



FAIRFAX TOWN COUNCIL SPECIAL MEETING COUNCIL MEMBER REPORT

MEETING DATE May 22, 2024
PREPARED FOR Town Council
PREPARED BY Barbara Coler, Mayor
SUBJECT Consideration and Approval of Memorandum of Understanding (MOU) Between the Town of Fairfax and the Marin Open Space Trust (MOST) Regarding the Acquisition of the Wall Property

RECOMMENDATION

Approve the Memorandum of Understanding (MOU) Between the Town of Fairfax and the Marin Open Space Trust (MOST) Regarding the Acquisition of the Wall Property and Authorize the Mayor to sign the MOU.

DISCUSSION

On September 6, 2023, the Town Council authorized the Mayor and Vice Mayor to negotiate and execute an agreement with the Marin Open Space Trust (MOST) regarding the exploration and possible purchase for open space of the 100-acre property commonly referred to as the Wall Property. The Council Subcommittee is comprised of Mayor Coler and Councilmember Cutrano. The Council appointed the Subcommittee on August 29, 2023 - since that time the Subcommittee has been meeting with various stakeholders. Since that time, MOST has completed a number of activities related to the property. MOST initiated and paid for an appraisal; MOST also contracted for a preliminary geotechnical report in cooperation with the Town and other public entity(s) to focus on landslide risks to adjacent properties and on reasonable mitigation measures. As the appraised amount was reasonable, MOST entered into a Vacant Land Purchase Agreement and Joint Escrow Instructions (a.k.a., the Purchase Agreement) dated November 4, 2023, with the owner of the Property, Marinda Heights, LLC, a California limited liability company. The Purchase Agreement provides an adequate period of time for further due diligence and fundraising. Among other things, MOST continues to work with all interested parties to secure the necessary funds for the purchase of the property. The Subcommittee and MOST continue to work with the Marin County Open Space and Parks District (MCOSD) on property management matters, also with other stakeholders on funding and other issues related to our shared conservation goals for the property. In addition, the Town changed its website to direct all Wall donations to MOST; the Town's Open Space Committee held two highly successful Wall fundraising events with all funds sent directly to MOST; and several Town businesses held an evening event with a portion of proceeds, again, sent directly to MOST for Wall.

MOST and the Town have been working together to achieve a common conservation goal—the permanent protection of the property (i.e., 100-acre unimproved property in the Town of Fairfax, California, referenced as Assessor Parcel Numbers 001-150-12, 001-160-09, 001-171-51, and 001-251-31, and commonly known as 400 Marinda Drive, Fairfax, California). **The purposes of the acquisition are for the protection, restoration, and enhancement of natural resources, wildlife habitat, open space, cultural resources, and compatible public access.**

The purpose of the MOU is to memorialize the intent of MOST and the Town of Fairfax to transfer title of the Wall Property to the Town. In return, MOST commits to raise the funds (\$2,300,000) for the purchase of the Wall Property (and for \$500,000 in restoration costs) and to convey the escrow account with all funds and the Wall Property to the Town (on or before October 29, 2024). In turn, the Town will accept title to the Property subject to the Town's satisfaction with its due diligence investigations. The Parties envision that the Property will be protected in perpetuity as public open space accessible to all, and integrated into the surrounding protected properties. It is intended that the Town will manage the Property as an open space preserve consistent with the acquisition purposes outlined above.

FISCAL IMPACT

There is no fiscal impact at this time.

ATTACHMENT

Memorandum of Understanding Between the Town of Fairfax and MOST re: the Wall Property

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**MOU**”) is entered into between the Marin Open Space Trust, a California nonprofit public benefit corporation (“**MOST**”) and the Town of Fairfax, a California municipality (“**Town**”). MOST and the Town together may be referred to in this MOU as the “**Parties**” and individually as a “**Party**.”

RECITALS

- A. The Parties are working together to achieve a common conservation goal—the permanent protection of a 100-acre unimproved property in the Town of Fairfax, California, referenced as Assessor Parcel Numbers 001-150-12, 001-160-09, 001-171-51, and 001-251-31, and commonly known as 400 Marinda Drive, Fairfax, California (the “**Property**”).
- B. MOST is a local land trust based in Marin County, California, and acquires and transfers open space properties in Marin County to land management agencies and also holds conservation easements on selected lands. MOST was formed pursuant to Section 501(c)(3) of the Internal Revenue Code.
- C. MOST has entered into a Vacant Land Purchase Agreement and Joint Escrow Instructions (the “**Purchase Agreement**”) dated November 4, 2023 with the owner of the Property, Marinda Heights, LLC, a California limited liability company (the “**Owner**”).
- D. MOST intends to raise the funds for the purchase of the Property and to convey, or cause to be conveyed, the Property to the Town and the Town intends to accept title to the Property subject to the Town’s satisfaction with its due diligence investigations. The Parties envision that the Property will be protected in perpetuity as public open space accessible to all, and integrated into the surrounding protected properties. It is intended that the Town will manage the Property as an open space preserve.
- E. The purpose of the MOU is to memorialize the intent of the Parties to transfer title to the Property to the Town.

UNDERSTANDINGS

- 1. **Project Structure.** Under the Purchase Agreement MOST has until June 1, 2024 to investigate the Property. If MOST elects to purchase the Property, close of escrow shall take place on or before October 29, 2024. The purchase price for the Property is Two Million Three Hundred Thousand Dollars (\$2,300,000.00). MOST accepts all responsibility for raising the funds to purchase the Property. The Town agrees to carry out all of the due diligence for the purchase of the Property by no later than May 23, 2024 (the “**Diligence Date**”). The Town will notify MOST by the Diligence Date whether the Town is satisfied with its due diligence investigations. If the Town notifies MOST in

writing by the Diligence Date that it is satisfied with its due diligence investigations, MOST will waive the due diligence contingency under the Purchase Agreement, pay the increased deposit to the Owner and proceed towards closing the purchase pursuant to the terms of the Purchase Agreement. If the Town notifies MOST in writing by the Diligence Date that the Town is not satisfied with its due diligence investigations, and any defects are incapable of being cured, the Town will not be obligated to accept title to the Property, MOST will be under no obligation to continue with the terms of the Purchase Agreement, and MOST will be under no obligation to continue with the terms of this MOU. If the Town notifies MOST in writing by the Diligence Date that it is satisfied with its due diligence investigations, then, at MOST's sole election at any time following the deposit in escrow of all purchase funds required to be deposited under the Purchase Agreement and the Donation (defined below) Town shall enter into an assignment and assumption of the Purchase Agreement with full release of MOST and the Town shall accept the Property by way of a direct deed from Owner to complete the acquisition. The Town's obligation to consummate the acquisition of the Property under this MOU and the assignment, assumption and release agreement shall be subject to the sole condition precedent that all purchase funds required to be deposited by MOST under the Purchase Agreement and the Donation (defined below) have been deposited in escrow. Town acknowledges that MOST has no intention of entering, and will not be obligated to enter, the chain of title to the Property.

2. **Expenses.** Each Party shall be responsible for all of its costs and expenses associated with pursuing the transaction, including its legal counsel, and including without limitation the performance of its obligations under this MOU. The Town will pay for the cost of a title insurance policy. Escrow and closing expenses shall be shared equally by the Parties. MOST will donate Five Hundred Thousand Dollars (\$500,000.00) (the "Donation") to the Town in escrow to assist with the Town's stewardship expenses of the Property.
3. **Due Diligence Materials.** MOST shall make available to the Town all relevant and necessary documents pertaining to the Property, including, but not limited to, surveys, engineering studies, cost estimates, and environmental documents provided by Owner or procured independently by MOST.
4. **Media and public relations.** MOST will coordinate the release of information to third parties or the public at large concerning the transaction. After the close of escrow, the Town will permit MOST to post a sign of mutually agreeable design acknowledging MOST's donation of the Property.
5. **Term and Termination.** The term of this MOU, and the Parties' obligations hereunder shall commence on the date that the MOU is signed by both Parties. Prior to the time that MOST has obligated itself to purchase the Property under the terms of the Purchase Agreement (i.e., waiver of the due diligence contingency under the Purchase Agreement on or before June 1, 2024), either Party may terminate this MOU at any time without any obligation or liability to the other party. Such notice of termination shall be given in writing prior to waiving of contingencies. If the Town notifies MOST in writing by the Diligence Date that it is satisfied with its due diligence investigations, and MOST has


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waived the due diligence contingency under the Purchase Agreement, then the Town shall have no right to terminate this MOU. If at any time Owner breaches the Purchase Agreement or fails to close the purchase in accordance with the terms of the Purchase Agreement, or MOST, for any reason fails to raise the funds for the purchase of the Property or the Donation, then either Party shall have the right to terminate this MOU by delivering written notice of termination to the other Party.

6. **No Assignment.** Neither this MOU, nor any rights or obligations hereunder may be assigned, delegated or conveyed by either Party without the prior written consent of the other Party.
7. **Counterparts.** This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

MARIN OPEN SPACE TRUST

TOWN OF FAIRFAX

By: 
Bill Long, Chair of the Board of Directors

By: _____
Barbara Coler, Mayor

Date: 5/21/2024

Date: _____