

RESOLUTION 2017-020

RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO NATIONAL CITY MARINE TERMINAL FOR GRADING, PAVING AND MARINE RELATED INDUSTRIAL USE OF THE FORMER TANK FARM PROPERTY

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, Section 87(a)(1) of the Port Act specifically provides that the tide and submerged lands of the District may be used for the construction, reconstruction, repair, maintenance and operation of wharves, docks, piers and all other works, buildings, facilities, utilities and structures necessary or convenient for the promotion and accommodation of commerce and navigation; and

WHEREAS, the National City Marine Terminal (NCMT) Tank Farm Paving Project (Project) involves (1) demolition, grading and paving; (2) hauling of excessive dirt to a District-approved location; (3) striping of the site; (4) installation of polemounted and perimeter light fixtures and security fencing; (5) improvements to the onsite drainage, such as bioswales to treat the surface drainage, new stormwater inlets and modification of existing stormwater inlets; (6) minor demolition activities including removal of fencing, curbs, gutters and asphalt; and (7) use of the Project site by Pasha for its import and export operations; and

WHEREAS, Pasha Automotive Services (Pasha) is the Project applicant and proponent; and

WHEREAS, the Project is located northwest of the intersection of Quay Avenue and West 28th Street in the City of National City and within the District; and

WHEREAS, the Project site is approximately 5.71-acre and is currently unused and unpaved; and

WHEREAS, Pasha has been operating at the NCMT since the early 1990s, and Pasha's NCMT operations include import, export, handling, and storage of motor vehicles; and

WHEREAS, currently, Pasha operates the NCMT under an existing Terminal Operator Agreement (TOA), and also uses several other lots in the vicinity of NCMT under short-term use permits (Tideland Use and Occupancy Permit, or Temporary Use Permit), which are typically for 5-year terms; and

WHEREAS, the TOA was granted on December 7, 2010, the initial term of the TOA is 10 years, January 1, 2011 to December 31, 2020, with conditions that Pasha invest in capital improvements in order to receive additional term extensions beyond December 2020, the additional term could extend the TOA to 2040, and the Project is identified in the TOA as a qualifying capital improvement project, due to its centralized location at NCMT and area for additional operations; and

WHEREAS, the Project would provide additional space, and increase efficiencies, for marine terminal operations, which primarily includes import, export, handling, and storage of motor vehicles, and the Project is consistent with the NCMT Optimization Study completed by Vickerman and Associates in September 2015; and

WHEREAS, implementation of the proposed Project would also allow for a potential increase to Pasha's employee count, and result in a potential change in annual throughput at the NCMT; and

WHEREAS, the Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea and the Project is fully consistent with California Public Resources Code Section 30000 et seq., and all applicable Coastal Act policies; and

WHEREAS, the demolition, grading and paving activities associated with the Project are considered "development" as defined in Section 30106 of the Coastal Act and the Project site is located in the Lumber Yards Subarea of Planning District 5, National City Bayfront, which is delineated on Precise Plan Map Figure 15 of the certified Port Master Plan (PMP) and the land use designation within the limits of the Project site is Marine Related Industrial, and Marine terminal operations are an allowed use under the Marine Related Industrial land use designation and therefore would be consistent with the certified land use designation and the certified PMP; and

WHEREAS, in accordance with the District's Coastal Development Permit (CDP) Regulations, the Project has been determined to be a "non-appealable" development because it is not considered an "excluded," "emergency," or "appealable" development; and

WHEREAS, pursuant to the California Coastal Act, the proposed development is considered "non-appealable" because it is not the type of "appealable" development listed in Section 30715 of Chapter 8 of the California

Coastal Act, which specifies the sole categories of development that may be appealed to the Coastal Commission; and

WHEREAS, the “non-appealable” category of development is supported by the record, including, without limitation, the EIR, the plain language of Section 30715, and the certified PMP; and

WHEREAS, the Project requires a non-appealable Coastal Development Permit and an application has been prepared for a non-appealable Coastal Development Permit to implement the Project; and

WHEREAS, the Board of Port Commissioners (BPC) finds that said application and attachments contain correct and accurate statements of fact; and

WHEREAS, the BPC has concluded that the Project conforms to the certified PMP; and

WHEREAS, the BPC considered the non-appealable Coastal Development Permit at the February 7, 2017 Board meeting; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA) and its implementing guidelines, the Project was analyzed in the NCMT Tank Farm Paving and Street Closures Project & Port Master Plan Amendment environmental impact report (EIR) (UPD #EIR-2014-188; SCH #2014121046), which was certified by the Board on September 8, 2016 by Resolution 2016-140; and

WHEREAS, staff has analyzed the whether the Project is in conformance with the certified EIR, and the BPC determines and finds that the Project was adequately analyzed in the EIR; and

WHEREAS, all applicable mitigation measures will be implemented for the Project and are included as special conditions of the CDP for the Project; and

WHEREAS, staff recommends the Board authorize issuance of a non-appealable CDP for the Project.

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

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

2. In general, the Project consists of (1) demolition, grading and paving; (2) hauling of excessive dirt to a District-approved location; (3) striping of

the site; (4) installation of polemounted and perimeter light fixtures and security fencing; (5) improvements to the onsite drainage, such as bioswales to treat the surface drainage, new stormwater inlets and modification of existing stormwater inlets; (6) minor demolition activities including removal of fencing, curbs, gutters and asphalt; and (7) use of the Project site by Pasha for its import and export operations at NCMT on approximately 5.71 acres in the City of National City.

3. The Project is located between the sea (as defined in the California Coastal Act) and the first inland continuous public road paralleling the sea and is fully consistent with Chapter 8 of the California Coastal Act (California Public Resources Code Sections 30000 et seq.) and applicable Coastal Act policies referenced therein.

4. The Project constitutes “development” under Section 30106 of the California Coastal Act as it will involve demolition, grading, paving, the construction of structures, and a change of intensity of use of the Project site, and accordingly, requires a Coastal Development Permit. In accordance with the District’s Coastal Development Permit Regulations, the Project is “Non-Appealable” because it does not qualify as an “Excluded,” “Appealable,” or “Emergency” development. Furthermore, pursuant to the California Coastal Act, the proposed development is considered “non-appealable” because it is not the type of “appealable” development listed in Section 30715 of Chapter 8 of the California Coastal Act, which specifies the sole categories of development that may be appealed to the Coastal Commission within the District’s jurisdiction. The non-appealable category of development is supported by the record, including, without limitation, the EIR, the plain language of Section 30715, and the certified PMP.

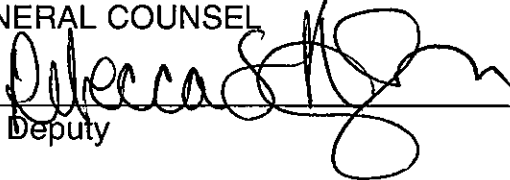
5. The Project site is located in the Lumber Yards Subarea of Planning District 5, National City Bayfront, which is delineated on Precise Plan Map Figure 15 of the certified PMP and the land use designation within the limits of the Project site is Marine Related Industrial, and Marine terminal operations, like those proposed by Pasha, are an allowed use under the Marine Related Industrial land use designation. The Project conforms to the planned land and water use designation and Precise Plan text and is thus, consistent with the certified PMP.

6. The Project was fully and adequately analyzed in the NCMT Tank Farm Paving and Street Closures Project & Port Master Plan Amendment EIR (UPD #EIR-2014-188; SCH #2014121046), which was certified by the Board on September 8, 2016 by Resolution 2016-140.

7. Based on the entire record available to the BPC and the findings set forth in this Resolution, the Executive Director or her designated representative is hereby authorized and directed to issue a Non-Appealable CDP for the portion of the Project, entitled “National City Marine Terminal Former Tank Farm – Grading, Paving and Marine Related Industrial Use.” Said Non-

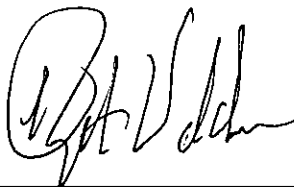
Appealable CDP shall require compliance with all the conditions set forth in the Non-Appealable CDP, including, but not limited to, the mitigation measures in the Mitigation Monitoring and Reporting Program; provided, however, as a condition of this approval, Pasha Automotive Services shall indemnify and hold the District harmless against all third-party legal challenges, claims, lawsuits, proceedings, and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District, related to the District's approval of this Non-Appealable CDP or other project entitlements or permits. Said indemnity and hold harmless condition is independent of any agreements by and between Pasha Automotive Services and the District.

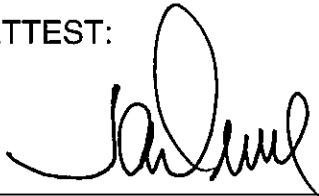
APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 7th day of February, 2017, by the following vote:

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


Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:

Timothy A. Deuel
District Clerk



(Seal)