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Title: RESOLUTION GRANTING INDEMNITY PURSUANT TO A CONSTRUCTION MAINTENANCE AGREEMENT WITH THE SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY FOR THE SAN DIEGO UNIFIED PORT DISTRICT'S IMPLEMENTATION OF THE SWEETWATER BICYCLE PATH AND PROMENADE PROJECT AND E STREET AT-GRADE CROSSING IN CHULA VISTA.

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Date	Ver.	Action By	Action	Result
10/9/2018	1	Board of Port Commissioners	adopted	

DATE: October 9, 2018

SUBJECT:

RESOLUTION GRANTING INDEMNITY PURSUANT TO A CONSTRUCTION MAINTENANCE AGREEMENT WITH THE SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY FOR THE SAN DIEGO UNIFIED PORT DISTRICT'S IMPLEMENTATION OF THE SWEETWATER BICYCLE PATH AND PROMENADE PROJECT AND E STREET AT-GRADE CROSSING IN CHULA VISTA.

EXECUTIVE SUMMARY:

In 2018, the San Diego Unified Port District (District) entered into a Grant Agreement ¹ with the State of California Natural Resources Agency (Agency) for Urban Greening Grant funding for the implementation of the Sweetwater Bicycle Path and Promenade Project (Sweetwater Path). The Sweetwater Path includes the construction of a Class 1 bike path and pedestrian promenade along the E Street portion of the San Diego and Arizona Eastern Railway's (SDAE) inactive Coronado Belt Line, owned and managed by the San Diego Metropolitan Transit System (MTS). In order to facilitate the construction and use of the Sweetwater Path and provide enhanced access to the Chula Vista Bayfront, the District must also convert a portion of E Street from a private at-grade crossing over the SDAE Coronado Belt Line to an at-grade crossing.

The schedule to accommodate the grant requires that the District provide evidence of site control to the Agency for all of the land included in the project that is not within the District's jurisdiction no later than December 31, 2018. As a result, staff has been working diligently with MTS to negotiate a no-cost Construction and Maintenance Agreement (CMA) along with granting indemnity to SDAE, to allow the construction of these public access improvements.

The CMA will be contingent upon compliance with maintenance, insurance, indemnity and other requirements. Amongst these requirements is the District's obligation to construct a new rail line and crossing within the area and to provide insurance, if the Coronado Belt Line is ever reactivated. The likelihood of the Coronado Belt Line re-opening is very low and would not represent a significant liability to the District. The CMA's insurance requirements are within the District's policy limits.

Completion of the Sweetwater Path and E Street crossing will provide much needed access to the Chula Vista Bayfront and will further the vision of the Chula Vista Bayfront Master Plan (CVBMP). Completion of these public access improvements is scheduled for 2020.

RECOMMENDATION:

Adopt a Resolution Granting Indemnity Pursuant to a Construction and Maintenance Agreement with the San Diego Arizona Eastern Railway Company for the San Diego Unified Port District's Implementation of the Sweetwater Bicycle Path and Promenade Project and E Street At-Grade Crossing in Chula Vista.

FISCAL IMPACT:

There is no fiscal impact at this time from the proposed Board action. Funding in the amount of \$4.8M will be reimbursed by the grant. Matching funds of \$794,000 are budgeted in the Site Preparation at Chula Vista Bayfront project within the current CIP budget and includes staff time budgeted as capital labor. The E Street at-grade crossing project is currently budgeted as part of the Phase 1 budget for the Chula Vista Bayfront project.

Approval of this agenda item will create a contingent obligation for the District to build a new rail line and crossing in the area of the public improvements, and the associated indemnity and insurance in the event of the reactivation of the Coronado Belt Line. The fiscal impact is undetermined at this time. If the Coronado Belt Line was reopened, the District's obligation would be limited to the replacement of the track and crossing. Staff has determined that the low probability of the Coronado Belt Line's reactivation, and the immediate benefit of the path and crossing, outweigh the potential burden included in the CMA.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

DISCUSSION:

The District and the City of Chula Vista (City) have been working jointly for more than ten years on the CVBMP, which was unanimously approved by the California Coastal Commission in 2012. This plan encompasses more than 535 acres of land in the City of Chula Vista. The implementation phase of the CVBMP has been rapidly moving forward and the District has been working on various projects

to improve multi-modal public access to the Chula Vista Bayfront.

Sweetwater Bicycle Path & Promenade

On April 20, 2018, the District entered into a Grant Agreement with the Agency for Urban Greening Grant funding of \$4.8M for the Sweetwater Path. The Sweetwater Path includes the construction of three-quarters of a mile of Class 1 bike path and promenade within the Sweetwater District in the Chula Vista Bayfront. The project site is located within one half-mile of San Diego Bay, the San Diego National Wildlife Refuge, the Sweetwater Mudflats, and the F&G Street Marsh. The Sweetwater Path will begin in the vicinity of the Living Coast Discovery Center parking lot and ends near the Marine Group Boat Works facility. Most of the route is currently unavailable to the public. The Sweetwater Path goes across a portion of the SDAE Coronado Belt Line along E street, which is owned and managed by MTS. A copy of the site plan that illustrates the Sweetwater Path is included as Attachment A.

“E” Street At-Grade Crossing

To facilitate the construction and use of the Sweetwater Path and provide enhanced access to the Chula Vista Bayfront, the District will also need to convert an existing private at-grade crossing into an at-grade crossing at E Street, which also crosses over the SDAE Coronado Belt Line. Staff is currently working with MTS staff to obtain approvals from the Public Utilities Commission , as necessary. A plan and profile of the proposed crossing has been included as Attachment B.

Construction and Maintenance Agreement

The schedule to accommodate the grant requires that the District provide evidence of site control to the Agency for all of the land included in the project that is not within the District’s jurisdiction no later than December 31, 2018. Staff has negotiated a no-cost CMA along with granting indemnity to SDAE, to allow the construction of these public access improvements. In 2011, the District entered into a CMA with SDAE for the completion of the H Street extension. The CMA includes indemnity, insurance and maintenance obligations. The indemnity required by the District is for the negligent acts of the District or its contractors which is customary and reasonable for the CMA. In addition, the CMA includes contingent obligations burdening the District to construct a new rail line and crossing within the public access area and to provide railroad insurance, if the Coronado Belt Line is ever reactivated. The likelihood that the Coronado Belt Line re-opening is very low and would not represent a significant liability to the District as the public access area which would need to be rebuilt is small. In addition, the CMA’s insurance requirements are within the District’s policy limits.

CONCLUSION:

The Sweetwater Path and E Street crossing once completed will provide much needed public access to the Chula Vista Bayfront and will further the vision of the CVBMP. Therefore, staff recommends granting indemnity pursuant to the CMA, to allow for the construction of the Sweetwater Path and the E Street at-grade-crossing, which are scheduled for completion in 2020.

General Counsel’s Comments:

The Office of the General Counsel has reviewed the Construction and Maintenance Agreement with San Diego and Arizona Eastern Railway and approves the agreement and indemnity requirement as

to form and legality.

Environmental Review:

The proposed Board action adopting a resolution granting indemnity pursuant to a construction maintenance agreement with the San Diego and Arizona Eastern Railway Company for the San Diego Unified Port District's negligence in the implementation of the Sweetwater Bicycle Path and Promenade project and "E" Street at-grade crossing was adequately covered in the Chula Vista Bayfront Final EIR (State Clearinghouse No. 2005081077) prepared and adopted/certified by the District in May 2010. The proposed project is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the Chula Vista Bayfront Final EIR, the District finds and recommends that the adoption of the resolution granting indemnity pursuant to a construction maintenance agreement does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR 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 FEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (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. Because none of these factors have been triggered and the adoption of the approval of the acceptance of grant funds and amendment to the Capital Improvement Program, the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162 (b)). Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

In addition, the proposed Board action allows for the District to implement its obligation under Section 87(a)(4) of the Port Act because it accepts grant funding that will be used for the construction of a bicycle path and pedestrian crossing in the Chula Vista Bayfront Master Plan area. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board direction or action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board's direction or action in

no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time

Equal Opportunity Program:

Not Applicable

PREPARED BY:

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Attachment(s):
Attachment A: Sweetwater Bicycle Path and Promenade Site Plan
Attachment B: E Street Crossing Plans
Attachment C: Draft Construction and Maintenance Agreement

¹ Grant Agreement for Sweetwater Bicycle Path & Promenade Clerk's Document No. 68461