

COASTAL CONSERVANCY
Staff Recommendation
June 29, 2006

BATIQUITOS LAGOON STATE ECOLOGICAL RESERVE
Murphy and Mitsuuchi Property Acquisitions
Pre-Acquisition Expenses

File No. 06-057
Project Manager: Deborah Ruddock

RECOMMENDED ACTION: Authorization to disburse up to \$50,000 to the Batiquitos Lagoon Foundation for acquisition expenses associated with future acquisitions of a portion of the 17.09 acre Murphy property and the entire 18.11 acre Mitsuuchi property, adjacent to the Batiquitos Lagoon State Ecological Reserve.

LOCATION: City of Carlsbad, County of San Diego (Exhibit 1)

PROGRAM CATEGORY: Resource Enhancement and Public Access

EXHIBITS

Exhibit 1: Project Location and Site Map

Exhibit 2: Carlsbad Mitigation Fund

Exhibit 3: Mitsuuchi Letter

Exhibit 4: Letters of Support

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31251-31270 and 31400-31409 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed fifty thousand dollars (\$50,000) to the Batiquitos Lagoon Foundation (“BLF”), a non-profit organization, for acquisition expenses associated with possible future acquisitions of the Murphy and Mitsuuchi properties, San Diego County Assessors Parcel Nos. 216-121-22 and 216-121-17, adjacent to the Batiquitos Lagoon, for natural resource and wildlife habitat restoration and public access purposes. This authorization is subject to the requirement that, prior to the disbursement of any Conservancy funds for the project, the BLF shall submit for the review and approval of the Executive Officer of the Conservancy a final work plan (including the names of any subcontractors to be used in the completion of the project), and a project schedule and budget.”

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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 proposed project is consistent with Chapter 6 of Division 21 of the Public Resources Code (Sections 31251-31270), with respect to coastal resource enhancement, and Chapter 9 of Division 21 of the Public Resources Code (Sections 31400-31409), with respect to public access.
2. The proposed project is consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 21, 2001.
3. The BLF is a nonprofit organization existing under the provisions of Section 501(c)(3) of the U.S. Internal Revenue Code whose purposes are consistent with Division 21 of the Public Resources Code.”

PROJECT SUMMARY:

Under the proposed authorization, funds not to exceed \$50,000 would be granted to the Batiquitos Lagoon Foundation (“BLF”) for real estate transaction costs associated with future acquisitions of a portion of the 17.09-acre Murphy property and the entire 18.11-acre Mitsuuchi property (Exhibit 1). Funded activities would include negotiation and preparation of property documents including appraisals, title reports, and Phase 1 environmental assessments. The City of Carlsbad has agreed to pay for wetland delineation for the Murphy property for the purposes of determining subdivision boundaries and the location of a proposed public access trail extension. The estimated cost for this portion of the project is \$3,000. Once pre-acquisition activities are complete, the BLF anticipates seeking additional Conservancy assistance to purchase the property and potentially to plan and construct new trail segments.

The funding source for the project would be the Carlsbad Agricultural Mitigation Fee Statutory Program account administered by the Coastal Conservancy pursuant to Section 30107.5 of the Coastal Act. The account is composed of conversion fees paid by developers of agricultural land in Carlsbad, and may be spent for projects or activities consistent with the priority-based list of allowed fund uses contained in Section 30107.5 (Exhibit 2). The proposed project is consistent with priority number 1, “restoration of natural resources and wildlife habitat in Batiquitos Lagoon”, as it will facilitate acquisition of the Murphy and Mitsuuchi properties and permit restoration activities to protect the ecological integrity of the lagoon. It is also consistent with priority number 4, which permits use of the funds for any “project or activity benefiting or enhancing the use of natural resources ... in the coastal zone in the City of Carlsbad that is provided for in the local coastal program of the City of Carlsbad.” Carlsbad’s local coastal program (LCP) recognizes the lagoon’s status as an ecological reserve and commits to protecting its sensitive biological habitats and water quality. It also calls for an open space buffer around the lagoon in which the only permitted use would be for a public access trail system.

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The Murphy and Mitsuuchi properties are located at the Batiquitos Lagoon immediately adjacent to an existing State Ecological Reserve. The coastal lagoon is the site of a \$55 million tidal restoration and habitat enhancement project that was completed in 1996. The BLF and the City of Carlsbad seek to acquire these properties for habitat protection and enhancement, and for public access.

The proposed acquisition areas contain wetland and upland habitat that will serve as habitat buffers to the lagoon. Purchase of the properties will facilitate control of non-native species and erosion that threaten existing ecological resources.

The proposed project also will facilitate improved public access at the coastal lagoon. The Aviara Trail, an approximately two-mile improved public access hiking trail located along the north shore of the east basin of the lagoon, is the only improved and maintained trail at the lagoon. It originated as a city maintenance road over a sewer line easement that the public has used for recreational access for many years. This same maintenance road/easement continues through the Murphy and Mitsuuchi properties. However, a fence obstructs general public access to and through the Murphy property. City maintenance crews must obtain the property owner's permission to enter. Purchase of the Mitsuuchi property and a portion of the Murphy property will allow for continuous and improved public access along the lagoon's north shore and improves the prospect of connecting the Aviara Trail with a municipal inland trail system.

The BLF expects to acquire title to the properties from the willing sellers and to convey the properties either to the State Lands Commission ("SLC"), which owns the reserve property, or to the City of Carlsbad. Management responsibilities of the properties will be determined by a memorandum of understanding developed among the BLF, the City of Carlsbad, and the Department of Fish and Game ("Department"), which manages reserve lands. Following acquisition, and based on the results of the City funded wetland delineation, a public trail route different from the existing sewer maintenance road may need to be identified and constructed.

The non-profit BLF has been involved with restoration and preservation at the lagoon since 1982. The BLF is a volunteer-driven organization that lacks funds to pursue acquisition. Several private properties surrounding the lagoon have been lost to development over the years. The BLF now has the opportunity to negotiate the acquisition of two key properties, but needs funding for pre-acquisition actions.

The Department and the City of Carlsbad support the project (Exhibit 4).

Site Description:

Batiquitos Lagoon is a 600-acre tidal lagoon located at the terminus of the San Marcos and Encinitas Creeks, on the coastal plain between the cities of Carlsbad and Encinitas. It is one of six coastal lagoons in San Diego County, which is significant in a state where 98% of coastal wetlands have been lost. The Coastal Act identifies the lagoon as one of the State's 19 most valuable wetlands and it is included as a biological core area in the

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North San Diego County Multi-Species Habitat Conservation Plan. The lagoon and its surrounding areas provide habitat for six sensitive bird species, while also providing scenic open space and passive recreational opportunities. Batiquitos Lagoon and its surrounding wetlands comprise the reserve owned by the SLC and managed by the Department. The lagoon is constrained by urban development, residential neighborhoods, and freeway, road, and railroad crossings.

The Murphy and Mitsuuchi properties are located along the northeast shore of the lagoon (Exhibit 1). Both properties lie within the City of Carlsbad. The Murphy property lies immediately to the west of the Mitsuuchi property. Much of the Murphy property is well upland of the lagoon. However, there are wetlands in the lower portion of the property. The owner of the Murphy property has shown a willingness to discuss subdividing the property such that the upper portion of the parcel would remain private property (current use is farm land) and the lower portion would be acquired by the BLF and dedicated for public access trail use along with substantial wetland buffer. The Mitsuuchi property possesses a northerly section of higher elevation containing panoramic lagoon views and upland habitat. The southerly half of the property, which borders the wetlands, is only a few feet higher than wetland elevation and provides key buffer habitat. Connection to the upland area via a spur from the lagoon trail is a priority of the BLF.

The remains of an old greenhouse, a remnant of the site's agricultural past, stand along the lower westerly property line abutting the wetlands.

Resource Values

The Murphy and Mitsuuchi properties provide substantial habitat value for the lagoon. Based on field surveys from neighboring properties and biological surveys completed within the reserve by Merkel and Associates, potential vegetation communities on the properties include Southern Willow Scrub, Diegan Sage Scrub, Southern Coastal Salt Marsh, Goldenbush Saline Meadow, Brackish Marsh, and Freshwater Marsh. The lagoon and its surrounding areas provide habitat for a wide range of wildlife, including some sensitive species. The state endangered Belding's savannah sparrow (*Passerculus sandwichensis beldingi*) nests in the pickleweed-dominated salt marsh at the lagoon. Belding's savannah sparrows have been abundant in the northeast corner of the lagoon, near where the proposed acquisitions are located. California gnatcatchers (*Polioptila californica*) and least Bell's vireo (*Vireo bellii pusillus*) have been observed in the upland area of the north shore of the lagoon. Upland birds are the most abundant bird type observed in the north east portion of the lagoon, exhibiting the importance of the nearby upland habitats on the privately owned lands.

The ecological restoration potential on the Murphy and Mitsuuchi properties is considerable. Non-native species, such as pampas grass, tamarisk, *Arundo donax*, and Canary Island date palms are a major ecological threat to the lagoon and both properties have substantial non-native coverage. The non-natives on these properties should be replaced with native plant communities to protect the ecological integrity of the lagoon. In addition to the threat to the lagoon posed by invasive species, erosion and sedimentation are significant problems on these properties. Evidence of erosion problems can be seen in the deep arroyos that have been cut into the upland slopes. These erosion

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and runoff problems periodically render the lagoon trail inaccessible due to flooding and ponding, and cause Eucalyptus trees lining the trail to fall, blocking access and posing a hazard to hikers. At the outlet of major storm drains, the alluvial sediment fans produced by upstream erosion threaten native plant survival. Acquisition of the Murphy and Mitsuuchi properties will provide the opportunity to address these erosion and invasive species problems.

Public Access

The Aviara Trail is an approximately two-mile improved public access hiking trail located along the north shore of the east basin of the lagoon, east of Interstate 5, which is extensively used by hikers, bird watchers, and educational groups. This trail provides the only improved and maintained public access to this regionally important coastal resource. The lagoon trail originated as a city maintenance road over a sewer line easement that the public has utilized for recreational access for many years. The trail extends from the lagoon nature center at the western end of the lagoon near I-5 to Gabbiano Lane. Parking is available on the street and in six reserved spots and is commonly used for accessing the trail.

This city maintenance road continues through the Murphy and Mitsuuchi properties. At this time a chain link fence obstructs general public access to and through the Murphy property. Acquisition of the Mitsuuchi property and a portion of the Murphy property will allow unfettered public access along the lagoon's north shore and provide outstanding views of the Batiquitos bluffs along the south shore. Results of the City-funded wetland delineation will determine the final route of a public access trail through the properties.

Project History:

As with many of Southern California's coastal lagoons, Batiquitos Lagoon was once fully tidal and deep enough to maintain an open lagoon mouth. However, agriculture and extensive urban development over the years resulted in erosion upstream and sediment accumulation in the lagoon. Subsequently, the tides were unable to flush out the silt and sand. In 1982, the BLF was formed by a group of citizens concerned about the future of the lagoon. In 1996, the Batiquitos Lagoon Enhancement Project, sponsored by the Port of Los Angeles and the City of Carlsbad, restored tidal flushing to the lagoon.

Once the restoration of tidal flushing was complete, the BLF shifted its focus to the creation of nature trails, development of environmental interpretive programs, and re-vegetation of the north shore of the lagoon. In 1997 the BLF, with funding from the Conservancy, completed the Batiquitos Lagoon Conceptual Planning Study to assess trail and education opportunities and constraints. Completion of the lagoon trail and acquisition of the Murphy and Mitsuuchi properties were three of the major priorities identified in the study. For additional background information, see the "Realization of Prior Conservancy Goals" section below.

