



## Legislation Text

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**DATE:** October 10, 2017

**SUBJECT:**

**PRESENTATION AND DIRECTION TO STAFF ON THE PORT MASTER PLAN UPDATE - DRAFT POLICY CONCEPTS REGARDING THE FOLLOWING TOPICS:**

- A) LAND AND WATER USE ELEMENT**
- B) COASTAL ACCESS AND RECREATION ELEMENT**

**EXECUTIVE SUMMARY:**

Since 2013, the District has been evolving and improving a process, which we have all come to know as Integrated Planning. In short, Integrated Planning is a multi-faceted and comprehensive approach for managing and planning the uses and business of the District in a balanced way. Although Integrated Planning is an approach and philosophy that will permeate numerous plans and processes at the District, one critical and current focus area is an update to the District's Port Master Plan. The first comprehensive revision in the District's history, the Port Master Plan Update (PMPU) is a comprehensive, integrated, baywide approach that will modernize our method for land and water planning and serve as a guide for future uses and development of District tidelands. The PMPU will connect the tidelands through a series of networks and Planning Districts. It will control the allowable land and water uses, including the type and characteristics of development, recreation, and environmental conservation throughout the District's jurisdiction.

Based on the Integrated Planning Vision, including the Guiding Principles and Framework Report, and the draft PMPU Goals endorsed by the Board at this year's PMPU workshops, staff will present concepts to illustrate strategies and priorities that may take the form of draft policy language to be contained within the following PMPU elements:

- Land and Water Use
- Coastal Access and Recreation

Staff's presentation will be similar in format to the policy concepts presented at the August 8, 2017 Board meeting for the Mobility, Economic Development, Resiliency and Safety, and Natural Resources elements of the PMPU. As requested during the August Board meeting, staff's preliminary draft presentation is included as Attachment A with the goal of providing the Board and the public time to review the discussion materials in advance of the meeting.

Each of the above topics will be presented and discussed individually to allow for clarifying questions and interactive dialogue with the Board for each element. Although this PMPU item will take place during a regular Board meeting, staff's intent is for the structure of the discussion to follow those of the Board workshops held earlier this year. This approach will allow the Board to receive staff's

presentations, hear from the public and stakeholders, and provide feedback to staff as the drafting of the PMPU progresses.

### **RECOMMENDATION:**

Receive staff's presentation and provide direction regarding draft policy concepts for the:

- A) Land and Water Use Element
- B) Coastal Access and Recreation Element.

### **FISCAL IMPACT:**

Funds for work associated with the Port Master Plan Update effort are budgeted in Planning's FY18 Professional Services expense account (#620100).

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the Strategic Goals adopted by the Board in 2012. The Integrated Planning efforts, including the PMPU, will bring the District's current practices into conformance with best management practices with considerations of sustainable fiscal growth for the District and environmental stewardship while proactively enhancing assets on tidelands and benefits to the public.

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

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- 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.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### **Holistic Planning Through Public Engagement**

The PMPU process is in the third phase of a five-phase, seven-year work plan. The five-phased work plan began with laying the foundation of the PMPU with acceptance of the Integrated Planning Vision Statement and Guiding Principles in the first phase, followed by acceptance of the Integrated Planning Framework in the second phase (collectively referred to as the "Integrated Planning Vision"). The phased work plan has allowed the PMPU team to continue to build a comprehensive update to the Port Master Plan from the ground up in a transparent and inclusive way that has included a balance of Board and public engagement throughout the planning process. This approach will continue with the 2017 public engagement plan for the draft PMPU.

The summary below shows the five major phases of the work plan:

- **Vision Process: Guiding Principles (Completed).** The initial phase included a high-level assessment of District-wide assets and extensive public engagement resulting in a foundational Vision Statement and Guiding Principles for the entire Integrated Planning framework.
- **Framework Report (Completed).** The Vision Process was further refined through consideration of a core set of comprehensive ideas, memorialized in a Framework Report, that is informing the development of the Draft PMPU document.
- **Draft the Port Master Plan Update (In Progress).** The current phase involves drafting the “Draft PMPU” document, which will ultimately be comprised of goals, policies and maps.
- **California Environmental Quality Act (CEQA) Environmental Review (In Progress).** Creation of the draft PMPU will be followed by conducting the requisite “CEQA Environmental Review.” Preliminary environmental review work has begun.
- **California Coastal Commission Certification.** If the Board certifies the Programmatic Environmental Impact Report (PEIR) and adopts the PMPU, it will be processed for “California Coastal Commission Certification,” with minor approvals thereafter, including the Board’s approval of the PMPU as certified by the California Coastal Commission and lastly, the Coastal Commission’s approval of the final PMPU after the Board’s approval of the PMPU as certified by the California Coastal Commission.

All of these steps have or will require public input, stakeholder outreach, and agency coordination throughout.

### Recap on the Draft PMPU Contents

As a refresher, the draft PMPU is proposed to include six topical sections, or elements, that provide baywide guidance related to Land and Water Use, Mobility, Coastal Access and Recreation, Natural Resources, Resiliency and Safety, and Economic Development. Within each element, there are goals and policies being drafted consistent with the proposed draft table of contents endorsed by the Board at the July 22, 2015 Integrated Planning Study Session. The elements will also contain and address cross-connecting themes like environmental justice, climate change, and the Green Necklace. The PMPU team has utilized the robust public feedback obtained during the Integrated Planning process as the basis for drafting the goals and policy language to be contained within the draft PMPU elements.

The PMPU is also proposed to contain ten Planning Districts, and application of the baywide goals and policies established by the six baywide elements will vary Planning District by Planning District, as appropriate. Each of the ten Planning Districts will contain more geographic-specific goals, policies, and land and water use maps intended to: 1) implement applicable baywide policies; 2) create development requirements tailored to the unique characteristics of each Planning District; and 3) implement the land and water use designations within those geographic areas. The draft policies for each Planning District will build on the corresponding goals and will be more granular in nature than the baywide element policies. The draft policies, both baywide- and Planning District-level will be available for the Board and public’s review during the Discussion Draft PMPU review period.

## **2017 PMPU Board Workshops and Completed Milestones**

The first of three Board workshops on the draft PMPU was held on March 9, 2017. Workshop No. 1 focused on the proposed organizational structure of the updated Port Master Plan, the proposed consolidated land and water use designations, and the draft goals for the Land and Water Use Element.

Board Workshop No. 2 on the PMPU was held on April 27, 2017, and concentrated on draft goals for the Mobility Element, draft goals for the Economic Development Element, and draft goals and draft land and water use maps for the ten Planning Districts.

On May 25, 2017, during Workshop No. 3 draft goals for the Resiliency and Safety Element, draft goals for the Natural Resources Element, and draft goals for the Coastal Access and Recreation Element, were discussed. Staff also presented preliminary draft PMPU baywide recreation open space acreage allocations.

Staff received considerable feedback from the public, stakeholders, and Board during these workshops, which is being taken into account as the drafting of the PMPU continues. Notably, completion of these three workshops resulted in clear direction to staff on all the draft PMPU element goals, which set the stage and context for the current policy discussions. Furthermore, as mentioned often during these workshops, drafting of PMPU materials discussed is iterative and the document will continue to be revised as staff receives public, stakeholder, and Board feedback.

## **PMPU Policy Concepts**

Based on the Integrated Planning Vision, including the Guiding Principles and Framework Report, and the draft PMPU Goals endorsed by the Board at this year's PMPU workshops, staff will present concepts to illustrate strategies and priorities that may take the form of draft policy language to be contained within the following PMPU elements:

- Land and Water Use
- Coastal Access and Recreation

A preliminary draft of staff's presentation is included as Attachment A in order to provide the Board and the public time to review the discussion materials in advance of the August 8<sup>th</sup> Board meeting. As a part of the presentation, staff will present policy concepts for the PMPU elements described below to obtain feedback from the Board and the public:

### Land and Water Use Element

The Land and Water Use Element establishes land and water use designations, descriptions of the uses, as well as supportive policies and guidance for all land and water use within District Tidelands. Land and water use maps will be located in each individual Planning District, rather than the Land and Water Use Element. Accordingly, land and water maps will be presented to the Board in upcoming Board meetings on the individual Planning Districts. Like all of the PMPU, the draft Land and Water Use Element will be developed in conformance with the Public Trust Doctrine, the Port Act, and the Coastal Act. The purpose of this Element is to guide growth and development, establish functional areas for District facilities and operations, and achieve a complementary range of uses Baywide consistent with the goals listed below as endorsed by the Board at the March 9, 2017 PMPU workshop.

- A coordinated Baywide land and water use strategy that promotes, fosters, accommodates, and enhances Public Trust uses for the benefit of the people, including:
  - Access to and enjoyment of the waterfront
  - Financially and economically sustainable commerce, fishing, and trade operations
  - Environmental stewardship of the Bay including resource preservation and enhancement
  - Prioritized and protected coastal-dependent, coastal-related, and deep-water dependent uses
- A Bay and shoreline that are celebrated as the District's most valuable natural, recreational, and commerce-supporting public assets
- A completed and enhanced inter-connected and criss-crossing system of Baywide connections around and across the Bay
- Integrated land use, water use, and transportation planning that considers climate change, including greenhouse gas reductions and coastal resilience
- Coordinated growth and development within District Tidelands that consider applicable local, regional, state, and federal plans
- District facilities and services necessary for the safety, health, prosperity, and enjoyment of visitors and those employed within the District

As presented at the March 9, 2017 PMPU workshop, the draft PMPU Land and Water Use Element will include a table of the proposed land and water use designations that will be depicted on the Planning District Maps as required by Section 30711 of the Coastal Act. The current Port Master Plan includes 35 different land and water use designations, which the PMPU team has proposed be consolidated into 21 broader designations (Attachment B). Through consolidation of land and water use designations, the District will have greater flexibility to respond to future market conditions and opportunities without always triggering the need for an amendment to the Port Master Plan.

As explained in the General Counsel's Comments, all proposed land and water uses are consistent with the Public Trust Doctrine. However, the simplified designations have been carefully crafted to acknowledge and protect coastal-dependent and coastal-related uses as those terms are defined by the California Coastal Act. A Glossary of Commonly Used Terms related to the land and water use designations table is also provided as Attachment C for your reference.

#### Coastal Access and Recreation Element

The Coastal Access and Recreation Element is intended to ensure public access to District tidelands and expand opportunities for people to participate in a range of activities on or near the shoreline. The Element provides the policy framework by which the District will plan and provide access to tidelands, the shoreline, and San Diego Bay, as well as plan and develop recreation open space facilities for the benefit of the people in a manner that guarantees the public realm.

The purpose of this Element is to ensure public access to District Tidelands and expand opportunities for people to participate in a range of publicly accessible activities on or near the shoreline,

consistent with the following goals as endorsed by the Board at the May 25, 2017 PMPU workshop:

- District Tidelands accessible to all people with consideration of public safety and resource protection needs
- Land and water access and mobility options providing opportunities for the public to explore and interact with the shoreline and in the Bay
- A system of interconnected District open space, parks, and recreational areas and facilities integrated with neighboring jurisdiction's recreational systems
- A variety of land- and water-based recreational experiences including scenic vista areas, natural open spaces, activated gathering spaces, and visitor-serving recreational facilities
- Wayfinding features that help people explore District Tidelands, and contribute to a sense of place, safety, and security
- Open space located along the Bay in a manner that provides meaningful access to the waterfront, provides a connected civic corridor and contributes to the overall image of the waterfront

The Coastal Access and Recreation Element policies will provide direction for the creation of successful public spaces throughout the District. The use of public space should strive to be multi-dimensional as they are used by many different people for many different purposes. The policies will aim to consider many facets of uses and users by providing support for these activities; encouraging varied physical and visual access; creating comforting spaces that fit within the identity of each Planning District; and encouraging greater sociability for visitors to the District. These concepts are of particular local interest at this time, largely due to the Downtown San Diego Partnership's recent focus on placemaking; see attached study "Shaping the Future of San Diego's Public Spaces through Placemaking" prepared by Project for Public Spaces, dated September 2017 (Attachment D).

## Next Steps

Planning District Policy Concepts and Maps: Staff plans to begin discussions focusing on the draft policy concepts for the ten Planning Districts, along with updated draft land and water use maps, at upcoming Board meetings. Due to the expected complexity and time needed for these discussions, it is anticipated that two or three Board meetings will be required to complete all ten Planning Districts.

Public Review of PMPU Discussion Draft: After the conclusion of policy concept discussions with the Board, staff will complete the Discussion Draft PMPU. The Discussion Draft PMPU will be made available to provide the Board and the public an opportunity to review the entire draft PMPU document, including the introduction, element goals and policies, and Planning Districts, in a holistic manner. Note that written comments received on the Discussion Draft will be transmitted to the Board and reviewed by the PMPU team. These public comments and Board feedback may result in revisions to the Draft PMPU.

Staff is recommending a 30-day public review period of the Discussion Draft PMPU. However, based

on feedback received from stakeholders and agencies, as well as a comment received by a Board Commissioner at the August Board meeting, staff is requesting the Board consider a 15-day extension of this review period for a total of 45-days. Please be aware the public will have an additional opportunity to review the draft PMPU and associated PEIR during the required 45-day CEQA public review.

PMPU PEIR Project Description: After the completion of the Discussion Draft public review period, staff plans to provide an overview presentation on the updated Draft PMPU based on public review and comment and Board input to date. Staff will also request the Board's direction to use the Draft PMPU as the project description for the PEIR to be prepared for the PMPU pursuant CEQA.

CEQA and Coastal Commission processing: As a part of the environmental review process, it is anticipated the Draft PEIR will be circulated for public review in mid-2018 with the Board's targeted consideration of the certification of the Final PEIR and approval of the PMPU in early 2019. Processing of the PMPU with the California Coastal Commission is expected to take place throughout 2019.

As these anticipated milestones are dependent upon the direction received by the Board and the volume and complexity of comments received, the timeline may require adjustment as the PMPU process progresses.

Upcoming Public Engagement Events: The District will host a public engagement event on October 12, 2017 at the Port Administration Building to allow members of the public to discuss and provide feedback directly with PMPU team members based on the draft PMPU policy concepts presented to the Board. Additional public engagement opportunities are planned to occur after the November and December 2017 Board meetings. These events, as well as the anticipated milestones for the completion of the PMPU, are depicted on the 2017 PMPU Public Engagement Timeline (Attachment E).

On-going Stakeholder and Agency Involvement: Throughout the planning process, the PMPU team has held, and will continue to hold, targeted stakeholder and agency meetings to gain feedback on the District's balanced approach to planning and policy development. The PMPU team has met on regular intervals to discuss the draft PMPU with internal District subject matter experts and staff from several local and regional agencies, including adjacent jurisdictions. Staff will continue proactive engagement with the Board, stakeholders, and the public as a way to advance a well-informed plan and to keep the PMPU on track; although, planning processes are not always predictable. As such, staff will keep the Board informed of any new or unanticipated issues as they arise, along with necessary updates or adjustments to the work plan

## **General Counsel's Comments:**

The General Counsel's Office has reviewed the agenda sheet and attachments as presented to it and approves them as to form and legality.

For background, the General Counsel's Office is providing a non-exhaustive summary of the Public Trust Doctrine and uses consistent therewith, as well as treatment of different uses under the California Coastal Act.

At the heart of the Public Trust Doctrine is the principle that trust lands belong to the public and are to be used to promote public rather than exclusively private purposes. Allowable uses under the Public Trust Doctrine are not static. Rather, the Doctrine is ever evolving and sufficiently flexible to encompass changing public needs. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441.) Historically, public trust uses were limited to water-related commerce, navigation, fishing, bathing, swimming, boating, general recreational purposes and environmental initiatives.

However, uses and structures that directly promote port development, such as, but not limited to wharves, warehouses and railroad uses are appropriate Public Trust uses. (*San Pedro etc. R.R. Co. v. Hamilton* (1911) 161Cal.610; *Koyner v. Miner* (1916) 172Cal.448; *Oakland v. Larue Wharf & Warehouse Co.* (1918) 179Cal.207; *City of Oakland v. Williams* (1929) 206Cal.315.) Additionally, uses incidental to the promotion of port commerce, such as convention centers, are allowable uses because although they do not directly support port business, they encouraged trade, shipping, and commercial associations that may become familiar with the port and its assets. (*Haggerty v. City of Oakland* (1958) 161 Cal.App.2d 407, 413-414.) Additionally, visitor-serving uses, such as restaurants, hotels, shops, and parking areas are appropriate Public Trust uses because as places of public accommodation, they allow broad public access to the tidelands, enhancing the public's enjoyment of trust lands. (*Id.* at p. 414; *Martin v. Smith* (1960) 184 Cal.App.2d 571, 577-78.) Accordingly, uses indirectly connected with water-related commerce are appropriate trust uses when they must be located on, over or adjacent to water to accommodate or foster commercial enterprises. (See *Boone v. Kingsbury* (1928) 206 Cal.148, 183; *Colberg, Inc. v. State of California ex rel. Dept. Pub. Works* (1967) 67 Cal.2d 408, 421-22; *Carstens v. California Coastal Com.* (1986) 182 Cal.App.3d 277, 289.) Nevertheless, the essential trust purposes have always been, and remain, water related. Accordingly, the California State Lands Commission has opined that commercial uses that could as easily be sited on uplands and strictly local or "neighborhood-serving" uses that confer no significant benefit to Californians statewide are prohibited (e.g., hospitals, city or county offices, grocery or department stores, public schools, etc.). Whether a particular use or development is allowed under the Public Trust Doctrine is a fact based inquiry and there is no per se bright-line rule.

