



## San Diego Unified Port District

3165 Pacific Hwy.  
San Diego, CA 92101

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File #:2017-0478

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DATE: January 9, 2018

SUBJECT:

**BAYSIDE PERFORMANCE PARK ENHANCEMENT PROJECT AND PORT MASTER PLAN AMENDMENT**

**A) CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT THE FILING OF THE NOTICE OF DETERMINATION**

**B) CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION APPROVING THE PORT MASTER PLAN AMENDMENT, AND DIRECTING FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION**

**C) ADOPT RESOLUTION AUTHORIZING A BINDING LETTER OF INTENT (LOI) WITH SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION FOR A BAYSIDE PERFORMANCE PARK ENHANCEMENT PROJECT WITHIN THE EMBARCADERO MARINA PARK SOUTH**

**EXECUTIVE SUMMARY:**

Since 2004, the San Diego Symphony Orchestra Association (Symphony) has entered into an annual Temporary Use and Occupancy Permit (TUOP) with the District to hold a summer concert series known as Bayside Summer Nights (formerly Summer Pops) at Embarcadero Marina Park South (EMPS) (Attachment A). The seasonal performance venue occurs during the four months of the summer, commencing June 1 and ending September 30, on approximately one-third of the 10.8-acre EMPS. The District formerly authorized the recurring use through Coastal Development Permit (CDP) CDP-2014-01 (Clerk's Document No. 61839) which permits up to 37 events per summer season. Once installed, the temporary performance venue closes off the northwestern portion of EMPS and restricts general public access in this area for approximately 120 consecutive days.

In 2015, the Symphony, as an applicant and project proponent, submitted a proposal to the District to construct permanent improvements to EMPS with enhanced public park amenities and a permanent performance stage and acoustic shell that would accommodate a full-sized orchestra year round (Project). In January 2016, the Board directed staff to initiate California Environmental Quality Act (CEQA) review and commence negotiations with the Symphony for the Project. As proposed by the Symphony, the proposed Project consists of two main components: (a) the Bayside Performance Park, a permanent performance and event venue and other public park enhancements located within the northwestern portion of EMPS where the temporary seasonal stage is currently constructed; and

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(b) EMPS Enhancements, enhancements located within the central and southeastern portions of EMPS (Attachment B).

Construction of the Project is anticipated to occur over an approximately 10-month timeframe. Following construction, EMPS would continue to be operated by the District, with the exception that the Bayside Performance Park would be operated and maintained by the Symphony under the terms and conditions of a non-appealable Coastal Development Permit (CDP) issued by the District and a Real Estate Agreement entered into with the District. The minimum acceptable price and key economic terms for this Project are included in the form of a binding Letter of Intent (LOI) (Attachment C). The financial feasibility (i.e., the Symphony's projected rate of return on investment [ROI]) of certain Project alternatives analyzed in the Draft Environmental Impact Report (EIR) for reduced capacities of 8,000 and 6,000 seats were scrutinized by an independent financial consultant based on information provided by the Symphony that was verified by the District (see Attachment D).

As part of the Project, the Symphony has proposed year-round outdoor programming that would include paid admission and rental events as well as free public events and rehearsals. Performances could be held any day throughout the week and performance dates and times would vary depending on the program, although all performances would end by 11:00 p.m. Paid admission and rental events would be limited to 15 percent of the year (equivalent to 55 full-day or 110 half-day events based on EMPS operating hours) in order to maintain general public access and recreation within EMPS for 85 percent of the year.

The District, as the lead agency under CEQA, prepared an EIR for the Project (UPD #EIR-2016-176; SCH #2016121003). As concluded by the Draft EIR (District Clerk's Document No. 67425) and the Final EIR, the Project would result in "Significant and Unavoidable" direct impacts on Greenhouse Gas (GHG) Emissions, Noise and Vibration, and Transportation, Circulation, and Parking and cumulative impacts on GHG Emissions and Transportation, Circulation, and Parking. Mitigation measures are specified in the Mitigation Monitoring and Reporting Program (MMRP) (Attachment E) and the remaining environmental impacts that would be reduced to a less than significant level. A second Errata to the Final EIR is provided which clarifies Table 4.2-5 and the Project's PM<sup>10</sup> emissions (Attachment I). The conclusion of less than significant related to the Project's PM<sup>10</sup> emissions does not change with the additional information.

CEQA requires the District to make written findings of fact for each significant environmental impact identified in the Final EIR and evaluate feasible project alternatives. The EIR analyzed six alternatives to the Project. However, despite implementation of all feasible mitigation measures, the Project was identified as having significant impacts which cannot be avoided or reduced to a level less than significant whether through mitigation measures or alternatives to the Project due to financial infeasibility. Accordingly, a Statement of Overriding Considerations (SOC) is required (Attachment E). The Statement of Overriding Considerations balances the specific economic, legal, social, technological, and other benefits of the Project against the significant and unavoidable environmental impacts.

The Project includes a Port Master Plan Amendment (PMPA) that would make additions to the Port Master Plan (PMP) precise plan language for Planning District 3, Centre City Embarcadero, including parameters for use of the Bayside Performance Park for paid admission and rental events to 15% annually (Attachment F). If approved by the Board, the draft PMPA would be submitted to the

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California Coastal Commission (Coastal Commission) for processing with a potential certification hearing by mid-2018. Implementation of the Project will also require a CDP issued by the District and a Real Estate Agreement by and between the District and the Symphony.

Staff recommends that the Board conduct a public hearing and adopt a resolution to certify the Final EIR, adopt the Findings of Fact and Statement of Overriding Considerations, and direct the filing of the Notice of Determination (NOD) with the County Clerk and State Clearinghouse. Staff further recommends that the Board conduct a public hearing, adopt a resolution to approve the PMPA, direct filing of the PMPA with the Coastal Commission for certification, and authorize a binding LOI with the Symphony.

