



## Legislation Details (With Text)

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**Title:** FIFTH AVENUE LANDING PROJECT AND PORT MASTER PLAN AMENDMENT

A) PRESENTATION AND DIRECTION TO STAFF ON THE FIFTH AVENUE LANDING PROJECT AND PORT MASTER PLAN AMENDMENT FINAL ENVIRONMENTAL IMPACT REPORT AND/OR PORT MASTER PLAN AMENDMENT; AND/OR

B) ADOPT RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING THE FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECTING THE FILING OF THE NOTICE OF DETERMINATION FOR THE FIFTH AVENUE LANDING PROJECT AND PORT MASTER PLAN AMENDMENT AND ADOPTING THE PHASE I ONLY MARINA ALTERNATIVE (ALTERNATIVE 4) OF THE FINAL ENVIRONMENTAL IMPACT REPORT AS THE APPROVED PROJECT; AND

C) CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION APPROVING THE PORT MASTER PLAN AMENDMENT, AS AMENDED TO REFLECT THE PHASE I ONLY MARINA ALTERNATIVE, AND DIRECTING THE FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION

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| Date       | Ver. | Action By                   | Action             | Result |
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| 12/28/2020 | 1    | Board of Port Commissioners | direction to staff | Pass   |

**DATE:** December 28, 2020

**SUBJECT:**

**FIFTH AVENUE LANDING PROJECT AND PORT MASTER PLAN AMENDMENT**

**A) PRESENTATION AND DIRECTION TO STAFF ON THE FIFTH AVENUE LANDING PROJECT AND PORT MASTER PLAN AMENDMENT FINAL ENVIRONMENTAL IMPACT REPORT AND/OR PORT MASTER PLAN AMENDMENT; AND/OR**

**B) ADOPT RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING THE FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECTING THE FILING OF THE NOTICE OF DETERMINATION FOR THE FIFTH AVENUE LANDING**

**PROJECT AND PORT MASTER PLAN AMENDMENT AND ADOPTING THE PHASE I ONLY MARINA ALTERNATIVE (ALTERNATIVE 4) OF THE FINAL ENVIRONMENTAL IMPACT REPORT AS THE APPROVED PROJECT; AND**

**C) CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION APPROVING THE PORT MASTER PLAN AMENDMENT, AS AMENDED TO REFLECT THE PHASE I ONLY MARINA ALTERNATIVE, AND DIRECTING THE FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION**

**EXECUTIVE SUMMARY:**

In January 2016, Fifth Avenue Landing, LLC (FAL), as the applicant and project proponent, submitted a project proposal to the San Diego Unified Port District (District) to construct and operate a market-rate hotel and lower-cost, visitor-serving hotel, marina, water transportation center, retail, and publicly accessible plaza and park areas on approximately 5 acres of land and 13 acres of water area (proposed Project or Project). The Project site (site) is located at Convention Way and Marina Park Way in San Diego (Attachment A - Project Location Map).

At the March 8, 2016 Board of Port Commissioners (Board) meeting, the Board received a preliminary project review presentation on FAL's proposal, and authorized staff to further study the Project and commence environmental review pursuant to the California Environmental Quality Act (CEQA). The District prepared a Draft Environmental Impact Report (EIR) that analyzed the potential environmental effects associated with the proposed Project. The Project was placed on hold in 2018 and again in 2019 at FAL's request to allow FAL to conduct further due diligence. On March 1, 2020, FAL requested that the District consider scheduling the Final EIR and Port Master Plan Amendment (PMPA) for the Board's consideration. However, on March 26, 2020, FAL submitted a revised development concept for the Project that has resulted in some changes to the EIR's project description and required further analysis to determine whether there are any new or increased significant impacts requiring recirculation of the Draft EIR. As revised, the key Project components include an 843-room market rate hotel; an up to 220-room, lower-cost, visitor serving hotel; 260 parking spaces; retail space; at-grade and elevated public plaza and park; a water transportation center; a two-phased marina expansion; and an optional bridge connecting to the San Diego Convention Center (SDCC). A Port Master Plan Amendment (PMPA), an appealable Coastal Development Permit (CDP), and lease amendment or new lease (Real Property Agreement) will also be required to implement the Project. After the analysis was conducted, the District determined that recirculation was not required in accordance with CEQA Guidelines Section 15088.5.

As lead agency under CEQA, the District prepared a Draft EIR (UPD EIR-2016-06; SCH #2016081053; Clerk's Document No. 67772) for the proposed Project that was circulated for a minimum 45-day public review period, which began on December 13, 2017 and ended on January 30, 2018. A total of 13 comment letters were received during the Draft EIR public review period. Staff determined that the comment letters did not raise any new significant environmental issues not already analyzed in the Draft EIR and therefore, pursuant to CEQA Guidelines Section 15088.5, recirculation of the Draft EIR was not required. The comment letters and responses to all written comments received on the Draft EIR are included in the Final EIR. In response to the comments received during the public review period, the Final EIR includes minor clarifications and corrections to the proposed Project, mitigation measures, and revisions to figures. The additional information contained in the District's responses to comments clarifies and further substantiates the conclusions contained in the Draft EIR and can be found in the Errata and Revisions chapter of the Final EIR.

Additionally, after circulation of the Final EIR, District staff noticed that portions of revised mitigation measures MM-GHG-4 and MM-GHG-5 were inadvertently not published. Accordingly, a Second Errata to the Final EIR has been prepared to include the full revised mitigation measures and is attached hereto as Attachment F - Second Errata to the Final EIR.

The Draft EIR concluded the proposed Project would result in significant direct impacts and cumulative impacts. Mitigation measures are specified in the Mitigation Monitoring and Reporting Program (MMRP). Note, a revised MMRP with the full revised mitigation measures MM-GHG-4 and MM-GHG-5 is attached hereto as Attachment E - Findings of Fact and SOC and MMRP for the Board's consideration. However, despite implementation of all feasible mitigation measures, significant impacts which cannot be avoided or reduced to less than significant, whether through mitigation measures or project alternatives, remain. The proposed Project would result in significant and unavoidable impacts including direct impacts on aesthetics and visual resources (obstruction of views within a vista area during construction and operation); greenhouse gas emissions and climate change (would not meet post-2020 reduction targets and inconsistency with statewide plans, policies and regulations); hazards and hazardous materials (waterside sediment contamination and damage to an existing sediment cap); noise and vibration (exceedance of noise standard during construction); public services and recreation (construction and operation of rooftop public plaza and park areas); and transportation, circulation, and parking (impacts to intersections level of service and parking supply during construction and operation). Significant and unavoidable cumulative impacts from the Project include greenhouse gas emissions and climate change; noise and vibration; and transportation, circulation and parking. Accordingly, a Statement of Overriding Considerations (SOC) is required. The proposed SOC balances the specific economic, legal, social, technological, and other benefits of a project against its significant and unavoidable environmental impacts and it is at the Board's discretion whether to adopt the SOC (see CEQA Guidelines Section 15093).

The Draft EIR considered project alternatives that would avoid or substantially lessen one or more significant environmental impacts. The Phase I Only Marina Alternative (Alternative 4) is the same as the proposed Project except that the marina expansion would only include Phase I (addition of 23 marina slips) and would not include the Phase II expansion of the marina. The Phase I Only Marina Alternative would not avoid any of the Project's significant and unavoidable impacts but consistent with CEQA, it would substantially lessen the significant environmental effects of the Project related to greenhouse gas emissions and climate change (reduced greenhouse gas emissions associated with fewer slips for recreational boating opportunities); hazards and hazardous materials (reduced potential for waterside sediment contamination and damage to an adjacent engineered cap); and noise and vibration (less vibration during waterside construction) (see CEQA Sections 21002, 21081). The Alternative 4 also meets the Project's basic objectives. Therefore, it is recommended that the Phase I Only Marina Alternative (Alternative 4) be adopted. The MMRP remains the same as for the proposed Project and a SOC would still be required for the Phase I Only Marina Alternative.

Since public review of the Draft EIR, FAL proposed some changes in the Project. These changes are reflected in the project description summarized in this agenda sheet and are detailed in the Final EIR. The changes in the project description did not affect the impact significance determinations or mitigation measures analyzed and disclosed in the Draft EIR. Originally, FAL also claimed economic infeasibility of a hazards and hazardous materials mitigation measure (MM-HAZ-6). Staff disagrees

with FAL's infeasibility claim because it is based on a worst-case scenario unlikely to be required and recommends that the mitigation measure be implemented as outlined in the MMRP. Subsequently, FAL withdrew its objection to MM-HAZ-6, as well as staff's recommendation to adopt Alternative 4. Additionally, after publication of the Final EIR, the Department of Transportation requested near-term, cumulative traffic impacts be considered against the year of 2025, and to reanalyze direct traffic impacts at certain intersections because the construction start year changed from 2021 to 2025. However, the traffic study indicates the impact is cumulative because without all the cumulative projects considered in the analysis, the Project alone would have not have a significant impact. Staff and the traffic consultant have determined this conclusion would hold regardless of construction start year. Thus, no changes were made. The Final EIR and MMRP have been prepared in accordance with CEQA, the State CEQA Guidelines, and the District's Guidelines for Compliance with CEQA. The Final EIR and MMRP have been previously provided to the Board via memorandum to the Board.

A PMPA is required for the Project to change the Port Master Plan (PMP) for Planning District 3, Centre City Embarcadero. The PMPA includes changes to the existing land and water use designations and updates the precise plan text, graphics, and adds the hotels and marina expansion to Table 11: Project List, Planning District 3, Centre City Embarcadero (Attachment B - Draft PMPA for the Phase I Only Marina Alternative). The current PMP allows for the third phase expansion of the SDCC (Phase III Expansion) including: adding up to 400,000 square feet of exhibit area, meeting rooms, and ballrooms; 560,000 square feet of support spaces; approximately 15,000 square feet of visitor-serving uses; a five-acre rooftop park on top of the expansion; realignment of Convention Way to the south (bayward); infrastructure upgrades; and landscape improvements. If approved by the Board, the Draft PMPA will be submitted to the California Coastal Commission (CCC) for PMPA certification.

The Project will also require an appealable CDP following full certification of the PMPA and a Real Property Agreement, negotiations of which have not started. The ARC Lease<sup>1</sup> provides that consideration of a Real Property Agreement by the Board is not required until after the Board approves the CEQA analysis for the Project. Staff has been engaged in negotiations with FAL regarding rent and other financial terms of the Project, but additional documents are still needed before a Real Property Agreement can be presented to the Board for its consideration.

## **RECOMMENDATION:**

### Fifth Avenue Landing Project and Port Master Plan Amendment

- A) Presentation and direction to staff on the FAL Project and PMPA Final EIR and/or PMPA; and/or
- B) Adopt resolution certifying the Final EIR, adopting the Findings of Fact and SOC's, adopting the MMRP, and directing the filing of the Notice of Determination (NOD) for the FAL Project and PMPA and adopting the Phase I Only Marina Alternative (Alternative 4) of the Final EIR as the approved project; and
- C) Conduct public hearing and adopt resolution approving the PMPA, as amended to reflect the Phase I Only Marina Alternative, and directing the filing with the CCC.

## **FISCAL IMPACT:**

Because the Real Property Agreement has not been fully negotiated, including rent or other economic concessions, staff cannot determine at this time if there will be a direct fiscal impact to the District. In accordance with BPC Policy No. 106, Cost Recovery User Fee Policy, FAL has been subject to cost recovery fees for CEQA and Coastal Act processing.

## **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 Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

### **Background**

The site covers a total of 18 acres (5 acres of land and 13 acres of water) containing a superyacht marina and transient berthing facility located in downtown San Diego in the South Embarcadero, adjacent to the SDCC. The existing landside portion of the site is composed of paved, developed, and landscaped areas and includes: two parking lots with approximately 303 parking spaces; a water transportation center ticket booth; a temporary mobile trailer office; a portion of the 35-foot-wide Embarcadero Promenade; a public restroom; and approximately 30,300 square feet (0.70 acre) of ground-level park area. The existing waterside portion of the site includes an existing 12-slip marina for superyacht and sailboat docking, ferry landing, and on-call water transportation services.

In 1984, the District entered into a 40-year lease<sup>2</sup> with FAL for the site. In 2010, the leasehold held by FAL was split into two leases - a lease with the San Diego Convention Center Corporation (SDCCC) for the SDCC Phase III Expansion (Phase III Expansion) (ARC Lease) and a lease with FAL for the continued operation of a marina on certain water parcels and water transportation center on a landside parcel on the adjacent premises (Marina Lease<sup>3</sup>). The ARC Lease also granted the SDCCC an option to lease for a 66-year term for the purposes of construction and operation of a Phase III Expansion upon satisfaction of certain conditions precedent. In 2015, SDCCC's leasehold interest was assigned back to and assumed by FAL.

The ARC Lease also provides that upon assumption of the ARC Lease by FAL and once hotel market performance achieved a certain threshold, FAL will submit a proposal for a minimum 400-room hotel project to the District for its consideration. In January of 2016, FAL submitted a project proposal consisting of primarily a hotel, a lower-cost accommodation and a marina expansion, which the District began diligently processing in good faith. However, the proposed Project is significantly larger than the project contemplated by the ARC Lease - doubling in size with two overnight accommodation product types and including a marina expansion.

In 2018, at the request of FAL, the City of San Diego (City), FAL and the District entered into a Purchase and Sale Agreement (PSA) subject to various conditions precedent, that among other things, would give the City control of the ARC Lease premises, which makes up a majority of the Phase III Expansion site. The City was unable to perform certain conditions precedent under the PSA and, as a result, FAL maintained control of the leasehold and obtained certain rights, including a three-year lease term extension on the ARC Lease (from June 30, 2024 to June 30, 2027) and 39,000 square feet of shading credits in the Marina Lease subject to approval by the resource agencies to allow for use of those credits. Additionally, the District agreed to notice and conduct a hearing by the Board of the proposed Project at its earliest regularly scheduled meeting following the completion of all legal notice requirements and mailings.

The District was able and willing to hear the FAL Project in May 2019. However, FAL requested that the Board extend the hearing date to allow FAL additional time to analyze and refine the Project.

### **Proposed Project**

The proposed Project would operate as a market-rate hotel and lower-cost, visitor-serving hotel, marina, water transportation center, retail, and publicly accessible plaza and park areas (Attachment C - Site Plan). More specifically, the key Project components, as revised, include:

- An 843-room, approximately 498-foot-high, 44-story market-rate hotel tower that would be approximately 911,736 gross square feet and includes approximately 69,100 square feet of meeting space;
- An up to 220-room, approximately 82-foot-high lower-cost, visitor serving hotel that would be approximately 60,000 gross square feet;
- 260 on-site parking spaces;
- Approximately 7,749 square feet of retail development along the Embarcadero Promenade;
- Approximately 98,448 square feet (2.26 acres) of public plaza and park areas (95,258 square feet of elevated public park and plaza area and 3,190 square feet of ground-level public promenade area) which would replace 30,300 square feet (0.7 acre) of existing ground-level public park/plaza;
- Relocated and upgraded water transportation center;
- A two-phase expanded marina with up to 50 new slips (approximately 23 slips in Phase I and 27 slips in Phase II) that, combined with the existing 12 slips, would total up to 62 slips;
- An optional connecting bridge from the hotel rooftop public plaza and park areas to the SDCC; and
- A PMPA, CDP and Real Property Agreement.

In addition to hotel rooms, the hotels would provide space within the hotel and on the public plaza and park area for special events such as weddings and conferences. As shown in Attachment D - Proposed Public Access Areas, certain proposed public plaza and park areas would be available for private events during the year (i.e. closed to the public) no more than the following percentages: 50 percent of Area A, Multifunctional Plaza & Lawn and 15 percent at Area B, Public Park Plaza; these

areas would be available to the public the remainder of the year (i.e. 50 percent for Area A and 85 percent for Area B). The marina would allow for a variety of vessels to dock and the water transportation center would provide amenities for marina users such as ticketing and restrooms. The retail options could include restaurants, cafés, coffee shops, and other visitor-serving uses, all of which would be open to the public.

The Project was placed on hold in 2018 and again in 2019 at FAL's request. On March 1, 2020, FAL requested that the District consider scheduling the Final EIR and PMPA for the Board's consideration. On March 26, 2020, FAL submitted a revised development concept for the Project that has resulted in changes to the EIR's project description. The following summarizes the changes to the project description proposed by FAL that have been included in the Final EIR:

- The number of market-rate hotel rooms decreased from 850 to 843 rooms, the gross square footage increased from 796,000 gross square feet to 911,736 square feet (through removal of a curve in the building façade), and the amount of meeting space increased from 55,583 square feet to approximately 69,100 square feet;
- The lower-cost, visitor serving hotel changed from providing 565-beds to providing up to 220 rooms and the gross square footage decreased from 80,000 to 60,000 gross square feet;
- The number of parking spaces decreased from 263 to 260 on-site parking spaces;
- The amount of retail development increased from 6,000 square feet to approximately 7,749 square feet; and
- The amount of public plaza and park space increased from 85,490 square feet (1.96 acres) to approximately 98,448 square feet (2.26 acres)

The proposed Project would increase the total area of public plaza and park areas from approximately 30,300 square feet (0.70 acre) of existing at-grade park area to approximately 98,448 square feet (2.26 acres) of elevated public plaza and park area. The public plaza and park areas would serve as resting and viewing areas for visitors and would include interpretive signage and public art. All the proposed public plaza and park areas would be designed with a combination of hardscape, drought-tolerant landscape, grass lawns, and artificial turf. In total, the proposed Project would include four public plaza and park areas and a public promenade allowing for public access throughout the site (Attachment D). A portion of the market-rate hotel would extend over the existing Embarcadero Promenade creating an overhang/tunnel.

Construction of the landside improvements and Phase I of the marina expansion is anticipated to occur over an approximately 30-month timeframe. The Phase I marina expansion would be constructed concurrently with the landside construction and is expected to take six to nine months. Construction of the Phase II marina expansion would be dependent on market conditions and could occur approximately five years after completion of the market-rate hotel tower and would take approximately six to nine months to complete.

## **Phase I Only Marina Alternative**

To lessen significant environmental effects, the Draft EIR included a reduced project alternative, the Phase I Only Marina Alternative (Alternative 4). The Phase I Only Marina Alternative would be the same as the Final EIR Project except it would only include the Phase I waterside component, adding 23 new marina slips ranging in size from 50 feet to 200 feet. Under this Alternative, Phase II of the marina expansion (addition of 27 slips) would not occur. The Phase I Only Alternative would reduce the waterside construction area from 57,696 square feet to 31,564 square feet, and would reduce the number of piles needed for the expanded marina from 188 to 60. The reduced project-related significant impacts are further discussed under Environmental Impact Report, below.

## **Environmental Impact Report**

The “Fifth Avenue Landing Project and Port Master Plan Amendment” EIR (UPD #EIR-2016-06; SCH #2016081053) 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 three volumes, organized as follows: Volume 1 contains the Final EIR dated October 2020, which includes the Executive Summary; Errata indicating revisions to the Draft EIR; Comments Received on the Draft EIR and the District’s Responses to Comments; and, the MMRP. Volume 2 contains the Draft EIR dated December 2017 and Volume 3 contains the Draft EIR Appendices dated December 2017 (Clerk’s Document No. 67772).

## ***Project Objectives***

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

1. Provide for the development and operation of a full-service hotel of a size, quality, and location appropriate for first-class convention operations that is a financially viable operation and is of a similar size and stature as nearby hotels such as the Hilton San Diego Bayfront Hotel (approximately 1,200 rooms), Manchester Grand Hyatt Hotel (approximately 1,625 rooms), and Marriott Marquis San Diego Marina Hotel (approximately 1,355 rooms).
2. Provide lower-cost, visitor-serving accommodations to allow greater access and enjoyment by the public that complies with Board Policy 775, Guidelines for the Protection, Encouragement, and, Where Feasible, Provision of Lower Cost Visitor and Recreational Facilities.
3. Provide for infill development on District tidelands that: (a) is compatible with surrounding uses; (b) maximizes the economic benefit to the District and City and surrounding region by maximizing hotel room revenue, restaurant and retail sales, and hotel and retail sales taxes; and (c) generates sufficient leasehold revenue to support the District’s participation in financing its mission of developing a balance between economic benefits, environmental stewardship, and public safety on behalf of the citizens of California.
4. Increase activation at the site and along the bayfront by providing public plaza and park spaces, accompanied by visitor-serving retail, an expanded marina, a new water transportation center, and continuing operation of the existing public in-Bay water transportation system.

5. Provide new public vista opportunities of San Diego Bay from vantage points such as the SDCC and proposed public plaza and park areas.
6. Improve public access by providing linkages from the City to the waterfront and Embarcadero Promenade by providing wayfinding signage at multiple entry points, including potential development of a pedestrian bridge that connects the site with the SDCC and the Gaslamp Quarter of downtown San Diego.
7. Pursue Leadership in Energy and Environmental Design (LEED) Silver certification or achieve an equivalent level of sustainability by incorporating sustainable practices in all elements of project design and construction, leading to a reduction in energy use, water use, and solid waste generation as compared to standard hotel and visitor-serving developments.

### ***Notice of Preparation and Scoping Meeting***

On August 18, 2016, a Notice of Preparation (NOP) was published for the EIR and circulated to solicit agency and public comments on the scope and content of the environmental analysis to be included in the EIR. The minimum 30-day NOP public review period began on August 18, 2016 and ended on September 16, 2016. As part of the NOP process, on September 7, 2016, the District held a public Scoping Meeting to further invite comments on the NOP. The District received a total of 10 comment letters on the NOP. The primary issues raised in the letters were related to air quality; biological resources; greenhouse gas emissions; hazards and hazardous materials; utilities; transportation, parking, and traffic; and inconsistency with the Phase III Expansion project previously approved by the District. These concerns were considered in the preparation of the Draft EIR.

### ***Draft EIR***

A Draft EIR was prepared for the proposed Project and was circulated for the minimum 45-day public review period, which began on December 13, 2017 and ended on January 30, 2018. Since circulation, FAL proposed some changes to the Project, which did not change the findings regarding the significance of the proposed Project's environmental impacts. An analysis of the proposed Project changes is contained in Chapter 4 of the Final EIR.

The Draft EIR found that the proposed Project would result in significant environmental impacts in the following areas:

- Direct impacts on aesthetics and visual resources; air quality and health risk; biological resources; cultural resources; geology and soils; greenhouse gas and climate change; hazards and hazardous materials; hydrology and water quality; land use and planning; noise and vibration; public services and recreation; transportation, circulation and parking; and utilities and service systems; and,
- Cumulative impacts on air quality and health risk; greenhouse gas and climate change; noise and vibration; transportation, circulation and parking; and utilities and service systems.

The Draft EIR found that the Project would have “Significant and Unavoidable” environmental impacts in the following areas:

- Direct impacts on aesthetics and visual resources as a result of obstructed views within a vista area during construction of the landside project components and permanent impacts due to development of the high-rise market-rate hotel tower;
- Direct impacts from greenhouse gas emissions and climate change because the Project would potentially not meet post-2025 reduction targets and is potentially inconsistent with statewide plans, policies and regulations;
- Direct impacts related to hazards and hazardous materials and in particular, waterside sediment contamination during construction as a result of pile construction in a potentially contaminated site and potential damage to the existing sediment cap;
- Direct impacts from exceedance of noise and vibration standards during construction and potentially substantial increase in ambient noise levels during operation due to outdoor special events;
- Direct impacts to public services and recreation associated with significant and unavoidable aesthetics, noise, transportation, circulation and parking construction and operation impacts of rooftop public plaza and park areas for the same reasons explained in this section;
- Direct impacts to transportation, circulation, and parking from temporary significant impacts to intersections level of service and parking supply during construction (as onsite parking would not be accessible throughout construction) and operation (as there is no quantifiable evidence that the proposed parking supply would meet parking demand);
- Cumulative impacts on greenhouse gas emissions and climate change because it cannot be stated with certainty that the proposed Project would result in emissions that would represent a fair share of the requisite reductions to achieve post-2025 targets; and
- Cumulative impacts from noise and vibration if construction activities for other projects within 1,500 feet of the site were to overlap with Project construction, especially pile driving activities; and
- Cumulative impacts from transportation, circulation and parking because it can't be guaranteed that mitigation measures for intersection improvements can be completed where the District does not have jurisdiction, a fair share contribution plan to mitigate for cumulative impacts to freeway segments is not yet established, and a substantial deficit in the onsite parking supply would potentially remain even with implementation of the parking management plan mitigation measure because the benefits of the parking management plan cannot be quantified. Related to impacts outside of the District's jurisdiction, mitigation measures are identified in the Final EIR and they can and should be adopted by the agencies with applicable jurisdiction.

The Draft EIR included mitigation measures to mitigate the proposed Project's significant unavoidable environmental impacts. In cases where the mitigation measures may reduce the effect of these unavoidable environmental impacts, but adoption of the mitigation measures would not reduce these impacts to less than significant, a SOC would be needed in order to approve the Project. A SOC allows a lead agency to determine that specific economic, social or other expected benefits of a project outweigh its potential unavoidable significant environmental risks.

The State CEQA Guidelines Section 15126.6 requires that an EIR present a range of reasonable alternatives that could meet most of a project's fundamental objectives, and that would avoid or

substantially lessen one or more significant environmental impacts. While several project alternatives were initially considered, six were selected for analysis and described below. The alternatives considered, but rejected, included an alternate location alternative, a lower-cost visitor-serving hotel only alternative, a hotel tower only alternative, and an SDCC expansion and hotel tower alternative. 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 Draft EIR considered the following six alternatives for analysis:

- *Alternative 1 - No Project/No Build Alternative.* The site would operate as it currently does until the expiration of the current ARC Lease. The proposed Project would not occur and the existing site would retain the 35-foot-wide Embarcadero Promenade, parking lots used for parking and staging for special events associated with SDCC, FAL superyacht marina, and open grass area used as a public park. The marina would not be expanded and the existing 12 boat slips would remain. The water transportation center would not be relocated and upgraded under this alternative. This alternative would avoid or substantially reduce impacts related to aesthetics and visual resources; air quality and health risks; biological resources; geology and soils; greenhouse gas emissions and climate change; hazards and hazardous materials; hydrology and water quality; noise and vibration; public services and recreation; traffic, circulation, and parking; and utilities and energy use, and the cumulative significant impacts on air quality and health risk; greenhouse gas emissions and climate change; noise and vibration; transportation, circulation, and parking; and utilities and energy use associated with the proposed Project. However, Alternative 1 would not meet any of the project objectives and would not provide the District and the region with all the benefits of the proposed Project.
- *Alternative 2 - No Project/Port Master Plan Consistency Alternative.* The SDCC Phase III Expansion and Expansion Hotel would be constructed as entitled in the current PMP. The proposed Expansion Hotel would occur outside of the site and, therefore, the focus of this alternative is the portion of the Phase III Expansion that would occur within the site. This alternative would substantially reduce the aesthetics and visual resources and greenhouse gas emissions and climate change impacts associated with the proposed Project; however, all other impacts would be similar. Furthermore, 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 proposed Project.
- *Alternative 3 - No Net New Marina Alternative.* Under this alternative, all the landside elements of the proposed Project would occur such as the development of the hotel tower, lower-cost visitor-serving hotel, retail along the Embarcadero Promenade, parking structure, ballroom, and public parks and plazas; however, the marina would not be expanded. The marina would continue its current operation of the existing 12 boat slips. The Draft EIR found Alternative 3 is considered the environmentally superior alternative because it would reduce the greatest number of impacts while still meeting the project objectives except only partially for Objective #4 because the proposed Project would not include an expanded marina. Although it is environmentally superior to the proposed Project, the No Net New Marina Alternative is less desirable because it would not achieve the project objectives to the same degree as the proposed Project.
- *Alternative 4 - Phase I Only Marina Alternative.* Under this alternative, all the elements of the proposed Project would occur except the marina expansion would only include Phase I, which would add 23 new marina slips ranging in size from 50 to 200 feet. Phase II of the marina expansion, adding an additional 27 slips to the marina, would not occur. The Draft EIR found

this alternative meets project objectives to a similar degree as the proposed Project and would lessen significant impacts associated with biological resources; greenhouse gas emissions and climate change; hazards and hazardous materials; hydrology and water quality; and noise and vibration. However, it would not reduce any of the significant and unavoidable impacts related to aesthetics and visual resources; public services and recreation; and transportation, circulation, and parking that would occur under the proposed Project.

- *Alternative 5 - Reduced Density Alternative.* The hotel tower would be reduced by 20% from 843 rooms to 675 rooms, and the lower-cost, visitor-serving hotel would be reduced by 20% from 228 beds (220 rooms) to 183 beds. The height of the hotel tower would be reduced from 498 feet to 428 feet (45 stories to 38 stories). The Draft EIR found Alternative 5 would substantially reduce the proposed Project's direct significant and unavoidable impacts related to transportation, circulation, and parking and slightly reduce greenhouse gas emissions and climate change impacts but would otherwise result in similar impacts as the proposed Project. Additionally, this alternative would not fully meet project objectives or result in project benefits to the same degree as the proposed Project.
- *Alternative 6 - Below Grade Parking Alternative.* Under this alternative, 478 parking spaces would be provided in a concrete parking structure, which would include a subterranean parking level approximately 12 feet below grade. The P1 level would include 190 standard stall spaces, 9 Americans with Disabilities Act spaces, and 64 valet spaces. The P2 level would include 167 standard spaces and 48 valet spaces. All other project components of the proposed Project would be implemented under Alternative 6. The Draft EIR found this alternative would reduce the significant and unavoidable parking impact associated with the proposed Project to less than significant because it would provide sufficient parking on site for project operations. However, this alternative would result in slightly greater significant impacts associated with air quality emissions, cultural resources, geology and soils, and slightly greater significant and unavoidable impacts associated with greenhouse gas emissions and climate change and hazards and hazardous materials.

In considering the feasibility of the alternatives, the District examined the ability of the alternative to avoid or substantially reduce significant and unavoidable impacts as well as its relationship to the project objectives. The District determined that the Phase I Only Marina Alternative (Alternative 4) meets the project objectives, is feasible, and substantially lessens significant environmental impacts of the Project related to greenhouse gas emissions and climate change, hazards and hazardous materials and noise and vibrations.

### ***Final EIR***

The Final EIR includes the proposed Project's executive summary, comments received on the Draft EIR, the District's responses to those comments, as well as an errata that further clarifies, corrects or adds information to the EIR based, in part, on information collected as part of the public review process and changes to the project description proposed by FAL. These revisions are fully described in the Errata and Revisions chapter of the Final EIR, which has been clarified by the Second Errata, attached hereto as Attachment F, and include but are not limited to:

- Clarifications on the project description to include updated square footage of various project elements;
- Clarifications on aesthetics and visual resources to clarify wayfinding signage and a description of the optional connecting pedestrian bridge;

- Clarifications on biological resource and transportation, circulation, and parking mitigation measures;
- Updates to air quality and greenhouse gas analysis;
- Clarification on hydrology and water quality to indicate pollutant sources that affect the San Diego Bay Watershed Management Area;
- Clarifications on land use and planning to specify the trigger for implementing the additional flood protection mitigation measures and provide clarification on sea level rise analysis;
- Clarifications on public services and recreation to require 100 percent public access of Area D, located at the ground level public promenade located south and east of the market-rate hotel tower (Attachment D);
- Clarification on figures and cumulative impacts related to transportation, circulation, and parking; and
- Incorporation of the amended South Embarcadero Public Access Program as an Appendix of the EIR.
- Refinements to mitigation measures MM-GHG-4 and MM-GHG-5.

The Final EIR also includes the Project's MMRP, as revised by the errata (see Attachment E) and discussed in more detail below.

The District received a total of 13 comment letters on the Draft EIR during the 49-day public review period, which began on December 13, 2017 and ended on January 30, 2018. Comment letters were received from California Department of Toxic Substances Control, City Planning Department, City Public Utilities Department, California Department of Transportation, San Diego Convention Center Corporation, CCC, Governor's Office of Planning and Research/State Clearinghouse, National Marine Fisheries Service, Save Our Heritage Organization, FAL, San Diego County Archaeological Society, Inc., Mark G. Stephens, and Spencer Mosher. The comment letters discussed information related to aesthetics and visual resources, air quality and health risks, biological resources, cultural resources, geology and soils, greenhouse gas emissions and climate change, hazards and hazardous materials, hydrology and water quality, land use and planning, public services and recreation, transportation, circulation and parking, and utilities and energy use. 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 Section 15088.5.

Similarly, the changes contained in the Final EIR do not constitute significant new information or result in a change in the Draft EIR's impact conclusions. The Final EIR document was prepared to ensure the accuracy and completeness of the project description and environmental analysis. The Final EIR (including the Final EIR, Draft EIR, and Draft EIR Appendices) was provided to the Board for its consideration via a Board Memo dated October 29, 2020. The Final EIR can be accessed on the District's website at:

<https://www.portofsandiego.org/public-records/port-updates/notices-disclosures/ceqa-documents>  
<<https://www.portofsandiego.org/public-records/port-updates/notices-disclosures/ceqa-%20documents>>.

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

As concluded by the Draft and Final EIR, the proposed Project would result in significant direct impacts on aesthetics and visual resources; air quality; biological resources; cultural resources; geology and soils; greenhouse gas emissions and climate change; hazards and hazardous materials; hydrology and water quality; land use and planning; noise and vibration; public services and recreation; transportation, circulation, and parking; and utilities and energy and in cumulative impacts on greenhouse gas emissions and climate change; noise and vibration; and transportation, circulation, and parking. With the exception of the significant and unavoidable impacts on CEQA resource areas that require a SOC as discussed below, all project level impacts can be mitigated to below a level of significance with the implementation of the mitigation measures outlined in the Final EIR's MMRP.

The project proponent, FAL, originally asserted that a hazards and hazardous materials mitigation measure, MM-HAZ-6 is infeasible. District staff disagreed with this assertion because FAL's argument regarding infeasibility was based on a "worst-case" scenario that is not likely to occur. That is, until the actual number of sample locations is determined through the preparation of a Sampling Analysis Plan as required by MM-HAZ-6, FAL's assertion regarding financial feasibility is based on speculation and is premature. FAL later withdrew its objection. After publication of the Final EIR, the Department of Transportation commented that "the Near-Term 2021 conditions should be considered as the Existing Conditions, and as direct impacts" for traffic impacts because the anticipated construction schedule for the Project has changed from 2021 to 2025. District staff and the traffic consultant disagree that further analysis needs to be conducted because the cumulative project list and assumptions utilized in the traffic study were conservative and would not change based on a construction start year of 2025 rather than 2021, as many of the projects included in the traffic study are yet to be built. Furthermore, the Project would not trigger a direct impact without all the other identified cumulative projects that were considered in the analysis and thus, no direct impact would occur. However, the Project plus cumulative projects would result in cumulative impacts. Accordingly, a fair-share contribution to installation of traffic signals is an appropriate mitigation measure and a direct impact would not occur that would require the full cost of installing traffic signals as mitigation. Thus, no changes were made to the MMRP or Final EIR.

All mitigation measures have been prepared in compliance with CEQA Guidelines Section 15097. Additionally, after circulation of the Final EIR, District staff noticed that portions of revised mitigation measures MM-GHG-4 and MM-GHG-5 were inadvertently not published. Accordingly, a revised MMRP has been prepared to include the full revised mitigation measures. The revised MMRP (Attachment E) identifies the required mitigation measures, the party responsible for carrying them out, and a monitoring and reporting mechanism. Compliance with the MMRP will be required as a condition of approval of any CDP issued for the Project or the Phase I Only Marina Alternative.

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

CEQA requires the Board to adopt written Findings of Fact (Attachment E) for all significant impacts identified in the Final EIR (CEQA Guidelines Section 15091). Because the direct impacts on aesthetics and visual resources; greenhouse gas emissions and climate change; hazards and hazardous materials; noise and vibration; public services and recreation; and transportation, circulation, and parking and cumulative impacts on greenhouse gas emissions and climate change; noise and vibration; 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 an SOC

(Attachment E) identifying that the District has balanced the benefits of the proposed Project against its specific environmental risks in determining whether or not to approve the proposed Project. Adoption of the SOC is at the Board's discretion.

As proposed, pursuant to CEQA Guidelines Section 15093, the SOC finds the benefits of the Phase I Only Marina Alternative (Alternative 4), including but not limited to the specific economic, legal, social, technological, and other benefits identified in the SOC, outweigh its significant adverse environmental impacts of the alternative. Benefits of this alternative include:

- Advance the goal articulated in the Port's mission statement by providing a stimulus to the local and regional economy through the increase of employment opportunities within the region including approximately 500 to 1,000 temporary jobs during construction (with a daily average around 186 works on the site at one time) and approximately 843 to 1011 permanent jobs post-pandemic during operation of the components of the Project. The market-rate hotel tower would be a full-service hotel with a high employee to guest and guest room ratio. Jobs will include maintenance staff, hotel management, and facilities management. The lower-cost visitor-serving hotel is estimated to provide approximately nine jobs and the marina will continue to provide one job. In addition, the site is strategically located in downtown San Diego, adjacent to the existing SDCC, and the public access plazas and park areas of the project would be available to residents and visitors to the San Diego region.
- Provide lower-cost visitor-serving accommodations, which will allow greater access and enjoyment by the public and complies with Board Policy 775, Guidelines for the Protection, Encouragement, and, Where Feasible, Provision of Lower Cost Visitor and Recreational Facilities.
- Provide up to five visitor-serving retail storefronts consisting of open cafés, food and beverage outlets, gift shops, and other visitor-serving establishments along the existing Embarcadero Promenade that will help to activate the Promenade.
- Provide new public vista opportunities of the San Diego Bay from vantage points from the public plazas and park areas.
- Reduce energy use, water use, and solid waste generation as compared to standard hotel and visitor-serving developments through pursuit of Leadership in Energy and Environmental Design (LEED) Silver certification or equivalency.

Although it cannot mitigate the unavoidable environmental impacts to a level below significance, Alternative 4 incorporates design features and will implement mitigation measures intended to minimize to the extent feasible the potential project-related and cumulative impacts on aesthetics and visual resources, greenhouse gas emissions and climate change; hazards and hazardous materials; noise and vibration; public services and recreation; and transportation, circulation, and parking.

The Board has discretion to deny/adopt the proposed Project, approve the Phase I Only Marina Alternative, approve the Project or Phase I Only Marina Alternative modified with other alternative/project components, as well as make the necessary CEQA Findings of Fact, adopt or deny the MMRP and the SOC.

### **Port Master Plan Amendment**

The current PMP was amended in 2013 for the Phase III Expansion of the SDCC, after several years of processing the amendment, to include: an additional 400,000 square feet of exhibit area, meeting

rooms, and ballrooms; 560,000 square feet of support spaces; approximately 15,000 square feet of visitor-serving uses; a five-acre rooftop park on top of the expansion; realignment of Convention Way to the south (bayward); infrastructure upgrades; and landscape improvements on the site, which is in the Convention Way Basin Planning Subarea of Planning District 3 Centre City Embarcadero. The 2013 PMP amendment also included the expansion to the existing Hilton Hotel located nearly adjacent to the SDCC and other public amenities, such as a public access pier and ground-level and elevated pedestrian access to the waterfront. To date, the Hilton Hotel expansion has not been constructed. However, if the Project's PMPA is approved, it would allow for 1,343 market-rate hotel rooms and 220 lower-cost visitor-serving rooms in the area. District staff is monitoring the market and to date, does not have information that shows the impacts of the pandemic on the market absorbing these rooms in this particular area.

The proposed PMPA includes changes to portions of the existing land and water use designations and updating the precise plan text, graphics, and adding the project to the Table 11, Planning District 3 Centre City Embarcadero Project List to reflect the Phase I Only Marina Alternative (Attachment B). In particular, it would remove the allowance for the Phase III Expansion, including the additional exhibit, meeting, and ballroom space; support space; visitor serving uses; rooftop park, realignment of Convention Way; infrastructure upgrades; and landscape improvements.

A public hearing on the Draft PMPA is required, pursuant to the California Coastal Act (Coastal Act), prior to Board approval. Notice of the proposed public hearing on the Draft PMPA was published on August 11, 2020 and October 9, 2020 in the *San Diego Daily Transcript* and was distributed consistent with applicable Coastal Act requirements. If approved by the Board, the Draft PMPA would be submitted to the CCC for certification.

### **Consistency with Integrated Planning Vision (BPC Policy 752)**

On a parallel track with the 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 adopted, the PMPU will set forth a policy level blueprint to guide all future redevelopment across District tidelands.

Pursuant to Board Policy 752, Guidelines for Conducting Project Consistency Review Related to the Integrated Port Master Plan Update, projects requiring a PMPA are evaluated against the IPV. During the processing of the proposed Project, staff has been coordinating with the PMPU team to determine the Project's consistency with the IPV and the overall integrated planning effort for the PMPU. Based on a review of the Project, it could be construed that the Project is consistent with the IPV. Additionally, the Final EIR analyzed the Project against the IPV and found it consistent with the same. However, the IPV (specifically the Framework Report) does make mention of the Phase III Expansion as part of the vision for the South Embarcadero area. Note, that at the time the Framework Report was prepared, the Project had not yet been proposed.

### **Next Steps**

If the Board certifies the Final EIR, adopts the MMRP, Findings of Fact and SOC, a NOD will be filed with the County of San Diego Records' Office and State Clearinghouse. Furthermore, if the Board approves the PMPA, staff will prepare and transmit the PMPA to the CCC for a determination of

completeness within ten days of receipt. In accordance with amendment No. 2 to the ARC Lease, if the Board certifies the EIR and approves the PMPA for the proposed Project, staff would continue negotiations with FAL on a Real Property Agreement for the Board's consideration.

Once the CCC deems the District's PMPA request complete, within 90 days a public hearing will be scheduled for CCC consideration of certification of the PMPA. Upon certification of the PMPA by the CCC, staff will return to the Board to consider adoption of the CCC-certified PMPA. At that time, staff will also request the Board consider authorizing a Real Property Agreement, granting concept approval, and authorizing issuance of an appealable CDP for the Project (conditional upon final action of the PMPA by the CCC). If the Board takes these actions, District staff will transmit the Board-adopted PMPA back to the CCC for final action. Once complete, and upon passage of the appeal period and no appeals are received, District staff will issue the CDP.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed this Agenda Sheet and attachments, as presented to it, and approves the same as to form and legality.

### **Environmental Review:**

The proposed Board actions complete the CEQA process for the Project.

The proposed Board actions would facilitate visitor-serving uses and marinas. The actions comply with Section 87(a)(5) 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 Project is consistent with the Public Trust Doctrine. 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:**

Megan Hamilton  
Associate Planner, Development Services

#### **Attachments:**

|               |                                                    |
|---------------|----------------------------------------------------|
| Attachment A: | Project Location Map                               |
| Attachment B: | Draft PMPA for the Phase I Only Marina Alternative |
| Attachment C: | Site Plan                                          |
| Attachment D: | Proposed Public Access Areas                       |
| Attachment E: | Findings of Fact and SOC and MMRP                  |
| Attachment F: | Second Errata to the Final EIR                     |

<sup>1</sup> Amended, Restated, and Combined Lease by and between San Diego Unified Port District, a public corporation and San Diego Convention Center

Corporation, a non-profit public benefit corporation, filed in the Office of the District Clerk as Document No. 56486 on May 6, 2010.

<sup>2</sup> Lease by and between San Diego Unified Port District, a public corporation and Sea Group Construction, Inc., a California corporation filed in the Office of the District Clerk as Document No. 17439 on October 9, 1984.

<sup>3</sup> Lease by and between San Diego Unified Port District, a public corporation and Fifth Avenue Landing, LLC, a California Limited Liability Company, filed in the Office of the District Clerk as Document No. 56494 on May 11, 2010.