

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 2, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 436

Introduced by Senator Kehoe

February 16, 2011

An act to amend, ~~repeal, and add~~ Section 65965 of, *and to add, repeal, and add Sections 65966, 65967, and 65968 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 *revise these provisions and 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~~, *as specified*. This bill would require a nonprofit

organization that holds funds on behalf of the Department of Fish and Game for the long-term management of land to comply with certain requirements, including certification by the department, and oversight by the Controller *under specified circumstances*. 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: 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 project proponent to transfer an interest in real*
 8 *property to mitigate any adverse impact upon natural resources*
 9 *caused by permitting the development of a project or facility.*
 10 *(c) It is a widespread practice that funds are set aside for the*
 11 *long-term stewardship of the property protected for mitigation*
 12 *purposes by the project proponent at the time the property is*
 13 *protected.*
 14 *(d) Lands and real property interests that are protected to*
 15 *achieve the mitigation may be held by public agencies, special*
 16 *districts, nonprofit organizations, or other entities, including*
 17 *for-profit corporations.*
 18 *(e) Many state and local agencies work with special districts,*
 19 *nonprofit organizations, and property owners in valuable and cost*
 20 *effective public-private partnerships to identify properties that*
 21 *meet the mitigation requirements and to hold and provide*
 22 *long-term stewardship of the real property interests.*
 23 *(f) There are tools and strategies available for improving the*
 24 *effectiveness, cost efficiency, and durability of mitigation for*
 25 *California's natural resources.*

1 (g) Identifying mitigation needs on a regional basis may expedite
2 the planning and mitigation processes, as well as ultimately result
3 in consolidated mitigation areas that can be managed more
4 cost-effectively.

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

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

13 (j) It is important that entities that are qualified as to experience,
14 capacity, and knowledge hold and manage property for mitigation
15 purposes and any accompanying funds.

16 (k) There are numerous benefits, including decreased financial
17 risk, creation of efficiencies, and maintaining partnerships, for
18 the real property and associated long-term funding to be held and
19 managed by the same entity.

20 (l) The state recognizes that it is widespread practice for the
21 holder of a mitigation property to also hold and manage the
22 long-term funding dedicated to the property.

23 (m) The state seeks strategies that allow and provide for this
24 practice to continue while providing appropriate standards and
25 public oversight to ensure that the funds endure for the long-term
26 stewardship of the protected property and its associated natural
27 resources.

28 (n) California has a number of strong protections in place to
29 ensure that nonprofit organizations properly manage their
30 charitable resources and assets held in trust. These protections
31 include, but are not limited to, the state's Nonprofit Corporations
32 Law that identifies the nonprofit governing body's obligations to
33 protect the assets and mission of the nonprofit, and the provision
34 that the governing body is jointly and severally liable for any
35 failure to do so. In addition, the Attorney General has enforcement
36 rights and obligations regarding noncompliance, mismanagement,
37 or misuse of endowment funds, including the recovery of any
38 endowment funds.

39 (o) The management of endowment funds by California nonprofit
40 organizations is governed by the Uniform Prudent Management

1 of Institutional Funds Act (Part 7 (commencing with Section 18501)
2 of Division 9 of the Probate Code).

3 (p) The Uniform Prudent Management of Institutional Funds
4 Act recognizes the distinction between permanently restricted funds
5 and temporarily restricted funds and imposes requirements for
6 each. Both types of funds are relevant to the management of funds
7 for the long-term stewardship of land.

8 (q) The goal of managing funds held for the long-term
9 stewardship of land is to achieve intergenerational equity as
10 embodied in the Uniform Prudent Management of Institutional
11 Funds Act and extensively cited in the financial literature.
12 Considerable guidance is provided in the act about achieving this
13 objective.

14 (r) While nonprofit organizations must manage endowment
15 funds according to the Uniform Prudent Management of
16 Institutional Funds Act, to the extent feasible and permissible, the
17 same principles and guidelines, including the goal of managing
18 for intergenerational equity, should guide all holders of long-term
19 endowment funds including public agencies and special districts.

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

22 65965. ~~(a)~~ For the purposes of this ~~section~~ chapter, the
23 following definitions apply:

24 (a) “Accompanying funds” means the funds for the long-term
25 stewardship of lands that may be conveyed for the long-term
26 stewardship of a property.

27 (b) “Conservation easement” means a conservation easement
28 created pursuant to Chapter 4 (commencing with Section 815) of
29 Title 2 of Part 2 of Division 2 of the Civil Code.

30 (c) “Department” means the Department of Fish and Game.

31 ~~(d)~~

32 (d) “Direct protection” means the permanent protection,
33 conservation, and preservation of ~~natural~~ lands, waters, or natural
34 resources, including, but not limited to, agricultural lands, wildlife
35 habitat, wetlands, endangered species habitat, open-space areas,
36 or outdoor recreational areas.

37 (e) “Exclusive department-named entity” means any entity
38 chosen by the department in a manner that excludes other entities
39 from the same activity or activities.

1 (f) “Mitigation agreement” means a written agreement between
2 a public agency, the project proponent, and the special district,
3 nonprofit organization, or other entity that holds the property. A
4 mitigation agreement shall govern the long-term stewardship of
5 a property and accompanying funds, and shall specify any
6 reporting requirements or elements, including due dates of reports.