The BLF has engaged in discussions with the Murphy family for approximately two

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years primarily because of the desire to extend the lagoon trail. At this time the Murphy family appears willing to subdivide the property for this purpose. The Mitsuuchi property is under option for possible residential construction until the end of June 2006, but the family is willing to sell the property for public purposes if an agreement is not concluded by the time the option expires (Exhibit 3). For this reason, the BLF needs the funding to be able to act quickly should the Mitsuuchi property become available.

PROJECT FINANCING:

Coastal Conservancy:

Pre-acquisition expenses	
Murphy Property	\$28,000
Mitsuuchi Property	<u>\$22,000</u>
Subtotal	\$50,000

City of Carlsbad:

Wetland delineation	\$ 3,000
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Total Project Cost \$53,000

The anticipated funding source for the project would be the Carlsbad Agricultural Mitigation Fee Statutory Program account. The mitigation account is composed of conversion fees paid by developers of agricultural land in Carlsbad, and may be spent for restoration of natural resources and wildlife habitat in Batiquitos Lagoon, or for other projects or activities benefiting or enhancing the use of natural resources in the coastal zone of the City of Carlsbad, as provided for in its LCP, pursuant to Public Resources Code Section 30171.5. Carlsbad's LCP recognizes the lagoon's status as a State Ecological Reserve and commits to protecting its sensitive biological habitats and water quality. Consistent with this policy, the proposed project will facilitate acquisition of the Murphy and Mitsuuchi properties and permit restoration activities to protect the ecological integrity of the lagoon. The current fund balance is approximately \$1.8 million.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

This project is consistent with the Conservancy's enabling legislation, Division 21 of the Public Resources Code, specifically with Chapter 6, pertaining to coastal resource enhancement projects, and Chapter 9, pertaining to public coastal access.

Pursuant to §31251, the Conservancy may award grants to public agencies and nonprofit organizations for the enhancement of coastal resources that, because of natural or human-induced events, or incompatible land uses, have suffered loss of natural and scenic values. Conservancy grants under Chapter 6 are to be utilized for the assembly of parcels of land within coastal resource enhancement areas to improve resource management, for

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relocation of improperly designed or located improvements, and for other corrective measures that will enhance the natural and scenic character of the areas; this includes the cost of acquisition of lands within coastal resource enhancement areas like Batiquitos Lagoon. Consistent with §31252, and consistent with §30171.5 of the Coastal Act, the City of Carlsbad certified local coastal program identifies restoration of natural resources and wildlife habitat in Batiquitos Lagoon as the first priority for the expenditure of agricultural conversion mitigation funds held by and administered by the Conservancy. The proposed grant of a portion of these funds to the nonprofit BLF will facilitate acquisition of two private properties located in the Coastal Zone necessary to permit restoration activities that will protect the ecological integrity of the lagoon.

Under §31400, the Conservancy has a principal role in the implementation of a system of public access ways to and along the coast. The Conservancy's funding of the Murphy and Mitsuuchi pre-acquisition actions is consistent with Chapter 9 because of the opportunities for trail connectivity to and along a coastal lagoon.

Under §31400.1, the Conservancy may award grants to any public agency or nonprofit organization to acquire land for public access purposes to and along the coast. No grants may be awarded to any public agency unless the Conservancy has determined that the accessway will serve more than local public needs. The proposed project will facilitate enhanced public access for the many visitors to northern coastal San Diego County's popular beaches and visitor-serving facilities, including guests of the nearby Aviara and La Costa resorts, and thus would be consistent with this requirement.

