

AMENDED IN ASSEMBLY JULY 13, 2011
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
(Principal coauthor: Assembly Member Alejo)
(Coauthor: Assembly Member Chesbro)

February 16, 2011

An act to amend Section 65965 of, *to add Section 65969 to*, 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, 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 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 achieve
- 15 the mitigation may be held by public agencies, special districts,
- 16 nonprofit organizations, or other entities, including for-profit
- 17 corporations.
- 18 (e) Many state and local agencies work with special districts,
- 19 nonprofit organizations, and property owners in valuable and ~~cost~~
- 20 ~~effective~~ *cost-effective* public-private partnerships to identify
- 21 properties that meet the mitigation requirements and to hold and
- 22 provide long-term stewardship of the real property interests.

1 (f) There are tools and strategies available for improving the
2 effectiveness, cost efficiency, and durability of mitigation for
3 California’s natural resources.

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

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

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

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

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

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

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

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

1 or misuse of endowment funds, including the recovery of any
2 endowment funds.

3 (o) The management of endowment funds by California
4 nonprofit organizations is governed by the Uniform Prudent
5 Management of Institutional Funds Act (Part 7 (commencing with
6 Section 18501) of Division 9 of the Probate Code).

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

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

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

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

26 65965. For the purposes of this chapter, the following
27 definitions apply:

28 (a) “Accompanying funds” means the funds for the long-term
29 stewardship of lands that may be conveyed for the long-term
30 stewardship of a property.

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

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

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

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

4 ~~(f)~~

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

11 ~~(g)~~

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

15 ~~(h)~~

16 (g) “Property” means fee title land or any partial interest in real
17 property, including a conservation easement.

18 ~~(i)~~

19 (h) “Special district” means any special district formed pursuant
20 to Article 3 (commencing with Section 5500) of Chapter 3 of
21 Division 5 or Division 26 (commencing with Section 35100) of
22 the Public Resources Code.

23 ~~(j)~~

24 (i) “Stewardship” encompasses the range of activities involved
25 in controlling, resource and compliance monitoring, and managing
26 for conservation purposes a property, or a conservation or
27 open-space easement, as defined by the terms of the easement, and
28 its attendant resources.

29 SEC. 3. Section 65966 is added to the Government Code, to
30 read:

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

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

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

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

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

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

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

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

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

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

37 (e) The recorded instrument that places the title of the property
38 with a special district or nonprofit organization pursuant to
39 subdivision (a) or (b) shall include a provision that if the local
40 agency or its successor agency reasonably determines that the

1 property is not being held, monitored, or stewarded for
2 conservation purposes in the manner specified in that instrument
3 or in the mitigation agreement, the property shall revert to the local
4 agency, or to another public agency, special district, or nonprofit
5 organization qualified pursuant to subdivision (a) and approved
6 by the local agency.

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

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

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

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

26 (C) The holder utilizes generally accepted accounting practices
27 as promulgated by the Financial Accounting Standards Board for
28 nonprofit organizations or the Governmental Accounting Standards
29 Board for public agencies.

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

32 (E) The holder has an investment policy that is consistent with
33 the Uniform Prudent Management of Institutional Funds Act (Part
34 7 (commencing with Section 18501) of Division 9 of the Probate
35 Code).

36 (3) The mitigation agreement that authorizes the funds to be
37 conveyed to a special district or nonprofit organization pursuant
38 to paragraph (2) shall include a provision that requires the
39 accompanying funds held by a special district or a nonprofit
40 organization to revert to the local agency, or to a successor

1 organization identified by the agency and subject to paragraph (2),
2 if any of the following occurs:

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

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

5 (C) The special district or nonprofit organization becomes
6 bankrupt or insolvent.

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

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

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

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

28 (2) Review the qualifications of a special district or nonprofit
29 organization to hold and manage the accompanying funds pursuant
30 to paragraph (2) of subdivision (f).

31 (3) Review reports or other performance indicators to evaluate
32 the stewardship of lands, resources, or funds, and compliance with
33 the mitigation agreement.

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

1 cover the costs of reviewing qualifications, approving holders, and
2 ongoing oversight.

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

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

12 SEC. 4. Section 65966 is added to the Government Code, to
13 read:

14 ~~65966. (a) Notwithstanding any other provision of law, if~~ *If* a
15 local 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 local agency
18 may authorize a special district or a nonprofit organization to hold
19 title to and manage that property. If the local agency authorizes a
20 nonprofit organization to hold title to and manage the property,
21 ~~the~~ *that* nonprofit organization shall meet all of the following
22 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 organization”
29 as defined in Section 170(h)(3) of the Internal Revenue Code.

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

36 (b) If a local agency, in the development of its own project, is
37 required to protect property to mitigate an adverse impact upon
38 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 nonprofit organization or special district
5 to acquire land or easements that satisfy the agency's mitigation
6 obligations.

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

15 (d) The local agency may require the special district or nonprofit
16 organization to submit a report not more than once every 12 months
17 and for the number of years specified in the mitigation agreement,
18 that details the stewardship and condition of the property and the
19 accompanying funds. The mitigation agreement shall specify any
20 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 local
24 agency or its successor agency reasonably determines that the
25 property is not being held, monitored, or stewarded for
26 conservation purposes in the manner specified in that instrument
27 or in the mitigation agreement, the property shall revert to the local
28 agency, or to another public agency, special district, or nonprofit
29 organization qualified pursuant to subdivision (a) and approved
30 by the local agency.

