

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING ISSUANCE OF NON-APPEALABLE COASTAL DEVELOPMENT PERMIT FOR THE DEMOLITION OF A VACANT STRUCTURE, PLATFORM AND PILINGS**

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, Anthony's operated four eating establishments/restaurants (three restaurants and a coffee kiosk) at 1360 North Harbor Drive, San Diego, CA 92101; and

WHEREAS, Anthony's premises has been vacated, leaving an unused, 24,855 square-foot building, 23,285 square-foot platform, 66 pre-stressed 16 inch diameter concrete support piles, the remnants of the existing 565 square-foot dock, and associated accessory improvements, such as fencing and signage (Existing Structure); and

WHEREAS, a March 2016 report, entitled, "Waterfront Facility Inspection and Assessment Future Portside Pier Restaurant," prepared by Moffatt & Nichol, was conducted to analyze the structural integrity of the piles, platform and utilities of the Existing Structure (Structural Integrity Report), attached to the corresponding Agenda Sheet and Staff Report and incorporated herein by reference; and

WHEREAS, the Structural Integrity Report finds, without limitation, the following issues: 1) the piles have a built-up grout cap, which are in poor condition with corrosion spalls or cracks noted on approximately 40 percent of them; 2) two of the pile encasements are failing or corroded; 3) two of the steel braces for the piles are severely corroded and are in serious condition; 4) the concrete pile caps are in poor condition with significant corrosion and defects; 5) previous repairs are failing; 6) soft rot is present; 7) splits in the pile cap have occurred; 8) dry rot has occurred on the girders and portions of the timber stringers with one stringer failing; 9) minor to severe corrosion of the connections has occurred; 10) portions of the fire system pipe are in poor condition; 11) the hangers and fittings for the portable water pipe are in poor condition; 12) extensive corrosion of the electrical conduits is present; and 13) pipe hangers for the gas pipe are bending and corroded; and

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WHEREAS, the Structural Integrity Report concluded that the platform and piles are beyond their “service life,” which is defined as the length of time during which a structure, or facility, can be used economically before emergent damage cause increasing interruption or becomes a threat to public health and safety[.]” an inordinate amount of restoration and ongoing sustainment is required to use the platform and piles, and there is an inability to ascertain the load capacity of the platform and piles, which alone negates the option for reuse of the Existing Structure; and

WHEREAS, the District has concerns that the vacant Existing Structure may: 1) entice trespassers and create an attractive nuisance; 2) create a health and safety issue due to its lack of structural integrity and potential to become blight; and 3) may become an attractive area for criminal activity due to its inactivity; and

WHEREAS, Section 30612 of California Public Resource Code (herein referred to as the California Coastal Act, unless otherwise noted) provides that “an application for a coastal development permit to demolish a structure shall not be denied unless . . . based on a preponderance of the evidence, that retention of that structure is feasible” as decided by the District; and

WHEREAS, Section 30108 of the California Coastal Act defines “feasible” as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors; and

WHEREAS, based on the Structural Integrity Report, other health and safety concerns as stated herein, and the entire record, District staff recommends the Board of Port Commissioners (BPC) find that the retention of the Existing Structure is not feasible, as restoration of the Existing Structure, including the piles, platform and certain utilities is not capable of being accomplished in a reasonable amount of time (the Existing Structure is past its service life, load capabilities are unattainable and if it could be retained, which is doubtful, it would require inordinate repairs) due to economic (the cost), technological (deterioration has corrupted the ability to determine the lateral load capacity of the existing platform and piles, which in itself precludes reuse) and environmental (restoration may take more time and cause greater impacts) factors; and

WHEREAS, in the short-term, locking up and enclosing the Existing Structure addresses public health and safety, attractive nuisance, criminal activity and trespass issues, but in the long-term, demolition of the Existing Structure is vital; and

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WHEREAS, Section 56 of the Port Act grants the BPC traditional police powers, including authority to take such action necessary for the public's health, safety and sanitation; and

WHEREAS, due to the health and safety concerns described herein, the District, as the project proponent/applicant, proposes to demolish the Existing Structure (Project), which may be done in phases, and demolition would occur regardless of any proposed subsequent development on the Project site; and

WHEREAS, the Project generally consists of, without limitation (1) demolition of the existing 24,855 square-foot building, the existing 23,285 square-foot platform, the existing 69 16-inch and 24-inch diameter support piles, the remnants of the existing 565 square-foot dock and accessory improvements, such as fencing and signage, and (2) erection of a fence and screening; and

WHEREAS, if the Project is phased, Phase I would include demolition of the existing 24,855 square-foot building, accessory structures and potentially the remnants of the existing 565 square-foot dock (the dock demolition may occur during Phase II) and Phase II would include demolition of existing 23,285 square-foot platform and the existing 69 16-inch and 24-inch diameter support piles; 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 conforms to the existing certified land and water use designations, as demolition is allowed in all land and water uses, 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

WHEREAS, the Project constitutes "development" under Section 30106 of the California Coastal Act as it will involve the demolition 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

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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 Mitigated Negative Declaration (MND), the plain language of Section 30715, and the certified PMP, which does not identify the demolition as an appealable 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 Project is consistent with Chapter 8 and Chapter 3 policies of the California Coastal Act, including Sections 30604(c), 30210-30224, and other 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 BPC finds that said application and attachments contain correct and accurate statements of fact; and

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

WHEREAS, the BPC considered the non-appealable Coastal Development Permit at the June 20, 2017 BPC meeting; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA) statutes and guidelines, the Project was analyzed in the 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 BPC 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 (BPC) 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.

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2. In general, the Project consists of, without limitation (1) demolition of the existing 24,855 square-foot building, the existing 23,285 square-foot platform, the existing 69 16-inch and 24-inch diameter support piles, which equates to 92 square feet of existing fill area, the remnants of the existing 565 square-foot dock and accessory improvements, such as fencing and signage and (2) erection of a fence and screening.

3. The Project may be phased and if so, Phase I would include demolition of the existing 24,855 square-foot building, accessory structures and potentially the remnants of the existing 565 square-foot dock (the dock demolition may occur during Phase II) and Phase II would include demolition of the existing 23,285 square-foot platform and the existing 69 16-inch and 24-inch diameter support piles.

4. 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 BPC finds that the Project, the demolition of a vacant building, is consistent with the existing certified land and water use designations, which allow demolition in all uses and therefore, the Project conforms to the certified PMP.

5. The BPC finds that the Existing Structure, which is vacant, in the long-term, poses a potential public health and safety risk, including, without limitation, present structural issues (as evidenced in the Structural Integrity Report), the potential creation of an attractive nuisance and the potential risk of trespass and criminal activities.

6. The BPC finds: (A) that the pilings and super structure are beyond their intended service life and the structure, including piles and platform, is in need of inordinate restoration to be capable of supporting a new development and that the deterioration has corrupted the ability to determine the lateral load capacity, which in itself precludes reuse; (B) that the retention, reuse and/or restoration of the structure, including platform and piles, is not capable of being accomplished in a reasonable amount of time (the Existing Structure is past its service life, load capabilities are unattainable and if it could be retained, which is doubtful, it would require inordinate repairs) due to economic (the cost), technological (deterioration has corrupted the ability to determine the lateral load capacity of the existing platform and piles, which in itself precludes reuse) and environmental (restoration may take more time and cause greater impacts) factors; and (C) that demolition is the only feasible long-term option. Based on the entire record, including the Structural Integrity Report, the Staff Report, and the MND, the BPC finds, by the preponderance of the evidence, that retention of that structure is infeasible and accordingly, this CDP falls under Section 30216 of the California Coastal Act.

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7. The BPC finds that due to the potential public health and safety risks, the Project would occur regardless of any proposed redevelopment.

8. 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 the California Coastal Act, including, without limitation, Sections 30715.5, 30718, 30604(c), and 30210-30224, and the California 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.

9. The BPC finds that (A) the Project constitutes “development” under Section 30106 of the California Coastal Act as it will involve the demolition of a structure and accordingly requires a Coastal Development Permit; (B) 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; (C) 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; and (D) 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.

10. 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 a Non-Appealable Coastal Development Permit for the “Demolition of Vacant Structure, Platform and Pilings.” Said Non-Appealable Coastal Development Permit shall require compliance with all the conditions set forth in the Non-Appealable Coastal Development Permit.

APPROVED AS TO FORM AND LEGALITY:

GENERAL COUNSEL

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 20th day of June 2017, by the following vote: