



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code: Section:

[Up^](#) [Add To My Favorites](#)

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66342] (*Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4.6. Mitigation Lands: Nonprofit Organizations [65965 - 65968] (*Chapter 4.6 added by Stats. 2006, Ch. 577, Sec. 2.)*

65965. For the purposes of this chapter, the following definitions apply:

(a) "Endowment" means the funds that are conveyed solely for the long-term stewardship of a mitigation property. Endowment funds are held as charitable trusts that are permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside. Endowments shall be governed by the underlying laws, regulations, and specific governmental approvals under those laws and regulations pursuant to which the endowments were exacted, consistent with subdivision (b) of Section 65966 and with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code). Endowments do not include funds conveyed for meeting short-term performance objectives of a project.

(b) "Community foundation" means any community foundation that meets all of the following requirements:

- (1) Meets the requirements of a community trust under Section 1.170A-9(f)(10)-(11) of Title 26 of the Code of Federal Regulations.
- (2) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.
- (3) Is qualified to do business in this state.
- (4) Is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.
- (5) Has complied with National Standards for U.S. Community Foundations as determined by the Community Foundations National Standards Board, a supporting organization of the Council on Foundations.
- (6) Is registered with the Registry of Charities and Fundraisers maintained by the Attorney General pursuant to Section 12584.

(c) "Conservation easement" means a conservation easement created pursuant to Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(d) "Direct protection" means the permanent protection, conservation, and preservation of lands, waters, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, or outdoor recreational areas.

(e) "Governmental entity" means any state agency, office, officer, department, division, bureau, board, commission, public postsecondary educational institution, city, county, or city and county, or a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) that meets either of the following requirements:

- (1) The joint powers authority was created for the principal purpose and activity of the direct protection or stewardship of land, water, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.
- (2) The joint powers authority was created for the purpose of constructing, maintaining, managing, controlling, and operating transportation infrastructure, such as major thoroughfares and bridges.

(f) (1) "Mitigation agreement" means either of the following:

(A) A written agreement between the project proponent and the entity qualified to hold the property and the endowment pursuant to this chapter, which is submitted to the state or local agency for the purpose of obtaining any permit, clearance, or mitigation approval from that state or local agency.

(B) A written agreement between the project proponent and the entity qualified to hold the property pursuant to this chapter, including any agreement with an entity qualified to hold the endowment pursuant to this chapter, which is submitted to the state or local agency for the purpose of obtaining any permit, clearance, or mitigation approval from that state or local agency.

(2) A mitigation agreement shall govern the long-term stewardship of the property and the endowment.

(g) "Congressionally chartered foundation" means a nonprofit organization that meets all of the following requirements:

(1) Is chartered by the United States Congress.

(2) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(3) Is qualified to do business in this state.

(4) Is registered with the Registry of Charities and Fundraisers maintained by the Attorney General pursuant to Section 12584.

(5) Has as a purpose the conservation and management of fish, wildlife, plants, and other natural resources, which includes, but is not limited to, the direct protection or stewardship of land, water, or natural wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(h) "Nonprofit organization" means any nonprofit organization that meets all of the following requirements:

(1) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(2) Is qualified to do business in this state.

(3) Is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

(4) Is registered with the Registry of Charities and Fundraisers maintained by the Attorney General pursuant to Section 12584.

(5) Has as its principal purpose and activity the direct protection or stewardship of land, water, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(i) "Project proponent" means an individual, business entity, agency, or other entity that is developing a project or facility and is required to mitigate any adverse impact upon natural resources.

(j) "Property" means fee title land or any partial interest in real property, including a conservation easement, that may be conveyed pursuant to a mitigation requirement by a state or local agency.

(k) "Special district" means any of the following special districts:

(1) A special district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 or Division 26 (commencing with Section 35100) of the Public Resources Code.

(2) A resource conservation district organized pursuant to Division 9 (commencing with Section 9001) of the Public Resources Code.

(3) A district organized or formed pursuant to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969).

(4) A county water district organized under Division 12 (commencing with Section 30000) of the Water Code, that has more than 5,000 acres of mitigation lands.

(5) A special district formed pursuant to Chapter 2 (commencing with Section 11561) of Division 6 of the Public Utilities Code that provides water and wastewater treatment services.

(6) A district organized or formed pursuant to the County Water Authority Act (Chapter 545 of the Statutes of 1943).

(7) A local flood control district formed pursuant to any law.

(l) "Stewardship" encompasses the range of activities involved in controlling, monitoring, and managing for conservation purposes a property, or a conservation or open-space easement, as defined by the terms of the easement, and its attendant resources.

(Amended by Stats. 2023, Ch. 478, Sec. 43. (AB 1756) Effective January 1, 2024.)

65966. (a) Any conservation easement created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration, whether created pursuant to Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5 of this code or Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of the Civil Code.

(b) Any local or state agency that requires property to be protected pursuant to subdivision (a) or (b) of Section 65967 may identify how the funding needs of the long-term stewardship of the property will be met. Nothing in this chapter shall be construed as otherwise precluding other methods of funding for the long-term stewardship of the property. If an endowment is conveyed or secured at the time the property is protected, all of the following shall apply:

(1) The endowment shall be held, managed, invested, and disbursed solely for, and permanently restricted to, the long-term stewardship of the specific property for which the funds were set aside.

(2) The endowment shall be calculated to include a principal amount that, when managed and invested, is reasonably anticipated to cover the annual stewardship costs of the property in perpetuity.

(3) The endowment shall be held, managed, invested, disbursed, and governed as described in subdivision (a) of Section 65965 consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(c) If a nonprofit corporation holds the endowment, the nonprofit shall utilize generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board or any successor entity.

(d) If a local agency holds the endowment, the local agency shall do all of the following:

(1) Hold, manage, and invest the endowment consistent with subdivision (b) to the extent allowed by law.

(2) Disburse funds on a timely basis to meet the stewardship expenses of the entity holding the property.

(3) Utilize accounting standards consistent with standards promulgated by the Governmental Accounting Standards Board or any successor entity.

(e) (1) Unless the mitigation agreement provides that another person or entity shall prepare the annual fiscal report described below, a governmental entity, community foundation, special district, a congressionally chartered foundation, or a nonprofit organization that holds funds pursuant to this chapter, including an endowment or moneys for initial stewardship costs, shall provide the local or state agency that required the endowment with an annual fiscal report that contains at least the following elements with respect to each individual endowment dedicated and held by that entity:

(A) The balance of each individual endowment at the beginning of the reporting period.

(B) The amount of any contribution to the endowment during the reporting period including, but not limited to, gifts, grants, and contributions received.

(C) The net amounts of investment earnings, gains, and losses during the reporting period, including both realized and unrealized amounts.

(D) The amounts distributed during the reporting period that accomplish the purpose for which the endowment was established.

(E) The administrative expenses charged to the endowment from internal or third-party sources during the reporting period.

(F) The balance of the endowment or other fund at the end of the reporting period.

(G) The specific asset allocation percentages including, but not limited to, cash, fixed income, equities, and alternative investments.

(H) The most recent financial statements for the organization audited by an independent auditor who is, at a minimum, a certified public accountant.

(2) If an entity is required to submit an identical annual fiscal report pursuant to paragraph (1) to the Department of Fish and Game and any other state or local agency, then that report shall be provided only to the Department of Fish and Game. In that instance, the Department of Fish and Game shall provide a copy of that annual fiscal report on its Internet Web site for a minimum of five years.

(f) If a state agency authorizes a governmental entity, special district, or nonprofit organization to hold property pursuant to subdivision (a) or (b) of Section 65967 in connection with a development project, the agency may require the project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of potential holders of the property and approving those holders. This one-time fee shall be collected only if the agency can demonstrate its actual review of qualifications and approval of holders.

(g) If a local agency authorizes a governmental entity, special district, or nonprofit organization to hold property or an endowment pursuant to this chapter, the agency may require the project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of the parties identified in the mitigation agreement, approving those parties, and any regular oversight over those parties to ensure that the parties are complying with all applicable laws. This one-time fee shall be collected only if the agency can demonstrate its actual review of qualifications, approval of parties, or regular oversight of compliance and performance.

(h) A local agency may require a project proponent to provide a one-time payment that will provide for the initial stewardship costs for up to three years while the endowment begins to accumulate investment earnings. The funds for the initial stewardship costs are distinct from the funds that may be conveyed for long-term stewardship, construction, or other costs. If there are funds remaining at the completion of the initial stewardship period, the funds shall be conveyed to the project proponent.

(i) The local agency may contract with or designate a qualified third party to do any of the following:

(1) Review the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward natural land or resources pursuant to subdivision (c) of Section 65967.

(2) Review the qualifications of a governmental entity, community foundation, or nonprofit organization to hold and manage the endowment that is set aside for long-term stewardship of the property.

(3) Review reports or other performance indicators to evaluate the stewardship of lands, natural resources, or funds, and compliance with the mitigation agreement.

(j) If a property conserved pursuant to subdivision (a) or (b) of Section 65967 is condemned, the net proceeds from the condemnation of the real property interest set aside for mitigation purposes shall be used for the purchase of property that replaces the natural resource characteristics the original mitigation was intended to protect, or as near as reasonably feasible. Any endowment held for the condemned property shall be held for the long-term stewardship of the replacement property.

(k) Unless prohibited by law, no provision in this chapter is intended to prohibit for-profit entities from holding, acquiring, or providing property for mitigation purposes.

(l) Nothing in this section shall prohibit a state agency from exercising any powers described in subdivision (d), (g), or (h).

(m) A governmental entity, special district, or nonprofit organization may contract with a community foundation or congressionally chartered foundation at any time to hold, manage, and invest the endowment for a mitigation property and disburse payments from the endowment to the holder of the mitigation property consistent with the fund agreement.

(n) Except as expressly authorized in paragraph (1) of subdivision (e), the mitigation agreement shall not include any provision to waive or exempt the parties from any requirement, in whole or part, of this chapter.

(o) Subdivisions (b) to (e), inclusive, shall not apply to funds, including funds from mitigation fees, held for the long-term management and stewardship of property pursuant to either an interim or approved habitat conservation plan pursuant to Chapter 35 (commencing with Section 1531) of Title 16 of the United States Code or an interim or approved natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, if, in the interim or approved plan documents, the permitting agency determines the endowment to be established with those funds will be adequate and provides a schedule for funding the endowment.

(Amended by Stats. 2012, Ch. 705, Sec. 3. (SB 1094) Effective September 28, 2012.)

65967. (a) If a state or local agency requires a project proponent to transfer property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the agency may authorize a governmental entity, special district, a nonprofit organization, a for-profit entity, a person, or another entity to hold title to and manage that property.

(b) If a state or local agency, in the development of its own project, is required to protect property to mitigate an adverse impact upon natural resources, the agency may take any action that the agency deems necessary in order to meet its mitigation obligations, including, but not limited to, the following:

(1) Transfer the interest, or obligation to restore and enhance property, to a governmental entity, special district, or nonprofit organization that meets the requirements set forth in subdivision (c).

(2) Provide funds to a governmental entity, nonprofit organization, a special district, a for-profit entity, a person, or other entity to acquire land or easements, or to implement a restoration or enhancement project, that satisfies the agency's mitigation

obligations.

(3) Hold an endowment in an account administered by an elected official provided that the state or local agency is protecting, restoring, or enhancing its own property.

(c) A state or local agency shall exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources. The local agency may adopt guidelines to assist it in that review process, which may include, but are not limited to, the use of or reliance upon guidelines, standards, or accreditation established by a qualified entity that are in widespread state or national use.

(d) The state or local agency may require the governmental entity, special district, or nonprofit organization to submit a report not more than once every 12 months and for the number of years specified in the mitigation agreement that details the stewardship and condition of the property and any other requirements pursuant to the mitigation agreement for the property.

(e) The recorded instrument that places the fee title or partial interest in real property with a governmental entity, special district, nonprofit organization, or for-profit entity, pursuant to subdivision (a) or (b) shall include a provision that if the state or local agency or its successor agency reasonably determines that the property conveyed to meet the mitigation requirement is not being held, monitored, or stewarded for conservation purposes in the manner specified in that instrument or in the mitigation agreement, the property shall revert to the state or local agency, or to another public agency, governmental entity, special district, or nonprofit organization pursuant to subdivision (c) and subject to approval by the state or local agency. If a state or local agency determines that a property must revert, it shall work with the parties to the mitigation agreement, or other affected entities, to ensure that any contracts, permits, funding, or other obligations and responsibilities are met.

(Amended by Stats. 2012, Ch. 705, Sec. 4. (SB 1094) Effective September 28, 2012.)

65968. (a) Notwithstanding Section 13014 of the Fish and Game Code, if an endowment is conveyed pursuant to Section 65966 for property conveyed pursuant to Section 65967, the endowment may be held by the same governmental entity, special district, or nonprofit organization that holds the property pursuant to this section.

(b) (1) Except as permitted pursuant to paragraph (2), the endowment shall be held by one of the following:

(A) The agency or agencies that required the mitigation.

(B) The governmental entity, special district, or nonprofit organization that either holds the property, or holds an interest in the property, for conservation purposes.

(C) The governmental entity or special district that retains the property after conveying an interest in the property for conservation purposes if that governmental entity or special district is protecting, restoring, or enhancing the property that was retained.

(2) The exceptions to paragraph (1) are the following:

(A) An endowment that is held by an entity other than the state or holder of the mitigation property as of January 1, 2012.

(B) An endowment that is held by another entity, which is qualified pursuant to this chapter, pursuant to the terms of a natural community conservation plan (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) or a safe harbor agreement (Article 3.7 (commencing with Section 2089.2) of Chapter 1.5 of Division 3 of the Fish and Game Code). In order for this paragraph to apply, prior to setting aside any endowments, the implementation agreement that is a part of an approved natural community conservation plan, the planning agreement for any natural community conservation plan that has not yet been approved, or the safe harbor agreement shall specifically address the arrangements for the endowment including, but not limited to, qualifications of the endowment holder, capitalization rate, return objectives, and the spending rule and disbursement policies.

(C) If existing law prohibits the holder of the mitigation property to hold the endowment, including for-profit entities.

(D) If the project proponent and the holder of the mitigation property or conservation easement agree that a community foundation or a congressionally chartered foundation shall hold the endowment.

(E) If the mitigation property is held or managed by a federal agency.

(F) If any of the same mitigation property is required to be conveyed pursuant to both a federal and state governmental approval, and under the federal governmental approval the federal agency does not approve one of the entities described in

paragraph (1) of subdivision (b) as chosen to hold the endowment by the agreement of the project proponent and the holder of the mitigation property or conservation easement.

(c) A community foundation or congressionally chartered foundation that holds an endowment pursuant to subparagraphs (A) to (F), inclusive, of paragraph (2) of subdivision (b), shall meet all the qualifications and requirements of this chapter for holding, managing, investing, and disbursing the endowment funds.

(d) Any entity that holds an endowment under this chapter shall hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property in accordance with subdivision (a) of Section 65965.

(e) The holder of an endowment shall certify to the project proponent or the holder of the mitigation property or a conservation easement and the local or state agency that required the endowment that it meets all of the following requirements:

(1) The holder has the capacity to effectively manage the mitigation funds.

(2) The holder has the capacity to achieve reasonable rates of return on the investment of those funds similar to those of other prudent investors for endowment funds and shall manage and invest the endowment in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(3) The holder utilizes generally accepted accounting practices as promulgated by either of the following:

(A) The Financial Accounting Standards Board or any successor entity for nonprofit organizations.

(B) The Governmental Accounting Standards Board or any successor entity for public agencies, to the extent those practices do not conflict with any requirement for special districts in Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5.

(4) The holder will be able to ensure that funds are accounted for, and tied to, a specific property.

(5) If the holder is a nonprofit organization, a community foundation, or a congressionally chartered foundation, it has an investment policy that is consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(f) If a governmental entity, community foundation, special district, nonprofit organization, or a congressionally chartered foundation meets the requirements of this chapter, it is qualified to be a holder of the endowment for the purpose of obtaining any permit, clearance, or mitigation approval from a state or local agency.

(g) Except for a mitigation agreement prepared by a state agency, the mitigation agreement that authorizes the funds to be conveyed to a governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization pursuant to subdivision (a) shall include a provision that requires the endowment be held by a governmental entity, special district, or a nonprofit organization to revert to the local agency, or to a successor organization identified by the agency and subject to subdivision (e), if any of the following occurs:

(1) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization ceases to exist.

(2) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization is dissolved.

(3) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization becomes bankrupt or insolvent.

(4) The local agency reasonably determines that the endowment held by the governmental entity, community foundation, special district, or nonprofit organization, or its successor entity, is not being held, managed, invested, or disbursed for conservation purposes and consistent with the mitigation agreement and legal requirements. Any reverted funds shall continue to be held, managed, and disbursed only for long-term stewardship and benefit of the specific property for which they were set aside. If the funds revert from the governmental entity, community foundation, special district, or nonprofit organization, the special district or nonprofit organization may choose to relinquish the property. If the property is relinquished, the local agency shall accept title to the property or identify an approved governmental entity, community foundation, special district, or nonprofit organization to accept title to the property.

(h) Nothing in this section shall prohibit a state or local agency from determining that a governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization meets the requirements of this section and is qualified to hold the endowment, or including a provision in the mitigation agreement as described in subdivision (g).

(i) A state or local agency may allow the endowment to be held temporarily in an escrow account until December 31, 2012, after which time the funds shall be transferred to the entity that will permanently hold the endowment.

(j) Subject to subdivision (g), any endowment that is conveyed to and held by a governmental entity, special district, or nonprofit organization pursuant to this section shall continue to be held by the entity if this section is repealed.

(k) A state or local agency shall not require, as a condition of obtaining any permit, clearance, agreement, or mitigation approval from the state or local agency, that a preferred or exclusively named entity by the state or local agency be named as the entity to hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property for which the funds were set aside.

(l) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

(Amended by Stats. 2021, Ch. 735, Sec. 3. (SB 716) Effective January 1, 2022. Repealed as of January 1, 2027, by its own provisions.)