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Title: RESOLUTION BY A FOUR-FIFTHS (4/5) VOTE RATIFYING THE EMERGENCY ACTION TAKEN BY THE EXECUTIVE DIRECTOR AND AUTHORIZING CONTINUED ACTION FOR THE EMERGENCY STORM WATER MANAGEMENT AT THE CHULA VISTA BAYFRONT INCLUDING PROCUREMENT OF A CONSULTANT TO PROVIDE DESIGN FOR THE STORM WATER MANAGEMENT REVISIONS, AND PROCUREMENT OF A CONTRACTOR TO IMPLEMENT THE STORM WATER MANAGEMENT IMPROVEMENTS

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Attachments: 1. 6. 2018-0577 Attachment A, 2. 6. 2018-0577 Draft Resolution

Date	Ver.	Action By	Action	Result
1/16/2019	1	Board of Port Commissioners	adopted	

DATE: January 16, 2018

SUBJECT:

RESOLUTION BY A FOUR-FIFTHS (4/5) VOTE RATIFYING THE EMERGENCY ACTION TAKEN BY THE EXECUTIVE DIRECTOR AND AUTHORIZING CONTINUED ACTION FOR THE EMERGENCY STORM WATER MANAGEMENT AT THE CHULA VISTA BAYFRONT INCLUDING PROCUREMENT OF A CONSULTANT TO PROVIDE DESIGN FOR THE STORM WATER MANAGEMENT REVISIONS, AND PROCUREMENT OF A CONTRACTOR TO IMPLEMENT THE STORM WATER MANAGEMENT IMPROVEMENTS

EXECUTIVE SUMMARY:

Between the dates of November 29th and December 7th, 2018, two storms occurred at the Chula Vista Bayfront development producing approximately 4.45 inches of rainfall, with 2.6 inches occurring in a six-hour window. The storms had rainfall quantities at intensities that were well above average and caused erosion damage to freshly graded areas. This created the need for costly clean up and repairs and raised concern that future storms may create further damage and stormwater discharges. To mitigate these concerns and avoid further damage to District property, the Executive Director declared an emergency to provide repairs to the sites and deploy additional erosion control and sediment runoff prevention measures termed Best Management Practices (BMPs).

Prior to the storms, the San Diego Unified Port District (District) imported approximately 220,000 cubic yards of soil to two development sites at the Chula Vista Bayfront. The imported soil will be utilized to raise site elevations to accommodate anticipated sea level rise and prepare for two planned developments that are scheduled to begin construction in 2019; the Chula Vista Bayfront

Resort Hotel & Convention Center development and the Sun Communities RV Park. Both sites were filled using standard grading configurations and standard erosion control measures and Best Management Practices (BMPs). This work was performed under a direct negotiated contract with minimal change order capacity to address unforeseen conditions.

In order to perform required clean up and repair damages that were caused by the noted storm events, and in anticipation of future storm events, immediate repairs to the graded areas, revisions to the grading configurations, and revisions to the BMPs are being implemented to minimize risk of further damage to District property and prevent erosion and sediment runoff. These measures will reduce the likelihood of future damage caused by stormwater runoff, costly repairs, and possible citations and fines. The normal procurement process to award a new public works contract could not happen in the timeframe necessary to protect from future anticipated rain events, therefore this emergency action was deemed necessary.

Pursuant to Public Contracting Code Section 22035 and 22050, Section 58 of the Port Act, and Board of Port Commissioners (Board) Resolution 2000-03, the Executive Director declared an emergency and authorized the immediate execution of contracts to design a plan and repair the damage to protect District owned property. The declaration of an emergency waives the necessity of formal bidding procedures for contracts exceeding \$175,000 as required by the State of California Public Contract Code and the Board is required to authorize this action. Pursuant to Board Resolution 2000-03, a four-fifths (4/5) vote of the Board is required to ratify the Executive Director's declaration of emergency.

RECOMMENDATION:

Adopt a resolution by a four-fifths (4/5) vote ratifying the emergency action taken by the Executive Director and authorizing continued action for the emergency storm water management at the Chula Vista Bayfront including procurement of a consultant to provide design for the stormwater management revisions, and procurement of a contractor to implement the storm water management improvements.

FISCAL IMPACT:

This project is being funded by the approved CIP project, Site Preparation at Chula Vista Bayfront. Initial costs are estimated to be approximately \$200,000. The District will pursue reimbursement from insurance for all costs associated with this emergency.

COMPASS STRATEGIC GOALS:

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

- A Port with a healthy and sustainable bay and its environment.

DISCUSSION:

Approximately 220,000 Cubic Yards of soil has been imported to two development sites at the Chula Vista Bayfront raising the elevation of both sites roughly 7-feet to accommodate anticipated sea level rise and prepare for two planned developments; the Chula Vista Bayfront Resort Hotel & Convention Center development and the Sun Communities RV Park. Both sites were specified and constructed

using standard grading configurations and erosion control and sediment runoff prevention (BMPs). This work was performed under a direct negotiated contract with minimal change order capacity to address unforeseen conditions.

Significant storm events occurred between November 29, 2018 and December 7, 2018 with unanticipated rainfall intensities and amounts. According to on-site rainfall meters, the November 29th storm produced 1.1 inches of rain and the December 5th event produced 3.35 inches of rain with 2.6 inches occurring in a six-hour window between 3:00 PM and 9:00 PM. Rain continued through the night and into December 6th resulting in severe damage to the sites and to the preventative stormwater BMPs that were deployed. The contractor, Sierra Pacific West Inc., installed gravel bags in strategic locations on December 5th and 6th, but had to leave due the lightning and safety concerns. The total rainfall and rainfall intensities due to these two rain events overwhelmed the standard stormwater BMPs that were deployed at the sites, resulting in significant erosion damage to District property. The first storm saturated the soil and the second event, which released 3.35 inches of rain, was almost entirely runoff resulting in erosion damage to District property at both sites. The contractor, Sierra Pacific West Inc., returned to the sites the day after the events ended, December 7th, 2018, cleaning up and making repairs to the site and to the stormwater BMPs. However, the scope under their current contract does not address the magnitude of repairs and additional BMPs necessary to prevent additional damage.

In order to perform required clean up and repair damages that were caused by the noted storm events, and in anticipation of future storm events immediate repairs to the graded areas, revisions to the grading design, and additional BMPs are required to minimize risk of further erosion damage to District property, unauthorized stormwater runoff, costly repairs, and possible regulatory citations and fines. The current contract providing stormwater BMPs is part of a small, direct negotiated contract, and does not have the capacity to address the required preventative measures, therefore a new contract was deemed necessary. The normal procurement process to award a new public works contract could not happen in the timeframe necessary to protect the District from future rain events, the first of which was anticipated to occur on December 25, 2018 therefore emergency action was authorized by the Executive Director on December 20, 2018.

Pursuant to Public Contracting Code Section 22035 and 22050, Section 58 of the Port Act, and Board Resolution 2000-03, the Executive Director declared an emergency and authorized the immediate execution of contracts to design a plan and repair the damage to District Property.

Public Contracting Code Sections 22035 and 22050, Section 58 of the Port Act, and Board Resolution 2000-03 requires that the Board review actions exercised by the Executive Director pursuant to a declaration of emergency and authorize continued action. The recommended action complies with that requirement. A four-fifths (4/5) affirmative vote is required pursuant to Board Resolution 2000-03 to ratify the Executive Director's declaration of emergency.

General Counsel's Comments:

The Office of the General Counsel has reviewed the issues presented in the Executive Director's declaration of emergency and the agenda sheet requesting Board ratification and approves as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a resolution ratifying the emergency action taken for the storm water management at Chula Vista Bayfront was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), and the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069). The proposed Board action 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 FEIR and Addendums, the District finds and recommends that the resolution ratifying emergency action 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 and 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 FEIR and Addendum, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and 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. 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.

Additionally, the proposed Board action complies with Sections 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. 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.

Finally, the project was covered in the CDP for Site Preparation at Chula Vista Bayfront (CDP-2017-01; Clerk Document No. 66187) approved by the District on January 25, 2017 and the amendment to the CDP issued by the District on November 1, 2018. The proposed Board actions are consistent with the project in that CDP and amendment. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A: Photos