



Legislation Text

File #: 2018-0492, Version: 1

DATE: December 11, 2018

SUBJECT:

- A) RESOLUTION AUTHORIZING THE SAN DIEGO UNIFIED PORT DISTRICT TO ACCEPT AN EASEMENT FROM AND GRANT INDEMNITY TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA FOR THE IMPLEMENTATION OF THE SWEETWATER BICYCLE PATH AND PROMENADE PROJECT LOCATED IN THE CITY OF CHULA VISTA**
- B) RESOLUTION AUTHORIZING THE SAN DIEGO UNIFIED PORT DISTRICT TO ACCEPT AN EASEMENT FROM AND GRANT INDEMNITY TO UTC AEROSPACE SYSTEMS, INC., SUBJECT TO REASONABLE INDEMNITY PROVISIONS AND EXCLUDING PRE-EXISTING CONDITIONS OF THE EASEMENT AREA, AS APPROVED BY THE GENERAL COUNSEL, FOR THE IMPLEMENTATION OF THE SWEETWATER BICYCLE PATH AND PROMENADE PROJECT LOCATED IN THE CITY OF CHULA VISTA**
- C) RESOLUTION AUTHORIZING THE SAN DIEGO UNIFIED PORT DISTRICT TO ENTER INTO A CONSENT FOR THE USE OF LAND AGREEMENT AND GRANT INDEMNITY TO SAN DIEGO GAS & ELECTRIC COMPANY FOR THE IMPLEMENTATION OF THE SWEETWATER BICYCLE PATH AND PROMENADE PROJECT LOCATED IN THE CITY OF 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 on portions of certain properties not within the District's site control; including property owned by the Successor Agency of the Redevelopment Agency of the City of Chula Vista (City of Chula Vista), UTC Aerospace Systems, Inc. (UTC) and San Diego Gas & Electric Company (SDGE&E).

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 the City of Chula Vista, UTC and SDGE&E to negotiate no-cost site control agreements along with granting indemnity, to allow the construction, operation and maintenance of the Sweetwater Path.

Completion of the Sweetwater Path will provide much 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:

- A) Adopt a resolution authorizing the San Diego Unified Port Districts to accept an easement for a term of twenty-five (25) years, from and grant indemnity to the Successor Agency to the Redevelopment Agency of the City of Chula Vista for the implementation of the Sweetwater Bicycle Path and Promenade Project located in the City of Chula Vista; and
- B) Adopt a resolution authorizing the San Diego Unified Port Districts to accept an easement for a term of twenty-five (25) years, from and grant indemnity to UTC Aerospace Systems, Inc., subject to reasonable indemnity provisions and excluding pre-existing conditions of the easement area, as approved by the General Counsel, for the implementation of the Sweetwater Bicycle Path and Promenade Project located in the City of Chula Vista; and
- C) Adopt a resolution authorizing the San Diego Unified Port District to enter into a Consent to the Use of Land agreement for a term of twenty-five (25) years, and grant indemnity to San Diego Gas & Electric Company for the implementation of the Sweetwater Bicycle Path and Promenade Project located in the City of 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.

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 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 for \$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 portions of certain properties owned by the City, UTC and SDG&E. A copy of the site plan that illustrates the Sweetwater Path is included as Attachment A.

Public Access Agreements

In order to facilitate the construction and use of the Sweetwater Path and provide enhanced access to the Chula Vista Bayfront, the District must enter into various agreements for those properties not within the District's site control. 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 control no later than December 31, 2018. Staff has negotiated the following agreements for a term of twenty-five (25) years, along with granting indemnity, as applicable, to allow construction of the Sweetwater Path. The table below provides a high-level summary of each of these agreements:

| Name | Party | Term | Description | Indemnity |
|---|---|----------|---|-----------|
| Easement for Bicycle and Pedestrian Purposes (Attachment B) | Successor Agency of the Redevelopment Agency of the City of Chula Vista | 25 Years | Exclusive easement for a 2.26-acre parcel of land for the construction, operation and maintenance of path. | No |
| Easement (Attachment C) | UTA Aerospace Systems, Inc. | 25 Years | Exclusive easement for a 4.94 acre parcel of land for the construction, operation and maintenance of path. | Yes |
| Consent to Use of Land (Attachment D) | SDG&E | 25 Years | Exclusive use of approximately 2,000 square feet of land for the construction, operation and maintenance of path. | Yes |

The agreements include 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 these types of agreements. The indemnity provisions of the easement with UTC are subject to reasonable indemnity provisions and excluding pre-existing conditions of the easement area, as approved by the General Counsel. In addition, the insurance requirements for each of the agreements are within the District's policy limits.

CONCLUSION:

The Sweetwater Path once completed will provide much needed public access to the Chula Vista Bayfront and will further the vision of the CVBMP. Therefore, staff recommends accepting the agreements and granting indemnity pursuant to each of the agreements to allow for the construction of the Sweetwater Path, scheduled for completion in 2020.

General Counsel's Comments:

The Office of the General Counsel has reviewed the easement with the City of Chula Vista and the Consent to the Use of Land agreement with San Diego Gas & Electric Company, and the applicable indemnity provisions, and approves as to form and legality. The easement with UTC Aerospace Systems, Inc., and the granting of indemnity are subject to reasonable indemnity provisions and excluding pre-existing conditions of the easement area, as approved by the General Counsel.

Environmental Review:

The proposed Board action, including without limitation, a resolution authorizing and granting indemnity on various agreements for the implementation of the Sweetwater Bicycle Path and Promenade project 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). In April 2018, the Board adopted a Second Addendum to the Final EIR (Clerk Document No. 68404) that found the certified Port Master Plan Amendment for the CVB, as revised, with the incorporation of the CVBMP Development Policies (Clerk Document No. 59407) and CVBMP Public Access Plan (PAP) (Clerk Document No. 59408) were consistent with the Final EIR prepared for the CVBMP. 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 Addendum, the District finds and recommends that the approval of authorization of the agreements and associated indemnities 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, 35, and 87 of the Port Act which allow for the Board to pass resolutions, to do all acts necessary and convenient for the exercise of its powers for, and 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.

Finally, the proposed Board 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 Regulations. However, implementation of the Bicycle Path and Promenade project is considered “non-appealable development” pursuant to Sections 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.” Recreational pathways are not listed as an appealable development, requiring an appealable CDP. The District has determined that one non-appealable CDP for the Bicycle Path and Promenade project may be issued, which is the subject of a proposed Board action prior to this action.

Equal Opportunity Program: Not Applicable

PREPARED BY:

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Attachment A: Sweetwater Bicycle Path and Promenade Site Plan
Attachment B: Draft Public Access Easement - City of Chula Vista
Attachment C: Draft Easement and Agreement -UTC
Attachment D: Draft Consent to Use of Land - SDG&E

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