

COOPERATIVE FUNDING AGREEMENT
BETWEEN THE EAST BAY REGIONAL PARK DISTRICT AND CITY OF EMERYVILLE TO
DISBURSE FUNDS FOR MCLAUGHLIN EASTSHORE STATE PARK BIOSWALE AND PARK
IMPROVEMENTS PROJECT

This Cooperative Funding Agreement, hereinafter referred to as "AGREEMENT", made and entered into on the **1st day of August, 2024**, by and between the East Bay Regional Park District, hereinafter referred to as "EBRPD" and City of Emeryville, hereinafter referred to as "EMERYVILLE".

WITNESSETH

WHEREAS, EMERYVILLE has experienced chronic flooding of the roadway, bike lane, and sidewalk on Powell Street between Alameda County Fire Station 34 (Fire Station 34) and Frontage Road during wet weather that poses a threat to safe travel of motorists, cyclists, and pedestrians; and

WHEREAS, EMERYVILLE desires to provide improvements to the drainage facilities in an approximately three-acre area in McLaughlin Eastshore State Park in Emeryville, to alleviate the chronic flooding in the upland areas along Powell Street between Fire Station 34 and Frontage Road (the Project Area), and to also facilitate implementation of publicly-accessible park amenities in the adjacent areas; and

WHEREAS, EMERYVILLE desires to complete this work in the Project Area in two phases. Phase I work will complete the environmental analysis, negative declaration preparation, construction plans and specification. Phase II work will implement the construction plans.

WHEREAS, EBRPD desires to manage, protect, and enhance the habitat of the Project Area and to facilitate compatible public access to that area; and

WHEREAS, the California Department of Transportation (Caltrans), pursuant to San Francisco Bay Conservation and Development Commission (BCDC) Permit 11-93, was required to pay \$400,000 to fund improvements to provide public access to the shoreline at Powell Street in Emeryville within the Eastshore State Park; and

WHEREAS, Caltrans transferred the \$400,000 to BCDC and BCDC established an interest-bearing account to disburse the funds to EBRPD once a proposed project was approved; and

WHEREAS, BCDC desires that the State of California Coastal Conservancy (COASTAL CONSERVANCY) accept and use certain funds required as conditions of regulatory permits, for purposes specified by BCDC via said permits, and subsequently transferred the funds to the COASTAL CONSERVANCY (the GRANT FUNDS); and

WHEREAS, the COASTAL CONSERVANCY is solely responsible for administering the funds for such project, and EBRPD must be the lead applicant; and

WHEREAS, EMERYVILLE proposed to the COASTAL CONSERVANCY and EBRPD the Project Area Phase I work (PROJECT) as an appropriate recipient of the GRANT FUNDS; and

**Cooperative Funding Agreement
McLaughlin Eastshore State Park Improvement Project**

WHEREAS, EBRPD and EMERYVILLE mutually desire to cooperate in completing the PROJECT, and to specify herein the terms and conditions under which the PROJECT will be implemented; and

NOW, THEREFORE, it is mutually agreed as follows:

SECTION I

EBRPD AGREES:

- (1) To disburse the GRANT FUNDS to EMERYVILLE on a reimbursement basis.
- (2) To prepare and submit grant reimbursement requests and grant progress reports to COASTAL CONSERVANCY on a quarterly basis.
- (3) To coordinate communication with California State Parks and Recreation for its review and approval of the proposed final project plans.
- (4) To provide EMERYVILLE (and its Phase I contractors and consultants) access to the project areas not on EMERYVILLE property.

SECTION II

EMERYVILLE AGREES:

- (1) To complete the PROJECT as described in Exhibit "A."
- (2) To provide EBRPD no less than quarterly reimbursement requests for actual expenses related to the completion of the PROJECT within 60 days of receipt of a cost summary and invoice from EBRPD up to, but not to exceed, **\$120,000 total**. A project area map is attached as Exhibit "B". A scope of work and budget is attached as Exhibit "A".
- (3) To provide EBRPD the 90% design plans for review and approval.
- (4) To provide progress reports to EBRPD at quarterly intervals that detail the status of completion of the work.

To cover any PROJECT costs in excess of the \$120,000 COASTAL CONSERVANCY grant

- (5) To report any other information required under the terms of the grant to demonstrate that the work of the PROJECT is eligible for the grant funding.

SECTION III

IT IS MUTUALLY AGREED AS FOLLOWS:

- (1) EBRPD agrees to indemnify and hold harmless EMERYVILLE, its, officers, agents,

**Cooperative Funding Agreement
McLaughlin Eastshore State Park Improvement Project**

employees and assigns from and against any and all loss, damage, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, based upon or otherwise arising out of EBRPD's performance of EBRPD's obligations under this AGREEMENT.

(2) EMERYVILLE agrees to indemnify and hold harmless EBRPD, its officers, agents, employees and assigns from and against any and all loss, damage, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, from and against any loss, damage, liability, claims, suits, costs and expenses based upon or otherwise arising out of EMERYVILLE's performance of EMERYVILLE's obligations under this AGREEMENT.

(3) Notices regarding this AGREEMENT shall be sent by first class mail, postage prepaid, to EBRPD at General Manager, P. O. Box 5381, Oakland, CA 94605-0381, to EMERYVILLE at Interim City Manager, 1333 Park Avenue, Emeryville, CA 94608-3517.

(4) This AGREEMENT shall run through completion of the PROJECT, unless otherwise validly terminated or amended except that the provisions of Section III, numbers 2 and 3 shall survive the completion of the PROJECT.

(5) This AGREEMENT contains the entire agreement between the parties with regard to matters described in this AGREEMENT and supersedes all prior agreements, whether written or oral, between the parties with respect to such subject matter.

