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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-22-0748

Applicant: City of National City

Location: The project extends from north of the Harbor Drive/Civic Center Drive intersection, south to McKinley Avenue, west along Bay Marina Drive, south adjacent to Marina Way, south paralleling Paradise Marsh, to the northeast corner of Pier 32 Marina in National City, San Diego County.

Project Description: Construction of Segment 5 of the San Diego Bayshore Bikeway, a 13-15-ft.-wide, 1.45-mile-long Class I asphalt bike path, including new traffic signals; cross walks; lane restriping; updated parking configuration; curbs and ramps; wayfinding signage; lighting; three retaining walls ranging from 4-8 ft.-high, and 50-400 ft.-long; approximately 2,968 cu.yds. of grading (2,184 cu.yds. cut, 784 cu.yds. fill); 4 ft.-high chain-link fencing; removal of eight non-native trees; and stormwater BMPs.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

National City (City) is proposing the San Diego Bayshore Bikeway Segment 5 Project (subject project). The proposed alignment would provide a non-motorized Class I

bikeway ranging from 13-15 ft. wide that would improve the existing interim bike route, creating a safe biking commuter route connecting residents to downtown San Diego, and offering a scenic coastal access experience to residents and visitors of National City. A Class I bicycle path is one that provides a completely separated right-of-way for the exclusive use of bicyclists and pedestrians with minimal cross flow by motorists. The subject project extends for a linear distance of 1.45 miles, traversing City certified Local Coastal Plan (LCP), and California Coastal Commission (CCC) retained tidelands jurisdictional areas, in National City (Exhibit 3). On October 17, 2022, the City of National City and Executive Director, agreed to a consolidated permit as the subject project is located within National City's LCP jurisdiction and within the Commission's retained jurisdiction. A portion of the National City project area is owned by the San Diego Unified Port District ("Port") and this area is proposed to be incorporated into the Port's jurisdiction through a pending Port Master Plan Amendment.

The primary issue raised by this project is the protection of sensitive habitat and species within the adjacent Paradise Marsh. The proposed alignment is located within the 100-ft. wetland buffer for Paradise Marsh. Due to the Port's pending development plans and site constraints, the City originally proposed a 35-ft. wetland buffer for the entire alignment; however, after coordinating with Commission staff, the City revised the project to provide a 70-ft. buffer, where feasible (Exhibit 4). The City's LCP allows for a reduction of the 100-ft. wetland buffer depending upon the analysis of the specific site proposed for development and with approval from the California Department of Fish and Wildlife (CDFW). In this case, the City has obtained approval from CDFW for a reduced wetland buffer in combination with the proposed fence designed to exclude humans and domestic animals from Paradise Marsh.

The proposed alignment is sited atop remnant fill from an abandoned railway, creating a grade separation, ranging from 9- to 15-feet, between the subject bikeway and Paradise Marsh. The 1,100-foot-long northern segment of the alignment adjacent to Paradise Marsh has site constraints created by steep elevations and an existing retaining wall along Marina Way. Due to these site constraints, a 100-ft. wetland buffer cannot be accommodated, however, a buffer varying in width from 35- to 70-feet, is proposed. As the alignment continues southward, the topography flattens and allows for the alignment to shift westward to achieve a consistent 70-ft. wetland buffer from Paradise Marsh (Exhibit 4), while avoiding impacts to the Port's planned development for an RV-park.

Past Commission actions have recognized that a particular site may have unavoidable constraints, and when reviewed and recommended by a Commission ecologist, the Commission has allowed for a reduction of a 100-foot wetland buffer by appropriate amounts. In this case, based upon review by a staff ecologist it has been determined that the proposed development is sited outside of the Paradise Marsh wetlands, the impacted vegetation is not Environmentally Sensitive Habitat Area (ESHA), and the elevation differentials between the proposed development and the wetland boundaries will help protect the wetlands. Additionally, the applicant is proposing mitigation that includes the onsite planting of native vegetation and construction of fencing designed to protect Paradise Marsh. Consistent with the aforementioned LCP policy, CDFW has provided concurrence with the alignment and the reduced wetland buffer.

To further protect the sensitive habitat and species within Paradise Marsh, **Special Condition 1** requires final review and approval of the 4-ft. high chain link fence design (Exhibit 5) to be installed along the alignment adjacent to Paradise Marsh to prevent human and domesticated pet intrusion. Additionally, **Special Condition 2** requires that temporary and permanent impacts to coastal sage scrub (CSS) be mitigated onsite in accordance with a Habitat Mitigation and Monitoring Plan (HMMP) approved by the Executive Director. **Special Condition 6** prohibits work within 300 feet of Paradise Marsh during sensitive avian breeding cycles between February 15 and August 31, and prohibits nightwork.

The subject project incorporates measures designed to protect the Paradise Marsh water quality during construction and operation of the bikeway. The proposed storm water quality management plan satisfies the project's required treatment needs in excess of municipal, state and federal mandates. Among other measures, **Special Condition 5** requires construction Best Management Practices (BMPs) including prohibiting fueling and maintenance of construction equipment within 100 feet of coastal waters, accidental spills containment and clean up protocols, and erosion control BMPs to prevent sediment transport into coastal waters and/or sensitive habitat.

Although the subject project is sited within a previously disturbed area of imported fill, the potential to uncover cultural resources during soil disturbing activities does exist. Accordingly, **Special Condition 4** requires the City to retain a Qualified Archaeologist and Native American monitor(s) from the Kumeyaay Nation to be present during ground disturbing work.

Due to the project's proximity to Paradise Marsh, a sea level rise risk was performed to determine potential areas of flooding risk under various sea level rise (SLR) scenarios. The southern portion of the proposed bikeway would be impacted during a 100-year storm event combined with SLR projections for the year 2100. Although the service life of the bikeway facility is 25 years, it is possible that the facility may remain indefinitely; accordingly, longer term SLR rise scenarios were considered for planning purposes. Because the project is located in an area vulnerable to coastal hazards, such as flooding and SLR, **Special Condition 8** requires the applicant to waive their rights to future shoreline protection and **Special Condition 9** requires the applicant to acknowledge and assume the risk of building in a hazardous location.

With the proposed conditions, impacts to Paradise Marsh and coastal resources have been adequately avoided, minimized and/or mitigated. Commission staff recommends that the Commission **APPROVE** Coastal Development Permit (CDP) application 6-22-0748, as conditioned. The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act with National City's certified LCP used as guidance.

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EXHIBITS

[Exhibit 1 – Project Vicinity Map](#)

[Exhibit 2 – Project Site Map](#)

[Exhibit 3 – Jurisdiction Map](#)

[Exhibit 4 – Revised Alignment and Wetland Buffer](#)

[Exhibit 5 – Proposed Fencing Detail](#)

[Exhibit 6 – Space Constrained Segment](#)

[Exhibit 7 – Lighting Detail](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-22-0748 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind

all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Revised Final Plans. PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Permittee shall submit, for the review and written approval of the Executive Director, revised Final Plans that conform with the plans submitted to the Commission, titled, "100% Improvement Plans- City of National City, Bayshore Bikeway Segment 5" dated March 21, 2021, except that they shall be modified as required below:
 - a. A plan view showing the revised alignment and the 70-ft. wetland buffer for the southern segment, as depicted in Exhibit 4.
 - b. The chain-link shall be a maximum of four feet above grade and shall receive a bronze-patina treatment to reduce visual impacts, as detailed in Exhibit 5.
 - c. Revised Landscape Plans shall show the bikeway alignment outside the 70-ft. wetland buffer in the southern segment; include only drought tolerant, native species; prohibit the use of rodenticides containing any anticoagulant compounds; and minimize the use of fertilizer, to the greatest extent feasible.
 - d. Revised Lighting Plan - All night lighting shall be minimized, directed downward, and shielded using the best available dark skies technology and pole height and design that minimizes light spill, sky glow, and glare impacts. Lighting shall be the minimum necessary to light the bikeway for safety purposes. This lighting shall be limited to fixtures that do not exceed three feet in height above finished grade, are shielded and directed downward (Exhibit 7). Lights shall not exceed a correlated color temperature of 2,700 Kelvin. No non-security lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.
 - e. Storage and staging plans showing storage and staging sited outside the 100-ft. wetland buffer, and located in a manner having the least impact to public access, including public parking.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Final Habitat Mitigation and Monitoring Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit to the Executive Director for review and written approval a Final Habitat Mitigation and Monitoring Plan showing the revised alignment and 70-ft. wetland buffer and mitigation of temporary impacts at a 1:1 ratio onsite, and mitigation of permanent impacts at a 2:1 ratio onsite, with drought tolerant, native species. The Permittee shall undertake development in

accordance with the approved final Plan unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 3. Final Stormwater Pollution Prevention Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the City shall submit the Final Stormwater Pollution Prevention Plan (SWPPP) to the Executive Director for review and written approval. The SWPPP shall include all housekeeping, source control, and treatment control best management practices (BMPs) that will be used during construction, and shall be updated as needed to reflect progression and phasing of the project. The Permittee shall undertake development in accordance with the approved SWPPP. Minor adjustments to the approved SWPPP may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary by the Executive Director; and (2) do not adversely impact coastal resources.
- 4. Cultural Resources Treatment and Monitoring Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit for the review and written approval of the Executive Director an archaeological/cultural resources monitoring plan prepared by a qualified professional, which shall incorporate the following measures and procedures:

 - a. The monitoring plan shall ensure that any prehistoric archaeological, paleontological, or Native American cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. To this end the cultural resources monitoring plan shall require that archaeological and Native American monitors (including a Kumeyaay Cultural monitor) be present during all grading operations and subsurface construction activity that has the potential to impact cultural resources.
 - b. There shall be at least one pre-grading conference with the project manager and grading contractor at the project site in order to discuss the potential for the discovery of archaeological, cultural, or paleontological resources. A Kumeyaay Cultural Monitor and archaeological monitor(s) shall be included and present at this meeting.
 - c. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, a Kumeyaay Cultural monitor, and the Native American most likely descendent (MLD), when State Law mandates identification of a MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.
 - d. The permittee shall provide sufficient archaeological and Native American monitors to assure that all project grading and subsurface construction activities that have any potential to uncover or otherwise disturb cultural deposits are monitored at all times.

- e. If any archaeological or paleontological, or cultural deposits are discovered, including but not limited to skeletal remains and grave related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix B). The permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the deposits are significant.
- f. The permittee shall report all discoveries, such as cultural artifacts, cremation sites, or human remains, to the Kumeyaay Nation representative. If the Executive Director determines that the discovery is significant, the permittee shall follow the procedures in Appendix B of this staff report to determine if an amendment to this permit is required. If an amendment to this CDP is required, development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

5. Construction Best Management Practices. PRIOR TO COMMENCEMENT OF CONSTRUCTION the applicants shall submit, for the review and written approval of the Executive Director, a Construction and Pollution Prevention Plan prepared and certified by a qualified licensed professional. The final Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

- a. Minimize Erosion and Sediment Discharge. During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including, at a minimum:
 - 1. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
 - 2. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
 - 3. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sandbag barriers, or straw bale barriers) shall be installed

as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.

4. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
 5. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) shall be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
- b. Minimize Discharge of Construction Pollutants. The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:
1. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
 - a. Covering stockpiled construction materials, soil (except topsoil), and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers. Permanent stockpiling of materials is prohibited.
 - b. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
 - c. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
 - d. Prompt removal of all construction debris from the lagoon and beach.
 - e. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
 2. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site may not take place on the beach, and shall

take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

- c. Minimize Other Impacts of Construction Activities. Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including.
 1. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
 2. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.
- d. Construction In, Over, or Adjacent to Coastal Waters and Habitat. Construction taking place in, over, or adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional BMPs, including:
 1. The majority of work shall take place during daylight hours, to the greatest extent feasible.
 2. All construction equipment and materials shall be stored beyond the reach of tidal waters. All construction equipment and materials shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exceptions may be for erosion and sediment controls or construction area boundary fencing, where such controls or fencing are placed as close to the base of the seawall, bluff, or back of the beach as feasible, and are minimized in their extent.
 3. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.
 4. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the ocean, waterways, natural drainage swales, and the storm drain system, or being deposited on the beach.

5. All debris resulting from construction activities shall be removed within 30 days of completion of construction.
- e. Manage Construction-Phase BMPs. Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- f. Construction Site Map and Narrative Description. The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components.
 1. A map delineating the construction site and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
 2. A description of the BMPs that shall be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, with a description and timeline of significant land disturbance activities.
 3. A description of the BMPs that shall be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
 4. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that shall be converted to permanent post-development BMPs.
- g. Construction Site Documents. The Construction and Pollution Prevention Plan shall specify that copies of the signed CDP and the approved Construction and Pollution Prevention Plan be maintained in a conspicuous location at the construction job site at all times, and be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction and Pollution Prevention Plan, and the public review requirements applicable to them, prior to commencement of construction.
- h. Construction Coordinator. The Construction and Pollution Prevention Plan shall specify that a construction coordinator be designated who may be contacted during construction should questions or emergencies arise regarding the construction. The coordinator's contact information (including, at a minimum, an e-mail address and a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site and

readily visible from public viewing areas, indicating that the coordinator should be contacted in the case of questions or emergencies. The coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 72 hours of receipt of the complaint or inquiry.

- i. Notification. The Permittees shall notify planning staff of the Coastal Commission's San Diego District Office at least three working days in advance of commencement of construction activities and promptly upon completion of construction activities, and shall promptly notify staff of any anticipated changes in the schedule based on site conditions, weather or other unavoidable factors.
- j. Progress Reports. The Permittees shall submit annual reports reflecting progress and status of the project, including an identification of any outstanding issues that may have arisen since the last progress report, or are anticipated to arise in the foreseeable future.

The Permittees shall undertake development in accordance with the approved Construction and Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

- 6. Timing and Implementation of Project Operations.** By acceptance of this permit, it shall be the permittee's responsibility to ensure that the following occurs concurrent with, and after completion of, all project operations: To avoid potential impacts to sensitive bird species, no work within 300 feet of Paradise Marsh shall occur between February 15 and August 31, unless approved by the Executive Director in writing and after coordination with the California Department of Fish and Wildlife (CDFW). No work shall occur outside the hours of 7:00 a.m. to 7:00 p.m.; material or equipment deliveries and collections shall also be prohibited outside of these hours.

- 7. Nesting Bird Monitoring and Avoidance Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION,** the applicant shall submit for review and written approval, a Nesting Bird Monitoring and Avoidance Plan that shall include but not be limited to the following provisions:

If project activities must occur during bird nesting season (February 1 through August 31), a qualified biologist, with experience conducting bird surveys, shall survey for active nests within seven days prior to commencement of project activities, and once a week thereafter during construction, to detect any such activity within 500 feet of the project area. If an active songbird nest(s) is located within 300 feet of construction activities (500 feet for raptors), the qualified biologist shall halt construction activities to enable the applicant to employ best management practices (BMPs) to ensure that construction activities do not disturb or disrupt nesting activities. Noise levels at active nest sites must not exceed 65 dB unless a noise study has determined that ambient noise in the immediate area exceeds that level. If this is the case, noise levels at the nest site must not exceed the ambient

noise level measured. Noise reducing BMPs may include using alternative equipment, equipment noise buffering, sound blankets, etc. Alternatively, construction activities and schedules may be adjusted to avoid active nest areas until the respective young birds have fledged. Unrestricted construction activities may resume when no active nests remain in the construction area. Results of nesting bird surveys, ambient noise surveys, and any follow-up construction avoidance measures shall be documented in monthly reports by the qualified biologist and submitted to the Coastal Commission Executive Director throughout the bird breeding season.

- 8. Waiver of Rights to Future Shoreline Protection.** By acceptance of this coastal development permit, the applicant agrees, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to this coastal development permit including but not limited to, the bike path and any improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
- a. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structure is currently and permanently unsafe for use due to damage or destruction from waves, flooding, erosion, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for use without the use of bluff or shoreline protective devices;
 - b. Access to the site can no longer feasibly be maintained due to the coastal hazards listed above;
 - c. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 - d. The development requires new or augmented shoreline protective devices that is conflict with applicable LCP or Coastal Act policies. Approval of CDP 6-22-0748 does not allow encroachment onto public trust lands.

Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. The permittee shall obtain a CDP for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

- 9. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following: (a) that the site may be subject to coastal hazards, including but not limited to episodic and long-term shoreline retreat and coastal erosion, wave action, tsunami, tidal scour, coastal flooding, liquefaction and the interaction of same, many of which may worsen with future sea level rise; (b) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The City of National City is proposing construction of Segment 5 of the Bayshore Bikeway, beginning north of the Harbor Drive/Civic Center Drive intersection, continuing south along McKinley Avenue, west along Bay Marina Drive, south adjacent to the east side of Marina Way, continuing parallel along the west side of Paradise Marsh, and terminating near the northeast corner of Pier 32 Marina. The subject project extends a distance of 1.45 miles, traversing the area of the National City certified LCP and the Commission's retained tidelands jurisdictional area in National City (Exhibits 1, 2, and 3).

The Bayshore Bikeway is a partially constructed, 24-mile bicycle path around San Diego Bay. Even in its currently unfinished state, the Bayshore Bikeway is recognized as a popular public coastal amenity in the San Diego area. Establishment of the Bayshore Bikeway was first initiated in 1975 with planning efforts that sought to construct a 24-mile dedicated bike path that would provide the public with increased coastal recreational opportunities and improve the connectivity of non-automobile transportation routes around the San Diego Bay.

In 2006, the San Diego Association of Governments (SANDAG) released an official Bayshore Bikeway Plan that depicted each segment of the planned bikeway system. The Bayshore Bikeway is planned as a separated bike path that would extend around San Diego Bay beginning from the Broadway Pier in downtown San Diego through the cities of San Diego, National City, Chula Vista, Imperial Beach, and Coronado, ending at the Coronado ferry terminal. While portions of the designated Bayshore Bikeway remain unconstructed, the majority of the route has been completed or is in the planning process. The Bayshore Bikeway is a part of the larger SANDAG Regional Bike Plan, which outlines a range of recommendations including bicycle infrastructure improvements, bicycle-related programs, and policy and design guidelines to facilitate

regional goals to increase the number of people who bike and the frequency of bicycle trips for all purposes, improving safety for bicyclists, and increasing public awareness and support for bicycling in the San Diego region.

The existing Segment 5 of the Bayshore Bikeway was built in 2018 as an interim segment and provides on-street Class II and Class III bike lanes through maritime/industrial areas. The existing/interim bikeway begins as the Bikeway turns west onto Civic Center Drive and extends south onto Tidelands Avenue to 32nd Street where it meets an existing Class I segment of the Bikeway. Although the formal Bayshore Bikeway follows Tidelands Avenue, many cyclists use Cleveland Avenue, which offers a more direct route between Harbor Drive and the Gordy Shields Bridge path, a one-mile bridge and bike path at the State Route 54/Interstate-5 interchange that allows bikers to cross the Sweetwater River connecting National City and Chula Vista.

The purpose of the subject project is to relocate the interim bike route away from the active marine terminal and maritime-related industrial area, and construct a permanent Class I bicycle path that will provide a completely separated right-of-way for the exclusive use of bicycles and pedestrians with minimal cross flow by motorists. Class I bikeway standards mandate that the proposed bikeway segment be a minimum of 13 feet wide and include yellow striping in the middle to separate travel in opposite directions. On-street work will include new traffic signals, cross walks, lane restriping, parking reconfiguration, temporary and permanent curbs and ramps, temporary K-rail placement, wayfinding signage, construction of an 8-foot high, 400-foot long retaining wall at the corner of McKinley Avenue and Bay Marina Drive, and construction of an 8-foot high, 100-foot long retaining wall at the southbound Interstate-5 onramp/Harbor Drive undercrossing. New traffic signals, signage, and crosswalks will be installed at the Marina Way/Bay Marina Drive, Interstate 5 offramp/Bay Marina Drive, and Civic Center Drive/Harbor Drive intersections. The McKinley Avenue/West 19th Avenue and McKinley Avenue/18th Street intersections will receive new crosswalks, and the Cleveland Avenue/Bay Marina Drive intersection will receive a new traffic signal. All existing striping in conflict with proposed striping will be removed. Additionally, a permanent stormwater Best Management Practices (BMP) at East 20th Street and B Avenue will be installed to treat stormwater runoff associated with the subject project. Construction will take 21 months to complete.

The off-street segment of the bikeway that leaves Marina Way to the south and runs parallel along the west side of Paradise Marsh is sited atop an area that was previously disturbed by filling, railroad, and ongoing utility activities, creating a grade-separation between the proposed alignment and the marsh that ranges from 9- to 15-feet high. The lowest point of the alignment (9 feet above the marsh), is also the most constrained stretch due to the steep elevations and the existing Marina Way retaining wall (Exhibit 6). Due to the constraints along this stretch, a consistent wetland buffer between the bikeway and Paradise Marsh cannot be accommodated, so the proposed wetland buffer varies from 35- to 70-feet wide. However, as the alignment continues to the south and onto Port-owned property, a 70-ft. wetland buffer from Paradise Marsh can be accommodated on the vacant parcel.

Off-street construction will require approximately 2,184 cubic yards of cut, 784 cubic yards of fill and asphalt placement, construction of a 4-foot high and 50-foot long retaining wall adjacent to the existing Marina Way retaining wall, the installation of 4-foot high chain link fence along the east side of the bikeway along Paradise Marsh, and the removal of eight non-native trees.

Consolidated Permit Jurisdiction

Coastal Act Section 30601.3 provides the Commission with the authority to act upon a consolidated permit for proposed projects that require a coastal development permit from both a local government with a certified local coastal program (LCP) and the Commission. The subject project is located within National City's LCP jurisdiction and within the Commission's retained jurisdiction. Consolidated permitting is allowed if the applicant, the local government and Executive Director (or Commission) consent to the combined action. Consistent with Coastal Act Section 30601.3, on October 17, 2022, the City of National City (as the applicant and as the local government) and the Executive Director agreed to a consolidated permit. A portion of the project site is proposed to be incorporated into the Port's jurisdiction; however, while the Port was noticed of this application, it is not an applicant at this time. Therefore, the portion of the project located in Tidelands areas remains in the Commission's retained jurisdiction. The standard of review for such consolidated permits is Chapter 3 of the Coastal Act, with National City's LCP policies used as guidance.

B. Biological Resources and Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effect of waste water discharges and entrainments, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

National City's LCP Marshland Preservation Policy 4 states that:

New development, including roadways, adjacent to wetlands, shall provide physical barriers, such as fencing or landscaping with noninvasive species, to discourage intrusion of pedestrians, vehicles or domestic animals into the marsh.

