

Date of Hearing: July 5, 2021

ASSEMBLY COMMITTEE ON TRANSPORTATION
Laura Friedman, Chair
SB 790 (Stern) – As Amended May 20, 2021

SENATE VOTE: 39-0

SUBJECT: Wildlife connectivity mitigation credits

SUMMARY: This bill creates a compensatory mitigation credit program at the California Department of Fish and Wildlife (CDFW) for projects conducted by the State Department of Transportation (Caltrans) that improve wildlife connectivity, among other environmental improvements. Specifically, **this bill:**

- 1) Requires CDFW, in consultation with Caltrans, to provide compensatory mitigation credits to support modification and planning of transportation projects that improve local and regional habitat connectivity and result in fish passage, wildlife connectivity, and other environmental improvements.
 - a) Environmental improvements include, but are not limited to, an overpass or underpass; vegetation management; directional fencing; and barrier modification.
 - b) CDFW shall not provide compensatory mitigation credits for more than 10 new transportation projects per fiscal year.
 - c) A “transportation project” is a project to construct or improve a portion of the state highway system.
- 2) Requires CDFW in determining the value of compensatory mitigation credits for actions taken by Caltrans to consider all of the following:
 - a) Physical roadway factors impacting the ability of wildlife to cross the roadway;
 - b) The benefit to wildlife to cross the roadway
 - c) The impact on critical terrestrial habitat linkages including at a minimum the Santa Monica Mountains and Rim of the Valley corridor, Santa Ana Mountains, San Gabriel Mountains, San Bernardino Mountains, Santa Cruz Mountains, and the Gabilan Mountain Range.
- 3) Authorizes Caltrans and CDFW in determining the value of compensatory mitigation credits to consult with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Army Corps of Engineers.
- 4) Authorizes Caltrans to request that CDFW issue credits where Caltrans has taken actions to improve fish and wildlife connectivity in connection with a transportation project in excess of legally required mitigation. Requires CDFW to issue credits.
- 5) Authorizes CDFW to develop an in-lieu fee program as part of the implementation of the compensatory mitigation credit program.
- 6) Authorizes Caltrans to use compensatory mitigation credits to satisfy obligations to mitigate the impacts of transportation projects on fish and wildlife required by the California

Environmental Quality Act, the California Endangered Species Act, and the Lake and Streambed Alteration Program, as specified.

- 7) Makes certain related legislative findings.

EXISTING LAW:

- 1) Vests CDFW with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.
- 2) Authorizes the development of Natural Community Conservation Plans (NCCPs) to provide comprehensive management and conservation of wildlife.
- 3) Establishes the voluntary Regional Conservation Investment Strategy (RCIS) pilot program that identifies and prioritizes regional conservation through a science-based public process while also encouraging investments in conservation through advance mitigation.
- 4) Requires CDFW to investigate, study, and identify those areas in the state that are most essential as wildlife corridors and habitat linkages, as well as the impacts to those wildlife corridors from climate change.
- 5) Provides that the State Department of Transportation (Caltrans) has full possession and control of the state highway system, and requires Caltrans to make improvements to and maintain the state highway system.
- 6) Requires Caltrans to prepare an annual report to the Legislature describing the status of progress in locating, assessing, funding and remediating barriers to fish passage. The most recent report states that in 2019 Caltrans completed remediation activities at four fish passage barrier locations, improving access to an estimated 5.5 miles of salmon and Steelhead habitat. Caltrans is developing projects to remediate 30 fish passage barriers which are estimated to improve access to 313 miles of currently blocked salmon and Steelhead habitat.
- 7) Creates the Advanced Mitigation Program (AMP) and tasks Caltrans to oversee the program administration, planning, delivery, implementation, and tracking.

FISCAL EFFECT: Unknown

COMMENTS: Land use has been changing as the state's population continues to grow. Development decisions sometimes result in the conversion of natural and working lands to urban uses, destroying natural habitats and corridors necessary for migration of species, which are even more important under changing climate conditions. Working landscapes are biodiverse landscapes, providing a safe haven for native plants and animals, habitat for pollinators, and important connections for migration.

The state's transportation system can be an obstacle for wildlife seeking to move between different parcels of the same type of habitat. Wildlife-vehicle collisions are a significant threat to public health and safety, and result in numerous animal fatalities.

A four-year-old male mountain lion known as P-61 was struck and killed while crossing Interstate 405 in Los Angeles in September 2019. The lion managed to cross five of the ten traffic lanes before being fatally struck. The Santa Cruz Puma Project has documented 35 mountain lion deaths on roadways in Santa Cruz and nearby counties since 2008. Researchers believe approximately 100 mountain lions are killed each year while crossing roads and highways across the state.

According to the September 2018 California Biodiversity Initiative: A Roadmap for Protecting the State's Natural Heritage, preserving ecosystems at the regional scale, with sufficient linkages, buffers and refuge to provide a robust future for all native species in the face of climate change is a state priority. It is a prerogative of the state to improve the ecological conditions, ecosystem functions, and natural processes vital for sustaining ecosystems across California with solutions such as connectivity of habitats.

The state maintains programs that fund, or provide the framework for, environmental mitigation necessary for projects that work towards habitat connectivity across the transportation system. The California Natural Resources Agency's grant program – the Environmental Enhancement and Mitigation Program – offers grants to local, state and federal government agencies and to nonprofit organizations for projects to mitigate the environmental impacts caused by new or modified public transportation facilities.

SB 1 (Beall, Chapter 5, Statutes of 2017) established AMP to meet Caltrans and local transportation agencies' mitigation needs to the extent funding allows, and tasks Caltrans with overseeing program administration, planning, delivery, implementation, and tracking. Caltrans advance mitigation projects can consist of activities such as:

- Purchase of credits from an existing mitigation bank, conservation bank, or in-lieu fee program.
- Establish credits by establishing a mitigation bank, conservation bank, or in-lieu fee program in accordance with applicable state and federal standards.
- Pay mitigation fees or other costs or payments associated with coverage of transportation projects under a Natural Community Conservation Plan or a Habitat Conservation Plan.
- Pursuant to Regional Conservation Investment Strategies Program Guidelines, Caltrans may:
 - Enter into a Mitigation Credit Agreement with CDFW or implement conservation actions and habitat enhancement actions.
 - Acquire, restore, manage, monitor, enhance, and preserve lands, waterways, aquatic resources, or fisheries that would measurably advance a conservation objective while offsetting anticipated transportation improvement impacts
- Implement or fund other forms of advance mitigation in accordance with a programmatic mitigation plan.

The AB 1282 Transportation Permitting Task Force 2019 Final Report, released on June 2020, outlines solutions to improve the efficiency and effectiveness of permitting for transportation

projects, while protecting the state's natural resources. Recommendations include how to optimize advance mitigation credits:

- Update mitigation bank policies and practices to accommodate advance mitigation purchases: Guidance for future mitigation bank development should accommodate an easy revision process for established bankers to accommodate advance mitigation purchases.
- Establish programmatic agreements or batched permits in coordination with planned advance mitigation investments to streamline transportation project delivery.
- Improve tools and options to align agency requirements in implementing advance mitigation: Allow CDFW to participate in in-lieu fee programs to align with federal wetland mitigation regulations. Other state agencies could recognize the RCIS MCAs to meet their own regulatory requirements, allowing additional alignment for implementing mitigation.
- Establish crediting framework for projects that result in fish passage and wildlife connectivity and other environmental improvements: Work with all permitting agencies, including U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the U.S. Army Corps of Engineers to develop a crediting framework for fish passage and wildlife connectivity. Establish crediting framework for other proactive projects to improve water quality, scenic resources, passive public access, and other assets on the state highway system.

Several of these recommendations, including developing a system to assess the value of wildlife connectivity, ensuring corridor projects are able to access advance mitigation funds, and allowing CDFW to participate in in-lieu fee programs to align with federal wetland mitigation regulations are included in this bill.

Caltrans and CDFW have met multiple times as a result of this legislation, and the AB 1282 Transportation Permitting Task Force 2019 Final Report. This collaboration may lead to the early implementation of this bill.

The author may wish to consider the current effectiveness and implementation of the AMP, rather than require Caltrans and CDFW to create a new mitigation credit program. The AB 1282 Transportation Permitting Task Force 2019 Final Report includes specific legislative and administrative recommendations on how to improve the current AMP program. The bill would be more effective if it is addressed and followed up on current conversation between Caltrans and CDFW that address the current mitigation credit program.

