



## Legislation Text

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**File #:** 2018-0488, **Version:** 1

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**DATE:** November 1, 2018

**SUBJECT:**

**RESOLUTION AUTHORIZING ENTERING INTO AN AGREEMENT THAT THE CITIZENS INITIATIVE “FOR A BETTER SAN DIEGO” HAS QUALIFIED AS A BALLOT MEASURE AND THAT THE CORRESPONDING CONDITIONS PRECEDENT IN THE PURCHASE AND SALE AGREEMENT (SECTIONS 6.1.1 AND 7.2.1) ENTERED INTO BY AND AMONG THE SAN DIEGO UNIFIED PORT DISTRICT, THE CITY OF SAN DIEGO AND FIFTH AVENUE LANDING, LLC HAVE BEEN SATISFIED.**

**EXECUTIVE SUMMARY:**

Over the past decade, there have been extensive planning, design, and financing efforts towards the completion of a Phase III Expansion of the San Diego Convention Center (Convention Center). The Phase III Expansion site is located on San Diego Unified Port District (District) tidelands bayward of Convention Way and is also located on land currently leased by Fifth Avenue Landing, LLC (FAL), often referred to as the “Arc Lease Premises” and the “Marina Landside Area” (collectively, FAL Premises). A site plan depicting the area of the proposed Phase III Expansion has been included as Attachment A.

On June 21, 2018, the District, the City of San Diego (City) and FAL (collectively, Parties) entered into a Purchase and Sale Agreement (PSA)<sup>1</sup> in anticipation of a citizen’s initiative titled “For a Better San Diego” (Initiative), which proposes a special tax measure to increase the City’s transient occupancy tax and dedicate the resulting revenues for specified public benefits, including the financing and construction of the Phase III Expansion. The PSA, subject to various conditions precedent, will give the City control of the FAL Premises, which makes up the majority of the Phase III Expansion site. Sections 6.1.1 and 7.2.1 of the PSA include conditions precedent that the Initiative qualifies as a ballot measure and that the City give FAL and the District notice of the qualification by August 20, 2018 (collectively, Ballot Qualification Condition).

Prior to Ballot Qualification Condition’s August deadline, a sample of signatures for the Initiative was counted by the San Diego County Registrar of Voters (ROV), but the count fell between 95% and 100%, which triggers the need for a full count of signatures. Subsequently, the Parties agreed to extend the deadlines for certain deliverables under the PSA to September 25, 2018, including the Ballot Qualification Condition deadline. On September 20, 2018, the City notified the District and FAL that, based on signature verifications completed by the ROV, the City Clerk certified that the initiative qualified as a Ballot Measure to be submitted to the local voters no later than November 2020. The Parties entered into a second extension of the deadlines to October 25, 2018 and a third extension of the deadlines to November 5, 2018 to allow FAL and the District to decide whether the Ballot Qualification Condition has been satisfied.

At its November 1, 2018 Board of Port Commissioners (Board) meeting staff will recommend that the Board pass a resolution finding that the Ballot Qualification Condition has been met and authorizing the District to enter into an agreement among the Parties (see Attachment B) memorializing the same.

### **RECOMMENDATION:**

Adopt a Resolution Authorizing Entering into an Agreement that the Citizens Initiative “For a Better San Diego” Has Qualified as a Ballot Measure and that the Corresponding Conditions Precedent in the Purchase and Sale Agreement (Sections 6.1.1 and 7.2.1) Entered into by and among the San Diego Unified Port District, the City of San Diego and Fifth Avenue Landing, LLC have been Satisfied.

### **FISCAL IMPACT:**

The fiscal impact to the District from this action will be \$5 million if the Alternative A Closing in the PSA occurs. Funding is available from previous years’ cumulative unrestricted resources.

If Alternative B closing occurs, the \$5 million released initial option payment would be reimbursed to the District by the City.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### ***Background***

The Convention Center is located on District tidelands and was built and paid for by the District in 1989 and later expanded in 2001 by the District and the City. Over the past decade, there have been extensive planning, design, and financing efforts to complete a Phase III Expansion of the Convention Center to bring additional convention business to San Diego.

In 1984, the District entered into a 40-year lease with FAL for the site on which the Phase III Expansion is proposed. In 2010, the leasehold held by FAL was split into two separate leaseholds - a lease with San Diego Convention Center Corporation (SDCCC) for the Phase III Expansion site (ARC Lease, as amended) and a lease with FAL for the continued operation of a marina on certain water parcels and water transportation center on a landside parcel, known as the “Marina Landside Area” (Marina Lease) on the adjacent premises. In 2015, pursuant to the terms of the ARC Lease, SDCCC’s leasehold interest was assigned to and assumed by FAL.

In accordance with the conditions of the ARC Lease, FAL submitted a project proposal consisting of a hotel, lower-cost overnight accommodations and a marina expansion (FAL Project), on January 11, 2016, which the District has been processing diligently and in good faith.

### ***Purchase and Sale Agreement***

In anticipation of the Initiative, on June 21, 2018, the Parties entered into the PSA to facilitate a transaction that would give the City control of the FAL Premises, which makes up most of the Phase III Expansion site. The Initiative, launched by a coalition of business and labor organizations, proposes a special tax measure to increase the City's transient occupancy tax and dedicates the resulting tax revenues for specified public benefits, including financing construction of an expansion to the Convention Center and modernization of the existing facility.

The PSA was structured to allow for two alternative closings - Alternative A Closing and Alternative B Closing. The Alternative A Closing is conditioned upon the passage of the Ballot Measure, the occurrence of certain conditions precedent and involves the District as a party to two real estate transactions; one with the City and the other with FAL. A summary of the key terms of the PSA have been listed below:

- The District through four option payments (District Option Payments) will purchase from FAL its interest in the ARC Lease and Marina Landside Area for \$30 million and reimburse FAL up to \$3.2 million that it has expended related to the FAL Project.
- Depending on certain conditions, including the City's deposit of a Promissory Note to the District and \$5.3 million into a separate escrow account as collateral for the Promissory Note, District pays FAL its first initial non-refundable option payment of \$5 million (Released Initial Option Payment) towards the purchase price, which is secured through the Promissory Note from the City to the District. To date, the City has not deposited the Promissory Note or \$5.3 million into escrow as it was waiting to see if the Ballot Qualification Condition has been met.
- City through three option payments (City Option Payments) will purchase from the District the ARC Lease, Expansion Option, a leasehold interest in the Marina Landside Area and extended term for up to \$28.2 million. The remaining District's payments to FAL are conditioned on the City making the City Option Payments to the District.
- If the Alternative A Closing does not occur and certain conditions are met, FAL would retain any payments received and the District would proceed with the Alternative B Closing which primarily includes prompt consideration of the FAL Project by the Board, an ARC Lease term extension to make up for lost time and reinstatement of some overwater shading credits.

A full description of the PSA and associated real estate transactions is provided in the June 12, 2018 BPC <sup>2</sup> Agenda Sheet which has been included as Attachment C.

### ***Ballot Measure Qualification***

Prior to the August 20, 2018 deadline for satisfaction of the Ballot Qualification Condition, the District

was informed that the random sampling of signatures by the ROV fell between 95% and 100% and that the ROV would need to conduct a full verification of signatures to determine whether the measure would still be eligible for a future ballot (next Citywide election is in November 2020).

As stated above, the Ballot Qualification Condition required the City provide the District with written notice with respect to ballot qualification by August 20, 2018. To accommodate completion of the verification process, on August 17, 2018, the Parties collaboratively agreed to extend this deadline in addition to the deadlines for several other deliverables under the PSA to September 25, 2018. These same deadlines were subsequently extended to October 25, 2018 and November 5, 2018. Specifically, the following deadlines were extended:

1. Completion of the title review and approval process (Section 2.3.5 (vi))
2. The City providing written notice to the District of the initiative's ballot qualification by August 20, 2018 (Section 6.1.1 and 7.2.1);
3. Submittal of all documents to escrow (Document Delivery Date) (Section 2.4); and
4. Termination of the PSA for third-party lawsuits (Section 16.3).

On September 20, 2018 the District was notified that the initiative gathered enough signatures to qualify as a Ballot Measure and the City officially provided the District and FAL with written notice that, based on signatures verifications completed by the ROV, the City Clerk has certified that the Ballot Measure has qualified as a measure to be submitted to the local voters no later than November 2020.

#### **RECOMMENDATION:**

Staff is recommending that the Board find and authorize entering into an agreement that the conditions precedent regarding Ballot Qualification in Section 6.1.1 of the PSA have been satisfied and that the City has timely satisfied its obligation under Section 7.2.1 to provide written confirmation regarding such qualification.

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

The General Counsel's Office has reviewed the agenda sheet, and the attachments, as presented to it and approves as to form and legality.

#### **Environmental Review:**

The proposed actions were previously analyzed in the Final Environmental Impact Report that was certified by the Board on September 12, 2012 (SCH #2010121004, UPD-83356-EIR-855; District Document No. 59378, filed on September 28, 2012), were considered in the adopted Findings of Fact and a Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program adopted by the Board on September 12, 2012, as well as Addendum to Final Environmental Impact Report (District Document No. 61745 filed on April 25, 2014) adopted by the Board on March 4, 2014. The Final Environmental Impact Report and Addendum are herein collectively referred to as "FEIR".

The proposed actions are not a separate "project" for CEQA purposes but simply an additional governmental approval required to implement a previously approved project. (CEQA Guidelines §

15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Accordingly, the District has determined that actions are merely a step-in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR, the District finds and recommends that the proposed approvals do not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) requires changes to mitigation measures or alternatives. Because none of these factors have been triggered, the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines §15162(b)). Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that the proposed actions are within the scope of the FEIR and no further analysis or environmental documentation is necessary.

Therefore, no further CEQA review is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, proposed actions do not allow for “development,” as defined in Section 30106 of the Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, the District’s projects require processing under the District’s CDP Regulations. Prior to development of the SDCC Phase III Expansion and the relocation of the WTC, the Board will consider approval of CDPs under District’s CDP Regulations. The proposed approvals in no way limit the exercise of the District’s discretion under the District’s CDP Regulations.

### **Equal Opportunity Program:**

Not Applicable.

### **PREPARED BY:**

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Attachment(s):

Attachment A: Area Site Plan and Phase III Expansion Site  
Attachment B: Proposed Agreement among the Parties Regarding Ballot Qualification Condition  
Attachment C: June 21, 2018 BPC Agenda Sheet No. 2018-0282

1. Purchase and Sale Agreement dated June 21, 2018 Clerks Document No 68716
2. The complete June 12, 2018 BPC Agenda File No. 2012-0282 with all attachments can be found in Granicus-Legistar on the District's website at <https://portofsandiego.legistar.com/Calendar.aspx>