

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Fred Smith via Clay Holstine, City Manager

DATE: Meeting of November 19, 2015

SUBJECT: Consider approval of Resolution No. 2015-45 approving the terms and conditions of the contract with the California Coastal Conservancy for the funding of the Brisbane Acres Acquisition under the Bay Area Conservancy Program and authorizing the City Manager to execute the agreement.

RECOMMENDATION:

Approve resolution No. 2015-45 and authorize the City Manager to execute the agreement.

BACKGROUND and DISCUSSION:

On April 2, 2015 the City Council adopted Resolution No. 2015-19 ratifying and approving the purchase agreement for APN 007-481-040, Lot 79, in the Brisbane Acres. On May 21, 2015 the City Council approved Resolution No. 2015-20, authorizing the filing of an application for grant funds under the California Coastal Conservancy San Francisco Bay Area Conservancy Program for a 75% matching grant of \$60,000 to acquire Lot 79. On October 1, 2015, the grant was approved by the Coastal Conservancy Board.

The Conservancy Board also authorized the execution of a grant agreement with the City. The grant agreement must be executed before the Conservancy will disburse the grant funds. The contract contains a number of conditions for the grant of funds. The most significant are outlined below.

1. The property shall be permanently protected for open space, wildlife and habitat preservation and the City shall monitor and maintain the property consistent with those uses. The City shall submit reports to the Conservancy every five years documenting the condition of the property.

2. The property may not be sold or used as security for debt without the approval of the Coastal Conservancy.
3. The City may not use or develop other properties it owns in the vicinity of the property being acquired in such a manner that interferes with the purpose of resource preservation on the property being acquired.
4. The City shall post signs identifying the property and the source of funding for the acquisition.
5. Acquisition of this property cannot be used as a mitigation measure for development elsewhere without the written approval by the Coastal Conservancy. This means that this property cannot be counted towards the 40% conserved habitat requirement for the Brisbane Acres under the HCP.

Conditions 1, 2, 3, & 5, above will be incorporated, either directly or by reference, into deed restrictions that will be recorded on the title to the property. The deed will provide that the State can take title to the property if the deed restrictions are violated.

FISCAL IMPACT/FINANCING ISSUES

The City's share of the purchase price is \$20,000 plus appraisal and closing costs. The City's share was originally to be \$40,000 and the Conservancy would provide an additional grant of \$20,000 to pay part of the cost of removing the stand of eucalyptus trees on the property. To simplify administration of the grant, the Conservancy agreed to apply the additional \$20,000 to the purchase price with the understanding that the City would pay the full cost of the eucalyptus removal.

Funds to complete the purchase and to pay for the eucalyptus removal have been included in the 2015-16 budget.



Fred Smith
Special Assistant to the City Manager



Clay Holstine
City Manager

ATTACHMENTS:

Resolution No. 2015-45
Proposed agreement with the California Coastal Conservancy.

RESOLUTION NO. 2015-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING THE GRANT OF FUNDS FROM THE STATE COASTAL CONSERVANCY AND AUTHORIZING EXECUTION OF DOCUMENTS ON BEHALF OF THE CITY

For the San Bruno Mountain Brisbane Acres Acquisition 5

WHEREAS, the Legislature of the State of California has established the State Coastal Conservancy ("Conservancy") under Division 21 of the California Public Resources Code, and has authorized the Conservancy to award grants to public agencies and nonprofit organizations to implement the provisions of Division 21; and

WHEREAS, the Conservancy awards grants for projects that it determines are consistent with Division 21 of the Public Resources Code and with the Conservancy's Strategic Plan and that best achieve the Conservancy's statutory objectives, in light of limited funding.

WHEREAS, on May 21, 2015, the City Council of the City of Brisbane adopted Resolution No. 2015-20 approving a grant application to the State Coastal Conservancy for the purchase of one parcel of land in the area of the City commonly referred to as the Brisbane Acres and identified as Assessor's Parcel Number 007-481-040 (the "Property"); and

WHEREAS, at its October 1, 2015 meeting, the Conservancy adopted a resolution authorizing a grant to the City of Brisbane ("grantee") for San Bruno Mountain Brisbane Acres Acquisition 5 ("the project"). The resolution was adopted by the Conservancy pursuant to and is included in the Conservancy October 1, 2015 staff recommendation, a copy of which is on file with the grantee and with the Conservancy.

WHEREAS, the Conservancy requires that the governing body of the grantee certify through a resolution that it approves the award of Conservancy grant funding and authorizes the execution of a grant agreement in substantially the form of the agreement attached to this resolution as Exhibit "A";

WHEREAS, the City Council has reviewed and considered the terms and conditions of the proposed agreement with the Coastal Conservancy, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Conservancy Agreement"), and has determined that it would be in the best interest of the City to proceed with the acquisition of the Property pursuant to the terms and conditions of the Conservancy Agreement,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane that the City Council hereby:

1. Approves the award of grant funding from the Conservancy for the project.
2. Acknowledges that it has or will have sufficient funds to complete the project and, if any facilities are constructed as a part of the project, to operate and maintain the project for a reasonable period, not less than the useful life of the facilities.
3. Agrees to provide any funds beyond the Conservancy grant funds necessary to complete the project.
4. Agrees to be bound by all terms and conditions of the grant agreement and any other agreement or instrument as may be required by the Conservancy and as may be necessary to fulfill the terms of the grant agreement and to complete the project.
5. Authorizes any person holding any of the following positions with the grantee to act as a representative of the grantee, to negotiate and execute on behalf of the grantee all agreements and instruments necessary to comply with the Conservancy's grant requirements, including, without limitation, the grant agreement: The City Manager of the City of Brisbane

Terry O'Connell, Mayor

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the 19th day of November, 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Sheri Marie Spediacci, City Clerk

STATE OF CALIFORNIA
STANDARD AGREEMENT
 Std. 2 (Grant - Rev 08/08)

APPROVED AS TO FORM:

Michael Roush

Michael Roush, City Attorney

AGREEMENT NUMBER 15-037	AM. NO.
TAXPAYERS FEDERAL EMPLOYER IDENTIFICATION NO. 94-1525367	

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE Executive Officer	AGENCY State Coastal Conservancy	, hereafter called the Conservancy, and
GRANTEE'S NAME City of Brisbane		, hereafter called the Grantee.

