

Introduced by Senator Wolk

February 19, 2010

An act to amend Sections 2810 and 2820 of the Fish and Game Code, relating to wildlife resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as introduced, Wolk. Natural community conservation plans.

The Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species. The act requires the department to approve a natural community conservation plan for implementation after making specified findings based upon substantial evidence in the record, including a finding that the plan has been developed consistent with the planning agreement process.

This bill would expand the cooperation requirement to require the department to cooperate with all local agencies that have land use permit authority over the activities proposed to be addressed in the plan. The bill would require a corresponding finding.

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

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

SECTION 1. Section 2810 of the Fish and Game Code is amended to read:

2810. (a) The department may enter into an agreement with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with ~~a~~ *all* local ~~agency agencies~~ that ~~has~~ *have* land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species, including, but not limited to, those species listed pursuant to Article 2 (commencing with Section 2070) of Chapter 1.5. The agreement shall include a provision specifying the amount of compensation, if any, payable to the department pursuant to Section 2829.

(b) The agreement shall meet all of the following conditions:

(1) The agreement shall be binding upon the department, other participating federal, state, and local agencies, and participating private landowners.

(2) The agreement shall define the geographic scope of the conservation planning area.

(3) The agreement shall identify a preliminary list of those natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the plan.

(4) The agreement shall identify preliminary conservation objectives for the planning area.

(5) The agreement shall establish a process for the inclusion of independent scientific input to assist the department and plan participants, and to do all of the following:

(A) Recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the plan.

(B) Recommend a set of reserve design principles that addresses the needs of species, landscapes, ecosystems, and ecological processes in the planning area proposed to be addressed by the plan.

1 (C) Recommend management principles and conservation goals
2 that can be used in developing a framework for the monitoring
3 and adaptive management component of the plan.

4 (D) Identify data gaps and uncertainties so that risk factors can
5 be evaluated.

6 (6) The agreement shall require coordination with federal
7 wildlife agencies with respect to the federal Endangered Species
8 Act (16 U.S.C. Sec. 1531 et seq.).

9 (7) The agreement shall encourage concurrent planning for
10 wetlands and waters of the United States.

11 (8) The agreement shall establish an interim process during plan
12 development for project review wherein discretionary projects
13 within the plan area subject to Division 13 (commencing with
14 Section 21000) of the Public Resources Code that potentially
15 conflict with the preliminary conservation objectives in the
16 planning agreement are reviewed by the department prior to, or as
17 soon as possible after the project application is deemed complete
18 pursuant to Section 65943 of the Government Code and the
19 department recommends mitigation measures or project alternatives
20 that would help achieve the preliminary conservation objectives.
21 As part of this process, information developed pursuant to
22 paragraph (5) of subdivision (b) of Section 2810 shall be taken
23 into consideration by the department and plan participants. Any
24 take of candidate, threatened, or endangered species that occurs
25 during this interim period shall be included in the analysis of take
26 to be authorized under an approved plan. Nothing in this paragraph
27 is intended to authorize take of candidate, protected, or endangered
28 species.

29 (9) The agreement shall establish a process for public
30 participation throughout the plan development and review pursuant
31 to Section 2815.

32 (c) The approval of the planning agreement is not a project
33 pursuant to Division 13 (commencing with Section 21000) of the
34 Public Resources Code.

35 (d) Prior to department approval of the planning agreement, the
36 public shall have 21 calendar days to review and comment on the
37 proposed planning agreement.

38 SEC. 2. Section 2820 of the Fish and Game Code is amended
39 to read:

2820. (a) The department shall approve a natural community conservation plan for implementation after making the following findings, based upon substantial evidence in the record:

(1) The plan has been developed consistent with the process identified in the planning agreement entered into pursuant to Section 2810, *including cooperation with all local agencies that have land use permit authority over the activities proposed to be addressed in the plan.*

(2) The plan integrates adaptive management strategies that are periodically evaluated and modified based on the information from the monitoring program and other sources, ~~which~~ *that* will assist in providing for the conservation of covered species and ecosystems within the plan area.

(3) The plan provides for the protection of habitat, natural communities, and species diversity on a landscape or ecosystem level through the creation and long-term management of habitat reserves or other measures that provide equivalent conservation of covered species appropriate for land, aquatic, and marine habitats within the plan area.

(4) The development of reserve systems and conservation measures in the plan area provides, as needed for the conservation of species, all of the following:

(A) Conserving, restoring, and managing representative natural and seminatural landscapes to maintain the ecological integrity of large habitat blocks, ecosystem function, and biological diversity.

(B) Establishing one or more reserves or other measures that provide equivalent conservation of covered species within the plan area and linkages between them and adjacent habitat areas outside of the plan area.

(C) Protecting and maintaining habitat areas that are large enough to support sustainable populations of covered species.

(D) Incorporating a range of environmental gradients ~~(such, such as slope, elevation, aspect, and coastal or inland characteristics)~~ *characteristics*, and high habitat diversity to provide for shifting species distributions due to changed circumstances.

(E) Sustaining the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the plan area.

(5) The plan identifies activities, and any restrictions on those activities, allowed within reserve areas that are compatible with

1 the conservation of species, habitats, natural communities, and
2 their associated ecological functions.

