

**SAN DIEGO UNIFIED PORT DISTRICT**

**MEMORANDUM**

**Date:** October 6, 2016

**To:** Board of Port Commissioners

**From:** Job Nelson  
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**Subject:** Memorandum of Agreement between the California State Lands Commission and the San Diego Unified Port District regarding the establishment of a marine planning partnership for the State-owned tidelands and submerged lands located in the Pacific Ocean offshore San Diego County

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On October 13, 2016, the California State Lands Commission (Commission) will hold its meeting in San Diego, and on its docket is an action item titled: Consider Authorization of a Memorandum of Agreement (MOA) between the California State Lands Commission and the San Diego Unified Port District (District) to develop a Pilot Marine Planning Effort for State-Owned Tidelands and Submerged Lands Located in the Pacific Ocean Offshore San Diego County.

A companion item will also appear on the Board of Port Commissioners meeting agenda (Board agenda) on October 13, 2016. Given the Commission only meets every other month and it was the Commission staff's preference to hear the item before the last meeting of the year, staff from both agencies closely coordinated to have the MOA considered on the same day in October, albeit earlier than originally anticipated. Consideration on the MOA by both the Commission and District on the same day symbolizes the cooperation and collaboration we share between our agencies.

The purpose of the MOA is to memorialize a collaborative partnership between the State Lands Commission and the District to effectively plan for use of the ocean space and to include local trustee grantee's participation in management. As described in the Commission's staff report (Attachment A) and in the District's Board agenda item 2016-0558 for October 13, 2016, the planning effort would include development of a pilot-scale marine decision-support framework and spatial analysis tool. The framework encompasses coastal waters off San Diego County in an area to be determined based on further discussions with the State Lands Commission.

**Subject:** Memorandum of Agreement between the California State Lands Commission and the San Diego Unified Port District regarding the establishment of a marine planning partnership for the State-owned tidelands and submerged lands located in the Pacific Ocean offshore San Diego County

The value of Coastal and Marine Spatial Planning (CMSP) efforts has gained valuable recognition at the state and local levels and the pilot marine decision-support framework is anticipated to serve as a model for future co-management collaborations between the Commission and its local trustee grantees. For the District, the MOA provides the opportunity to have a “seat at the table” and a leading voice in the planning for coastal and ocean resources of which the District is both intimately familiar and invested. The marine spatial planning effort is consistent with, and supports, the District’s Integrated Planning Vision and Guiding Principles and goals of the District’s Compass Strategic Plan.

This MOA provides a way for the Commission and the District to work together to develop a process to acquire and share comprehensive environmental baseline data, environmental analyses, impact assessments, conservation opportunities, socioeconomic research, and other information pertaining to the pilot planning area. This collaborative process will allow for scientifically-informed decision making while maintaining consistency with all applicable state, federal, and local laws, regulations, and policies.

Ultimately, the Commission and the District anticipate the work product developed from the MOA’s implementation will be a planning document that will serve to inform the adaptive management of the state-owned tidelands and submerged lands in the Pacific Ocean within a geographic area offshore San Diego County.

If you have any questions, please contact Job Nelson at [jnelson@portofsandiego.org](mailto:jnelson@portofsandiego.org) or 619-725-6087 or Jason Giffen at [jgiffen@portofsandiego.org](mailto:jgiffen@portofsandiego.org) or (619) 686-6473.

## Attachment A

### CALENDAR ITEM

**64**

A 78, 80

10/13/16

J. Mattox

S 39, 40

S. Pemberton

### **CONSIDER AUTHORIZATION OF A MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE SAN DIEGO UNIFIED PORT DISTRICT TO DEVELOP A PILOT MARINE PLANNING EFFORT FOR STATE-OWNED TIDELANDS AND SUBMERGED LANDS LOCATED IN THE PACIFIC OCEAN OFFSHORE SAN DIEGO COUNTY**

#### **INTRODUCTION**

The California State Lands Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands and the beds of navigable lakes, rivers, and streams owned by the State (Public Resources Code section 6301, et seq.). The Commission manages approximately 4 million acres of these sovereign lands in trust for the benefit of the statewide public subject to the common law Public Trust Doctrine, including those tidelands and submerged lands that extend from the shoreline to three nautical miles offshore along California's beautiful and dynamic coastline.

At its December 18, 2015 meeting, the Commission directed staff to develop a framework to engage in a comprehensive, ecosystem-based, stakeholder driven resource management partnership with the San Diego Unified Port District for state-owned tidelands and submerged lands located in the Pacific Ocean offshore San Diego County. This area includes seven Marine Protected Areas designated under the Marine Life Protection Act of 1999. Commission staff expects that this area would be the starting point for developing and refining the boundaries of the pilot framework area, a geographically discrete area in the southern part of the state. The final boundaries will be based on all of the following:

- Stakeholder input
- Selected resource use sectors
- Scientific information
- Other factors identified during the planning process.

Ecosystem-based marine spatial planning concepts can provide valuable insights for coordinating ocean management. Expansion of existing uses and the addition

## CALENDAR ITEM NO. 64 (CONT'D)

of emerging uses (e.g., offshore renewable energy), along with a growing human population and climate change effects make clear the need for a proactive approach to governance and use of the ocean space. The framework envisioned in this pilot partnership is to move from the sector-by-sector management approach toward a more comprehensive and integrated approach within which individual activities can be addressed and a healthy, sustainable ocean is ensured.

This planning effort will be anchored on robust and extensive stakeholder participation and collaboration throughout the entire planning process. The framework developed under the partnership will ensure meaningful public participation, public accountability and transparency, independent decision-making, and a science-based process for adaptive management. Staff envisions that stakeholders will include representatives from various state and federal agencies, the environmental community, fisheries, the boating community, nongovernmental organizations, labor, academia, local and regional governments, tribes, industry, local elected officials, and the United States Navy, among others.

### **THE MEMORANDUM OF AGREEMENT**

The purpose of the MOA is to form and memorialize a collaborative partnership between the Parties to effectively plan for use of the ocean space and local trust grantee participation in management thereof. The planning effort would include development of a pilot-scale marine decision-support framework and spatial analysis tool in coastal waters off San Diego County. The MOA will facilitate coordination between the Parties to develop and implement a comprehensive strategy that would reduce the potential for conflict among various Public Trust consistent uses, resources, and values. Goals include creating opportunities for education and environmental conservation and developing multi-objective solutions to achieve healthy, ecological, social and economic systems.

Under the MOA, the Parties will develop a process to acquire and share comprehensive environmental baseline data, environmental analyses, impact assessments, conservation opportunities, socioeconomic research, and other information pertaining to the pilot planning area. This process will allow for scientifically-informed decision making while minimizing user conflict and maintaining consistency with applicable state, federal, and local laws, regulations, and policies. The MOA also describes the Parties' commitment to transparent, robust public engagement during all phases of framework development.

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The MOA also identifies specific objectives for the planning process, including:

- Maximize transparency, collaboration, integration of best available science, and stakeholder participation to ensure a decision-support framework and spatial analysis tool that is sustainable, relevant, balanced, and user-friendly.
- Protect and enhance cultural and biological resources, using the partnership to enhance awareness and dialogue around culturally and ecologically important marine resources.
- Facilitate streamlined evaluation and consideration of projects or activities in the planning area by creating a GIS-based spatial analysis tool that identifies the location of existing and emerging sectors, potential conflict areas, and areas of mutual benefit.
- Encourage resource users to use the spatial analysis tool and accompanying data to help ensure proposed projects would minimize conflict and maximize multi-sector benefits.
- Facilitate efficient and integrated management of the Port's trust lands and the ocean planning areas, recognizing that many sectors overlap both jurisdictions.

Commission staff anticipates that the work product coming out of the MOA's implementation is a multi-sector, spatially referenced, marine planning framework that takes into account the interests and needs of the Parties to balance existing and emerging water-related commercial activities ("Blue Economy") with environmental protection, ocean health, climate resiliency, and social equity. This framework will inform the adaptive management of the state-owned tidelands and submerged lands in the Pacific Ocean within a relatively modest geographic area offshore San Diego County.

