

RESOLUTION 2016-205

**RESOLUTION AUTHORIZING ISSUANCE OF NON-
APPEALABLE COASTAL DEVELOPMENT PERMIT
FOR THE PORTSIDE PIER RESTAURANT
REDEVELOPMENT PROJECT**

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 I (Port Act); and

WHEREAS, at the May 12, 2015 Board of Port Commissioners (Board) meeting, staff was directed to issue a Request for Proposal (RFP) for the redevelopment and operation of 1360 North Harbor Drive (Project Site), which is currently leased to Anthony's Fish Grotto of La Mesa (Anthony's) under a lease that expires on January 31, 2017; and

WHEREAS, Anthony's currently operates four eating establishments/restaurants (three restaurants and a coffee kiosk) at the Project Site and a 565-square-foot dock once was located at the site; and

WHEREAS, at the November 17, 2015 Board meeting, the Board selected and authorized negotiations with The Brigantine for the development and operation of the Project Site; and

WHEREAS, The Brigantine, Inc., as the project proponent/applicant, proposes to redevelop the Project Site with the Portside Pier Restaurant Redevelopment Project (Project), which, like the existing facility, consists of four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop), as well as a second-floor public viewing deck, and an expanded dock and dine facility; and

WHEREAS, the Project area encompasses approximately 45,174 square feet of land and water area, which includes approximately 37,107 square feet of water area and approximately 8,067 square feet of land area; and

WHEREAS, the Project generally consist of, without limitation, (1) demolition of the existing 24,855-square-foot restaurant structure, piles and platform; (2) construction of new piles, platform and structure, (3) redevelopment of the Project Site with four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop) that would provide up to 1,000 restaurant seats for diners, an approximate 3,711-square-foot dedicated public viewing deck with tables and benches for up to 108 public

visitors on the second floor, an approximate 1,913-square-foot perimeter public walkway around the bottom floor of the building to provide views of the bay (access to these public areas, would be provided during restaurant business hours), and an approximate 3,370-square-foot expanded dock and dine facility capable of docking up to 12 vessels; (4) clear signage directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway; (5) improvements to the portion of the North Embarcadero Promenade located in front of the Project Site with new pavers, street furniture, and wayfinding signage; and (6) LED light signage and elements; and

WHEREAS, the overall building height of the Project would increase from 27 feet to approximately 34 feet above mean sea level, a net increase of 7 feet and the Project would result in a net increase of approximately 9,214 square feet of building floor area, 4,480 square feet of total water coverage, 1,094 square feet of first-floor public access area, 3,711 sf of second-floor public deck area, and 2,805 square feet in public dock area; and

WHEREAS, the Project is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan (PMP) and the PMP land and water use designations within the limits of the Project are Commercial Recreation and Ship Anchorage; and

WHEREAS, the Project is the redevelopment of an existing waterfront restaurant facility use and is consistent with the existing certified land and water use designations, which allow for restaurant uses and dock and dine facilities and therefore, the Project conforms to the certified PMP; and

WHEREAS, the Project is 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 Section 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein since the Project with mitigation measures, which are incorporated into the proposed Coastal Development Permit, will have no impact on public access, public recreation, public facilities, or related issues; and

WHEREAS, the Project constitutes "development" under Section 30106 of the California Coastal Act as it will involve the demolition and construction of a structure and accordingly requires a Coastal Development Permit; and

WHEREAS, pursuant to the District's Coastal Development Permit Regulations, the Project has been determined to be a "non-appealable" development because it is not considered an "excluded," "emergency," or "appealable" development; and

WHEREAS, pursuant to the California Coastal Act, the proposed development is considered "non-appealable" because it is not the type of

“appealable” development listed in Section 30715 of Chapter 8 of the California Coastal Act, which specifies the sole categories of development that may be appealed to the Coastal Commission; and

WHEREAS, the “non-appealable” category of development is supported by the record, including, without limitation, the responses to comments to the Draft MND, the plain language of Section 30715, and the certified PMP, which does not identify the existing restaurant as an appealable development and other restaurants listed in the PMP as appealable were part of larger appealable categories of development, and the characteristics of the Project; and

WHEREAS, the Project requires a non-appealable Coastal Development Permit and an application has been prepared for a non-appealable Coastal Development Permit to implement the Project; and

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

WHEREAS, the Board has concluded that the Project conforms to the certified Port Master Plan; and

WHEREAS, the Board considered the non-appealable Coastal Development Permit at the December 13, 2016 Board meeting; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA) statutes and guidelines, the Project was analyzed in the Mitigated Negative Declaration (MND) entitled “Portside Pier Restaurant Redevelopment Project” (UPD #MND-2016-91 and SCH #2016081007) and pursuant to Resolution No. 2016-202, on December 13, 2016, the Board adopted the MND and a Mitigation, Monitoring Reporting Program and made certain findings as particularly stated in said Resolution.

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

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

2. In general, the Project consists of (1) demolition of the existing 24,855-square-foot restaurant structure, piles and platform; (2) construction of new piles, platform and structure, (3) redevelopment of the Project site with four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop) that would provide up to 1,000 restaurant seats for diners, an approximate 3,711-square-foot dedicated public viewing deck with tables and benches for up to 108 public visitors on the second floor, an approximate 1,913-

square-foot perimeter public walkway around the bottom floor of the building to provide views of the bay (access to these public areas, would be provided during restaurant business hours), and an approximate 3,370-square-foot expanded dock and dine facility capable of docking up to 12 vessels; (4) clear signage directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway; (5) improvements to the portion of the North Embarcadero Promenade located in front of the Project Site with new pavers, street furniture, and wayfinding signage; and (6) LED light signage and elements. The Brigantine, Inc. shall maintain the improvements and the public areas, including, without limitation, the public viewing deck, the perimeter walkway and the dock and dine.

3. The Project is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan (PMP) and the PMP land and water use designations within the limits of the Project are Commercial Recreation and Ship Anchorage. The Project is the redevelopment of an existing waterfront restaurant facility use and is consistent with the existing certified land and water use designations, which allow for restaurant uses and dock and dine facilities and therefore, the Project conforms to the certified PMP.

4. The Project is 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 30715.5, 30718, 30604(c), and 30210-30224, and the Coastal Act public access and recreation policies referenced therein since the Project with mitigation measures, which are incorporated into the proposed Coastal Development Permit, will have no impact on public access, public recreation, public facilities, or related issues.

5. The Project constitutes "development" under Section 30106 of the California Coastal Act as it will involve the demolition and construction of a structure and accordingly requires a Coastal Development Permit. In accordance with the District's Coastal Development Permit Regulations, the Project is "Non-Appealable" because it does not qualify as an "Excluded," "Appealable," or "Emergency" development. Furthermore, pursuant to the California Coastal Act, the proposed development is considered "non-appealable" because it is not the type of "appealable" development listed in Section 30715 of Chapter 8 of the California Coastal Act, which specifies the sole categories of development that may be appealed to the Coastal Commission within the District's jurisdiction. The non-appealable category of development is supported by the record, including, without limitation, the responses to comments to the Draft MND, the plain language of Section 30715, and the certified PMP, which does not identify the existing restaurant as an appealable development and other restaurants listed in the PMP as appealable were part of larger appealable categories of development, and the characteristics of the Project.

6. Based on the entire record available to the Board and the findings set forth in this Resolution, the Executive Director or her designated representative is hereby authorized and directed to issue a Non-Appealable Coastal Development Permit for the "Portside Pier Restaurant Redevelopment Project." Said Non-Appealable Coastal Development Permit shall require compliance with all the conditions set forth in the Non-Appealable Coastal Development Permit; provided, however, as a condition of this approval, The Brigantine, Inc. shall indemnify and hold the District harmless against all third-party legal challenges, claims, lawsuits, proceedings, and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District, related to the District's approval of this Non-Appealable Coastal Development Permit. Said indemnity and hold harmless condition is independent of any agreements by and between The Brigantine, Inc. and the District.

APPROVED AS TO FORM AND LEGALITY:

Deputy

GENERAL COUNSEL

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 13th day of December, 2016, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: Nelson

ABSENT: None.

ABSTAIN: None.


Marshall Merrifield, Chair
Board of Port Commissioners

ATTEST:


Timothy A. Deuel
District Clerk

(seal)