National City's LCP Marshland Preservation Policy Recommendation 2 states:

A 100-foot distance from the edge of the wetland shall generally provide an appropriate buffer. The required distance may be increased or decreased based on consultation with the Department of Fish and Game [Fish and Wildlife]. A buffer area less than 100 feet wide may be permitted, depending upon the analysis of the specific site proposed for development.

Wetland Buffer

Wetland buffer areas are undeveloped areas surrounding wetlands that act to protect the wetlands from the direct effects of nearby disturbance (both acute and chronic) and provide necessary habitat for organisms that spend only a portion of their life in the wetlands, such as amphibians, reptiles, birds, and mammals. The Commission considers a 100-foot buffer to be the minimum distance necessary to protect wetland habitat from adverse impacts related to development such as polluted runoff from developed areas, construction-related erosion and sedimentation, and disturbance from noise, light, traffic, debris and other activities related to increased human and domesticated animal use.

The proposed alignment is located within the 100-ft. wetland buffer for Paradise Marsh. Due to the Port's pending development plans and site constraints, the City originally proposed a 35-ft. wetland buffer for the entire alignment; however, after coordinating with Commission staff, the City revised the project to provide a wetland buffer that varies from 35- to 70-ft. in the northern segment, while a consistent 70-ft. wetland buffer is proposed in the southernmost segment. The City's LCP allows for a reduction of the 100-ft. wetland buffer depending upon the analysis of the specific site proposed for development and with approval from CDFW. In this case, the City has obtained approval from CDFW for a reduced wetland buffer in combination with the proposed fence designed to exclude humans and domestic animals from Paradise Marsh.

The proposed bikeway will be located outside of the Paradise Marsh wetlands, atop a previously disturbed area of existing fill that was placed to construct a now abandoned railway, creating a grade separation between the proposed alignment and the marsh that ranges from 9 feet in the northern portion to 15 feet in the southern portion.

The 1,100-foot-long northern segment of the alignment adjacent to Paradise Marsh has site constraints created by steep elevations and an existing retaining wall along Marina Way. Due to these site constraints, a 100-ft. wetland buffer cannot be accommodated, however, a buffer varying in width from 35- to 70-feet, is proposed. As the alignment continues southward, the topography flattens and allows for the alignment to shift westward to achieve a consistent 70-ft. wetland buffer from Paradise Marsh, while avoiding impacts to the Port's planned development for an RV-park. Accordingly, the applicant has proposed a revised alignment to accommodate a 70-ft. wetland buffer for the southern segment of the bikeway (Exhibit 4).

Past Commission actions have recognized that a particular site may have unavoidable constraints, and when reviewed and recommended by a Commission ecologist, the Commission has allowed for a reduction of a 100-foot wetland buffer by appropriate amounts. In this case, minimal development is proposed, minimizing impacts, and elevation differentials between the proposed development and wetland boundaries will help protect the wetlands. Additionally, the applicant is proposing mitigation that includes the planting of native vegetation and construction of fencing designed to protect Paradise Marsh.

Special Condition 1 requires submittal of Revised Final Plans showing the revised alignment and 70-ft. wetland buffer in the southern segment for Executive Director review and approval. Further, the proposed installation of a 4-ft. high chain-link fence along alignment will prevent human and domestic pet intrusion into Paradise Marsh. When taken together, the scale of the proposed bikeway, the protections provided by wetland buffer, the existing grade separation, and the required fencing, staff finds that potential impacts to Paradise Marsh have been adequately avoided, minimized, and mitigated.

Sensitive Plant Species

Construction of the subject project would require earth moving equipment for site preparation and construction. Indirect impacts on special-status estuary seablite (*Suaeda esteroa*) (California Rare Plant Rank 1B.2) may result from construction activities. Potential construction related impacts can include additional deposition of dust on plants, sedimentation, erosion, introduction of invasive species on disturbed soils, roadway runoff, trampling, and potential changes in hydrological conditions due to increased impervious surfaces adjacent to marsh habitat, which is uniquely vulnerable to changes in hydrology.

The upland vegetative landcover within the project footprint consists of a combination of disturbed, low quality coastal sage scrub (CSS) plant community and non-native, ruderal species. CSS is characteristically composed of a variety of soft, low shrubs, dominated by drought-deciduous species such as California sagebrush (*Artemisia californica*), flat-topped buckwheat (*Eriogonum fasciculatum* var. *fasciculatum*), and sages (*Salvia* spp.). However, the disturbed CSS at the subject project site exhibits low diversity and is dominated by broom baccharis (*Baccharis sarothroides*), and non-native grasses and forbs. Thus, as determined by the Commission ecologist, CSS at the project site is not considered ESHA. The subject project would result in 0.25 acre of

temporary impacts and 0.44 acre of permanent impacts to CSS. **Special Condition 2** requires mitigation of temporary impacts at a 1:1 ratio onsite, and mitigation of permanent impacts at a 2:1 ratio onsite, along the southern stretch of the alignment where space allows, per a Habitat Mitigation and Monitoring Plan (HMMP) to be approved by the Executive Director. Indirect construction and operational impacts on special-status plants will be minimized through installation of protective chain-link fencing, by maintaining a wetland buffer from Paradise Marsh, and through the implementation of the aforementioned Special Conditions.

Special Status Birds

The Belding's savannah sparrow (*Passerculus sandwichensis beldingi*) and the Light-footed Ridgeway rail (*Rallus obsoletus levipes*) are listed as endangered under the California Endangered Species Act, and Paradise Marsh is known to support these sensitive bird species. The Belding's savannah sparrow is endemic to salt marsh areas and is known to inhabit these areas on a year-round basis, foraging, nesting and establishing breeding territories exclusively in areas dominated by pickleweed vegetation. Observations of this bird have been made in the adjacent Paradise Marsh. During protocol surveys, one Belding's savannah sparrow was observed within Paradise Marsh, outside of the subject project limits of disturbance. Light-footed Ridgeway rails occur almost exclusively in tidal and brackish marshes with unrestricted daily tidal flows, adequate invertebrate prey food supply, well-developed tidal channel networks, and suitable nesting and escape cover to provide habitat during extreme high tides. The species is known to occur within nearby areas where suitable habitat is present. Suitable habitat for Light-footed Ridgeway's rail is present within Paradise Marsh outside of the project limits of disturbance, however, a 2019 survey found no rails.

Although the subject project will be located adjacent to salt marsh habitat that supports Belding's savannah sparrow and Light-footed Ridgeway's rail, the proposed bikeway is separated from the marsh habitat by an elevation difference ranging from 9 to 15 feet. To further minimize potential impacts to these sensitive species, **Special Condition 1** requires submittal and Executive Director approval of Final Plans showing the alignment of the bikeway outside of the 70-ft. wetland buffer for the southern stretch of the route, south of the most space-constrained segment. Construction of a four-foot tall chain link fence along the bikeway will prevent visitors and their pets from disturbing sensitive habitat. **Special Condition 2** requires that disturbed vegetation is fully restored with native, drought-tolerant species through implementation of an approved HMMP. Finally, **Special Condition 6** requires all work proposed adjacent to Paradise Marsh to occur outside of the nesting bird season of February 15-August 31.

Water Quality

San Diego Bay and Sweetwater Channel are the receiving water bodies for the project site. Paradise Creek, a Clean Water Act Section 303(d)-impaired water body, runs north and south of Sweetwater Channel, and Paradise Marsh is directly east of the subject project site. Water quality in San Diego Bay is influenced by processes and activities that take place within the Pueblo San Diego and Sweetwater hydrologic units. The creeks in the watershed are highly affected by urban runoff, such as contaminants from

roadways, industry, and other urban sources. The subject project site and surrounding area includes dense urban development. As such, Paradise Marsh is subject to artificial disturbances resulting from surrounding industrial facilities, roadways, gutters, sidewalks and railroad lines. The majority of the drainage area can be classified as highly impervious. A large portion of the existing project site drains via overland sheet flow into San Diego Bay and Sweetwater Channel, or through an existing underground storm drain system.

Water quality for the subject project will be maintained through Municipal Permit construction BMP requirements. Additionally, Port projects greater than one acre are required to comply with the Construction General Permit (CGP) required by the State of California. The CGP requires a Storm Water Pollution Prevention Plan (SWPPP) development and implementation, sediment control and erosion control BMP implementation, and regular inspections and reporting. The required minimum BMPs include project planning, good site management, non-stormwater management, erosion control, sediment control, run-on and runoff controls. The BMPs to be implemented at a project must be site specific, seasonally appropriate, and construction phase appropriate.

The subject project is considered a priority development project in accordance with the Port's and the City's Jurisdictional Runoff Management Plans (JRMPs). As a priority development project, the City was required to submit a Stormwater Quality Management Plan (SWQMP) with site design Low Impact Development (LID) BMPs for implementation post-construction. LID features provide retention, infiltration, and evapotranspiration, minimizing pollutants that reach the receiving body of water. The proposed project would also include non-structural BMPs such as storm drain stenciling and signage, properly designed outdoor materials storage areas, properly designed trash storage areas, proof of ongoing BMP maintenance, and pollutant control BMPs to reduce the discharge of pollutants to the maximum extent practicable.

The SWQMP for the subject project has been designed in accordance with the Environmental Protection Agency Green Streets Guidance. The subject project is eligible to offset the impacts from the increase in impermeable surfaces that contribute to runoff into the San Diego Bay, through the implementation of an offsite Drainage Management Area per the US Environmental Protection Agency Green Streets Initiative.

Although the hardscape proposed by the subject project will increase impervious surfaces by 0.67 acre, the proposed bikeway will maintain existing drainage patterns. The onsite drainage patterns within the Drainage Management Area for the Paradise Marsh portion of the proposed bikeway do not capture sufficient stormwater to address the subject project SWQMP requirements. Accordingly, an alternative location within the same watershed tributary to Paradise Marsh in the adjacent upstream urban neighborhood was selected because of the large volume of stormwater it can capture and treat. An existing curb inlet on the southeast corner of E. 20th Street and B Avenue was identified as a viable off-site location because it has more than the required impervious treatment area, its drainage patterns allow for capture of more than enough runoff, and it has a wide parkway area available for BMP installation. A small

modification is necessary along the existing curb, immediately upstream of the existing curb inlet, to install a curb cut for intercepting low flows for treatment. The resulting design satisfies the project's required treatment needs and provides upstream treatment pollutant control BMPs in excess of the requirement.

Implementation of the subject project would not substantially alter the existing drainage pattern of the subject project, and would not otherwise substantially degrade existing water quality. Through the addition of LID features and compliance with the Port's and City's respective BMP Manual, the proposed project would improve current drainage patterns. Although the proposed project would result in an increase in impervious surfaces, waterflow would still drain directly into Sweetwater Channel. Therefore, the proposed project does not include changes to the existing storm drain system that would result in substantial erosion or siltation or flooding onsite or offsite. The subject project would not violate any surface or groundwater quality standards or waste discharge requirements in compliance with the applicable jurisdiction's JRMP, BMP Design Manual, and the Construction General Permit.

In addition to the above avoidance, minimization, and mitigation measures, **Special Condition 3** requires the City to submit the Final SWPPP to the Executive Director for review and written approval.

