

AMENDED IN ASSEMBLY MARCH 28, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 949

Introduced by Assembly Member Kehoe

February 23, 2001

An act to amend Sections 1601 and 1603 of the Fish and Game Code, relating to streambeds, and making an appropriation therefor. An act to amend Section 2801 of, and to add Section 2826 to, the Fish and Game Code, relating to natural community conservation planning, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 949, as amended, Kehoe. Natural ~~waters~~ *Community Conservation Planning Act.*

(1) ~~Under existing law, general plans for a project for construction by, or on behalf of, any state or local governmental agency or any public utility are required to be submitted to the Department of Fish and Game if the project will, among other things, divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit.~~

~~Existing law also makes it unlawful for any person to substantially change the bed, channel, or bank of any river, stream, or lake designated by the department without first notifying the department, except as provided.~~

~~This bill would add to those requirements any project by such an entity or person that would fill the bed, channel, or bank of any river, stream, or lake and would also include isolated wetlands, seasonal~~

wetlands, vernal pools, or other waters that are not part of a tributary system to interstate water or to navigable water of the United States.

(2) Other provisions of existing law would make a violation of the bill a misdemeanor. Thus, this bill would impose a state-mandated local program by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason:

(4)–

(1) *The existing Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into an agreement with any person for the purpose of preparing and implementing a natural community conservation plan to provide comprehensive management and conservation of multiple wildlife species.*

The United States Supreme Court, in Solid Waste Agency v. Army Corps. EN. (2001) 148 L.Ed.2d 576, did not extend regulation under the federal Clean Water Act to wetlands not adjacent to open water that serve as habitat for migratory birds.

This bill would authorize natural community conservation plans to provide for the conservation of wetlands and wetlands-dependent species no longer receiving protection under the federal Clean Water Act pursuant to that case.

(2) Under existing law, the money in the Fish and Game Preservation Fund is continuously appropriated to the department to carry out the Fish and Game Code.

Because this bill would impose new duties on the department, the bill would thereby make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 1601 of the Fish and Game Code is~~
- 2 *SECTION 1. Section 2801 of the Fish and Game Code is*
- 3 *amended to read:*
- 4 2801. The Legislature finds and declares all of the following:



1 (a) The continuing population growth in California will result
2 in increasing demands for dwindling natural resources and will
3 result in the continuing decline of the state's wildlife.

4 (b) There is a need for broad-based planning to provide for
5 effective protection and conservation of the state's wildlife
6 heritage while continuing to allow appropriate development and
7 growth.

8 (c) Natural community conservation planning is an effective
9 tool in protecting California's natural diversity while reducing
10 conflicts between protection of the state's wildlife heritage and
11 reasonable use of natural resources for economic development.

12 (d) Natural community conservation planning promotes
13 coordination and cooperation among public agencies, landowners,
14 and other private interests, provides a mechanism by which
15 landowners and development proponents can effectively
16 participate in the resource conservation planning process,
17 provides a regional planning focus that can effectively address
18 cumulative impact concerns, minimizes wildlife habitat
19 fragmentation, promotes multispecies management and
20 conservation, provides an option for identifying and ensuring
21 appropriate mitigation for impacts of fish and wildlife, and
22 promotes the conservation of broad-based natural communities
23 and species diversity.

24 (e) Natural community conservation planning can provide for
25 efficient use and protection of natural and economic resources
26 while also promoting greater sensitivity to important elements of
27 the state's critical natural diversity.

28 (f) Natural community conservation planning is an effective
29 planning process that can facilitate early coordination to protect
30 the interests of the state, the federal government, local public
31 agencies, landowners, and other private parties.

32 (g) Natural community conservation planning is a mechanism
33 that can provide an early planning framework for proposed
34 development projects within the planning area in order to avoid,
35 minimize, and compensate for impacts on wildlife caused by
36 development and growth.

37 (h) Natural community conservation planning is consistent
38 with, and will support, the fish and wildlife management activities
39 of the department in its role as the trustee for fish and wildlife
40 within the state.



1 (i) The purpose of natural community conservation planning is
2 to sustain and restore those species and habitat identified by the
3 department that are necessary to maintain the continued viability
4 of biological communities that are impacted by growth and
5 development.

6 (j) *Natural community conservation planning can serve as an*
7 *effective means to integrate the conservation mandates and*
8 *permitting requirements of various state and federal*
9 *environmental protection laws, including the federal Clean Water*
10 *Act (33 U.S.C. Sec. 1251 et seq.). In light of recent changes in*
11 *federal law related to protection of wetlands, it is desirable to*
12 *create a clear incentive to provide for the conservation of wetlands*
13 *and wetlands-dependent plant and animal species that may no*
14 *longer be receiving protection under federal law through the*
15 *natural community conservation planning process.*

16 SEC. 2. Section 2826 is added to the Fish and Game Code, to
17 read:

18 2826. A natural community conservation plan may provide
19 for the conservation of wetlands and wetlands-dependent species
20 no longer receiving protection under the federal Clean Water Act
21 (33 U.S.C. 1251 et seq.) pursuant to the United States Supreme
22 Court ruling in *Solid Waste Agency v. Army Corps EN. (2001) 148*
23 *L.Ed.2d 576*, if the department finds all of the following:

24 (a) The plan ensures that there is no net loss of existing
25 wetlands or recreational uses and that the plan provides a
26 long-term gain in the quality and quantity of wetlands acreage and
27 functions in the plan area.

28 (b) The plan meets the substantive requirements of the federal
29 Clean Water Act (33 U.S.C. Sec. 1251 et seq.) by requiring project
30 proponents to avoid or minimize all significant adverse
31 environmental impacts to wetlands from projects and to conduct
32 onsite mitigation where possible for all unavoidable project
33 impacts.

34 (c) Any use of offsite mitigation or wetlands mitigation banks
35 shall be in close enough proximity to the project site that the
36 mitigation will provide actual replacement of the hydrological,
37 vegetative, and wildlife function and values of the wetlands on the
38 project site.



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All matter omitted in this version of the bill appears in the bill as introduced in the Assembly February 23, 2001 (JR 11)

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