

COASTAL CONSERVANCY

Staff Recommendation
March 8, 2007

HAMILTON WETLAND RESTORATION PLAN

File No. 94-003
Project Manager: Tom Gandesbery

RECOMMENDED ACTION: Consideration and possible Conservancy authorization to accept title to the 18.37 acre Navy property in a no-cost public benefit transfer for purposes of the Hamilton Wetland Restoration Plan

LOCATION: Novato, Marin County

PROGRAM CATEGORY: San Francisco Bay Area Conservancy; Resource Enhancement

EXHIBITS

Exhibit 1: Project Location, Site and Parcel Maps (3)

Exhibit 2: USFWS letter in support of no-cost transfer

Exhibit 3: Finding of Suitability for Transfer, Department of the Navy

Exhibit 4: Determination of No Further Action - DTSC and RWQCB

RESOLUTION AND FINDINGS:

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

“The State Coastal Conservancy hereby authorizes the acceptance of fee title to the Navy “Ballfields” property adjacent to the Hamilton Army Airfield as a no-cost public discount benefit transfer from the United States Department of the Navy, on the terms and conditions described in the accompanying staff recommendation. This authorization is subject to approval by the Director of General Services pursuant to Government Code Section 11005 and all other relevant provisions of law.”

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 acceptance of title to the Navy Ballfields property 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, and necessary to implement the Hamilton Wetland Restoration Project as authorized by the Conservancy on April 22, 1999.”

PROJECT SUMMARY:

Staff is recommending that the Conservancy accept title to the “Navy Ballfields” property (Exhibit 1), adjacent to the Hamilton Airfield Parcel, as a no-cost discount public benefit transfer from the Department of the Navy for purposes of wildlife restoration and conservation.

This action 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 (Corps) 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 18.37 acres of land adjacent to the Hamilton Army Airfield which is needed for the project.

In April 1999, the Conservancy certified the Hamilton Wetland Restoration Project Environmental Impact Report/Environmental Impact Statement; adopted the Hamilton Wetland Restoration Plan Feasibility Study; and authorized its Executive Officer to take actions necessary for the transfer of the Hamilton Army Airfield and Navy Ballfields properties to the State. One of these actions was to request support from the U.S. Fish and Wildlife Service for a no-cost, public benefit conveyance of both properties for the purpose of habitat restoration, as required under the federal statute authorizing such transfers (16 U.S.C. § 667b-d). That request was initiated as early as 1997 and granted by the Service in September 1999 (Exhibit 2). In June 2001 the Conservancy authorized and subsequently entered into a Project Cooperation Agreement with the Corps providing for implementation of the Hamilton Wetlands Restoration Project on these lands. The Conservancy authorized acceptance of the Airfield Parcel from the Army in August 2003 and it was transferred in September of 2003. Staff is now recommending that the Conservancy authorize acceptance of the Navy property in order to make these 18.37 acres available for implementation of the project.

SITE DESCRIPTION:

The Ballfields Site is located on the southeastern edge of the city of Novato, adjacent to San Pablo Bay, in Marin County (Exhibit 1). The site was originally part of a larger Navy reservation, the balance of which has already been transferred to the city of Novato. The remaining five parcels comprise a total area containing 18.37 acres of land bordered by a Coast Guard-owned hillside to the west, a levee and privately owned housing development (“South Gate”) to the north, and Conservancy-owned parcels to the south and east.

In December 2006 the Navy prepared a Finding of Suitability for Transfer (“FOST”)

(Exhibit 3) with respect to the proposed transfer of the property to the Coastal Conservancy as part of the Hamilton Wetland Restoration Project. Table 1 of the FOST lists the approximate individual acreage of each parcel and summarizes its historical use and current status. The property is currently unused by the Navy and vacant. There are no buildings on the property, though there is one small, abandoned utility vault. The Hamilton Wetland Restoration Plan calls for the property to be restored to seasonal wetland habitat with approximately 6-9 feet of fill placed on top of the ground surface.

The primary purpose of the FOST is to summarize how federal requirements and notifications for hazardous substances, petroleum products, and other regulated materials on the Ballfields Property have been satisfied. The Navy coordinated its activities in developing the FOST with representatives of the California Department of Toxic Substances Control (DTSC), the San Francisco Bay Regional Water Quality Control Board (RWQCB), and the Navy's Base Closure and Reuse Environmental Coordinator. A Preliminary Assessment-Site Investigation (PA/SI) of the property was completed in 2005. Environmental sampling results indicated that very low concentrations of volatile organic compounds, semi-volatile organic compounds, metals and pesticides are present in the soil and groundwater on one of the five parcels, but at concentrations that do not require removal, remedial action or reporting. Based on a review of the PA/SI, in April of 2006, DTSC and RWQCB issued a "no further action" letter declaring the parcels suitable for unrestricted land use (Exhibit 4).

PROJECT HISTORY:

In the mid-1990s the Conservancy developed 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 (BCDC) 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 Corps to study the feasibility and design of the project; these agreements were entered into in 1998 and 1999, respectively. As part of the process, the Conservancy and Corps prepared an Environmental Impact Statement and Report (EIS/EIR) for the project. The EIS/EIR was certified by the Conservancy in April of 1999. 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.

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 Army worked intensively with state regulatory agencies (DTSC and RWQCB) to satisfy conditions of the MOA and ultimately prepared a Record of Decision/Remedial Action Plan to address remaining contaminants of concern on the property. The Conservancy, the State Public Works Board, and the Governor of the State of California approved an "early transfer" pursuant to which the RAP will be implemented, and the condition of transfer met, in

conjunction with implementation of the wetland restoration project by the Corps 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 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. Staff is now recommending that the Conservancy accept title to the Navy Ballfields Parcel as a no-cost public discount benefit conveyance. Acceptance of the Navy Ballfields Parcel is necessary to satisfy the Conservancy's obligation to provide necessary lands and to timely implementation of the wetland restoration project.

PROJECT DESCRIPTION

Staff is recommending that the Conservancy authorize acceptance of fee title to the Navy Ballfields Parcel as 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 U.S. Fish and Wildlife Service has provided a letter in support of transfer to the Conservancy (Exhibit 2). Upon completion of the Hamilton Wetland Restoration Project, the U.S. Fish and Wildlife Service may consider assuming long term management of these properties as a component of the National Wildlife Refuge System.

As described in the FOST, the deed conveying title to the State of California will contain notices and covenants that are required under federal law and that are standard for such property transfers. Specifically the deed will include:

- A notice that soil at the locations of several former buildings may contain residual lead concentrations associated with lead-based paint and a covenant by the state to be responsible for managing any lead-based paint hazards in compliance with applicable law
- A notice that hazardous substances were stored, released or disposed of on the property, as described in the FOST, and a covenant and warranty by the United States that all remedial actions necessary to protect human health and the environment have been taken before the date of transfer.
- A covenant by the United States to conduct any remedial action found to be necessary on the property after the date of transfer for hazardous substances existing on the property before that date
- A covenant by the State of California that the United States shall have access to the property in any case in which response action or corrective action is found to be necessary after the date of transfer, or where necessary to carry out a response action or corrective action on adjoining property

Though these and other notifications outlined in the FOST (including those referring to existing buildings and covering residential use) will likely be incorporated into the deed for

the property, most will not be applicable since the use of the property will be restricted to wildlife conservation purposes, and since the buildings were removed by the Corps. In 2004 the Corps demolished all unneeded structures on the former Hamilton Airfield, including those on the Navy property. The Corps followed an approved lead abatement program and involved excavation and disposal of soil surrounding each building in order to ensure that residual lead-based paint was removed.

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 started a review process with the Department of General Services and anticipates that approval by the State Public Works Board will be required.

PROJECT FINANCING:

The Navy parcel would be acquired through a no-cost public benefit conveyance subject to the Conservancy's authorization. Staff costs are included in overall project management costs associated with the larger Hamilton project. The Conservancy will need to pay the costs of a title report and title insurance, and for the costs of review by the Department of General Services and Public Works Board.

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.

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 Corps 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 Navy 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 BCDC 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 will also require 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 Navy property for implementation of the project 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.

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.

Additional Criteria

Urgency: The subject property is integral to the restoration plan for the Hamilton Wetland Restoration Project. The property will be the location for seasonal wetlands, an upland transition, and portions of the Bay Trail. The Corps is currently constructing levees and other site features on the Airfield (former Army property) which is contiguous with the subject property. The Conservancy must obtain rights to the property within a reasonable timeframe in order to not delay the Hamilton project. A delay would result in substantial increases in project cost, a shared responsibility with the Corps.

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.

Readiness: Also See urgency above. The Corps is planning on constructing a levee, a berm and other site features on the former Airfield including the Ballfields this summer and fall. Dredged material fill will be pumped on to the site starting as early as October though more likely in the late fall of 2007.

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

Cooperation: The transfer of this property is the end product of years of planning between the Conservancy, The Army and Navy BRAC, the Corps and the City of Novato. The subject property is designated in the City of Novato's Hamilton Master Plan as open space / restoration, to be restored along with the remainder of the Airfield.

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 an Environmental Impact Statement and Report, published December of 1998 and certified by the Conservancy in April 1999. The impact analysis in the EIS/EIR included the Navy Ballfields as part of the Hamilton Army Airfield parcel. In its 1999 action, the Conservancy found that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impacts as described in the EIR/EIS to a level of no significance, and subsequently filed a Notice of Determination.