Therefore, the Commission finds that the subject project, as conditioned, is consistent with the biological resource policies of Section 30230, Section 30231, and Section 30240 of the Coastal Act.

C. Public Access and Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a) of the Coastal Act states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreation uses shall be reserved for such uses, where feasible.

Public Access Policy 1 from the National City LCP states:

New public shoreline accessways shall be designated to and along Paradise Marsh and Sweetwater River Channel...

Public Access Policy 5 from the National City LCP states:

It is also the City's policy that additional nature and bicycle trails be developed adjacent to the Paradise Marsh to connect to the Bay Route Bikeway and Sweetwater River Flood Control Channel Trail System.

The subject project is located in the southwestern most part of the City of San Diego that borders the San Diego Bay and National City. Public coastal recreation opportunities are limited in this area, as this region has historically been a hub for industrial facilities, the naval station, port landings, and various maritime operations. Construction of Segment 5 of the Bayshore Bikeway would provide the public with new low-cost coastal recreational opportunities. It would improve connectivity and cyclist safety between National City and downtown San Diego, allowing for bicyclists to safely commute downtown to work, thereby reducing vehicle miles travelled and greenhouse gas emissions.

The proposed bikeway would expand public coastal access through this area of the San Diego Bay by providing a completely separated right-of-way for the exclusive use of bicyclists and pedestrians with minimal cross flow by motorists. Construction of the proposed segment would lengthen the existing public coastal Bayshore Bikeway facility and further the completion of the Bayshore Bikeway around the entire San Diego Bay. The Bayshore Bikeway is a popular recreational amenity and the proposed project would enhance coastal recreational opportunities for bicyclists and pedestrians alike. Other bayfront segments of the Bayshore Bikeway are heavily utilized by all members of the public, including children, families, recreational walkers and joggers, and bicyclists of all abilities. The subject project would also provide public access to the Port's planned waterfront development projects.

The subject project would increase public access to coastal waters, as public coastal access to the bayfront is not currently provided along the proposed alignment. The subject project represents a public access benefit to the residents and visitors of National City by providing a safe bikeway for commuting, and low-cost recreation access to scenic coastal resources. Additionally, public parking will not be impacted by construction and operation of the subject project. Further, public access to the interim

bikeway is proposed to be completely maintained throughout the 21-month construction phase, so that the public can continue to bicycle along the interim segment of the Bayshore Bikeway until the proposed bikeway is completed. Therefore, the Commission finds that, as conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities and is consistent with Sections 30210, 30212, 30213, and 30223 of the Coastal Act.

D. Cultural Resources and Tribal Consultation

Section 30244 of the Coastal Act states:

Where development would adversely impact archeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The following summary describes the Port's tribal consultation as detailed in the FEIR for the National City Bayfront Projects and Plan Amendments (September 2022). Tribal consultation included contacting the Native American Heritage Commission (NAHC), requesting a review of its Sacred Lands File, reviewing the Sacred Lands File, and sending outreach letters and follow up emails describing the proposed project to the 25 individuals and organizations identified by the NAHC. On October 24, 2019, Port and City staff met with tribal representative Kristie Orozco, of the Sycuan Band of the Kumeyaay Nation, to discuss the subject project and the tribe's concerns and recommendations. On November 20, 2019, the Port sent an email to Ms. Orozco with proposed mitigation measures and requested comments from the tribe on the mitigation measures. The Port also invited Ms. Orozco to a site visit.

Construction activities that disturb soils (e.g., grinding, tilling, disking, and digging/excavating) can damage archaeological, cultural, or paleontological resources. Due to the presence of fill material placed to construct a railroad adjacent to Paradise Marsh, it is unlikely that cultural resources will be encountered as a result of the proposed project. Additionally, no potential impact to known cultural resources within the subject project has been identified. However, there could be previously unidentified cultural resources buried within the subject project area. **Special Condition 4** requires that during ground disturbing activities within the southern segment of the proposed alignment, adjacent to Paradise Marsh, a Qualified Archaeologist shall be present and a Native American monitor from the Kumeyaay Nation shall be invited onsite to inspect and monitor the excavation work. Prior to the start of any work that requires monitoring, a Native American monitor will attend preconstruction meetings to review and approve an archaeological monitoring exhibit for the project, and will determine the extent of their presence during earth-moving activities based on the approved exhibit. If cultural materials are discovered, all earth-moving activities within and around the immediate discovery area would be diverted until a Qualified Archaeologist can assess the nature and significance of the find.

Based on staff review of the tribal consultation performed by the Port, as well as the cultural resource mitigation measures and monitoring, evaluation, and protection protocols that will be implemented by the City as part of the subject project, the

Commission finds that the proposed development, as conditioned, is consistent with Coastal Act Section 30244.

E. Coastal Hazards

Section 30253 of the Coastal Act states, that new development should do all of the following:

Minimize risks to life and property in areas of high geologic, flood, and fire hazard. Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

Section 30270 of the Coastal Act requires the Commission to:

...take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

Coastal Act Section 30421 more broadly requires state and regional agencies to:

...identify, assess, and, to the extent feasible and consistent with their statutory authorities, avoid, minimize, and mitigate the impacts of sea level rise.

National City's LCP Policies B and C, Existing Planning and Zoning state:

The City will explore necessary measures to protect areas in danger from flood hazards.

Assessment of potential flood and drainage impacts will be required of all major new developments. When significant impacts are identified, the project will provide adequate mitigation either directly or will provide the means for financing necessary public drainage improvements.

Sea level rise has occurred on a local and global scale over the past century and projections indicate that the rate may accelerate in the future. Potential effects of sea level rise include increased shoreline erosion and scour, increased nearshore wave energy, flooding, and reduced beach area, all of which can affect the long-term stability of infrastructure. Sea level rise is a particular concern in combination with future storm events and coastal flooding. A scenario where 100-year flood flows coincide with high tides in 50 or 100 years would dramatically increase the risk of flooding in the project vicinity.

