



**SB-1094 Kehoe Mitigation Lands
2011-2012 Legislative Session**

- Sections 65965, 65966, 65967, and 65968 of the Government Code amended by Statutes, 2012, Ch. 705, Sec. 5. Effective September 28, 2012
- Repealed CDFW's obligation to conduct due diligence for endowment holders
 - 1094 added specific information for the endowment holder to provide to the agency requiring the endowment i.e., self-certification letters
- Modified the requirements for endowments



SB-1094 Evaluation Process for CDFW

- Ministerial review of the endowment holder
 - (no formal approval of the self-certification letters)
- Discretionary evaluation of the mitigation land holder
 - (due diligence application process)
- Ministerial review of the endowment performance
 - (no formal approval of the annual fiscal reports)



Ministerial Review of the Endowment Holder

- 1094 requirements
 - Self-certification letters
 - 5 items pursuant to Gov. Code, § 65968, subd. (e)
 - CDFW’s ministerial review involves verifying that the required information present?
- More substantive review required by CDFW permitting statutes with financial assurance requirements
 - Lake or Streambed Alteration Agreements
 - CESA Incidental Take Permits
 - Note that this review will not be inconsistent with 1094



Contents of Self-Certification Letter

- (1) The holder has the capacity to effectively manage the mitigation funds
- (2) The holder has the capacity to achieve reasonable rates of return
- (3) The holder utilizes generally accepted accounting practices
- (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



Evaluating the Mitigation Land Holder

- CDFW is required to conduct due diligence when approving non-profit organizations, governmental entities, and special districts to hold and manage mitigation lands. Specifically, Government Code section 65967 states, “[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.”



Land Holder Application Process

- Applicant completes application and submits to Region or HCPB
- Application is reviewed for completeness
- Incomplete applications returned
- Region reviews the entire application
- HCPB reviews the fiscal information
- Applicants are denied when there is incomplete information or financial insolvency.
- Approved applicants have 5-year approval period
- HCPB will coordinate with applicants applying to hold lands in multiple Regions.



SB-1094 Reporting Requirements

1. Annual fiscal report for endowment performance
Gov. Code § 65966, subd. (e)(1)
– Shall provide (imperative)
2. Annual report describing stewardship and condition of the property Gov. Code § 65967, subd. (d)
– CDFW may request (optional), and contents of these reports are not listed in 1094.



Reporting Requirements Annual Fiscal Report

- Endowment holders are required to submit annual fiscal reports pursuant to Gov. Code § 65966, subd. (e)(1) to CDFW.
- Annual fiscal report shall contain at a minimum the following elements:
 1. Balance of each individual endowment at the beginning of the reporting period.
 2. Amount of any contribution to the endowment during the reporting period including, but not limited to, gifts, grants, and contributions received.



Annual Fiscal Report

- The annual fiscal report shall contain at a minimum the following elements (continued):
 3. The net amounts of investment earnings, gains, and losses during the reporting period, including both realized and unrealized amounts.
 4. The amounts distributed during the reporting period that accomplish the purpose for which the endowment was established.
 5. The administrative expenses charged to the endowment from internal or third-party sources during the reporting period.



Annual Fiscal Report

- The annual fiscal report shall contain at a minimum the following elements (continued):
 6. The balance of the endowment or other fund at the end of the reporting period.
 7. The specific asset allocation percentages including, but not limited to, cash, fixed income, equities, and alternative investments.
 8. The most recent financial statements for the organization audited by an independent auditor who is, at a minimum, a certified public accountant.



Annual Fiscal Report

- Who submits the annual fiscal report?
 - the entity that holds the endowment, unless the mitigation agreement states otherwise.
- Where does the endowment holder send the report?
 - Habitat Conservation Planning Branch
- When is the annual fiscal report due?
 - 1094 did not specify when the reports would be submitted
 - HCPB currently working with CCLT to update ITP template to include a submission date to HCPB.



Ministerial Review of the Annual Fiscal Report

- How will CDFW evaluate the report?
 - Did we receive the report when it was due?
 - Does the report contain the minimum requirements?
- How will CDFW manage any issues or concerns in the fiscal report?
 - Gov. Code, § 65968, subd. (g) governs the process of reverting endowment funds should unlikely circumstances arise
 - CDFW permitting statutes with financial assurance requirements – ultimately affects the permittee not the endowment holder



Annual Fiscal Reports Potential Issues and Concerns

- Gov. Code, § 65968, subd. (g) states:
 - The mitigation agreement shall include a provision for the endowment to revert to a successor organization if:
 - The endowment holder ceases to exist
 - The endowment holder is dissolved
 - The endowment holder becomes bankrupt or insolvent
 - The endowment is not being held, managed, invested, or dispersed in compliance with the mitigation agreement or other legal requirements.



Summary



Questions


