



AB-2087 Regional conservation frameworks. (2015-2016)

AMENDED IN SENATE JUNE 22, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

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CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 2087

Introduced by Assembly Member Levine

February 17, 2016

An act to add Chapter 9 (commencing with Section 1850) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2087, as amended, Levine. Regional conservation frameworks.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency. Under existing law, the department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the department may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated. Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the department of that activity, and entering into a lake or streambed alteration agreement if required by the department to protect fish and wildlife resources.

This bill would authorize the department, or any other public agency, to propose a regional conservation framework that would be required to contain specified information, including a regional conservation assessment. The bill would authorize the department to approve a regional conservation framework, or approve the framework with amendments, for ~~a~~ *an initial* period of up to ~~5~~ *10* years after certain public meetings and a public comment period regarding the proposed framework have been held and after it finds that the framework meets certain requirements. The bill would authorize a conservation action, as defined, and a habitat enhancement, as defined, that measurably advance the conservation objectives of an approved framework and that meet other specified requirements, to be used to create mitigation credits that may be used, within the framework area, to compensate for take or other adverse impacts of activities authorized pursuant to the California Endangered Species Act, to reduce adverse impacts to fish ~~and~~ *or* wildlife ~~resources~~.

resources, or both, from activities authorized pursuant to a lake or streambed alteration agreement to less than substantial, or to mitigate significant effects on the environment pursuant to the California Environmental Quality Act. To create these mitigation credits, the bill would require a person or entity to enter into a mitigation credit agreement with the department that meets specified requirements. *The bill would prohibit the release of mitigation credits for use, sale, or transfer under a mitigation credit agreement unless the department approves the release in accordance with certain requirements.* The bill would authorize the department to collect fees from a person or entity that proposes to enter into a mitigation credit agreement, and from a public agency that proposes a framework, to pay for all or a portion of the department's costs relating to the mitigation credit agreement or proposed framework. *The bill would authorize the department to adopt guidelines and criteria to aid in the implementation of the mitigation credit provisions and would exempt the adoption of these guidelines and 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 9 (commencing with Section 1850) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 9. Regional Conservation Frameworks

1850. (a) The Legislature finds and declares that it would be beneficial to identify ~~wildlife species~~ and habitat conservation initiatives at a regional scale, including actions needed to address the impacts of climate change and other wildlife stressors, in order to guide voluntary investments in conservation, infrastructure planning, sustainable communities strategies, and compensatory mitigation for impacts to ~~natural ecological~~ resources, including impacts to threatened and endangered species, other sensitive species, natural communities, ecological processes, and wildlife corridors.

(b) The purpose of this chapter is to promote the voluntary conservation of natural resources, including biodiversity and ecological processes, ~~in order to maintain the continued viability of biological communities~~ and to enhance ~~their~~ resiliency to climate change and other threats. In order to further this goal, it is the policy of the state to encourage voluntary mechanisms to conserve biological and other ~~natural ecological~~ resources and to identify ~~natural resource~~ conservation actions, including actions needed to promote resiliency to the impacts of climate change and other ~~wildlife and fisheries stressors, stressors to species and habitat.~~

(c) It is further the policy of the state to encourage voluntary mechanisms to identify and implement advance mitigation actions that do the following:

(1) Can be used to compensate for project impacts, including, but not limited to, infrastructure and renewable energy projects, more efficiently.

(2) Are effective ecologically.

(3) Will help to conserve regionally important biological and other ecological resources.

~~(e)~~

(d) In enacting this chapter, it is the intent of the Legislature to promote conservation planning that identifies ~~wildlife, fishery, species~~ and habitat conservation needs, including actions needed to promote ~~the~~ resiliency to the impacts of climate change and other ~~wildlife stressors, in order to guide voluntary stressors.~~ It is further the intent of the Legislature to create nonregulatory mechanisms to guide investments in conservation, infrastructure and land use planning, and compensatory mitigation for impacts to natural resources, including impacts to threatened and endangered species, other sensitive species, natural communities, ecological processes, and connectivity.

(e) In enacting this chapter, it is not the intent of the Legislature to prescribe or prohibit land uses, establish land use designations, or to affect the land use authority of any public agency.

1851. For purposes of this chapter:

(a) "Areas of Conservation Emphasis" means the biodiversity analysis completed by the department in 2010, or the latest update of that analysis.

(b) "Conservation action" means the permanent protection of habitat, and restoration and management actions on permanently protected habitat that help to offset the impacts of threats to focal species and help to achieve biological goals and objectives for those focal species.

(c) *"Conservation easement" means a perpetual conservation easement that complies with Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.*

~~(e)~~

(d) "Focal species" means ~~those native~~ species within ~~the~~ a regional conservation framework area that are ~~both of the following: analyzed in the framework and will benefit from conservation actions set forth in the framework.~~

~~(1) Endangered, threatened, or candidate species pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 or other sensitive species;~~

~~(2) Analyzed within and protected by conservation actions set forth within the framework;~~

~~(d)~~

(e) "Habitat enhancement" means an action to improve the quality of wildlife habitat, or to address risks or stressors to wildlife, that has long-term durability but does not involve land acquisition or the permanent protection of habitat, such as improving in-stream flows to benefit fish species, enhancing habitat connectivity, or invasive species control or eradication. If a habitat enhancement is used to create ~~a mitigation credit, "long-term durability"~~ one or more mitigation credits pursuant to this chapter, long-term durability means that the habitat enhancement will remain in effect for at least as long as the impact that is being mitigated.

~~(e) "Hydrologic Unit Code Watershed" means a watershed as described and delineated by the United States Geological Survey;~~

(f) *"Performance-based milestones" means specifically identified steps in the implementation of a conservation action or habitat enhancement, such as site protection, initiating implementation, completing implementation, or achieving performance standards.*

(g) *"Performance standards" means observable or measurable physical or biological attributes that are used to determine if a conservation action or habitat enhancement has met its objectives.*

~~(f)~~

(h) "Permanently protect" 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 substantially similar to a conservation easement and approved in advance in writing by the department,~~ that prevents development, prohibits inconsistent uses, and ensures that habitat for focal species is maintained.

(2) Providing secure, perpetual funding for management of the ~~land;~~ land, monitoring, and enforcement.

~~(g) "Pressure" means an anthropogenic or natural driver that could significantly change ecological conditions. Pressures may be positive or negative depending on intensity, timing, and duration.~~

~~(h)~~

(i) "Sensitive species" means any special status species identified by a state or federal agency, and any species for which the department has determined that listing as endangered, threatened, or a candidate is reasonably foreseeable within the term of the framework.

~~(i) "Stress" and "stressor" mean a degraded ecological condition resulting directly or indirectly from negative impacts of pressures, for example, habitat fragmentation;~~

~~(j) "USDA Ecological Subsection" means a subsection as described and delineated by the United States Department of Agriculture, the Forest Service and the Natural Resource Conservation Service;~~

1852. (a) The department may approve a regional conservation framework pursuant to this chapter. A regional conservation framework may be proposed by the department or any other public agency.

(b) The purpose of a regional conservation framework shall be to ~~provide voluntary guidance for one or more of the following in ways that will enhance the long-term viability of native~~ *inform actions that would advance the conservation of focal* species, habitat, and other natural ~~resources:~~ *resources and to provide voluntary guidance for one or more of the following:*

(1) Identification of wildlife and habitat conservation priorities, including actions needed to address the impacts of climate change and other wildlife stressors.

(2) Investments in ~~natural~~ *ecological* resource conservation.

(3) Infrastructure planning.

(4) Identification of conservation priorities for land use planning.

(5) Identification of priority locations for compensatory mitigation for impacts to species and natural resources.

(c) A regional conservation framework shall include all of the following:

(1) An explanation of the conservation purpose of and need for the framework.

(2) The geographic area of the framework and rationale for the selection of the area.

(3) The focal species included in, and their current known or estimated status within, the framework.

(4) ~~Other important species,~~ *Important* habitat, and other natural and seminatural resource conservation elements within the framework area, *including, but not limited to, habitat connectivity and existing protected areas*, and an explanation of the criteria, data, and methods used to identify those important conservation elements.

(5) A summary of historic, current, and projected future stressors and pressures in the framework area on the focal species, habitat, and other natural resources.

(6) Conservation goals and measurable objectives for the *focal species and* important conservation elements identified in the framework that address or respond to the identified stressors and pressures.

(7) Conservation actions, including a description of the general amounts and types of habitat that, if restored or enhanced and permanently protected, could achieve the conservation goals and objectives.

(8) A description of how the conservation actions and habitat enhancements were prioritized and selected in relation to the conservation goals and objectives.

(9) An explanation of how the framework is consistent with or complements any natural community conservation plan, *federal* habitat conservation plan, *state or federal* recovery plan, ~~and~~ *or* other *approved* conservation ~~or recovery plan~~ *strategy* that overlaps with the framework area.

(10) A description of how the framework's conservation goals and objectives provide for adaptation opportunities against the effects of climate change for ~~species covered by the framework,~~ *the framework's focal species*.

(11) Incorporation and reliance on, and citation of, the best available scientific information, and a brief analysis of gaps in relevant scientific information.

(12) A regional conservation assessment that provides context at an ecoregional or subcoregional scale for the development of the framework. If a regional conservation assessment has already been prepared, the regional conservation framework may incorporate the assessment by reference, and shall update or supplement the assessment as necessary for the framework. A regional conservation assessment shall do all of the following:

(A) Identify and summarize relevant regional pressures, stressors, and conservation priorities, including priority conservation areas and habitat connectivity values, included in all of the following:

(i) Conservation plans, such as the State Wildlife Action Plan and natural community conservation plans.

(ii) Analyses designed to identify areas of high biological diversity, such as the Areas of Conservation Emphasis.

(iii) Analyses designed to identify areas of high value for habitat connectivity.

(B) Identify the best available scientific information and analyses, including geospatial information regarding the distribution of species and natural communities.

(C) Use spatial analysis to identify ecological relationships between existing protected areas and priority conservation areas.

(D) ~~Enable and promote consistency among regional conservation assessments throughout California by using~~ *Use* standard or prevalent vegetation classifications and standard ~~ecological subdivision~~ *ecoregional* classifications for terrestrial and aquatic ~~data.~~ *data to enable and promote consistency among regional conservation assessments throughout California.*

(E) Be consistent with approved natural community conservation plans, regional habitat conservation plans, and recovery plans within the ecoregion or subcoregion included in the assessment.

(F) ~~Briefly assess~~ *Assess* the climate change vulnerability of identified priority conservation areas.

(G) Compile input and summary priority data in a consistent format that could be uploaded for interactive use in an Internet Web portal and *that* would allow stakeholders to generate queries of conservation values ~~in subregions~~ within the region.

1853. (a) The department may prepare or approve a regional conservation framework, or approve the framework with amendments, for ~~a~~ *an initial* period of up to ~~five~~ *10* years after finding that the framework meets the requirements of Section 1852. *The department may extend the duration of an approved regional conservation framework for additional periods of up to 10 years after finding that the framework continues to meet the requirements of Section 1852.*

(b) ~~The level of detail necessary for each regional conservation framework shall be at the discretion of the department and shall be assessed independently for each framework, taking into account the requirements of Section 1852 and the intended uses and scope of the framework.~~ It is the intent of this chapter to establish general guidelines and requirements that allow sufficient flexibility to develop each regional conservation framework based on the best available information regarding the framework area.

(c) (1) Prior to submitting a draft regional conservation framework to the department for approval, a public agency proposing a framework shall hold at least two public meetings to allow interested persons and entities to receive information about the proposed draft framework early in the process of preparing it and to have an adequate opportunity to provide written and oral comments. At least one of the public meetings shall be held at a location within the framework area. ~~A public agency shall provide public notice of the meetings that shall include, at a minimum, notice to the county clerk of each county within the geographical scope of the framework, with a request to post the notice in the office of the county clerk, and publication in at least one newspaper of general circulation. If preparation of a regional conservation framework was initiated before January 1, 2017, the public meetings required under this section may be held after January 1, 2017, if they are held at least 30 days before the framework is submitted to the department for approval.~~

(2) *At least 30 days before holding public meetings to distribute information about the development of a draft regional conservation framework, a public agency proposing a framework shall provide notice of the regional conservation framework public meetings as follows:*

(A) On the public agency's Internet Web site and any relevant LISTSERV.

(B) To each county or city within or adjacent to the regional conservation framework area.

(C) To each public agency, organization, or individual who has filed a written request for the notice.

~~(2)~~

(3) At least 60 days before submitting a draft regional conservation framework to the department for approval, the public agency proposing the framework shall notify the board of supervisors in each county within the geographical scope of the framework and provide the board of supervisors with an opportunity to submit written comments.

~~(3) Within~~

(4) After a draft regional conservation framework is submitted to the department for approval, the department shall have 30 days within which to deem the draft regional conservation framework complete or to explain to the public agency submitting the framework what is needed to complete the framework. Within 30 days of deeming a draft regional conservation framework complete, the department shall make the draft framework available to the public on its Internet Web site for review and comment for a period of at least 30 days.

(d) The department shall make all approved regional conservation frameworks, including all updates to scientific information and analyses used in a regional conservation framework, available on its Internet Web site.

(e) The department shall require the use of consistent metrics that incorporate both the area and quality of habitat and other natural resources in relation to a regional conservation framework's conservation objectives to measure the net change resulting from the implementation of conservation actions and habitat enhancements.

1854. (a) Regional conservation frameworks ~~and mitigation agreements~~ shall not affect the authority or discretion of any public agency, except as specifically provided in this chapter. Nothing in this chapter increases *or decreases* the authority or jurisdiction of the department ~~to regulate~~ *regarding* any land use, species, habitat, area, resource, plan, process, or corridor.

(b) The approval or existence of a regional conservation framework or mitigation credit agreement pursuant to this chapter does not do any of the following:

(1) Modify in any way the standards for issuance of incidental permits or concurrence determinations pursuant to Section 2081 or 2080.1, issuance of take authorizations pursuant to Section 2835, or the issuance of lake or streambed alteration agreements pursuant to Section 1602.

~~(1)~~

(2) Establish a presumption under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that ~~any project's impacts are, or are not, potentially significant.~~ the regional conservation framework provides substantial evidence in connection with any determination of whether a proposed project may or may not result in significant environmental effects and does not in any way limit a lead agency's or responsible agency's discretion to determine, based on project-specific information, whether a proposed project may or may not result in significant environmental effects.

~~(2)~~

(3) Prohibit or authorize any project or project impacts.

~~(3)~~

(4) Create a presumption or guarantee that any proposed project will be approved or permitted, or that any proposed impact will be authorized, by any state or local agency.

~~(4)~~

(5) Create a presumption that any proposed project will be disapproved or prohibited, or that any proposed impact will be prohibited, by any state or local agency.

~~(5)~~

(6) Alter or affect, or create additional requirements for, the general plan of the city, county, or city and county, in which it is located.

~~(6)~~

(7) Have a binding or mandatory regulatory effect on private landowners or project proponents.

1855. (a) A conservation action or habitat enhancement that measurably advances the conservation objectives of an approved regional conservation framework may be used to create mitigation credits that can be used to compensate for impacts to species, habitat, and other natural resources, as provided in this section. To be used to create *these* mitigation credits, a conservation action or habitat enhancement shall be implemented *successfully* in advance of the impacts. *The requirements of this section apply only to the generation of*

mitigation credits under mitigation credit agreements pursuant to this section.

(b) For a conservation action or habitat enhancement identified in a regional conservation framework to be used to create mitigation credits pursuant to this section, the regional conservation framework shall include, in addition to the requirements of Section 1852, all of the following:

(1) An adaptive management and monitoring strategy for conserved habitat and other conserved natural resources.

(2) A process for updating the scientific information used in the framework, and for *tracking the progress of, and* evaluating the effectiveness ~~of of~~, conservation actions and habitat enhancements identified in the framework *in* offsetting identified threats to focal species and ~~to achieve in achieving~~ the framework's biological goals and objectives, at least once every five years.

(3) Identification of a public or private entity that will be responsible for the periodic evaluation and for updating the framework ~~periodically at least once every five years~~ to incorporate the best available scientific information and analyses.

(c) A mitigation credit created in accordance with an approved regional conservation framework may be used for 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 within the regional conservation framework area.

(2) To reduce adverse impacts to fish ~~and or~~ wildlife ~~resources resources, or both~~, from activities authorized pursuant to Chapter 6 (commencing with Section 1600) within the regional conservation framework area to less than substantial.

(3) To mitigate significant effects on the environment within the regional conservation framework area 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).

(d) The department shall ensure the long-term durability of a habitat enhancement. If a habitat enhancement is used to provide compensatory mitigation, the habitat enhancement shall remain in effect for at least as long as the impact that is being mitigated.

~~(d)~~

(e) To create mitigation credits pursuant to this section, a person or entity, including a state or local agency, shall enter into a mitigation credit agreement with the department. The mitigation credit agreement shall establish the type and number of mitigation credits created by the conservation action or habitat enhancement and the terms and conditions under which the mitigation credits may be used. The person or entity may create and use, sell, or otherwise transfer the mitigation ~~credits, credits~~ upon department approval that the credits have been created in accordance with the agreement. To enter into a mitigation credit agreement with the department, a person or entity shall submit a draft mitigation credit agreement to the department for its review, revision, and approval. The department may enter into a mitigation credit agreement if it determines that the mitigation credit agreement ~~provides does~~ all of the following:

~~(1) The person or entity's contact information.~~

~~(2) A description of the proposed conservation action or habitat enhancement.~~

(1) Provides contact information for, and establishes the qualifications of, the person or entity entering into the agreement, the entity that will manage the site of the conservation action or habitat enhancement, and any contractors or consultants.

(2) Fully describes the proposed conservation actions or habitat enhancements.

~~(3) A~~ *Identifies the location of the conservation actions or habitat enhancements, including a* location map, address, and size of the site where the proposed conservation action or habitat enhancement will be implemented.

~~(4) Color~~ *Provides color* aerial and ground-level photographs that reflect current conditions on the site and

surrounding properties.

~~(5) A draft of the proposed mitigation credit agreement that includes an explanation of how the proposed conservation action or habitat enhancement will be implemented and how the proposed mitigation credits will be created and used, including all of the following:~~

(5) Explains how the mitigation credits will be created, including, but not limited to, information regarding proposed ownership arrangements, long-term management strategy, and any phases of implementation.

(6) Includes a natural resources evaluation that documents biotic and abiotic baseline conditions, including past, current, and adjacent land uses, vegetation types, species information, topography, hydrology, and soil types.

(7) Identifies public lands and permanently protected lands in the vicinity of the conservation actions or habitat enhancements.

~~(A) The proposed~~

(8) Fully describes the proposed type and quantity of mitigation credits and the supporting rationale.

~~(B) A proposed service area defined by a USDA Ecological Subsection or Hydrologic Unit Code Watershed unit.~~

~~(C) An explanation of~~

(9) Explains how the proposed conservation actions or habitat enhancement is consistent with enhancements will measurably advance conservation objectives of the regional conservation framework, including how the action will help to achieve the framework's biological goals and objectives, framework that have not yet been achieved.

~~(D) Metrics~~

(10) Identifies metrics or indicators by which the proposed conservation action or habitat enhancement's contribution to achieving the framework's conservation goals and objectives can feasibly be measured with existing technology. The net ecological gain from the implementation of conservation actions and habitat enhancements shall be reported using consistent metrics that measure the increment of gain in the area and quality of habitat or other natural resource values compared to baseline conditions, and measures the increment of gain in relation to the regional conservation framework's conservation objectives.

~~(E) The proposed~~

(11) Describes the proposed landownership of the site or sites of the conservation actions or habitat enhancement, enhancements.

~~(F) How the site of the conservation action will be permanently protected and managed in perpetuity, including, if applicable, a draft conservation easement.~~

(12) Includes a template conservation easement for the sites of any conservation action and an explanation of how the long-term durability of the sites of any habitat enhancements will be ensured.

~~(G) How the~~

(13) Ensures that the implementation of the conservation action or habitat enhancement, including long-term protection and management of the site, will be funded, funded in accordance with Chapter 4.6 (commencing with Section 65965) of Division 1 of Title 7 of the Government Code.

~~(H) A draft of the long-term management plan for the site.~~

~~(I) A draft long-term monitoring and adaptive management plan for the site.~~

~~(J) Drafts of habitat restoration plans and performance criteria, if applicable.~~

(14) Includes a template monitoring and long-term adaptive management plan.

~~(K) An explanation of~~

(15) Explains the terms and conditions under which the proposed mitigation credits may be sold or otherwise

transferred and how the proposed mitigation credits will be accounted for, including the specific methods proposed for reporting and maintaining ~~records~~ *a record* of credit creation, release, and use, sale, or transfer.

