

AMENDED IN SENATE MAY 15, 2012
AMENDED IN SENATE APRIL 19, 2012
AMENDED IN SENATE APRIL 16, 2012
AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1094

Introduced by Senator Kehoe

February 16, 2012

An act to amend Sections 65965, 65966, 65967, and 65968 of the Government Code, relating to land use, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as amended, Kehoe. Land use: mitigation lands: nonprofit organizations.

(1) The Planning and Zoning Law provides that if a state or local agency requires a person to transfer to that agency an interest in real property to mitigate the environmental impact of a project or facility, that agency may authorize specified entities to hold title to, and manage that interest in, real property, as well as any accompanying funds, provided those entities meet specified requirements. Existing law requires that if accompanying funds, as defined, are conveyed at the time the property is protected, then the holder of those accompanying funds must meet specified requirements. Existing law requires a state or local agency to exercise due diligence in reviewing the qualifications of a special district or nonprofit organization to effectively manage and steward land, water, or natural resources, as well as the accompanying funds.

This bill would use the term “endowment” instead of “accompanying funds.” This bill would authorize an agency, in connection with the provisions described above, to also permit a governmental entity, *as defined*, to hold title to, and manage that interest in, real property, as well as any endowment. This bill would remove the requirement that a state or local agency exercise due diligence in reviewing the qualifications of a special district or nonprofit organization to effectively manage the endowment. This bill would also modify the requirements that the holder of an endowment must meet, and would provide that those requirements also apply to endowments that are secured at the time the property is protected.

(2) Existing law authorizes a state or local agency, if that agency authorizes specified entities to hold property pursuant to these provisions, to require an administrative endowment from the project proponent to cover reasonable costs to the agency.

This bill would revise that provision to authorize a state or local agency to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of potential holders of the property, approving those holders, and any regular oversight over those holders to ensure that the holders are complying with all applicable laws.

(3) Existing law provides that if a state or local agency, in the development of its own project, is required to mitigate an adverse impact upon natural resources, that agency may take any action it deems necessary to meet its mitigation obligations, including, among others, transferring an interest in the property to specified entities.

This bill would additionally authorize a state or local agency to hold an endowment in an account administered by an elected official.

(4) Existing law generally requires that the accompanying funds described above be held by the agency that requires the mitigation or by the special district or nonprofit organization that holds the property. Existing law excepts certain situations from this requirement, including, among others, if the accompanying funds are held by another entity pursuant to a natural community conservation plan or a safe harbor agreement that is executed on or before January 1, 2012.

This bill would require that, in order to qualify for that exception, ~~the natural community conservation plan or safe harbor agreement be at a recognized initial, interim, or final stage on or before January 1, 2012~~ *the implementation agreement would be required to meet certain requirements*. This bill also would modify the exceptions to that

requirement by adding some and removing others, including, among other changes, adding exceptions that would authorize a community foundation, as defined, or ~~the National Fish and Wildlife Foundation~~ *a congressionally chartered foundation* to hold an endowment if specified conditions are met.

This bill would authorize a state or local agency to allow the endowments to be temporarily held in an escrow account until a specified date, after which time the bill would require the state or local agency to transfer the endowments to the entity that will permanently hold them.

~~This bill would require the National Fish and Wildlife Foundation, if the foundation holds any endowment funds pursuant to these provisions, to submit a report to the Legislature by a specified date that contains specified requirements.~~

This bill would also make technical, nonsubstantive changes to those provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. It is the intent of the Legislature, and in the best
2 interest of the public, that there is available a diversified pool of
3 eligible entities that are qualified to do business in California,
4 based in California, and that meet the requirements of this chapter
5 to hold, manage, invest, and disburse endowment funds in
6 furtherance of the long-term stewardship of the property set aside
7 for mitigation purposes.

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

10 65965. For the purposes of this chapter, the following
11 definitions apply:

12 (a) "Endowment" means the funds that are conveyed solely for
13 the long-term stewardship of a *mitigation* property. ~~The initial~~
14 ~~endowment forms the principle that is held and managed as a~~
15 ~~permanently restricted fund to generate annual revenues for the~~
16 ~~long-term management and stewardship of the property. The~~
17 ~~endowment shall be~~ *Endowment funds are held as charitable assets*

1 *that are permanently restricted to paying the costs of long-term*
2 *management and stewardship of the mitigation property for which*
3 *the funds were set aside. Endowments shall be governed by the*
4 *underlying laws and regulations pursuant to which the endowments*
5 *were exacted, and otherwise held consistent with subdivision (b)*
6 *of Section 65966 and with the Uniform Prudent Management of*
7 *Institutional Funds Act (Part 7 (commencing with Section 18501)*
8 *of Division 9 of the Probate Code). Endowments do not include*
9 *funds conveyed for meeting short-term performance objectives of*
10 *a project.*

11 (b) “Community foundation” means any community foundation
12 that meets all of the following requirements:

13 (1) Meets the requirements of a community trust under Section
14 1.170A-9(f)(10)-(11) of Title 26 of the Code of Federal
15 Regulations.

16 (2) Is exempt from taxation as an organization described in
17 Section 501(c)(3) of the Internal Revenue Code.

18 (3) Is qualified to do business in this state.

19 (4) Is a “qualified organization” as defined in Section 170(h)(3)
20 of the Internal Revenue Code.

21 (5) Has complied with National Standards for U.S. Community
22 Foundations as determined by the Community Foundations
23 National Standards Board, a supporting organization of the Council
24 on Foundations.

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

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

33 (e) “Governmental entity” means any state agency, office,
34 officer, department, division, bureau, board, ~~and~~ commission, ~~and~~
35 ~~any~~ city, county, or city and county, *or a joint powers authority*
36 *formed pursuant to the Joint Exercise of Powers Act (Chapter 5*
37 *(commencing with Section 6500) of Division 7 of the Government*
38 *Code) that was created for the principal purpose and activity of*
39 *the direct protection or stewardship of land, water, or natural*
40 *resources, including, but not limited to, agricultural lands, wildlife*

1 *habitat, wetlands, endangered species habitat, open-space areas,*
2 *and outdoor recreational areas.*

3 (f) “Mitigation agreement” means a written agreement between
4 a ~~public state or local~~ agency, the project proponent, and the
5 governmental entity, special district, nonprofit organization,
6 for-profit entity, or other entity that holds the property. A mitigation
7 agreement governs the long-term stewardship of ~~a~~ *the mitigation*
8 property and an endowment, ~~and shall specify any reporting~~
9 ~~requirements or elements, including due dates of reports.~~

10 (g) ~~“National Fish and Wildlife Foundation”~~ “*Congressionally*
11 *chartered foundation*” means a nonprofit organization that meets
12 all of the following requirements:

13 (1) ~~Was~~ *Is* chartered by the United States Congress ~~in 1984.~~

14 (2) Is exempt from taxation as an organization described in
15 Section 501(c)(3) of the Internal Revenue Code.

16 (3) Is qualified to do business in this state.

17 (4) Is registered with the Registry of Charitable Trusts
18 maintained by the Attorney General pursuant to Section 12584.

19 (5) Has as its ~~principal a~~ purpose and activity ~~the administration~~
20 ~~of donations of real or personal property, or the interest in property,~~
21 ~~in connection with United States Fish and Wildlife Service~~
22 ~~programs and conservation activities in the United States.~~ *the*
23 *conservation and management of fish, wildlife, plants, and other*
24 *natural resources, which includes, but is not limited to, the direct*
25 *protection or stewardship of land, water, or natural wildlife*
26 *habitat, wetlands, endangered species habitat, open-space areas,*
27 *and outdoor recreational areas.*

28 (h) “Nonprofit organization” means any nonprofit organization
29 that meets all of the following requirements:

30 (1) Is exempt from taxation as an organization described in
31 Section 501(c)(3) of the Internal Revenue Code.

32 (2) Is qualified to do business in this state.

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

35 (4) Is registered with the Registry of Charitable Trusts
36 maintained by the Attorney General pursuant to Section 12584.

37 (5) Has as its principal purpose and activity the direct protection
38 or stewardship of land, water, or natural resources, including, but
39 not limited to, agricultural lands, wildlife habitat, wetlands,

1 endangered species habitat, open-space areas, and outdoor
2 recreational areas.

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

6 (j) “Property” means fee title land or any partial interest in real
7 property, including a conservation easement, that may be conveyed
8 pursuant to a mitigation requirement by a state or local agency.

9 (k) “Special district” means any of the following special
10 districts:

11 ~~(1)~~
12 (1) A special district formed pursuant to Article 3 (commencing
13 with Section 5500) of Chapter 3 of Division 5 or Division 26
14 (commencing with Section 35100) of the Public Resources Code.

15 (2) A resource conservation district organized pursuant to
16 Division 9 (commencing with Section 9001) of the Public
17 Resources Code.

18 (3) A district organized or formed pursuant to the Metropolitan
19 Water District Act (Chapter 209 of the Statutes of 1969).

20 (4) A county water district organized under Division 12
21 (commencing with Section 30000) of the Water Code, that has
22 more than 5,000 acres of mitigation lands.

23 (5) A special district formed pursuant to Chapter 2 (commencing
24 with Section 11561) of Division 6 of the Public Utilities Code that
25 provides water and wastewater treatment services.

26 (6) A district organized or formed pursuant to the County Water
27 Authority Act (Chapter 545 of the Statutes of 1943).

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

32 SEC. 3. Section 65966 of the Government Code is amended
33 to read:

34 65966. (a) Any conservation easement created as a component
35 of satisfying a local or state mitigation requirement shall be
36 perpetual in duration, whether created pursuant to Chapter 6.6
37 (commencing with Section 51070) of Part 1 of Division 1 of Title
38 5 of this code or Chapter 4 (commencing with Section 815) of
39 Title 2 of Part 2 of the Civil Code.

1 (b) Any local or state agency that requires property to be
2 protected pursuant to subdivision (a) or (b) of Section 65967 may
3 identify how the funding needs of the long-term stewardship of
4 the property will be met. If an endowment is conveyed or secured
5 at the time the property is protected, all of the following shall
6 apply:

7 (1) The endowment shall be held, managed, invested, and
8 disbursed solely for, *and permanently restricted to*, the long-term
9 stewardship of the specific property for which the funds were set
10 aside.

11 (2) The endowment shall be calculated to include a principal
12 amount that, when managed and invested, is reasonably anticipated
13 to cover the annual stewardship costs of the property in perpetuity.

14 ~~(3) The principal amount shall be defined and managed as~~
15 ~~permanently restricted funds.~~

16 ~~(4) Any one-time payment, as defined by subdivision (g), and~~
17 ~~earnings from the principal shall be managed as temporarily~~
18 ~~restricted funds.~~

19 ~~(5)~~

20 (3) The endowment shall be held, managed, invested, ~~and~~
21 disbursed, *and governed as described in subdivision (a) of Section*
22 *65965* consistent with the Uniform Prudent Management of
23 Institutional Funds Act (Part 7 (commencing with Section 18501)
24 of Division 9 of the Probate Code).

25 (c) If a nonprofit corporation holds the endowment, the nonprofit
26 shall utilize generally accepted accounting practices that are
27 promulgated by the Financial Accounting Standards Board *or any*
28 *successor entity*.

29 (d) If a local agency holds the endowment, the local agency
30 shall do all of the following:

31 (1) Hold, manage, and invest the endowment consistent with
32 subdivision (b) to the extent allowed by law.

