



Legislation Text

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DATE: October 10, 2017

SUBJECT:

PRESENTATION AND UPDATE ON ENTITLEMENT PROCESS FOR A MITIGATION BANK AT POND 20, SOUTH SAN DIEGO BAY

EXECUTIVE SUMMARY:

Pond 20 is a 95.13 acre undeveloped parcel of land located at the southernmost portion of San Diego Bay (Attachment A). Pond 20 is within the City of San Diego's (San Diego) Otay Mesa-Nestor Community, it is included in the City of Imperial Beach's (Imperial Beach) former Redevelopment Area, and it is not currently included in the Port Master Plan¹. In July 2015, the Board directed staff to develop a Request for Proposals (RFP) for a wetlands mitigation bank and to continue to analyze the development of a mitigation bank on approximately 80 acres of Pond 20. Furthermore, On November 17, 2015, by Resolution 2015-151, the Board adopted the Pond 20 Economic Development Fund, BPC Policy No. 774.

On November 8, 2016, by Resolution 2016-178, the Board authorized an agreement with Great Ecology Environment and Design (Great Ecology) for \$640,220 to prepare drawings and mitigation banking documents for a wetlands mitigation bank at Pond 20. Additionally, the Board adopted Resolution 2016-179 commencing environmental review and California Coastal Act review to assign land use designations for Pond 20 and two adjacent development parcels.

The scope of services with Great Ecology includes base map development, geotechnical and soil investigation, wetlands jurisdictional determination and functional assessment, preliminary design and 60% design services, and required documentation for long-term maintenance, protections, and regulatory permitting, including a Banking Prospectus and Mitigation Bank Instrument.

To date, the base line map, wetlands jurisdictional determination, functional assessment, preliminary design, banking prospectus have been submitted to the Army Corps of Engineers (ACOE) for review. Additionally, the first meeting of the Interagency Review Team was held to obtain feedback on the proposed mitigation bank.

RECOMMENDATION:

Presentation and update on entitlement process for a mitigation bank on Pond 20.

FISCAL IMPACT:

This presentation does not have a fiscal impact. The Environmental Conservation budget has

\$700,000 from the Environmental Fund budgeted this fiscal year FY17/18 for mitigation banking and Planning has \$80,000 for entitlements.

COMPASS STRATEGIC GOALS:

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

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- 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.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

History of Pond 20

In the 1850s, Pond 20 was acquired by the Western Salt Company, and between the 1890s and 1928 it was bermed and incorporated into their salt evaporation pond network. Saltworks operations at Pond 20 ceased in the 1960s, and the site has remained vacant. Pond 20 was purchased by the District in October 1998 as a part of the 836-acre Western Salt land acquisition. Of the 836 acres, 722 acres were transferred to the state of California as offsite mitigation for the expansion of Lindbergh Field, and ultimately led to the creation of the South San Diego Bay National Wildlife Refuge. The remaining 114 acres were vested in the District for future development, and subject to the Public Trust Doctrine. When the San Diego County Regional Airport Authority (Airport) became a separate agency, Senate Bill 1896 provided for the District to retain ownership of Pond 20, by reimbursing the Airport \$3.33 million plus interest.

Since acquiring Pond 20, the District, in collaboration with the cities of Imperial Beach and San Diego, conducted numerous public outreach meetings, studies, and appraisals. Determining highest and best use, in 2015 the Board directed staff to analyze the development of a mitigation bank on approximately 80 acres of Pond 20 and approved an RFP to initiate the entitlement process.

On July 14, 2015 the Board directed staff to issue a RFP for mitigation banking for the District or a developer to create a mitigation bank. Furthermore, the Board directed staff to establish a Pond 20 Economic Development Fund Policy. On November 17, 2015, by Resolution 2015-151, the Board adopted BPC Policy No. 774, the Pond 20 Economic Development Fund.

On December 8, 2015, the Board directed staff to conduct additional due diligence, which included, a review of long-term maintenance and protection of the mitigation bank and related agency approvals; market analysis of current demand for mitigation credits; and refined cost estimates including the use of excess soil generated from the mitigation bank for use on other District projects.

Due Diligence for a Mitigation Bank

On May 10, 2016, staff presented the findings of the limited due diligence including the current demand for mitigation credits, long term maintenance requirements, construction estimates,

placement of excess soil, legal protections and regulatory permitting. Based on the preliminary due diligence, staff recommended pursuing the creation of a mitigation bank without a formal development partner, due to the anticipated higher rate of return with a District created bank. Furthermore, based on the initial due diligence, sale credits are valued at no less than \$500,000 an acre for wetlands and could be significantly higher due to several factors that may influence demand and supply, including the extent of the geographic area credits can be sold, called the Service Area and interest from prospective credit buyers.

The District has garnered interest from several of entities to purchase tidal wetland mitigation credits from the Pond 20 mitigation bank once they are available.

Mitigation Ad hoc Committee

On June 15, 2016, a Mitigation Ad hoc Committee (Committee) was formed to continue the due diligence efforts and to validate assumptions that a mitigation bank would be successful at Pond 20. The Committee met on three occasions to evaluate the strengths, risks, and uncertainties associated with creating a mitigation bank on Pond 20.

Mitigation Banking Update

On November 8, 2016, by Resolution 2016-178, the Board approved entering into an agreement with Great Ecology to document baseline conditions; conduct a jurisdictional wetland delineation for an ACOE approved jurisdictional determination; further the design of the mitigation bank; prepare construction documents to the 60% completion level; prepare required long-term maintenance, protections, and regulatory permitting documents; and submit a Banking Prospectus to the ACOE and the Interagency Review Team. The scope of work also includes the development of the draft mitigation banking enabling instrument, a regulatory document that codifies how mitigation credits are defined, sold, and secured.

Additionally, by Resolution 2016-179, the Board approved initiating the entitlement process including environmental review and processing a Port Master Plan Amendment pursuant to the California Coastal Act, for District land in and surrounding Pond 20 which include parcels A, B, and C (Attachment A).

Since November 2016, staff has been working diligently on the following activities related to the development of a mitigation bank at Pond 20:

- Held the first Interagency Review Team coordination meeting on April 19, 2017, to discuss the draft mitigation banking prospectus.
- Held coordination meetings with the U.S. Fish and Wildlife Service National Wildlife Refuge and Poseidon Resources regarding the proposed Otay River Estuary Restoration Project on the adjacent parcel, also within the berm at Pond 20 (see Attachment B).
- Developed base maps which include ortho-rectified aerial imagery and topographic survey data.
- Conducted a geotechnical and soil investigation to inform project design, construction and soil disposal options.
- Conducting biological resource surveys required for the mitigation banking prospectus and for environmental review.

- Conducted jurisdictional wetland delineation and coordinated with the ACOE on the draft delineation report.
- Coordinated with the ACOE to determine the most suitable wetland functional assessment method to assist in determining the number of sales credits available.
- Submitted draft prospectus to the ACOE and Interagency Review Team
- Review of 30% concept and preliminary design analysis.

Next steps:

The following is an estimated timeframe to complete the mitigation banking process for Pond 20. The implementation schedule may vary based on agency review and approval time periods:

- Obtain ACOE approval of the wetlands jurisdictional determination - Q4 2017
- Initiate Environmental Review - Q4 2017
- Conduct soil sampling and analysis to finalize disposal options - Q2 2018
- Review 60% design and construction documents - Q2 2018
- Submit final prospectus to the ACOE and Interagency Review Team- Q4 2017
- Regional Water Quality Control Board (RWQCB) approval for site-specific reuse of soil - Q4 2018
- Submit draft banking enabling instrument to the ACOE - Q2 2018
- Solicit for final design of mitigation bank - Q2 2018
- Final Design - Q1 2019
- Complete California Environmental Quality Act (CEQA) Review - Q2 2019
- Complete Coastal Act Review (e.g., Port Master Plan Amendment¹, Coastal Development Permit) - Q1 2020
- Submit permit applications to the ACOE and RWQCB - Q3 2019
- Construction Contracting - Q2 2020
- Start Construction - Q3 2020

Funding

The development of a mitigation bank will require an estimated \$20 million in initial capital investment. Completion of the engineering and design documents will lead to refined construction cost estimates, to instill a higher level of confidence in the mitigation banking business model. Potential sources of funding to assist with offsetting the initial capital investment could include the uncommitted reserves in the Environmental Fund and upfront sale of mitigation credits. A credit release schedule will be developed as a component of the draft banking enabling instrument, and could include advancing a portion of the credits prior to bank development. Other financial benefits to creating the mitigation bank include cost savings for future District construction projects by reducing mitigation ratios, and by reduced timelines to permit future projects. The District will be able to readily use credits from the bank to satisfy future mitigation requirements, and could receive favorable compensatory mitigation ratios due to the existence of a District-constructed advance mitigation site.

General Counsel's Comments:

The Office of the General Counsel reviewed this agenda as to form and legality.

Environmental Review:

This presentation to the Board does not constitute a “project” or an “approval” of a “project” under the definitions set forth in CEQA Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of its projects. If a project is formulated and CEQA review is conducted, the Board reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no-project alternative, a statement of overriding considerations, if applicable, and may approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the Board. Based on the totality of the circumstances and the entire record, this presentation does not commit the District to a definite course of action prior to CEQA review being conducted. No further action under CEQA is required at this time.

This presentation to the Board does not allow for “development,” as defined in Section 30106 of the California Coastal Act (CCA), or “new development,” pursuant to Section 1.a. of the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required. However, the District’s projects require processing under the CCA and the District’s CDP Regulations. The Board will consider approval of development of a mitigation bank at Pond 20 after the appropriate documentation under CCA and the District’s CDP Regulations has been completed and authorized by the Board, if necessary. The Board’s direction in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

Equal Opportunity Program:

Not applicable.

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Attachment(s):

Attachment A: Map of Pond 20 parcels

Attachment B: Draft concept design for wetlands mitigation projects on Pond 20

¹Depending on timing of the comprehensive Port Master Plan Update (PMPU), Pond 20 and the two adjacent development parcels would be incorporated into the PMPU. However, if the project-level CEQA analysis for the Pond 20 mitigation bank proceeds ahead of the PMPU, a project-specific Port Master Plan Amendment would be processed.