(16) Includes enforcement provisions.

(17) Ensures that, for each site on which the conservation actions or habitat enhancements will be implemented, the following shall be prepared and submitted to the department for review for adequacy and approval prior to implementation:

(A) Site-specific conservation objectives of the conservation actions or habitat enhancements and how they reflect a measurable advancement of the conservation objectives of the regional conservation framework.

(B) Preliminary natural resources surveys that document biotic and abiotic baseline conditions, including past, current, and adjacent land uses, vegetation types, species information, topography, hydrology, and soil types.

(C) For conservation actions, the conservation easement that will be used to permanently protect the site, and for habitat enhancements, the instrument that will be used to ensure their long-term durability.

(D) A management plan that includes the short-term and long-term management actions necessary to ensure that the conservation actions or habitat enhancements achieve their site-specific conservation objectives.

(E) If mitigation credits are proposed to be created from habitat enhancements or conservation actions that include restoration of ecological resources, detailed plans, including as-built designs and ecological performance standards.

(F) A property analysis record or other comparable economic analysis of the funding necessary to support site-specific maintenance activities, such as monitoring and reporting, in perpetuity.

(G) The sources for, and the terms under which, the endowment for long-term protection, management, and enforcement will be funded.

(H) A current preliminary report covering the site of the conservation actions or habitat enhancements that identifies the owner of the fee simple title and shows all liens, easements, and other encumbrances and depicts all relevant property lines, easements, dedications, and other features.

(I) A declaration of whether or not the proposed site has been or is being used as mitigation, is designated or dedicated for park or open space use, or designated for purposes that may be inconsistent with habitat preservation.

(J) Details of any public funding received for acquisition or restoration of, or other purposes related to, the proposed site.

(K) A phase I environmental site assessment of the site dated not more than six months prior to the date of submission to the department. This assessment shall be performed in accordance with the ASTM International Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" or any successive ASTM International standard active at the time of the assessment.

(18) Includes a proposed credit ledger and credit release schedule that meets the requirements of subdivision (f).

~~*(6) Other information,*~~

(19) Includes any other information, analysis, and legal or financial assurances of implementation as the department deems necessary or appropriate.

(f) (1) The release of mitigation credits for use, sale, or transfer under a mitigation credit agreement shall require the department's approval in accordance with this subdivision.

(2) The release of mitigation credits shall be tied to performance-based milestones and achievement of ecological performance standards. The credit release schedule for each mitigation credit agreement shall reserve a substantial share of the total credits for release after those ecological performance standards are fully achieved.

(3) The terms of the credit release schedule shall be specified in the mitigation credit agreement. When conservation actions and habitat enhancements are implemented and meet the performance-based milestones

specified in the credit release schedule, credits shall be created in accordance with the credit release schedule. If a conservation action or habitat enhancement does not meet those performance-based milestones, the department may suspend the release of credits, reduce the number of credits, or otherwise modify the credit release schedule accordingly.

(4) In order for mitigation credits to be released, the person or entity that has entered into a mitigation credit agreement shall demonstrate to the department that the appropriate performance-based milestones for credit release have been met. The department shall determine whether the milestones have been met and the credits may be released.

~~(e)~~

(g) Nothing in this chapter is intended to limit or impose additional conditions on the creation or sale of mitigation credits by a conservation bank or mitigation bank approved by the department pursuant to Chapter 7.9 (commencing with Section 1797).

~~(f)~~

*(h) The creation of mitigation credits pursuant to this section from a conservation action or habitat enhancement implemented within the plan area of an approved natural community conservation plan shall not duplicate or replace mitigation requirements set forth in the natural community conservation plan and shall require the advance written approval of the plan's implementing entity. *Mitigation credits created pursuant to this section may be used for covered activities under an approved natural community conservation plan only in accordance with the requirements of the plan.**

1856. The department may collect fees from a person or entity that proposes to enter into a mitigation credit agreement, and from a public agency that proposes a regional conservation framework, to pay for all or a portion of the department's costs relating to the mitigation credit agreement or proposed framework.

1857. The department may adopt guidelines and criteria to aid in the implementation of Section 1855. 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 and criteria shall be posted on the department's Internet Web site.