

AMENDED IN SENATE MAY 2, 2011  
AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 436**

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**Introduced by Senator Kehoe**

February 16, 2011

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An act to amend, *repeal, and add* 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, *until January 1, 2022*, 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 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, and durability of mitigation for California's natural resources.

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

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

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

1 SEC. 2. Section 65965 of the Government Code is amended  
2 to read:

3 65965. (a) For the purposes of this section, the following  
4 definitions apply:

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

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

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

21 (1) Exempt from taxation as an organization described in Section  
22 501(c)(3) of the Internal Revenue Code, and qualified to do  
23 business in the state.

24 (2) A “qualified organization” as defined in Section 170(h)(3)  
25 of the Internal Revenue Code.

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

31 (c) If a state or local public agency, in the development of its  
32 own project, is required to protect an interest in real property to  
33 mitigate an adverse impact upon natural resources, the agency may  
34 do either of the following:

35 (1) Transfer the interest to a nonprofit organization that meets  
36 the requirements set forth in subdivision (b).

37 (2) Provide funds to a nonprofit organization to acquire land or  
38 easements that satisfy the agency’s mitigation obligations.

39 (d) Funds set aside for the long-term management of lands or  
40 easements conveyed to a nonprofit organization pursuant to

1 subdivisions (b) and (c) may also be conveyed to the nonprofit  
2 organization. The nonprofit organization shall hold, manage, invest,  
3 and disburse the funds in furtherance of managing and stewarding  
4 the land or easement for which the funds were set aside.

5 (e) (1) *The state or local public agency may require the*  
6 *nonprofit organization to submit a report not more than every 12*  
7 *months and for a specified number of years, that details the*  
8 *management and condition of the property or easement and the*  
9 *accompanying funds. The mitigation or funding agreement shall*  
10 *specify the reporting due dates and the elements of the report.*

11 (2) *The funds of a nonprofit organization holding funds for the*  
12 *long-term management of property shall revert to the state or local*  
13 *public agency that required the mitigation if the nonprofit*  
14 *organization does any of the following:*

15 (A) *Ceases operation.*

16 (B) *Is dissolved.*

17 (C) *Becomes bankrupt or insolvent.*

18 (D) *Fails to perform its duties for any reason, as determined*  
19 *by the state or local public agency.*

20 (e)

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

34 (f)

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

1 ~~or it may utilize~~ *process, which may include* guidelines or standards  
2 established by a qualified entity.

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

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

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

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

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

20 ~~(g)~~

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

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

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

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

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

32 ~~(h)~~

33 (i) (1) If a state or local agency authorizes nonprofit  
34 organizations to hold lands or natural resources created for  
35 mitigation purposes, the state or local agency may require an  
36 administrative endowment from the project proponent for costs  
37 associated with reviewing qualifications, approving holders, and  
38 regular oversight of compliance and performance.

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

4 (i)

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

8 ~~(j) A state or local agency may identify priority areas for~~  
9 ~~mitigation for the purposes of consolidating mitigation areas,~~  
10 ~~improving conservation outcomes, and improving long-term~~  
11 ~~management efficiencies. The agency may use information from~~  
12 ~~other state or local agencies or other sources to identify priority~~  
13 ~~areas. Identified priority areas may be areas that currently have no~~  
14 ~~protection or would expand upon existing protected areas.~~

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

18 ~~(l) An existing conservation program of a state agency or~~  
19 ~~department may receive and expend funds to meet a specified~~  
20 ~~mitigation purpose, if all costs associated with the mitigation~~  
21 ~~transaction are fully paid by the project proponent. Qualified~~  
22 ~~programs are limited to the Wildlife Conservation Board,~~  
23 ~~Department of Parks and Recreation, Department of Conservation,~~  
24 ~~and any state conservancy.~~

25 (m)

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

33 (m) *This section shall remain in effect only until January 1,*  
34 *2022, and as of that date is repealed, unless a later enacted statute,*  
35 *which is enacted before January 1, 2022, deletes or extends that*  
36 *date.*

37 *SEC. 3. Section 65965 is added to the Government Code, to*  
38 *read:*

39 *65965. (a) For the purposes of this section, the following*  
40 *definitions apply:*

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

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

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

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

21 (2) A “qualified organization” as defined in Section 170(h)(3)  
22 of the Internal Revenue Code.

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

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

34 (d) The recorded instrument that places title with a nonprofit  
35 organization pursuant to subdivision (b) shall include, at a  
36 minimum, a provision that if the state or local public agency that  
37 authorized the nonprofit organization to hold the title, or its  
38 successor agency, determines that the interest in real property that  
39 is held by the nonprofit organization is not being held, monitored,  
40 or managed for conservation purposes in the manner specified in

1 *that instrument or in the mitigation agreement between the state*  
2 *or local public agency and the nonprofit organization, the interest*  
3 *in real property shall revert to the state or that local public agency,*  
4 *or to another public agency or nonprofit organization qualified*  
5 *pursuant to subdivision (b), approved by the state or local public*  
6 *agency.*  
7 *(e) A state or local public agency shall exercise due diligence*  
8 *in reviewing the qualifications of a nonprofit organization to*  
9 *effectively manage and steward natural land or resources. The*  
10 *state or local public agency may adopt guidelines to assist the*  
11 *agency in that review process.*  
12 *(f) This section shall become operative on January 1, 2022.*