

PROPOSED LAW

This bill authorizes the Department of Fish and Wildlife to approve RCFs to guide conservation of natural resources and infrastructure planning. Specifically, this bill:

- 1) States legislative findings and declarations regarding the benefits of identifying habitat conservation initiatives on a regional scale, including actions to address climate change, protect wildlife corridors, and guide voluntary investments in conservation, infrastructure, sustainable community strategies, and compensatory mitigation for impacts to species. The bill contains additional findings that state that the purpose of this bill is to promote conservation of natural resources, biodiversity and ecological processes, and to identify conservation actions that promote resiliency to the impacts of climate change and other stressors. The bill contains additional findings regarding the importance of voluntary, non-regulatory approaches to regional conservation that have no effect on local land-use decisions.
- 2) Authorizes the DFW to approve a RCF proposed by DFW or any other public agency and specifies that the purpose of a RCF is to provide voluntary guidance for one or more of the following, as specified:
 - a) Identification of wildlife and habitat conservation priorities, including actions to address impacts of climate change and other stressors;
 - b) Investments in natural resource conservation;
 - c) Infrastructure planning;
 - d) Identification of conservation priorities for land use planning;
 - e) Identification of priority locations for compensatory mitigation.
- 3) Identifies the elements that must be included in an RCF to be approved by DFW and requires the RCF to include a regional conservation assessment that provides context at an ecoregional scale for development of the RCF, as specified. If an assessment has already been prepared it can be incorporated by reference if it meets specified criteria, including the use of standardized information so that RCFs use a consistent approach. The bill requires the RCF to include best available scientific information and for the information to be displayed on the internet in a way that allows the public to have interactive use. A RCF would be valid for 10 years, and the department could extend the RCF for additional 10 year periods.
- 4) Requires a public agency preparing a RCF, prior to submitting the RCF to DFW, to publicly notice and hold at least two public meetings, at least one of which must be in the RCF area, to allow interested persons to receive information early in the preparation process and to have an opportunity to provide written and oral comments. Other provisions dealing with public notice and public meetings are also in the bill. The bill requires that the board of supervisors in each county within the geographical scope of the RCF be notified and given an opportunity to comment at least 60 days prior to submittal of the proposed RCF to DFW. The bill also requires DFW to make all RCFs available to the public on its Internet Web site for public review and comment for at least 30 days, and to make all approved RCFs and any updates available on its Internet Web site. DFW has 30

days to consider whether a draft RCF is complete, and if not, it must explain to the public agency submitting the draft what is needed to complete the RCF.

- 5) Adds a series of statutory statements that the RCF does not increase or decrease the authority of DFW, modify the standards for issuing take permits, establish any presumptions under CEQA, prohibit or authorize any project or impacts from any project, or affect any local land use decision-making.
- 6) Authorizes conservation actions or habitat enhancements that measurably advance the conservation objectives of an approved RCF to be used to create mitigation credits that can be used to compensate for impacts to species, habitat, or other natural resources, if the conservation action or habitat enhancement is implemented successfully in advance of the impacts. In order to be used to create mitigation credits, a RCF must include an adaptive management and monitoring strategy, a process for updating scientific information and evaluating the effectiveness of identified conservation actions and habitat enhancements at least every ten years, and identification of an entity who will be responsible for those updates and evaluations.
- 7) The same extensive conservation criteria that are required for mitigation banks would be required for mitigation credits issued pursuant to this bill. These include maps, a natural resources evaluation, a conservation easement to permanently protect the site, a description of how habitat values will be improved, the metrics that will be used to measure how the goals are to be achieved, a description of the net ecological gain compared to baseline conditions, a long-term endowment, and provisions for enforcement of the terms of the mitigation credit transaction.
- 8) Mitigation credits will not be released without the approval of the department, and all such releases must be tied to performance-based milestones and achievement of ecological performance standards.
- 9) Specifies that a mitigation credit created in accordance with an approved RCF may be used to: a) compensate for take or other adverse impacts of activities authorized pursuant to the California Endangered Species Act (CESA) within the RCF area, b) reduce adverse impacts to fish and wildlife from authorized streambed alteration activities within the RCF area to less than substantial, and c) mitigate significant effects on the environment within the RCF area pursuant to CEQA.
- 10) Requires that in order to create mitigation credits under this bill a mitigation credit agreement shall be required with DFW. The agreement shall establish the type and number of mitigation credits created and the terms and conditions under which the credits may be used. Specifies the information in detail that must be submitted to DFW to enter into a mitigation credit agreement.
- 11) Clarifies that nothing in this bill is intended to limit or impose additional conditions on the creation or sale of mitigation credits by a conservation bank or mitigation bank approved under existing law. Clarifies that creation of mitigation credits under an RCF shall not duplicate or replace mitigation requirements set forth in a natural community conservation plan.