7 (g) “Project proponent” means an individual, business entity,
8 agency, or other entity that is developing a project or facility and
9 is required to mitigate any adverse impact upon natural resources.

10 (h) “Property” means fee title land or any partial interest in
11 real property, including a conservation easement.

12 (i) “Special district” means any special district formed pursuant
13 to Article 3 (commencing with Section 5500) of Chapter 3 of
14 Division 5 or Division 26 (commencing with Section 35100) of the
15 Public Resources Code.

16 (2)

17 (j) “Stewardship” encompasses the range of activities involved
18 in controlling, *resource and compliance* monitoring, and managing
19 for conservation purposes a property, or a conservation or
20 open-space easement, as defined by the terms of the easement, and
21 its attendant resources.

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

30 ~~(1) Exempt from taxation as an organization described in Section
31 501(c)(3) of the Internal Revenue Code, and qualified to do
32 business in the state.~~

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

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

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

7 ~~(d) The recorded instrument that places title with a nonprofit~~
8 ~~organization pursuant to subdivision (b) shall include, at a~~
9 ~~minimum, a provision that if the state or local public agency that~~
10 ~~authorized the nonprofit organization to hold the title, or its~~
11 ~~successor agency, determines that the interest in real property that~~
12 ~~is held by the nonprofit organization is not being held, monitored,~~
13 ~~or managed for conservation purposes in the manner specified in~~
14 ~~that instrument or in the mitigation agreement between the state~~
15 ~~or local public agency and the nonprofit organization, the interest~~
16 ~~in real property shall revert to the state or that local public agency,~~
17 ~~or to another public agency or nonprofit organization qualified~~
18 ~~pursuant to subdivision (b), approved by the state or local public~~
19 ~~agency.~~

20 ~~(e) A state or local public agency shall exercise due diligence~~
21 ~~in reviewing the qualifications of a nonprofit organization to~~
22 ~~effectively manage and steward natural land or resources. The~~
23 ~~state or local public agency may adopt guidelines to assist the~~
24 ~~agency in that review process.~~

25 *SEC. 3. Section 65966 is added to the Government Code, to*
26 *read:*

27 *65966. (a) Notwithstanding any other provision of law, if a*
28 *local agency requires a project proponent to transfer property to*
29 *mitigate any adverse impact upon natural resources caused by*
30 *permitting the development of a project or facility, the local agency*
31 *may authorize a special district or a nonprofit organization to*
32 *hold title to and manage that property. If the local agency*
33 *authorizes a nonprofit organization to hold title to and manage*
34 *the property, the nonprofit organization shall meet all of the*
35 *following requirements:*

36 *(1) The nonprofit organization shall be exempt from taxation*
37 *as an organization described in Section 501(c)(3) of the Internal*
38 *Revenue Code.*

39 *(2) The nonprofit organization shall be qualified to do business*
40 *in the state.*

1 (3) *The nonprofit organization shall be a “qualified*
2 *organization” as defined in Section 170(h)(3) of the Internal*
3 *Revenue Code.*

4 (4) *The nonprofit organization shall have as its principal*
5 *purpose and activity the direct protection or stewardship of land,*
6 *water, or natural resources, or cultural or historic resources,*
7 *including, but not limited to, agricultural lands, wildlife habitat,*
8 *wetlands, endangered species habitat, open-space areas, and*
9 *outdoor recreational areas.*

10 (b) *If a local agency, in the development of its own project, is*
11 *required to protect property to mitigate an adverse impact upon*
12 *natural resources, the agency may do either of the following:*

13 (1) *Transfer the interest to a special district or to a nonprofit*
14 *organization that meets the requirements set forth in subdivision*
15 *(a).*

16 (2) *Provide funds to a nonprofit organization or special district*
17 *to acquire land or easements that satisfy the agency’s mitigation*
18 *obligations.*

19 (c) *A local agency shall exercise due diligence in reviewing the*
20 *qualifications of a special district or nonprofit organization to*
21 *effectively manage and steward land, water, or natural resources,*
22 *as well as the accompanying funds. The local agency may adopt*
23 *guidelines to assist it in that review process, which may include,*
24 *but are not limited to, the use of or reliance upon guidelines,*
25 *standards, or accreditation established by a qualified entity that*
26 *are in widespread state or national use.*

27 (d) *The local agency may require the special district or nonprofit*
28 *organization to submit a report not more than once every 12*
29 *months and for the number of years specified in the mitigation*
30 *agreement, that details the stewardship and condition of the*
31 *property and the accompanying funds. The mitigation agreement*
32 *shall specify any reporting due dates and the elements of the report.*

33 (e) *The recorded instrument that places the title of the property*
34 *with a special district or nonprofit organization pursuant to*
35 *subdivision (a) or (b) shall include a provision that if the local*
36 *agency or its successor agency reasonably determines that the*
37 *property is not being held, monitored, or stewarded for*
38 *conservation purposes in the manner specified in that instrument*
39 *or in the mitigation agreement, the property shall revert to the*
40 *local agency, or to another public agency, special district, or*

1 nonprofit organization qualified pursuant to subdivision (a) and
2 approved by the local agency.

