

COASTAL CONSERVANCY

Staff Recommendation
September 23, 2021

CALLEGUAS CREEK WATERSHED IN-LIEU FEE PROGRAM TERMINATION

Project No. 19-004-02
Project Manager: Christopher Kroll

RECOMMENDED ACTION: Authorization to terminate the Coastal Conservancy's Calleguas Creek Watershed In-lieu Fee Program by disbursing \$2,453,773 million for the purchase of 58.11 jurisdictional wetland and riparian buffer credits from the Santa Paula Creek Mitigation Bank.

LOCATION: Santa Paula Creek, Santa Clara River Watershed, Ventura County

EXHIBITS

- Exhibit 1: [Project Location Map](#)
 - Exhibit 2: [June 25, 1998 Staff Recommendation](#)
 - Exhibit 3: [2003 Letter Agreement](#)
 - Exhibit 4: [2014 Enabling Instrument](#)
 - Exhibit 5: [SCC-Corps Letters](#)
 - Exhibit 6: [Sale Agreement](#)
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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 termination of the Calleguas Creek Watershed In-Lieu Fee Program and disbursement of all funds remaining in the Calleguas Creek Watershed In-Lieu Fee Program account, totaling two million four hundred fifty three thousand seven hundred seventy three dollars (\$ 2,453,773) to the Santa Paula Creek Mitigation Bank for the purchase of 58.11 jurisdictional wetlands and riparian buffer preservation credits.

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 6 of Division 21 of the Public Resources Code, regarding resource enhancement.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.

STAFF RECOMMENDATION

PROJECT SUMMARY:

Staff recommends the Conservancy authorize termination of the Calleguas Creek Watershed In-Lieu Fee (ILF) Program and disbursement of all funds remaining in the Calleguas Creek Watershed In-Lieu Fee Program account for the purchase of 58.11 jurisdictional wetlands and riparian buffer preservation credits in coordination with the U.S. Army Corps of Engineers (Corps).

In June 1998, the Conservancy authorized staff to accept funds paid as in-lieu mitigation fees for the planning and implementation of riparian/aquatic restoration projects in the Calleguas Creek watershed (Exhibit 2). The Corps imposed mitigation fees to address violations of the Clean Water Act within the watershed. The Corps and California Department of Fish & Wildlife considered the Conservancy the appropriate recipient of these fees for habitat restoration in the Calleguas Creek watershed. Use of the funds required Corps and Conservancy Board approval.

Following the initial Conservancy approval in 1998, the Corps and the Conservancy entered into a more formal in-lieu fee program. The program began as a short letter agreement between the Conservancy and the Corps. In 2003, the Agreement for Establishment and Administration of the Calleguas Creek Watershed (Ventura County, California) Aquatic Resource In-Lieu Fee Compensatory Mitigation Program (“the agreement”) (Exhibit 3) was approved by the Corps.

In 2008, EPA and the U.S. Army Corps of Engineers, through a joint rulemaking, expanded the Clean Water Act guidelines to include more comprehensive standards for compensatory mitigation. The agreement was updated in 2014 to make it consistent with these regulatory changes resulting a new, more formal “enabling instrument” (Exhibit 4) for the ILF Program. The purpose of the ILF program was to provide a voluntary, alternative compensatory mitigation option that would result in “better-designed and managed” aquatic resource restoration projects.

An ILF fund was established by the Conservancy in an interest-bearing account within the Coastal Conservancy Trust Fund to track and consolidate funds received under the program. The fund is administered by the Conservancy to receive monies from individuals or entities (permittees) receiving Corps Section 404 permits and, when appropriate, resolving Section 404 enforcement actions. The program was open to compensatory mitigation for unavoidable temporary and permanent impacts to aquatic resources resulting from projects authorized

under an Army Corps General/Nationwide Permit, and from unauthorized activities in the Calleguas Creek watershed.

By July 2010, the Corps had allowed the Conservancy, as the program sponsor, to accept fees from 24 project proponents associated with 26 separate Corps permits. Under these permits, the Corps required a total of 22.2 acres of compensatory mitigation for 10.4 acres of permanent impacts to water of the U.S. Between 2003 and 2010, the Conservancy implemented three restoration projects for which 2.4 acres were credited by the Corps, leaving a balance of 20.06 acres to be mitigated under the ILF program. These 20.06 acres are the ILF Program's unmet mitigation obligation. This mitigation obligation, originally held by the permittees, was transferred to the Conservancy in exchange for in-lieu fee payments made by permittees to the Conservancy. The Conservancy has accepted over \$2 million from permittees and is therefore now responsible for the remaining 20.06 acres of compensatory aquatic resource mitigation.

Since 2010 Conservancy staff have attempted to identify and develop several restoration projects in the Calleguas Creek watershed to meet the program's mitigation obligation. Initially, the Conservancy hired a consultant to prepare the Calleguas Creek Watershed Restoration Plan (2000) to identify potential restoration and enhancement projects in the watershed. The plan identified 49 possible restoration sites in the watershed before narrowing the list to ten specific sites. Staff selected a high-priority project with willing partners from this list of project sites and expended funds to initiate restoration planning. Ultimately in 2015 the property owner decided that they were not willing to proceed with the project.

Since 2015, Conservancy staff have made several attempts to identify projects to restore wetlands in the Calleguas Creek, Santa Clara River, and Ventura River watersheds. In 2017, Conservancy staff, working with the Corps, released a request for proposals to identify potential projects and local partners for those projects. Unfortunately, no responsive projects were submitted that would meet the program criteria. A project in the Calleguas Creek watershed, a project in the neighboring Santa Clara River watershed and one in the Ventura River watersheds were investigated by staff but none of these projects could be implemented. Some property owners have been unable to sign the conservation easement required by the Corps for a project to proceed. In addition, most of the projects identified in the Calleguas Creek Watershed Restoration Plan required property acquisition before restoration could be undertaken. The available funding was not adequate to both purchase a property and restore it.

In 2019 Conservancy staff began evaluating terminating the ILF program as the most efficient means to achieve the required mitigation. After consultation with Corps staff, it was decided that termination of the program was appropriate. The ILF Program enabling instrument provides that any party may terminate the instrument by giving 60-days written notice to the other parties. Conservancy staff wrote such a letter in April 2021 (see Exhibit 5). The letter requested that Corps direct the Conservancy to use the remaining funds in the program account to secure credits from another source of third-party mitigation in Ventura County, such as another in-lieu fee program, mitigation bank, or other entity willing to undertake the compensation activity.

In its response (Exhibit 5), the Corps directed Conservancy staff to two approved mitigation banks in the Santa Clara River watershed as there are no approved programs or mitigation banks in the Calleguas Creek watershed. After soliciting proposals from Santa Paula Creek Mitigation Bank (SPCMB) and the Peterson Ranch Mitigation Bank. Conservancy staff submitted proposals to the Corp for termination of the ILF program. The Corps directed the Conservancy to purchase a total of 58.11 acres wetland mitigation credits (21.62 jurisdictional waters preservation credits and 36.49 riparian buffer preservation credits) from SPCMB with all remaining funds in the ILF Program account.

The Conservancy's approval will allow staff to complete the sale agreement with the mitigation bank, to purchase the credits through a state warrant and to terminate the ILF Program. The mitigation bank has provided a sale agreement (Exhibit 6) which will be the basis of an agreement between the Conservancy and SPCMB once the Conservancy has approved purchasing the credits and terminating the program. After the purchase, the Corps and the Conservancy will then formally terminate the ILF program through an exchange of letters acknowledging closure of the ILF Program.

Site Description: The Santa Paula Creek Mitigation Bank is a 200-acre parcel located in Santa Paula Canyon with Santa Paula Creek, a tributary of the Santa Clara River, running through the property. Most of the lands adjoining the bank property are currently managed as recreational open space by the U.S. Forest Service (USFS). Other adjacent land uses include commercial agriculture, mainly citrus and avocado production, and oil/natural gas production.

The mitigation bank property is bounded on three sides (north, south, and east) by USFS lands administered under the Forest Management Plan for Los Padres National Forest. Lands to the west are under avocado and citrus cultivation. Santa Paula Creek and associated watershed has provided habitat for or has the potential to provide suitable habitat for several threatened, endangered, or sensitive species, including steelhead trout, California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub and southwestern pond turtle.

The mitigation bank property contains upland, riparian, and wetland habitats on steep slopes and in floodplains of Santa Paula Creek and contributing tributaries. Vegetation is comprised of five predominant habitat types, including Coastal Sage Scrub, Floodplain Scrub, Chaparral, Riparian Woodland, and Upland Woodland.

Mitigation Bank Qualifications: The Santa Paula Creek Mitigation Bank was established in December 2011. Its service area includes the Santa Clara River, Ventura River, and the Calleguas Creek watersheds. It is authorized to mitigate for impacts to riparian/wetlands and upland habitats in these watersheds. The mitigation bank and its staff have completed approximately 50 large mitigation transactions over the last 10 years for private companies and government agencies. It reports annually to the Army Corps of Engineers, California Department of Fish and Wildlife, and the United State Environmental Protection Agency.

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 below.

2. **Consistency with purposes of the funding source:** See the "Project Financing" section below.

3. **Promotion and implementation of state plans and policies:**

By preserving jurisdictional wetlands and riparian habitat along Santa Paula Creek, the proposed project will implement the following state plans:

- **California @ 50 Million: The Environmental Goals and Policy Report** (Governor's Office of Planning and Research, 2013 Draft). The "Preserve and Steward State Lands and Natural Resources" section calls for working to increase biodiversity and helping natural systems recover from disruption. Action #3 calls for building resilience in natural systems and specifically calls out the need for well-maintained watersheds and floodplains.

- **California Wildlife Action Plan** (California State Department of Fish and Game, 2005). The proposed project will further the following statewide recommended actions: d) the state should increase efforts to restore coastal watersheds; and g) federal, state, and local agencies and nongovernmental conservation organizations, working with private landowners and public land managers, should expand efforts to restore and conserve riparian communities.

4. **Support of the public:** Preservation and restoration of the Santa Clara River watershed has long had public support as seen in the support for Conservancy-funded restoration projects in the watershed.

5. **Location:** See the "Project Summary".

6. **Need:** Purchase of mitigation credits is necessary to eliminate the mitigation obligation incurred by the Calleguas Creek In-Lieu Fee program. In order to terminate the ILF Program, the Corps indicated in a June 2021 letter, the Corps directed purchase of credits from the Santa Paula Creek Mitigation Bank (see Exhibit 4). Purchase of these credits will allow the Conservancy and the Corps to terminate the ILF Program.

7. **Greater-than-local interest:** The Santa Clara River was designated a river parkway by the Conservancy in 2000. Protection and restoration of habitat along the river and its watershed is a goal of several projects funded by such state agencies as the Conservancy, Wildlife Conservation Board, and California Department of Fish and Wildlife. National Marine Fisheries Services has named the river as a highest priority river necessary for long

term survival of the southern steelhead, an endangered fish of great regional importance for southern California.

8. **Sea level rise vulnerability:** The proposed project is located approximately 19 miles from the coast and so is not vulnerable to sea level rise.

Additional Criteria

9. **Urgency:** The mitigation bank has limited credits which are available now and will not be available in the future if purchased by others.
10. **Readiness:** The mitigation bank is prepared to sell the credits as soon as the Conservancy gives approval to the transaction.

PROJECT FINANCING

Coastal Conservancy	\$2,453,773
Project Total	\$2,453,773

The source of funds for this project will be the Special Deposit Account in the Coastal Trust Fund that was established for the Calleguas Creek In-Lieu Fee Program. Fees were paid into the account by developers, local government agencies, and others as directed by the Corps, California Department of Fish and Wildlife or the Los Angeles Regional Water Quality Control Board through permits or enforcement actions for expenditure consistent with the Conservancy’s agreement with the Corps. Consistent with the current enabling instrument, the Corp has approved use of the funds for these purposes.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

The proposed project would be undertaken pursuant to Chapter 6 of the Conservancy’s enabling legislation, Public Resources Code Sections 31251-31270, as follows:

Pursuant to Section 31251.2 the Conservancy may undertake a project to enhance a watershed resource that is partly outside of the coastal zone to enhance the natural or scenic character of coastal resources within the coastal zone. The SPCMB provides habitat for steelhead salmon populations known to travel upstream of the coastal zone boundary to fulfill their life history patterns. Indeed, steelhead depend on unimpeded access to high-quality habitat both within and outside of the coastal zone to survive. Thus, steelhead are watershed resources located both within and outside the coastal zone and the purchase of these credits will enable the continued use of this habitat by steelhead trout. This section further requires approval from public agencies having jurisdiction over the area of the project. The Corps, U.S. E.P.A. and the California Department of Fish and Wildlife have each approved the SPCMB and its use for these purposes.

To maintain and restore steelhead trout, projects to improve steelhead habitat must be undertaken both within and outside the coastal zone. The proposed project is consistent with the Ventura local coastal program, as discussed in the “Consistency with Local Coastal Program Policies” section below. Although the proposed project is located outside the coastal zone, the proposed project will beneficially affect the habitat value of the downstream coastal resources, which lies under the jurisdiction of the City of San Buenaventura.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The proposed project is located in the Santa Clara River watershed, outside the coastal zone. Nonetheless, it addresses coastal zone resources and comports to the goals and objectives outlined under the LCP for the City of San Buenaventura.

The proposed project is consistent with Policy 13.1 in that it encourages “preservation of the Ventura and Santa Clara Rivers in their present semi-natural state, and possible restoration to natural conditions.”

CONSISTENCY WITH CONSERVANCY’S [2018-2022 STRATEGIC PLAN](#) GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 5, Objective A** of the Conservancy’s 2018-2022 Strategic Plan, the proposed project will protect a portion of a significant watershed resource property. Purchase of the 58.11 credits from the mitigation bank will protect both jurisdictional wetland and riparian buffer areas.

CEQA COMPLIANCE:

The proposed project is categorically exempt from the California Environmental Quality Act under a section of the CEQA Guidelines at Cal. Code of Regulations title 14. The project is exempt under section 15325 as a transfer of an interest in land to preserve open space and habitat. The purchase of mitigation credits will protect the natural resources of the property for open space and habitat conservation.

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