

## **Minutes of the Meeting of the Board of Directors of September 7, 2002**

This, the first quarterly meeting of the Board of Directors of the Western Cave Conservancy, was called to order at 1:35 p.m. on Saturday, September 7, 2002 at the headquarters of Sequoia National Park, Ash Mountain, California. The facilities were provided courtesy of Joel Despain and the National Park Service.

### **ATTENDEES**

Rolf L. Aalbu, Director  
Joel D. Despain, Director  
Jerald J. Johnson, Director  
Robert C. "Martin" Haye, Director and Incorporator  
Marianne L. Russo, Director  
Daniel S. Snyder, Incorporator (present but not voting)

Martin Haye, acting as Incorporator, called the meeting to order at 1:35 pm.

Meeting recessed by general consent to allow reading of the minutes of the planning meeting of June 8.

Meeting called back to order at 1:50 pm.

Joel Despain nominated Marianne Russo to the chair *pro tem*; elected.

Martin Haye nominated Dan Snyder as secretary *pro tem*; elected.

Meeting recessed by general consent to continue review of the minutes.

The chair *pro tem* called the meeting back to order at 2 pm.

### **MINUTES**

A motion by Jerry Johnson to approve the minutes of the planning meeting of June 8, 2002 was adopted.

### **UNFINISHED BUSINESS**

By general consent, the secretary *pro tem* altered the order of certain mutually dependent items in the agenda.

### **Bylaws**

Following informal discussion and amendments to the draft of the Bylaws, a motion by Martin Haye to approve the amendments was adopted (refer to Attachment B showing revisions).

A motion by Martin Haye to adopt the amended Bylaws was carried unanimously.

### **Corporate Office**

Martin Haye moved that the corporate office be located at the residence of Martin Haye and Dan Snyder at 213 Elm Street, Santa Cruz, CA 95060. Carried by general consent.

## **Accounting System**

A motion by Rolf Aalbu to adopt cash-based accounting for the corporation's books was carried (but see Attachment C for subsequent email proceedings reversing this decision in order to comply with GAAP—Generally Accepted Accounting Principles).

## **Liability Insurance**

Dan Snyder, speaking as one of the Incorporators, reported that he had not yet obtained insurance quotes, and raised the possibility of obtaining a liability policy through the Land Trust Alliance. This report was followed by informal discussion on the necessity of obtaining insurance, the need to learn other conservancies' experience, and the need to at least obtain quotes periodically in order to demonstrate a good-faith effort to find affordable insurance.

## **Articles of Incorporation status**

Martin Haye, speaking as one of the Incorporators, reported that the Articles of Incorporation were mailed but returned unfiled by the California Secretary of State due to a missing date. He has resubmitted them.

## **Attorney review of documents**

A motion by Joel Despain authorizing the Incorporators to spend up to \$300 for attorney review of the Conservancy's incorporation documents and tax-exempt application (IRS Form 1023 and equivalent State form) was carried unanimously.

## **Rippled Cave Acquisition**

After informal discussion, the Rippled Cave negotiations were laid on the table pending receipt of 501(c)(3) status.

## **Informal discussion of other potential cave acquisitions (out of order, by general consent)**

Jerry Johnson reported that the Inskip Hill lava tubes and a nearby archeological deposit may be threatened by the reopening or expansion of a nearby quarry. Agreed by general consent that Jerry should investigate this further and report back to the board.

Joel Despain suggested approaching the owners of Empire Mine Cave, a significant cave located within a 12-acre patented mining claim in the Mineral King area of Sequoia National Park. The cave has a very interesting mineralogy and is several hundred feet in extent with additional man-made tunnels and is only partly surveyed. Agreed by general consent that Joel may enquire on behalf of the Conservancy whether the owners would consider selling at some time in the future.

## **NEW BUSINESS**

### **NSS Western Regional, Oct. 19-23**

Following informal discussion, Marianne moves to direct the chair *pro tem* to prepare a 15 minute presentation for the Western Regional meeting. Carried by general consent.

By general consent, the secretary *pro tem* made additions to the order of New Business.

A motion by Marianne Russo to recess for 5 minutes carried by general consent.

## Election of Officers

Joel Despain nominates Martin Haye for Treasurer.  
Martin Haye nominates Dan Snyder for Secretary.  
Rolf Aalbu nominates Marianne Russo for President  
Martin Haye nominates Rolf Aalbu for Vice President

Martin Haye moved to accept slate by acclamation. Carried unanimously.

## Compensation of officers

There followed a discussion of the compensation to be paid to the corporation's officers. Upon motion by Martin Haye it was unanimously resolved that the following annual salaries be paid to the officers of the corporation:

|                |     |
|----------------|-----|
| President      | \$0 |
| Vice President | \$0 |
| Treasurer      | \$0 |
| Secretary      | \$0 |

## Corporate seal

Following informal discussion, the matter of a corporate seal was postponed indefinitely by general consent.