(6) This AGREEMENT shall be interpreted and enforced under the laws of the State of California.

(7) If any provision or provisions of this AGREEMENT shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized as of the day, month, and year first hereinabove written

CITY OF EMERYVILLE

DocuSigned by:
By Adam W. Politzer
69513EF3408F412...
(Signature of Interim City Manager)

Adam Politzer
(Print Name of Authorized Representative)

EAST BAY REGIONAL PARK DISTRICT

Signed by:
By Sabrina Landreth
EE49D08711CA4BC...
(Signature of General Manager)

Sabrina B. Landreth
(Print Name of Authorized Representative)

Title: General Manager

Date: 10/03/2024

DocuSigned by:
John Kennedy
By 2C934D02DB55467
~~Christie Crowl, Acting City Attorney~~
John Kennedy

**Cooperative Funding Agreement
McLaughlin Eastshore State Park Improvement Project**

Exhibit A

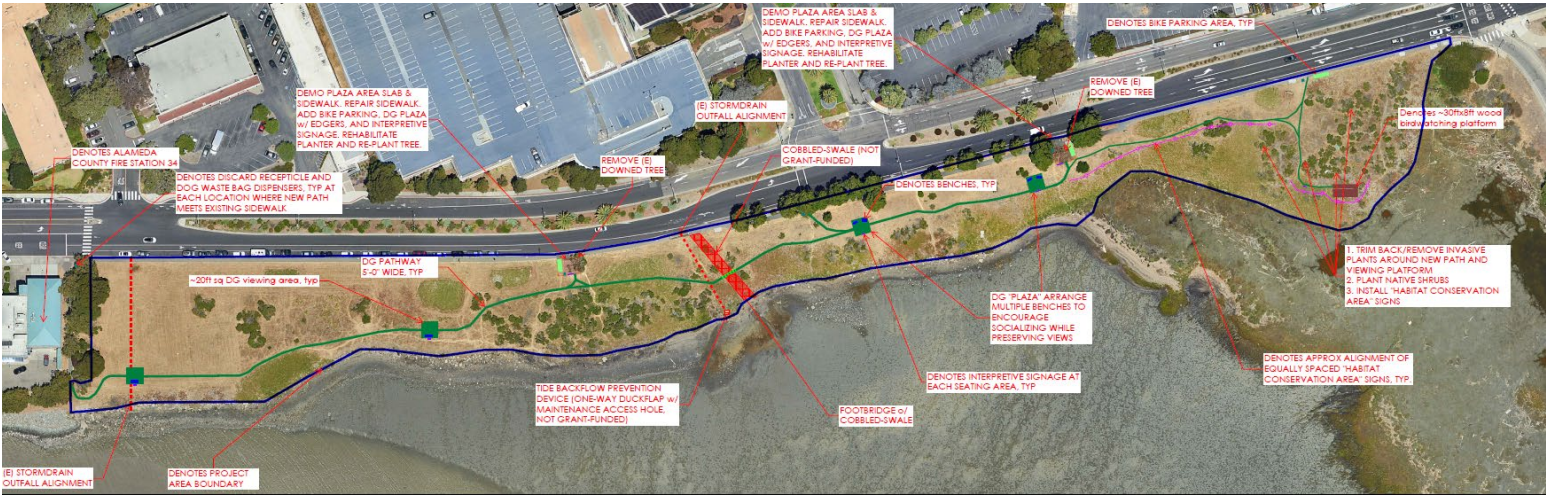
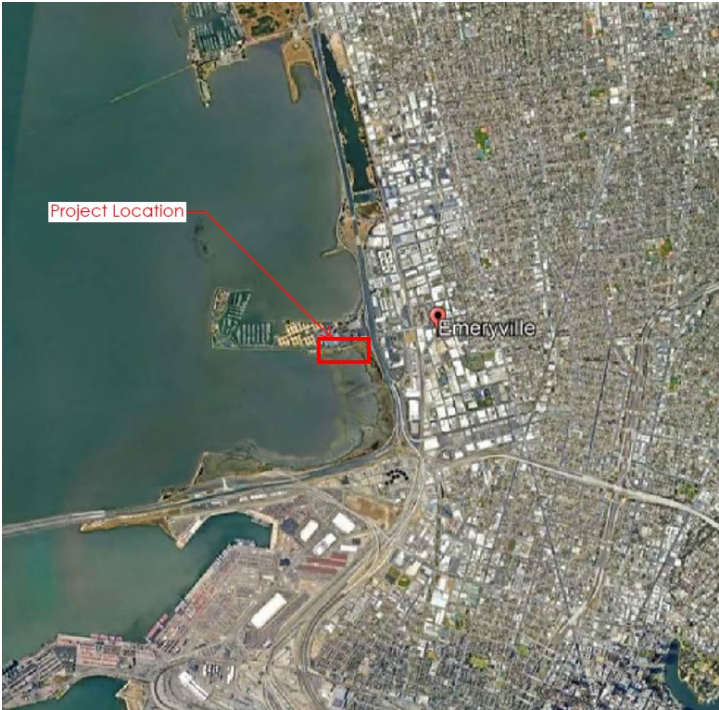
PROJECT BUDGET & SCOPE OF WORK

	Project Tasks	Conservancy Grant	City of Emeryville	Total
1	Project Manager	\$0	\$0	\$0
2	Environmental Analysis / Negative Declaration Preparation	\$30,000	\$10,000	\$40,000
3	Planning and Design of Access Elements	\$90,000	\$0	\$90,000
	TOTAL	\$120,000	\$10,000	\$130,000

	Project Task	Emeryville Deliverable	Estimated Start Date	Estimated Completion Date
1	Project Management	Requests for Disbursement (Invoices), Progress Reports, Copies of Subcontracts	July 2024	Monthly or quarterly throughout the contract term
2	Environmental Analysis/Negative Declaration Preparation	Environmental Impact Report with a Mitigated Negative Declaration, Plans, Specifications, and Cost Estimation	July 2024	December 2024
3	Planning and Design of Access Elements	Construction plans and specifications	July 2024	December 2024

Cooperative Funding Agreement
McLaughlin Eastshore State Park Improvement Project

EXHIBIT B
PROJECT MAP



**Cooperative Funding Agreement
McLaughlin Eastshore State Park Improvement Project**

Exhibit C

Coastal Conservancy & EBRPD Executed Grant Agreement

(see next page)

STATE OF CALIFORNIA
State Coastal Conservancy
GRANT AGREEMENT
Grant - Rev 11/20

AGREEMENT NUMBER 23-131	AM. NO.
TAXPAYERS FEDERAL EMPLOYER IDENTIFICATION NO. 94-6000591	

THIS AGREEMENT is entered into this 29th day of March, 2024 in the State of California, by and between:





AGENCY State Coastal Conservancy	and
GRANTEE'S NAME East Bay Regional Park District	

I. 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 East Bay Regional Park District (“the grantee”) a sum not to exceed \$120,000 (one hundred twenty thousand dollars) (“funds”), subject to this agreement.

(Continued on the following pages)

The provisions on the following pages constitute a part of this agreement.
This agreement has been executed by the parties as shown below.

STATE OF CALIFORNIA		GRANTEE			
AGENCY State Coastal Conservancy	GRANTEE (If other than an individual, state whether a corporation, partnership, etc.) East Bay Regional Park District				
BY (Authorized Signature) 	BY (Authorized Signature) 				
PRINTED NAME AND TITLE OF PERSON SIGNING Amy Hutzel, Executive Officer	PRINTED NAME AND TITLE OF PERSON SIGNING Deborah Spaulding, Assistant General Manager, Finance and Management Services/CFO				
ADDRESS & PHONE NUMBER 1515 Clay Street, 10 th Floor Oakland, CA 94612 Phone: (510) 286-1015	ADDRESS & PHONE NUMBER 2950 Peralta Oaks Court Oakland, CA 94605 Phone: (510) 544-2001				
AMOUNT ENCUMBERED BY THIS DOCUMENT \$120,000.00	PROGRAM/CATEGORY Other Capital Outlay	FUND TITLE/PROP NO. CTF – San Francisco BCDC			I certify that this agreement is exempt from Department of General Services' approval.  Erika Gomez Procurement and Contracts Manager
PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$-0-	FUND ITEM 3760-801-802900013(D)	CHAPTER 224	STATUTE 2004	FISCAL YEAR 04/05	
TOTAL AMOUNT ENCUMBERED TO DATE \$120,000.00	PROJECT NAME McLaughlin Eastshore State Park Access Improvements				
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.					
NAME AND SIGNATURE OF ACCOUNTING OFFICER 		DATE 3/29/2024			

☐

East Bay Regional Park District
Grant Agreement No. 23-131
Page 2

The grantee shall use the funds to prepare designs and environmental review documents (“the project”) for the area of McLaughlin Eastshore State Park located between Powell Street and San Francisco Bay in the City of Emeryville, as shown on Exhibit A, which is incorporated by reference and attached.

The project consists of preparation of designs and environmental review documents for park improvements, including gravel trails, park benches, a bird watching platform, bike parking, trash and dog waste receptacles, and rehabilitated plazas, planters, and trees, on an approximately three-acre upland area.

The grantee shall carry out the project in accordance with this agreement. The grantee shall provide any funds beyond those granted under this agreement that are needed to complete the project.

II. CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT

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

1. The board of directors 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 (“Executive Officer”) has approved in writing:
 - a. The work program for the project as provided in section “V. WORK PROGRAM.”
 - b. All contractors that the grantee intends to retain in connection with the project.
3. The grantee has provided written evidence to the Conservancy that:
 - a. The grantee has provided for required insurance coverage, including additional insured endorsement, as described in section “XIII. INSURANCE.”
 - b. The grantee and City of Emeryville have entered into an agreement identifying their roles and responsibilities for implementation of the project and future construction and maintenance of the project.

The grantee shall, to the extent appropriate, incorporate into the project the guidelines of the Conservancy’s ‘Coastal Access Project Standards’ and the San Francisco Bay Trail Guidelines and Standards.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 3

III. TERM OF AGREEMENT

This agreement will take effect when signed by both parties and received in the office of the Conservancy together with the resolution described in section “II. CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT”. This agreement may be signed electronically using a process specified by the Conservancy.

This agreement terminates on July 31, 2025 (“the termination date”) unless otherwise terminated early as provided in this agreement. However, the grantee shall complete all work by April 30, 2025 (“the completion date”).

The grantee shall deliver a final Request for Disbursement to the Conservancy no later than May 31, 2025.

IV. AUTHORIZATION

The signature of the Executive Officer of the Conservancy on this agreement certifies that at its February 15, 2024 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit B. This agreement is executed under that authorization.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 4

Standard Provisions

V. WORK PROGRAM

Before beginning the project, the grantee shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with this grant agreement. The work program must include:

1. The specific tasks to be performed.
2. A schedule of completion for the project, specifically listing the completion date for each project component and a final project completion date.
3. A detailed project budget. The project budget must describe all labor and materials costs of completing each component of the project. For each project component, the project budget must list all intended funding sources including the Conservancy's grant and all other sources of monies, materials, or labor.

If all or any part of the project to be funded under this agreement will be performed by third parties ("contractors") under contract with the grantee, the grantee shall submit to the Executive Officer for review and approval the names and qualifications of the contractors.

The work program will have the same effect as if included in the text of this agreement. However, the work program may be modified without amendment of this agreement upon the grantee's submission of a modified work program and the Executive Officer's written approval of it. If this agreement and the work program are inconsistent, the agreement will control.

The grantee shall carry out the project in accordance with the approved work program.

VI. COORDINATION AND MEETINGS

The grantee shall coordinate closely with Conservancy staff and other involved entities, including local, state and federal agencies, and shall participate in meetings and other communications as necessary to ensure coordination.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 5

VII. WORK PRODUCTS AND ACKNOWLEDGMENT OF CONSERVANCY SUPPORT

All material, data, information, and written, graphic or other work produced, developed or acquired under this agreement is subject to the unqualified and unconditional right of the Conservancy to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the Conservancy is granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The grantee shall include in any contract with a third party for work under this agreement terms that preserve the rights, interests, and obligations created by this section, and that identify the Conservancy as a third-party beneficiary of those provisions.

The grantee shall not utilize the work produced under this agreement for any profit-making venture, nor sell or grant rights to a third party for that purpose.

In order to acknowledge the Conservancy's support of the project, the grantee shall display the Conservancy's name and logo in the final report in a prominent location. The grantee shall mention the Conservancy's support in its project-related press releases, contacts with the media, and social media postings, and on its website.

VIII. COSTS AND DISBURSEMENTS

When the Conservancy determines that all conditions in section "II. CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT" have been fully met, the Conservancy shall disburse to the grantee a total amount not to exceed the amount of this grant, in accordance with the approved project budget and this section.

The withholding for this agreement is five percent. The Conservancy shall disburse funds for costs incurred to date, less five percent, upon the grantee's satisfactory progress under the approved work program and upon submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The Conservancy shall disburse the five percent withheld upon the grantee's satisfactory completion of the project and compliance with section "X. PROJECT COMPLETION", and upon the Conservancy's acceptance of the project.

Hourly rates billed to the Conservancy must be equal to the actual compensation paid by grantee to employees, which may include employee benefits. The grantee shall require its employees to

East Bay Regional Park District
Grant Agreement No. 23-131
Page 6

keep records of their time spent on the project for purposes of documenting the employee time billed to the Conservancy. The Conservancy will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the state employee rates as identified on the California Department of Human Resources (CalHR) website under travel reimbursements for state employees. The Conservancy may reimburse in excess of the state employee rates upon documentation that these rates are not reasonably available to the grantee.

The grantee shall request disbursements by filing with the Conservancy a fully executed "Request for Disbursement" form (available from the Conservancy). The grantee shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred, of all work done for which disbursement is requested. The form must also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of the grantee must sign the form. Each form must be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred.
2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.
3. A progress report summarizing the current status of the project and the work for which the grantee is requesting disbursement.

The grantee's failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Conservancy of its obligation to disburse funds to the grantee unless and until the grantee corrects all deficiencies.

IX. EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS

No increase in the total amount of this grant will be valid unless set forth in a written amendment to this agreement. The grantee shall expend funds consistent with the approved project budget. Expenditure on items contained in the approved project budget, other than overhead and indirect costs, may vary by as much as ten percent without prior approval by the Executive Officer,

East Bay Regional Park District
Grant Agreement No. 23-131
Page 7

provided that the grantee first submits a revised budget to the Conservancy and requests disbursement based on the revised budget. Any deviation greater than ten percent, and any deviation that shifts funds from approved budget items into an overhead or indirect costs category, must be identified in a revised budget approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for items that exceed the amount allocated in the project budget by more than ten percent and that have not received the approval required above. Any increase in the funding for any particular budget item will mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

X. PROJECT COMPLETION

The grantee shall complete the project by the completion date provided in section “III. TERM OF AGREEMENT”. Upon completion of the project, the grantee shall supply the Conservancy with evidence of completion by submitting the following by the final Request for Disbursement date set forth in section “III. TERM OF AGREEMENT”:

1. The plan and any other work products specified in the work program for the project, each in a format or formats (for example, paper, digital, photographic) approved by the Executive Officer.
2. A fully executed final “Request for Disbursement.” A “final Request for Disbursement” means a Request for Disbursement that includes the withheld amounts and all remaining amounts for which grantee is entitled to seek payment, if any, pursuant to this agreement.

The Conservancy shall determine whether the grantee has satisfactorily completed the project. If so, the Conservancy shall issue to the grantee a letter of acceptance of the project. The project will be deemed complete as of the date of the letter.

XI. EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM

Before the project has commenced, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing.

Before the project is complete, the Conservancy may terminate or suspend this agreement for any reason by providing the grantee with seven days notice in writing. In either case, the grantee shall immediately stop work under the agreement and take all reasonable measures to prevent further costs to the Conservancy. The Conservancy will 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 or suspend, but only up to the undisbursed balance of funding

East Bay Regional Park District
Grant Agreement No. 23-131
Page 8

authorized in this agreement. Any notice suspending work under this agreement will remain in effect until further written notice from the Conservancy authorizes work to resume.

If the grantee fails to complete the project as required, or fails to fulfill any other obligations of this agreement prior to the termination date, the grantee will be liable for immediate repayment to the Conservancy of all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph does not limit any other remedies the Conservancy may have for breach of this agreement.

Before the project is complete, the grantee may terminate this agreement for any reason by providing the Conservancy with seven days notice in writing and repaying to the Conservancy all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and allow early termination without repayment for work partially completed.

On or before the date of termination of the agreement under this section, whether terminated by the grantee or the Conservancy, the grantee shall provide the Conservancy with all work, material, data, information, and written, graphic or other work produced, developed or acquired under this agreement (whether completed or partial), in appropriate, readily useable form.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

XII. 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 or arising out of the willful or negligent acts or omissions of the grantee, its officers, agents, contractors, subcontractors and employees, or in any way connected with or incident to this agreement, except for the 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.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 9

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.

Nothing in this agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this agreement.

XIII. INSURANCE

Throughout the term of this agreement, the grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the grantee or its agents, representatives, employees, or contractors associated with the project undertaken pursuant to this agreement.

As an alternative, with the written approval of the Executive Officer, the grantee may satisfy the coverage required by this section in whole or in part through: (a) its contractors' procurement and maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee's participation in a "risk management" plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- a. Insurance Services Office ("ISO") Commercial General Liability coverage, occurrence basis (Form CG 00 01) or comparable.
- b. Automobile Liability coverage - ISO Form Number CA 0001, Code 1 (any auto).
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employer's Liability insurance.

2. Minimum Limits of Insurance. Grantee shall maintain coverage limits no less than:

- a. General Liability: *(Including operations, products and completed operations, as applicable)* \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to the activities under this agreement, or the general aggregate limit must be twice the required occurrence limit.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 10

- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 - c. Worker's Compensation and Employer's Liability: Worker's compensation as required by law and Employer's Liability of no less than \$1,000,000 per accident for bodily injury or disease.
 - d. Watercraft Liability (for private vessel) coverage, if required under 1.d., above:
 - a. Vessels under 26 ft.: \$1,000,000 combined single limit.
 - b. Vessels over 26 ft. or vessel involved in research: \$2,000,000 combined single limit.
3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.
4. Required Provisions Concerning the Conservancy and the State of California.
- a. The grantee shall notify the Conservancy within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the grantee lapses or is cancelled, the grantee shall provide the Conservancy with evidence of renewal or replacement of the policy.
 - b. The grantee hereby grants to the State of California, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the grantee has received a waiver of subrogation endorsement from the insurer.
 - c. The general liability and automobile liability policies must contain, or to be endorsed to contain, the following provisions:
 - i. The State of California, its officers, agents and employees are additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with such work or operations.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 11

- ii. For any claims related to this agreement, the grantee's insurance coverage must be primary insurance with respect to the State of California, its officers, agents and employees, and not excess to any insurance or self-insurance of the State of California.
 - iii. The limits of the additional insured coverage must equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.
 - d. Coverage does not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
5. Acceptability of Insurers. Insurance must be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
6. Verification of Coverage. The grantee shall furnish the Conservancy with original certificates and amendatory endorsements, or copies of the applicable policy language, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage, at any time.
7. Contractors. The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, grantee shall also require each professional contractor to provide and maintain errors and omissions liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project with a minimum limit of liability of \$1,000,000.
8. Premiums and Assessments. The Conservancy is not responsible for premiums and assessments on any insurance policy.

XIV. AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, "required 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 required records include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, disbursement of all funds related to work under the

East Bay Regional Park District
Grant Agreement No. 23-131
Page 12

agreement, and time and effort reports that permit tracing 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 required records. The grantee shall provide the Conservancy, California State Auditor, their officers, employees and agents with any relevant information requested and with 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 required records for a minimum of three years following final disbursement by the Conservancy. The records will be subject to examination and audit by the Conservancy and the California State Auditor during the retention period.

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.

After completing the work, the grantee shall promptly conduct a final financial and compliance audit of revenue and expenditures. An independent Certified Public Accountant must conduct the audit and prepare a report in compliance with GAAP. In place of performing a separate audit, the grantee may submit to the Conservancy, within a time that the Conservancy specifies, a copy of the grantee's federal "single audit."

The grantee shall conduct an audit in accordance with Title 2, Code of Federal Regulations, Part 200 (2 CFR 200). The audit shall be conducted at least every two years, completed within twelve months after the end of the grantee's fiscal year, and submitted to the Conservancy within thirty days after the completion of the audit. The Conservancy shall provide technical assistance to the grantee, at the grantee's request, for meeting the requirements of 2 CFR 200.

XV. 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.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 13

XVI. NONDISCRIMINATION

During the performance of this agreement, the grantee and its contractors shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The grantee shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The grantee and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the Conservancy to implement such article. The grantee shall permit access by representatives of the Department of Fair Employment and Housing and the Conservancy upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the Conservancy shall require to ascertain compliance with this clause. 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. (See Cal. Code Regs., tit. 2, §11105.)

The grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under this agreement.

XVII. AMERICANS WITH DISABILITIES ACT

By signing this agreement, grantee certifies that it is in compliance with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

XVIII. PREVAILING WAGE

Work done under this grant agreement may be subject to the prevailing wage and other related requirements of the California Labor Code, Division 2, Part 7, Chapter 1, sections 1720-1861. If required by law to do so, the grantee shall pay prevailing wage to all persons employed in the performance of any part of the project and otherwise comply with all associated requirements and obligations.

East Bay Regional Park District
Grant Agreement No. 23-131
Page 14

The grantee is responsible for determining whether the project is subject to prevailing wage laws, and for complying with all labor laws applicable to the project. The grantee may also review the Conservancy publication, Information on Prevailing Wage Laws for State Coastal Conservancy Grantees (2023), available from the Conservancy on request, which provides general information and is not legal advice to the grantee on whether the grantee's project is subject to prevailing wage laws.

XIX. DRUG-FREE WORKPLACE

The grantee's signature on this agreement constitutes the certification required by Government Code Section 8355 (Drug-Free Workplace Act of 1990), which requires that all state grantees provide a drug-free workplace by doing all of the following:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions that will be taken against employees for violations of the prohibition.
2. Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person's or organization's policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employee assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
3. Requiring that each employee engaged in the performance of the grant be given a copy of the drug-free workplace statement and that, as a condition of employment on the grant, the employee agrees to abide by the terms of the statement.

