

RESOLUTION 2017-138

RESOLUTION AUTHORIZING ISSUANCE OF NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO PASHA AUTOMOTIVE SERVICES, CONTINGENT ON FINAL ACCEPTANCE OF THE PORT MASTER PLAN AMENDMENT BY THE CALIFORNIA COASTAL COMMISSION, FOR THE CLOSURE, DEMOLITION, CONSTRUCTION, AND USE FOR MARINE TERMINAL OPERATIONS OF PORTIONS OF QUAY AVENUE, 28TH STREET, AND 32ND STREET

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, Pasha Automotive Services (Pasha), as the project applicant/proponent, has proposed the closure of Quay Avenue between Bay Marina Drive and 28th Street, 28th Street west of Quay Avenue, and 32nd Street west of Tidelands Avenue (Street Closures) and associated development including minor demolition, removal of the median, curbs, and gutter; relocation of a backflow valve; minor grading, repaving, and striping; relocation of the guard shack further east on 32nd Street, as well as operation of the area for marine terminal operations and related industrial operations (collectively, Project); and

WHEREAS, the streets that are subject to the Street Closures are principally devoted for internal circulation within the District boundaries and do not service areas outside of District boundaries but rather, internally service the terminal and surrounding marine terminal area; and

WHEREAS, due to tenant consolidation and reconfiguration, the streets that are subject to the Street Closures are no longer necessary for circulation and the Project would result in approximately 5 acres of marine related industrial operations; and

WHEREAS, the Project requires a Port Master Plan Amendment (PMPA) to change the land use designation of the Project site from "Street" to "Marine Related Industrial"; and

WHEREAS, pursuant to California Public Resources Code Sections 30714 and 30716 and Title 14, Section 13632(e) of the California Code of Regulations, in order for the PMPA to be fully certified the following must occur (1) approval of the PMPA by the Board of Port Commissioners (BPC); (2)

certification of the PMPA by the California Coastal Commission (CCC); (3) BPC adoption of the PMPA, as certified by the CCC; and (4) CCC acceptance of the BPC's adoption of the PMPA as consistent with its certification; and

WHEREAS, on September 8, 2016, the BPC, as Lead Agency under the California Environmental Quality Act (CEQA): (1) certified a Final Environmental Impact Report (EIR) entitled "National City Marine Terminal Tank Farm Paving and Street Closures Project & [National City Street Closures] PMPA" EIR (UPD #EIR-2014-188; SCH #2014121046), adopted Findings of Fact and a Statement of Overriding Considerations, and adopted a Mitigation Monitoring Reporting Program (MMRP) for the Project, which among other things analyzed the Project and associated PMPA and Coastal Development Permit (CDP); (2) conducted a public hearing and approved the PMPA; and (3) directed District staff to file the PMPA with the CCC for certification; and

WHEREAS, District staff subsequently filed the PMPA application with the CCC, and on August 9, 2017, the CCC held a public hearing and unanimously approved certification of the PMPA, as submitted, finding the PMPA to be consistent with Chapter 8 of the California Coastal Act (Coastal Act); and

WHEREAS, on September 12, 2017, the BPC held a public hearing and adopt the PMPA, as certified by the CCC; and

WHEREAS, the only step left for the proposed PMPA to become effective is for the CCC to accept the BPC's September 12, 2017 adoption of the PMPA as consistent with its certification (CCC Acceptance); and

WHEREAS, the Project site is located in the Lumber Yards Subarea of Planning District 5, National City Bayfront, which is delineated on Precise Plan Map 15 of the certified Port Master Plan (PMP) and once the CCC Acceptance is completed the land use designation within the limits of the Project site will be changed from "Street" to "Marine Related Industrial"; and

WHEREAS, marine terminal or related operations are an allowed use under the Marine Related Industrial land use designation and therefore, upon the CCC Acceptance, the Project would be consistent with the new land use designation; and

WHEREAS, Section 30106 of the Coastal Act defines "development" as, among other things, the placement or erection of any solid material on land, grading, change in the density or intensity of use of land, and construction, reconstruction, demolition, or alteration of the size of any road, and consequently, the closing, demolition and construction activities that are associated with the Project, as well as change in intensification of use on the Project site are considered "development," requiring a CDP; and

WHEREAS, pursuant to the District's 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 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 Coastal Act, which specifies the sole categories of development that may be appealed to the CCC; and

WHEREAS, the "non-appealable" category of development is supported by the record, including the plain language of Section 30715, the proposed PMPA, the District's CDP Regulations and the characteristics of the Project, including, without limitation, the fact that the streets subject to the Street Closures are principally devoted for internal circulation within the District boundaries; and

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

WHEREAS, the 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 Port Master Plan once the PMPA becomes effective through the CCC Acceptance; and

WHEREAS, the BPC considered the non-appealable CDP at the September 12, 2017 BPC meeting; and

WHEREAS, in accordance with CEQA and its implementing guidelines, the Project and proposed CDP were analyzed in the Final EIR, as certified by the BPC and the BPC has determined that the CDP and Project are adequately documented, described, disclosed, and analyzed in the EIR, and no further CEQA review is required.

