



**Contra  
Costa  
County**

To: Contra Costa County Flood Control District Board of Supervisors  
 From: Brian M. Balbas, Public Works Director/Chief Engineer  
 Date: March 27, 2018

Subject: Approve Project, CEQA Findings, and Funding Agreement with American Rivers for the Three Creeks Parkway Restoration Project. (Project No. 7562-6D8490)

### **RECOMMENDATION(S):**

1. CONSIDER the approved Initial Study/Mitigated Negative Declaration ("IS/MND") for the Three Creeks Parkway Restoration Project, attached hereto, together with proposed Addendum No. 1 thereto, and any comments received during the public review process.
2. ADOPT Addendum No. 1 to the IS/MND, attached hereto.
3. FIND, on the basis of the whole record, including the IS/MND and Addendum No. 1 thereto, and any comments received and staff responses thereto, that there is no substantial evidence the Three Creeks Parkway Restoration Project will have a significant effect on the environment, and that the IS/MND, together with Addendum No. 1 thereto, reflects the independent judgment and analysis of the lead agency.
4. APPROVE and AUTHORIZE the Chief Engineer or his designee to execute an agreement with American Rivers, Inc., for implementation of the Three Creeks Restoration Project, a component of the Three Creeks Parkway Restoration Project, substantially in the form attached hereto.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **03/27/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

#### **VOTE OF SUPERVISORS**

AYE: Candace Andersen, District II  
 Supervisor  
 Diane Burgis, District III  
 Supervisor  
 Karen Mitchoff, District IV  
 Supervisor  
 Federal D. Glover, District V  
 Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: March 27, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

ABSENT: John Gioia, District I  
 Supervisor

By: Stacey M. Boyd, Deputy

Contact: Gus Amirzehni, (925)  
 313-2128

5. APPROVE the Three Creeks Parkway Restoration Project.

## RECOMMENDATION(S): (CONT'D)

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6. DIRECT the Director of Conservation and Development to file a Notice of Determination with the County Clerk.

7. SPECIFY that the Chief Engineer is the custodian of the documents and other material that constitute the record of proceedings upon which the Board's decision is based and that the record of proceedings is located at 255 Glacier Drive, Martinez, CA.

8. AUTHORIZE the Chief Engineer, or designee, to arrange for payment of \$2,280.75 for California Department of Fish and Wildlife fees, a \$50 fee to the County Clerk for filing the Notice of Determination, and a \$25 fee to the Department of Conservation and Development for processing.

## FISCAL IMPACT:

The estimated total cost of the Three Creeks Restoration Project, including planning, engineering, construction and project management, is \$2,738,954. The Flood Control District ("District") will have a \$25,000 share of the total cost, in the form of staff's environmental review services, to be funded by Flood Control Drainage Area 130 funds. The California Department of Water Resources ("DWR") is providing \$744,404 in grant funding, and American Rivers, Inc. ("American Rivers"), is providing \$1,969,550. Payment of the required \$2,355.75 in fees will also be funded by Flood Control Drainage Area 130 funds.

## BACKGROUND:

### The Project

Marsh Creek flows 30 miles from the eastern slope of Mt. Diablo through the communities of Brentwood and Oakley and into the Sacramento-San Joaquin Delta, which serves as the water supply for more than 20 million people. Marsh Creek provides habitat for numerous endangered and declining aquatic species, such as Delta smelt, Sacramento splittail, Chinook salmon, red-legged frog and western pond turtle. Several years ago, American Rivers, a nonprofit corporation that works to restore rivers and critical wildlife habitat, approached the District to propose a project to restore a segment of Marsh Creek, with the bulk of funding to be provided by public and private grants. In 2014, American Rivers and the District jointly applied for a grant from DWR for the project. The DWR grant was awarded, on August 16, 2016, the District and American Rivers jointly entered into an agreement with DWR ("Grant Agreement"), in which DWR agreed to provide a \$744,404 grant to improve habitat along a 1,400-foot reach of Marsh Creek from the Union Pacific Railroad to the confluence with Sand Creek (the "Lower Reach"). The proposed improvements to the Lower Reach would involve widening the existing creek channel to allow for the planting of native vegetation along the creek corridor. This project is known as the "Three Creeks Restoration Project." The

obligations of the District and American Rivers under the Grant Agreement were expressly conditioned upon the District's completion of the environmental review and Board approval of the project.

The location and timing of the Three Creeks Restoration Project provided a unique opportunity for the District to integrate a separate, long-planned channel widening project upstream of Sand Creek. Shortly after execution of the Grant Agreement, District staff and American Rivers began discussing whether the Three Creeks Restoration Project could be combined with the channel widening project. Discussions led to planning and the design of channel improvements in segments upstream from the Lower Reach, including a segment from Sand Creek to Deer Creek (the "Middle Reach") and from Deer Creek to Dainty Avenue (the "Upper Reach"). The Three Creeks Restoration Project and the proposed improvements in the Middle Reach and Upper Reach have become known collectively as the Three Creeks Parkway Restoration Project ("Project" hereafter). In all, the Project would include the widening and planting of approximately 4,000 feet of Marsh Creek from the Union Pacific Railroad to Dainty Avenue, and improvement of stormwater conveyance capacity in the Middle Reach and Upper Reach. It has been proposed that American Rivers would pay a share of the costs through grants from public agencies and private entities, and that the District would pay a share of the costs with Drainage Area 130 funds. The scope of the Project may need to be limited in order to not exceed the available funds.

It has also been proposed that District would complete the civil/earth work within the District's channel, while American Rivers would complete and landscaping part of the Project and provide for three years of maintenance.

### **Environmental Review**

The Project was reviewed under the California Environmental Quality Act and an Initial Study/Mitigated Negative Declaration was prepared. On September 27, 2016, the Board considered and adopted the IS/MND and a Mitigation and Monitoring Program for the Project. Subsequently, District and American Rivers staff proposed several changes to the Project, which necessitated the preparation of an addendum to the approved IS/MND. As described in Addendum No. 1, the changes include: 1) the incorporation of an adjacent water quality basin and related access improvements within the City of Brentwood Sungold Park; 2) the use of an adjoining parcel as a potential staging area and to place excavated materials; 3) the construction of a pedestrian bridge across Marsh Creek; and 4) the use of temporary creek crossings during construction.

As discussed in Addendum No. 1, no new significant impacts or impacts of substantially greater severity would result from the construction and operation of the updated Project, and there have been no changes in circumstances in the Project area that would result in new significant environmental impacts or substantially more severe impacts.

Additionally, no new information has come to light that would indicate the potential for new significant impacts or substantially more severe impacts than were analyzed in the September 27, 2016 IS/MND.

## **Agreement with American Rivers**

Although significant progress has been made in the planning and design of the Project, American Rivers has not yet secured sufficient funding for its share of the cost. For this reason, American Rivers and the District are not prepared at this time enter into an agreement that outlines their respective cost shares and responsibilities for Project work. However, American Rivers and the District can proceed with an agreement that spells out their respective obligations under the Grant Agreement as to the work in the Lower Reach component of the Project. The attached Agreement Between Contra Costa County Flood Control & Water Conservation District and American Rivers, Inc., for the Three Creeks Restoration Project (“Agreement”), which has been executed by American Rivers and is presented for Board approval today, sets forth that American Rivers will be responsible for funding and implementing the Three Creeks Restoration Project, except for a \$25,000 cost share provided by the District to contribute toward the environmental review process.

Under the Agreement, American Rivers would be responsible for preparing construction documents, including plans and specifications, constructing all civil/earth work improvements and performing all of the landscaping and planting work, for the Lower Reach Project. The proposed agreement also includes insurance, bonding and indemnification requirements that protect the District, and mutual indemnity obligations that protect each party from liabilities caused by the actions of the other party.

District staff anticipates that if negotiations in the coming months are successful, a new agreement will be prepared to outline responsibilities of the District and American Rivers in all three reaches of the Project. A new agreement may negate the need for, and supersede, this Agreement.

## **Project Approval**

Notwithstanding ongoing negotiations regarding the Project, the completion of the environmental review of the Project, coupled with approval of the Agreement, provide the Board with an opportunity to approve the Project. Approval of the Project includes approval of the Three Creeks Restoration Project component of the Project. The Project approval triggers the obligations of both the District and American Rivers under the Grant Agreement, but does not commit either party to proceed with other components of the Project. Project approval is recommended at this time because of conditions imposed by the Sacramento-San Joaquin Delta Conservancy, which has approved a grant to American Rivers for the Project. District staff have been advised that unless the Project is approved, and a Notice of Determination filed, before the end of March, that grant funding may be lost.

## **CONSEQUENCE OF NEGATIVE ACTION:**

If the Agreement and Project are not approved, grant funding for the Three Creeks Restoration Project will be lost and the Project will not be implemented.

#### ATTACHMENTS

Agreement for the Three Creeks Restoration Project

Addendum No. 1 Three Creeks Parkway Restoration Projection Mitigated Negative Declaration, Dec 2017

Three Creeks Parkway Restoration Projection Initial Study/Mitigated Negative Declaration, Sept 2016