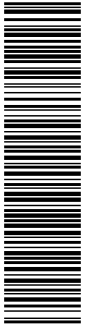


An act to amend Section 2081 of the Fish and Game Code, to amend Section 104 of, and to add Sections 104.1, 126, and 126.1 to, the Streets and Highways Code, relating to environmental mitigation.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2081 of the Fish and Game Code is amended to read:

2081. The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

(b) The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated.

The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) (A) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(B) For purposes of this section, transportation funding identified in the State Highway System Management Plan for habitat connectivity and wildlife maintenance corridors shall be presumed to ensure adequate funding for the long-term maintenance of a structure on the state highway system, but not for the habitat on the structure.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

(d) The department shall adopt regulations to aid in the implementation of subdivision (b) and the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, with respect to authorization of take. The department may seek certification pursuant to Section 21080.5 of the Public Resources Code to implement subdivision (b).

(e) Commencing January 1, 2019, the department shall post each new permit issued pursuant to subdivision (b) on its ~~Internet Web site~~ internet website within 15 days of the effective date of the permit.

SEC. 2. Section 104 of the Streets and Highways Code is amended to read:

104. The department may acquire, either in fee or in any lesser estate or interest, any real property ~~which that~~ it considers necessary for state highway purposes. Real property for ~~such these~~ purposes includes, but is not limited to, real property considered necessary for any of the following purposes:



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- (a) For rights-of-way, including those necessary for state highways within cities.
- (b) For ~~the~~ purposes of exchanging the same for other real property to be used for rights-of-way.
- (c) For rock quarries, gravel pits, or sand or earth borrow pits.
- (d) For offices, shops, or storage yards.
- (e) For parks adjoining or near ~~any~~ a state highway.
- (f) For the culture and support of trees ~~which~~ that benefit ~~any~~ a state highway by aiding in the maintenance and preservation of the roadbed, or ~~which~~ that aid in the maintenance of the attractiveness of the scenic beauties of ~~such~~ a state highway.
- (g) For drainage in connection with ~~any~~ a state highway.
- (h) For the maintenance of an unobstructed view of any portion of a state highway so as to promote the safety of the traveling public.
- (i) For the construction and maintenance of stock trails.
- (j) For the construction and maintenance of nonmotorized transportation facilities, as defined in Section ~~156-~~ 887.
- (k) (1) For environmental mitigation property, which the department may transfer to, purchase for transfer to, or purchase in the name of a governmental entity, special district, nonprofit organization, for-profit entity, person, or other entity.

(2) For purposes of this section, "environmental mitigation property" means property that is required by state or federal law, or by permit conditions imposed by a state or federal agency, to be preserved or restored and maintained as natural habitat to offset the environmental impacts caused by the construction and operation of a state highway improvement project or for advance mitigation purposes as provided in Section 800.6.

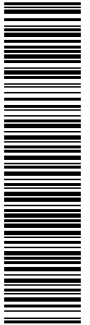
SEC. 3. Section 104.1 is added to the Streets and Highways Code, to read:

104.1. For purposes of environmental mitigation pursuant to subdivision (k) of Section 104, the department may create an endowment or enter one or more agreements with the transferee of an environmental mitigation property or another party or parties to provide funding for the establishment, preservation, restoration, and maintenance of the property consistent with any permit conditions, mitigation requirements imposed by state or federal law, conditions imposed by a state or federal agency, or advance mitigation requirements.

SEC. 4. Section 126 is added to the Streets and Highways Code, to read:

126. (a) Notwithstanding the advertising and bidding provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code, the department may enter into an agreement for the purchase of environmental mitigation credits in a mitigation credit agreement, or from a mitigation bank, conservation bank, or an in-lieu fee program, or other mitigation credit provider, if a state or federal regulatory agency requires the department to purchase credits from a particular mitigation credit provider.

(b) Notwithstanding the advertising and bidding provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code, the department may use an alternative method to purchase environmental mitigation credits from a mitigation bank, conservation bank, or in-lieu fee program, or other mitigation credit provider for the purpose of fulfilling mitigation responsibilities for natural



resources or for advance mitigation purposes, as specified in Section 800.6, if the environmental mitigation credits are solicited through a process, as determined by the department in cooperation with the Department of General Services, that includes a solicitation or evaluation of cost and the availability of environmental mitigation credits.

(c) The department and a governmental entity, a special district, a nonprofit organization, a community foundation, or a congressionally chartered foundation may enter into a cooperative agreement at any time to hold, manage, and invest an endowment for an environmental mitigation property, as defined in subdivision (k) of Section 104, and disburse payments from the endowment to the holder of the property consistent with the fund agreement.

(d) For purposes of this section, the following definitions apply:

(1) "Community foundation" has the same meaning as defined in Section 65965 of the Government Code.

(2) "Congressionally chartered foundation" has the same meaning as defined in Section 65965 of the Government Code.

(3) "Environmental mitigation credit" means a unit of mitigation as determined in a mitigation or conservation bank enabling instrument, as defined in Section 1797.5 of the Fish and Game Code, in-lieu fee program instrument, mitigation credit agreement, or other agreement approved by a state or federal regulatory agency.

(4) "In-lieu fee program" has the same meaning as provided in Section 332.2 of Title 33 of the Code of Federal Regulations or Section 230.92 of Title 40 of the Code of Federal Regulations.

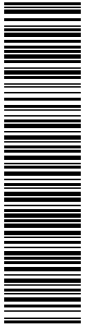
(5) "Mitigation bank" or "conservation bank" means an entity as defined in subdivision (d) or (f) of Section 1797.5 of the Fish and Game Code or as defined as a "mitigation bank" in Section 332.2 of Title 33 to the Code of Federal Regulations or Section 230.92 of Title 40 of the Code of Federal Regulations.

(6) "Mitigation credit agreement" means a mitigation credit agreement approved by the Department of Fish and Wildlife pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(7) "Nonprofit organization" has the same meaning as defined in Section 65965 of the Government Code.

SEC. 5. Section 126.1 is added to the Streets and Highways Code, to read:

126.1. The department may enter into agreements, which may provide funding as necessary, with governmental, nonprofit, and for-profit entities for the purpose of mitigating environmental impacts caused by transportation projects or for advance mitigation purposes, as provided in Section 800.6. These agreements may provide for the advancement of funds as necessary.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Environmental mitigation: Department of Transportation.

(1) The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the Department of Fish and Wildlife may authorize the take of listed species if the take is incidental to an otherwise lawful activity, the impacts are minimized and fully mitigated, and the applicant ensures adequate funding for implementing the mitigation measures and for monitoring compliance with, and the effectiveness of, those measures.

This bill would specify that any transportation funding identified in the State Highway System Management Plan for purposes of these provisions is presumed to provide secure, long-term funding for structures in the state highway system, and not for habitat management purposes.

(2) Existing law vests the Department of Transportation with full possession and control of the state highways and associated properties. Existing law authorizes the department to acquire any real property that it considers necessary for state highway purposes.

This bill would authorize the department to purchase property for specified environmental mitigation purposes, to be called environmental mitigation property, and to transfer that property to specified governmental and nongovernmental entities, or to purchase the property in the name of those entities. The bill would authorize the department to create an endowment or enter into an agreement with the transferee of an environmental mitigation property or another party to provide funding for the establishment, preservation, restoration, and maintenance of the property consistent with certain permit conditions or mitigation requirements. The bill would authorize the department to enter into a cooperative agreement with certain other parties to hold, manage, and invest an endowment for an environmental mitigation property and disburse payments from the endowment to the holder of the property consistent with the fund agreement.

The bill would also authorize the department to purchase, exempt from specified advertising or bidding requirements, environmental mitigation credits in a mitigation credit agreement or from a mitigation bank, conservation bank, in-lieu fee program, or from another mitigation credit provider in certain circumstances. The bill would authorize the department to purchase, exempt from those same advertising or bidding requirements, environmental mitigation credits from a mitigation bank, conservation bank, in-lieu fee program, or from another mitigation credit provider for the purpose of fulfilling mitigation responsibilities for natural resources or for advance mitigation purposes, using an alternative solicitation method, as specified. The bill would authorize the department to enter into agreements with governmental, nonprofit, and for-profit entities for the purpose of mitigating environmental impacts caused by transportation projects or for advance mitigation purposes.



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

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