3 (f) (1) If the local agency authorizes a special district or
4 nonprofit organization to hold the property, the state agency may
5 allow the accompanying funds to be held by the same special
6 district or nonprofit organization that holds the property subject
7 to this subdivision and to subdivision (a) of Section 65968. Except
8 the special district or nonprofit organization that is holding the
9 property or the local agency, no other special district, nonprofit
10 organization, or entity may hold the accompanying funds if the
11 property is held by a special district or nonprofit organization.
12 The special district or nonprofit organization shall hold, manage,
13 invest, and disburse the funds in furtherance of the long-term
14 stewardship of the property for which the funds were set aside.

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

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

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

22 (C) The holder utilizes generally accepted accounting practices
23 as promulgated by the Financial Accounting Standards Board for
24 nonprofit organizations or the Governmental Accounting Standards
25 Board for public agencies.

26 (D) The holder will be able to ensure that funds are accounted
27 for, and tied to, a specific property.

28 (E) The holder has an investment policy that is consistent with
29 the Uniform Prudent Management of Institutional Funds Act (Part
30 7 (commencing with Section 18501) of Division 9 of the Probate
31 Code).

32 (3) The mitigation agreement that authorizes the funds to be
33 conveyed to a special district or nonprofit organization pursuant
34 to paragraph (2) shall include a provision that requires the
35 accompanying funds held by a special district or a nonprofit
36 organization to revert to the local agency, or to a successor
37 organization identified by the agency and subject to paragraph
38 (2), if any of the following occurs:

39 (A) The special district or nonprofit organization ceases to exist.

40 (B) The special district or nonprofit organization is dissolved.

1 (C) *The special district or nonprofit organization becomes*
2 *bankrupt or insolvent.*

3 (D) *The local agency determines that the accompanying funds*
4 *held by the special district or nonprofit organization, or its*
5 *successor entity, are not being held, managed, invested, or*
6 *disbursed for conservation purposes in the manner specified in*
7 *the mitigation agreement between the local agency and the special*
8 *district or nonprofit organization. If the funds are taken by the*
9 *local agency, the agency may also take the land pursuant to*
10 *subdivision (e). If the special district or nonprofit organization*
11 *chooses to relinquish the property, the local agency shall take title*
12 *to the property or identify an approved special district or nonprofit*
13 *organization to take title to the property.*

14 (4) *If the local agency holds the accompanying funds, the local*
15 *agency may hold, manage, and invest the accompanying funds*
16 *pursuant to subparagraph (D) of paragraph (2) and shall disburse*
17 *funds in a timely basis for the stewardship expenses of the special*
18 *district or nonprofit organization holding the property.*

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

21 (1) *Review the qualifications of a special district or nonprofit*
22 *organization to effectively manage and steward natural land or*
23 *resources pursuant to subdivisions (a) and (c).*

24 (2) *Review the qualifications of a special district or nonprofit*
25 *organization to hold and manage the accompanying funds pursuant*
26 *to paragraph (2) of subdivision (f).*

27 (3) *Review reports or other performance indicators to evaluate*
28 *the stewardship of lands, resources, or funds, and compliance with*
29 *the mitigation agreement.*

30 (h) (1) *If a local agency authorizes a special district or*
31 *nonprofit organization pursuant to subdivision (a) or (b), the local*
32 *agency may require an administrative endowment from the project*
33 *proponent for costs associated with reviewing qualifications,*
34 *approving holders, and regular oversight of compliance and*
35 *performance. The administrative endowment shall be held,*
36 *managed, and invested to produce an annual revenue sufficient to*
37 *cover the costs of reviewing qualifications, approving holders,*
38 *and ongoing oversight.*

39 (2) *The local agency may require a project proponent to provide*
40 *a one-time payment that will provide for the initial stewardship*

1 costs for not more than five years while the endowment begins to
2 accumulate investment earnings. This one-time payment will be
3 conveyed to the holder of the accompanying funds by the project
4 proponent.

5 (i) This section shall remain in effect only until January 1, 2022,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2022, deletes or extends that date.

8 SEC. 4. Section 65966 is added to the Government Code, to
9 read:

10 65966. (a) Notwithstanding any other provision of law, if a
11 local agency requires a project proponent to transfer property to
12 mitigate any adverse impact upon natural resources caused by
13 permitting the development of a project or facility, the local agency
14 may authorize a special district or a nonprofit organization to
15 hold title to and manage that property. If the local agency
16 authorizes a nonprofit organization to hold title to and manage
17 the property, the nonprofit organization shall meet all of the
18 following requirements:

19 (1) The nonprofit organization shall be exempt from taxation
20 as an organization described in Section 501(c)(3) of the Internal
21 Revenue Code.

22 (2) The nonprofit organization shall be qualified to do business
23 in the state.

24 (3) The nonprofit organization shall be a “qualified
25 organization” as defined in Section 170(h)(3) of the Internal
26 Revenue Code.

27 (4) The nonprofit organization shall have as its principal
28 purpose and activity the direct protection or stewardship of land,
29 water, or natural resources, or cultural or historic resources,
30 including, but not limited to, agricultural lands, wildlife habitat,
31 wetlands, endangered species habitat, open-space areas, and
32 outdoor recreational areas.

33 (b) If a local agency, in the development of its own project, is
34 required to protect property to mitigate an adverse impact upon
35 natural resources, the agency may do either of the following:

36 (1) Transfer the interest to a special district or to a nonprofit
37 organization that meets the requirements set forth in subdivision
38 (a).

