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SACRAMENTO - SAN JOAQUIN  
**DELTA CONSERVANCY**  
*A California State Agency*

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## **Delta Land Management and Acquisition Workgroup Report July 23, 2014**

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### **RECOMMENDATIONS**

Land management needs are varied in scope, duration, and purpose throughout the Delta. These variances require a nuanced and thoughtful approach to long-term land management. An approach that keeps sight of the overarching (Delta-wide) and property-specific goals, acknowledges site-specific requirements, constraints, and opportunities, and builds on the strengths of participating interests and local communities is key. The long-term management of the Delta's habitat lands and the continued agricultural viability of the region depend on such a thoughtful approach.

Staff recommends that the Conservancy begin to prepare itself to be a primary landowner and easement holder of lands owned in support of Delta restoration objectives by identifying 1) required policies and procedures; 2) relevant regulations that pertain to the State's ownership of land; 3) the type and number of staff needed to manage acquisitions and land management agreements; and 4) funding sources to support these activities. Conservancy staff requests Board approval to move in this direction.

### **BACKGROUND**

The Sacramento-San Joaquin Delta (Delta) is the home of many current restoration and associated land acquisition efforts. Ongoing activities include efforts to meet the 8,000 acre requirements under the US Fish and Wildlife Service and National Marine Fisheries Service biological opinions for State Water Projects and Central Valley Project operations, restoration associated with levee maintenance and flood control projects, implementation of the California Department of Fish and Wildlife's (DFW) Ecosystem Restoration Program (ERP) and emerging efforts to implement the recently completed Suisun Marsh Restoration Plan. The Bay-Delta Conservation Plan (BDCP), if approved, will most likely include over 100,000 acres for habitat restoration activities that will require land acquisition and easement processes.

As restoration efforts are further planned and implemented, many questions exist regarding the best mechanisms for acquiring and managing lands prior to, during, and post-restoration activities. A number of federal, State, and local agencies, and non-governmental entities (NGO) currently own and/or manage land in the Delta for habitat restoration and agricultural production. As restoration efforts increase, a clearer understanding of current roles and long-term expectations is required.

The following background information states the roles and expectations of land ownership and management of each of the agencies actively working in the Delta (in the future we will build in the NGO partners), provides a

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high level overview of the most likely land control and management options, presents a list of criteria that can be helpful in making land acquisition and management decisions, and identifies several key challenges that are impacting our ability to achieve current restoration objectives. Information for this staff report was received during two meetings of the Delta Land Acquisition and Management Workgroup that met on May 2<sup>nd</sup> and June 6<sup>th</sup>. These meetings were attended by representatives of the Department of Water Resources (DWR), DFW, the Delta Stewardship Council (DSC), Suisun Marsh Resource Conservation District (RCD), State and Federal Contractors Water Agency (SFCWA), Metropolitan Water District (MWD) and the Delta Conservancy (Conservancy). It is anticipated that the workgroup, if it continues, will expand to include the Department of Transportation, the Department of Parks, Delta County representatives, surrounding HCP/NCCP representatives, and NGO partners.

This staff report was also informed by the Delta Dialogue's Special Session held on June 27<sup>th</sup>. Several members of the Delta community expressed concerns about the Workgroup meeting without Delta community participation. As a result—and at the request of the Delta community—the special session was convened to include more in-Delta participants in a discussion of how publically owned land, or land that has been acquired with public funds can be used to meet Delta/Suisun restoration objectives. The group identified three key areas where more work/dialogue should ensue: 1) better inventory of publically owned or funded lands; 2) an assessment of overlapping restoration and mitigation requirements; and 3) interim and long-term land management and good neighbor policies.

### **Roles and Expectations**

A number of State agencies and departments currently manage land in the Delta. Understanding current roles and long-term expectations is key to the various Delta interests' ability to work collaboratively and in coordination.

#### *State Agencies*

DWR currently owns land in the Delta for a variety of purposes, including flood management and mitigation for flood activities, and as required under existing Biological Opinions to carry out SWP operations. It is actively engaged in efforts to acquire property to meet its habitat restoration obligations under current Biological Opinions and its CESA long-fin smelt incidental take permit. These efforts are mostly centered in the Cache Slough, Suisun Marsh, and Yolo Bypass areas. DWR is also considering a number of options with regard to owning and managing land, including easements, but has not reached any decisions about whether and how DWR might want to acquire or manage land. In addition, DWR could consider requests for proposals for specific kinds of projects as a means to satisfy habitat obligations. DWR intends to keep all options open as it moves forward. In some cases, it may be appropriate for DWR to be the long-term owner and steward of the land. In other cases, DWR may want other entities, such as DFW and the Conservancy, to own land and work collaboratively to ensure that restoration, conservation, and other goals are met.

DFW currently owns thousands of acres in the Delta and anticipates continued ownership and management. DFW's focus is wildlife and its habitat, a focus that continues to generate interest in owning and managing land for these benefits. DFW doesn't anticipate being a large landowner in the Delta, but will consider taking on new lands when they meet their objectives. If adequate and long-term operations and management (O&M) funding

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were secure, they would likely be interested in a larger role. Currently, new acquisitions are reviewed within the region to determine if they fit with ERP objectives; if they are linked to other properties and projects, and; if there are sufficient resources for long-term operations and management.

The Conservancy was created to be a lead agency for ecosystem restoration and to support efforts that promote environmental protection and the economic well-being of all Delta residents. The Conservancy's enabling legislation allows the agency to hold fee title but expresses a strong preference for conservation easements. While the Conservancy does not currently have the capacity, it is prepared to develop the infrastructure needed to own and manage land and hold easements.

#### *Other Public Entities*

SFCWA's focus is to support habitat restoration projects, and assist SFCWA member agencies in assuring an adequate, reliable and high quality water supply. SFCWA and MWD are actively engaged in land acquisition and restoration efforts in support of achieving the 8,000 acre target set by the Biological Opinion. Neither entity is strongly interested in long-term ownership or management of Delta lands but is open to considering this scenario if it was an appropriate role for their respective agencies. Both anticipate the Delta Conservancy will play a role in land ownership and management.

RCDs and Reclamation Districts (RD) currently play an active role in Delta land management. The Suisun Marsh RCD owns land as well, but does not see an expanded ownership role. RCDs and RDs generally have strong relationships with local landowners as well as expertise in habitat restoration and land management activities. This knowledge and skill set places RCDs and RDs in a good position to play a strong role in Delta land management.

#### *Non-Governmental Entities*

Land Trusts and other conservation-focused nonprofits also have the potential to acquire and manage land in the Delta. The Nature Conservancy and The Trust for Public Land have held land in the Delta for many years and manage their lands for both habitat and agricultural values. This type of management can continue but due to concerns of long-term liability and the challenge of securing adequate and long-term O&M funding, these entities have expressed interest in transferring title of currently owned lands and an unwillingness except under rare circumstances to acquire additional lands.

In early 2012, a group of five Delta focused land trusts and NGO partners formed a workgroup to explore their role in restoration and land management in the Delta. They met with then Undersecretary Meral to express their potential role as restoration partners and land managers. The member agencies are not interested in holding title to Delta properties except under limited circumstances.

#### **Ownership and Management**

A number of scenarios exist for the control and long-term management of restoration and agricultural land in the Delta. Some of the following scenarios are more realistic than others. Despite these challenges, all options should remain on the table.

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### *Easements*

**Public/Private Easements.** A public entity enters into an easement with a landowner that limits the rights of the landowner, often in a way that prohibits non-agricultural activity (agricultural conservation easement) or specific agricultural activities such as growing vines and trees that would not be compatible with conservation goals and objectives (habitat conservation easement). These easements allow for improved or restored habitat value consistent with stated objectives, thereby compensating the private landowner for the decreased value of the land but leaving the land in private ownership.

### *Fee Title Acquisitions*

**Public/Public .** A public entity purchases the property and either manages it long-term or transfers it to another public agency. This scenario is the most straightforward but has challenges related to O&M funding and the oftentimes inflexibility of State processes.

**Public/Private.** A public entity purchases the property and contracts with a private entity for long-term management. This scenario also provides the State as the ultimate back stop for liability but utilizes the flexibility of a non-state agency for long-term management.

**Private/Public.** A private entity or NGO partner purchases land and transfers it to the State for restoration or long-term management. For example, McCormack-Williamson and Yolo Ranch are currently owned by private entities who have expressed interest in finding other long-term owners once restoration work is complete.

### *Other*

**Requests for Proposals (RFP).** This tool involves issuing an RFP in order to achieve a particular outcome, such as obtaining a specified number of mitigation and/or conservation credits for a particular species. For example, in the fall of 2013, DWR issued an RFP seeking competitive bids to provide DWR with a minimum of fifty (50) salmonid credits through the creation of floodplain habitat comprised of riparian, shrub-scrub, and/or shaded riverine habitat along the Sacramento River between Colusa and Verona. The mitigation credits are to be established in the form of a mitigation bank permitted through the Mitigation Banking Interagency Review Team (IRT) process, and will then be used to mitigate for impacts to salmonid habitat from future State Plan of Flood Control flood projects and activities.

### **Decision-Making Criteria**

Decisions about acquisition and long-term management should focus on the purpose of the acquisition (habitat, agricultural conservation, flood, a combination, etc.). A flow chart or decision tree is envisioned with these questions or considerations:

- What is the purpose of acquiring this land (flood, restoration, agricultural preservation, a combination, etc.)?
- What is the long-term restoration, conservation, or flood (or other) goal for this property?

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- Can this goal be met through the purchase of a conservation easement? In perpetuity or term?
- Is fee simple purchase by a State agency required to meet the goal?
- Which agency is the best suited to acquire the land?
- Which agency or partner has the capacity and is best suited to manage the land in the near, mid, and long-term?
- How soon will restoration activities begin?
- Will agricultural production continue on the property (in the short-term? Long-term?)?
- What type of O&M funding is available and what can these funds support?

### **Challenges**

The Workgroup identified the following four key challenges for land acquisition and management in the Delta.

**Operations and Management.** A number of challenging issues exist in O&M. Primary is the lack of sufficient and secure funding to support management practices and staffing necessary to maintain an on-site presence. This lack of presence makes dealing with vandalism, trespassing, and similar issues a challenge. An on-site presence also builds stronger ties to neighboring landowners and communities. Other concerns include: how to manage land until it is restored; authority and ability to make decisions and spend money; and an ability to move quickly to fix problems.

**Valuation.** Land is traditionally valued for development potential and agricultural production. With restoration a key focus in the Delta (and development severely limited due to building regulations in the primary zone), land needs to be valued as such. The Department of General Services (DGS) manages appraisals for State agencies and processes appraisals from the traditional development perspective. This makes it difficult to identify the restoration value of the land and compensate willing sellers accordingly. Land valuation is a key roadblock for efforts to acquire lands in support of current restoration objectives.

**Liability.** Given the flood prone nature of the Delta, compounded by subsidence issues, there is significant liability associated with land ownership in the region. Land trusts and other NGO's may not have the capacity to manage the high liability issues. The State may therefore be the appropriate entity to assume liability for lands that have been restored in support of the co-equal objectives.

**Coordination.** A number of State, federal, and local governments have jurisdiction in the Delta. Coordination is key but oftentimes elusive with the myriad of independent actions, regulations and requirements. Coordinating acquisition needs and efforts amongst the principle entities in the Delta will increase awareness of each other's efforts and hopefully result in efficiencies through shared learning and problem solving.

### **BUDGET**

Staff does not anticipate any additional costs associated with researching how to prepare the agency for a role in long-term Delta land management.

### **Contact Person:**

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