

COASTAL CONSERVANCY

Staff Recommendation  
November 8, 2007

**BATIQUITOS LAGOON MITSUUCHI ACQUISITION**

File No. 07-082-02  
Project Manager: Deborah Ruddock

**RECOMMENDED ACTION:** Authorization to disburse up to \$1,700,000 to the California Department of Fish and Game to assist with acquisition of the 18.11-acre Mitsuuchi property, adjacent to the Batiquitos Lagoon State Ecological Reserve, San Diego County.

**LOCATION:** Carlsbad, San Diego County (Exhibit 1)

**PROGRAM CATEGORY:** Resource Enhancement and Public Access

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**EXHIBITS**

- Exhibit 1: [Project Location and Site Map](#)
  - Exhibit 2: [Carlsbad Mitigation Fund](#)
  - Exhibit 3: [Photos](#)
  - Exhibit 4: [Letters of Support](#)
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**RESOLUTION AND FINDINGS:**

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31251-270 and 31400 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed one million and seven hundred thousand dollars (\$1,700,000) to the California Department of Fish and Game to assist with acquisition of the “Mitsuuchi Property”, San Diego County Assessor’s Parcel No. 216-121-17, adjacent to the Batiquitos Lagoon, for open space; natural resource and wildlife habitat protection; restoration; and public access purposes.

1. Prior to the disbursement of any Conservancy funds for the acquisition, the California Department of Fish and Game (“Department”) shall submit for the review and approval of the Executive Officer of the Conservancy (“the Executive Officer”):
  - a. All relevant acquisition documents, including without limitation, an appraisal, purchase agreement, escrow instructions, environmental assessment, and title report.
  - b. Evidence that sufficient matching funds are available to complete the acquisition.

- c. Evidence of commitment to manage the property for open space, wildlife habitat and public access.
2. The Department shall pay no more than fair market value for the property, as established in an appraisal approved by the Department of General Services.
3. The Department shall permanently dedicate the property for open space, public access and habitat preservation, through an appropriate instrument approved by the Executive Officer.
4. The Department shall acknowledge Conservancy funding by erecting and maintaining on the property signs, the design and location of which have been approved by the Executive Officer.”

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 and September 20, 2007.
3. The proposed project serves greater than local need.”

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**PROJECT SUMMARY:**

Under the proposed authorization, funds not to exceed \$1,700,000 would be granted to the California Department of Fish and Game (Department) to assist with acquisition of the 18.11-acre Mitsuuchi property, located immediately adjacent to Batiquitos Lagoon in the City of Carlsbad (Exhibit 1). The coastal lagoon is the site of a \$55 million tidal restoration and habitat enhancement project that was completed in 1996, assisted by Conservancy planning grants (See “Realization of Prior Conservancy Goals” section). Conservancy financial support for the Mitsuuchi acquisition will help facilitate conservation and management of habitat important for the long-term functioning of the lagoon, protect valuable open space and wildlife habitat, and provide opportunities for improved coastal public access.

The funding source for the proposed acquisition would be the Carlsbad Agricultural Mitigation Fee Statutory Program account administered by the Conservancy pursuant to Section 30107.5 of the Coastal Act (Exhibit 2). Approximately \$1.7 million remains in the account (See “Project Financing section for more background).

*Resource Enhancement*

The Batiquitos Lagoon Foundation, the Department and the U.S. Fish and Wildlife Service (FWS) share a concern that development pressures, soil erosion and invasion by non-native plants threaten loss of the Mitsuuchi Property's significant coastal wetland values and degradation of the adjacent ecological reserve (Exhibit 3). The 18-acre parcel comprises much of the little remaining habitat surrounding the lagoon, including habitat used by endangered species. The Carlsbad Habitat Management Plan (HMP), a local plan permitted under the federal Natural Communities Conservation Planning program (NCCP) and the Northwest San Diego County Multiple Habitat Conservation Plan (MHCP), affords some protection for the property but still allows limited development. Because of previous large scale habitat losses to development, state and federal regulators believe fee acquisition of the entire Mitsuuchi parcel followed by restoration is necessary to protect and enhance lagoon functioning and to help preserve amounts and kinds of habitat and linkages necessary to sustain viable regional populations of critical species.

Specifically, acquisition of the Mitsuuchi Property would provide significant resource conservation benefits including: 1) protection of a wetland to upland habitat transition zone supporting important refugia for wetland species during flooding; 2) protection and future enhancement of breeding, sheltering and foraging habitat for the unique upland and wetland species that occupy the transition zone, including the Federally listed California gnatcatcher, least Bell's vireo and light-footed clapper rail; 3) control of non-native species and erosion that threaten existing ecological resources; and 4) maintenance of a habitat buffer between the lagoon and surrounding development.

#### *Public Access*

The Mitsuuchi Property acquisition will facilitate improved, continuous public access along the coastal lagoon's north shore and provide outstanding views of the Batiquitos bluffs along the south shore. 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 Mitsuuchi Property and neighboring Murphy Property but a fence on the neighboring Murphy parcel obstructs general public access through this area. Purchase of the Mitsuuchi Property, along with fee purchase or acquisition of an access easement through the Murphy Property in the future, will allow unobstructed access and will improve the prospect of connecting the Aviara Trail with a planned municipal inland trail system.

#### *Open Space*

The Mitsuuchi Property is prioritized for acquisition by the City of Carlsbad's Open Space Committee based on its inclusion in the Carlsbad HMP, threat of development, and recreational trail opportunities on the site.

#### *Transaction Details*

The non-profit Batiquitos Lagoon Foundation (Foundation) has been involved with restoration and preservation at the lagoon since 1982. The Foundation, a volunteer-driven organization, lacks funds to pursue land acquisition. Having watched several properties in the lagoon vicinity succumb to development, and conscious of the remaining development potential of the

Mitsuuchi parcel and the neighboring Murphy Property, the Foundation backed by the Department requested and received from the Conservancy in 2006 a grant of \$50,000 to cover negotiation and other pre-acquisitions expenses associated with fee or easement purchase of the two properties. Following lengthy discussions with the Foundation, the Mitsuuchi family agreed to sell fee title to the property at the Department of General Services' approved appraised fair market value of \$2.4 million. Conservancy funding for the project is conditioned upon securing funding commitments for the \$700,000 balance. The Department and FWS are jointly seeking federal Section 6 Endangered Species Act funding to complete the transaction.

Since the property is immediately adjacent to the Department's Batiquitos Lagoon Ecological Reserve, the Department will take title to the property and add it to the existing Ecological Reserve. Following acquisition, the Department will collaborate with the City of Carlsbad and the Foundation on public access improvements and on development and implementation of a habitat management and monitoring program consistent with management guidelines and requirements included in the Carlsbad HMP and the Northwest San Diego County MHCP. These generally include various stewardship measures including control of invasive plant species, providing oversight and enforcement over allowed public uses, and monitoring of covered species and habitat types. The Foundation will continue discussions with the owner of the adjacent Murphy Property.

Letters of support have been received from State Senator Mark Wyland, the Department and the City of Carlsbad (Exhibit 4).

**Site Description:**

The Mitsuuchi Property is located along the northeast shore of Batiquitos Lagoon in the City of Carlsbad (Exhibit 1). The property possesses a northerly section of higher elevation containing panoramic lagoon views and upland habitat (Exhibit 3). The southerly half of the property, which borders the wetlands, is only a few feet higher than wetland elevation and provides key buffer habitat. Based on field surveys from neighboring properties and biological surveys completed within the reserve, potential vegetation communities on the property includes Southern Willow Scrub, Diegan Sage Scrub, Southern Coastal Salt Marsh, Goldenbush Saline Meadow, Brackish Marsh, and Freshwater Marsh. The property also has substantial non-native vegetation and erosion and sedimentation problems, as evidenced by the deep arroyos cut into the upland slopes.

The two-mile improved Aviara Trail along the north shore of the lagoon continues through the Murphy and Mitsuuchi Properties as a city maintenance road over a sewer line easement. A fence on the Murphy Property obstructs public access through the properties. Following acquisition, the public will be able to access the portion of the trail on the Mitsuuchi Property, but continuous access along the lagoon's north shore will remain impeded until fee or an access easement are acquired over the Murphy Property.

**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 Foundation 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 Foundation 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 Foundation, 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 Mitsuuchi and Murphy 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 Foundation backed by the Department requested and received in 2006 a Conservancy grant of \$50,000 to cover negotiation and other pre-acquisitions expenses associated with fee or easement purchase of the two properties. Following lengthy discussions with the Foundation, the Mitsuuchi family agreed to sell fee title to the property at the Department of General Services’ approved appraised fair market value of \$2.4 million.

**PROJECT FINANCING:**

Coastal Conservancy	\$1,700,000
Applied for funding	
USFWS Section 6 Grant	<u>700,000</u>
<b>Total Project Cost</b>	<b>\$2,400,000</b>

The funding source for the Conservancy grant would be the Carlsbad Agricultural Mitigation Fee Statutory Program account administered by the 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 the purposes of the funding source as it will facilitate acquisition of the Mitsuuchi Property and permit restoration activities to protect the ecological integrity of the lagoon (priority 1). It also will permit natural resource enhancement in the coastal zone in the City of Carlsbad as provided for in the City of Carlsbad’s local coastal program (priority 4). 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.

**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 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 Department will facilitate acquisition of a private property 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 financial assistance for the Mitsuuchi acquisition 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 (Coastal Resource Enhancement) and §31400.2 (System of Public Accessways), the amount of funding proposed by the Conservancy for acquisition of lands for coastal resource enhancement and public access purposes shall be determined by the total amount of funding available for these types of projects, the fiscal resources of the applicant, and the urgency of the project relative to other eligible projects. Consistent with these sections, the amount of proposed Conservancy funding for this project has been determined with an understanding of the Department's financial limitations, the potential for cost sharing with other state, federal and local agencies, the urgency of the proposed acquisition, 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 Department will acquire land 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.

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 land containing 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 and September 20, 2007, 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:** 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:** Absent the proposed acquisition, the current property owner could pursue residential development consistent with the zoning.
6. **Greater-than-local interest:** Acquisition of the property would buffer a state ecological reserve from the impacts of adjacent development and protect transitional and upland habitat for state and federal threatened and endangered species. The project also would permit enhancement of public trail access on the lagoon's north shore, an area frequented by guests of the Aviara destination resort, tourists attracted to Carlsbad's nearby beaches and residents of surrounding developments.

**Additional Criteria**

13. **Realization of prior Conservancy goals:** The 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 Foundation, 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 Mitsuuchi and Murphy Properties were three of the major priorities identified in the planning study. The proposed acquisition would protect the investment made in the enhancement of the lagoon, while providing public access, and would enable invasive non-native plant and erosion control issues to be addressed in the future. Acquisition and restoration of the property 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 (Exhibit 2):

- (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 Mitsuuchi Property 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 \$1.7 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.

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

The Mitsuuchi Property is 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 by the Department, the City of Carlsbad, and the Foundation.

Consistent with Section 30251, the proposed project will facilitate acquisition of property 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 property in question is 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 are a major ecological threat to the lagoon. Following acquisition, non-native plants on this property 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 this property 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.

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. Acquisition of the Mitsuuchi Property, and future fee or easement

acquisition of the Murphy Property, will allow unobstructed public trail access along the lagoon's north shore.

**COMPLIANCE WITH CEQA:**

The proposed acquisition is exempt from the California Environmental Quality Act under Section 15313, Class 13, as the property is being purchased for fish and wildlife conservation purposes, and under Section 15325, Class 25, as the transfer of an ownership interest in land to preserve open space. Upon approval of the project, staff will file a Notice of Exemption (NOE).