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San Diego Unified Port District

Document No. **65905**Filed **DEC 22 2016**

Office of the District Clerk

**MEMORANDUM OF AGREEMENT
BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND
THE SAN DIEGO UNIFIED PORT DISTRICT REGARDING
THE ESTABLISHMENT OF A MARINE PLANNING PARTNERSHIP
FOR THE STATE-OWNED TIDELANDS AND SUBMERGED LANDS
LOCATED IN THE PACIFIC OCEAN OFFSHORE SAN DIEGO COUNTY**

I. INTRODUCTION

Parties

The California State Lands Commission (Commission) consists of two Constitutional Officers; the Lieutenant Governor and the State Controller, and the Governor's Director of Finance. Established in 1938, the Commission manages 4 million acres of tide and submerged lands and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. These lands, often referred to as sovereign or public trust lands, stretch from the Klamath River and Goose Lake on the north to the Tijuana Estuary and Colorado River on the south, and from the Pacific Coast 3 miles offshore on the west to world-famous Lake Tahoe on the east, and includes California's two longest rivers, the Sacramento and San Joaquin.

The San Diego Unified Port District (Port) is a public corporation established in 1962 by an act of the California State legislature and approved by the voters of the five member cities of the District. The enabling legislation, subsequent amendments, and other actions conveyed certain tide and submerged lands within San Diego Bay and the oceanfront within the City of Imperial Beach to the Port in trust for the people of the State of California, to further the development of commerce, navigation, fisheries and recreation. The Port's five member cities are Chula Vista, Coronado, Imperial Beach, National City and San Diego. The District is governed by a seven-member Board of Port Commissioners appointed by the member cities. The Port's jurisdiction covers approximately 2,500 acres of land and 3,400 acres of water within these cities.

National and Regional Context

In 2010, the President issued Executive Order 13547, which established the National Ocean Policy (Policy) and its companion National Ocean Council (Council). The Policy calls for the use of coastal and marine spatial plans to enable a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to managing sustainable multi-usages across sectors and to improve the conservation of the ocean, coasts, and the Great Lakes. The Council's National Ocean Policy Implementation Plan furthered this goal by creating nine Regional Planning Bodies (RPBs) that bring together federal, state, tribal, local, and regional decision makers to develop marine spatial plans and aid the federal agencies responsible for marine resource management. The State

of California is a participant in the West Coast Governors Alliance on Ocean Health, the Regional Ocean Partnership that constitutes the West Coast RPB.

At its December 18, 2015 meeting, the Commission directed staff to develop a pilot framework to engage in a comprehensive, ecosystem-based, stakeholder-driven, resource management partnership with the Port for state-owned tidelands and submerged lands located in the Pacific Ocean offshore San Diego County.

The Commission and the Port, collectively referred to hereafter as the "Parties", anticipate that this area would be the starting point for developing and refining the ultimate boundaries of the pilot framework area, a geographically discrete area in the southern part of the state which includes areas leased by the Commission, areas granted to local trustees, Environmentally Sensitive Habitat Areas, Marine Protected Areas designated under the Marine Life Protection Act of 1999, and other designations and uses that will help inform the process. The final boundaries will be based on all of the following:

- Stakeholder input
- Selected resource use sectors
- Scientific information
- Other factors identified during the planning process

The effort the Parties are undertaking aligns with the marine conservation and resource management goals of the National Ocean Policy and seeks to develop a decision-support framework and spatial analysis tool specific to the San Diego offshore region. While the Parties will lead the San Diego process, it will include representative perspectives from federal, state, local, and tribal governments as well as non-governmental stakeholders. Consistent with the West Coast RPB approach, the planning will be localized in its geographic scope and definition of planning goals. However, it will differ from the West Coast RPB in its adherence to voluntary participation and adoption for the Parties, rather than the compulsory implementation for federal agencies inherent in the outcome of the RPB process.

The value of these types of planning efforts has been recognized at the state and local levels and the pilot framework is expected to serve as a model for future co-management collaborations between the Commission and its local grantees. The planning effort is consistent with, and supports, the Port's Integrated Planning Vision and Guiding Principles and goals of the Port's Compass Strategic Plan.

II. PURPOSE AND OBJECTIVES

The purpose of this Memorandum of Agreement (MOA) is to form and memorialize a collaborative partnership between the Parties to effectively plan for use of the ocean space and local trust grantee participation in management thereof. The planning effort would include development of a pilot-scale marine decision-support framework and spatial analysis tool in coastal waters off San Diego County.

The Parties will develop a process to acquire and share comprehensive environmental baseline data, environmental analyses, impact assessments, conservation opportunities, socioeconomic research, and other information pertaining to the pilot planning area. This process will allow for scientifically-informed decision making while maintaining consistency with applicable state, federal, and local laws, regulations, and policies. This MOA also describes the Parties' commitment to transparent, robust public engagement during all phases of framework development. The MOA will facilitate coordination between the Parties to develop and implement a comprehensive strategy that would reduce the potential for conflict among various Public Trust consistent uses, resources, and values.

The Parties will collaborate to achieve the following objectives:

1. Develop a Pilot-Scale Marine Decision-Support Framework

- a) Develop a multi-sector, spatially referenced, marine planning framework that takes into account the interests and needs of the Parties to continue to champion, and balance, existing and emerging water-related commercial activities, such as the Blue Economy, with environmental protection, ocean health, climate resiliency, and social equity.
- b) Protect and enhance, where feasible, cultural and biological resources, using the partnership to enhance awareness and dialogue around culturally and ecologically important marine resources.

2. Develop and Share a Spatial Analysis Tool

- a) Facilitate streamlined evaluation and consideration of projects or activities in the planning area by creating a GIS-based spatial analysis tool that identifies the location of existing and emerging sectors, potential conflict areas, and areas of mutual benefit.
- b) Encourage resource users to use the spatial analysis tool and accompanying data to help ensure proposed projects minimize conflict and maximize multi-sector co-benefits.

3. Develop a Pilot-Scale Framework for Local Trust Grantee Participation in Management of Ocean Areas

- a) Facilitate efficient and integrated management of the Bay and ocean areas by maximizing coordination and communication, recognizing that many sectors overlap both areas.

4. Facilitate Stakeholder Engagement

- a) Maximize transparency, collaboration, integration of best available science, and stakeholder participation to ensure development of a decision-support framework and spatial analysis tool that is relevant, balanced, and user-friendly.

III. PROCESS

1. The Parties will gather existing information from their respective institutions relevant to the pilot area and the resource sectors therein.
2. The Parties will coordinate, share, and combine resources and data to support and prepare the decision-support framework and spatial analysis tool, while identifying and seeking to fill research gaps through a combination of outreach and new research efforts.
3. The Parties will outreach to federal, state and local agencies, Tribes, non-governmental organizations, industry, community organizations, utilities, universities, fishing interests, the military and other stakeholder groups to benefit the process of developing the decision-support framework.
4. The Parties will create and convene working groups comprised of the aforementioned stakeholders to share, create, and analyze resources and data to assist the development and preparation of the spatial analysis tool.
5. The Parties will hold public meetings and use other public engagement techniques to achieve transparency, share process and tool development updates, and elicit input and feedback from the community, stakeholders, and the public.
6. The Parties will use best available science to inform process and tool development, and enlist a scientific peer-review of work products to ensure data-driven decision making.
7. The Parties will create and carry out an implementation plan for use of the developed decision-support framework and spatial analysis tool for resource management and lease authorizations.

IV. AUTHORITY TO ENTER INTO AGREEMENT

- A. California State Lands Commission Authority: Public Resources Code sections 6001, et seq.
- B. San Diego Unified Port District: Harbors & Navigations Code, Appendix I.

V. GENERAL PROVISIONS

- A. Nothing in this MOA is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of the Port or Commission. Specifically, nothing in this MOA shall be construed as limiting the Commission's exercise of its approval authority or discretion over any proposal or development affecting sovereign lands.
- B. Nothing in this MOA binds the Port or Commission to perform beyond their respective authorities.

- C. Nothing in this MOA requires the Port or Commission to assume or expend any funds in excess of available appropriations authorized by law.
- D. The respective mission requirements, funding, personnel, and other priorities of the Port or Commission may affect their respective abilities to fully implement all the provisions identified in this MOA.
- E. Specific activities that involve the transfer of money, or services between the Parties may require execution of separate agreements or contracts.
- F. Nothing in this MOA is intended to or shall be construed to restrict the Port, Commission, or other agencies or departments from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- G. Any information furnished between the Parties under this MOA is potentially subject to the California Public Records Act (Government Code section 6250, et seq.). The Parties agree to consult one another prior to releasing potentially privileged or exempt documents and to cooperate in good faith to assert all such privileges and exemptions permitted by California Public Records Act.
- H. Every provision in this MOA is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.
- I. All cooperative work under the provisions of this MOA will be accomplished without discrimination against any employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, in accordance with Article 1 (commencing with Section 12940) of Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government Code and other state antidiscrimination laws, for any use or service in connection with those actions.
- J. Amendments or supplements to this MOA may be proposed by the Port or Commission and shall become effective upon written approval of both Parties.
- K. The Port or Commission may terminate its participation in this MOA at any time through written notification to the other Parties at least thirty days prior to termination.
- L. This MOA shall become effective upon signature by the Parties. This MOA may be executed in one or more counterparts, each of which will be considered an original document. The effective date shall be the date of the last signature as shown below, excepting subsequent amendments and addition of counterparts.

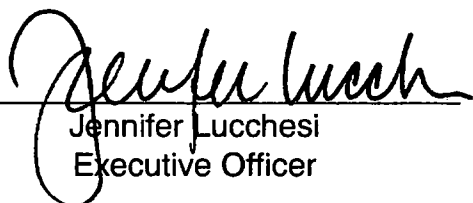
- M. This MOA is intended to facilitate cooperation among the Parties. It is not a contract for acquisition of supplies or services; it is not legally enforceable; and it does not create any legal obligation of or between any of the Parties or create any private right or cause of action for or by any person or entity.

VI. IMPACT ON EXISTING AUTHORITIES

Nothing in this MOA, and nothing in the planning framework, removes, limits, or otherwise affects the rights or interests of tribal governments, or state, federal, or local regulatory agencies, and does not affect or supersede existing authorities that may relate to resources or lands in the planning area.

California State Lands Commission

Date: 11/08/2016

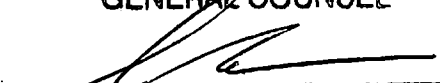

Jennifer Lucchesi
Executive Officer

San Diego Unified Port District

Date: 11/28/16


Randa Coniglio
Chief Executive Officer/Director

Approved as to form and legality:
GENERAL COUNSEL


By: Simon M. Kann, Deputy

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Reference Copy
65905**RESOLUTION 2016-159****RESOLUTION APPROVING MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE SAN DIEGO UNIFIED PORT DISTRICT REGARDING THE ESTABLISHMENT OF A COLLABORATIVE MARINE PLANNING PARTNERSHIP FOR THE STATE-OWNED TIDELANDS AND SUBMERGED LANDS LOCATED IN THE PACIFIC OCEAN OFFSHORE SAN DIEGO COUNTY**

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 1, (Port Act); and

WHEREAS, in accordance with the purposes of the District, staff recommended the District enter into a Memorandum of Agreement (MOA) with the California State Lands Commission (Commission) to memorialize a collaborative partnership between the Commission and the District to effectively plan for use of the ocean space and to include local trustee grantee's participation in management of coastal waters off San Diego County in an area to be determined based on further discussions; and

WHEREAS, the value of Coastal and Marine Spatial Planning (CMSP) efforts has gained valuable recognition at the state and local levels and the pilot marine decision-support framework is anticipated to serve as a model for future co-management collaborations between the Commission and its local trustee grantees; and

WHEREAS, for the District, the MOA provides the opportunity to have a "seat at the table" and a leading voice in the planning for coastal and ocean resources of which the District is both intimately familiar and invested; and

WHEREAS, the marine spatial planning effort is consistent with, and supports, the District's Integrated Planning Vision and Guiding Principles and goals of the District's Compass Strategic Plan; and

WHEREAS, the MOA includes the Commission's and the District's commitment to transparent, robust public engagement during all phases of framework development; and

WHEREAS, the draft MOA contemplates that the District and the Commission will cooperatively start discussing a potential plan to develop a

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pilot-scale marine decision-support framework; develop and share a marine spatial analysis tool; develop a pilot-scale framework for local trustee grantee participation in management of ocean areas; and to facilitate stakeholder engagement; and

WHEREAS, approval of the MOA does not constitute an "approval" of a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because it would not result in any direct or indirect physical changes to environment; and

WHEREAS, it is the District's interpretation of the draft MOA that no adoption of an ocean planning document (like a master plan) or development can or will occur until after environmental review is conducted under CEQA, which is the intent of the parties; rather, the MOA, allows the District and Commission to gather information and start a discussion regarding potential planning efforts; and

WHEREAS, additionally, the District retains sole and absolute discretion to, among other things (i) prepare, adopt, or disapprove any CEQA analysis; (ii) adopt any and all feasible mitigation measures to lessen potentially significant environmental effects; (iii) modify the project, adopt any alternatives to the same, including the "no project" alternative, and adopt or refuse to adopt a Statement of Overriding Consideration, if applicable, in connection with the CEQA process. Pursuant to the MOA, the parties also agree that the agreement does not commit either party to a specific course of action, and therefore, the Board of Port Commissioners still has the ability to reject or approve any formulated plan or project.

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

That the Executive Director or her designated representative is hereby authorized on behalf of the San Diego Unified Port District to execute the Memorandum of Agreement between the California State Lands Commission and the San Diego Unified Port District regarding the establishment of a marine planning partnership for the State-owned tidelands and submerged lands located in the Pacific Ocean offshore San Diego County.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Assistant/Deputy

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PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 13th day of October, 2016, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama.

NAYS: None.

EXCUSED: Bonelli.

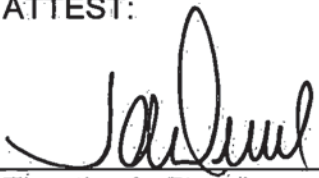
ABSENT: None.

ABSTAIN: None.



Marshall Merrifield, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)