




**EAST BAY REGIONAL PARK DISTRICT
BOARD OF DIRECTORS MEETING
AGENDA STAFF REPORT**

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|-----------------|--|
| DATE | Tuesday, March 19, 2024 |
| TITLE | Authorization to Enter Into a Reserve Fund Agreement with National Fish and Wildlife Foundation and Transfer \$125,000 to the National Fish and Wildlife Foundation to be Held in a Reserve Fund as Part of Mitigation Funding Agreement with California Department of Fish and Wildlife |
| DIVISION | Acquisition, Stewardship, and Development |
| FROM | Matt Graul, Chief of Stewardship Ken Wysocki, Assistant General Manager of ASD |
| APPROVED | Sabrina Landreth, General Manager  |

RECOMMENDATION

The General Manager recommends that the Board of Directors authorize entering into a Reserve Fund Agreement with National Fish and Wildlife Foundation (NFWF) and authorize the transfer of \$125,000 from Project # 542500 to the National Fish and Wildlife Foundation Reserve Fund (NFWF Fund) to be held in that reserve fund as part of a Mitigation Funding Agreement with California Department of Fish and Wildlife (CDFW).

BACKGROUND

The California Endangered Species Act requires the East Bay Regional Park District (Park District) to obtain Incidental Take Permits (ITP) from CDFW for Park District projects that could result in incidental harm to or take of endangered species. One such Park District project is the Wildfire Hazard Reduction and Resource Management Plan (Fuels Project). Because project activities could result in the incidental take of the endangered Alameda Whipsnake (AWS), the Park District sought and obtained an ITP from CDFW. The ITP for the Fuels Project requires the Park District to establish conservation easements to protect AWS and to provide financial assurance for the long-term management of the easement areas to support habitat for AWS.

On December 17, 2019, per Board Resolution No. 2019-12-323, the Board of Directors authorized staff to enter into a Mitigation Funding Agreement with CDFW to provide permanent funding reserves for the Park District's long-term management of habitat mitigation lands as required by regulatory permits for Park District projects. Under the CDFW Mitigation Funding Agreement, CDFW and the Park District agreed that a Reserve Fund can be utilized in lieu of traditional endowments for the Park District's Fuels Project and other projects permitted in the future that require long-term funding agreements to ensure permit compliance. On April 20, 2020, the Board Finance Committee was informed of the necessity to enter into a Reserve Fund Agreement with NFWF as required by the CDFW Mitigation Agreement and recommended forwarding the reserve fund agreement to the full Board for approval.

ANALYSIS

Incidental take permits commonly require a permanent set-aside of habitat conservation lands as compensation for impacts to species and their habitat. Under these permits, CDFW requires the permittee to provide financial assurances that permit conditions and long-term management requirements will be implemented on the designated conservation lands. CDFW typically requires permitholders to also fund an endowment that generates enough interest to pay for long-term management of those habitat conservation lands. These endowments are often referred to as non-wasting, meaning that the principal amount of the endowment cannot be drawn upon, and only the interest generated by the endowment may be accessed for ongoing land management costs.

If the Park District, however, were required to fund a traditional endowment for each of its many permitted projects, then the Park District would need to set aside millions of dollars to generate the interest necessary to cover the annual management costs of the conservation lands. Permanently setting aside such a large amount of local tax dollars would significantly reduce the funds available to acquire property and protect sensitive habitats, invest in stewardship staff, and provide appropriate management of habitat-sensitive public lands.

To address this dilemma, the Park District and CDFW formed a working group to explore options for an alternative funding approach that reflects the Park District's conservation mission and avoids unnecessarily tying up public dollars. Following negotiations, CDFW and the Park District agreed that for the District's Fuels Project and other permitted projects, long-term funding requirements can be met through use of a Reserve Fund in lieu of traditional endowments per Board Resolution No. 2019-12-323.

Per the Mitigation Funding Agreement, the District will deposit \$125,000 into a Reserve Fund. This is roughly equal to five years of annual monitoring and management costs for the lands placed under a conservation easement to mitigate impacts to AWS during implementation of the Fuels Project. The Reserve Fund will not be used to pay for the Park District's management of the mitigation lands but will be a permanent fund that CDFW can call on for enforcement of the Park District's permit obligations, only following an extensive dispute resolution process, including full opportunity for the Park District to cure any alleged violation. If CDFW were to call on the fund for enforcement of permit obligations, the Park District would be required to replenish the funds in the same budget year. In essence, the Reserve Fund functions as a security deposit, to assure that the Park District will fulfill its permit obligations of setting aside and carefully managing permit required conservation easements.

