

COASTAL CONSERVANCY

Staff Recommendation
August 14, 2003

Hamilton Wetland Restoration Project

File No. 94-003

Project Manager: Tom Gandesbery

RECOMMENDED ACTION: Consideration and possible Conservancy certification of the Subsequent Environmental Impact Report (SEIR) for the Remedial Action Plan for the Hamilton Airfield Parcel; authorization to accept title to the Airfield Parcel and enter into a Memorandum of Agreement for Implementation of the Remedial Action Plan in conjunction with the Hamilton Wetland Restoration Plan; and authorization to disburse up to \$900,000 for a policy of environmental insurance on the Airfield Parcel.

LOCATION: Novato, Marin County

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following Resolution pursuant to Chapters 4.5 and 6 of Division 21 of the Public Resources Code:

“The State Coastal Conservancy hereby certifies the Subsequent Environmental Impact Report (SEIR) for the Main Airfield Parcel, Record of Decision / Remedial Action Plan (RAP) for the Hamilton Army Airfield, attached to the accompanying staff recommendation as its Exhibit 1; modifies its previous authorizations for implementation of the Hamilton Wetland Restoration Project (HWRP) in accordance with the Subsequent EIR and RAP; and adopts the mitigation monitoring/reporting program described in the accompanying staff recommendation.

The Conservancy further authorizes the acceptance of fee title to the Hamilton Army Airfield and appurtenant easements as a no-cost public discount benefit transfer from the United States Department of the Army, on the terms and conditions set forth below and described in the accompanying staff recommendation. No transfer of title shall occur unless and until all of the following have occurred:

1. The United States Department of the Army has entered into a Memorandum of Agreement with the Conservancy on behalf of both the Based Realignment and Closure (“BRAC”) program, and the Army Corps of Engineers, Civil Works

Program, providing for implementation of the Remedial Action Plan in conjunction with the Hamilton Wetlands Restoration Project (the "Implementation MOA"), on substantially the terms and conditions set forth in Exhibit 2.

2. The Record of Decision / Remedial Action Plan (RAP) has been approved by the California Department of Toxic Substances Control (DTSC) and the San Francisco Bay Regional Water Quality Control Board (RWQCB) and site cleanup requirements have been issued by the RWQCB pursuant to the RAP.
3. The Governor of the State of California has determined, pursuant to Section 120 (h)(3)(C) of the Comprehensive Response, Compensation and Liability Act (CERCLA), that the Hamilton Army Airfield is suitable for "early transfer".
4. The transfer of title has been approved by the Director of General Services pursuant to Government Code Section 11005 and all other relevant provisions of law.
5. All terms and conditions of the 1999/2000 Memorandum of Agreement between the Department of the Army and the Conservancy for the No-Cost Public Benefit Conveyance of the Airfield have been satisfied or waived by the State; provided, however, that the condition requiring the Army to remediate contaminants on the Hamilton Army Airfield to a level suitable for wetland restoration may be satisfied through implementation of the RAP pursuant to provisions of the Implementation MOA and under the oversight of the RWQCB.

The Conservancy hereby further authorizes the disbursement of an amount not to exceed nine hundred thousand dollars (\$900,000) for the purchase of a policy of pollution legal liability insurance on the Hamilton Airfield property, as described in the accompanying staff recommendation."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The Conservancy has independently reviewed and considered the information contained in the SEIR pursuant to its responsibilities under 14 California Code of Regulations Section 15090. The SEIR identifies potential significant impacts from the project in the areas of biological resources, cultural resources, air resources, noise and transportation. With regard to these impacts, the Conservancy finds as follows:
 - (a) Changes have been made in the Hamilton Wetland Restoration Project or its operating conditions to avoid, reduce or mitigate the possible significant environmental effects on biological resources, cultural resources, air quality and noise to a level of insignificance;
 - (b) Such changes are within the responsibility and jurisdiction of the Army and the RWQCB and can and should be adopted by the Army in implementing environmental actions pursuant to the RAP, and by the RWQCB in its adoption of site cleanup requirements; and

(c) The project will result in “significant and unavoidable”, but short term impacts to traffic on State Highways No. 101 and 37. Specific environmental and economic benefits of the Hamilton Wetland Restoration project described in the accompanying staff recommendation outweigh and render acceptable these unavoidable adverse environmental effects because the condition of the property will be permanently improved by remediation contemplated in the RAP, whereas the traffic impacts associated with the remediation (off hauling soil and employee commute traffic) will be minor and temporary.

2. Implementation of the Hamilton Wetland Restoration Project in conjunction with the Remedial Action Plan remains consistent with the purposes and criteria set forth in Chapter 4.5 of Division 21 of the Public Resources Code (Sections 31160-31164), regarding enhancement of San Francisco Bay Area resources; with Chapter 6 of Division 21 (Sections 31251-31270), concerning the enhancement of coastal and bay resources; and with the Conservancy’s authorizations of April 22, 1999 and June 25, 2001.

3. The Hamilton Wetland Restoration Project and actions authorized herein are consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001.

4. Acceptance of title to the Hamilton Airfield Parcel and appurtenant easements for implementation of the Hamilton Wetland Restoration Project is consistent with the authority and mandate of the Conservancy under section 311004.1 of the Public Resources Code to serve as a repository for lands whose reservation is required to meet the policies and objectives of the San Francisco Bay Plan.”

HAMILTON WETLAND RESTORATION PROJECT

File No. 94-003

STAFF DISCUSSION

PROJECT SUMMARY:

Staff is recommending that the Conservancy certify the Hamilton Wetland Restoration Project Subsequent Environmental Impact Report (**SEIR**) for the Remedial Action Plan for the Hamilton Airfield Parcel; authorize actions necessary to accept title to the Hamilton Airfield Parcel as a no-cost discount public benefit transfer from the Department of the Army and as an “early transfer” under provisions of CERCLA; and authorize the disbursement of up to \$900,000 to purchase environmental insurance on the Airfield Parcel.

These actions will further carry out the Conservancy’s responsibilities for implementation of the Hamilton Wetland Restoration Plan, adopted by the Conservancy in 1999 and now being carried out in cooperation with the United States Army Corps of Engineers as a federal ecosystem restoration project. As the nonfederal sponsor of the Hamilton Wetland Restoration project, the Conservancy is responsible to provide all of the land and easements necessary to its implementation. The recommended actions would enable the Conservancy to carry out these responsibilities with respect to the first 630 acres of land needed for the project: the Hamilton Army Airfield.

The Army agreed in 1999 to transfer the Airfield Parcel to the Conservancy upon satisfaction of a number of preconditions to transfer – including the remediation of contaminants on the property to a level “suitable” for wetland restoration. It is now proposed that the property be conveyed prior to completion of all remedial action on the property, as an “early transfer” in accordance with provisions of the Comprehensive Response, Compensation and Liability Act (CERCLA). CERCLA Section 120 (h)(3)(C) permits such “early transfers” only upon a determination by the Governor of the State that the property is suitable for transfer for its intended use; that the intended use is consistent with the protection of human health and the environment; and that sufficient assurances are in place with regard to the release or threatened release of hazardous substances on the property.

Conservancy staff has worked closely with the Army, the State Department of Toxic Substances Control, the San Francisco Bay Regional Water Quality Control Board, Bay Conservation and Development Commission, California Environmental Protection Agency, Resources Agency and others to develop a package of assurances in support of the proposed early transfer. These assurances include a Record of Decision/Remedial Action Plan (RAP) jointly prepared by the Army, DTSC and RWQCB to provide for the remaining remedial actions; the issuance of site cleanup requirements and waste discharge requirements by the RWQCB with regard to implementation of the RAP and the Hamilton Wetland Restoration Project (HWRP); a Memorandum of Agreement between the Conservancy and the Army to allocate responsibilities for implementation of the Remedial Action Plan between the Army BRAC program and the HWRP, as implemented by Army Civil Works in cooperation with the Conservancy; and the purchase of environmental insurance for the protection of the Conservancy as the owner of the Airfield property.

SITE DESCRIPTION:

The area proposed for transfer in 2003 involves 630 acres of the 644-acre Army Airfield parcel. The remaining 14 acres is land that is located under the western flood control levee and will be conveyed separately to the City of Novato. Hamilton Army Airfield, a portion of the former Hamilton Air Force Base, is located along the western edge of San Pablo Bay, Marin County. Most of the airfield lies in an area that was historically salt marsh. This salt marsh habitat was drained when farmers constructed levees to permit agricultural use of the land. The site was later acquired by the Army for use as an airfield, and the runways and support structures were installed and improved over a period of five decades. The area west of the runway was converted to urban use and has since been redeveloped for housing and commercial office use.

As part of its responsibilities as nonfederal sponsor of the HWRP, the Conservancy would acquire fee title or other appropriate interests in the properties shown in Exhibit 3. In addition to the Army Airfield parcel, the HWRP area includes approximately 12.5 acres is the former Navy Ball Field and the approximately 344-acre North Antenna field, currently owned by the State Lands Commission. These properties would be the subject of later transfer actions.

A future phase of the project may involve the Conservancy's 1,600-acre Bel Marin Keys Unit V property, which would expand the restoration project to a total of almost 2,500 acres. All of these properties are included in the project area because, like Hamilton, they are all formerly part of San Francisco Bay and have subsided below sea level. These properties would all be subject to inundation by bay waters. Protecting the site from flooding would otherwise require construction of new flood control levees and structures. The Conservancy will receive an easement to allow the project to flood and place material against the levee ("surcharge").

The site grade is subsided former tidelands and has an elevation ranging from 4 to 7 feet below sea level. The site contains an 8,000-foot runway, aprons, taxiways, aircraft dispersal area, and other airfield support structures as well as several small buildings and a perimeter drainage collection ditch. Only three of the structures - Building 82, the BRAC project management office and the storm-water pump stations - are in use. The Army is temporarily storing soils on the runway relocated from the adjacent property undergoing urban redevelopment.

The majority of the airfield site consists of grasslands and paved surfaces (Map Exhibit 3). The wetland areas within the parcel consist of seasonally flooded areas within the grasslands. Grasses consist of non-native weedy annual grasses and fescue (HWRP EIS/EIR, 1998). Other aquatic areas within the airfield are a 13 acre brackish water pond (referred to as Nina's lake or Borrow area #1) and the perimeter drainage ditches. In the early 1990s, the Army created a 12.5-acre seasonal wetland in the northern panhandle region of the site. This wetland was created as mitigation for loss of jurisdictional wetlands when Landfill 26 (offsite) was remediated and capped. Regional Water Board and other agency staff have concluded that the mitigation wetland has not been successful and that implementation of the Hamilton Project will more than compensate for any loss of habitat within the mitigation wetland. Tidal wetlands on the property occur only along the eastern levee of the site. The legal parcel extends about 100 feet out from the levee; however, the fringing marsh (referred to as the Coastal Salt Marsh) eastward of the levee extends for hundreds of feet beyond this point into San Pablo Bay (Exhibit

3) The fringing marsh is approximately 88 acres in size and is owned by the State Lands Commission. With the exception of the channel breach to the site, the Hamilton project would not conduct work within nor directly affect this area. However, proposed Army BRAC response actions include nine remedial sites located within this area. A number of special status species occur on the site. The majority of those are either raptors that forage in the grasslands of the airfield or salt marsh birds, mammals and fishes that inhabit the fringing marsh, outboard of the eastern levee and outside the boundaries of the parcel (Exhibit 3).

PROJECT HISTORY:

The Hamilton Airfield ceased operations in 1976 and the Army operated the runway under a permit until 1984 when they took title. Runway operations finally ceased in 1994 when the base officially closed. The Department of Defense and General Services Administration, with input from the City of Novato, published a Reuse Plan, dated October 1995. The majority of the facility was planned for residential housing, a portion was designated for commercial and open space development. Portions of the base have been remediated and transferred to the City of Novato for redevelopment (Exhibit 3). In the last decade, about 2000 single-family residences have been built and aircraft hangers have been rehabilitated for commercial use. The RAP and Record of Decision to remediate and transfer the airfield property for open space and wildlife conservation purposes would be the last major federal property transfer action at Hamilton.

The Conservancy assumed the lead in developing a wetland restoration plan for the former Hamilton Army Airfield and adjacent properties, as suggested and supported by the National Oceanic and Atmospheric Administration (NOAA) fisheries restoration staff. In 1996, Conservancy staff joined with staff from the San Francisco Bay Conservation and Development Commission to address the technical aspects of restoration and to better link the project with the efforts of BCDC in finding ways to restore wetland habitat using dredged sediment. In April 1999 the Conservancy adopted the Hamilton Wetlands Restoration plan and certified the EIR/EIS for the project. The Conservancy entered into agreements with the Army Corps of Engineers to study the feasibility and design of the project; these agreements were entered into in 1998 and 1999, respectively. At this time, the Conservancy and Corps prepared an Environmental Impact Statement and Report for the project. The project was certified by the Conservancy in April of 1999 (Exhibit 4). Also in 1999, the Congress of the United States authorized the project under the Ecosystem Restoration authority of the Civil Works program. Subsequently, the project has received federal funding to carry out design development and construction (Also see Financing Section, below).

In 1999, Conservancy entered into a Memorandum of Agreement (MOA) with the Army BRAC program (as the Airfield property owner) providing for the transfer of the Airfield parcel as a no-cost public benefit transfer for wildlife conservation. The MOA contains conditions to transfer, which the Conservancy must address and several that the Army is responsible to fulfill. Most of these conditions have been met. One remaining condition of the MOA is that the property will not be transferred until the contaminants on the Property are remediated "to a level suitable for wetland restoration." The Army has worked intensively with state regulatory agencies (DTSC and RWQCB) to satisfy this condition since that time, and they have jointly prepared the Record

of Decision/Remedial Action Plan to address remaining contaminants of concern on the property. If the early transfer is approved, the RAP will be implemented, and the condition of transfer met, in conjunction with implementation of the wetland restoration project by the Army Corps of Engineers and the Conservancy, under the regulatory oversight of the RWQCB.

In 2001, the Conservancy also authorized and entered into a Project Cooperation Agreement (PCA) with the Army Corps of Engineers for implementation of the wetland restoration project. Under the PCA, the Army will construct the wetland restoration project using suitable dredge material pursuant to federal law and practice. The Conservancy has responsibility to take title to the lands, easements and rights of way necessary to construct the project, and to pay 25% of project costs. In authorizing the Executive Officer to enter into the PCA (see June 25, 2001 Staff Recommendation, attached as Exhibit 5), the Conservancy was aware of the Army's desire to utilize the early transfer provisions of CERCLA and of the possibility that some of the remedial actions could correspond to project features and thus be best undertaken by the Corps and the Conservancy as part of project implementation. Thus, the Conservancy deferred for subsequent action approval of the terms of transfer, and authorization to accept any property interests necessary to implement the project. The current staff recommendation is to accept title to the Airfield Parcel as a no-cost public discount benefit conveyance pursuant to the 1999 MOA, and as an early transfer under the provisions of CERCLA subject to all of the necessary actions and approvals: approval of the RAP; issuance of site cleanup requirements by the San Francisco Bay Regional Water Board; execution of an Implementation MOA; and a determination by the Governor that the property is suitable for early transfer.

PROJECT BACKGROUND:

1. The Hamilton Wetland Restoration Project (HWRP) was analyzed in the Conservancy's 1998 EIS/EIR, certified April of 1999. The project consists of restoring the former airfield and North Antenna Field sites to a combination of tidal and non-tidal (seasonal) wetlands. The project would result in an increase in tidal and seasonal wetlands, a habitat lost throughout the Bay Area due to conversion to agriculture, salt production and other development.
2. **Benefits:** The restored wetlands are intended to provide habitat for endangered species, including the Salt Marsh Harvest Mouse and California Clapper Rail, as well as a wide variety of migratory waterfowl, shorebirds and fishes. The restored site will constitute a major portion of the wetlands surrounding San Pablo Bay. A trail will be built along the southern levee, linking into the existing trail atop the City's flood control levee and then extending northward toward Pacheco Pond (See Site Template, Exhibit 3). A future leg of the trail is anticipated to travel northward around to Bel Marin Keys Boulevard, contingent upon the expansion of the HWRP to include the BMKV property. The trail is anticipated to be a link in the San Francisco Bay Trail and will provide public access to both local residents as well as the general public. The project will result in the beneficial reuse of millions of cubic yards of clean dredged sediment, material that would otherwise be disposed of in the bay and ocean (also see Exhibits 4 and 5). Finally, this project in conjunction with other key restoration efforts could become a link in the chain of bay

wetlands extending from China Camp to Mare Island (See regional map Exhibit 3).

3. **Restoration Concept:** The Hamilton Airfield and surrounding lands (including the Conservancy-owned BMKV property to the north) is land that has subsided below sea level. In most areas of the site, the existing ground surface is between six and seven feet below mean sea level. Salt marshes develop on fine sediment substrates that exist at elevations at or above sea level. Tidal range for salt marshes in San Francisco Bay extend several feet above mean sea level. Therefore, filling the site will greatly increase the rate at which tidal wetlands form on the property. The construction approach involves filling the site with clean dredged sediment to a level slightly under exact marsh plain elevations. Daily tides then transport the remaining six inches to one foot of material onto the surface, as well as organic material and marsh plant seed. Unlike some other restoration efforts, no planting is necessary and no intensive soil or sediment manipulation is required. Seasonal wetland areas will require filling to higher elevations than the tidal areas. The two western “corners” of site were picked as ideal areas for seasonal wetlands (see Exhibit 3, Project Template). These areas do not have potential for tidal scour, therefore, they are an ideal area for placement of fill from other parts of the site that contain residual contaminants in the site soil. In accordance with the Record of Decision / Remedial Action Plan (RAP), a soil management plan will detail the placement location and construction method to carry this out.
4. **LTMS:** The Project is closely tied to the Long Term Management Strategy for the Disposal of Dredged Material in San Francisco Bay (LTMS) and the Oakland Deepening Project. These connections are further discussed in previous Staff Recommendations (Exhibits 4 and 5). The LTMS is a set of policies of the Regional Water Quality Control Board, U.S. EPA, Corps of Engineers, and BCDC that guide those agencies on their regulatory programs. The goal of the LTMS policy is to eventually result in a reduction in-bay disposal equivalent to 20 percent of the historic volume of material in San Francisco Bay. The remaining 80 percent of material would go to the ocean disposal site or be used instead for beneficial uses, such as marsh restoration. The Hamilton project, due to its large size, is critical in fulfilling the restoration goal. The Oakland Deep Draft Navigation Improvement (minus 50 -foot), is a federally authorized navigation project that includes the Hamilton Project as a disposal site for beneficial reuse of suitable dredged material. The Oakland project will supplement the cost of Hamilton site preparation and will provide a significant portion of the dredged sediment necessary to complete the project (see Exhibit 4).
5. **Residual Contamination:** The Army, which is responsible under provisions of the Comprehensive Response, Compensation and Liability Act (CERCLA) for remediation of the property for the protection of human health and the environment, has undertaken a series of remedial actions and investigations over the years in order to meet this obligation prior to transfer of title. The Airfield has been the subject of investigation and remediation by the Army’s BRAC program since the mid 1990s. Under the BRAC program, the Army follows the process outlined in the CERCLA / Superfund guidance, an effort that has generated over 17,000 data points and cost tens of millions of dollars. Contaminants found include petroleum and its combustion products, heavy metals, PCBs and pesticides. In addition to these pollutant “releases”, the Army also identified the

presence of low levels of DDT pesticide across the entire site. The plan to remediate the remaining sites of contamination is contained in the RAP that was drafted jointly by the Army and state regulatory agencies and that is analyzed in the Conservancy's SEIR (see discussion below).

6. **RAP:** The RAP was circulated for public comment by the Army and by the Conservancy as part of the CEQA process and will be approved by the Department of Toxic Substances Control and by the Regional Water Quality Control Board at its public hearing on August 20, 2003. The RAP identifies specific sites at which CERCLA-regulated contamination remains, and requires either excavation and off-site disposal or management in-site with at least three feet of stable cover. The RAP also addresses the problems of area-wide pesticides existing on the property (DDT and DDT-breakdown products) and of a family of byproducts of petroleum breakdown and combustion called polynuclear aromatic hydrocarbons or PAHs, which the Army BRAC program contends are not governed by provisions of CERCLA and hence are not its responsibility. Instead, the HWRP, as a function of filling the site with clean dredged sediment, will address these concerns by providing at least three feet of cover over all areas in which sensitive species could be exposed to these contaminants.

The RAP also requires stable cover to be maintained over areas where the soil contains residual CERCLA contaminants that BRAC acknowledges as its responsibility. In these areas, the RAP remedy corresponds to the wetland restoration project concept (placement of suitable dredge material to raise site elevations) and can be provided as part of project implementation. If the HWRP design and geomorphic analysis indicates that it stable cover can not be reasonably assured, then the soil excavation will be undertaken and funded by the BRAC program at no cost to the wetland project.

7. **Implementation MOA:** Conservancy staff has negotiated and drafted a Memorandum of Agreement (Implementation MOA) with the Department of the Army regarding implementation of the RAP in conjunction with the HWRP in the event of early transfer and the apportionment of remediation costs and responsibilities between the BRAC and Civil Works programs (Exhibit 2). The agreement specifically allocates responsibilities between the Base Closure and Realignment (BRAC) program, on the one hand; and the Army Corps of Engineers, Civil Works Program, on the other. In general, the BRAC program is responsible to remediate chemical contaminant releases caused by the Army, both on the airfield and in the Coastal Salt Marsh bordering the site. The Civil Works program, administered by the Army Corps of Engineers, will address some contaminant issues through the implementation of the wetland project. These contamination issues, which include area-wide DDT contamination in site soil, will be dealt with through the placement of dredge material in a manner that meets performance criteria of the RAP as part of the wetland restoration project. Because the Conservancy pays 25% of all Civil Works project costs, the Conservancy has an interest in the resolution of BRAC and non-BRAC responsibilities. The Implementation MOA is also intend to provide additional assurances to the Conservancy, as the property owner and thus a potentially responsible party with regard to contamination on the property, that the RAP will be implemented by the Army, and that the HWRP will be carried out by the Civil Works Program in accordance with relevant RAP requirements. During remediation and project

implementation, the project will be subject to land use restrictions prohibiting residential or other incompatible uses; requiring regulatory approvals of grading plans and waste discharge requirements with regard to any excavations; and authorizing access to state and federal agencies for remediation purposes. The Corps of Engineers will, pursuant to the PCA, be responsible for construction of the wetland project and implementation of a 13-year monitoring and adaptive management program in cooperation with the Conservancy (and cost shared 75%/25%); following the monitoring and adaptive management period, the Conservancy will have sole responsibility to maintain the property.

PROJECT DESCRIPTION

Staff is now recommending that the Conservancy take the following actions:

Certify SEIR for the Remedial Action Plan

The Conservancy is acting as the lead agency for the preparation of a Subsequent Environmental Impact Report analyzing the RAP jointly prepared and adopted by the Army, DTSC and RWQCB for the remediation of contaminants on the Airfield Parcel. The SEIR modifies the HWRP and its original EIR/EIS by analyzing specific information that was not available when the original EIR was certified as complete (i.e., with regard to contaminants remaining on the property and measures proposed for their remediation), and changes in the conditions under which the project would be undertaken, which could involve significant new environmental effects. The specific environmental effects and mitigation measures are more fully described in the “Compliance with CEQA” section of this Staff Recommendation.

The wetland restoration plan that is the subject of the original EIR/EIS has not been significantly altered by the RAP or by the mitigation measures adopted for the RAP.

Certification of the SEIR is necessary to support the remaining Conservancy actions to accept title and carry out the project, however. The SEIR has also been utilized by DTSC and the RWQCB to make the necessary findings required for their approval of the RAP.

Authorize Acceptance of Fee Title to Airfield Parcel

Staff is recommending that the Conservancy authorize acceptance of fee title to the Airfield Parcel on specified terms and conditions. As contemplated in prior Conservancy actions and in the MOA between the Army and the Conservancy, the transfer would be a no-cost public benefit transfer for wildlife conservation purposes, pursuant to 16 U.S.C. Section 667b. In accordance with provisions of that federal statute, the property can only be used for wildlife conservation purposes; any other use would result in a reversion of title to the United States. Also as required under provisions of that statute, the US Fish and Wildlife Service has provided a letter in support of transfer to the Coastal Conservancy. All conditions to transfer set forth in the 1999 MOA between the Conservancy and the Army would also have to be satisfied prior to transfer. For the most part, these conditions have already been met or would be met pursuant to the deed and other documents or actions effecting the transfer. However, the Army is seeking to carry out the transfer prior to the complete remediation of contaminants on the property, and this condition would have to be met as part of the RAP implementation in the event of an early transfer, as described below.

Pursuant to provisions of law applicable to the acquisition of property by state agencies, the transfer would also have to be approved by the Director of General Services. Conservancy staff has been advised by the Departments of General Services and Finance that approval by the State Public Works Board may also be required.

Early Transfer

Staff is also recommending that the Conservancy agree to accept title as an “early transfer”, pursuant to Section 120(h)(3) of CERCLA, provided that certain conditions are met.

CERCLA generally requires that prior to transfer of federal property, a federal agency (such as the Army) must warrant to the transferee that all remedial action necessary to protect human health and the environment with respect to hazardous substances on the property has been taken; and that any additional remedial action found to be necessary after the date of transfer with respect to hazardous substances existing during the period of federal ownership will be conducted by the United States. In an early transfer, however, the federal agency may defer the first of these covenants (and thus delay the completion of all necessary remedial action) until a date following the transfer, but only if the Governor of the State in which the property is located determines that the property is suitable for such transfer. The Governor’s determination of suitability for transfer must be based on a finding that:

- i. the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;
- ii. the deed or other agreement proposed to govern the transfer contains certain assurances (specified by 16 USC §9620(h)(3)(C)(ii) and described below);
- iii. the federal agency has provided notice and an opportunity for public comment on the early transfer; and
- iv. deferral of the covenant and transfer of the property will not substantially delay any necessary response action at the property.

Thus, acceptance of title to the Airfield Parcel as an early transfer would be expressly contingent upon the Governor’s determination pursuant to the statute.

The Remedial Action Plan (RAP) prepared by the Army and state regulatory agencies describes the remaining remedial actions necessary to make the property suitable for wetland restoration and wildlife conservation use. Early transfer is necessary at least in the case of contaminants existing in the salt marsh outboard of the existing bayward levee, and under the levee itself, because of sensitive wetland habitats in the area, and because the levee should not be breached until the interior levees and peninsulas have been built. There may also be remedial activities that directly correspond to features of the project, and that can best be undertaken by the Corps and the Conservancy as part of project construction, specifically by providing cover material that is also called for in the wetland project design. Finally, the wetland project can provide the three feet of stable cover that constitutes the RAP’s recommended action with regard to areawide pesticides and PAHs, thus avoiding continuing conflict between the Army and state regulatory authorities regarding the extent of the Army’s obligation for these contaminants under CERCLA and resolving the actual contaminant issue on site.

Assurances Package

In determining whether property is suitable for early transfer under CERCLA, the Governor is required to find that the deed or other agreement proposed to govern the transfer contains certain “response action assurances” with respect to the release of hazardous substances for which a federal agency is responsible under CERCLA. These response action assurances must provide:

- (1) any necessary restrictions on the use of the property to ensure the protection of human health and the environment;
- (2) necessary restrictions on the use of the property to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;
- (3) all necessary response actions will be taken and identify the schedules for their investigation and completion as approved by the appropriate regulatory agency; and
- (4) that the federal agency will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

State and federal agencies have coordinated various regulatory processes and authorities in an effort to assemble a “package” of actions and documents that provide these necessary assurances. The draft deed for transfer of the property includes covenants and restrictions limiting the property to wildlife conservation uses and expressly prohibiting residential use; reserving access rights for remedial purposes; and containing other covenants required under CERCLA. Specifically, the United States assumes responsibility for all response actions necessary to protect human health and the environment with respect to hazardous substances remaining on the property as a result of storage, release or disposal prior to conveyance, including any remedial action found to be necessary after the date of conveyance. The deed also references the RAP and the Army’s “Finding of Suitability for Early Transfer” or FOSET, and provides other notices and disclosures regarding the condition of the property. The United States further agrees to indemnify the State against claims and other liabilities for personal injury or property damage that results from the release or threatened release of contaminants as a result of federal activities on the property.

The package of assurances that state agencies have submitted to the Governor in support of his possible determination and findings contemplates additional conditions to the transfer. Specifically, the RAP would have to be approved by DTSC and the RWQCB, and both the Army BRAC program and Army Corps of Civil Works Program would enter into a further Memorandum of Agreement with the Conservancy concerning implementation of the RAP in conjunction with implementation of the HWRP. The Implementation MOA apportions remediation costs and responsibilities between the BRAC and Civil Works programs and includes the Army’s commitment to submit a

budget request to the Director of the Office of management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

It is further contemplated that the RWQCB would adopt an order, referred to as Site Cleanup Requirements (SCR) directing the Army to implement the RAP (Exhibit 6). Implementation of the wetland restoration project, including the placement of dredge material in a manner that satisfies RAP performance criteria, would also be subject to waste discharge requirements to be issued by the RWQCB.

3. Purchase of Environmental Insurance

As part of the “package of assurances” being considered by the Governor, Conservancy staff has also proposed to purchase a policy of pollution legal liability insurance on the property. The insurance coverage would be for contaminant liabilities associated with construction of the project and on-going ownership of the site during the construction and monitoring periods. The cost of coverage is currently estimated to range from about \$383,000 to \$742,000 for a 10-year policy. Fifteen and twenty year terms are available but are not currently the industry standard, with the inherent cost implications. Our broker, Marsh Insurance Brokerage, has advised Conservancy staff that rather than apply for a longer term policy, the Conservancy should consider purchasing a 10-year policy and then reassessing the need for insurance at sometime in the future (e.g. Year 8). The requested authorization of \$900,000 represents the upper range of anticipated cost, based on recent quotes (Exhibit 7). A policy would be purchased once the remaining transfer issues have been completed.

Additional discussion of liability issues and insurance is also found in counsel’s legal analysis provided to the Conservancy at its April 24, 2004 meeting.

PROJECT FINANCING:

This Action

Insurance Premium –Estimate upper limit	\$900,000
Property Acquisition	No Cost

Prior Estimates (April 1999 and August 2001 Board Actions)

Hamilton Cost Summary (cost – in millions)

Non-Federal Share 1998 Estimate - Conservancy ¹	\$13.8
Total Project Cost - Corps of Engineers 1998 Estimate	\$55.2
Cost of Project to date:	9.3
Cost to the Conservancy to date:	1.9
Cal-Fed Grant	0.896

----- *Revised Cost Estimates* project)² -----

Non-Federal Share – Conservancy	\$13.7
Total Hamilton-Only Cost (authorized project: Airfield and NAF site)	\$54.7

Total Project Cost:

<u>Combined project cost est. (Hamilton and BMKV)³</u>	\$188.3
Combined project share –Conservancy	47.1
Lands Credit -Conservancy ⁴	19.1
<u>Net Cost to Conservancy for Combined Project⁵</u>	28.0

¹ Project Cooperation Agreement authorized by Conservancy June 2001. Source is General Fund. Has been used to fund CEQA and environmental assessment consulting.

² See Post Authorization Changes Appendix A, Table A-1 General Reevaluation Report, April 2003

³ Corps of Engineers, Bel Marin Keys Unit V Expansion of the Hamilton Wetland Restoration Project, General Reevaluation Report April 2003

⁴ subject to a re-appraisal at the time of re-compensation, same as prior, value may change affecting net cost

⁵ same as previous note

The Army parcel would be acquired through a no-cost public benefit conveyance subject to the Conservancy's authorization. Funding for design and construction of the project has been appropriated to the Conservancy specifically for use in this project; this source of funding has been committed toward the Conservancy's share of project costs in the PCA as well as funding several minor consulting contracts. The Conservancy's General Fund appropriation, \$13.8 million, was based on the 1998 estimated total project cost of \$55,238,123.00.

Funding is provided to the Corps of Engineers on an annual basis over the period of project design and construction phases, as well as a 13-year monitoring and adaptive management period. The Project Cooperation Agreement (PCA) between the Conservancy and Corps of Engineers, approved in June 2001 and signed in April of 2002, encumbered the remaining Hamilton Wetlands appropriation, totaling \$12.85 million (Exhibit 5). An additional \$1.02 million was also reserved to secure the entire non-federal cost share of \$13.7 million. Federal funds are annually appropriated and have been received by the Corp at a "capability" level of \$8 million. This level may be increased or decreased depending upon the project need and Congressional budgetary actions.

The revised cost estimates shown above are taken from the Corps's General Reevaluation Report (GRR) for the combined project. Note that these estimates are not calculated in the same fashion as "government estimates" used in the federal contracting process. Rather, the estimates are used to establish the total cost authorized by Congress (called a "Section 902 limit"). With respect to the original 1998 project cost estimate, the Corps recalculated the costs using a more sophisticated analysis, including new factors for sediment offloading and a consideration of the project's integration with the total Corps dredging program. While the overall project increases in cost, the proportional cost goes down due to an economy of scale. Also, with the addition of the BMK property, the Conservancy will receive a land credit toward the total project cost, thereby leveraging its investment in the property. So for the combined project, the total cash contribution from the Conservancy would be \$28.0 million vs. \$13.7 million for the Hamilton project alone, an about two fold cost increase. However the total project acreage would be increased 2.6 fold⁶. Also note that Exhibit 9 of this Recommendation includes a status report on the BMK addition.

Funds for the purchase of environmental insurance will likely be derived from the Cal. Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Bond Act of 2002 (Proposition 40) which are allocated for the San Francisco Bay Conservancy Program for acquisition, deployment, rehabilitation, restoration and protection of land and water resources.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

Implementation of the proposed project would advance the purposes of Division 21 of the Public Resources Code, by implementing a resource enhancement plan approved pursuant to Chapter 6, and by protecting and enhancing natural habitats within the San Francisco Bay Area pursuant to Chapter 4.5.

⁶ this from total project acreage, actual restored areas would be less due to inclusion of levee footprints, existing salt perimeter marshes etc.

In its action to adopt the Hamilton Wetland Restoration Plan on April 22, 1999, the Conservancy found the project to be consistent with Chapter 6 of Division 21, including specifically sections 31252, 31258.5, and 31263.5. The Conservancy also determined the Hamilton Wetland Restoration Project to be consistent with Chapter 4.5 of the Division 21, establishing the San Francisco Bay Area Conservancy Program to address resource and recreational goals of the San Francisco Bay Area, in its action of June 25, 2001, pursuant to which the Conservancy has entered into a Project Cooperation Agreement with the Army Corps of Engineers for implementation of the wetland restoration project and authorized the disbursement of \$13.8 million to pay the nonfederal share of project costs. The project remains consistent with the authority, purposes and objectives of Chapter 4.5 and Chapter 6 of Division 21.

Acceptance of title to the Airfield property is necessary to implementation of the project and is consistent with the authority and mandate of the Conservancy under Public Resources Code Section 31104.1 to serve as a repository of lands whose reservation is required to meet the policies and objectives of the San Francisco Bay Plan as implemented by the San Francisco Bay Conservation and Development Commission pursuant to Title 7.2 (commencing with Section 66600) of the Government Code. (See “CONSISTENCY WITH BAY PLAN POLICIES.”) Pursuant to this authority, the Conservancy may accept dedication of fee title, easements, or other interests in lands. Acceptance of title in an early transfer will also require action by the Governor of the State of California and approval by the State’s Director of General Services, following action by the State Public Works Board.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

In its action on June 25, 2001, the Conservancy found the Hamilton Wetland Restoration Project to be consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001. Acceptance of the early transfer and implementation of the project in conjunction with the Remedial Action Plan would be consistent with Project Selection Criteria and Guidelines in the same way, and also in the following respects:

Required Criteria

Promotion of the Conservancy’s statutory programs and purposes: See the “Consistency with Conservancy’s Enabling Legislation” section above.

Consistency with purposes of the funding source: Funding is consistent with the goals for implementation of the San Francisco Bay Area Conservancy Program.

Support of the public: No public input has been received related to this transfer. General project support and concern was received when the EIS/EIR was drafted in 1998.

Need: Under provisions of the PCA and conditions of the Conservancy’s June 2001 action, the Corps cannot begin construction of the project until the Conservancy takes title to the necessary property interests. Acquisition of these interests is one of the Conservancy’s obligations as the nonfederal project sponsor; no other entity can provide the lands and easements needed for project construction. The Army BRAC program, which is responsible for remediation of contaminants on the property, is unwilling and claims that it lacks legal authority to address

residual pesticides (DDTs) and polynuclear aromatic hydrocarbon (PAH) contamination on the property. However, these problems can be addressed in manner protective of sensitive species through the implementation of this project.

Additional Criteria

Urgency: The Army is seeking to complete the transfer of the property during this federal fiscal year, ending September 30. If the Conservancy does not act now, the Army may postpone the completion of remedial work and/or seek other transferees. The Army BRAC program does not expect to have funds available to carry out the remediation in future fiscal years, so it is important to act now. Construction and implementation of the HWRP cannot occur until the Conservancy has obtained title to the property. Delays in the implementation of the HWRP may mean that the site cannot accept dredged sediment from the Port of Oakland – Corps of Engineers minus 50-foot navigation improvement project and other San Francisco Bay dredging projects (also see discussion of Navigation Dredging in Exhibit 4), and further delay in the implementation of in-bay disposal reductions contemplated in the LTMS.

Resolution of more than one issue: These actions would resolve closure issues on a former military facility while protecting and enhancing resources of San Francisco Bay by expanding wetlands, and using the wetland restoration projects itself as a means of addressing area-wide contaminant issues that could otherwise affect future species inhabiting the wetlands.

Conflict resolution: Completion of the Remedial Action Plan (RAP), and its implementation as proposed in this recommendation, resolves longstanding conflicts between the Army and state regulatory authorities in a manner that promotes the restoration of wetlands and beneficial reuse of dredge materials that would otherwise be disposed of in the bay or ocean.

Innovation: This project has several innovative features that make it of interest to restoration advocates worldwide. First, the project uses dredged sediment as fill and as the future marsh surface. Secondly, the project will result in tidal and non-tidal wetlands on a large scale, and the site is situated within the San Pablo Bay margin where numerous other wetland restoration efforts are underway. Lastly, the project is constructed on a former military airfield with residual soil contamination. The fill material, due to its physical properties and stability, greatly lessens the threat posed by the contaminant residues toward the future wetland inhabitants, thereby doing double duty as both a construction fill material and a remedial solution.

Readiness: Through a concerted effort, the BRAC program has reached agreement with state and federal regulatory and resource trustee agencies on a final remediation plan (RAP) for the site. Therefore, the next step is for the project to acquire the land and begin construction. The Army is ready and anxious to transfer title in this federal fiscal year. The Corps of Engineers is currently conducting field tests and demolishing buildings on site. Further project design and permitting is anticipated for the fall of 2003 with major construction slated for spring and summer of 2004. Therefore it is imperative that the Conservancy acquire the land in order to provide access to the Corps to start construction of the project

Realization of prior Conservancy goals: See “Project History” and “Strategic Plan” Sections above.

Cooperation: The package of assurances developed to support early transfer of the property to

the Conservancy involved extensive and detailed cooperation among the Conservancy, the Army (both BRAC and Civil Works programs), the State Department of Toxics Substances Control, the San Francisco Bay Regional Water Quality Control Board, Bay Conservation and Development Commission, California Environmental Protection Agency, Resources Agency and others. The Conservancy will work closely with the Army and RWQCB to make sure that the remediation is completed and restoration objectives for the property achieved.

CONSISTENCY WITH SAN FRANCISCO BAY PLAN: The project will assist in the implementation of BCDC's San Francisco Bay Plan which contains policies to protect and restore marshes and mudflats (pages 9 and 1012): "Marshes and mudflats should be maintained to the fullest possible extent to conserve fish and wildlife and to abate air and water pollution." And ". . . the quality of existing marshes should be improved by appropriate measures wherever possible." And Fish and Wildlife policy (Page 7, Policy 1) ". . . to the greatest extent possible, the remaining marshes and mudflats around the Bay . . . should be maintained." The project would also be consistent with the Bay Plan dredging policies (pages 21-22) that promote the use of dredged material as a resource and specifically policy 4 that states: "To ensure adequate capacity for necessary Bay dredging projects and to protect Bay natural resources, acceptable non-tidal disposal sites should be secured and designated. Further, disposal projects should maximize use of dredged material as a resource, such as creating, enhancing, or restoring tidal and managed wetlands. . . ."

The Bay Plan identifies the Hamilton Airfield and coastal salt marsh area as high-priority areas for wildlife use. The plan was amended (Bay Plan Amendment No. 1-95) to change the airport priority use designation and policy note for the former Hamilton airfield parcel. The plan contains the following policy:

Develop comprehensive wetlands habitat plan and long-term management program for restoring and enhancing wetlands habitat in diked former tidal wetlands. Dredged materials should be used whenever feasible and environmentally acceptable to facilitate wetlands restoration.

Implementation of the Hamilton Wetland Restoration Project, and the acceptance of property interests necessary to the project, is necessary to carry out that Bay Plan policy.

CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 5 Objective A**, the project would preserve, restore and enhance coastal wetlands critical to the San Francisco Bay region, both by acquiring interests in land and by facilitating the resolution of conflicts that impede efforts to conserve resources.

Consistent with **Goal 10 Objectives A and B** of the Conservancy's Strategic Plan, the proposed project will protect, restore and enhance natural habitats and connecting corridors, watersheds, and other open space resources of regional importance.

COMPLIANCE WITH CEQA:

The Hamilton Wetland Restoration Project was analyzed in a Environmental Impact Statement and Report, published December of 1998 and certified by the Conservancy in April 1999.

In accordance with the California Environmental Quality Act (CEQA), the Conservancy has undertaken an analysis of the environmental impacts resulting from the implementation of the Record of Decision /Remedial Action Plan (RAP/ROD). A Subsequent Environmental Impact Report (Exhibit 1) was prepared and circulated concurrently with the public comment period for the RAP/ROD. The analysis found that several significant environmental impacts could result but that all but one of these impacts can be reduced to a level that is less than significant by monitoring construction activities to nesting species of significance or any buried cultural resources discovered in the course of construction; by incorporating noise-reducing construction practices; and by controlling fugitive dust emissions. Management of the remedial actions and construction activities is the responsibility of the Army and outside the jurisdiction and direct control of the Conservancy. However, all of the mitigation measures were developed in consultation with the Army, DTSC, and RWQCB, and will be incorporated in site cleanup requirements adopted by the RWQCB to ensure that they are carried out. Staff will monitor implementation of the remedial actions and obtain reports of compliance from the RWQCB.

Analysis in the SEIR for implementation of the RAP indicates that the project has the potential for significant and unavoidable impacts to traffic on state highways 101 and 37. The project seeks to avoid but cannot mitigate these impacts to a less-than-significant level, because the freeways adjacent to the site are at full capacity. Project scheduling could lessen the impacts to local traffic patterns, and staff will continue to work with the Army, the City of Novato and Caltrans to find ways to mitigate this impact. As with the impacts for which mitigation is proposed, however, management of the remedial actions is the responsibility of the Army BRAC program and outside the jurisdiction and direct control of the Conservancy. Such unavoidable adverse environmental impacts may be considered acceptable under provisions of CEQA where the lead agency finds that the project's specific economic, legal, social, technological or other benefits outweigh the unavoidable adverse impacts. In view of tremendous benefits of remediating contaminants on the property and implementing the wetland restoration project, staff is recommending that the Conservancy make such findings – known as a “Statement of Overriding Considerations” - with respect to this impact. Remediation of contaminants on the property is necessary to protect public health and the environment. Implementation of the RAP in conjunction with the Hamilton Wetland Restoration Project will permit and facilitate the use of cover in place where removal (and resulting additional traffic impacts) might otherwise be required. The condition of the property will be permanently improved by remediation contemplated in the RAP, whereas the traffic impacts associated with the remediation (off hauling soil and employee commute traffic) will be minor and temporary.

Staff have received one comment letter on the SEIR. The letter, from Friends of Novato Creek is focused on the adequacy of the RAP and not the actually the environmental analysis (Exhibit 8). Because the RAP is a joint document, the responses to the letter will be prepared by the Army,

DTSC and the RWQCB, with input from Conservancy and Corps staff.

Staff will file a Notice of Determination upon authorization of the Conservancy.

LIST OF EXHIBITS

1. Subsequent Environmental Impact Report, Main Airfield Parcel, Record of Decision/Remedial Action Plan (SEIR)
2. Implementation Memorandum of Agreement [DRAFT HOLD]
3. Maps (3)
4. Staff Recommendation, April 22, 1999
5. Staff Recommendation, June 25, 2001
6. Tentative Site Cleanup Requirements
7. Insurance Coverage Quotes
8. Comment Letter on SEIR
9. Status Report for Bel Marin Keys Unit V Authorization