



TOWN OF FAIRFAX

STAFF REPORT

June 1, 2022

TO: Mayor and Town Council

FROM: Janet Coleson, Town Attorney

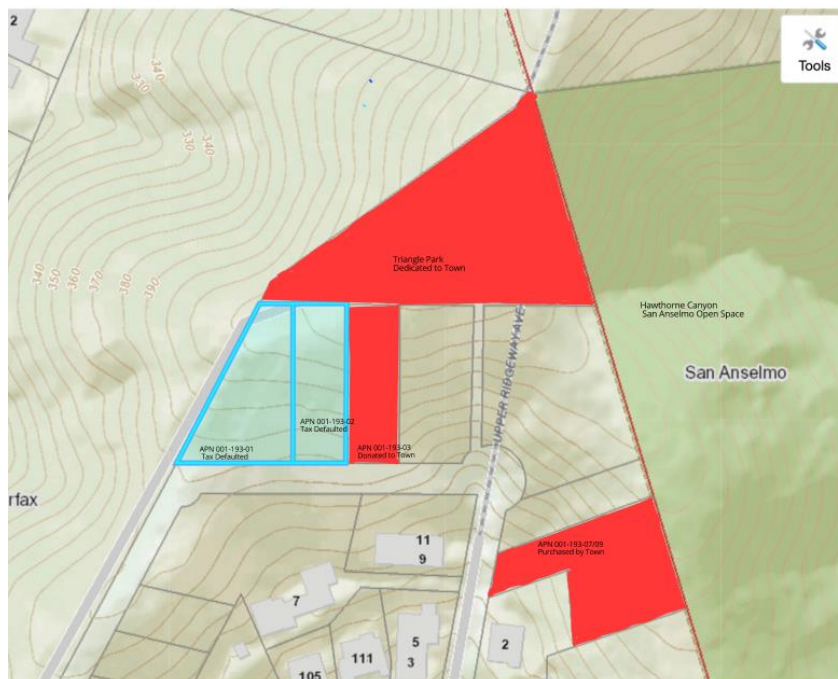
SUBJECT: Adopt a Resolution Approving an Agreement with the Marin Open Space Trust to Fund the Purchase of Two Undeveloped Parcels on Upper Ridgeway Avenue to Preserve Open Space and Authorizing the Town Manager to Execute the Agreement and Take All Necessary Actions to Complete the Purchase

RECOMMENDATION

Adopt a resolution approving an agreement with the Marin Open Space Trust (“MOST”) to fund the purchase of two undeveloped parcels on Upper Ridgeway Avenue to preserve open space and authorizing the Town Manager to execute the agreement and take all necessary actions to complete the purchase.

BACKGROUND

In 2021, the Fairfax Open Space Committee (FOSC) recommended the Town acquire two undeveloped parcels (APNs 001-193-01 and 001-193-02) on the unimproved portion of Upper Ridgeway Drive flanking the northeastern side of Fairfax (“the Parcels”). The Parcels are surrounded on three sides by vacant, undeveloped land, including one Town-owned parcel donated for open space purposes and the Town-owned “Triangle Park” – the fourth side borders the only two residentially developed parcels on Upper Ridgeway, 7 and 11 Upper Ridgeway Avenue. If acquired, the Parcels will create a substantial swath of Town-owned and preserved open space that will be contiguous with San Anselmo’s open space area (Hawthorne Canyon).



DISCUSSION

Staff recommends adoption of the current resolution, which will authorize the Town Manager to (1) execute an agreement with MOST to fund the purchase of the Parcels and (2) take any necessary subsequent actions to enact the agreement and purchase the Parcels on behalf of the Town, using MOST's funding. MOST is prepared to fund the entire estimated purchase price (\$45,000) using funds received through an anonymous donation for this purpose. The County of Marin has determined the Parcels are tax-defaulted and subject to tax sale, which allows the Town to purchase the Parcels for open space purposes.

FISCAL IMPACT

As MOST is depositing the entire amount necessary to fund the estimated purchase price of the Parcels, there is no direct fiscal impact to the Town at this time. Future maintenance of the Parcels as open space areas may indirectly increase staff and materials costs.

ATTACHMENT

Resolution with Exhibit A Funding Agreement with MOST

RESOLUTION 22-_____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX APPROVING AN AGREEMENT WITH THE MARIN OPEN SPACE TRUST TO FUND THE PURCHASE OF TWO UNDEVELOPED PARCELS ON UPPER RIDGEWAY AVENUE TO PRESERVE OPEN SPACE AND AUTHORIZING TOWN MANAGER TO TAKE NECESSARY ACTIONS TO ENACT THE AGREEMENT

WHEREAS, the Town of Fairfax, California (Town) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Marin Open Space Trust (MOST) is a California nonprofit public benefit corporation organized to preserve and protect critical open spaces in the state; and

WHEREAS, two undeveloped parcels within the Fairfax town limits (APNs 001-193-01 and 001-193-02, or “the Parcels”) are available for purchase from the County of Marin (County) as the result of a tax foreclosure sale; and

WHEREAS, the Town desires to purchase and preserve as open space, and MOST desires to fund the purchase of, the Parcels for each party’s mutual benefit; and

WHEREAS, MOST has agreed to deposit the entire amount necessary to pay the estimated cost of the purchase price of the Parcels (\$45,000), inclusive of penalties, fees, and miscellaneous costs, upon execution of the Funding Agreement attached to this Resolution as **Exhibit A**, into escrow for use by the Town to purchase the Parcels.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fairfax as follows:

SECTION 1. Recitals.

The above recitals are each incorporated by reference and adopted as findings of the Town Council.

SECTION 2. Authorization.

The Town desires to enter into the Funding Agreement with MOST, attached as Exhibit A, and hereby authorizes the Town Manager, or designee, to take all steps needed to execute the Funding Agreement and acquire the Parcels, including, without limitation, accepting and executing any other documents and any other actions as may be necessary in furtherance of the purchase of the Parcels.

SECTION 3. Certification.

The Town Clerk shall attest and certify to the passage and adoption of this

Resolution and it shall become effective immediately upon its approval.

SECTION 4. Compliance with CEQA.

This resolution was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the Town. The Town Council hereby finds that this resolution is not subject to review under CEQA because it is not a “project” under State CEQA Guidelines section 15378. In addition, if this action were to be considered a project under CEQA, it is categorically exempt from further CEQA review under State CEQA Guidelines sections 15307 (actions for protection of natural resources) and 15308 (actions for the protection of the environment). None of the exceptions to these categorical exemptions apply, and consequently, this action is exempt from further CEQA Review. If the execution of the Funding Agreement or purchase of the parcels is deemed not to be categorically exempt from CEQA review, it is exempt under section 15061(b)(2).

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 1st day of June, 2022, by the following vote:

AYES:

NOES:

ABSENT:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

FUNDING AGREEMENT

The Town of Fairfax, a California public agency (“**Town**”), and Marin Open Space Trust, a California nonprofit public benefit corporation (“**MOST**”), enter into this Funding Agreement (this “**Agreement**”), dated for reference purposes as of _____, 2022 (the “**Effective Date**”), and agree as follows:

1. Background. Two undeveloped parcels (Marin County APNs 001-193-01 and 001-193-02) on the undeveloped portion of Upper Ridgeway Avenue, within the corporate limits of the Town of Fairfax (“**Parcels**”) are available for purchase from the County of Marin (“**County**”) as a result of a tax foreclosure sale. Town intends to purchase the Parcels as Tax Defaulted Properties. These parcels adjoin open space owned by the Town and are part of a large area of undeveloped and scenic uplands including San Anselmo’s Hawthorne Canyon Open Space and private property formerly known as the Wall property. In accord with its mission to protect critical open spaces, MOST seeks to support the Town’s effort to secure the Parcels by donating funds to the Town, sufficient to pay the amount due to County for the full Redemption Amount and Tax Sale Fees for the Tax Defaulted Properties.
2. Purchase Price. The purchase price for the Parcels is currently estimated at \$44,600 (forty four thousand six hundred dollars), consisting of payment of past due taxes, penalties and fees, and other miscellaneous costs. The Town shall open an escrow with an escrow company selected by the Town, and MOST and the Town shall submit joint escrow instructions for use or return of deposited funds consistent with the terms of this Agreement. The costs of the escrow will be shared equally between the Town and MOST. Within 10 days of execution of the joint escrow instructions, MOST shall deposit the sum of \$45,000 (forty five thousand dollars) for the purposes set forth herein. Should the purchase price for the Parcels exceed \$45,000 (forty five thousand dollars), MOST agrees to deposit into escrow within 10 (ten) days’ notice provided in writing by the Town to MOST; such additional funds which shall not exceed \$5,000 (five thousand dollars) unless agreed to in writing by both parties.
3. Further Actions. Subject to Town’s right to elect not to move forward with the purchase of the Parcels as provided in paragraph 4 below, the Town shall take the necessary steps and fulfill all County required procedures to have the title transferred from the County to the Town and the Town will accept title to the undeveloped parcels specified above.
4. Closing of Parcels. If, for any reason other than a default under this Agreement by MOST, escrow for the Tax Default Sale has not closed within 18 (eighteen) months of the effective date of this Agreement, MOST may give notice to Town of its election to terminate this Agreement, and if the escrow for Parcels does not close within 10 (ten) days after such notice, this Agreement shall terminate with no further obligation by either party, and any funds shall be returned to MOST from the escrow within 20 (twenty) days of MOST’s notice to terminate. If no such demand is made, escrow shall be closed as soon as possible thereafter. If at any time Town elects not to move forward with the purchase of the Parcels, there will be no further obligation on the Town other than to authorize escrow to return any funds previously provided to the escrow by MOST under this Agreement.

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5. Reliance. MOST hereby acknowledges that Town is relying on MOST's timely payment, to the escrow as provided in this Agreement, of the entire purchase price for the Parcels in order to consummate the transaction contemplated through the Tax Default Sale.
6. Notices. Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services shall be considered to be personal service) or by telephone facsimile or other electronic transmission (provided that the sender of a telephone facsimile or other electronic transmission has received a return receipt signed by the party so notified, or has other written evidence of receipt), and upon the second Business Day after mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed in accordance with addresses set forth below the signature of the applicable party to this Agreement (or such alternate address as such party shall have specified in a notice delivered to the other party in accordance with this section).
7. Legal; Interpretation. This Agreement shall be governed by the laws of the State of California and venue for any dispute arising hereunder shall be in Marin County, California. The headings and captions of articles and sections used in this Agreement are for convenience only, and this Agreement shall be interpreted without reference to any headings or captions. Similarly, the presence or absence of language in prior drafts of this document shall not be used to interpret any provision hereof. This Agreement has been prepared and revised by attorneys for both parties, so any rule of law or construction that ambiguities are to be construed against the party responsible shall not apply.
8. Assignment; Successors Bound. Neither party shall assign this Agreement without the prior written consent of the other party.
9. Time of Essence. This Agreement shall be effective as of the date of full execution by both parties. Time is of the essence of this Agreement. A "**Business Day**" shall mean any day other than a Saturday, Sunday or holiday observed by the Marin County Recorder.
10. Attorneys' Fees. In the event either party shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the Court or arbitrator. Without limiting the generality of the foregoing, the prevailing party shall be entitled to recover its attorneys' fees and other legal expenses incurred in connection with a bankruptcy or other insolvency-related proceeding of the other party (and including such fees and expenses incurred in efforts, whether successful or not, to obtain adequate protection, annulment, modification or termination of the automatic stay). The parties also agree that: (a) any attorneys' fees incurred in connection with the enforcement or collection of any judgment obtained in any suit or other proceeding with respect to the subject matter or enforcement of this Agreement shall be recoverable as a separate item; (b) the provisions of this Section 9 shall survive the entry of any judgment with respect to this Agreement; and (c) the provisions of this Section 9 shall not merge or be deemed to have merged into any such judgment.

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11. Counterparts; Facsimile and PDF Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute a single document. Signatures transmitted by facsimile and signatures transmitted by e-mailing a “pdf” signature shall be binding; provided, however, that any person transmitting his or her signature by facsimile or e-mail shall promptly send an original signature to the other parties in accordance with Section 5.

12. Possession and Use. Town will hold title to the Parcels and MOST will have no right of use or ownership of Parcels. In connection with the Town’s completion of the Application to Purchase Tax Defaulted Property to be submitted to the County of Marin, the Town agrees to check the box indicating the purpose of the purchase is “To preserve open space”. Town acknowledges that the Town’s intent in purchasing the Parcels is to retain the Parcels as open space. Notwithstanding the foregoing, if at any time the Town elects to use the Parcels for any other purpose, the Town agrees to return the funds provided by MOST to purchase the Parcels as provided herein, plus interest thereon at the rate of 2% per annum from the date of the closing of the purchase of the Parcels.

[Signatures on Following Page]

WCS
5/24/22

SIGNATURE PAGE FOR FUNDING AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

TOWN:

THE TOWN OF FAIRFAX,
a California public agency

By: _____

Address: _____

MOST:

MARIN OPEN SPACE TRUST,
a California public benefit corporation

By: _____

Name: BILL RONG

Title: BOARD CHAIR

Address: Marin Open Space Trust
BOX 4133
SAN RAFAEL, CA 94913
Attention: _____
Email: _____

With A Copy To:
RALPH MIHAN, ESQ
BOX 150381
SAN RAFAEL, CA 94915
Attention: _____
Facsimile: _____