



**Staff Recommendation**

December 7, 2021

**Consent Item: Consideration of Authorization to Disburse Additional Funds for the Big Canyon Habitat Restoration Project in Upper Newport Bay**

Maria Rodriguez, Wetlands Program Manager

**RECOMMENDED ACTION:** Staff recommends that OPC approve the authorization to disburse up to \$250,000 to the Newport Bay Conservancy for a budget augmentation of the previously approved Big Canyon Coastal Habitat Restoration and Adaptation Project. Additional permitting requirements, and an updated quote for engineering services identified a funding gap for completion of final design components, as originally scoped in the grant. This additional funding will ensure that completion of final designs and permitting can be fully supported.

**LOCATION:** Upper Newport Bay, Orange County; see Exhibits for more detailed project-specific location and site map.

**STRATEGIC PLAN GOALS AND OBJECTIVES:** This project implements strategic targets in Goals 1 and 3, within Objective 1.1: Build Resiliency to Sea-Level Rise, Coastal Storms, Erosion, Flooding; Objective 3.1: Protect and Restore Coastal and Marine Ecosystems; Objective 3.3: Support Sustainable Marine Fisheries and Thriving Fish and Wildlife Populations; and Objective 3.4: Improve Coastal and Ocean Water Quality.

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**EXHIBITS:** Exhibit 6b1 Project Location Map and Project Phase Map

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**FINDINGS AND RESOLUTION:**

Staff recommends that the Ocean Protection Council (OPC) adopt the following findings:

“Based on the accompanying staff report and attached exhibit(s), OPC hereby finds that:

- 1) The proposed projects are consistent with the purposes of Division 26.5 of the Public Resources Code, the California Ocean Protection Act;
- 2) The proposed project is consistent with OPC's Proposition 68 Grant Guidelines, adopted May 2019; and

- 3) OPC has reviewed the project CEQA documents as follows: For Phase 2A, an Initial Study and Mitigated Negative Declaration (IS/MND) was completed by the City of Newport Beach and adopted in January 2019. OPC has considered the IS/MND and recommends that the mitigation and avoidance measures identified in the IS/MND be adopted as a condition of approval. The Phase 2B/2C CEQA document, which is a planning component funded by the originally-approved OPC grant, is currently in process and is anticipated to be completed by Fall 2022. No additional CEQA review is triggered by this planning and design stage of the project. OPC has considered the Phase 2A IS/MND and recommends that the mitigation and avoidance measures identified in the IS/MND be adopted as a condition of approval.”

Staff further recommends that OPC adopt the following resolution pursuant to Sections 35500 *et seq.* of the Public Resources Code:

“OPC hereby approves the disbursement of up to \$250,000 to the Newport Bay Conservancy for budget augmentation of the previously approved Big Canyon Coastal Habitat Restoration and Adaptation Project.

This authorization is subject to the condition that prior to disbursement of funds, the Newport Bay Conservancy shall submit for the review and approval of the Executive Director of the OPC detailed work plans, schedules, staff requirements, budgets, and the names of any contractors intended to be used to complete the projects, as well as discrete deliverables that can be produced in intervals to ensure the projects are on target for successful completion. All projects will be developed under a shared understanding of process, management and delivery.”

#### **EXECUTIVE SUMMARY:**

Staff recommends that OPC provide up to \$250,000 to the Newport Bay Conservancy (NBC) to augment the Big Canyon Coastal Habitat Restoration and Adaptation Project to support full completion of final design components (design plans, specifications and engineering costs) for Phase 2B and 2C as originally scoped in the grant. In November 2019, OPC approved the disbursement of \$529,000 of Proposition 1 funds for NBC to plan and implement various elements of Phases 2A, 2B and 2C of the Big Canyon Coastal Habitat Restoration and Adaptation project<sup>1</sup>. However, project updates have determined that the original cost estimated to complete 100% designs, planning and permitting for Phase 2B and 2C is currently under-budgeted due to 1) additional requests made by permitting agencies that have led to increases in staff labor and resources, and 2) a recently updated quote for services from NBC’s consultant, Burns and McDonnell, identified a funding gap to fully complete engineering designs from 60% to 100%. This

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<sup>1</sup> [https://www.opc.ca.gov/webmaster/ftp/pdf/agenda\\_items/20191113/Item7-Proposition-1-Funding-Staff-Recommendation-revised.docx](https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20191113/Item7-Proposition-1-Funding-Staff-Recommendation-revised.docx)

minor budget augmentation will provide the additional funding needed to ensure that completion of final designs, engineering, and permitting of Phase 2B and 2C can be fully supported and successfully lead to future implementation.

While the original project was funded through Proposition 1, the recommended funding source for this budget augmentation is Proposition 68 (Chapter 9— Ocean, Bay, and Coastal Protection).

## **PROJECT SUMMARY:**

### **Background:**

This project is a multi-phase water quality, restoration and adaptation project in the Big Canyon Nature Park. The project is located within the 60-acre City-owned Big Canyon Nature Park as well as CDFW owned land, at the downstream end of the Big Canyon Watershed in the City of Newport Beach in Orange County. Big Canyon is the only natural, undeveloped portion of the Big Canyon watershed, which covers about two square miles, and the only significant remaining natural canyon on the east side of Upper Newport Bay (UNB). Big Canyon Creek winds through Big Canyon in a southeast to northwest direction and drains the 1,300-acre Big Canyon Watershed directly into the UNB State Marine Conservation Area (SMCA) and Ecological Reserve.

Big Canyon Nature Park has been subjected to extensive disturbance since the 1930s. In 1938, Back Bay Drive was constructed, functioning as an effective border between UNB and the Nature Park. The road cuts off tidal flow into the lower canyon that was historically tidal marsh and mudflat, in what are now project areas 2B and 2C. These changes resulted in loss of historic salt marsh and the functionality of this coastal habitat that is a vital connection to marine fisheries, habitat and water quality. This project seeks to restore these historical wetland habitats and their ecosystem functionality, while building climate change resiliency into the design. Disturbance throughout Big Canyon allowed invasive species to spread, which caused a reduction of native plant diversity and loss of suitable habitat for local endangered birds. Removal of invasive plants and replacement with a mosaic of native riparian, wetland, and upland species will help restore ecosystem function and provide better quality habitat for wildlife.

The project site also suffers from stream and flood plain erosion, degraded creek water quality by pollution from ground-water seepage, increased peak flows during storm events, and year-round urban dry weather flows. Degraded habitat and naturally high selenium concentrations at Big Canyon critically impact the UNB, making restoration of Big Canyon a priority for regional stakeholders.

### **Project Summary:**

This project helps restore the full continuum of tidal to freshwater to upland habitat in Big Canyon Nature Park in Newport Beach. The Phase 2 project is being implemented in phases: Phase 2A and Phases 2B/2C. The OPC-funded Phase 2A work, including project construction, has already been completed, and long-term maintenance planning is

underway. This minor budget augmentation will provide supplemental funding to support full completion of the permitting and design components specific to Phase 2B/2C outlined in the grant's Workplan. Completion of this task is needed to ensure project efficiency and readiness for future implementation of Phase 2B/2C.

OPC funded Phase 2A implementation, which included restoration of 9.6 acres of coastal canyon creek, seasonal and alkaline wetlands, and riparian habitat. Specifically, Phase 2A outcomes included high quality wetland and riparian habitat by removing invasive plant species, recontouring of the flood plain to restore creek and flood plain connectivity, stabilizing creek banks with native materials, creating alkaline wetlands compatible with higher salinity soils to improve resilience to sea level rise, removing trees impacted by polyphagous shot hole borer (PSHB), and replanting with an integrated mosaic of self-sustaining coastal wetland and riparian native plants.

The 4.83-acre Phase 2B area is downstream of Phase 2A and contains a freshwater pond that was created by the placement of dredge material and a downstream engineered outflow structure. Dry weather flows in the Big Canyon watershed contain elevated levels of selenium which have impacted the sediment and vegetation in the freshwater pond of Phase 2B and will require remediation as part of the restoration approach to Phase 2B. The 4.34-acre Phase 2C area is adjacent to Phase 2B and was a historical tidal marsh that was lost due to the construction of Back Bay Drive and placement of dredged materials from UNB.

The efforts for Phase 2B/2C move forward planning and permitting by funding: CEQA documentation (draft and final) and noticing; biological and other required technical reports; Clean Water Act (CWA) 404 permit; 1600 Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW); CWA 401 Certification; issuance of a Coastal Development Permit from the California Coastal Commission; and 30%, 60%, 90%, final design plans and specifications (100%), and engineering cost estimate. Based on the updated quote for these services, the originally approved budget for this task (\$360,000) would only be able to complete CEQA documentation, listed required permits, and up to 60% design. Additionally, several permitting regulatory agencies (CDFW, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service) have requested more detailed soil sampling investigations at the project site due to its exposure to selenium contamination. The proposed budget augmentation of \$250,000 will allow the grantee to fully complete the design elements and additional permitting required to keep the project on track to meet its objectives and secure an efficient transition to future implementation.

### **About the Grantee**

NBC is focused exclusively on the protection and preservation of UNB—one of the largest, and most productive remaining natural estuaries in Southern California. NBC organizes community-based native habitat restoration and other service activities that involve the public and local businesses in the stewardship of the Bay. The organization undertakes and supports science-based adaptive management for over a square mile of protected

tidelands and uplands in the heart of Newport Beach. This includes performing and sponsoring habitat and wildlife monitoring and research, implementing conservation projects, and providing information management services. In addition, NBC advocates and helps facilitate integrated, sustainable management of the 154-square mile area of central Orange County that drains to the ocean via the Bay. Since inception of this project, NBC has garnered financial, practical, technical and influential support, critical in sustaining the health and benefits of this region’s most productive ecosystems. NBC works collaboratively with partners to leverage resources, and drive education, restoration, research, and advocacy to effectively manage, protect, and preserve the UNB, and its many unique resources such as Big Canyon.

**Project Timeline**

Long-term monitoring plans are currently in progress in collaboration with the City for Phase 2A. Technical reports are currently underway for Phases 2B/2C to support CEQA documentation and permitting, as of Spring 2021. Data from the completed feasibility study will support initial development of these drafts. NBC routinely meets with the TAC to collect feedback on draft technical products, including design iterations; they previously met in November 2021 and plan to meet again early Spring or Summer 2022 to review updated technical materials. The completion of 30% designs is anticipated to be completed by the end of 2021. Full completion of design components is anticipated between late-2022 and early 2023, with the design and engineering package ready for bidding subsequently.

The grantee is working diligently with several state and federal agencies to solicit implementation funding when the timing to apply is appropriate. Many agencies require at least 30% designs and CEQA completed to be considered for implementation funding. With this minor budget augmentation dedicated to completing these essential project components, the project will be able to comply with funder’s request, submit necessary grant applications for implementation funding, and avoid potential project delays. NBC anticipates obtaining implementation funding through grants and completed permits in place to begin construction on Phase 2B/2C by late 2023 or 2024.

**PROJECT FINANCING:**

Staff recommends that OPC authorize encumbrance of up to \$250,000 to the Newport Bay Conservancy to conduct the project summarized above.

Ocean Protection Council Proposition 68 (Chapter 9)	\$250,000
<b>TOTAL</b>	<b>\$250,000</b>
<b>Previous Award (OPC Proposition 1)</b>	\$529,000
<b>OPC Total</b>	<b>\$779,000</b>

The anticipated source of funds will be from the OPC's FY 2018/2019 appropriation of Proposition 68 funds (Chapter 9 – Ocean, Bay, and Coastal Protection). Per OPC's Proposition 68 Grant Guidelines, this funding source prioritizes projects intended to conserve, protect, and restore marine wildlife and healthy ocean and coastal ecosystems.

**CONSISTENCY WITH CALIFORNIA OCEAN PROTECTION ACT:**

The proposed project is consistent with the Ocean Protection Act, Division 26.5 of the Public Resources Code, because it is consistent with trust-fund allowable projects, defined in Public Resources Code Section 35650(b)(2) as projects which:

- Eliminate or reduce threats to coastal and ocean ecosystems, habitats, and species.
- Improve the management of fisheries and/or foster sustainable fisheries.
- Improve coastal water quality.
- Allow for increased public access to, and enjoyment of, ocean and coastal resources, consistent with sustainable, long-term protection and conservation of those resources.
- Improve management, conservation, and protection of coastal waters and ocean ecosystems.
- Provide monitoring and scientific data to improve state efforts to protect and conserve ocean resources.
- Protect, conserve, and restore coastal waters and ocean ecosystems.
- Address coastal water contamination from biological pathogens.
- Provide funding for adaptive management, planning coordination, monitoring, research, and other necessary activities to minimize the adverse impacts of climate change on California's ocean ecosystem.

**COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):**

This project is a habitat and wetland restoration project to improve a vital connection to marine fisheries, habitat and water quality. An IS/MND for Phase 2A was completed by the City of Newport Beach and adopted in January 2019; mitigation and avoidance measures identified in the IS/MND were adopted as a condition of approval. The Phase 2B/2C CEQA document, which is a planning component funded by the originally-approved OPC grant, is currently in process and is anticipated to be completed by Fall 2022. No additional CEQA review is triggered by this planning and design stage of the project.