

Assembly Bill No. 444

Passed the Assembly September 8, 2009

Chief Clerk of the Assembly

Passed the Senate September 2, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL’S DIGEST

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

(1) 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.

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, on and after July 1, 2010. The bill would also 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.

(2) Existing law also authorizes a state or local public 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 instead authorize a state or local public agency that, in the development of its own project, is required to protect 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 or to provide funds to a nonprofit organization to acquire land or easements that satisfy the agency’s mitigation obligations. The bill would prohibit

retroactive application of its provisions to endowment funds held by the state in the Pooled Money Investment Account.

(3) This bill would provide that these changes to existing law would remain in effect until January 1, 2014, after which the provisions of existing law would become operative.

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

SECTION 1. Section 65965 of the Government Code is amended to read:

65965. (a) For the purposes of this section, the following definitions apply:

(1) “Direct protection” means the protection and preservation of natural lands or resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, or outdoor recreational areas.

(2) “Stewardship” encompasses the range of activities involved in controlling, monitoring, and managing for conservation purposes a property, or a conservation or open-space easement, as defined by the terms of the easement, and its attendant resources.

(b) Notwithstanding any other law to the contrary, if a state or local public agency requires a property owner to transfer to the agency an interest in real property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the state or local public agency may authorize a nonprofit organization to hold title to and manage that interest in real property, provided that the nonprofit organization is all of the following:

(1) Exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code, and qualified to do business in the state.

(2) A “qualified organization” as defined in Section 170(h)(3) of the Internal Revenue Code.

(3) An organization that has as its principal purpose and activity the direct protection or stewardship of natural land or resources, or cultural or historic resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(c) If a state or local public agency, in the development of its own project, is required to protect an interest in real property to

mitigate an adverse impact upon natural resources, the agency may do the following:

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

(2) Provide funds to a nonprofit organization to acquire land or easements that satisfy the agency's mitigation obligations.

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

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

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

(4) This subdivision shall become operative on July 1, 2010.

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

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

- (1) Ceases operations.
- (2) Is dissolved.
- (3) Becomes bankrupt or insolvent.
- (4) Fails to perform its duties for any reason.

(g) (1) A state or local public agency shall exercise due diligence in reviewing the qualifications of a nonprofit organization to effectively manage and steward natural land or resources, as well as the accompanying funds.

(2) In furtherance of its exercise of due diligence:

(A) The state or local public agency may adopt guidelines to assist the agency in the review process.

(B) With regard to accompanying funds, the state or local public agency shall determine that the holder of the funds does all of the following:

(i) Has the capacity to effectively manage the mitigation funds.

(ii) Has the capacity to achieve over the life of the agreement reasonable rates of return on investment of those funds similar to those of other prudent investors.

(iii) Utilizes generally accepted accounting practices, and will be able to ensure that funds are accounted for, and tied to, a specific property or project.

(iv) Has an adopted investment policy that is consistent with the Uniform Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code) with regard to endowment funds and that is consistent with Sections 18505 and 18506 of the Probate Code with regard to nonendowment funds.

(h) This section shall not apply retroactively to endowment funds held by the state in the Pooled Money Investment Account as of July 1, 2010.

(i) This section shall remain in effect only until January 1, 2014, and as of that date is repealed.

SEC. 2. Section 65965 is added to the Government Code, to read:

65965. (a) For the purposes of this section, the following definitions apply:

(1) “Direct protection” means the protection and preservation of natural lands or resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, or outdoor recreational areas.

(2) “Stewardship” encompasses the range of activities involved in controlling, monitoring, and managing for conservation purposes a property, or a conservation or open-space easement, as defined by the terms of the easement, and its attendant resources.

(b) Notwithstanding any other provision of law to the contrary, if a state or local public agency requires a property owner to transfer to the agency an interest in real property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the state or local public agency may authorize a nonprofit organization to hold title to and manage that interest in real property, provided that the nonprofit organization is all of the following:

(1) Exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code, and qualified to do business in the state.

(2) A “qualified organization” as defined in Section 170(h)(3) of the Internal Revenue Code.

(3) An organization that has as its principal purpose and activity the direct protection or stewardship of natural land or resources, or cultural or historic resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(c) If a state or local public agency, in the development of its own project, is required to transfer an interest in real property to mitigate an adverse impact upon natural resources, the agency may transfer the interest to a nonprofit organization that meets the requirements set forth in paragraphs (1) to (3), inclusive, of subdivision (b).

(d) The recorded instrument that places title with a nonprofit organization pursuant to subdivision (b) shall include, at a minimum, a provision that if the state or local public agency that authorized the nonprofit organization to hold the title, or its successor agency, determines that the interest in real property that is held by the nonprofit organization is not being held, monitored,

or managed for conservation purposes in the manner specified in that instrument or in the mitigation agreement between the state or local public agency and the nonprofit organization, the interest in real property shall revert to the state or that local public agency, or to another public agency or nonprofit organization qualified pursuant to subdivision (b), approved by the state or local public agency.

(e) A state or local public agency shall exercise due diligence in reviewing the qualifications of a nonprofit organization to effectively manage and steward natural land or resources. The state or local public agency may adopt guidelines to assist the agency in that review process.

(f) This section shall become operative on January 1, 2014.

Approved _____, 2009

Governor