Under §31253 and §31400.2, the Conservancy may provide up to the total cost of a coastal resource enhancement project, and of the acquisition of interests in lands by a non-profit organization, respectively, with the amount of funding determined by the total amount available for coastal resource enhancement and access projects, the fiscal resources of the applicant, and the urgency of the project relative to other eligible projects. Consistent with this section, the amount of proposed Conservancy funding for this project has been determined with an understanding of the financial limitations of the BLF, the urgency of the proposed acquisitions, and the availability of funds in the Carlsbad Agricultural Mitigation Fee Statutory Program Account, for which the restoration of natural resources in Batiquitos Lagoon is the highest priority.

Under §31400.3, the Conservancy may provide such assistance as is required to aid public agencies and nonprofit organizations in establishing a system of public coastal accessways, and related functions necessary to meet the objectives of Division 21. Consistent with this section, the BLF will use authorized funds to complete pre-acquisition actions necessary to acquire lands for the protection and enhancement of key trail links along a State Ecological Reserve.

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

Consistent with **Goal 2, Public Access, Objective A** of the Conservancy's Strategic Plan, the proposed project will facilitate protection of coastal open space and buffer an existing State Ecological Reserve.

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Consistent with **Goal 2, Public Access, Objective B**, the proposed project will facilitate acquisition of property that will provide access to a coastal area that is currently inaccessible and closed to public use.

Consistent with **Goal 4, Coastal Resources Conservation, Objective A**, the proposed project will facilitate acquisition of coastal open space near a major urban center.

Consistent with **Goal 5, Coastal Resources Conservation, Objective A**, the proposed project will facilitate acquisition in fee of approximately 23 acres of coastal sage scrub, riparian, and coastal salt marsh habitat.

**CONSISTENCY WITH CONSERVANCY'S
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Support of the public:** The Department of Fish and Game and the City of Carlsbad support the project. See the letters of support (Exhibit 4).
4. **Location:** The proposed project would be located within the coastal zone of the City of Carlsbad (Exhibit 1).
5. **Need:** The BLF, the only non-profit organization at the lagoon, has severely limited funds. Absent the proposed acquisitions, the current property owners could pursue residential development consistent with the zoning.
6. **Greater-than-local interest:** As discussed, the proposed project and the subsequent acquisition of the Murphy and Mitsuuchi properties would allow unobstructed public access along the north shore of the lagoon, a State Ecological Reserve.

Additional Criteria

13. **Realization of prior Conservancy goals:** The Coastal Conservancy has long assisted with planning and restoration in the north county area of San Diego County. In 1987, the Conservancy developed the Batiquitos Lagoon Watershed Sediment Control Plan. This plan recommended restoration of tidal flushing to the lagoon; this goal was realized through the lagoon enhancement project completed in 1996. In 1997 the BLF, with funding from the Conservancy, completed the Batiquitos Lagoon Conceptual Planning Study to assess trail and education opportunities and constraints. The completion of the lagoon trail and acquisition of the Murphy and Mitsuuchi properties were three of the major priorities identified in the planning study. The proposed acquisitions would protect the investment made in the enhancement of the

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lagoon, while providing public access, and would enable erosion control issues to be addressed in the future. Acquisition and restoration of these properties would also help to carry out the responsibilities imposed on the Conservancy by section 30171.5 of the Coastal Act, to expend agricultural mitigation fees for the restoration of natural resources and wildlife habitat in Batiquitos Lagoon.

CONSISTENCY WITH THE COASTAL ACT:

The proposed project is consistent with Section 30171.5(b) of the Coastal Act, which establishes the following order of priority for expenditures of the Carlsbad Agricultural Mitigation Account:

- (1) Restoration of natural resources and wildlife habitat in Batiquitos Lagoon.
- (2) Development of an interpretive center at Buena Vista Lagoon.
- (3) Provision of access to public beaches in the city of Carlsbad.
- (4) Any other project or activity benefiting or enhancing the use of natural resources . . . in the coastal zone in the City of Carlsbad that is provided for in the local coastal program of the City of Carlsbad.”

The proposed project is consistent with priority (1) because the proposed project will facilitate acquisition of the Murphy and Mitsuuchi properties and permit restoration activities to protect the ecological integrity of Batiquitos Lagoon. In accordance with Public Resources Code Section 30171.5(d), the Conservancy has reserved not less than 50 percent of all mitigation fees deposited into the Carlsbad Agricultural Mitigation for projects consistent with priority (1). The current account balance available for priority (1) projects is approximately \$1.8 million. Funds available for projects consistent with priorities (2) and (3) have been expended. The proposed project also is consistent with priority (4), because it will help to benefit or enhance the use of Batiquitos Lagoon in the City’s coastal zone and as provided in its LCP.

The proposed project is generally consistent with Public Resources Code Section 30210, which states: “. . . maximum access . . . and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.”

This project is consistent with Section 30231 of the Coastal Act which states that the “biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored. . . .” The proposed project would facilitate future projects to restore and enhance the natural resources and wildlife habitat at Batiquitos Lagoon.

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The proposed project is consistent with the following specific policy of the Coastal Act, Public Resources Code Sections 30000 et seq.:

The Murphy and Mitsuuchi properties are located in the coastal zone. Section 30210 of the Coastal Act mandates that “maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with the public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.” The proposed project will facilitate acquisition of property that will provide passive recreational opportunities and unobstructed public access to and along an important coastal resource. The property will be collaboratively managed via a memorandum of understanding among the BLF, the City of Carlsbad, and the Department..

Consistent with Section 30251, the proposed project will facilitate acquisition of properties for the protection of significant scenic and visual resources.

Section 30500 (a) mandates that “each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction. Consistent with this section, the City of Carlsbad has a certified LCP and this project is consistent with this program. The properties in question are part of the East Batiquitos Lagoon/Hunt Properties segment of the LCP. According to the LCP, this segment was certified in 1985.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The proposed project is consistent with the City of Carlsbad’s General Plan/Local Coastal Program (“GP/LCP”).

Chapter II-1, Policy 2 states that the first priority for the expenditure of the Agricultural Conversion Fund shall be restoration of natural resources at Batiquitos Lagoon. Consistent with this policy, the proposed project will facilitate acquisition of properties necessary to permit restoration activities that will protect the ecological integrity of the lagoon. Non-native species, such as pampas grass, tamarisk, *Arundo donax*, and Canary Island date palms on these properties are a major ecological threat to the lagoon. Following acquisition, non-native plants on these properties would be replaced with native plant communities.

Chapter II-2, Policy 3-3 states that development should be clustered to preserve sensitive habitat areas and maintain the maximum amount of permanent open space feasible. Acquisition of these properties would maintain the maximum amount of open space.

Chapter II-2, Policy 4-3 (b)(1)(a) states that for slopes possessing coastal sage scrub plant communities, slopes over 25% should be maintained in their natural state. Much of the Mitsuuchi property is steep slopes covered with sage scrub.

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Chapter II-4, B 1(1)(a)(2) states that portions of the Batiquitos Lagoon north shore (outside the wetland boundary) and an accompanying wetland buffer are designated as open space. While the LCP did not designate the two properties proposed for acquisition as open space, it is clear that the intent of the LCP is to provide a sufficient open space buffer for the lagoon where and when possible. This section also identifies a public access trail system as the only allowed use within the wetland buffer. The future acquisition of the Murphy and Mitsuuchi properties will allow unobstructed public trail access along the lagoon's north shore.

COMPLIANCE WITH CEQA:

The proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code of Regulations Sections 15262 and 15306 in that it only involves data collection, planning and feasibility studies for possible future actions that have not yet been adopted, approved or funded. The pre-acquisition activities that would be funded will not result in any disturbance to environmental resources, but will take environmental factors (such as the boundary between wetland areas and areas to be retained in agriculture on the Murphy property) into consideration. Staff will file a Notice of Exemption upon approval of this authorization by the Conservancy.