



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: MARCH 29, 2012

FROM: ENVIRONMENTAL MANAGEMENT

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF THE CALIFORNIA LEAST TERN NESTING SITE INTERAGENCY MEMORANDUM OF AGREEMENT FOR ANNUAL NESTING SITE MONITORING PROGRAM

SUMMARY:

Staff recommends that the Board of Harbor Commissioners (Board) approve the attached California Least Tern Nesting Site Memorandum of Agreement among the City of Los Angeles Harbor Department (Harbor Department), California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (COE). This interagency Memorandum of Agreement (MOA) on the endangered California least tern is the latest in a sequence of agreements that have been in place since 1984. Over the years, these agreements have provided for successful protection, maintenance and relocation of the least tern's 15-acre nesting area to Pier 400, while allowing continued Port of Los Angeles (Port) activities. The proposed agreement sets forth the responsibilities of the signatories towards protection of the least tern during its nesting season from April to September for a term of five (5) years. There is no direct cost associated with this MOA.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the attached California Least Tern Nesting Site Memorandum of Agreement among the City of Los Angeles, California Department of Fish and Game, U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers for a period of five (5) years from 2012 to 2017;
2. Authorize the Executive Director to execute and Board Secretary to attest to said interagency Memorandum of Agreement; and
3. Adopt Resolution No. _____.

DISCUSSION:

Background - In April 1980, the Harbor Department accepted Permit No. 80-154 issued from the U.S. Army Corps of Engineers (COE) authorizing the dredging/deepening of the Inner Harbor areas and use of the dredge material to create the portion of Pier 300 known as the 190-acre landfill (Harbor Deepening Project). The permit incorporated special conditions for protection of fish and wildlife including protection of a federal and state endangered species, the California least tern.

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On May 3, 1984 the Board approved a five-year MOA (Agreement No. 1308) among the USFWS, CDFG and the COE to clarify the obligations of the Harbor Department, USFWS, COE, and CDFG as set forth in Permit No. 80-154. The MOA is a cooperative agreement intended to allow compatible development of Port lands while guarding the welfare of the California least tern. The MOA, as an interagency agreement, does not require City Council approval. The current five-year MOA was last updated and approved by the Board on June 6, 2006. Based on the successful history of interagency cooperation, the 2012 five-year MOA (Transmittal 1) would continue the required least tern protection efforts and minimize the administrative burden associated with frequent updates.

Need for MOA Renewal - The current MOA requires that upon expiration, the MOA must be renewed or a new agreement must be consummated if there is continued need for least tern protection measures. It has been determined that continued protection of the least tern colony is still required due to the ongoing presence of least terns on Pier 400 (Transmittal 2) during nesting season, and the benefits accrued from monitoring activities to both the least terns and Port development projects. Further, ongoing construction projects have specific permit conditions requiring protection of the least tern through required Port and resource agency actions specified in the MOA.

Consultant Services - One provision included in both Permit 80-154 and the MOA is to monitor the least tern site, which allows for determination of nesting success and protects against danger to the least terns should they nest off the designated site, as occurred in 1990. A monitoring agreement with Keane Biological Services was last approved in May 2010 to cover the 2010–2012 nesting seasons. A new Request for Proposals (RFP) for this monitoring work will be released in 2012, and a consultant will be selected prior to the expiration of the current agreement in 2013. The selection process and award of a consultant agreement will go before the Board for approval under separate cover.

Cost and Term of the MOA - The MOA is for a period of five years from the date of execution by all parties. The MOA specifies that the Harbor Department is responsible for designating, preparing, and protecting California least tern nesting site(s), as well as predator management. The costs for these activities are budgeted for fiscal year 2012/13. Compliance with the MOA will cost approximately \$150,000 each year for monitoring, maintenance and preparation of the site.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an MOA for continued least tern protection measures that resulted from COE Permit No. 80-154 and the Deep Draft Navigation Improvements Environmental Impact Report/Environmental Impact Statement certified by the Board on November 18, 1992 (State Clearinghouse No. 87101408). As an activity for which the underlying project has been previously assessed, the Director of Environmental Management has determined that approval of the MOA is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(i) of the Los Angeles City CEQA Guidelines.

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ECONOMIC BENEFITS:

This Board action will have no employment effect.

FINANCIAL IMPACT:

The proposed MOA memorializes the framework in which least tern nesting site monitoring responsibilities are assigned among the MOA signatories, consisting of the Harbor Department, COE, CDFG, and USFWS. Under the MOA the Harbor Department will continue to be responsible for monitoring the least tern nesting site at an estimated cost of \$150,000 in each year of the five-year MOA. For comparison purposes, average annual expenditures for similar services under the current MOA are \$150,000 per year. A separate Board item will be brought before the Board in a future action to recommend the approval of a consultant for these services and at which time more cost impact details will be presented.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Memorandum of Agreement as to form and legality.

TRANSMITTALS:

1. California Least Tern Nesting Site Memorandum of Agreement
2. Map of Nesting Site



CHRISTOPHER CANNON
Director of Environmental Management

FIS Approval: ecf (initials)

CA Approval: mc (initials)



MICHAEL R. CHRISTENSEN
Deputy Executive Director

APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director