
UNFINISHED BUSINESS

Bill No: SB 790
Author: Stern (D) and Cortese (D), et al.
Amended: 8/30/21
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

SENATE FLOOR: 39-0, 6/1/21
AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero,
Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg,
Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Min,
Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern,
Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Melendez

ASSEMBLY FLOOR: 76-0, 9/2/21 - See last page for vote

SUBJECT: Wildlife connectivity mitigation credits

SOURCE: Author

DIGEST: This bill authorizes the California Department of Fish and Wildlife to approve compensatory mitigation credits for certain wildlife connectivity actions that measurably improve habitat connectivity or wildlife migration, such as adding an overpass or underpass for a roadway, as provided.

Assembly Amendments revise wildlife connectivity mitigation credits to be explicitly authorized within the framework of existing programs that provide for mitigation credits; revise and provide explicit criteria to be considered in determining the value of compensatory mitigation credits for a wildlife connectivity action; provide explicitly for the durability of wildlife connectivity actions; require the development of guidelines and criteria to implement the credits; define relevant terms and make additional conforming changes.

ANALYSIS:

Existing law:

- 1) Provides for the establishment of the Department of Fish and Wildlife (CDFW).
- 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 establishment of conservation banks, mitigation banks, or conservation and mitigation banks upon approval by and agreement with CDFW, as provided. Related legislative findings and declarations include that these banks “are important tools in mitigating impacts to resources and in conserving a wide range of habitat lands.”
- 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) Authorizes the creation of credits in certain circumstances under both the conservation and mitigation bank program and the RCIS that may be used to fulfill requirements to mitigate impacts to fish and wildlife.
- 6) 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.
- 7) 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.

- a) 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 authorizes CDFW to approve compensatory mitigation credits for certain wildlife connectivity actions that measurably improve habitat connectivity or wildlife migration, such as adding an overpass or underpass for a roadway, as provided.

Specifically, this bill:

- 1) Authorizes CDFW to approve compensatory mitigation credits for wildlife connectivity actions (actions) taken pursuant to RCIS or to conservation or mitigation banks.
 - a) If feasible, the action taken is required to permanently protect all real property that is part of the action or where the action is sited in order for compensatory mitigation credits to be granted. If permanent protection is infeasible, compensatory mitigation credits can still be granted if the action has long-term durability and the real property is permanently protected to the extent feasible, as specified.
- 2) Authorizes CDFW to consider the following when determining the value of compensatory mitigation credits for an action:
 - a) Measureable improvement to habitat connectivity and wildlife migration, including improving the ability of wildlife to safely cross or bypass built infrastructure, such as roads.
 - b) The value of the habitat connected by the action.
 - c) Benefits to affected species, as provided.
 - d) Improved connectivity in critical terrestrial habitat linkages including, among others, the Santa Monica Mountains and Rim of the Valley Corridor, as specified.
 - e) The use or value of the particular location in improving connectivity and migration, including topography, among other things.
 - f) Any other factor that CDFW deems relevant.

- 3) Authorizes CDFW in evaluating a proposed action to consult with Caltrans, the US Fish and Wildlife Service and other federal agencies, as specified. Requires CDFW to consult with Caltrans if the action or any part of it is located on the right-of-way of an existing state highway.
- 4) Authorizes a compensatory mitigation credit to be used to fulfill compensatory mitigation requirements established under any state or federal environmental law, as provided. These include to compensate for take or reduce adverse impacts under the California Endangered Species Act; to reduce adverse impacts for activities authorized under a Lake and Streambed Alteration Agreement; and to mitigate significant effects pursuant to the California Environmental Quality Act and its guidelines.
- 5) Authorizes CDFW to adopt guidelines and criteria to aid in the implementation of actions and compensatory mitigation credits, and to post the guidelines online at CDFW's website. Waives the Administrative Procedures Act for the development, adoption, or amendment of these guidelines or criteria.
- 6) Defines related terms including:
 - a) A Compensatory mitigation credit means a credit that can be used to fulfill mitigation requirements under applicable federal, state, or local law, as provided.
 - b) Long-term durability means providing a plan approved by CDFW that ensure the long-term success and upkeep of an action, and ensuring long-term funding for plan implementation. If the action is used to create mitigation credits then the action must remain in effect until at least the site of the environmental impacts is returned to pre-impact conditions, as provided.
 - c) Permanent protection means recording of a conservation easement or otherwise establishing perpetual protection of land, as specified, within the area of the applicable action, and securing perpetual funding for land management, monitoring, and enforcement.
 - d) Wildlife connectivity action means an action that measurably improves habitat connectivity or wildlife migration, recolonization and breeding opportunities inhibited by built infrastructure or habitat fragmentation.
- 7) Makes certain related legislative findings and states legislative intent to facilitate creation and issuance of mitigation credits for actions that improve wildlife connectivity.

Background

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. 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.

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.

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 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).

Under SB 1 (Beall, Chapter 5, Statutes of 2017), an Advance Mitigation Program was created at Caltrans to protect natural resources through transportation project mitigation, among other things. The requirement is to mitigate environmental impacts from transportation infrastructure projects to the maximum extent required by law. Caltrans is required to consult with CDFW. Funds available within the program can be used to purchase or fund the purchase of credits from mitigation banks, or conservation banks; prepare a regional conservation assessment and RCIS; and participate in a mitigation credit agreement through an approved RCIS or perform mitigation to advance the RCIS, among other things.

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

According to the Assembly Appropriations Committee:

- 1) Unknown, likely moderate, costs to the DFW for permitting and banking, coordinating connectivity crediting activities, and project review and approvals.
- 2) Caltrans notes the department could realize project time savings and cost savings through the bill's environmental mitigation programs. Caltrans estimates its costs to assist with establishing those programs would be minor and absorbable.

SUPPORT: (Verified 8/31/21)

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 & Hillside
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
Orange County Transportation Authority
Pathways for Wildlife
Paula Lane Action Network
PETA
Placer Land Trust
Planning and Conservation League
Poison Free Agoura
Poison Free Malibu
Preserve our Rural Communities
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 8/31/21)

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.”

ASSEMBLY FLOOR: 76-0, 9/2/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca

Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua,
Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood
NO VOTE RECORDED: Kiley, Nguyen, Rendon

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9/2/21 18:53:19

**** **END** ****