The author has agreed to the following amendments in the Assembly Committee on Water, Parks, and Wildlife:

After Section 1951 (d), add new (e):

- (e) The Department of Fish and Wildlife, for purposes of implementing this section, shall utilize existing programs where feasible.

A large coalition of organizations including The Humane Society of the United States, Sierra Club California, and PETA have requested an amendment to increase available data and information regarding barriers to wildlife, transportation project impacts, and wildlife-vehicle collisions.

According to the author, "As Californians respond to the changing nature of our state due to natural events, such as fires, drought, and flooding, various species the impact of these same events on

wildlife are often overlooked. In recent years the changing face of our state has resulting in changing migration patterns and habitats for much of California's wildlife. In seeking out shelter, food, and water wildlife will risk crossing roads and railways which results in expensive vehicle collisions, injury, and death. The wildlife-vehicle collisions reported in 2018 alone caused 314 instances of injury, an estimated five deaths, and over \$230 million in economic and social costs in California. It is critical that we take steps to ensure that wildlife can migrate safely to prevent further harm to California's unique biodiversity as well, and prevent additional harm to California residents."

In support, the Planning and Conservation League writes, "We are proud to support this bill because it builds upon an already-working framework to ensure that wildlife, both large and small, is able to access adequate habitat to promote healthy wildlife populations across the state."

Previous Legislation: SB 1372 (Monning and Stern of 2020) enacts the Wildlife and Biodiversity Protection and Movement Act of 2020 and requires the state to build off of existing programs and plans, including the State Wildlife Action Plan, to proactively protect and enhance wildlife corridors and design infrastructure to maximize wildlife connectivity. Establishes the Ira Ruskin Wildlife Habitat Connectivity Advance Mitigation Pilot Program to create compensatory mitigation credits that can be used to address existing barriers identified in the California Essential Habitat Connectivity Project.

Double Referral: This bill was heard the Assembly Water, Parks, and Wildlife Committee on July 1, 2021.

REGISTERED SUPPORT / OPPOSITION:

Support

Arroyos & Foothills Conservancy
California Waterfowl Association
Citizens for Los Angeles Wildlife (CLAW)
Coastal Ranches Conservancy
Endangered Habitats League
Escondido Creek Conservancy, the
Friends of Harbors, Beaches and Parks
Hills for Everyone
In Defense of Animals
Land Trust of Santa Cruz County
Madrone Audubon Society, Sonoma County
Midpeninsula Regional Open Space District
Mountains Recreation and Conservation Authority
National Wildlife Federation
Nature for All
Paula Lane Action Network
Placer Land Trust
Planning and Conservation League
Santa Clara Valley Open Space Authority

Santa Monica Mountains Fund
Sc Wildlands
Sonoma County Agricultural Preservation and Open Space District
The Trust for Public Land
Thousand Oaks; City of

Support If Amended

Action for Animals
Amah Mutsun Tribal Band
Animal Legal Defense Fund
Animal Welfare Institute
Animazonia Wildlife Foundation
Biodiversity First!
Brentwood Alliance of Canyons & Hillsides
California Chaparral Institute
California Council for Wildlife Rehabilitators
California Institute for Biodiversity
California Wildlife Center
California Wildlife Foundation
Center for Biological Diversity
Citizens for Los Angeles Wildlife
Cougar Conservancy
Extinction Rebellion Sf Bay
Federation of Hillside and Canyon Associations
Felidae Conservation Fund
Happy Hen Animal Sanctuary
Laurel Canyon Land Trust
Live Oak Associated, INC.
Los Padres Forestwatch
Madrone Audubon Society
Mojave Desert Land Trust
North County Watch
Ojai Valley Green Coalition
People for The Ethical Treatment of Animals (PETA)
Poison Free Agoura
Poison Free Malibu
Preserve Our Rural Communities - San Benito County
Preserve Wild Santee
Raptors are The Solution
San Bernardino Valley Audubon Society
Santa Barbara Audubon Society
Santa Clara Valley Audubon Society
Santa Susana Mountain Park Association
Sierra Club California
Social Compassion in Legislation
Temescal Canyon Association
The Cougar Fund
The Human Society of The United States

Ventana Wilderness Alliance
Voters for Animal Rights
Western Watersheds Project
Wildfutures
Wishtoyo Chumash Foundation

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