



## Legislation Text

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**File #:** 2019-0029, **Version:** 1

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**DATE:** March 12, 2019

**SUBJECT:**

### **RESOLUTION BY A FOUR-FIFTHS (4/5) VOTE AUTHORIZING CONTINUED ACTION FOR THE EMERGENCY STORM WATER MANAGEMENT AT THE CHULA VISTA BAYFRONT**

#### **EXECUTIVE SUMMARY:**

The San Diego Unified Port District (District) imported approximately 220,000 cubic yards of soil to two development sites at the Chula Vista Bayfront.

Between November 29<sup>th</sup> and December 7<sup>th</sup>, 2018, two storms occurred that damaged the sites creating the need for cleanup and repairs. To meet this need and avoid further damage to District property, the Executive Director declared an emergency and authorized the immediate execution of contracts to design a plan, repair the damage, and deploy additional erosion control and sediment runoff prevention measures termed Best Management Practices (BMP's) to protect the District's property. The declaration of the emergency waived the necessity of formal bidding procedures as required by the State of California Public Contract Code. The contract was implemented, and the contractor began site repairs and BMP Installation and maintenance.

At its regularly scheduled meeting the San Diego Unified Port Board of Port Commissioners (Board), by a four-fifths (4/5) vote, ratified the declaration of emergency by the Executive Director on January 16, 2019. Pursuant to Board Resolution 2000-03, the Board shall review the need for continued emergency action at every regularly scheduled meeting to determine, by a four-fifths (4/5) vote, that there is a need to continue the emergency action. The Board authorized continued action at the February 12, 2019 meeting and Staff recommends the Board continue the action at today's meeting.

#### **RECOMMENDATION:**

Adopt a Resolution by a Four-Fifths (4/5) Vote Authorizing Continued Action for the Emergency Storm Water Management at the Chula Vista Bayfront

#### **FISCAL IMPACT:**

This project is being funded by the approved CIP project, Site Preparation at Chula Vista Bayfront. Cost projections have been revised to be approximately \$500,000, this is expected to exceed the current CIP budget for the Site Preparation at Chula Vista Bayfront. Staff will request funds upon completion of the project to increase the CIP project budget.

#### **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 temporarily raising the elevation of both sites roughly 7-feet to provide sufficient onsite soil 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 storm water erosion control and sediment runoff prevention measures termed Best Management Practices (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 gages, the two storm events produced a total of 4.5 inches of rainfall. The first storm, dropping 1.1 inches of rain, saturated the soil. The second storm dropped 3.4 inches of rain, with 2.6 inches occurring in a six-hour window, on the already saturated ground at the sites. The rainfall and rainfall intensities during these two events overwhelmed the stormwater BMPs at both sites resulting in significant erosion damage to District property.

The original soil import contractor, Sierra Pacific West Inc., was onsite during the December 7<sup>th</sup> storm event attempting to mitigate damage to the sites but ceased operations due to lightning and safety concerns. The contractor returned to the sites the day after the December 7<sup>th</sup> storm event and began cleaning up and making repairs to the site and to the stormwater BMPs. It was immediately determined that the scope under their current contract did not address the magnitude of repairs and additional BMPs necessary to restore the sites and to prevent further damage.

In order to perform required clean up and repair damages that were caused by the noted storm events, and to provide additional BMPs in anticipation of future storm events an action plan was developed to provide immediate repairs to the graded areas, revisions to the grading design, and additional BMPs were required to minimize risk of further erosion damage to District property unauthorized stormwater runoff, costly repairs, and possible regulatory citations and fines. The original contract with Sierra Pacific West, Inc. was a small, direct negotiated contract, with insufficient change order capacity to address the required repairs and additional BMP preventative measures. Therefore, a new and immediate 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. The Board was notified through a Board Memo and ratified the declaration of emergency in its January 16, 2019 meeting.

The District's insurance carrier, Factory Mutual Insurance Company, was contacted to determine if the costs of repairs was reimbursable. The response was "... the land (soil) is excluded property

under the Policy. The Policy, therefore, cannot respond to costs to replace and regrade the land (soil) ...”.

Additional storm events occurred in January and February resulting in additional unanticipated minor damage to the site and slowing the repair and additional BMP implementation efforts already underway. However, the newly installed additional stormwater BMP's have helped to protect the sites and, with continued maintenance will continue helping to protect the sites. See Attachment A for photos of the repairs, BMP's, and resulting stormwater runoff improvements.

Currently, repairs are ongoing and continued implementation and maintenance of the BMP's are necessary to assure that District property is fully protected. It is anticipated this effort will continue through much of the remainder of the rainy season (April 2019). 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 at every regularly scheduled meeting, to determine, by a four-fifths (4/5) vote, that there is a need to continue the emergency until the action is terminated. Staff recommends the Board authorize continuing the emergency until all repairs and additional stormwater preventative BMPs are fully implemented.

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

The Office of the General Counsel has reviewed the issues set forth in this agenda and found no legal concerns as presented.

### **Environmental Review:**

The proposed Board direction or action, including without limitation, a resolution authorizing the continued action for the emergency 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 authorizing continued emergency storm water management 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 direction or 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 direction or 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 proposed Board direction or action 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 direction or action is 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