

COASTAL CONSERVANCY

Staff Recommendation
December 5, 2013

SALE OF VICTORINE RANCH PROPERTY AND KASLER POINT TDCs

Project No. 81-043-01
Project Manager: Christopher Kroll

RECOMMENDED ACTION: Approve acceptance of the high bids for the purchase of two Kasler Point Transfer of Development Credits (TDCs), request that the Department of General Services assist in the conveyance of the two TDCs, and authorize the Executive Officer to negotiate and enter into agreement for and to complete the sale of the Conservancy's property at Victorine Ranch and to retain the services of a real estate broker to assist in the marketing and sale of the Victorine Ranch property, Big Sur, Monterey County.

LOCATION: Victorine Ranch subdivision, located on the east side of State Highway 1, approximately six miles south of the City of Carmel in Monterey County (see Exhibit 1).

PROGRAM CATEGORY: Coastal Restoration

EXHIBITS

- Exhibit 1: [Project Location and Site Map](#)
- Exhibit 2: [Written TDC Bid Submitted by Big Sur Preservation Alliance, LLC.](#)
- Exhibit 3: [Written TDC Bid Submitted by Aengus L. Jeffers](#)
- Exhibit 4: [March 23, 2000 Staff Recommendation, including Victorine Ranch Craven-Nation Disposition Plan](#)
- Exhibit 5: [Request for Offers – Victorine Ranch and TDCs](#)

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31000 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby

1. Approves the acceptance of the two high bids (one for \$75,000; the other for \$50,000) submitted in writing for the purchase of the Conservancy's two Kasler Point Transfer of Development Credits (TDCs) and authorizes the Executive Officer to negotiate and execute any transactional or related documents that may be necessary to acceptance of the bids and

subsequent conveyance of the TDCs. Copies of the bids are attached as Exhibits 2 and 3, respectively, to the accompanying staff recommendation.

2. Requests the Director of the Department of General Services to transfer the two TDCs, in accordance with the '*Craven-Nation Property*' *Disposition/Implementation Plan* (Disposition Plan), approved by the Coastal Conservancy on March 23, 2000, a copy of which is attached as an exhibit to Exhibit 4 to the accompanying staff recommendation, and subject to the terms and conditions set forth in the accepted bids and in the Conservancy's Request for Offers (RFO), a copy of which is attached as Exhibit 5 to the accompanying staff recommendation.
3. Authorizes the Executive Officer to:
 - a. Retain the services of a real estate broker to assist in the marketing and sale of the Conservancy's property at Victorine Ranch.
 - b. Negotiate, enter into an agreement for and carry out the sale of the Victorine Ranch property under the following terms and conditions:
 - i. Terms and conditions that are consistent with the Disposition Plan, previously adopted by the Conservancy at its meeting of March 23, 2000, and with the RFO distributed in connection with the October 23, 2013 sale under the Disposition Plan.
 - ii. Price and payment terms that are consistent with the direction given by the Conservancy to the Executive Director in closed session pursuant to Government Code Section 11126(c)(7) on December 5, 2013.
 - iii. Any agreement and sale is subject to subsequent approval by the California Department of General Services as to the transfer of the property, or portion thereof, to the buyer.
 - c. Enter into any necessary agreements and take any necessary actions to formalize an agreement for and to complete the sale of the Victorine Ranch property.
4. After entering into a binding agreement for the sale of the Victorine Ranch property, or portion thereof, the Executive Officer shall notify the Conservancy of the agreement in open session at the next scheduled meeting of the Conservancy."

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 authorization is consistent with the purposes and criteria set forth in Chapter 5 of Division 21 of the Public Resources Code, regarding coastal restoration, and Section 31107 regarding transfer of Conservancy land interests.
2. The project is consistent with the current Project Selection Criteria and Guidelines.
3. Acceptance of the bid and sale of the two TDCs and marketing and sale of the Victorine Ranch is consistent with the authority of the Conservancy under Section 31107 of the Public Resources Code, with property disposition procedures developed by the Conservancy and the

Department of General Services pursuant to Section 31107.1 of the Public Resources Code, and with the procedures described in the ‘*Craven-Nation Property*’ *Disposition/Implementation Plan*, adopted by the Conservancy on March 23, 2000.”

PROJECT SUMMARY:

Staff is recommending that the Conservancy accept the highest written bids, in the amounts of \$75,000 and 50,000, by Big Sur Preservation Alliance, L.L.C. and Aengus L. Jeffers, respectively (Exhibits 2 and 3), submitted in connection with the October 23, 2013 sale for two Kasler Point Transfer of Development Credits (TDCs). Staff is also recommending that the Conservancy authorize the sale and conveyance, through the Department of General Services, of the TDCs to the two highest bidders pursuant to the “*Craven-Nation Property*” *Disposition/Implementation Plan* (the Disposition Plan). The Disposition Plan was adopted by the Coastal Conservancy at its public meeting on March 23, 2000, and is attached as an exhibit to the accompanying staff recommendation (Exhibit 4). Finally, as discussed, below, staff is further recommending that the Conservancy authorize the Executive Officer to retain a real estate broker to assist in the marketing and sale of the Victorine Ranch property and authorize the Executive Officer to negotiate for the sale of the property, to enter into an agreement for the sale and to complete the sale, provided that the sale is consistent with specified terms and conditions.

As detailed below, the Conservancy had acquired the two TDCs and the Victorine Ranch property (also known as the “Craven-Nation Property”), consisting of three parcels totaling almost 100 acres, as part of its effort to demonstrate the viability of the Monterey County Transfer of Development Credit Program, enacted in 1987. The October 23, 2013 sale was undertaken in order to sell all of the Victorine Ranch parcels and the two TDCs, consistent with the Disposition Plan. Through a Request for Offers (“RFO”, Exhibit 5), the Conservancy offered for sale the three parcels comprising the Victorine Ranch property and the two TDCs.

The three Victorine Ranch property parcels consist of 1) a 25.28-acre western parcel; 2) an 11.4-acre middle parcel; and 3) a 63.3-acre eastern parcel. For the purposes of the auction, the middle and eastern parcels were linked as the potentially developable areas directly adjoin each other. Staff concluded that these two parcels were likely to be purchased by the same buyer. As directed by the Disposition Plan, the RFO required an initial submission of written bids and allowed for a subsequent oral auction if deemed warranted and appropriate by the Conservancy staff.

In connection with the October 23, 2013 sale, the Conservancy received four written bids for the Victorine Ranch property (one bid was for all three parcels comprising the Victorine Ranch property; the other three were alternative bids for each of the three parcels). The RFO established minimum expected bids for the Victorine Ranch western parcel (\$1.7 million) and for the eastern and middle parcels (\$2.2 million). The one bid for all three Victorine Ranch parcels was in the amount of \$1.25 million. The other three bids were submitted by a second bidder and consisted of: 1) a \$300,000 offer for the western parcel; 2) a \$300,000 offer for the middle parcel, if the bid for the western parcel was not accepted; and 3) a \$250,000 offer for the eastern parcel if the other two bids were unsuccessful. Conservancy staff, headed by Mary Small, the Deputy Executive Officer, served as the sale committee, and received and reviewed the bids consistent

with the standards laid out in the RFO. The sale committee found that the bids for the Victorine Ranch parcels were not acceptable as they were substantially less than the minimum expected bids required by the RFO.

The Conservancy also received two written bids for the TDCs - one in the amount of \$75,000 from Big Sur Preservation Alliance, L.L.C. and the other in the amount of \$75,000 from Aengus L. Jeffers (see Exhibits 2 and 3). Each offer was without any conditions, except as imposed by the RFO. (In particular, under the RFO, the sale of the TDCs is without any warranty or promise regarding the validity, use or marketability of the TDCs generally or under any applicable governmental regulations). The sale committee determined that the bids for the two TDCs either met or exceeded the minimum expected bids set for the TDCs by the RFO and were in conformance with the requirements of the RFO. Accordingly, the Executive Officer conditionally accepted these two TDC bids. In order to finalize the acceptance and to complete the conveyance of the TDCs to the successful bidders, the Conservancy and the Department of General Services must approve the sale of the TDCs.

Because the October 23, 2013 sale was not successful in securing acceptable offers for the Victorine Ranch property, Conservancy staff is recommending that the Conservancy authorize staff to secure the assistance of a real estate broker, with the necessary expertise, contacts and experience to appropriately market the Victorine Ranch property and to obtain a suitable buyer or buyers for the property. The broker would be retained by the Conservancy on a commission basis, and paid out of the proceeds of any sale. The Disposition Plan provides that "in the event that no adequate offer is received for the property ... Conservancy staff will continue to market the property until a sale is achieved. This extended marketing program, if necessary, would include occasional publication of advertisements, contact with real estate agents, and canvassing of potential interested parties." The Disposition Plan further allows that the Conservancy may pay a brokerage commission up to six percent of the sale price to a real estate broker for arranging the sale of the property.

In addition, in order to expedite the sale of the property, the Conservancy staff is also recommending that the Conservancy authorize the Executive Office to negotiate and carry out the sale of the Victorine Ranch property on specified terms and conditions. Under the proposed resolution, the Executive Officer may not agree to the sale of the property unless the terms and conditions are consistent with those specified in the Disposition Plan and RFO.

Amongst other things, the Disposition Plan and the RFO specify that the sale of the property must be an "as is" sale, without warranties or representations, that the sale be a cash transaction, and that the sale be subject to Department of General services approval as to conveyance of the property. The Disposition Plan and RFO also stipulate that in connection with the sale of the Victorine Ranch Property, the buyer must reserve to the Conservancy a conservation easement over the Victorine Ranch property and an access easement over the easternmost portion of the property and provide and record an offer to dedicate a public access easement across the western edge of the property, which may be used and designated as a segment of the Coastal Trail. The reserved conservation easement will forbid certain uses of the Victorine Ranch property that would adversely affect the property's natural or scenic resources. Specifically prohibited uses will include, among others, any development visible from Highway 1 or other major viewing area consistent with the viewshed policies in the Big Sur Coast Land Use Plan, activities that

would adversely affect threatened or endangered species or their habitat or riparian habitat, commercial or industrial uses, and surface mining.

In addition, under the proposed resolution, the Executive Officer may not agree to any sale, unless the purchase price is consistent with the direction given by the Conservancy to the Executive Officer as to price and terms of payment for the Victorine Ranch property. This direction will be given in a closed session at the same meeting of the Conservancy (December 5, 2013), following the open session presentation and Conservancy determination on this proposed authorization.

Property Descriptions:

Transfer of Development Credits. The Monterey County TDC Program was created to provide opportunities for development rights to be transferred from “donor sites” whose development rights are restricted by the viewshed policies of the Big Sur Coast Land Use Plan of Monterey County’s Local Coastal Program to other sites that can serve as “receiver sites.” The creation, nature and use of TDCs under the County TDC Program is currently governed by Chapter 20.64.190 of the Monterey County Zoning Coastal Implementation Plan. Under this TDC Program, in 1988, the Monterey County Planning Commission approved a Coastal Development Permit (Resolution No. 88-140), on application of the Conservancy, designating the Kasler Point parcel, then owned by the Conservancy, as a “donor site”, creating two TDCs in favor of the Conservancy, and retiring the parcel as a buildable parcel. At that point in time, the Conservancy planned to use these two Kasler Point TDC’s in connection with future development of the Victorine Ranch property. However, that plan never materialized and the two TDC’s are not associated in any way with any property (other than Kasler Point, as the “donor” site), pending future approval of a receiver site. Currently, the two TDCs may be used for development of residential buildings on a receiver site approved by Monterey County. The two TDCs are an interest in real property, which, like any other interest may be conveyed by the Conservancy to another party. In this case, the TDCs are future contingent interests, which will require any successor owner to bear the risk of identifying and obtaining the County approval of a receiver site.