1 (2) *Provide funds to a nonprofit organization or special district*
2 *to acquire land or easements that satisfy the agency’s mitigation*
3 *obligations.*

4 (c) *A local agency shall exercise due diligence in reviewing the*
5 *qualifications of a special district or nonprofit organization to*
6 *effectively manage and steward land, water, or natural resources,*
7 *as well as the accompanying funds. The local agency may adopt*
8 *guidelines to assist it in that review process, which may include,*
9 *but are not limited to, the use of or reliance upon guidelines,*
10 *standards, or accreditations established by a qualified entity that*
11 *are in widespread state or national use.*

12 (d) *The local agency may require the special district or nonprofit*
13 *organization to submit a report not more than once every 12*
14 *months and for the number of years specified in the mitigation*
15 *agreement, that details the stewardship and condition of the*
16 *property and the accompanying funds. The mitigation agreement*
17 *shall specify any reporting due dates and the elements of the report.*

18 (e) *The recorded instrument that places the title of the property*
19 *with a special district or nonprofit organization pursuant to*
20 *subdivision (a) or (b) shall include a provision that if the local*
21 *agency or its successor agency reasonably determines that the*
22 *property is not being held, monitored, or stewarded for*
23 *conservation purposes in the manner specified in that instrument*
24 *or in the mitigation agreement, the property shall revert to the*
25 *local agency, or to another public agency, special district, or*
26 *nonprofit organization qualified pursuant to subdivision (a) and*
27 *approved by the local agency.*

28 (f) *The local agency may contract with or designate an*
29 *independent third party to do either of the following:*

30 (1) *Review the qualifications of a special district or nonprofit*
31 *organization to effectively manage and steward natural land or*
32 *resources pursuant to subdivisions (a) and (c).*

33 (2) *Review reports or other performance indicators to evaluate*
34 *the stewardship of lands, resources, or funds, and compliance with*
35 *the mitigation agreement.*

36 (g) (1) *If a local agency authorizes a special district or*
37 *nonprofit organization pursuant to subdivision (a) or (b), the local*
38 *agency may require an administrative endowment from the project*
39 *proponent for costs associated with reviewing qualifications,*
40 *approving holders, and regular oversight of compliance and*

1 *performance. The administrative endowment shall be held,*
2 *managed, and invested to produce an annual revenue sufficient to*
3 *cover the costs of reviewing qualifications, approving holders,*
4 *and ongoing oversight.*

5 *(2) The local agency may require a project proponent to provide*
6 *a one-time payment that will provide for the initial stewardship*
7 *costs for not more than five years while the endowment begins to*
8 *accumulate investment earnings. This one-time payment will be*
9 *conveyed to the holder of the accompanying funds by the project*
10 *proponent.*

11 *(h) This section shall become operative on January 1, 2022.*

12 *SEC. 5. Section 65967 is added to the Government Code, to*
13 *read:*

14 *65967. (a) Notwithstanding any other provision of law, if a*
15 *state agency requires a project proponent to transfer property to*
16 *mitigate any adverse impact upon natural resources caused by*
17 *permitting the development of a project or facility, the state agency*
18 *may authorize a special district or a nonprofit organization to*
19 *hold title to and manage that property. If the state agency*
20 *authorizes a nonprofit organization to hold title to and manage*
21 *the property, the nonprofit organization shall meet all of the*
22 *following requirements:*

23 *(1) The nonprofit organization shall be exempt from taxation*
24 *as an organization described in Section 501(c)(3) of the Internal*
25 *Revenue Code.*

26 *(2) The nonprofit organization shall be qualified to do business*
27 *in the state.*

28 *(3) The nonprofit organization shall be a “qualified*
29 *organization” as defined in Section 170(h)(3) of the Internal*
30 *Revenue Code.*

31 *(4) The nonprofit organization shall have as its principal*
32 *purpose and activity the direct protection or stewardship of land,*
33 *water, or natural resources, or cultural or historic resources,*
34 *including, but not limited to, agricultural lands, wildlife habitat,*
35 *wetlands, endangered species habitat, open-space areas, and*
36 *outdoor recreational areas.*

37 *(b) If a state agency, in the development of its own project, is*
38 *required to protect property to mitigate an adverse impact upon*
39 *natural resources, the agency may do either of the following:*

1 (1) *Transfer the interest to a special district or to a nonprofit*
2 *organization that meets the requirements set forth in subdivision*
3 *(a).*

4 (2) *Provide funds to a special district or nonprofit organization*
5 *to acquire land or easements that satisfy the agency’s mitigation*
6 *obligations.*

7 (c) *A state agency shall exercise due diligence in reviewing the*
8 *qualifications of a special district or nonprofit organization to*
9 *effectively manage and steward natural land or resources, as well*
10 *as the accompanying funds. The state agency may adopt guidelines*
11 *to assist it in that review process, which may include, but are not*
12 *limited to, the use of or reliance upon guidelines, standards, or*
13 *accreditation established by a qualified entity that are in*
14 *widespread state or national use.*

15 (d) *The state agency may require the special district or nonprofit*
16 *organization to submit a report not more than once every 12*
17 *months and for the number of years specified in the mitigation*
18 *agreement, that details the stewardship and condition of the*
19 *property and the accompanying funds. The mitigation agreement*
20 *shall specify the reporting due dates and the elements of the report.*

21 (e) *The recorded instrument that places the title of the property*
22 *with a special district or nonprofit organization pursuant to*
23 *subdivision (a) or (b) shall include a provision that if the state*
24 *agency, or its successor agency, determines that the property is*
25 *not being held, monitored, or stewarded for conservation purposes*
26 *in the manner specified in that instrument or in the mitigation*
27 *agreement, the property shall revert to the state agency, or to*
28 *another public agency, special district, or nonprofit organization*
29 *qualified pursuant to subdivision (a) and approved by the state*
30 *agency.*

31 (f) (1) *If the state agency authorizes a special district or*
32 *nonprofit organization to hold the property, the state agency may*
33 *allow the accompanying funds to be held by the same special*
34 *district or nonprofit organization that holds the property subject*
35 *to this subdivision and to subdivision (a) of Section 65968. Except*
36 *the special district or nonprofit organization that is holding the*
37 *property or the state agency, no other special district, nonprofit*
38 *organization, or entity may hold the accompanying funds if the*
39 *property is held by a special district or nonprofit organization.*
40 *The special district or nonprofit organization shall hold, manage,*

1 *invest, and disburse the funds in furtherance of the long-term*
2 *stewardship of the property for which the funds were set aside.*

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

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

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

10 *(C) The holder utilizes generally accepted accounting practices*
11 *as promulgated by the Financial Accounting Standards Board for*
12 *nonprofit organizations or the Governmental Accounting Standards*
13 *Board for public agencies.*

14 *(D) The holder will be able to ensure that funds are accounted*
15 *for, and tied to, a specific property.*

16 *(E) The holder has an adopted investment policy that is*
17 *consistent with the Uniform Prudent Management of Institutional*
18 *Funds Act (Part 7 (commencing with Section 18501) of Division*
19 *9 of the Probate Code).*

20 *(3) The mitigation agreement that authorizes the funds to be*
21 *conveyed to a special district or nonprofit organization pursuant*
22 *to paragraph (2) shall include a provision that requires the*
23 *accompanying funds held by a special district or a nonprofit*
24 *organization to revert to the state agency, or to a successor*
25 *organization identified by the agency and subject to paragraph*
26 *(2), if any of the following occurs:*

27 *(A) The special district or nonprofit organization ceases to exist.*

28 *(B) The special district or nonprofit organization is dissolved.*

29 *(C) The special district or nonprofit organization becomes*
30 *bankrupt or insolvent.*

31 *(D) The state agency determines that the accompanying funds*
32 *held by the special district or nonprofit organization, or its*
33 *successor entity, are not being held, managed, invested, or*
34 *disbursed for conservation purposes in the manner specified in*
35 *the mitigation agreement. If the funds are taken by the state agency,*
36 *the state agency may also take the land pursuant to subdivision*
37 *(e). If the special district or nonprofit organization chooses to*
38 *relinquish the property, the state agency shall take title to the*
39 *property or identify an approved special district or nonprofit*
40 *organization to take title to the property.*

1 (4) *If the state agency is the department, the following conditions*
2 *apply to the holding, managing, investment, expenditure,*
3 *disbursement, and oversight of the accompanying funds:*

4 (A) *A special district or nonprofit organization shall not hold*
5 *funds unless it is certified by the department. The department shall*
6 *adopt regulations for a process to certify special districts or*
7 *nonprofit organizations to hold accompanying funds. The*
8 *department shall not certify more than 10 special districts or*
9 *nonprofit organizations to hold accompanying funds under this*
10 *section.*

11 (B) *The department may contract with the Controller to provide*
12 *fiscal expertise for the evaluation of a special district or nonprofit*
13 *organization to hold accompanying funds.*

14 (C) *A special district or nonprofit organization that holds*
15 *accompanying funds for the long-term stewardship of land may*
16 *be subject to oversight by the Controller. The Controller may*
17 *annually review independent audit or financial statements, tax*
18 *filings, or any other documents or reports the Controller*
19 *determines necessary to verify the sound financial management*
20 *of funds held by a special district or nonprofit organization.*

21 (D) *All costs incurred by the department or the Controller under*
22 *this subdivision shall be paid by the administrative endowment*
23 *established pursuant to paragraph (1) of subdivision (h).*

24 (5) *If the state agency holds the accompanying funds, the state*
25 *agency may hold, manage, and invest the accompanying funds*
26 *pursuant to subparagraph (D) of paragraph (2) and shall disburse*
27 *funds in a timely basis for the stewardship expenses of the special*
28 *district or nonprofit organization holding the property.*

29 (g) *The state agency may contract with or designate an*
30 *independent third party to do any of the following:*

31 (1) *Review the qualifications of a special district or nonprofit*
32 *organization to effectively manage and steward natural land or*
33 *resources pursuant to subdivisions (a) and (c).*

34 (2) *Review the qualifications of a special district or nonprofit*
35 *organization to hold and manage the accompanying funds pursuant*
36 *to paragraph (2) of subdivision (f).*

37 (3) *Review reports or other performance indicators to evaluate*
38 *the stewardship of lands, resources, or funds, and compliance with*
39 *the mitigation agreement.*

1 (h) (1) *If a state agency authorizes a special district or nonprofit*
2 *organization to hold property protected for mitigation purposes,*
3 *the state agency may require an administrative endowment from*
4 *the project proponent for costs associated with reviewing*
5 *qualifications, approving holders, and regular oversight of*
6 *compliance and performance. The administrative endowment shall*
7 *be held, managed, and invested to produce an annual revenue*
8 *sufficient to cover the costs of reviewing qualifications, approving*
9 *holders, and ongoing oversight.*

