



## Legislation Text

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**File #:** 2020-0317, **Version:** 1

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**DATE:** September 10, 2020

**SUBJECT:**

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH DOLE FRESH FRUIT COMPANY, REGARDING LOW CARBON FUEL STANDARD (LCFS) CREDITS GENERATED FROM THE SHORE POWER PLUG LOCATED AT THE TENTH AVENUE MARINE TERMINAL FOR USAGE COVERING THE PERIOD FROM JULY 1, 2020 THROUGH DECEMBER 31, 2020.**

**EXECUTIVE SUMMARY:**

Dole Fresh Fruit company is a current District tenant that leases approximately 954,864 square feet of land area and the improvements thereon at the Tenth Avenue Marine Terminal (TAMT), and pursuant to Tariff No. 1-G, Dole utilizes additional space outside of its leasehold for their maritime cargo operations. The Port District installed and owns a 7.5 MV Amp substation, duct bank system, and two shore-to-ship power receptacles in vaults at berths 10-2 and 10-3 at the northern section of TAMT ("Shore Power Plug") which is operated by Dole when its vessels are berthed at the TAMT. The electric meter for the TAMT Shore Power Plug is under Dole's name and account with San Diego Gas & Electric (SDG&E) and Dole pays SDG&E directly for the electric power used by its vessels from the Shore Power Plug.

The State of California has codified the California Low Carbon Fuel Standard Regulation at 17 CCR § 95480 *et seq.*, as may be amended from time to time ("LCFS Regulation"). LCFS Regulation provides for the generation of credits ("LCFS Credits") based on the provision of power to Ocean-Going Vessels, which LCFS Credits can then be monetized. The Parties are interested in memorializing their agreement and mutual understanding regarding the LCFS Credits for the TAMT Shore Power Plug for the period beginning on July 1, 2020 and ending on December 31, 2020 only ("Q3 and Q4 of 2020").

The proposed Memorandum of Understanding would result in revenue in the approximate amount of \$290,908. Additionally, the MOU would provide half of those funds, approximately \$145,453 to Dole to further their electrification needs and to assist the District in meeting our TAMT EIR mitigation measures as consideration for the shore power plug data associated with the 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2020. Staff is in the process of negotiating a longer-term agreement with Dole but this MOU would enable the District and Dole to continue monetizing generation credits until a final agreement is reached.

**RECOMMENDATION:**

Adopt a resolution authorizing the executive director to execute a memorandum of understanding

with Dole Fresh Fruit Company, regarding Low Carbon Fuel Standard (LCFS) credits generated from the shore power plug located at the Tenth Avenue Marine Terminal through December 31, 2020.

### **FISCAL IMPACT:**

The proposed Memorandum of Understanding would result in revenue in the approximate amount of \$290,908. Of that amount, \$145,454 would be revenue for the District. Additionally, the MOU would provide half of the total funds, approximately \$145,454 to Dole to further electrification needs and to assist the District in meeting TAMT EIR mitigation measures as consideration for the shore power plug data associated with the 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2020.

### **COMPASS STRATEGIC GOALS:**

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

- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port that the public understands and trusts.
- A Port with a healthy and sustainable bay and its environment.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### **LCFS Background**

In 2006 and under Assembly Bill 32, the California Air Resources Board identified the Low Carbon Fuel Standard (LCFS) as a program to assist in decreasing the carbon intensity of California's transportation sector by reducing GHG emissions and other air pollutants, while increasing transportation mobility alternatives. In an effort to reduce petroleum dependency and improve the air quality, the program was approved in 2009 and implementation began in 2011. Those who are unable to reduce their emissions to a satisfactory method can purchase LCFS credits from LCFS generators. In 2018, CARB amended the LCFS program to allow for other crediting opportunities to promote electrification and other advanced technologies to achieve decarbonization in the transportation industry. The use of shore power was included in the 2018 amendment as one of the new methods by which to receive LCFS credits.

The LCFS is one of the key AB 32 measures to reduce greenhouse gas emissions in California but also has other significant benefits by allowing for reinvestments into further electrification opportunities. The State of California has codified the California Low Carbon Fuel Standard Regulation at 17 CCR § 95480 *et seq*, as may be amended from time to time ("LCFS Regulation"). LCFS Regulation provides for the generation of credits ("LCFS Credits") based on the provision of power to Ocean-Going Vessels, which LCFS Credits can then be monetized.

The District and Dole are interested in memorializing their agreement and mutual understanding regarding the LCFS Credits for the TAMT Shore Power Plug for the period beginning on July 1, 2020 and ending on December 31, 2020 only ("Q3 and Q4 of 2020").

## Discussion

Dole Fresh Fruit company is a current District tenant that leases approximately 954,864 square feet of land area and the improvements thereon at the Tenth Avenue Marine Terminal (TAMT), and pursuant to Tariff No. 1-G, Dole utilizes additional space outside of its leasehold for their maritime cargo operations. The Port District installed and owns a 7.5 MV Amp substation, duct bank system, and two shore-to-ship power receptacles in vaults at berths 10-2 and 10-3 at the TAMT ("Shore Power Plug") which is operated by Dole when its vessels are berthed at the TAMT. The electric meter for the TAMT Shore Power Plug is under Dole's name and account with San Diego Gas & Electric (SDG&E) and Dole pays SDG&E directly for the electric power used by its vessels from the Shore Power Plug.

The Port owns the Fueling Supply Equipment (FSE) as prescribed in the LCFS regulation (the 7.5 MV Amp substation, duct bank system, and two shore-to-ship power receptacles), and Dole controls the meter and data needed for CARB verification. Without Dole's data, the District would not be eligible to participate in this program. Once the data from Dole is received, the District can then sell those credits through our LCFS Broker, Blue Source, as approved by this Board in the December 2019 Board of Port Commissioner Meeting. All revenues received through the LCFS program, must be reinvested into further electrification. This can assist the District in achieving the Maritime Clean Air Strategy, as well as meet the Tenth Avenue Marine Terminal Redevelopment EIR mitigation measures. It will also assist Dole in acquiring new, electric pieces of cargo handling equipment.

## Previous Administrative LCFS Activities

The District has executed quarterly agreements none of which have exceeded \$175,000 annually, but is interested in executing a longer agreement and present before the Board of Port Commissioners in accordance with District policies. To date, the District has generated the following revenues from LCFS credits:

- Q2 of 2019: \$44,364 (District portion); \$44,364 (Dole portion)
- Q3 of 2019: \$81,070 (District portion); \$54,047 (Dole portion)
- Q4 of 2019: \$57,532 (District portion); \$57,532 (Dole portion)
- Q1 of 2020: \$101,078 (District portion); \$101,078 (Dole portion)
- Q2 of 2020: \$88,247 (District portion pending); \$58,831 (Dole portion pending)

Previously, the District has received \$182,966 in 2019 and \$189,325 in 2020 thus far to be reinvested in further electrification. Dole has received \$155,943 in 2019 and \$159,909 in 2020 thus far to reinvest in further electrification. This does not take into account the LCFS funds associated with the Cruise shore power plug which generated District revenue of \$208,524 in 2019 and \$767,801 in 2020.

This MOU will allow for an agreement to split the revenues associated with LCFS credits generated at TAMT for the Dole vessels that shore power, between the District and Dole in consideration for the receipt of data from Dole for Q3 and Q4 of 2020, which shall be reinvested into further electrification pursuant to the LCFS regulation. Staff is in the process of negotiating a longer-term agreement with Dole but this MOU would enable the District and Dole to continue monetizing generation credits until

a final agreement is reached.

## **Conclusion**

Staff believes that the Memorandum of Understanding represents a favorable deal for the District as it allows the District and Dole to capture LCFS revenues to assist both parties in achieving the Tenth Avenue Marine Terminal Redevelopment EIR mitigation measures as well as the goals outlined the Maritime Clean Air Strategy.

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

The Office of the General Counsel has reviewed and approved this agenda sheet, the proposed MOU, and resolution, as presented, as to form and legality.

## **Environmental Review:**

The proposed Board action, including without limitation, a resolution authorizing a memorandum of understanding with Dole Fresh Fruit Company regarding low carbon fuel standard credits does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board action that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The proposed Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action complies with Sections 21, 35, and 87 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers, and which authorizes the use of tidelands for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

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 (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 Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified

CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

Josefina V. Khalidy  
Principal, Maritime Business

**Attachment(s):**

Attachment A: MEMORANDUM OF UNDERSTANDING BETWEEN DOLE FRESH FRUIT COMPANY AND THE SAN DIEGO UNIFIED PORT DISTRICT FOR LCFS CREDIT REVENUE SHARING FOR THIRD AND FOURTH QUARTERS OF 2020 ONLY