



# NEWPORT BEACH

## City Council Staff Report

January 24, 2023  
Agenda Item No. 4

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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**TITLE:** Resolution No. 2023-7: Big Canyon Habitat Restoration – Phase 3: Adoption of License Agreement and Design Plan (PA2022-034)

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### **ABSTRACT:**

For the City Council's consideration is the approval of a resolution approving the Big Canyon Restoration Project and authorization of a license agreement and memorandum of understanding with the California Department of Fish and Wildlife (CDFW) to complete the final, Phase 3 of the Big Canyon Nature Park restoration efforts. The project is a coordinated habitat restoration effort with CDFW as property owner, the City of Newport Beach (City) as the lead agency for environmental clearance, and ongoing permit coordination with the Newport Bay Conservancy (Conservancy).

### **RECOMMENDATION:**

- a) Find this project exempt from the California Environmental Quality Act ("CEQA") pursuant to California Public Resources Code Section 21080.56; and
- b) Adopt Resolution No. 2023-7, *A Resolution of the City Council of the City of Newport Beach, California, Approving the Big Canyon Habitat Restoration Project Phase 3, Approving a License Agreement and Memorandum of Understanding with the California Department of Fish and Wildlife, and Authorizing Submittal of an Application to the California Coastal Commission (PA2022-034).*

### **DISCUSSION:**

Big Canyon Nature Park is the only natural, undeveloped portion of the Big Canyon watershed and the only significant remaining natural canyon on the east side of Newport Bay. The upper, 39-acre parcel of the Big Canyon Park, located west of Jamboree Road, is owned by the City. The majority of the lower, 15-acre portion of the Nature Park (the majority of Phase 3) is owned by the California Department of Fish and Wildlife and is a part of the Upper Newport Bay State Ecological Reserve. Surrounding parcels of the Phase 3 site area are owned by the City.

The lower reach of the Big Canyon watershed has been significantly altered over the past decades. As early as the 1950s, the lower reach of Big Canyon had been negatively impacted by the construction of salt evaporation ponds, historical placement of dredge and fill material, farming, and other human originating activities. Stockpiling of dredge fill during the 1950s and 1960s within Big Canyon Creek raised the elevations within the canyon and re-channelized the creek to the north.

In 2006, the City revised the Natural Resources Element of the General Plan to provide direction regarding the conservation, development and utilization of natural resources within its sphere of influence. General Plan Policy NR 16.2 (Big Canyon Creek Restoration Project) sets a policy to, “Coordinate the Big Canyon Creek Restoration Project so that its outcomes are consistent with goals for Upper Newport Bay established by Orange County and the Department of Fish and Game.”

### *Big Canyon Habitat Restoration Plan and Phasing*

In 2008, high concentrations of selenium were found in Big Canyon Creek as well as within the Big Canyon freshwater lake adjacent to Back Bay Drive. Under the direction of the Santa Ana Regional Water Quality Control Board, a selenium-mitigation work plan for the canyon was developed in 2011. Under the plan, selenium mitigation and habitat restoration in the Nature Park would proceed in three phases, each of which addresses a different set of site constraints and challenges:

**Figure 1: Phasing Plan**



1. Phase 1. In July 2017, the Big Canyon Habitat Restoration - Phase 1 was completed following the approval of Coastal Development Permit No. 5-16-0059 on August 11, 2016. The six-acre project adjacent to Jamboree Road diverts high selenium concentration groundwater to the sanitary sewer and captures all stormwater flow from Jamboree Road in a bio-infiltration basin sized for a 100-year storm. The site was replanted with native vegetation and trails were added or improved per recommendations of the Resource and Recreation Management Plan (RRMP).
2. Phase 2. In fall of 2019, the City obtained a Coastal Development Permit No. 5-19-0213 and the Conservancy commenced construction of Big Canyon Habitat Restoration - Phase 2, completing the construction project within six months. The project improved the creek flow, replaced an invasive Pepper Tree grove with native trees and plants, addressed the pervasive infestation of the Polyphagous Shothole Borer (PSHB), and created public access improvements and informational signage. Long-term maintenance and monitoring of the new vegetation by a City-assigned maintenance contractor is currently underway for Phase 2.
3. Phase 3 (Proposed Project). The Phase 3 (Project) area measures approximately 14.3 acres of the larger 60-acre Big Canyon Nature Park. The Project involves removing the existing selenium impacted salt-water lake, eliminating invasive plants, and re-grading the site. The proposed grading will extend saltwater influence from the Back Bay into the Phase 3 site; the area will then be replanted with native plants to restore riparian and upland habitats. The Project restores historical salt marsh and establishes transitional wetlands that will allow for upslope migration and resiliency to long-term sea level rise (SLR). The Project will restore tidal marsh, which also further reduces selenium bioavailability found naturally within marine deposits in the watershed, maintains positive drainage during low flows, and addresses mosquito breeding habitat. The City will also incorporate fuel modification on the surrounding sloping parcels the City owns as part of the project scope to reduce fire risks to nearby homes. The Project's scope is the last phase in this ongoing restoration effort of Big Canyon Nature Park. Refer to the project plans provided as Exhibit "A" to Attachment A and Figure 2, shown on the following page:

**Figure 2: Phase 3 Project Boundary and Ownership**



### *License Agreement*

The proposed license agreement and memorandum of understanding with the CDFW will provide CDFW access to City-owned parcels of the project site and delegate duties to hire agents, contractors, subcontractors and consultants to complete the scope of the Phase 3 habitat restoration.

### *Public Benefits*

Big Canyon Nature Park is used by residents and visitors for passive recreation. This is an important destination for thousands of children participating in the Orange County Department of Education Inside the Outdoors program. The program provides watershed educational activities for grade school children throughout the county including disadvantaged communities. As the largest undeveloped canyon adjacent to Newport Bay, it has the potential to become an integral part of the Upper Newport Bay State Ecological Preserve and to provide unique opportunities for the public to learn about the diversity of biological resources and environmental protection. Along with the restoration of a mosaic of coastal riparian, alkaline marsh, salt marsh, transitional habitat, and coastal sage scrub, the existing and planned construction and operation of maintenance roads will provide incidental public benefits serving an ancillary function as trails around the perimeter of the restoration that will provide an enhanced experience of the different ecotones in a coastal watershed.

### *Parks, Beaches, and Recreation Commission Review*

The Project was presented to the Parks, Beaches and Recreation Commission on October 4, 2022. The Commission recommended approval of the Project to the City Council. The minutes from this meeting are incorporated as Attachment B.

### *Local Coastal Program Compliance*

The Project site is bisected by the Local Coastal Program jurisdictional boundaries between the City of Newport Beach and the California Coastal Commission. In accordance with Newport Beach Municipal Code Section 21.50.025 (Projects Bisected by Jurisdictional Boundaries), projects that are bisected may either: (1) process two separate coastal development permits for the portions of the project within the respective areas of jurisdiction; or (2) process a consolidated coastal development permit through the California Coastal Commission. In this case, it is recommended that a consolidated coastal development permit be processed through the California Coastal Commission to simplify the permitting review process. Following City Council adoption of the attached resolution, the Project will be submitted to the California Coastal Commission to obtain a coastal development permit.

### **FISCAL IMPACT:**

There are no general funds required for this project. The Conservancy is currently leading the effort to secure grant funding for the construction of the Project and no City funds are required. Currently, the Conservancy has an active grant with the Ocean Protection Council (OPC) for \$779,000. The OPC grant, with other funding sources, will fund 100% restoration design construction drawings and specifications, environmental review, and permitting. The Conservancy has received an additional \$30,000 from a corporate donor for planning and design for the Project.

### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21080.56 of the CEQA California Public Resources Code, Division 13, Chapter 2.6. In 2021, California Senate Bill (SB) 155 was signed into law, enacting Section 21080.56 of the California Public Resources Code which provides a new statutory exemption from CEQA for fish and wildlife restoration projects through 2025 that meet certain requirements. Projects that qualify for this new exemption from CEQA are projects that conserve, restore, protect, enhance and assist in the recovery of native fish, wildlife and natural habitat.

The Project proposes to replace existing degraded habitat by restoring historic salt marsh and freshwater/riparian habitat. Salt marsh was filled in the 1950s-1960s as a result of dredged material placement in Big Canyon. By restoring salt marsh habitat, this will provide habitat for a variety of California wildlife that utilize this habitat. Upland Coastal

Sage Scrub habitat enhancement will benefit the coastal California gnatcatcher, song sparrow, California towhee, and the wrenit, to name a few.

Additionally, the City has obtained a concurrence letter from the Director of CDFW that the exemption applies to the Project, in accordance with Section 21080.56(e) (Exhibit “C” to Attachment A).

Following City Council action, a Notice of Determination/Exemption will be subsequently recorded to memorialize this exemption. With recordation of the Notice of Determination/Exemption, the Conservancy, assisted by City staff, can submit permit applications to the regulatory agencies including the California Coastal Commission for approval of a Coastal Development Permit.

#### *Tribal Consultation*

In accordance with guidance provided for CEQA SERP Exception under Public Resources Code Section 21080.56, consultation with the appropriate tribes identified by the Native American Heritage Commission (NAHC) is encouraged. The City requested a list of tribal contacts from the NAHC. Three tribal contacts were provided notice regarding the proposed Project on September 1, 2022. An email request to consult was received from the Gabrieleno Band of Mission Indians-Kizh Nation on November 14, 2022. The representative, Mr. Andrew Salas, expressed his satisfaction with the Project and requested that a monitor oversee ground-disturbing construction work. Out of an abundance of caution, the agencies (CDFW, Conservancy, and the City) have agreed to retain a tribal monitor in the unlikely event any resources are found.

#### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

#### **ATTACHMENTS:**

Attachment A – City Council Resolution No. 2023-7

Attachment B – October 4, 2022, Parks, Beaches, and Recreation Commission Minutes

Attachment C – CEQA lead agency letter