XX. EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the Conservancy determine the grantee is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The Conservancy shall provide the grantee advance written notice of such termination, allowing

East Bay Regional Park District
Grant Agreement No. 23-131
Page 15

the grantee at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the Conservancy.

XXI. INDEPENDENT CAPACITY

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

XXII. ASSIGNMENT

Without the written consent of the Executive Officer, this agreement is not assignable by the grantee in whole or in part.

XXIII. TIMELINESS

Time is of the essence in this agreement.

XXIV. EXECUTIVE OFFICER'S DESIGNEE

The Executive Officer shall designate a Conservancy project manager who will 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.

XXV. AMENDMENT

Except as expressly provided in this agreement, no change in this agreement will be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement will be binding on any of the parties.

XXVI. SURVIVAL

The obligations in sections "VII. WORK PRODUCTS AND ACKNOWLEDGMENT OF CONSERVANCY SUPPORT" and "XII. INDEMNIFICATION AND HOLD HARMLESS" survive the termination of this agreement.

Exhibit A

Exhibit 1: Project Location Map

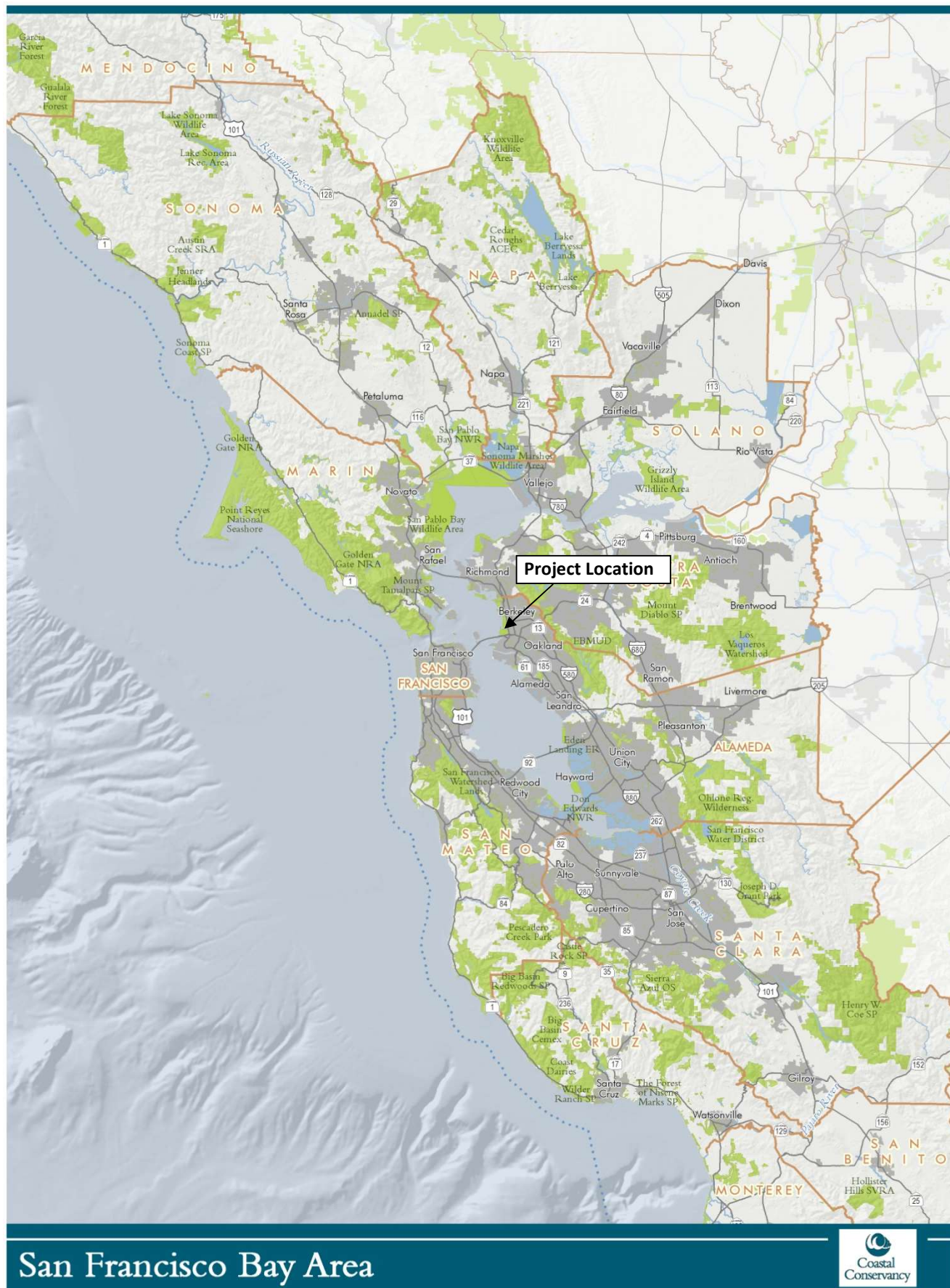


Exhibit B

COASTAL CONSERVANCY

Staff Recommendation

February 15, 2024

MCLAUGHLIN EASTSHORE STATE PARK ACCESS IMPROVEMENTS

Project No. 23-092-01

Project Manager: Mark Kalnins

RECOMMENDED ACTION:

Authorization to disburse up to \$120,000 to East Bay Regional Park District to prepare designs and environmental review documents for park improvements within McLaughlin Eastshore State Park, Alameda County.

LOCATION: Between Powell Street and San Francisco Bay, east of Emeryville Fire Station No. 34, McLaughlin Eastshore State Park, City of Emeryville, Alameda County

EXHIBITS

Exhibit 1: [Project Location Map](#)

Exhibit 2: [Site Photographs](#)

Exhibit 3: [Project Letters](#)

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 one hundred twenty thousand dollars (\$120,000) to East Bay Regional Park District ("the grantee") to prepare designs and environmental review documents for park improvements within McLaughlin Eastshore State Park, City of Emeryville, Alameda County.

Prior to commencement of the project, the grantee shall submit for the review and written approval of the Executive Officer of the Conservancy (Executive Officer) the following:

1. A detailed work program, schedule, and budget.
2. Names and qualifications of any contractors to be retained in carrying out the project.

MCLAUGHLIN EASTSHORE STATE PARK ACCESS IMPROVEMENTS

3. Evidence that the grantee and City of Emeryville have entered into an agreement identifying their roles and responsibilities for implementation of the project and future construction and maintenance of the park improvements.

In addition, to the extent appropriate, the grantee shall incorporate the guidelines of the Conservancy's 'Coastal Access Project Standards' and the San Francisco Bay Trail Guidelines and Standards.

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 goals of the San Francisco Bay Program.
 2. The proposed project is consistent with the current Conservancy Project Selection Criteria.
-

STAFF RECOMMENDATION

PROJECT SUMMARY:

Staff recommends the Conservancy authorize a grant of up to \$120,000 to East Bay Regional Park District (EBRPD) to prepare designs and environmental review documents for park improvements (the project) on an approximately three-acre upland area located between Powell Street and San Francisco Bay, east of Emeryville Fire Station No. 34, within McLaughlin Eastshore State Park, in the City of Emeryville, Alameda County (Exhibit 1).

The park improvements to be designed are based on a conceptual plan that includes gravel trails, park benches, a bird watching platform, bike parking, trash and dog waste receptacles, and rehabilitation of existing plazas, planters, and trees. EBRPD has an operating agreement with California State Parks to provide operation and maintenance of the land, but will work in partnership with the City of Emeryville ("City") who will take the lead on carrying out the project. The park improvements are part of the City's larger Powell Street Bioswale Project, which involves upgrading its storm drain facilities in the vicinity to address flooding. Once the project is complete, EBRPD expects the City will construct the park improvements.

The McLaughlin Eastshore State Park is largely unimproved; does not have a dedicated path, seating, or amenities; and is often littered with trash and animal waste (see the Site Description section below for more detail). The project will address these deficiencies, as well as the need for 0.5 mile of new trail to connect to the San Francisco Bay Trail and for an enhanced sense of connectedness and continuity of the nearby communities. The designs will include signage to inform patrons that the site's shoreline marsh area is a "habitat conservation" area that should be left undisturbed.

The project is anticipated to be complete by December 2024, and staff anticipates returning to the Conservancy for authorization of funds to support construction.

MCLAUGHLIN EASTSHORE STATE PARK ACCESS IMPROVEMENTS

Site Description: The three-acre project site is located within the approximately six-acre McLaughlin Eastshore State Park, which is owned by State Parks and managed by EBRPD. The park features include a dilapidated sidewalk along Powell Street, sparse native shrubs and predominately non-native groundcover, as well as two existing plaza areas that abut the sidewalk. There is no existing footpath that traverses the bay shoreline within the park, and there are no locations where park patrons can sit to rest within the park grounds. The two existing storm drains within the park direct stormwater to an armored bayside outfall. The project site is the upland portion of McLaughlin Eastshore State Park, situated adjacent to a unique bird habitat and tidal wetlands that support countless shorebirds and unique wildlife, known as the Emeryville Crescent. The wetlands area is adjacent to local freeways and urban areas and is commonly littered with trash. Bird-watching areas with seating, signage directing patrons away from sensitive habitats, and bike parking are all needed. Also, the existing plazas are in poor condition, exhibiting uplifted slab edges, fallen trees, and deteriorating wood. Further, one of the two City storm drain lines is severely clogged with silt, causing significant ponding on Powell Street, impeding access and emergency response activities during rainfall and high-tide events.

Grant Applicant Qualifications:

EBRPD is qualified to carry out this project and has been conducting habitat restoration work and maintaining parks and trails for more than 80 years. EBRPD manages nearly 125,000 acres of parks, trails, and community spaces.

The City of Emeryville has received millions of dollars in grant funding from regional, State and Federal Agencies including but not limited to California Strategic Growth Council, Affordable Housing and Sustainable Communities, US Environmental Protection Agency, Department of Toxic Substances Control, California Department of Parks and Recreation, California Arts Council, Metropolitan Transportation Committee, Alameda County Transportation Committee, US Department of Transportation, and Caltrans. Funded work has included planning studies, capital projects and community outreach. EBRPD will maintain all amenities on the land that they manage, and the City will maintain the trash receptacles.

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 proposed project will design park amenities that will enhance access to and the overall user experience along the area known as the Emeryville Crescent, as well as adjoining trail and park routes within McLaughlin Eastshore State Park. This is an extremely viable and cherished park area that serves a very large, urban East Bay community.

MCLAUGHLIN EASTSHORE STATE PARK ACCESS IMPROVEMENTS

Access and experience will be improved through walking paths, seating areas, and wildlife viewing opportunities. The proposed project will therefore further the State's "Outdoors For All" initiative, which seeks to equitably expand outdoor access to all Californians through focused investments in open space infrastructure, outdoor programming, and improvements to state systems.

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.

The Chair and spokesperson for the Confederated Villages of Lisjan and Co-Director for The Sogorea Te' Land Trust has per a previous letter to the City expressed interest in collaborating with the City on planning and restoration efforts in this geographic area. The City will follow up directly during the design process.

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

EBRPD will maintain the amenities after they are constructed in McLaughlin Eastshore State Park. The elements will be mostly typical park amenities, which EBRPD has experience in maintaining and therefore can ensure resilience of those features. The City of Emeryville has a desire to ensure that trash and recycling is properly disposed of, so the planned trash receptacles at the trail heads, once constructed, will be added to the City's discard retrieval program. The City staff are also highly responsive to the various citizen-led committees and their liaisons. This close relationship ensures that maintenance issues noticed by park patrons are quickly addressed before significant deterioration of any City-maintained amenities occurs.

5. Project delivers multiple benefits and significant positive impact.

Once this project is complete and the park improvements are constructed, the San Francisco Bay Trail will extend through the uplands area of the park, thereby enhancing the sense of connectedness of the park to the surrounding community. Bike parking will enable park users, including those using the adjacent Bay Trail, to utilize the park and its amenities. Removal of the non-native, invasive ice plant will clear parkland to encourage native flora to thrive in its place. The plaza rehabilitation will show to the community that the park is not falling into disrepair and will serve as a welcoming gateway to potential patrons. The additional trash receptacles will further encourage potential patrons to leave trash where it belongs thereby minimizing trash being left in the park. The plaza areas will provide locations for patrons to rest their legs while appreciating the park, and also give those patrons an opportunity to read interpretive exhibits that emphasize information that the park stakeholders want to present to the community.

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

This project was planned with input from the City's Transportation Committee, key members of the Parks and Recreation Committee, and the Confederated Villages of Lisjan, and the City plans to solicit input from the Bicycle-Pedestrian Advisory Committee in early January 2024. These committees are staffed by members of the Emeryville community. The City's collaboration with these groups has garnered support for the project, and the City considers this to be a strong

MCLAUGHLIN EASTSHORE STATE PARK ACCESS IMPROVEMENTS

example that it has closely engaged the community during the planning process to provide equitable access.

PROJECT FINANCING

Coastal Conservancy	\$120,000
City of Emeryville	\$10,000
Project Total	\$130,000

Conservancy funding is anticipated to come from funds provided by Caltrans in fulfillment of a mitigation condition under San Francisco Bay Conservation and Development Commission (BCDC) development permit No. 1993.011.09 (formerly Permit No. 11-93, issued on June 8, 1994, and amended through August 19, 2013). Special Condition C.11 of this permit requires that Caltrans convey \$400,000 to be disbursed solely to EBRPD for the purpose of improving a public view area and habitat enhancement in the upland areas on the south side of Powell Street west of I- 80 and immediately east of the Emeryville Fire Station. The proposed project is consistent with this funding purpose, as described above.

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 of Division 21 of the Public Resources Code.

Section 31162 authorizes the Conservancy to undertake projects in the nine-county San Francisco Bay Area to help achieve regional public access and resource goals.

The proposed authorization is consistent with Section 31162(a) because the proposed project is located within the nine-county Bay Area (in Alameda County), and it will help achieve the San Francisco Bay Area Conservancy Program goal of improving public access to and around the Bay, without having a significant adverse impact on agricultural operations and environmentally sensitive areas and wildlife through (1) designing new and upgraded public access amenities in McLaughlin Eastshore State Park, and (2) designing a new trail section within the park that connects to population centers and public facilities, and to the San Francisco Bay Trail. The proposed authorization will also provide accessible and safe wildlife viewing opportunities, and secure staging area for Bay Trail users.

Consistent with 31162(d), the proposed authorization will promote, assist, and enhance a project that provides open space and natural areas (i.e., McLaughlin Eastshore State Park) that are accessible to urban populations for recreational and educational purposes.

The proposed project is consistent with Section 31163(c), for the following reasons: (1) renovation of a trail system that provides safe and equitable recreation, pedestrian, and bicycle

MCLAUGHLIN EASTSHORE STATE PARK ACCESS IMPROVEMENTS

facilities, and recreational resources is consistent with adopted local and regional plans, including the City of Emeryville 2009 General Plan, and BCDC's San Francisco Bay Plan, wherein the entire Emeryville Crescent has been designated as a key park and public access area to the Bay; (2) the public access amenities will serve a regional constituency, specifically the diverse public who reside in the City of Emeryville and communities abutting the Emeryville Crescent, as well as historically marginalized communities from throughout the Bay Area; (3) completion will be timely (design and environmental review to be complete by end of 2024 and construction planned to be complete by end of 2025); (4) project benefits could be lost if the project is not quickly implemented, as there is current momentum built from the planning and conceptual design work already undertaken by the City of Emeryville; and (5) the City will provide matching funds.

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

Consistent with **Goal 2.4, Build Trails**, the proposed project will plan 0.5 mile of trail to connect to San Francisco Bay Trail, located within Powell Street.

Consistent with **Goal 2.5, Recreation Facilities and Amenities**, the proposed project will plan one recreational facility (at McLaughlin Eastshore State Park).

CEQA COMPLIANCE:

Authorizing the recommended grant project is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines at California Code of Regulations, Title 14, Sections 15262, which exempts feasibility and planning studies for possible future actions from the requirement to prepare an Environmental Impact Report or negative declaration, and 15306, which exempts from CEQA basic data collection, research, and resource evaluation activities that will not disturb environmental resources. The design and planning tasks to be funded are planning activities, preparation of designs, and review of environmental effects, none of which will impact any environmental resources and all of which will be undertaken for possible future actions that the Conservancy has not yet approved, adopted, or funded. Staff will file a Notice of Exemption upon approval of this project.