

COASTAL CONSERVANCY

Staff Recommendation

June 25, 2015

CORTE MADERA MARSH ECOLOGICAL RESERVE ACQUISITION

Project No. 15-006-01

Project Manager: Betsy Wilson

RECOMMENDED ACTION: Authorization to disburse up to \$400,000 to Marin Audubon Society for the acquisition of a 5.2-acre property adjoined to the north, east, and south by the Corte Madera Marsh Ecological Reserve in Marin County.

LOCATION: East of the terminus of Industrial Way in Corte Madera, Marin County (Exhibit 1)

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

EXHIBITS

Exhibit 1: [Project Location Maps](#)

Exhibit 2: [Project Photographs](#)

Exhibit 3: [Project Letters](#)

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 disbursement of an amount not to exceed four hundred thousand dollars (\$400,000) to Marin Audubon Society (MAS) to acquire a 5.2-acre property adjoined to the north, east, and south by the Corte Madera Marsh Ecological Reserve in Marin County (Marin County Assessor’s Parcel Numbers 023-040-06, -10, and -11). This authorization is subject to the following conditions:

1. Prior to the disbursement of Conservancy funds, MAS shall submit for the review and approval of the Executive Officer of the Conservancy (Executive Officer) all relevant documents, including, without limitation, the appraisal, purchase agreement, escrow instructions, environmental assessment, and title report.
 2. Prior to the disbursement of Conservancy funds, MAS shall submit evidence that it has obtained sufficient rights to access the site for purposes of the acquisition.
 3. MAS shall permanently dedicate the property for the purposes of habitat restoration and preservation, while enabling compatible public access, by recording an irrevocable offer to dedicate the property or other instrument approved by the Executive Officer.
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4. Conservancy funding shall be acknowledged by erecting and maintaining a sign on the property or in a nearby public staging area, the design and location of which must be approved by the Executive Officer.
5. MAS shall pay no more than fair market value for the property, as approved by the Conservancy, based on an appraisal of the property.”

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 Chapter 4.5 of Division 21 of the Public Resources Code (Sections 31160 *et seq.*), regarding San Francisco Bay Area Conservancy Program.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.
3. The Marin Audubon Society is a nonprofit organization existing under section 501(c)(3) of the U.S. Internal Revenue Code, and whose purposes are consistent with Division 21 of the Public Resources Code.”

PROJECT SUMMARY:

Staff recommends authorization to disburse up to \$400,000 to Marin Audubon Society (MAS) to acquire 5.2 acres of filled historic tidelands surrounded on the north, east, and south by the almost 300-acre Corte Madera Marsh Ecological Reserve (Reserve) in Marin County. Following acquisition, MAS plans to restore the site to tidal marsh and transitional upland habitat. Restoring the site will benefit the endangered Ridgway’s rail as well as other special status species, fish, migratory waterfowl, and shorebirds that depend on the Reserve’s habitats.

Purchase of the property is needed to permanently protect the site, remove uses that are degrading the Reserve habitat, and restore a complete tidal marsh habitat integrated with the Reserve marsh. The entire project site is former tidal marsh that was filled for development over the last 40 years, leaving the property several feet higher than the adjacent Reserve. People currently use the property as a connection between the north-south levee trail and an unauthorized path on the Reserve’s high marsh, resulting in trampling of marsh vegetation and wildlife disturbance. In addition, there is a threat of development as the site is zoned for office use and there have been several development proposals over the years.

MAS is in the process of planning restoration of the site; it anticipates that approximately 2.5 acres of the site will be restored to tidal marsh and the remaining portion to upland transitional habitat. MAS also intends to provide for public access, most likely as a trail along the edge of the property where people can view the marsh and wildlife that use it without impacting those resources. Following restoration, MAS will donate the property to the California Department of Fish and Wildlife (CDFW) for inclusion in the Reserve.

A railroad right-of-way currently owned by Sonoma-Marín Area Rail Transit (SMART) is located along the property's western boundary. While physical access to the subject property is from the terminus of Industrial Way over a compacted gravel driveway that crosses the right-of-way, the property does not appear to have legal access rights over the SMART right-of-way. MAS is in negotiations with SMART to obtain sufficient rights to access the site for purposes of restoration and to maintain the property. A condition of Conservancy approval requires MAS to submit evidence that it has obtained sufficient rights to access the site for purposes of the acquisition prior to the disbursement of Conservancy funds.

Acquisition of the project site will enable restoration of coastal wetlands in San Francisco Bay's Corte Madera Creek watershed. The acquisition will facilitate enhancement and restoration of habitat for the endangered Ridgway's rail and other species; provide high tide refugia; eliminate current land uses that are degrading and destroying habitat for rails and other wildlife; and remove forever the threat of development from the project area. The San Francisco Estuary is the largest estuary on the west coast of the continent, is a major migration refueling stop and overwintering habitat for migratory waterfowl and shorebirds of the Pacific Flyway, and is the only remaining habitat for the resident endangered Ridgway's rail. Given that an estimated 85-90 percent of the historic tidal marshes in the San Francisco Estuary have been filled or significantly altered over the past two centuries, it is critical to protect and restore former tidelands that can still be easily restored, particularly those that are adjacent to extant marshes that are managed for wildlife.

Marin Audubon Society has been working to restore Marin County's coastal wetlands since 1956 through advocacy and partnering with local, state, and federal agencies, and local nonprofit organizations. MAS partnered with the Conservancy in 2002-2008 to successfully protect and restore hundreds of acres of tidal wetlands, riparian, and adjacent upland habitat in the Bahia site in Novato, Marin County.

Site Description: Currently, the project site consists of uplands dominated by non-native weedy species. The parcel is not actively managed, and is utilized in ways that disturb wildlife and degrade habitat on the adjacent Reserve. Photographs of the project site are included as Exhibit 2.

The project site is surrounded on three sides by the approximately 300-acre Corte Madera Marsh Ecological Reserve. The 95-acre ancient Heerdt Marsh, one of just a few tidal marshes in the estuary that has never been diked, abuts the project site on the south. On the east and north boundaries are five acres of ruderal lands that were filled along with the project site over 40 years ago. The Heerdt tidal marsh surrounds the filled lands of the Reserve and the project site. Tidal waters have been gradually extending back into the filled area of the Reserve as a result of subsidence and sea level rise, and have now converted some filled upland into high marsh. An unauthorized trail extends through this high marsh. These tidal and non-tidal habitats comprise the 100-acre northern section of the Reserve.

The Reserve extends along the entire western edge of Corte Madera Bay, from Corte Madera Creek on the north to San Clemente Creek at the south end, and includes some intertidal parcels. Approximately 200-acres of the Reserve to the south of project site is the Muzzi Marsh which consists of tidal marsh that was diked and restored approximately 25 years ago. Further southeast is Triangle Marsh and adjacent tidelands owned by MAS.

Project History: The proposed acquisition of the project site is part of the Campaign for Marin Baylands initiated by MAS with its partner, Marin Baylands Advocates (MBA), in the late 1980s. The goal of this partnership is to permanently protect those remaining baylands in Marin County, along San Francisco Bay and San Pablo Bay that are at risk of being lost to development and are in private ownership. A list of at-risk properties was compiled and, so far, these partners have worked together to purchase 17 properties and have assisted with the purchase of other properties by public agencies. The project site has been on the at-risk list since its inception. There is a long history of development interest in the project site, including proposals for a 66,000-square-foot office development, affordable housing, and a soccer complex.

The Conservancy provided MAS with grant funding for the acquisition of the 33-acre Triangle Marsh property in 2000 and for the restoration and expansion of existing tidal marsh and transition area at the site in 2004. The Triangle Marsh site is located at the south end of Corte Madera Bay.

The Conservancy has also implemented a San Francisco Bay Living Shorelines Project in the subtidal areas offshore of the Corte Madera shoreline, near Muzzi Marsh and the Corte Madera Ecological Reserve.

PROJECT FINANCING

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| Coastal Conservancy | \$400,000 |
| Marin Audubon Society | 205,709 |
| National Fish and Wildlife Foundation | 175,000 |
| County of Marin | 100,000 |
| Marin Baylands Advocates | 84,460 |
| Wimberly Foundation through Audubon CA | 30,000 |
| Local Organizations and Foundations (14 sources) | <u>89,485</u> |
| Project Total | \$1,084,654 |

The anticipated source of Conservancy funds is an appropriation to the Conservancy from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50), Water Code section 79500, et seq. These funds can be used for coastal watershed protection, including the acquisition and protection of land and water resources pursuant to Chapter 4.5 of Division 21 of the Public Resources Code. As discussed in greater detail below, this project furthers the San Francisco Bay Area Conservancy Program’s goal to protect, restore, and enhance natural habitats as set forth in Section 31162(b) of Chapter 4.5 of Division 21.

Water Code section 79507 requires that “watershed protection activities” funded by Proposition 50 must be consistent with the applicable adopted local watershed management plan and the applicable regional water quality control plan adopted by the regional water quality control board. The project is consistent with the Ross Valley Flood Protection and Watershed Program (County of Marin, City of Larkspur, and Towns of Fairfax, Ross and San Anselmo, 2006), including its goal to integrate environmental enhancement/restoration with the flood mitigation

efforts. The project is also consistent with the San Francisco Regional Water Quality Control Board's Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan), including Chapter 4.2 which addresses wetland protection and management. Per Chapter 4.2 of the Basin Plan, when permitting or otherwise acting on wetland issues, the Water Board will refer to several guiding documents that promote the preservation, protection, restoration, and enhancement of California's wetlands and the multiple resources which depend on them for the benefit of the people of the state. Since the acquisition of the property will protect and enhance wetland habitat, it is consistent with those guiding documents. Thus, the proposed project is an appropriate use of Proposition 50 funds.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

The proposed project is consistent with Chapter 4.5 of Division 21 of the Public Resources Code, Sections 31160-31165, which authorizes the Conservancy to 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, restore, and enhance natural habitats and connecting corridors, watersheds, scenic areas, and other open-space resources of regional importance." Acquisition of the property will provide for permanent protection of these filled historic tidelands and allow for MAS to move forward with restoration of the site. Following acquisition, MAS intends to restore the site to a complete tidal marsh habitat integrated with the adjacent Reserve marsh. The restored marsh will benefit the endangered Ridgway's rail and other special status species, fish, migratory waterfowl, and shorebirds that depend on the Reserve's habitats.

Furthermore, under Section 31162(d), the Conservancy may "promote, assist, and enhance projects that provide open space and natural areas that are accessible to urban populations for recreational and educational purposes." MAS is planning to include a public access component with its restoration plans, providing people with a view of the marsh without impacting the habitats. This property is easily accessed by residents of Marin and several other Bay Area counties.

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 have entered into a purchase and sale agreement with MAS. MAS is a private nonprofit organization with no ability to force the transfer of title.

Consistent with Section 31163(c), the project is 1) supported by adopted regional plans, including the Corte Madera Baylands Conceptual Sea Level Rise Adaptation Strategy, San Francisco Bay Plan, San Francisco Estuary Comprehensive Conservation and Management Plan, San Francisco Baylands Ecosystem Habitat Goals Report, and the U.S. Fish and Wildlife Service's Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California; 2) is regionally significant in terms of the tidal marsh habitat restoration potential; 3) can be implemented in a timely way as there is a willing seller; 4) provides an opportunity to acquire a significant property that could be lost; and 5) includes significant matching funds from other sources.

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

Consistent with **Goal 11, Objective A** of the Conservancy's 2013-2018 Strategic Plan, the proposed acquisition will protect 5.2 acres of historic tidelands of the San Francisco Bay.

Consistent with **Goal 12, Objective C**, the project will increase the amount of land accessible to the public and will facilitate a new trail to connect with the existing trail on the north-south levee of the adjacent Reserve.

**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 October 2, 2014, 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. **Promotion and implementation of state plans and policies:** The proposed acquisition project serves to promote and implement several state plans and policies, including:
 - *San Francisco Baylands Ecosystem Habitat Goals Report* (San Francisco Bay Area Wetlands Ecosystem Goals Project, U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, 1999). The report recommends the restoration and enhancement of tidal marsh wherever possible in Central San Francisco Bay. This project will enable MAS to proceed with the restoration and enhancement of tidal marsh at the site.
 - *San Francisco Estuary Comprehensive Conservation and Management Plan* (approved by the Governor and U.S. EPA Administrator in 1993, updated in 2007). Acquisition and restoration of the project site will carry out objectives and actions identified in the CCMP to protect, create, and restore habitat critical for special status wildlife, specifically through acquisition, permanent protection, enhancement and restoration of marsh and transitional upland habitat.
 - *Corte Madera Baylands Conceptual Sea Level Rise Adaptation Strategy* (San Francisco Bay Conservation and Development Commission, 2013). Restoration of the site will further two of the plan's recommended management measures for sea level rise adaptation: improve sediment pathways, and increase the transition zone.
4. **Support of the public:** As shown in the letters attached as Exhibit 3, the project is supported by Congressman Jared Huffman, State Senator Mike McGuire, State Assemblymember Marc Levine, and the County of Marin Department of Public Works.
5. **Location:** The project is located in Marin County, within the jurisdiction of the nine-county San Francisco Bay Area Conservancy Program.

6. **Need:** MAS has assembled over \$680,000 from 19 funding sources for the acquisition and related transaction costs; this represents over a 2:1 match for the Conservancy's requested contribution. No other funding is available to enable funding the acquisition by the time the sellers wish to complete the transaction.
7. **Greater-than-local interest:** Acquisition and restoration of this property to tidal marsh and creation of high tide refugia/transition zone habitat will greatly benefit the marsh ecosystem, endangered Ridgway's rails, and other resident and migratory species.
8. **Sea level rise vulnerability:** Restoration of tidal marshes surrounding San Francisco Bay is a critical adaptation measure that will benefit wildlife, the public, and infrastructure. The proposed acquisition will protect bayfront property and enable its restoration to tidal marsh, thereby helping to increase resilience and accommodate sea level rise in this location.

Additional Criteria

9. **Urgency:** MAS has only two months to acquire this property, as its purchase agreement expires in August of 2015. The property is currently zoned for office use and could be purchased for development if MAS does not acquire the property. There is a long history of development interest in the project site, including proposals for a 66,000-square-foot office development, affordable housing, and a soccer complex.
10. **Leverage:** See the "Project Financing" section above.
11. **Readiness:** If the Conservancy approves the proposed grant, MAS will be ready to close the acquisition in August 2015.
12. **Realization of prior Conservancy goals:** See "Project History" above.
13. **Cooperation:** The project is part of the Campaign for Marin Baylands initiated by MAS with its partner, Marin Baylands Advocates (MBA), in the late 1980s. This particular project is moving forward with the cooperation of several community groups, and local, state, and federal agencies. Over 20 different groups are contributing to the acquisition of the site.

CONSISTENCY WITH SAN FRANCISCO BAY PLAN:

The San Francisco Bay Conservation and Development Commission prepared the San Francisco Bay Plan to guide the future protection and use of San Francisco Bay and its shoreline. The Bay Plan states that, "[w]here feasible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions, such as resting, foraging, and breeding habitat for fish, other aquatic organisms and wildlife." Part III - The Bay as a Resource: Findings and Policies, Tidal Marshes and Tidal Flats, Policy 4, amended October 2011. The proposed acquisition will allow MAS to initiate future restoration consistent with this policy as well as with many additional standing and amended policies of the Bay Plan.

COMPLIANCE WITH CEQA:

The proposed acquisition of the Corte Madera Marsh property is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code of Regulations Section 15325 as a transfer of ownership of interest in land to preserve open space and to allow restoration of natural conditions. The Conservancy's grantee, MAS intends to preserve the site as open space and to restore the land to tidal marsh and supporting habitat.

Upon approval, staff will file a Notice of Exemption for the proposed project.