## Authorization to open corporate bank account

Upon motion duly made by Joel Despain and amended by motion of Martin Haye, carried unanimously, it was

Resolved, that the funds of this corporation shall be deposited with a bank of the Treasurer's choosing (**Bank of America**).

Resolved further, that the treasurer of this corporation be and hereby is authorized and directed to establish an account with said bank and to deposit the funds of this corporation therein.

Resolved further, that any officer, employee or agent of this corporation be and is authorized to endorse checks, drafts or other evidences of indebtedness made payable to this corporation, but only for the purpose of deposit.

Resolved further, that all checks, drafts, and other instruments obligating this corporation to pay money shall be signed on behalf of this corporation by any one of the following: Robert C. "Martin" Haye, treasurer; Marianne L. Russo, president; and Rolf L. Aalbu, vice president.

Resolved further, that the said bank be and hereby is authorized to honor and pay all checks and drafts of this corporation signed as provided herein.

Resolved further, that the authority hereby conferred shall remain in force until revoked by the board of directors of this corporation and until written notice of such revocation shall have been received by said bank.

Resolved further, that the secretary of this corporation be and hereby is authorized to certify as to the continuing authority of these resolutions, the persons authorized to sign on behalf of this corporation, and the adoption of said bank's standard form of resolution, provided said form does not vary materially from the terms of the foregoing resolution.

## **2003 NSS National Convention**

Martin Hays moved that the conservancy host an inaugural party on Tuesday or Thursday night of the convention if either slot is available. Adopted by general consent.

Joel Despain moves that the conservancy staff an information and donation table. Adopted by general consent.

## **Corporate logo**

## **Land Trust Alliance**

After informal discussion

## **Authorization to purchase reference books**

On motion of Joel Despain, an amount up to \$200 was allocated to purchase of the following reference books:

*Robert's Rules of Order*

*The Standards and Practices Guidebook*

*Statement of Land Trust Standards and Practices*

*Starting a Land Trust*

## **Fundraising**

The board then informally discussed fundraising ideas.

## **Annual meeting**

On motion of ? the annual meeting on January 12, 2003 (as provided in the bylaws) will be held at CSU Sacramento in Mendocino Hall, Jerry Johnson to arrange for the room.

## **Meeting adjourned 6:16 p.m.**

ATTACHMENT A: Final agenda for the meeting of September 7, 2002

ATTACHMENT B: Bylaws, showing final revisions

ATTACHMENT C: Business conducted by email since the meeting of September 7, 2002

I certify that the above is, to the best of my knowledge, the true and complete record of business conducted at and since the first meeting of the Board of Directors of the Western Cave Conservancy held on September 7, 2002, and before the annual meeting held January 12, 2003.



Daniel S. Snyder, Secretary

**Agenda as Approved for the Meeting of the Board of September 7, 2002**

**CALL TO ORDER**

**APPROVAL OF THE MINUTES OF THE PLANNING MEETING OF JUNE 8, 2002**

**OLD BUSINESS**

Bylaws

Corporate office status

Accounting system/software authorization

Liability Insurance—group coverage available through Land Trust Alliance

Seed Money

Articles of Incorporation status

Attorney Review of documents

Rippled Cave acquisition—tabled pending 501(c)(3) status

Other Old Business

**NEW BUSINESS**

Election of officers

Compensation

Authorization to order corporate seal, ~\$50

Authorization to open bank account

Corporate certificates

Western Regional Convention

2003 National Convention

Logo Design

Authorization to join the Land Trust Alliance, \$225

Authorization to purchase reference books:

*Roberts Rules of Order* ~\$5

*The Standards and Practices Guidebook: An Operating Manual For Land Trusts* \$45 LTA/65 non  
*Statement of Land Trusts Standards and Practices* \$2/3

*Doing Deals: A Guide to Buying Land For Conservation* \$18.50/25

*Fundraising For the Long Haul* \$18/20

**ATTACHMENT A**

*Starting a Land Trust* \$25/30

*The Conservation Easement Handbook* \$25/35

*Model Conservation Easement and Historic Preservation Easement* (updates the Handbook) \$16/20

*Working Ranchland Conservation Easements* \$12/15

Fundraising brainstorming

Publicity materials design

Brochure(s)

Website

Director biographies/photos

Arrange Annual Meeting of the Western Cave Conservancy

Other New Business

**ADJOURNMENT**

**BYLAWS  
OF  
THE WESTERN CAVE CONSERVANCY  
A CALIFORNIA PUBLIC BENEFIT CORPORATION**

**ARTICLE 1  
OFFICES**

**SECTION 1. PRINCIPAL OFFICE**

The principal office of the corporation for the transaction of its business is located in Santa Cruz County, California.

**SECTION 2. CHANGE OF ADDRESS**

The county of the corporation's principal office can be changed only by amendment of these Bylaws and not otherwise. The Board of Directors may, however, change the principal office from one location to another within the named county by noting the changed address and effective date below, and such changes of address shall not be deemed an amendment of these Bylaws:

213 Elm Street, Santa Cruz, CA 95060      Dated: September 7, 2002

\_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_ Dated: \_\_\_\_\_

**SECTION 3. OTHER OFFICES**

The corporation may also have offices at such other places, within or without the State of California, where it is qualified to do business, as its business may require and as the board of directors may, from time to time, designate.

**ARTICLE 2  
PURPOSES AND TERRITORY**

**SECTION 1. OBJECTIVES AND PURPOSES**

The primary objective and purpose of this corporation shall be to protect caves and associated natural and cultural resources within the corporation's designated territory, by purchases of land, conservation easements and leases, and by other means.

The secondary objectives and purposes of this corporation shall be:

- (a) to facilitate public access to the acquired properties, subject to reasonable restrictions, for various scientific, scenic and educational purposes;
- (b) to encourage scientific inquiry and study of the corporation's caves and related surface and subsurface geological, faunal, hydrological, archaeological and other natural and cultural resources;
- (c) to assist cave owners within the corporation's territory with the management and protection of their caves.
- (d) to educate the general public about the origin and importance of caves, and in the value of preserving and protecting caves together with the fragile and irreplaceable resources they contain.

## ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION

### **SECTION 2. TERRITORY**

The Territory of the corporation is limited to the western United States.

## **ARTICLE 3 DIRECTORS**

### **SECTION 1. NUMBER**

The corporation shall have not less than five (5) and not more than nine (9) directors and collectively they shall be known as the Board of Directors. The exact number may be fixed within these limits by approval of the Board of Directors in the manner provided in these Bylaws.

### **SECTION 2. POWERS**

Subject to the provisions of the California Nonprofit Public Benefit Corporation law and any limitations in the Articles of Incorporation and Bylaws relating to action required or permitted to be taken or approved by the members, if any, of this corporation, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

### **SECTION 3. DUTIES**

It shall be the duty of the directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation of this corporation, or by these Bylaws;
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the corporation;
- (c) Supervise all officers, agents and employees of the corporation to assure that their duties are performed properly;
- (d) Meet at such times and places as required by these Bylaws;
- (e) Register their addresses with the Secretary of the corporation and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

### **SECTION 4. TERMS OF OFFICE**

Each director shall hold office for three (3) years, and until his or her successor is elected and qualifies. *The terms of office shall be as follows:*

- (a) *The initial directors of the corporation shall have staggered terms. Specifically, Robert Haye shall have a term of one year; Joel Despain and Rolf Aalbu shall each have a term of two years; and Marianne Russo and Jerald Johnson shall each have a term of three years.*
- (b) *When a director's term expires, the board shall elect a director to fill the vacancy; that director's term shall be three years.*

### **SECTION 5. COMPENSATION**

Directors shall serve without compensation except that they shall be allowed and paid their actual and necessary expenses incurred in attending Directors meetings. In addition, they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 3 of this Article. Directors may not be compensated for rendering services to the corporation in any capacity other than Director unless such other compensation is reasonable and is allowable under the provisions of Section 6 of this Article.

## ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION

### **SECTION 6. RESTRICTION REGARDING INTERESTED DIRECTORS**

Notwithstanding any other provision of these Bylaws, not more than forty-nine percent (49%) of the persons serving on the board may be interested persons. For purposes of this Section, “interested persons” means either:

- (a) Any person currently being compensated by the corporation for services rendered it within the previous twelve (12) months, whether as a full- or part-time officer or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; or
- (b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

### **SECTION 7. PLACE OF MEETINGS**

Meetings shall be held at the principal office of the corporation unless otherwise provided by the board or at such place within or without the State of California which has been designated from time to time by resolution of the Board of Directors. In the absence of such designation, any meeting not held at the principal office of the corporation shall be valid only if held on the written consent of all directors given either before or after the meeting and filed with the Secretary of the corporation or after all board members have been given written notice of the meeting as hereinafter provided for special meetings of the board.

Any meeting, regular or special, may be held by conference telephone, electronic video screen communication, or other communications equipment. Participation in a meeting through use of conference telephone constitutes presence in person at that meeting so long as all directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment (other than conference telephone) constitutes presence in person at that meeting if all of the following apply:

- a) Each director participating in the meeting can communicate with all of the other directors concurrently;
- b) Each director is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation;
- c) The corporation adopts and implements some means of verifying 1) that all persons participating in the meeting are directors of the corporation or are otherwise entitled to participate in the meeting, and 2) that all actions of, or votes by, the board are taken and cast only by directors and not by persons who are not directors.

### **SECTION 8. REGULAR AND ANNUAL MEETINGS**

Regular annual meetings of Directors shall be held on the second Sunday in January at 2 o'clock PM, unless the Board of Directors schedules a different date and/or time in advance.

At every ~~third (3<sup>rd</sup>) annual~~ any meeting of directors, directors ~~shall~~ may be elected by the Board of Directors in accordance with this section. Each candidate for director shall be nominated by at least one director. Each director shall cast up to the same number of votes as the number of directors, and shall not name the same candidate more than once. Candidates shall be ranked according to the number of votes received, the highest ranking filling the vacant seats, *in the order the vacancies occurred*. Voting will be by secret ballot and will be tallied by the Secretary.

### **SECTION 9. SPECIAL MEETINGS**

Special meetings of the Board of Directors may be called by the Chairperson of the board, the President, the Vice President, the Secretary, or by any two directors, and such meetings shall be held at the place, within or without the State of California, designated by the person or persons calling the meeting, and in the absence of such designation, at the principal office of the corporation.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

### **SECTION 10. NOTICE OF MEETINGS**

Regular meetings of the board may be held without notice. Special meetings of the board shall be held upon four (4) days' notice by first-class postal mail or electronic mail, or forty-eight (48) hours' notice delivered personally or by telephone or telegraph. If sent by postal mail, electronic mail or telegraph, the notice shall be deemed to be delivered on its deposit in the mails or on its delivery to the telegraph company. Such notices shall be addressed to each director at his or her address as shown on the books of the corporation. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than twenty-four (24) hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to directors absent from the original meeting if the adjourned meeting is held more than twenty-four (24) hours from the time of the original meeting.

### **SECTION 11. CONTENTS OF NOTICE**

Notice of meetings not herein dispensed with shall specify the place, day and hour of the meeting. The purpose of any board meeting need not be specified in the notice.

### **SECTION 12. WAIVER OF NOTICE AND CONSENT TO HOLDING MEETINGS**

The transactions of any meeting of the board, however called and noticed or wherever held, are as valid as though the meeting had been duly held after proper call and notice, provided a quorum, as hereinafter defined, is present and provided that either before or after the meeting each director not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

### **SECTION 13. QUORUM FOR MEETINGS**

A quorum shall consist of a majority of the Directors.

Except as otherwise provided in these Bylaws or in the Articles of Incorporation of this corporation, or by law, no business shall be considered by the board at any meeting at which a quorum, as hereinafter defined, is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn. However, a majority of the directors present at such meeting may adjourn from time to time until the time fixed for the next regular meeting of the board.

When a meeting is adjourned for lack of a quorum, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted at such meeting, other than by announcement at the meeting at which the adjournment is taken, except as provided in Section 10 of this Article.

The directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of directors from the meeting, provided that any action thereafter taken must be approved by at least a majority of the required quorum for such meeting or such greater percentage as may be required by law, or the Articles of Incorporation or Bylaws of this corporation.

### **SECTION 14. MAJORITY ACTION AS BOARD ACTION**

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Articles of Incorporation or Bylaws of this corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212), approval of contracts or transactions in which a director has a material financial interest (Section 5233) and indemnification of directors (Section 5238e), require a greater percentage or different voting rules for approval of a matter by the board.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

### **SECTION 15. CONDUCT OF MEETINGS**

Meetings of the Board of Directors shall be presided over by the Chairperson of the Board, or, if no such person has been so designated or, in his or her absence, the President of the corporation or, in his or her absence, by the Vice President of the corporation or, in the absence of each of these persons, by a Chairperson chosen by a majority of the directors present at the meeting. The Secretary of the corporation shall act as secretary of all meetings of the board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

Meetings shall be governed by Roberts' Rules of Order, as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation of this corporation, or with provisions of law.

### **SECTION 16. ACTION BY UNANIMOUS WRITTEN CONSENT WITHOUT MEETING**

Any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action. For the purposes of this Section only, "all members of the board" shall not include any "interested director" as defined in Section 5233 of the California Nonprofit Public Benefit Corporation Law. Written consent may be provided by first-class postal mail or by electronic mail. Such written consent or consents shall be filed with the minutes of the proceedings of the board. Such action by written consent shall have the same force and effect as the unanimous vote of the directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by unanimous written consent of the Board of Directors without a meeting and that the Bylaws of this corporation authorize the directors to so act, and such statement shall be prima facie evidence of such authority.

### **SECTION 17. VACANCIES**

Vacancies on the Board of Directors shall exist (1) on the death, resignation or removal of any director, and (2) whenever the number of authorized directors is increased.

The Board of Directors may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Section 5230 and following of the California Nonprofit Public Benefit Corporation Law.

If this corporation has any members, then, if the corporation has less than fifty (50) members, directors may be removed without cause by a majority of all members, or, if the corporation has fifty (50) or more members, by vote of a majority of the votes represented at a membership meeting at which a quorum is present.

If this corporation has no members, directors may be removed without cause by a unanimous vote of the remaining directors then in office.

Any director may resign effective upon giving written notice to the Chairperson of the Board, the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No director may resign if the corporation would then be left without a duly elected director or directors in charge of its affairs, except upon notice to the Attorney General.

Vacancies on the board may be filled by approval of the board or, if the number of directors then in office is less than a quorum, by (1) the unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with this Article of these Bylaws, or (3) a sole remaining director. If this corporation has members, however, vacancies created by the removal of a director may be filled only by the approval of the members. The members, if any, of this corporation may elect a director at any time to fill any vacancy not filled by the directors.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

A person elected to fill a vacancy as provided by this Section shall hold office until the next ~~annual election of the Board of Directors~~ *expiration of the term*, or until his or her death, resignation or removal from office.

### **SECTION 18. NON-LIABILITY OF DIRECTORS**

The directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

### **SECTION 19. INDEMNIFICATION BY CORPORATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS**

To the extent that a person who is, or was, a director, officer, employee or other agent of this corporation has been successful on the merits in defense of any civil, criminal, administrative or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, an agent of the corporation, or has been successful in defense of any claim, issue or matter, therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with such proceedings shall be provided by this corporation but only to the extent allowed by, and in accordance with the requirements of, Section 5238 of the California Nonprofit Public Benefit Corporation Law.

### **SECTION 20. INSURANCE FOR CORPORATE AGENTS**

The Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the corporation (including a director, officer, employee or other agent of the corporation) against any liability other than for violating provisions of law relating to self-dealing (Section 5233 of the California Nonprofit Public Benefit Corporation Law) asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of Section 5238 of the California Nonprofit Public Benefit Corporation Law.

## **ARTICLE 4 OFFICERS**

### **SECTION 1. NUMBER OF OFFICERS**

The officers of the corporation shall be a President, *a Vice President*, a Secretary, and a Chief Financial Officer who shall be designated the Treasurer. The corporation may also have, as determined by the Board of Directors, a Chairperson of the Board, Assistant Secretaries, Assistant Treasurers, or other officers. Any number of offices may be held by the same person except that neither the Secretary nor the Treasurer may serve as the President or Chairperson of the Board.

### **SECTION 2. QUALIFICATION, ELECTION, AND TERM OF OFFICE**

Any person may serve as officer of this corporation. Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

### **SECTION 3. SUBORDINATE OFFICERS**

The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board of Directors.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

### **SECTION 4. REMOVAL AND RESIGNATION**

Any officer may be removed, either with or without cause, by the Board of Directors, at any time. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any officer of the corporation.

### **SECTION 5. VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the President until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the board may or may not be filled as the board shall determine.

### **SECTION 6. DUTIES OF PRESIDENT**

The President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, supervise and control the affairs of the corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation of this corporation, or by these Bylaws, or which may be prescribed from time to time by the Board of Directors. Unless another person is specifically appointed as Chairperson of the Board of Directors, he or she shall preside at all meetings of the Board of Directors. If applicable, the President shall preside at all meetings of the members. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, he or she shall, in the name of the corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

### **SECTION 7. DUTIES OF VICE PRESIDENT**

In the absence of the President, or in the event of his or her inability or refusal to act, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the President. The Vice President shall have other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these Bylaws, or as may be prescribed by the Board of Directors.

### **SECTION 8. DUTIES OF SECRETARY**

The Secretary shall:

- (a) Certify and keep at the principal office of the corporation the original, or a copy of these Bylaws as amended or otherwise altered to date.
- (b) Keep at the principal office of the corporation or at such other place as the board may determine, a book of minutes of all meetings of the directors, and, if applicable, meetings of committees of directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.
- (c) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
- (d) Be custodian of the records and of the seal of the corporation and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the corporation under its seal is authorized by law or these Bylaws.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

- (e) If this corporation has any members, keep at the principal office of the corporation a membership book containing the name and address of each and any members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased.
- (f) Exhibit at all reasonable times to any director of the corporation, or to his or her agent or attorney, on request therefor, the Bylaws, the membership book, and the minutes of the proceedings of the directors of the corporation.
- (g) In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation of this corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

### **SECTION 9. DUTIES OF TREASURER**

Subject to the provisions of these Bylaws relating to the "Execution of Instruments, Deposits and Funds," the Treasurer shall:

- (a) Have charge and custody of, and be responsible for, all funds and securities of the corporation, and deposit all such funds in the name of the corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.
- (b) Receive, and give receipt for, monies due and payable to the corporation from any source whatsoever.
- (c) Disburse, or cause to be disbursed, the funds of the corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.
- (d) Keep and maintain adequate and correct accounts of the corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.
- (e) Exhibit at all reasonable times the books of account and financial records to any director of the corporation, or to his or her agent or attorney, on request therefore.
- (f) Render to the President and directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the corporation.
- (g) Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.
- (h) In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

### **SECTION 10. COMPENSATION**

The salaries of the officers, if any, shall be fixed from time to time by resolution of the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation, provided, however, that such compensation paid a director for serving as an officer of this corporation shall only be allowed if permitted under the provisions of Article 3, Section 6 of these Bylaws. In all cases, any salaries received by officers of this corporation shall be reasonable and given in return for services actually rendered for the corporation which relate to the performance of the charitable or public purposes of this corporation.

## ARTICLE 5 COMMITTEES

### **SECTION 1. EXECUTIVE COMMITTEE**

The Board of Directors may, by a majority vote of directors, designate two (2) or more of its members (who may also be serving as officers of this corporation) to constitute an Executive Committee and delegate to such Committee any of the powers and authority of the board in the management of the business and affairs of the corporation, except with respect to:

- (a) The approval of any action which, under law or the provisions of these Bylaws, requires the approval of the members or of a majority of all of the members.
- (b) The filling of vacancies on the board or on any committee which has the authority of the board.
- (c) The fixing of compensation of the directors for serving on the board or on any committee.
- (d) The amendment or repeal of Bylaws or the adoption of new Bylaws.
- (e) The amendment or repeal or any resolution of the board which by its express terms is not so amendable or repealable.
- (f) The appointment of committees of the board or the members thereof.
- (g) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.
- (h) The approval of any transaction to which this corporation is a party and in which one or more of the directors has a material financial interest, except as expressly provided in Section 5233(d)(3) of the California Nonprofit Public Benefit Corporation Law.

By a majority vote of its members then in office, the board may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two (2) the number of its members, and fill vacancies therein from the members of the board. The Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the board from time to time as the board may require.

### **SECTION 2. OTHER COMMITTEES**

The corporation shall have such other committees as may from time to time be designated by resolution of the Board of Directors. Such other committees may consist of persons who are not also members of the board. These additional committees shall act in an advisory capacity only to the board and shall be clearly titled as "advisory" committees.

### **SECTION 3. MEETINGS AND ACTION OF COMMITTEES**

Meetings and action of committees shall be governed by, noticed, held and taken in accordance with the provisions of these Bylaws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be fixed by resolution of the Board of Directors or by the committee. The time for special meetings of committees may also be fixed by the Board of Directors. The Board of Directors may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these Bylaws.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

### **ARTICLE 6 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

#### ***SECTION 1. EXECUTION OF INSTRUMENTS***

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

#### ***SECTION 2. CHECKS AND NOTES***

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by the Treasurer and countersigned by the President of the corporation.

#### ***SECTION 3. DEPOSITS***

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

#### ***SECTION 4. GIFTS***

The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or device for the charitable or public purposes of this corporation.

### **ARTICLE 7 CORPORATE RECORDS, REPORTS AND SEAL**

#### ***SECTION 1. MAINTENANCE OF CORPORATE RECORDS***

The corporation shall keep at its principal office in the State of California:

- (a) Minutes of all meetings of directors, committees of the board and, if this corporation has members, of all meetings of members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- (b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- (c) A record of its members, if any, indicating their names and addresses and, if applicable, the class of membership held by each member and the termination date of any membership;
- (d) A copy of the corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the members, if any, of the corporation at all reasonable times during office hours.

#### ***SECTION 2. CORPORATE SEAL***

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

### **SECTION 3. DIRECTORS' INSPECTION RIGHTS**

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation.

### **SECTION 4. MEMBERS' INSPECTION RIGHTS**

If this corporation has any members, then each and every member shall have the following inspection rights, for a purpose reasonably related to such person's interest as a member:

- (a) To inspect and copy the record of all members' names, addresses and voting rights, at reasonable times, upon five (5) business days' prior written demand on the corporation, which demand shall state the purpose for which the inspection rights are requested.
- (b) To obtain from the Secretary of the corporation, upon written demand and payment of a reasonable charge, an alphabetized list of the names, addresses and voting rights of those members entitled to vote for the election of directors as of the most recent record date for which the list has been compiled or as of the date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of ten (10) business days after the demand is received or after the date specified therein as of which the list is to be compiled.
- (c) To inspect at any reasonable time the books, records, or minutes of proceedings of the members or of the board or committees of the board, upon written demand on the corporation by the member, for a purpose reasonably related to such person's interests as a member.

### **SECTION 5. RIGHT TO COPY AND MAKE EXTRACTS**

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

### **SECTION 6. ANNUAL REPORT**

The board shall cause an annual report to be furnished not later than one hundred and twenty (120) days after the close of the corporation's fiscal year to all directors of the corporation and, if this corporation has members, to any member who requests it in writing, which report shall contain the following information in appropriate detail:

- (a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- (d) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year;
- (e) Any information required by Section 7 of this Article.

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation.

If this corporation has members, then, if this corporation receives TWENTY-FIVE THOUSAND DOLLARS (\$25,000), or more, in gross revenues or receipts during the fiscal year, this corporation shall automatically send the above annual report to all members, in such manner, at such time, and with such contents, including an accompanying report from independent accountants or certification of a corporate officer, as specified by the above provisions of this Section relating to the annual report.

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

### **SECTION 7. ANNUAL STATEMENT OF SPECIFIC TRANSACTIONS TO MEMBERS**

This corporation shall mail or deliver to all directors and any and all members a statement within one hundred and twenty (120) days after the close of its fiscal year which briefly describes the amount and circumstances of any indemnification or transaction of the following kind:

- (a) Any transaction in which the corporation, or its parent or its subsidiary, was a party, and in which either of the following had a direct or indirect material financial interest:
  - (1) Any director or officer of the corporation, or its parent or subsidiary (a mere common directorship shall not be considered a material financial interest); or
  - (2) Any holder of more than ten percent (10%) of the voting power of the corporation, its parent or its subsidiary.

The above statement need only be provided with respect to a transaction during the previous fiscal year involving more than FIFTY THOUSAND DOLLARS (\$50,000) or which was one of a number of transactions with the same persons involving, in the aggregate, more than FIFTY THOUSAND DOLLARS (\$50,000).

Similarly, the statement need only be provided with respect to indemnifications or advances aggregating more than TEN THOUSAND DOLLARS (\$10,000) paid during the previous fiscal year to any director or officer, except that no such statement need be made if such indemnification was approved by the members pursuant to Section 5238(e)(2) of the California Nonprofit Public Benefit Corporation Law.

Any statement required by this Section shall briefly describe the names of the interested persons involved in such transactions, stating each person's relationship to the corporation, the nature of such person's interest in the transaction and, where practical, the amount of such interest, provided that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

If this corporation has any members and provides all members with an annual report according to the provisions of Section 6 of this Article, then such annual report shall include the information required by this Section.

## **ARTICLE 8 FISCAL YEAR**

### **SECTION 1. FISCAL YEAR OF THE CORPORATION**

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

## **ARTICLE 9 AMENDMENT OF BYLAWS**

### **SECTION 1. AMENDMENT**

Subject to any provision of law applicable to the amendment of Bylaws of public benefit nonprofit corporations, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted as follows:

- (a) Subject to the power of members, if any, to change or repeal these Bylaws under Section 5150 of the Corporations Code, by approval of the Board of Directors unless the Bylaw amendment would materially and adversely affect the rights of members, if any, as to voting or transfer, provided, however, if this corporation has admitted any members, then a Bylaw specifying or changing the fixed number of directors of the corporation, the maximum or minimum number of directors, or changing

## **ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

from a fixed to variable board or vice versa, may not be adopted, amended, or repealed except as provided in subparagraph (b) of this Section; or

(b) By approval of the members, if any, of this corporation.

### **ARTICLE 10 AMENDMENT OF ARTICLES**

#### ***SECTION 1. AMENDMENT OF ARTICLES BEFORE ADMISSION OF MEMBERS***

Before any members have been admitted to the corporation, any amendment of the Articles of Incorporation may be adopted by approval of the Board of Directors.

#### ***SECTION 2. AMENDMENT OF ARTICLES AFTER ADMISSION OF MEMBERS***

After members, if any, have been admitted to the corporation, amendment of the Articles of Incorporation may be adopted by the approval of the Board of Directors and by the approval of the members of this corporation.

#### ***SECTION 3. CERTAIN AMENDMENTS***

Notwithstanding the above sections of this Article, this corporation shall not amend its Articles of Incorporation to alter any statement which appears in the original Articles of Incorporation of the names and addresses of the first directors of this corporation, nor the name and address of its initial agent, except to correct an error in such statement or to delete such statement after the corporation has filed a "Statement by a Domestic Non-Profit Corporation" pursuant to Section 6210 of the California Nonprofit Corporation Law.

### **ARTICLE 11 PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS**

#### ***SECTION 1. PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS***

No member, director, officer, employee, or other person connected with this corporation, or any private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the corporation, provided, however, that this provision shall not prevent payment to any such person of reasonable compensation for services performed for the corporation in effecting any of its public or charitable purposes, provided that such compensation is otherwise permitted by these Bylaws and is fixed by resolution of the Board of Directors; and no such person or persons shall be entitled to share in the distribution of, and shall not receive, any of the corporate assets on dissolution of the corporation. All members, if any, of the corporation shall be deemed to have expressly consented and agreed that on such dissolution or winding up of the affairs of the corporation, whether voluntarily or involuntarily, the assets of the corporation, after all debts have been satisfied, shall be distributed as required by the Articles of Incorporation of this corporation and not otherwise.

### **ARTICLE 12 MEMBERS**

#### ***SECTION 1. DETERMINATION OF MEMBERS***

If this corporation makes no provision for members, then, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this corporation, require approval by a majority of all members or approval by the members, shall only require the approval of the Board of Directors.

**ATTACHMENT B: FINAL AMENDMENTS TO BYLAWS PRIOR TO ADOPTION**

**WRITTEN CONSENT OF DIRECTORS ADOPTING BYLAWS**

We, the undersigned, are all of the persons named as the initial directors in the Articles of Incorporation of the Western Cave Conservancy, a California nonprofit corporation, and, pursuant to the authority granted to the directors by these Bylaws to take action by unanimous written consent without a meeting, consent to, and hereby do, adopt the foregoing Bylaws, consisting of 1 pages, as the Bylaws of this corporation.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Rolf L. Aalbu, PhD, Director

\_\_\_\_\_  
Joel Despain, Director

\_\_\_\_\_  
Robert C. Haye, Director

\_\_\_\_\_  
Jerald J. Johnson, PhD, Director

\_\_\_\_\_  
Marianne L. Russo, Director

**CERTIFICATE**

This is to certify that the foregoing is a true and correct copy of the Bylaws of the corporation named in the title thereto and that such Bylaws were duly adopted by the Board of Directors of said corporation at its inaugural meeting on the date set forth below.

Dated: September 7, 2002

\_\_\_\_\_  
Daniel S. Snyder,  
Secretary

**ATTACHMENT C: EMAIL MOTION BY MARTIN HAYE AND VOTES OF DIRECTORS ON SAME**

Date: Mon, 30 Sep 2002 12:26  
To: [WCC Board]  
From: [Martin Haye]  
Subject: WCC: Accounting basis

Hi all,

At our last meeting I asked for and the board approved a motion that the conservancy should use a cash basis for accounting. Since that time, I've been researching in much more depth exactly what that decision means, and I think we should reconsider.

It's likely that some donors, grant agencies, and/or lenders will want to see our financial statements as being in accordance with the "Generally Accepted Accounting Principles", or GAAP, defined by the Financial Accounting Standards Board. And the GAAP specifically specifies accrual basis accounting. Here's a quote from "Not-for-profit Accounting Made Easy" by Warren Ruppel: "Any auditor's report accompanying financial statements prepared using the cash basis of accounting must include a statement that the financial statements are not prepared in accordance with generally accepted accounting principles."

I know I made accrual accounting seem overly complex, but I believe we'll have to deal with that complexity, and QuickBooks Pro takes care of most of the added work. In addition, the GAAP is extremely complex, but we can deal with that by paying annually for an independent auditor to make adjustments and prepare our financial statements in accordance with GAAP.

The upside is that our financial statements will be more useful in approaching state agencies, banks, and large donors. So how about this:

Martin moves:

Whereas various lenders, grantors, and donors may request that the corporation provide financial reports in accordance with Generally Accepted Accounting Principles (GAAP); and

Whereas the GAAP require that financial reports must be provided using accrual basis accounting; and

Whereas the Board of Directors previously resolved on September 7, 2002 to use the cash basis of accounting;

Resolved therefore that the Board of Directors repeals said resolution, and instead adopts the accrual basis of accounting for bookkeeping and financial reports.

Pending permission of the Chair, I'd like to open this motion for email discussion. If people think it's a good idea, the Chair could ask for an email vote and if all are in favor, the resolution can be adopted by unanimous consent. That way I could begin accrual bookkeeping before the next meeting in January.

Thanks,  
Robert (Martin) Haye  
Treasurer

**ATTACHMENT C: EMAIL MOTION BY MARTIN HAYE AND VOTES OF DIRECTORS ON SAME**

Date: Wed, 02 Oct 2002 09:31:43 -0700  
To: [Marianne Russo]  
From: [Martin Haye]  
Subject: Re: Cave Conservancy

I got Jerry's vote, and also replied to him. Now everyone has voted, but I'm not sure everybody forwarded to everyone else. So I'm including everybody's vote for your reference in this email, in the order I received them.

--Martin

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From: [Rolf Aalbu]  
To: [WCC Board]  
Subject: Re: RE: Accounting basis  
Date: Mon, 30 Sep 2002 22:25:46 -0700

Martin  
I vote aye  
Rolf

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From: [Joel Despain]  
To: [WCC Board]  
Subject: Re: Fwd: RE: Accounting basis  
Date: Tue, 01 Oct 2002 16:04:02 +0000

I vote for the change in accounting procedures

Joel

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From: [Jerald J. Johnson]  
To: [WCC Board]  
Date: Tue, 1 Oct 2002 12:36:23 -0700  
Subject: Re: Fwd: RE: Accounting basis

Hi Martin,

I vote in favor of the change in "Accounting Basis" even though it is more complex it will be better for the Western Cave Conservancy in the long run.

Date Voted: October 1, 2002

Jerald Jay Johnson, Member  
Board of Directors

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**ATTACHMENT C: EMAIL MOTION BY MARTIN HAYE AND VOTES OF DIRECTORS ON SAME**

From: [Marianne Russo]  
To: [WCC Board]  
Date: Tue, 1 Oct 2002 21:25:06 -0700

Marianne Russo here: I vote YES on Martin's motion to use accrual accounting instead of cash accounting.

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Date: Wed, 02 Oct 2002 09:24:09 -0700  
To: [WCC Board]  
From: [Martin Haye]  
Subject: Re: Accounting Basis

My vote is on the accounting motion is "Aye".

--Martin

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