Agenda Item VIII
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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:

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

SEC. 2. Chapter 9 (commencing with Section 1850) is added to Division 2 of the Fish and Game Code, to read:

Chapter 9. Advance Mitigation And Regional Conservation Investment Strategies

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

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

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

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

(2) Are effective ecologically.

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

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

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

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

1851. For purposes of this chapter:

(a) "Administrative draft natural community conservation plan" means a substantially complete draft of a natural community conservation plan that is released after January 1, 2016, to the general public, plan participants, and the department.

~~(a)~~

(b) "Areas of Conservation Emphasis" means the biodiversity analysis completed by the department in 2010, or the latest update of that analysis.

~~(b)~~

(c) "Compensatory mitigation" means actions taken to fulfill, in whole or in part, mitigation requirements under state or federal law or a court mandate.

~~(c)~~

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

~~(d)~~

(e) "Conservation easement" means a perpetual conservation easement that complies with Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

~~(e)~~

(f) "Focal species" means sensitive species within a regional conservation investment strategy area that are analyzed in the strategy and will benefit from conservation actions and habitat enhancement actions set forth in the strategy.

~~(f)~~

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

~~(g)~~

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

~~(h)~~

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

~~(i)~~

(j) "Permanently protect" means doing both of the following:

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

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

~~(j)~~

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

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

~~(k)~~

(l) "Regional conservation investment strategy" means information and analyses prepared pursuant to this chapter to inform *nonbinding and voluntary* conservation actions and habitat enhancement actions that would advance the conservation of focal species, habitat, and other natural resources and to provide nonbinding voluntary guidance for the identification of wildlife and habitat conservation priorities, investments in ecological resource conservation, ~~identification of conservation priorities,~~ or identification of ~~priority~~ locations for compensatory mitigation for impacts to species and natural resources. Regional conservation investment strategies are intended to provide scientific information for the consideration of public ~~agencies and are voluntary~~ *agencies, are voluntary,* and do not create, modify, or impose regulatory requirements or standards, regulate the use of land, establish land use designations, or affect the land use authority of *or exercise of discretion by,* any public agency. The preparation and use of regional conservation investment strategies for this guidance is voluntary.

~~(*l*)~~

(m) "Regional level" means the geographic scale of relevant ecologically defined units such as ecoregions.

~~(m)~~

(n) "Sensitive species" means any special status species identified by a state or federal agency.

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

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

(1) Conservation.

(2) Public infrastructure or forest management.

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

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

(2) Investments in resource conservation.

(3) Infrastructure.

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

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

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

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

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

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

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

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

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

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

~~(7)~~

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

~~(8)~~

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

~~(9)~~

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

~~(10)~~

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

~~(11)~~

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

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

~~(12)~~

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

~~(13)~~

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

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

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

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

(2) Reasonably foreseeable development of infrastructure facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(C)~~

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

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

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

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

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

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

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

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

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

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

Code), or in any way limit a lead agency's or responsible agency's discretion, in connection with any determination of whether a proposed project may or may not result in significant environmental effects or in any way ~~limit a lead agency's or responsible agency's discretion to determine, based on project-specific information,~~ *establish a presumption in connection with any determination of* whether a proposed project may or may not result in significant environmental ~~effects.~~ *effects or whether a proposed project's impacts would be mitigated.*

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

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

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

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

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

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

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

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

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

~~(d)~~

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

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

~~(c)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) Includes enforcement provisions.

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

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

~~(f)~~

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

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

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

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

(B) Completing construction of a habitat restoration action.

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

(D) Fully achieving ecological performance standards.

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

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

~~(g)~~

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

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

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

~~(h)~~

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

~~(i)~~

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

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

~~(j)~~

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

1857. The department shall 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 regional conservation investment 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 assessment.

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

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

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

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

~~1861.~~

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

~~1862.~~

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

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