3 (6) The plan contains specific conservation measures that meet
4 the biological needs of covered species and that are based upon
5 the best available scientific information regarding the status of
6 covered species and the impacts of permitted activities on those
7 species.

8 (7) The plan contains a monitoring program.

9 (8) The plan contains an adaptive management program.

10 (9) The plan includes the estimated timeframe and process by
11 which the reserves or other conservation measures are to be
12 implemented, including obligations of landowners and plan
13 signatories and consequences of the failure to acquire lands in a
14 timely manner.

15 (10) The plan contains provisions that ensure adequate funding
16 to carry out the conservation actions identified in the plan.

17 (b) A natural community conservation plan approved pursuant
18 to this section shall include an implementation agreement that
19 contains all of the following:

20 (1) Provisions defining species coverage, including any
21 conditions of coverage.

22 (2) Provisions for establishing the long-term protection of any
23 habitat reserve or other measures that provide equivalent
24 conservation of covered species.

25 (3) Specific terms and conditions, ~~which~~ *that*, if violated, would
26 result in the suspension or revocation of the permit, in whole or
27 in part. The department shall include a provision requiring
28 notification to the plan participant of a specified period of time to
29 cure any default prior to suspension or revocation of the permit in
30 whole or in part. These terms and conditions shall address, but are
31 not limited to, provisions specifying the actions the department
32 shall take under all of the following circumstances:

33 (A) If the plan participant fails to provide adequate funding.

34 (B) If the plan participant fails to maintain the rough
35 proportionality between impacts on habitat or covered species and
36 conservation measures.

37 (C) If the plan participant adopts, amends, or approves any plan
38 or project without the concurrence of the wildlife agencies that is
39 inconsistent with the objectives and requirements of the approved
40 plan.

1 (D) If the level of take exceeds that authorized by the permit.

2 (4) Provisions specifying procedures for amendment of the plan
3 and the implementation agreement.

4 (5) Provisions ensuring implementation of the monitoring
5 program and adaptive management program.

6 (6) Provisions for oversight of plan implementation for purposes
7 of assessing mitigation performance, funding, and habitat
8 protection measures.

9 (7) Provisions for periodic reporting to the wildlife agencies
10 and the public for purposes of information and evaluation of plan
11 progress.

12 (8) Mechanisms to ensure adequate funding to carry out the
13 conservation actions identified in the plan.

14 (9) Provisions to ensure that implementation of mitigation and
15 conservation measures on a plan basis is roughly proportional in
16 time and extent to the impact on habitat or covered species
17 authorized under the plan. These provisions shall identify the
18 conservation measures, including assembly of reserves where
19 appropriate and implementation of monitoring and management
20 activities, that will be maintained or carried out in rough proportion
21 to the impact on habitat or covered species and the measurements
22 that will be used to determine if this is occurring.

23 (c) If a plan participant does not maintain the proportionality
24 between take and conservation measures specified in the
25 implementation agreement and does not either cure the default
26 within 45 days or enter into an agreement with the department
27 within 45 days to expeditiously cure the default, the department
28 shall suspend or revoke the permit, in whole or in part.

29 (d) Any data and reports associated with the monitoring program
30 required by this section shall be available for public review. The
31 entity managing the plan shall also conduct public workshops on
32 an annual basis to provide information and evaluate progress
33 toward attaining the conservation objectives of the plan.

34 (e) To the extent provided pursuant to Division 13 (commencing
35 with Section 21000) of the Public Resources Code and any
36 guidelines adopted pursuant thereto, if the impacts on one or more
37 covered species and its habitat are analyzed and mitigated pursuant
38 to a program environmental impact report for a plan adopted
39 pursuant to this chapter, a plan participant that is a lead agency or
40 a responsible agency under that division shall incorporate in the

1 review of any subsequent project in the plan area the feasible
2 mitigation measures and alternatives related to the biological
3 impacts on covered species and their habitat developed in the
4 program environmental impact report.

5 (f) The department may provide assurances for plan participants
6 commensurate with long-term conservation assurances and
7 associated implementation measures pursuant to the approved
8 plan.

9 (1) When providing assurances pursuant to this subdivision, the
10 department's determination of the level of assurances and the time
11 limits specified in the implementation agreement for assurances
12 may be based on localized conditions and shall consider all of the
13 following:

14 (A) The level of knowledge of the status of the covered species
15 and natural communities.

16 (B) The adequacy of analysis of the impact of take on covered
17 species.

18 (C) The use of the best available science to make assessments
19 about the impacts of take, the reliability of mitigation strategies,
20 and the appropriateness of monitoring techniques.

21 (D) The appropriateness of the size and duration of the plan
22 with respect to quality and amount of data.

23 (E) The sufficiency of mechanisms for long-term funding of all
24 components of the plan and contingencies.

25 (F) The degree of coordination and accessibility of centralized
26 data for analysis and evaluation of the effectiveness of the plan.

27 (G) The degree to which a thorough range of foreseeable
28 circumstances are considered and provided for under the adaptive
29 management program.

30 (H) The size and duration of the plan.

31 (2) If there are unforeseen circumstances, additional land, water,
32 or financial compensation or additional restrictions on the use of
33 land, water, or other natural resources shall not be required without
34 the consent of plan participants for a period of time specified in
35 the implementation agreement, unless the department determines
36 that the plan is not being implemented consistent with the
37 substantive terms of the implementation agreement.