

**CALENDAR ITEM
C37**

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02/01/10
AD 542 / G10-08
J. Lucchesi
G. Kato

**CONSIDERATION OF A LAND EXCHANGE AGREEMENT BETWEEN THE SAN
DIEGO UNIFIED PORT DISTRICT, SAN DIEGO GAS AND ELECTRIC COMPANY,
AND THE STATE LANDS COMMISSION, INVOLVING CERTAIN PARCELS
LOCATED WITHIN THE SAN DIEGO UNIFIED PORT DISTRICT, CITY OF CHULA
VISTA, SAN DIEGO COUNTY**

PARTIES:

State of California
State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, California 95825

San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112

San Diego Gas and Electric Company
8335 Century Park Court, CP11d
San Diego, CA 92123

PROPOSED LAND EXCHANGE AGREEMENT:

The San Diego Unified Port District (Port) has requested that the State Lands Commission (Commission) consider and approve a Land Exchange Agreement (Agreement) between the Port, the Commission and San Diego Gas and Electric Company (SDG&E). The purpose of the Agreement is to facilitate the relocation of the existing South Bay Substation to allow for future redevelopment by the Port of the Chula Vista Bayfront for the benefit of the public trust and the State. The parties to the proposed Agreement include the State of California (State), acting by and through the Commission, the Port and SDG&E. The State would terminate any and all public trust interest in a 12.42-acre parcel (Trust Termination Parcel) and quitclaim the Trust Termination Parcel to SDG&E in exchange for SDG&E relinquishing, and the State acquiring in trust, two easement interests in certain parcels of land, 7.22 acres and 10.47 acres respectively. The Port would retain the underlying fee interest in these two easement parcels. For purposes of this staff report and the Agreement, these

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easement interests to be acquired by the State are referred to as the Final Public Trust Easement Parcel A and Final Public Trust Easement Parcel B. The Trust Termination Parcel and the Final Public Trust Easement Parcels A and B are shown for reference purposes on Exhibit A.

The Port and SDG&E have entered into a companion real estate transaction that, in conjunction with the land exchange provided in the proposed Agreement, will facilitate the relocation and development of the New Substation and the decommissioning and demolition of the existing South Bay Substation and related existing transmission and distribution facilities by SDG&E.

Specifically, the terms of the proposed Agreement provide that:

1. Prior to the close of escrow, various conditions precedent must occur, including the Required Must Run (RMR) status of the South Bay Power Plant must be terminated and SDG&E must receive final decisions from the California Public Utilities Commission (CPUC) issuing the Permit to Construct and all other required permits for the New Substation.
2. The Port will quitclaim its interests in the Trust Termination Parcel to the State.
3. The State will then quitclaim its interests in the Trust Termination Parcel, free of any public trust interests to SDG&E.
4. SDG&E will quitclaim its interests in the Final Public Trust Easement Parcel A to the State.
5. The Port will then lease its underlying fee interest in the Final Public Trust Easement Parcel A site to SDG&E for a term not to exceed ten years for the purpose of decommissioning and demolishing the existing South Bay Substation and its related transmission and distribution facilities.
6. At the completion of the decommissioning and demolition of the improvements on the Final Public Trust Easement Parcels A and B sites, SDG&E will then quitclaim its interests in the Final Public Trust Easement Parcel B to the State.
7. Commission staff and the Port will then pursue obtaining necessary State legislation to include the State's interests in the Final Public Trust Easement Parcels A and B in the Port's trust grant.

BACKGROUND:

The Port is the State's trustee of public trust lands within San Diego Bay granted to it by the Legislature pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, with minerals reserved (Port Act or the Port's trust grant).

In 1998, the Port acquired from SDG&E certain land within the city of Chula Vista, which included the 116-acre South Bay Power Plant site, a 33-acre parcel known as the Liquid Natural Gas (LNG) site, and a 16-acre transmission corridor (see Exhibit B) using public

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trust funds. The 1998 land acquisition by the Port included the Trust Termination Parcel site and the Final Public Trust Easement Parcels A and B sites. The Trust Termination Parcel is a portion of the LNG site and was acquired by the Port in fee simple absolute. However, because public trust funds were used to acquire these parcels, they are held by the Port subject to the public trust. The Final Public Trust Easement Parcel A and B sites are a portion of the 116-acre South Bay Power Plant site. The Port acquired the underlying fee interest in the Final Public Trust Easement Parcel A site, consisting of 7.22 acres, subject to SDG&E's retained exclusive Easement for Electric Substation (existing South Bay Substation) for the operation of the existing South Bay Substation. The Port acquired the underlying fee interest in the Final Public Trust Easement Parcel B site, consisting of 10.47 acres, subject to SDG&E's retained non-exclusive Easement for Electric Transmission Facilities and Easement for Distribution of Electricity for the operation of transmission and distribution facilities. The Commission approved the Port's above described acquisition pursuant to Section 30.5 of the Port Act on January 29, 1999 (Minute Item 46).

LEGAL REQUIREMENTS:

The Trust Termination Parcel is an upland parcel acquired by the Port as a public trust asset and is not historically sovereign land subject to section 3, Article X of the California Constitution which prohibits the alienation of tide and submerged lands within two (2) miles of an incorporated city or town. However, pursuant to section 87(b) of the Port Act, the Port is prohibited from terminating any public trust interests and alienating its public trust lands, including those acquired pursuant to section 30.5 of the Port Act, to any individual, firm or corporation.

Pursuant to Public Resources Code (PRC) section 6307, the Commission is authorized, under certain circumstances, to terminate the State's public trust interests and enter into land exchange agreements. Because the Port does not have the legal authority to terminate the State's public trust interest on trust property, the Commission must take title to the Trust Termination Parcel to be exchanged for the interests in the Final Public Trust Easement Parcels A and B and as part of that exchange terminate the public trust interest on the Trust Termination Parcel. The Commission, in order to approve the proposed Agreement, must make the following requisite findings pursuant to PRC section 6307:

- (1) The exchange is for one or more of the following purposes:
 - a. To improve navigation or waterways;
 - b. To aid in reclamation or flood control;
 - c. To enhance the physical configuration of the shoreline or trust land ownership;
 - d. To enhance public access to or along the water;

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- e. To enhance waterfront and nearshore development or redevelopment for public trust purposes;
 - f. To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space;
 - g. To resolve boundary or title disputes.
- (2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust;
 - (3) The exchange does not substantially interfere will public rights of navigation and fishing;
 - (4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange;
 - (5) The lands or interests in land given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways and are relatively useless for public trust purposes.
 - (6) The exchange is in the best interest of the State.

ANALYSIS AND STAFF RECOMMENDATION

Commission staff has reviewed the information submitted for the proposed Land Exchange Agreement, including an appraisal of the interests in the Trust Termination Parcel and the Final Public Trust Easement Parcels A and B. Staff believes all necessary legal elements have been met for the exchange of the Trust Termination Parcel for the Final Public Trust Easement Parcels A and B.

Since 2002, the Port and the City of Chula Vista have engaged in a cooperative planning effort for the Chula Vista Bayfront, which includes granted sovereign lands under the jurisdiction of the Port and private uplands within the city of Chula Vista. This effort has involved extensive public outreach and resulted in a 556-acre master plan that proposes to reconfigure 497 acres of land and 59 acres of water uses, connecting them in a way that promotes public access and engagement with the water while enhancing the quality and protection of key habitat areas. According to the Port, the ultimate goal of the master plan is to create a world-class bayfront through strong planning and design, economic feasibility, and community outreach.

The existing South Bay Substation is situated in the center of the Otay District, which is the southernmost district of the master plan's three planning districts. The Otay District is approximately 144 acres, and is planned for medium-density development consisting of industrial business park use, a recreational vehicle park, a new public park, open space areas, an ecological buffer, bike path, pedestrian trails, and new roadways and infrastructure.

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The proposed Agreement allows for the relocation of the South Bay Substation to a peripheral location, thereby facilitating consolidated redevelopment of public trust lands and allowing for public access where it currently is prohibited. Specifically proposed in the location of the existing South Bay Substation are a recreational vehicle park and public park areas. These low cost visitor serving uses will promote and enhance direct public access to the shoreline, will provide linkages to walking trails and promenades along the entire Chula Vista Bayfront.

In addition to facilitating the redevelopment of the Final Public Trust Easement Parcels A and B sites for public trust purposes, the Agreement will also facilitate the relocation and construction of a more modern and reliable 230/69/12 kV New Substation on the Trust Termination Parcel site. The relocation and construction of a New Substation will be subject to SDG&E obtaining all required regulatory approvals from the CPUC and the California Independent System Operator. The CPUC will be the lead agency for the New Substation project, including the decommissioning and demolishing of the existing South Bay Substation and related transmission and distribution facilities under the California Environmental Quality Act (CEQA). According to the Port, the expected timeframe, after acquiring all permits and satisfying all other conditions precedent, from start of construction of the New Substation through demolition of the existing South Bay Substation is approximately three years.

Staff is recommending Commission approval of the proposed Agreement for several reasons. The Agreement will facilitate the relocation of the existing South Bay Substation from its current location to a more remote location. This will in turn allow for future development of Port lands in furtherance of public trust purposes. The Trust Termination Parcel is relatively small in area when compared to the thousands of acres of filled and unfilled public trust lands held in trust by the Port. The evidence shows that the Trust Termination Parcel was never tide and submerged lands and is physically separated from the waters of San Diego Bay by a commercial solar salt evaporation facility. In contrast, the Final Public Trust Easement Parcels A and B to be acquired by the trust will provide public access to and along San Diego Bay, as well as provide public bayfront recreational opportunities for the citizens of the State of California. Further, the monetary value of the Final Public Trust Easement Parcels A and B are equal to or greater than the monetary value of the public trust interests in the Trust Termination Parcel as demonstrated by an appraisal completed by Jones, Roach & Caringella, Inc. and reviewed by Commission staff.

As described in the preceding paragraphs, the facts support each of the necessary findings the Commission must make. Staff therefore recommends that the Commission approve the Agreement and authorize its execution and the execution and recordation of all documents necessary to implement it.

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OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to section 6307 of such code, to enter into land exchange agreements.
2. The San Diego Unified Port District approved the Land Exchange Agreement on January 5, 2010.
3. Adjacent to the Trust Termination Parcel, lying westerly of the Trust Termination Parcel and easterly of San Diego Bay, the State, acting by and through the Commission, acquired a parcel (known as the Northeast Parcel), pursuant to a title settlement agreement between the Commission, the Port and Western Salt Company. This agreement was authorized by the Commission on January 29, 1999 as Minute Item 45 (AD 364). The Commission currently leases the Northeast Parcel to the United States Fish and Wildlife Service as part of the San Diego National Wildlife Refuge (Lease No. PRC 8075). A commercial solar salt evaporation facility currently operates on the Northeast Parcel under a Special Use Permit between the Fish and Wildlife Service and the San Diego County Airport Authority.
4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined that this activity is exempt from the requirements of CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b) (3)

5. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. However, the Commission has declared that all lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code sections 6370, et seq., use classifications for such lands have not been designated. Therefore, finding of the project's consistency with the use classification as required by Title 2, California Code of Regulations, section 2954 is not applicable.

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EXHIBIT:

- A. Location and Site Map
- B. Location and Site Map of the Port's 1998 Acquisition

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 because there is no possibility that the activity may have a significant effect on the environment; Title 14, California Code of Regulations, section 15061 (b) (3).

AUTHORIZATION:

1. Find that, with respect to the Land Exchange Agreement, which findings shall be effective on close of escrow as provided in the Land Exchange Agreement:
 - A. The Land Exchange Agreement is consistent with Public Trust needs to enhance trust land ownership along the shoreline, to enhance public access to and along the water and to enhance waterfront and nearshore redevelopment for Public Trust purposes.
 - B. The lands and interests in lands to be acquired by the State pursuant to this Land Exchange Agreement are of such a configuration that they can be used more effectively by the San Diego Unified Port District, as Trustee, in furtherance of Public Trust purposes than the uplands to be conveyed and will in fact provide a significant benefit to the Public Trust;
 - C. The land given by the State to SDG&E pursuant to this Agreement is cut off from water access, is relatively useless for public trust purposes and as an upland parcel acquired by the Port, is a public trust asset and not historically sovereign land;
 - D. The monetary value of the lands and interests in lands received by the State in trust pursuant to the Land Exchange Agreement is equal to or greater than the that of the lands and interests in lands to be relinquished by the State;
 - E. The Land Exchange Agreement does not substantially interfere with public rights of navigation and fishing;
 - F. The Land Exchange Agreement is consistent with and is authorized by the requirements of the law;

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- G. The Land Exchange Agreement is in the best interests of the State.
2. Find that the interests in land to be conveyed to the State are to be accepted as being subject to the Public Trust for the benefit of the people of the State of California, to be held by the State of California for Public Trust purposes.
 3. Approve and authorize the execution, acknowledgment, and recordation of the Land Exchange Agreement and associated deed and acceptances on behalf of the California State Lands Commission, in substantially the form of the copy of such Agreement on file in the Sacramento Office of the Commission.
 4. Authorize and direct staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgement, acceptance and recordation of all documents as may be necessary or convenient to carry out the Land Exchange Agreement; and to appear on behalf of the Commission in any legal proceeding relating to the subject matter of the Land Exchange Agreement.

NO SCALE

SITE

CHULA VISTA

APN
571-160-08-00

FINAL PUBLIC TRUST
EASEMENT PARCEL B

APN
571-240-01-00

SOUTH BAY
POWER
PLANT SITE

FINAL PUBLIC TRUST
EASEMENT PARCEL A

SAN DIEGO
BAY

APN
617-011-09-00
LIQUID
NATURAL
GAS SITE

BAY BLVD.

TRUST
TERMINATION
PARCEL

PORTIONS OF PARCELS 1 AND 2 OF PARCEL MAP NO. 18185,
FILE NO. 1998-858614, SAN DIEGO COUNTY RECORDS

NO SCALE

LOCATION

Exhibit A

G 10-08.10
SAN DIEGO UNIFIED PORT
DISTRICT
APNs 617-011-09-00,
571-240-01-00 & 571-160-08-00
SAN DIEGO COUNTY



MAP SOURCE: USGS QUAD



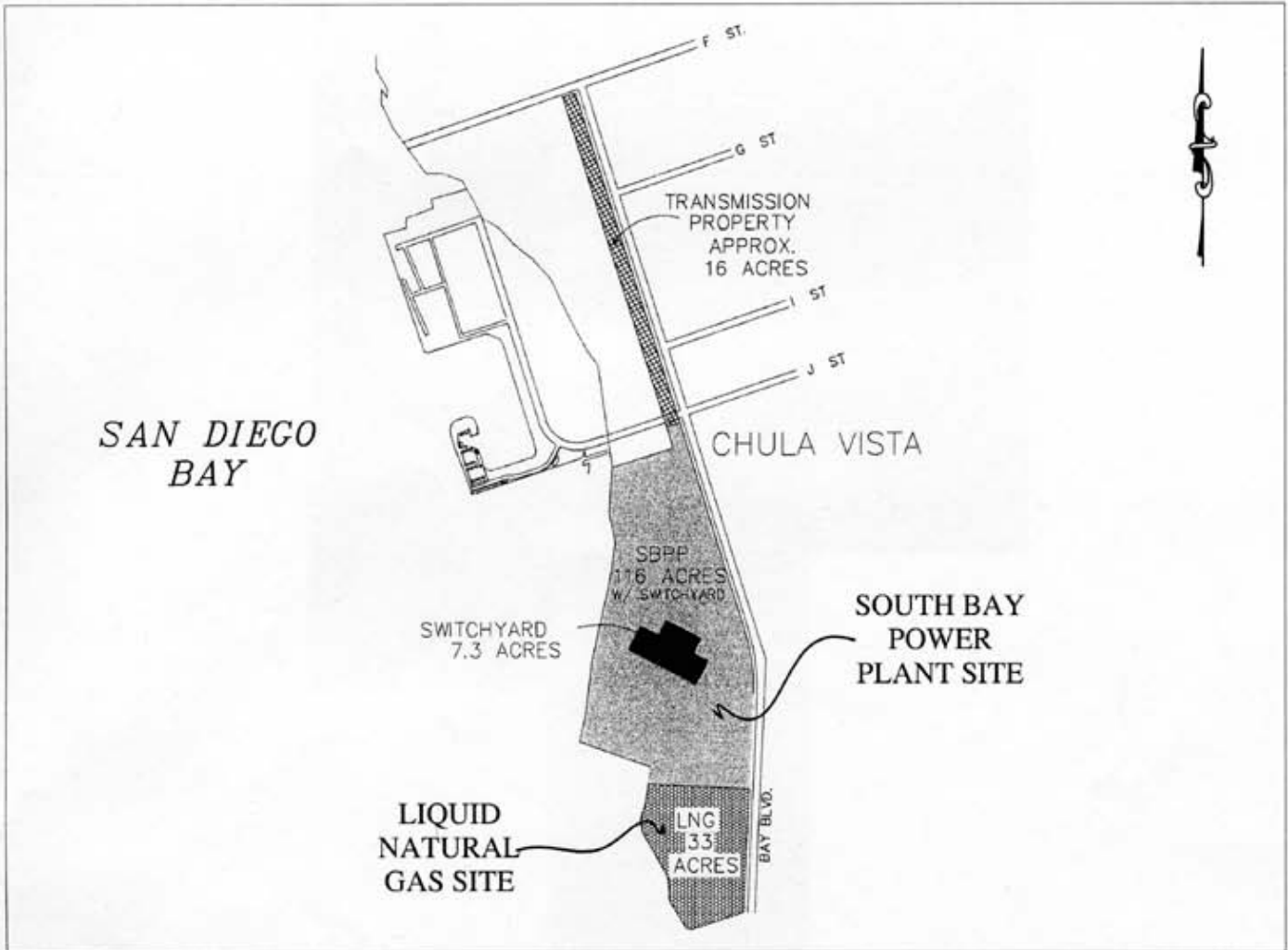
SITE

JWP 01/10

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

NO SCALE

SITE



SAN DIEGO UNIFIED PORT DISTRICT'S 1998 ACQUISITION

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

G 10-08.10
 SAN DIEGO UNIFIED
 PORT DISTRICT
 CHULA VISTA,
 SAN DIEGO COUNTY



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