10 (2) *The state agency may require project proponents to provide*
11 *a one-time payment to provide for the initial stewardship costs for*
12 *up to five years while the endowment begins to accumulate*
13 *investment earnings. This one-time payment will be conveyed to*
14 *the holder of the accompanying funds by the project proponent.*

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

18 (j) *This section shall remain in effect only until January 1, 2022,*
19 *and as of that date is repealed, unless a later enacted statute, that*
20 *is enacted before January 1, 2022, deletes or extends that date.*

21 SEC. 6. *Section 65967 is added to the Government Code, to*
22 *read:*

23 65967. (a) *Notwithstanding any other provision of law, if a*
24 *state agency requires a project proponent to transfer property to*
25 *mitigate any adverse impact upon natural resources caused by*
26 *permitting the development of a project or facility, the state agency*
27 *may authorize a special district or a nonprofit organization to*
28 *hold title to and manage that property. If the state agency*
29 *authorizes a nonprofit organization to hold title to and manage*
30 *the property, the nonprofit organization shall meet all of the*
31 *following requirements:*

32 (1) *The nonprofit organization shall be exempt from taxation*
33 *as an organization described in Section 501(c)(3) of the Internal*
34 *Revenue Code.*

35 (2) *The nonprofit organization shall be qualified to do business*
36 *in the state.*

37 (3) *The nonprofit organization shall be a “qualified*
38 *organization” as defined in Section 170(h)(3) of the Internal*
39 *Revenue Code.*

1 (4) *The nonprofit organization shall have as its principal*
2 *purpose and activity the direct protection or stewardship of land,*
3 *water, or natural resources, or cultural or historic resources,*
4 *including, but not limited to, agricultural lands, wildlife habitat,*
5 *wetlands, endangered species habitat, open-space areas, and*
6 *outdoor recreational areas.*

7 (b) *If a state agency, in the development of its own project, is*
8 *required to protect property to mitigate an adverse impact upon*
9 *natural resources, the agency may do either of the following:*

10 (1) *Transfer the interest to a special district or to a nonprofit*
11 *organization that meets the requirements set forth in subdivision*
12 *(a).*

13 (2) *Provide funds to a special district or nonprofit organization*
14 *to acquire land or easements that satisfy the agency's mitigation*
15 *obligations.*

16 (c) *A state agency shall exercise due diligence in reviewing the*
17 *qualifications of a special district or nonprofit organization to*
18 *effectively manage and steward natural land or resources, as well*
19 *as the accompanying funds. The state agency may adopt guidelines*
20 *to assist it in that review process, which may include, but are not*
21 *limited to, the use of or reliance upon guidelines, standards, or*
22 *accreditation established by a qualified entity that are in*
23 *widespread state or national use.*

24 (d) *The state agency may require the special district or nonprofit*
25 *organization to submit a report not more than once every 12*
26 *months and for the number of years specified in the mitigation*
27 *agreement, that details the stewardship and condition of the*
28 *property and the accompanying funds. The mitigation agreement*
29 *shall specify the reporting due dates and the elements of the report.*

30 (e) *The recorded instrument that places the title of the property*
31 *with a special district or nonprofit organization pursuant to*
32 *subdivision (a) or (b) shall include a provision that if the state*
33 *agency, or its successor agency, determines that the property is*
34 *not being held, monitored, or stewarded for conservation purposes*
35 *in the manner specified in that instrument or in the mitigation*
36 *agreement, the property shall revert to the state agency, or to*
37 *another public agency, special district, or nonprofit organization*
38 *qualified pursuant to subdivision (a) and approved by the state*
39 *agency.*

1 (f) The state agency may contract with or designate an
2 independent third party to do any of the following:

3 (1) Review the qualifications of a special district or nonprofit
4 organization to effectively manage and steward natural land or
5 resources pursuant to subdivisions (a) and (c).

6 (2) Review reports or other performance indicators to evaluate
7 the stewardship of lands, resources, or funds, and compliance with
8 the mitigation agreement.

9 (g) (1) If a state agency authorizes a special district or nonprofit
10 organization to hold property protected for mitigation purposes,
11 the state agency may require an administrative endowment from
12 the project proponent for costs associated with reviewing
13 qualifications, approving holders, and regular oversight of
14 compliance and performance. The administrative endowment shall
15 be held, managed, and invested to produce an annual revenue
16 sufficient to cover the costs of reviewing qualifications, approving
17 holders, and ongoing oversight.

18 (2) The state agency may require project proponents to provide
19 a one-time payment to provide for the initial stewardship costs for
20 up to five years while the endowment begins to accumulate
21 investment earnings. This one-time payment will be conveyed to
22 the holder of the accompanying funds by the project proponent.

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

26 (i) This section shall become operative on January 1, 2022.

27 SEC. 7. Section 65968 is added to the Government Code, to
28 read:

29 65968. (a) Any local or state agency that requires property
30 to be protected pursuant to subdivisions (a) or (b) of Section 65966
31 or subdivisions (a) or (b) of Section 65967 shall identify how the
32 funding needs of the long-term stewardship of the property will
33 be met. If funds are set aside at the time the property is protected,
34 all of the following shall apply:

35 (1) The accompanying funds shall be held, managed, invested,
36 and disbursed solely for the long-term stewardship of the specific
37 property for which the funds were set aside.

