

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE 2941**

**ORDINANCE AMENDING THE FISCAL YEAR (FY)  
2019 BUDGET INCREASING THE FY 2019 CAPITAL  
IMPROVEMENT PROGRAM (CIP) APPROPRIATION  
BY \$650,000 TO BE FUNDED FROM CUMULATIVE  
UNRESTRICTED RESOURCES PURSUANT TO  
BPC POLICY NO. 90**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, Board of Port Commissioners (BPC) adopted BPC Policy No. 090, to establish a policy for the transfer of amounts between appropriated items in the budget in accordance with Section 86 of the Port Act, as well as within appropriated items; and

**WHEREAS**, in November 2016, the Board authorized staff to prepare the Chula Vista Bayfront (CVB) site for the import of up to 700,000 cubic yards of fill material to allow for future developments and raise the individual site elevations to improve drainage and create more resilient projects in the face of predicted sea level rise; and

**WHEREAS**, at the time it was anticipated the import of soil would save up to approximately \$15 million in future development costs; and

**WHEREAS**, approximately 220,000 cubic yards of soil has been imported to two development sites at the CVB temporarily raising the elevation of both sites roughly 7-feet to provide sufficient onsite soil to accommodate anticipated sea level rise and prepare for two planned developments: the Chula Vista Bayfront Resort Hotel & Convention Center development and the Sun Communities RV Park; and

**WHEREAS**, both sites were specified and constructed using standard grading configurations and storm water erosion control and sediment runoff prevention measures termed Best Management Practices (BMPs); and

**WHEREAS**, through extensive negotiations and favorable market conditions the initial contract amount to import this fill was \$44,500, which was performed under a direct negotiated contract with minimal change order capacity to address unforeseen conditions; and

**WHEREAS**, significant storm events occurred between November 29, 2018 and December 7, 2018 with unanticipated rainfall intensities and amounts; and

**WHEREAS**, according to on-site rainfall gages, the two storm events produced a total of 4.5 inches of rainfall. The first storm, dropping 1.1 inches of rain, saturated the soil; and

**WHEREAS**, the second storm dropped 3.4 inches of rain, with 2.6 inches occurring in a six-hour window, on the already saturated ground at the sites; and

**WHEREAS**, the rainfall and rainfall intensities during these two events overwhelmed the stormwater BMPs at both sites resulting in significant erosion damage to District property; and

**WHEREAS**, the original soil import contractor, Sierra Pacific West Inc., was onsite during the December 7, 2018 storm event attempting to mitigate damage to the sites but ceased operations due to lightning and safety concerns; and

**WHEREAS**, the contractor returned to the sites the day after the December 7, 2018 storm event and began cleaning up and making repairs to the site and to the stormwater BMPs, and it was immediately determined that the scope under their current contract did not address the magnitude of repairs and additional BMPs necessary to restore the sites and to prevent further damage; and

**WHEREAS**, in order to perform required clean up and repair damages that were caused by the noted storm events, and to provide additional BMPs in anticipation of future storm events, an action plan was developed to provide immediate repairs to the graded areas, revisions to the grading design, and additional BMPs were installed to minimize risk of further erosion damage to District property, unauthorized stormwater runoff, costly repairs, and possible regulatory citations and fines; and

**WHEREAS**, since the original contract with Sierra Pacific West, Inc. was a small, direct negotiated contract, there was insufficient change order capacity to address the required repairs and additional BMP preventative measures; and

**WHEREAS**, therefore, a new and immediate contract was deemed necessary; and

**WHEREAS**, the normal procurement process to award a new public works contract could not happen in the timeframe necessary to protect the District from future rain events, the first of which was anticipated to occur on December 25, 2018, therefore emergency action was authorized by the Executive Director on December 20, 2018; and

**WHEREAS**, the Board was notified through a Board Memo and ratified the declaration of emergency in its January 16, 2019 meeting.

**WHEREAS**, the District's insurance carrier, Factory Mutual Insurance Company, was contacted to determine if the cost of repairs was reimbursable, but "... the land (soil) is excluded property under the Policy. The Policy, therefore, cannot respond to costs to replace and regrade the land (soil)..."; and

**WHEREAS**, additional storm events occurred in January and February 2019 resulting in additional minor damage to the site and slowing the repair and additional BMP implementation efforts already underway; and

**WHEREAS**, the cost of the emergency action is approximately \$650,000. Combined, the cost of the original import contract and the emergency action equal approximately \$694,500, which equate to a cost of \$3.16 per cubic yard for the 220,000 cubic yards imported to the Chula Vista Bayfront; and

**WHEREAS**, this net cost is still significantly less than the \$15 million estimated in November 2016; and

**WHEREAS**, repairs are ongoing and continued implementation and maintenance of the BMP's are necessary to assure that District property is fully protected; and

**WHEREAS**, it is anticipated that the emergency measures will be completed in April 2019; and

**WHEREAS**, the current CIP budget for Site Preparation at the Chula Vista Bayfront is being used to fund the emergency action; and

**WHEREAS**, estimated costs of \$650,000 for these repairs exhausts the remaining available funds in the CIP budget; and

**WHEREAS**, current funds in the CIP project budget were planned for future needs and obligations including the ongoing efforts for the RIDA and RV Park projects, 30% design of Sweetwater and Harbor Parks, and the Urban Greening grant funded Path and Promenade project; and

**WHEREAS**, District staff recommends the Board authorize adding the \$650,000 repair action cost to the CIP budget for the Site Preparation at the Chula Vista Bayfront project; and

**WHEREAS**, the additional funds will be used to provide payment for the Emergency Stormwater Management at the Chula Vista Bayfront Project.

**NOW, THEREFORE,** the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. The FY 2019 budget is hereby amended to increase the FY 2019 Capital Improvement Program (CIP) appropriation by \$650,000 to be funded from cumulative unrestricted resources pursuant to BPC Policy No. 90

Section 2. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

  
By: ~~Assistant~~/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9<sup>th</sup> day of April 2019, by the following vote:

AYES: Bonelli, Castellanos, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: Malcolm, Zucchet

ABSENT: None.

ABSTAIN: None.

  
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Garry J. Bonelli, Chairman  
Board of Port Commissioners

ATTEST:

  
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Donna Morales  
District Clerk

(Seal)