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

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

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

39 (g) (1) If a local agency authorizes a special district or nonprofit
40 organization pursuant to subdivision (a) or (b), the local agency

1 may require an administrative endowment from the project
2 proponent for costs associated with reviewing qualifications,
3 approving holders, and regular oversight of compliance and
4 performance. The administrative endowment shall be held,
5 managed, and invested to produce an annual revenue sufficient to
6 cover the costs of reviewing qualifications, approving holders, and
7 ongoing oversight.

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

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

15 SEC. 5. Section 65967 is added to the Government Code, to
16 read:

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

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

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

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

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

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

4 (1) Transfer the interest to a special district or to a nonprofit
5 organization that meets the requirements set forth in subdivision
6 (a).

7 (2) Provide funds to a special district or nonprofit organization
8 to acquire land or easements that satisfy the agency's mitigation
9 obligations.

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

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

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

34 (f) (1) ~~If~~ *Notwithstanding Section 13014 of the Fish and Game*
35 *Code, if* the state agency authorizes a special district or nonprofit
36 organization to hold the property, the state agency may allow the
37 accompanying funds to be held by the same special district or
38 nonprofit organization that holds the property subject to this
39 subdivision and to subdivision (a) of Section 65968. Except the
40 special district or nonprofit organization that is holding the property

1 or the state agency, no other special district, nonprofit organization,
2 or entity may hold the accompanying funds if the property is held
3 by a special district or nonprofit organization. The special district
4 or nonprofit organization shall hold, manage, invest, and disburse
5 the funds in furtherance of the long-term stewardship of the
6 property for which the funds were set aside.

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

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

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

14 (C) The holder utilizes generally accepted accounting practices
15 as promulgated by the Financial Accounting Standards Board for
16 nonprofit organizations or the Governmental Accounting Standards
17 Board for public agencies.

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

20 (E) The holder has an adopted investment policy that is
21 consistent with the Uniform Prudent Management of Institutional
22 Funds Act (Part 7 (commencing with Section 18501) of Division
23 9 of the Probate Code).

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

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

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

33 (C) The special district or nonprofit organization becomes
34 bankrupt or insolvent.

35 (D) The state agency determines that the accompanying funds
36 held by the special district or nonprofit organization, or its
37 successor entity, are not being held, managed, invested, or
38 disbursed for conservation purposes in the manner specified in the
39 mitigation agreement. If the funds are taken by the state agency,
40 the state agency may also take the land pursuant to subdivision

1 (e). If the special district or nonprofit organization chooses to
2 relinquish the property, the state agency shall take title to the
3 property or identify an approved special district or nonprofit
4 organization to take title to the property.

5 (4) If the state agency is the department, the following conditions
6 apply to the holding, managing, investment, expenditure,
7 disbursement, and oversight of the accompanying funds:

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

15 (B) The department may contract with the Controller to provide
16 fiscal expertise for the evaluation of a special district or nonprofit
17 organization to hold accompanying funds.

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

25 (D) All costs incurred by the department or the Controller under
26 this subdivision shall be paid by the administrative endowment
27 established pursuant to paragraph (1) of subdivision (h).

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

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

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

38 (2) Review the qualifications of a special district or nonprofit
39 organization to hold and manage the accompanying funds pursuant
40 to paragraph (2) of subdivision (f).

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

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

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

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

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

24 SEC. 6. Section 65967 is added to the Government Code, to
25 read:

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

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

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

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

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

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

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

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

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

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

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

1 qualified pursuant to subdivision (a) and approved by the state
2 agency.

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

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

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

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

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

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

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

29 SEC. 7. Section 65968 is added to the Government Code, to
30 read:

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

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

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

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

7 (4) Any one-time payment, pursuant to paragraph (1) of
8 subdivision (h) of Section 65966 or paragraph (1) of subdivision
9 (h) of Section 65967, and earnings from the ~~principle~~ *principal*,
10 shall be 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
14 18501) 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) of
21 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 remain in effect only until January 1, 2022,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2022, deletes or extends that date.

32 SEC. 8. Section 65968 is added to the Government Code, to
33 read:

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

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

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

8 (3) The ~~principle~~ *principal* amount shall be defined and managed
9 as permanently restricted funds.

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

14 (5) The accompanying funds shall be held, managed, invested,
15 and disbursed consistent with the Uniform Prudent Management
16 of Institutional Funds Act (Part 7 (commencing with Section
17 18501) of Division 9 of the Probate Code).

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

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

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

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

33 *SEC. 9. Section 65969 is added to the Government Code, to*
34 *read:*

35 *65969. A special district or a nonprofit organization that holds*
36 *funds pursuant to this chapter, including, but not limited to,*
37 *accompanying funds, moneys to acquire land or easements, or*
38 *moneys for initial stewardship costs, shall provide the local or*
39 *state agency with an annual fiscal report regarding the funds that*

- 1 *contains at least the same information as is required by Internal*
- 2 *Revenue Service Form 990.*

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