



## Legislation Details (With Text)

**File #:** 2017-0348    **Version:** 1    **Name:**  
**Type:** Action Item    **Status:** Passed  
**File created:** 6/29/2017    **In control:** Board of Port Commissioners  
**On agenda:** 8/8/2017    **Final action:** 8/8/2017  
**Title:** RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT FOR THE U.S. SAND SCULPTING CHALLENGE AND DIMENSIONAL ART EXPOSITION

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 5. 2017-0348 Attachment A, 2. 5. 2017-0348 Attachment B - Color, 3. 5. 2017-0348 Attachment C - Color, 4. 5. 2017-0348 Draft Resolution

Date	Ver.	Action By	Action	Result
8/8/2017	1	Board of Port Commissioners	adopted	

**DATE:** August 8, 2017

**SUBJECT:**

### RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT FOR THE U.S. SAND SCULPTING CHALLENGE AND DIMENSIONAL ART EXPOSITION

#### EXECUTIVE SUMMARY:

The project applicant and proponent, 3D Art Expo LLC, proposes a temporary event and associated temporary improvements (collectively, "Project") on Broadway Pier in San Diego, California (Attachment A, Location Map).

The U.S. Sand Sculpting Challenge and Dimensional Art Exhibition (event) is a five-day temporary event, proposed from Thursday, August 31, 2017 through Monday, September 4, 2017. The event would require an additional nine days of staging, installation, and removal of temporary structures to take place from August 26, 2017 through September 8, 2017, during which time there would be intermittent closures of all or portions of the project site. The event would utilize all of Broadway Pier (including the Pavilion, pier, and park/plaza area), and a portion of the area between the promenade and N. Harbor Drive, of which portions would not be free-of-charge to general public use during the event. The event would consist of a sand sculpting competition and art exhibition, along with various vendors, interactive entertainment, and exhibition booths. Temporary parking would be accommodated on B Street Pier and nearby parking lots. After the conclusion of the event, all temporary structures would be removed and the Project site would be restored to its original condition at which time it would continue to operate as a public park/plaza and cruise terminal.

The Project is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15304 (Minor Alterations to Land), 15311 (Accessory Structures), and/or 15323 (Normal Operations of Facilities for Public Gatherings) and Sections 3.d. (6) and/or 3.i. of the

District's Guidelines for Compliance with CEQA. Additionally, pursuant to the District's Coastal Development Permit (CDP) Regulations and the California Coastal Commission's (CCC) Temporary Event Guidelines, the Project requires issuance of a Non-Appealable CDP as it meets all of the criteria within the CCC Temporary Event Guidelines. As conditioned, the Project is consistent with the certified Port Master Plan (PMP), Chapters 3 and 8 of the Coastal Act, and the applicable special conditions associated with the North Embarcadero Visionary Plan (NEVP) Phase 1 CDP (A-6-PSD-11-006; Clerk's Doc. No. 58230) approved by the California Coastal Commission on April 13, 2011 (specifically, CDP Attachment B, Broadway Pier Design Principles and Programming Plan).

### **RECOMMENDATION:**

Adopt a resolution authorizing issuance of a Non-Appealable Coastal Development Permit for the U.S. Sand Sculpting Challenge and Dimensional Art Exhibition at Broadway Pier.

### **FISCAL IMPACT:**

The event is sponsored through the Tidelands Activation Program in the form of fee waivers in the amount of \$71,630. The event organizers would continue to be responsible for all applicable costs associated with the entitlement, temporary installation, and operation of the event that are not sponsored by the District.

### **COMPASS STRATEGIC GOALS:**

The Board's action would authorize issuance of a CDP for a temporary event that would help ensure that San Diego Bay remains a vibrant waterfront destination by continuing to provide opportunities for activation of the waterfront.

This agenda item supports the following Strategic Goal:

- A vibrant waterfront destination where residents and visitors converge.

### **DISCUSSION:**

#### **Background**

The U.S. Sand Sculpting Challenge and Dimensional Art Exhibition has occurred annually on North Embarcadero since 2012. The event has historically been sponsored by the Tidelands Activation Program (TAP) through District services. This year, the Project is proposed as a five-day temporary sand sculpting competition and art exhibition that would take place from Thursday, August 31, 2017 through Monday, September 4, 2017. The event would utilize all of Broadway Pavilion, Pier, and Plaza, located at 1000 N. Harbor Drive in San Diego, California. The District would provide event sponsorship in the form of service fee waivers for the event.

The event would involve the installation of temporary structures, including amusement rides, concession vendor stands, entertainment stages, and exhibition booths. Public access to the portions of the event at Broadway Pier and Pavilion and the area between the promenade and N. Harbor Drive, referred to on the Site Plan (Attachment B) as the 'Kid Zone', would require a paid ticket and

would involve the installation of temporary fencing along the eastern end of Broadway Pier and around the Kid Zone to limit access into the event for ticketed guests. The public promenade adjacent to Broadway Pier, running linear to the shoreline, would be partially used for sponsor installations and booths but would remain open to general public use at all times. Unobstructed pedestrian passageway from the promenade to N. Harbor Drive would be maintained at all times. The entirety of the development, including installation, staging, and removal of the temporary structures and material, and the duration of the event, may take up to 14 days total and would result in intermittent closures of all or portions of the Project site to the general public. Parking for the event would be accommodated in nearby public parking lots, including the B Street Pier parking lot operated by ABM Parking Services, with approximately 2,000 available parking spaces in the vicinity. Information and incentives for public transit use have been distributed via the event organizers website.

### Coastal Development Permit

The Project site is located in the Civic Zone Subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan. The land use designations within the limits of the Project site are Marine Terminal, Park/Plaza, and Promenade. Park-activating recreational uses that are ancillary to public uses are allowed uses under the Park/Plaza land use designation. Furthermore, the event is consistent with the applicable special conditions and Programming Criteria of the NEVP Phase 1 CDP (specifically, the Broadway Pier Design Principles and Programming Plan), which authorizes the use of Broadway Pier for special events, such as festivals. Therefore, the event use would be consistent with the certified land use designations, the certified Port Master Plan, and the NEVP Phase 1 CDP, as a park-activating temporary special event/festival.

Per the California Coastal Commission Temporary Event Guidelines, temporary events shall be excluded from CDP requirements except those which: are held between Memorial Day Weekend and Labor Day; and, occupy all or a portion of a sandy beach area or the District's equivalent of shoreline parks/plaza; and involve a charge for general public admission or seating where no fee is currently charged for use of the same area. The proposed Project meets all of the Guidelines criteria and requires the issuance of a CDP as it is being held from August 26, 2017 to September 8, 2017, will charge admission, and is located adjacent to the Bay on a pavilion, a pier, and park/plaza area. In accordance with the District's CDP Regulations, the proposed actions constitute a Non-Appealable development under Section 7.d.(3) of the District's CDP Regulations (Regulations): Non-Appealable developments are those not classified in the Regulations in Section 7.d.(1) as "Excluded," in 7.d.(2) as "Emergency," or in 7.d.(4) as "Appealable." Pursuant to Coastal Act Section 30715 and Sections 7.d.(3) and (4) of the Regulations, events and associated temporary improvements/facilities are not listed as appealable developments, requiring an appealable CDP. The District has determined that one Non-Appealable CDP for the Project may be issued. A copy of the Draft Non-Appealable CDP is provided as Attachment B to this Agenda Sheet. Conditions are incorporated into the draft CDP to ensure conformance with related District and NEVP Phase I CDP requirements.

Additionally, pursuant to the California Coastal Act, the proposed development is considered "non-appealable". Chapter 8 of the Coastal Act regulates development within a port in the California coastal zone. Section 30715 of Chapter 8 specifies the sole categories of development that may be appealed to the Coastal Commission. A temporary special event is not listed as appealable in Section 30715.

The Project site is identified as estuary/wetland on the 1975 Coastal Plan and consistent with Public Resource Code Section 30700, the Project must comply with the Chapter 3 and 8 policies of the Coastal Act. The Project's temporary improvements and use of public areas are "development" as defined in Section 30106 of the Coastal Act. The temporary use of the Project site is fully consistent with applicable land uses identified in the Port Master Plan and Chapters 3 and 8 of the Coastal Act (see Cal. Public Resources Code Section 30700, et seq.). Based on this finding and the entire record, a Non-Appealable CDP may be issued.

### **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.

While the term of the proposed CDP is for ten (10) years, issuance of the CDP does not constitute approval of any future District sponsorship in any form and may not be relied on to obtain or claim entitlement to any District sponsorship, TAP or otherwise.

### **Environmental Review:**

The proposed Board action would authorize issuance of a Non-Appealable CDP for the proposed Project. The proposed Board action is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15304 (Minor Alterations to Land), 15311 (Accessory Structures), and/or 15323 (Normal Operations of Facilities for Public Gatherings) and Sections 3.d. (6) and/or 3.i. of the District's Guidelines for Compliance with CEQA. The Categorical Exemptions listed above are appropriate for the proposed Project because the Project involves minor temporary use of land having negligible or no permanent effects on the environment, would not involve the removal of mature, scenic trees, and would include the installation of minor structures accessory to existing facilities. As further detailed above, the proposed Project would not have any effects on the environment and results in temporary closure to general public access on Broadway Pier consistent with the Broadway Pier Design Principles and Programming Plan as required by the NEVP Phase 1 CDP. No further action under CEQA is required.

The proposed Board actions comply with Section 87 of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting 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 Project is consistent with the Public Trust Doctrine.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

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Attachment(s):

Attachment A: Location Map

Attachment B: Site Plan

Attachment C: Draft Coastal Development Permit