

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING AN AMENDMENT TO THE NON-APPEALABLE COASTAL DEVELOPMENT PERMIT 2006-05 FOR THE KETTENBURG BOATYARD PROJECT TO ADD INTREPID LANDING, LLC AS A CO-PERMITTEE, SPECIFY THE PUBLIC ART, CLARIFY THE LOCATION OF THE EXISTING FOOD SERVICE BUILDING, AND UPDATE STANDARD PROVISIONS**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, on August 8, 2006, by Board of Port Commissioners (BPC) Resolution No. 2006-130, the BPC authorized issuance of a non-appealable Coastal Development Permit (CDP) to Driscoll, Inc. (Driscoll) for the Kettenburg Boatyard project, and the CDP-2006-05 (District Clerk's Document No. 51016) was issued on August 18, 2006 to Driscoll; and

WHEREAS, the Kettenburg Boatyard project included the redevelopment of the former boatyard, located at 2702 Shelter Island Drive (Kettenburg site), with a new boatyard, boat slips, marine sales and services buildings, a food service building, and a public promenade and plaza; and

WHEREAS, the CDP authorized, consistent with the District's certified Port Master Plan (PMP) and the California Coastal Act (Coastal Act) the redevelopment of the Kettenburg site including (1) the demolition of the existing margin wharf, floating docks, shoreline embankment, pavement areas and building structures, all in a deteriorated state, unsightly and inefficient; (2) the proposed construction of a two-story boatyard administration building, roughly 4500-square-foot in size; (3) a high bay metal boat shed of approximately 6,500 square-feet; (4) two 65-foot-long by three foot wide cast-in-place concrete finger piers supported by sixteen pre-cast concrete friction piles for use by a new 35-ton travel lift; (5) roughly 41,000 square feet of concrete paving; (6) up to 52 boat slips; (7) reconstruction of approximately 368 linear feet of shoreline with new granite stone revetment; (8) dredging to create the new shoreline condition and minimum depths required for boatyard use; (9) installation of a water reclamation system including on-site detention and treatment in conformance with Regional Water Quality Control BPC standards; (10) construction of approximately 6,100 square feet of marine sales and services buildings; (11) a food service building of approximately 1,263 square feet; (12) a 680- linear-foot long shoreline pedestrian walkway with a ten-foot minimum width; (13) approximately 28,973-square-foot public plaza including landscape planting and circular hard-scape gathering area;

20xx-xxx

(14) a new dinghy dock for water taxis and transient moorings; and (15) a minimum of 51 parking spaces (herein referred to collectively, as Development); and

WHEREAS, in January 2012, the BPC approved the division of the Kettenburg site into three separate leaseholds, one leased to Driscoll and two leased to Intrepid Landing, LLC (Intrepid), to ensure more timely redevelopment of the Kettenburg site consistent with CDP-2006-05; and

WHEREAS, the Driscoll leasehold includes approximately 47,475 square feet of land and 42,570 square feet of water and is currently being developed with a boatyard repair and storage facility, the first Intrepid leasehold includes approximately 20,665 square feet of land and 65,950 square feet of water and is developed with marine sales and service (MSS) establishment and in-water slips and the second Intrepid leasehold includes approximately 32,604 square feet of land area and includes two buildings, a marine sales and service facility at the western end and an ancillary walkup food and beverage service establishment with an outdoor patio at the eastern end; and

WHEREAS, public promenades are provided throughout the Kettenburg site on all three leaseholds, and shared parking is provided; and

WHEREAS, the entire site with all three leaseholds functions as one MSS establishment; and

WHEREAS, Intrepid proposes to improve the existing approximately 1,263-square-foot, ancillary walkup food and beverage service building on the eastern portion of the Kettenburg site, which is currently vacant and is surrounded by an approximately 2,000-square-foot outdoor patio area; and

WHEREAS, Intrepid's proposed improvements include (1) construction of an approximately 281-square-foot walkup food service counter; (2) placement of limited outdoor table seating consisting of four tables and approximately 30 seats; (3) construction of foundations; (4) installation of utilities, appliances and fixtures; (6) development of on-site restrooms; (7) implementation of public benefit improvements to the existing outdoor public patio area consisting of beautification of the area through planters and treatment to the existing guard rail, public seating; (8) placement of at least two non-conspicuous signs stating that the patio is open to the public during the latter of the operating hours of the walkup food and beverage service or during daylight hours; and (9) installation on the west side of the existing walkup food and beverage service building of a sails public art sculpture awning, which would consist of canvas canopies shaped like sails, which will provide shade relief for the public (collectively, Proposed Improvements); and

WHEREAS, as it is today, the public promenade located adjacent to the north of the building would be open at all times and views from the promenade

20xx-xxx

and designated view corridors will not be impeded with implementation of the Proposed Improvements; and

WHEREAS, as of the date of this Resolution, Intrepid's subtenant, Eppig Brewery would operate the walkup food and beverage service building; and

WHEREAS, in accordance with Section 14.d of the District CDP Regulations, the Development Services Director determined that an amendment to CDP-2006-05 was necessary and that the proposed CDP amendment would be a material change due to the nature and extent of the proposed changes; and

WHEREAS, the Development and Proposed Improvements are located within Planning District 1, Shelter Island/La Playa, which is delineated on Precise Plan Map Figure 4 of the certified Port Master Plan (PMP) and the PMP land use designation within the limits of the Kettenburg site is MSS; and

WHEREAS, in the MSS land use designation, the PMP allows "[a]ncillary uses, when specifically provided for in the property lease, including fish transshipment and no more than 10% of the site may be used for walkup window-type food and beverage services with limited outdoor table seating provided such uses do not materially interfere with the function and operation of the primary Marine Sales and Services use" (PMP, page 21); and

WHEREAS, the intent of the MSS ancillary use language is evident by the California Coastal Commission's (CCC) own record and findings when it certified a Port Master Plan Amendment (PMPA) for America's Cup Harbor (ACH) in June 2003, which is attached to the proposed CDP amendment agenda sheet and incorporated herein by reference; and

WHEREAS, according to the CCC staff report and findings for the ACH PMPA, attached to the corresponding agenda sheet for the proposed CDP amendment and incorporated herein by reference, the CCC initially had concerns about allowing food service use in land area designated MSS, as "...there was no limit on the size of the food and beverage service permitted on the site..." and they wanted "...assurance that the main purpose of the site – marine sales and services – would not be compromised by the food service use" (CCC Staff Report, page 15); and

WHEREAS, CCC did acknowledge in its findings for the PMPA that "[a]llowing a small walk-up food service area in association with a use such as a boat yard, is reasonable and would provide an amenity to both employees and customers who spend long days doing boat maintenance and repair on site" (CCC Staff Report, page 15); and

WHEREAS, to address CCC staff's concern, language was added to the proposed PMPA that would "...limit the ancillary food service to no more than 10% of the marine sales and services site. . ." and according to the CCC record,

20xx-xxx

“[t]his definition would apply to any location with the Marine Sales and Services designation” (CCC Staff Report, pages 6 and 15); and

WHEREAS, the CCC findings and record for the ACH PMPA further acknowledge that “[i]n the case of the proposed PMPA, an additional 8,100 sq. ft. of the Kettenburg Boat Yard [site] would be redeveloped as a walk-up food court, although the designation of the site would remain Marine Sales and Services” and language was added to the PMPA to state that such an ancillary use cannot materially interfere with the function and operation of the primary MSS use, which the CCC concluded “...is not expected to adversely impact the supply of marine sales and services facilities.” (CCC Staff Report, pages 6 and 16); and

WHEREAS, based on the entire record and the following, the proposed CDP amendment and Proposed Improvements are consistent with the certified PMP:

1. The Proposed Improvements do not exceed 10% of the MSS Kettenburg site. Conservatively, the existing approximately 1,263-square-foot walkup food and beverage service building with the 2,000 square foot public patio, which arguably may not be considered part of the food and beverage service establishment since it is open to the public, totals 3,263 square feet. This 3,263 square-foot area only makes up 3.2% of the entire Kettenburg site, which totals 100,628 square feet of land area. This is significantly less than the 8,100 square-foot walkup food court recognized by CCC for the 2006 CDP development site in its ACH PMPA findings;
2. The proposed outdoor seating is limited with four proposed tables and an estimated 30 chairs – open to the public – in the 2,000 square foot patio. Right now no seating is available in the patio;
3. The Proposed Improvements to the existing walkup food and beverage service building and public patio, as well as the proposed installation of the public art would also not materially interfere with the function and operation of the primary MSS use. The existing walkup food and beverage service building is tucked into the southeastern corner of the MSS development on the Kettenburg site and is physically separated by the remaining MSS operations by the public promenade and a security gate for the boat sale slips. Moreover, patrons of the existing walkup food and beverage service building are intended to be boatyard customers and employees during the daylight hours of the workday. The public promenade and plaza allows for intentional access to the walkup food and beverage service establishment without having to traverse through and disturb the MSS operations;

20xx-xxx

4. The small size of the establishment – 3.2% of the site - makes it ancillary or secondary by nature to the primary use as MSS. CCC determined when it made its findings for the ACH PMPA that 10% of the entire Kettenburg site or 8,100 square feet of walk-up food and beverage service establishments – even if configured in a food court yard – would constitute ancillary uses provided they did not materially interfere with the function and operation of the primary MSS use. As presented in the agenda sheet and the record, the proposed improvements to the existing walkup food and beverage service building and public patio would not materially interfere with the operation or function of the MSS uses;
5. The Proposed Improvements would not impede or interfere with the public promenade, as the location of the sails public art sculpture would be set back approximately 10 feet from the existing public promenade that runs through the site; therefore, it would not hinder the public's ability to access from the promenade and would not block views from the promenade; and
6. The Proposed Improvements are not located within the view corridor extensions of Carleton and Dickens Streets and thus, would not adversely impact any PMP-designated view corridors; and

WHEREAS, the Proposed Improvements are located between the sea (as defined in the California Coastal Act) and the first inland continuous public road paralleling the sea and is fully consistent with California Public Resources Code Sections 30604(c), 30210-30224, and all applicable California Coastal Act policies; and

WHEREAS, an application has been prepared for the proposed amendment to Non-Appealable CDP 2006-05; and

WHEREAS, the BPC finds that said application and attachments contain correct and accurate statements of fact; and

WHEREAS, the BPC has concluded that the Proposed Improvements and Development, as amended by the Proposed Improvements conforms to the certified PMP; and

WHEREAS, the BPC considered the proposed amendment to Non-Appealable CDP 2006-05 at the December 5, 2017 BPC meeting; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), California Public Resources Code Section 21000, et seq., and its implementing regulations, 14 California Code of Regulations Section 15000, et seq. (CEQA

20xx-xxx

Guidelines) and the District's CEQA Guidelines, the BPC finds that the Proposed Improvements and Development, as amended by the Proposed Improvements, fall within the scope of the previously certified Final Program Environmental Impact Report (FPEIR) for the "America's Cup Harbor Redevelopment Project and Port Master Plan Amendment for Shelter Island Planning District" (UPD #83356-EIR-332, Clerk's Document No. 44566) and adopted Findings of Fact and Statement of Overriding Considerations, and adopting the Mitigation Monitoring and Reporting Program (Resolution No. 2002-119) and accordingly, no additional environmental review is required pursuant to CEQA; and

WHEREAS, the BPC finds that the Proposed Improvements and Development, as amended by the Proposed Improvements complies with Section 87 of the Port Act, which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities; and

