

COASTAL CONSERVANCY

Staff Recommendation
November 21, 2024

NEWARK BAYLANDS ACQUISITION

Project No. 24-050-01
Project Manager: Laura Cholodenko

RECOMMENDED ACTION: Authorization to disburse up to \$3,000,000 to The Trust for Public Land to acquire 430 acres of Newark Baylands (Area 4) for the protection and restoration of habitat, public access, the potential creation of an interpretive visitor center, and to the extent compatible with those purposes: education, research, and Native American tribal cultural uses.

LOCATION: City of Newark, Alameda County

EXHIBITS

- Exhibit 1: [Project Location and Habitat Maps](#)
 - Exhibit 2: [Site Photographs and Species Lists](#)
 - Exhibit 3: [Project Letters](#)
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RESOLUTION AND FINDINGS

Staff recommends that the State Coastal Conservancy adopt the following resolution and findings.

Resolution:

The State Coastal Conservancy hereby authorizes a grant of an amount not to exceed three million dollars (\$3,000,000) to the Trust for Public Land (“the grantee”) to acquire 430 acres of Newark Baylands (Area 4) (including Alameda County’s Assessor’s Parcel Nos. 537-0850-011-01, 537-0850-007-02, 537-0850-011-04, 537-0801-002-06, and 537-0850-009) for the protection and restoration of habitat, public access, the potential creation of an interpretive visitor center, and to the extent compatible with those purposes: education, research, and Native American tribal cultural uses (“the acquisition purposes”), along the shoreline of San Francisco Bay in Newark (“the project”), subject to the following conditions:

1. Prior to the disbursement of funds for the acquisition, the grantee shall submit for the review and approval of the Executive Officer of the Conservancy (Executive Officer):

- a. All relevant acquisition documents for the acquisition including, without limitation, the appraisal, purchase and sale agreement, deed, escrow instructions, environmental or hazardous materials assessment, and title report;
 - b. A baseline conditions report; and
 - c. Evidence that sufficient funds are available to complete the acquisition.
2. The grantee shall pay no more than fair market value for the property, as established in an appraisal approved by the Executive Officer.
 3. The property acquired under this authorization shall be managed and operated for the acquisition purposes. The property shall be permanently dedicated to those purposes by an appropriate instrument approved by the Executive Officer.
 4. Conservancy funding shall be acknowledged by erecting and maintaining a sign on the property or in a nearby publicly-viewable area, the design and location of which are to be approved by the Executive Officer.

Findings:

Based on the accompanying staff recommendation 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, regarding the San Francisco Bay Area Program.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria.
3. The Trust for Public Land is a nonprofit organization organized under section 501(c)(3) of the U.S. Internal Revenue Code.

STAFF RECOMMENDATION

PROJECT SUMMARY:

Staff recommends the Conservancy authorize a grant of an amount not to exceed three million dollars (\$3,000,000) to the Trust for Public Land (TPL) to acquire 430 acres of Newark Baylands (Area 4) (including Alameda County's Assessor's Parcel Nos. 537-0850-011-01, 537-0850-007-02, 537-0850-011-04, 537-0801-002-06, and 537-0850-009) for the protection and restoration of habitat, public access, the potential creation of an interpretive visitor center, and to the extent compatible with those purposes: education, research, and Native American tribal cultural uses ("the acquisition purposes"), along the shoreline of San Francisco Bay in Newark ("the project") (Exhibit 1). The 430-acre property ("the property"), part of a 559-acre area designated as "Area 4" in the City of Newark's General Plan, is located along Mowry Slough in the western part of the City of Newark, adjacent to the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge). Acquisition of the property will protect approximately 249 acres of wetlands and open water and 181 acres of uplands with excellent restoration potential. The property is one of the few remaining undeveloped and unprotected sites along the South San Francisco Bay shoreline and it provides an opportunity for restoration of tidal marsh and marsh

migration in response to sea level rise (Exhibit 1, Figure 3). Future restoration of tidal marsh habitat on site would benefit several threatened and endangered species including salt marsh harvest mouse and Ridgway's rail and would help protect adjacent communities against flooding and storm surges. Protection of the property also provides an opportunity to develop public access in a part of the Bay Area that has very little publicly accessible open space and minimal access to the shoreline.

In 2019, the Newark City Council approved a development project consisting of 469 executive style houses for the property. The development, which has been contested over many years would require 1.6 million cubic yards of fill (dirt) to raise portions of the property out of the 100-year flood zone. The landowners are close to receiving all necessary approvals and permissions to construct the development project but have signed a non-binding letter documenting that they are willing to sell the property to TPL at a price that does not exceed the fair market value. However, if the property is not protected now, it is very likely to be developed in the future, especially if market conditions change so that the cost of developing the property becomes lower.

TPL plans to convey the property to the U.S. Fish and Wildlife Service (Service), which manages the Refuge, upon close of escrow for long-term ownership and management. TPL intends to conduct a separate fundraising effort to establish an endowment that will cover the cost of long-term property management by the Service. The Service has identified the acquisition of Newark Baylands as a priority due to the site's ability to support endangered species recovery, to provide climate-change resilient habitat, and increase the Refuge's connections to local communities. The property is located within the Congressionally authorized acquisition boundary for the Refuge (Exhibit 3; see letters from USFWS).

Future restoration and enhancement may include reconnecting diked marsh on site with Mowry Slough to return tidal flows to the property and initiate the restoration of tidal marsh. Once tidal marsh is established, it will provide nature-based flood protection for areas of Newark, Fremont, and infrastructure such as the Union Pacific Railroad Line that carries Amtrak and freight trains in Alameda County. There is also potential to reconnect two freshwater tributaries to Mowry Slough (currently engineered channels called Line D and Line N) to historic slough traces present within the diked salt marsh (see Exhibit 1, Figure 4). Reconnecting the tributaries to the property would deposit freshwater and sediment from the watershed into the marsh, enhancing marsh resilience to sea level rise. The reconnection may also allow storm water runoff from Lines D and N to collect and filter through the landscape before flowing to the Bay, which would have water quality benefits and flood protection benefits.

Future goals for public access at the project site include establishing a new section of the San Francisco Bay Trail. The trail alignment would likely parallel the Union Pacific Railroad tracks that form the eastern edge of the property for at least a portion of its alignment but may include integration into future restoration plans for an enhanced experience. A pedestrian overpass or underpass may be needed to facilitate walking and bicycling access to the site. A trail segment through the property would offer exceptional wildlife viewing and scenic views of the salt ponds and open waters of the Bay, with a backdrop of the Peninsula and South Bay

ridgelines. The site also presents the potential that it could support an interpretive visitor center that facilitates public education about natural and cultural resources of the area.

Over a dozen Bay Area environmental and planning organizations have been directly engaged in efforts over the past two decades to secure protection and preservation of Newark Baylands. Organizations expressing support for permanent protection of this property include Citizens Committee to Complete the Refuge (CCCR), Sierra Club California, Greenbelt Alliance, Center for Biological Diversity, Save the Bay, San Francisco Bay Keeper, Climate Resilient Communities, and Ohlone Audubon Society. These organizations have spoken at City meetings, provided comments on environmental review documents, and engaged their members in actions and petitions to stop the proposed development (Exhibit 3). Over 6,000 individuals wrote letters and/or signed petitions to the City Council and to regulatory agencies requesting they exert their full authority to regulate these lands.

Site Description: The property is bordered by the Union Pacific Railroad tracks and commercial areas of Newark to the east. The Tri-Cities Landfill and Alameda County Flood Control District's Line N is located to the south and the District's Line D forms the northern boundary of the property. West of the property is Mowry Slough and salt production ponds, some owned by the Service as part of the Refuge and others owned by Cargill (Exhibit 1).

The property was historically a tidal wetland. By the early 1900s it was drained and turned into farmland. Part of it was also converted to a managed pond to support duck hunting. The site is currently composed of approximately 29 acres of open water and 220 acres of wetlands including seasonal wetlands, diked salt marsh, brackish and freshwater marsh, and 181 acres of diked and annually pumped uplands that support seasonal ponds. The property ranges in elevation from approximately -0.5 to 7.5 feet above sea level and lies entirely within a Federal Emergency Management Agency flood zone.

The endangered salt marsh harvest mouse is known to occur in the diked marshes on site and numerous shorebirds, waterfowl, and other waterbirds use the site during winter migration and/or for foraging and nesting (Exhibit 2). The largest harbor seal pupping site in South San Francisco Bay is located at the mouth of Mowry Slough, close to the project site.

Grant Applicant Qualifications: The Trust for Public Land is a national nonprofit organization whose mission is to create parks and protect land to ensure healthy, livable communities for generations to come. To date, TPL has completed over 700 land conservation projects in California, protecting more than 440,000 acres. TPL has received many grants from California state agencies, including grants from the Conservancy for acquisition of properties including Banning Ranch in Orange County and Toro Creek in San Luis Obispo County.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA:

The proposed project is consistent with the Conservancy's Project Selection Criteria, last updated on September 23, 2021, in the following respects:

Selection Criteria

1. Extent to which the project helps the Conservancy accomplish the objectives in the Strategic Plan.

See the “Consistency with Conservancy’s Strategic Plan” section below.

2. Project is a good investment of state resources.

The current negotiated purchase price of the property is 70% of the appraised value, making the project a good investment of state resources.

Permanently protecting Newark Baylands (Area 4) ensures that this property can continue to help buffer developed areas from Bay waters. Future restoration of tidal wetlands on the property would enhance flood protection for adjacent communities in the face of sea-level rise because restored wetlands would absorb wave run up and reduce storm surge that can lead to erosion and damage of developed areas. The project will therefore help minimize the risks and public costs of sea-level rise that will exacerbate flooding in the future.

The acquisition of Newark Baylands is consistent with *Pathways to 30x30 California (2021)* that recommends prioritizing acquisition of unprotected lands adjacent to or surrounded by currently established public lands and lands where wetlands will likely migrate over time to expand and improve habitat and achieve climate benefits.

3. Project includes a serious effort to engage tribes. Examples of tribal engagement include good faith, documented efforts to work with tribes traditionally and culturally affiliated to the project area.

Service staff have indicated a commitment to working with tribes at the earliest phases of planning for the long-term management of the property and to learn how to best incorporate tribal knowledge and concerns into the project. While formal outreach by the Service to regional tribal interests has not yet occurred, the Sogorea Te’ Land Trust has provided a support letter and has expressed interest in working with the Refuge on land management (Exhibit 3).

4. Project benefits will be sustainable or resilient over the project lifespan.

TPL intends to convey the property to the Service upon close of escrow. If necessary, TPL will manage and steward the property until it is transferred to the Service. Both organizations bring decades of experience in monitoring, maintenance, and stewardship of land. In the short term, the property will be managed for invasive weeds, preventing unauthorized access, and guiding the anticipated natural response once active disking and pumping are stopped. Longer-term management by the Service is expected to include the active restoration of disturbed areas as well as planning for and implementing the reconnection of tidal and freshwater flows to the site in a manner that protects adjacent property while supporting robust native habitat recovery.

5. Project delivers multiple benefits and significant positive impact.

Acquisition will prevent development of the property, thereby protecting existing wildlife habitat. Protection of the property would also preserve the potential to restore hundreds of acres of tidal marsh that can move upslope as sea levels rise. There are very few opportunities

in the south and central parts of San Francisco Bay to protect tidal marsh migration pathways at the scale of this project. Restored tidal marsh would have significant benefits for a diversity of marsh-dependent wildlife that have suffered from widespread loss of habitat throughout the San Francisco Estuary and are at risk of further loss of habitat due to sea level rise. Restored tidal marsh would also provide climate change resilient flood protection for development east of the property.

Future plans for the property also include the potential development of a section of the San Francisco Bay Trail that will provide shoreline access and recreational opportunities to economically disadvantaged neighborhoods in Newark. The property is located approximately one mile from Ohlone Community College and Newark Memorial High School where 50% of the students are Latino and 42% of students are eligible for lunch assistance. The Service plans to develop recreational opportunities and to engage local youth and college students in stewardship and environmental education programs, after it has taken ownership of the property.

6. Project planned with meaningful community engagement and broad community support.

The project has a high level of community support and will provide numerous community benefits. The Citizens Committee to Complete the Refuge (CCCR) has been leading efforts to expand the Refuge to include surrounding Baylands, including the Newark Baylands. CCCR brought forth lawsuits in 2010 that halted development of the project site. The Center for Biological Diversity joined CCCR as co-plaintiffs/appellants in a 2019 CEQA lawsuit to stop the current development proposal.

More than 40 Bay Area scientists signed a letter of support calling for the protection Newark Baylands that was published in the journal *Bay Nature* in August 2023. The letter references numerous studies and scientific reports including the *Baylands Ecosystem Habitat Goals Climate Change Update (2015)*, the *San Francisco Bay Shoreline Adaptation Atlas (2019)*, and *Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan (2012)* that highlight the unique and significant value of protecting the Newark Baylands Area 4 (Exhibit 3).

PROJECT FINANCING

Coastal Conservancy	\$3,000,000
USFWS Land and Water Conservation Fund FY23-24	\$4,700,000
USFWS Land and Water Conservation Fund FY24-25	\$4,500,000
USFWS Land and Water Conservation Fund FY25-26 (<i>pending</i>)	\$5,000,000
San Francisco Bay Restoration Authority (<i>pending</i>)	\$25,000,000
Wildlife Conservation Board (<i>pending</i>)	\$10,000,000

Fund Sources Under Development

Other Federal Funds (USFWS, others)	\$6,300,000
Other State Funds	\$6,500,000
Private Foundations and Donors	\$5,000,000
Project Total	\$70,000,000

Conservancy funding is anticipated to come from a Fiscal Year 2022/23 appropriation from the Greenhouse Gas Reduction Fund (GGRF) to the Conservancy for urgent sea level rise adaptation and coastal resilience needs (Budget Act of 2022, as amended by the Budget Act of 2023, SB 101, Chapter 12, Statutes of 2023). The Greenhouse Gas Reduction Fund Investment Plan and Communities Revitalization Act (Health and Safety Code (HSC) Sections 39710 – 39723) requires that GGRF funds be used to (1) facilitate the achievement of reductions of GHG emissions consistent with the Global Warming Solutions Act of 2006 (HSC Sections 38500 *et seq*), and (2) to the extent feasible, achieve other co-benefits, such as maximizing economic, environmental and public health benefits and directing investment to disadvantaged communities (HSC 39712(b)). The Global Warming Solutions Act of 2006 sets forth certain GGRF funding priorities (HSC Section 38590.1).

The California Air Resources Board (“CARB”) has adopted guidelines that establish program goals that agencies must achieve with their GGRF funds. Consistent with the CARB 2018 Funding Guidelines, the proposed project will help the Conservancy meet its GGRF program goals because the project will:

- Facilitate GHG emission reductions (carbon sequestration)
- Benefit disadvantaged communities
- Maximize economic, environmental, and public health co-benefits to the State; and
- Leverage funds to provide multiple benefits and to maximize benefits.

The proposed project will meet these objectives by protecting 430 acres of diked wetlands and uplands that, provide carbon sequestration benefits and wildlife habitat. As explained above, the property can be restored to tidal wetlands that protect habitat and communities from sea level rise. The project will leverage a substantial amount of federal and local funding to provide maximum benefits to several communities along the South San Francisco Bay shoreline as well numerous native and endangered wildlife species.

Unless specifically identified as “Required Match,” the other sources of funding and in-kind contributions described above are estimates. The Conservancy does not typically require matching funds or in-kind services, nor does it require documentation of expenditures from other funders or of in-kind services. Typical grant conditions require grantees to provide any funds needed to complete a project.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

The proposed project is being undertaken pursuant to Chapter 4.5 (regarding the San Francisco Bay Area Conservancy) of Division 21 of the Public Resources Code. Section 311162 authorizes

the Conservancy to undertake projects in the nine-county San Francisco Bay Area to help achieve regional public access and resource protection goals.

Section 31162(b) authorizes the Conservancy to award grants for projects that protect natural habitats and connecting corridors, watersheds, scenic areas, and other open space resources of regional importance. The proposed project will protect natural habitat and allow for future restoration of high value tidal wetland habitat that benefits native wildlife and enhances flood protection for Bay Area communities.

CONSISTENCY WITH CONSERVANCY'S [2023-2027 STRATEGIC PLAN](#):

Consistent with **Objective 3.1 Conserve Lands**, the proposed project will protect 430 acres of wetland and upland habitat.

CEQA COMPLIANCE:

The project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code of Reg. Section 15313, which exempts acquisitions of property for purposes of preserving fish and wildlife habitat; and Section 15325, which exempts acquisitions for purposes of preserving open space, the existing natural conditions of the property, including plant and animal habitats, and for park purposes. The proposed acquisition will preserve the existing natural conditions and habitats of the property.

Upon approval of the project, Conservancy staff will file a Notice of Exemption.