

RESOLUTION 2013-32

RESOLUTION TO ADOPT FINAL MITIGATED NEGATIVE DECLARATION, ADOPT MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT FILING OF NOTICE OF DETERMINATION FOR TENTH AVENUE MARINE TERMINAL SHORE POWER PROJECT

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, the District has proposed the Tenth Avenue Marine Terminal Shore Power Project (Proposed Project), which proposes to install shore power equipment at the three berths at the Tenth Avenue Marine Terminal (TAMT) so that berthing cargo ships can use electrical power from the shore rather than from their own engines while at berth, in compliance with the California Air Resources Board Shore Side Power Rule; and

WHEREAS, the property which is subject to the Proposed Project consists of a portion of the existing TAMT which is located along the eastern shoreline of central San Diego Bay in the area bounded by Harbor Drive and Water Street and Terminal Street, approximately one-half mile south of downtown San Diego, California, within Planning District 4 of the Port Master Plan; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, et seq., and its implementing regulations, 14 California Code of Regulations Section 15000, et seq. ("CEQA Guidelines"), the District prepared a Draft Mitigated Negative Declaration ("Draft MND") for the Proposed Project which was made available for public review and comment as required by law on October 24, 2012; and

WHEREAS, the District received comments letters concerning the Draft MND from several agencies and organizations and the District has prepared written responses to all comments received on the Draft MND during the public comment period which raised environmental issues; and

WHEREAS, the District has determined that the comments received on the Draft MND did not contain any significant new information within the meaning of CEQA Guidelines section 15073.5 and therefore recirculation of the Draft MND is not required; and

WHEREAS, the District has prepared a Final Mitigated Negative Declaration ("Final MND"), which contains the information required by CEQA and the technical appendices, public comments and the District's responses to public comments on the Draft MND, and which has been filed with the Clerk of the Board of Port Commissioners ("Board"); and

WHEREAS, pursuant to Public Resources Code Section 21081.6(a)(1), the District has prepared a Mitigation Monitoring and Reporting Program, which is included as Chapter 3.0 of the Final MND and has been filed with the Clerk of the Board; and

WHEREAS, the Clerk of the Board has caused notice to be duly given of a public hearing in this matter in accordance with law, as evidenced by the affidavit of publication and affidavit of mailing on file with the Clerk of the Board; and

WHEREAS, all materials with regard to the Proposed Project were made available to the Board for its review and consideration of the Proposed Project including, but not limited to, the following:

1. The Draft MND and appendices, dated October 2012;
2. The Final MND and appendices, dated February 2013;
3. The Staff Report and Agenda Sheet, dated February 5, 2013;
4. The Mitigation Monitoring and Reporting Program set forth in Chapter 3.0 of the Final MND; and
5. All documents and records filed in this proceeding by interested parties.

WHEREAS, a duly noticed public hearing was held on February 12, 2013, before the Board, at which the Board received public testimony, reviewed and considered all testimony and materials made available to the Board regarding the Proposed Project; and

WHEREAS, having reviewed and considered all testimony and materials made available to the Board, including but not limited to the Final MND, the staff reports and all the testimony and evidence in the record of the proceedings with respect to the Proposed Project, the Board took the actions hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. The Board finds the facts recited above are true and further finds that this Board has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. The Board finds and determines that the applicable provisions of CEQA, its implementing State Guidelines, and District Guidelines have been duly observed in conjunction with said hearing and the considerations of this matter and all of the previous proceedings related thereto.

3. The Board finds and determines that:

A. The Final MND was presented to the Board, and the Board has fully reviewed and considered the information in Final MND, together with any comments received during the public review process, prior to approving the Proposed Project;

B. The Final MND is complete and adequate in scope and has been completed in compliance with CEQA and the State and District Guidelines for implementation thereof;

C. On the basis of the whole record before the Board, including the Initial Study and any comments received, there is no substantial evidence that the Proposed Project, as mitigated by the measures set forth in the Mitigation Monitoring and Reporting Program, will have a significant effect on the environment; and

D. The Final MND reflects the Board's independent judgment and analysis, and, therefore, the Final MND is hereby declared to be adopted in relation to the subject of this Resolution.

4. Pursuant to Public Resources Code Section 21081.6(a)(1) and CEQA Guidelines Section 15074(d), the Board hereby adopts and approves the Mitigation Monitoring and Reporting Program, which is included in Chapter 3.0 of the Final MND and is made a part hereof by this reference, with respect to the significant environmental effects identified in the Final MND, and hereby makes and adopts the provisions of the Mitigation Monitoring and Reporting Program as conditions of approval for the Proposed Project.

5. Based on the absence of evidence in the record of these proceedings as required by Public Resources Code Section 21082.2 for the purpose of documenting significant effects on the environment, the Board finds the Proposed Project will have impacts below the level of significance with regard to wildlife resources and, therefore, is hereby granted a "*de minimis*" exception in

accordance with Fish and Wildlife Code Section 711. Additionally, the assumption of adverse effect is rebutted on the basis of the above referenced absence of evidence in the record.

6. Pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075, the Clerk of the Board shall cause a Notice of Determination to be filed with the Clerk of the County of San Diego and the State Office of Planning and Research. Unless the Proposed Project is declared exempt herein and a Certificate of Filing Fee Exemption is on file, the Proposed Project is not operative, vested or final until the filing fees required pursuant to Fish and Game Code Section 711.4 are paid to the Clerk of the County of San Diego.

7. Pursuant to Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15074(c), the location and custodian of the documents and other materials which constitute the record of proceedings on which this Resolution is based is the Clerk, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92101.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12th day of February, 2013, by the following vote:

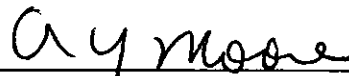
AYES: Malcolm, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

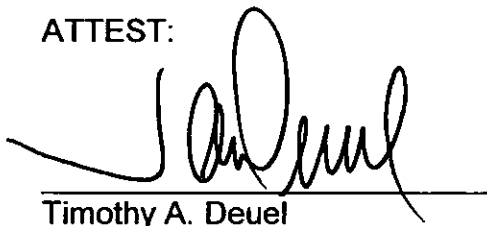
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)