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AMENDED IN SENATE AUGUST 19, 2016
AMENDED IN SENATE AUGUST 16, 2016
AMENDED IN SENATE AUGUST 1, 2016
AMENDED IN SENATE JUNE 22, 2016
AMENDED IN ASSEMBLY MAY 31, 2016
AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2087

Introduced by Assembly Member Levine

February 17, 2016

An act to add Chapter 9 (commencing with Section 1850) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2087, as amended, Levine. Regional conservation investment strategies.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency. Under existing law, the department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the department may authorize the take of listed species if the take is incidental to an otherwise lawful

activity and the impacts are minimized and fully mitigated. Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the department of that activity, and entering into a lake or streambed alteration agreement if required by the department to protect fish and wildlife resources.

This bill would authorize the department, or any other public agency, to propose a regional conservation investment strategy, to be developed in consultation with applicable local agencies that have land use authority, for the purpose of informing science-based *nonbinding and voluntary* conservation actions and habitat enhancement actions that would advance the conservation of focal species and providing voluntary nonbinding guidance for various activities. *The bill would authorize the department to approve a regional conservation investment strategy only if one or more state agencies request approval of the strategy through a letter sent to the Director of Fish and Wildlife, as prescribed.* The bill would require the strategy to contain specified information and would authorize the strategy to include a regional conservation assessment proposed by the department or any other public agency and approved by the department. The bill would authorize the department to approve a regional conservation investment strategy or amended strategy for an initial period of up to 10 years after a public meeting and a public comment period regarding the proposed strategy or amended strategy have been held and after it finds that the strategy meets certain requirements. The bill would authorize a conservation action and a habitat enhancement action that measurably advance the conservation objectives of an approved strategy and that meet other specified requirements to be used to create mitigation credits. The bill would authorize these mitigation credits to be used to fulfill compensatory mitigation requirements established under any state or federal environmental law, as determined by the applicable local, state, or federal regulatory agency, including compensatory mitigation requirements to compensate for take or other adverse impacts of activities authorized pursuant to the California Endangered Species Act, to reduce adverse impacts to fish or wildlife resources, or both, from activities authorized pursuant to a lake or streambed alteration agreement to less than substantial, or to mitigate significant effects on the environment pursuant to the California Environmental Quality Act.

To create these mitigation credits, the bill would require a person or entity to enter into a mitigation credit agreement with the department that meets specified requirements. The bill would prohibit the release of mitigation credits for use, sale, or transfer under a mitigation credit agreement unless the department approves the release in accordance with certain requirements. The bill would require the department to collect fees or other compensation from a person or entity that proposes to enter into a mitigation credit agreement, and from a public agency that proposes a strategy or a regional conservation assessment, to pay for all or a portion of the department's costs relating to the mitigation credit agreement, proposed strategy, or proposed regional conservation assessment. ~~The bill would authorize the department to partner with the California Infrastructure and Economic Development Bank to finance the development of advance mitigation credits if needed.~~ The bill would authorize the department to adopt guidelines and criteria to aid in the implementation of these provisions and would exempt the adoption of these guidelines and criteria from the Administrative Procedure Act. The bill would require the department to submit a report regarding the implementation of these provisions to the Legislature on or before January 1, 2020. The bill would prohibit the department from approving more than ~~15~~ 8 regional conservation investment strategies before January 1, 2020, and would prohibit the department from approving a regional conservation investment strategy or regional conservation assessment on or after January 1, 2020, and from entering into a mitigation credit agreement on or after January 1, 2020.

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 purpose of Chapter 9 (commencing with
- 2 Section 1850) of Division 2 of the Fish and Game Code is to create
- 3 a pilot regional conservation investment strategy program through
- 4 January 1, 2020, to identify ~~and prioritize regional conservation~~
- 5 *regional conservation and conservation investments, and aid the*
- 6 *development of critical infrastructure* through an open public
- 7 process and using a science-based approach while also encouraging
- 8 investments in conservation through advance mitigation.
- 9 SEC. 2. Chapter 9 (commencing with Section 1850) is added
- 10 to Division 2 of the Fish and Game Code, to read:

1 CHAPTER 9. ADVANCE MITIGATION AND REGIONAL
2 CONSERVATION INVESTMENT STRATEGIES

3
4 1850. (a) The Legislature finds and declares that it would be
5 beneficial to identify species and habitat conservation initiatives
6 at a regional scale, including actions ~~needed~~ to address the impacts
7 of climate change and other wildlife stressors, in order to guide
8 voluntary investments in conservation, ~~infrastructure, sustainable~~
9 ~~communities strategies~~, and compensatory mitigation for impacts
10 to ecological resources, including impacts to threatened and
11 endangered species, other sensitive species, natural communities,
12 ecological processes, and wildlife corridors.

13 (b) The purpose of this chapter is to promote the voluntary
14 conservation of natural resources, including biodiversity and
15 ecological processes, and to enhance resiliency to climate change
16 and other threats. In order to further this goal, it is the policy of
17 the state to encourage voluntary mechanisms to conserve biological
18 and other ecological resources and to identify conservation actions,
19 including actions ~~needed~~ to promote resiliency to the impacts of
20 climate change and other stressors to species and habitat.

21 (c) It is further the policy of the state to encourage voluntary
22 mechanisms to identify and implement advance mitigation actions
23 that do *all of* the following:

24 (1) Can be used to compensate for project impacts, including,
25 but not limited to, infrastructure and renewable energy projects,
26 more efficiently.

27 (2) Are effective ecologically.

28 (3) Will help to conserve regionally important biological and
29 other ecological resources.

30 (d) In enacting this chapter, it is the intent of the Legislature to
31 promote science-based ~~conservation that identifies species and~~
32 ~~habitat conservation needs~~, *conservation*, including actions ~~needed~~
33 to promote resiliency to the impacts of climate change and other
34 stressors. It is further the intent of the Legislature to create
35 nonregulatory mechanisms to guide investments in conservation,
36 infrastructure, and compensatory mitigation for impacts to natural
37 resources, including impacts to threatened and endangered species,
38 other sensitive species, natural communities, ecological processes,
39 and connectivity.

1 (e) In enacting this chapter, it is not the intent of the Legislature
2 to regulate the use of land, establish land use designations, or to
3 affect, limit, or restrict the land use authority of any public agency.

4 (f) Further, in enacting this chapter, it is not the intent of the
5 Legislature that an approved regional conservation investment
6 strategy would be binding on independent public agency action
7 within the strategy’s geographic scope.

8 1851. For purposes of this chapter:

9 (a) *“Administrative draft natural community conservation plan”*
10 *means a substantially complete draft of a natural community*
11 *conservation plan that is released after January 1, 2016, to the*
12 *general public, plan participants, and the department.*

13 ~~(a)~~

14 (b) *“Areas of Conservation Emphasis”* means the biodiversity
15 analysis completed by the department in 2010, or the latest update
16 of that analysis.

17 ~~(b)~~

18 (c) *“Compensatory mitigation”* means actions taken to fulfill,
19 in whole or in part, mitigation requirements under state or federal
20 law or a court mandate.

21 ~~(c)~~

22 (d) *“Conservation action”* means an action to preserve or to
23 restore ecological resources, including habitat, natural
24 communities, ecological processes, and wildlife corridors, to
25 protect those resources permanently, and to provide for their
26 perpetual management, so as to help to achieve one or more
27 biological goals and objectives for one or more focal species.
28 Conservation actions may include, but are not limited to, actions
29 to offset impacts to focal species.

30 ~~(d)~~

31 (e) *“Conservation easement”* means a perpetual conservation
32 easement that complies with Chapter 4 (commencing with Section
33 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

34 ~~(e)~~

35 (f) *“Focal species”* means sensitive species within a regional
36 conservation investment strategy area that are analyzed in the
37 strategy and will benefit from conservation actions and habitat
38 enhancement actions set forth in the strategy.

39 ~~(f)~~

1 (g) “Habitat enhancement action” means an action to improve
2 the quality of wildlife habitat, or to address risks or stressors to
3 wildlife, that has long-term durability but does not involve land
4 acquisition or the permanent protection of habitat, such as
5 improving in-stream flows to benefit fish species, enhancing habitat
6 connectivity, or invasive species control or eradication.

7 ~~(g)~~

8 (h) “Performance-based milestones” means specifically
9 identified steps in the implementation of a conservation action or
10 habitat enhancement action, such as site protection, initiating
11 implementation, completing implementation, or achieving
12 performance standards.

13 ~~(h)~~

14 (i) “Performance standards” means observable or measurable
15 physical or biological attributes that are used to determine if a
16 conservation action or habitat enhancement action has met its
17 objectives.

18 ~~(i)~~

19 (j) “Permanently protect” means doing both of the following:

20 (1) Recording a conservation easement, in a form approved in
21 advance in writing by the department, or establishing perpetual
22 protection of land in a manner consistent with draft or approved
23 natural community conservation plans within the area of the
24 applicable regional conservation investment strategy and approved
25 in advance in writing by the department, that prevents development,
26 prohibits inconsistent uses, and ensures that habitat for focal species
27 is maintained.

28 (2) Providing secure, perpetual funding for management of the
29 land, monitoring, and legal enforcement.

30 ~~(j)~~

31 (k) “Regional conservation assessment” means information and
32 analyses that document the important species, ecosystems,
33 ecosystem processes, protected areas, and linkages within an
34 ecoregion to provide the appropriate context for ~~prioritized~~
35 *nonbinding, voluntary* conservation strategies and actions. Those
36 assessments include information ~~critical to~~ *for* the identification
37 of areas with greatest probability for long-term ecosystem
38 conservation success incorporating cobenefits of ecosystem
39 services, such as carbon, water, and agricultural lands. A regional
40 conservation assessment may be used to provide context at an

1 ecoregional or subcoregional scale to assist with the development
 2 of a regional conservation investment strategy. A *regional*
 3 *conservation assessment is nonbinding, voluntary, and does not*
 4 *create, modify, or impose regulatory requirements or standards,*
 5 *regulate the use of land, establish land use designations, or affect*
 6 *the land use authority of, or the exercise of discretion by, any*
 7 *public agency. The preparation and use of a regional conservation*
 8 *assessment is voluntary.*

9 ~~(k)~~

10 (l) “Regional conservation investment strategy” means
 11 information and analyses prepared pursuant to this chapter to
 12 inform *nonbinding and voluntary* conservation actions and habitat
 13 enhancement actions that would advance the conservation of focal
 14 species, habitat, and other natural resources and to provide
 15 nonbinding voluntary guidance for the identification of wildlife
 16 and habitat conservation priorities, investments in ecological
 17 resource conservation, ~~identification of conservation priorities,~~ or
 18 identification of ~~priority~~ locations for compensatory mitigation for
 19 impacts to species and natural resources. Regional conservation
 20 investment strategies are intended to provide scientific information
 21 for the consideration of public agencies and ~~are voluntary agencies,~~
 22 *are voluntary,* and do not create, modify, or impose regulatory
 23 requirements or standards, regulate the use of land, establish land
 24 use designations, or affect the land use authority of *or exercise of*
 25 *discretion by, any public agency. The preparation and use of*
 26 *regional conservation investment strategies for this guidance is*
 27 *voluntary.*

28 ~~(t)~~

29 (m) “Regional level” means the geographic scale of relevant
 30 ecologically defined units such as ecoregions.

31 ~~(m)~~

32 (n) “Sensitive species” means any special status species
 33 identified by a state or federal agency.

34 1852. (a) The department may approve a regional conservation
 35 investment strategy pursuant to this chapter. A regional
 36 conservation investment strategy may be proposed by the
 37 department or any other public agency, and shall be developed in
 38 consultation with local agencies that have land use authority within
 39 the geographic area of the regional conservation investment
 40 strategy. *The department may only approve a regional conservation*

1 *investment strategy if one or more state agencies request approval*
2 *of the regional conservation investment strategy through a letter*
3 *sent to the director indicating that the proposed regional*
4 *conservation investment strategy would contribute to meeting both*
5 *of the following state goals:*

6 (1) *Conservation.*

7 (2) *Public infrastructure or forest management.*

8 (b) The purpose of a regional conservation investment strategy
9 shall be to inform science-based *nonbinding and voluntary*
10 conservation actions and habitat enhancement actions that would
11 advance the conservation of focal species, including the ecological
12 processes, natural communities, and habitat connectivity upon
13 which those focal species depend, and to provide nonbinding
14 voluntary guidance for one or more of the following:

15 (1) Identification of wildlife and habitat conservation priorities,
16 including actions ~~needed~~ to address the impacts of climate change
17 and other wildlife stressors.

18 (2) Investments in resource conservation.

19 (3) Infrastructure.

20 (4) Identification of ~~priority~~ areas for compensatory mitigation
21 for impacts to species and natural resources.

22 (c) A regional conservation investment strategy shall include
23 all of the following:

24 (1) An explanation of the conservation purpose of and need for
25 the strategy.

26 (2) The geographic area of the strategy and rationale for the
27 selection of the area, together with a description of the surrounding
28 ecoregions and any adjacent protected habitat areas or linkages
29 that provide relevant context for the development of the strategy.

30 (3) The focal species included in, and their current known or
31 estimated status within, the strategy.

32 (4) Important resource conservation elements within the strategy
33 area, including, but not limited to, important ecological resources
34 and processes, natural communities, habitat, habitat connectivity,
35 and existing protected areas, and an explanation of the criteria,
36 data, and methods used to identify those important conservation
37 elements.

38 (5) A summary of historic, current, and projected future stressors
39 and pressures in the strategy area, including climate change
40 vulnerability, on the focal species, habitat, and other natural

1 resources, as identified in the best available scientific information,
2 including, but not limited to, the State Wildlife Action Plan.

3 ~~(6) Major—~~*Consideration of major* water, transportation and
4 transmission infrastructure facilities, urban development areas,
5 and city, county, and city and county general plan designations
6 *that accounts for reasonably foreseeable development of major*
7 *infrastructure facilities, including, but not limited to, renewable*
8 *energy and housing* in the strategy area.

9 *(7) Provisions ensuring that the strategy will be in compliance*
10 *with all applicable state and local requirements and does not*
11 *preempt the authority of local agencies to implement infrastructure*
12 *and urban development in local general plans.*

13 ~~(7)~~

14 (8) Conservation goals and measurable objectives for the focal
15 species and important conservation elements identified in the
16 strategy that address or respond to the identified stressors and
17 pressures on focal species.

18 ~~(8)~~

19 (9) Conservation actions, including a description of the general
20 amounts and types of habitat that, if preserved or restored and
21 permanently protected, could achieve the conservation goals and
22 objectives, and a description of how the conservation actions and
23 habitat enhancement actions were prioritized and selected in
24 relation to the conservation goals and objectives.

25 ~~(9)~~

26 (10) Provisions ensuring that the strategy is consistent with and
27 complements any ~~draft or administrative draft~~ *natural community*
28 *conservation plan*, approved natural community conservation ~~plan~~
29 *plan*, or federal habitat conservation plan that overlaps with the
30 strategy area.

31 ~~(10)~~

32 (11) An explanation of whether and to what extent the strategy
33 is consistent with any previously approved strategy or amended
34 strategy, state or federal recovery plan, or other state or federal
35 approved conservation strategy that overlaps with the strategy
36 area.

37 ~~(11)~~

38 (12) A summary of mitigation banks and conservation banks
39 approved by the department or the United States Fish and Wildlife

1 Service that are located within the strategy area or whose service
2 area overlaps with the strategy area.

3 ~~(12)~~

4 (13) A description of how the strategy's conservation goals and
5 objectives provide for adaptation opportunities against the effects
6 of climate change for the strategy's focal species.

7 ~~(13)~~

8 (14) Incorporation and reliance on, and citation of, the best
9 available scientific information regarding the strategy area and the
10 surrounding ecoregion, including a brief description of gaps in
11 relevant scientific information, and use of standard or prevalent
12 vegetation classifications and standard ecoregional classifications
13 for terrestrial and aquatic data to enable and promote consistency
14 among regional conservation investment strategies throughout
15 California.

16 (d) A regional conservation investment strategy shall compile
17 input and summary priority data in a consistent format that could
18 be uploaded for interactive use in an Internet Web portal and that
19 would allow stakeholders to generate queries of regional
20 conservation values within the strategy area.

21 (e) In addition to considering the potential to advance the
22 conservation of focal species, regional conservation investment
23 strategies shall consider all of the following:

24 (1) The conservation benefits of preserving working lands for
25 agricultural uses.

26 (2) Reasonably foreseeable development of infrastructure
27 facilities.

28 (3) Reasonably foreseeable projects in the strategy area,
29 including, but not limited to, ~~affordable~~ housing.

30 (4) Reasonably foreseeable development for the production of
31 renewable energy.

32 (5) *Draft natural community conservation plans within the area*
33 *of the applicable regional conservation investment strategy.*

34 1853. (a) The department may approve a regional conservation
35 assessment *only for the purposes of a regional conservation*
36 *investment strategy* pursuant to this chapter. A regional
37 conservation assessment may be proposed by the department or
38 any other public agency. However, a regional conservation
39 assessment is not required for department approval of a regional
40 conservation investment strategy.

1 (b) If a regional conservation assessment that encompasses the
2 area of a proposed regional conservation investment strategy has
3 already been approved by the department, the strategy shall explain
4 how and to what extent it has incorporated the assessment
5 information and analysis.

6 (c) A regional conservation assessment shall do all of the
7 following:

8 (1) Identify and summarize relevant regional pressures and
9 stressors, including climate change ~~vulnerability, and conservation~~
10 ~~priorities, including priority~~ *vulnerability*, conservation areas and
11 habitat connectivity values, included in all of the following:

12 (A) Conservation plans, such as the State Wildlife Action Plan
13 and approved natural community conservation plans.

14 (B) Analyses designed to identify areas of high biological
15 diversity, such as the Areas of Conservation Emphasis.

16 (C) Analyses designed to identify areas ~~of high value~~ for habitat
17 connectivity.

18 (2) Identify the best available scientific information and
19 analyses, including geospatial information regarding the
20 distribution of species and natural communities.

21 (3) Use spatial analysis to identify ecological relationships
22 between existing protected areas and ~~priority~~ conservation areas.

23 (4) Use standard or prevalent vegetation classifications and
24 standard ecoregional classifications for terrestrial and aquatic data
25 to enable and promote consistency among regional conservation
26 assessments throughout California.

27 (5) Compile input and summary ~~priority~~ data in a consistent
28 format that could be uploaded for interactive use in an Internet
29 Web portal and that would allow stakeholders to generate queries
30 of regional conservation values within the strategy area.

31 (6) Be consistent with ~~draft and~~ *administrative draft natural*
32 *community conservation plans*, approved natural community
33 conservation ~~plans~~ *plans*, and regional habitat conservation plans,
34 and approved recovery plans within the ecoregion or subecoregion
35 included in the assessment.

36 (7) *Consider existing major water, transportation, and*
37 *transmission infrastructure facilities in the assessment area and*
38 *account for reasonably foreseeable development of major*
39 *infrastructure facilities, including, but not limited to, renewable*
40 *energy and housing.*

1 (8) *Include provisions ensuring that the strategy will be in*
2 *compliance with all applicable state and local requirements and*
3 *does not preempt the authority of local agencies to implement*
4 *infrastructure and urban development in local general plans.*

5 (9) *Include provisions ensuring that the assessment is consistent*
6 *with and complements any approved natural community*
7 *conservation plan or regional federal habitat conservation plan*
8 *that overlaps with the assessment area.*

9 (10) *Include an explanation of whether, and to what extent, the*
10 *assessment is consistent with any previously approved assessment*
11 *or amended assessment, state or federal recovery plan, or other*
12 *state or federal approved conservation strategy that overlaps with*
13 *the assessment area.*

14 ~~(d) (1) A draft regional conservation assessment may be~~
15 ~~submitted to the department with a draft regional conservation~~
16 ~~investment strategy or separately.~~

17 ~~(2) If submitted with a draft regional conservation investment~~
18 ~~strategy, the draft regional conservation assessment shall be~~
19 ~~included in the review process set forth in subdivision (c) of~~
20 ~~Section 1854.~~

21 ~~(3) If submitted separately, the department shall have 30 days~~
22 ~~within which to deem the draft regional conservation assessment~~
23 ~~complete or to explain in writing to the public agency submitting~~
24 ~~the assessment what is needed to complete the assessment. Within~~
25 ~~30 days of deeming a draft regional conservation assessment~~
26 ~~complete, the department shall make the draft assessment available~~
27 ~~to the public on its Internet Web site for review and comment for~~
28 ~~a period of at least 30 days, following which the department may~~
29 ~~approve the assessment, approve it with amendments, or disapprove~~
30 ~~it.~~

31 1854. (a) The department may prepare or approve a regional
32 conservation investment strategy, or approve an amended strategy,
33 for an initial period of up to 10 years after finding that the strategy
34 meets the requirements of Section 1852. The department may
35 extend the duration of an approved or amended regional
36 conservation investment strategy for additional periods of up to
37 10 years after updating the strategy for new scientific information
38 and finding that the strategy continues to meet the requirements
39 of Section 1852. For purposes of this section, an amended strategy
40 means a complete regional conservation investment strategy

1 prepared by a public agency to amend substantially and to replace
2 an approved strategy submitted by the public agency.

3 (b) It is the intent of this chapter to establish requirements that
4 provide sufficient flexibility to develop each regional conservation
5 investment strategy based on the best available information
6 regarding the strategy area.

7 (c) (1) A public agency shall publish notice of its intent to create
8 a regional conservation investment strategy. This notice shall be
9 filed with the Governor’s Office of Planning and Research and the
10 county clerk of each county in which the regional conservation
11 investment strategy is found in part or in whole. If preparation of
12 a regional conservation investment strategy was initiated before
13 January 1, 2017, this notice shall not be required.

14 (2) After a draft regional conservation investment strategy or
15 an amendment to a strategy is submitted to the department for
16 approval, the department shall have 30 days within which to deem
17 the draft regional conservation investment strategy or an amended
18 strategy complete or to explain in writing to the public agency
19 submitting the strategy or amended strategy what is needed to
20 complete the strategy or amended strategy. Within 30 days of
21 deeming a draft regional conservation investment strategy or
22 amended strategy complete, the department shall make the draft
23 strategy or amended strategy available to the public on its Internet
24 Web site for review and comment for a period of at least 30 days
25 and shall notify any public agency, organization, or individual who
26 has filed a written request to the department for notices regarding
27 draft regional conservation strategies.

28 (3) (A) A public agency proposing a strategy or amended
29 strategy shall hold a public meeting to allow interested persons
30 and entities to receive information about the draft regional
31 conservation investment strategy or amended strategy early in the
32 process of preparing it and to have an adequate opportunity to
33 provide written and oral comments. The public meeting shall be
34 held at a location within or near the strategy area. ~~¶~~

35 (B) *In a draft regional conservation investment strategy or*
36 *amended strategy submitted to the department for approval, the*
37 *public agency shall include responses to written public comments*
38 *submitted during the public comment period.*

39 (C) *If preparation of a regional conservation investment strategy*
40 *was initiated before January 1, 2017, and a public meeting*

1 regarding the strategy or amended strategy that is consistent with
2 the requirements of this section was held before January 1, 2017,
3 an additional public meeting shall not be required. ~~If~~

4 (D) *If* preparation of a regional conservation investment strategy
5 was initiated before January 1, 2017, and a public meeting
6 regarding the strategy was not held before January 1, 2017, the
7 public meeting required under this section may be held after
8 January 1, 2017, if it is held at least 30 days before the strategy is
9 submitted to the department for approval.

10 (4) At least 30 days before holding a public meeting to distribute
11 information about the development of a draft regional conservation
12 investment strategy or amended strategy, a public agency proposing
13 a strategy shall provide notice of a regional conservation
14 investment strategy or amended strategy public meeting as follows:

15 (A) On the public agency’s Internet Web site and any relevant
16 LISTSERV.

17 (B) To each city, county, and city and county within or adjacent
18 to the regional conservation investment strategy area.

19 (C) *To the implementing entity for each natural community*
20 *conservation plan or federal regional habitat conservation plan*
21 *that overlaps with the strategy area.*

22 ~~(C)~~

23 (D) To each public agency, organization, or individual who has
24 filed a written request for the notice, including any agency,
25 organization, or individual who has filed a written request to the
26 department for notices of all regional conservation investment
27 strategy public meetings.

28 (5) At least 60 days before submitting a final regional
29 conservation investment strategy or amended strategy to the
30 department for approval, the public agency proposing the
31 investment strategy or amended strategy shall notify the board of
32 supervisors and the city councils in each county within the
33 geographical scope of the strategy and provide the board of
34 supervisors and the city councils with an opportunity to submit
35 written comments for a period of at least 30 days.

36 (6) After a final regional conservation investment strategy or
37 amended strategy is submitted to the department for approval, the
38 department shall have 30 days within which to approve the final
39 regional conservation investment strategy or amended strategy or
40 to explain in writing to the public agency submitting the strategy

1 or amended strategy what is needed to approve the strategy or
2 amended strategy.

3 (d) The department shall make all approved regional
4 conservation investment strategies, including all updates to
5 scientific information and analyses used in a regional conservation
6 investment strategy and any amendments to the strategy available
7 on its Internet Web site.

8 (e) The department shall require the use of consistent metrics
9 that incorporate both the area and quality of habitat and other
10 natural resources in relation to a regional conservation investment
11 strategy's conservation objectives to measure the net change
12 resulting from the implementation of conservation actions and
13 habitat enhancement actions.

14 1855. (a) Regional conservation investment strategies shall
15 not affect the authority or discretion of any public agency and shall
16 not be binding upon public agencies other than parties to a
17 mitigation credit agreement. Nothing in this chapter increases or
18 decreases the authority or jurisdiction of the department regarding
19 any land use, species, habitat, area, resource, plan, process, or
20 corridor. Regional conservation investment strategies are intended
21 to provide scientific information for the consideration of public
22 agencies. Nothing in this chapter *or any other provision of law*
23 requires any public agency, other than a public agency that is party
24 to a mitigation credit agreement, to adopt, implement, or otherwise
25 adhere to a regional conservation investment strategy or a regional
26 conservation assessment.

27 (b) The approval or existence of a regional conservation
28 investment ~~strategy or strategy~~, mitigation credit ~~agreement~~
29 ~~agreement, or credit~~ pursuant to this chapter does not do any of
30 the following:

31 (1) Modify in any way the standards for issuance of incidental
32 take permits or consistency determinations pursuant to Section
33 2081 or 2080.1, issuance of take authorizations pursuant to Section
34 2835, the issuance of lake or streambed alteration agreements
35 pursuant to Section 1602, or any other provision of this code or
36 regulations adopted pursuant to this code.

37 (2) ~~Require a lead agency or responsible agency to determine~~
38 ~~that there is substantial evidence~~ *Modify in any way the standards*
39 under the California Environmental Quality Act (Division 13
40 (commencing with Section 21000) of the Public Resources ~~Code~~)

1 *Code), or in any way limit a lead agency's or responsible agency's*
 2 *discretion, in connection with any determination of whether a*
 3 *proposed project may or may not result in significant environmental*
 4 *effects or in any way limit a lead agency's or responsible agency's*
 5 *discretion to determine, based on project-specific information,*
 6 *establish a presumption in connection with any determination of*
 7 *whether a proposed project may or may not result in significant*
 8 *environmental effects: effects or whether a proposed project's*
 9 *impacts would be mitigated.*

10 (3) Prohibit or authorize any project or project impacts.

11 (4) Create a presumption or guarantee that any proposed project
 12 will be approved or permitted, or that any proposed impact will
 13 be authorized, by any state or local agency.

14 (5) Create a presumption that any proposed project will be
 15 disapproved or prohibited, or that any proposed impact will be
 16 prohibited, by any state or local agency.

17 (6) Alter or affect, or create additional requirements for, the
 18 general plan of the city, county, or city and county, in which it is
 19 located.

20 (7) Constitute any of the following, for the purposes of the
 21 California Environmental Quality Act (Division 13 (commencing
 22 with Section 21000) of the Public Resources Code):

23 (A) A plan, policy, or regulation adopted for the purpose of
 24 avoiding or mitigating an environmental effect.

25 (B) A local policy or ordinance protecting biological resources.

26 (C) An adopted local, regional, or state habitat conservation
 27 plan.

28 ~~(e) The department shall not reject biologically appropriate and~~
 29 ~~adequate compensatory mitigation proposed by a project proponent~~
 30 ~~on the basis that the compensatory mitigation is not a conservation~~
 31 ~~action or habitat enhancement identified in a regional conservation~~
 32 ~~investment strategy.~~

33 ~~(d)~~

34 (c) Nothing in this chapter shall require a project proponent
 35 seeking to provide compensatory mitigation pursuant to Section
 36 1602, 2080.1, 2081, or 2835 or the California Environmental
 37 Quality Act (Division 13 (commencing with Section 21000) of
 38 the Public Resources Code) to undertake conservation actions or
 39 habitat enhancement actions identified in a regional conservation
 40 investment strategy; implement, contribute to, fund, or otherwise

1 comply with the actions described in a regional conservation
2 investment strategy; require or otherwise compel a project
3 proponent to enter into a mitigation credit agreement; or use or
4 purchase mitigation credits established pursuant to this chapter to
5 satisfy the compensatory mitigation requirements. Nothing in this
6 section shall prevent ~~an applicant~~ *a project proponent* from
7 proposing mitigation consistent with one or more strategies
8 ~~identified~~ *approved* pursuant to this chapter.

9 (e)

10 (d) Mitigation credits provided by this chapter shall not be
11 ~~utilized~~ *utilized* to fund or offset the costs of the design,
12 construction, or mitigation of new Delta *water* conveyance
13 facilities.

14 (e) *The department shall not reject biologically appropriate*
15 *and adequate compensatory mitigation proposed by a project*
16 *proponent on the basis that the compensatory mitigation is not a*
17 *conservation action or habitat enhancement identified in a regional*
18 *conservation investment strategy.*

19 1856. (a) A conservation action or habitat enhancement action
20 that measurably advances the conservation objectives of an
21 approved regional conservation investment strategy may be used
22 to create mitigation credits that can be used to compensate for
23 impacts to focal species and other species, habitat, and other natural
24 resources, as provided in this section. The requirements of this
25 section apply only to the creation of mitigation credits under
26 mitigation credit agreements pursuant to this section and do not
27 establish requirements for other forms of compensatory mitigation.

28 (b) For a conservation action or habitat enhancement action
29 identified in a regional conservation investment strategy to be used
30 to create mitigation credits pursuant to this section, the regional
31 conservation investment strategy shall include, in addition to the
32 requirements of Section 1852, all of the following:

33 (1) An adaptive management and monitoring strategy for
34 conserved habitat and other conserved natural resources.

35 (2) A process for updating the scientific information used in the
36 strategy, and for tracking the progress of, and evaluating the
37 effectiveness of, conservation actions and habitat enhancement
38 actions identified in the strategy, in offsetting identified threats to
39 focal species and in achieving the strategy's biological goals and

1 objectives, at least once every 10 years, until all mitigation credits
2 are used.

3 (3) Identification of a public or private entity that will be
4 responsible for the updates and evaluation required pursuant to
5 paragraph (2).

6 (c) A mitigation credit created in accordance with this section
7 may be used to fulfill, in whole or in part, compensatory mitigation
8 requirements established under any state or federal environmental
9 law, as determined by the applicable local, state, or federal
10 regulatory agency, including, but not limited to, the following:

11 (1) To compensate for take or other adverse impacts of activities
12 authorized pursuant to Chapter 1.5 (commencing with Section
13 2050) of Division 3 within the regional conservation investment
14 strategy area.

15 (2) To reduce adverse impacts to fish or wildlife resources, or
16 both, from activities authorized pursuant to Chapter 6 (commencing
17 with Section 1600) within the regional conservation investment
18 strategy area to less than substantial.

19 (3) To mitigate significant effects on the environment within
20 the regional conservation investment strategy area pursuant to the
21 California Environmental Quality Act (Division 13 (commencing
22 with Section 21000) of the Public Resources Code) and Guidelines
23 for Implementation of the California Environmental Quality Act
24 (Chapter 3 (commencing with Section 15000) of Division 6 of
25 Title 14 of the California Code of Regulations).

26 (d) The department shall ensure the long-term durability of a
27 habitat enhancement action. If a habitat enhancement action is
28 used to create one or more mitigation credits pursuant to this
29 section, the habitat enhancement action shall remain in effect at
30 least until the site of the environmental impact is returned to
31 preimpact ecological conditions.

32 (e) To create mitigation credits pursuant to this section, a person
33 or entity, including a state or local agency, shall enter into a
34 mitigation credit agreement with the department. The mitigation
35 credit agreement shall identify the type and number of mitigation
36 credits proposed to be created and the terms and conditions under
37 which the mitigation credits may be used. Mitigation credits shall
38 not be created on a site that has already been permanently protected
39 and has been used, or is currently in use, to fulfill compensatory
40 mitigation requirements for one or more projects. The person or

1 entity may create and use, sell, or otherwise transfer the mitigation
2 credits upon department approval that the credits have been created
3 in accordance with the agreement. ~~To~~

4 (f) *To enter into a mitigation credit agreement with the*
5 *department, a person or entity shall submit a draft mitigation credit*
6 *agreement to the department for its review, revision, and approval.*
7 *approval or disapproval. Within five days of deeming a draft*
8 *agreement complete, the department shall publish notice of the*
9 *availability of the draft agreement by filing its notice with the*
10 *Governor's Office of Planning and Research and the city and*
11 *county clerks of each county in which the agreement is applicable*
12 *in part or in whole and shall make the draft agreement available*
13 *to the public on its Internet Web site, and to any public agency,*
14 *organization, or individual who has filed a written request to the*
15 *department for notices regarding agreements, for review and*
16 *comment for a period of at least 45 days, following which the*
17 *department shall respond to written comments submitted during*
18 *the public comment period and may approve the agreement,*
19 *approve it with revisions, or disapprove it.* The department may
20 enter into a mitigation credit agreement if it determines that the
21 mitigation credit agreement does all of the following:

22 (1) Provides contact information for, and establishes the
23 qualifications of, the person or entity entering into the agreement,
24 the entity that will manage the site of the conservation action or
25 habitat enhancement action, and any contractors or consultants.

26 (2) Fully describes the proposed conservation actions or habitat
27 enhancement actions and explains how, and to what extent, they
28 will measurably advance conservation objectives of the regional
29 conservation investment strategy that have not yet been achieved.

30 (3) Identifies the location of the conservation actions or habitat
31 enhancement actions, including a location map, address, and size
32 of the site where the proposed conservation action or habitat
33 enhancement action will be implemented.

34 (4) Provides color aerial and ground-level photographs that
35 reflect current conditions on the site and surrounding properties.

36 (5) Explains how the mitigation credits will be created,
37 including, but not limited to, information regarding proposed
38 ownership arrangements, long-term management strategy, and any
39 phases of implementation.

1 (6) Identifies mitigation banks and conservation banks approved
2 by the department as a mitigation alternative and explains how
3 available mitigation credits at those banks will be purchased or
4 used in combination with the mitigation credits created under the
5 mitigation credit agreement or, if those available mitigation credits
6 will not be purchased or used, why they will not be purchased or
7 used.

8 (7) Includes a natural resources evaluation that documents biotic
9 and abiotic baseline conditions, including past, current, and
10 adjacent land uses, vegetation types, species information,
11 topography, hydrology, and soil types.

12 (8) Identifies public lands and permanently protected lands in
13 the vicinity of the conservation actions or habitat enhancement
14 actions.

15 (9) Fully describes the proposed type and quantity of mitigation
16 credits and the supporting rationale. Mitigation credits created
17 pursuant to this section shall directly correlate to the focal species
18 and other species, habitat, and other natural resources protected
19 by the conservation actions or habitat enhancement actions.

20 (10) Identifies metrics or indicators by which the proposed
21 conservation action or habitat enhancement action's contribution
22 to achieving the strategy's conservation goals and objectives can
23 feasibly be measured with existing technology. The net ecological
24 gain from the implementation of conservation actions and habitat
25 enhancement actions that include habitat restoration shall be
26 reported using consistent metrics that measure the increment of
27 gain in the area and quality of habitat or other natural resource
28 values compared to baseline conditions described in the regional
29 conservation investment strategy, and measures the increment of
30 gain in relation to the regional conservation investment strategy's
31 conservation objectives.

32 (11) Describes the proposed landownership of the site or sites
33 of the conservation actions or habitat enhancement actions.

34 (12) Includes a template conservation easement, or other
35 instrument providing for perpetual protection of land in a manner
36 consistent with approved natural community conservation plans
37 within the area of the applicable regional conservation investment
38 strategy, for the sites of any conservation action and an explanation
39 of how the long-term durability of the sites of any habitat
40 enhancement actions will be ensured.

1 (13) Ensures that the implementation of the conservation action
2 or habitat enhancement action will be adequately funded and that
3 long-term protection and management of the site will be funded
4 in accordance with Chapter 4.6 (commencing with Section 65965)
5 of Division 1 of Title 7 of the Government Code or, if a state
6 agency proposed to enter into a mitigation credit agreement, other
7 comparable funding mechanism approved by the department in
8 accordance with an adopted statewide policy regarding funding
9 for long-term management and operations of mitigation sites.

10 (14) Includes a template monitoring and long-term adaptive
11 management plan.

12 (15) Explains the terms and conditions under which the proposed
13 mitigation credits may be sold or otherwise transferred and how
14 the proposed mitigation credits will be accounted for, including
15 the specific methods proposed for reporting and maintaining a
16 record of credit creation, release, and use, sale, or transfer.

17 (16) Includes enforcement provisions.

18 (17) Ensures that, for each site on which the conservation actions
19 or habitat enhancement actions will be implemented, information
20 consistent with, pursuant to this chapter, the information required
21 for a mitigation bank in paragraph (2) of subdivision (b) of Section
22 1798 and subparagraphs (B) to (H), inclusive, of paragraph (2) of
23 subdivision (a) of Section 1798.5 shall be prepared and submitted
24 to the department for review for adequacy and approval prior to
25 implementation.

26 (18) Includes a proposed credit ledger and credit release
27 schedule that meets the requirements of subdivision-~~(f)~~. (g).

28 ~~(f)~~

29 (g) (1) The release of mitigation credits for use, sale, or transfer
30 under a mitigation credit agreement shall require the department's
31 approval in accordance with this subdivision.

32 (2) The release of mitigation credits shall be tied to
33 performance-based milestones and achievement of ecological
34 performance standards. The credit release schedule for each
35 mitigation credit agreement shall reserve a substantial share of the
36 total credits for release after those ecological performance standards
37 are fully achieved. Performance-based milestones shall include,
38 but are not be limited to, the following:

39 (A) Recording a conservation easement consistent with approved
40 natural community conservation plans within the area of the

1 applicable regional conservation investment strategy on the site
2 of a conservation action, or putting into place measures that ensure
3 the long-term durability of a habitat enhancement action in
4 accordance with subdivision (d).

5 (B) Completing construction of a habitat restoration action.

6 (C) Achieving temporal ecological performance standards for
7 habitat restoration, such as standards established for one year, three
8 years, or five years following the initiation of habitat restoration.

9 (D) Fully achieving ecological performance standards.

10 (3) The terms of the credit release schedule shall be specified
11 in the mitigation credit agreement. When conservation actions and
12 habitat enhancement actions are implemented and meet the
13 performance-based milestones specified in the credit release
14 schedule, credits shall be created in accordance with the credit
15 release schedule. If a conservation action or habitat enhancement
16 action does not meet performance-based milestones, the department
17 may suspend the release of credits, reduce the number of credits,
18 or otherwise modify the credit release schedule accordingly.

19 (4) In order for mitigation credits to be released, the person or
20 entity that has entered into a mitigation credit agreement shall
21 demonstrate to the department that the appropriate
22 performance-based milestones for credit release have been met.
23 The department shall determine whether the milestones have been
24 met and the credits may be released.

25 ~~(g)~~

26 (h) (1) Mitigation credit agreements may be used to establish
27 the terms and conditions under which mitigation credits can be
28 created by projects that improve wildlife habitat, or that address
29 stressors to wildlife, to an extent that quantifiably exceeds
30 compensatory mitigation requirements established by the
31 department for those projects pursuant to Chapter 6 (commencing
32 with Section 1600) or Chapter 1.5 (commencing with Section
33 2050) of Division 3. Those projects may include, but are not limited
34 to, the construction of setback levees that result in the creation of
35 more floodplain or riparian habitat than is required to compensate
36 for construction impacts or the construction of transportation
37 facility improvements that remove barriers to fish or wildlife
38 movement and thereby improve the quality of habitat or address
39 stressors to wildlife to a greater extent than is required to
40 compensate for construction impacts. For those projects, the project

1 proponent may submit a draft mitigation credit agreement that
2 proposes the terms and conditions under which mitigation credits
3 may be created and used by or in conjunction with those projects
4 to the department for its review, revision, and approval. The
5 submission may occur concurrently with, or after, an application
6 submitted pursuant to Chapter 1.5 (commencing with Section
7 2050) of Division 3 or a notice submitted pursuant to Chapter 6
8 (commencing with Section 1600) or may occur after the application
9 or notice is submitted. Where a draft mitigation agreement is
10 submitted concurrently with the application or notice, the
11 department shall review the draft mitigation credit agreement
12 concurrently with its review of the application or notice and shall,
13 to the maximum extent practicable, complete its review of both
14 the notice or application and the draft agreement concurrently.

15 (2) Mitigation credit agreements submitted to the department
16 pursuant to this subdivision may comply with the requirements of
17 subdivision—~~(f)~~ (g) with a credit release schedule related to
18 construction of the project that will improve wildlife habitat, or
19 will address stressors to wildlife, to an extent that exceeds
20 compensatory mitigation requirements quantifiably. For those
21 projects, construction of the project may be a performance-based
22 milestone required by paragraph (2) of subdivision—~~(f)~~: (g).

23 ~~(h)~~

24 (i) Nothing in this chapter is intended to limit or impose
25 additional conditions on the creation or sale of mitigation credits
26 by a conservation bank or mitigation bank approved by the
27 department pursuant to Chapter 7.9 (commencing with Section
28 1797).

29 ~~(i)~~

30 (j) The creation of mitigation credits pursuant to this section
31 from a conservation action or habitat enhancement action
32 implemented within the plan area of an approved natural
33 community conservation plan shall not duplicate or replace
34 mitigation requirements set forth in the natural community
35 conservation plan and shall require the advance written approval
36 of the plan's implementing entity. Mitigation credits created
37 pursuant to this section may be used for covered activities under
38 an approved natural community conservation plan only in
39 accordance with the requirements of the plan. Individuals and
40 entities eligible for coverage as a participating special entity under

1 an approved natural community conservation plan may use
2 mitigation credits created pursuant to this section only if the plan's
3 implementing entity declines to extend coverage to the covered
4 activity proposed by the eligible individual or entity.

5 (j)

6 (k) The department shall make project mitigation credit and
7 ~~release information~~ *information, including the demonstration*
8 *submitted pursuant to paragraph (4) of subdivision (g)*, publicly
9 available on the department's Internet Web site.

10 1857. The department shall collect fees or other compensation
11 from a person or entity that proposes to enter into a mitigation
12 credit agreement, and from a public agency that proposes a regional
13 conservation investment strategy or a regional conservation
14 assessment, to pay for all or a portion of the department's costs
15 relating to the mitigation credit agreement, proposed strategy, or
16 proposed assessment.

17 1858. The department may adopt guidelines and criteria to aid
18 in the implementation of this chapter. Chapter 3.5 (commencing
19 with Section 11340) of Part 1 of Division 3 of Title 2 of the
20 Government Code does not apply to the development, adoption,
21 or amendment of guidelines or criteria pursuant to this section.
22 These guidelines and criteria shall be posted on the department's
23 Internet Web site.

24 1859. (a) The department shall submit a report to the
25 Legislature on or before January 1, 2020, regarding the
26 implementation of this chapter.

27 (b) The report required to be submitted pursuant to subdivision
28 (a) shall be submitted in compliance with Section 9795 of the
29 Government Code.

30 ~~1860. The department may partner with California~~
31 ~~Infrastructure and Economic Development Bank to finance the~~
32 ~~development of advance mitigation credits if needed.~~

33 ~~1861.~~

34 1860. Nothing in this chapter supersedes, limits, or otherwise
35 modifies the Sacramento-San Joaquin Delta Reform Act of 2009
36 (Division 35 (commencing with Section 85000) of the Water Code)
37 or Division 22.3 (commencing with Section 32300) of the Public
38 Resources Code.

1 ~~1862.~~
2 1861. The department shall approve no more than ~~15~~ 8 regional
3 conservation investment strategies before January 1, 2020. The
4 department shall not approve a regional conservation investment
5 strategy or regional conservation assessment pursuant to this
6 chapter on or after January 1, 2020, and shall not enter into a
7 mitigation credit agreement pursuant to this chapter on or after
8 January 1, 2020.

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