

**CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT**

MEETING DATE: June 18, 2019

AGENDA ITEM NO.

ITEM TITLE:

Resolution of the City Council of the City of National City approving a 24-year Public Interest Agreement with the State of California Coastal Conservancy and the Ocean Foundation (a Section 501(c)(3) nonprofit organization) for Paradise Creek Habitat Restoration; and authorizing the City Manager to execute the Agreement.

PREPARED BY: Stephen Manganiello

DEPARTMENT: Engineering & Public Works

PHONE: 619-336-4382

APPROVED BY: _____

EXPLANATION:

See attached.



FINANCIAL STATEMENT:

APPROVED: _____ **Finance**

ACCOUNT NO.

APPROVED: _____ **MIS**

N/A

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: INTRODUCTION: FINAL ADOPTION:

STAFF RECOMMENDATION:

Adopt Resolution approving a Public Interest Agreement with the State of California Coastal Conservancy and the Ocean Foundation for Paradise Creek Habitat Restoration.

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

1. Explanation
2. Public Interest Agreement
3. Resolution

Explanation:

In April 2017, the City Manager submitted a letter of support to the State of California Coastal Conservancy (Conservancy) on behalf of the Ocean Foundation, a Section 501(c)(3) nonprofit organization, for receipt of grant funds for the Paradise Creek Habitat Restoration and Education "Pilot" Project. The Project engages students from Kimball Elementary School and other local partners such as Paradise Creek Educational Foundation, Inc. in the restoration of Paradise Creek and upland transition habitat at Paradise Creek Educational Park. Activities include native plant revegetation, soil replenishment, abatement of invasive plant species, and litter removal. Grant funds were subsequently awarded by the Conservancy to the Ocean Foundation, and the pilot project was successfully completed in February 2018.

Based on the success of the pilot project, the Conservancy awarded additional funds in May 2018 and March 2019, to continue habitat restoration efforts under the same program. In order for the Ocean Foundation to continue receiving grant funds to administer this program, both the Ocean Foundation and the City of National City are required to execute a Public Interest Agreement with the Conservancy. The purpose of the Agreement is to define the responsibilities of the Ocean Foundation and ensure that if future funds are awarded for the program, the City will not undertake any development projects that impact the wetlands habitat along said portion of Paradise Creek. National City's General Plan identifies this area as a park and natural wetlands habitat; therefore, execution of the Agreement would be consistent with General Plan goals and policies for this area. The Agreement, if executed, would be valid through November 30, 2043.

PUBLIC INTEREST AGREEMENT
Paradise Creek, National City, CA

**AGREEMENT PROTECTING THE PUBLIC INTEREST
IN CERTAIN IMPROVEMENTS AND DEVELOPMENT**

This agreement is entered into by the California State Coastal Conservancy (“the Conservancy”) and the Ocean Foundation, Inc, a California nonprofit organization (“the nonprofit organization”) and City of National City, (the “landowner”) a municipal corporation of the State of California.

PERTINENT FACTS

- A. California Public Resources Code §§ 31116 authorizes the Conservancy to award grants to nonprofit organizations for the purposes of Division 21 of the Public Resources Code.
- B. The nonprofit organization is a California nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code and whose purposes are consistent with Division 21.
- C. The City of National City owns certain real property at 1815 Hoover Avenue, National City, CA 91950, and shown on Exhibit A (“the property”).
- D. On November 16, 2016, the Wildlife Conservation Board (“WCB”) authorized a grant to the Conservancy, awarded under Agreement No. WC-1631DC (“WCB Grant”), for community-based restoration projects in coastal wetlands and watersheds in Southern California. The WCB Grant requires the Conservancy to obtain a recorded agreement to protect the public interest in projects conducted on privately-owned property.
- E. On May 24, 2018, and March 14, 2019 the Conservancy authorized grants to the nonprofit organization, subsequently awarded under Grant Agreement Nos. 17-016 and 18-120 (the “grants”) to engage elementary students in the restoration of the wetland, stream corridor, and upland transition habitats around Paradise Creek, which is directly behind the student’s school in National City, County of San Diego. The Project will be implemented on the areas of the Property shown in Exhibit A (the “Project Site”).
- F. The grant referred to above was conditioned on the nonprofit organization and the Conservancy executing and recording an agreement to protect the public interest in all improvements or developments constructed with Conservancy funds.

