

RESOLUTION 2016-142

RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND CITY OF NATIONAL CITY REGARDING A MARINE RELATED INDUSTRIAL OVERLAY ON DISTRICT PARCEL 028-007 AND THE EASTERN PORTION OF DISTRICT PARCEL 025-010-D (LOT K)

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 1, (“Port Act”); and

WHEREAS, National City Marine Terminal (“NCMT”) is operated by Pasha Automotive Services (“Pasha”) under a Terminal Operating Agreement (“TOA”) with the District and as part of that operation, Pasha also operates on numerous District-owned parcels under short-term agreements with the District, including District Parcel 028-007 and the eastern portion of District Parcel 025-010-D (Lot K); and

WHEREAS, Pasha has proposed a project (“Project”) that includes, among other components: (a) grading, paving and operating on a former tank farm site that is subject to the TOA; (b) closing and re-paving approximately five acres of portions of Quay Avenue, 28th Street, and 32nd Street, as well as changing the land use designation for these portions of the streets in the certified Port Master Plan from Street to Marine Related Industrial (“Street Closure Component”); (c) renewing existing and entering into new short-term use permits or agreements with the District on sites that are adjacent or near NCMT, including on District Parcel 028-007 and the eastern portion of District Parcel 025-010-D (Lot K); and

WHEREAS, as part of the Project, the eastern portion of District Parcel 025-010-D (Lot K) and District Parcel 027-047 are proposed to be incorporated into the certified Port Master Plan (the eastern portion of 025-010-D and District Parcel 027-047 are collectively referred to as “Uplands Properties” and inclusion of those properties into the certified Port Master Plan is referred to as the “Uplands Properties Component”); and

WHEREAS, the Project also proposes to designate the Uplands Properties as Commercial Recreation in the certified Port Master Plan and an overlay is proposed to be placed on District Parcel 028-007 and the eastern portion of District Parcel 025-010-D (Lot K), which would temporarily designate the properties as Marine Related Industrial until the earlier of seven years or the

Board of Port Commissioners (“BPC”) approves a development through the issuance of a Coastal Development Permit consistent with the Commercial Recreation use designation (“Overlay Component”); and

WHEREAS, in summary, the Project proposes a Port Master Plan Amendment (“PMPA”) for the Street Closure Component, the Uplands Properties Component and the Overlay Component; and

WHEREAS, the City of National City (“City”) and District have been working collaboratively and closely on a land use plan that encompasses several properties within both the District and City, including, but not limited to, the entirety of District Parcels 025-010-D (Lot K), 028-007 and 027-047 and said land use plan is intended to promote, in harmony, commercial, recreational and maritime uses (“Balanced Land Use Plan”); and

WHEREAS, on April 5, 2016, the City Council of the City was provided an update on the Balanced Land Use Plan and directed staff, in relevant part, to collaborate with the District on an environmental impact report that studies all related plans, projects, and public improvements comprehensively in both the City’s and District’s jurisdictions as part of the Balanced Land Use Plan; and

WHEREAS, on April 14, 2016, the BPC directed staff to further study the Balanced Land Use Plan and to initiate an Environmental Impact Report (“EIR”) under the California Environmental Quality Act (“CEQA”) for the Balanced Land Use Plan; and

WHEREAS, through the collaboration of the District and City (collectively, “parties”) on the Balanced Land Use Plan, certain additions and refinements have been made to the Balanced Land Use Plan and the District intends to return to the BPC in the fall of 2016 to obtain direction on preliminary project review for those added and refined elements; and

WHEREAS, pursuant to CEQA statutes and guidelines, the Project was analyzed in the EIR entitled “National City Marine Terminal Tank Farm Paving and Street Closures Project & Port Master Plan Amendment” (UPD #EIR-2014-188, SCH# 2014121046) and on September 8, 2016, the BPC adopted the Final EIR, Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program (collectively, “District EIR Certification”); and

WHEREAS, pursuant to the California Coastal Act, the BPC approved the PMPA, but only authorized District staff to submit the Street Closure Component portion of the PMPA to the California Coastal Commission for its consideration and certification and directed District staff to return to the BPC in 12-18 months with an update on discussions with the City and land uses for properties that would be subject to the Overlay Component and Upland Properties Components, including an update on the Balanced Land Use Plan and the EIR for the

Balanced Land Use Plan, which, if approved, would supersede the Overlay Component; provided, however, if a change of circumstances occurs making it so that Pasha may not legally operate on the parcels that would be subject to the Overlay Component or portions thereof, the BPC may immediately or soon thereafter authorize the submittal of the Overlay Component to the California Coastal Commission for its consideration and certification ("District PMPA Approval"; the District EIR Certification and the District PMPA Approval are herein referred to as "District Approvals"); and

WHEREAS, as part of the District PMPA Approval, the BPC also recognized that when the item returns to the BPC, the BPC may have several options including, but not limited to, authorizing submittal of the Uplands Properties Component and Overlay Component with the California Coastal Commission for its consideration and certification, or direct District Staff to return to the BPC at a later date with a further update, or rescind the BPC's approval of the Uplands Properties Component and Overlay Component; and

WHEREAS, the parties disagree on certain legal matters, including, without limitation, land use jurisdiction over the eastern portion of District Parcel 025-010-D and District Parcel 027-047, as well as whether the Project and the Balanced Land Use Plan are separate projects with independent utility; and

WHEREAS, based upon and in recognition of the parties continued efforts and collaboration on the Balanced Land Use Plan, which the parties believe will address the Overlay Component issues, the City supports the District Approvals ("City Support"); and

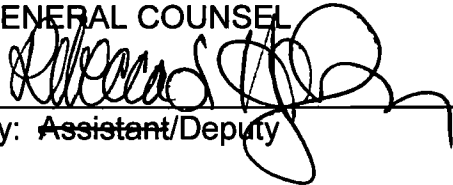
WHEREAS, the District understands that the City's Support includes foregoing opposition to the certification of EIR, the District's approval of the PMPA and authorization to submit the Street Closure Component of the PMPA to the California Coastal Commission; provided, however, if the Uplands Properties Component and the Overlay Component is ultimately authorized for submittal to the California Coastal Commission for its consideration, the City may express its concerns to the District and California Coastal Commission; and

WHEREAS, to memorialize the City Support and the BPC's approvals, the City and District propose to enter into a Memorandum of Understanding.

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

That the Executive Director or her designated representative is hereby authorized and directed to enter into that certain Memorandum of Understanding between the San Diego Unified Port District and the City of National City Regarding a Marine Related Industrial Overlay on District Parcel 028-007 and the Eastern Portion of District Parcel 025-010-D (Lot K).

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 8th day of September, 2016, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama.
NAYS: None.
EXCUSED: None.
ABSENT: None.
ABSTAIN: None.


Marshall Merrifield, Chairman
Board of Port Commissioners

ATTEST:


for Timothy A. Deuel
District Clerk

(Seal)