

## **Appendix G California Department of Fish and Wildlife Mitigation Policy Consistency Analysis and Morro Dunes Ecological Reserve Management Obligation Assessment**

This appendix documents the results of an analysis that concluded that enrollment of the California Department of Fish and Wildlife's Morro Dunes Ecological Reserve is consistent with the CDFW *Policy for Mitigation on Public Owned, Department Owned, and Conserved Lands* (CDFW 2012), which is provided at the end of this appendix. For each of the guidelines within the CDFW mitigation policy, Table G-1 evaluates whether the use of the MDER is consistent.

This appendix also lists CDFW's management obligations for the MDER based on a review of the existing management plan for the reserve (CDFW 1982). At the time that the management plan was developed, the reserve consisted only of the 47.8-acre Pecho Parcel, located west of Pecho Valley Road. A plan has not yet been developed for the 230.9-acre Bayview Unit of the MDER.

The management recommendations in the plan, outlined in order of priority, were to:

1. Complete a flora and invertebrate survey by competent biologists;
2. Delineate the most important habitat areas for habitat enhancement for Morro Bay kangaroo rat;
3. Delineate the areas critical for protection of the banded dune snail (Morro shoulderband snail) and various endemic plants, so they can be left 'as is';
4. Conduct periodic monitoring of the efficacy of the management practices, including population sampling for the kangaroo rat; and
5. Meeting twice a year with the State Parks, the USFWS, and Cal Poly staff to review the progress of management and determine the course of future management efforts.

These existing recommendations, which represent the management obligation for the property (R. Stafford, pers. comm. 2016), could be greatly expanded upon to address management issues and threats to the covered species, and enhance and restore habitat at the site as part of the LOHCP Preserve System AMMP. Specifically, efforts to control exotic plants, address the impacts of historic land use including old roads, restore areas that have been denuded as a result of intense trail use, and conduct vegetation management to simulate the beneficial effects of fire and promote fire-adapted species, as outlined in Section 5.3.3 and discussed in greater detail in Appendix D, could restore or enhance the coastal sage scrub and maritime chaparral habitat in the MDER and in doing so, promote populations of the covered species all of which have current or historic occurrences within the site. Based on the framework for management and monitoring outlined in Appendix D, the Department believes that the enhanced management and restoration of the MDER proposed by the LOHCP is above and beyond CDFW's existing responsibility for management of the ecological reserve (R. Stafford, pers. comm. 2016).

Specific management and restoration activities and the methods of crediting them as mitigation in the LOHCP will be identified in the Preserve System AMMP, which will be developed during the first three years of Plan implementation (Section 5.3.3.2). The *Interim Adaptive Management and Monitoring Plan for the Los Osos Habitat Conservation Plan Preserve System* (McGraw 2002; Appendix M) outlines habitat restoration and monitoring strategies that the County and/or its Implementing Entity could take to begin to restore habitat in the MDER during the first three years of LOHCP implementation.

**Table G-1: Consistency of Enrollment of the Morro Dunes Ecological Reserve in the LOHCP Preserve System with CDFW Mitigation Policy Guidelines**

CDFW Mitigation Policy Guideline	Evaluation of Consistency of LOHCP with the Guideline
<p>Mitigation is consistent with the current and future uses of the land including any encumbrances, easements, or public use values, as evaluated through a site visit and described in CDFW documents including:</p> <ul style="list-style-type: none"> <li>• Land management plan (LMP) for the property;</li> <li>• Any Conceptual Area Protection Plans (CAPP) or Land Acquisition Evaluations (LAE) written for the property; and</li> <li>• Easement; and</li> <li>• Titles.</li> </ul>	<p>Restoration and management of habitat within the MDER is consistent with the objectives for the reserve as outlined in the current LMP, which are: protection and enhancement of Morro Bay kangaroo rat habitat, protection of Morro shoulderband snail habitat, and protection of the endemic plants (CDFW 1982). Specifically, restoration projects will be designed to promote habitat for the covered species (MBKR, MSS, IKM, and MM) by addressing factors that degrade it, including exotic plants, erosion, and unnatural succession due to fire exclusion. There are no easements or provisions on the title for the properties that preclude their use as mitigation.</p>
<p>Mitigation is consistent with the purpose for which the land was acquired, and the funding source used for acquisition.</p>	<p>Restoration and management will promote the rare species and endemic communities that properties within the MDER were acquired to protect. CDFW confirmed that state funds used to purchase the property (Proposition 50 and state license plant funds) do not preclude their use as mitigation. Likewise, USFWS found that land purchased in part using federal threatened and endangered species program funds and Section 6 funds can be restored or managed as mitigation.</p>
<p>Mitigation will not preclude, diminish, or interfere with encumbrances, or the management plan for the property.</p>	<p>Restoration and management will promote the goals of the management of the property, which are: protection and enhancement of Morro Bay kangaroo rat habitat, protection of Morro shoulderband snail habitat, and protection of the endemic plants (CDFW 1982). There are no known encumbrances for the property for which restoration and management would interfere.</p>
<p>Mitigation maintains and or enhances the current ecological and public use values of the land. The entity proposing mitigation needs to provide documentation of how placing the mitigation on the land is going to maintain or enhance these values.</p>	<p>Restoration and management will promote the ecological goals for the property, as outlined above. The current LMP does not identify public use goals. Hiking and dog walking (on a leash of no more than 10 feet) are allowed under CDFW regulations that govern management of the reserve, while the California Code of Regulations, Title 14, Sections 550 and 630, prohibits bike riding, horseback riding,</p>

**Table G-1: Consistency of Enrollment of the Morro Dunes Ecological Reserve in the LOHCP Preserve System with CDFW Mitigation Policy Guidelines**

CDFW Mitigation Policy Guideline	Evaluation of Consistency of LOHCP with the Guideline
<p>The full cost of the mitigation is accounted for (this includes but is not limited to all capital improvements, restoration, enhancement, monitoring, long term management and maintenance and reimbursement for any CDFW staff time including enforcement, on all lands).</p>	<p>off-highway vehicle use, and camping. Compatible recreational use will be enhanced by efforts to restore habitat in areas where historic roads and trails that have become deeply incised and are impassible, while leaving more suitable trails in place.</p>
<p>A Memorandum of Understanding (MOU) is in place prior to the project sponsors undertaking the project. The MOU will be developed in cooperation with the land manager, reviewed for statewide consistency by the CDFW’s Lands Program in the Wildlife Branch and signed by the District Assistant Chief and the CDFW Regional Manager and the County. The MOU will define the mitigation purpose, permit requirements, agreement term, scope of work, schedule, management and/or maintenance requirements, monitoring, and responsibilities of the parties to the agreement.</p>	<p>The LOHCP mitigation fees were calculated to fund the habitat restoration, management, and monitoring of the MDER. Fees will fund Implementing Entity staff or contractors who will implement the conservation activities in coordination with CDFW staff responsible for MDER management.</p> <p>The County and CDFW have developed a MOU to establish the terms and conditions upon which the CDFW will authorize the County to conduct habitat management, restoration, and monitoring activities on CDFW lands enrolled within the LOHCP Preserve System including the MDER (Appendix J). As required in the MOU, the County prepared the IAMMP, which will serve as the Mitigation Plan and describes the specific management and/or restoration actions that will be implemented and the monitoring that will be used to evaluate their effectiveness (McGraw 2020; Appendix M), consistent with the AMMP. The Mitigation Plan must be approved by the CDFW prior to issuance of the Special Use Permit (SUP) which will allow the LOHCP Implementing Entity access to CDFW lands to conduct the mitigation activities outlined in the Mitigation Plan.</p>

To: Department of Fish and Game Staff

Subject: POLICY FOR MITIGATION ON PUBLICLY OWNED, DEPARTMENT OWNED,  
AND CONSERVED LANDS

The Department of Fish and Game (Department) is often faced with development project proposals that seek to mitigate for impacts to fish and wildlife resources through restoration or enhancement of lands that are publicly owned or already protected for conservation or other purposes. There has been significant discussion within the Department about the appropriateness of locating such mitigation on Department and other conservation lands since the mid-1990s. Mitigation has been proposed for Department lands, Bureau of Land Management lands, and existing mitigation lands.

The appropriateness of such proposals has been considered by the Department's Lands Committee, Banking Policy Team, and Habitat Conservation Supervisors. These discussions have resulted in issue papers that address the benefits and drawbacks of mitigating on already-protected conservation lands. Recent discussions have been in response to: 1) the regulated community seeking to restore or enhance habitat as mitigation on publicly owned and conserved lands, and 2) Department managers seeking to situate such mitigation on Department lands to enhance or restore degraded habitats, and provide a mechanism for funding long-term management and maintenance of these lands. This would be consistent with established management objectives for the particular site.

The policy statement below addresses those situations where the Department has regulatory or approval authority over the mitigation, and/or where the mitigation site is proposed on publicly owned, Department-owned, and conserved lands. This policy only addresses the use of Department-owned and conserved lands for mitigation in the form of restoration and enhancement. It is not appropriate to allow the use of Department-owned and conserved lands when mitigation requires the preservation or protection of additional acres of land.

## **POLICY STATEMENT**

To assure that mitigation is implemented in a way that best serves California's fish and wildlife resources, the Department's policy for mitigation on publicly owned, Department owned and conserved lands is as follows:

*Mitigation for impacts to fish and wildlife resources may occur on publicly owned, Department owned, and conserved lands if it has been determined by the Department that: 1) the mitigation is consistent with requirements of the law under which the mitigation is being sought; 2) its relative value as mitigation is equal to or greater than it would be if the same mitigation were*

*situated on non-public or non-conserved lands; 3) it results in a clear and quantifiable improvement or positive change above that currently present or reasonably expected to exist under current conditions on the site; 4) the future uses of the land, including encumbrances or easements, will not preclude or diminish the mitigation; 5) the mitigation will not preclude, diminish or interfere with the funding or purpose of acquisition, encumbrances, or management plan for the property; and 6) it will not result in a net loss of existing conservation values.*

The Department has developed a flow chart (attached) to help evaluate whether proposed mitigation is consistent with the policy. The flow chart provides a step-wise process for Department staff to follow to make the determination.

## **IMPLEMENTATION GUIDANCE**

The policy for mitigation on publicly owned, Department owned, and conserved lands applies when such mitigation results from an environmental document prepared pursuant to the California Environmental Quality Act (CEQA), a Lake or Streambed Alteration (LSA) Agreement issued pursuant to Fish and Game Code section 1600 *et seq.*, or a California Endangered Species Act (CESA) Incidental Take Permit (ITP) or Consistency Determination (CD) issued pursuant to Fish and Game Code sections 2081(b) and 2080.1 respectively.

### ***CEQA Mitigation***

The Department may have little or no discretionary approval authority over CEQA mitigation measures that do not take place on Department lands or do not require permitting by the Department. The Department may support such mitigation in those situations where mitigation is proposed on publicly owned or conserved lands, the Department's input is requested, and the proposed mitigation is consistent with this policy.

### ***LSA Mitigation***

For LSA mitigation the Department shall include reasonable measures necessary to protect the resources affected by the project or activity. Such protection is based on project and site specific conditions and may include habitat restoration, rehabilitation and/or protection on a temporary or permanent basis. Project proponents may request that mitigation requirements to restore or rehabilitate habitat occur on publicly owned or conserved lands, or the Department may determine that the fish and wildlife resources will be best served by placing the mitigation on publicly owned or conserved lands. In these cases, the mitigation may proceed if it is consistent with the policy.

### ***CESA Mitigation***

CESA requires, among other things, that the impacts of authorized take be minimized and fully mitigated, the measures required to meet this obligation shall be roughly proportional in extent to the impact, and that all required measures shall be capable of successful implementation (Fish and Game Code Section 2081(b)).

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The Department has interpreted the loss and degradation of habitat to be prohibited under CESA if it results in the death of listed fish, wildlife or plants, and such mortality is a foreseeable and natural consequence of the habitat modifications.

Lands with habitats that may be rehabilitated, restored, or preserved and maintained to fully mitigate for the impacts of take must be protected through fee title, transfer or conservation easement to an appropriate conservation entity to ensure long term preservation and successful implementation of the mitigation.

The fish and wildlife resources or environments replaced or substituted for those impacted must be maintained in perpetuity. There may be cases where some impacts of the take are temporary such that the credit (offsetting value) would not need to be in perpetuity. If the fully mitigated standard can be met on conserved or publicly owned lands and the mitigation and land are protected in perpetuity, the mitigation may proceed if it is consistent with the policy.

***Implementing Mitigation on Department Owned or Conserved Lands***

For mitigation to occur on Department-owned or conserved lands the following guidelines should be met:

1. Mitigation is consistent with the current and future uses of the land including any encumbrances, easements or public use values.
  - a. To find information on encumbrances, easements or public use values the following documents should be checked:
    - i. Management plan for the property
    - ii. Any Conceptual Area Protection Plans (CAPP) or Land Acquisition Evaluations (LAE) written for the property
    - iii. Easements can be found on the California Natural Resources Agency website and at the County Records office. The Lands Program should also be checked.
    - iv. Title search – this should be performed by the entity proposing the mitigation
    - v. Site visits should be performed
2. Mitigation is consistent with the purpose for which the land was acquired and the funding source used for acquisition.
3. Mitigation will not preclude, diminish or interfere with encumbrances, or the management plan for the property.
4. Mitigation maintains and or enhances the current ecological and public use values of the land.
  - a. Entity proposing the mitigation needs to provide documentation of how

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placing the mitigation on the land is going to maintain or enhance the ecological and public use values of the land.

5. The full cost of the mitigation is accounted for (this includes but is not limited to all capital improvements, restoration, enhancement, monitoring, long term management and maintenance and reimbursement for any Department staff time including enforcement, on all lands).
6. A Memorandum of Understanding (MOU) is in place prior to the project sponsors undertaking the project. The MOU will be developed in cooperation with the land manager, reviewed for statewide consistency by the Department's Lands Program in the Wildlife Branch and signed by the District Assistant Chief and the Department Regional Manager, the land management agency or non-profit (if other than the Department), and the project sponsor. The MOU will define the mitigation purpose, permit requirements, agreement term, scope of work, schedule, management and/or maintenance requirements, monitoring, and responsibilities of the parties to the agreement.

CEQA compliance and all applicable state, federal and local permits shall be the responsibility of the project sponsor and shall be completed prior to the implementation of the mitigation project. Conditions of such permits will be followed by the project sponsor at all times.

Further information related to this policy may be found on the Department's Intranet at <https://intranet.dfg.ca.gov/portal/ExploreDFG/Programs/Program30ManagementofDepartmentLands/tabid/388/Default.aspx>.

*signed original on file*  
Charlton H. Bonham  
Director

Attachments: Definitions  
Procedural Flow Chart

## DEFINITIONS

When used in context of this policy, these terms have the following meaning:

*Conserved Lands:* An interest in lands acquired by a tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in California which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition; and lands over which a Conservation Easement as defined under Section 815.1 of the California Civil Code has been granted.

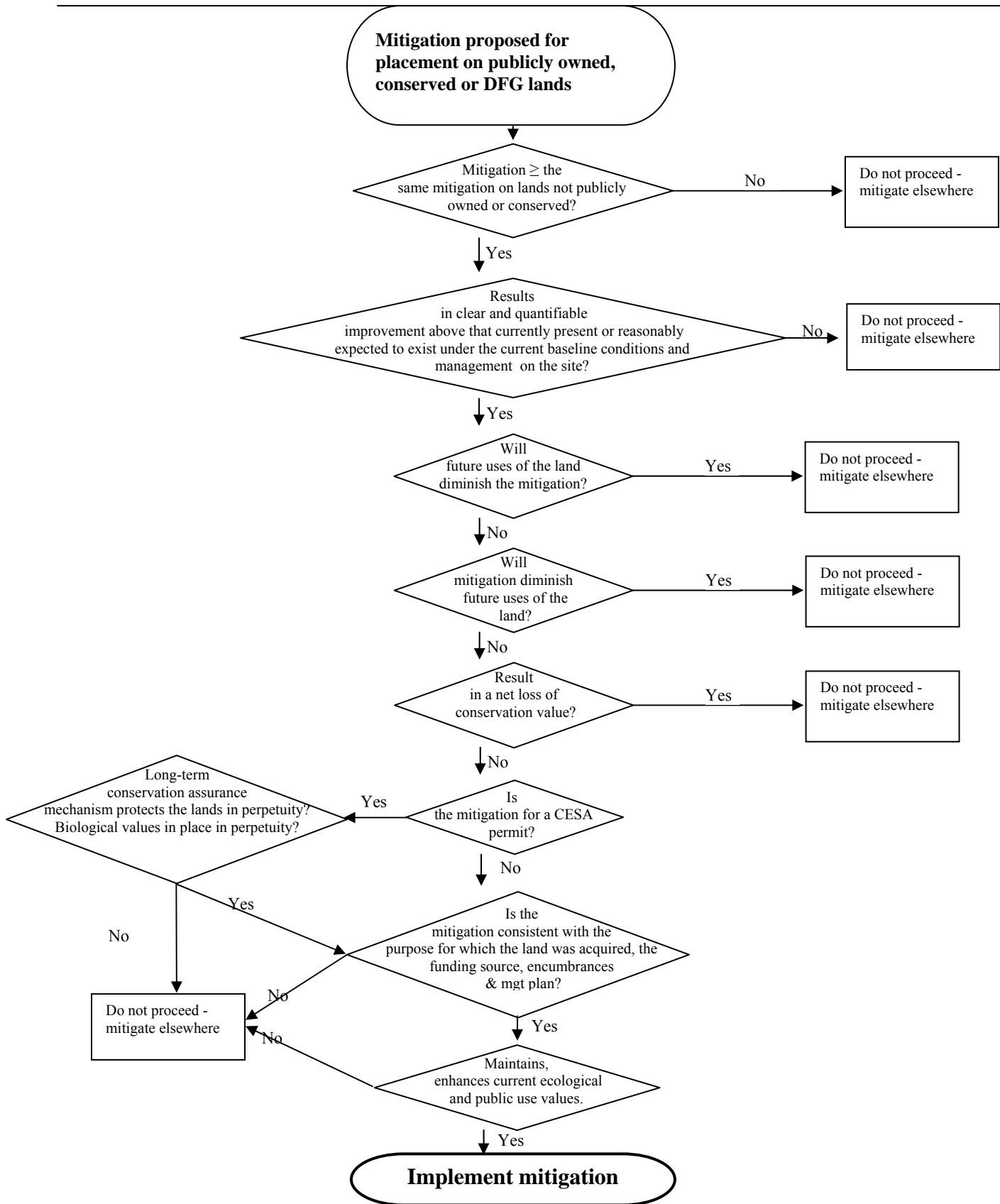
*Department-Owned Lands:* Lands owned in fee title by the California Department of Fish and Game or the Wildlife Conservation Board.

*Publicly Owned Lands:* Lands owned in fee title by a public agency, other than Department-Owned Lands. Land access, use and/or certain resource purposes on the lands are preserved for the public by a government agency with legal title or other interest which is required to maintain them for such specific use(s) or to meet diverse needs of the public.

*Restore or Enhance:* Create, re-establish, rehabilitate, or improve habitat that is not present, has been lost or is degraded, improve the ability of existing habitat to support fish and wildlife, change management to improve ability of a habitat to support target species or functions.



# ATTACHMENT: Mitigation on Publicly Owned and Conserved Lands - Flow Chart



For Conserved and DFG lands:

- 1) Recover full cost of mitigation including environmental review and permitting, capital improvements, enhancement, restoration, enforcement, monitoring, long-term management, etc;
- 2) Develop implementing documents as required; and
- 3) Mitigator completes or funds CEQA and any necessary permitting for project implementation.

## **California Department of Fish and Wildlife Policy for Mitigation on Publicly Owned, Department Owned, and Conserved Lands**

The following pages contain the California Department of Fish and Wildlife Policy for Mitigation on Publicly Owned, Department Owned, and Conserved Lands (CDFW 2012).