The Grantee, for and in consideration of the covenants, conditions, agreements, and stipulations of the Conservancy hereinafter expressed, does hereby agree as follows:

SCOPE OF AGREEMENT

Pursuant to Chapter 4.5 of Division 21 of the California Public Resources Code, the State Coastal Conservancy ("the Conservancy") hereby grants to the City of Brisbane ("the grantee") a sum not to exceed \$60,000 (sixty thousand dollars), subject to this agreement. The grantee shall use these funds to acquire real property ("the real property"), located in the County of San Mateo, State of California (County Assessor's Parcel No. 007-481-040), and depicted in Exhibit 1, which is incorporated by reference and attached.

(Continued on following pages)

The provisions on the following pages constitute a part of this agreement.
 IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA		GRANTEE	
AGENCY State Coastal Conservancy	GRANTEE (If other than an individual, state whether a corporation, partnership, etc.) City of Brisbane		
BY (Authorized Signature) <i>[Signature]</i>	BY (Authorized Signature) <i>[Signature]</i>		
PRINTED NAME AND TITLE OF PERSON SIGNING Samuel Schuchat, Executive Officer	PRINTED NAME AND TITLE OF PERSON SIGNING Clayton Holstine, City Manager		
ADDRESS & PHONE NUMBER 1330 Broadway, 13 th Floor Oakland, CA 94612 Phone: (510) 286-1015	ADDRESS 50 Park Place Brisbane, CA 94005 Phone: (415) 508-2110		

AMOUNT ENCUMBERED BY THIS DOCUMENT \$60,000.00	PROGRAM/CATEGORY (CODE AND TITLE) Local Assistance	FUND TITLE California Clean Water, Clean Air, Safe...(Prop 40)		
	(OPTIONAL USE) Brisbane Acres IV Acquisition	CHAPTER 25	STATUTE 2014	FISCAL YEAR 14/15
PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$-0-	ITEM 3760-101-6029(1)			
TOTAL AMOUNT ENCUMBERED TO DATE \$60,000.00	OBJECT OF EXPENDITURE (CODE AND TITLE) San Francisco Bay			

I certify that this agreement is exempt from Department of General Services' approval.

Erlinda Corpuz
Contracts Manager

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

SIGNATURE OF ACCOUNTING OFFICER <i>[Signature]</i>	DATE
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GRANTEE ACCOUNTING PROJECT MANAGER CONTROLLER STATE AGENCY

SCOPE OF AGREEMENT (Continued)

The real property is being acquired for open space, wildlife, and habitat preservation, “the acquisition purposes.”

The grantee shall provide any funds beyond those granted under this agreement which are needed to complete the acquisition of the real property.

CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT

The grantee shall not acquire the real property and the Conservancy shall not be obligated to disburse any funds under this agreement until the following conditions precedent have been met:

1. The City Council of the grantee has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the grantee.
2. The Executive Officer of the Conservancy (“the Executive Officer”) has reviewed and approved in writing:
 - a. All title and acquisition documents pertaining to acquisition of the real property, including, without limitation, an appraisal, a preliminary title report, agreement for purchase and sale, escrow instructions, environmental documentation or hazardous materials assessment, baseline conditions report, monitoring program, and intended instruments of conveyance.
 - b. A plan for the installation of signs on the real property and acknowledgment of Conservancy support as provided in the “SIGNS AND ACKNOWLEDGMENT” section, below.
 - c. A signed and acknowledged deed restriction approved by the Executive Officer that serves to permanently dedicate the property for the acquisition purposes. This instrument shall be recorded concurrently with the instrument conveying title to the real property to the grantee.
 - d. A baseline report adequately documenting the physical and environmental condition of the real property as of the date of acquisition.
 - e. A monitoring and reporting program, that, at a minimum, details a monitoring protocol, and requires the grantee to inspect and document, in a monitoring report, the condition and circumstances of the real property every five years in order to demonstrate ongoing

CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT (Continued)

compliance with the acquisition purposes. The program shall require the grantee to submit these monitoring reports to the Conservancy.

3. The purchase price of any interest in land purchased under this agreement may not exceed fair market value as established by the approved appraisal.

COSTS AND DISBURSEMENTS

When the Conservancy determines that all "CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT" have been fully met, the Conservancy shall disburse funds, not to exceed the amount of this grant, as follows:

The purchase price, plus closing costs consisting of escrow, recording and title insurance fees, to the extent not included in the purchase price, shall be disbursed directly into an escrow account established for the acquisition.

The grantee shall request disbursement for the acquisition by sending a letter to the Conservancy. The grantee shall include in the letter the name and address of the grantee, the number of this agreement, the date, the amount to be disbursed, and a description of the items for which disbursement is requested. Additionally, the letter shall include the name, address and telephone number of the title company or escrow holder and the escrow account number to which the funds will be disbursed. The letter shall be signed by an authorized representative of the grantee. Failure to send the required letter will relieve the Conservancy of its obligation to disburse funds.

TERM OF AGREEMENT

This agreement shall take effect when signed by both parties and received in the offices of the Conservancy together with the resolution described in "CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT" section of this agreement. An authorized representative of the grantee shall sign the first page of the originals of this agreement in ink.

The term of this agreement shall run from its effective date through September 30, 2036 ("the termination date").

COMPLETION DATE

The grantee shall complete acquisition of the real property no later than September 30, 2016 ("the completion date").

COMPLETION DATE (Continued)

Prior to the completion date, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing.

If the Conservancy terminates prior to the completion date, the grantee shall take all reasonable measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate, but only up to the unpaid balance of funding authorized in this agreement.

AUTHORIZATION

The signature of the Executive Officer on the first page of this agreement certifies that at its October 1, 2015 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit 2. This agreement is executed under that authorization.

Standard Provisions

ESSENTIAL PROVISIONS OF DEED RESTRICTION

The deed restriction by which the grantee permanently dedicates the property for public or conservation purposes shall include the following essential provisions:

1. The real property was acquired by the grantee with a grant of funds from the State Coastal Conservancy, an agency of the State of California, for the purpose of open space, wildlife, and habitat preservation and no use of the real property inconsistent with that purpose is permitted.

Mitigation. Without the written permission of the Executive Officer, the grantee shall not use or allow the use of any portion of the real property for mitigation (in other words, to compensate for adverse changes to the environment elsewhere). In providing permission, the Executive Officer may require that all funds generated in connection with any authorized or allowable mitigation on the real property be remitted promptly to the Conservancy.

2. The real property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Executive Officer of the Conservancy, or its successor.
3. The real property (including any portion of it or any interest in it) may not be transferred without the approval of the State of California, through the Executive Officer of the Conservancy, or its successor.
4. The grantee is obligated to use, monitor, manage, operate and maintain the real property as described in the "USE, MONITORING, MANAGEMENT, OPERATION AND MAINTENANCE" section of California State Coastal Conservancy Grant Agreement No. 15-037, as it may be amended from time to time.
5. The Conservancy shall have reasonable access to the real property to monitor compliance with the essential provisions stated above.
6. If the existence of the grantee ceases for any reason or if any of the essential provisions stated above are violated, all of the grantee's right, title and interest in the real property shall automatically vest in the State of California for the benefit of the Conservancy or its successor, upon acceptance of the real property and approval of the State Public Works Board. However, the State, through the Executive Officer of the Conservancy, or its successor, may designate another public agency or a nonprofit organization to accept the right, title and interest, in which case vesting shall be in that agency or organization rather than in the State.

ESSENTIAL PROVISIONS OF DEED RESTRICTION (Continued)

7. If the real property is under threat of condemnation or has been condemned, the grantee shall promptly notify the Conservancy in writing, and shall use its best efforts to obtain the maximum compensation possible. Upon receiving condemnation proceeds, the grantee shall promptly pay to the Conservancy a percentage of the condemnation proceeds equivalent to the percentage of the total acquisition cost originally contributed by the Conservancy.

As used in this section, "condemnation" means a permanent taking through the exercise of any government power (by legal proceedings or otherwise) by any party having the right of eminent domain ("condemnor"); or through a voluntary sale or transfer by the offeror to any condemnor, either under threat of exercise of eminent domain by a condemnor or while legal proceedings for eminent domain are pending.

8. Notwithstanding any other provision of these restrictions, the Conservancy may use any remedy available in law or equity to enforce the covenants and restrictions contained in this deed.
9. The instrument shall run with the land. The instrument irrevocably conditions or restricts the use of the property in perpetuity and is binding on the grantee's successors, successors-in-interest, and assigns.

SIGNS AND ACKNOWLEDGMENT

Prior to acquiring the real property, the grantee shall submit a plan to the Executive Officer for the installation of signs on the real property and acknowledgment of Conservancy support. Except as the Executive Officer agrees otherwise, the plan shall commit the grantee to mention the Conservancy's support in its project-related press releases, contacts with the media, and social media postings, and on its website.

The grantee shall install and maintain one or more signs visible from the nearest public roadway identifying the real property, acknowledging Conservancy assistance and displaying the Conservancy's logo. The Conservancy shall provide to the grantee specifications for the signs. The grantee may incorporate the required information into other signs as approved by the Executive Officer. In special circumstances, where the placement of signs or the general specifications are inappropriate, the Executive Officer may approve alternative, more appropriate methods for acknowledging the sources of funding. The grantee shall submit plans describing the number, design, placement and wording of the signs, or the specifications of a proposed, alternative method.

USE, MONITORING, MANAGEMENT, OPERATION AND MAINTENANCE

The grantee shall use, monitor, manage, operate and maintain the real property in a manner consistent with the acquisition purposes and the monitoring and reporting program. The grantee assumes all monitoring, management, operation and maintenance costs associated with the real property, including the cost of ordinary repairs and replacements of a recurring nature, and costs of enforcement of regulations. The Conservancy shall not be liable for any costs of monitoring, management, operation or maintenance. The grantee shall refrain from developing or otherwise using any other property it owns or controls near the real property in a manner that interferes with or inconveniences the use, monitoring, management, operation or maintenance of the real property or detracts from the acquisition purposes. The grantee may be excused from its obligations for monitoring, management, operation and maintenance only upon the written approval of the Executive Officer of the Conservancy or its successor.

Mitigation. Without the written permission of the Executive Officer, the grantee shall not use or allow the use of any portion of the real property for mitigation (in other words, to compensate for adverse changes to the environment elsewhere). In providing permission, the Executive Officer may require that all funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Conservancy.

INSPECTION

Throughout the term of this agreement, the Conservancy shall have the right to inspect the real property to ascertain compliance with this agreement.

INDEMNIFICATION AND HOLD HARMLESS

The grantee shall be responsible for, indemnify and hold harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs, including, without limitation litigation costs and attorneys fees resulting from, growing out of, or in any way connected with or incident to this agreement, except for active negligence of the Conservancy, its officers, agents or employees. The duty of the grantee to indemnify and hold harmless includes the duty to defend as provided in Civil Code Section 2778. This agreement supersedes any right the grantee may have as a public entity to indemnity and contribution as provided in Gov. Code Sections 895 et seq.

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the acquisition, use, management, operation and maintenance of the real property. The grantee shall maintain adequate supporting records in a manner that permits tracing of transactions from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the records related to the acquisition for three years following the date of final disbursement for the acquisition by the Conservancy. All other records shall be retained by the grantee for three years following the later of final payment and the final year to which the records pertain. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention periods.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

COMPUTER SOFTWARE

The grantee certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this contract, state funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

NONDISCRIMINATION CLAUSE

During the performance of this agreement, the grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, ethnic group identification, physical disability (including HIV and AIDS), mental disability, medical condition, genetic information, gender, gender identity, gender expression, marital status, age, sexual orientation, or military and veteran status (Government Code section 12940). The grantee and its contractors also shall not unlawfully deny a request for or take unlawful action against any individual because of the exercise of rights related to family-care leave (Government Code sections 12945.1 and 12945.2). The grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination, harassment and unlawful acts.

Consistent with Government Code section 11135, the grantee shall ensure that no one, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information or disability, is unlawfully denied full and equal access to the benefits of, or is unlawfully subjected to discrimination under, the work funded by the Conservancy under this agreement.

Pursuant to Government Code section 12990, the grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations (California Code of Regulations Title 2, section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this agreement by this reference.

The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all contracts and subcontracts entered into to perform work provided for under this agreement.

INDEPENDENT CAPACITY

The grantee, and the agents and employees of the grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

ASSIGNMENT

Without the written consent of the Executive Officer, the grantee may not assign this agreement in whole or in part.

TIMELINESS

Time is of the essence in this agreement.

EXECUTIVE OFFICER'S DESIGNEE

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

AMENDMENT

No change in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

LOCUS

This agreement is deemed to be entered into in the County of Alameda.

SURVIVAL

The obligations in the "USE, MONITORING, MANAGEMENT, OPERATION, AND MAINTENANCE" and "INDEMNIFICATION AND HOLD HARMLESS" sections, above, shall survive the termination of this agreement.

Exhibit 1

City of Brisbane
Brisbane Acres

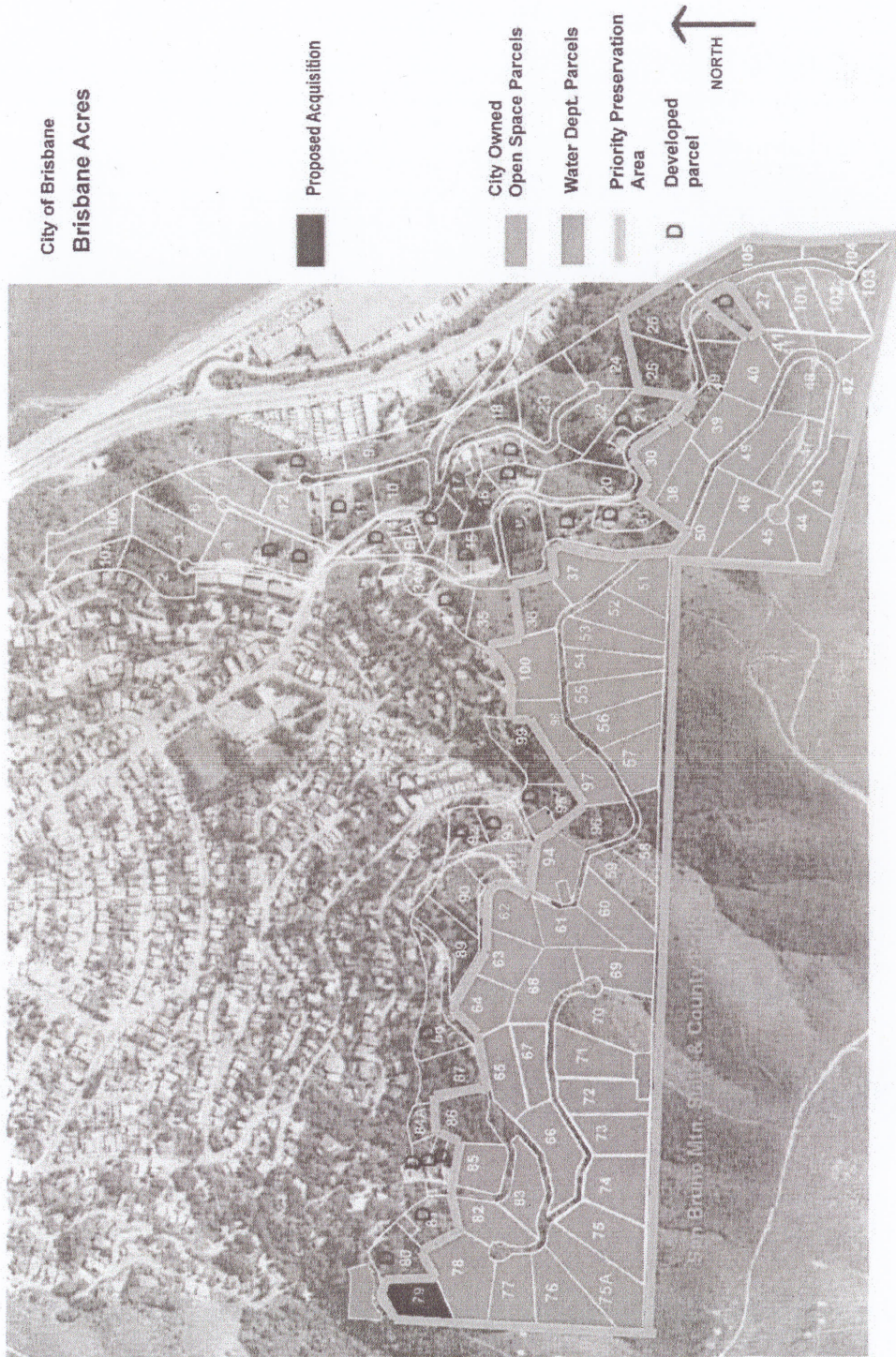


Exhibit 1



COASTAL CONSERVANCY

Staff Recommendation
October 1, 2015

**SAN BRUNO MOUNTAIN HABITAT ACQUISITION:
BRISBANE ACRES IV**

Project No. 14-038-01
Project Manager: Betsy Wilson

RECOMMENDED ACTION: Authorization to disburse up to \$60,000 to the City of Brisbane to acquire a 1.14-acre parcel within Brisbane Acres, on the upper slopes of San Bruno Mountain in the City of Brisbane.

LOCATION: Brisbane Acres is located on the upper slopes of San Bruno Mountain, below and adjacent to San Bruno Mountain State and County Park, west of Highway 101 and east of Highway 280 in northern San Mateo County (Exhibit 1).

PROGRAM CATEGORY: San Francisco Bay Area Conservancy

EXHIBITS

- Exhibit 1: Project Location Maps
 - Exhibit 2: Photographs
 - Exhibit 3: Project Letters
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RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31161-31165 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes disbursement of an amount not to exceed sixty thousand dollars (\$60,000) to the City of Brisbane to acquire a 1.14-acre parcel within Brisbane Acres (the “property”), San Mateo County Assessor Parcel Number 007-481-040, San Bruno Mountain, City of Brisbane. This authorization is subject to the following conditions:

1. Prior to the disbursement of any Conservancy funds for acquisition, the City of Brisbane shall submit for review and approval of the Executive Officer of the Conservancy (“Executive Officer”) all relevant documents, including, without limitation, the appraisal, purchase agreement, escrow instructions, environmental assessment, and title report.
2. The City of Brisbane shall permanently dedicate the property for the purposes of open space, wildlife, and habitat preservation by recording an irrevocable offer to dedicate the property or other instrument approved by the Executive Officer.

3. Conservancy funding shall be acknowledged by erecting and maintaining a sign on the property or in a nearby public staging area, the design and location of which must be approved by the Executive Officer.
4. The City of Brisbane shall pay no more than fair market value for the property, as approved by the Conservancy, based on an appraisal of the property.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent with Chapter 4.5 of Division 21 of the Public Resources Code, Sections 31162 and 31163 regarding the protection of natural habitats and resources of regional importance within the San Francisco Bay Area.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.”

PROJECT SUMMARY:

Staff requests authorization to disburse up to \$60,000 to the City of Brisbane (“City”) for the acquisition of a 1.14-acre parcel known as lot 79 within Brisbane Acres (“the property”). Protection of the property is a high priority because it contains habitat for two federally listed endangered species: the Mission blue butterfly (*Icaricia icarioides missionensis*) and Callippe silverspot butterfly (*Speyeria callippe callippe*). The property is located adjacent to and contiguous with the existing San Bruno Mountain State and County Park and protected open space lands owned by the City of Brisbane (See Exhibit 1).

Acquisition of the property would complement the 50.2 acres of existing protected lands in the Brisbane Acres that the City has acquired since 1998 using a combination of funds from the Conservancy, U.S. Fish and Wildlife, and City of Brisbane. The Conservancy previously matched the City’s acquisition funds to complete the purchase of three parcels in 2001, two parcels in 2004, and five parcels in 2008.

The property consists primarily of native coast live oak woodland with some significant stands of introduced blue gum eucalyptus and French broom. After acquisition, the City plans to spend \$40,000 to remove the eucalyptus and other non-native invasive species on the property. The property would also be added to the City’s ongoing vegetation management program that includes tracking of invasives, eradication, and control.

Acquisition of the property is important because it lies adjacent to the San Bruno Mountain State and County Park and protected City-owned lands. If the property is not acquired, the invasive, non-native eucalyptus and French broom on the site could spread to these adjacent lands. Nearby protected lands contain important habitat for the federally endangered Callippe silverspot and Mission blue butterflies with abundant host and nectar plants for these species. The habitat in this area is of high quality but invasive, non-native plants, if not controlled, will expand and degrade the habitat.

San Bruno Mountain State and County Park was established in the late 1970s to protect the main ridges and saddle area of San Bruno Mountain. The upper Brisbane Acres is a largely

undeveloped area within the city limits of Brisbane, adjacent to the northeastern boundary of the Park. The upper Brisbane Acres contains some of the most important and sensitive habitat lands on San Bruno Mountain, but this area was not included in the State and County Park due to its complex and fragmented land ownership pattern. Inadequate infrastructure and steep slopes has kept the upper portion of the Brisbane Acres in its natural state, but development pressures in this area are increasing.

Most of the land on San Bruno Mountain, including the Brisbane Acres, is included within the San Bruno Mountain Habitat Conservation Plan ("HCP"), a plan which provides for the protection and enhancement of the habitat of federally listed endangered species while allowing limited development in certain permitted areas. The HCP policy for the Brisbane Acres calls for only 40% of the area to be preserved as conserved habitat. Since the area is subdivided into approximately acre-sized lots, this HCP policy would be implemented on a parcel by parcel basis, allowing for development of 60% of each lot, which will result in fragmentation of the habitat. Acquisition of lot 79 will prevent development on this lot and fragmentation of habit. Further, the City will not count the acquisition of lot 79 towards its goal of protecting 40% of the Brisbane Acres area, such that the proposed acquisition will provide additional habitat protection beyond the HCP.

Site Description: Brisbane Acres is located on the San Bruno Mountain, which is a major landform on the bayside of the San Francisco Peninsula south of Candlestick Point. The mountain exists in a unique combination of climate, geography, and topography that now contains a variety of rare, endangered and unique species including the Mission blue butterfly, Callippe silverspot butterfly, the San Bruno elfin butterfly and the rare hosts plants that the butterflies depend on to survive: three species of lupine – *albiofrons*, *formosus*, and *varii-color* – *sedum spathulifolium*, a succulent, and *viola pedunculata*, also known as the Johnny-jump-up. E.O. Wilson ranked the San Bruno Mountain as one of the world's 18 biodiversity "hot spots" in his 1992 book, *The Diversity of Life*. This is in large part due to the fact that the mountain is an island of open space in the midst of a densely developed area. Approximately one million people live within ten miles of San Bruno Mountain. From the mountain's summit, one can see as far as the Farallon Islands, the Golden Gate and Marin Headlands, and Mount Diablo.

The property is in the upper Brisbane Acres area above the city of Brisbane. The property site consists primarily of native coast live oak woodland with some significant stands of introduced blue gum eucalyptus and French broom.

The Brisbane Acres is a largely undeveloped area within the city limits of Brisbane, adjacent to the northeastern boundary of San Bruno Mountain State and County Park. Brisbane Acres contains nearly two percent of the Mission blue butterfly population and over 10 percent of the Callippe silverspot butterfly population found on San Bruno Mountain. The Mission blue and Callippe silverspot butterflies have been recorded on or near the property. Most of the land on San Bruno Mountain, including the Brisbane Acres, is included within the San Bruno Mountain HCP, a plan which provides for the protection and enhancement of the habitat of federally listed endangered species while allowing limited development in certain permitted areas. The proposed acquisition of the property together with previous acquisitions within the Brisbane Acres and the State and County Park will create approximately 2,386 acres of contiguous habitat on the San Bruno Mountain.

Project History: In 1998, the City of Brisbane developed an Open Space Plan evaluating open space resources within the City and identifying priority areas for preservation - the primary focus

being the upper Brisbane Acres. That same year, the City began acquiring parcels from willing sellers in the Brisbane Acres utilizing City funds and grants from the U.S. Fish and Wildlife Service Section 6 grant program and the Conservancy.

The proposed acquisition of the property will add to the 50.2 acres of existing protected lands that the City has acquired in Brisbane Acres since 1998. The Conservancy and the U.S. Fish and Wildlife Service have previously assisted the City with the purchase of parcels with high habitat value. In 2001, the Conservancy provided a \$65,000 grant to assist with the acquisition of three, one acre parcels. In 2004, the Conservancy awarded \$61,400 toward the acquisition of two, one acre parcels. And in 2008, a Conservancy award of \$243,500 facilitated the acquisition of five additional parcels totaling 6.4 acres. Through 2015, the City has expended approximately \$1,465,000, the U.S. Fish and Wildlife Service contributed approximately \$710,000 and the Conservancy approximately \$364,000 for the purchase of over 50 acres of important open space and habitat lands in the upper Brisbane Acres on San Bruno Mountain.

The Conservancy has also assisted with the restoration of endangered and threatened butterfly habitat on San Bruno Mountain. On February 22, 2001 the Conservancy authorized \$144,170 to assist the County of San Mateo and San Bruno Mountain Watch (SBMW) to restore 317 acres of valuable butterfly habitat. The County and SBMW successfully completed the project, removing invasive plants to restore valuable habitat in several locations on the mountain. On January 23, 2003 the Conservancy authorized another \$85,000 to assist SBMW to restore endangered butterfly habitat on five new tracts, maintain existing restored habitat on San Bruno Mountain, and support public outreach.

Finally, in December 2007, the Conservancy awarded a \$38,122 grant to San Mateo County Parks and Recreation as part of the 2007 San Francisco Bay Area Community-based Educational, Environmental Restoration and Trail Project grants. The \$38,122 grant funded the San Bruno Mountain Volunteer Trail Project where community volunteers completed hands-on trail work to rehabilitate two seriously neglected trails at San Bruno Mountain.

PROJECT FINANCING

Coastal Conservancy	\$60,000
City of Brisbane	<u>\$30,000</u>
Project Total	\$90,000

The expected source of the proposed grant is appropriations made to the Conservancy pursuant to the "California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002" (Proposition 40), which allocates bond funds to the Conservancy for the acquisition and protection of land and water resources consistent with the Conservancy's enabling legislation. The proposed project is consistent with the Conservancy's enabling legislation, as described below, and will protect land through acquisition for purposes of open space, wildlife and habitat preservation. Accordingly, the proposed acquisition is an appropriate use of Proposition 40 funds.

Following acquisition, the City will spend approximately \$40,000 to remove blue gum eucalyptus and other non-native invasive species on the property site. The property will be added

to the City's ongoing vegetation management program that includes tracking of invasives, eradication, and control.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

This project is undertaken pursuant to Chapter 4.5 of the Conservancy's enabling legislation, Public Resources Code Sections 31160-31165, which authorizes the Conservancy to undertake projects and award grants in the San Francisco Bay Area to public and private agencies and organizations.

The property proposed for acquisition is within San Mateo County, one of the nine counties which make up the San Francisco Bay Area, as described in Section 31162 of the Public Resources Code. Consistent with Section 31162, this project will facilitate the protection, restoration, and enhancement of natural habitats of regional significance and habitat for federally and state listed butterfly species. Furthermore, acquisition of the property will prevent fragmentation of adjacent protected sites, and facilitate restoration of the larger contiguous area of important habitat, and increase the open space resources on San Bruno Mountain.

This project is consistent with Section 31162(c), in that it assists in the implementation of the policies and programs of the adopted plans of local governments. Acquisition of the property will implement the goals and policies of the City of Brisbane Open Space and Conservation Elements of the General Plan that identify Brisbane Acres as the highest priority for preservation. The acquisition will also assist in achieving the goals of the San Bruno Mountain Habitat Conservation Plan.

This project is consistent with Section 31163(a), as discussed in the Conservancy's Strategic Plan Goals and Objectives. Furthermore, the acquisition of the property is from willing sellers who have entered into purchase agreement with the City of Brisbane.

This project is appropriate for prioritization under the selection criteria set forth in Section 31163(c) in that: (1) it is consistent with the San Bruno Mountain Habitat Conservation Plan and the City of Brisbane Open Space and Conservation Elements of the General Plan; (2) it results in coordination of preservation and enhancement of endangered butterfly habitat with the San Bruno Mountain State and County Park and with the several jurisdictions that are part of the San Bruno Mountain Habitat Conservation Plan area; (3) it will be implemented in a timely manner as escrow is scheduled to close in February 2016; (4) the property may be lost to development if not acquired for habitat preservation; and (5) the proposal includes matching acquisition funds from the City of Brisbane.

**CONSISTENCY WITH CONSERVANCY'S 2013 STRATEGIC PLAN
GOAL(S) & OBJECTIVE(S), AS REVISED JUNE 25, 2015:**

Consistent with **Goal 11, Objective B** of the Conservancy's 2013-2018 Strategic Plan, the proposed project will result in the acquisition of 1.14 acres of property that are contiguous with existing protected endangered butterfly habitat on San Bruno Mountain.

**CONSISTENCY WITH CONSERVANCY'S
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on October 2, 2014, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Promotion and implementation of state plans and policies:** The San Bruno Mountain Habitat Conservation Plan was the nation's first HCP, adopted in 1983. The San Bruno Mountain HCP was created to protect a number of listed and proposed endangered species that exist on San Bruno Mountain. The proposed project protects habitat for two listed endangered species, the Callippe silverspot and the Mission blue butterflies. The proposed project is within the San Bruno Mountain HCP and the acquisition of the property will expand the amount of protected land provided for in the HCP and allow management and restoration activities that will prevent degradation of surrounding sensitive habitat lands.
4. **Support of the public:** The project is supported by Assemblymember Kevin Mullin, County of San Mateo Supervisor Adrienne Tissier, County of San Mateo Parks Department, California Native Plant Society, and San Bruno Mountain Watch (see Exhibit 3).
5. **Location:** Brisbane Acres is located in San Mateo County, one of the nine counties in the San Francisco Bay Area and thus is within the jurisdiction of the San Francisco Bay Area Conservancy Program.
6. **Need:** Without the Conservancy's assistance, the City of Brisbane could not purchase the property for permanent protection and restoration. The purchase agreement that the City has entered into with the property owners is contingent on Conservancy authorization of funds.
7. **Greater-than-local interest:** Acquisition of the property will provide habitat for two endangered species of butterflies that are of national and state interest. This acquisition will contribute to the protection and recovery of the endangered and threatened Mission blue and Callippe silverspot butterflies. In addition, this area is considered a key area for biodiversity protection due to its unique combination of climate and geography, the rare, threatened and endangered plants and animals that live there, and the threats from development that this area faces.
8. **Sea level rise vulnerability:** The property is located approximately 600 feet above sea level and will not be vulnerable to sea level rise.

Additional Criteria

9. **Urgency:** Brisbane Acres is one of a few undeveloped, residentially zoned, and scenic areas with close proximity to San Francisco and northern San Mateo County; therefore, pressure to develop these parcels is very high.

10. **Resolution of more than one issue:** Acquisition of the property will prevent the site from being developed. Development of the property would fragment habitat for the endangered Mission blue and Callippe silverspot butterflies and reduce recovery efforts made to date. Acquisition of the property will also enable the City to implement control measures to stop the spread of invasive plants that threaten the viability of habitat for these endangered species.
11. **Leverage:** See the “Project Financing” section above.
12. **Readiness:** The City has entered into a purchase agreement with the property owners. All parties to the agreement are prepared to move forward to close escrow on the property in February 2016.
13. **Realization of prior Conservancy goals:** See the “Project History” section above.
14. **Cooperation:** The landowners are willing sellers. Also, most of the land on San Bruno Mountain, including Brisbane Acres, is part of the San Bruno Mountain Habitat Conservation Plan, a cooperative effort between San Mateo County, the cities of Brisbane, Daly City, and South San Francisco, the U.S. Fish and Wildlife Service, the California Departments of Fish and Wildlife and Parks and Recreation, and the major landowners on the mountain to protect and enhance the habitat for federally-listed endangered species while allowing for limited development in designated areas. The public agencies involved with the HCP effort support management of these parcels considered here for purchase to achieve the conservation goals of the HCP.
15. **Vulnerability from climate change impacts other than sea level rise:** Acquisition of the property will enable the City to manage the habitat and mitigate vegetation changes due to invasive species and plant succession.

COMPLIANCE WITH CEQA:

The acquisition of the property at Brisbane Acres is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) because it consists of the acquisition of interest in land for wildlife conservation purposes (14 Cal. Code of Regulations Section 15313).

The invasive species removal work that the City intends to carry out on the property after acquisition, pursuant to the City’s vegetation management program, is also categorically exempt from CEQA in that the work consists of small habitat restoration, enhancement, maintenance, and protection for plants and wildlife (14 Cal. Code of Regulations Section 15333). Removal of invasive plant species on the property satisfies all of the criteria under Section 15333 as follows: 1) the property is 1.14 acres and therefore the removal work does not exceed five acres in size; 2) there will be no significant adverse impact on endangered, rare, or threatened species or their habitat – rather the work will protect and enhance habitat for two federally listed endangered butterflies; 3) there are no hazardous materials at or around the property that may be disturbed or removed; and 4) the removal work will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Staff will file a Notice of Exemption following Conservancy authorization.

Exhibit 1: Project Location Maps

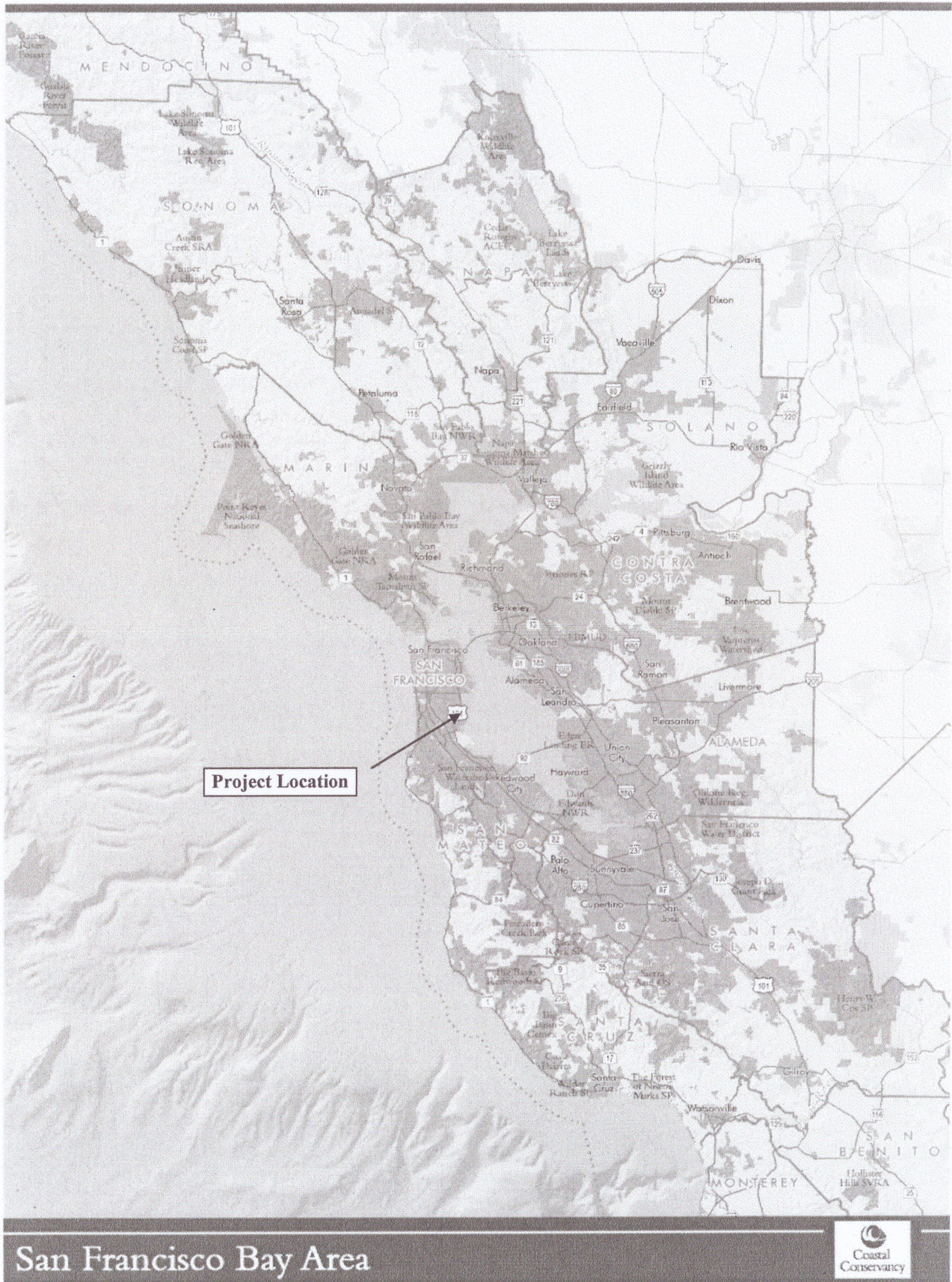


Exhibit 1: Project Location Maps

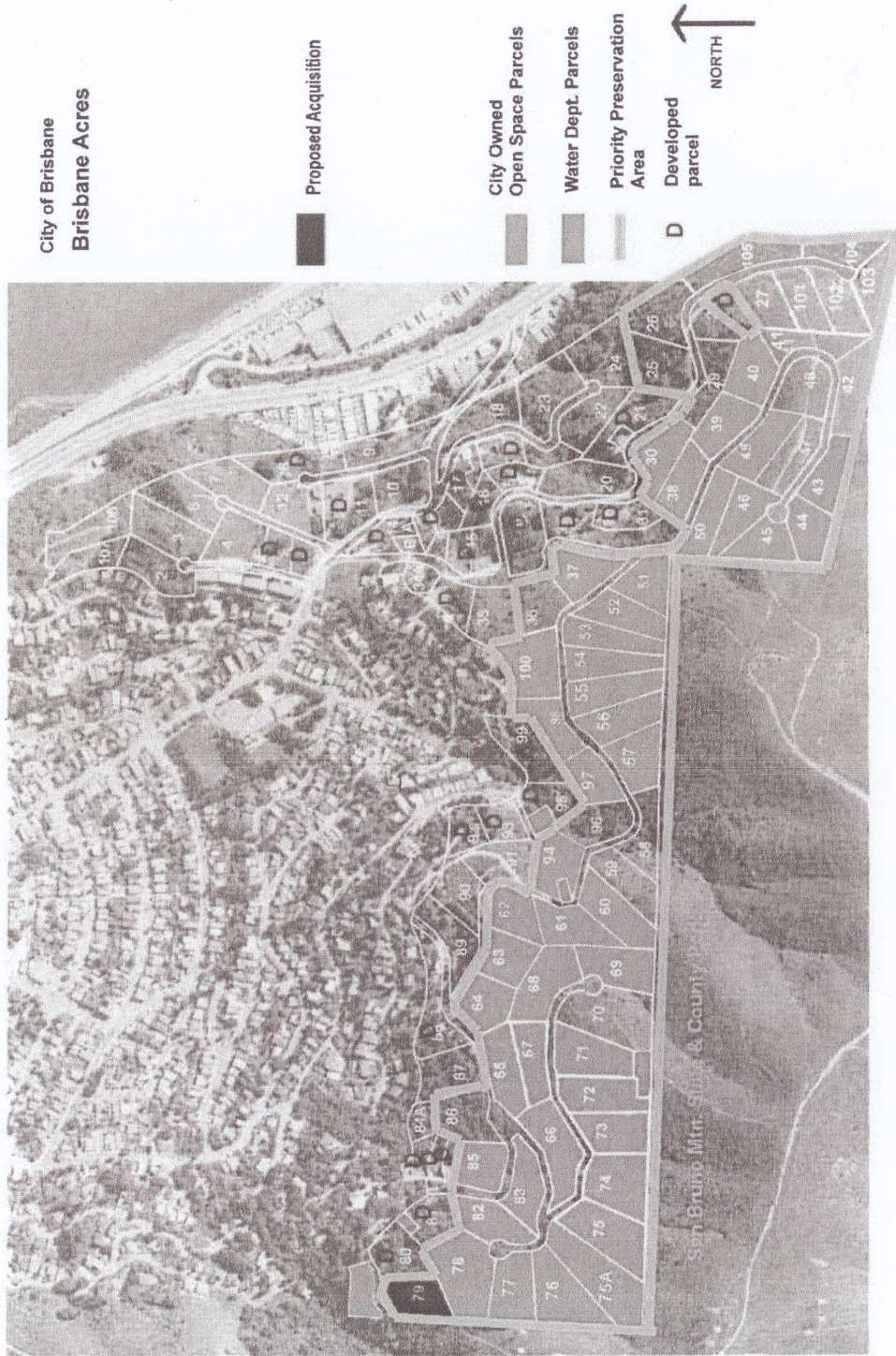


Exhibit 1: Project Location Maps



Exhibit 2 - Photographs



Lower property looking west



Lower property looking east

Exhibit 2 - Photographs



Upper property looking east



Upper property looking south

Exhibit 2 - Photographs



Top of property looking north



Silver lupine, a host plant for the Mission Blue butterfly

Exhibit 2 - Photographs



Main ridge of Upper Brisbane Acres, located near the subject property