The Coastal Act mandates the protection of public access and recreation along the coast, coastal habitats, and other sensitive resources, as well as provision of priority visitor-serving and coastal-dependent or coastal-related development with simultaneous minimization of risks from coastal hazards. In 2018, the California Ocean Protection Council released the latest sea level rise guidance. This state guidance and the Coastal

Commission's 2018 Sea Level Rise Policy Guidance document recommend a site-specific analysis to determine the appropriate sea level rise for design considerations.

The applicant estimates the bikeway has a service life of approximately 25 years; however, routine maintenance and repairs will significantly lengthen the lifespan. The applicant completed a sea level rise analysis for the project, and estimated that the project's lowest points would only be impacted by sea level rise in the year 2100, under worst case scenario conditions. Therefore, impacts due to sea level rise are not expected to impact the project for many decades to come.

Special Condition 8 requires the applicant to waive its rights to construct shoreline protection and requires that the applicant remove all or a portion of the development and restore the site if the structure is deemed unsafe for use, access to the site can no longer be maintained, removal is required pursuant to a future LCP policy or sea level rise adaptation planning, or the development requires a shoreline protective device that is in conflict with the applicable LCP or Coastal Act policies. Because periodic storm and flood events are expected to impact the development as sea level rise progresses, **Special Condition 9** requires the applicant to acknowledge the risk of building in a hazardous location and ensures that the risks of property damage arising from sea level rise or changed circumstances are borne by the applicant.

The Commission finds that, as conditioned, the proposed development will not have an adverse impact on coastal hazards and is consistent with Sections 30253, 30270, 30421 of the Coastal Act. Further, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

F. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The San Diego Bay is a popular coastal recreational center that provides users with a multitude of ocean and bay views. However, for the northern stretch of the proposed bikeway, views of the bay are blocked by existing development, industrial and maritime-related businesses. Therefore, construction of the proposed Class I bikeway in the industrial areas, and associated signage and retaining walls, would not result in any blockage of existing coastal views and would improve the visual character in the subject area.

The portion of the proposed bikeway that extends into the Paradise Marsh uplands will not alter the landform and will minimize ground disturbance to the maximum extent practicable. The originally proposed project included a 5-ft. tall wooden fence recommended by CDFW to protect the marsh from human and pet intrusion, which would have adversely impacted public views of Paradise Marsh. Commission staff consulted with CDFW regarding potential alternatives, including a post-and-cable design to reduce visual impacts. CDFW preferred a chain-link fence over the post-and-cable, as a chain-link fence design provides more effective exclusion. Commission staff recommends a four-ft-high chain-link to protect views of the marsh while preventing intrusion into sensitive habitat. The four-ft-high chain-link fence will receive a bronze patina treatment to blend with the natural setting, as approved in past Commission actions in similar settings. Additionally, the off-street scenic portion of the bikeway will receive concrete curb edges to create a more visually appealing border effect.

Following construction, construction access areas, staging areas, and other temporary uses will be re-contoured to match the surrounding natural topography. Vegetation trimmed or removed during project construction will be restored with appropriate native plants following construction. **Special Condition 1** requires submittal of a revised fence design to ensure the fence is a maximum of four feet above grade and blends with the natural coastal setting.

In conclusion, the overall visual impacts of the subject project will be minor, and will be mitigated by the visual enhancements provided and by the native vegetation restoration required by **Special Condition 2**. As conditioned, the Commission finds that the project is consistent with Section 30251 of the Coastal Act.

G. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

For this consolidated permit application, the policies of Chapter 3 of the Coastal Act are the standard of review with the City's certified LCP used as guidance. As conditioned, the proposed development is consistent with the public access, recreation, and environmental protection policies in Chapter 3 of the Coastal Act and with the City's certified LCP. Therefore, approval of the proposed development will not prejudice the ability of National City to continue to implement its certified LCP.

H. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse

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effect which the activity may have on the environment. The Port, acting as the lead agency under CEQA, adopted a Final Environmental Impact Report for the National City Bayfront Projects and Plan Amendments in September 2022.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. The Commission has reviewed the relevant coastal resource issues with the proposed project and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

National City Bayfront Projects and Plan Amendments Final Environmental Impact Report, September 2022.

Port Master Plan Update Draft Program Environmental Impact Report, November 2021.

National City Local Coastal Program Land Use Plan, Revised 1997.

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PROCEDURES

- a. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the consulting Tribes(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 30 days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.
 1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Significance Testing Plan but determines that the testing measures therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission. Once the measures identified in the Significance Testing Plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by both the Kumeyaay Cultural Monitor's recommendation and the project archaeologist's recommendation as to whether the deposits are significant. The project archaeologist's recommendation shall be made in consultation with the Native American monitors, the consulting Tribe(s), and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director.
 3. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director and the Kumeyaay Cultural Monitor/MLD a supplementary Archaeological Plan in accordance with subsection B of this condition and all other relevant subsections.
 4. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program. All unearthed archaeological resources or

tribal cultural resources will be collected and temporarily stored in a secure location onsite (or as otherwise agreed upon by the archaeological monitor and the traditionally and culturally affiliated Tribe(s)) for later reburial onsite.

- b. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archaeological Plan for the review and approval of the Executive Director. The Supplementary Archaeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the consulting Tribe(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection C below. The Supplementary Archaeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.
 1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- c. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee made up of qualified archaeologists convened in accordance with current professional practice. Representatives of traditionally and culturally affiliated Tribes included on an updated NAHC list shall also be given an opportunity to review and submit written comments on the required plans. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and Native American representatives or explain why the recommendations were rejected. Furthermore, upon completion of the review process, all plans shall be

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submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.