

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 436

Introduced by Senator Kehoe

February 16, 2011

An act to ~~add Section 65966 to~~ *amend Section 65965 of the Government Code, relating to land use.*

LEGISLATIVE COUNSEL'S DIGEST

SB 436, as amended, Kehoe. Land use: mitigation lands: nonprofit organizations.

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

This bill would *authorize a state or local public agency to provide funds to a nonprofit organization to acquire land or easements that satisfy the agency's mitigation obligations, including funds that have been set aside for the long-term management of any lands or easements conveyed to a nonprofit organization if the nonprofit organization meets certain requirements. The bill would also state the findings and declarations of the Legislature with respect to the preservation of natural resources through such mitigation, and would state that it is in the intent of the Legislature to enact legislation best interest of the public to allow state and local public agencies and nonprofit organizations to utilize the tools and strategies they need for improving the effectiveness,*

~~cost efficiency~~ *cost efficiency*, and durability of mitigation for California's natural resources.

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

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

- 1 ~~SECTION 1. Section 65966 is added to the Government Code,~~
2 ~~to read:~~
3 ~~65966. (a) The Legislature finds and declares all of the~~
4 ~~SECTION 1. The Legislature finds and declares all of the~~
5 following:
6 ~~(1)~~
7 ~~(a) State and local laws protect a variety of natural resources,~~
8 ~~and also require permits to be issued for the development of certain~~
9 ~~projects or facilities.~~
10 ~~(2)~~
11 ~~(b) In furtherance of these laws, state or local public agencies~~
12 ~~may require a property owner to transfer an interest in real property~~
13 ~~to mitigate any adverse impact upon natural resources caused by~~
14 ~~permitting the development of a project or facility.~~
15 ~~(3)~~
16 ~~(c) Funds may be simultaneously set aside for the long-term~~
17 ~~management of the property transferred for mitigation purposes.~~
18 ~~(4)~~
19 ~~(d) Lands and real property interests transferred to achieve the~~
20 ~~mitigation may be held by nonprofit organizations.~~
21 ~~(5)~~
22 ~~(e) Many state and local agencies work with nonprofit~~
23 ~~organizations in valuable and cost effective public-private~~
24 ~~partnerships to identify properties that meet the mitigation~~
25 ~~requirements and to hold and provide long-term management of~~
26 ~~the real property interests.~~
27 ~~(6)~~
28 ~~(f) There are tools and strategies available for improving the~~
29 ~~effectiveness, cost efficiency, and durability of mitigation for~~
30 ~~California's natural resources.~~
31 ~~(g) Identifying mitigation needs on a regional basis may expedite~~
32 ~~the planning and mitigation processes, as well as result ultimately~~

1 *in consolidated mitigation areas that can be managed more*
2 *cost-effectively.*

3 ~~(7)~~

4 (h) It is in the interest of the public, project proponents, and
5 local communities to ensure that the public benefits of mitigation
6 are achieved.

7 ~~(b) It is the intent of the Legislature to enact legislation that will~~

8 (i) *It is in the best interest of the public to allow state and local*
9 *public agencies and nonprofit organizations to utilize the tools and*
10 *strategies they need for improving the effectiveness, cost-efficiency*
11 *cost efficiency, and durability of mitigation for California's natural*
12 *resources.*

13 *SEC. 2. Section 65965 of the Government Code is amended to*
14 *read:*

15 65965. (a) For the purposes of this section, the following
16 definitions apply:

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

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

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

33 (1) Exempt from taxation as an organization described in Section
34 501(c)(3) of the Internal Revenue Code, and qualified to do
35 business in the state.

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

38 (3) An organization that has as its principal purpose and activity
39 the direct protection or stewardship of natural land or resources,
40 or cultural or historic resources, including, but not limited to,

1 agricultural lands, wildlife habitat, wetlands, endangered species
2 habitat, open-space areas, and outdoor recreational areas.

3 (c) If a state or local public agency, in the development of its
4 own project, is required to ~~transfer~~ *protect* an interest in real
5 property to mitigate an adverse impact upon natural resources, the
6 agency may ~~transfer the interest to a nonprofit organization that~~
7 ~~meets the requirements set forth in paragraphs (1) to (3), inclusive,~~
8 ~~of subdivision (b).~~ *do either of the following:*

9 (1) *Transfer the interest to a nonprofit organization that meets*
10 *the requirements set forth in subdivision (b).*

11 (2) *Provide funds to a nonprofit organization to acquire land*
12 *or easements that satisfy the agency's mitigation obligations.*

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

19 ~~(d)~~

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

33 ~~(e)~~

34 (f) (1) A state or local public agency shall exercise due diligence
35 in reviewing the qualifications of a nonprofit organization to
36 effectively manage and steward natural land or resources, *as well*
37 *as the accompanying funds.* The state or local public agency may
38 adopt guidelines to assist the agency in that review process *or it*
39 *may utilize guidelines or standards established by a qualified*
40 *entity.*

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

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

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

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

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

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

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

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

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

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

29 (h) *If a state or local agency authorizes nonprofit organizations*
30 *to hold lands or natural resources created for mitigation purposes,*
31 *the state or local agency may require an administrative endowment*
32 *from the project proponent for costs associated with reviewing*
33 *qualifications, approving holders, and regular oversight of*
34 *compliance and performance.*

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

38 (j) *A state or local agency may identify priority areas for*
39 *mitigation for the purposes of consolidating mitigation areas,*
40 *improving conservation outcomes, and improving long-term*

1 *management efficiencies. The agency may use information from*
2 *other state or local agencies or other sources to identify priority*
3 *areas. Identified priority areas may be areas that currently have*
4 *no protection or would expand upon existing protected areas.*

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

8 *(l) An existing conservation program of a state agency or*
9 *department may receive and expend funds to meet a specified*
10 *mitigation purpose, if all costs associated with the mitigation*
11 *transaction are fully paid by the project proponent. Qualified*
12 *programs are limited to the Wildlife Conservation Board,*
13 *Department of Parks and Recreation, Department of Conservation,*
14 *and any state conservancy.*

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