

COASTAL CONSERVANCY

Staff Recommendation
November 10, 2011

BERTAGNOLLI RANCH ACQUISITION

Project No. 07-078-02
Project Manager: Melanie Denninger

RECOMMENDED ACTION: Authorization to disburse up to \$2,500,000 to Save Mount Diablo for acquisition of a 560-acre portion of the 1,080-acre Bertagnolli Ranch adjacent to Mount Diablo State Park in unincorporated Contra Costa County.

LOCATION: Southeast side of Mount Diablo in unincorporated Contra Costa County (Exhibit 1)

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

EXHIBITS

Exhibit 1: [Project Location](#)

Exhibit 2: [Project Site Map](#)

Exhibit 3: [Project Photographs](#)

Exhibit 4: [Conservation Lands Network Analysis](#)

Exhibit 5: [East Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan Map of Acquisition Priorities](#)

Exhibit 6: Project Letters—to be provided on November 10

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31160-31165 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of up to \$2,500,000 (two million five hundred thousand dollars) to Save Mount Diablo for acquisition of Assessor’s Parcel Nos. 080-090-005, 220-020-001, and 220-020-002 in Contra Costa County (“the property”) which compose a 560-acre portion of the 1,080-acre Bertagnolli Ranch (shown in Exhibits 1 and 2, which are attached to the accompanying staff recommendation), for the purposes of preserving open space, scenic resources, plant and wildlife communities, and other natural resources, protecting watersheds, and enabling public access that is compatible with those purposes. This authorization is subject to the following conditions:

1. Prior to disbursement of any Conservancy funds, Save Mount Diablo shall submit for review and approval by the Executive Officer of the Conservancy (“the Executive Officer”):
 - a. All relevant acquisition documents including but not limited to the appraisal, environmental assessments, escrow instructions, title reports and documents of title necessary for the purchase of the property.
 - b. Evidence that there is legal access to the property.
 - c. Evidence that sufficient funds are available to complete the acquisition.
 - d. A stewardship plan, budget, and schedule describing the actions that Save Mount Diablo will take, prior to the anticipated transfer of the property to a long-term manager, to monitor and maintain existing natural resources on the property and any natural resource-compatible public access, and any grazing proposed for the property.
 - e. A plan showing the design and placement of signs acknowledging Conservancy funding for the acquisition.
2. Save Mount Diablo shall pay no more than fair market value for the property, as established in an appraisal approved by the Executive Officer.
3. Save Mount Diablo shall permanently dedicate the property for the purposes of preserving open space, scenic resources, plant and wildlife communities, and other natural resources, protecting watersheds, and enabling public access that is compatible with those purposes, by recording an offer to dedicate or other instrument acceptable to the Executive Officer.
4. Save Mount Diablo shall submit a written monitoring report to the Executive Officer before close of escrow on acquisition of the property, and at five-year intervals thereafter for as long as it holds a property interest, identifying the conditions and circumstances of the property as relevant to the purposes of preserving open space, scenic resources, plant and wildlife communities, and other natural resources, protecting watersheds, and enabling public access that is compatible with those purposes.”

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 the current Project Selection Criteria and Guidelines.
 2. The proposed authorization is consistent with the purposes and objectives of Chapter 4.5 of Division 21 of the Public Resources Code, regarding the San Francisco Bay Area Conservancy Program.
 3. Save Mount Diablo is a nonprofit organization existing under the provisions of Section 501(c)(3) of the United States Internal Revenue Code, and whose purposes are consistent with Division 21 of the Public Resources Code.”
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PROJECT SUMMARY:

Staff Recommendation

Staff is recommending that the State Coastal Conservancy authorize the disbursement of up to \$2,500,000 (two million five hundred thousand dollars) to Save Mount Diablo for acquisition of Assessor's Parcel Nos. 080-090-005, 220-020-001, and 220-020-002 in Contra Costa County ("the property"), which form a 560-acre portion of the 1,080-acre Bertagnolli Ranch ("the Ranch") (Exhibits 1 and 2) for the purposes of preserving open space, scenic resources, plant and wildlife communities, and other natural resources, protecting watersheds, and enabling public access that is compatible with those purposes.

Project Importance

Acquisition of the property is a priority for Conservancy assistance because the property is large, prominent in the viewshed, biologically rich and diverse, and adjoins the existing Mount Diablo State Park ("the State Park"; Exhibit 2). The project will help implement open space, rangeland and watershed protection goals and objectives of the Conservancy's Strategic Plan, further the Conservancy's long-standing efforts to assist with open space protection on Mount Diablo, and implement State and regional plans as follows:

Mount Diablo State Park General Plan: The property is surrounded on three sides by the State Park (Exhibit 2). The general plan prepared by the California Department of Parks and Recreation ("State Parks") provides for inclusion of the property, along with the remainder of the Ranch, in the State Park. Due to financial constraints, State Parks is not able to help acquire the property and may not be able to incorporate it into the State Park unless an endowment for management is provided. In the meantime, Save Mount Diablo is prepared to accept responsibility for property management, including conducting public hikes.

Bay Area Conservation Lands Network ("CLN"; also known as Upland Habitat Goals): The CLN is a science-based assessment tool created by multiple agencies, and used to identify priorities for conservation of large blocks of lands needed to preserve biodiversity in the Bay Area. The Conservancy helped fund creation of the CLN. Applying the geographic information systems database and analytical tools of the CLN indicates that the majority of the Ranch, and the entirety of the 560-acre property that the Conservancy would fund, are identified as lands essential to accomplishing the Conservation Goals of the CLN. Among the vegetation conservation targets that protection of the property would help accomplish are those for blue oak woodlands, semi-desert/desert scrub, hot and warm grasslands, mixed montane chaparral, and blue oak-foothill pine woodlands (Exhibit 4).

East Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan ("East County HCP/NCCP"): Approximately three-quarters of the property, along with all of the rest of the Ranch, falls within the geographic scope of the East County HCP/NCCP. This plan constitutes both a habitat conservation plan under the federal Endangered Species Act and a natural communities conservation plan ("NCCP") under the state Natural Communities Conservation Planning Act of 1991 (California Fish and Game Code Section 2800 *et seq.*). The purpose of the plan is to conserve habitat on an ecosystem scale, and to aid in the recovery of endangered species while defining with greater certainty where development will be allowed to occur, and streamlining the process for permitting development that adversely impacts habitat for endangered species. The East County HCP/NCCP identifies land to be conserved (referred to as

Preserve lands) and land that can be permitted for development. The Preserve lands protect regional biodiversity by conserving intact ecosystems and their dependent species. Based on the plan, the U.S. Fish and Wildlife Service and the California Department of Fish and Game have authorized the participating public entities to permit the incidental take of endangered species.

The East County HCP/NCCP proposes conservation of approximately twice as much habitat as it estimates will be required to offset development impacts. Developers obtaining construction approvals pursuant to the plan will be required to pay fees that will be used to implement the East County HCP/NCCP. Because the fees are based on the acreage of habitat impacted and the plan sets aside more land than is required to offset the development impacts, the development fees are not sufficient to enable protection of all of the Preserve lands. Accordingly, the joint powers authority created to manage implementation of the East County HCP/NCCP, the East Contra Costa County Habitat Conservancy (the Habitat Conservancy), has obtained grants from the U.S. Fish and Wildlife Service and the Wildlife Conservation Board for conservation acquisitions and also works closely with other funding partners, such as the Wildlife Conservation Board, Save Mount Diablo, and the East Bay Regional Park District, to permanently protect habitat in the conservation areas.

The majority of the property lies within the lands designated for the Preserve in the East County HCP/NCCP, in an area designated "Zone 4a." This zone is identified as warranting a "higher" level of acquisition effort in order to protect the headwaters of Marsh Creek (Exhibit 5). Thus, conservation of the property will achieve a significant goal of the Habitat Conservancy.

Acquisition and Management

According to its pending purchase and sale agreement, Save Mount Diablo will acquire fee title to the entire 1,080-acre Bertagnolli Ranch property not later than late December 2011, at a total price of \$7,173,800. The amount offered by Save Mount Diablo is the fair market value of fee title as determined in an appraisal commissioned by the Conservancy in 2008 and update by Save Mount Diablo in October 2011. The proposed sources of funding for the fee acquisition are the Conservancy (\$2,500,000) and a loan by an anonymous private donor (\$4,673,800). Staff of the Habitat Conservancy has expressed its interest in pursuing subsequent acquisition of a conservation easement over a portion of the Ranch.

In order to help mesh the fiduciary responsibilities of the Conservancy with the administrative and fiduciary needs of Save Mount Diablo, its private donor and the Habitat Conservancy, the Conservancy's funding will be attributed to acquisition of parcels with a fair market value of not less than \$2.5 million (currently estimated to be approximately 560 acres) at the southern end of the Ranch (Exhibit 2), with a requirement that Save Mount Diablo record an irrevocable offer to dedicate (OTD) or similar legal instrument to permanently restrict uses of this portion of the Ranch to those consistent with the purposes of the Conservancy's grant. Save Mount Diablo anticipates reimbursing the private donor for all or a part of his/her contribution by fundraising from a variety of sources and by selling a conservation easement over the 520 acres outside the OTD to the Habitat Conservancy. Thus, the entire Ranch will be protected in perpetuity even though the Conservancy's OTD will only cover the 560-acre portion of the Ranch.

For the foreseeable future, Save Mount Diablo will manage and monitor the entirety of the Ranch for its open space, scenic, plant, wildlife, and watershed resources, possibly using cattle grazing to help protect and restore native grasses and forbs and to generate income to fund other

management activities, and will also seek to enter into an agreement with State Parks for public trail access to and from the property. Over the long-term, Save Mount Diablo hopes to assemble funding for a management endowment and transfer title to either State Parks or to the East Bay Regional Park District.

Save Mount Diablo is a private nonprofit organization dedicated to protecting fish and wildlife habitat, open space, scenic resources, and agriculture on and around Mount Diablo, and to expanding opportunities for trail access. The organization was founded in 1971. Most of the properties which it has acquired have been transferred to the California Department of Parks and Recreation (“State Parks”) for inclusion in Mount Diablo State Park (“the State Park”) or to the East Bay Regional Park District. It manages the remainder of the properties which it has acquired using management funds obtained as part of acquisition transactions or provided by donors.

Site Description: Bertagnolli Ranch lies on the southeastern flank of Mount Diablo in central Contra Costa County. The mountain’s geology, unusual soils, climatic diversity and location at the edge of the Coastal Range and Central Valley near the Delta, creates a biodiversity “hot spot,” linking a myriad of smaller peaks in an oval of wildlife corridors—much of it privately owned—stretching from the main peak through Altamont Pass to join the rest of the northern Diablo range. The mountain is the single most important wildlife habitat area in the East Bay and one of the Bay Area’s most important. Mount Diablo is home to 253 vertebrate animal species and its 900 plant species, three quarters of which are native, representing one tenth of the native plants found in California. More than 150 species are rare or listed, and eleven are endemic to the Mount Diablo region. In a 2009 24-hour “BioBlitz” biological survey of Bertagnolli Ranch conducted by Save Mount Diablo and scientists, 733 species—30 of them rare or listed—were identified.

The 1,080-acre Bertagnolli Ranch is divided into two parts which touch at the corners of two parcels (Exhibit 2). Overall, the property lies in canyons and on ridges and knolls, from 800 feet to 2,080 feet above sea level, with habitats including annual grassland, oak savannah, blue oak woodland, ponds and riparian areas, as well as boulders, cliffs and windcaves.

On the 560-portion of the property (Exhibit 2), oak savannah and blue oak woodland predominate, with windcaves occurring on the highest points. Drainage flows across the property into tributaries to Marsh Creek and Alameda Creek. Both of those creeks contain steelhead, a species listed under the State Endangered Species Act as threatened, and are the subject of multi-agency restoration and protection efforts. Cave Point is visible from the 3,849-foot summit of Mount Diablo and from lower surrounding areas.

Bertagnolli Ranch adjoins Mount Diablo State Park, which encompasses most of the mountain. The 560-acre portion of the Ranch proposed for acquisition with Conservancy funds is surrounded on three sides by the State Park. Trail users from State Park property cross this portion of the ranch on informal trails.

Project History: Acquisition of Bertagnolli Ranch has been a priority for State Parks and Save Mount Diablo for decades. In 2008, the Conservancy commissioned an appraisal of fee title and acquisition of the ranch from the Bertagnolli family trust seemed feasible, with a package of funding from State Parks, the Wildlife Conservation Board and the Conservancy. Prospects

dimmed, though, when one of the family members made arrangements to hold onto the property and continue ranching.

Several months ago, a broker began marketing the property again. In August 2011, Save Mount Diablo, with the backing of an anonymous donor, made an offer to acquire fee title based upon the fair market appraisal completed for the Conservancy in August 2008. This donor is serving in the role of an institutional lender, and is reported to be comfortable with an uncertain schedule for repayment. In October 2011, an updated appraisal was completed for Save Mount Diablo. This appraisal supports Save Mount Diablo's recent purchase offer. As of this writing, Save Mount Diablo are in negotiations and Conservancy staff is reviewing the October 2011 appraisal. Staff will provide an update at the Conservancy's November 10 meeting.

The family is reportedly now facing some urgency about selling the property, due to financial difficulties including a tax lien recorded against the property by the Internal Revenue Service. Reflecting that urgency, Save Mount Diablo's offer provides for a 60-day escrow from acceptance of the offer, with a possible 30-day extension.

Of the anticipated participants in the 2008 funding package, State Parks will have no acquisition funds for this property for the foreseeable future and the Wildlife Conservation Board would not be able to participate within the time constraints set out in the offer. The Conservancy—subject to the conditions in the funding authorization proposed by staff—would be able to perform within the escrow period.

(Prior Conservancy assistance with resource protection on and around Mount Diablo is reviewed below in the "Realization of prior conservancy goals" item in "CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES".)

PROJECT FINANCING

Coastal Conservancy	\$2,500,000
Total Project Costs	\$2,500,000

The anticipated source of Conservancy funds is the FY 09/10 appropriation to the Conservancy from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 ("Proposition 84," Public Resources Code Sections 75001 *et seq.*). Proposition 84 funds are available for all San Francisco Bay Area Conservancy Program projects that protect and restore natural habitat values of coastal watershed lands, including projects that protect land through acquisition. Public Resources Code sections 75005(m) and 75060(c). Acquisition of the property by Save Mount Diablo will protect the natural habitat values of the property, which is in the San Francisco Bay watershed.

Proposition 84 also requires that, for acquisition projects that protect natural resources, the Conservancy give priority to projects that meet at least one of the criteria specified in Section 75071 (a)-(e). The proposed acquisition satisfies three of the five specific criteria because the project will: link protected areas of the State Park (Section 75071(a)); contribute to long-term protection of the water quality of Alameda Creek and Marsh Creek, which are in the priority watershed of San Francisco Bay, a major biological region of the state (Section 75071(b)); and

support a relatively large area of under-protected major habitat types (Section 75071 (c)). See “PROJECT SUMMARY” and Project Description” above for information related to these criteria.

As mandated by Section 75071(f), Conservancy staff has submitted to the Resources Agency, and posted on the Conservancy’s website, an explanation of how the proposed acquisition meets the criteria established in Section 75071 for use of Proposition 84 funding.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

The proposed project is consistent with the provisions of Chapter 4.5 of Division 21 of the Public Resources Code, Sections 31160-31165, which state that the Conservancy may award grants in the nine-county San Francisco Bay Area to help achieve stated goals. Consistent with Section 31162(b), the proposed project will help “to protect...natural habitats and connecting corridors, watersheds, scenic areas, and other open-space resources of regional importance.” The property acquisition will result in the protection of the grasslands, oak savannah, and blue oak woodland plant communities on the property and of the wildlife corridors that it provides. Because the property is part of the watershed of the San Francisco Bay, the project also protects watershed land.

Section 31163 (a) provides that “any acquisition of real property by the Conservancy pursuant to this chapter shall be from willing sellers.” Consistent with this section, the sellers of the property are free to enter or not enter into a purchase and sale agreement with Save Mount Diablo. As of this writing, they had not yet entered into that agreement. Furthermore, Save Mount Diablo is a private nonprofit organization with no ability to force the transfer of title.

The property acquisition satisfies the criteria for determining project priority under Section 31163(c), as the project has the following characteristics: it serves a regional constituency in that the project will help preserve sensitive natural communities and also provides scenic resources and potential trail connections; it can be implemented in a timely way because it will be completed within approximately 3 months; and it includes substantial matching funds.

CONSISTENCY WITH CONSERVANCY’S 2007 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 10, Objective D** of the Conservancy’s 2007 Strategic Plan, the proposed project would protect approximately 560 acres of uplands, wildlife habitat, connecting corridors, scenic areas, and other open-space resources of regional significance in the Bay Area.

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 June 4, 2009, 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 proposed project has broad support from the public, as demonstrated by the project letters attached as Exhibit 6 to this staff report.
4. **Location:** The project is located in Contra Costa County, within the jurisdiction of the nine-county San Francisco Bay Area Conservancy Program.
5. **Need:** The opportunity to acquire the Bertagnolli Ranch arose unexpectedly in summer 2011. In order to meet the time constraints of the financially distressed seller, Save Mount Diablo needs to assemble acquisition funding in time to close escrow in December 2011. A private donor will loan funds for acquisition of approximately 520 acres of the 1,080-acre property. Conservancy funding is needed to acquire the other approximately 560 acres. No other acquisition funding is available in time for the deadline to close escrow.
6. **Greater-than-local interest:** The proposed project would protect wildlife habitat that is of state and federal significance, preserve scenic open space, and enable connection of trails in Mount Diablo State Park which are currently interrupted by the peninsula of the property extending into the State Park.
7. **Sea level rise vulnerability:** The property is not vulnerable to rising sea level, as it lies between 800 and 2,080 feet above sea level.

Additional Criteria

8. **Urgency:** See "Need" above in "Required Criteria."
10. **Leverage:** See the "Project Financing" section above.
13. **Readiness:** With the private donor's funds in place and the proposed Conservancy funding authorization, Save Mount Diablo will have the funds needed to complete the acquisition of the entire Ranch during the agreed upon escrow period. (Note that, as of this writing, an appraisal update and purchase offer are pending.)
14. **Realization of prior Conservancy goals:** In order to help conserve the rich habitat, scenic and recreational resources on Mount Diablo, the Conservancy has assisted with conservation acquisitions of a number of other Mount Diablo properties— Clayton Ranch (\$300,000 authorized in 1999), Silva Ranch (\$750,000 authorized in 1999), Wright Ranch (\$590,000 authorized in 2001), Mount Diablo Gateway Parcel (\$259,999 authorized in 2003), Mangini Ranch (\$900,000 authorized in 2006), and Chaparral Spring (\$1,400,000 authorized in 2008). See also "Project History" above."

COMPLIANCE WITH CEQA:

Land acquisition for the purpose of preserving the land in its natural condition and providing public access is categorically exempt from California Environmental Quality Act (CEQA), under

14 California Code of Regulations Section 15313, Acquisition of Land for Wildlife Conservation Purposes; Section 15325, Transfer of Ownership of Interest in Land to Preserve Existing Natural Conditions; and Section 15316, Transfer of Ownership of Land in Order to Create Parks.

Consistent with the provisions of these sections, the purposes of the proposed acquisition are to preserve sensitive natural resources in their existing natural condition through the transfer of ownership to a conservation organization, with future use restricted to natural resource protection and compatible public access and grazing. Although public access is contemplated, no plan for management of the property as a park has been prepared yet, and therefore the exemption under section 15316 applies to this acquisition.

Staff will file a Notice of Exemption following Conservancy authorization.