

DRAFT

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE XXXX

ORDINANCE FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINES SECTIONS 15301, 15302 AND 15303 AND AUTHORIZING AMENDMENT NO. 1 TO TIDELANDS USE AND OCCUPANCY PERMIT WITH NEW CINGULAR WIRELESS PCS, LLC APPROVING ADDITIONAL SMALL CELL SITE(S) FOR POTENTIAL INSTALLATION OF WIRELESS COMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHT OF WAY

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, New Cingular Wireless, PCS, LLC a Delaware limited liability company (New Cingular), a subsidiary of AT&T Mobility Corporation, has a Tidelands Use and Occupancy Permit (TUOP) with the District; and

WHEREAS, the term of the TUOP is 5 years with two 5-year extension options and conditionally grants New Cingular the requisite property rights to install small cellular wireless communications facilities (WCF) on two specific streetlights within the public right-of-way (PROW) on District tidelands; and

WHEREAS, recent advancements in wireless technology, namely “Fifth Generation” (commonly called “5G”) are often deployed as “small cells”, which are lower powered and smaller than typical WCF and are often deployed on streetlights, utility poles, or similar infrastructure in the PROW; and

WHEREAS, New Cingular has requested to amend their TUOP to add an additional location for the potential installation of a small cell WCF on a streetlight

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within the PROW located off North Harbor Drive, referred to as “Site 3”, and to relocate “Site 2” (as currently set forth on Exhibit A to the TUOP) off Kettner Boulevard to a new streetlight across the street due to better undergrounding power availability at the new site; and

WHEREAS, each of the sites will constitute a “Pre-Selected Site” under the TUOP; and

WHEREAS, with BPC’s approval, the TUOP will be amended by deleting the existing Exhibit A in the TUOP and inserting in its place an updated Exhibit A with the new Pre-Selected Sites (see Attachment B to the corresponding agenda sheet); all other terms, covenants, and conditions of said TUOP shall remain in full force and effect; and

WHEREAS, prior to making any installations on any of the Pre-Selected Sites, New Cingular must first obtain all requisite permits and approvals required under Port Code Article 15 – Regulation of Wireless Communication Facilities on District Tidelands, as well as under all other applicable laws with respect to any Pre-Selected-Site, after which it becomes an “Activated Site” under the TUOP available for installations; and

WHEREAS, prior to a Pre-Selected Site becoming an Activated Site available for installations, New Cingular has no right to use the Pre- Selected Site and the District is free to grant to third parties rights to the same location; and

WHEREAS, staff is requesting the Board of Port Commissioners adopt an Ordinance authorizing the deletion of the existing Exhibit A to the TUOP with New Cingular and inserting in its place an updated Exhibit A with three Pre-Selected Sites for potential installation of small-cell WCFs.

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

Section 1. That, based on the entire administrative record, the Board of Port Commissioners finds that the Board of Port Commissioners action is exempt under the California Environmental Quality Act, including but not limited to, CEQA Guideline Sections 15301 and 15303.

Section 2. The Executive Director or his/her designated representative is hereby authorized to replace the current Exhibit A to the Tidelands Use and Occupancy Permit for New Cingular Wireless PCS, LLC in its entirety with the Exhibit A substantially in the form attached as Attachment B to the agenda sheet to which this Ordinance relates on behalf of the San Diego Unified Port District.

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

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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 11th day of April 2023, by the following vote: