

COASTAL CONSERVANCY

Staff Recommendation

January 27, 2005

**UPPER SULPHUR CREEK RESTORATION PROJECT**

File No. 04-107

Project Manager: Deborah Ruddock

**RECOMMENDED ACTION:** Authorization to disburse up to \$287,200 to the City of Laguna Niguel to assist with restoration and enhancement of approximately 7,900 linear feet of stream corridor along Upper Sulphur Creek, a coastal watershed.

**LOCATION:** Sulphur Creek, City of Laguna Niguel, Orange County (Exhibit 1)

**PROGRAM CATEGORIES:** Integrated Coastal and Marine Resources Protection and Coastal Resource Enhancement

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**EXHIBITS**

Exhibit 1: Project Location

Exhibit 2: Project Summary

Exhibit 3: Letters of Support

Exhibit 4: Mitigated Negative Declaration

Exhibit 5: Mitigation Monitoring Program

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**RESOLUTION AND FINDINGS:**

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31220 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes disbursement of an amount not to exceed two hundred eighty-seven thousand and two-hundred dollars (\$287,200) to assist with restoration and enhancement of approximately 7,900 feet of stream corridor along Upper Sulphur Creek in Orange County, subject to the following conditions:

1. Prior to disbursement of any funds, the City shall submit for review and approval of the Executive Officer of the Conservancy:
  - a) A detailed final work program, schedule and budget for the project covering construction, monitoring and maintenance;
  - b) Documentation that it has obtained all necessary permits and approvals;

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- c) Evidence acceptable to the Executive Officer of easement agreements with all of the property owners necessary to construct and maintain the project;
  - d) The names and qualifications of any contractors to be employed for plan implementation; and
  - e) A signage plan acknowledging Conservancy assistance with the project
2. The City shall manage and operate the property for the lifetime of the improvements, but in no case less than a period of 20 years.
  3. The City shall ensure that the mitigation measures identified in the MND are fully incorporated into the project, as identified in the Mitigation Monitoring Program attached as Exhibit 5.

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 Public Resources Code Section 31220, regarding the Conservancy’s authority to protect coastal and marine water quality and habitats, and Sections 31251-31270, regarding the Conservancy’s mandate to protect and enhance natural resources.
2. Implementation of the project is consistent with the Conservancy’s Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001;
3. The Conservancy has independently reviewed the Mitigated Negative Declaration prepared by and adopted by the City of Laguna Niguel on December 7, 2004, attached to the accompanying staff recommendation as Exhibit 4 and finds that there is no substantial evidence based upon the whole record that the project as mitigated will have a significant effect on the environment;
4. There is no substantial evidence before the Conservancy that the project will have a potentially adverse effect either individually or cumulatively, on wildlife resources as defined under California Code of Regulations Section 753.5(d) regarding the potential for adverse effect on wildlife resources as defined under California Fish and Game Code Section 711.2; and
5. The project serves greater than local needs.”

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### **PROJECT SUMMARY:**

The proposed authorization would enable the Conservancy to assist the City of Laguna Niguel with restoration to more natural conditions of approximately 7,900 linear feet of stream corridor along Upper Sulphur Creek (Exhibit 2). The creek is a major tributary to a creek (Aliso Creek) that drains to the ocean. The Upper Sulphur Creek Restoration Project would be implemented in partnership with the State Water Resources Control Board (SWRCB), the principle project funder, three homeowners’ associations (HOAs), and the owners of the property adjacent to the creek.

The proposed project will include the removal of up to 3,600 linear feet of concrete ditches to create a wider, soft-bottom stream channel. Some additional excavation will be used to create streamside terraces that will enhance flood protection. Additional project elements include removal of invasive and exotic species, re-vegetation with native species, and pre- and post-construction biological and water quality monitoring.

Before and after construction, the City will monitor water flow and quality parameters, including phosphorus, nitrogen, and bacteria, at key upstream and downstream points within the project site. A field biologist retained by the City will track the establishment and diversity of plant communities and colonization by native fauna and migratory birds. The biologist will also identify any special maintenance needs, such as for replacement plantings to achieve sufficient coverage, on a quarterly basis for at least two years after planting.

The principle incremental downstream benefit to coastal resources of restoring more natural stream functions in this coastal watershed is improved water quality. Stream corridors, or riparian areas, located at the interface between upland areas and bodies of water, provide a vital role with their placement in the ecosystem. Studies have shown that watersheds where riparian restoration has occurred have shown marked water quality improvement. Healthy riparian vegetation stabilizes stream banks, traps sediment eroded from upland areas, and can remove plant nutrients and contaminants from runoff before they reach a receiving water body such as Aliso Creek and the Pacific Ocean. Riparian areas also allow for groundwater recharge by slowing stream velocities and below-ground aeration by roots. In addition, streamside vegetation also serves as regional and local wildlife corridors for species habitat movement and dispersal, thereby protecting the biodiversity of the region or of localized habitat islands.

Estimated total project cost is \$1,375,980.00. A Proposition 13 grant of \$928,723 awarded the City in 2002 by the SWRCB will provide the bulk of the project funding. The City will contribute staff time with a value it estimates at \$160,057. Project implementation already has begun. The City approved a Mitigated Negative Declaration for the project on December 7, 2004 and has initiated the permitting process with State and Federal resource agencies. Construction is scheduled to start in Spring 2005 and be complete by Fall 2005. Following re-vegetation, the restored area will be regularly maintained in perpetuity by the City under maintenance easements to be granted to the City by the HOAs. Regular City maintenance activities will be supplemented with volunteers who will remove weeds and pick up trash.

The City's experience with several other riparian habitat mitigation and wetland creation projects in the Sulphur Creek watershed in the last three years will be useful for implementation and management of the proposed project.

**Site Description:** The Upper Sulphur Creek Restoration project site is a 1.7-mile-long stream corridor at the headwaters of Sulphur Creek. The creek flows downstream of the project site approximately three miles to Aliso Creek, then continues another three miles into the Pacific Ocean at Aliso Beach Park. The project site drains a coastal sub-watershed of approximately three square miles within the City of Laguna Niguel, in southern Orange County. Approximately 40 years ago, Upper Sulphur Creek was channelized in conjunction with rapid suburban development across the entire headwaters area, so that the creek now runs in a straightened and narrowed course parallel to a major arterial roadway called Crown Valley Parkway. Single-

family homes sit on the canyon ridgelines some 30-100 feet above the creek. Two elementary schools, a middle school and four City parks are all within a short walking distance of the creek.

Although the entire project site is a privately owned common area belonging to three different HOAs, the entire area is completely accessible along its east side from a continuous public sidewalk along Crown Valley Parkway. Moreover, all three HOAs have already approved the project in concept and have indicated willingness to grant easements without compensation. Along the site's west edge, an unpaved regional equestrian/hiking trail extends along the upstream reaches.

The project site is divisible into three sub-areas (see Exhibit 2 project summary):

- 1) The 3,600'-long Upper Reach, which is owned by the Rancho Niguel Master Association. The Upper Reach currently contains approximately 16 acres of riparian woodland and native scrub vegetation, heavily intermixed with ornamental shrubbery and infested with invasive weeds such as pampas grass and tamarisk;
- 2) The 1,700'-long Middle Reach, which is owned by the Crown Royale Homeowners' Association. At this location, the creek runs in a concrete-lined ditch landscaped with approximately 5.5 acres of irrigated turfgrass and eucalyptus trees;
- 3) The 1,900'-long Lower Reach, where the creek continues its course in a concrete ditch, and over 6 acres of flowering ornamental shrubs dominate the surrounding irrigated landscaping owned by the Niguel Ridge Homeowners' Association.

Immediately downstream of the site are the City of Laguna Niguel's Sulphur Creek Park, which is a riparian habitat mitigation area, and Crown Valley Community Park, which is the site of a U.S. Army Corps of Engineers (USACE) Aquatic Ecosystem Restoration Project scheduled for construction during winter 2004-2005. Biological surveys in Spring 2002 identified a pair of nesting Southwestern Willow Flycatchers at the USACE project site—the only pair of this federally listed endangered species identified in all of Orange County that year. Six other migratory songbird species of Federal interest also were found at the USACE site. These species could potentially move directly upstream to the Upper Sulphur project site when habitat is re-established as a result of the proposed project.

**Project History:** The restoration of Upper Sulphur Creek was one of the high-priority recommendations of the Aliso Creek Watershed Management Plan, which was completed as a multi-year, multi-stakeholder effort in 2002. Thereafter, in the same year, the SWRCB awarded a Proposition 13 grant to the City for the project, and in 2003 the project was added to the Southern California Wetland Recovery Project's Work Plan. Initial project work commenced in Spring 2003 with biological surveys to determine the presence or absence of endangered species. The City initiated the environmental review process and permit discussions with resource agencies in Spring 2004 and adopted a mitigated negative declaration for the project in December 2004.

**PROJECT FINANCING:**

Coastal Conservancy	\$ 287,200.00
Other sources	
State Water Resources Control Board	928,723.00
City of Laguna Niguel (in-kind, staff time)	<u>160,057.00</u>
<b>Total Project Cost</b>	<b>\$1,375,980.00</b>

The anticipated source of Conservancy funds is the “California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Bond Act of 2002” (Proposition 40). This funding source may be used for the rehabilitation, restoration, and protection of land and water resources in accordance with the provisions of the Conservancy’s enabling legislation, Division 21 of the Public Resources Code. AB 2534 added Chapter 5.5 to the Conservancy’s enabling legislation (Public Resources Code Section 31220) and appropriated funds from Proposition 40 to the Conservancy to carry out projects that are described under Section 31220. As discussed below, Section 31220 authorizes projects that, like the proposed project, serve to protect or restore fish and wildlife habitat within coastal watersheds, reduce unnatural erosion, sedimentation and contamination of coastal watersheds, or protect and restore sensitive watershed lands. Proposition 40 also requires the Conservancy to give priority to grant projects with matching funds (Public Resources Code Section 5096.651). The proposed project is supported by a commitment from multiple private and public entities to provide substantial funds and in-kind services to complete the project work.

**CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:**

This project would be undertaken pursuant to Chapter 5.5 (Section 31220) of the Conservancy’s enabling legislation, Division 21 of the Public Resources Code, regarding watershed restoration projects, and to Chapter 6, regarding coastal resource enhancement (Sections 31251-31270).

As required by Section 31220(a), staff has consulted with the State Water Resources Control Board (SWRCB) in the development of the project to ensure consistency with Chapter 3 (commencing with Section 30915) [Clean Beaches Program] of Division 20.4 of the Public Resources Code [Watershed, Clean Beaches, and Water Quality Act]. The SWRCB already has committed to providing the bulk of the funding for the project through a 2002 Proposition 13 grant of \$928,723. Consistent with Section 31220(c), staff has consulted with the SWRCB for consistency with local watershed management plans and water quality control plans adopted by the SWRCB and Regional Water Quality Control Boards (see the “Consistency with Local Watershed Management Plan/State Water Quality Control Plan” section below). Also consistent with this section, the project includes a water quality and biological monitoring and evaluation component.

Pursuant to Section 31220(b), the Conservancy is authorized to award grants for a project if it accomplishes one or more objectives specified in subsections (b)(1) through (b)(9). Consistent with Section 31220(b)(1), the proposed project incrementally reduces contamination of waters within the coastal zone by reducing runoff, erosion and sedimentation in Upper Sulphur Creek.

Upper Sulphur Creek is a tributary of Aliso Creek, which drains into the Pacific Ocean. Consistent with Section 31220(b)(2), the proposed project, by restoring Upper Sulphur Creek to more natural conditions, will also serve to protect fish and wildlife habitat within coastal watersheds and coastal waters. Further, consistent with Section 31220(b)(3), the proposed project will directly lead to reduction of erosion and sedimentation within a coastal watershed.

Consistent with Chapter 6, Section 31251, the proposed project would result in enhancement of coastal resources that had been degraded as a result of human-induced impacts in the Upper Sulphur Creek watershed. As required by Section 31252(a), the proposed project would benefit resources both outside and within the coastal zone and would be undertaken at the request of the local jurisdiction, the City of Laguna Niguel.

**CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

The proposed project is consistent with **Coastal Resources Conservation Goal 5, Objective A**, in that the project will result in the restoration of several native plant communities, including Coastal Freshwater Marsh habitat. Consistent with **Goal 5, Objectives B and C**, the project will eliminate non-native species, re-establish native wildlife habitat and re-connect habitat in the Upper Reach of the creek with existing habitat downstream.

The proposed project also is consistent with **Coastal Resources Conservation Goal 6, Objectives A and B**, in that the project would serve to preserve and restore lands located in a coastal watershed and improve water quality to benefit coastal resources.

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

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, 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. **Support of the public:** Letters of support (Exhibit 3) have been received from former Assemblywoman Patricia Bates and State Senator Dick Ackerman; the three HOAs that own the property; and three local non-profit organizations (ShadeTree Partnership, Trails4All, and Niguel Botanical Preserve).
4. **Location:** The project site is situated within a coastal watershed. Restoration to more natural conditions of approximately 7,900 linear feet of stream corridor along Upper Sulphur Creek will result in downstream benefits to coastal resources.

5. **Need:** Conservancy assistance is necessary to address construction cost escalation over initial assumptions generated during the SWRCB Proposition 13 grant process. The City has not been able to secure funding from other sources to make up the difference, and looming expiration of Proposition 13 grant funds renders Conservancy funding critical to implementation of the project.
6. **Greater-than-local interest:** The Upper Sulphur Creek Restoration Project is of regional interest due to its multiple direct impacts on the creeks, regional parks and ocean beaches downstream. Aliso Creek, of which Sulphur Creek is a major tributary, drains to Aliso Beach, a popular south Orange County beach that averages 120,000 visitations per month, many of these by tourists.

**Additional Criteria**

7. **Urgency:** Looming expiration of Proposition 13 grant funds in 2006 renders Conservancy funding critical to implementation of this complex construction project.
8. **Resolution of more than one issue:** The proposed project will contribute directly and indirectly to the resolution of several issues, including water quality impairment, beach closures due to high bacterial loads, habitat degradation, and flooding.
12. **Readiness:** The bulk of funding is already in place as a result of an SWRCB Proposition Nonpoint Source Pollution Control Program. Project design tasks are nearly completed. The City adopted a Mitigated Negative Declaration for the project on Dec. 7, 2004 (Exhibit 4). Construction is expected to begin in Spring 2005 and be complete by late Fall 2005.
13. **Realization of prior Conservancy goals:** Other Coastal Conservancy supported projects in the watershed include the Wood Canyon Restoration Project and the Aliso Creek Mainstem Restoration Project.
15. **Cooperation:** The private landowners, three different homeowners' association, will contribute, at no cost, easements over their common property allowing the City to maintain it for stewardship purposes into the future. A local non-profit organization, the ShadeTree Partnership, will donate a limited number of trees and riparian plants. The City has contributed substantial staff time to project implementation and will monitor the project for five years consistent with permit requirements. The City's maintenance responsibility for the project site will continue in perpetuity consistent with maintenance easement agreements with the HOAs.

**CONSISTENCY WITH LOCAL WATERSHED MANAGEMENT PLAN/  
STATE WATER QUALITY CONTROL PLAN:**

The proposed project is consistent with the Aliso Creek Watershed Management Plan, which was developed by the U.S. Army Corps of Engineers in cooperation with the County of Orange and local cities and water districts between 1997 and 2003. This plan identifies restoration to more natural conditions of Upper Sulphur Creek as a high priority.

The State Water Resources Control Board "Plan for California's Nonpoint Source Pollution Control Program" includes Management Measures for Channelization Modification, Protection and Restoration of Wetlands/Riparian Areas, and Vegetated Treatment Systems. The Upper Sulphur Creek Restoration Project is consistent with this State plan; this was a requirement of the Proposition 13 funding for the project.

The proposed project also is consistent with the Water Quality Control Plan for the San Diego Region (also known as the "Basin Plan") and the San Diego Region Watershed Management Initiatives Chapter.

**COMPLIANCE WITH CEQA:**

The City Council of Laguna Niguel adopted a Mitigated Negative Declaration (MND, Exhibit 4) and a Mitigation Monitoring Program (MMP, Exhibit 5) on Dec. 7, 2004 for the proposed project. Staff has independently reviewed the City's MND and MMP and concurs that the project, as mitigated, will not have a significant adverse impact on the environment. The City's adopted environmental documents incorporate changes that had been recommended by Conservancy staff during the public review period.

Staff recommends that the Conservancy find 1) there is no substantial evidence the project, as mitigated, will have a significant adverse effect on the environment, and 2) the project does not have a potential for adverse effect on wildlife resources defined under California Fish and Game Code Section 711.2 and Calif. Code of Regulations Section 735.5(d). Upon approval, staff will file a Notice of Determination (NOD) for the project.