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**SB-790 Wildlife connectivity actions: compensatory mitigation credits.** (2021-2022)

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**Senate Bill No. 790**

**CHAPTER 738**

An act to add Chapter 13.5 (commencing with Section 1955) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

[ Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 790, Stern. Wildlife connectivity actions: compensatory mitigation credits.

Existing law establishes the Department of Fish and Wildlife and sets forth the powers and duties of the department with regard to the implementation and administration of, among other things, projects and programs to protect wildlife and wildlife habitat in the state, including a conservation and mitigation banking program and a regional conservation investment strategy program. Under the conservation and mitigation banking program and the regional conservation investment strategy program, existing law authorizes the creation of credits under certain circumstances that may be used to fulfill legal obligations to mitigate impacts to fish and wildlife.

This bill would authorize the department to approve compensatory mitigation credits for wildlife connectivity actions taken under the conservation and mitigation banking program or the regional conservation investment strategy program. In order to receive compensatory mitigation credits from the department under this authority, the bill would require the wildlife connectivity action to meet specified requirements. The bill would authorize a compensatory mitigation credit created under this authority to be used to fulfill, in whole or in part, compensatory mitigation requirements established under any state or federal environmental law, as determined by the applicable local, state, or federal regulatory agency. The bill would authorize the department to adopt guidelines and criteria to aid in the implementation of these provisions and would exempt the development, adoption, or amendment of these guidelines or criteria from the Administrative Procedure Act.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Chapter 13.5 (commencing with Section 1955) is added to Division 2 of the Fish and Game Code, to read:

**CHAPTER 13.5. Wildlife Connectivity Actions**

**1955.** The Legislature finds and declares all of the following:

(a) California's climate is changing. Rising temperatures, increases in the frequency and severity of extreme events like drought and wildfire, changing ocean conditions, and shifts in precipitation patterns all pose threats to California's wildlife. These changes

are shifting the habitat ranges of many California species, requiring these species to migrate to different latitudes or altitudes to locate suitable habitat necessary to survive.

(b) Land use is also changing as the state's population continues to grow. Habitat conversion and fragmentation forces many California species to migrate in search of replacement habitat, and it also risks continued survival of species by compromising genetic diversity, among other things.

(c) California wildlife is losing the ability to move and migrate as habitat conversion and built infrastructure disrupt species habitat and cut off migration corridors.

(d) Habitat connectivity and wildlife migratory corridors are essential to the continued survival of many California species. Their importance will only grow as California wildlife increasingly migrates in response to climate change and resulting shifts in habitat suitability.

(e) Habitat connectivity is also necessary to reduce wildlife-vehicle collisions, which put people and wildlife at risk of injury or death.

(f) The department has several existing programs that can be used to promote habitat connectivity. It is the intent of the Legislature to expand, or clarify, two of these programs, Chapter 7.9 (commencing with Section 1797) and Chapter 9 (commencing with Section 1850), to facilitate creation and issuance of mitigation credits for actions that improve wildlife connectivity.

**1956.** For purposes of this chapter, the following terms apply:

(a) "Compensatory mitigation credit" means a credit that may be used to fulfill, in whole or in part, mitigation requirements under applicable federal, state, or local law.

(b) "Long-term durability" means doing both of the following:

(1) Providing a plan, approved in writing by the department, that ensures the long-term success, maintenance, repair, and upkeep of a wildlife connectivity action. If the wildlife connectivity action is used to create one or more mitigation credits pursuant to this chapter, the plan shall ensure the wildlife connectivity action remains in effect until, at minimum, the site of the environmental impacts is returned to preimpact ecological conditions.

(2) (A) Providing secure, long-term funding for implementation of the plan developed pursuant to paragraph (1) in a form approved in advance in writing by the department.

(B) For purposes of this section, transportation funding identified in the State Highway System Management Plan provides secure, long-term funding for a structure, but not the habitat thereon, on the state highway system.

(c) "Permanently protect" or "permanent protection" means doing both of the following:

(1) Recording a conservation easement, in a form approved in advance in writing by the department, or establishing perpetual protection of land in a manner consistent with draft or approved natural community conservation plans within the area of the applicable wildlife connectivity action and approved in writing by the department, that prevents development, prohibits inconsistent uses, and ensures habitat for focal species is maintained.

(2) Providing secure, perpetual funding for management of the land, monitoring, and legal enforcement, in a form approved in advance in writing by the department.

(d) "Wildlife connectivity action" means an action that measurably improves aquatic or terrestrial habitat connectivity, or wildlife migration, recolonization, and breeding opportunities inhibited by built infrastructure or habitat fragmentation. A wildlife connectivity action may include, but is not limited to, a road overpass or underpass solely for use by wildlife.

**1957.** (a) The department may approve compensatory mitigation credits for wildlife connectivity actions taken under either of the following programs:

(1) Chapter 7.9 (commencing with Section 1797).

(2) Chapter 9 (commencing with Section 1850).

(b) (1) A wildlife connectivity action shall, if feasible, permanently protect all real property comprising the wildlife connectivity action or where the wildlife connectivity action is sited in order to receive compensatory mitigation credits pursuant to this chapter. The department may determine, on a case-by-case-basis, that permanent protection of all, or part of, the real property is infeasible. If the department determines that permanent protection of the real property is infeasible, in whole or in part, the

department may still provide compensatory mitigation credits, including, but not limited to, compensatory mitigation credits for permanent impacts, for the wildlife connectivity action if the wildlife connectivity action meets both of the following conditions:

(A) Provides permanent protection of the real property where, and to the extent, feasible.

(B) Where, and to the extent, permanent protection is infeasible, the wildlife connectivity action has long-term durability.

(2) (A) In determining whether permanent protection is infeasible under this chapter, the department shall consider federal, state, and local legal restrictions, particularly those limiting the use of real property, that prevent, or significantly inhibit, placing a conservation easement on real property comprising the wildlife connectivity action or where the wildlife connectivity action is sited.

(B) Notwithstanding subparagraph (A), the department shall determine it is infeasible to permanently protect any portion of a wildlife connectivity action in the right-of-way of an existing state highway or other existing public road.

(c) In determining the value of compensatory mitigation credits for wildlife connectivity actions, the department may consider all of the following:

(1) The measurable improvement to habitat connectivity and wildlife migration, including, but not limited to, improving the ability of wildlife to safely cross or bypass built infrastructure, such as roads, that inhibit such connectivity or migration.

(2) The value of the habitat connected by the wildlife connectivity action.

(3) Benefits to affected species, including, but not limited to, improved genetic diversity and breeding opportunities, removed migration barriers, and improved access to additional latitudes and altitudes of potentially suitable habitat to adapt to climate change.

(4) Improved connectivity in critical terrestrial habitat linkages, including, but not limited to, 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.

(5) The use or value of the particular location in improving connectivity and migration, including, but not limited to, topography, watercourse presence, vegetative cover, mortality data, or other factors that increase the likelihood of use, or value of, a particular location for connectivity or migration.

(6) Any other factor the department, in its discretion, deems relevant.

(d) When evaluating a proposed wildlife connectivity action under this chapter, the department may consult with the Department of Transportation, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the United States Army Corps of Engineers. If a proposed wildlife connectivity action, or portion thereof, will be located on the right-of-way of an existing state highway, the department shall consult with the Department of Transportation in the course of its evaluation process.

(e) A compensatory mitigation credit created in accordance with this chapter may be used to fulfill, in whole or in part, compensatory mitigation requirements established under any state or federal environmental law, as determined by the applicable local, state, or federal regulatory agency, including, but not limited to, the following:

(1) To compensate for take or other adverse impacts of activities authorized pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3.

(2) To reduce adverse impacts to fish or wildlife resources, or both, from activities authorized pursuant to Chapter 6 (commencing with Section 1600).

(3) To mitigate significant effects on the environment pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and Guidelines for Implementation of the California Environmental Quality Act (Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California Code of Regulations).

**1958.** The department may adopt guidelines and criteria to aid in the implementation of this chapter. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the development, adoption, or amendment of guidelines or criteria pursuant to this section. These guidelines shall be posted on the department's internet website.