

AGENDA REPORT

Resolution: Authorize the Executive Director to Enter into the Mitigation Agreement with East Bay Regional Park District for Two (2) Years as Mitigation for Impacts Associated with the Airport Perimeter Dike Improvements Project in the Amount of \$78,750. **(Engineering & Aviation)**

MEETING DATE: 11/21/2019

AMOUNT: \$78,750 (FY 2020, One-Time)
Non-Operating Expense

PARTIES INVOLVED: East Bay Regional Park District, Oakland, CA
Debra Auker, Assistant General Manager, Finance and
Management Services/CFO

SUBMITTED BY: Robert Andrews, Acting Director of Engineering
Bryant Francis, Director of Aviation

APPROVED BY: Danny Wan, Interim Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

This Agenda Report seeks Board authorization of the following:

Authorize the Executive Director to enter into the Mitigation Agreement with East Bay Regional Park District for two (2) years for species mitigation impacts associated with the Airport Perimeter Dike Improvements Project in the amount of \$78,750.

BACKGROUND

The Airport Perimeter Dike (APD) protects facilities in the South Field at Oakland International Airport (OAK)—including the main air carrier Runway 12-30, taxiways, passenger terminals, air cargo facilities, and other support facilities from inundation from the San Francisco Bay. The Port will be constructing the APD Improvements Project (Project), which will improve the APD to withstand severe storms, protect OAK from potential flooding, meet Federal Emergency Management Administration (FEMA) certification standards, and address sea level rise. At the September 12, 2019 meeting, the Board of Port Commissioners approved Resolution No. 19-91, which approved a budget of \$26,521,825 for the design, environmental

studies, construction, and construction support costs, which included the necessary funding for this current action.

As part of the Project, approximately 0.8 acres of California Clapper Rail (Clapper Rail) bird habitat, which consists of federally jurisdictional wetlands and other waters of the U.S along the APD, will be impacted from the construction of a stability berm. The Port submitted a Biological Assessment on February 2, 2016 (subsequent Addendums were submitted on August 29, 2017 and April 17, 2018), which described the potential impacts to Clapper Rail habitat, to the United States Fish and Wildlife Service (USFWS), which has governing authority via the federal Endangered Species Act of 1973. On November 5, 2018, the Port received USFWS' Biological Opinion (Corps File No. 2000-252600S) requiring measures and best management practices to minimize impacts to Clapper Rail habitat. In the Biological Opinion (BO), USFWS required the Port to provide predator management as species mitigation. This mitigation would be provided by financing the predator management conducted by the East Bay Regional Park District (EBRPD) at a site within proximity to OAK that has a known Clapper Rail population. Hayward Regional Shoreline, operated by EBRPD, is the closest site conducting predator management for Clapper Rail.

ANALYSIS

The Port's predator management funding, as required in the USFWS BO, would go towards enhancing the control of predators and improve the survivorship of the established Clapper Rail population at Hayward Regional Shoreline. EBRPD controls both native and non-native predators (including non-native red fox and feral cats, as well as overabundant native predators such as raccoons, striped skunk, and Virginia opossum), which have been documented as a threat to the Clapper Rail population.

The Port and EBRPD have negotiated the terms of a Mitigation Agreement. The Port will fund two (2) years of EBRPD predator management at a total cost of \$78,750. Pursuant to the terms of the agreement, EBRPD will use the funds for Clapper Rail predator management project planning and implementation at Hayward Regional Shoreline for two (2) years. The agreement provides that EBRPD will contract the predator management work to the United States Department of Agriculture Animal and Plant Health Inspection Service Wildlife Services (APHIS-WS) and that the funds cannot be disbursed until the APHIS-WS contract has been signed with a copy delivered to the Port. As part of this agreement, EBRPD will submit two annual reports to the Port summarizing the past year's predator management results. The Port will submit these reports to the USFWS to document our compliance with the Biological Opinion's predator management conservation measure.

Entering into a Mitigation Agreement for predator management with EBRPD would comply with the USFWS Biological Opinion, allowing for the Port to move forward with the Project.

BUDGET & STAFFING

There is no budget impact. The mitigation costs have been included in the Project budget. There is no anticipated staffing impact associated with the requested authorization.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

Goal: Modernize and Maintain Infrastructure

Goal: Strengthen Safety and Security

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement because East Bay Regional Park District is a government agency.

SUSTAINABILITY

Predator Management at Hayward Regional Shoreline allows the federally endangered Clapper Rail to sustain its populations by removing predators from its environment. This may help the Clapper Rail during breeding time by minimizing disturbance or predation of eggs or hatchlings, and may also minimize predation on adult Clapper Rails.

ENVIRONMENTAL

The Port, as lead agency for CEQA, prepared a draft IS/MND to evaluate potential impacts from the APD Project and circulated it for public review from September 16, 2015 to October 16, 2015. The Final IS/MND was adopted by the Board on December 17, 2015 (Ordinance No. 4359) and the Notice of Determination was filed with the Alameda County Clerk's Office on December 18, 2015. The Addendum to the IS/MND was completed in September 2017 (SCH No. 2015092045) and the Second Addendum to the IS/MND was completed in April 2018 (SCH No. 2015092045). These documents discussed potential impacts to Clapper Rail habitat. The Port received a USFWS Biological Opinion (Corps File No. 2000-252600S) on November 5, 2018, which included the suggested predator management mitigation measure for the Clapper Rail.

The Port also received a permit from the San Francisco Regional Water Quality Control Board on May 9, 2019 (Place ID 846688). A permit from the Bay Conservation and Development Commission has been received. Port staff is working to finalize the United States Corps of Engineers permit issuance.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

The Port has two options for this action:

- 1) Authorize the Executive Director to enter into the Mitigation Agreement with East Bay Regional Park District for two (2) years as mitigation for impacts associated with the Airport Perimeter Dike Improvements Project in the Amount of \$78,750. This is the recommended action.
- 2) Do not authorize the Executive Director to enter into the Mitigation Agreement with East Bay Regional Park District for two (2) years as mitigation for impacts associated with the Airport Perimeter Dike Improvements Project in the amount of \$78,750. This could potentially lead to project delays and/or cost overruns, thus impacting the completion of the Project.

RECOMMENDATION

Authorize the Executive Director to enter into the Mitigation Agreement with East Bay Regional Park District for two (2) Years for predator management as mitigation for impacts associated with the Airport Perimeter Dike Improvements Project in the amount of \$78,750, subject to approval as to form and legality by the Port Attorney.