

AMENDED IN SENATE MAY 10, 2010
AMENDED IN SENATE APRIL 20, 2010

SENATE BILL

No. 1334

Introduced by Senator Wolk

February 19, 2010

An act to amend Section 2820 of the Fish and Game Code, relating to wildlife resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, Wolk. Natural community conservation plans.

The Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species. The act requires the department to approve a natural community conservation plan for implementation after making specified findings based upon substantial evidence in the record, including a finding that the plan has been developed consistent with the planning agreement process.

This bill would include in the required finding that the plan has been developed consistent with the planning agreement process an additional finding of cooperation with ~~all a local agencies~~ *agency that have has* land use permit authority over the activities proposed to be addressed in the plan.

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

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

1 SECTION 1. Section 2820 of the Fish and Game Code is
2 amended to read:

3 2820. (a) The department shall approve a natural community
4 conservation plan for implementation after making the following
5 findings, based upon substantial evidence in the record:

6 (1) The plan has been developed consistent with the process
7 identified in the planning agreement entered into pursuant to
8 Section 2810, including cooperation with ~~all local agencies that~~
9 *have a local agency that has* land use permit authority over the
10 activities proposed to be addressed in the plan.

11 (2) The plan integrates adaptive management strategies that are
12 periodically evaluated and modified based on the information from
13 the monitoring program and other sources, that will assist in
14 providing for the conservation of covered species and ecosystems
15 within the plan area.

16 (3) The plan provides for the protection of habitat, natural
17 communities, and species diversity on a landscape or ecosystem
18 level through the creation and long-term management of habitat
19 reserves or other measures that provide equivalent conservation
20 of covered species appropriate for land, aquatic, and marine habitats
21 within the plan area.

22 (4) The development of reserve systems and conservation
23 measures in the plan area provides, as needed for the conservation
24 of species, all of the following:

25 (A) Conserving, restoring, and managing representative natural
26 and seminatural landscapes to maintain the ecological integrity of
27 large habitat blocks, ecosystem function, and biological diversity.

28 (B) Establishing one or more reserves or other measures that
29 provide equivalent conservation of covered species within the plan
30 area and linkages between them and adjacent habitat areas outside
31 of the plan area.

32 (C) Protecting and maintaining habitat areas that are large
33 enough to support sustainable populations of covered species.

34 (D) Incorporating a range of environmental gradients, such as
35 slope, elevation, aspect, and coastal or inland characteristics, and
36 high habitat diversity to provide for shifting species distributions
37 due to changed circumstances.

1 (E) Sustaining the effective movement and interchange of
2 organisms between habitat areas in a manner that maintains the
3 ecological integrity of the habitat areas within the plan area.

4 (5) The plan identifies activities, and any restrictions on those
5 activities, allowed within reserve areas that are compatible with
6 the conservation of species, habitats, natural communities, and
7 their associated ecological functions.

8 (6) The plan contains specific conservation measures that meet
9 the biological needs of covered species and that are based upon
10 the best available scientific information regarding the status of
11 covered species and the impacts of permitted activities on those
12 species.

13 (7) The plan contains a monitoring program.

14 (8) The plan contains an adaptive management program.

15 (9) The plan includes the estimated timeframe and process by
16 which the reserves or other conservation measures are to be
17 implemented, including obligations of landowners and plan
18 signatories and consequences of the failure to acquire lands in a
19 timely manner.

20 (10) The plan contains provisions that ensure adequate funding
21 to carry out the conservation actions identified in the plan.

22 (b) A natural community conservation plan approved pursuant
23 to this section shall include an implementation agreement that
24 contains all of the following:

25 (1) Provisions defining species coverage, including any
26 conditions of coverage.

27 (2) Provisions for establishing the long-term protection of any
28 habitat reserve or other measures that provide equivalent
29 conservation of covered species.

30 (3) Specific terms and conditions, that, if violated, would result
31 in the suspension or revocation of the permit, in whole or in part.
32 The department shall include a provision requiring notification to
33 the plan participant of a specified period of time to cure any default
34 prior to suspension or revocation of the permit in whole or in part.
35 These terms and conditions shall address, but are not limited to,
36 provisions specifying the actions the department shall take under
37 all of the following circumstances:

38 (A) If the plan participant fails to provide adequate funding.

1 (B) If the plan participant fails to maintain the rough
2 proportionality between impacts on habitat or covered species and
3 conservation measures.

4 (C) If the plan participant adopts, amends, or approves any plan
5 or project without the concurrence of the wildlife agencies that is
6 inconsistent with the objectives and requirements of the approved
7 plan.

8 (D) If the level of take exceeds that authorized by the permit.

9 (4) Provisions specifying procedures for amendment of the plan
10 and the implementation agreement.

11 (5) Provisions ensuring implementation of the monitoring
12 program and adaptive management program.

13 (6) Provisions for oversight of plan implementation for purposes
14 of assessing mitigation performance, funding, and habitat
15 protection measures.

16 (7) Provisions for periodic reporting to the wildlife agencies
17 and the public for purposes of information and evaluation of plan
18 progress.

19 (8) Mechanisms to ensure adequate funding to carry out the
20 conservation actions identified in the plan.

21 (9) Provisions to ensure that implementation of mitigation and
22 conservation measures on a plan basis is roughly proportional in
23 time and extent to the impact on habitat or covered species
24 authorized under the plan. These provisions shall identify the
25 conservation measures, including assembly of reserves where
26 appropriate and implementation of monitoring and management
27 activities, that will be maintained or carried out in rough proportion
28 to the impact on habitat or covered species and the measurements
29 that will be used to determine if this is occurring.

30 (c) If a plan participant does not maintain the proportionality
31 between take and conservation measures specified in the
32 implementation agreement and does not either cure the default
33 within 45 days or enter into an agreement with the department
34 within 45 days to expeditiously cure the default, the department
35 shall suspend or revoke the permit, in whole or in part.

36 (d) Any data and reports associated with the monitoring program
37 required by this section shall be available for public review. The
38 entity managing the plan shall also conduct public workshops on
39 an annual basis to provide information and evaluate progress
40 toward attaining the conservation objectives of the plan.

1 (e) To the extent provided pursuant to Division 13 (commencing
2 with Section 21000) of the Public Resources Code and any
3 guidelines adopted pursuant thereto, if the impacts on one or more
4 covered species and its habitat are analyzed and mitigated pursuant
5 to a program environmental impact report for a plan adopted
6 pursuant to this chapter, a plan participant that is a lead agency or
7 a responsible agency under that division shall incorporate in the
8 review of any subsequent project in the plan area the feasible
9 mitigation measures and alternatives related to the biological
10 impacts on covered species and their habitat developed in the
11 program environmental impact report.

12 (f) The department may provide assurances for plan participants
13 commensurate with long-term conservation assurances and
14 associated implementation measures pursuant to the approved
15 plan.

16 (1) When providing assurances pursuant to this subdivision, the
17 department's determination of the level of assurances and the time
18 limits specified in the implementation agreement for assurances
19 may be based on localized conditions and shall consider all of the
20 following:

21 (A) The level of knowledge of the status of the covered species
22 and natural communities.

23 (B) The adequacy of analysis of the impact of take on covered
24 species.

25 (C) The use of the best available science to make assessments
26 about the impacts of take, the reliability of mitigation strategies,
27 and the appropriateness of monitoring techniques.

28 (D) The appropriateness of the size and duration of the plan
29 with respect to quality and amount of data.

30 (E) The sufficiency of mechanisms for long-term funding of all
31 components of the plan and contingencies.

32 (F) The degree of coordination and accessibility of centralized
33 data for analysis and evaluation of the effectiveness of the plan.

34 (G) The degree to which a thorough range of foreseeable
35 circumstances are considered and provided for under the adaptive
36 management program.

37 (H) The size and duration of the plan.

38 (2) If there are unforeseen circumstances, additional land, water,
39 or financial compensation or additional restrictions on the use of
40 land, water, or other natural resources shall not be required without

- 1 the consent of plan participants for a period of time specified in
- 2 the implementation agreement, unless the department determines
- 3 that the plan is not being implemented consistent with the
- 4 substantive terms of the implementation agreement.