38 (2) The accompanying funds shall be calculated to include a
39 principle amount that, when managed and invested, will produce

1 revenues that are reasonably sufficient to cover the annual
2 stewardship costs of the property in perpetuity.

3 (3) The principle amount shall be defined and managed as
4 permanently restricted funds.

5 (4) Any one-time payment, pursuant to paragraph (1) of
6 subdivision (h) of Section 65966 or paragraph (1) of subdivision
7 (h) of Section 65967, and earnings from the principle, shall be
8 managed as temporarily restricted funds.

9 (5) The accompanying funds shall be held, managed, invested,
10 and disbursed consistent with the Uniform Prudent Management
11 of Institutional Funds Act (Part 7 (commencing with Section 18501)
12 of Division 9 of the Probate Code).

13 (b) A property that has been previously protected for
14 conservation purposes, including the placement of a conservation
15 easement on the property, may not be used for mitigation purposes.

16 (c) Any conservation easement that is used to satisfy a local or
17 state mitigation requirement shall be permanent in duration.

18 (d) If a property conserved pursuant to subdivision (a) or (b)
19 of Section 65966 or subdivision (a) or (b) of Section 65967 is
20 condemned, any funds received for the condemnation of the
21 property shall be used for the purchase of a replacement property
22 with similar natural resource characteristics as the original
23 mitigation was intended to protect, or as near as reasonably
24 feasible. Any accompanying funds held for the condemned property
25 shall be held for the long-term stewardship of the replacement
26 property.

27 (e) This section shall remain in effect only until January 1, 2022,
28 and as of that date is repealed, unless a later enacted statute, that
29 is enacted before January 1, 2022, deletes or extends that date.

30 SEC. 8. Section 65968 is added to the Government Code, to
31 read:

32 65968. (a) Any local or state agency that requires property
33 to be protected pursuant to subdivisions (a) or (b) of Section 65966
34 or subdivisions (a) or (b) of Section 65967 shall identify how the
35 funding needs of the long-term stewardship of the property will
36 be met. If funds are set aside at the time the property is protected,
37 all of the following shall apply:

38 (1) The accompanying funds shall be held, managed, invested,
39 and disbursed solely for the long-term stewardship of the specific
40 property for which the funds were set aside.

1 (2) *The accompanying funds shall be calculated to include a*
2 *principle amount that, when managed and invested, will produce*
3 *revenues that are reasonably sufficient to cover the annual*
4 *stewardship costs of the property in perpetuity.*

5 (3) *The principle amount shall be defined and managed as*
6 *permanently restricted funds.*

7 (4) *Any one-time payment, pursuant to paragraph (1) of*
8 *subdivision (g) of Section 65966 or paragraph (1) of subdivision*
9 *(g) of Section 65967, and earnings from the principle, shall be*
10 *managed as temporarily restricted funds.*

11 (5) *The accompanying funds shall be held, managed, invested,*
12 *and disbursed consistent with the Uniform Prudent Management*
13 *of Institutional Funds Act (Part 7 (commencing with Section 18501)*
14 *of Division 9 of the Probate Code).*

15 (b) *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 (c) *Any conservation easement that is used to satisfy a local or*
19 *state mitigation requirement shall be permanent in duration.*

20 (d) *If a property conserved pursuant to subdivision (a) or (b)*
21 *of Section 65966 or subdivision (a) or (b) of Section 65967 is*
22 *condemned, any funds received for the condemnation of the*
23 *property shall be used for the purchase of a replacement property*
24 *with similar natural resource characteristics as the original*
25 *mitigation was intended to protect, or as near as reasonably*
26 *feasible. Any accompanying funds held for the condemned property*
27 *shall be held for the long-term stewardship of the replacement*
28 *property.*

29 (e) *This section shall become operative on January 1, 2022.*

30 ~~SECTION 1. The Legislature finds and declares all of the~~
31 ~~following:~~

32 ~~(a) State and local laws protect a variety of natural resources,~~
33 ~~and also require permits to be issued for the development of certain~~
34 ~~projects or facilities.~~

35 ~~(b) In furtherance of these laws, state or local public agencies~~
36 ~~may require a property owner to transfer an interest in real property~~
37 ~~to mitigate any adverse impact upon natural resources caused by~~
38 ~~permitting the development of a project or facility.~~

39 ~~(c) Funds may be simultaneously set aside for the long-term~~
40 ~~management of the property transferred for mitigation purposes.~~

1 ~~(d) Lands and real property interests transferred to achieve the~~
2 ~~mitigation may be held by nonprofit organizations.~~

3 ~~(e) Many state and local agencies work with nonprofit~~
4 ~~organizations in valuable and cost effective public-private~~
5 ~~partnerships to identify properties that meet the mitigation~~
6 ~~requirements and to hold and provide long-term management of~~
7 ~~the real property interests.~~

8 ~~(f) There are tools and strategies available for improving the~~
9 ~~effectiveness, cost efficiency, and durability of mitigation for~~
10 ~~California's natural resources.~~

11 ~~(g) Identifying mitigation needs on a regional basis may expedite~~
12 ~~the planning and mitigation processes, as well as result ultimately~~
13 ~~in consolidated mitigation areas that can be managed more cost~~
14 ~~effectively.~~

15 ~~(h) It is in the interest of the public, project proponents, and~~
16 ~~local communities to ensure that the public benefits of mitigation~~
17 ~~are achieved.~~

18 ~~(i) It is in the best interest of the public to allow state and local~~
19 ~~public agencies and nonprofit organizations to utilize the tools and~~
20 ~~strategies they need for improving the effectiveness, cost efficiency,~~
21 ~~and durability of mitigation for California's natural resources.~~

22 ~~SEC. 2. Section 65965 of the Government Code is amended~~
23 ~~to read:~~

24 ~~65965. (a) For the purposes of this section, the following~~
25 ~~definitions apply:~~

26 ~~(1) "Department" means the Department of Fish and Game.~~

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

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

35 ~~(b) Notwithstanding any other provision of law to the contrary,~~
36 ~~if a state or local public agency requires a property owner to~~
37 ~~transfer to the agency an interest in real property to mitigate any~~
38 ~~adverse impact upon natural resources caused by permitting the~~
39 ~~development of a project or facility, the state or local public agency~~
40 ~~may authorize a nonprofit organization to hold title to and manage~~

1 that interest in real property, provided that the nonprofit
2 organization is all of the following:

3 (1) Exempt from taxation as an organization described in Section
4 501(e)(3) of the Internal Revenue Code, and qualified to do
5 business in the state.

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

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

13 (e) If a state or local public agency, in the development of its
14 own project, is required to protect an interest in real property to
15 mitigate an adverse impact upon natural resources, the agency may
16 do either of the following:

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

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

21 (d) (1) Funds set aside for the long-term management of lands
22 or easements conveyed to a nonprofit organization pursuant to
23 subdivisions (b) and (e) may also be conveyed to the nonprofit
24 organization, subject to the limitations in paragraph (2). The
25 nonprofit organization shall hold, manage, invest, and disburse
26 the funds in furtherance of managing and stewarding the land or
27 easement for which the funds were set aside.

28 (2) (A) A nonprofit organization may not hold funds on behalf
29 of the department for the long-term management of lands unless
30 that nonprofit organization is certified by the department. The
31 department shall adopt regulations for a process to certify nonprofit
32 organizations to hold funds on behalf of the department for the
33 long-term management of land. The department shall certify no
34 more than 10 nonprofits to hold funds for the long-term
35 management of mitigation lands under this section.

36 (B) A nonprofit organization that holds funds on the behalf of
37 the department for the long-term management of land shall be
38 subject to oversight by the Controller. The Controller shall annually
39 review independent audit statements, tax filings, or any other
40 documents or reports the Controller determines necessary to verify

1 the sound financial management of funds held by a nonprofit
2 organization on behalf of the department for the long-term
3 management of land. All costs incurred by the department or the
4 Controller under this subdivision shall be reimbursed by the
5 nonprofit organization.

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

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

16 (A) Ceases operation.

17 (B) Is dissolved.

18 (C) Becomes bankrupt or insolvent.

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

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 (g) (1) A state or local public agency shall exercise due
35 diligence in reviewing the qualifications of a nonprofit organization
36 to effectively manage and steward natural land or resources, as
37 well as the accompanying funds. The state or local public agency
38 may adopt guidelines to assist the agency in that review process,
39 which may include guidelines or standards established by a
40 qualified 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 ~~(3) The department may contract with the Controller to provide~~
19 ~~fiscal expertise for the evaluation of nonprofit organizations that~~
20 ~~hold funds on behalf of the department for the long-term~~
21 ~~management of mitigation lands.~~
22 ~~(h) The state or local public agency may contract with or~~
23 ~~designate an independent third party to do any of the following:~~
24 ~~(1) Review the qualifications of a nonprofit organization to~~
25 ~~effectively manage and steward natural land or resources.~~
26 ~~(2) Review the qualifications of a nonprofit organization to hold~~
27 ~~and manage the funds set aside for long-term management~~
28 ~~associated with the property.~~
29 ~~(3) Determine whether the holder of the funds meets the~~
30 ~~requirements set forth in paragraph (2) of subdivision (f).~~
31 ~~(4) Review reports or other performance indicators to evaluate~~
32 ~~the management of lands, resources, or funds.~~
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 ~~(j) This section shall not apply retroactively to endowment funds~~
5 ~~held by the state in the Pooled Money Investment Account as of~~
6 ~~January 1, 2012.~~

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

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

17 ~~(m) This section shall remain in effect only until January 1,~~
18 ~~2022, and as of that date is repealed, unless a later enacted statute,~~
19 ~~which is enacted before January 1, 2022, deletes or extends that~~
20 ~~date.~~

21 ~~SEC. 3. Section 65965 is added to the Government Code, to~~
22 ~~read:~~

23 ~~65965. (a) For the purposes of this section, the following~~
24 ~~definitions apply:~~

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

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

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

1 ~~(1) Exempt from taxation as an organization described in Section~~
2 ~~501(c)(3) of the Internal Revenue Code, and qualified to do~~
3 ~~business in the state.~~

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

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

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

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

30 ~~(e) A state or local public agency shall exercise due diligence~~
31 ~~in reviewing the qualifications of a nonprofit organization to~~
32 ~~effectively manage and steward natural land or resources. The~~
33 ~~state or local public agency may adopt guidelines to assist the~~
34 ~~agency in that review process.~~

35 ~~(f) This section shall become operative on January 1, 2022.~~