THE NONPROFIT ORGANIZATION AND THE CONSERVANCY AGREE AS FOLLOWS, in order to carry out the purposes of the grant, and considering the Pertinent Facts, above:

PUBLIC INTEREST AGREEMENT
Paradise Creek, National City, CA

1. **DURATION**. The term of this agreement is from the date last signed by a party below through November 30, 2043.
2. **PROJECT SITE PROTECTION**. Landowner shall not undertake any development, as defined in Public Resources Code § 30106, in the Project Site except for development that is consistent with habitat protection.
3. **CONSTRUCTION AND MAINTENANCE**. The nonprofit organization assumes all responsibility for constructing the restoration. During the term of this agreement, the nonprofit organization shall maintain and operate the property and access improvements and shall use the property and access improvements in a manner consistent with the purposes of the Conservancy's grant to the nonprofit organization.
4. **SIGNS**. The nonprofit organization shall provide, and landowner shall permit the erection of permanent signs on the property identifying the project.
5. **ACCESS BY THE NONPROFIT ORGANIZATION**. The nonprofit organization shall have access to the property to accomplish the purposes of this agreement.
6. **INSPECTION**. The nonprofit organization and the landowner shall permit the Conservancy, the Wildlife Conservation Board, and the California Department of Fish and Wildlife their agents or employees, to visit the project site at reasonable intervals to determine whether access is being provided to the public on a nondiscriminatory basis in accordance with this agreement.
7. **LANDOWNER'S USE OF THE PROPERTY**. The landowner reserves the right to use the property in any manner, provided that its use does not unreasonably interfere with the nonprofit organization's rights under this agreement.
8. **SUCCESSORS TO THE NONPROFIT ORGANIZATION**. If, for any reason, including, but not limited to the dissolution and winding up of the nonprofit organization, the nonprofit organization is unwilling or unable to meet its obligations under this agreement, the Executive Officer of the Conservancy shall have the right to designate a public entity or nonprofit corporation to assume the responsibilities of the nonprofit organization under this agreement.
9. **SUCCESSORS IN INTEREST**. The terms of this agreement shall be binding on all successors and assigns of the parties to this agreement.
10. **FORBEARANCE NOT A WAIVER**. Any forbearance on the part of the Conservancy, or its successor in interest, to enforce the terms and provisions of this agreement in the event of a breach shall not be deemed a waiver of the Conservancy's right regarding any subsequent violation or breach.

PUBLIC INTEREST AGREEMENT
Paradise Creek, National City, CA

11. **SEVERABILITY**. If any of the provisions of this agreement are found by a court of law to be of no force or effect, the validity of all other provisions shall be unaffected.
12. **NOTICES**. Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

State Coastal Conservancy
1515 Clay St. 10th Floor
Oakland, CA 94612

The Ocean Foundation
P.O. Box 34103
San Diego, CA 92163

The City of National City
1243 National City Blvd.
National City, CA 91950

13. A notice provided pursuant to this agreement shall be deemed to have been given on: a) the date delivery if by provided by personal delivery, b) 48 hours after deposit with the US mail, or c) one business day after the date of deposit with an overnight courier service.
14. **LOCUS OF CONTRACT**. This agreement is entered into in the County of Alameda, California.

PUBLIC INTEREST AGREEMENT
Paradise Creek, National City, CA

STATE COASTAL CONSERVANCY

May 2019 for
Samuel Schuchat
Executive Officer

4/29/19
Date

THE OCEAN FOUNDATION

Mark Spalding
Executive Director

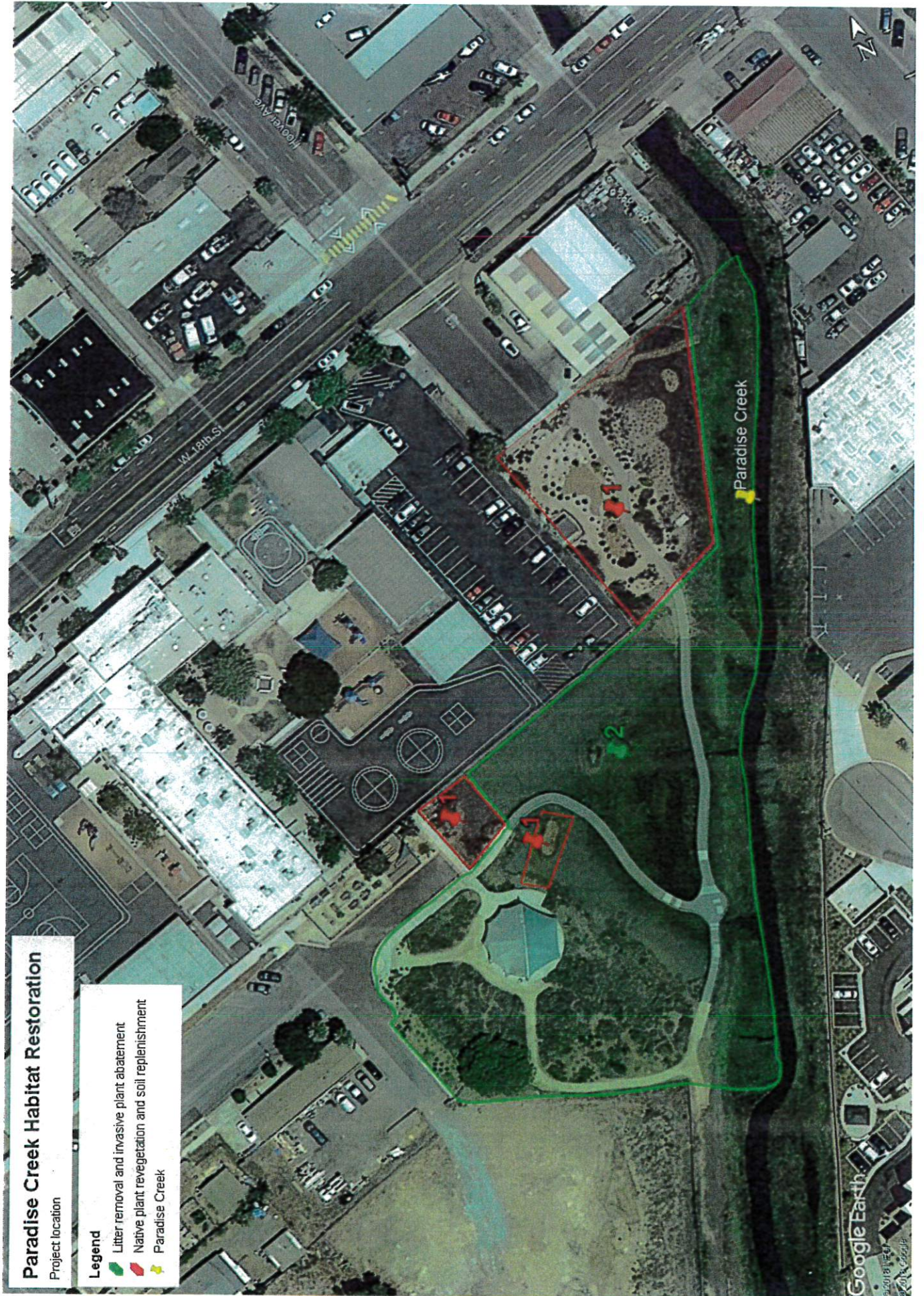
Date

THE CITY OF NATIONAL CITY

Brad Raulston, City Manager

Date

Exhibit A



Paradise Creek Habitat Restoration
Project location

- Legend**
- Litter removal and invasive plant abatement
 - Native plant revegetation and soil replenishment
 - Paradise Creek