
THIRD READING

Bill No: SB 790
Author: Stern (D) and Cortese (D), et al.
Amended: 5/20/21
Vote: 21

SENATE TRANSPORTATION COMMITTEE: 16-0, 4/13/21
AYES: Gonzalez, Bates, Allen, Archuleta, Becker, Cortese, Dahle, Dodd,
McGuire, Melendez, Min, Newman, Rubio, Skinner, Umberg, Wilk
NO VOTE RECORDED: Wieckowski

SENATE NATURAL RES. & WATER COMMITTEE: 9-0, 4/27/21
AYES: Laird, Jones, Allen, Eggman, Grove, Hertzberg, Hueso, Limón, Stern

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SUBJECT: Wildlife connectivity mitigation credits

SOURCE: Author

DIGEST: This bill creates a new compensatory mitigation credit program at the California Department of Fish and Wildlife for projects conducted by the State Department of Transportation that improve wildlife connectivity, among other environmental improvements.

ANALYSIS:

Existing law:

- 1) Provides for the establishment of the Department of Fish and Wildlife (CDFW), led by the CDFW Director.
- 2) 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.

- 3) Authorizes the development of Natural Community Conservation Plans (NCCPs) to provide comprehensive management and conservation of wildlife, as provided.
- 4) 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.
- 5) 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.
- 6) 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. Caltrans is required 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 2018 Caltrans completed remediation activities at five fish passage barrier locations, improving access to an estimated 31 miles of salmonid habitat.

This bill creates a new compensatory mitigation credit program at CDFW for Caltrans' projects 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, as provided.
 - 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, as provided.
 - 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, as specified;
 - b) The benefit to wildlife to cross the roadway, as specified;
 - 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; and
 - d) Certain additional factors relevant to the value of a particular wildlife crossing, as provided.
- 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, as provided.
- 5) Authorizes CDFW to develop an in-lieu fee program as part of the implementation of the compensatory mitigation credit program, as provided.
- 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) Authorizes Caltrans to only use compensatory mitigation credits within the same Caltrans' district the credits are issued in.
- 8) Makes certain related legislative findings.

Background

The state's transportation system – for example, highways, local roads, and rail – 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.

According to materials received from the author, 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.

In 2017, CDFW and Caltrans signed a Memorandum of Understanding specific to the mitigation credit value of the wildlife crossing for a project on Highway 17.

In 2020, CDFW released a list of priority wildlife movement barriers in the state. Approximately 10 of the highest priority projects were identified in each of its six regions. Almost all of these barriers identified were roadways. The total length of the priority segments identified is 610 miles. The segments represent barriers to migration of big game (per federal direction) as well as mountain lion, fox, bobcat, kit fox, fisher, badger, California tiger salamander, California red-legged frog and arroyo toad, among others.

There are programs that fund or provide the framework for the environmental mitigation necessary for certain projects.

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 cause by new or modified public transportation facilities.

According to CDFW, its conservation or mitigation bank program is composed of privately or publicly owned land managed for its natural resource values. In exchange for permanently protecting, managing, and monitoring the land, the bank sponsor is allowed to sell or transfer habitat credits to permittees who need to satisfy legal requirements and compensate for the environmental impacts of certain projects.

The NCCP program described above is the state analogue to the federal Habitat Conservation Plan (HCP). An HCP describes a project, the anticipated effects of the project on the proposed take of certain species, how those project impacts will be minimized or mitigated, and how the HCP is to be funded. The HCP is an

essential component of obtaining an incidental take permit, required where a project will result in the take of a species listed under the federal Endangered Species Act. HCPs can apply to both listed and non-listed species. NCCPs are generally part of combined NCCP/HCPs. NCCP/HCPs must meet conservation standards that provide for the recovery of species within the planning area. There are at least 14 approved NCCPs as of April 2020 that are located throughout the state.

In 2017, according to CDFW, the RCIS pilot program was established to encourage a voluntary, non-regulatory regional planning process intended to result in higher-quality conservation outcomes. The RCIS program uses a science-based approach to identify conservation and enhancement opportunities that, if implemented, will help California's declining and vulnerable species by protecting, creating, restoring, and reconnecting habitat, and may contribute to species recovery and adaptation and resilience to climate change. There are three components: regional conservation assessments, regional conservation investment strategies, and mitigation credit agreements. There are four approved RCIS, two in the works, and a mitigation credit agreement (MCA) pilot program is under development. According to the most recent CDFW report, RCIS projects in various stages of approval cover almost 10 million acres (10% of the state).

Comments

RCIS and NCCPs/HCPs do not cover all locations in the state. It may take many years (and some legislative changes) for there to be approved voluntary RCIS and approved corresponding MCAs available throughout the state. The RCIS program is only four years old, and elements of it are still being piloted. NCCPs/HCPs also do not cover all locations in the state.

The Wildlife Conservation Board's wildlife corridor grant program. Proposition 68 provided funding to the Wildlife Conservation Board for grants related to wildlife corridors, among other things. Projects are being awarded to grants in response to a recent solicitation. Another solicitation is expected in 2021. The May revise includes a proposal for an additional \$200 million from the General Fund for this grant program at the Wildlife Conservation Board over two years. (This budget proposal is still pending before the Legislature.)

NOTE: Additional discussion can be found in the Senate Transportation and Senate Natural Resources and Water Committees' bill analyses.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- Unknown ongoing costs, likely in the hundreds of thousands of dollars annually (General Fund), for CDFW staff to support Habitat Conservation Planning Branch permitting and banking, coordinating connectivity crediting activities, and project review and approvals.
- CalTrans notes that the department could realize savings in terms of project time and costs through the bill's environmental mitigation programs. CalTrans estimates that its costs to assist with establishing those programs would be minor and absorbable.

SUPPORT: (Verified 5/20/21)

Action for Animals

Amah Mutsun Tribal Band

Animal Legal Defense Fund

Animal Welfare Institute

Animazonia Wildlife Foundation

Arroyos & Foothills Conservancy

Biodiversity First!

Brentwood Alliance of Canyons & Hillsides

California Chaparral Institute

California Council for Wildlife Rehabilitators

California Institute for Biodiversity

California Native Plant Society

California Waterfowl Association

California Wildlife Center

California Wildlife Foundation

Center for Biological Diversity

Citizens for Los Angeles Wildlife

City of Thousand Oaks

Coastal Ranches Conservancy

Cougar Conservancy

County of Ventura

Defenders of Wildlife

Endangered Habitats League

Escondido Creek Conservancy

Extinction Rebellion SF Bay

Federation of Hillside and Canyon Associations, Inc.

Felidae Conservation Fund

Friends of Harbors, Beaches and Parks
Happy Hen Animal Sanctuary
Hills for Everyone
In Defense of Animals
Laguna Greenbelt, Inc.
Land Trust of Santa Cruz County
Laurel Canyon Land Trust
Live Oak Associates, Inc.
Los Padres ForestWatch
Madrone Audubon Society
Midpeninsula Regional Open Space District
Mojave Desert Land Trust
Mountain Lion Foundation
Mountains Recreation and Conservation Authority
National Wildlife Federation
Nature for All
North County Watch
Ojai Valley Green Coalition
Pathways for Wildlife
Paula Lane Action Network
PETA
Placer Land Trust
Planning and Conservation League
Poison Free Agoura
Poison Free Malibu
Preserve Wild Santee
Protect San Benito
Raptors Are the Solution
San Bernardino Valley Audubon Society
Santa Barbara Audubon Society
Santa Clara Valley Audubon Society
Santa Clara Valley Open Space Authority
Santa Monica Mountains Fund
Santa Susana Mountain Park Association
SC Wildlands
Sierra Club California
Social Compassion in Legislation
Sonoma County Agricultural Preservation and Open Space District
Temescal Canyon Association
The Cougar Fund

The Honorable Linda Parks, Supervisor, County of Santa Barbara
The Humane Society of the United States
The Trust for Public Land
Ventana Wilderness Alliance
Ventura Coastkeeper
Ventura County Transportation Commission
Voters for Animal Rights
Western Watersheds Project
WildCare
WildFutures
Wildlands Network
Wishtoyo Foundation

OPPOSITION: (Verified 5/20/21)

None received

ARGUMENTS IN SUPPORT: According to the author, “[a]s Californians respond to the changing nature of our state due to natural events, such as fires, drought, and flooding, 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 5 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.”

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5/25/21 10:44:29

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