

**RESOLUTION 2016-36**

**RESOLUTION ADOPTING BOARD OF PORT  
COMMISSIONERS (BPC) POLICY NO. 775 –  
GUIDELINES FOR THE PROTECTION,  
ENCOURAGEMENT AND, WHERE FEASIBLE,  
PROVISION OF LOWER COST VISITOR AND  
RECREATIONAL FACILITIES**

**WHEREAS**, the California Legislature has declared the purposes and uses of tidelands and submerged lands matters of statewide concern and has, through the Harbors and Navigation Code Appendix I (Port Act), established the San Diego Unified Port District (District) as a public corporation and the boundaries thereto; and

**WHEREAS**, in enacting the Port Act, the Legislature proclaimed the District a trustee for the people of the State of California; and

**WHEREAS**, as trustee of the tidelands and submerged waters, the District is vested with the authority to hold and manage the tidelands and submerged lands in and around San Diego Bay "for the development, operation, maintenance, control, regulation, and management of the harbor of San Diego ... and for the promotion of commerce, navigation, fisheries, and recreation therein."; and

**WHEREAS**, the California Legislature also granted the District broad police powers to make and enforce all necessary rules and regulations governing the use of tidelands and submerged water and balance the needs of commerce, navigation, fisheries and recreation thereon; and

**WHEREAS**, the District has the express authority to manage the tidelands and submerged waters in accordance with the Port Act and the Public Trust doctrine and that authority, includes without limitation, the ability regulate, acquire, construct, erect, maintain or operate within the District all improvements or facilities necessary for the promotion and accommodation of commerce, navigation, fisheries and recreation upon the lands and waters under the control and management of the Board of Port Commissioners (Board); and

**WHEREAS**, the Port Act also requires the District to approve a Port Master Plan, which sets forth the public trust land and water uses within the District; and

**WHEREAS**, consistent with common law, the District has the affirmative duty to take the public trust into account and to protect public trust uses whenever

feasible, but in doing so, the District has the authority to choose between different public trust uses and balance the needs of the people of California; and

**WHEREAS**, the District is within the California Coastal Zone and, hence, is subject to the California Coastal Act as codified in the California Public Resource Code Section 30000 et seq. (Coastal Act); and

**WHEREAS**, consistent with the Port Act and the Coastal Act, the District has a certified Port Master Plan, which sets forth goals, policies, and objectives, as well as land and water uses within the District; and

**WHEREAS**, the Coastal Act does not dictate the exact policies or uses that must be in the Port Master Plan, but rather, grants the District the flexibility and autonomy to impose a variety of different policies and uses to further the Coastal Act; and

**WHEREAS**, one of the policies codified in Chapter 3 of the Coastal Act, is Section 30213, which states: "Lower cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided. Developments providing recreational opportunities are preferred"; and

**WHEREAS**, under the Coastal Act, the District has the ability to decide among numerous policies and possibilities on how it will advance the goals set forth in Section 30213; and

**WHEREAS**, Section 30213 of the Coastal Act prohibits the California Coastal Commission from dictating room rates as a condition of approval of a development or requiring the establishment of lower-cost room rates as a policy in the Port Master Plan; and

**WHEREAS**, leasehold revenues collected by the District are used to provide public benefits, including lower cost visitor and recreational facilities; and

**WHEREAS**, to date, the District and its tenants have developed and maintain an estimated 22 parks, six playgrounds, six fire rings, seven swim beaches, 22 miles of promenade, five fishing piers, four public viewing piers and platforms, three boat launch ramps, free mooring and docking and numerous public art displays, as well as provided public infrastructure, such as streets, sidewalks, public restrooms and landscaping; and

**WHEREAS**, Section 21 of the Port Act states that the Board may pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, District staff recommends that the Board adopt the proposed BPC Policy No. 775 – Guidelines for the Protection, Encouragement and, Where Feasible, Provision of Lower Cost Visitor and Recreational Facilities (Policy); and

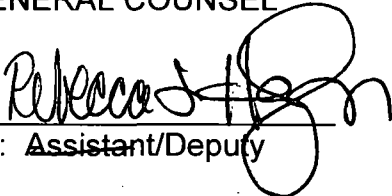
**WHEREAS**, the Policy is intended to affirm the District's goal to protect, encourage and, where feasible, provide such facilities consistent with the District's powers and authority under the Port Act and Public Trust Doctrine and further the goals of Section 30213 of the Coastal Act; and

**WHEREAS**, the Policy includes examples of lower cost visitor and recreational facilities, but pursuant to the Policy, not every project will necessarily protect or provide such facilities, and a mix of the same may be protected or provided.

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

That BPC Policy No. 775 – Guidelines for the Protection, Encouragement and, Where Feasible, Provision of Lower Cost Visitor and Recreational Facilities is hereby adopted and a copy is on file in Office of the District Clerk.

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 8<sup>th</sup> day of March 2016, by the following vote:

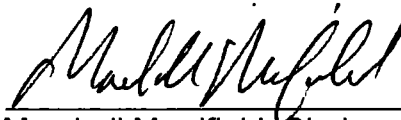
AYES: Bonelli, Merrifield, Malcolm, Moore, and Valderrama.

NAYS: None.

EXCUSED: Castellanos and Nelson.

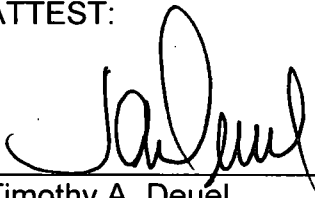
ABSENT: None.

ABSTAIN: None.



Marshall Merrifield, Chairman  
Board of Port Commissioners

ATTEST:



Timothy A. Deuel  
District Clerk

(Seal)