

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING ISSUANCE OF NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION, CONDITIONED ON SATISFACTION OF THE CALIFORNIA COASTAL COMMISSION'S ACCEPTANCE OF THE DISTRICT'S ADOPTION OF THE PORT MASTER PLAN AMENDMENT AS CERTIFIED BY THE CALIFORNIA COASTAL COMMISSION AND APPROVAL AND EXECUTION OF A LEASE BETWEEN THE DISTRICT AND THE SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION**

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, the San Diego Symphony Orchestra Association (Symphony), as the applicant and project proponent, has proposed the replacement of its temporary performance and event venue located on the northern 3.68 acres of the 10.8-acre Embarcadero Marina Park South (EMPS) with a permanent performance and event venue, accessory uses and several enhancements to other areas of EMPS outside of the proposed venue location (collectively, Project); and

WHEREAS, in order to allow for the Project in EMPS, a designated public park in the Port Master Plan (PMP), as a year-round performance and event venue, a Port Master Plan Amendment (PMPA) was required to address public access, programming, park mitigation, lighting, and sea level rise adaptation; and

WHEREAS, the PMPA modifies text of the Marina Zone subarea of the Centre City Embarcadero Planning District, adds the proposed Project as a non-appealable project to the Centre City Embarcadero Project List (Table 11), and modifies the text of the South Embarcadero Public Access Program (SE PAP) to allow for the Project; and

WHEREAS, pursuant to California Public Resources Code Sections 30714 and 30716 and Title 14, Section 13632(e) of the California Code of Regulations, in order for the PMPA to be fully certified the following must occur (1) approval of the PMPA by the Board of Port Commissioners (BPC); (2) certification of the PMPA by the California Coastal Commission (CCC); (3) BPC adoption of the PMPA, as certified by the CCC; and (4) CCC acceptance of the BPC's adoption of the PMPA as consistent with its certification; and

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WHEREAS, on January 9, 2018, the BPC, as Lead Agency under the California Environmental Quality Act (CEQA): (1) adopted Resolution No. 2018-019, certifying a Final Environmental Impact Report (EIR) entitled “Bayside Performance Park Enhancement Project and Port Master Plan Amendment” EIR (UPD #EIR-2016-176; SCH #2016121003), adopting Findings of Fact and a Statement of Overriding Considerations, and adopting a Mitigation Monitoring Reporting Program (MMRP) for the Project, which among other things analyzed the Project and associated PMPA and Coastal Development Permit (CDP); and (2) conducted a public hearing and adopted Resolution No. 2018-020, approving the PMPA and directing District staff to file the PMPA with the CCC for certification; and

WHEREAS, District staff subsequently filed the PMPA application with the CCC, and on November 8, 2018, the CCC unanimously certified the PMPA, as submitted, finding the PMPA to be consistent with Chapter 8 the California Coastal Act (Coastal Act); and

WHEREAS, a duly noticed public hearing was held on December 11, 2018, before the BPC, at which the BPC received public testimony and materials made available to the BPC regarding the Project and adoption of the PMPA, as certified by the CCC; and

WHEREAS, the only step left for the proposed PMPA to become effective is for the CCC to accept the BPC’s December 11, 2018 adoption of the PMPA as consistent with its certification (CCC Acceptance); and

WHEREAS, the Project site is included in the Marina Zone subarea of the Centre City Embarcadero 3 of the PMP, the Project is consistent with the land use designation for the site as Park/Plaza and once the CCC Acceptance is completed the Project will be fully consistent with the certified PMP; and

WHEREAS, Section 30106 of the Coastal Act defines “development” as, among other things, the placement or erection of any solid material on land, grading, and change in the density or intensity of use of land, and consequently, the Project, as well as change in intensification of use on the Project site are considered “development,” requiring a CDP; and

WHEREAS, pursuant to the District’s CDP 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 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 Coastal Act, which

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specifies the sole categories of development that may be appealed to the CCC;
and

WHEREAS, the “non-appealable” category of development is supported by the record, including the plain language of Section 30715, the proposed PMPA, the District’s CDP Regulations and the characteristics of the Project; and

WHEREAS, the Project requires a non-appealable CDP and an application has been prepared for a non-appealable CDP to implement the Project; 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 PMP once the PMPA becomes effective through the CCC Acceptance; and

WHEREAS, the BPC considered the non-appealable CDP and Concept Approval at the December 11, 2018 BPC meeting, but as of that date, the District and Symphony have not entered into a definitive real estate agreement to give Symphony real property rights to develop and operate the Project (Definitive Agreement); and

WHEREAS, the authority to issue the CDP is expressly conditioned on the occurrence of the CCC Acceptance and the BPC approving a Definitive Agreement and the execution of the same by the District and Symphony; and

WHEREAS, in accordance with CEQA and its implementing guidelines, the Project and proposed CDP were analyzed in the Final EIR, as certified by the BPC and the BPC has determined that the CDP and Project are adequately documented, described, disclosed, and analyzed in the EIR, and no further CEQA review is required.

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.

2. In general and as more particularly described in the corresponding agenda sheet and CDP, the project consists of a 57-foot tall acoustic shell housing a stage (of similar height to the temporary stage house), back of house facilities, and rear steps with a public viewing deck; light-emitting diodes (LED) on the interior of the shell that would light the translucent material comprising the shell; stage lighting; a sloped synthetic turf lawn; a box office; two food pavilions; 42-inch

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tall perimeter fencing between the venue and public promenade and 8-foot tall fencing at the back-of-stage, both with moveable sections to allow for public access during non-event hours; and 68 restroom stalls located beneath the sloped lawn as well as several enhancements to other areas of EMPS outside of the proposed venue location, including expanding the width of the public promenade around the site from 8 feet to 12 feet; installing new benches along the promenade; replacing existing park lighting with shielded, low correlated color temperature (2,700-3,000 Kelvins) LED lighting; reconfiguring the parking lot to add four parking spaces; replacing basketball courts and fitness equipment; refurbishing the gazebo and restrooms; landscaping; and installing 228 10-foot high solar panels.

3. As more particularly described in the corresponding agenda sheet and CDP, the maximum capacity of the venue would be increased from 5,200 (temporary venue capacity limitation) to 10,000 attendees. The majority of events are anticipated to involve less than 6,500 persons. However, no more than six events a year would be allowed to occur with capacities between 8,000 to 10,000 persons. The number of events allowed would increase from 37 events (temporary venue programming limitation) to 55 full-day events or 110 half-day events which is equivalent to 15% of the year. Non-symphony events, such as partnership performances and private rentals, would also be allowed but would be included in the 55 full- or 110 half-day limitation. The District would be entitled to reserve up to five full-day (or 10 half-day) events per year as District or District-sponsored events. Of these five reserved full-days (or 10 half-days), two full-day (or four half-day) events would be reserved within the peak summer period and three full-day (or six half-day) events within the non-peak period. These events would be counted within the 15% annual event limitation if they involve admission or constitute a rental for non-public use.

4. As more particularly described in the corresponding agenda sheet and CDP, the Project would also be subject to several other public access and programming conditions, including the requirements that (A) the venue would remain open to the general public for 85% of the year (equivalent to 310 full-days or 620 half-days) during the peak period, no more than three consecutive full-day events would occur; (B) a minimum of one full-day is required where the site would be open to the general public immediately after the three-consecutive full-day events; (C) four public events made free of charge to the general public must be provided each year; (D) general public access/circulation would remain open at all times on the public promenade surrounding the site, including during all events; (E) when the site is open to the general public, temporary special events may continue to utilize the site (or any other portion of EMPS) when authorized via a District-issued Special Event Permit; (F) all event seating and tables would be non-permanent/temporary and promptly removed during extend periods of time (more than 5 days) when no events are scheduled; and (G) all perimeter fencing, which would be promptly opened after an event and would remain open when no events are scheduled, would include large removable/moveable sections to provide sufficient public access into the site during non-event hours.

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5. The Project conforms to the land use designations of “Park/Plaza,” and upon the CCC Acceptance, Precise Plan text, and Project list, and is therefore consistent with the certified PMP.

6. Section 30106 of the Coastal Act defines “development” as, among other things, the placement or erection of any solid material on land, grading, and change in the density or intensity of use of land, and consequently, the Project, as well as change in intensification of use on the Project site are considered “development,” requiring a Coastal Development Permit (CDP). Pursuant to the District’s CDP Regulations, the Project has been determined to be a “non-appealable” development because it is not considered an “excluded,” “emergency,” or “appealable” development. Additionally, pursuant to the 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 Coastal Act, which specifies the sole categories of development that may be appealed to the CCC. The “non-appealable” category of development is supported by the record, including the plain language of Section 30715, the proposed PMPA, the District’s CDP Regulations and the characteristics of the Project. Consequently, a non-appealable CDP is required for the Project. However, said, non-appealable CDP cannot be issued until the CCC Acceptance is completed.

7. In accordance with the California Environmental Quality Act (CEQA) and its implementing guidelines, the Project and proposed CDP were analyzed in the “Bayside Performance Park Enhancement Project and PMPA” EIR (UPD #EIR-2016-176; SCH #2016121003), which was certified by the BPC on January 9, 2018 by Resolution 2018-019 and the BPC hereby finds that the proposed CDP and Project are adequately documented, described, disclosed, and analyzed in the EIR, and no further CEQA review is required.

8. The BPC also hereby finds that the Project will enhance public access and public recreation by providing permanent cultural amenity that would attract the general public to the waterfront during Symphony performances and other events. The Project also includes park improvements that would benefit the general public including an expanded promenade, benches, and refurbished/replaced exercise equipment, basketball courts, gazebo, and restrooms. The proposed BPC’s action complies with Section 87 of the Port Act, which allows for all commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants and facilities, public assembly and meeting places, parks, and public recreation facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed BPC actions are consistent with the Public Trust Doctrine.

9. 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

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hereby authorized and directed to issue a Non-Appealable CDP for the “Bayside Performance Park Enhancement Project and Port Master Plan Amendment”; provided, however, said Non-Appealable CDP shall not be issued until the CCC Acceptance action as described herein is completed, and approval and execution of a Definitive Agreement between the District and the San Diego Symphony Orchestra Association occurs. Said Non-Appealable CDP shall require compliance with all the conditions set forth in the Non-Appealable CDP and as a condition of this approval, 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 CDP. Said indemnity and hold harmless condition is independent of any agreements by and between San Diego Symphony Orchestra Association and the District.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11th day of December 2018, by the following vote: