

AGENDA
REGULAR MEETING
BOARD OF DIRECTORS

EAST BAY REGIONAL PARK DISTRICT

Tuesday, December 15, 2009

C. BUSINESS BEFORE THE BOARD

4. LAND DIVISION

- a. Authorization to Acquire Fee Interest, Transfer Funds and Encumber Properties for the Purchase of the 1,644± Acre Vaquero Farms Conservation LLC Property: Vasco Caves Regional Preserve and Black Diamond Mines Regional Preserve (Wenninger/Doyle)

RECOMMENDATION

The General Manager recommends that the Board of Directors authorize the acquisition of fee title interest and transfer of funds for the purchase from Vaquero Farms Conservation LLC (VFC) of 1,644.21 acres of land located west of Vasco Road and immediately north of Vasco Caves Regional Preserve in the Byron area of unincorporated Contra Costa County.

REVENUE/COST

The property owners have agreed to sell the property for \$2,924,000, its appraised fair market value. Pursuant to Resolution No. 2008-9-245 approved September 16, 2008, an option payment of \$500,000 [(\$250,000 from the District and \$250,000 from the East Contra Costa County Habitat Conservancy (Conservancy))] has already been released to the Sellers. The balance of funding for the purchase consists of another \$250,000 from the District plus \$2,174,000 from the Conservancy. The District's additional acquisition cost will be funded from remaining Measure AA Interest, Diablo Metro Area. Close of escrow is scheduled to occur before December 31, 2009.

TRANSFER FROM:

Designated for Land Acquisition	
Measure AA Interest, Diablo Metro Area	
(229900BAAI)	\$250,000

TRANSFER TO: Vasco Caves/Vaquero Farms Conservation LLC

Capital Project Account 2349	
For Purchase	<u>\$250,000</u>
Total	\$250,000

BACKGROUND

On November 6, 2007, by its Resolution No. 2007-11-265, the Board of Directors authorized staff to begin negotiations to acquire the subject property from its owners, Vaquero Farms Conservation LLC, a California limited liability company. Negotiations to acquire the property were initiated at the request of the East Contra Costa County Habitat Conservancy. On September 16, 2008, the Board approved an "Option, Purchase and Sale Agreement" with close of escrow to occur on or before March 30, 2009. Due to delays in the State Wildlife Conservation Board's processing of the awarded federal grants, the Conservancy has paid an additional \$150,000 in the interim to extend the option to December 31, 2009.

Located in unincorporated Contra Costa County near the community of Byron and immediately north of the Vasco Caves Regional Preserve, the property is irregularly-shaped and comprised of seven parcels totaling more than 1,644 acres. Access to the property from Vasco Road is through Vasco Caves Regional Preserve via Howden Road. The property consists of rolling hills which range from moderately to steeply sloped. The highest elevation on the property is 1,060 feet in the southwesterly corner. A number of drainage features are interspersed throughout the property, including intermittent creeks and ponds. Perennial Brushy Creek flows along the southeasterly boundary of the property. Plant communities include non-native annual grassland (which is predominant), freshwater marsh and seep, alkali meadow and valley sink scrub. The property is currently grazed by cattle.

Natural Resource Values The property is of particular interest to the Conservancy because of its potential for the creation, enhancement and restoration of wetlands and special status species habitat. A 2006 biological survey by Sycamore Associates LLC concluded that the property "provides optimal habitat for several special-status species, including California tiger salamander, California red-legged frog and western burrowing owl." This site currently supports healthy breeding populations of each of these species. In addition, the study area serves as core San Joaquin kit fox habitat and is a critical linkage to Los Vaqueros watershed lands. Preservation and public management of these lands will benefit the continued survival of several special-status species and sensitive natural communities and will be an important addition to the regional conservation efforts in east Contra Costa County.

Conservation Easement The property has several conditions which will affect its future uses and management. The Agricultural-Natural Resources Trust of Contra Costa County holds a conservation easement and management endowment over the southerly 936 acres of land. The easement was created as mitigation for environmental impacts of the "Vineyards at Marsh Creek," a residential subdivision. Pursuant to the terms of the conservation easement, the Trust is required to use the endowment to implement the prescribed long-term management plan, including fire hazard reduction and cattle grazing, repair and replacement of gates and fences, signage, maintenance of stock ponds and spring boxes, and monitoring of easement compliance. Accordingly, this portion of the subject property should have minimal impacts on District operations.

Wind Turbines In addition, the entire property is subject to wind leases held by Tres Vaqueros Wind Farms and North Wind Energy, with more than 190 wind turbines in various

arrays across the property. At present, many of the turbines are non-operational; however, Tres Vaqueros is currently in the process of submitting an application to “repower” its turbines, removing all of its old smaller turbines and replacing them with fewer large turbines. When VFC purchased the subject property, the previous owners retained 50% of the interest in the wind and air rights as well as one-half of the turbine revenue. A non-negotiable condition in the option agreement was that VFC shall retain the remaining 50% of the wind rights and turbine revenue. No mineral rights, wind rights or turbine revenue will be obtained by the District. However, the Tres Vaqueros tenant has agreed to work cooperatively with the District and the District’s consultant Shawn Smallwood to site the new turbines to minimize avian fatalities, which has been an ongoing concern of Board members. In addition, the Tres Vaqueros repowering project is subject to full CEQA and regulatory review.

Encumbered Properties. When the East Contra Costa County Habitat Conservation Plan (HCP) was originally conceived and approved, land acquisition and restoration activities were to be funded using a combination of developer fees, state and federal grants and bond funds. Unfortunately, in the interim real estate development has come to a virtual halt, and state grant funding from sources such as Prop 84 has been frozen. The Conservancy has been able to attract significant federal grants to help fill the gap; however, the grants still require a 55% non-federal match to qualify. Besides the District’s monetary contribution of \$500,000, therefore, the Conservancy has requested that the District allow two previously acquired properties within the HCP area to be used as match for the subject acquisition: Souza I at Vasco Caves and the Lentzner property at Black Diamond Mines. Both of these properties were acquired with Resource Enhancement Project monies and are currently being managed with habitat protection and enhancement goals. In addition, the Conservancy has previously funded and completed habitat restoration projects on both properties.

If approved by the Board, a Notice of Unrecorded Grant Agreement will be filed encumbering the Souza and Lentzner properties. According to said document, the District agrees to manage the properties consistent with the goals of the HCP and may not sell or otherwise dispose of the properties without the consent of the granting agencies. Staff recommends Board approval of these conditions. Both properties were approved by the Board to be dedicated in 2007, thereby constraining any future sale, and as noted above, the District is already managing these properties in a manner which is consistent with the HCP’s goals.

The purchase of the subject property is the first phase of a larger project. In mid-2010, the Conservancy intends to convey to the District 577± acres adjacent to the north at no additional financial cost to the District.

Staff recommends that this property be purchased and held in landbank status for the foreseeable future. The conservation easement and the wind turbines will prevent public access over most of the subject property, acting to reduce operational impacts in the near term. However, the property is large and will require periodic patrol and management of the grazing lease. The current grazing tenant is Duane Martin, who has developed a positive relationship with the District on other parklands.

Pursuant to our agreements with the East Contra Costa County Habitat Conservancy, the Conservancy will provide management funding for non-park-related activities. The amount of funding for the subject property is yet to be negotiated. Regarding fencing needs, staff recommends a careful field inspection to determine where new fencing might actually be necessary in the short term. The entire westerly boundary of the subject property is Los Vaqueros watershed; CCWD's fencing is relatively new and in good condition. The southerly boundary fence at Vasco Caves/Souza was replaced in 2005 as part of a REP project. Expansion into new adjacent areas to the north of the subject property is anticipated within the next year. Therefore, installing new fence at this time is not recommended.

ALTERNATIVES

No alternatives are recommended.