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 the closure of Quay Avenue between Bay Marina Drive and 28th Street, 28th Street west of Quay Avenue,

and 32nd Street west of Tidelands Avenue and associated development including minor demolition, removal of the median, curbs, and gutter; relocation of a backflow valve; minor grading, repaving, and striping; relocation of the guard shack further east on 32nd Street, as well as operation of the area for marine terminal operations and related industrial operations.

3. The Project site is located in the Lumber Yards Subarea of Planning District 5, National City Bayfront, which is delineated on Precise Plan Map 15 of the certified Port Master Plan (PMP) and once the California Coastal Commission (CCC) accepts the BPC's approval of the PMPA, as certified by the CCC (CCC Acceptance), the land use designation within the limits of the Project site will be changed from "Street" to "Marine Related Industrial." Marine terminal or related operations are an allowed use under the Marine Related Industrial land use designation. Thereafter, the Project would be consistent with the certified PMP upon the CCC Acceptance.

4. The Project site is not identified as estuary/wetland on the 1975 Coastal Plan and must comply with the Chapter 8 policies of the California Coastal Act (Coastal Act). The Project expands marine related and industrial operations in support of Pasha's coastal-dependent operations at the National City Marine Terminal and is fully consistent with Chapter 8 of the Coastal Act.

5. Section 30106 of the Coastal Act defines "development" as, among other things, the placement or erection of any solid material on land, grading, change in the density or intensity of use of land, and construction, reconstruction, demolition, or alteration of the size of any road, and consequently, the closing, demolition and construction activities that are associated with the Project, as well as change in intensification of use on the Project site are considered "development," requiring a Coastal Development Permit (CDP). Pursuant to the District's CDP Regulations, the Project has been determined to be a "non-appealable" development because it is not considered an "excluded," "emergency," or "appealable" development. Additionally, pursuant to the 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 Coastal Act, which specifies the sole categories of development that may be appealed to the CCC. The "non-appealable" category of development is supported by the record, including the plain language of Section 30715, the proposed PMPA, the District's CDP Regulations and the characteristics of the Project, including, without limitation, the fact that the streets subject to the Street Closures are principally devoted for internal circulation within the District boundaries. Consequently, a non-appealable CDP is required for the Project. However, said, non-appealable CDP cannot be issued until the CCC Acceptance is completed.

6. In accordance with the California Environmental Quality Act (CEQA) and its implementing guidelines, the Project and proposed CDP were

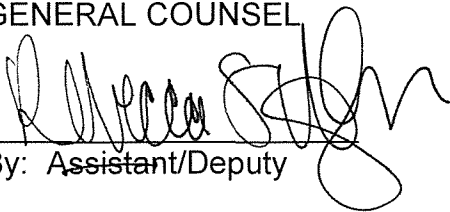
analyzed in the "NCMT Tank Farm Paving and Street Closures Project & [National City Street Closures] PMPA" EIR (UPD #EIR-2014-188; SCH #2014121046), which was certified by the BPC on September 8, 2016 by Resolution 2016-140 and the BPC hereby finds that the proposed CDP and Project are adequately documented, described, disclosed, and analyzed in the EIR, and no further CEQA review is required.

7. The BPC also hereby finds that the Project would facilitate improvements necessary for the promotion and accommodation of a maritime operation. The proposed BPC's action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operations of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed BPC actions are consistent with the Public Trust Doctrine.

8. 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 "National City Street Closures Project – Portions of Quay Avenue, 28th Street, and 32nd Street"; provided, however, said Non-Appealable CDP shall not be issued until the CCC Acceptance action as described herein is completed. Said Non-Appealable CDP shall require compliance with all the conditions set forth in the Non-Appealable CDP and 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. 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: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12th day of September 2017, by the following vote:

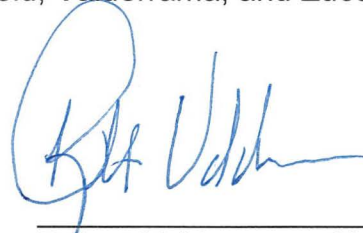
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Valderrama, and Zucchet

NAYS: None.

EXCUSED: Moore

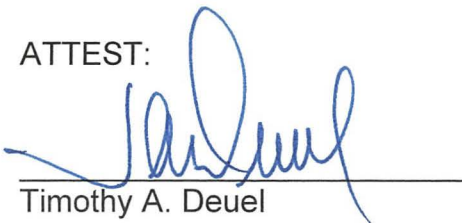
ABSENT: None.

ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)