

**DRAFT****SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE xxxx****ORDINANCE GRANTING A THIRTY (30) YEAR  
EASEMENT TO POSEIDON RESOURCES  
(CHANNELSIDE) LP FOR ENVIRONMENTAL  
MITIGATION PURPOSES IN CONNECTION WITH  
THE OTAY RIVER ESTUARY RESTORATION  
PROJECT ADJACENT TO THE SAN DIEGO BAY  
NATIONAL WILDLIFE REFUGE IN SOUTH SAN  
DIEGO BAY**

**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(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

**WHEREAS**, Section 21 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five (5) years shall be made by ordinance; and

**WHEREAS**, the Otay River Estuary Restoration Project ("ORERP") is a restoration project located in south San Diego Bay that was planned in partnership with the United States Fish & Wildlife Service ("USFWS") and Poseidon Resources (Channelside) LP, a Delaware limited partnership ("Poseidon"); and

**WHEREAS**, the goals of the ORERP are to implement the habitat restoration objectives of the USFWS 2006 San Diego Bay National Wildlife Refuge Comprehensive Conservation Plan and fulfill the applicable terms and conditions of the permits issued to Poseidon by the California Coastal Commission and San Diego Regional Water Quality Control Board for the Carlsbad Desalination Plant Project; and

**WHEREAS**, the ORERP spans two non-contiguous sites within the South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge; and

**WHEREAS**, the first restoration site, which is located near the Otay River Floodplain, is in the northern [non-District owned] portion of Pond 20, and the second restoration site, which is located at Pond 15, is adjacent to the Chula Vista Bayfront Planning District; and

XXXX

**WHEREAS**, in order to connect the restored habitat to the San Diego Bay, the northern levee of the site adjacent to Pond 15 and as shown on Attachment A to the corresponding Agenda to which this ordinance relates on file with the Office of the District Clerk will be breached to allow water to circulate throughout the habitat; and

**WHEREAS**, the berm breach will impact District tidelands and be completed pursuant to a separate administratively approved Right of Entry License Agreement between the District and Poseidon in the form attached as Attachment C to the corresponding Agenda to which this ordinance relates on file with the Office of the District Clerk; and

**WHEREAS**, following completion of the berm breach in accordance with the Right of Entry License Agreement, Poseidon will require an easement from the District covering 1.2 acres of submerged tidelands for the completed berm breach, resulting inlet channel, and continuing access, repair, monitoring, and maintenance of the same; and

**WHEREAS**, staff has negotiated a 30-year Easement for Environmental Mitigation Purposes with Poseidon in the form attached as Attachment B to the corresponding Agenda to which this ordinance relates on file with the Office of the District Clerk; and

**WHEREAS**, staff recommends the Board adopt an Ordinance authorizing approval and execution of the Easement for Environmental Mitigation Purposes between the District and Poseidon conditioned upon Poseidon completing the aforementioned berm breach and related work pursuant to and in accordance with the terms of the Right of Entry License Agreement that will be approved administratively by District staff.

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. Conditioned upon Poseidon completing the aforementioned berm breach and related work (the "Work") pursuant to and in accordance with the terms of the Right of Entry License Agreement to be administratively approved by District staff, the 30-year Easement for Environmental Mitigation Purposes with Poseidon Resources (Channelside) LP, covering 1.2 acres of submerged tidelands for the completed berm breach, resulting inlet channel, and continuing access, repair, monitoring, and maintenance purposes, is hereby granted.

Section 2. The Executive Director or his designated representative is hereby directed to execute said Easement for Environmental Mitigation Purposes attached as Attachment B to the corresponding agenda sheet to which this ordinance relates; provided that if the Work has not been completed on or before

XXXX

May 31, 2028, then the Easement as well as the authority granted hereunder shall be automatically null and void without the need for further action by the Board.

Section 3. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

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 14<sup>th</sup> day of June 2022, by the following vote: