



**THE PORT  
OF LOS ANGELES**  
Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: JANUARY 2, 2017**

**DIVISION: ENVIRONMENTAL MANAGEMENT**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - BANK ENABLING INSTRUMENT FOR  
THE PORT OF LOS ANGELES HARBOR HABITAT MITIGATION BANK**

**SUMMARY:**

Staff requests approval and execution of a Bank Enabling Instrument (BEI) for a Port of Los Angeles (Port) Harbor Habitat Mitigation Bank (Bank) among the City of Los Angeles Harbor Department (Harbor Department), the United States Army Corps of Engineers (Corps), the United States Environmental Protection Agency (USEPA), the United States Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS). The BEI sets forth an agreement regarding the establishment, use, operation, and maintenance of seven biological mitigation sites to be used as future mitigation credits (Bank Sites). These Bank Sites, which collectively total approximately 374 acres, were previously developed in the Los Angeles Harbor District in accordance with Inner Harbor and Outer Harbor Mitigation Bank Memoranda of Agreements, executed in 1984 and 1997, respectively, with multiple agencies as signatory. Staff now recommends written consent to rescind the Inner Harbor Bank and Outer Harbor Bank Memoranda of Agreements, as the BEI will supersede these agreements. Staff also recommends approval of a Conservation Land Use Agreement, which would establish how the Bank Sites will be maintained going forward. These agreements would not require any new expenditure of Harbor Department funding for future use and maintenance of these existing Bank Sites.

**RECOMMENDATIONS:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;

**DATE: JANUARY 2, 2017**

**PAGE 2 OF 6**

**SUBJECT: BANK ENABLING INSTRUMENT FOR THE PORT OF LOS ANGELES HARBOR HABITAT MITIGATION BANK**

2. Approve the Bank Enabling Instrument for the Port of Los Angeles Harbor Habitat Mitigation Bank between the City of Los Angeles Harbor Department, the United States Army Corps of Engineers, the United States Environmental Protection Agency, the United States Fish and Wildlife Service, and the National Marine Fisheries Service;
3. Approve the Conservation Land Use Agreement between the City of Los Angeles and the United States Army Corps of Engineers, Los Angeles District (Exhibit D of the Bank Enabling Instrument);
4. Approve the Letter of Consent to Rescind Harbor Department Agreement Nos. 1327 and 1972;
5. Authorize the Executive Director to execute and the Board Secretary to attest to said Bank Enabling Instrument;
6. Authorize the Executive Director to execute and the Board Secretary to attest to the Conservation Land Use Agreement Between the City of Los Angeles and the United States Army Corps of Engineers, Los Angeles District;
7. Authorize the Executive Director to execute and the Board Secretary to attest to Letter of Consent to Rescind Harbor Department Agreement Nos. 1327 and 1972; and
8. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Project Background/Context - State and Federal laws require the Harbor Department to provide mitigation for impacts to Waters of the U.S. as a result of development projects, such as creation of land, in the Los Angeles Harbor District. The Harbor Department's long-term planning process includes development of compensatory mitigation projects and maintaining biological mitigation banks so credits are available for use in the future to mitigate impacts from Harbor Department development projects. The creation of such compensatory projects for planning purposes within the Los Angeles Harbor District has resulted in two mitigation banks, known and referred to as the Inner Harbor Bank and the Outer Harbor Bank, and provided for in these two agreements:

- *Memorandum of Understanding Among the Harbor Department of the City of Los Angeles, the California Department of Fish and Game, the National Marine Fisheries Service, and the Fish and Wildlife Service to Establish a Procedure for*

**DATE:           JANUARY 2, 2017**

**PAGE 3 OF 6**

**SUBJECT:   BANK ENABLING INSTRUMENT FOR THE PORT OF LOS ANGELES  
HARBOR HABITAT MITIGATION BANK**

*Advance Compensation of Marine Habitat Losses Incurred by Selected Port Development Projects Within the Harbor District of the City of Los Angeles (Harbor Department Agreement No. 1327, known and referred to as the "Inner Harbor Agreement") executed in 1984, and*

