

**AB 1799 (Gordon) – Assembly Committee
on Local Government Analysis,
Assembly Bill**

Attachment 3

Date of Hearing: April 2, 2014

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
K.H. "Katcho" Achadjian, Chair
AB 1799 (Gordon) – As Introduced: February 18, 2014

SUBJECT: Land use: mitigation lands.

SUMMARY: Eliminates, if a governmental entity or special district provides evidence that it possesses an investment-grade credit rating and meets other specified conditions, the requirement of an endowment for long-term stewardship. Specifically, this bill:

- 1) Eliminates the requirement of an endowment or other financial mechanism for long-term stewardship where a governmental entity or special district is the entity required to provide the long term stewardship, if the governmental entity or special district provides evidence to the local or state agency that it possesses an investment-grade credit rating by a nationally recognized statistical rating organization or other equivalent evidence of financial reliability, and provides one of the following:
 - a) A resolution to fund the long-term stewardship of the property adopted by the board or legislative body of the governmental entity or special district; or,
 - b) A contractual agreement with the state or local agency enforcing the mitigation requirements to fund the long-term stewardship of the property.
- 2) Provides that a resolution or contract shall include all of the following:
 - a) A summary of the governmental entity or special district's current and projected financial state;
 - b) A finding regarding a financial analysis conducted on annual management costs;
 - c) An annual pledge of revenue to cover the annual mitigation requirements;
 - d) An annual pledge of revenue to cover the annual management costs;
 - e) Use of accounting standards consistent with standards promulgated by the Governmental Accounting Standards Board (GASB) or its successor entity; and,
 - f) An annual fiscal report.
- 3) Allows, if the governmental entity or special district is subsequently downgraded below an investment-grade credit rating by a nationally recognized statistical rating organization or fails to maintain an equivalent standard of financial reliability, the state or local agency enforcing the mitigation requirement to provide written notice thereof and require the governmental entity or special district to post collateral for performance of the long-term stewardship in the form of a performance bond, escrow account, casualty insurance, letter of credit, or other appropriate instrument.

- 4) Specifies that the obligation to maintain collateral shall end, and all unused collateral shall be cancelled or refunded, upon the governmental entity or special district providing evidence of its return to an investment-grade credit rating by a nationally recognized statistical rating organization or other equivalent evidence of financial reliability.
- 5) Allows, if the governmental entity or special district fails to adequately fund the long-term stewardship by revoking, failing to comply with, or otherwise rendering ineffective the board resolution, or after being provided written notice, fails to cure the remedy period set forth in the contractual agreement, the state or local agency enforcing the mitigation requirement, in addition to any contractual remedies, to require the governmental entity or special district to post collateral for performance of the long-term stewardship in the form of a performance bond, escrow account, casualty insurance, letter of credit, or other appropriate instrument.
- 6) Defines "investment grade" to mean a credit rating provided by a nationally recognized statistical rating organization that indicates a relatively low risk of default.
- 7) Defines "national recognized statistical rating organization" to mean a rating agency designated by the Securities and Exchange Commission as being nationally recognized.

EXISTING LAW:

- 1) Specifies that if a state or local agency requires a project proponent to transfer property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the agency may authorize a governmental entity, special district, a nonprofit organization, a for-profit entity, a person, or another entity to hold title to and manage that property.
- 2) Defines "endowment" to mean the funds that are conveyed solely for the long-term stewardship of a mitigation property.
- 3) Requires a mitigation agreement to govern the long-term stewardship of the property and the endowment.
- 4) Requires any conservation easement created as a component of satisfying a local or state mitigation requirement to be perpetual in duration, as specified.
- 5) Requires, if an endowment is conveyed or secured at the time the property is protected, all of the following to apply:
 - a) The endowment shall be held, managed, invested, and disbursed solely for, and permanently restricted to, the long-term stewardship of the specific property for which the funds were set aside;
 - b) The endowment shall be calculated to include a principal amount that, when managed and invested, is reasonably anticipated to cover the annual stewardship costs of the property in perpetuity; and,
 - c) The endowment shall be held, managed, invested, disbursed, and governed as specified and consistent with the Uniform Prudent Management of Institutional Funds Act.

- 6) Requires, if a nonprofit corporation holds the endowment, the nonprofit to utilize generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board of any successor entity.
- 7) Requires, if a local agency holds the endowment, the local agency to do all of the following:
 - a) Hold, manage, and invest the endowment, as specified;
 - b) Disburse funds on a timely basis to meet the stewardship expenses of the entity holding the property; and,
 - c) Utilize accounting standards consistent with standards promulgated by the Governmental Accounting Standards Board or any successor entity.

FISCAL EFFECT: None

COMMENTS:

- 1) Purpose of this bill. This bill eliminates the requirement of an endowment for long-term stewardship, if a governmental entity or special district provides evidence that it possesses an investment-grade credit rating and meets other specified criteria. The bill is sponsored by the Santa Clara Valley Water District.
- 2) Background and previous legislation. Current law authorizes a state or local agency to allow a qualified and approved nonprofit organization or special district to hold property and long-term stewardship funds (i.e., accompany funds or endowment) to mitigate adverse impacts to natural resources caused by a permitted development project. This was put into place by SB 436 (Kehoe), Chapter 590, Statutes of 2011 and modified by SB 1094 (Kehoe), Chapter 705, Statutes of 2012, with various technical clean-up of the prior bill. Prior to these bills, however, there was a long history of attempts to clarify which entities could hold both the property and the endowment for mitigation lands.

In 2006, the Assembly Water, Parks and Wildlife Committee asked for a written opinion from Legislative Counsel about whether there was statutory authorization for nonprofit organizations to hold and manage funds set aside for the purpose of long-term management of mitigation lands. At that time, Legislative Counsel opined that existing law already allowed a state agency, including the Department of Fish and Game (DFG), to enter into an agreement authorizing a nonprofit organization to hold and manage mitigation funds sets aside for the long-term management of the property.

In the following years, there were numerous bills to expressly authorize nonprofits to hold and manage mitigation fund endowments for the long-term management of the property, including the following:

- a) AB 2916 (Water, Parks and Wildlife Committee, 2006) – would have authored DFF to enter into agreements with eligible nonprofit organizations to hold and manage endowment accounts, subject to specified standards. The bill was held in the Senate Appropriations Committee.

- b) SB 1011 (Hollingsworth, 2007) – similarly proposed to allow DFG to authorize a local public entity or a nonprofit to hold and manage mitigation endowment funds, subject to specified conditions. SB 1011 was held in the Senate Appropriations Committee.
 - c) AB 2746 (Blakeslee), Chapter 577, Statutes of 2006, and AB 1246 (Blakeslee), Chapter 330, Statutes of 2007, clarified the authority of state and local agencies to allow nonprofit land trusts to accept and hold mitigation lands.
 - d) AB 444 (Caballero, 2009) – would have clarified that funds set aside for long-term management of mitigation lands conveyed to a nonprofit organization may also be conveyed to the nonprofit, and authorizes the nonprofit to hold, manage, invest, and disburse the funds for management and stewardship of the land or easement for which the funds were set aside. AB 444 was vetoed by Governor Schwarzenegger because of the lack of adequate fiscal assurances.
 - e) SB 1094 (Kehoe), Chapter 705, Statutes of 2012 – As a technical clean-up to SB 436 (Kehoe), this bill modified provisions related to mitigation agreements and the entities that may hold endowments dedicated to mitigation lands, and expands the eligible entities authorized to hold title, manage property, and hold endowments related to mitigation lands
- 3) Author's statement. According to the author, this bill would "provide alternatives for financing the future stewardship of mitigation properties, as long as the project lead agency demonstrates financial reliability. Permitting agencies would only approve entities that have provided financial assurances for fully funding the long-term stewardship of the mitigation property through a Board resolution or contractual agreement. Public agencies would still be required to provide mitigation...this bill simply allows them more flexibility as to how they finance those mitigation obligations."
- "Requiring public agencies to set aside funds in endowments permanently ties up more taxpayer funds than is necessary to maintain the site, keeping those funds from other critical projects. Freeing up these valuable taxpayer dollars will help fund additional public efforts including environmental stewardship, public safety, and additional mitigation projects."
- 4) Santa Clara Valley Water District. The sponsor raises the issue of their Stream Maintenance Program, which required over 400 acres at Coyote Ridge to be set aside and maintained in perpetuity. Ongoing maintenance of the property is estimated at \$80,000 per year. The District notes that they'd rather be able to budget for this maintenance cost annually, but under current law, the District has been requested to set aside \$5 million of taxpayer funds in a restricted account. According to the sponsor, these are funds that would no longer be available for other public projects and improvements.
- 5) Policy considerations. A coalition of environmental organizations (California Council of Land Trusts, Defenders of Wildlife, Wildlands, Inc., and Wildlife Heritage Foundation) that were heavily involved in the policy discussions and legislation since 2006 in how mitigation, and mitigation endowments are held and managed, raise the following concerns:
- a) The bill exempts one class of entities (i.e. governmental entity or special district) that must meet mitigation requirements from being required by the permitting agency to set

aside secure funds thus creating an un-level playing field in which one class of project proponents is treated differently from other project proponents.

- b) SB 1094 (Kehoe, 2012) expressly provides that other methods of funding for the long-term stewardship of the property shall not be precluded as funding options for the long-term stewardship of the mitigation property. This bill jumps completely past other funding mechanism options to completely exempt selected public parties from any form of dedicated financial assurance for mitigation lands.
 - c) The relevant definitions of "governmental entity" are very broad and encompassing and could include joint ventures, joint power authorities, public-private partnerships and other groups that include governmental entities or special districts that would be exempt from conveying an endowment. Also, using the phrase "possession of an investment-grade credit rating" as one of the triggers for excluding local agencies from being required to convey and endowment is an extremely broad category.
 - d) The permitting agency that is requiring the mitigation has no authority to approve the local resolution, yet the bill completely removes endowments as an option from the permitting agency's 'financial mechanism toolbox.'
 - e) There is no mandatory or comparable penalty in the bill should the governmental entity or special district fail to meet the obligations embodied in the mitigation agreement. The Coalition believes that if the governmental entity fails to fulfill its obligations, then it should immediately be required to create an endowment.
- 6) Arguments in support. Local government groups including the Rural County Representatives of California, California State Association of Counties, and the California Special Districts Association, argue that this bill would provide the needed flexibility for local governments to budget and pay for mitigation costs as needed, and that the current requirement to set aside funds greatly hinders the ability of local governments to best utilize their valuable taxpayer dollars.
- 7) Arguments in opposition. A coalition of environmental groups including the California Council of Land Trusts, Defenders of Wildlife, Wildlands, Inc. and Wildlife Heritage Foundation raise a number of concerns about both the policy direction the bill sets, plus a number of technical issues related to the broad language in the bill, and the un-level playing field in which one class of project proponents is treated differently from other project proponents.
- 8) Double-referral. This bill is double-referred to the Water, Parks and Wildlife Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Santa Clara Valley Water District [SPONSOR]
California State Association of Counties
California Special Districts Association
Counties of San Bernardino and Santa Barbara
Mid-Peninsula Open Space District
Rural County Representatives of California

Opposition

California Council of Land Trusts
Defenders of Wildlife
Wildlands, Inc.
Wildlife Heritage Foundation

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ASSEMBLY BILL

No. 1799

Introduced by Assembly Member Gordon
(Coauthors: Assembly Members Alejo, Campos, and Wieckowski)
(Coauthors: Senators Beall and Correa)

February 18, 2014

An act to amend Sections 65965 and 65966 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1799, as introduced, Gordon. Land use: mitigation lands.

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 and 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. Existing law requires a conservation easement created as a component of satisfying a local or state mitigation requirement to be perpetual in duration, and sets forth the requirements for long-term stewardship of property by various entities, including, among others, local governmental entities and nonprofit organizations.

This bill would eliminate the requirement of an endowment or other financial mechanism for long-term stewardship where a governmental entity or special district is the entity required to provide the long-term stewardship, if the governmental entity or special district provides evidence to the local or state agency that it possesses an investment-grade credit rating by a nationally recognized statistical rating organization, and provides either a resolution adopted by the legislative body of the governmental entity or special district or a contractual agreement with the local or state agency enforcing the mitigation requirements, as specified.

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

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

- 1 SECTION 1. Section 65965 of the Government Code is
- 2 amended to read:
- 3 65965. For the purposes of this chapter, the following
- 4 definitions apply:
- 5 (a) "Endowment" means the funds that are conveyed solely for
- 6 the long-term stewardship of a mitigation property. Endowment
- 7 funds are held as charitable trusts that are permanently restricted
- 8 to paying the costs of long-term management and stewardship of
- 9 the mitigation property for which the funds were set aside.
- 10 Endowments shall be governed by the underlying laws, regulations,
- 11 and specific governmental approvals under those laws and
- 12 regulations pursuant to which the endowments were exacted,
- 13 consistent with subdivision (b) of Section 65966 and with the
- 14 Uniform Prudent Management of Institutional Funds Act (Part 7
- 15 commencing with Section 18501) of Division 9 of the Probate
- 16 Code). Endowments do not include funds conveyed for meeting
- 17 short-term performance objectives of a project.
- 18 (b) "Community foundation" means any community foundation
- 19 that meets all of the following requirements:
- 20 (1) Meets the requirements of a community trust under Section
- 21 1.170A-9(f)(10)-(11) of Title 26 of the Code of Federal
- 22 Regulations.
- 23 (2) Is exempt from taxation as an organization described in
- 24 Section 501(c)(3) of the Internal Revenue Code.
- 25 (3) Is qualified to do business in this state.

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

3 (5) Has complied with National Standards for U.S. Community
4 Foundations as determined by the Community Foundations
5 National Standards Board, a supporting organization of the Council
6 on Foundations.

7 (6) Is registered with the Registry of Charitable Trusts
8 maintained by the Attorney General pursuant to Section 12584.

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

12 (d) “Direct protection” means the permanent protection,
13 conservation, and preservation of lands, waters, or natural
14 resources, including, but not limited to, agricultural lands, wildlife
15 habitat, wetlands, endangered species habitat, open-space areas,
16 or outdoor recreational areas.

17 (e) “Governmental entity” means any state agency, office,
18 officer, department, division, bureau, board, commission, public
19 postsecondary educational institution, city, county, or city and
20 county, or a joint powers authority formed pursuant to the Joint
21 Exercise of Powers Act (Chapter 5 (commencing with Section
22 6500) of Division 7 of Title 1) that meets either of the following
23 requirements:

24 (1) The joint powers authority was created for the principal
25 purpose and activity of the direct protection or stewardship of land,
26 water, or natural resources, including, but not limited to,
27 agricultural lands, wildlife habitat, wetlands, endangered species
28 habitat, open-space areas, and outdoor recreational areas.

29 (2) The joint powers authority was created for the purpose of
30 constructing, maintaining, managing, controlling, and operating
31 transportation infrastructure, such as major thoroughfares and
32 bridges.

33 (f) (1) “Mitigation agreement” means either of the following:

34 (A) A written agreement between the project proponent and the
35 entity qualified to hold the property and the endowment pursuant
36 to this chapter, which is submitted to the state or local agency for
37 the purpose of obtaining any permit, clearance, or mitigation
38 approval from that state or local agency.

39 (B) A written agreement between the project proponent and the
40 entity qualified to hold the property pursuant to this chapter,

1 including any agreement with an entity qualified to hold the
 2 endowment pursuant to this chapter, which is submitted to the state
 3 or local agency for the purpose of obtaining any permit, clearance,
 4 or mitigation approval from that state or local agency.

5 (2) A mitigation agreement shall govern the long-term
 6 stewardship of the property and the endowment.

7 (g) “Congressionally chartered foundation” means a nonprofit
 8 organization that meets all of the following requirements:

9 (1) Is chartered by the United States Congress.

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

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

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

15 (5) Has as a purpose the conservation and management of fish,
 16 wildlife, plants, and other natural resources, which includes, but
 17 is not limited to, the direct protection or stewardship of land, water,
 18 or natural wildlife habitat, wetlands, endangered species habitat,
 19 open-space areas, and outdoor recreational areas.

20 (h) *“Investment grade” means a credit rating provided by a*
 21 *nationally recognized statistical rating organization that indicates*
 22 *a relatively low risk of default. For purposes of this subdivision,*
 23 *“nationally recognized statistical rating organization” means a*
 24 *rating agency designated by the Securities and Exchange*
 25 *Commission as being nationally recognized.*

26 ~~(h)~~

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

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

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

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

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

36 (5) Has as its principal purpose and activity the direct protection
 37 or stewardship of land, water, or natural resources, including, but
 38 not limited to, agricultural lands, wildlife habitat, wetlands,
 39 endangered species habitat, open-space areas, and outdoor
 40 recreational areas.

1 ~~(i)~~

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

5 ~~(j)~~

6 (k) "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)~~

10 (l) "Special district" means any of the following special districts:

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

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

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

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

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

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

27 (7) A local flood control district formed pursuant to any law.

28 ~~(l)~~

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

33 SEC. 2. Section 65966 of the Government Code is amended
34 to read:

35 65966. (a) Any conservation easement created as a component
36 of satisfying a local or state mitigation requirement shall be
37 perpetual in duration, whether created pursuant to Chapter 6.6
38 (commencing with Section 51070) of Part 1 of Division 1 of Title
39 5 of this code or Chapter 4 (commencing with Section 815) of
40 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. Nothing in this chapter shall be construed
5 as otherwise precluding other methods of funding for the long-term
6 stewardship of the property. If an endowment is conveyed or
7 secured at the time the property is protected, all of the following
8 shall apply:

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

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

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

21 (c) If a nonprofit corporation holds the endowment, the nonprofit
22 shall utilize generally accepted accounting practices that are
23 promulgated by the Financial Accounting Standards Board or any
24 successor entity.

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

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

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

31 (3) Utilize accounting standards consistent with standards
32 promulgated by the Governmental Accounting Standards Board
33 or any successor entity.

34 (e) (1) Unless the mitigation agreement provides that another
35 person or entity shall prepare the annual fiscal report described
36 below, a governmental entity, community foundation, special
37 district, a congressionally chartered foundation, or a nonprofit
38 organization that holds funds pursuant to this chapter, including
39 an endowment or moneys for initial stewardship costs, shall provide
40 the local or state agency that required the endowment with an

1 annual fiscal report that contains at least the following elements
2 with respect to each individual endowment dedicated and held by
3 that entity:

4 (A) The balance of each individual endowment at the beginning
5 of the reporting period.

6 (B) The amount of any contribution to the endowment during
7 the reporting period including, but not limited to, gifts, grants, and
8 contributions received.

9 (C) The net amounts of investment earnings, gains, and losses
10 during the reporting period, including both realized and unrealized
11 amounts.

12 (D) The amounts distributed during the reporting period that
13 accomplish the purpose for which the endowment was established.

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

16 (F) The balance of the endowment or other fund at the end of
17 the reporting period.

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

20 (H) The most recent financial statements for the organization
21 audited by an independent auditor who is, at a minimum, a certified
22 public accountant.

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

30 (f) If a state agency authorizes a governmental entity, special
31 district, or nonprofit organization to hold property pursuant to
32 subdivision (a) or (b) of Section 65967 in connection with a
33 development project, the agency may require the project proponent
34 to pay a one-time fee that does not exceed the reasonable costs of
35 the agency in reviewing qualifications of potential holders of the
36 property and approving those holders. This one-time fee shall be
37 collected only if the agency can demonstrate its actual review of
38 qualifications and approval of holders.

39 (g) If a local agency authorizes a governmental entity, special
40 district, or nonprofit organization to hold property or an endowment

1 pursuant to this chapter, the agency may require the project
2 proponent to pay a one-time fee that does not exceed the reasonable
3 costs of the agency in reviewing qualifications of the parties
4 identified in the mitigation agreement, approving those parties,
5 and any regular oversight over those parties to ensure that the
6 parties are complying with all applicable laws. This one-time fee
7 shall be collected only if the agency can demonstrate its actual
8 review of qualifications, approval of parties, or regular oversight
9 of compliance and performance.

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

18 (i) The local agency may contract with or designate a qualified
19 third party to do any of the following:

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

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

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

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

1 (k) Unless prohibited by law, no provision in this chapter is
2 intended to prohibit for-profit entities from holding, acquiring, or
3 providing property for mitigation purposes.

4 (l) Nothing in this section shall prohibit a state agency from
5 exercising any powers described in subdivision (d), (g), or (h).

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

12 (n) Except as expressly authorized in paragraph (1) of
13 subdivision (e), the mitigation agreement shall not include any
14 provision to waive or exempt the parties from any requirement, in
15 whole or part, of this chapter.

16 (o) Subdivisions (b) to (e), inclusive, shall not apply to funds,
17 including funds from mitigation fees, held for the long-term
18 management and stewardship of property pursuant to either an
19 interim or approved habitat conservation plan pursuant to Chapter
20 35 (commencing with Section 1531) of Title 16 of the United
21 States Code or an interim or approved natural community
22 conservation plan pursuant to Chapter 10 (commencing with
23 Section 2800) of Division 3 of the Fish and Game Code, if, in the
24 interim or approved plan documents, the permitting agency
25 determines the endowment to be established with those funds will
26 be adequate and provides a schedule for funding the endowment.

27 (p) *(1) If a governmental entity or special district is the project*
28 *proponent required to provide long-term stewardship of property*
29 *pursuant to subdivision (b), an endowment or other financial*
30 *mechanism for long-term stewardship shall not be required if the*
31 *governmental entity or special district provides evidence to the*
32 *local or state agency that it possesses an investment-grade credit*
33 *rating by a nationally recognized statistical rating organization*
34 *or other equivalent evidence of financial reliability, and provides*
35 *one of the following:*

36 *(A) A resolution to fund the long-term stewardship of the*
37 *property adopted by the board or legislative body of the*
38 *governmental entity or special district.*

- 1 (B) A contractual agreement with the state or local agency
2 enforcing the mitigation requirements to fund the long-term
3 stewardship of the property.
- 4 (2) A resolution or contract provided pursuant to paragraph
5 (1) shall include all of the following:
- 6 (A) A summary of the governmental entity or special district's
7 current and projected financial state.
- 8 (B) A finding regarding a financial analysis conducted on
9 annual management costs.
- 10 (C) An annual pledge of revenue to cover the annual mitigation
11 requirements.
- 12 (D) An annual pledge of revenue to cover the annual
13 management costs.
- 14 (E) Use of accounting standards consistent with standards
15 promulgated by the Governmental Accounting Standards Board
16 or its successor entity.
- 17 (F) An annual fiscal report.
- 18 (3) If the governmental entity or special district is subsequently
19 downgraded below an investment-grade credit rating by a
20 nationally recognized statistical rating organization or fails to
21 maintain an equivalent standard of financial reliability, the state
22 or local agency enforcing the mitigation requirement may provide
23 written notice thereof and require the governmental entity or
24 special district to post collateral for performance of the long-term
25 stewardship in the form of a performance bond, escrow account,
26 casualty insurance, letter of credit, or other appropriate
27 instrument. The obligation to maintain collateral shall end, and
28 all unused collateral shall be canceled or refunded, upon the
29 governmental entity or special district providing evidence of its
30 return to an investment-grade credit rating by a nationally
31 recognized statistical rating organization or other equivalent
32 evidence of financial reliability.
- 33 (4) If the governmental entity or special district fails to
34 adequately fund the long-term stewardship by revoking, failing to
35 comply with, or otherwise rendering ineffective the board
36 resolution described in paragraph (1), or after being provided
37 written notice, fails to cure within the remedy period set forth in
38 the contractual agreement, the state or local agency enforcing the
39 mitigation requirement may, in addition to any contractual
40 remedies, require the governmental entity or special district to

- 1 *post collateral for performance of the long-term stewardship in*
- 2 *the form of a performance bond, escrow account, casualty*
- 3 *insurance, letter of credit, or other appropriate instrument.*