AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 484

Introduced by Assembly Member Alejo

February 15, 2011

An act to amend Section 65965 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 484, as amended, Alejo. Land use: natural resources: transfer of long-term management funds.

The Planning and Zoning Law authorizes a state or local public agency to authorize a nonprofit organization to hold title to, and manage an interest in, real property that the state or local public agency requires a property owner to transfer to the agency to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, provided the nonprofit organization meets specified conditions. That law also authorizes an agency that, in the development of its own project, is required to transfer an interest in real property to mitigate an adverse impact upon natural resources, to transfer the interest to a nonprofit organization that meets the specified conditions.

This bill would authorize funds set aside for the long-term management of any lands or easements conveyed to a nonprofit organization pursuant to the above provisions to also be conveyed to the nonprofit organization as specified. The bill would also require the nonprofit organization to hold, manage, invest, and disburse the funds in furtherance of managing and stewarding the land or easement for which the funds were set aside.

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

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

SECTION 1. Section 65965 of the Government Code is amended to read:

65965. (a) For the purposes of this section, the following definitions apply:

(1) "Direct protection" means the protection and preservation of natural lands or resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, or outdoor recreational areas.

(2) "Stewardship" encompasses the range of activities involved in controlling, monitoring, and managing for conservation purposes a property, or a conservation or open-space easement, as defined by the terms of the easement, and its attendant resources.

(b) Notwithstanding any other provision of law to the contrary, if a state or local public agency requires a property owner to transfer to the agency an interest in real property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the state or local public agency may authorize a nonprofit organization to hold title to and manage that interest in real property, provided that the nonprofit organization is all of the following:

(1) Exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code, and qualified to do business in the state.

(2) A "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

(3) An organization that has as its principal purpose and activity the direct protection or stewardship of natural land or resources, or cultural or historic resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(c) If a state or local public agency, in the development of its own project, is required to transfer an interest in real property to mitigate an adverse impact upon natural resources, the agency may transfer the interest to a nonprofit organization that meets the requirements set forth in paragraphs (1) to (3), inclusive, of subdivision (b).

(d) (1) Funds set aside for the long-term management of any lands or easements conveyed to a nonprofit organization pursuant to subdivisions (b) and (c) may also be conveyed to the nonprofit organization. The nonprofit organization shall hold, manage, invest, and disburse the funds in furtherance of managing and stewarding the land or easement for which the funds were set aside.

(2) The state or local agency may require the nonprofit organization to submit a report, not more than once every 12 months, that details the management and condition of the property or easement and the accompanying funds. The mitigation or funding agreement shall specify the reporting due dates and elements of the report.

(3) If, after the state or local agency receives the report described in paragraph (2), the state or local agency determines that there is cause to consider whether the terms of the mitigation or funding agreement have been violated, the agency may review the accounting documents involving the funds or require an independent audit of the funds to be performed and the audit report submitted to the agency.

(e) The recorded instrument that places title with a nonprofit organization pursuant to subdivision (b) shall include, at a minimum, a provision that if the state or local public agency that authorized the nonprofit organization to hold the title, or its successor agency, determines that the interest in real property that is held by the nonprofit organization is not being held, monitored, or managed for conservation purposes in the manner specified in that instrument or in the mitigation agreement between the state or local public agency and the nonprofit organization, the interest in real property shall revert to the state or that local public agency, or to another public agency or nonprofit organization qualified pursuant to subdivision (b), approved by the state or local public agency.

(f) The funds of a nonprofit organization holding funds for the long-term management of property shall revert to the state or local public agency or to another public agency or nonprofit organization approved by the state or local agency and qualified under subdivision (b), if any of the following conditions exist:

(1) The nonprofit organization ceases operations.

(2) The nonprofit organization is dissolved.

(3) The nonprofit organization becomes bankrupt or insolvent.

(4) The nonprofit organization fails to preform its duties pursuant to this section for any reason.

(g) (1) A state or local public agency shall exercise due diligence in reviewing the qualifications of a nonprofit organization to effectively manage and steward natural land or resources, as well as the accompanying funds. The state or local public agency may adopt guidelines to assist the agency in that review process.

(2) The state or local agency shall determine that the holder of accompanying funds meets all of the following requirements:

(A) The holder has the capacity to effectively manage the mitigation funds.

(B) The holder has the capacity to achieve reasonable rates of return on investment of those funds, similar to those of other prudent investors, over the life of the agreement.

(C) The holder utilizes general accepted accounting practices, and will be able to ensure that funds are accounted for, and tied to, a specific property or project.

(D) The holder has an adopted investment policy with regard to endowment funds that is consistent with the Uniform Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code) and Sections 18505 and 18506 of the Probate Code.

(h) The state or local public agency may contract with or designate an independent third party to do any of the following:

(1) Review the qualifications of a nonprofit organization to effectively manage and steward natural land or resources.

(2) Review the qualifications of a nonprofit organization to hold and manage the funds set aside for long-term management associated with the property.

(3) Determine whether the holder of the funds meets the requirements set forth in paragraph (2) of subdivision (f).

(4) Review reports or other performance indicators to evaluate the management of lands, resources, or funds.

(i) (1) If a state or local agency authorizes a nonprofit organization to hold land or natural resources created for mitigation purposes, the state or local agency may require an administrative endowment from the project proponent for costs

associated with reviewing qualifications, approving holders, and regular oversight of compliance and performance.

(2) The state or local public agency may also require project proponents to provide a separate account that will provide for initial management costs while the endowment matures.

(j) This section shall not apply retroactively to endowment funds held by the state in the Pooled Money Investment Account as of January 1, 2012.

(k) A property that has been previously protected for conservation purposes, including the placement of a conservation easement on the property, shall not be used for mitigation purposes.

(l) This section is not intended to interfere with or prevent the existing authority of an agency or department to carry out its programs, projects, or responsibilities to identify, review, approve, deny, or implement any mitigation requirement, and nothing in this section shall be construed as a limitation on mitigation requirements for the project, or a limitation on compliance requirements under this division or any other provision of law.

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