The Mitigation Funding Agreement states that the Reserve Fund will be held as a trust by the NFWF. NFWF is a 501(c)3 non-profit organization established in 1984 and has grown to be the nation's largest private conservation grant-maker. NFWF has a long track record of success as a trustee of these types of mitigation endowments. The Park District will enter into a Reserve Fund Agreement with NFWF to transfer \$125,000 into and establish terms for the management and administration of the Reserve Fund. Subsequent deposits for future permitted projects will be made according to the terms of the CDFW Mitigation Funding Agreement as well as the NFWF Reserve Fund Agreement.

As the Park District secures additional permits for other projects that require compensatory mitigation lands, the Park District will deposit more funding into the Reserve Fund, up to a maximum Reserve Fund amount of \$500,000. All interest generated will remain in the Reserve Fund, but will not count against the \$500,000 cap. The current reserve amount will be subject to review every five years and may be modified upon agreement between the CDFW and Park District.

FISCAL IMPACT

This action will authorize the transfer of \$125,000 of General Funds set aside for this purpose in the WHRRMP LTMP Prop Mgmt Annual Project (Project # 542500) to the NFWF Reserve Fund. This will be the first deposit into the NFWF Reserve Fund. After this transfer future CDFW permitted projects could necessitate the deposit of an additional \$375,000 with NFWF to ensure long term management costs of conservation lands. Additional appropriations and transfers to the NFWF Reserve Fund not to exceed \$500,000 over the course of the five-year term will be allowable with the General Manager's approval.

| SOURCE OF FUNDS | |
|---|-------------------|
| WHRRMP LTMP Prop Mgmt Annual Project (Project No. 542500) | \$ 150,000 |
| Encumbrances and Expenditures to date | (5,779) |
| Total Funds Available | \$ 144,221 |

| USE OF FUNDS | |
|--|------------------|
| Transfer to NFWF for the NFWF Reserve Fund | \$ 125,000 |
| Balance Remaining | \$ 19,221 |

ATTACHMENTS

- I. Executed Mitigation Funding Agreement between EBRPD and CDFW



**EAST BAY REGIONAL PARK DISTRICT
RESOLUTION NO. 2024 – 03 -
MARCH 19, 2024**

**AUTHORIZATION TO ENTER INTO A RESERVE FUND AGREEMENT WITH
NATIONAL FISH AND WILDLIFE FOUNDATION AND TRANSFER \$125,000 TO
THE NATIONAL FISH AND WILDLIFE FOUNDATION TO BE HELD IN A
RESERVE FUND AS PART OF MITIGATION FUNDING AGREEMENT WITH
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

WHEREAS, the California Endangered Species Act requires the East Bay Regional Park District (Park District) to obtain incidental take permits from the California Department of Fish and Wildlife (CDFW) for the Park District's own projects that could result in incidental harm to or take of endangered species; and

WHEREAS, CDFW and the Park District negotiated an alternative funding plan versus a traditional endowment that would encumber large amounts of public funds for projects that could result in incidental harm to or take of endangered species; and

WHEREAS, on April 28th, 2020, as authorized by the Board of Directors on December 17, 2019, by Board Resolution, 2019-12-323, the Park District entered into a Mitigation Agreement with CDFW; and

WHEREAS, on April 29th, 2020, the Board Finance Committee was informed of the necessity to enter into a Reserve Fund Agreement with National Wildlife Foundation (NFWF) as required by the CDFW Mitigation Agreement and recommended forwarding the reserve fund agreement to the full Board for approval; and

WHEREAS, General Funds are available and were set aside for this purpose in the WHRRMP LTMP Prop Mgmt Annual Project (Project # 542500) for the initial deposit of \$125,000 to NFWF for a Reserve Fund per the Mitigation Funding Agreement with CDFW; and

WHEREAS, over the course of the five-year term of the CDFW Mitigation Funding Agreement, as additional permits for other projects that require compensatory mitigation lands, the Park District will deposit more funding into the NFWF Reserve Fund, up to a maximum Reserve Fund amount of \$500,000;

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors of the East Bay Regional Park District hereby grants authorization to enter into a Reserve Fund Agreement with the National Fish and Wildlife Foundation and to transfer \$125,000 from WHRRMP LTMP Prop Mgmt Annual Project (Project # 542500) as presented to the Board on March 19, 2024; and

BE IT FURTHER RESOLVED, that the General Manager is hereby authorized and directed, on behalf of the Park District and in its name, to authorize additional transfer of General Funds to the NFWF Reserve Fund up to \$500,000; and

BE IT FURTHER RESOLVED, that the General Manager is hereby authorized and directed, on behalf of the Park District and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

Moved by Director _____, and seconded by Director _____, and adopted March 19, 2024, by the following vote:

FOR:

AGAINST:

ABSTAIN:

ABSENT: