



Shifting the Regulatory Paradigm Toward Bold Immediate Action for a Resilient California

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Purpose

Wildfire. Drought. Flooding. Species extinction. Climate change. California faces grave threats that require bold, immediate action. An essential part of any solution is to restore and proactively manage California's lands and natural resources at a scale and pace sufficient to result in meaningful benefits.

The purpose of this paper is to help catalyze new conversations and strategies to reduce persistent barriers to environmental stewardship, conservation and restoration of California's lands that are unintended consequences of essential environmental regulations. It summarizes and assesses key advances in addressing these barriers—including legislative and policy approaches as well as approaches based on coordination, collaboration, and trust building—and includes recommended next steps.

This white paper includes a problem statement, key findings (p. 3), assessment of recent efforts (p.3), models outside the field of conservation (p.17), and conclusions and recommended next steps (p.19).

Problem Statement

The current tapestry of environmental laws and regulations have been effective tools to mitigate environmental degradation from human activities. An unintended and antithetical consequence is that this system also creates significant barriers to achieving essential conservation. The idea that environmental permitting is a barrier to environmental work is now generally accepted, and the idea of programmatic and legislative solutions to that problem no longer needs proof of concept.

To become resilient to climate change and other threats- in light of population growth, development patterns and other pressures- we must significantly increase the pace and scale of natural resource conservation, restoration, and stewardship across large landscapes. As public and private land managers face a suite of increasingly complex challenges, they seek new paradigms for managing our lands.

Collaborating across jurisdictions is one new paradigm, and the importance of acting at the landscape scale¹ has become a widely held view in the national conservation community. Developing solutions to the regulatory complexity of cross-boundary stewardship will be critical to achieving landscape-scale outcomes. It is currently challenging to permit projects across geographic and regulatory jurisdictions and multiple landowners.

Our challenge is to reframe the conversation from a focus on risk to a focus on imperative.

Another new paradigm is that it is imperative to act, and inaction is a risk. The current regulatory framework evaluates projects in terms of risk management, considering potential impacts of proposed projects, with few tools to consider their long-term benefits or the risk of inaction. Yet inadequate or piecemeal conservation presents a significantly larger risk than bold, educated, and scalable action. Our challenge is to reframe the conversation from a focus on risk to a focus on imperative.

A “culture” has evolved within this current risk paradigm. Regulators, environmental advocates, and conservation practitioners focus significant resources on avoiding potential short-term impacts rather than long-term benefits of environmental improvement projects. This results in fewer and smaller actions being taken at a slower pace and a greater expense. Additionally, these groups often seek to protect the integrity of important laws and regulations that protect the environment from harm, even though those laws are less suited for restoration and conservation. A further concern among regulators and project proponents is the constant looming specter of litigation related to compliance with environmental laws and regulations. An unintended consequence of this dynamic is that we are unable to achieve environmental benefits at the pace and scale we need to meet key threats to California.

Ironically, streamlined permitting for ecologically beneficial projects can free up more resources to (a) achieve State and federal mandates and (b) prevent environmental harm. Sustainable Conservation found that permitting efficiencies for environmentally beneficial projects can reduce agency staff time reviewing projects by thousands of hours, allowing them to focus on other types of projects with significant impacts.² For example, using a programmatic 401 Water Quality Certification for ecological restoration projects saved the North Coast Regional Control Board approximately 25 to 50% in staff time and National Marine Fisheries Service estimates a 90% staff time savings using a programmatic Biological Opinion. Moreover, Sustainable Conservation estimated that a simplified project planning, application, and review process for ecologically beneficial projects could free up to \$124 million in state, federal and local funding for

Inadequate or piecemeal conservation presents significantly larger risk than bold, educated, and scalable action.

¹ Johnson, Shawn. (2017). *Building a Large Landscape Conservation Community of Practice*. Lincoln Institute of Land Policy. Center for Natural Resources and Environmental Policy, University of Montana.

² Sustainable Conservation. (2018). *Expedited Permitting for Statewide Aquatic Restoration: A case for support: 2018-2020*.

restoration applicants over a 10-year period to directly achieve their mandates more effectively and efficiently.

How do we shift the regulatory paradigm to enable larger, more comprehensive, and more meaningful conservation work to be implemented in a cost-effective, time-sensitive manner that focuses on the imperative of action and the risks of inaction?

Key Findings

In preparation of this white paper we conducted interviews, reviewed literature, convened workshops, solicited input from a working group of the California Landscape Stewardship Network, and drew upon over 70 collective years of our own professional experience in natural resource stewardship. Based on these sources of information we offer the following findings:

1. There have been significant advances in permitting efficiencies over the last 15 years. Some have helped “move the dial” towards changing the culture of risk.
2. These pathways are often underutilized or misunderstood by regulators as well as project proponents, local governments, and consultants.
3. Some efforts are not working as hoped or intended, particularly when: (a) no entity “owns” it to ensure its continued success, and/or (b) when permit terms are overly complicated and restrictive.
4. Streamlining environmental regulations to mitigate impacts for other public goods (economic growth, housing, energy, etcetera) has been more successful than streamlining environmental regulations for environmental enhancement. There is more regulatory relief for projects with no net environmental harm than there is for projects with net environmental benefit.
5. Legislative, programmatic, legal, and trust-based solutions influence each other.

Assessment of Recent Efforts

Over the past 15 years there have been a number of significant advances in regulatory efficiencies for a suite of conservation, restoration, and stewardship actions across an array of California’s landscapes. Many evolved from a task force of the California Natural Resources Agency on how to more effectively support voluntary, proactive restoration and habitat enhancement. *Removing Barriers to Restoration; Report of the Task Force to the Secretary of Resources* was published in 2002. It has proven to be a seminal report catalyzing real progress at state and federal levels. Legislation, policies, and programs have created new permit mechanisms to expedite small restoration projects, with varying degrees of success. A shift toward collaborative and coordinated planning has taken hold in many regions in the state. Tangible results are still evolving as these efforts mature. The report made 10 recommendations, some of which were implemented and some of which were not. For a detailed update on the status of these ten recommendations, please see Appendix A.

In 2010, the California Roundtable on Agriculture and Environment (CRAE) published *Permitting Restoration: Helping Agricultural Land Stewards Succeed in Meeting California Regulatory Requirements for Environmental Restoration Projects*³. The recommendations provided by CRAE are very similar to those found in the 2002 Task Force report, and the document recommends creating an inter-agency task force to help address the barriers.

The common thread in this work and other publications⁴ is that our current regulatory framework poses significant barriers to natural resource management due to the complexities of overlapping state and federal regulations and laws, lack of cross-jurisdictional and multi-agency collaboration, unclear requirements, and lack of a common understanding of risks and benefits associated with implementation of various types of actions. Furthermore, we find that existing regulatory streamlining efforts do not address or incentivize larger, more complex efforts.

A number of new approaches have been developed in California and elsewhere to address some of these permit and compliance related barriers. Some of the new approaches are effectively increasing the efficiencies, reducing uncertainty, and creating incentives for voluntary restoration and conservation efforts. A tabular summary of regulatory tools that are available in California to increase permit efficiencies for restoration, stewardship, and conservation has been developed by Sustainable Conservation and can be found online⁵. Information provided below is meant to supplement this summary, providing additional context for these and some additional tools. The examples discussed below are intended to provide (a) a summary of the significant progress to date and innovative strategies that have been tested, and (b) an assessment of the scope and scale of effectiveness in addressing regulatory barriers.

Existing regulatory streamlining efforts do not address or incentivize larger, more complex efforts.

Legislative and Policy Approaches

CEQA Categorical Exemption

In 2004, Section 15333 was added to the California Environmental Quality Act (CEQA), creating the Categorical Exemption for Small Scale Habitat Restoration. It was the first major action implemented based on the 2002 Task Force report.

Benefits:

- It provided proof of concept and momentum for regulatory streamlining for habitat restoration.

³ Retrieved from: http://www.aginnovations.org/uploads/result/1431289151-93b99a9dd9a0442df/CRAE_Permitting_Restoration.pdf

⁴ Such as Ulibarri, N., Cain, B.E., & Ajami, N.K. (2017). *A Framework for Building Efficient Environmental Permitting Processes*. Sustainability, 9(2): 180.

⁵ Retrieved from: https://suscon.org/pdfs/acceleratingrestoration/pdf/Expedited_Simplified_Permitting_for_Voluntary_Habitat_Restoration_Projects.pdf

- It has been heavily utilized by public agencies with missions focused on ecological restoration.
- It has been pivotal in increasing efficiencies (time and cost) for implementing small habitat restoration projects throughout the state.

Challenges:

- The exemption is limited to small habitat restoration projects with an impact footprint of less than 5 acres.
- Lack of clarity about language in the exemption has led to different interpretations and underutilization.
- Perceived risk about legal vulnerability, public perception, and natural resource protection has led to underutilization of this tool.

Voluntary Local Program (VLP)

The VLP represents one of the brightest spots in reducing regulatory barriers to conservation to date in California. The concept of the VLP was authorized by Senate Bill 231 (Costa 1997) and required the California Department of Fish and Wildlife (CDFW), in cooperation with the California Department of Food and Agriculture, to adopt regulations to create locally designed voluntary programs for routine and ongoing agricultural activities on farms and ranches that would encourage habitat conservation and minimize take of State listed species and wildlife in general. The first VLP was jointly developed 15 years later in 2012 by CDFW, the USDA Natural Resources Conservation Service (NRCS), and the Alameda County Resource Conservation District (RCD). The Alameda County RCD is the holder of the first VLP, and the Contra Costa County RCD now holds a companion VLP that covers a similar suite of practices and species. These two are still the only approved VLPs in California.

The Alameda County VLP is an excellent demonstration of an underutilized tool in the effort to increase the pace and scale of conservation. Working collaboratively, staff from CDFW, the RCD and NRCS realized that the listing of California tiger salamander for protection under the California Endangered Species Act (CESA) had the potential to jeopardize successful conservation programs. They agreed that the risk to the species from undermining the conservation program was greater than the risk of regulatory streamlining. The VLP was developed and finalized in approximately one year. According to former RCD staff, CDFW “made this happen, made sure it was simple, and helped make it a huge success.”

Benefits:

- VLP incentivizes farmers and ranchers to follow wildlife-friendly agricultural practices by providing an exemption from some prohibitions in CESA.
- Alameda County’s program is hailed as a major success by both the landowners enrolled in the program and staff at the three agencies that jointly developed the VLP.
- VLP is a proof of concept and an existing mechanism for improved efficiency and benefit.
- Unlike traditional Incidental Take Permits or programmatic state Safe Harbor that are often considered to be too costly and cumbersome to create, approve, and administer; VLP has proven to be easy to administer and simple for landowners to enroll in.

- VLP's flexible enabling legislation does not raise concerns regarding landowner exposure and risk in development of baseline conditions on private lands that other programs do.
- VLP does not require documentation of baseline conditions that pose a barrier to landowner participation because of risk and exposure.
- Voluntary conservation efforts under the VLP are considered self-mitigating, avoiding insurmountable costs from CESA requirement to fully mitigate for conservation projects that deters participation in other programs.
- Two agencies added companion regulatory efficiencies to the VLP to further incentivize conservation: San Francisco Regional Water Quality Control Board developed a companion General Order for Waste Discharge (WDR) and the USFWS developed a Programmatic Biological Opinion (BO).

Challenges:

- By statute, VLPs cannot be used for most fish species.
- Due to the lack of completed VLPs and the emergence of state Safe Harbor Agreements (discussed below), there have been recent discussions about discontinuing this program.⁶
- VLPs are limited to lands used for farming and ranching.

401 General Certification for Small Habitat Restoration Projects

Section 401 Certifications, required by the federal Clean Water Act (CWA), confirm that proposed project actions comply with all applicable water quality standards and requirements. In 2007 the State Water Resources Control Board, in collaboration with the Army Corps of Engineers, issued a General Order creating a simplified process for projects that meet the conditions of Categorical Exemption 15333 described above. The General Order was amended in 2012 and 2013 and is currently going through another amendment process. The updated versions include Waste Discharge Requirement coverage, expanding to projects beyond U.S. Army Corps of Engineers' jurisdiction. Fees are reduced for ecologically beneficial projects.

Benefits:

- It is consistent with CEQA Exemption 15333.
- It has increased comfort among some resource agency staff with providing simplified permitting for net beneficial projects. The State Water Resources Control Board is considering expanding the scope and scale of the tool to better incentivize conservation (with help from Sustainable Conservation and funding from the State Coastal Conservancy). The North Coast Regional Water Quality Control Board adopted a policy resolution in 2015 providing clear guidance to staff to help remove barriers to implementing restoration work along California's north coast⁷.

⁶ Personal communication with Leslie Koenig, biologist involved in developing the Alameda County RCD's VLP.

⁷ California Regional Water Quality Control Board, North Coast Region. January 29, 2015. Resolution No. RI-2015-0001: Policy in Support of Restoration in the North Coast Region. Accessed at https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/161116/161115_Regional_Board_Resolution.pdf

- The Regional Water Quality Control Boards also have a reduced fee structure for traditional 401 certifications for large habitat restoration projects, which is a significant benefit for larger projects and is well used.
- Past amendments, the current amendment process, and the North Coast Regional Board's policy strongly suggest this innovative effort has helped catalyze a shift in the culture at these agencies regarding the benefits of expedited permitting.

Challenges:

- The current version of the General Order goes beyond the CEQA limit of 5 acres and further restricts eligible projects to a maximum of 500 linear feet of stream. This results in underutilization of the permit or incentivizing smaller projects.
- It is underutilized due to lack of information and education amongst practitioners and Regional Water Quality Control Board staff across the state, e.g. lack of clarity and differing interpretations about how to measure 500 linear feet and lack of clarity on official documents regarding the approval process.
- Use of the permit requires development and implementation of a monitoring plan, which is not clearly defined and is viewed as an impediment to voluntary conservation, particularly on private lands.

Habitat Restoration and Enhancement Act of 2014 (AB 2193/ HREA)

This legislation addresses a suite of efficiencies related to permitting of restoration projects through the California Department of Fish and Wildlife (CDFW). Among other benefits, the Act developed one simplified application and process for obtaining a Lake and Streambed Alteration Agreement (LSAA) and compliance with the CESA.

Benefits:

- It creates a number of efficiencies pertaining to CDFW permitting.
- It uses criteria consistent with the small habitat restoration CEQA exemption and 401 Certification.
- Awareness and use of the tool are increasing, enhanced by outreach and education efforts by Sustainable Conservation.
- The Act includes legislated deadlines, preventing delays in obtaining permits.

Challenges:

- Size restrictions limit its utility and incentivize small projects.
- As with the 401 Certification, there is lack of clarity and consistent interpretation about how to measure 500 linear feet of streambank (e.g., both banks counted separately or counted from the centerline; total length of project or cumulative length of each individual area of impact).
- There is lack of clarity about whether State fully protected species are included in the legislation.
- CDFW staff are not fully comfortable utilizing it yet (Sustainable Conservation is working on this issue).

- The way CDFW is implementing it requires between 6 to 11 signatures, from staff level to the Director. This causes delays and burdens to staff, as well as staff concerns about meeting legislated deadlines.
- There are no fee reductions for restoration projects.

Army Corps of Engineers Nationwide Permit #27

Section 404 of the Federal Clean Water Act grants the Army Corps of Engineers authority to review and approve projects that result in dredge or fill of wetlands and other waters of the US. The Nationwide Permits (NWP) program is authorized by the Corps as a programmatic mechanism for compliance with Section 404 for 42 unique project types. Nationwide Permit #27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities) covers a large suite of ecological restoration project types within the jurisdiction of the Army Corps of Engineers.

Benefits:

- It is well established and the criteria for inclusion, general conditions, and requirements are clear.
- There are no project size limits.
- It covers a large suite of ecological projects.

Challenges:

- Although there are no size limits in the NWP, there are inconsistent staff determinations and lack of clarity about whether a project is eligible.
- Lack of certainty has led to some underutilization.
- It does not address Corps obligations related to the Endangered Species Act and National Historic Preservation Act. These federal nexus requirements can be the most time-consuming components of 404 compliance.
- NWPs expire every 5 years and require renewal, creating some uncertainty for applicants and confusion about whether approval under an expired NWP is still valid.

NOAA Programmatic Biological Opinions (BO)

The National Oceanic and Atmospheric Administration Restoration Center (NOAA RC) has been a trailblazer in developing tools to increase the efficiency of compliance with the Endangered Species Act (ESA) for projects that benefit listed species under their jurisdiction. In 2006, the NOAA RC completed the first-of-its-kind Programmatic BO to cover implementation of a wide suite of fisheries restoration practices within the jurisdiction of their Santa Rosa office. This BO was renewed for an additional 10 years in 2016 and companion BOs now exist for all regions of the State.

Benefits:

- It has very limited restrictions on size and project types covered.
- The agency has shifted its perception of risk. Concerns about risk resulted in size and project limitations in the original Programmatic BO. After seeing its clear benefits, the

agency removed many restrictions to incentivize larger, more ecologically beneficial projects.

- The process is simple, including the application.
- Interaction between the Corps and the NOAA RC for Section 7 consultation using the programmatic is seamless.
- The value of this BO has expanded with the Coastal Commission's approval of Federal Consistency with the Coastal Act for projects covered under the BO (see below).

Challenges:

- It does not contain a companion Consistency Determination from CDFW for coverage of California Endangered Species Act listed species.
- It does not contain coverage for non-salmonid ESA listed species that commonly co-occur in aquatic habitats such as California red-legged frog, etc.

Federal Consistency with the Coastal Act

Building on its success, the NOAA RC has extended the utility of its Programmatic BOs to include a programmatic Federal Consistency Determination for compliance with the California Coastal Act, under the jurisdiction of the California Coastal Commission. The Commission has an office specifically designated to work with federal partners to ensure that federal actions are consistent with the Act.

Benefits:

- This CD allows projects that are approved under the NOAA RC BO and/or have funding or technical support from the NOAA RC to use an extremely streamlined and cost-effective approach to compliance with the Coastal Act.
- This process is free and in lieu of what can be an expensive process and fee to obtain a Coastal Development Permit (CDP) through local governments implementing Local Coastal Plans, or from the Commission.
- Timelines for completing compliance are reduced from many months or longer to a matter of weeks.

Challenges:

- This process is not well understood by many local jurisdictions that implement the Coastal Act through Local Coastal Plans. There is a need for education to minimize confusion and duplication of effort.
- Some stakeholders who are used to the public process associated with CDPs are concerned by the lower level of public engagement in the CD process.

Fisheries Restoration Grants Program (FRGP)

This CDFW grant program developed its own set of programmatic permits to increase efficiencies (time and cost) of implementing funded projects.

Benefits:

- It offers a suite of permits, including an annual Programmatic CEQA Initial Study with Mitigated Negative Declaration, a Regional General Permit for 404, Programmatic 401 Certification, and Programmatic Biological Opinions from the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS).
- The NOAA Restoration Center utilizes its Federal Consistency Determination with the California Coastal Act for most FRPG funded projects within Coastal Commission jurisdiction.
- Permits and timelines for grant-funded projects have significantly increased certainty.

Challenges:

- CDFW's own permits are not included, i.e. Lake and Streambed Alteration Agreements (LSAA) and take authorization through the California Endangered Species Act (CESA).
- CDFW's own permit fees are not waived or reduced.
- Until approximately 2006, CDFW staff were empowered to include non-FRGP funded salmonid recovery projects under this suite of programmatic permits, further increasing the value of these tools and of FRGP. Concern about risks⁸ of covering non-funded projects resulted in the practice being abandoned.

USFWS Programmatic Biological Opinions (BO)

The U.S. Fish and Wildlife Service's Partners in Wildlife Program followed the NOAA RC's lead and created a programmatic BO in 2010 via intra-service consultation.

Benefits:

- It was developed specifically to address internal regulatory barriers to implementing species recovery actions in the Central Valley and Foothills.
- It directly supported an existing effort by linking to the Rangeland Conservation Coalition's priorities and conservation targets.
- It was developed collaboratively with private landowners, state and federal landowners, and regulators with the specific goal of increasing the pace and scale of conservation in these areas.
- Intra-service consultation enabled this BO to be used on projects with or without a Corps nexus.
- While this effort never gained the traction and utility that the NOAA RC effort has, the lessons learned are helping Sustainable Conservation work with the USFWS to create a statewide programmatic BO to benefit aquatic habitats and listed species where there is a Corps nexus.

Challenges:

- It was underutilized due to internal issues including complexity with compliance, concern about programmatic approvals, and staff turnover.
- It was limited in geography and not useable for USFWS's similar Coastal Program.

⁸ Note: The nature of these risks was never articulated publicly so that they could be fully understood and assessed.

- It does not appear to be used any longer, although it is valid through 2020.

Partners in Restoration (PIR)

PIR programs are designed to create a one-stop-shop for permitting in which local Resource Conservation Districts (RCDs) hold a comprehensive suite of programmatic permits (e.g., Section 404 permit and 401 certification, Biological Opinions from NMFS and USFWS, CEQA, and County Planning) that cover a specific set of conservation practices. Sustainable Conservation developed several PIR programs throughout the state in partnership with RCDs and the USDA Natural Resources Conservation Service (NRCS). PIRs typically depend upon NRCS design specifications and federal nexus.

Benefits:

- These programs provide landowners with access to a suite of programmatic permits that incentivize voluntary conservation by reducing uncertainty and costs associated with regulatory compliance.
- They provide engineers and landowners with clear design specifications and best practices to help maximize natural resource benefit and minimize impacts.
- Since PIRs are locally based and developed, they have fine resolution for addressing local natural resource issues and are among the only tools that streamline local regulatory barriers.

Challenges:

- While PIR programs have proven invaluable in a number of settings, development of new PIR programs has slowed due a number of interrelated issues, including:
 - the cost of developing and administering programs;
 - reduced commitment from NRCS; and
 - waning support from key regulatory agencies due to the upfront costs, even if there is overall reduction in costs; and
 - in 2011, Sustainable Conservation published *Creating a Statewide Program for Voluntary Restoration on Private Lands: Promoting Statewide Permit Coordination*. This document detailed constraints to developing new local PIR programs and a pivot toward statewide solutions.

Programmatic Safe Harbor Agreements

The federal Safe Harbor Agreement (SHA) program is implemented by USFWS and NMFS under Section 10(1)(a) of the Endangered Species Act. The passage of SB 448, the California State Safe Harbor Agreement Program Act, updates the state's Fish and Game Code to include a process parallel to the federal program. Three agreements are currently in place in California, all of which were developed to incentivize and expedite implementation of conservation actions over large landscapes (Lower Mokelumne River Safe Harbor -finalized in 2006, the Valley Longhorn Elderberry Beetle and Giant Garter Snake Programmatic Safe Harbor in Yolo County -finalized in 2007, and the Sacramento River Conservation Forum Area -finalized in 2013).

Benefits:

- Landowners are incentivized to manage their lands for protected species by shielding them from liability if one is accidentally “taken” as part of routine agricultural practices.
- Oregon and southeastern US have demonstrated effectiveness and scale of these SHAs. The Oregon Department of Forestry recently signed a statewide SHA with NRCS and USFWS to provide coverage related to take of the northern spotted owl for enrolled forest landowners, and a multi-state SHA for the endangered red-cockaded woodpecker has enrolled more than 400 landowners over 2.3 million acres, contributing to a 25% increase in the population of this endangered woodpecker on their lands.

Challenges:

- The three programmatic SHAs in California are federal and do not provide safe harbor from the state.
- State SHAs provide CESA coverage but no companion LSAA or other state approvals or waivers.
- A recent assessment⁹ found that landowner participation in California has fallen short of expectations, while significant resources have gone into creating these tools. It also found nationally that, “Agreement development takes too long and is not always a priority for staff... [M]any agreements are developed as if they are a contract between adversarial parties... If 22 years of experience leads the agency to believe that there is real partnership opportunity, a faster approach to agreement development and a higher degree of trust in participants could go a long way to expanding the partnerships.” The author summarizes, “After 22 years and having inked 100 agreements, the concept of Safe Harbor is no longer a pilot or experimental idea for endangered species management. The U.S. Fish and Wildlife Service can take a number of steps to learn from that experience. This should include a decision on whether and how to scale up Safe Harbor so that it makes a meaningful positive impact on wildlife conservation and people because the demand for such agreements is likely much bigger than the progress made thus far.”

Joint Aquatic Resource Permit Application (JARPA)

JARPA was a regional Bay Area effort to fulfill a statewide recommendation for a streamlined permit process for environmentally beneficial project. This early effort represented a major conceptual step forward in creating a streamlined and simplified permit application.

Benefits:

- It created one application for multiple agencies to simplify the permit application process.
- It standardized project review by providing state and federal agencies with the same project description and plans, impacts analysis, and proposed avoidance, minimization and mitigation measures.

⁹ Michael J. Bean. 2017. Endangered Species Safe Harbor Agreements: An Assessment Working Paper. Madison, WI: Sand County Foundation/Environmental Policy Innovation Center.

Challenges:

- JARPA included most, but not all watersheds within the nine Bay Area counties, leading to some confusion for applicants.
- Regulatory agency staff were not universally comfortable with the form and continued to request that applicants fill out individual agency applications and provide additional information for each agency, diluting the value of a unified permit application.
- Chronic requests for additional information created unintended uncertainty and delays for project proponents and led to limited adoption of JARPA.
- No single agency took ownership to ensure that it stayed current as respective agencies' permit applications changed to reflect changes in legislation, policy, and/or concerns. As a result, JARPA became less relevant and more out of date, further reducing its utility.

National Environmental Policy Act, Categorical Exclusion for Fuel Reduction Practices in the Lake Tahoe Basin

Congressman Tom McClintock included an amendment in the December 2016 Water Infrastructure Improvement for the Nation Act (WIIN) that allows for a list of specific forest management activities focused on fuel reduction to be categorically excluded from the requirements of NEPA.

Benefit:

- It is intended to accelerate the pace and scale of forest management activities, reducing risk of catastrophic fire and improving forest health.
- According to McClintock, a Regional Forest Service Manager estimated that this Categorical Exclusion would reduce NEPA compliance documents from an average of 800 pages to an average of 40 pages, reducing the costs, uncertainty, and time associated with traditional NEPA compliance.

Challenges:

- Federal agencies in the Tahoe basin have found the Categorical Exclusion difficult to utilize due to potential legal challenges by entities who are concerned that this exclusion would enable practices that are deleterious to the environment. They feel the NEPA exclusion was developed to circumvent important federal regulations meant to protect the environment and provide disclosure to interested citizens.

Regional Conservation Investment Strategies (RCIS)

The RCIS process can involve all or one of the following steps: creation of a regional conservation assessment, development of a regional conservation investment strategy, and if a RCIS is approved, then a Mitigation Credit Agreement (MCA) can be developed. Currently, much of the focus for local or regional agencies developing an RCIS is its potential use to mitigate impacts of development, although the enabling legislation, guidance documents and the language being used by CDFW staff focuses on using the RCIS process to increase the pace and scale of voluntary conservation.

Benefits:

- RCIS creates a regional “blueprint” for conservation with specific recommendations that can help drive priority conservation actions.
- Approved RCISs will be eligible for specific grant funds focused on implementing the strategy.
- If an MCA is completed, additional funding from mitigation for impacts will be available to implement conservation.

Challenges:

- RCIS does not address regulatory barriers to implementing priority conservation recommendations and was not specifically developed to do so. However, the program is overseen by CDFW and the regulatory relief and liability protections for landowners willing to implement priority actions could significantly increase the value of this tool.
- No other state or federal agencies are collaborating with CDFW in approval of RCISs or MCAs. Expanding the process to include partner resources agencies represents an opportunity to further increase its value and reach.

California SB 901

The “Wildfires Bill” was signed into law in 2018, and among other things, created two new permit efficiencies that incentivize forest landowners to conduct fuel management practices and more. The Small Timberland Owner Exemption and the Forest Fire Prevention Pilot Project Exemption exempt certain landowners from the Z’berg-Nejedly Forest Practice Act of 1973 and enable tree and brush removal, access road construction, and other practices necessary to reduce the potential for catastrophic wildfire and protect forest resources. This bill and the associated provisions are just going into effect and it is hard to analyze benefits and challenges without experience with how these exemptions will be used and will evolve.

Approaches Based on Collaboration and Trust

Building trust, a shared vision, and collaboration between landowners, conservation groups, and resource agencies is critical to address regulatory barriers to restoration. We found this to be a common theme in the literature and interviews, as well as our professional experience.

Building trust, a shared vision, and collaboration between landowners, conservation groups, and resource agencies is critical to address regulatory barriers to restoration.

There are a number of bright spots that highlight the potential effectiveness of collaboration as a tool for reducing regulatory barriers in this section as well as below, in “Approaches Outside of Conservation.”

Central Coast Integrated Watershed Restoration Program (IWRP)

IWRP was developed to function as a focal point and framework to improve regional restoration and conservation planning and delivery. It is a non-regulatory process, relying on the voluntary

cooperation of landowners, collaboration of watershed partners, and a Technical Advisory Committee (TAC) composed of regulators and experts from state, federal, and local resource agencies. The unique and foundational centerpiece of IWRP has been its TAC. The IWRP TAC is deeply engaged in identification, prioritization, and oversight of IWRP projects. Over the past 15 years, IWRP has resulted in over 150 wetland restoration, fish passage, water quality, and instream flow improvement projects being implemented across Monterey, Santa Cruz, and San Mateo counties. Moreover, due to the success of the program and support from resource agency partners, the program has brought in more than \$20 million in funding for conservation and restoration.

Benefits:

- While the culture of regulatory compliance previously focused on resource agencies reacting to permit applications, IWRP engaged agency staff proactively in project development from inception to implementation.
- With collaborative input, projects are designed and built to the highest technical standards, benefits are maximized and impacts are minimized.
- Trade-offs are discussed openly and analyzed via consensus.
- IWRP has resulted in significantly increased permit efficiencies due to agency staff confidence in projects prior to permit applications being submitted.
- IWRP provided the forum which led to development of the NOAA RC's original Programmatic Biological Opinion in 2007, which then catalyzed similar statewide efforts including the Federal Consistency Determination with the Coastal Act described above.
- IWRP has achieved national recognition, including the 2011 the Coastal America Award for excellence in collaborative conservation from the Obama administration and the 2008 American Fisheries Society Western Division Challenge Award for excellence in collaborative fisheries restoration.
- The trust that has been built through years of effort with IWRP has enabled the RCDs to function as local hubs to expand the program's scope to provide support for addressing much larger and more complex projects across the Central Coast.

Challenges:

- The IWRP TAC is only as effective as its resource agency partners. Resource agencies that commit staff to working on the TAC have been very successful in seeing mission-critical projects developed and implemented. Conversely, resource agencies that do not engage are also less likely to see the value in the IWRP model for meeting their agency's mandates.
- Facilitating the TAC and engaging with landowners to develop project ideas that address resource agency mandates is time consuming and costly work. The State Coastal Conservancy has been forward thinking and has funded most of the IWRP program over the past 15 years. Funders often wish to fund project implementation rather than programs.
- Agency staff turnover can result in less investment in IWRP as new staff do not have the relationship and history, and therefore trust, with the program.

San Francisco Bay Coordinated Permitting Approach

This new (2018) collaboration between multiple state and federal resource agencies has the specific charge of ensuring “timely action and compliance” with the vast array of federal and state permitting authorities with jurisdiction over the San Francisco Bay and its environs. Of the two teams formed as part of the effort, the Bay Restoration Regulatory Integration Team (BRRIT) is charged with improving the permitting process for multi-benefit wetland restoration projects and associated flood management and public access infrastructure in San Francisco Bay by dedicating agency representatives to review project information and prepared permit applications for consideration as a team in the most efficient manner. The includes members of the permitting authorities who handle regulations including but not limited to: Clean Water Act (CWA) §404, CWA §401 Water Quality Certification, McAteer-Petris Act, Endangered Species Act, Essential Fish Habitat, California Endangered Species Act, California Water Code, CDFW 1600, San Francisco Bay Basin Plan, Suisun Marsh Preservation Act, Rivers and Harbors Act, Coastal Zone Management Act, and California Fully Protected Species.

Benefits:

- Projects will be vetted by resource agency staff empowered to make decisions prior to permits being submitted, which may result in more certainty for project applicants.
- Positions in each resource agency within the BRITT are funded through the Bay Area Restoration Authority and the Coastal Conservancy, ensuring commitment to the process.
- If effective, the BRITT will represent a model that scales up the IWRP model and could be further scaled-up to facilitate delivery of regional conservation efforts elsewhere in the state.

Challenges:

- BRITT will not be developing programmatic permits, so individual projects will still need to go through traditional permit processes.
- Replicability might be hampered by the financial model that includes the Bay Area Restoration Authority funding positions at each resource agency to participate in the BRITT and process permit applications. Other regions of the state may not have the financial capacity to fund the necessary positions.

Other Regional Coordination Efforts

Permit challenges may not be the driving force for developing regional technical review teams, but the coordinated approach is showing progress throughout California. From Lake Tahoe’s Environmental Improvement Program to the Southern California Wetlands Project, state, local, and federal agencies are working to create more collaborative, coordinated, and proactive engagement across public and private landowners/managers and resource protection agencies. This approach becomes more essential for landscape level stewardship, as the technical complexity, the spatial scale, and the number of affected jurisdictions increase.

In the Lake Tahoe Basin, the environmental restoration program for the region spans two states and five counties with nearly 80% federal land ownership. According to Kim Caringer at the Tahoe Regional Planning Agency, resource agencies have been working together for over 20 years to build a culture of collaboration and coordinate environmental review and permitting of restoration projects. This includes building inter-agency working groups and permitting teams and engaging the public early in project development. She noted that while Lake Tahoe has made great strides in collaboration and coordination on small-scale projects, more work can be done on large landscape-scale analysis and permitting. As resource agencies desire to increase the pace and scale of project implementation to respond to new emerging threats such as catastrophic wildfire, increasing the pace of environmental review and permitting needs to advance along with this desire for it to be realized.

Models Outside of Conservation

In addition to the examples within the conservation sector articulated above, there has been significant effort and success¹⁰ in California and nationally increasing regulatory efficiencies and streamlined

permitting to address an urgent need or react to a crisis, e.g. to spur economic growth, facilitate development, ensure sufficient energy, and address housing shortages. Ironically, there exists large-scale streamlining of environmental regulations in other sectors of the economy, while large-scale environmental stewardship and ecological restoration remain hamstrung by concerns about risk to the environment. Following are examples of streamlining from outside of the conservation sector, which might provide models for creating greater efficiencies for implementing conservation at-scale:

- The Warren-Alquist Act gave the California Energy Commission comprehensive permitting authority over thermal power plants 50MW or larger in the midst of the California energy crisis.
- California AB 1804, created a new CEQA exemption in 2018 to streamline the approval process for multi-family units and low-income housing in an effort to address the state's housing crisis.
- Habitat Conservation Plans (federal) and Natural Community Conservation Plans (state) were developed to comprehensively mitigate the impacts of development and large infrastructure projects. They are intended to reduce the time, cost, and uncertainty associated with federal and state endangered species protections; facilitating development while minimizing impacts to protected species. Ironically, in many regions they have led to increased costs and complexity for implementing conservation and

Ironically, there exists large-scale streamlining of environmental regulations in other sectors of the economy, while large-scale environmental restoration remains hamstrung by concerns about risk to the environment.

¹⁰ Success in this context is defined as objective and related to whether the action was completed or approved. It does not refer to the intention or effect of the action.

restoration due to rigid regulatory and cost structures that are not in sync with voluntary conservation projects.

- The U.S. Environmental Protection Agency (EPA) Smart Sectors¹¹ is a multi-jurisdictional collaboration to reduce permitting inefficiencies to expedite major development projects and spur economic growth. The program focuses directly on building trust through coordination and collaboration. It is founded on early and transparent communication between project applicants and regulatory agencies. Smart Sectors develops trust between parties and proactive and meaningful mitigation for project impacts, in order to reduce costs associated with a long and uncertain permit process. The EPA's role in the process is to help facilitate collaboration between and amongst federal agencies, state agencies, local agencies and applicants. If the EPA is keen to provide this tool to ensure that economic growth continues and environmental impacts are mitigated in a meaningful way, perhaps they could also play a role in building on and expanding some of the existing bright spots highlighted below.
- The White House Council on Environmental Quality and the California Governor's Office of Planning and Research developed a handbook in 2014 to provide guidance to implement NEPA and CEQA efficiently and effectively¹². As the handbook notes, a joint review process can avoid redundancy, improve efficiency and interagency cooperation, and be easier for applicants to navigate, avoiding unnecessary delay, confusion, and legal vulnerability.
- With Executive Order 13807 in August 2017, the Trump Administration created the One Federal Decision policy that requires federal agencies to develop a single permitting timetable for large infrastructure projects and prepare a single environmental impact statement, sign a single record of decision, and issue all necessary authorization decisions within 90 days of issuance of the record of decision. The goal is to reduce the duration of the NEPA process to an average of no more than two years from publication of the Notice of Intent to prepare an EIS—a process that typically takes an average of 5 to 7 years and can take up to 25 years. The Executive Order also creates page limits for NEPA documents to further streamline analysis and review. Secretary's Order 3355 was also issued in August of 2017 to implement EO 13807 with the specific intent of improving the Department of Interior (DOI)'s NEPA review process. This order instructed each bureau or office within the DOI serving as a NEPA lead agency to limit Environmental Impact Statements (EIS) to a maximum length of 150 pages (or 300 pages for unusually complex projects), and to ensure that each Final EIS be completed within 365 days of the Notice of Intent publication date¹³. The driving force behind these orders has been to reduce costs

¹¹ Learn more at <https://www.epa.gov/smartsectors>

¹² White House Council on Environmental Quality. (2014). *NEPA and CEQA: Integrating Federal and State Environmental Reviews Report*. Retrieved from: https://ceq.doe.gov/docs/ceq-publications/NEPA_CEQA_Handbook_Feb_2014.pdf

¹³ Department of the Interior. *Memo on Additional Direction for Implementing SO 3355*. (April 27, 2018). Retrieved from: https://www.fws.gov/environmental-justice/pdfs/additional_direction_for_implementing_so_3355.pdf

of regulatory compliance and expedite approval of development projects under the purview of NEPA.

Conclusions and Recommended Next Steps

The past 15 years has seen a number of significant advances in regulatory efficiencies for a suite of conservation actions across an array of California’s landscapes. These efforts have “moved the dial,” providing significant proof of concept about the potential benefits to improving regulatory efficiency. We assessed these efforts and identified many lessons to be learned. Each model has benefits and challenges, some are underutilized, and some new solutions are needed. In particular, we found that existing regulatory streamlining does not sufficiently incentivize- and often disincentivizes- larger, more complex efforts that are necessary to build California’s resilience. We also identified models of large-scale streamlining of environmental regulations to address economic and other imperatives, while large-scale environmental stewardship and ecological restoration remain hamstrung by concerns about risk to the environment.

Build political capital, shared investment, a shared imperative and a comprehensive strategy to shift the paradigm from fear of action to fear of inaction.

Based on these findings as well as input from 24 experts we convened in Sacramento on January 23, 2019, we recommend the following next steps. We are grateful for the insights and input of our many advisors.

1. Develop a shared narrative about the barriers posed by environmental regulations to accomplishing natural resource stewardship critically needed to increase California’s resilience to drought, flood, wildfires, and other urgent issues.
2. Develop a more detailed map of underutilized or misunderstood opportunities identified in this document to identify next steps that will reduce barriers to stewardship and conservation.
3. Conduct a series of focused conversations with project proponents who fear using existing pathways to better understand their rationale, fears, and perceptions of risk.
4. Secure clear interpretations by state and federal decision-makers where exemptions and streamlining already exist but are not fully utilized due to lack of clarity and/or perceived risk.
5. Support efforts of Sustainable Conservation and others as appropriate to expand limits on existing programmatic efficiencies and develop new pathways.
6. Build political capital, shared investment, a shared imperative and a comprehensive strategy to shift the paradigm from fear of action to fear of inaction. Utilize the established working group of the California Landscape Stewardship Network to include

key entities working across this arena: social change theorists; environmental conservation NGOs; large landowner groups; public and private land managers; government agencies; and the private sector, including lobbyists and environmental consultants.

California faces grave threats- climate change, drought, flooding, wildfires, species extinction and more- that require bold, immediate action. We must proactively restore and manage California's natural resources at a scale and pace sufficient to result in meaningful benefits to address these threats. Yet we face a regulatory framework that perceives action as risk and incentivizes inadequate or piecemeal conservation. This presents a significantly larger risk than bold, educated, and scalable action. Our challenge is to reframe the conversation from a focus on risk to a focus on imperative.

Appendix A: Status of Recommendations from “Removing Barriers to Restoration; Report of the Task Force to the Secretary of Resources”

In the early 2000s, the California Natural Resources Agency convened a task force that was comprised of representatives from landowner groups, state agencies, and the restoration community, with the specific charge to provide guidance to the State government on how to more effectively support voluntary, proactive restoration and habitat enhancement efforts. The task force’s final report, *Removing Barriers to Restoration; Report of the Task Force to the Secretary of Resources*, was published in 2002. The report made 10 recommendations, some of which were implemented and some of which were not, as outlined below¹⁴.

1. Create a Categorical Exemption under CEQA for Small-Scale Restoration Projects:

- a. Status: This recommendation was implemented in 2004, with the inclusion of a new Categorical Exemption to the CEQA Guidelines (section 15333, Small Habitat Restoration Projects).
- b. Complexity: While this recommendation has provided regulatory efficiencies for small projects, its use has been limited by: (a) confusion regarding when it applies and when it does not due to unclear language; (b) the 5-acre project size constraint; and (c) the fact that the exemption is for individual restoration projects rather than broader restoration programs.
- c. Next Steps: Many project proponents are hesitant to use this exemption due to lack of familiarity, confusion regarding interpretation of the text, and risk aversion. Risk aversion appears to be rooted in both: (a) the lead agency’s internal concerns regarding adequate environmental review for projects that are beneficial but have limited construction-related impacts; and (b) external fears about the perception of stakeholders to Categorical Exemptions. Additional cultural shifts are required to increase the effectiveness of existing tools like this.
- d. Alternative Programs: In addition to its use for small projects, the Categorical Exemption helped catalyze two additional permit efficiency efforts—the State Water Resources Control Board’s 2013 General Order for Small Habitat Restoration Projects (providing simplified approval for Clean Water Act §401 Water Quality Certifications and Waste Discharge Requirement) and the Department of Fish and Wildlife’s Habitat Restoration and Enhancement Act (providing simplified permitting for section 1600 and California Endangered Species Act). While both of these new mechanisms are examples of significant advancement, both permits are limited to projects that fit under the Categorical Exemption and are currently further limited by an additional size restriction of 500 linear feet of stream.

2. Create a Permit Assistance Center to Aid Landowners Doing Voluntary Conservation Projects:

¹⁴ Information on these recommendations was excerpted from Sustainable Conservation’s 2011 report entitled *Creating a Statewide Program for Voluntary Restoration on Private Lands: Promoting Statewide Permit Coordination* and updated with analysis and additional information by the authors.

- a. Status and Alternative Programs: This recommendation was not implemented on a statewide basis, but certain counties, Resource Conservation Districts, and others have created locally-based guides to help landowners navigate environmental compliance and otherwise assist landowners with permits.
3. Develop a Regional Pilot Technical Review Team for Large-Scale Restoration Projects:
 - a. Status: Although technical review teams have been assembled in selected locations, this recommendation has not been broadly implemented.
 - b. Next Steps: Additional details on “bright spots” related to this recommendation can be found in the Bright Spots section of the paper.
 - c. Alternative Programs: The Integrated Watershed Restoration Program (IWRP) is an example of the power of collaborative and advanced planning but historically focused on smaller-scale projects. This program is founded in early engagement and working directly with local, state, and federal resource agency staff on prioritizing, designing, and permitting projects. Through this process, resource agency staff generally share ownership of IWRP through selection of priority projects, review and input on designs, and oversight of permit and compliance efforts. While IWRP has shown the benefits of early coordination, this is even more essential for large, regional conservation efforts. Clear recognition of this need has led to the creation of the San Francisco Bay Coordinated Permitting Approach, a collaboration between multiple state and federal resource agencies with the specific charge of ensuring “timely action and compliance” by permitting authorities with jurisdiction over the San Francisco Bay and its environs. While permit challenges may not be the driving force in developing regional technical review teams, such approaches to addressing the increased complexity of implementing large scale projects that are cross-jurisdictional and multi-jurisdictional have been effective in identifying, prioritizing, and planning major efforts in the Lake Tahoe Basin, in Southern California through the Southern California Wetlands Recovery Project, and elsewhere. This concept is still evolving, but it is becoming a mainstay of regional conservation and restoration planning in many areas of the state and is resulting in significant improvements in cross-jurisdictional collaboration and a higher level of coordination on permitting and project approvals. Successful technical review teams require substantive buy-in from agency management to ensure staff is empowered to engage regularly and make decisions.
4. Assist the Expansion of Watershed-based Permit Coordination Programs:
 - a. Status: Since 2001, the primary mechanism for addressing this barrier has been the collaborative efforts led by Sustainable Conservation, the Natural Resources Conservation Service (NRCS), and Resource Conservation Districts (RCDs) to expand the Partners in Restoration (PIR) permit coordination program in many areas of the state.
 - b. Complexity: While these programs have been successful, they have proven to be costly to develop and manage and very difficult to grant fund. In addition, they have historically been restricted to a suite of smaller-scale projects and have not been successfully scaled up to cover larger or more complex conservation efforts.

- c. Next Steps: In 2011, Sustainable Conservation published a report entitled *Creating a Statewide Program for Voluntary Restoration on Private Lands: Promoting Statewide Permit Coordination*. This document detailed a number of the constraints related to developing new PIR programs in California and Sustainable Conservation's pivot toward legislative action and statewide programmatic permitting (vs. county or regional) to address critical regulatory barriers at a statewide scale.
5. Develop a State-Recommended Watershed Planning Guide:
 - a. Status: This recommendation has been implemented through the California Watershed Assessment Manual and Guide.
 6. Implement a Pilot Project to Develop a Program EIR in Conjunction with a Watershed Plan:
 - a. Status: The recommendation to develop a program EIR to cover projects described within a community-based watershed plan has not been directly implemented.
 - b. Complexity: The critical concept here was to use a programmatic EIR to provide CEQA coverage for a suite of projects as opposed to analyzing each project individually. There is additional complexity surrounding this recommendation due to the development of the Categorical Exemption for Small Habitat Restoration Projects and a growing sentiment that the vast majority of restoration and conservation work should not require an EIR level of analysis (i.e., generally smaller projects and/or projects that are net beneficial to the environment and do not have significant impacts that cannot be mitigated and should be Categorically Exempt or fit under a Mitigated Negative Declaration). In 2004, this was brought into sharp contrast through a CalFed grant to the Westside RCD to implement projects within the Arroyo Passajero Coordinated Resource Management Plan (CRMP). The grantor, the California Department of Water Resources (DWR), required Westside RCD complete an EIR before DWR would allow funding to be allocated to any of the projects listed in the grant. The projects were all small erosion control, rangeland improvement (fencing, new pipelines for cattle watering, etc.), and riparian planting. The Westside RCD argued that: (a) there was no evidence based on the Initial Study that any significant or cumulatively significant impacts would occur from implementation, and (b) each of the projects individually would be exempt under the brand-new Categorical Exemption for Small Habitat Restoration Projects. The Governor's Office for Planning and Research was brought in to mediate the conflict and, in the end, Westside RCD gave back the grant funds to CalFed/DWR and walked away from the CRMP. In the intervening years, there have been a number of program EIRs developed for watershed plans, but research for this reflection found all of them to be completed by water districts (Los Angeles County Flood Control District, San Francisco Public Utilities Commission, etc.) and not for voluntary conservation or restoration work.
 - c. Next Steps: In 2018, this recommendation appears to be in direct conflict with the concept of reducing barriers to restoration due to the cost, complexity, and often inappropriateness of an EIR as the CEQA document for implementing watershed plans. The Lower Marsh Creek Corridor Restoration Program in Contra Costa County is

currently focused on implementing a suite of small-scale creek and floodplain restoration projects, and American Rivers, in collaboration with the Contra Costa County, is developing a Mitigated Negative Declaration to cover future projects to be implemented under this program. This example, if successful, should help “move the needle” on a more realistic, cost-effective and legally appropriate approach to programmatic CEQA coverage for watershed plans.

7. County Ordinance to Indemnify Landowners Performing Conservation Work:

- a. Status: This recommendation was not implemented.
- b. Complexity: County permitting and indemnification issues remain significant barriers to restoration programs. Although some counties have provided permit exemptions for restoration programs, many do not, and the process of obtaining individual project permits for encroachment, right-of-way, grading, and other county ordinances can be onerous.

8. Enable Advance or Expedited Payments for Government Funding of Restoration Projects:

- a. Status: Grant funding and payments was not the focus of this review, but it remains a significant area of interest in conversations around facilitating conservation.

9. Develop Mechanisms to Pay Environmental Review and Permit Fees for Restoration Projects:

- a. Status: This recommendation was not implemented.
- b. Complexity: Certifying a CEQA document such as an MND currently costs state and county governments approximately more than \$2,000 in fees. For permit fees, CDFW currently charges the same fees for projects utilizing their small habitat restoration permit as they do for other projects requiring compliance with Section 1600 of the Fish and Game Code. County agencies generally require fees for compliance with grading and other ordinances.
- c. Alternative Programs: Many public funding sources will pay for permits and CEQA when the projects are grant-funded. The Regional Water Quality Control Boards require fees to issue Clean Water Act §401 Water Quality Certifications, though fees for restoration projects are significantly reduced.

10. Support Safe Harbor Program:

- a. Status: In 2009, this recommendation was supported with the passage of SB 448, the California State Safe Harbor Agreement Program Act. This law—paralleling the federal Safe Harbor program implemented by the U.S. Fish and Wildlife Service and NOAA Fisheries under Section 10(1)(a) of the Endangered Species Act—encourages landowners to voluntarily manage habitat on their lands for special status species through implementation of a suite of approved conservation actions and measures to avoid impacts to these species.
- b. Complexity: The agreements are intended to benefit species while shielding landowners from regulatory liability if a listed species is accidentally “taken” as part of routine land-use practices. There are at least three federal programmatic Safe Harbor Agreements in place to expedite implementation of conservation over a large

landscape. According to CDFW's website, seven state Safe Harbor Agreements or Consistency with Federal Safe Harbors have been approved.

- c. Next Steps: Research for this effort was unable to obtain detailed information for these agreements and information in enrollment, success criteria, etc. While this tool is potentially a game changer for providing assurances and certainty for landowners with respect to listed species, obstacles such as complexity and cost of creating SHA, potentially burdensome restrictions placed on landowners voluntarily implementing conservation actions, and addressing CESA's "fully mitigated" requirement have reduced the utility of this tool to-date. Cultural changes that address the perception of risk associated with providing landowners with programmatic approvals could result in greatly improved adoption of this tool.
- d. Alternative Programs: The Voluntary Local Program (VLP) is similar to the state Safe Harbor Program, but was established through legislation a decade earlier than SB 448 and is limited to work on agricultural and ranch lands and does not cover incidental take of fish species. Alameda County RCD and Contra Costa County RCD hold the only VLPs in the state and they focus directly on pond and stream restoration and erosion control activities. Like the state Safe Harbor Program, the VLP only provides California Endangered Species Act protections, and not authorizations under Section 1600 of the Fish and Game code. So, while it does provide for permit efficiencies and reduced risk for landowners, it is limited to one of many state laws/regulations that govern conservation and restoration actions.