33 (2) Disburse funds on a timely basis to meet the stewardship
34 expenses of the entity holding the property.

35 (3) Utilize accounting standards consistent with standards
36 promulgated by the Governmental Accounting Standards Board
37 *or any successor entity*.

38 (e) ~~A(1)~~ *Unless the mitigation agreement provides otherwise,*
39 *a governmental entity, community foundation, special district, a*
40 *congressionally chartered foundation, or a nonprofit organization*

1 that holds funds pursuant to this chapter, including, ~~but not limited~~
2 ~~to~~, an endowment, ~~moneys to acquire land or easements~~, or moneys
3 for initial stewardship costs, shall provide the local or state agency
4 *that required the endowment* with an annual fiscal report that
5 contains at least ~~the same information as required by Internal~~
6 ~~Revenue Service Form 990 regarding the funds~~. *the following*
7 *elements with respect to each individual endowment dedicated on*
8 *a property-by-property basis and held by that entity:*

9 (A) *The balance of each individual endowment at the beginning*
10 *of the reporting period.*

11 (B) *The amount of any contribution to the endowment during*
12 *the reporting period including, but not limited to, gifts, grants,*
13 *and contributions received.*

14 (C) *The net amounts of investment earnings, gains, and losses*
15 *during the reporting period, including both realized and unrealized*
16 *amounts.*

17 (D) *The amounts distributed during the reporting period for*
18 *facilities and programs that accomplish the purpose for which the*
19 *endowment was established.*

20 (E) *The administrative expenses charged to the endowment from*
21 *internal or third-party sources during the reporting period.*

22 (F) *The balance of the endowment or other fund at the end of*
23 *the reporting period.*

24 (G) *The specific asset allocation percentages including, but not*
25 *limited to, cash, fixed income, equities, and alternative investments.*

26 (H) *The most recent financial statements for the organization*
27 *audited by an independent auditor who is, at a minimum, a certified*
28 *public accountant.*

29 (2) *If an entity is required to submit an identical annual fiscal*
30 *report pursuant to paragraph (1) to the Department of Fish and*
31 *Game and any other state or local agency, then that report shall*
32 *be provided only to the Department of Fish and Game. In that*
33 *instance, the Department of Fish and Game shall provide a copy*
34 *of that annual fiscal report on its Internet Web site for a minimum*
35 *of five years.*

36 (f) If a state or local agency authorizes a governmental entity,
37 special district, or nonprofit organization to hold property pursuant
38 to subdivision (a) or (b) of Section 65967 in connection with a
39 development project, the agency may require the project proponent
40 to pay a one-time fee that does not exceed the reasonable costs of

1 the agency in reviewing qualifications of potential holders of the
2 property, approving those holders, and any regular oversight over
3 those holders to ensure that the holders are complying with all
4 applicable laws. ~~The one-time fee shall be held, managed, and~~
5 ~~invested to produce an annual revenue sufficient to cover the costs~~
6 ~~of reviewing qualifications, approving holders, and ongoing~~
7 ~~oversight.~~

8 (g) A local agency may require a project proponent to provide
9 a one-time payment that will provide for the initial stewardship
10 costs for up to three years while the endowment begins to
11 accumulate investment earnings. The funds for the initial
12 stewardship costs are distinct from the funds that may be conveyed
13 for long-term stewardship, construction, or other costs. If there are
14 funds remaining at the completion of the initial stewardship period,
15 the funds shall be conveyed to the project proponent.

16 (h) The local agency may contract with or designate a qualified
17 third party to do any of the following:

18 (1) Review the qualifications of a governmental entity, special
19 district, or nonprofit organization to effectively manage and
20 steward natural land or resources pursuant to subdivision (c) of
21 Section 65967.

22 (2) Review the qualifications of a governmental entity,
23 community foundation, or nonprofit organization to hold and
24 manage the endowment that is set aside for long-term stewardship
25 of the property.

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

29 (i) If a property conserved pursuant to subdivision (a) or (b) of
30 Section 65967 is condemned, the net proceeds from the
31 condemnation of the real property interest set aside for mitigation
32 purposes shall be used for the purchase of property that replaces
33 the natural resource characteristics the original mitigation was
34 intended to protect, or as near as reasonably feasible. Any
35 endowment held for the condemned property shall be held for the
36 long-term stewardship of the replacement property.

37 (j) Unless prohibited by law, no provision in this chapter is
38 intended to prohibit for-profit entities from holding, acquiring, or
39 providing property for mitigation purposes.

1 (k) Nothing in this section shall prohibit a state agency from
2 exercising any powers described in subdivision (d), (g), or (h).

3 (l) A governmental entity, special district, *congressionally*
4 *chartered foundation*, or nonprofit organization may contract with
5 a community foundation at any time to hold, manage, and invest
6 the endowment for a mitigation property and ~~disbursing payments~~
7 *disburse payments from the endowment* to the holder of the
8 mitigation property consistent with the fund agreement.

9 (m) The mitigation agreement shall not include any provision
10 to waive or exempt the parties from any requirement, in whole or
11 part, of this chapter.

12 SEC. 4. Section 65967 of the Government Code is amended
13 to read:

14 65967. (a) If a state or local agency requires a project
15 proponent to transfer property to mitigate any adverse impact upon
16 natural resources caused by permitting the development of a project
17 or facility, the agency may authorize a governmental entity, special
18 district, a nonprofit organization, a for-profit entity, a person, or
19 another entity to hold title to and manage that property.

20 (b) If a state or local agency, in the development of its own
21 project, is required to protect property to mitigate an adverse impact
22 upon natural resources, the agency may take any action that the
23 agency deems necessary in order to meet its mitigation obligations,
24 including, but not limited to, the following:

25 (1) Transfer the interest to a governmental entity, special district,
26 or nonprofit organization that meets the requirements set forth in
27 subdivision (c).

28 (2) Provide funds to a governmental entity, nonprofit
29 organization, a special district, a for-profit entity, a person, or other
30 entity to acquire land or easements that satisfy the agency's
31 mitigation obligations.

32 (3) Hold an endowment in an account administered by an elected
33 official provided that the state or local agency is protecting,
34 restoring, or enhancing its own property.

35 (c) A state or local agency shall exercise due diligence in
36 reviewing the qualifications of a governmental entity, special
37 district, or nonprofit organization to effectively manage and
38 steward land, water, or natural resources. The local agency may
39 adopt guidelines to assist it in that review process, which may
40 include, but are not limited to, the use of or reliance upon

1 guidelines, standards, or accreditation established by a qualified
2 entity that are in widespread state or national use.

3 (d) The state or local agency may require the governmental
4 entity, special district, or nonprofit organization to submit a report
5 not more than once every 12 months and for the number of years
6 specified in the mitigation agreement that details the stewardship
7 and condition of the property and any other requirements pursuant
8 to the mitigation agreement for the property.

9 (e) The recorded instrument that places the fee title or partial
10 interest in real property with a governmental entity, special district,
11 nonprofit organization, or for-profit entity, pursuant to subdivision
12 (a) or (b) shall include a provision that if the state or local agency
13 or its successor agency reasonably determines that the property
14 conveyed to meet the mitigation requirement is not being held,
15 monitored, or stewarded for conservation purposes in the manner
16 specified in that instrument or in the mitigation agreement, the
17 property shall revert to the state or local agency, or to another
18 public agency, governmental entity, special district, or nonprofit
19 organization pursuant to subdivision (c) and subject to approval
20 by the state or local agency. If a state or local agency determines
21 that a property must revert, it shall work with the parties to the
22 mitigation agreement, or other affected entities, to ensure that any
23 contracts, permits, funding, or other obligations and responsibilities
24 are met.

25 SEC. 5. Section 65968 of the Government Code is amended
26 to read:

27 65968. (a) Notwithstanding Section 13014 of the Fish and
28 Game Code, if an endowment is conveyed pursuant to Section
29 65966 for property conveyed pursuant to Section 65967, the
30 endowment may be held by the same governmental entity, special
31 district, or nonprofit organization that holds the property pursuant
32 to this section.

33 (b) (1) Except as permitted ~~below pursuant to paragraph (2),~~
34 the endowment shall be held by the agency or agencies that require
35 ~~the one of the following:~~

36 (A) ~~The mitigation or by the governmental.~~

37 (B) ~~The governmental~~ entity, special district, or nonprofit
38 organization that *either* holds the property, or holds an interest in
39 the property, for conservation purposes. ~~The exceptions to this~~
40 ~~requirement are the following:~~

- 1 (C) *The governmental entity or special district that retains the*
- 2 *property after conveying an interest in the property for*
- 3 *conservation purposes if that governmental entity or special district*
- 4 *is protecting, restoring, or enhancing the property that was*
- 5 *retained.*
- 6 (2) *Notwithstanding paragraph (1), an endowment may also be*
- 7 *held by the following:*
- 8 (1)
- 9 (A) *An endowment that is held by an entity other than the state*
- 10 *or holder of the mitigation property as of January 1, 2012.*
- 11 (2)
- 12 (B) *An endowment that is held by another entity, which is*
- 13 *qualified pursuant to this chapter, pursuant to the terms of a natural*
- 14 *community conservation plan (Chapter 10 (commencing with*
- 15 *Section 2800) of Division 3 of the Fish and Game Code) or a safe*
- 16 *harbor agreement (Article 3.7 (commencing with Section 2089.2)*
- 17 *of Chapter 1.5 of Division 3 of the Fish and Game Code). In order*
- 18 *for this paragraph to apply, on or before January 1, 2012, a natural*
- 19 *community conservation plan or a safe harbor agreement shall be*
- 20 *at a recognized initial, interim, or final stage as reflected in the*
- 21 *completion of planning agreements, framework plans, subarea*
- 22 *plans, implementing agreements, or other documents that are part*
- 23 *of the recognized natural community conservation plan process*
- 24 *as described in Chapter 10 (commencing with Section 2800) of*
- 25 *Division 3 of the Fish and Game Code, or a safe harbor agreement*
- 26 *as described in Article 3.7 (commencing with Section 2089.2) of*
- 27 *Chapter 1.5 of Division 3 of the Fish and Game Code. prior to*
- 28 *setting aside any endowments, the implementation agreement that*
- 29 *is a part of the recognized natural community conservation plan*
- 30 *or safe harbor agreement shall specifically address the*
- 31 *arrangements for the endowment including, but not limited to,*
- 32 *qualifications of the endowment holder, capitalization rate, return*
- 33 *objectives, and the spending rule and disbursement policies.*
- 34 (3)
- 35 (C) *If existing law prohibits the holder of the mitigation property*
- 36 *to hold the endowment, including for-profit entities.*
- 37 (4)
- 38 (D) *If the project proponent and the holder of the mitigation*
- 39 *property or conservation easement agree that a community*

1 foundation or a congressionally chartered foundation shall hold
2 the endowment.

3 ~~(5)~~

4 (E) If the mitigation property is held or managed by a federal
5 agency, ~~the agency may hold the endowment itself or designate a~~
6 ~~qualified entity, including a community foundation or the National~~
7 ~~Fish and Wildlife Foundation, to hold the endowment.~~

8 ~~(6)~~

9 (F) If any of the the same mitigation property is required to be
10 conveyed pursuant to both a federal and state permit, and under
11 the federal governmental approval the federal agency directs that
12 a community foundation or the National Fish and Wildlife
13 Foundation shall hold the endowment with does not approve one
14 of the entities described in paragraph (1) of subdivision (b) as
15 chosen to hold the endowment by the agreement of the project
16 proponent and the holder of the mitigation property or conservation
17 easement.

