



Legislation Text

File #: 2017-0290, **Version:** 1

DATE: June 20, 2017

SUBJECT:

DEMOLITION OF AN EXISTING STRUCTURE AND REDEVELOPMENT OF 1360 NORTH HARBOR DRIVE IN THE CITY OF SAN DIEGO:

- A) RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO THE DISTRICT FOR DEMOLITION OF THE VACANT STRUCTURE, PLATFORM, AND PILINGS LOCATED AT 1360 NORTH HARBOR DRIVE IN THE CITY OF SAN DIEGO**
- B) RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO THE BRIGANTINE, INC. FOR CONSTRUCTION OF THE PORTSIDE PIER PROJECT)**
- C) RESOLUTION RESCINDING BOARD RESOLUTION 2016-205 AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT FOR THE PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT**

EXECUTIVE SUMMARY:

Currently a vacant and fenced off structure, once occupied as several restaurants operated by Anthony's Fish Grotto of La Mesa (Anthony's), exists at 1360 N. Harbor Drive, in the City of San Diego (Project Site). Anthony's, the previous tenant, vacated the premises on March 15, 2017. Since that time, the District has fenced off the site. As explained in more detail, below, the District has longer-term public safety and health concerns about leaving the vacated building "as-is" including the potential creation of an attractive nuisance, possible trespassing and criminal activity at the site and the structure's disrepair. Accordingly, the District, as the applicant and project proponent, has applied for a Non-Appealable Coastal Development Permit (CDP) to demolish the existing structure, including the building shell, platform, piles, dock and associated improvements (collectively, "Existing Structure"), which may be done in phases (Demolition Project). Demolition is necessary regardless of the particulars of any redevelopment of the site. Moreover, because it is infeasible to restore or reuse the structure, District staff has determined that the proposed CDP for the Demolition Project (Demolition CDP) falls within the purview of Section 30612 of the California Coastal Act (codified in the California Public Resource Code), which states that "an application for a coastal development permit to demolish a structure shall not be denied unless . . . based on a preponderance of the evidence, that retention of that structure is feasible."

District staff recommends that a previous Board of Port Commissioners (Board) December 2016 approval authorizing the issuance of a CDP (2016 CDP) to The Brigantine, Inc. (The Brigantine) be rescinded and the Demolition CDP be issued to the District. More particularly, at the December 13, 2016 Board of Port Commissioners Meeting, the Board adopted the Final Mitigated Negative

Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) (codified in the California Public Resource Code), and authorized issuance of a non-appealable CDP pursuant to the California Coastal Act, for the Portside Pier Restaurant Redevelopment Project (Portside Pier Project), which at the time, consisted of demolition of the Existing Structure, and construction of a new platform; supporting piles; a new, two-story restaurant structure containing three restaurants and a gelato and coffee shop; and an expanded dock and dine facility (Board Resolutions 2016-202 and 2016-205, respectively). To date, the CDP has not been issued or executed. At this time, The Brigantine is no longer proposing demolition of the Existing Structures, and as explained, below, Anthony's refused to perform the removal of the Existing Structure and opted to leave the Existing Structure in place. Accordingly, the District is proposing that a new CDP be issued to the District for the Demolition Project.

The Brigantine has agreed to the rescinding of the CDP and also the Board's reconsideration whether to approve a new Non-Appealable CDP to The Brigantine for the construction of a new platform; supporting piles; a new, two-story restaurant structure containing three restaurants and a gelato and coffee shop; and an expanded dock and dine facility (Reduced Project).

Additionally, after the Board's December 2016 actions, California Coastal Commission (CCC) staff expressed concerns about the Portside Pier Project and requested changes to the 2016 CDP. As it would with any stakeholder, District staff has been working collaboratively with CCC staff to clarify the Portside Pier Project and add additional conditions to the 2016 CDP through an amendment to that CDP. The Brigantine has been a partner in the collaborative discussions. This Agenda item was continued from the April 25, 2017 Special Board Meeting (Granicus File ID #2017-0214) to allow additional time for District and CCC staff to work through their remaining issues with this project. As of June 13, 2017, District staff and CCC staff and The Brigantine have agreed to certain clarifications of the Portside Pier Project and conditions related to public access, signage and lighting, eelgrass, and parking. None of the proposed clarification or conditions are necessary to reduce any significant environmental impacts. Further, the Reduced Project, as clarified, fully falls within the scope of the MND.

Because the District now proposes two new CDPs and a rescinding of the authorization to issue the 2016 CDP, an amendment to the 2016 CDP is no longer being proposed. However, all of the agreed upon clarifications and conditions have been incorporated into the proposed new Non-Appealable CDP for the Reduced Project. As explained below, as of the date of this drafting, there are three outstanding issues CCC staff has with the project that District staff and CCC staff have been unable to reach agreement on - water coverage, increase in fill area and the appealability of the CDP.

Staff has determined that the Reduced Project CDP and the Demolition Project CDP are consistent with the District's certified Port Master Plan and do not require further CEQA review.

RECOMMENDATION:

Demolition of an Existing Structure and Redevelopment at 1360 North Harbor Drive in the City of San Diego:

- A. Adopt resolution authorizing issuance of a non-appealable Coastal Development Permit to the District for demolition of the vacant structure, platform, and pilings located at 1360 North Harbor Drive in the City of San Diego
- B. Adopt resolution authorizing issuance of a non-appealable Coastal Development Permit to

The Brigantine, Inc. for construction of the Portside Pier Project

- C. Adopt resolution rescinding Board Resolution 2016-205 authorizing issuance of a non-appealable Coastal Development Permit for the Portside Pier Restaurant Redevelopment Project

FISCAL IMPACT:

The proposed Board actions will require the District to pay for the demolition cost of the Existing Structure, estimated between \$1,100,000 and \$1,700,000. The Board approved and funded \$1,700,000 within the District's Major Maintenance-Capital Program budget for this project as part of its FY 2018 Preliminary Budget adoption at its May 16, 2017 Board meeting. Staff will present the final FY 2018 budget to the Board for adoption on June 20, 2017.

In accordance with BPC Policy No. 106, Cost Recovery User Fee Policy, The Brigantine has been subject to cost recovery fees for Project review, and CEQA and Coastal Act processing.

COMPASS STRATEGIC GOALS:

The Project would enable demolition of an aging structure and authorize redevelopment with a new structure and modern restaurant facility that includes enhanced public access amenities.

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Original Approvals

On May 20, 2015, the District issued a Request for Proposals (RFP) for the redevelopment of an aging restaurant establishment on the Project Site.¹ The Brigantine was ultimately selected as the development partner for its Portside Pier Project. As originally proposed, the Portside Pier Project consisted of demolition of the Existing Structure and construction of a new two-story, approximately 34,069-square-foot restaurant structure containing three restaurants and a gelato and coffee shop. The proposal also included a second-floor, approximately 3,711-square-foot dedicated public viewing deck, and an approximately 3,370-square-foot expanded dock and dine facility capable of docking up to 12 vessels.

An MND was drafted and circulated for the Portside Pier Project. At the December 13, 2016 Board meeting, the Board adopted the Final MND pursuant to the requirements of CEQA, and authorized issuance of the Non-Appealable CDP pursuant to the California Coastal Act for the Portside Pier Restaurant Redevelopment Project (Board Resolutions 2016-202 and 2016-205, respectively). The 2016 CDP authorized demolition of the Existing Structure, and construction of a new platform; supporting piles; a new, two-story restaurant structure containing three restaurants and a gelato and coffee shop; and an expanded dock and dine facility. Attachment A contains Agenda Sheet 2016-0550 from the December 13, 2016 Board Meeting and the Draft CDP authorized by the Board. To date, the 2016 CDP has not been issued to or executed by The Brigantine, and lease negotiations

are on-going.

Proposed Non-Appealable CDP for the Demolition Project

Anthony's previously operated four (4) eating establishments/restaurants (three restaurants and a coffee kiosk) at the Project Site. On or about August 18, 1964, the District entered into a Lease² with Anthony's, which expired on January 31, 2017 (collectively as amended, "Lease"). The Lease gives Anthony's ninety (90) days from the expiration date of the Lease to remove the Existing Structure; however, Anthony's refused to perform the removal of the Existing Structure and opted to leave the Existing Structure in place. Accordingly, the District has agreed to demolish the Existing Structure conditioned on reimbursement for the costs by Anthony's.

The District's recent proposal arose after the authorization to issue the 2016 CDP to The Brigantine. The 2016 CDP could have been amended to remove the demolition component and a new CDP could have been issued to Anthony's for demolition of the Existing Structure. However, considering Anthony's refusal to perform, that is no longer a viable option.

Additionally, the District has concerns about the current state of the Existing Structure. On March 15, 2017, Anthony's vacated the Project Site. The District has since erected fencing around the Project Site and increased police patrols in the area. For the short-term, the fencing and increased patrols appear to be deterring trespassers. The District is concerned that if left in its current condition for an extended period of time (anywhere from six (6) months to 24 months), the Project Site could become an attractive nuisance and that health and safety issues may arise, including trespassing and an increase in criminal activity. Additionally, the longer the Existing Structure is left in its current condition, the more probability that it will constitute blight.

Pursuant to a March 18, 2016 report, entitled, "Waterfront Facility Inspection and Assessment Future Portside Pier Restaurant," prepared by Moffatt & Nichol, (see Attachment E), portions of the Existing Structure are in serious disrepair, causing the District to have additional concerns about the safety and structural integrity of the Existing Structure. Specifically, the report finds, without limitation, the following issues with the Existing Structure:

- The piles have a built-up grout cap, which are in poor condition with corrosion spalls or cracks noted on approximately 40 percent of them.
- Two of the pile encasements are failing or corroded.
- Two of the steel braces for the pile are severely corroded and are in serious condition.
- The concrete pile caps are in poor condition with significant corrosion and defects.
- Previous repairs are failing.
- Soft rot is present.
- Splits in the pile cap have occurred.
- Dry rot has occurred on the girders and portions of the timber stringers with one stringer failing.
- Minor to severe corrosion of the connections has occurred.
- Portions of the fire system pipe are in poor condition.
- The hangers and fittings for the portable water pipe are in poor condition.
- Extensive corrosion of the electrical conduits is present.

- Pipe hangers for the gas pipe are bending and corroded.

The report finds that the platform and piles are beyond their “service life,” which is defined as the length of time during which a structure, or facility, can be used economically before emergent damage cause increasing interruption or becomes a threat to public health and safety.” Also, an inordinate amount of restoration and ongoing sustainment is required to use the platform and piles. Moreover, there is an inability to ascertain the load capacity of the platform and piles. That fact alone negates the option for reuse of the Existing Structure.

The District is now proposing to demolish the Existing Structure, subject to reimbursement from Anthony’s, and is recommending the Board issue the Demolition CDP.

The proposed Demolition CDP to the District would include demolition of the following structures:

- The existing 24,855 square-foot building;
- The existing 23,285 square-foot platform;
- The existing 69 16-inch and 24-inch diameter support piles³;
- The remnants of the existing 565 square-foot dock; and
- Accessory improvements, such as fencing and signage.

Additionally, the Demolition CDP would authorize the erection of a fence and screening of the Project Site, which may include informational signage.

The Demolition CDP also allows for, but does not require, phasing of the demolition. Specifically, if the demolition is phased, Phase I would include demolition of the existing 24,855 square-foot building, accessory structures and potentially the remnants of the existing 565-square-foot dock (the dock demolition may occur during Phase II) and Phase II would include demolition of existing 23,285-square-foot platform and the existing 69 support piles.

Proposed Non-Appealable CDP for the Reduced Project

After the Board’s December 2016 actions, CCC staff expressed concerns about the Portside Pier Project and requested changes to the 2016 CDP. As it would with any stakeholder, District staff has been working collaboratively with The Brigantine and CCC staff to clarify the Portside Pier Project and proposed additional conditions to the 2016 CDP, which would have to be accomplished through an amendment to that CDP. For the reasons explained, above, a new CDP for the Reduced Project rather than an amendment is now being proposed. This Agenda item was scheduled to be considered by the Board at its April 25, 2017 Special Board Meeting (Granicus File ID #2017-0214); however, at the request of the CCC Executive Director, this item was continued to a future Board meeting to allow additional time for District and CCC staff to work through their remaining issues with this project. As of June 13, 2017, District staff, CCC staff and The Brigantine have agreed to certain clarifications and new or revised conditions related to public access, signage and lighting, eelgrass, and parking as follows:

Public Access

1. Relocation of the public perimeter walkway from the ground level to the second level.
2. Revised language to clearly describe access to the second floor public perimeter walkway and

viewing deck via two elevators (one directly accessible from the Promenade) and two staircases on the north and south ends.

3. Revised language to clarify that the pathway to the public viewing area and public perimeter walkway will not be obstructed.
4. Special Condition added to the CDP to clarify that the Project will include a public walkway no less than 48 inches wide and will extend around the entire perimeter of the second floor.
5. Special Condition added to the CDP that the public viewing deck and public perimeter walkway will not be used for private functions or restaurant events and will be open to the public at all times during operating hours of the restaurant.
6. Special Condition added to the CDP that the public viewing deck shall be 3,711 square feet.
7. Special Condition added to the CDP that the dock and dine is available for berthing for both patrons and non-patrons of the adjacent restaurants, and for use by water taxis, at all times during operating hours of the restaurant.

Signage and Lighting

8. The number of large, backlit illuminated waterside-facing signs has been reduced from three to a single "Portside Pier" sign.
9. Deletion of eight previously proposed color LED panels along the Promenade and waterside-facing frontage.
10. Addition of two large public access signs at the stair/elevator public access points that are visible from the Promenade.
11. Addition of a sign at the public viewing deck to notify the public that the deck is open to the public.
12. Addition of at least two wayfinding signs on the Promenade that notify the public that there is a public deck on the second floor of Portside Pier that is free and open to the public.

Eelgrass

13. Special Condition added to the CDP that requires an eelgrass survey be conducted 90 days before construction. This condition is already required pursuant to existing regulations.

Parking

14. Special Condition added to the CDP that clarifies that any reduction in the "Secured Parking" valet parking spaces account for a cushion of 5%.
15. Special Condition added to the CDP that requires that in the short-term, The Brigantine file an annual parking implementation report with the District that includes a specific peak parking implementation program containing specific components such as: evidence that show the required valet parking spaces are available, parking counts, location of lots available for valet use and number of spaces available in each lot, and information on any period the valet was closed due to no available parking spaces. Also, the condition requires The Brigantine to implement any parking refinements that may be required by the District.
16. Special Condition added to the CDP that requires that, in the event the District establishes a long-term parking program for the area, The Brigantine shall contribute a fair share to the construction and operating costs of the program.

In addition, the CDP clarifies that under the Reduced Project, a total of 327 parking spaces, rather than 979 spaces, are needed for the project (assuming no restaurant establishments existed previously on the site and water transportation services were servicing the site)⁴. None of the proposed clarifications or conditions are necessary to reduce any significant environmental impacts,

but are being added as part of collaboration with CCC staff. In addition, the Reduced Project, as clarified, has been fully analyzed in the MND.

Outstanding Issues

As of the date of this drafting, there are three outstanding issues CCC staff has with the project that District staff and CCC staff have been unable to reach agreement on - water coverage, increase in fill area and the appealability of the CDP.

Water Coverage

The Reduced Project will result in a net increase of 4,480 square feet of water coverage - approximately 2,805 square feet of which is attributed to the proposed dock and dine facility, a water dependent use, and 1,675 square feet of which is attributed to the ground floor walkway, which, among other things provides access to the dock and dine. In accordance with BPC Policy 735, the Board authorized The Brigantine the use of 4,480 square feet of the District's water coverage credits to mitigate the net increase.

CCC staff, without citing any authority or provision of the California Coastal Act claims that an increase of water coverage is only allowable for a water-dependent use. As stated in Section 30715.5 of the California Coastal Act, the standard for issuance of the CDP is conformity with the certified Port Master Plan, as determined by the District. There is no prohibition against a net increase of water coverage in the Port Master Plan. Pursuant to the MND, the increase in water coverage would be mitigated to below a level of significance through use of District credits. While consistency with the Port Master Plan is the legal threshold for issuance of a CDP, there is no prohibition in the California Coastal Act for a project - water-dependent or otherwise - from using shading credits.

District staff recommends that the net increase in water coverage be allowed subject to the existing special conditions, which require The Brigantine to pay fair market value for the shading credits.

Increased Fill from Piles

Section 30108.2 of the California Coastal Act defines "fill" as "earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area." Accordingly, the proposed piles are considered "fill" under the California Coastal Act. Both Chapter 8 and Chapter 3 of the California Coastal Act allow for fill. Specifically, Section 30705 of the California Coastal Act allows fill for improving shoreline appearance and public access to the water. Section 30233 of the California Coastal Act also allows fill "in open coastal waters . . . [for] new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities." The Reduced Project meets both of these requirements.

The net increase of fill for the piles proposed in the Reduced Project is shown in the following table:

Pile Source	Area (in square feet)
Proposed Piles to be Added ⁵	179
<i>Dock and Dine</i>	20
<i>Restaurant</i>	159
Existing Piles to be Removed	(135)
TOTAL NET INCREASE	44*

*If the dock and dine is removed, the net increase is 24 square feet.

It is CCC staff's position that the Reduced Project may not result in any net increase in fill from the proposed piles. However, consistent with previous CCC decisions (see Attachment F for example), if a restaurant development includes public access features, such as a bayward perimeter access walkway that is designated exclusively for public use free of charge, an increase in fill associated with the restaurant's platform piles is permissible under the California Coastal Act. In essence, the public access way was considered public access and/or a recreational opportunity, allowing for an increase in fill.

Here, as explained above, The Brigantine is proposing two key public access components, both of which currently do not exist - the second floor viewing deck (approximately 3,711 square feet) and a connecting perimeter public walkway around the second floor (approximately 2,050 square feet and no less than 48 inches wide). Both are exclusively available to the public free of charge. The Reduced Project also includes bike racks, wayfinding signage, and an enhanced promenade - all public access improvements. Additionally, the dock and dine facility is by definition "public access" as it is open to the public and allows public vessels to access the area. Moreover, the entire proposed Reduced Project is improving the appearance of the shoreline, which is currently occupied by an aging and deteriorating building.

Again, conformity with the certified Port Master Plan is the standard for issuance of a CDP. The certified Port Master Plan does not prohibit increased fill for the proposed uses nor does it include a requirement of no net increase in fill. Nonetheless, the proposed "fill" is allowed under Sections 30705 and 30233 of the California Coastal Act. Accordingly, it is the District's position, at least for the Reduced Project, that the proposed pilings may be approved. However, as a compromise to CCC staff's concerns, the following condition has been added to the Reduced Project CDP:

The fill area from the platform piles supporting the restaurant establishment shall not exceed the existing 135 square feet of piles unless the Permittee either 1) obtains and pays fair market value for fill credits from the District in the same amount of square footage of the exceedance or 2) removes piles in the same square footage of the exceedance.

Note that District staff has not gotten agreement from CCC staff on the proposed condition. Both the U.S. Army Corps of Engineers and the Regional Water Quality Board have indicated that use of a fill credit is acceptable and would have been required by the applicable regulations.

Appealability of the Permit

During a "dispute resolution" hearing, the CCC found that dock and dine facilities and proposed restaurants are appealable under Section 30715 of the California Coastal Act. For the reasons set

forth in Attachments G, H and I (full copies of the Attachments with Exhibits are available in the Office of the District Clerk and have previously been provided to the Board), it is the District staff's and the Office of the General Counsel's belief that the CCC lacked authority to hold the "dispute resolution" hearing, the CCC's decision at that hearing is not binding on the District, and the dock and dine facilities - akin to a parking lot for vessels - and restaurants - not listed in Section 30715 - are non-appealable development. Accordingly, District staff is recommending a Non-Appealable CDP be issued for the Reduced Project.

BPC Policy No. 735

At the December 13, 2016 Board Meeting, the Board found the Portside Pier Project to be in conformance with Board Policy 735 and allowed the use of District environmental mitigation property for the project (Board Resolution 2016-203). Since then, the project has been revised to include a dedicated continuous second floor public perimeter walkway that is approximately 2,050 square feet and 4 feet wide, which will result in an increase in public access. Also, the proposed dock and dine, which was requested by the Board and provides increased public access still remains. The Brigantine has also agreed to maintain all public facilities. Based on these factors, District staff finds that the Reduced Project complies with BPC No. 735. Accordingly, if the Board adopts a resolution authorizing issuance of the Reduced Project CDP to The Brigantine, staff recommends that through that resolution, the Board also find that the Reduced Project is in conformance with BPC Policy No. 735 and grant The Brigantine use of District fill credits. Use of the credits would be conditioned on payment of a fee to the District equal to the fair market value of those credits. The fill credit could be used from the 123 square feet of fill credits that resulted from removal of piles at the B Street Pier.

Coastal Development Permit

The Project Site is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan. The Port Master Plan land and water use designations within the limits of the projects are Commercial Recreation (restaurant establishment) and Ship Anchorage (dock and dine).

Proposed Non-Appealable CDP for the Demolition Project

The Demolition Project involves demolition of a vacant and potentially unsafe building. Demolition is allowed in all land uses of the Port Master Plan and therefore, the Demolition CDP is consistent with and conforms to the certified Port Master Plan.

The Demolition Project constitutes "development" under Section 30106 of the California Coastal Act as it involves the demolition of the Existing Structure. Accordingly, a California Coastal Act authorization from the District is required. The Demolition Project has been determined to be a "non-appealable" development because it is not considered an "excluded," "emergency," or "appealable" development. Additionally, Chapter 8 of the Coastal Act regulates port development within the California coastal zone. Section 30715 of Chapter 8 specifies the sole categories of development that may be appealed to the CCC. Demolition of a vacant structure that poses a public safety issue is not listed as appealable in Section 30715. As supported by the record, the certified Port Master Plan and the characteristics of the Demolition Project, the Demolition Project does not fall with Section 30715 and a non-appealable CDP is appropriate.

The Demolition Project is located between the sea (as defined in the California Coastal Act) and the first inland continuous public road paralleling the sea. The Demolition Project is fully consistent with Chapter 8 of the Coastal Act, California Coastal Act Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein. The Demolition Project will remove an aging and vacant structure, improving public safety.

Section 30612 of California Coastal Act states that “an application for a coastal development permit to demolish a structure shall not be denied unless . . . based on a preponderance of the evidence, that retention of that structure is feasible” as decided by the District. Section 30108 of the California Coastal Act defines “feasible” as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” Based on “Waterfront Facility Inspection and Assessment Future Portside Pier Restaurant,” report prepared by Moffatt & Nichol, other health and safety concerns as stated herein, and the entire record, District staff recommends the Board find that the retention of the Existing Structure is not feasible, as retention of the Existing Structure including the piles and platform for reuse or otherwise is not capable of being accomplished in a reasonable amount of time due to economic (the cost), technological (deterioration has corrupted the ability to determine the lateral load capacity of the existing platform and piles, which in itself precludes reuse) and environmental (restoration may take more time and cause greater impacts) factors. While enclosing the vacant Existing Structure provides a short-term solution to the issue, in the long-term, demolition is necessary. Therefore, based on the preponderance of the evidence, the Demolition CDP should not be denied.

Proposed Non-Appealable CDP for the Reduced Project

The Reduced Project includes redevelopment of the Project Site with a new restaurant facility and dock and dine facility. The Commercial Recreation use expressly allows for restaurants and therefore, the proposed restaurant establishment is consistent with the Port Master Plan. Additionally, while the Port Master Plan expressly allows dock and dine facilities in the Commercial Recreation use category, the Port Master Plan also specifies that compatible uses may be allowed in a particular land or water use category when the uses are similar in character and the proposed use is compatible to the expressed allowed land and water uses. The Port Master Plan lists Ship Anchorage as a circulation and navigation use that allows for short-term temporary berthing or anchorage of vessels. Similarly, dock and dine facilities are part of the water-side circulation system and they allow for temporary short-term berthing of a vessel. Moreover, a dock and dine facility is similar to a landside parking lot, but for vessels. Parking is allowed in all uses of the Port Master Plan and hence, a dock and dine facility is allowed in the Ship Anchorage use. Therefore, the dock and dine facility is consistent with the Ship Anchorage water use. The Reduced Project conforms to the certified Port Master Plan.

The Reduced Project constitutes “development” under Section 30106 of the California Coastal Act as it proposes construction of structures (piles, platform, building and dock and dine). Accordingly, a California Coastal Act authorization from the District is required. Pursuant to the District’s CDP Regulations and the reasons set forth in Attachments G, H and I to this Agenda Sheet, the Reduced Project has been determined to be a “non-appealable” development. It is also not considered an “excluded,” “emergency,” or “appealable” development.

Additionally, pursuant to the California Coastal Act, the proposed Reduced Project is considered “non-appealable”. Chapter 8 of the Coastal Act regulates port development within the California coastal

zone. Section 30715 of Chapter 8 specifies the sole categories of development that may be appealed to the CCC. Neither restaurants, eating establishments or dock and dine facilities are listed as appealable in Section 30715. As supported by a previous decision of the Superior Court in litigation where the CCC and District were parties, the record, the Port Master Plan and the characteristics of the Reduced Project, the plain language of Section 30715, the Reduced Project is a non-appealable project.

Moreover, the existing restaurant was not listed as an appealable development in the Port Master Plan, and other restaurants listed in the Port Master Plan as appealable were part of larger appealable categories of development. Therefore, the proposed development is a “non-appealable” category of development.

The Reduced Project is located between the sea (as defined in the California Coastal Act) and the first inland continuous public road paralleling the sea. The Reduced Project is fully consistent with Chapter 8 of the Coastal Act, California Coastal Act Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein. The Reduced Project provides extensive public access and recreational opportunities through the public viewing deck, public access way, wayfinding signage, bike racks, improved promenade and dock and dine facility.

Copies of the Draft CDPs are provided as Attachments B and C to this Agenda Sheet. Special conditions are incorporated into the CDPs to include stakeholder feedback and minor clarifications, and to ensure the Project’s conformance with the Final MND’s Mitigation Monitoring and Reporting Program (MMRP) and related District requirements.

General Counsel’s Comments:

The General Counsel’s Office assisted in the drafting of this agenda sheet and approves it and the attachments as to form and legality.

Note, that the proposed Board action to adopt a resolution authorizing issuance of the Demolition CDP is included in this agenda item for convenience and is recommended based on independent factors. The Demolition CDP would be recommended regardless of the ultimate development of the Project Site. Accordingly, it is not considered related development to the Reduced Project.

Environmental Review:

The District, as lead agency under CEQA, prepared a Final MND and Initial Study for the “Portside Pier Restaurant Redevelopment Project” (UPD #MND-2016-91; Resolution No. 2016-202) that was adopted by the Board on December 13, 2016. The Final MND analyzed the Demolition Project and the Reduced Project that are covered by the proposed CDPs. While there are some clarifications to the CDPs, revisions to special conditions and added Special Conditions, none of them are required to lessen environmental impacts. District staff reviewed the clarifications, revisions and additions and finds that they would result in less impact to the environment than was analyzed in the MND.

District staff finds that the MND is adequate for the Board to authorize issuance of Non-Appealable CDPs as the proposed action is a subsequent governmental approval required to implement a previously approved project (CEQA Guidelines §15378(c)). Accordingly, the District has determined that the 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.

District staff has evaluated the proposed Demolition Project, Reduced Project, and associated clarifications and revisions as described herein with the information contained in the MND and MMRP. District staff finds that the Demolition Project and Reduced Project, as clarified and revised, would not result in any substantial adverse effects to the environment with the incorporation of mitigation measures in the adopted MMRP. Pursuant to CEQA Guidelines §15162(b), District staff finds and recommends that no further CEQA analysis be required as: 1) the proposed revisions are not substantial and do not require major revisions to the MND due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new significant information has come to light that shows the Demolition Project and Reduced Project will have one or more significant effects not discussed in the MND, identified significant impacts would be more severe, mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant effects, and no changes to mitigation measures or alternatives have been identified (CEQA Guidelines §15162(a)). Because none of these factors have been triggered, the District has the discretion to require a subsequent negative declaration, an addendum, or no further analysis/documentation. (CEQA Guidelines §15162(b) (if the factors of CEQA Guidelines §15162(a) are not triggered, the lead agency has the discretion whether to require a subsequent CEQA analysis is required or no further analysis.) The minor clarifications and revisions to the projects would result in a smaller scope and would be less impactful to the environment and hence, District staff recommends that no additional analysis be conducted. Note that the District will still impose the mitigation measures identified in the MND and MMRP and no changes to the mitigation measures are proposed.

Furthermore, the Demolition Project and Reduced Project are not separate “projects” 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.) The activities allowed under the proposed CDPs were fully contemplated in the Final MND prepared for the project as adopted by the Board. The proposed projects are consistent with the project analyzed in the Final MND and the MND and MMRP are adequate to carry out the proposed Board’s actions. Therefore, no further action under CEQA is required.

The Demolition Project and Reduced Project comply 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 projects are consistent with the Public Trust Doctrine.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Wileen C. Manaois
Principal, Development Services

Real Estate Development

Attachment(s):

- Attachment A: Agenda Sheet 2016-0550 from December 13, 2016 with Attachments
- Attachment B: Draft CDP to the District for Demolition of Vacant Structure, Platform, and Pilings
- Attachment C: Draft CDP to The Brigantine, Inc. for the Portside Pier Development Project
- Attachment D: Board Resolution 2016-205
- Attachment E: Waterfront Facility Inspection and Assessment Future Portside Pier Restaurant report, prepared by Moffatt & Nichol (March 18, 2016)
- Attachment F: CCC Staff Report
- Attachment G: February 6, 2017 Letter to CCC from the General Counsel's Office regarding Appealability of the Portside Pier Project CDP
- Attachment H: March 2, 2017 Letter to CCC from the General Counsel's Office regarding Dispute Resolution Hearing
- Attachment I: March 2, 2017 Letter to CCC from Richards, Watson, Gershon regarding Dispute Resolution Hearing

¹ Accordingly to BPC Policy 355, an existing tenant may propose to construct capital improvements to a leasehold premises in exchange for a lease term extension. To qualify for the term extension the capital improvements must be consistent with the Port Master Plan and the District's vision for the use of the property, the tenant must be a tenant in good standing, the capital improvements must be beneficial and the plans acceptable. (BPC Policy 355, Section II). Anthony's proposed redevelopment of the Project Site only two years prior to the Lease's expiration and failed to meet some of the factors required by BPC Policy 355, resulting in the issuance of the RFP.

² See District Document No. 987. The Lease was amended on three occasions (see District Document Nos. 1621, 41253 and 63237).

³ Upon further review of information received by The Brigantine, Inc., it was determined that the existing platform and dock contain a total of 69 piles: 63 piles beneath the platform (47 16-inch diameter octagonal vertical piles and 16 24-inch diameter round battered piles) and 6 16-inch diameter octagonal piles beneath the dock. This equates to an existing pile area of 135 square feet.

⁴ Unfortunately, a clerical error occurred during finalization of Mitigation Measure TRA-2, which identifies the need for the Permittee to obtain 979 offsite parking spaces, which was identified in the Traffic Analysis as the near-term parking deficiency in the North Embarcadero (890 parking spaces) plus the spaces needed for the Project under the shared parking scenario (89 parking spaces). (Transportation Analysis, p. 47.) ACE Parking's Letter of Commitment identified at least 1,000 parking spaces that could service the area. The intent of TRA-2 to reduce potential parking impacts to below a level of significance was to require the Permittee to secure 327 parking spaces if and when water transportation services are provided or 358 parking spaces without the water transportation provided.

⁵ Upon further review of information received by The Brigantine, Inc., it was determined that the proposed platform and dock and dine will contain a total of 57 piles: 48 24-inch octagonal vertical piles for the platform and 9 18-inch square vertical piles for the dock and dine. This equates to a proposed pile area of 179 square feet.