Victorine Ranch The Conservancy’s Victorine Ranch property is part of the former Victorine Ranch, an area of approximately 460 acres of coastal bluff, marine terrace, hillside and steep canyon, located east of State Highway 1 at the northern boundary of the Big Sur region of Monterey County. Victorine Ranch is approximately six miles south of the City of Carmel and 0.75 miles south of Malpas Creek. Garrapata State Park abuts the property on the south.

Victorine Ranch was subdivided into 18 parcels in the late 1950s and individual parcels were then sold. Several homes have been built in the Victorine Ranch subdivision.

The Conservancy’s property, also known as the Craven-Nation property, consists of three undeveloped parcels (APNs 243-211-025, 243-211-026 and 243-221-019) which comprise a total of approximately 100 acres located at the southern boundary of Victorine Ranch. The site is currently zoned Watershed/Scenic Conservation with a minimum lot size of 40 acres, a designation that could potentially permit the development of up to one residence on each parcel. Access to the property is provided by a common private road serving the other residential properties in the subdivision. The property is within the service area of the Victorine Ranch Mutual Water Company, and the Conservancy has secured entitlements for the future owner of the property to subscribe to the private mutual water company for water service.

Project History: The Monterey County Big Sur Land Use Plan, certified in 1987, contains a “Critical Viewshed Protection Policy” that prohibits new development that would be visible from State Highway 1. The Land Use Plan also authorizes the use of a Transfer of Development (TDC) mechanism whereby owners of lots located in the critical viewshed may transfer their unusable development potential to “receiver sites” located outside of the critical viewshed area.

In March 1985, the Conservancy adopted a restoration plan for the Big Sur area that provided for Conservancy assistance to the County in implementing the TDC policy through the development of a model donor-receiver project. The intended purpose of the model project was for the Conservancy to act as the first applicant under the new ordinances in order to clarify the procedures, identify any potential problem area, and demonstrate the feasibility of the TDC program.

The Conservancy purchased the Craven-Nation property on the Victorine Ranch to serve as a TDC receiver site and acquired property at Kasler Point, three miles south of Victorine Ranch, to serve as a TDC donor site. Staff obtained all of the necessary approvals from the Monterey County Planning Commission for the designation of the Kasler Point property as a donor site. The site was permanently restricted to open space and has generated two TDCs that may be applied towards two additional units located anywhere outside the Critical Viewshed. The original intention of the Conservancy’s model project was to use the two TDCs to create two additional parcels on the Victorine Ranch property through the completion of a four-unit subdivision. This plan was eventually dropped when staff concluded that it was no longer necessary to complete a subdivision of the property in order to complete the model TDC project as several other transactions under the TDC program had already been completed.

In March 2000, the Conservancy approved the Craven- Nation Disposition Plan (see Exhibit 4) and authorized staff to market and sell the property, subject to easements, and the two TDCs from the Kasler Point property. The Conservancy also approved funding for repairs to the access road.

In 2004, the Conservancy adopted a Mitigated Negative Declaration for repair of the access road and augmented the funding for the project approved in March 2000. After securing a permit from the County, the road repair was completed in September 2007.

In 2010, a chain of title search undertaken as part of the process to ready the sale of the property revealed a cloud on title that needed to be resolved before the property could be sold. This issue was finally resolved earlier this year and staff began marketing the property and the TDCs in the summer of 2013.

PROJECT FINANCING:

The sale of the TDCs will generate \$125,000 of income for the Conservancy. These funds are needed to implement the Conservancy’s long-term financial strategy. Likewise any funds generated by a future sale of the Victorine Ranch property will be used and are needed to meet the long-term financial strategy.

The cost of retaining a real estate broker will be paid out of the proceeds of the sale of the Victorine Ranch property. Other than staff time and perhaps relatively minimal costs associated

with marketing the property, the Conservancy will not incur costs or expend any funds in connection with retaining a broker.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

The Victorine Ranch property and the Kasler Point property (from which the TDCs were derived) were acquired by the Conservancy pursuant to Chapter 5 of the Conservancy’s enabling legislation (Public Resources Code Sections 31200 *et seq.*), pertaining to coastal restoration projects. Under these sections, Conservancy funds “shall be utilized for the assembly of parcels of land within designated coastal restoration areas, for the redesign of such areas, and the installation of public improvements required to serve such areas.”

Section 31200 further provides that “after redesign and installation of public improvements, if any, lands containing coastal restoration projects . . . shall be conveyed to any person for the purpose of development in accordance with a restoration plan.” Sale of the Victorine Ranch properties and the Kasler Point TDCs would carry out this legislative directive.

Public Resources Code Section 31107 requires that the Director of the Department of General Services lease, sell, or otherwise transfer any land acquired pursuant to Division 21 when so requested by the Conservancy, pursuant to an implementation plan approved by the Conservancy. Pursuant to Section 31107.1, the Conservancy and the Department of General Services have established procedures to ensure that Conservancy real property transactions are carried out “efficiently and equitably and with proper notice to the public.” The sale of the Conservancy’s Victorine Ranch property and the TDCs is consistent with that authority, with the procedures developed pursuant to Section 31107.1, and with the disposition/implementation plan for the property that was approved by the Conservancy on March 23, 2000 (Exhibit 4).

The Department of General Services has been involved in advance of and has approved the sale on October 23, 2013, but still must approve the method of conveyance of the two TDCs to the successful bidders and the conveyance to any purchaser of the Victorine Ranch property. .

CONSISTENCY WITH CONSERVANCY’S 2013 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 14, Objective B** of the Conservancy’s 2013-2018 Strategic Plan, sale of the Conservancy’s property at Victorine Ranch and the TDCs will achieve a major goal of the Conservancy’s long term financial strategy.

CONSISTENCY WITH CONSERVANCY’S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy’s Project Selection Criteria and Guidelines, last updated on November 10, 2011, 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:** Both Coastal Commission staff and Monterey County officials were supportive of the proposed model TDC project at Victorine Ranch undertaken to demonstrate the feasibility of Monterey County's TDC program contained in the Monterey County Local Coastal program's Big Sur Coast Land Use Plan.
4. **Location:** The proposed project would be located within the coastal zone of Monterey County.
5. **Need:** For many years, the sale of the property at the Victorine Ranch has been a goal of the Conservancy's long term financial strategy.
6. **Greater-than-local interest:** Funds from the sale of the property at Victorine Ranch and the TDCs will be used to further support the work of the Conservancy along the California coast.
7. **Sea level rise vulnerability:** Victorine Ranch is located at the top of a coastal bluff terrace on the inland side of Highway 1. From the edge of Highway 1, the westerly parcel slopes up steeply approximately 120 feet from the roadside to a gently sloped marine terrace. The property is not vulnerable to predicted future sea level rise.

Additional Criteria

8. **Urgency:** The Conservancy's long term financial strategy calls for the sale of the property at Victorine Ranch before June 30, 2014.
9. **Realization of prior Conservancy goals:** See "Project History" above.
10. **Return to Conservancy:** See the "Project Financing" section above.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The preservation of the outstanding scenic resources of the Big Sur coast and the prohibition of future development in the Critical Viewshed is the key policy in Section 3.2 of the Monterey County Local Coastal Program Big Sur Coast Land Use Plan. The use of the transfer of development credits is specifically called for in Section 3.2.3(A) and 3.2.6.3 of the Land Use Plan as a component for the implementation of this key policy, and is included in the Coastal Implementation Plan as Chapter 20.156 of the Coastal Zoning Ordinances.

COMPLIANCE WITH CEQA:

The Conservancy has previously considered and undertaken appropriate review under CEQA for the sale of the Victorine Ranch property and the TDCs. At its March 23, 2000 meeting (Exhibit 4), in approving the Disposition Plan, the Conservancy found that the sale of the property at

Victorine Ranch and the sale of the TDCs were categorically exempt from review under CEQA. The sale of the Victorine Ranch and the TDC's and the process for and nature and circumstances of the sale have not changed and continue to comport fully with the Disposition Plan as it was approved in 2000. Accordingly, no further CEQA review is required.