

August 3, 2004

Hon. Wesley Chesbro, Chair
Joint Legislative Budget Committee
Room 5100, State Capitol
Sacramento, California 95814

Dear Senator Chesbro:

In a letter to the Joint Legislative Budget Committee dated July 8, 2004, the Secretary for Resources notified you pursuant to Section 9.45 of the then proposed *2004-05 Budget Bill* that the Wildlife Conservation Board (WCB) and the State Coastal Conservancy (SCC) each plan to allocate up to \$30 million in Proposition 50 bond funds for a conservation transaction referred to as the "Hearst Ranch Conservation Area" project. The total purchase price for this project is \$95 million, with the balance of the funding coming from federal funds (\$23 million) and WCB-approved tax credits pursuant to the Natural Heritage Preservation Tax Credit Act of 2000 (\$15 million).

The WCB is expected to consider the allocation of funds for this proposed project at its August 12, 2004 meeting. Thereafter, on September 15, 2004, the SCC board will consider the allocation of funds for this proposed project. The State Public Works Board, whose approval is also required, has not yet set a date for consideration of this proposal.

Summary of Proposed Project

Our understanding of the proposed conservation transaction is as follows. The Hearst Ranch in San Luis Obispo County covers 81,777 acres and includes land on the west and east sides of Highway 1. This proposed project covers all 81,777 acres and has several objectives from the state's perspective, including protection of natural, agricultural, scenic, and cultural resources. Specifically, the proposed project transaction encompasses the following major components:

- On the east side of Highway 1, the state would purchase a conservation easement covering over 80,000 acres. A conservation easement is a restriction placed on a piece of property to protect its resource values, such as agriculture and wildlife. The proposed easement on the east side would primarily allow for ranching operations to continue on this land and limit the development potential to 42 new homesites (15 of which are for ranch employees). The conservation easement does not preapprove any

development. Rather, all development will require the normal regulatory approvals. The conservation easement will be held by a nonprofit organization, the California Rangeland Trust (CRT), which will be responsible for monitoring and enforcing the easement.

- On the west side of Highway 1, Hearst would donate approximately 800 acres to the Department of Parks and Recreation (DPR). In addition, the state would purchase conservation easements over land retained by Hearst on the west side (at three select locations). The easements would provide for specified public access and allow for specified development (at a level less than proposed by Hearst in the past).
- Hearst would donate to the California Department of Transportation (Caltrans) land necessary to accommodate possible future realignment of Highway 1.

The Appraisals. As noted in the Secretary's letter, the Department of General Services (DGS) has appraised the fair market value of this transaction to the state (purchase of conservation easements plus land to be held by the state in title) to be "at least" \$110 million. While we are aware that an independent appraiser hired by the SCC arrived at a fair market value appraisal of \$230 million, the WCB has indicated that this appraisal does not meet DGS' standards.

Concerns With Proposed Transaction

While we support the multiple objectives of this project, we have several significant concerns with the proposed transaction, as discussed below.

Level of Resource Protection Provided by East Side Conservation Easement Needs Strengthening and Greater Certainty. The conservation easement on the east side is intended to conserve all of the resources, including those natural resources, identified in a "Baseline Conditions Report," to be finished before the transaction is completed. Essentially, the "Baseline Conditions Report" is intended to provide an inventory of the current conditions on the east side, its uses and improvements, existing development, and agricultural and natural resources. This report would be used to monitor changes in resource conditions and compliance with the easement terms. However, we are concerned that the terms of the easement do not provide an adequate level of specificity to protect these resources. For example, the easement prohibits "impairment" of natural resources; however, the terms of the easement do not provide sufficient guidance as to what would constitute an "impairment" of the natural resources of the property. In addition, while the easement sets forth preferred homesite locations, it does not specify

that development is limited to certain areas. Accordingly, while the terms of the easement limit development in general, the easement potentially allows for development in areas of high resource value (subject to the requisite regulatory approvals).

The lack of specificity with regards to the level of resource protection is a significant concern. This is because the proposal allows many activities such as housing development and intensive agriculture which, without further guidance, may conflict with protecting the natural resources. In the future, without specificity regarding the protection of the natural resources, the parties to the agreement may find themselves in conflict over the level of protection that is appropriate for natural resources. Lastly, while the current property owners are considered good stewards of the natural resources on the property, future ownership may not share the same stewardship practices.

Level of Resource Protection Contingent on Yet-to-Be-Developed Management Plan. We are similarly concerned about whether a yet-to-be developed management plan will ensure an adequate level of resource protection. Under the terms of the east side conservation easement, the way in which the property is to be managed is to be determined in the "Management Plan." This plan will be developed by Hearst and approved by CRT within one year after the close of escrow. The WCB reviews, but does not approve, the Management Plan. We are concerned about the adequacy of this plan in protecting resource values for several reasons. First, the standards for the plan's development are not specified in the easement. (Such standards can include, for example, provisions that specify special practices to protect endangered species or habitat and provisions that specify forest management practices.) Without these standards, the degree to which the Management Plan will address resource protection is uncertain. Second, since state wildlife agencies' approval of this plan is not required, the state lacks the authority to ensure that this plan protects all terms of the easement. Finally, the lack of public review of this plan limits the ability of the public to review and comment on the effectiveness of the Management Plan.

The uncertainties discussed above in the Management Plan are of concern because the quality of management activities has a direct impact on the preservation of the natural resources. Furthermore, the lack of clear direction on what the Management Plan should contain may result in disagreements and difficulties in enforcing the easement.

Adequacy of Monitoring of Easement Is Uncertain. Monitoring activities are critical to the success of the conservation easement because they determine if the terms of the easement are being followed. They are particularly critical for this easement because many of the development and agricultural activities allowed under this agreement could threaten the natural resources covered under this easement. As proposed, monitoring activities will be done by CRT. The monitoring activities are to be outlined in the “Monitoring Protocol.” This document is under development, but must be completed, approved by WCB, and made public before the transaction is complete. Once monitoring begins, CRT is also required to submit their monitoring reports to WCB. An audit committee will review monitoring activities at least once every five years; the results of these audits are to be kept confidential. Only one state representative (either the Secretary for the Resources Agency, the Under Secretary for the Resources Agency, the Deputy Secretary for the Resources Agency, or the Executive Director of WCB) will be on the audit committee.

We have a couple concerns about the monitoring of the easement. First, the adequacy of the monitoring is not certain because the Monitoring Protocol has not yet been developed. This means that important details related to the quality of the monitoring, such as whether the monitors will include a fish and wildlife specialist, are unknown at this time. In addition, since the reports of the Audit Committee are confidential, the public and interested state agencies do not have access to an important oversight tool, which is necessary in order to determine if the terms of the easement are being followed.

Recommendations

We recommend a number of modifications to the proposed transaction relating to the terms and enforcement of the conservation easement covering the east side of Hearst Ranch. We believe that these modifications will in general provide for more effective and certain resource protection—a cornerstone of the state’s investment in this transaction.

Strengthen Resource Protections Provided in Conservation Easement. The level of resource protection provided for in the east side conservation easement can be strengthened in a couple of ways. First, we recommend that the conservation easement be amended to clarify under what circumstances the natural resources identified in the Baseline Conditions Report would be considered “impaired.” Second, as a practical application of the Baseline Conditions Report, we recommend that the easement *specify* areas on which housing development and other activities permitted in the easement are limited or prohibited because of the area’s exceptional resource values. We think that this is a reasonable modification, particularly given that the proposed agreement already identifies preferred areas for development based on a preliminary assessment

of resource impacts. This modification should provide greater certainty to the state as to the level of resource protection resulting from its investment.

These recommendations are consistent with the state's practices in other conservation easements when there are significant resource values identified for protection. Furthermore, these recommendations are particularly important given the many activities permitted under this conservation easement that may threaten the state's investment in natural resource protection on this property.

Baseline Conditions Report and Monitoring Protocol Should Be Made Available for Public Review. In order for the state and the public to review the inventory of resources, resource protections, and monitoring efforts that will be part of this easement, it is essential that the Baseline Conditions Report and Monitoring Protocol be released and made available for review by the appropriate state agencies, including the Department of Fish and Game, and the public with sufficient time to comment on these documents before they are approved by WCB and the transaction completed. In addition, given the resource values on this property, we recommend that the state require the Monitoring Protocol to specify that the group of monitors include at least one fish and wildlife specialist in order to ensure that the natural resource values on the property are appropriately monitored.

Easement Should Include Standards for Management Plan. As discussed earlier, it is unclear the extent to which the Management Plan, which will be developed one year after the transaction is complete, will address resource protection issues. In order to ensure that the Management Plan does adequately address resource protection issues, the conservation easement should include standards for the Management Plan. It is critical that all parties agree to specific provisions that should be included in the plan before state funds are disbursed. Since the terms of this easement are in perpetuity, clear guidelines on what the Management Plan will address provides greater certainty before the transaction is completed that resource protection will be addressed.

Audit Committee Should Convene More Frequently and Its Results Should Be Made Public. Finally, we recommend that an audit of CRT's monitoring and enforcement activities should be completed biennially, rather than every five years. We also recommend that the results of the audit and any written records of the deliberations of the Audit Committee should be made public. This strengthens the state and public's oversight in protecting its investment.

In summary, while we support the objectives of conserving the Hearst Ranch property, we recommend that the above modifications to the transaction be made to strengthen the agreement and ensure that the state's significant investment is protected in perpetuity. In order to allow the necessary time to address the issues raised in this letter, we recommend that you request that WCB's commitment of funds scheduled to be considered at the August 12, 2004 board meeting be postponed. Since this transaction is contingent upon the completion of several documents as well as approval by the SCC board and the State Public Works Board, we do not think postponing WCB's funding commitment will significantly delay this project.

Sincerely,

Hadley Johnson, Jr.
Deputy Legislative Analyst

Enclosure
cc: Members of the Joint Legislative Budget Committee