### **RECOMMENDATION:**

Bayside Performance Park Enhancement Project and Port Master Plan Amendment:

- A. Conduct public hearing and adopt resolution certifying the Final Environmental Impact Report for the “Bayside Performance Park Enhancement Project and Port Master Plan Amendment,” adopt Findings of Fact and Statement of Overriding Considerations, adopt Mitigation Monitoring and Reporting Program and direct filing of the Notice of Determination.
- B. Conduct public hearing and adopt resolution approving the Port Master Plan Amendment, and directing filing with the California Coastal Commission for certification.
- C. Adopt a resolution authorizing a binding Letter of Intent (LOI) with the San Diego Symphony Orchestra Association for a Bayside Performance Park Enhancement Project within Embarcadero Marina Park South.

### **FISCAL IMPACT:**

The Board’s action will have no direct fiscal impact to the District’s FY18 approved Budget as construction of the Project would be entirely funded by the Symphony. The proposed Board actions would enable the Symphony to expand its outdoor programming, currently held June through September, to include year-round events wherein the District would receive a percentage of gross ticket sales and concessions subject to the basic terms described in the binding LOI (Attachment C).

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goals.

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

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## **Background**

### ***EMPS***

EMPS is located at 200 and 206 Marina Park Way in the City of San Diego. It is situated bayward of the San Diego Convention Center at the edge of downtown San Diego and is surrounded on three sides by San Diego Bay. The 10.8-acre EMPS was constructed in the 1970s and opened to the general public in 1976. EMPS is entirely developed and includes grassy lawn areas with various landscaping and hardscape, a 128-space parking lot, public restrooms (two women's stalls and two men's stalls), four basketball courts (two full-size courts divided into four half-courts), gazebo, the Embarcadero Marina Park Fishing Pier, bait shop and deli, and an 8- to 10-foot-wide meandering public promenade that travels around and through the park (Attachment B). EMPS also provides bicycle parking adjacent to the fishing pier, on the north side of the bait shop and deli, and a fitness course consisting of stationary fitness equipment dispersed along the public promenade. EMPS provides public coastal/bayside access by way of the meandering public promenade and fishing pier, with bay viewing areas along the promenade, pier, and throughout the lawn areas and public benches.

### ***Bayside Summer Nights Performance Series***

The Symphony is a non-profit organization that has provided musical and educational programming in San Diego for over 100 years. Since 2004, the Symphony has been operating its summer programming, titled the Bayside Summer Nights (formerly Summer Pops), at EMPS through a District-issued TUOP and CDP which sets out certain limitations including an allowance for up to 37 events per season. The Bayside Summer Nights Performance Series is currently held on approximately one-third of EMPS for four months each summer, beginning June 1 and ending September 30. As part of the series, the Symphony installs a temporary stage, stage house, seating, fencing, portable toilets, and auxiliary buildings and facilities on the northwestern portion of EMPS where it performs a series of concerts and allows for rental events. The area in which the portable stage and facilities are set up is typically referred to as the "temporary concert venue." EMPS was chosen by the Symphony for its sweeping views of the San Diego Bay, Coronado, Point Loma, and the downtown San Diego skyline and has been an ideal setting for the public to experience orchestral and other genres of music in an open-air performance and event venue.

Ticket demand for the Bayside Summer Nights performances has increased by nearly 70 percent over its 12-year history, with more than 96,000 people attending 34 performances and events in the 2016 season. A portion of the revenue from each performance is paid to the District pursuant to an annual TUOP issued each year. In addition to event patrons, boaters and kayakers in the bay and bicyclists and the general public along the Embarcadero have been observed enjoying the concerts free of charge. The Symphony also typically includes one free public event each Bayside Summer Nights season, consisting of a Symphony performance that is free of charge and open to the general public. Other external events permitted by the District utilize the Symphony's temporary concert venue stage and ancillary facilities at EMPS during the summer season subject to the limitations in the TUOP and CDP. Of the 34 performances and events held during the 2016 season, five were external major venue rentals. In past seasons, the Symphony has coordinated event rentals with the District and Major League Baseball, Comic Con, and the AIDS Memorial Foundation to accommodate these other permitted events. The Symphony has also worked closely with a number of non-profit

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groups and civic entities in the region, including the San Diego Junior League, Muscular Dystrophy Association, and Mexican Consulate, by providing use of the EMPS temporary summer concert venue as an event rental.

**Proposed Project**

The EMPS' position due west of the San Diego Convention Center and views of the bay make the location an ideal setting for public recreation and cultural use. Given the success of the Bayside Summer Nights performances and San Diego's growing and vibrant cultural landscape, the District and Symphony began to discuss the opportunity for EMPS to become a more prominent public resource and visitor-serving amenity.

In 2015, the Symphony submitted a proposal for the proposed Project to the District to construct permanent improvements to EMPS with enhanced public park amenities and a permanent performance stage and acoustic shell that would accommodate a full-sized orchestra year-round. After further discussion with the District about the Symphony's vision and goals for its proposal, at the January 12, 2016 Board meeting, at which the Board received a preliminary project review presentation on the Symphony's proposal, the Board directed staff to start the CEQA review for the Project and commence negotiations with the Symphony for the Project. The Project, as proposed, consists of the replacement and enhancement of public park amenities in EMPS, provision of public access enhancements, and installation of new permanent facilities. Park enhancements include: (a) Bayside Performance Park, a permanent performance and event venue and other public park enhancements located within the northwestern portion of EMPS; and (b) EMPS Enhancements, enhancements located within the central and southeastern portions of EMPS.

The proposed Bayside Performance Park performance stage and event venue would occupy the same area used seasonally for performances - a 3.68 acre area of the 10.8-acre EMPS. The following summarizes the key components of the Bayside Performance Park (Attachment G):

- Replacement of the existing seasonal use of a temporary performance stage and other temporary amenities with a 13,015 square-foot (0.29-acre), permanent, outdoor performance stage, acoustic shell, and back-of-house facilities for year-round use by the Symphony and other artists and events, such as rental events and community events;
- Construction of concrete steps and viewing deck encompassing 5,445 square feet at the back of the performance stage to be kept open to the general public as a bay viewing deck during non-event hours and to be used for public/private event rentals;
- Construction of a sloped synthetic turf (sand-based) lawn to be used as the main seating area and pre-event space during event hours. Seating would be temporary and no permanent seating would be installed;

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- Construction of a subgrade restroom with 68 stalls beneath the sloped lawn;
- Widening of the existing 8-foot-wide public promenade around the perimeter of the Bayside Performance Park with a 12-foot-wide promenade to remain open to the general public at all times; and
- Installation of a visual public art element illuminated with light-emitting diode (LED) lighting on the exterior acoustic shell.

The following summarizes the key components of the park enhancements to be constructed within the central and southeastern portions of EMPS.

- Reconfiguration of the existing parking lot to add four parking spaces and landscaped medians for a total of 132 parking spaces;
- Replacement of the four existing basketball courts (two full-sized courts that are divided into four half-sized courts) with new basketball court materials and equipment (e.g., court surface, hoops, etc.);
- Relocation of the existing fitness equipment with replacement (as necessary), new equipment and relocation to the southeastern portion of EMPS near the gazebo and basketball courts;
- Refurbishment of the existing public outdoor gazebo with similar materials as existing; and
- Refurbishment of the existing public restrooms with new facilities (number of stalls would be maintained) and new materials.

Construction of the proposed Project is anticipated to occur over an approximately ten-month timeframe and would be entirely funded by the Symphony (estimated development cost of \$45 Million, with \$25 Million expected to come from donations and the remaining \$20 Million to come from debt).

***Operation***

The Symphony would operate the Bayside Performance Park year-round under the terms and conditions of a forthcoming Real Estate Agreement with the District, subject to the basic terms summarized in the binding LOI (Attachment C). As part of the Agreement, the Symphony is anticipated to be responsible for all operational matters, such as maintenance and repair, utilities, mechanical systems, landscaping, security, and event operation, setup, and takedown. Events would be held year-round, although the majority of events are anticipated to be held during the summer months, and would be subject to the limitations in a forthcoming District-issued CDP. EMPS would continue to be open to the general public and operate as a public park at all times during normal park hours (6:00 a.m. to 10:30 p.m.). However, when events are held at the Bayside Performance Park, general public access would be restricted to outside of the Bayside Performance Park boundaries,

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which would be enclosed by perimeter fencing. When events are not being held, large portions of the fencing would be removed/moved, allowing the Bayside Performance Park to remain open to the general public. The removable/moveable portions of the fencing would be closed off only during paid-admission and rental events. The areas not accessible by the general public at any time would be the performance stage, back-of-house facilities, box office, and pavilions for safety and security reasons. These areas total approximately 15,090 square feet (0.34 acres). The promenade would remain open for general public access circulation at all times including during event hours, whereby the general public would be able to listen to Symphony concerts and other performances.

Event guest parking would continue to be conducted in a similar manner as is done currently for the Bayside Summer Nights. During events, the Real Estate Agreement would allow the Symphony to utilize up to 56 spaces within EMPS, with the remaining 76 parking spaces to remain available to the general public (park and pier users), and the Symphony would arrange agreements with off-site parking vendors, provide a shuttle service to and from the Bayside Performance Park, provide transit and ferry incentives, and continue to coordinate with other event venues such as the Convention Center and hotels. During non-event day rehearsals, all rehearsal staff and musicians would be required to park off-site to ensure the entire EMPS parking lot is available for use by the general public/park users when events are not occurring.

***Bayside Performance Park Programming***

The Symphony has proposed an expansion of its outdoor programming, currently held June through September, to include year-round events that would include paid admission and rental events as well as free public events and rehearsals (Attachment H). Performances could be held any day throughout the week and performance dates and times would vary depending on the program, although all performances would end by 11:00 p.m. and be subject to additional limitations included in a forthcoming District-issued CDP. These include paid admission and rental events that would be limited to 15 percent of the year (equivalent to 55 full-day or 110 half-day events based on a full day from 6:00 a.m. to 11:00 p.m.) in order to maintain general public access and recreation within the Bayside Performance Park for 85 percent of the year. The 85 percent provision is consistent with similar protections listed in Planning District 3 of the PMP for general public use (Marriott Marina Terrace, Convention Center Phase III Rooftop Park/Plaza and the Hilton Public Access Pier). Of these 110 half-day or 55 full-day events, no more than six events would allow attendances of between 8,000 and 10,000 each year.

The paid admission and rental events would include Symphony concerts (Bayside Summer Nights and other Symphony performances), partnership performances (non-Symphony musical performances) and local external rentals such as civic events, corporate events, convention center events, and festivals. Public events held at the park would include free events open to the general public. The Symphony has a long-standing commitment to education and public engagement and regularly offers over a dozen distinct educational and public-based initiatives. As part of the Project, the Symphony would expand on its current Education and Public Engagement Program by offering free public concerts and performances as well as education and public engagement performances. These public events would not be included in the annual 15 percent limitation for paid admission and rental events as described above.

General public access and recreation would remain the primary use of EMPS, including the Bayside

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Performance Park, with the majority of EMPS open 100 percent of the time during park hours. As previously discussed, while the majority of Symphony events are anticipated to continue occurring in the summer months, events would also be held outside of the summer season. Most Symphony events are considered half-day events and would not require full-day use as they typically occur in the late afternoon and evening hours. The Bayside Performance Park, as proposed, could hold a maximum of 10,000 seats. However, as previously noted, 8,000 to 10,000-seat events would be limited to no more than 6 per year.

## **Environmental Impact Report**

The “Bayside Performance Park Enhancement Project and Port Master Plan Amendment” EIR (UPD #EIR-2016-176; SCH #2016121003) has been prepared in accordance with CEQA (Public Resources Code Section 2100 et seq.), the State CEQA Guidelines, and the District’s CEQA Guidelines. The Final EIR consists of two volumes, which are organized as follows:

- Volume 1 contains the Final EIR dated January 2018, which includes the executive summary, project level impacts and mitigation measures, an Errata and revisions, a list of public agencies commenting on the Draft EIR, comments received on the Draft EIR and the District’s responses to comments, the MMRP, as well as the Draft EIR dated June 2017 (Clerk’s Document No. 67425). The Draft EIR includes the executive summary; the introduction and purpose; the project description; the project’s environmental analysis, impacts and mitigation measures; and project alternatives.
- Volume 2 contains the Draft EIR Appendices dated January 2018.

These two volumes collectively constitute the Final EIR. The Final EIR can be accessed on the District’s website at:

<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning.html>. A second Errata to the Final EIR is included as Attachment I.

## ***Project Objectives***

In accordance with Section 15124(b) of the CEQA Guidelines, the following objectives were identified for the proposed Project:

- Upgrade and modernize the public amenities and public access features in EMPS to provide enhanced cultural uses, improved public gathering spaces, and diversified park activation opportunities, as well as creating a more enjoyable park setting with additional recreational opportunities.
- Replace a temporary seasonal performance and event venue with an iconic and attractive world-class and highly innovative permanent outdoor public venue that can facilitate enhanced public park uses and enrich visual and cultural resources in the area.
- Allow the District, in coordination with a non-profit organization, to provide cultural events and arts to a broad and diverse audience within the San Diego region.



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- Optimize a portion of EMPS land use in a manner that is consistent with the Park/Plaza designation as applied to the Marina Zone Subarea of the PMP Centre City Embarcadero Precise Plan, guiding principles within the District's Integrated Planning Vision, and the Coastal Act.
- Provide an acoustically superior outdoor venue that will be sited and placed in a manner that minimizes noise impacts to nearby sensitive receptors.
- Maintain and promote the District's long-standing commitment to public access to the waterfront.
- Create a long-term financially sustainable project that contributes to regional economic vitality while allowing for lower-cost recreational/cultural experiences and promoting public access and the public's enjoyment of San Diego Bay.
- Create a project design that incorporates state-of-the-art sustainability practices and features.

***Notice of Preparation, Scoping Meeting, and Draft EIR***

In January 2016, the Board directed staff to initiate the CEQA process for the Project and commence negotiations with the Symphony for a permanent performance venue on approximately 3.68 acres of EMPS. In accordance with CEQA, District staff determined that an EIR would be the appropriate document due to potential issues related to GHG, traffic and parking, and noise that would require further analyses as part of an EIR process. District staff also determined that a PMPA would be required due to existing language in the PMP and potential public access concerns associated with site development and programming.

On December 1, 2016, a Notice of Preparation (NOP) was published, which included an Initial Study determining that a Draft EIR would be needed to evaluate potentially significant impacts to: Aesthetics and Visual Resources; Air Quality; Biological Resources; Geology and Soils; GHG Emissions; Hydrology and Water Quality; Land Use and Planning; Noise and Vibration; Public Services; Recreation; Transportation, Circulation and Parking; and Utilities and Service Systems. On December 19, 2016, the District held a public Scoping Meeting at the San Diego Unified Port District Administration Building from 5:00 p.m. to 7:00 p.m. In response to the NOP solicitation and scoping meeting, the District received 13 comment letters from the following agencies and individuals (some provided multiple letters): City of San Diego, City of Coronado, the Native American Heritage Commission, John Sexton, Charles and Peggee Cuson, Mark G. Stephens, Seth Goldway, Riley D. Mixson, Penny Wing, Janet Gorrie, and Julia Brown. Subsequently, a Draft EIR was prepared for the Project and was circulated for a minimum 45-day public review period, which began on June 13, 2017 and ended on July 31, 2017.

Below is a list of some of the key determinations that were included in the Project's Draft EIR analysis:

- The Initial Study determined that the Project had the potential to result in significant impacts to

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a number of CEQA resource areas. However, upon further examination, the Draft EIR found that the Project would result in a “less than significant” impact with no mitigation required for Air Quality, Hydrology and Water Quality, Public Services and Utilities.

- The Draft EIR found that impacts to Aesthetics and Visual Resources (impacts to visual character), Biological Resources (direct and indirect effects on nesting birds), Geology and Soils (geologic hazards), Land Use and Planning (inconsistency with plans due to loss of public parkland), and Recreation (increased use of parks) would be reduced to a “Less Than Significant Level” with Mitigation Measures incorporated. With the mitigation measures identified in the EIR, the Project was found to be less than significant in these CEQA resource areas.
- The Draft EIR found that the Project would have “Significant and Unavoidable” environmental impacts on the following areas:
  - Direct impacts on GHG Emissions (post-2020 reduction targets and inconsistency with statewide plans, policies and regulations), Noise and Vibration (operational noise in excess of San Diego and Coronado noise levels), and Transportation, Circulation and Parking (temporary impacts to intersection Level of Service and inadequate parking during maximum capacity events);
  - Cumulative impacts on GHG Emissions, and Transportation, Circulation and Parking.
- There are feasible mitigation measures with respect to the significant unavoidable environmental impacts. Although in some instances the mitigation measures may substantially lessen these unavoidable environmental impacts, adoption of the mitigation measures will not fully avoid these impacts and a “Statement of Overriding Considerations” would be needed in order to approve the proposed Project. A Statement of Overriding Considerations allows a lead agency to determine that specific economic, social or other expected benefits of a project outweigh its potential unavoidable significant environmental risks.
- Project Alternatives: The State CEQA Guidelines require that an EIR present a range of reasonable alternatives that could meet a majority of the Project’s base objectives, but that would avoid or substantially lessen one or more significant environmental impacts. While several project alternatives were initially considered, six were selected for analysis in this EIR. The alternatives considered, but rejected, included a reduced capacity alternative for 3,500 seats and several alternative locations including: (1) County Waterfront Park; (2) Embarcadero Marina Park North; (3) Harbor Island; (4) Navy Pier; (5) Shelter Island; and (6) the Joan and Irwin Jacobs Music Center. These alternatives were rejected because of the failure to meet most of the basic project objectives, infeasibility, or inability to avoid significant environmental impacts.

The EIR considered the following six alternatives for analysis:

- *Alternative 1 - No Project Alternative with Discontinued Symphony Events:* This alternative analyzed potential impacts that would occur if the new park enhancements were not implemented, EMPS would remain as it exists today, and no temporary

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concert venue would be set up on-site for the June through September season because the Symphony would discontinue holding its Bayside Summer Nights performance series and free public events held at EMPS. The EIR found that because Alternative 1 would entail no physical modification of the project site, it would reduce all significant and unavoidable impacts and impacts mitigated to less than significant to less than significant, requiring no mitigation. However, Alternative 1 would not achieve any of the project objectives and would preclude obtaining the benefits of the Project as summarized in the project components (Attachment G).

- *Alternative 2 - No Project Alternative with Continued Symphony Events:* This alternative analyzed potential impacts that would occur if the new park enhancements were not implemented, EMPS would remain as it exists today, and the Symphony would continue to hold the Bayside Summer Nights performance series and rental events held at EMPS. The EIR found that Alternative 2 would reduce all significant and unavoidable impacts and impacts mitigated to less than significant to less than significant, requiring no mitigation. However, Alternative 2 would not attain some of the project objectives and would not provide the District and the region with all of the benefits of the Project, and thus would be undesirable from a policy standpoint.
- *Alternative 3 - Reduced Capacity Alternative - 8,000 Seats:* Under this alternative, the project would be similar to the proposed Project, though instead of 10,000-attendee capacity at the Bayside Performance Park, it included an 8,000-attendee capacity. The EIR found that Alternative 3 would slightly reduce impacts associated with GHG emissions and Transportation, Circulation and Parking, but impact significance levels would remain the same as under the proposed Project. All other impacts would be similar to the Project's impacts and the use of space would not be optimized.
- *Alternative 4 - Reduced Capacity Alternative - 6,000 Seats:* Under this alternative, the project would also be similar to the proposed Project, though instead of 10,000-attendee capacity at the Bayside Performance Park, it included a 6,000-attendee capacity. The EIR found that Alternative 4 would slightly further reduce impacts associated GHG emissions and Transportation, Circulation, and Parking compared to Alternative 3. However, impact significance levels would remain the same as under the Project. All other impacts would be similar to the Project's impacts and some of the anticipated partnership performances at the Bayside Performance Park would be precluded.
- *Alternative 5 - Reduced Programming Alternative:* Under this alternative, the project would be similar to the proposed Project and would include all physical components of the Project, including a 10,000-seat capacity at the Bayside Performance Park. However, Alternative 5 would reduce the annual event limit by approximately 35 percent, which means that access to the Bayside Performance Park being restricted during 9.8 percent of the year (equivalent to 36 full-day or 72 half-day paid admission and rental events) instead of 15 percent of the year (equivalent to 110 half-day or 55 full-day paid admission and rental events). The EIR found that Alternative 5 would reduce impacts associated with GHG emissions; noise; recreation; and transportation,

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circulation and parking; but impact significance levels would remain the same as under the proposed Project. All other impacts would be similar to the Project's impacts.

- *Alternative 6 - Balboa Park (Starlight Bowl) Alternative Location:* Under this alternative, Balboa Park was identified as an "upland" (i.e., off-Tidelands) alternative location for the performance park. The EIR found that while Alternative 6 would not reduce impacts associated with event number or attendance, it would reduce the project's impacts associated with aesthetics, biological resources, land use and planning, noise, and recreation. Therefore, Alternative 6 was identified as the Environmentally Superior Alternative in the Draft EIR. The EIR found that Alternative 6 would avoid or substantially lessen the potential significant direct and cumulative impacts on Noise and Vibration, and Parking in the project area. However, the Alternative 6 project site is not within the jurisdiction of the District and would not provide the District with all the benefits of the Project.

**Final EIR**

The Final EIR includes the Project's executive summary, comments received on the Draft EIR, the District's responses to those comments, as well as a Final EIR document that further clarifies, corrects or adds information to the EIR based, in part, on information collected as part of the public review process. These revisions are more fully described in the Errata to the Final EIR, but include: 1) clarifications on aesthetics, biological resources, greenhouse gas emissions, and aesthetics related to tree removal and replacement; 2) incorporation of additional visual simulations; 3) clarifications on proposed lighting operations; 4) clarification on a proposed transit rebate; 5) clarification on a land use measure requiring a financial contribution to acquire, create, or improve approximately 15,090 square feet of unimproved space into improved park/plaza space - the measure was also clarified to designate the contribution toward Pepper Park in the National City Bayfront; 6) clarification on a noise measure for providing sound level logs upon request; 7) update to include the Project analysis within a tribal and cultural resources section; and 8) though described in the Project Description, incorporation of the proposed PMPA language as an Appendix of the Final EIR; the proposed PMPA incorporates language in response to Coastal Commission comments received on the Draft EIR. A second Errata to the Final EIR is provided which clarifies Table 4.2-5 and the Project's PM<sup>10</sup> emissions (Attachment I). The conclusion of less than significant related to the Project's PM<sup>10</sup> emissions does not change with the additional information.

The Final EIR also includes the Project's MMRP, discussed in more detail below.

Comment letters on the Draft EIR were received during a minimum 45-day public review period from June 13, 2017 through July 31, 2017. Comment letters were received from five agencies including the State Clearinghouse, Coastal Commission, Native American Heritage Commission, San Diego Association of Governments (SANDAG), and the City of Coronado. No comment letters were received from private organizations or individual persons. The comment letters discussed information related to aesthetics, biological resources, GHG emissions, land use and planning, noise, transportation, traffic and parking, tribal cultural resources, and cumulative impacts. The additional information contained in the District's responses to comments clarifies and further substantiates the conclusions contained in the Draft EIR. None of the comments received constituted or resulted in significant new information requiring recirculation of the EIR under CEQA Guidelines 15088.5.

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Similarly, the changes contained in the Final EIR are minor and do not constitute significant new information or a change in the Draft EIR's conclusion. The Final EIR document was prepared to ensure the accuracy and completeness of the environmental analysis. The Final EIR is available for review in the Office of the District Clerk, was provided to the Board for its consideration via a Board Memo dated December 28, 2017, and was also made available to the Board in the Commissioners' Office. The Final EIR can be accessed on the District's website at:

<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning.html>

Staff recommends that the Board conduct a public hearing, adopt a resolution certifying the Final EIR, and direct staff to file a Notice of Determination.

### ***Mitigation Monitoring and Reporting Program***

As concluded by the Draft EIR and the Final EIR, the Project would result in significant and unavoidable direct impacts on GHG Emissions, Noise and Vibration, and Transportation, Circulation, and Parking and in cumulative impacts on GHG Emissions and Transportation, Circulation, and Parking. With the exception of the significant and unavoidable impacts on these CEQA resource areas, all project level and cumulative impacts can be mitigated to below a level of significance with the implementation of the mitigation measures outlined in the Final EIR's MMRP (Attachment E). These mitigation measures include the following:

- Restrictions on the Duration of Sound Amplification on Event Days
- Restrictions on the Duration of Sound Amplification on Non-event Days
- Active Noise Monitoring
- Noise Complaint Hotline
- Off-site Public Park Space
- Public Access and Notice During Construction
- Traffic Management Plan
- Parking Management Plan
- Traffic Management Plan Traffic Control and Traffic Officer Requirements
- Subsidized Mass Transit Requirements
- Landscape Plans
- Pre-construction Surveys (which may result in monitoring by a qualified biologist)
- Limitations on Lighting
- LED Lighting
- Litter Deterrence Strategies
- Solar Photovoltaic Panels
- High-efficiency Water Heaters
- All-Electric Landscaping Equipment
- Low-Flow Water Fixtures
- Drought-tolerant Landscaping
- Increased Recycling
- Use of Tier IV Final CAR-Certified Construction Equipment
- Geotechnical and Fault Rupture Investigations

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All mitigation measures have been prepared in compliance with CEQA Guidelines Section 15097. The MMRP identifies the required mitigation measures, the party responsible for carrying them out, and a monitoring and reporting mechanism. Compliance with the MMRP contained in the Final EIR will be included as a condition of a forthcoming District-issued CDP for the Project.

Staff recommends the Board adopt the MMRP.

### ***Findings of Fact and Statement of Overriding Considerations***

CEQA requires the Board to adopt written findings of fact for all significant project impacts identified in the Final EIR (CEQA Guidelines Section 15091) including impacts that are considered less than significant after mitigation and impacts that are considered significant and unavoidable. Because the direct impacts on GHG Emissions, Noise and Vibration, and Transportation, Circulation, and Parking and the cumulative impacts on GHG Emissions and Transportation, Circulation, and Parking were found to be significant even after the adoption of all feasible mitigation measures, the Board must adopt findings regarding the feasibility of any alternatives that could avoid or substantially reduce the significant and unmitigable impacts. The significant and unavoidable impacts also require the Board to adopt a Statement of Overriding Considerations identifying that the District has balanced the specific environmental risks in determining whether to approve the Project.

In October 2017, following release of the Draft EIR for public review, the Symphony submitted financial information to the District discussing the financial infeasibility of the project alternatives. In response to the information provided, staff engaged the London Moeder Advisors (LM) to prepare an Analysis and Strategic Consultation Report to determine the economic feasibility of the various alternatives analyzed in the EIR based on the initial 10 years of projected revenues and expenses provided by the Symphony (Attachment D). LM used industry benchmarks for return on equity expectations to determine the feasibility of 6,000, 8,000, and 10,000 seat venues based on each scenario's stabilized year-10 revenue. LM noted that ground rent in the initial years prior to stabilization would likely require a ramp-up rent structure to maintain feasibility. LM recommended an equity return range of 10 to 12 percent based on the project type and size and their methodology for determining feasibility using those metrics.

The financial feasibility of the project alternatives (i.e., the Symphony's projected rate of ROI) was scrutinized. Based on the findings of the report, the reduced capacity alternatives were determined to be financially infeasible. This conclusion was based on the Symphony's negotiated lease terms with the District for an at-market rent structure that achieves a minimum five percent of gross ticket sales and concessions based on estimated expenditures and revenues provided by the Symphony, and the stabilized 10-year revenue projected under the alternatives.

Considering these factors, it was projected that Alternative 3 (8,000-seat venue) would result in a return less than the market return and Alternative 4 (6,000-seat venue) would result in a return of less than zero percent, rendering both alternatives to return less than the 10 to 12 percent ROI that is demonstrated to be at market, favorable, and a financially feasible ROI for an investment of this type, risk profile and scale. Likewise, given that both the 20 percent and 40 percent reductions in venue size were found to be financially infeasible, it was concluded that Alternative 5 (35 percent reduction

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in programming) would also be financially infeasible due to two key factors in determining potential revenue generation - the number of attendees and the number of events. A reduction in either would result in a corresponding reduction in revenue, which would then reduce the return to less than the 10 to 12 percent return demonstrated to be at market, favorable, and a financially feasible ROI for an investment of this type, risk profile and scale.

A binding LOI summarizing the minimum acceptable price and terms for this Project has been prepared (Attachment C). Based on the ranges of return in the LM report and the minimum acceptable rent structure, the minimum price and terms render the reduced alternatives financially infeasible and demonstrates that the District would not enter into a forthcoming Real Estate Agreement on price and terms less than those summarized in the LOI.

Staff recommends the Board adopt the Findings of Fact.

Staff also recommends the Board find that, pursuant to CEQA Guidelines Section 15093, the benefits of the Project, including but not limited to the specific economic, legal, social, technological, and other benefits outweighs its significant adverse environmental impacts and therefore, such impacts are considered acceptable.

Staff recommends the District adopt the Statement of Overriding Considerations.

**Port Master Plan Amendment**

The Project site is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the PMP. The Project site is located in the Marina Zone Subarea with land use designations of Park/Plaza and Promenade. These designations encourage the development and accommodation of public access to and along the interface zone of land and water. As described in the PMP, uses frequently associated with Park/Plaza include cultural uses and other park-activating uses that are ancillary to the public uses. As described in the Precise Plan text, the Marina Zone Subarea is planned to be "intensively developed as a major public and commercial recreational complex." The PMP describes EMPS as contributing to the transformation of the waterfront area into an "attractive commercial and recreational resource." The Plan further describes this waterfront area as a "lively activity center for residents and visitors alike." The PMP discusses the public promenade, public access pier, and EMPS to be open for general public use at all times, with an allowance for temporary special event use of EMPS consistent with District Special Event Procedures and Guidelines.

The Project will result in the development of enhancements to EMPS including the development of the Bayside Performance Park. The uses associated with these physical improvements conform to the underlying land use designations in the PMP; however, a PMPA is proposed to update the precise plan text in Planning District 3 for the following components (Attachment F):

- Describe the use of a portion of EMPS as a performance venue for paid admission and rental events in the Marina Zone Subarea;

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- Describe the parameters for use of the Bayside Performance Park for paid admission and rental events; and
- Correct a text reference to EMPS in the Convention Way Basin Subarea (relocate the text reference to EMPS from Convention Way Basin Subarea to the Marina Zone Subarea as is delineated on Figure 11).

As detailed in the PMPA, the parameters for paid admission and rental events within the Bayside Performance Park would include limiting the number of events to 15 percent per year (equivalent to 55 full-day or 110 half-day events) to ensure general public access within the Bayside Performance Park for a minimum of 85 percent per year consistent with similar public access provisions in Planning District 3. The PMPA also includes a limitation on structure height and provisions to maintain public access along the promenade at all times, parking, transit subsidies, and lower-cost visitor serving opportunities (e.g., reduced admission pricing, and rehearsals, concerts, community events, and public educational programming offered free-of-charge to the general public). The proposed PMPA is project-specific and would not address other projects or land uses within the Planning District.

A public hearing on the draft PMPA is required, pursuant to the Coastal Act, prior to Board approval. Notices of the availability of the draft PMPA and proposed public hearing were published on December 6, 2017 in the *San Diego Daily Transcript* and *Coronado Eagle* and distributed consistent with applicable Coastal Act requirements. If approved by the Board, the draft PMPA would be submitted to the Coastal Commission for processing with a potential certification hearing by mid-2018.

Staff recommends the Board conduct a public hearing and adopt a resolution approving the PMPA and direct staff to file the PMPA with the California Coastal Commission for certification.

**Binding Letter of Intent**

As discussed, the Symphony has entered into a TUOP with the District every year since 2004 to hold the Bayside Summer Nights concert series at EMPS during four months of the summer. Up to 37 events are permitted each summer and the Symphony pays the District a flat \$1 per ticket, flat \$20.00 per parking space per day, and percentage rent on food, beverage, and merchandise. The TUOP expires each year and a new one is executed for the following year's performances.

Over the last three years of summer events, the \$1 per ticket has equated to just over 2 percent of ticket sales on average as shown in the table below.

	<b>Tickets Sold</b>	<b>Ticket Sales</b>	<b>% Rent</b>
<b>2015</b>	52,405	\$2,290,934	2.3%
<b>2016</b>	56,950	\$2,563,158	2.2%
<b>2017</b>	65,149	\$3,236,016	2.0%
<b>Average</b>			<b>2.2%</b>



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In October 2017, the Symphony submitted financial information to the District discussing the financial infeasibility of the project alternatives. Based on their submittal, staff and LM determined that a percentage rent lease versus the current hybrid flat and percentage rent arrangement is the best approach in that it allows the District to participate in the upside of a successful venue, given the variability in ticket prices for different events, as well as the increase in ticket prices over the course of a long-term lease.

Staff further engaged LM to determine the economic feasibility of the various alternatives analyzed in the EIR based on the initial 10 years of projected revenues and expenses provided by the Symphony. LM used industry benchmarks for return on equity expectations to determine the feasibility of 6,000, 8,000, and 10,000 seat venues based on each scenario's stabilized year-10 revenue. LM noted that ground rent in the initial years prior to stabilization would likely require a ramp-up rent structure to maintain feasibility. LM recommended an equity return range of 10 to 12 percent based on the project type and size and their methodology for determining feasibility using those metrics.

The financial feasibility of the project alternatives (i.e., the Symphony's projected rate of return on investment [ROI]) was scrutinized. A binding LOI summarizing the minimum acceptable price and key economic terms for this Project has been prepared (Attachment C). Below summarizes the key economic terms included in the binding LOI:

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<b>Term Category</b>	<b>Term</b>
<b>Ground Lease Term</b>	15 Years with options to extend 35 additional years (Total 50 Years)
<b>Audit on Improvements</b>	Option extension subject to condition and maintenance audit
<b>Percentage Rent for Ticket Sales</b>	Construction: \$0 \$0 to \$18MM: 1% Gross Revenue of Ticket Sales \$18MM to \$30MM: 2.5% Gross Revenue of Ticket Sales \$30MM plus: 5% Gross Revenue of Tickets Sales \$40MM plus: 7% Gross Revenue of Tickets Sales \$50MM plus: 8% Gross Revenue of Tickets Sales
<b>Percentage Rent for Food &amp; Beverage Sales</b>	5%
<b>Percentage Rent for Merchandise Sales</b>	5%
<b>Parking Rent</b>	Consistent with TUOP; with rights reserved to adjust annually to market
<b>Minimum Annual Rent (MAR)</b>	Set at 75% of the average of the last 5 accounting years
<b>Title to Improvements at Expiration/Early Termination</b>	District

The full Real Estate and Operating Agreement with all price and terms will be presented to the Board at a future date.

Staff recommends the Board adopt a resolution authorizing a binding LOI with the Symphony.

### **Consistency with Port Master Plan Update**

On a parallel track with the Project and proposed PMPA, the District is processing a separate but related effort: the comprehensive Port Master Plan Update (PMPU) guided by the Integrated Planning Vision (IPV). The IPV includes the Integrated Planning Vision Statement, Guiding Principles, and Framework Report accepted by the Board in 2014 and 2015. Combined, the IPV provides a bridge between the visioning conducted for Integrated Planning to the drafting of the PMPU document. Once complete, the PMPU will set forth a policy level blueprint to guide all future redevelopment across District tidelands as part of future implementing projects.

As previously described, in 2015, the Symphony submitted a proposal to the District to construct permanent improvements in EMPS. In January 2016, the Board directed staff to further study and

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commence negotiations with the Symphony for a permanent performance venue on approximately 3.68 acres of EMPS. However, implementation of the Project would require a PMPA. Pursuant to Board Policy 752, Guidelines for Conducting Project Consistency Review Related to the Integrated Port Master Plan Update, projects are required to rely on the Guiding Principles for consistency while the PMPU is in progress. As further described in Table 4.7-2 of the Final EIR, the Project is consistent with the IPV as a result of the Project's proposed use of EMPS, design features and public enhancements provided as part of the Project, and Mitigation Measures designed to avoid or reduce impacts to recreation, mobility, and public park space.

During the processing of the proposed PMPA, staff has been coordinating with the PMPU team to determine compatibility with the draft goals, policy concepts, and land and water use maps under consideration in the PMPU process, in both the Baywide Elements and the South Embarcadero Sub-District of Planning District 3.

**Next Steps**

Following Board certification of the Final EIR, adoption of the MMRP, and adoption of the Findings of Fact and Statement of Overriding Considerations, a Notice of Determination will be filed with the County of San Diego Records' Office.

Following Board approval of the PMPA, staff will prepare and transmit the PMPA to the Coastal Commission for a determination of completeness within 10 days of receipt. Once found complete, a public hearing will be scheduled for Coastal Commission certification of the PMPA within 90 days. Upon certification of the PMPA by the Coastal Commission, staff will return to the Board for acceptance of the certified PMPA. At this time, staff will also request the Board authorize a conditional, non-appealable CDP for the Project (conditional upon final action of the PMPA by the Coastal Commission) and a Real Estate Agreement with the Symphony. Following these Board actions, District staff will transmit the Board-accepted PMPA back to the Coastal Commission for final action. Once complete, District staff will issue the CDP.

Following Board authorization to enter into a binding LOI with the Symphony, staff will commence negotiations of a Real Estate Agreement to finalize price and terms, outline operations of the venue including District use, maintenance and repair, utilities, mechanical systems, landscaping, security, and event operation, setup, and takedown.

**General Counsel's Comments:**

The General Counsel's Office has reviewed the agenda sheet and attachments as presented to it and approves them as to form and legality.

**Environmental Review:**

The proposed Board action completes the CEQA process for the Project.

In addition, the proposed Board actions would facilitate enhancements of public facilities and uses. The actions comply with Section 87(a)(5) of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting

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places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

Joseph Smith, AICP  
Department Manager  
Development Services

**Attachments(s):**

Attachment A:	Project Location Map
Attachment B:	Site Plan
Attachment C:	Binding Letter of Intent
Attachment D:	LM Financial Report and Information Provided by the Symphony
Attachment E:	Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program
Attachment F:	Draft Port Master Plan Amendment
Attachment G:	Project Components
Attachment H:	Programming Summary
Attachment I:	Second Errata to Final EIR

*Due to size, the Final EIR can be accessed on the District's website at:*

<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning.html>