The planning effort is consistent with, and supports, the Port's Integrated Planning Vision and Guiding Principles and goals of the Port's Compass Strategic Plan. It is also consistent with and supports implementation of the Commission's 2016-2020 Strategic Plan, particularly Strategy 1.2, Strategic Partnerships, and Strategy 4.2, Geographic Information Systems Decision-support Tools. Commission staff does not intend for this effort to impact or otherwise usurp existing local, regional, state and federal regulatory authorities, jurisdiction, and processes. Commission staff is committed to ensuring that this effort creates an additional tool for the proactive management of state-owned tidelands within the defined planning area with the fundamental principle of

CALENDAR ITEM NO. **64** (CONT'D)

enhancing the ocean ecosystem to ensure sustainable ecosystem service delivery for current and future generations.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, is consistent with evolving Public Trust principles and values.
2. This action is consistent with Strategy 4.2 of the Commission's Strategic Plan to extend Geographic Information Systems (GIS) content and capabilities to be an integrated decision making tool for the Commission's management of lands and resources and a valued visualization and communication mechanism for the public.
3. The authorization to execute a Memorandum of Agreement is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

**EXHIBIT:**

- A. Memorandum of Agreement between the California State Lands Commission and the San Diego Unified Port District Regarding the Establishment of a Marine Planning Partnership for the State-owned Tidelands and Submerged Lands Located in the Pacific Ocean Offshore San Diego County.

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**AUTHORIZATION:**

Authorize the Executive Officer, or her designee, to execute a Memorandum of Agreement, substantially in the form of attached Exhibit A, between the California State Lands Commission and the San Diego Unified Port District regarding the establishment of a marine planning partnership for land offshore in San Diego County.

## EXHIBIT A

### MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE SAN DIEGO UNIFIED PORT DISTRICT REGARDING THE ESTABLISHMENT OF A MARINE PLANNING PARTNERSHIP FOR THE STATE-OWNED TIDELANDS AND SUBMERGED LANDS LOCATED IN THE PACIFIC OCEAN OFFSHORE SAN DIEGO COUNTY

#### I. INTRODUCTION

##### Parties

The California State Lands Commission (Commission) consists of two Constitutional Officers; the Lieutenant Governor and the State Controller, and the Governor's Director of Finance. Established in 1938, the Commission manages 4 million acres of tide and submerged lands and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. These lands, often referred to as sovereign or public trust lands, stretch from the Klamath River and Goose Lake on the north to the Tijuana Estuary and Colorado River on the south, and from the Pacific Coast 3 miles offshore on the west to world-famous Lake Tahoe on the east, and includes California's two longest rivers, the Sacramento and San Joaquin.

The San Diego Unified Port District (Port) is a public corporation established in 1962 by an act of the California State legislature and approved by the voters of the five member cities of the District. The enabling legislation, subsequent amendments, and other actions conveyed certain tide and submerged lands within San Diego Bay and the oceanfront within the City of Imperial Beach to the Port in trust for the people of the State of California, to further the development of commerce, navigation, fisheries and recreation. The Port's five member cities are Chula Vista, Coronado, Imperial Beach, National City and San Diego. The District is governed by a seven-member Board of Port Commissioners appointed by the member cities. The Port's jurisdiction covers approximately 2,500 acres of land and 3,400 acres of water within these cities.

##### National and Regional Context

In 2010, the President issued Executive Order 13547, which established the National Ocean Policy (Policy) and its companion National Ocean Council (Council). The Policy calls for the use of coastal and marine spatial plans to enable a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to managing sustainable multi-usages across sectors and to improve the conservation of the ocean, coasts, and the Great Lakes. The Council's National Ocean Policy Implementation Plan furthered this goal by creating nine Regional Planning Bodies (RPBs) that bring together federal, state, tribal, local, and regional decision makers to develop marine spatial plans and aid the federal agencies responsible for marine resource management. The State

of California is a participant in the West Coast Governors Alliance on Ocean Health, the Regional Ocean Partnership that constitutes the West Coast RPB.

At its December 18, 2015 meeting, the Commission directed staff to develop a pilot framework to engage in a comprehensive, ecosystem-based, stakeholder-driven, resource management partnership with the Port for state-owned tidelands and submerged lands located in the Pacific Ocean offshore San Diego County.

This area includes seven Marine Protected Areas designated under the Marine Life Protection Act of 1999. The Commission and the Port, collectively referred to hereafter as the "Parties", anticipate that this area would be the starting point for developing and refining the ultimate boundaries of the pilot framework area, a geographically discrete area in the southern part of the state. The final boundaries will be based on all of the following:

- Stakeholder input
- Selected resource use sectors
- Scientific information
- Other factors identified during the planning process

The effort the Parties are undertaking aligns with the marine conservation and resource management goals of the National Ocean Policy and seeks to develop a decision-support framework and spatial analysis tool specific to the San Diego offshore region. While the Parties will lead the San Diego process, it will include representative perspectives from federal, state, local, and tribal governments as well as non-governmental stakeholders. Consistent with the West Coast RPB approach, the planning will be localized in its geographic scope and definition of planning goals. However, it will differ from the West Coast RPB in its adherence to voluntary participation and adoption for the Parties, rather than the compulsory implementation for federal agencies inherent in the outcome of the RPB process.

The value of these types of planning efforts has been recognized at the state and local levels and the pilot framework is expected to serve as a model for future co-management collaborations between the Commission and its local grantees. The planning effort is consistent with, and supports, the Port's Integrated Planning Vision and Guiding Principles and goals of the Port's Compass Strategic Plan.

## **II. PURPOSE AND OBJECTIVES**

The purpose of this Memorandum of Agreement (MOA) is to form and memorialize a collaborative partnership between the Parties to effectively plan for use of the ocean space and local trust grantee participation in management thereof. The planning effort would include development of a pilot-scale marine decision-support framework and spatial analysis tool in coastal waters off San Diego County.

The Parties will develop a process to acquire and share comprehensive environmental baseline data, environmental analyses, impact assessments, conservation



opportunities, socioeconomic research, and other information pertaining to the pilot planning area. This process will allow for scientifically-informed decision making while maintaining consistency with applicable state, federal, and local laws, regulations, and policies. This MOA also describes the Parties' commitment to transparent, robust public engagement during all phases of framework development. The MOA will facilitate coordination between the Parties to develop and implement a comprehensive strategy that would reduce the potential for conflict among various Public Trust consistent uses, resources, and values.

The Parties will collaborate to achieve the following objectives:

1. Develop a Pilot-Scale Marine Decision-Support Framework

- a) Develop a multi-sector, spatially referenced, marine planning framework that takes into account the interests and needs of the Parties to continue to champion, and balance, existing and emerging water-related commercial activities, such as the Blue Economy, with environmental protection, ocean health, climate resiliency, and social equity.
- b) Protect and enhance, where feasible, cultural and biological resources, using the partnership to enhance awareness and dialogue around culturally and ecologically important marine resources.

2. Develop and Share a Spatial Analysis Tool

- a) Facilitate streamlined evaluation and consideration of projects or activities in the planning area by creating a GIS-based spatial analysis tool that identifies the location of existing and emerging sectors, potential conflict areas, and areas of mutual benefit.
- b) Encourage resource users to use the spatial analysis tool and accompanying data to help ensure proposed projects minimize conflict and maximize multi-sector co-benefits.

3. Develop a Pilot-Scale Framework for Local Trust Grantee Participation in Management of Ocean Areas

- a) Facilitate efficient and integrated management of the Bay and ocean areas by maximizing coordination and communication, recognizing that many sectors overlap both areas.

4. Facilitate Stakeholder Engagement

- a) Maximize transparency, collaboration, integration of best available science, and stakeholder participation to ensure development of a decision-support framework and spatial analysis tool that is relevant, balanced, and user-friendly.

### **III. PROCESS**

1. The Parties will gather existing information from their respective institutions relevant to the pilot area and the resource sectors therein.
2. The Parties will coordinate, share, and combine resources and data to support and prepare the decision-support framework and spatial analysis tool, while identifying and seeking to fill research gaps through a combination of outreach and new research efforts.
3. The Parties will outreach to federal, state and local agencies, Tribes, non-governmental organizations, industry, community organizations, utilities, universities, fishing interests, the military and other stakeholder groups to benefit the process of developing the decision-support framework.
4. The Parties will create and convene working groups comprised of the aforementioned stakeholders to share, create, and analyze resources and data to assist the development and preparation of the spatial analysis tool.
5. The Parties will hold public meetings and use other public engagement techniques to achieve transparency, share process and tool development updates, and elicit input and feedback from the community, stakeholders, and the public.
6. The Parties will use best available science to inform process and tool development, and enlist a scientific peer-review of work products to ensure data-driven decision making.
7. The Parties will create and carry out an implementation plan for use of the developed decision-support framework and spatial analysis tool for resource management and lease authorizations.

### **IV. AUTHORITY TO ENTER INTO AGREEMENT**

- A. California State Lands Commission Authority: Public Resources Code sections 6001, et seq.
- B. San Diego Unified Port District: Harbors & Navigations Code, Appendix I.

### **V. GENERAL PROVISIONS**

- A. Nothing in this MOA is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of the Port or Commission. Specifically, nothing in this MOA shall be construed as limiting the Commission's exercise of its approval authority or discretion over any proposal or development affecting sovereign lands.
- B. Nothing in this MOA binds the Port or Commission to perform beyond their respective authorities.

- C. Nothing in this MOA requires the Port or Commission to assume or expend any funds in excess of available appropriations authorized by law.
- D. The respective mission requirements, funding, personnel, and other priorities of the Port or Commission may affect their respective abilities to fully implement all the provisions identified in this MOA.
- E. Specific activities that involve the transfer of money, or services between the Parties may require execution of separate agreements or contracts.
- F. Nothing in this MOA is intended to or shall be construed to restrict the Port, Commission, or other agencies or departments from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- G. Any information furnished between the Parties under this MOA is potentially subject to the California Public Records Act (Government Code section 6250, et seq.). The Parties agree to consult one another prior to releasing potentially privileged or exempt documents and to cooperate in good faith to assert all such privileges and exemptions permitted by California Public Records Act.
- H. Every provision in this MOA is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.
- I. All cooperative work under the provisions of this MOA will be accomplished without discrimination against any employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, in accordance with Article 1 (commencing with Section 12940) of Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government Code and other state antidiscrimination laws, for any use or service in connection with those actions.
- J. Amendments or supplements to this MOA may be proposed by the Port or Commission and shall become effective upon written approval of both Parties.
- K. The Port or Commission may terminate its participation in this MOA at any time through written notification to the other Parties at least thirty days prior to termination.
- L. This MOA shall become effective upon signature by the Parties. This MOA may be executed in one or more counterparts, each of which will be considered an original document. The effective date shall be the date of the last signature as shown below, excepting subsequent amendments and addition of counterparts.
- M. This MOA is intended to facilitate cooperation among the Parties. It is not a contract for acquisition of supplies or services; it is not legally enforceable; and it

does not create any legal obligation of or between any of the Parties or create any private right or cause of action for or by any person or entity.

## **VI. IMPACT ON EXISTING AUTHORITIES**

Nothing in this MOA, and nothing in the planning framework, removes, limits, or otherwise affects the rights or interests of tribal governments, or state, federal, or local regulatory agencies, and does not affect or supersede existing authorities that may relate to resources or lands in the planning area.

California State Lands Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
Jennifer Lucchesi  
Executive Officer

San Diego Unified Port District

Date: \_\_\_\_\_

\_\_\_\_\_  
Randa Coniglio  
Chief Executive Officer/Director