

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 444

Introduced by Assembly Member Caballero

February 24, 2009

An act to amend Section 65965 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 444, as amended, Caballero. Land use: natural resources: transfer of long-term management funds.

Existing law allows a state or local public agency to authorize a nonprofit organization to hold title to, and manage an interest in, real property that the state or local public agency requires a property owner to transfer to the agency to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, provided the nonprofit organization meets certain requirements. Existing law also authorizes an agency that, in the development of its own project, is required to transfer an interest in real property to mitigate an adverse impact upon natural resources, to transfer the interest to a nonprofit organization that meets the specified requirements.

This bill would authorize funds set aside for the long-term management of any lands or easements conveyed to a nonprofit organization pursuant to the above provisions to also be conveyed to the nonprofit organization. The bill would also ~~authorize~~ *require* the nonprofit organization to hold, manage, invest, and disburse the funds in furtherance of managing and stewarding the land or easement for which the funds were set aside. *The bill would authorize the state or local agency to impose certain requirements on the nonprofit*

organization and impose on the state or local agency specified due diligence requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65965 of the Government Code is
2 amended to read:
3 65965. (a) For the purposes of this section, the following
4 definitions apply:
5 (1) “Direct protection” means the protection and preservation
6 of natural lands or resources, including, but not limited to,
7 agricultural lands, wildlife habitat, wetlands, endangered species
8 habitat, open-space areas, or outdoor recreational areas.
9 (2) “Stewardship” encompasses the range of activities involved
10 in controlling, monitoring, and managing for conservation purposes
11 a property, or a conservation or open-space easement, as defined
12 by the terms of the easement, and its attendant resources.
13 (b) Notwithstanding any other ~~provision of~~ law to the contrary,
14 if a state or local public agency requires a property owner to
15 transfer to the agency an interest in real property to mitigate any
16 adverse impact upon natural resources caused by permitting the
17 development of a project or facility, the state or local public agency
18 may authorize a nonprofit organization to hold title to and manage
19 that interest in real property, provided that the nonprofit
20 organization is all of the following:
21 (1) Exempt from taxation as an organization described in Section
22 501(c)(3) of the Internal Revenue Code, and qualified to do
23 business in the state.
24 (2) A “qualified organization” as defined in Section 170(h)(3)
25 of the Internal Revenue Code.
26 (3) An organization that has as its principal purpose and activity
27 the direct protection or stewardship of natural land or resources,
28 or cultural or historic resources, including, but not limited to,
29 agricultural lands, wildlife habitat, wetlands, endangered species
30 habitat, open-space areas, and outdoor recreational areas.
31 (c) If a state or local public agency, in the development of its
32 own project, is required to transfer an interest in real property to
33 mitigate an adverse impact upon natural resources, the agency may

1 transfer the interest to a nonprofit organization that meets the
2 requirements set forth in paragraphs (1) to (3), inclusive, of
3 subdivision (b).

4 (d) (1) Funds set aside for the long-term management of any
5 lands or easements conveyed to a nonprofit organization pursuant
6 to subdivisions (b) and (c) may also be conveyed to the nonprofit
7 organization. The nonprofit organization ~~may~~ shall hold, manage,
8 invest, and disburse the funds in furtherance of managing and
9 stewarding the land or easement for which the funds were set aside.

10 (2) *The state or local public agency may require the nonprofit*
11 *organization to submit a report not more than every 12 months*
12 *and for a specified number of years that details the management*
13 *and condition of the property or easement and the accompanying*
14 *funds. The mitigation or funding agreement shall specify the*
15 *reporting due dates and elements of the report.*

16 (3) *If, after submission of the report described in paragraph*
17 *(2), the agency determines there is cause to consider that the terms*
18 *of the mitigation or funding agreement may have been violated,*
19 *the agency may review the accounting documents involving the*
20 *funds or require an audit of the funds to be performed and the*
21 *audit report submitted to the agency.*

22 (e) The recorded instrument that places title with a nonprofit
23 organization pursuant to subdivision (b) shall include, at a
24 minimum, a provision that if the state or local public agency that
25 authorized the nonprofit organization to hold the title, or its
26 successor agency, determines that the interest in real property that
27 is held by the nonprofit organization is not being held, monitored,
28 or managed for conservation purposes in the manner specified in
29 that instrument or in the mitigation agreement between the state
30 or local public agency and the nonprofit organization, the interest
31 in real property shall revert to the state or that local public agency,
32 or to another public agency or nonprofit organization qualified
33 pursuant to subdivision (b), approved by the state or local public
34 agency.

35 (f) *The funds of a nonprofit organization holding funds for the*
36 *long-term management of property shall revert to the state or local*
37 *public agency or to another public agency or nonprofit*
38 *organization approved by the state or local agency and qualified*
39 *under subdivision (b) if the nonprofit organization does any of the*
40 *following:*

- 1 (A) *Ceases operations.*
- 2 (B) *Is dissolved.*
- 3 (C) *Becomes bankrupt or insolvent.*
- 4 (D) *Fails to perform its duties for any reason.*
- 5 (F)
- 6 (g) (1) A state or local public agency shall exercise due
- 7 diligence in reviewing the qualifications of a nonprofit organization
- 8 to effectively manage and steward natural land or resources, as
- 9 well as the accompanying funds. ~~The state or local public agency~~
- 10 ~~may adopt guidelines to assist the agency in that review process.~~
- 11 *as the accompanying funds.*
- 12 (2) *In furtherance of its exercise of due diligence:*
- 13 (A) *The state or local public agency may adopt guidelines to*
- 14 *assist the agency in the review process.*
- 15 (B) *With regard to accompanying funds, the state or local public*
- 16 *agency shall determine that the holder of the funds does all of the*
- 17 *following:*
- 18 (i) *Has the capacity to effectively manage the mitigation funds.*
- 19 (ii) *Has the capacity to achieve over the life of the agreement*
- 20 *reasonable rates of return on investment of those funds similar to*
- 21 *those of other prudent investors.*
- 22 (iii) *Utilizes generally accepted accounting practices, and will*
- 23 *be able to ensure that funds are accounted for, and tied to, a*
- 24 *specific property or project.*
- 25 (iv) *Has an adopted investment policy that is consistent with*
- 26 *the Uniform Management of Institutional Funds Act (Part 7*
- 27 *commencing with Section 18501) of Division 9 of the Probate*
- 28 *Code) with regard to endowment funds and that is consistent with*
- 29 *Sections 18505 and 18506 of the Probate Code with regard to*
- 30 *nonendowment funds.*

O