18 (c) ~~An entity~~ A community foundation or congressionally
19 chartered foundation that holds an endowment pursuant to
20 paragraphs (1) to (6) subparagraphs (A) to (F), inclusive, of
21 subdivision (a) paragraph (2) of subdivision (b), shall meet all the
22 qualifications and requirements of this chapter for holding,
23 managing, investing, and disbursing the endowment funds.

24 (d) ~~The governmental entity, special district, community~~
25 ~~foundation, National Fish and Wildlife Foundation, or nonprofit~~
26 ~~organization~~ Any entity that holds an endowment under this chapter
27 shall hold, manage, invest, and disburse the funds in furtherance
28 of the long-term stewardship of the property for which the funds
29 were set aside in accordance with subdivision (a) of Section 65965.

30 (e) The holder of an endowment shall certify to the project
31 proponent or the holder of the mitigation property or a conservation
32 easement and the local or state agency that required the
33 endowment that it meets all of the following requirements:

34 (1) The holder has the capacity to effectively manage the
35 mitigation funds.

36 (2) The holder has the capacity to achieve reasonable rates of
37 return on the investment of those funds similar to those of other
38 prudent investors for endowment funds and shall manage and
39 invest the endowment in good faith and with the care an ordinarily
40 prudent person in a like position would exercise under similar

1 *circumstances, consistent with the Uniform Prudent Management*
2 *of Institutional Funds Act (Part 7 (commencing with Section 18501)*
3 *of Division 9 of the Probate Code).*

4 (3) The holder utilizes generally accepted accounting practices
5 as promulgated by either of the following:

6 (A) The Financial Accounting Standards Board *or any successor*
7 *entity* for nonprofit organizations.

8 (B) The Governmental Accounting Standards Board *or any*
9 *successor entity* for public agencies, to the extent those practices
10 do not conflict with any requirement for special districts in Article
11 2 (commencing with Section 53630) of Chapter 4 of Part 1 of
12 Division 2 of Title 5 of the Government Code.

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

15 (5) If the holder is a nonprofit organization, a community
16 foundation, ~~or the National Fish and Wildlife Foundation~~ *a*
17 *congressionally chartered foundation*, it has an investment policy
18 that is consistent with the Uniform Prudent Management of
19 Institutional Funds Act (Part 7 (commencing with Section 18501)
20 of Division 9 of the Probate Code).

21 (f) If a ~~government~~ *governmental* entity, community foundation,
22 special district, nonprofit organization, ~~or the National Fish and~~
23 ~~Wildlife Foundation~~ *a congressionally chartered foundation* meets
24 the requirements of this chapter, it is qualified to be a holder of
25 the endowment for the purpose of obtaining any permit, clearance,
26 agreement, or mitigation approval from a state or local agency.

27 (g) Except for a mitigation agreement prepared by a state
28 agency, the mitigation agreement that authorizes the funds to be
29 conveyed to a governmental entity, community foundation, special
30 district, *a congressionally chartered foundation*, or nonprofit
31 organization pursuant to subdivision (a) shall include a provision
32 that requires the endowment be held by a governmental entity,
33 special district, or a nonprofit organization to revert to the local
34 agency, or to a successor organization identified by the agency
35 and subject to subdivision (e), if any of the following occurs:

36 (1) The governmental entity, community foundation, special
37 district, *a congressionally chartered foundation*, or nonprofit
38 organization ceases to exist.

1 (2) The governmental entity, community foundation, special
2 district, *a congressionally chartered foundation*, or nonprofit
3 organization is dissolved.

4 (3) The governmental entity, community foundation, special
5 district, *a congressionally chartered foundation*, or nonprofit
6 organization becomes bankrupt or insolvent.

7 (4) The local agency reasonably determines that the endowment
8 held by the governmental entity, community foundation, special
9 district, or nonprofit organization, or its successor entity, ~~are~~ *is* not
10 being held, managed, invested, or disbursed for conservation
11 purposes and consistent with the mitigation agreement and legal
12 requirements. Any reverted funds shall continue to be held,
13 managed, and disbursed only for long-term stewardship and benefit
14 of the specific property for which they were set aside. If the funds
15 revert from the governmental entity, community foundation, special
16 district, or nonprofit organization, the special district or nonprofit
17 organization may choose to relinquish the property. If the property
18 is relinquished, the local agency shall accept title to the property
19 or identify an approved governmental entity, community
20 foundation, special district, or nonprofit organization to accept
21 title to the property.

22 (h) Nothing in this section shall prohibit a state or local agency
23 from determining that a governmental entity, community
24 foundation, special district, *a congressionally chartered foundation*,
25 or nonprofit organization meets the requirements of this section
26 and is qualified to hold the endowment, or including a provision
27 in the mitigation agreement as described in subdivision (g).

28 (i) A state or local agency may allow the endowment to be held
29 temporarily in an escrow account until December 31, 2012, after
30 which time the funds shall be transferred to the entity that will
31 permanently hold the endowment.

32 (j) Subject to subdivision (g), any endowment that is conveyed
33 to and held by a governmental entity, special district, or nonprofit
34 organization pursuant to this section shall continue to be held by
35 the entity if this section is repealed ~~and those funds are conveyed~~
36 ~~prior to the date this section is repealed.~~

37 (k) A state or local agency shall not require, as a condition of
38 obtaining any permit, clearance, agreement, or mitigation approval
39 from the state or local agency, that a preferred or exclusively named
40 entity by the state or local agency be named as the entity to hold,

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

4 ~~(l) (1) If the National Fish and Wildlife Foundation holds~~
5 ~~endowment funds conveyed pursuant to Section 65966 for property~~
6 ~~conveyed pursuant to Section 65967, it shall provide, no later than~~
7 ~~July 1, 2013, and annually thereafter, a report to the Legislature~~
8 ~~that provides all of the following:~~

9 ~~(A) An audited financial statement for the previous financial~~
10 ~~year that states the organization's investment policy, return~~
11 ~~objectives and other items required by generally accepted~~
12 ~~accounting principles related to endowment management by~~
13 ~~nonprofit corporations.~~

14 ~~(B) A list of all mitigation properties conveyed pursuant to~~
15 ~~Section 65967 that the National Fish and Wildlife Foundation is~~
16 ~~the holder of the endowment.~~

17 ~~(C) For each endowment identified in subparagraph (B), the~~
18 ~~following items shall be provided in the report:~~

19 ~~(i) Beginning of year balance.~~

20 ~~(ii) Contributions.~~

21 ~~(iii) Investment earnings or losses.~~

22 ~~(iv) Grants.~~

23 ~~(v) Program expenses.~~

24 ~~(vi) Administrative expenses.~~

25 ~~(vii) End of year balance.~~

26 ~~(viii) The estimated percentage of the year-end balance held as~~
27 ~~a board-designated endowment or quasi-endowment, held as a~~
28 ~~permanent endowment, and held as a term endowment.~~

29 ~~(ix) Endowment funds not in the possession of the organization~~
30 ~~that are held and administered for the organization by unrelated~~
31 ~~organizations, or related organizations.~~

32 ~~(2) The report required to be submitted pursuant to subdivision~~
33 ~~(a) shall be submitted in compliance with Section 9795.~~

34 ~~(m)~~

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

38 SEC. 6. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:

3 In order to ensure that mitigation projects are approved in a
4 timely manner, particularly in relation to desert renewable energy
5 projects, it is necessary that this act take effect immediately.

6

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8 **CORRECTIONS:**

9 **Text—Page 11.**

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