- *Memorandum of Agreement Among the City of Los Angeles, the California Department of Fish and Game, the National Marine Fisheries Service, and the Fish and Wildlife Service to Establish a Procedure for On-site Compensation of Marine Habitat Losses Incurred by Port Development Landfills within the Harbor District of the City of Los Angeles (Harbor Department Agreement No. 1972, known and referred to as the "Outer Harbor Agreement") executed in 1997.*

The Inner and Outer Harbor Mitigation Banks have been maintained by the Harbor Department, in coordination with the USFWS, National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries, previously National Marine Fisheries Service) and California Department of Fish and Wildlife (CDFW, previously California Department of Fish and Game). The Inner Harbor Bank and Outer Harbor Bank currently contain 10.26 and 84.10 credits, respectively. Although not signatory to these agreements, the Corps had previously allowed these credits to be used to mitigate for impacts to Waters of the U.S. from development projects in the Los Angeles Harbor District, in conjunction with the National Environmental Policy Act (NEPA) process.

In 2008, this changed following the establishment of a new regulation, the Corps and USEPA *Compensatory Mitigation for Losses of Aquatic Resource; Final Rule* (the Rule). The Rule now requires establishment of a BEI (Transmittal 1) by the Corps, that they are signatory to, before the Harbor Department may have access to these credits again.

The purpose of the BEI is to set forth the agreement of the signatories regarding the establishment, use, operation, and maintenance of the Bank. The BEI includes: i) identification of the seven Bank Sites that have been created previously in the Los Angeles Harbor District (Transmittal 2); ii) the number of unexpended credits that are being carried over from the existing agreements; iii) provision of financial assurances through a management commitment, as appropriate for a government agency; and iv) long-term management and monitoring as provided in the Long-Term Management Plan (Exhibit C of the BEI) and Conservation Land Use Agreement (CLUA) (Exhibit D of the BEI).

The long-term monitoring of the Bank Sites includes routine maintenance and monitoring performed by the Harbor Department, such as periodic Port-wide Biological Surveys to monitor the health of the Los Angeles Harbor and implementation of various source control measures established in the Water Resources Action Plan. It also

**DATE: JANUARY 2, 2017**

**PAGE 4 OF 6**

**SUBJECT: BANK ENABLING INSTRUMENT FOR THE PORT OF LOS ANGELES HARBOR HABITAT MITIGATION BANK**

includes additional site-specific provisions for Bank Sites located in the Cabrillo Shallow Water Habitat, specifically biological monitoring and periodic inspections to ensure the appropriate depth is maintained.

If the Harbor Department were to permanently lose access to these credits, the ability to replace them would depend on the availability of new mitigation projects at an uncertain cost and timeline. When the Harbor Department purchased Bolsa Chica credits in 2005 the cost was \$300,000 per credit. Actual future costs would be project-specific but are likely to be higher. However, using this value does provide a low-end estimate, totaling \$28,308,000, of the cost to replace the 94.36 credits should the Harbor Department fail to enter into a BEI.

Conservation Land Use Agreement - The purpose of the CLUA is to: i) ensure the Bank Sites will be retained in a Natural Condition (as defined therein, taking into account the reserved rights and prohibited uses applicable to a working port and the historical nature of the bank sites); and ii) to restrict any use of the Bank Sites that will physically alter the Natural Condition of the Bank Sites.

Letter of Consent to Rescind Harbor Department Agreement Nos. 1327 and 1972 - The BEI will supersede and replace Harbor Department Agreement Nos. 1327 and 1972 provided the parties to these agreements consent to such supersedence and replacement. Execution of the Letter of Consent (Transmittal 3) will rescind the obsolete mitigation agreements.

Term of BEI and CLUA - The BEI shall remain in force until all credits are expended from the Harbor Mitigation Bank or it is terminated, in accordance to the terms of the BEI. The CLUA shall remain in force until the Bank Sites are transferred or the CLUA is terminated, in accordance to the terms of the CLUA. To the extent that bank credits have been expended towards mitigation of impacts, the Harbor Department will be required to maintain the Bank Sites in accordance with the terms of the CLUA.

Based on all of the forgoing, staff recommends approval of: (i) the BEI to establish the Bank Sites as mitigation banks under the Rule, (ii) the CLUA to establish Bank Site maintenance procedures, and (iii) a Letter of Consent to Rescind Harbor Department Agreement Nos 1327 and 1972 to rescind the previous Bank Site agreements.

#### **ENVIRONMENTAL ASSESSMENT:**

The proposed action is limited to approval of the BEI for the Bank and approval of the CLUA for the long-term management and monitoring of the Bank Sites. Use of credits from the BEI to mitigate or compensate for impacts to Waters of the U.S. as a result of

**DATE: JANUARY 2, 2017**

**PAGE 5 OF 6**

**SUBJECT: BANK ENABLING INSTRUMENT FOR THE PORT OF LOS ANGELES HARBOR HABITAT MITIGATION BANK**

future projects would be subject to environmental review pursuant to the CEQA and NEPA by the respective lead agencies and would not occur until approved by the Corps, in consultation with agency members of the Interagency Review Team. Therefore, as an administrative activity involving the approval of agreements, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

In signing this BEI, the Harbor Department is agreeing to monitor and maintain the seven existing bank sites described in the BEI, reporting annually on the sites, and maintaining a ledger of the mitigation credits. Through its existing water quality programs like the Port-wide Biological Surveys and the Cabrillo Shallow Water Habitat Monitoring program, the Harbor Department fulfills the long-term monitoring and maintenance requirements of the seven Bank Sites. The BEI emphasizes the importance of the Harbor Department's continued participation in these routine and site-specific water quality activities. Specifically, funds for FY 2017/18 for the Port-wide Biological Surveys and Cabrillo Shallow Water Habitat Monitoring in the amounts of \$260,000 and \$65,000, respectively, were budgeted in Account 54260, Center 330, Program 000.

The annual reporting and ledger maintenance of the bank credits is a new activity that is not included under existing programs. The administrative costs of the BEI are expected to cost \$20,000 per year for the extent of the agreement. Funds in FY 2017/18 in the amount of \$20,000 for the BEI administration are available in Account 54260, Center 330, Program 000.

Ongoing monitoring and maintenance includes periodic biological surveys, inspections and other measures described in this report. Funding needed in future fiscal years will be requested through the annual budget adoption process. The Harbor Department's financial obligations after the current fiscal year are contingent on the Board appropriation of funds.

**CITY ATTORNEY:**

The Office of the City Attorney has approved the proposed Agreements as to legality and form.

DATE: JANUARY 2, 2017

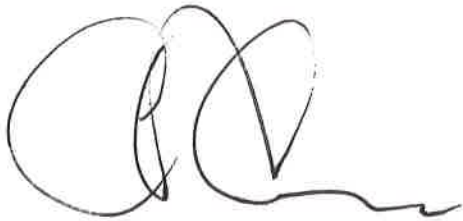
PAGE 6 OF 6

SUBJECT: BANK ENABLING INSTRUMENT FOR THE PORT OF LOS ANGELES  
HARBOR HABITAT MITIGATION BANK


TRANSMITTALS:

1. Bank Enabling Instrument Port of Los Angeles Harbor Habitat Mitigation Bank
2. Bank Sites, Port of Los Angeles Harbor Habitat Mitigation Bank
3. Letter of Consent to Rescind Harbor Department Agreement Nos. 1327 and 1972

FIS Approval: MB (initials)  
CA Approval: MB (initials)



CHRISTOPHER CANNON  
Director of Environmental Management



MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED

 FOK

EUGENE D. SEROKA  
Executive Director

CC:yo  
AUTHOR: K. PRICKETT

FILE: Y:\ADMIN\BOARD REPORTS\WATER QUALITY\BIO MITIGATION CREDITS\BANK ENABLING INSTRUMENT\ENV\_BEI - FINAL.doc  
UPDATED: 1/2/2018 4:38 PM - YO