



Legislation Text

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DATE: August 9, 2022

SUBJECT:

ENVIRONMENTAL MITIGATION LAND MANAGEMENT GRANT PROGRAM FUNDED BY SAN DIEGO ASSOCIATION OF GOVERNMENTS

- A) RESOLUTION AUTHORIZING AN APPLICATION FOR ENVIRONMENTAL MITIGATION LAND MANAGEMENT GRANT PROGRAM FUNDS TO THE SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) FOR ENDANGERED AVIAN NESTING SITE STEWARDSHIP AT D-STREET FILL PROJECT COMMITTING TO PROVIDE FUNDS IN KIND, AND AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE TO ACCEPT GRANT FUNDS AND EXECUTE GRANT AGREEMENT; AND**
- B) RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE TO ACCEPT GRANT FUNDS AND EXECUTE GRANT AGREEMENT WITH THE SAN DIEGO ASSOCIATION OF GOVERNMENTS FOR GRANT FUNDING, IF AWARDED, IN THE AMOUNT OF \$80,000, FOR A PERIOD OF 18 MONTHS BEGINNING ON OR AROUND SEPTEMBER 1, 2022, AND ENDING ON OR AROUND FEBRUARY 1, 2024, AND GRANTING INDEMNITY TO SANDAG**

EXECUTIVE SUMMARY:

In November 2004, countywide voters approved the San Diego Association of Governments' (SANDAG) *TransNet* Extension Ordinance and Expenditure Plan, which established the *TransNet* Environmental Mitigation Program (EMP). The EMP established the Land Management Grant Program, which is a competitive grant process that provides funding for regional habitat management and monitoring activities to mitigate habitat impacts for regional transportation projects.

In 2018, the District applied for and was awarded \$75,400 from the EMP Land Management Grant 9th Cycle Awards to support the District's Endangered Species Management Program. The grant funds supported management and recovery efforts for two federally listed birds, the endangered California least tern and threatened Western snowy plover, during the 2019 and 2020 nesting seasons at the D Street Fill in Chula Vista.

In January 2022, the District applied for the EMP Land Management Grant 10th Cycle Awards, requesting the maximum of \$80,000 to continue support for the District's Endangered Species Management Program. On June 14, 2022, the EMP Working Group recommended the District's application for full funding. The EMP Working Group's recommendation will be brought to SANDAG's Board of Directors for consideration in fall 2022.

A Board resolution to accept grant funding is a condition of funding approval by SANDAG's Board of Directors. Execution of an agreement that includes indemnification of SANDAG from claims resulting from or related to performance of the work funded by the grant is also required prior to the award of funds. A sample grant agreement provided by SANDAG is included as Attachment A. SANDAG has indicated that it will not agree to substantive modifications of this sample agreement, which would be tailored to the District's project if this item is authorized by the Board. These items are therefore being brought before the Board prior to SANDAG's approval.

RECOMMENDATION:

Adopt a resolution authorizing the acceptance of grant funding, if awarded, from the SANDAG *TransNet* Environmental Mitigation Program Land Management Grant program for endangered avian species stewardship at the D Street Fill in the amount of \$80,000. Adopt a resolution authorizing the Executive Director or designee to negotiate and enter into an agreement with SANDAG for grant funding, if awarded, in the amount of \$80,000, for a period of 18 months beginning on or around September 1, 2022, and ending on or around February 1, 2024.

FISCAL IMPACT:

Approval of this resolution would authorize the District's acceptance of this grant, if awarded, which would fund \$80,000 toward endangered species management at the D Street Fill included in the Environmental Conservation department FY 2023 budget. The District would provide in-kind services of staffing resources to manage the grant and consultant agreements, provide oversight, and organize volunteer events. The estimated cost of in-kind services is \$10,000.

COMPASS STRATEGIC GOALS:

The D Street Fill is jointly managed by the District and the U.S. Fish & Wildlife Service National Wildlife Refuges (Refuge) as nesting habitat for the endangered California least tern and threatened Western snowy plover. Joint management is conducted in accordance with the San Diego Bay Integrated Natural Resources Management Plan.

This agenda item supports the following Strategic Goal(s).

- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION:

Endangered Species Management Program

The District's Endangered Species Management Program assists in the management of nesting habitat and predator control for the recovery of two federally listed species, the endangered California least tern (*Sternula antillarum browni*) and threatened Western snowy plover (*Charadrius nivosus nivosus*).

The California least tern is a small, migratory seabird that once nested in large colonies on beaches throughout Southern and Central California. However, increased urbanization, permanent and long-

term habitat loss, and abundant land predators led to a decrease in their habitat range and a decline in the breeding population to less than 300 nesting pairs. In 1972, the species was subsequently listed under the Endangered Species Act (ESA, 16 U.S.C. § 1531 et seq.). Annual monitoring, site management, and predator control efforts helped increase the least tern population to over 7,000 nesting in California pairs by 2009. Since then, the breeding population and reproductive success has varied wildly from year to year but is generally declining.

The Western snowy plover is a small shorebird found along the Pacific coast from southern Baja California, Mexico to southern Washington. Like least terns, snowy plovers have experienced significant habitat loss due to urbanization, human disturbance, and invasive plants, which has led to a decline in active nesting and their overall breeding population. In 1993, the Western snowy plover was listed as threatened under the Endangered Species Act. Snowy plovers are frequently observed foraging on the western shoreline at the D Street Fill. In early 2022, two snowy plovers were observed nesting onsite, which has not occurred since 2000.

Management Program Activities

Reproductive success for least terns and potential nesting and foraging for snowy plovers at the D Street Fill is dependent on two main factors, annual habitat management and predator control. The District's management program activities include performing the following annual activities at the D Street Fill:

- Site preparation, including removal of invasive vegetation and herbicide application, prior to the start of the nesting season (April through September).
- Predator control prior to and during the nesting season to remove avian and mammalian predators, as needed.
- Biological monitoring and reporting during the nesting season.
- Weekly and annual reporting.

Biological monitoring occurs a minimum of once per week and up to several times per week during the peak of the nesting season. Monitoring includes observations of the number of adult birds, nests, eggs, chicks, and fledglings present each week; biological data on chicks (e.g., chick weight, age, body condition, etc.); predation of any adult birds, eggs, chicks, or fledglings; reporting of human disturbances and trespassing; coordination with predator control services; and weekly reporting to the District and the Refuge.

Both least terns and snowy plovers are ground-nesting birds, which makes them easily susceptible to predators, human disturbance, and invasive species that overgrow the bare, sandy coastal habitat they require for nesting. Without site management to remove invasive species and predator control efforts to remove nuisance mammalian and avian predators, the least tern population at the D Street Fill could be eliminated in as little as one nesting season.

D Street Fill, Chula Vista

Least terns migrate to San Diego Bay at the beginning of April and typically depart by mid-September. One of the largest nesting areas in the Bay is at the D Street Fill, a roughly 80-acre rectangular peninsula located within the City of Chula Vista, just south of the Sweetwater Channel. Creation of the site began in the 1960s with placement of dredge spoils from nearby development projects. Today, the D Street Fill consists of disturbed vegetated and unvegetated areas and salt

marsh and mudflat habitat along the shoreline, which supports native and nonnative plant and animal species.

The D Street Fill is jointly managed by the District on Tidelands, and by the U.S. Fish and Wildlife Service, San Diego Bay National Wildlife Refuge (Refuge) on Refuge lands. The D Street Fill is an existing California least tern nesting colony and the adjacent Refuge property is designated as a snowy plover critical habitat area. Other nesting sites around San Diego Bay include the San Diego International Airport, Chula Vista Wildlife Reserve, Naval Air Station North Island, the South San Diego Bay Unit of the Refuge, and the Naval Amphibious Base beaches in Coronado.

EMP Land Management Grant Program

To support the District's endangered species program, the District applied for an EMP Land Management Grant to assist in the management and recovery of least terns and snowy plovers. The District was successfully awarded a similar grant in 2018 and has experience managing EMP grants and has built an effective relationship with SANDAG staff. The new grant will provide funding for similar management activities as the 2018 grant, including site preparation, invasive plant control, biological monitoring, predator control, and environmental education in the amount of \$80,000. The new grant will also expand on the environmental education component to include at least two volunteer cleanup events at the D Street Fill to remove trash and invasive weeds. District and Refuge staff will provide education on endangered and invasive species, local watersheds, San Diego Bay's natural resources, and environmental career paths during these volunteer events.

SANDAG staff has prioritized the District's project and anticipates recommending funding the project to the SANDAG Board of Directors later this year. SANDAG requires a resolution from the District's Board to accept funding, if awarded, by August 19, 2022, in order to meet recommendation process deadlines. Execution of a grant agreement between the District and SANDAG will also be required prior to the award of grant funds and project implementation.

A sample grant agreement provided by SANDAG is included as Attachment A. Among other things, the sample agreement has an indemnity clause that requires the Grantee (District) to agree to indemnify and hold harmless SANDAG from claims resulting from or related to the performance of the work funded by the grant. SANDAG has indicated that it will not agree to substantive modifications of this sample agreement, which would be tailored to the District's project if this item is authorized by the Board.

EMP grant funds will support the nesting success of California least terns and will be used to prepare the D Street Fill site for the 2023 and 2024 nesting seasons by performing site grading, debris removal, vegetation control, invasive plant management, avian monitoring, and predator control. The District will also organize volunteer events to assist in site preparation and promote the Bay's natural resources. While no matching funds are required, the District will provide in-kind services of staffing resources to manage the grant and consultant agreements, provide oversight, reporting, and organizing a volunteer event, estimated at \$10,000.

Conclusion

Staff recommends the Board adopt a resolution authorizing an agreement with SANDAG, if awarded, for \$80,000 in grant funding and providing indemnification to SANDAG.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board action to accept grant funds from the San Diego Association of Governments (SANDAG) Environmental Mitigation Land Management Grant Program for threatened and endangered species stewardship at the D Street Fill was adequately covered in the Exemption prepared by the District on June 14, 2018. The proposed Board action is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). No further action under CEQA is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for the establishment and maintenance of tidal and submerged lands for open space, ecological preservation, and habitat restoration. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

At this time, no additional action under the California Coastal Act is required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct impact on District workforce or contract reporting at this time.

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Attachment(s):
Attachment A: Sample Grant Agreement