It is important to note, under the Public Trust Doctrine, a trustee of tidelands - like the District - is not bound to hierarchy of trust-consistent uses. (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.) In other words, under the Doctrine, no one trust use has a higher priority over another trust use and the District is free to choose among a variety of Public Trust consistent uses.

The California Coastal Act sets forth policies whereby certain uses are given special treatment. Section 30703 of the Coastal Act prohibits a port from eliminating or reducing existing commercial fishing harbor space, unless demand for such facilities no longer exists or an adequate alternative space has been provided. On the other hand, recreational boating facilities to the extent feasible, are required to be designed and located in a fashion that do not interfere with the needs of the commercial fishing industry and accordingly, may be seen as less of a priority. (Coastal Act Section 30703.) Section 30708 provides that uses for port purposes, such as, without limitation, navigational uses, terminals, maritime operations and necessary support and access facilities, be given the highest priority to use existing land space within harbors. That same Section 30708 states that other



beneficial Public Trust uses - non-port purpose uses - such as, without limitation, recreation and wildlife uses should be provided to the extent feasible. Additionally, in the PMPU, appealable development (as set forth in Section 30715 of the Coastal Act) must be described in sufficient detail to be able to determine their consistency with Chapter 3 of the Coastal Act. Several Chapter 3 policies treat certain uses as unique. For example, Section 30213 provides that public recreational opportunities are preferred over other types of lower cost visitor facilities and Section 30255 provides that coastal-dependent uses shall have priority over other uses on or near the shoreline.

### **Environmental Review:**

This item provides a presentation on the policy concepts for the Land and Water Use and Coastal Access and Recreation elements of the draft PMPU. This presentation is informational in nature and is intended to give staff initial and preliminary feedback on the topics being presented. The item and any Board feedback do not constitute an “approval” or a “project” under the definitions set forth in CEQA Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. While the Board may request certain project components be included, alternatives studied or other direction, such direction to staff will not bind the District to a definite course of action prior to CEQA review. Additionally, Board endorsement of the policy concepts presented does not constitute a binding commitment to approve the PMPU or its contents prior to consideration of the PEIR. These components may be altered through the public engagement process, future Board feedback, and the CEQA process. Full CEQA analysis will be completed prior to the District’s commitment to the PMPU of components thereof, in whole or in part. Moreover, the Board reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the PMPU, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the PMPU. Those decisions may be exercised in the sole and absolute discretion of the Board. Based on the totality of the circumstances and the entire record, the Board’s direction and action do not commit the District to a definite course of action prior to CEQA review being conducted. Therefore, no further CEQA review is required.

In addition, this informational report allows for the District to implement its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, this informational report is consistent with the Public Trust Doctrine.

Finally, this informational report to the Board does not allow for “development,” as defined in Section 30106 of the Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, the District’s projects require processing under the District’s CDP Regulations. If a project is formulated as a result of the informational report, the Board will consider approval of the project and any improvements associated after the appropriate documentation under District’s CDP Regulations has been completed and authorized by the Board, if necessary. The Board’s direction in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

### **Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

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**Attachment(s):**

Attachment A:	Preliminary Draft Staff Presentation for October 10, 2017 Board Meeting
Attachment B:	Draft Land and Water Use Designations Table
Attachment C:	Draft Glossary of Commonly Used Terms
Attachment D:	Shaping the Future of San Diego's Public Spaces through Placemaking, Project for Public Spaces, September 2017
Attachment E:	2017 Port Master Plan Update Public Engagement Timeline