



CALIFORNIA STATE  
**PUBLIC WORKS BOARD**

GRAY DAVIS, GOVERNOR

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**Special Meeting**

STATE PUBLIC WORKS BOARD  
September 22, 2003  
**MINUTES**

**PRESENT:**

Ms. Shelley Mateo, Deputy Director, Department of Finance  
Mr. Bob Garcia, Chief Financial Officer, Department of Transportation  
Mr. Cy Rickards, Deputy Director, Legal affairs, Department of General Services

**ADVISORY MEMBER:**

Director, Employment Development Department

**LEGISLATIVE ADVISORS:**

Assembly Member Darrell Steinberg  
Assembly Member Wilma Chan  
Assembly Member Fabian Nunez  
Senator Betty Karnette  
Senator Wesley Chesbro  
Senator Gilbert Cedillo

**STAFF PRESENT:**

Kathryn Amann, Assistant Administrative Secretary, State Public Works Board  
Tamara Moss, Executive Secretary, State Public Works Board  
Fred Klass, Program Budget Manager, Department of Finance

**OTHERS PRESENT:**

Hugh T. Ashley, Department of Army–Contractor for Usage  
Gerry Clark, Department of General Services–RESO  
Dorothy Rice, Department of Toxic Substances Control  
J.R. Spragnole, Secretary for Environmental Protection–Cal/EPA  
Sam Schuchat, State Coastal Conservancy  
Marcia Grimm, State Coastal Conservancy  
Tom Gandesbury, State Coastal Conservancy  
A. Todd, State Treasurer’s Office  
J. Castillo, State Treasurer’s Office  
Naomi Feger, Regional Water Quality Control Board–S.F. Bay  
Tim Shelley

### **CALL TO ORDER AND ROLL CALL:**

Ms. Mateo, Chairperson, Deputy Director, Department of Finance at 10:00 am called the meeting to order. Ms. Amann, Assistant Administrative Secretary for the State Public Works Board called the roll. A quorum was established.

### **APPROVAL OF MINUTES**

Ms. Amann reported that staff has reviewed the minutes from September 12, 2003 meeting and believe them to accurately represent the actions of the Board and recommended approval.

**Hearing no objections, the minutes from the September 12, 2003 meeting were unanimously approved.**

### **ACTION ITEMS:**

Ms. Amann stated that there was one Action Item. Item 1, Department of General Services, State Coastal Conservancy, Hamilton Wetlands Army Airfield Acquisition.

Ms. Amann presented the risks and benefits of the proposed item (see staff analysis).

Ms. Mateo asked for some historical background, which was presented by Mr. Klass. In summary:

- The State Coastal Conservancy proposes to acquisition 630 acres of the main airfield parcel of the former Hamilton Army Airfield. The State project planned for the acquired site consists of wetlands restoration; this project is an important first step toward restoration of 2,500 acres of marshes around the San Francisco Bay. The project will provide increased habitat for a variety of endangered and threatened species.
- The conservancy and Army had agreements in place regarding the Army's responsibilities for environmental mitigation. Additionally, the federal government, through the Army Corps, was to partner with the conservancy on the State's wetlands project and provide 75 percent of the project costs. These agreements have always provided that title to the land would not transfer to the conservancy until the Army completed its environmental remediation.
- Although the remediation is not complete, the Department of Defense established a September 30, 2003 deadline to transfer the property. Failure to complete the land transaction could result in loss of federal funds for the conservancy's wetlands restoration project.
- While the Army has made progress in implementing its environmental remediation plan, there are risks to the State in proceeding with the acquisition at this time. Although the Army is legally responsible for remediation, there are differing views regarding the scope of the Army's responsibility for area-wide DDT contamination in soil adjacent to the runway.
- While there are some risks in accepting the property now, there are benefits to be gained. First, securing federal funds for 75 percent of the project cost is a substantial benefit. In addition, the Port of Oakland needs a location to deposit dredged materials that result from dredging of its shipping channels. This provides economic benefits to both governmental entities, estimated at \$6 million for the State wetlands project compared to buying infill, and \$15 million for the Port compared to hauling the dredged materials to sea. Finally, the

conservancy has secured environmental insurance to cover up to \$20 million in cleanup costs if the Army does not fully complete its environmental remediation.

Ms. Mateo asked if there was any additional testimony or comments at this time.

Mr. Michael Holmes of Save the Bay Institute testified in support of the acquisition.

Ms. Amann indicated that Ms. Elena Belsky sent a letter opposing the acquisition of the Hamilton Wetlands at this time. In summary, the letter states that there are numerous transfer liability issues, mainly: (1) partial summary of document and process problems and (2) creating financial burden to the taxpayer.

In light of the risk-benefit assessment, staff recommends approval of this acquisition conditioned upon completion of the following:

- the execution of the Implementation MOA by the Army and the Conservancy,
- the Governor's determination that the property is suitable for early transfer, as provided for in section 120(h)(3)(C) of CERCLA,
- the execution of the "Covenant to Restrict Use of Property Environmental Restriction", incorporated by reference in the quitclaim deed (section VI.C), by the Army, RWQCB and DTSC,
- the Conservancy obtaining a Pollution Legal Liability Insurance Policy,
- the Conservancy obtaining a policy of title insurance and,
- the Department of Finance approval of a gift of real property under Government Code Section 11005.

**A motion was made by Mr. Garcia, and Seconded by Mr. Rickards to adopt Bond Item #1.**

**Director Jefferds, Department of General services, wanted the record to reflect that his decision to abstain is not because he or the Department believes there is any legal conflict prohibiting a vote on this matter. However, because he is a retired General in the US Army, and, he has served with the office of the military base retention and re-use, and because he has communicated with officials of the army base relocation and closure program regarding Hamilton, he has decided to abstain from this vote so as to not raise any appearance of impropriety**

**Bond Item #1 was adopted by a 2-0 vote.**

**OTHER BUSINESS:**

Ms. Amann stated that there were no items of other business.

**REPORTABLES:**

Ms. Amann stated that there were no reportable items at this time.

**NEXT MEETING:**

Ms. Amann noted that next regularly scheduled meeting is Friday, October 10, 2003, at 10:00 am, in Room 112.

Having no further business, the meeting was adjourned at 10:28 am.

## ACTION ITEM

### ACTION ITEM – 1

**DEPARTMENT OF GENERAL SERVICES (1760)**  
**STATE COASTAL CONSERVANCY (3760)**  
**HAMILTON WETLANDS ARMY AIRFIELD ACQUISITION, MARIN COUNTY**  
Project Number AS SCC101.1A, DGS Parcel Number 10173

*Authority: Chapter 52/00 Item 3760-302-0005*  
*Public Resources Code Section 31104.*

**a. Authorize acquisition consistent with the staff analysis**

**APPROVED.**

## ACTION ITEM

### STAFF ANALYSIS – 1

Department of General Services  
State Coastal Conservancy  
Hamilton Wetlands Army Airfield Acquisition

#### Action Requested

**The requested action will authorize acquisition consistent with the staff analysis.**

#### Scope Description

**This project is within scope.** The State would accept transfer of title as a no-cost public benefit transfer for wildlife conservation purposes in accordance with 16 U.S.C. §667b, and pursuant to, in part, a Memorandum of Agreement between the Department of the Army (“Army”) and the State Coastal Conservancy (“Conservancy”) executed in November 1999 and approved by the Departments of General Services and Finance in November 2000 (“1999/2000 Conservancy/Army MOA”). The 1999/2000 Conservancy/Army MOA specified that the Conservancy would not take title to the subject property prior to the Army’s completion of the hazardous remediation. Subsequently, the Conservancy and Army negotiated a new agreement (Implementation Memorandum of Agreement (“Implementation MOA”)), which was developed solely in anticipation of title being transferred prior to remediation. The Conservancy and the Army expect to sign this implementation MOA prior to and as a condition of transfer although, to date, it has not been executed by either party.

The subject property is approximately 630 acres of the Main Airfield Parcel of the former Hamilton Army Airfield (“HAAF”), which consists of the runway, revetments, aircraft maintenance areas, sewage treatment plant, a former skeet range, firing ranges, and other related facilities. The HAAF was recommended for base closure in 1988 and determined surplus federal property making it available to be disposed of by the Army. The Army is transferring title to the property pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, and the Federal Property and Administrative Services Act of 1949, as amended, as well as 16 U. S.C. §667b.

This property transfer represents an important step for the Hamilton Wetland Restoration Project (“HWRP”); a San Francisco Bay area marsh restoration project. This site will be the first phase of the HWRP to restore a total of approximately 2,500 acres of marshes to the San Francisco Bay.

The Army and Conservancy entered into a Project Cooperation Agreement on April 22, 2002 (“PCA”), that identifies the Army, represented by the Assistant Secretary of the Army (“Civil Works” or “Army Corps”) and Conservancy, the non-federal sponsor, as partners in the proposed restoration of the HAAF property to wetlands. As a condition imposed by the Army, the PCA identifies that acceptance of title is necessary to implement the federally-authorized HWRP. Pursuant to the PCA, the Army Corps will be responsible for construction of the wetland project and implementation of a 13-year monitoring and adaptive management program in cooperation with the Conservancy (a cost share program). Following the monitoring and adaptive management period, the Conservancy will have sole responsibility to maintain the property.

The HAAF property has been determined to contain known hazardous substances, or is suspected of having hazardous substances, that were stored, released or disposed of on the property. Pursuant to section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§9601 *et seq.*, the Army can transfer the property prior to remediation of the hazardous substances upon a determination by the Governor of the State of California, that the property is suitable for early transfer and with a

warranty from the United States that when all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken care of, the United States shall execute and deliver to the Conservancy an appropriate document containing a warranty that all such response action has been taken (section 120 (h)(3)(C)(iii) of CERCLA).

#### Funding and Cost Verification

**This project is within cost.** No funds will be expended for acquisition of the property. The costs of implementation of the HWRP will be shared 75 percent by the Army Corps and 25 percent by the Conservancy. Funds appropriated to the Conservancy for this project in 2000 (Chapter 52/00, Item 3760-301-0001(4)) for its share of project costs, based on 2000 estimates, have been encumbered under the PCA, and may be supplemented from appropriations of bond funds allocated for purposes of the San Francisco Bay Area Conservancy Program as needed.

The Conservancy plans on offsetting a portion of its 25 percent share of the HWRP costs by participating in the Port of Oakland Minus 50-Foot Navigation Improvement Project, wherein the restoration project will accept sediment from the Port of Oakland. Participation in this project is expected to contribute approximately 22 percent towards the HWRP costs (offset to be credited to both the Conservancy and Army Corps).

The costs of carrying out the CERCLA-based remediation on the property, to the extent these remedial actions are not already features of the wetland restoration project, will be borne exclusively by the Army.

Costs of Environmental Insurance: At its August 14, 2003 Board Meeting, the Conservancy staff was authorized to spend up to \$900,000 to obtain a policy of environmental insurance. DGS and Conservancy staff has discussed the potential coverage issues of a Pollution Legal Liability (PLL) insurance policy with AIG Environmental Insurance Company. The Conservancy is being represented by an insurance broker, Marsh Risk & Insurance Services to secure this policy. AIG presented the Conservancy with several coverage and term options. DGS and Conservancy staff agrees that, the best policy coverage would be that of \$20 million for a term of 15 years. The premium for this policy is within the Conservancy's authorized amount. On September 12, 2003, AIG provided the Conservancy with a letter of intent to provide a PLL policy as identified in Premium Indication Number 89653-008. Final details regarding the coverage are still being finalized between DGS and Conservancy staff members, Marsh and AIG. All parties expect mutual reconciliation of any outstanding issues in a timely manner.

#### CEQA

The Final Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") prepared for the Hamilton Wetland Restoration Plan in December 1998 addresses that the Army anticipates transfer of the HAAF property to the Conservancy. The Notice of Determination (NOD) was filed with the State Clearinghouse on May 10, 1999. A Subsequent Environmental Impact Report to this EIR/EIS was prepared for the Record of Decision/Remedial Action Plan (ROD/RAP). The approval of the ROD/RAP is a discretionary act subject to CEQA. The NOD for this document was filed with the State Clearinghouse on August 19, 2003. The 30-day statute of limitations period expired on September 17, 2003. As of that date, there were no protests filed.

#### Project Schedule

**The project schedule is as follows:**

Transfer of this property from the Army to the Conservancy cannot occur without the determination by the Governor that the property is suitable for early transfer. The Army submitted its Finding of Suitability for Early Transfer and request for concurrence with early

transfer findings to the Governor on August 20, 2003 with a determination due date request of September 30, 2003. A Briefing Package regarding the Army's request for early transfer was submitted jointly by the California Environmental Protection Agency and the Resources Agency, with the participation of the Department of Toxic Substances Control, San Francisco Bay Regional Water Quality Control Board, State Coastal Conservancy and the Bay Conservation and Development Commission. Close of escrow will not be able to take place unless and until the early transfer and all other conditions as identified under Staff Recommendations are met.

#### Condition of Property

Department of General Services, Environmental Services Section ("ESS") staff conducted a site visit to the HAAF property, Novato, California, on August 13, 2003. The acquisition consists of approximately 630 acres of land, primarily comprised of the Inboard Area ("IA") and a small strip of Coastal Salt Marsh ("CSM") along San Pablo Bay.

The former HAAF has been owned and operated by various branches of the Department of Defense ("DOD") from 1932 to the present. This closed military facility is on the State's Cortese List (Hazardous Waste and Substances Site List). The Army is responsible for environmental remediation of the Main Airfield Parcel at HAAF as the DOD owner of the property at the time of closure under the Base Realignment and Closure Act ("BRAC"). Once the State takes title to the property, the State will become a "Responsible Party" with the Army for CERCLA remediation requirements as well as assuming the responsibility for the non-CERCLA remediation requirements.

Many of the buildings have already been demolished and removed. Buildings that are to be removed in the near future to clear the way for airfield grading and wetland construction preparations consist of the following (personal communication, Hugh Ashley, Environmental Engineer, Anteon Corporation):

- Metal shack at Revetment 10
- Building 15 – Tactical Aircraft Navigation building (TACAN)
- Building 20 – Radar generator building
- Building 26 – Radar tracking command
- Building 48 – Runway lighting electrical building
- Building 84 – Electronics maintenance lab
- Building 87 – POL and paint/chemical storage
- Building 90 – Aircraft radar maintenance sheds
- Building 92 – Warehouse
- Building 94 - Warehouse

Several buildings are to remain until they are no longer needed by the HWRP design and construction personnel. Those buildings are (personal communication, Hugh Ashley, Environmental Engineer, Anteon Corporation):

- Building 35 – Storm Water Pump Station No. 1
- Building 38 (Building 53 ) - Storage Shack next to transformers at storm water pump station area
- Building 39 – Storm Water Pump Station No. 2
- Building 82 – BRAC Office and Warehouse, Sheriff's Department training center and County Search and Rescue

Asbestos abatement has been completed on all buildings and other potentially impacted areas with the following two exceptions (personal communication, Hugh Ashley, Environmental Engineer, Anteon Corporation):

- the tar coating on the underground portion of the pump station outfall pipes within the levee
- the 15-inch diameter ACM transit pipeline, which extends from the levee road approximately 445 feet into the CSM toward San Pablo Bay.

ESS staff reviewed a Draft Final Record of Decision/Remedial Action Plan (“ROD/RAP”, dated May 2003) prepared by CH2M Hill under the direction of the Army, the Department of Toxic Substances Control (“DTSC”), and the Regional Water Quality Control Board (“RWQCB”) with input from other agencies, e.g., California Department of Fish and Game (“CDFG”). A Notice of Determination for the Subsequent Environmental Impact Report which was prepared for the Record of Decision/Remedial Action Plan (ROD/RAP) was filed with the State Clearinghouse on August 19, 2003. The 30-day statute of limitations period expired on September 17, 2003. On August 20, 2003, at its Board Meeting, the RWQCB adopted Site Cleanup Requirements consistent with the ROD/RAP. The ROD/RAP was signed by the Army on August 20, 2003; by the RWQCB on August 27, 2003; and by the DTSC on September 12, 2003.

The ROD/RAP presents the environmental response actions to be taken by the Army (the Army BRAC program) and additional environmental assurances to be provided by the Army Civil Works Program (“Army Corps”) through the HWRP co-sponsored by the Conservancy to address potential risks associated with residual contaminants on the Main Airfield Parcel and restoration of a wetland at HAAF.

The objective of the ROD/RAP is to remove and/or cover contamination in the IA, rendering it suitable for open-space wetland restoration. For the CSM, the alternative is to remove contaminated soils to the maximum extent practical to protect public health and to maintain its wetland function. The ROD/RAP identifies four environmental action alternatives to address risks to human health and ecological receptors in a wetland environment. The four environmental action alternatives are:

- No Further Action (Alternative 1)
- Excavation and Offsite Disposal (Alternative 2)
- Manage In-Situ, with Monitoring and Maintenance, for Army BRAC Sites (Alternative 3)
- Manage Onsite, with Monitoring and Maintenance, for Army Civil Works Issues (Alternative 4, which is analogous to the HWRP)

Several areas of the HAAF property are still under investigation to determine the final activities necessary for protection of the wetlands reuse. The Army will be responsible for characterization and remediation of CERCLA contamination of the following identified sites:

- BRAC and GSA soil stockpiles that were generated from previous excavation activities and currently located on the runway. The Army will be responsible for conducting any additional actions required by the RWQCB as per the ROD/RAP.
- ASR Site #4 - Testing Range (may have been a small arms target practice area).
- ASR Site #8 - Alleged Hazardous, Toxic and Radiological Waste Disposal Site (alleged improper disposal of various chemicals, etc.).
- ASR Site #18 - Skeet Range (e.g., lead and other metals from shot and PAH’s associated with clay targets).
- ASR Site #19 - Firing-In-Butt (possible soil contamination from aircraft machine guns fired into an earthen mound to check firing alignment).
- DDT soil contamination greater than 1 ppm in the northwest corner within the unlined portion of the perimeter drainage ditch (“PDD”).
- DDT soil contamination of 21 -27 ppm in vegetation area, between the runway and the hangar.
- Additional characterization of contamination levels and locations for chemicals of concern, including DDT, within the CSM (Donn Diebert, DTSC, personal communication). The cleanup of the CSM is a balancing act between the remediation activities, cleanup goals and the “take” of prime habitat. For example, the cleanup goal of 24 ppb *may or may not* be an appropriate or adequate action goal protective of endangered species within the CSM (Dan Buford, USFWS, personal communication).

According to the regulatory agencies, these above-referenced sites are only being investigated for CERCLA contamination. However, should it be determined that remediation of non-CERCLA contamination is required on any of the sites, this will be the joint responsibility of the Army Corps and the Conservancy.

The Army is legally responsible for the remediation of all CERCLA releases; however, the Army and the State regulatory agencies (RWQCB and DTSC) have differing views regarding the scope of the Army's legal responsibility for the remediation of the Inboard Area-wide DDT contamination and the PAH contamination in soil adjacent to the runway. As outlined in the Draft Final ROD/RAP (May 2003), the Army Corps and the SCC will assume responsibility for the remediation of the Area-wide DDT contamination and the PAH contamination in the soils. The Army Corps, through the implementation of the HWRP, will remediate DDT contamination of less than 1 ppm to 24 ppb, the PAH contamination along the edges of the southern end of the runway, and any residual lead contamination from paint used on the buildings. These remedial activities are to be achieved through the placement of dredge material or by grading on site to non-tidal areas as part of the HWRP.

In addition to the remedial activities identified in the ROD/RAP, ESS staff recommends the following to be done:

- Encourage the City of Novato to maintain and manage the soil stacked on City property at the property line, and to comply with the City's stormwater pollution prevention plan as it relates to these soils. The potential exists for this soil to be an issue if it has any chemicals that could adversely affect the future wetland and if it encroaches on future State property during rainy weather.
- Require the Army to remove and dispose of storm drains and any associated contaminants of concern located approximately three to seven feet below ground under the airfield and apron, connecting to the PDD, if these storm drains present scour issues or impede channel formation during wetland design.

The Biological Opinion ("BO") issued by the US Fish and Wildlife Service (USFWS) on August 22, 2003, and amended on September 10, 2003, "concluded the transfer and environmental remediation of the Hamilton Army Air Field Main Airfield Parcel and adjacent coastal salt marshes, is not likely to result in jeopardy to the endangered California clapper rail, endangered salt marsh harvest mouse, and threatened Sacramento splittail (BO, 09/10/03)." The cleanup level for the Area-wide DDT contamination identified in the ROD/RAP of 30 ppb has been changed to a cleanup level or action goal of 24 ppb for the IA. The BO indicates a "no take authorization" for the proposed HWRP, which requires the Army Corps and the Conservancy to reinstate formal consultation for that element of the project once (1) the Corps can demonstrate that the Army and Corps are in compliance with all aspects of the terms and conditions contained in the BO, and (2) the Corps has developed an adequate restoration plan for analysis by the USFWS. As part of the Corps' reinstatement of formal consultation, the Corps should provide a Biological Assessment which analyzes the effects on listed species from implementation of the proposed HWRP (USFWS Formal Consultation on HAAF, August 2003 and September 2003).

If the HWRP is not implemented, the ROD/RAP will be reopened.

#### Other

- The no cost acquisition will be accepted by the State pursuant to the terms and conditions of the 1999/2000 Conservancy/Army MOA (in part); the PCA dated May 22, 2002; and the Implementation MOA between the Conservancy and Army (yet to be executed).
- Pursuant to 16 U.S.C. §667b, the Army can transfer title of the subject property to the Conservancy at no cost subject to the reservation by the United States of all oil, gas, and

mineral rights, **and** with the condition that should the property not be used for wildlife conservation, or in the event it is needed for national defense purposes, title shall revert to the United States. The United States retains the discretion to execute this reversion.

- Pursuant to section 120(h)(3)(C) of the CERCLA, 42 U.S.C. §§9601 *et seq.*, the Army can transfer the property prior to remediation of the hazardous substances upon a determination by the Governor of the State of California, that the property is suitable for early transfer **and** with a warranty from the United States that when all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken care of, the United States shall execute and deliver to the Conservancy an appropriate document containing a warranty that all such response action has been taken. The Army sent the GAR to the Governor's Office on August 20, 2003. Assurance of the required warranty is provided in the quitclaim deed and in the Implementation MOA.
- Land Use Restrictions are imposed on the subject property through restrictions contained in the quitclaim deed and through a "Covenant to Restrict Use of Property Environmental Restriction", incorporated by reference in the quitclaim deed (section VI.C). This Covenant is to be entered into between the Army, RWQCB and DTSC as a condition of the transfer. The use of the property shall be restricted so as not to allow for residences, schools, daycare facilities, hospitals, hospices, or similar sensitive uses. In the event the HWRP is not implemented (property not converted into a wetlands), the use of the property will remain subject to these restrictions.
- DGS staff is requiring that the Conservancy obtain a Pollution Legal Liability (PLL) Insurance Policy to be effective at the time of transfer. The Conservancy is anticipating obtaining this insurance from AIG Environmental Insurance Company through Marsh Risk & Insurance Services, an insurance broker. On September 12, 2003, AIG provided the Conservancy with a letter of intent to provide a PLL policy as identified in Premium Indication Number 89653-008. DGS Office of Risk and Insurance Management has reviewed AIG's rating and the reasonableness of the premium. DGS Real Estate Services Section and Office of Legal Services have reviewed the policy for coverage issues. Final details regarding the coverage are still being finalized between DGS and Conservancy staff members, Marsh and AIG. All parties expect mutual reconciliation of any outstanding issues in a timely manner. With the anticipated coverages in place, it appears that the approved insurance coverage is protective of the anticipated risks to the State.
- The Conservancy will be required to obtain a policy of title insurance on the subject property.
- The Department of Finance must approve a gift to the State of real property under Government Code Section 11005. Since the Army is transferring title in this case as a no-cost public benefit transfer, Finance must approve acceptance of the property prior to transfer.
- DGS staff identifies the following as some of the legal and financial liabilities being assumed by the State in the acquisition of this property. Where appropriate, staff has indicated how these liabilities (risks) may be mitigated.
  - Potential Responsible Party ("PRP"): By taking title to property that is known to have or is suspected of having hazardous substances stored, released or disposed of, the State (through the Conservancy) assumes liability as a PRP;
  - Lead based paint ("LBP") and Asbestos: Conservancy has been put on notice through language in the quitclaim deed that buildings on the property are presumed to contain LBP and that asbestos pipe covering material remains on the property. Under the quitclaim deed, the Army assumes no liability for any future remediation associated with LBP and asbestos. The Conservancy accepts this responsibility and considers this an acceptable risk. The environmental insurance policy, as proposed, is

expected to cover the expense of remediation of LBP and asbestos if found in the soils and for third party liability claims relating to LBP and asbestos, but not to cover the costs of LBP and asbestos removal from existing structures (existing structures are to be removed as a part of the HWRP costs, including the cost of any LBP/asbestos removal);

- Low-level area-wide DDT's and runway-associated PAH's: Army and State regulatory agencies disagree on whether low-level area-wide dichlorodiphenyltrichloroethane ("DDT's") and runway-associated polynuclear aromatic hydrocarbons ("PAH's") are the Army's responsibility as a CERCLA release. Acceptance of title without a commitment by the Army to remediate these contaminants under CERCLA could result in the State being liable for these contaminants as owner of the property. The proposed environmental insurance policy will cover the State's liability associated with releases of DDT and PAH once the restoration plan is complete, but will not cover cost overruns in implementation of the restoration plan, including actions necessary to control the release of DDT and PAH. However, if the restoration plan cannot be implemented as currently proposed due to cost overruns or for other reasons, the proposed policy will cover some of the costs of remediation under an alternative land use.
- Additional remedial activities of uncharacterized areas (areas yet to be investigated for contamination): According to the regulatory agencies, these sites are only being investigated for CERCLA contamination. To the extent they contain DDT or PAH in excess of action levels, it will be the Army Corps/Conservancy responsibility to meet the ROD/RAP cover criteria. The Conservancy has already accepted this responsibility with its role as partner in the HWRP.
- Restoration Plan ("HWRP") either not completed or never implemented: The HWRP, as proposed, is designed to protect future wetland receptors from low-level DDT's and PAH's on site by placing three feet of stable cover over the contaminated areas. If the HWRP is not completed or never implemented, the ROD/RAP will be reopened. The Army has agreed to this condition. There has been no agreement by any State agency, including the Conservancy, with the Army's position that, in the absence of the HWRP, the Army is not responsible for DDT and PAH. It is only in the event that this disagreement continues or is resolved in the Army's favor that the State would be liable for remediation. The environmental insurance as proposed will cover cost overruns associated with mitigating DDTs and PAHs under an alternative land use, but the Conservancy would be primarily responsible for the expected costs of the alternative use.

#### Conclusion

### **RISK-BENEFIT ASSESSMENT**

#### **OF ACCEPTING EARLY TRANSFER OF HAMILTON ARMY AIRFIELD**

- Acceptance of Hamilton from the Army Base Realignment and Closure Program (BRAC) and its conversion to wetlands would result in substantial benefits to the people of the state:
  - The Hamilton wetlands project will restore approximately 630 acres of the former airfield to a mix of wetland habitats. This will help restore the health of the Bay estuary, which has been damaged by diking, filling, water pollution and water diversions.

- The project will provide increased habitat for a variety of endangered and threatened species, including the California Clapper Rail, Salt Marsh Harvest Mouse, steelhead, salmon, the Sacramento Splittail, and various plants that live in and adjacent to the project site.
  - A state and federal interagency agreement about disposal of San Francisco Bay dredge material known as the Long Term Management Strategy (LTMS) mandates reducing in-Bay disposal to low levels. However, substantial dredging is necessary to maintain safe deep-water shipping lanes within the Bay. The Hamilton restoration project is critical to the success of the LTMS and shipping, because it will provide a place to deposit millions of cubic yards of dredge material without filling the Bay or hauling it miles out to sea. The availability of the Hamilton site will help ensure that the Bay's maritime trade, which provides about \$7.5 billion in annual economic benefits, will not be disrupted. For example, the Port of Oakland and the Army Corps of Engineers (Corps) propose taking 2.5 million cubic yards dredge material from the Port's 50-foot deepening project to Hamilton. Use of Hamilton instead of the ocean disposal site saves approximately \$6 per cubic yard in haul costs—over \$15 million for the Port's material alone.
  - Transfer of the property allows the Corps to pay 75% of the cost of the wetlands restoration and dredged material reuse project (currently estimated at about \$120 million), thus substantially limiting the State's cost for the project. In addition, the Port of Oakland will be contributing at least \$6 million to the project.
  - The project would increase public access to the Bay and lengthen the Bay Trail, an important state-local effort to develop a trail that will eventually circle the entire Bay.
- However, there are risks to the state in accepting the property now that would not exist if the property were transferred after BRAC finishes its remediation of the site. As owners of the property, the state would have increased risk of financial liability for contaminant cleanup:
    - If the Army BRAC fails to perform in its responsibilities for cleanup of contaminants, the state might have to pick up some of the costs.
    - There are several sites within the airfield that have not been fully investigated for contaminants. If as-yet unknown contaminants are discovered that the Army BRAC refuses to remediate, the state might have to pay for cleanup.
    - Potential costs under a worst-case scenario are on the order of \$10 to \$20 million, if the Army BRAC refused to accept responsibility for complete cleanup.
    - Detailed planning for the restoration project is not complete and state and federal agencies have not given final signoff on the restoration plan. Unanticipated costs may materialize as project plans are finalized. However, to some extent, this will be true whether the site transfers to the state now or later.
  - So why take the property now:
    - The Army BRAC is under mandate from Congress to maximize the acreage of closed bases that is cleaned and transferred. BRAC funding is assured only if the property is transferred in the current federal fiscal year. If BRAC funding is not available, the restoration project will be delayed at least a year and perhaps much longer.
    - Delay lengthens the time before dredged material can come to the site and so threatens Bay maritime navigation. If Hamilton is not ready, the Port and Corps likely will dispose of the dredged material at the ocean site, further delaying Hamilton construction.

- Delays in construction of Hamilton frustrate the recovery of endangered species and the development of the habitat and recreational benefits of the site.
- Various conditions mitigate the risks and make them acceptable given the benefits:
  - Under federal environmental laws, the Army BRAC clearly is responsible for cleaning up most of the contaminants at Hamilton, despite transfer to the state.
  - The Army BRAC has committed in writing through the Record of Decision and Remediation Plan (ROD/RAP) to remediate certain contaminants, both known and any that should subsequently be identified that resulted from the Army's historic use of the airfield.
  - The State Regional Water Quality Control Board has also issued a Site Cleanup Order to the Army BRAC for cleanup of the site.
  - A Memorandum of Understanding between the Army BRAC and the state further binds the Army to its cleanup responsibilities.
  - The Conservancy has secured a \$20 million insurance policy to cover cleanup if the Army does not perform.
  - Funds are available to cover unplanned additional costs. In addition to its existing \$13.8 million General Fund appropriation for the Hamilton project, substantial Prop 40 and 50 funds are allocated to the Conservancy that could be dedicated to the Hamilton project. The Corps has signed a Project Cooperation Agreement with the state for the Corps to construct the restoration project and pay 75% of project costs, and that agreement could cover currently unplanned expenses.
  - If cleanup costs for wetlands restoration became prohibitive, the Conservancy could abandon the wetlands project and instead implement alternative open space projects that would not require costly remediation.
  - The restoration project enjoys tremendous support locally, in the region, and by the Bay Congressional delegation to help ensure follow through by all parties and appropriation of needed funding.

**Staff Recommendation: In light of the above risk-benefit assessment, approve acquisition consistent with the staff analysis, conditioned upon completion of the following:**

- **the execution of the Implementation MOA by the Army and the Conservancy.**
- **the Governor's determination that the property is suitable for early transfer, as provided for in section 120(h)(3)(C) of CERCLA.**
- **the execution of the "Covenant to Restrict Use of Property Environmental Restriction", incorporated by reference in the quitclaim deed (section VI.C), by the Army, RWQCB and DTSC.**
- **the Conservancy obtaining a Pollution Legal Liability Insurance Policy.**
- **the Conservancy obtaining a policy of title insurance.**
- **the Department of Finance approval of a gift of real property under Government Code Section 11005.**

**OTHER BUSINESS**

**REPORTABLES**

Respectfully Submitted,

JAMES E. TILTON  
Administrative Secretary  
By:

KATHRYN AMANN  
Assistant Administrative Secretary