

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING ISSUANCE OF NON-APPEALABLE COASTAL DEVELOPMENT PERMIT FOR CHULA VISTA BAYFRONT SWEETWATER PEDESTRIAN/BIKE PATHWAY PROJECT**

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, the District, as the applicant and project proponent, proposes the construction, operation and maintenance of a portion of the Sweetwater Pathway (Path), a multi-use pedestrian and bicycle pathway and bridge, that is within its jurisdiction on the Chula Vista Bayfront (CVB), (collectively, Project); and

WHEREAS, the Path is in both the jurisdictions of the District and City of Chula Vista (City), is a key component of the Sweetwater Park (Park), would provide a pedestrian route from existing and proposed developments between the north and south of the CVB and an important connection to the existing Bayshore Bikeway cycle path; and

WHEREAS, in 2017, the District received funding in the form of an Urban Greening Grant (Grant) from the California Natural Resources Agency (CNRA) to facilitate the design and construction of the Path and due to Grant timing obligations, the District and City must expedite entitlement of the Path in advance of the Park; and

WHEREAS, for the purpose of this approval, “Project” means the portion of the Path within the District’s jurisdiction, “City Project” means the portion of the Path within the City’s jurisdiction and Path means the entire Path within both jurisdictions; and

WHEREAS, Section 30106 of the California Coastal Act defines “development” as, among other things, the placement or erection of any solid material on land, grading, and the change in the density or intensity of use of land, and consequently, the Path, is considered “development,” requiring Coastal Development Permits (individually, CDP and collectively, CDPs); and

WHEREAS, due to the location of the Path, it requires issuance of three CDPs: 1) a non-appealable CDP for the Project, which is the majority of the Path and is the subject of this resolution and corresponding agenda sheet (the Project); 2) an appealable CDP for the City’s Project to be subsequently issued

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by the City for a smaller portion of the Path and pedestrian/bicycle bridge crossing; and 3) the Costa Vista RV Resort (RV Resort) CDP authorized by the Board on September 12, 2018 (Board Resolution No. 2018-0390) that provides the northerly CVB connection to the Bayshore Bikeway and Bay Boulevard for the Project; and

WHEREAS, in May 2010, the Board of Port Commissioners (BPC), as lead agency under the California Environmental Quality Act (CEQA) adopted Resolution No. 2010-78, certifying a Final Environmental Impact Report (Final EIR) (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), adopting findings of fact, a statement of overriding considerations, and a Mitigation Monitoring and Reporting Program (MMRP) as well as adopted Resolution No. 2010-79, approving the Port Master Plan Amendment (PMPA) for the CVB Master Plan and authorizing the PMPA be submitted to the California Coastal Commission (CCC) for its certification; and

WHEREAS, in August 2012, the CCC unanimously certified the PMPA and in doing so made minor changes to the PMPA and incorporated the CVBMP Development Policies (Clerk Document No. 59407) and Public Access Plan (PAP) (Clerk Document No. 59408); and

WHEREAS, in April 2018, the BPC adopted a Second Addendum to the Final EIR (Clerk Document No. 68404) that found the PMPA including the Development Policies and PAP, as certified by the CCC was a minor change to the original PMPA approved by the BPC and was consistent with the Final EIR prepared for the CVBMP; and

WHEREAS, the entire Path has been studied as one project consistent with CEQA; and

WHEREAS, the Project is located on four parcels identified as Parcels S-2, SP-2, HP-1 (N), and H-1A (S) in the CVB Sweetwater District of Planning District 7, which is delineated on Precise Plan Map Figure 19 of the certified Port Master Plan (PMP); and

WHEREAS, the Project is listed as Project Nos. 2: "Sweetwater Park (S-2)"; 5: "Sweetwater District Roadway and Infrastructure Improvements"; and 6: "Sweetwater District Wetland and Upland Habitat Enhancement (SP-1 & SP-2)" in the PMP Project List (Table 19); and

WHEREAS, the Path is required to comply with all applicable mitigation measures that are specified in the Final EIR MMRP and all applicable policies and implementation measures in the Development Policies, PAP, Natural Resources Management Plan (NRMP) (Clerk Document No. 65065), and the CVB Settlement Agreement (Clerk Document No. 56523); and

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WHEREAS, Special Conditions are incorporated into the District's proposed CDP to ensure Project conformance with all applicable mitigation measures, policies, and implementation measures including the relevant development policies relating to environmental management, climate change and sea level rise, wildlife protection, landscaping, lighting and illumination, noise, pathway design, storm water and urban runoff quality, public engagement, public access, and circulation and pedestrian orientation; and

WHEREAS, a Restoration and Enhancement Alternatives report prepared by Merkel and Associates (Merkel) dated April 2017, on file with the Office of the District Clerk, containing a sea level rise analysis prepared by Environmental Science Associates concluded that the Path will not be impacted by sea level rise through the year 2100 and hence, are consistent with the PMP and applicable California Coastal Act provisions; and

WHEREAS, a Biological Impact Analysis Report prepared by Merkel for the Path was conducted in November 2018, on file with the Office of the District Clerk, which included the quantity of anticipated impacts to vegetation communities and consequently, the Path will provide mitigation to permanent impacts consistent with the mitigation identified within the Final EIR; and

WHEREAS, in accordance with the District's CDP Regulations, the Project constitutes non-appealable development under Section 7.d.(3) of the District's CDP Regulations (Regulations): Non-appealable developments are those not classified in the Regulations in Section 7.d.(1) as "Excluded," in 7.d.(2) as "Emergency," or in 7.d.(4) as "Appealable"; and

WHEREAS, pursuant to Coastal Act Section 30715 and Sections 7.d.(3) and (4) of the Regulations, recreational pathways and associated grading and landscaping are not listed as an appealable development, requiring an appealable CDP; and

WHEREAS, the "non-appealable" category of development is supported by the record, including the plain language of Section 30715, the PMPA, the District's CDP Regulations and the characteristics of the Project; 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 PMP; and

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WHEREAS, the BPC considered the non-appealable CDP at the December 11, 2018 BPC meeting; and

WHEREAS, in accordance with CEQA and its implementing guidelines, the Path, including the Project and proposed CDP were analyzed in the Final EIR and Second Addendum, 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 development, operation and maintenance of a bicycle and pedestrian pathway and associated mitigation, grading, and landscaping.

3. The PMP land use designations within the limits of this portion of the Project are "Park/Plaza" (S-2, HP-1 (N), and H-1A (S)), "Promenade" (S-2, HP-1 (N), and H-1A (S)), and "Wetlands" (SP-2) and the portion of the Project within the District's jurisdiction is consistent with said land use designations and the Sweetwater District Precise Plan text and is therefore, consistent with the certified PMP which includes, by reference, the Development Policies, PAP, and the NRMP.

4. Pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the Final EIR and Second Addendum, the BPC finds that approval of the Project does not require further environmental review as: 1) no substantial changes are proposed by the Project and no substantial changes have occurred that require major revisions to the Final EIR and Second Addendum due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the Final EIR and Second Addendum, (b) identifies significant impacts would not be more severe than those analyzed in the Final EIR and Second Addendum, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required.

5. As conditioned, the BCP further finds that the Project is consistent with the certified PMP and Chapters 3 and 8 of the Coastal Act.

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6. The BPC also hereby finds that the Project will enhance public access and public recreation by providing accessible recreation trails connecting the wider area to the bayside and surrounding parks as envisioned by the certified PMP which includes the Development Policies and PAP.

7. The BPC's action complies with Section 87 of the Port Act which allows for public recreation uses and purposes, and the construction, maintenance, and operation of parks, public recreation facilities, and appliances incidental, necessary, or convenient for the promotion and accommodation of such uses. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed 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 Chula Vista Bayfront Sweetwater Pedestrian/Bike Pathway project.

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 December 2018, by the following vote: