

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

Joint Legislative Budget Committee

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August 4, 2004

Mike Chrisman, Secretary
Resources Agency
State of California
1416 Ninth Street, Suite 1311
Sacramento, California 95814

Dear Mr. Chrisman:

In a letter to the Joint Legislative Budget Committee (JLBC) dated July 8, 2004, you notified me pursuant to Section 9.45 of the *2004-05 Budget Bill* that the Wildlife Conservation Board (WCB) and the State Coastal Conservancy (SCC) plan to allocate up to \$30 million each 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.

Enclosed is the analysis prepared for the JLBC by the non-partisan Legislative Analyst's Office (LAO). It outlines several concerns with the proposed transaction, including concerns about the level of resource protection and the adequacy of monitoring.

Additionally, I have enclosed a listing of concerns raised by the Natural Resources Defense Council, the California Coastal Protection Network, and the Sierra Club. I am aware that similar concerns have been raised by additional environmental organizations.

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Mr. Mike Chrisman

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I support the multiple objectives of conserving the Hearst Ranch property. However, the concerns raised by the non-partisan LAO, as well as other organizations, are significant and should be carefully considered by the State prior to approving this project so that the proposed agreement adequately ensures the State's significant investment is protected in perpetuity. In order to allow the necessary time to address the issues raised, I concur with the LAO recommendation that the WCB's commitment of funds, scheduled to be considered at the August 12, 2004, board meeting, be postponed to facilitate further public review and any potential modifications that might be in the best interest of the State.

Sincerely,


WESLEY CHESBRO
Chair

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COASTAL CONSERVANCY
OAKLAND, CALIF.

Enclosure

cc: Members of the Joint Legislative Budget Committee
Senator Pro Tem John Burton
Senator Byron Sher
Senator Sheila Kuehl
Assembly Speaker Fabian Nuñez
Assembly Member Hannah Beth Jackson
Assembly Member Fran Pavley
Assembly Member Laird
Elizabeth Hill, LAO
✓ Al Wright, Wildlife Conservation Board
Sam Schuchat, California Coastal Conservancy
Tony Harris, Department of Transportation
Ruth Coleman, Department of Parks and Recreation
Peter Douglas, CA Coastal Commission

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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

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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

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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.

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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

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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.

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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

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HEARST RANCH PROPOSAL
SUMMARY OF MAJOR CONCERNS
July 2004

While public interest organizations around the state want to see the Hearst Ranch preserved, the proposed deal terms raise serious concerns. If deficiencies are not corrected, this deal compromises the legitimacy of easements as a conservation tool, and sets a number of dangerous new precedents. For \$95 million in taxpayer approved conservation funds, the public should be assured that the Hearst Ranch's outstanding natural resources will be protected in perpetuity for purposes consistent with Prop 50. While full analysis is not complete, the following issues have emerged as major flaws in the document, which need to be rectified before public funding is committed.

The deal proposes to fund the agricultural easement with Prop 50 funds [Water Code Division 26.5 commencing with Section 79500]. Chapter 10 entitled *Coastal Watershed and Wetlands Protection* states that the purpose of the \$120 million available to the State Coastal Conservancy is *coastal watershed protection*. The \$750 million available to the Wildlife Conservation Board is for the *acquisition, protection and restoration of coastal wetlands, upland areas adjacent to coastal wetlands and coastal watershed lands*. The easement must comply with these purposes.

1. The agricultural easement contains four pages listing the natural resource and species values of the East Ranch, yet does not contain enforceable conservation policies and lacks defined, measurable criteria that establish bottom-line safeguards for natural resources and key habitats. Enforceable, specific policies detailing how the Hearst Corp. will protect the biological resources on the ranch in return for public dollars are not in the easement.

Requested Change: The agricultural easement must contain enforceable standards and the conservation management plan must be prepared in cooperation with the State DFG before the deal is approved.

2. The State does not have direct authority to enforce the easement even in return for public dollars.

Requested Change: The State must have direct enforcement and monitoring authority.

3. The Hearst Corp. does not have to retire development rights until they get approval for new building permits even upon receipt of public dollars. The 42 proposed homesites are spread from south to north in pods and satellite locations. The easement even allows development to be moved (with no clustering requirement) if more than one predetermined application is denied, delayed or even just "conditioned."

Requested Change: Development rights should be retired upon public funding of the deal. Locations of residential development should be reconsidered and then locked in after baseline biological surveys are released.

4. Public access west of the Highway One is too restricted, and the Coastal Trail is being routed predominantly along the Highway. Five of the 18 miles along the ranch would not be regularly open to the public. Access to Ragged Point and Pico Cove is limited to quarterly tours of 20 persons each. San Simeon Point, the one most heavily used by the public now, will be restricted to 100 people per day. Visitors will be

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restricted to a single loop trail, 10 months per year from 1/2 hour after dawn to 1/2 hour before dusk. The Coastal Trail bypasses the point all together, and is largely routed along the highway. There is no provision for east side access even though the historic Mission Trail runs along the most northern border of the ranch.

Requested Change: The state should seek fee title ownership west of Highway One. At a minimum, a State Agency, (SCC or DPR) should hold the easement over any lands that Hearst retains west of the Highway, to ensure public access will be provided for and protected, including a Coastal Trail alignment that follows state standards.

5. Basic background information – the appraisal, conservation management plan, baseline biological resource inventory and monitoring protocols are not public and not available. Baseline studies are the most basic element of the easement. Without them, there is no way to understand what the public is buying, or if the management plan is adequate to protect them. Likewise, the monitoring protocol is key to assuring that the resources will adequately monitored for signs of degradation.

Requested Change: The baseline surveys, conservation management plan, appraisal and monitoring protocol must be available for public review before the deal is approved.

6. The easement allows water to be "transferred" off the property. Without enforceable conservation standards, large amounts of water could be removed, thereby compromising the very natural resources this deal is supposed to protect.

Requested Change: Water transfers or sales should not be allowed.

7. The Hearst Corp. can control and limit monitoring of the property since it has sole discretion to approve who can enter the property, even after public dollars are spent.

Requested Change: The easement holder must have every right and responsibility to review and approve the Conservation Management Plan, conduct monitoring and include ecological experts in addition to a range expert as proposed.

8. The confidentiality agreement and deal terms allow the easement holder, California Rangeland Trust (CRT) to keep monitoring information confidential even after public dollars are spent. The auditing committee will convene only once every 5 years to monitor easement implementation. The committee consists of a CRT Director, the Hearst Corporation, the Secretary for Resources and a certified rangeland manager. When complete, the committee's report and all written material are confidential to the committee and not available to the public.

Requested Change: The auditing committee should be publicly accountable for monitoring easement implementation and should include independent biologists, not interested parties.

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Arnold Schwarzenegger, Governor
STATE OF CALIFORNIA-THE RESOURCES AGENCY
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August 27, 2004

The Honorable Sheila Kuehl
Member of the Senate
State Capitol, Room 4032
Sacramento, California 95814

The Honorable Patty Berg
Member of the Assembly
State Capitol, Room 2137
Sacramento, California 95814

The Honorable Hannah-Beth Jackson
Member of the Assembly
State Capitol, Room 4140
Sacramento, California 95814

The Honorable Fran Pavley
Member of the Assembly
State Capitol, Room 3126
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The Honorable Loni Hancock
Member of the Assembly
State Capitol, Room 4139
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The Honorable Christine Kehoe
Member of the Assembly
State Capitol, Room 5150
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The Honorable John Laird
Member of the Assembly
State Capitol, Room 2196
Sacramento, California 95814

The Honorable Alan Lowenthal
Member of the Assembly
State Capitol, Room 4146
Sacramento, California 95814

The Honorable Sally J. Lieber
Member of the Assembly
State Capitol, Room 4162
Sacramento, California 95814

Dear Senator Kuehl and Assembly Members Berg, Jackson,
Pavley, Hancock, Kehoe, Laird, Lowenthal and Lieber:

Thank you for your letter of August 11, 2004 to the Members of the Wildlife Conservation Board (WCB) regarding the Hearst Ranch Conservation Area which was considered and conditionally approved by the WCB at its meeting on August 12, 2004. Because of the widespread public interest and concerns that have been raised by the Legislative Analyst's Office (LAO) and environmental groups regarding the Hearst Ranch Conservation Project, you had requested that the WCB accept public testimony and postpone a final action.

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The Honorable Senator Kuehl and Assembly Members Berg,
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The project has multiple components which together cover the entire 82,000± acre Hearst Ranch, including its more than 18 miles of coastline. Over 1,500 acres would be transferred to State ownership, most of which (over 950 acres, including 13 miles of coastline) would become part of the State Parks system. A combination of public ownership and conservation easements west of Highway One would make an 18-mile segment of the California Coastal Trail a reality. The more than 80,000 acres of the Hearst Ranch east of Highway One would become subject to a perpetual conservation easement limiting future uses and development to protect the extraordinary scenic, open space, agricultural and natural resource values of this land.

The WCB, State Coastal Conservancy and Department of Parks and Recreation released numerous draft documents about the proposed project one month prior to the WCB meeting and we held a public information meeting near the ranch in Cayucos on July 15. It was reported that more than 400 people attended.

The proposed "East Side Conservation Easement" was the primary focus of the August 12 WCB meeting, therefore, this letter addresses the East Side issues. The WCB decision was not the final decision as two additional public meetings will be held in September and October, at which the State Coastal Conservancy and the State Public Works Board will each consider the Hearst Ranch project proposal, including the West Side components.

The WCB considered over four hours of public testimony with about two-thirds of the speakers supporting the transaction and recommending that the WCB approve the project as proposed. Of those who spoke and raised concerns, the theme of their testimony generally fell within four areas: natural resource protections, additional public disclosure, management plan standards, and conservation easement monitoring and enforcement.

Protection of Natural Resources – It has been recommended that resource protections in the proposed East Side Conservation Easement be strengthened by clarifying what would constitute "impairment" of Conservation Values, particularly natural resources and habitats. In light of this recommendation, the WCB conditioned its approval and funding subject to staffs of the Resources Agency and WCB working with the California Rangeland Trust (CRT), the proposed easement holder, to ensure that the Monitoring Protocol for the East Side Conservation Easement will provide standards to guide CRT's determination regarding "impairment" of Conservation Values. These standards will be based on CRT's extensive experience with conservation easements and will be consistent with standards and practices for conservation of working rangeland landscapes and associated natural resources. The Monitoring Protocol must be approved by WCB as a condition of funding.

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The Honorable Senator Kuehl and Assembly Members Berg,
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Public Disclosure of Baseline Conditions Report and Monitoring Protocol – The LAO, environmental groups and others have encouraged the public disclosure of the Baseline Conditions Report and proposed Monitoring Protocol, in addition to the draft transaction documents, detailed appraisal review and summary, natural resources summary and other information currently posted on the Resources Agency website. Under the proposed Grant Agreement, both the Baseline Conditions Report and the Monitoring Protocol are subject to approval by WCB as a condition of funding.

A draft Monitoring Protocol submitted by CRT has been received and is available for public review at www.resources.ca.gov. The final Monitoring Protocol will also be made available to the public. Extensive information has already been provided about the Conservation Values the proposed East Side and West Side conservation easements would protect.

It is important to note that, when future permitting processes occur which require public disclosure of the potential impacts to natural resources of requested development, water or other permits, the East Side Conservation Easement would require the landowner to comply with those requirements.

Management Plan – The proposed East Side Conservation Easement would require the landowner, in cooperation with the easement holder, to develop a Management Plan after close of escrow. Under the proposed Grant Agreement, the WCB would have at least 45 days to review and provide comments and suggestions to the proposed Management Plan. Recommendations have been made to clarify the Management Plan requirements in the East Side Conservation Easement, in order to assure that it will address resource protection issues.

As currently drafted, Section 6(a) of the proposed East Side Conservation Easement specifies that the Management Plan must address appropriate management practices for soil and water conservation, erosion control, pest management, nutrient management, water quality and habitat protection. The Management Plan must also contain prescriptions for the management of range resources that include "reasonable practices which serve to balance continued agricultural uses with the protection of the other Conservation Values, including water quality and riparian habitat within the Easement Area."

In light of comments by interested parties, including those of the LAO and environmental groups, the WCB conditioned its approval on staff adding a new subsection to the East Side Conservation Easement requiring the management plan to prescribe actions consistent with sustaining a combination of agricultural operations, natural resources and habitats within the portions of the Easement Area used for range, cropland or other agricultural operations.

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The Honorable Senator Kuehl and Assembly Members Berg,
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Oversight of Monitoring and Enforcement – State oversight of monitoring and enforcement is a fourth area of identified concern. The LAO has suggested that independent audits of the easement holder's monitoring and enforcement should be completed biennially rather than every five years, as the proposed Grant Agreement would require. Environmental groups have requested that the State have direct enforcement and monitoring authority.

The Hearst Corporation, like many other landowners with whom CRT has entered into voluntary working landscape conservation easement transactions, is unwilling to enter into a direct contractual relationship with the State. As an alternative, the East Side Conservation Easement and Grant Agreement was written to ensure CRT will be directly accountable to the State through its Grant Agreement. CRT's Audit Policy and Procedures (Exhibit E to the proposed Grant Agreement) specify five years as the maximum interval between audits, however, more frequent audits are possible. The Audit Policy states that the CRT Board of Directors may approve a more frequent audit schedule on the recommendation of the Audit Committee if extraordinary circumstances indicate the need for such additional action. The Resources Agency Secretary or designee will represent the State's interest as a member of the Audit Committee.

Environmental groups have also raised concerns regarding public access, development and resource extraction. Before closing I will briefly summarize and respond to those issues.

Public Access – The lack of public access to the East Side is of concern to some environmental groups. Working landscape conservation easements commonly do not allow public access. The property owner here was not willing to include public access to the East Side as part of the proposed transaction.

Development – It has also been suggested that development rights should be retired upon public funding of the deal, and that homesites should be sited to protect sensitive resources. The 42 eligible owner homesites identified in the proposed East Side Conservation Easement were selected to satisfy siting criteria including resource protection to avoid sensitive areas, protect views from Highway One and Hearst Castle and to minimize the need for new road construction by utilizing existing roads. Any modified or alternative homesite must satisfy the same criteria (Exhibit H, Section A).

The proposed East Side Conservation Easement (Section 5) would immediately terminate and extinguish all development rights except for the retained development rights reserved to the landowner in the document. The landowner would also be prohibited (under Section 4 of the East Side Conservation Easement) from separately selling, transferring or subdividing the East Side (including the existing certificate of compliance parcels) with the exception of 25 clustered owner homesite parcels (or fallback owner homesite parcels), two owner homesite large parcels, a 1,500± acre Headquarters Area Parcel, a 100-acre Pico Area Parcel, the Junge-OSSV Employee

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

The Honorable Senator Kuehl and Assembly Members Berg,
Jackson, Pavley, Hancock, Kehoe, Laird, Lowenthal and Lieber
August 27, 2004
Page 5

Housing Area and the Caltrans Realignment Area Parcel. The purpose of retaining the existing certificates of compliance is to assure that the landowner has a meaningful opportunity to seek approvals for the divisions the East Side Conservation Easement would permit. The certificates of compliance would be retired on an eight-to-one basis for each Owner Homesite Parcel and a 13-to-1 basis for the Headquarters and Pico Area Parcels. Under either situation, the landowner could never build more than 27 owner homes.

Resource Extraction – Environmental groups have recommended prohibiting water transfers or sales as well as oil and gas exploration and extraction.

The proposed East Side Conservation Easement would not allow water transfers off of the Hearst Ranch. The landowner could transfer water or water rights from the Easement Area for use outside the Ranch only with the easement holder's written permission based upon its determinations that the transfer will not impair Conservation Values, particularly fish and wildlife, either at the time of transfer or following the exercise of other retained rights on the Easement Area. In addition, any proposed transfer of water or water rights would be subject to all applicable permitting and regulatory requirements.

Exploration and development of oil and gas on the Easement Area would be limited to no more than five surface acres of the Easement Area in total for the duration of the East Side Conservation Easement and must not impair Conservation Values. In addition, the impact of such activities must be limited and localized, must not be visible from Hearst Castle or Highway One, must not be irretrievably destructive of any significant conservation interests (within the meaning of specified IRS regulations), and must be consistent with the purpose of the East Side Conservation Easement (as stated in Section 1, "to achieve protection of the Conservation Values by sustaining in perpetuity a combination of agricultural operations and natural habitats within the Easement Area").

The proposed Hearst Ranch Conservation project to protect open space, extraordinary scenic and natural resources and agricultural values, and increase public ownership of and access to the California coastline, has broad public support, as expressed at the July 15, 2004 public information meeting in Cayucos and again during the WCB meeting on August 12, 2004. Criticisms such as those addressed in this letter have also been raised. The challenge in this voluntary transaction is to strike a balance of interests. The WCB believes that, with the added conditions, the project achieves that balance. The WCB motion as recommended and approved is attached for your reference.

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

The Honorable Senator Kuehl and Assembly Members Berg,
Jackson, Pavley, Hancock, Kehoe, Laird, Lowenthal and Lieber
August 27, 2004
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Should you wish further information or clarification on any issue regarding the Hearst Ranch Conservation Area, please contact me at (916) 445-0137 at your earliest convenience

Sincerely,



Al Wright
Executive Director

Enclosure

- cc: Jim Kellogg, President, Fish and Game Commission
Donna Arduin, Director, Department of Finance
L. Ryan Broddrick, Director, Department of Fish and Game
The Honorable Abel Maldonado, Member of the Assembly
The Honorable Bruce McPherson, Member of the Senate
Mike Chrisman, Resources Agency Secretary
Stephen T. Hearst, Vice President and General Manager, The Hearst Corporation
✓ Sam Schuchat, Executive Director, State Coastal Conservancy
Ruth Coleman, Director, Department of Parks and Recreation

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Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

Excerpt from Minutes
Wildlife Conservation Board Meeting

August 12, 2004

35. Hearst Ranch Conservation Area, San Luis Obispo County

It was moved by Mr. Dave Harper that the Board approve this project; allocate \$28,500,000.00 from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Prop. 50), Section 79565, to cover the Board's portion of the Grant Amount; authorize acceptance of the State Coastal Conservancy grant funds directly into escrow to assist with the transaction; approve the donation and related tax credits subject to appropriate legislative authority to do so; allocate \$6,000,000.00 from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Prop. 50), Section 79565, to apply towards the Board's proportionate share of the proposed \$15,000,000.00 tax credit reimbursement; authorize staff to enter into appropriate agreements necessary to accomplish this project; and authorize staff and the Department of Fish and Game to proceed substantially as planned, subject to the following conditions: (a) that the State Coastal Conservancy and the Public Works Board each consider the conservation transaction, and approve and authorize funding for the transaction as applicable; (b) that, prior to funding the Board's portion of the Grant amount, staff and the Department of Fish and Game review and approve a Baseline Conditions Report and Monitoring Protocol; and (c) that the following areas of concern be resolved to the satisfaction of staff: (1) application of viewshed protection standards for structures, (i.e. buildings of sufficient size) that could impair the viewshed as seen from Highway One or Hearst-San Simeon State Historical Monument (Hearst Castle); (2) clarification that Highway One viewshed protection standards apply to the alignment of Highway One as it exists at the time of establishing each owner homesite parcel; (3) provision in the East Side Conservation Easement that the Management Plan shall prescribe actions consistent with sustaining a combination of agriculture operations, natural resources and habitats with the portions of the Easement Area used for range, cropland or other agriculture operations; and (4) incorporation of standards within the Monitoring Protocol to guide California Rangeland Trust's determination regarding when there has been "impairment" of Conservation Values as defined in East Side Conservation Easement.

Motion carried.

I, Al Wright, Executive Director of the Wildlife Conservation Board, hereby certify that the foregoing is a true and correct copy of action taken by the Wildlife Conservation Board in a meeting assembled in Sacramento on August 12, 2004.



Al Wright
Executive Director

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

Sent By: Law Office of Alfred F. Jahns; 916-449-9510; Aug-27-04 6:03PM; Page 4/7



August 11, 2004

Sent by Telecopy and U.S. Mail

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

Re: Hearst Ranch Conservation Transactions – LAO Recommendations

Dear Senator Chesbro:

In a letter to you dated August 3, Deputy Legislative Analyst Hadley Johnson Jr. presented recommendations on behalf of the Legislative Analyst Office ("LAO") regarding the Hearst Ranch conservation transactions under consideration for partial funding by several state agencies. As the two non-profit land trusts involved in presenting this historic opportunity to the State of California, we are disappointed that we were not approached for information or perspective in connection with the development of the LAO recommendations. We are therefore writing you to provide our views on those recommendations and to assist in clearing up some misunderstandings reflected in the LAO letter.

At the outset, we wish to reiterate and emphasize that the Hearst Ranch conservation proposal is a "willing seller, willing buyer" transaction and must be evaluated on that basis. As you will note in the following responses, many of the concerns identified in the LAO letter appear to reflect a perspective that the Hearst Ranch conservation proposal results in some level of development entitlement or right in favor of the landowner. That perspective is incorrect. The Hearst Ranch conservation proposal eliminates a wide range of existing development rights and severely restricts the specific rights retained by the landowner. As to such retained rights, the landowner must still comply with all applicable regulatory approval requirements in connection with any exercise of such rights. There is nothing in the Hearst Ranch conservation proposal that limits any regulatory approval requirement for any future development proposed by the landowner.

1. Delay is not necessary to accommodate public review and input, and may frustrate this historic opportunity.

The final recommendation presented in the LAO letter is the most troubling, and so we begin with that. The recommendation is that you request "that WCB's commitment of funds scheduled to be considered at the August 12, 2004 board meeting be postponed." The first problem is that such a postponement will result in the State's failure to meet one of the essential milestone conditions of the agreements in principle announced by the Resources Secretary on June 4th. What is more, such a

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

Sent By: Law Office of Alfred F. Jahns; 916-449-9510;

Aug-27-04 6:04PM;

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Hon. Wesley Chesbro
August 11, 2004
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postponement will eliminate the landowner's contractual obligation to American Land Conservancy to go forward with the proposed conservation transactions.

These highly undesirable outcomes can be avoided by proceeding contingently as recommended by the WCB Staff in its agenda report:

Staff recommends that the Board approve this project as proposed contingent upon the other state agency parties approving and funding this transaction as described; . . . authorize staff to enter into appropriate agreements necessary to accomplish this project; and authorize staff and the Department of Fish and Game to proceed substantially as planned.

The approach of conditional approval by WCB will allow the process of public review and input to continue while satisfying the milestone requirement under the agreements. As you may be aware, WCB is not proposing to fund the entirety of the transaction and approvals from the State Coastal Conservancy and the Public Works Board are necessary before any public expenditure of funds.

II. A regulatory-like approach is not well-suited to a voluntary conservation transaction to protect a working landscape.

The LAO recommendation for amendment of the conservation easement "to clarify under what circumstances the natural resources identified in the Baseline Conditions Report would be considered "impaired"" seeks an impossible cookbook approach to a voluntary working landscape conservation easement transaction. Determinations of prohibited impairment must be left to case-by-case evaluations taking into account the potential magnitude and duration of the effects on protected resources in relation to the easement purpose. False precision will not serve the cause of a sustainable stewardship partnership between a landowner and easement holder. We are crafting a voluntary agreement, not a regulatory imperative, in this transaction.

The recommendation to specify areas where "housing development and other activities permitted in the easement are limited or prohibited" is also impracticable, given the sheer size of the Ranch. What we have done is to specify screening criteria that will serve as minimum resource protection requirements that must be met anywhere development is proposed to be undertaken. In addition to those criteria, and the overarching prohibition of impairment of conservation values, any proposed development on the Ranch will continue to be subject to all applicable local and state regulatory review and restrictions including regulation by the California Coastal Commission to the extent of its jurisdiction over the Ranch lands.

III. The conservation easement, not the management plan, will govern resource protection.

The LAO concern as to whether "a yet-to-be developed management plan will ensure and adequate level of resource protection" imparts the wrong function to the management plan. The resource protections are set forth in the conservation easement. The required management plan will serve as a road map of the landowner's intentions relative to those protections, and will thus allow the easement holder to better anticipate and address potential conflicts *before* they ripen into impairment of conservation values. Furthermore, contrary to the LAO assertion that "the standards for the plan's development are not specified in the easement," they are indeed specified in section 6 of the posted public review draft of the conservation easement (East-Side Conservation Easement, section 6 - pages 12 and 13 - available at www.resources.ca.gov).

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Sent By: Law Office of Alfred F. Jahns; 916-449-9510; Aug-27-04 6:04PM; Page 6/7

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August 11, 2004
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- IV. The proposed monitoring protocol is the most comprehensive ever submitted to WCB in connection with a working landscape conservation easement.

The LAO concern that a monitoring protocol has not yet been proposed has been addressed by the posting to the Resources Agency website, yesterday, of a public review draft of a proposed monitoring protocol. To our knowledge, it is the most comprehensive monitoring protocol ever proposed to WCB in connection with a working landscape conservation easement project. We believe that the LAO recommendations with respect to the protocol are fully addressed by the proposal. Our understanding is that the proposed protocol will be reviewed by the Department of Fish and Game, and public comments will be considered, before a protocol is finally approved by WCB.

- V. The property baseline conditions documentation is under review by the Department of Fish and Game; public review of this confidential information is not standard practice for good reasons.

The Department of Fish and Game is undertaking review of the baseline documentation to assure that it will provide an adequate foundation for the monitoring and enforcement of compliance with the conservation easement. The documentation, however, will be maintained by the easement holder and not the State. Again, it must be kept in mind that this is a voluntary conservation transaction to restrict development; it is not a mitigation commitment required as a regulatory condition of the grant of an entitlement or as a penalty for improper activities. Proprietary and confidential information about the business operations of the ranch are contained in the baseline documentation, and the landowner has a legitimate interest in maintaining the confidentiality of that information. If and when the landowner decides to propose development, public disclosure of the potential impacts of the proposed development will be required under the California Environmental Quality Act in connection with the regulatory review the development proposal.

Even with these legitimate limitations on the release of proprietary information, there has been released for public review an unprecedented level of description of the natural resources contained within the ranch property. This disclosure has been fully sufficient to satisfy the legitimate public interest in being informed of the resource values that would be conserved under the proposed transaction.

- VI. The proposed audit policy and procedures will provide a level of accountability that is unique in the history of conservation easement stewardship.

The audit policy and procedures that the Board of Directors of California Rangeland Trust has adopted for the Hearst Ranch conservation transaction are, to our knowledge, unique in the history of conservation easement stewardship. The independent audit function, to be routinely conducted at least every 5 years, will serve to reinforce the ongoing monitoring review that will be conducted by WCB. More frequent auditing will be commissioned if the need for it is indicated. The routine bi-annual audits recommended by the LAO are more than is reasonably necessary to achieve accountability and protect the public investment in this conservation project.

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

Sent By: Law Office of Alfred F. Jahns; 916-449-9510;

Aug-27-04 6:05PM;

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Hon. Wesley Chesbro
August 11, 2004
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Because the deliberations of the audit committee will require consideration of confidential proprietary information concerning the easement property, it is appropriate that the records of those deliberations not be released to the general public. Through the involvement of the Resources Secretary (or representative thereof) on the audit committee, and WCB's ongoing review of the easement holder's monitoring and enforcement record, the public will be well represented, and its investment in this conservation transaction will be well protected.

VII. This is a conservation opportunity for the ages.

The task of balancing private and public expectations is indeed challenging in a voluntary conservation transaction of this magnitude and complexity. The balances struck in arriving at the proposed conservation agreement reflect many months of deliberations and serious consideration of the diverse inputs received from the broad range of stakeholders. Through these careful efforts we have achieved broad-based support for moving forward with the proposed easement transaction.

We will be pleased to meet with you to address any questions that you may have about the details of this historic conservation proposal.

Sincerely,



Jeff Stamp, Vice President, American Land Conservancy

1388 Sutter St., Ste.810 San Francisco, CA 94109

ph: 415-749-3010 fax: 415-749-3011



Nita Vail, Executive Director, California Rangeland Trust

1221 H Street, Sacramento, CA 95814-11910

ph: 916-444-2096 fax: 916-444-2194

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

Sent By: Law Office of Alfred F. Jahns; 916-449-9510;

Aug-27-04 6:03PM;

Page 2



California
Rangeland
Trust

August 27, 2004

Sent by Telecopy and U.S. Mail

Elizabeth G. Hill
Legislative Analyst
925 L Street
Sacramento, CA 95814

Subject: Hearst Ranch Conservation Transaction:
Request for Meeting Regarding LAO Recommendations

Dear Ms. Hill:

As you know, Deputy Legislative Analyst Hadley Johnson Jr., by letter to Senator Welsey Chesbro, Chair of the Joint Legislative Committee dated August 3, 2004, prepared recommendations on behalf of the Legislative Analysts Office (LAO) concerning the Hearst Ranch conservation transaction. By letter to Senator Chesbro dated August 11, 2004, we responded to Mr. Johnson's letter, clarifying several issues. We sent you a copy of our August 11 letter and have also enclosed a copy with this letter for your convenience.

To restate briefly, we represent the non-profit land trusts that are presenting this historic conservation opportunity to the State. We were disappointed that we were not approached to provide information in connection with the development of the LAO recommendations. Had we been provided this opportunity, we believe that the conclusions reached by Mr. Johnson would have differed significantly from those set forth in his August 3rd letter, which has been broadly circulated and continues to be posted on the LAO website.

The next scheduled funding hearing on the Hearst Ranch conservation project is before the California State Coastal Conservancy on September 15, 2004. Because many decision makers have looked to the LAO for guidance on this important conservation project, it is imperative that the LAO recommendations are based upon complete and accurate information. We therefore request a meeting with you at your earliest convenience, so that we can brief you directly on our grounds for your reconsideration of the LAO recommendations prior to the September 15 meeting of the Coastal Conservancy.

Exhibit 9.5: Report of the Legislative Analyst's Office (8/3/04), and Letters responding to the report from: Wildlife Conservation Board Executive Officer Al Wright (8/27/04); American Land Conservancy/California Rangeland Trust (8/27/04 and 8/11/04) and Hearst Ranch Conservation NOW (8/6/04)

Sent By: Law Office of Alfred F. Jahns; 916-449-9510;

Aug-27-04 6:03PM;

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Elizabeth G. Hill
August 27, 2004
Page 2

Thank you for your consideration of this important matter. We will contact your office within the next day to determine whether you will meet with us on this important matter.

Sincerely,



Harriet Burgess, President, American Land Conservancy
1388 Sutter Street, Suite 810 San Francisco, CA 94109
ph: 415-749-3010 fax: 415-749-3011



Nita Vail, Executive Director, California Rangeland Trust
1221 H Street, Sacramento, CA 95814-11910
ph: 916-444-2096 fax: 916-444-2194

cc: (by facsimile)
Members of Joint Legislative Budget Committee
Members of Wildlife Conservation Board
Members of the California State Coastal Conservancy
Members of the California State Coastal Conservancy Legislative Advisory Board
Senator Pro Tem John Burton
Senator Kevin McCarthy
Senator Bruce McPherson
Assembly Member Abel Maldonado
Mike Chrisman, Resources Agency
Dave Widell, Resources Agency
Al Wright, Wildlife Conservation Board
Sam Schuchat, California Coastal Conservancy
Ruth Coleman, Department of Parks and Recreation
Tony Harris, Department of Transportation
Peter Douglas, California Coastal Commission

Enclosure: August 11, 2004 ALC/CRT Letter to Hon. Wesley Chesbro

Hearst Ranch Conservation NOW

Hearst Ranch Conservation Project Legislative Analyst Office, Letter and Response

Dated 8-3-2004

August 6, 2004



Hearst Ranch Conservation NOW is an independent group of individuals with varied and extensive land trust and environmental experience. We are not affiliated with the American Land Conservancy or the Hearst Corporation

Our website is
www.hearstranchconservation.org

Contact Information

Gary Felsman
gfelsman@thegrid.net
805-783-6068

Bruce Gibson
bgibson@thegrid.net
805-995-3059

Liz Scott-Graham
esgraham@slonet.org
805-785-0248

Hearst Ranch Conservation NOW

Response to Legislative Analyst Office (LAO) Letter Dated 8-3-2004

Below is a copy of the Letter from the LAO. We have highlighted sections of letter to show sections where LAO has raised some concerns about the Hearst Ranch Conservation Project. We have taken these concerns placed them in the table below. Next to each comment we have formulated a response to show where and how they are addressed in the conservation easement(s), staff reports, other related documents and the normal conservation easement process.. These concerns are similar to another document we have created from concerns raised at the July 15th hearing in Cayucos and from articles in the press.

We are concerned that these objections and attempts to delay public hearings threaten the project's success. If the already-extended option agreement between Hearst and the American Land Conservancy expires, the project faces an uncertain future at best, and could likely be terminated.

After review of the transaction documents, we believe that most expressed criticisms are based either on misleading interpretations, an incomplete understanding of the transaction details, or a basic misunderstanding of conservation transactions between land trusts and willing land owners. In the table below, we summarize the most common objections and our response to each.

Specific transaction document references (e.g., Independent Appraisal Review (Tab 2)) relate to document links on the California Resources Agency web page, www.resources.ca.gov/hearst_ranch_docs_toc.html/.

August 3, 2004

Hon. Wesley Chesbro
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

•Legislative Analyst's Office
California Legislature
Elizabeth G. Hill – Legislative Analyst
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Hon. Wesley Chesbro

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

Hon. Wesley Chesbro

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, & 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 agendas 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 owl 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 Older 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 CRTs monitoring and enforcement activities should be completed bi-annually, 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.

August 3, 2004

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 Joint Legislative Budget Committee

LAO Issues

Objection	Response	Reference(s)
<p>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).</p>	<ul style="list-style-type: none"> • There are only 27 new owner Homesites as specified by the Conservation Easement. Each homesite must meet strict criteria for location, sighting and not disturb the conservation values. • The 15 other are for ranch employees only and cannot be sold. Each homesite must meet strict criteria for location, sighting and not disturb the conservation values. 	<p>East Side Conservation Easement (Tab 3C) , Page 10, Section 3(d); Exhibit H, New Owner Homesite and Subdivision Criteria; East Side Conservation Easement (Tab 3C), Page 16, Section 9(c) and Exhibit D-4</p>
<p>In addition, the state would purchase conservation easements over land retained by Hearst on the west side (at three select locations).</p>	<ul style="list-style-type: none"> • Caltrans is purchasing a scenic viewshed easement on most of the west side, including these 3 locations. Hearst is donating a public access easement over these same areas. 	<p>West Side Summary, Tab 4A</p>
<p>Hearst would donate to the California Department of Transportation (Caltrans) land necessary to accommodate possible future realignment of Highway 1.</p>	<ul style="list-style-type: none"> • Hearst is donating by offer of dedication a total of 628 acres to the State of California for realignment. 518 acres for the realignment and 110 acres under Highway 1 	<p>Summary of Realignment Area Transaction (Tab 4F, 4F-1)</p>

Objection	Response	Reference(s)
<p>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.</p>	<ul style="list-style-type: none"> • Here is what is in the WCB Staff Report says: <p>“The SCC contracted for the State’s appraisal in this transaction and also contracted for a subsequent independent third party appraisal review and summary prepared by Waldron & Assoc., Inc. The State’s appraisal, as well as the independent third party review, was submitted to the Department of General Services (DGS) for its review and approval. The DGS has reviewed the State’s appraisal and has approved the conservation transaction value at no less than \$110,000,000.00, with concurrence from the Board, including the proposed tax credit component (as discussed below) as well.”</p>	<p>WCB Staff Report, August 12, 2004, (Page 84) posted at www.wcb.ca.gov.</p>
<p>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).</p>	<ul style="list-style-type: none"> • There is strict criteria in the conservation easement for the siting of the homesites whether or not they are in the specified area • In addition the new owner homesites are limited to a total of 675 acres counting the 5-acre building envelope and 20-acre buffer zone. 	<p>East Side Conservation Easement(Tab 3C), Page 10, Section 3(d) Exhibit H, New Owner Homesite Criteria and Exhibits D-1A through D-1F, Siting Guidelines Exhibit H (Section A(3) page 2), Exhibit H, Fallback Criteria (Section B(a)(1)(B), page 6)</p>

Objection	Response	Reference(s)
<p>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</p>	<ul style="list-style-type: none"> • The Conservation Easement provides strict requirements on homesites as stated above. • Intensified agriculture is limited to a total of 3,000 acres instead of the traditional 10,000 acres which is suitable for intensification. The 3000 acres includes any areas inside the owner homesites and any areas outside the easement area of no more than 300 acres of vineyards and 300 acres of orchards. • A detailed map has been prepared showing where agricultural may occur protecting the natural resources of the Ranch 	<p>Homesites see answer above. Agricultural restrictions East Side Conservation Easement(Tab 3C) , Page 15, Section 9(a), Exhibit D-6</p>

Objection	Response	Reference(s)
<p>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."</p> <p>First, the standards for the plan's development are not specified in the easement.</p>	<p>The East Side Conservation Easement by itself provides protection for the resources to be conserved.</p> <ul style="list-style-type: none"> • Many conservation easements do not have required management plans and virtually none are prepared prior to funding the easement. (see Attachment 1). • The management plan addresses <i>how</i> resources are to be protected, not <i>what</i> is to be protected. Hearst should be allowed to manage their land in a reasonable way as long as they achieve the requirements of the easement. • The Wildlife Conservation Board will review and comment on the management plan (and any amendments) before the California Rangeland Trust approves it • The Eastside Conservation Easement also has criteria for items to be included in the Management Plan under the Section 6 (Resource Stewardship). 	<p>East Side Conservation Easement (Tab 3C)</p> <p>Hearst Ranch Conservation Project, Viewpoint and Response to Comments, Attachment 1</p> <p>East Side Conservation Easement (Tab 3C), (Sections 6(a), 6(b), 6(c)) pages 12 and 13</p> <p>WCB Grant Agreement (Tab 3B, pg 4)</p> <p>East Side Conservation Easement (Tab 3C), (Sections 6(a), 6(b), 6(c)) pages 12 and 13</p>

Objection	Response	Reference(s)
<p>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.</p>	<ul style="list-style-type: none"> • Yes the Audit is done every five years. • However as outlined in the WCB Grant agreement the easement holder must make available at a mutually agreed upon location the monitoring report for WCB review each year. The WCB is also on the Audit Committee and reviews the Audit Reports • A summary report, less confidential information, must be submitted to the WCB for public disclosure each year as well 	<p>WCB Grant Agreement (Tab 3B) Section 3.5, pages 3 and 4</p> <p>WCB Grant Agreement (Tab 3B) Section 3.5, pages 3 and 4</p>
<p>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.</p>	<p>The easement defines in detail the conservation values to be protected, including incorporation of the Baseline Conditions Report inventory of resources. It prohibits impairment of conservation values using a standard consistent with easements recently funded or negotiated by the state and land trusts such as TNC and TPL</p>	<p>East Side Conservation Easement (Tab 3(C), Recitals D and E, pages 3-7; Section 1, pages 8-9.</p> <p>Hearst Ranch Conservation Project, Viewpoint and Response to Comments, Attachment 1</p>
<p>Second, as a practical application of the Baseline Conditions Report we recommend that the easement <i>specify</i> areas on which housing development and other activities permitted in the easement are limited or prohibited because of the area's exceptional resource values</p>	<ul style="list-style-type: none"> • There is strict criteria for the siting of the homesites whether or not they are in the specified area in the conservation easement • In addition the new owner homesites are limited to a total of 675 acres counting the 5-acres building envelope and 20-acre buffer zone. 	<p>East Side Conservation Easement(Tab 3C), Page 10, Section 3(d), Exhibit H, New Owner Homesite Criteria and Exhibits D-1A through D-1F, Siting Guidelines Exhibit H, (Section A(3) page 2), Exhibit H, Fallback Criteria (Section B(a)(1)(B), page 6)</p>

Objection	Response	Reference(s)
<p>These recommendations are consistent with the state's practices in other conservation easements when there are significant resource values identified for protection</p>	<ul style="list-style-type: none"> • The easement as presented goes above and beyond what has been traditionally required by state funded conservation easements in the past 	<p>Hearst Ranch Conservation Project, Viewpoint and Response to Comments, Attachment 1</p>
<p>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</p>	<ul style="list-style-type: none"> • The Wildlife Conservation Board and the Department of Fish and Game will review and approve the Baseline Inventory before funding the project. • Baseline Inventories are not public documents, because they contain confidential material about private property. They are a tool used by land trusts to fulfill their responsibilities for easement monitoring and enforcement • We have been told a baseline summary will be presented at the WCB Hearing on August 12t., 2004. 	<p>WCB Grant Agreement (Tab 3B, Section 2.2,pg 1)</p> <p>Hearst Ranch Conservation Project, Viewpoint and Response to Comments, Attachment 1</p>

Objection	Response	Reference(s)
<p>Easement Should Include Standards for Management Plan</p>	<p>The East Side Conservation Easement by itself provides protection for the resources to be conserved.</p> <ul style="list-style-type: none"> • Many, if not most, conservation easements do not have required management plans (see Attachment 1). • The management plan addresses <i>how</i> resources are to be protected, not <i>what</i> is to be protected. Hearst should be allowed to manage their land in a reasonable way as long as they achieve the requirements of the easement. • The Wildlife Conservation Board will review and comment on the management plan (and any amendments) before the California Rangeland Trust approves it. WCB has strong enforcement rights against CRT if it fails to require a management plan that adequately protects the resources. • The Eastside Conservation Easement also has criteria for items to be included in the Management Plan under the Section 6(Resource Stewardship) 	<p>East Side Conservation Easement (Tab 3C)</p> <p>Hearst Ranch Conservation Project, Viewpoint and Response to Comments, Attachment 1</p> <p>WCB Grant Agreement (Tab 3B, pg 4)</p> <p>East Side Conservation Easement (Tab 3C), (Sections 6.a, 6.b, 6.c) pages 12 and 13</p>

TITLE PAGES

ATTACHMENT 1: Comparison of Recent Coastal Conservation Transactions

ATTACHMENT 2: Public Access Analysis of West Side Parcels

ATTACHMENT 3: Trail Maps from Coast Walk Book on the California Coastal Trail