



## Legislation Details (With Text)

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**Type:** Action Item    **Status:** Passed  
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**On agenda:** 2/11/2021    **Final action:** 2/11/2021  
**Title:** ORDINANCE GRANTING AMENDMENT NO. 5 TO CONDITIONAL AGREEMENT WITH MITSUBISHI CEMENT CORPORATION TO EXTEND THE TERM OF THE CONDITIONAL AGREEMENT TO ALLOW ADDITIONAL TIME TO DEVELOP A ZERO EMISSION VEHICLE STRATEGY FOR THE PROPOSED CEMENT IMPORT TERMINAL IN WAREHOUSE C AT THE TENTH AVENUE MARINE TERMINAL, IN SAN DIEGO

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**Attachments:** 1. 5. 2021-0011 Attachment A, 2. 5. 2021-0011 Attachment B, 3. 5. 2021-0011 Draft Ordinance

Date	Ver.	Action By	Action	Result
2/11/2021	1	Board of Port Commissioners	adopted	Pass

**DATE:** February 11, 2021

**SUBJECT:**

**ORDINANCE GRANTING AMENDMENT NO. 5 TO CONDITIONAL AGREEMENT WITH MITSUBISHI CEMENT CORPORATION TO EXTEND THE TERM OF THE CONDITIONAL AGREEMENT TO ALLOW ADDITIONAL TIME TO DEVELOP A ZERO EMISSION VEHICLE STRATEGY FOR THE PROPOSED CEMENT IMPORT TERMINAL IN WAREHOUSE C AT THE TENTH AVENUE MARINE TERMINAL, IN SAN DIEGO**

**EXECUTIVE SUMMARY:**

Mitsubishi Cement Corporation (MCC) is majority owned by Mitsubishi Materials, the second largest producer of cement in Japan, and is a vertically integrated cement manufacturer and supplier. MCC desires to construct, own and operate a cement import terminal at the District's Tenth Avenue Marine Terminal (TAMT) to supply the San Diego market.

On June 11, 2015, the Board adopted an ordinance granting a Conditional Agreement<sup>i</sup> to MCC to construct and operate a cement import terminal in up to three bays in Warehouse C at TAMT. The original term of the Conditional Agreement was to expire on June 30, 2018. On September 12, 2017, the Board adopted an ordinance granting Amendment No. 1 to the Conditional Agreement (Amendment No. 1) to extend the term of the Conditional Agreement and update the business terms to allow MCC to increase the size of the leased premises from three bays (150,000 square feet) to a potential of four bays (200,000 square feet) so that MCC may either import a second type of product (slag or fly ash) or import larger volumes of cement. The Conditional Agreement was subsequently amended by Amendment No. 2, Amendment No. 3 and Amendment No. 4 to extend the term of the Conditional Agreement to allow time to process the Subsequent Environmental Impact Report (SEIR)

in accordance with the California Environmental Quality Act (CEQA) and allow MCC to complete the remaining conditions precedent.

Staff and MCC have been working diligently to complete the SEIR for the MCC project that “tiers-off” the Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Program EIR (TAMT EIR). On December 19, 2019, the District released for public review the Draft SEIR for the MCC project which is titled “Mitsubishi Cement Corporation at Warehouse C: Bulk Cement Warehouse and Loading Facility.” The Draft SEIR was available for a 57-day public review period which ended on February 14, 2020.

On December 8, 2020, the Board of Port Commissioners (Board) considered the certification of the Final SEIR, issuance of a Non-Appealable Coastal Development Permit (CDP), resolution granting concept approval for the project and other related items (Agenda File 2020-0255). The Board continued the item with direction to staff to work with MCC on a zero-emission truck plan (ZE Truck Plan) that would require a specific percentage of trucks that call on the MCC facility at TAMT to be zero emission by specific dates and increase their usage through the lease term. The ZE Truck Plan may include well defined “off-ramps” should the inclusion of zero emission trucks be found infeasible.

Amendment No. 5 to the Conditional Agreement (Amendment No. 5) would extend the term of the Conditional Agreement by twelve months through June 30, 2022 to allow additional time to develop a ZE Truck Plan to be incorporated into future MCC operations, complete the EIR process, and fulfill the remaining conditions precedent. Additionally, Amendment No. 5 would provide the Executive Director the ability to extend the Conditional Agreement in his/her sole discretion by an additional six months (until December 31, 2022) if the SEIR has not been certified by the Board by December 31, 2021. The additional time is needed to develop the ZE Truck Plan given the complexity of incorporating zero emission trucks into MCC customer’s operations and the rapidly changing zero emission market and technology. It should be noted that the proposed ordinance granting Amendment No. 5 would only extend the term of the Conditional Agreement. The Final SEIR, CDP, and project conceptual approval would still need to be considered and ultimately granted by the Board at a future public Board meeting in order for the project to move forward and operations to begin.

Staff recommends adopting an ordinance granting Amendment No. 5 to the Conditional Agreement to extend the term to provide additional time to develop a ZE Truck Plan, complete the EIR process, and fulfill the remaining conditions precedent in the Conditional Agreement.

### **RECOMMENDATION:**

Adopt an Ordinance Granting Amendment No. 5 to the Conditional Agreement with Mitsubishi Cement Corporation to Extend the Term of the Conditional Agreement to allow additional time to develop a zero emission vehicle strategy for the Proposed Cement Import Terminal in Warehouse C at the Tenth Avenue Marine Terminal, in San Diego.

### **FISCAL IMPACT:**

The proposed Amendment No. 5 to the Conditional Agreement would not result in a fiscal impact to the District. However, should all of the conditions in the Conditional Agreement be met, and a lease entered into, lease revenue would immediately include flat rent payments for two warehouse bays and a Minimum Annual Guarantee (MAG). Once the MAG has ramped up in year three of the Lease,

the minimum annual revenue to the District would be \$990,464. Consistent with other maritime industrial leases, the proposed lease will provide for an annual Consumer Price Index (CPI) adjustment to the flat rent, with a minimum increase of 2% and a maximum increase of 4%. Additionally, if the lease is entered into, MCC would contribute up to \$250,000 to offset District costs associated with CEQA review for the separate and independent Consolidated Dry Bulk Facility that may be implemented in the future.

### **COMPASS STRATEGIC GOALS:**

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

- A thriving and modern maritime seaport.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### ***Background:***

MCC is a vertically integrated cement manufacturer and supplier. MCC desires to construct, own and operate a cement import terminal at TAMT to supply the San Diego market. Currently, cement is transported to the San Diego area via truck from domestic production plants outside of San Diego County and from the Port of Long Beach. The import terminal at TAMT would serve the San Diego region's delta between available domestic supply and regional demand for cement. Should MCC be able to import cement into TAMT, the project would remove truck trips and truck miles off the regional highway system.

On June 11, 2015, the Board adopted an ordinance granting a Conditional Agreement to MCC to construct and operate a cement import terminal in up to three bays in Warehouse C at TAMT. The original term of the Conditional Agreement was to expire on June 30, 2018. On September 12, 2017, the Board adopted an ordinance granting Amendment No. 1 to the Conditional Agreement (Amendment No. 1) to extend the term of the Conditional Agreement and update the business terms to allow MCC to increase the size of the leased premises from three bays (150,000 square feet) to a potential of four bays (200,000 square feet) so that MCC may either import a second type of product (slag or fly ash) or import larger volumes of cement (Attachment A - Location Map). The Conditional Agreement was subsequently amended by Amendment No. 2, Amendment No. 3 and Amendment No. 4 to extend the term of the Conditional Agreement to allow time to process the SEIR in accordance with the CEQA and allow time for MCC to complete the remaining conditions precedent.

#### ***Conditional Agreement Term Extension:***

As a condition precedent to the Conditional Agreement, MCC is required to pay for the preparation of the appropriate CEQA document, which for this project has been determined to be a Subsequent EIR that "tiers-off" the TAMT EIR. On December 19, 2019, the District released for public review the Draft EIR for the MCC project which is available for a 57-day review period ending on February 14, 2020.

On December 8, 2020, the Board of Board considered the certification of the Final SEIR, issuance of a CDP, resolution granting concept approval for the project and other related items (Agenda File 2020-0255). The Board continued the item with direction to staff to work with MCC the ZE Truck Plan that would require a specific percentage of trucks that call on MCC's facility at TAMT to be zero

emission by specific dates and increase their usage through the lease term. The ZE Truck Plan may include well defined “off-ramps” should the inclusion of zero emission trucks be found infeasible

Amendment No. 5 would extend the term of the Conditional Agreement by twelve months through June 30, 2022 to allow additional time to develop a ZE Truck Plan to be incorporated into future MCC operations, complete the EIR process, and fulfill the remaining conditions precedent (Attachment B - Amendment No. 5 to Conditional Agreement). Additionally, Amendment No. 5 would provide the Executive Director the ability to extend the Conditional Agreement an additional six months (until December 31, 2022) if the SEIR has not been certified by the Board by December 31, 2021. The additional time is needed to develop the ZE Truck Plan given the complexity of incorporating zero emission trucks into their customer’s operations and the rapidly changing zero emission market and technology. It should be noted that the proposed ordinance granting Amendment No. 5 would only extend the term of the Conditional Agreement. The Final SEIR, CDP, and project conceptual approval would still need to be considered and granted by the Board at a future public Board meeting in order for the project to move forward.

### ***Consistency with TAMT Redevelopment Plan:***

The Conditional Agreement and the proposed Amendment No. 5 are consistent with the TAMT Redevelopment Plan, which focusses on the development of three distinct cargo nodes within the terminal: refrigerated cargo, dry bulk cargo and ro-ro (roll on-roll off)/project cargo. MCC’s potential tenancy at TAMT would provide the District a strong anchor tenant within the dry bulk cargo node, with a vertically integrated business model that puts it in a strong position to capture the rebound in the construction industry.

### **General Counsel’s Comments:**

The Office of the General Counsel has reviewed and approved this agenda, the proposed Amendment No. 5 to Conditional Agreement with Mitsubishi Cement Corporation, and proposed ordinance, as presented, as to form and legality.

### **Environmental Review:**

The authorization of Amendment No. 5 to the Conditional Agreement by the BPC does not constitute an “approval” of a project under the definitions set forth in the California Environmental Quality Act (CEQA) Guidelines Sections 15387 and 15352 and is therefore, not subject to CEQA. Amendment No. 5 to the Conditional Agreement extends the term of the Conditional Agreement for Mitsubishi Cement Corporation’s proposed cement import terminal in Warehouse C at the Tenth Avenue Marine Terminal. The CEQA and CDP requirements originally identified in the Conditional Agreement (BPC 2015-1389) for the project remain in effect with the authorization of Amendment No. 5. CEQA review for the potential lease, permits, MCC’s operation, and any improvements on the premises, must be conducted prior to issuance of the lease and any permits or entitlements necessary to operate and improve the premises.

Additionally, the Conditional Agreement states that the BPC reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the BPC. Based on the totality of the circumstances and the entire record,

including Amendment No. 5 and the Conditional Agreement itself, the BPC's action does not commit the District to a definite course of action, including, but not limited to, approval or commencement of a lease with MCC, operation or improvements by MCC at TAMT prior to CEQA review being conducted. Rather, Amendment No. 5 and the Conditional Agreement set forth the parties intent to further explore, design, and evaluate MCC's proposal for TAMT. No further action under CEQA is required for this item.

The authorization of Amendment No. 5 to the Conditional Agreement by the BPC 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 CDP Regulations. Therefore, issuance of a CDP or exclusion is not required; provided, however, issuance of a CDP is a condition precedent to MCC executing a lease, operating at the premises or constructing improvements thereon. The Conditional Agreement states that issuance of the CDP is vested with the BPC, in its sole and absolute discretion. No further action is required at this time.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

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**Attachment(s):**

Attachment A: Location Map

Attachment B: Amendment No. 5 to Conditional Agreement

i: Conditional Agreement between San Diego Unified Port District and Mitsubishi Cement Corporation dated June 11, 2015 and bearing District Clerk Document No. 63721