WHEREAS, the Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine and consequently, the proposed BPC action is consistent with the Public Trust Doctrine; and

WHEREAS, all materials with regard to the Proposed Improvements and the proposed CDP amendment were made available to the BPC for its review and consideration.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. The BPC finds the facts recited above are true and further finds that this BPC has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. The BPC authorized Development on the Kettenburg site to include the following with the issuance of CDP 2006-05: (a) the demolition of the existing margin wharf, floating docks, shoreline embankment, pavement areas and building structures, all in a deteriorated state, unsightly and inefficient; (b) the proposed construction of a two-story boatyard administration building, roughly 4500-square-foot in size; (c) a high bay metal boat shed of approximately 6,500 square-feet; (d) two 65-foot-long by three foot wide cast-in-place concrete finger piers supported by sixteen pre-cast concrete friction piles for use by a new 35-ton travel lift; (e) roughly 41,000 square feet of concrete paving; (f) up to 52 boat slips; (g) reconstruction of approximately 368 linear feet of shoreline with new granite stone revetment; (h) dredging to create the new shoreline condition and minimum depths required for boatyard use; (i) installation of a water reclamation system including on-site detention and treatment in conformance with Regional Water Quality Control Board standards; (j) construction of approximately 6,100 square feet of marine sales and services buildings; (k) a food service building of approximately 1,263 square feet; (l) a 680- linear-foot long shoreline pedestrian

20xx-xxx

walkway with a ten-foot minimum width; (m) approximately 28,973-square-foot public plaza including landscape planting and circular hard-scape gathering area; (n) a new dinghy dock for water taxis and transient moorings; and (o) a minimum of 51 parking spaces.

3. The Proposed Improvements, in general, consist of: (a) construction of an approximately 281-square-foot walkup food service counter; (b) placement of limited outdoor table seating consisting of four tables and approximately 30 seats; (c) construction of foundations; (d) installation of utilities, appliances and fixtures; (e) development of on-site restrooms; (f) implementation of public benefit improvements to the existing outdoor public patio area consisting of beautification of the area through planters and treatment to the existing guard rail, public seating; (g) placement of at least two non-conspicuous signs stating that the patio is open to the public during the latter of the operating hours of the walkup food and beverage service or during daylight hours; and (h) installation on the west side of the existing walkup food and beverage service building of a sails public art sculpture awning, which would consist of canvas canopies shaped like sails, which will provide shade relief for the public.

4. Having reviewed and considered all the materials made available to the BPC, the BPC further finds and determines:

a. The applicable provisions of CEQA, the CEQA Guidelines and the District CEQA Guidelines have been duly observed in the considerations of this matter and all of the previous proceedings related thereto; and

b. The Proposed Improvements and Development, as amended by the Proposed Improvements, fall within the scope of the previously certified Final Program Environmental Impact Report (FPEIR) for the "America's Cup Harbor Redevelopment Project and Port Master Plan Amendment for Shelter Island Planning District" (UPD #83356-EIR-332, Clerk's Document No. 44566) and adopted Findings of Fact and Statement of Overriding Considerations, and adopting the Mitigation Monitoring and Reporting Program (Resolution No. 2002-119) and accordingly, no additional environmental review is required pursuant to CEQA; and

c. The Proposed Improvements and Development, as amended by the Proposed Improvements complies with Section 87 of the Port Act, which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine and consequently, the proposed BPC action is consistent with the Public Trust Doctrine.

20xx-xxx

5. The Development and Proposed Improvements are located within Planning District 1, Shelter Island/La Playa, which is delineated on Precise Plan Map Figure 4 of the certified PMP and the PMP land use designation within the limits of the Kettenburg site is MSS. The MSS use designation allows “[a]ncillary uses, when specifically provided for in the property lease, including fish transshipment and no more than 10% of the site may be used for walkup window-type food and beverage services with limited outdoor table seating provided such uses do not materially interfere with the function and operation of the primary Marine Sales and Services use.” Based on the record and the following, the BPC finds the Development and Proposed Improvements conform with the certified PMP and MSS designation.

a. The Proposed Improvements do not exceed 10% of the MSS Kettenburg site. Conservatively, the existing approximately 1,263-square-foot walkup food and beverage service building with the 2,000 square foot public patio, which arguably may not be considered part of the food and beverage service establishment since it is open to the public, totals 3,263 square feet. This 3,263 square-foot area only makes up 3.2% of the entire Kettenburg site, which totals 100,628 square feet of land area. This is significantly less than the 8,100 square-foot walkup food court recognized by CCC for the 2006 CDP development site in its ACH PMPA findings.

b. The proposed outdoor seating is limited with four proposed tables and an estimated 30 chairs – open to the public – in the 2,000 square foot patio. Right now no seating is available in the patio.

c. The Proposed Improvements to the existing walkup food and beverage service building and public patio, as well as the proposed installation of the public art would also not materially interfere with the function and operation of the primary MSS use. The existing walkup food and beverage service building is tucked into the southeastern corner of the MSS development on the Kettenburg site and is physically separated by the remaining MSS operations by the public promenade and a security gate for the boat sale slips. Moreover, patrons of the existing walkup food and beverage service building are intended to be boatyard customers and employees during the daylight hours of the workday. The public promenade and plaza allows for intentional access to the walkup food and beverage service establishment without having to traverse through and disturb the MSS operations.

d. The small size of the establishment – 3.2% of the site - makes it ancillary or secondary by nature to the primary use as MSS. CCC determined when it made its findings for the ACH PMPA that 10% of the entire Kettenburg site or 8,100 square feet of walkup food and beverage service establishments – even if configured in a food court yard – would constitute ancillary uses provided they did not materially interfere with the function and operation of the primary MSS use. As presented in the agenda sheet and the

20xx-xxx

record, the proposed improvements to the existing walkup food and beverage service building and public patio would not materially interfere with the operation or function of the MSS uses.

e. The Proposed Improvements would not impede or interfere with the public promenade, as the location of the sails public art sculpture would be set back approximately 10 feet from the existing public promenade that runs through the site; therefore, it would not hinder the public's ability to access from the promenade and would not block views from the promenade.

f. The Proposed Improvements are not located within the view corridor extensions of Carleton and Dickens Streets and thus, would not adversely impact any PMP-designated view corridors.

6. The Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The BPC further finds that the Proposed Improvements and Development, as amended by the Proposed Improvements, are also consistent with California Public Resources Code Sections 30715.5, 30718, 30604(c) and 30210-30224, and the Coastal Act public access and recreation policies referenced therein because they will not interfere with the existing public spaces and recreational areas and will enhance those areas on the Kettenburg site.

7. Based on the entire record available to the BPC and the findings set forth in this Resolution, the Executive Director or her designated representative is hereby authorized and directed to issue the amendment to Non-Appealable CDP 2006-05. Said amendment to the Non-Appealable CDP shall require compliance with all the conditions set forth in the Non-Appealable CDP, as amended, including, but not limited to, the mitigation measures in the Final EIR and Mitigation Monitoring and Reporting Program; provided, however, as a condition of this approval, Intrepid Landing, LLC (Intrepid) and any of its successors in interest shall indemnify and hold the District harmless against all third-party legal challenges, claims, lawsuits, administrative or legal proceedings, including those instituted by the California Coastal Commission or its Executive Director and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District (collectively, Claims), related to the District's approval of this amendment to Non-Appealable CDP 2006-05. Said indemnity and hold harmless condition is independent of any agreements by and between Intrepid and the District. Intrepid also, as a condition of this approval, assumes all risk of any and all Claims against it or its subtenants.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

20xx-xxx

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 5th day of December 2017, by the following vote: