



FAIRFAX TOWN COUNCIL MEETING STAFF REPORT

MEETING DATE January 9, 2025

PREPARED FOR Mayor and Town Council

PREPARED BY Heather Abrams, Town Manager and Janet Coleson, Town Attorney

SUBJECT Adopt a Resolution Amending the Memorandum of Understanding (MOU) with Marin Open Space Trust (“MOST”) regarding the Property Commonly Known as the Wall Property (“Property”) in Order to update the Expense section to add a payment of \$5,500 from the Town to MOST for a portion of the Phase 1 geological investigation that was unintentionally missed in the MOU approved on May 22, 2024.

RECOMMENDATION

Adopt a Resolution to Amend the Memorandum of Understanding (MOU) with Marin Open Space Trust (“MOST”) regarding the Property Commonly Known as the Wall Property (“Property”) in Order to update the Expense section to add a payment of \$5,500 from the Town to MOST for a portion of the Phase 1 geological investigation that was unintentionally missed in the MOU approved on May 22, 2024.

BACKGROUND

The 100-acre area, commonly known as the Wall Property, has long been a significant property in Fairfax. Last year, an opportunity became available for acquisition by the Town for the protection, restoration, and enhancement of natural resources, wildlife habitat, open space, California Native American tribal cultural resources, and compatible public access. With significant help from MOST, volunteers, donors, and supporters, the Town acquired the Property in just one year’s time and it is now preserved in perpetuity as open space.

Completed Milestones:

- [September 6, 2023](#): Town Council formed a subcommittee of the then Mayor and Vice Mayor to explore the Property purchase with MOST.
- [April 3, 2024](#): Town Council authorized the Mayor to send a letter to the Coastal Conservancy regarding potential Grant Funds.
- [May 22, 2024](#): Town Council considered and approved a Memorandum of Understanding (MOU) between the Town of Fairfax and Marin Open Space Trust (MOST) regarding the acquisition of the Property
- [June 5, 2024](#) the Council authorized the Mayor to sign grant agreement with the California Coastal Conservancy for funds to aid in the acquisition of the Wall Property
- [June 6, 2024](#): California Coastal Conservancy approved \$500,000 grant to the Town of Fairfax to acquire the Property
- [August 7, 2024](#): Town approved Maintenance Agreement with County of Marin
- August 20, 2024: County of Marin approved \$1 million Measure A acquisition funds
 - [CB-6a - Staff Report](#)
 - [CB-6a - Agreement](#)
- August 20, 2024: Marin County Open Space District approved Wall Property Maintenance Agreement.

- [15d - Staff Report](#)
- [15d - Agreement](#)
- [15d - Attachment](#)
- [September 4, 2024](#): Council adopted a Resolution to Accept an Assignment from Marin Open Space Trust (“MOST”) of All Rights, Duties and Obligations Under a Purchase and Sale Agreement Between MOST and the Owner of the Vacant Property Commonly Known as the Wall Property (“Property”) in Order to Preserve the Property as Permanent Open Space; Authorize the Town Manager to Provide \$100,000 in Town Measure “A” funds to MOST for Purchase of the Property and Execute a Deed Restriction in Favor of the County of Marin Open Space District in recognition of the County’s grant of \$1 million in County Measure “A” Funds for Acquisition of the Property; and Authorize the Town Manager and/or Mayor to accept \$500,000 from MOST for the maintenance and rehabilitation of the Property; Authorize the Town Manager to Obtain and Pay for a Title Insurance Policy on the Property and Pay One-half of the Closing Costs for Acquisition of the Property; and Authorize the Town Manager and/or Mayor to Execute Any Other Necessary Document(s) Required and/or Perform Additional Steps Necessary to Complete the Acquisition of the Property
- September 30, 2024: Escrow closed. MOST completed a \$2.9 million fundraising effort needed to close escrow on the 100 acres of open space commonly known as the Wall Property in order to purchase the property and transfer ownership to the Town for open space. MOST transferred to the Town and the Town accepted \$500,000 from MOST for maintenance and rehabilitation of the property. Maintenance and rehabilitation project costs were estimated by Millier Pacific Engineering, the Town’s engineering firm, and staff expects to bring competitive bids to the Council for award in the next year. The Town will separately account for this \$500,000 through creation of a separate project in Capital Improvement Projects (CIP – Grants) Fund 51. Additionally, the Town paid approximately \$4,612 for title insurance, and the Town split the escrow fee of \$1,437.50 and closing expenses.
- October 14, 2024: The Town conducted a ribbon cutting ceremony at the Property attended by most current and former Council Members, MOST Board Members, Marin County staff and elected officials, Graton Rancheria Tribal Elders, donors and supporters.

DISCUSSION

In December 2023 MOST and the Mayor at the time agreed to the Town paying \$5,500 for a portion of the Phase 1 geologic investigation conducted by MOST in preparation for acquiring the property. However, the \$5,500 payment from the Town to MOST was inadvertently left out of the MOU Expenses section adopted by the Council in May. The Council action requested in this report is to amend the MOU to add the \$5,500 payment from the Town to MOST to the MOU, thereby authorizing the Town Manager to make the \$5,500 payment to MOST.

FISCAL IMPACT

The recommended action will result in a \$5,500 payment to MOST from the 01-611-881 account.

ATTACHMENTS

- A. Resolution
- B. Previously Executed MOU

RESOLUTION NO. 25-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING THE MEMORANDUM OF UNDERSTANDING WITH THE MARIN OPEN SPACE TRUST (MOST) REGARDING THE REAL PROPERTY COMMONLY KNOWN AS THE WALL PROPERTY (ASSESSOR PARCEL NUMBERS (“APNS”) 001-251-31, 001-150-12, 001-160-09, AND 001-171-51 (“PROPERTY”), AND AUTHORIZING THE TOWN MANAGER TO PROVIDE \$5,500 OF TOWN FUNDS TO MOST FOR PARTIAL REIMBURSEMENT FOR MOST’S PHASE 1 GEOLOGICAL INVESTIGATION.

WHEREAS, Council appointed a Subcommittee on August 29, 2023, to explore the preservation of 100 acres of vacant property in Town of Fairfax, Assessor’s Parcel Numbers (APNs) 001-251-31, 001-150-12, 001-160-09, and 001-171-51, commonly known as the Wall Property (“Property”) as permanent open space; and

WHEREAS, On September 6, 2023, the Town Council authorized then Mayor Cutrano and then Vice Mayor Coler 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; and

WHEREAS, Council met in closed session on January 24, 2024, April 3, 2024, May 8, 2024, and May 16, 2024 regarding the price and terms of the property; and

WHEREAS, On May 22, 2024, Council approved 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 Authorized the then Mayor to sign the MOU; and

WHEREAS, MOST has been conducting a fund-raising campaign and has successfully raised private funds toward the \$2.3 million purchase price; and

WHEREAS, On July 23, 2024, the Town Council of the Town of San Anselmo approved providing \$12,000 (twelve thousand dollars) to MOST for acquisition of the Property; and

WHEREAS, a grant application was submitted to the California Coastal Conservancy for funds to aid in the acquisition and preservation of the property as open space; and

WHEREAS, On June 6, 2024, the Coastal Conservancy awarded \$500,000 to be used for the acquisition and preservation of the Wall Property; and

WHEREAS, On August 20, 2024, the County of Marin Open Space District approved \$1 million in County Measure “A” funds for acquisition of the Property and approved a maintenance agreement with the Town for the Property.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

- 1) The Mayor is hereby authorized to sign the amendment to the MOU; and
- 2) the Town Manager is hereby authorized and directed to provide \$5,500 (five thousand five hundred dollars) of Town” funds to MOST for reimbursement of MOST for the phase 1 geological investigation.

ADOPTED ON January 9, 2025.

ATTEST:

LISEL BLASH
MAYOR

CHRISTINE FOSTER
DEPUTY TOWN CLERK

I, Christine Foster, Deputy Town Clerk of the Town of Fairfax, hereby certify that Resolution No. 25-XX is a full, true, and correct copy, and was duly adopted at a meeting of the Town Council of the Town of Fairfax on Thursday, January 9, 2025, by the following vote:

AYES:

NOES:

ABSENT:

CHRISTINE FOSTER
DEPUTY TOWN CLERK

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

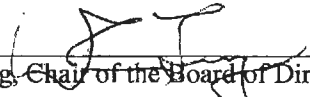
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waived the due diligence contingency under the Purchase Agreement, then the Town shall have no right to terminate this MOU. If at any time Owner breaches the Purchase Agreement or fails to close the purchase in accordance with the terms of the Purchase 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

By: 
Bill Long, Chair of the Board of Directors

Date: 5/21/2024

TOWN OF FAIRFAX

By: 
Barbara Coler, Mayor

Date: 5/23/2024