

AMENDED IN ASSEMBLY APRIL 18, 2001
AMENDED IN ASSEMBLY MARCH 28, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 949

Introduced by Assembly Member Kehoe

February 23, 2001

An act to amend Section 2801 of, and to add Section 2826 to, the Fish and Game Code, relating to natural community conservation planning, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 949, as amended, Kehoe. Natural Community Conservation Planning Act.

(1) The existing Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into an agreement with any person for the purpose of preparing and implementing a natural community conservation plan to provide comprehensive management and conservation of multiple wildlife species.

The United States Supreme Court, in *Solid Waste Agency v. Army Corps*, EN. (2001) 148 L.Ed.2d 576, did not extend regulation under the federal Clean Water Act to wetlands not adjacent to open water that serve as habitat for migratory birds.

This bill would authorize natural community conservation plans to provide for the conservation of wetlands and wetlands-dependent species ~~no longer receiving protection under the federal Clean Water Act pursuant to that case~~ *that are not subject to federal jurisdiction*.

(2) Under existing law, the money in the Fish and Game Preservation Fund is continuously appropriated to the department to carry out the Fish and Game Code.

Because this bill would impose new duties on the department, the bill would thereby make an appropriation.

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

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

1 SECTION 1. Section 2801 of the Fish and Game Code is
2 amended to read:

3 2801. The Legislature finds and declares all of the following:

4 (a) The continuing population growth in California will result
5 in increasing demands for dwindling natural resources and will
6 result in the continuing decline of the state's wildlife.

7 (b) There is a need for broad-based planning to provide for
8 effective protection and conservation of the state's wildlife
9 heritage while continuing to allow appropriate development and
10 growth.

11 (c) Natural community conservation planning is an effective
12 tool in protecting California's natural diversity while reducing
13 conflicts between protection of the state's wildlife heritage and
14 reasonable use of natural resources for economic development.

15 (d) Natural community conservation planning promotes
16 coordination and cooperation among public agencies, landowners,
17 and other private interests, provides a mechanism by which
18 landowners and development proponents can effectively
19 participate in the resource conservation planning process,
20 provides a regional planning focus that can effectively address
21 cumulative impact concerns, minimizes wildlife habitat
22 fragmentation, promotes multispecies management and
23 conservation, provides an option for identifying and ensuring
24 appropriate mitigation for impacts of fish and wildlife, and
25 promotes the conservation of broad-based natural communities
26 and species diversity.

27 (e) Natural community conservation planning can provide for
28 efficient use and protection of natural and economic resources
29 while also promoting greater sensitivity to important elements of
30 the state's critical natural diversity.



(f) Natural community conservation planning is an effective planning process that can facilitate early coordination to protect the interests of the state, the federal government, local public agencies, landowners, and other private parties.

(g) Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development projects within the planning area in order to avoid, minimize, and compensate for impacts on wildlife caused by development and growth.

(h) Natural community conservation planning is consistent with, and will support, the fish and wildlife management activities of the department in its role as the trustee for fish and wildlife within the state.

(i) The purpose of natural community conservation planning is to sustain and restore those species and habitat identified by the department that are necessary to maintain the continued viability of biological communities that are impacted by growth and development.

~~(j) Natural community conservation planning can serve as an effective means to integrate the conservation mandates and permitting requirements of various state and federal environmental protection laws, including the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.). In light of recent changes in~~

(j) In light of recent changes in federal law related to protection of wetlands, it is desirable to create a clear incentive to provide for the conservation of wetlands and wetlands-dependent plant and animal species that may no longer be receiving protection under federal law through the natural community conservation planning process.

SEC. 2. Section 2826 is added to the Fish and Game Code, to read:

2826. A natural community conservation plan may provide for the conservation of wetlands and wetlands-dependent species ~~no longer receiving protection under the federal Clean Water Act (33 U.S.C. 1251 et seq.) pursuant to the United States Supreme Court ruling in Solid Waste Agency v. Army Corps EN. (2001) 148 L.Ed.2d 576, if the department finds all of the following: not subject to federal jurisdiction, if the department finds all of the following:~~

1 (a) The plan ensures that there is no net loss of existing
2 wetlands ~~or recreational uses~~ and that the plan provides a
3 long-term gain in the quality and quantity of wetlands acreage and
4 functions in the plan area.

5 ~~(b) The plan meets the substantive requirements of the federal~~
6 ~~Clean Water Act (33 U.S.C. Sec. 1251 et seq.) by requiring project~~
7 ~~proponents to avoid or minimize all significant adverse~~
8 ~~environmental impacts to wetlands from projects and to conduct~~
9 ~~onsite mitigation where possible for all unavoidable project~~
10 ~~impacts.~~

11 ~~(c)~~
12 (b) *The plan prohibits the destruction of wetlands if there is a*
13 *practicable alternative that will have less adverse environmental*
14 *impacts.*

15 (c) *The plan requires that adverse environmental impacts of*
16 *wetlands destruction are avoided, that unavoidable impacts are*
17 *minimized, and that any remaining impacts are mitigated to the*
18 *maximum extent practicable.*

19 (d) *With respect to any coastal wetlands, as defined in Section*
20 *30121 of the Public Resources Code, the plan meets the*
21 *requirements of the California Coastal Act of 1976 (Division 20*
22 *(commencing with Section 30000) of the Public Resources Code).*

23 (e) Any use of offsite mitigation or wetlands mitigation banks
24 shall be in close enough proximity to the project site that the
25 mitigation will provide actual replacement of the hydrological,
26 vegetative, and wildlife function and values of the wetlands on the
27 project site.