

**CALENDAR ITEM**

**48**

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**CONSIDERATION OF A LAND EXCHANGE AGREEMENT BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT, NORTH C.V. WATERFRONT L.P. AND THE STATE LANDS COMMISSION, INVOLVING CERTAIN PARCELS LOCATED WITHIN THE 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

North C.V. Waterfront L.P.  
1785 Hancock Street, Suite 100  
San Diego, CA 92110

**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 North C.V. Waterfront L.P., in which Pacifica Hospitality Group, Inc. is the sole general partner (Pacifica). The purpose of the Agreement is to facilitate the development of the 556 acre Chula Vista Bayfront Master Plan.

The parties to the proposed Agreement include the State of California (State), acting by and through the Commission, the Port and Pacifica. Pursuant to the Agreement, the State will terminate any and all property interests, including any public trust interest, in two parcels, consisting of approximately 35 acres (Trust Termination Parcels), and

## CALENDAR ITEM NO. 48 (CONT'D)

quitclaim the Trust Termination Parcels to Pacifica in exchange for Pacifica conveying, and the State acquiring in trust, a parcel of land, consisting of approximately 97 acres (Final Public Trust Parcel). The Trust Termination Parcels and the Final Public Trust Parcel are shown for reference purposes on Exhibit A.

Specifically, the terms of the proposed Agreement provide that:

1. The Port will quitclaim its interests in the Trust Termination Parcels to the State.
2. The State will then quitclaim its interests in the Trust Termination Parcels, free of any public trust interests, to Pacifica.
3. Pacifica will convey its interests, in the form of a grant deed, in the Final Public Trust Parcel to the State.
4. The Commission will lease its interests in the Final Public Trust Parcel to the Port.
5. Commission staff and the Port will then pursue obtaining necessary State legislation to include the State's interests in the Final Public Trust Parcel 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).

Beginning in 2002, the Port and the city of Chula Vista engaged in a cooperative planning effort for the Port properties within the Chula Vista Bayfront. Prior to this, Pacifica had proposed a mixed-use plan for the MidBayfront properties, which includes the Final Public Trust Parcel. There was significant public opposition to Pacifica's proposal as community members felt that residential and other high-density development adjacent to the Sweetwater Marsh National Wildlife Refuge was highly undesirable. The community members requested that the MidBayfront and Port properties be comprehensively master planned and that the Port explore the feasibility of a land exchange between the MidBayfront and certain Port properties. In response, the city of Chula Vista and the Port approved the expansion of the Chula Vista Bayfront Master Plan (Master Plan) planning area. Pacifica voluntarily agreed to incorporate the MidBayfront properties, including the Final Public Trust Parcel, in the Master Plan.

A portion of the Master Plan area, including a portion of the Trust Termination Parcel, involves sovereign tide and submerged lands, which were initially legislatively granted to the city of Chula Vista and subsequently transferred to the Port pursuant to the Port Act. These lands were filled and reclaimed more than forty years ago. A portion of these lands includes a stormwater drainage channel known as the L-Ditch that was created sometime after the Trust Termination Parcels were filled and reclaimed. While

CALENDAR ITEM NO. 48 (CONT'D)

the L-Ditch was designed to drain stormwater runoff, portions of the L-Ditch are occasionally covered and uncovered by the ebb and flow of San Diego Bay waters through outflow pipelines. On August 20, 2010 (Minute Item #24), the Commission authorized the removal of a maximum of 500 cubic yards of material from the L-Ditch to comply with the requirements of a Cleanup and Abatement Order from the Regional Water Quality Control Board (RWQCB). In 1998, the RWQCB issued a Cleanup and Abatement Order (CAO-98-08) to B.F. Goodrich that required the L-Ditch to be remediated. B.F. Goodrich has prepared a remedial action plan in coordination with the RWQCB and the Port. As part of this remedial action plan, after removal of the material from the L-Ditch, the L-Ditch will be backfilled with clean fill and a lined sand filtration system to replace the drainage function of the L-Ditch. A backflow preventer will be installed to prevent tidal flow into the L-Ditch.

A portion of the Master Plan area, including another portion of the Trust Termination Parcel, also includes lands acquired by the Port through a land exchange with B.F. Goodrich/Rohr, approved by the Commission on December 3, 1999 (Minute Item #73). Additionally, a portion of the Master Plan area also includes lands the Port acquired using public trust revenues, including the South Bay Power Plant property. A portion of the South Bay Power Plant property was the subject of a land exchange agreement between the Port, San Diego Gas & Electric Company and the State (Minute Item #37), approved by the Commission on February 1, 2010.

Since the Port acquired the former Goodrich South Campus, the South Bay Power Plant properties, and other parcels, there have been several unsuccessful development proposals for the Chula Vista Bayfront. At the time of the prior land exchange with B.F. Goodrich/Rohr in 1999, there was no proposal for master planning the Chula Vista Bayfront. Although it made sense from a public trust perspective to consolidate disconnected public trust lands by exchanging certain Port property for parcels owned by B.F. Goodrich/Rohr, by 2005 it became evident that piecemeal development of the Bayfront was diminishing the public use value of the land within the Bayfront area, including public trust lands.

To avoid further diminishing public use values, the Master Plan effort was initiated. The Master Plan planning effort 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. One goal of the Master Plan is to create a world-class bayfront through strong planning and design, economic feasibility, and community outreach.

## CALENDAR ITEM NO. 48 (CONT'D)

The Master Plan also promotes public access to and engagement with the water while enhancing the quality and protection of key habitat areas. The Master Plan proposes an open space corridor that is fully accessible to the public and connects the entire Bayfront area through a shoreline promenade or baywalk and a bicycle path linking the various parks. Approximately 238 acres of the Master Plan site are proposed for open space, either in the form of natural habitat or public parks. Approximately 258 acres of the Master Plan are proposed for development. The remaining 59 acres consists of water covered lands to be developed for the marina basins and a new commercial harbor.

The key components of the Master Plan include: a signature park and open space areas; improved visual corridors to San Diego Bay; a resort and convention center and other hotels; residential and mixed-use office/commercial recreation uses; waterfront retail uses and public gathering spaces around the harbor; a new commercial harbor and improved navigation channel; a public promenade and bike trail through the entire bayfront; and large buffer zones to protect adjacent sensitive resources.

For planning purposes, the Master Plan area is divided into three districts – the Sweetwater District, the Harbor District and the Otay District. All three districts include public trust lands owned and managed, in trust, by the Port pursuant to the Port Act, and private lands. The Sweetwater District is composed of approximately 130 acres and is proposed to include the lowest intensity development of the three districts and focuses on lower scale, environmentally-sensitive and environmentally-themed uses. The Harbor District includes approximately 223 acres of land and 59 acres of water. The Harbor District proposes the highest intensity development and encourages a mix of uses including a resort conference center, hotels, bike path, park and open space areas, a continuous waterfront promenade, residential uses, and mixed-use retail and office uses. A reconfiguration of the existing harbor to create a new commercial harbor and realignment of the navigation channel is proposed. The Otay District is composed of 144 acres and proposes medium intensity development that will consist of industrial business park uses, low cost visitor-serving recreational uses, open space areas, an ecological buffer, bike paths and pedestrian trails. All three districts will also include new roadways and infrastructure improvements.

The Port and Pacifica have entered into a companion real estate transaction (the Commission is not a party to this companion transaction) that, in conjunction with the land exchange provided in the proposed Agreement, will facilitate the Chula Vista Bayfront Master Plan. Through this companion real estate transaction, Pacifica will contribute \$3,000,000 for infrastructure improvements within the Chula Vista Bayfront. Further, Pacifica will contribute an amount equal to 0.5% of the gross sales price for each residential unit to a Community Benefits Fund for environmental purposes. Such

CALENDAR ITEM NO. 48 (CONT'D)

deposits are anticipated to total more than \$7 million. Pursuant to a separate agreement, Pacifica is also committing 0.5% of all resales for seven years and \$2,000 per hotel room to a community fund.

**LEGAL REQUIREMENTS:**

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 Parcels to be exchanged for the interests in the Final Public Trust Parcel, and, as part of that exchange, terminate the public trust interest in the Trust Termination Parcels. 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;
  - 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 with 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.

CALENDAR ITEM NO. 48 (CONT'D)

**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 Parcels and the Final Public Trust Parcel.

Staff recommends Commission approval of the proposed Agreement for several reasons. The land exchange will allow the approximately 35-acre Trust Termination Parcel, located in the Harbor District, to be exchanged for the Final Public Trust Parcels, located in the Sweetwater District, thereby facilitating the proposed development of residential and non-trust retail/office uses away from sensitive resources, including the Sweetwater Marsh National Wildlife Refuge. The land exchange will allow for the development of residential and non-trust retail/commercial units on the Trust Termination Parcels, in a more densely developed area proposed by the Chula Vista Master Plan. The approximately 97-acre Final Public Trust Parcel will include low density development, including a large ecological buffer to preserve and enhance the Sweetwater Marsh National Wildlife Refuge, an 18-acre park, bike path, pedestrian trails, open space areas, parking for the Chula Vista Nature Center and a hotel. The land exchange will enhance public access to the water, enhance waterfront and nearshore development for public trust purposes, and preserve, enhance and create habitat and open space, including minimizing impacts of residential development to on-site and adjacent sensitive biological habitat.

The land exchange will also facilitate the creation of many other significant benefits to the Public Trust to be realized through implementation of the Master Plan, including: providing low-cost, visitor serving opportunities that will promote and encourage the public's use and enjoyment of the shoreline by creating new public access; developing recreational amenities and shoreline enhancements while protecting biological resources; creating a new active commercial harbor and increasing recreational boating opportunities; and generating substantial additional public trust revenues for the Port and the people of the State of California.

The Trust Termination Parcels are relatively small in area when compared to the thousands of acres of filled and unfilled public trust lands held in trust by the Port. In contrast, the Final Public Trust Parcel 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. The monetary value of the Final Public Trust Parcel is equal to or greater than the monetary value of the public trust interests in the Trust Termination Parcels as demonstrated by an appraisal completed by Rasmuson Appraisal Services and reviewed by Commission staff.

CALENDAR ITEM NO. 48 (CONT'D)

As stated previously, the L-Ditch is occasionally subject to tidal flow because of its design. However, as previously described, the L-Ditch will be filled pursuant to a remedial action plan prepared in response to the RWQCB Cleanup and Abatement Order. Pursuant to the proposed Agreement, the Commission's findings are effective upon the close of escrow and escrow cannot close unless the L-Ditch has been filled. Additionally, pursuant to the proposed Agreement, the Port is required to submit evidence that the L-Ditch has been filled. Staff recommends that the Commission delegate to the Executive Officer authority to receive and confirm such evidence and to issue a certification that the L-Ditch has in fact been filled.

As described in the preceding paragraphs and in the proposed Agreement, the facts support each of the necessary findings the Commission must make. Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met for the Land Exchange Agreement. 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.

**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 Board of Port Commissioners is scheduled to consider the Land Exchange Agreement on December 7, 2010. Port staff is recommending that the Board approve the Land Exchange Agreement.
3. An EIR [SCH# 2005081077] was prepared for this project by the San Diego Unified Port District and certified on May 19, 2010. The California State Lands Commission staff has reviewed such document and Mitigation Monitoring Program adopted by the lead agency. Findings made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, sections 15091 and 15096) are contained on file in the Sacramento office of the California State Lands Commission. A Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15093) is contained on file in the Sacramento office of the California State Lands Commission.

CALENDAR ITEM NO. 48 (CONT'D)

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBIT:**

- A. Location and Site Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that an EIR [SCH# 2005081077] was prepared for this Project by the San Diego Unified Port District and certified on May 19, 2010, and that the Commission has reviewed and considered the information contained therein and reached its own conclusion regarding approval of the land exchange.

Adopt the Findings made in conformance with Title 14, California Code of Regulations, section 15091 and 15096 (h), as contained on file in the Sacramento office of the California State Lands Commission and incorporated by reference hereto.

Adopt the Mitigation Monitoring Program, as contained on file in the Sacramento office of the California State Lands Commission and incorporated by reference hereto.

Adopt the Statement of Overriding Considerations made in conformance with Title 14, California Code of Regulations, section 15093, contained on file in the Sacramento office of the California State Lands Commission and incorporated by reference hereto.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code sections 6370, et seq.



CALENDAR ITEM NO. 48 (CONT'D)

**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, to enhance waterfront and nearshore redevelopment for Public Trust purposes and to preserve, enhance and create habitat and open space.
  - 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 lands to be conveyed and will in fact provide a significant benefit to the Public Trust;
  - C. The Land Exchange Agreement does not substantially interfere with public rights of navigation and fishing;
  - 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 that of the lands and interests in lands to be relinquished by the State;
  - E. Upon the filling of the L-Ditch, the Trust Termination Parcels have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of being filled and reclaimed, and are relatively useless for public trust purposes;
  - F. The Land Exchange Agreement is consistent with and is authorized by the requirements of the law;
  - 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. Delegate to the Executive Officer the authority to receive evidence and confirm that the L-Ditch has been filled and to issue a certificate acknowledging and confirming that the L-Ditch has been filled.
4. 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,

CALENDAR ITEM NO. 48 (CONT'D)

in substantially the form of the copy of such Agreement on file in the Sacramento office of the Commission.

5. Approve and authorize the issuance of a 49-year General Lease – Public Agency Use – of the Final Public Trust Parcel to the San Diego Unified Port District, as trustee, as provided for in the Land Exchange Agreement, in substantially the form of the copy of such Agreement on file in the Sacramento office of the Commission.
6. 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.