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Title: ADOPT A RESOLUTION AUTHORIZING AN AMENDMENT TO THE NON-APPEALABLE COASTAL DEVELOPMENT PERMIT 2006-05 FOR THE KETTENBURG BOATYARD PROJECT TO ADD INTREPID LANDING, LLC AS A CO-PERMITTEE, SPECIFY THE PUBLIC ART, CLARIFY THE LOCATION OF THE FOOD SERVICE BUILDING, AND UPDATE STANDARD PROVISIONS

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Date	Ver.	Action By	Action	Result
12/5/2017	1	Board of Port Commissioners	adopted	

DATE: December 5, 2017

SUBJECT:

ADOPT A RESOLUTION AUTHORIZING AN AMENDMENT TO THE NON-APPEALABLE COASTAL DEVELOPMENT PERMIT 2006-05 FOR THE KETTENBURG BOATYARD PROJECT TO ADD INTREPID LANDING, LLC AS A CO-PERMITTEE, SPECIFY THE PUBLIC ART, CLARIFY THE LOCATION OF THE FOOD SERVICE BUILDING, AND UPDATE STANDARD PROVISIONS

EXECUTIVE SUMMARY:

On August 8, 2006, by Board of Port Commissioners (Board) Resolution No. 2006-130, the Board authorized issuance of a non-appealable Coastal Development Permit (CDP) to Driscoll, Inc. (Driscoll) for the Kettenburg Boatyard project, and the CDP was issued on August 18, 2006 (CDP-2006-05; Clerk’s Document No. 51016). The Kettenburg Boatyard project included the redevelopment of the former boatyard, located at 2702 Shelter Island Drive, with a new boatyard, boat slips, marine sales and services buildings, a food service building, and a public promenade and plaza. In January 2012, the Board approved the division of the Kettenburg Boatyard project site (Kettenburg site) into three separate leaseholds, one leased to Driscoll and two leased to Intrepid Landing, LLC (Intrepid), to ensure more timely redevelopment of the Kettenburg site, consistent with CDP-2006-05 (see Attachments A and B). The Driscoll leasehold includes approximately 47,475 square feet of land and 42,570 square feet of water and is currently being developed with a boatyard repair and storage facility. The first Intrepid leasehold includes approximately 20,665 square feet of land and 65,950 square feet of water and is developed with a marine sales and service establishment, including in-water slips. The second Intrepid leasehold includes approximately 32,604 square feet of land area¹ and includes two buildings. One building, located western portion of the

leasehold, is a marine sales and service facility and the other building, located on the eastern portion of the leasehold, is an ancillary walkup food and beverage service establishment with outdoor seating. Public promenades and parking are provided on all three of the leaseholds.

Intrepid proposes to improve the existing approximately 1,263-square-foot, ancillary walkup food and beverage service building on the eastern portion of the site. The building is currently vacant and is surrounded by an approximately 2,000-square-foot outdoor patio area. The proposed improvements include an approximately 281-square-foot walkup food service counter and limited outdoor table seating. Intrepid's subtenant, Eppig Brewery (Eppig), would operate the walkup food and beverage service building. Additionally, Intrepid proposes to add a public art piece consisting of canvas canopies shaped like sails.

An amendment to the 2006 non-appealable CDP is proposed to add Intrepid as a co-permittee, clarify the location of the food service building specify the proposed public art, and update the CDP standard provisions consistent with District standard practice and applicable laws and regulations (Attachment C). As such, in accordance with Section 14.d of the District's CDP Regulations, staff has prepared a material amendment to the CDP-2006-05. The ancillary food and beverage service building and operation thereof is already authorized by the current 2006 CDP and is consistent with the certified Port Master Plan (PMP).

District staff recommends the Board authorize an amendment to the non-appealable CDP for the Kettenburg Boatyard Project (CDP-2006-05) to add Intrepid as a co-permittee to the CDP, specify the public art, clarify the location of the food service building, and update the standard provisions.

RECOMMENDATION:

Adopt a Resolution authorizing an amendment to the Non-Appealable Coastal Development Permit 2006-05 for the Kettenburg Boatyard Project to add Intrepid Landing, LLC as a Co-Permittee, specify the public art, clarify the location of the food service building, and update standard provisions.

FISCAL IMPACT:

The Board's action would not result in any direct fiscal impact to the District. However, Eppig expects to generate \$665,000 in gross sales annually once stabilized, which would account for approximately \$37,000 annually in additional percentage rent to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goals.

- A vibrant waterfront destination where residents and visitors converge.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Background

In 1995, Driscoll obtained control of the Kettenburg Marine Boatyard, located at 2702 Shelter Island

Drive, after the Kettenburg family had operated the boatyard for over 80 years. The Kettenburg site included approximately 100,628 square feet of land area and approximately 107,800 square feet of water area. In June 2005, Driscoll entered into an Option agreement with the District which required redevelopment of the former boatyard with a new boatyard, marina, commercial buildings, and a public promenade and plaza.

On August 8, 2006, by Board Resolution No. 2006-130, the Board authorized issuance of a non-appealable CDP to Driscoll for the Kettenburg Boatyard project and the CDP was issued on August 18, 2006 (CDP-2006-05; Clerk's Document No. 51016) (Attachment B). The CDP allows for the development of a two-story boatyard administration building, roughly 4,500 square feet in size, a high bay metal boat shed of approximately 6,500 square-feet, two 65-foot-long by three foot wide cast-in-place concrete finger piers supported by 16 pre-cast concrete friction piles for use by a new 35-ton travel lift, roughly 41,000 square feet of concrete paving, and up to 52 boat slips. It also allows for the development of approximately 6,100 square feet of marine sales and services buildings, a food service building of approximately 1,263 square feet, a 680-linear-foot long shoreline pedestrian walkway with a ten-foot minimum width, an approximately 28,973-square-foot public plaza including landscape planting and circular hard-scape gathering area, a new dinghy dock for water taxis and transient moorings, and a minimum of 51 parking spaces. In January 2012, the Board approved the division of the Kettenburg site into three separate leaseholds, one leased to Driscoll and two leased to Intrepid, to ensure more timely redevelopment of the Kettenburg site consistent with CDP-2006-05.

The Driscoll leasehold includes approximately 47,475 square feet of land and 42,570 square feet of water and is currently being developed with a boatyard repair and storage facility. The first Intrepid leasehold includes approximately 20,665 square feet of land and 65,950 square feet of water and is developed with marine sales and service establishment, including in-water slips. The second Intrepid leasehold includes approximately 32,604 square feet of land area and includes two buildings. One building, located western portion of the leasehold, is a marine sales and service facility and the other building, located on the eastern portion of the leasehold, is an ancillary walkup food and beverage service establishment with outdoor seating. Public promenades are provided on all three of the leaseholds and adequate parking is also provided for the uses. The three leaseholds operate as a single marine sales and service operation.

Proposed Improvements to the Walkup Food and Beverage Service Establishment Building

Intrepid proposes to improve the existing, approximately 1,263-square-foot walkup food and beverage service building (Attachment A) with an approximately 281-square-foot walkup food and beverage service counter and limited outdoor table seating. Indoor areas may also be accessible to patrons and the public but will not include seating. Specifically, Intrepid, through its subtenant, would install foundations, plumbing, appliances, fixtures, restrooms, a natural gas meter, and phone/cable/internet services. Also, public benefit improvements to the existing 2,000-square-foot outdoor public patio area are proposed, including beautification of the area through planters and treatment to the existing guard rail, public seating and non-conspicuous signage stating that the patio is open to the public. Specifically, the patio area would be open to the public as well as patrons of the walkup food and beverage service establishment during the later of the operating hours of the walkup food and beverage service or during daylight hours. The public promenade located adjacent to the north of the building would be open at all times. The improvements would not interfere with public use of or circulation within the area.

In addition, Intrepid proposes the installation of a sails public art sculpture awning, which would

consist of canvas canopies shaped like sails. The sculpture would be attached to the west side of the existing walkup food and beverage service building and provide shaded relief for the public outdoor area (see Attachment 2, Proposed Sails Public Art Sculpture Rendering of Attachment C to this Agenda Sheet). The sculpture would be set back approximately 10 feet from the existing public promenade located adjacent to the building, and would not impede views along the promenade due to its location on the building or traverse the view corridor extensions of Carleton and Dickens Streets.

CDP Amendment and Coastal Analysis

As discussed above, a non-appealable CDP (CDP-2006-05) for the Kettenburg Boatyard project was authorized by the Board on August 8, 2006, and was issued to Driscoll on August 18, 2006 (Attachment B). Intrepid is now proposing improvements to the existing walkup food and beverage service building on the eastern portion of its leasehold, which was permitted by CDP-2006-05. The proposed amendment to the CDP includes adding Intrepid as a co-permittee, clarifying the location of the food service building, specifying the proposed public art, and updating the standard provisions consistent with District standard practice and applicable laws and regulations.

In accordance with Section 14.d of the District CDP Regulations, the Development Services Director determined that an amendment to CDP-2006-05 was necessary and that the proposed amendment would be a material change due to the nature and extent of the proposed changes. The District's CDP Regulations require material amendments to be considered by the Board, along with consideration of consistency with the PMP.

The proposed development is located within Planning District 1, Shelter Island/La Playa, which is delineated on Precise Plan Map Figure 4 of the certified PMP. The PMP land use designation within the limits of the project is Marine Sales and Service (MSS). In the MSS land use designation, the PMP allows “[a]ncillary uses, when specifically provided for in the property lease, including fish transshipment and no more than 10% of the site may be used for walkup window-type food and beverage services with limited outdoor table seating provided such uses do not materially interfere with the function and operation of the primary Marine Sales and Services use.” [(PMP, page 21)] The intent of this language is evident by the California Coastal Commission’s (CCC) own record and findings when it certified a Port Master Plan Amendment (PMPA) for America’s Cup Harbor (ACH) in June 2003.

According to the CCC staff report and findings for the ACH PMPA (Attachment D), the CCC initially had concerns about allowing food service use in land area designated MSS, as “...there was no limit on the size of the food and beverage service permitted on the site...” and they wanted “...assurance that the main purpose of the site - marine sales and services - would not be compromised by the food service use.” (CCC Staff Report, page 15) They did acknowledge that “[a]llowing a small walk-up food service area in association with a use such as a boat yard, is reasonable and would provide an amenity to both employees and customers who spend long days doing boat maintenance and repair on site.” (*Id.*) To address CCC staff’s concern, language was added to the proposed PMPA that would “...limit the ancillary food service to no more that 10% of the marine sales and services site....” (*Id.*) According to the CCC record, “[t]his definition would apply to any location with the Marine Sales and Services designation.” (*Id.* at 6.) The CCC findings and record further acknowledge that “[i]n the case of the proposed PMPA, an additional 8,100 sq. ft. of the Kettenburg Boat Yard [site] would be redeveloped as a walk-up food court, although the designation of the site would remain Marine Sales and Services.” (*Id.*) Furthermore, language was added to the PMPA to state that such a use cannot

materially interfere with the function and operation of the primary MSS use. With these revisions to the PMPA language, the CCC staff report concluded that the change in the definition of the MSS designation in the PMP “...is not expected to adversely impact the supply of marine sales and services facilities.” (*Id.* at 16) Consequently, the CCC certified the ACH PMPA on June 12, 2003, and changed the definition of the MSS land use designation in the PMP.

The proposed improvements to the walkup food and beverage service building and the proposed art piece conform to the certified PMP. Both are consistent with the existing certified MSS land use designation.

First, the improvements to the existing approximately 1,263-square-foot walkup food and beverage service building with an approximately 281-square-foot walkup food and beverage service counter and limited outdoor seating do not exceed 10% of the MSS Kettenburg site. Conservatively, the existing approximately 1,263-square-foot walkup food and beverage service building with the 2,000 square foot public patio, which arguably may not be considered part of the food and beverage service establishment since it is open to the public, totals 3,263 square feet. This 3,263 square-foot area only makes up 3.2% of the entire Kettenburg site, which totals 100,628 square feet of land area. This is significantly less than the 8,100 square-foot walk-up food court recognized by CCC for the 2006 CDP development site in its ACH PMPA findings.

Second, the proposed outdoor seating is limited with four proposed tables and an estimated 30 chairs - open to the public - in the 2,000 square foot patio. Right now no seating is available in the patio.

Third, the proposed improvements to the existing walkup food and beverage service building and public patio, as well as the proposed installation of the public art would also not materially interfere with the function and operation of the primary MSS use. The existing walkup food and beverage service building is tucked into the southeastern corner of the MSS development on the Kettenburg site and is physically separated by the remaining MSS operations by the public promenade and a security gate for the boat sale slips. Moreover, patrons of the existing walkup food and beverage service building are intended to be boatyard customers and employees during the daylight hours of the workday. The public promenade and plaza allows for intentional access to the walkup food and beverage service establishment without having to traverse through and disturb the MSS operations.

Finally, the small size of the establishment - 3.2% of the site - makes it ancillary or secondary by nature to the primary use as MSS. CCC determined when it made its findings for the ACH PMPA that 10% of the entire Kettenburg site or 8,100 square feet of walk-up food and beverage service establishments - even if configured in a food court yard - would constitute ancillary uses provided they did not materially interfere with the function and operation of the primary MSS use. As presented in this agenda sheet and the record, the proposed improvements to the existing walkup food and beverage service building and public patio would not materially interfere with the operation or function of the MSS uses.

Moreover, while the food service building is located adjacent to an existing public promenade, it would not impede or interfere with the public promenade. Specifically, the location of the sails public art sculpture would be set back approximately 10 feet from the existing public promenade that runs through the site; therefore, it would not hinder the public’s ability to access the promenade and would not block views from the promenade. Finally, the proposed improvements to the existing food and beverage service building are not located within the view corridor extensions of Carleton and Dickens

Streets and thus, would not adversely impact any PMP-designated view corridors.

For the reasons detailed above, the proposed amended development would be consistent with the certified PMP, and would not require a PMPA. District staff recommends the Board authorize the amendment to the non-appealable CDP-2006-05 for the amended development. A copy of the draft amendment to CDP-2006-05 is provided as Attachment C to this agenda sheet.

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:

In accordance with the California Environmental Quality Act (CEQA), the proposed Board action was analyzed as a component of the Kettensburg Marine Boatyard redevelopment as part of the Final Program Environmental Impact Report (FPEIR) for the “America’s Cup Harbor Redevelopment Project and Port Master Plan Amendment for Shelter Island Planning District” (UPD #83356-EIR-332, Clerk’s Document No. 44566). On May 21, 2002, the Board adopted Resolution No. 2002-119 certifying the FPEIR, adopting the Findings of Fact and Statement of Overriding Considerations, and adopting the Mitigation Monitoring and Reporting Program. The proposed Board action is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist. (2012) 206 Cal.App.4th 1036.) Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no further environmental review is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. 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:

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Attachment(s):

Attachment A: Site Plan
Attachment B: Coastal Development Permit No. 2006-05
Attachment C: Draft Amendment to Coastal Development Permit No. 2006-05

Attachment D: CCC Staff Report, dated May 21, 2003

¹ San Diego Unified Port District Lease to Intrepid Landing, LLC. on file in the Office of the District Clerk bearing Document No. 62853, filed February 2, 2015.