- 12) Authorizes the DFW to collect fees from an entity that proposes to enter into a mitigation credit agreement or that proposes a RCF, to pay for all or a portion of DFW's costs.

ARGUMENTS IN SUPPORT

According to the author, AB 2087 establishes a new conservation planning tool that will identify wildlife and habitat conservation needs and priorities in a region, help guide infrastructure planning and development, and improve the effectiveness of public expenditures for wildlife conservation. This process will also help to identify potential advance mitigation solutions for large-scale public infrastructure projects. RCFs will identify wildlife, fisheries, and habitat conservation needs, including actions to address climate change and other stressors in order to guide public investments in conservation, infrastructure planning, compensatory mitigation for threatened and endangered species, and wildlife and fisheries recovery strategies.

The author also stresses the importance of allowing conservation actions to be implemented in accordance with an approved RCF, and in advance of project impacts, to be used to obtain mitigation credits to fulfill, in whole or in part, mitigation requirements for a project, if the permitting agency determines that the conservation action provides suitable mitigation and complies with other provisions of state law.

Other supporters welcome the new planning tool not only to map natural resources across the region, but also to identify actions that will promote regional conservation. Many supporters also welcome the ability to undertake advance mitigation for projects although that is not a requirement of the bill which remains a voluntary, non-regulatory tool.

Most supporters pointed to the fact that the bill could help guide development away from sensitive habitat while also adopting a more comprehensive approach to mitigation.

Defenders of Wildlife is in support and seeks two amendments: (1) a definition of "conservation" and (2) deletion of a redundant clause in section 1854(b)(7).

ARGUMENTS IN OPPOSITION

The California Building Industry Association is concerned that the bill could undermine NCCP, Habitat Conservation Plan (HCP), and mitigation banking provisions. It is not clear if the recent amendments address its concern.

Sierra Club California opposes the new conservation program of RCFs, and instead would support strengthening existing conservation programs including NCCPs and mitigation banks. It believes RCFs would be weaker than NCCPs and it also believes that reliance on mitigation is misplaced because developers should first try to avoid impacts. It would prefer a public process regarding the appropriateness of mitigation credits for a given project.

Although not in formal opposition, the California Farm Bureau is concerned about impacts of the bill on private landowners.

The Large Scale Solar Association seeks amendments to identify lands that are acceptable for renewable energy projects and the mitigation lands for those projects.

COMMENTS

1. This bill has been discussed extensively by the parties, including the opposition, and staff is recommending only two amendments.
 - a) The mitigation credit and release information should be public information and displayed on the department’s website. Staff will work with the author on that language. Amendment 1.
 - b) The recent amendments to Section 1850 clearly establish legislative intent that RCFs neither authorize nor prohibit any land uses, establish any land use designations, or affect the land use authority of any public agency. Similarly, in operational language in section 1854, there is a new amendment that describes in detail all the things that RCFs and mitigation credit agreements do not affect. This includes standards for permits under CESA, any affect whatsoever on CEQA or the discretion of a lead agency, whether a project should be approved or not, whether a presumption regarding a project is or is not created, and any changes to a local general plan. The original language in the bill that there is no binding or mandatory regulatory effect on private landowners or project proponents seems redundant given this new much more extensive and precise amendment and the Committee may wish to delete it. Amendment 2.

SUGGESTED AMENDMENTS

AMENDMENT 1

Include language requiring the public display of all projects’ mitigation credit and release information on the website of the Department of Fish and Wildlife.

AMENDMENT 2

Delete Section 1854 (b) (7).

SUPPORT

Audubon California
 Big Sur Land Trust
 Bolsa Chica Land Trust
 California Chapter, American Planning Association
 California Council of Land Trusts
 California Trout
 Defenders of Wildlife (if amended)
 East Bay Regional Park District
 Hills for Everyone
 Laguna Greenbelt, Inc.
 Land Trust of Santa Cruz County
 Marin Agricultural Land Trust
 Mojave Desert Land Trust
 Open Space Authority of Santa Clara Valley
 Pacific Forest Trust

Pathways for Wildlife
 Placer Land Trust
 Planning and Conservation League
 Sierra Business Council
 Sierra Foothill Conservancy
 Sonoma County Agricultural Preservation and Open Space District
 The Nature Conservancy
 Transition Habitat Conservancy
 Transportation Agency for Monterey County
 Truckee Donner Land Trust

OPPOSITION

California Building Industry Association
 Large Scale Solar Association
 Sierra Club California