

SAN FRANCISCO BAY RESTORATION AUTHORITY

Staff Recommendation
December 13, 2024

NEWARK BAYLANDS ACQUISITION

Project No. RA-042
Project Manager: Laura Cholodenko

RECOMMENDED ACTION: Authorization to disburse up to \$25,000,000 to The Trust for Public Land to acquire 430 acres of Newark Baylands (Area 4) for the protection and restoration of habitat, public access, the potential creation of an interpretive visitor center, and to the extent compatible with those purposes: education, research, and Native American tribal cultural uses.

LOCATION: City of Newark, Alameda County; Measure AA Region: East Bay

MEASURE AA PROGRAM CATEGORY: Safe, Clean Water and Pollution Prevention Program; Vital Fish, Bird and Wildlife Habitat Program

EXHIBITS

Exhibit 1: [Project Location and Habitat Maps](#)

Exhibit 2: [Site Photographs and Species Lists](#)

Exhibit 3: [Project Letters](#)

RESOLUTION AND FINDINGS

Staff recommends that the San Francisco Bay Restoration Authority adopt the following resolution and findings:

Resolution:

The San Francisco Bay Restoration Authority hereby authorizes disbursement of up to \$25,000,000 to The Trust for Public Land to acquire 430 acres of Newark Baylands (Area 4) for the protection and restoration of habitat, public access, the potential creation of an interpretive visitor center, and to the extent compatible with those purposes: education, research, and Native American tribal cultural uses. The Executive Officer of the Authority (Executive Officer) shall not disburse, nor enter into an agreement committing to disburse, \$25,000,000 until after June 30, 2026, except that: (i) in fiscal year 2024/2025, the Executive Officer may disburse \$4,000,000 of the \$25,000,000, and (ii) in fiscal year 2025/2026, the Executive Officer may disburse an additional \$10,500,000 of the \$25,000,000, leaving a balance of \$10,500,000 for disbursement in fiscal year 2026/2027.

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

Findings:

Based on the accompanying staff recommendation and attached exhibits, the San Francisco Bay Restoration Authority hereby finds that:

1. The proposed authorization is consistent with The San Francisco Bay Restoration Authority Act, Gov. Code Sections 66700-66706.
2. The proposed authorization is consistent with The San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (Measure AA).

STAFF RECOMMENDATION

PROJECT SUMMARY:

Staff recommends the Authority authorize a grant of an amount not to exceed twenty-five million dollars (\$25,000,000) to the Trust for Public Land (TPL) to acquire 430 acres of Newark Baylands (Area 4) (including Alameda County’s Assessor’s Parcel Nos. 537-0850-011-01, 537-0850-007-02, 537-0850-011-04, 537-0801-002-06, and 537-0850-009) for the protection and restoration of habitat, public access, the potential creation of an interpretive visitor center, and to the extent compatible with those purposes: education, research, and Native American tribal cultural uses (“the acquisition purposes”), along the shoreline of San Francisco Bay in Newark (“the project”) (Exhibit 1).

The 430-acre property (“the property”), part of a 559-acre area designated as “Area 4” in the City of Newark’s General Plan, is located along Mowry Slough in the western part of the City of Newark, adjacent to the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge). Acquisition of the property will protect approximately 249 acres of wetlands and open water and 181 acres of uplands that provide habitat for numerous migratory birds each year as well as the endangered salt marsh harvest mouse and other wildlife species.

The property is one of the few remaining undeveloped and unprotected sites along the South San Francisco Bay shoreline and it provides an opportunity for restoration of tidal marsh and marsh migration in response to sea level rise (Exhibit 1, Figure 3). Future restoration of tidal marsh would create new habitat for several threatened and endangered species including salt marsh harvest mouse and Ridgway's rail and would help protect adjacent communities from flooding. Protection of the property also provides an opportunity to develop public access in a part of the Bay Area that has little publicly accessible open space and minimal access to the shoreline.

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

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

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

Future goals for public access at the project site include establishing a new section of the San Francisco Bay Trail. The trail alignment would likely parallel the Union Pacific Railroad tracks that form the eastern edge of the property for at least a portion of its alignment but may include integration into future restoration plans for an enhanced experience. A pedestrian overpass may be needed to facilitate walking and bicycling access across the railroad tracks to the site. A trail segment through the property would offer exceptional wildlife viewing and scenic views of the salt ponds and open waters of the Bay, with a backdrop of the Peninsula and South Bay ridgelines. The site also presents the potential that it could support an interpretive visitor center that facilitates public education about natural and cultural resources of the area.

Over a dozen Bay Area environmental and planning organizations have been directly engaged in efforts over the past two decades to secure protection and preservation of Newark Baylands.

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

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

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

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

PROJECT FINANCING

San Francisco Bay Restoration Authority	\$25,000,000
State Coastal Conservancy	\$3,000,000
USFWS Land and Water Conservation Fund FY23-24	\$4,700,000
USFWS Land and Water Conservation Fund FY24-25	\$4,500,000
USFWS Land and Water Conservation Fund FY25-26 (<i>pending</i>)	\$5,000,000
Wildlife Conservation Board (<i>pending</i>)	\$10,000,000
 <u>Fund Sources Under Development</u>	
Other Federal Funds (USFWS, others)	\$6,300,000
Other State Funds	\$6,500,000
Private Foundations and Donors	\$5,000,000
Project Total	\$70,000,000

The Authority will set aside funds for the project in the amount of \$4 million in fiscal year 24/25 and \$10.5 million in fiscal year 25/26. The remaining amount will derive from Authority funds available in fiscal year 26/27.

CONSISTENCY WITH AUTHORITY’S ENABLING LEGISLATION, THE SAN FRANCISCO BAY RESTORATION AUTHORITY ACT:

Consistent with Sections 66704.5 (a), (b), and (e) of the San Francisco Bay Restoration Authority Act, the proposed project will grant funding to TPL, a nonprofit organization, that will acquire and permanently protect 430 acres of Newark Baylands, consisting of 5 parcels located along the shoreline of San Francisco Bay.

CONSISTENCY WITH MEASURE AA PROGRAMS AND ACTIVITIES:

The project supports the *Safe, Clean Water and Pollution Prevention Program’s* purpose by preventing development along the shoreline that would generate pollution, trash and toxins that are harmful to fish, birds, wildlife and people.

The project supports the *Vital Fish, Bird and Wildlife Habitat Program’s* purpose by protecting hundreds of acres of wetlands and open waters that support populations of migratory shorebirds and waterfowl as well as a population of the endangered salt marsh harvest mouse. Other special status species known to occur on the property include Alameda song sparrow, burrowing owl, golden eagle, peregrine falcon, tricolored blackbird, and white-tailed kite (Exhibit 2). The project will enhance the San Francisco Bay National Wildlife Refuge by preventing development that would introduce a new source of noise, pollution, invasive species and visual disturbance within close proximity to existing Refuge lands. Finally, the property can be restored to tidal marsh to increase the amount of habitat available to tidal marsh dependent wildlife that have suffered from significant population declines due to widespread loss of habitat throughout San Francisco Bay.

The project supports the *Integrated Flood Protection Program’s* purpose by permanently protecting open space that helps buffer communities and infrastructure from tidal waters that could cause flooding. The project preserves the opportunity to restore the property to tidal marsh that accretes sediment over time, raising marsh elevation and creating climate-resilient flood protection for the Bay’s shoreline.

CONSISTENCY WITH MEASURE AA PRIORITIZATION CRITERIA:

1. **Greatest positive impact.** Scientists and wildlife managers have long recognized the importance of protecting and restoring this property, as demonstrated by its inclusion within *the Potential Additions to the San Francisco Bay National Wildlife Refuge* (September 1990) and regional conservation plans. The San Francisco Estuary Institute’s *San Francisco Bay Shoreline Adaptation Atlas* (2019) identifies Newark Baylands and adjacent lands as providing a “rare buffer between the Bay and developed communities” and that restoration of this area would increase the climate resilience of both ecosystems and developed communities. The *Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan* (2012) identifies the acquisition of Area 4 (Newark Baylands) as a priority due to its ability to support endangered species recovery, mitigate

habitat loss from sea-level rise, and create connectivity and corridors to Refuge lands. The *Baylands Ecosystem Habitat Goals Report Science Update* (2015) states that the property can provide tidal marsh-upland transition zone habitat and migration space.

2. **Greatest long-term impact.** Protection of the property would preserve the potential to restore hundreds of acres of tidal marsh that can move upslope as sea levels rise. There are very few opportunities in the south and central parts of San Francisco Bay to protect tidal marsh migration pathways at the scale of this project. Restored tidal marsh would have significant benefits for a diversity of marsh-dependent wildlife that have suffered from widespread loss of habitat throughout the San Francisco Estuary and are at risk of further loss of habitat due to sea level rise. Restored tidal marsh would also provide climate change resilient flood protection for existing development east of the property.
3. **Leveraging resources and partnerships.** TPL is partnering with the Refuge, which will take ownership of the property and take the lead on the property's future restoration and development of public access. Funding for the project is expected to come from a diversity of federal, state, local, and private sources. See PROJECT FINANCING section above.

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

4. **Economically disadvantaged communities.** Acquisition of the property preserves the opportunity to provide new public access and recreational opportunities along the Newark shoreline, in close proximity to economically disadvantaged communities in Fremont and Newark. The Bay Area Greenprint, an online conservation mapping tool, reports that Newark has only 2% of Alameda County's regional trails and that only 4% of Newark's land constitutes a publicly accessible protected area. The majority of accessible protected areas are more than 5 miles from the project site, around Highway 84 to the north where there are trails around Refuge headquarters.
5. **Engage youth and young adults.** The property is located approximately one mile from Ohlone Community College and Newark Memorial High School where 50% of the students are Latino and 42% of students are eligible for lunch assistance. The Service plans to develop recreational opportunities and to engage local youth and college students in stewardship and environmental education programs, after it has taken ownership of the property.
6. **Monitoring, maintenance, and stewardship.** TPL intends to convey the property to the Service upon close of escrow. If necessary, TPL will manage and steward the property until it is transferred to the Service. Both organizations bring decades of experience in monitoring, maintenance, and stewardship of land. In the short term, the property will be managed for invasive weeds and preventing unauthorized access. Longer-term management by the Service is expected to include the active restoration of disturbed areas as well as planning for and implementing the reconnection of tidal and freshwater flows to the site in a manner that protects adjacent property while supporting robust native habitat recovery.
7. **Coastal Conservancy's San Francisco Bay Area Conservancy Program.** The project is consistent with Section 31163(c) of the San Francisco Bay Area Conservancy Program because: a) it is supported by several local and regional plans as described under #1 above, b)

the property will serve a regional constituency when it is transferred to the Refuge because the Refuge draws visitors from the Bay Area and beyond, c) a significant commitment of federal funds have been made available for the acquisition so that it can be implemented in a timely way, d) due to the threat of development, natural resource values of the property will be lost if the property is not conserved now, and e) the project is expected to include matching funds from federal, local and private entities.

8. **San Francisco Bay Joint Venture's Implementation Strategy.** The Joint Venture's 2022 Implementation Plan targets significant acreages of wetlands, subtidal habitat, seasonal wetlands, and riparian habitat for protection, restoration, and enhancement. The Newark Baylands acquisition supports Implementation Strategy goals that call for protection of upland transition zone and protection of undeveloped baylands that can either be enhanced to provide non-tidal wetlands and waters or restored to tidal marsh.

CONSISTENCY WITH AUTHORITY'S INTERIM TRIBAL CONSULTATION POLICY

Service staff have indicated a commitment to working with tribes at the earliest phases of planning for the long-term management of the property and to learn how to best incorporate tribal knowledge and concerns into the project. On September 26, 2024, the Coastal Conservancy mailed thirteen letters to tribes with interest in Alameda County projects a description of the Newark Baylands Acquisition project. One tribe responded with a request for consultation on the project.

COMPLIANCE WITH CEQA:

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

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