but instead are conducted by landowners (public or private), land trusts, non-profits conservation groups, etc. These efforts are voluntary and are conducted in an effort to increase the resource values in the study area. It should be noted that although the bulk of this section is focused on supporting private landowners, many of the programs and concepts for non-mitigation based conservation are applicable to any individual or organization interested in conducting or funding conservation actions in the study area. Whether or not private landowners are interested in participation in conservation through mitigation opportunities, the Strategy provides useful information that the private ranchers can use to better understand the land

type, habitat, species and management needs of their own lands that will enhance their stewardship decisions. The Strategy will provide such reference material and access to knowledgeable stakeholders. The landowners' easements when completed will be recorded and their stewardship efforts, if made public, would be recognized by the Strategy's databank and outreach activities. As new conservation tools and educational activities are developed, landowners will have the opportunity to participate.

There are several local land trusts and state-wide land trusts. Land trusts have a special opportunity to utilize and obligation to implement the Strategy as it pertains to their respective missions. They will participate in easement negotiations (both voluntary conservation and mitigation) as easement holders, report voluntary conservation transactions to the databank, and hold and monitor both types of easements in perpetuity. The land trusts, much like the landowners may utilize the reference material and other stakeholders in planning their own conservation goals and in performing their stewardship responsibilities. They will participate in landowner and community education and outreach. The existence of the Strategy may help facilitate the award of grants for voluntary conservation efforts.

### **5.7.1 Existing Stewardship Programs**

There are a wide variety of existing conservation programs in the study area that are currently being utilized to further stewardship and conservation on private and public lands. Not all of these efforts specifically target the conservation of focal species; however, most are concerned with retaining natural landscapes and intact habitats. Most of these efforts fall into one of the following three categories: conservation planning for ranches and/or farms; technical assistance and/or cost-share for implementing conservation actions; or education. These programs range from the suite of Federal Farm Bill–related programs overseen by the NRCS and local conservation programs implemented through the RCD to USFWS Partners Program projects to large-scale conservation easement efforts funded by private conservation organizations like The Nature Conservancy, the California Rangeland Trust, and local land trusts such as the Tri-Valley Conservancy as well as agencies like the Department of Conservation and Wildlife Conservation Board. A full listing of currently available stewardship programs can be obtained in Appendix F. These existing programs can provide anything from technical assistance and cost-share support for implementing conservation projects to restoration of wildlife friendly stock ponds. Of particular note is pest and weed management programs provided by the Alameda County Agriculture Department and forestry expertise provided by the County Forester. Although many of these programs are not specifically designed to conserve a piece of land in perpetuity (i.e., through fee-title purchase or purchase of a conservation easement), they nonetheless provide both incremental and cumulative benefits for conservation of various land cover types, habitats, and native species throughout the study area.

### **5.7.1.1 Endangered Species Act Safe Harbor Agreement**

Landowners participating in the Conservation Strategy also have the opportunity to voluntarily enter into a Safe Harbor Agreement (SHA) with USFWS. The USFWS must ensure the SHA results in a “net conservation benefit” for the listed species on the enrolled property. The baseline conditions must be determined, as well as the beneficial activities, routine and on-going activities proposed for incidental take coverage, and potential impacts from returning the property to baseline after the end of the agreement.

When the landowner meets all the terms of the SHA, they will receive written, formal assurances from USFWS that additional or different management activities would not be required without the participant’s consent during the period of time for which the SHA is valid. Under Section 10 of the ESA, the landowner would receive an Enhancement of Survival Permit authorizing incidental take of species that may result from actions undertaken by the landowner under the SHA. In exchange, the landowner would participate in actions that would contribute to the recovery of federally listed species. At the end of the SHA period, the participant also has the option of returning the enrolled property to the baseline conditions that existed before entering into the SHA. For more information on Safe Harbor Agreements visit the USFWS website, [http://www.fws.gov/sacramento/Partnerships/safe\\_harbor.htm](http://www.fws.gov/sacramento/Partnerships/safe_harbor.htm). Currently there is a safe harbor program that is administered by the ACRCDC for rehabilitation of stock ponds. This allows for the rehabilitation of stock ponds provided that they enhance habitat for California red-legged frog and California tiger salamander. Establishing the baseline under the safe harbor agreement give private land owners some assurance that they can conduct the work on their ponds without permitting delays or costs and that they can operate their pond within certain parameters provided that the quality of habitat does not become less than what it was when the program was initiated. Details on this program can be found at: [http://www.fws.gov/ecos/ajax/docs/plan\\_documents/tsha/tsha\\_572.pdf](http://www.fws.gov/ecos/ajax/docs/plan_documents/tsha/tsha_572.pdf)

### **5.7.1.2 California Department of Fish and Game Voluntary Local Program**

Agricultural landowners (farmers and ranchers) who want to enhance habitat on their property can be protected from endangered species regulations. The California Endangered Species Act offers such protection (Fish and Game Code Section 2086). Landowners can sign up for a Voluntary Local Program to restore or enhance habitat and receive permission to incidentally take (injure or kill) threatened or endangered species in the course of their routine and ongoing farming or ranching activities.

The Voluntary Local Program is DFG's compliment to the federal Safe Harbor Agreement Program sponsored under the federal Endangered Species Act. The two programs have the same goals of trying to encourage landowners to enhance habitat for threatened and endangered wildlife, while maintaining viable agricultural operations.

## 5.7.2 New Stewardship Programs and Tools

As the Conservation Strategy was developed, various landowners, representatives from conservation organizations and local agency staff, and state and federal resource agency personnel have discussed concepts to help foster conservation on private lands in east Alameda County. New ideas are constantly being developed, and the Implementation Committee will continue to solicit information on new ideas for furthering the goals of the Conservation Strategy through voluntary stewardship and hold discussions on how to best implement them. In many cases there are examples of existing programs that fit into these categories. They are listed when appropriate. Below is a list of ideas generated by the Implementation Committee, the UAG, and various other stakeholders. This list is in no particular order and does not suggest available staffing or funding or represent a hierarchy or prioritization of the listed ideas, issues, and concepts.

1. **ECOSYSTEMS SERVICE CONTRACTS AND TAX INCENTIVES.** Consider development of a habitat based program similar to the Williamson Act that would provide tax breaks for landowners willing to develop and implement long-term, but not perpetual, conservation plans and actions. This would require the development, implementation, and monitoring of a management plan and would be a commitment for a predetermined period of time.
2. **STOCK POND AMNESTY PROGRAM.** Work with the State Board, Regional Water Quality Control Board, CDFG, and the California Rangeland Conservation Coalition to develop a new pond registration amnesty program or something with similar intent to simplify and incentivize landowners to register their stock ponds with the State Board. In the current regulatory climate, it is very difficult to obtain permits from both the Regional Water Quality Control Board (401 Certification) and the CDFG (1600 Agreement) for conservation projects on unregistered ponds, even if those projects would benefit listed species. Registering ponds can be costly, time-consuming, and confusing, thus creating a disincentive to landowners to register them. This may create significant issues with using existing ponds as mitigation for impacts on resources under state jurisdiction.
3. **FACILTATE BASELINE DATA ASSESSMENTS ON PRIVATE LANDS.** Develop and expand landowner training/education opportunities to provide landowners with the tools and procedures to collect baseline data on species occurrences and conservation opportunities on their properties. Baseline

data collection would also support voluntary long-term management and monitoring. This could provide the biological resources information necessary for mitigation.

4. **EXPAND LANDOWNER EDUCATION ABOUT CONSERVATION EASEMENTS.** Work with PLCS and land trusts to develop and expand landowner training/education on the implications and nuances of executing a conservation easement on private property. In conjunction with this effort, landowners have suggested developing online resources, to serve as a clearinghouse for information on conservation easements, lessons learned, and a library of on-line resources and provide referrals for local professionals that specialize in conservation transactions (appraisers, tax professionals, real-estate brokers, biologists, etc).
5. **CONTINUE LANDOWNER AND OPERATOR EDUCATION ABOUT HABITAT AND SPECIES STEWARDSHIP.** Renew the RCD's Partners in Restoration Permit Coordination Program to coordinate permitting for a suite of voluntary NRCS/RCD sponsored conservation actions on private lands. The future efficacy of this program is tied to Step 3 above. Changes that are instituted upon program renewal would be consistent with the conservation goals and objectives of the Conservation Strategy. This effort would be coordinated with the California Rangeland Conservation Coalition.
6. **UTILIZATION FEE.** Work with local jurisdictions to consider creating a Conservation Strategy Utilization Fee that would be tied to development applications and could be used as cost-share grants for implementing various types of conservation projects in the study area (e.g., . cost-share grants for conservation actions funding for programs that perform outreach and education to landowner education).
7. In coordination with a Conservation Strategy Utilization Fee (#6), or another existing local conservation funding mechanism, develop a program modeled after other local programs for fund dispersal, such as the County Fish and Game Commission.
8. **TRACKING VOLUNTARY EFFORTS.** In concert with the mitigation tracking database to be developed for Conservation Strategy, find a way to track voluntary conservation efforts, both specific on-the-ground projects as well as non-mitigation based conservation easements in the study area. This would be best done on a regional level either for the entire study area or for each conservation zone (i.e., this many acres of grassland were managed for burrowing owl and this many ponds were restored this year). This information will be critical to assessing the efficacy of Conservation Strategy and will help identify conservation gaps in the future.
9. **DEVELOP ECOSYSTEM SERVICES VALUATION PROCESS.** Work with California Rangeland Conservation Coalition, NRCS, and ACRCDC to develop a local mitigation marketing system that recognizes the monetary benefits of land stewardship provided voluntarily by private and public landowners.