



## Legislation Text

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File #: 2018-0519, Version: 1

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**DATE:** December 11, 2018

**SUBJECT:**

**BAYSIDE PERFORMANCE PARK ENHANCEMENT PROJECT AT EMBARCADERO MARINA PARK SOUTH:**

- A) CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION ADOPTING THE PORT MASTER PLAN AMENDMENT, AS CERTIFIED BY THE CALIFORNIA COASTAL COMMISSION, AND DIRECTING THE FILING OF NOTICE OF SAID ADOPTION WITH THE CALIFORNIA COASTAL COMMISSION**
- B) ADOPT RESOLUTION GRANTING CONCEPT APPROVAL TO THE SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION FOR THE PROJECT, CONDITIONED ON SATISFACTION OF THE CALIFORNIA COASTAL COMMISSION'S ACCEPTANCE OF THE DISTRICT'S ADOPTION OF THE PORT MASTER PLAN AMENDMENT, AS CERTIFIED BY THE CALIFORNIA COASTAL COMMISSION, AND APPROVAL AND EXECUTION OF A LEASE BETWEEN THE DISTRICT AND THE SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION**
- C) ADOPT RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO THE SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION FOR THE PROJECT, CONDITIONED ON SATISFACTION OF THE CALIFORNIA COASTAL COMMISSION'S ACCEPTANCE OF THE DISTRICT'S ADOPTION OF THE PORT MASTER PLAN AMENDMENT, AS CERTIFIED BY THE CALIFORNIA COASTAL COMMISSION, AND APPROVAL AND EXECUTION OF A LEASE BETWEEN THE DISTRICT AND THE SAN DIEGO SYMPHONY ORCHESTRA ASSOCIATION**

### **EXECUTIVE SUMMARY:**

The San Diego Symphony Orchestra Association, as the applicant and project proponent (Applicant), proposes to replace its temporary performance and event venue located on the northern 3.68 acres of the 10.8-acre Embarcadero Marina Park South (EMPS) with a permanent performance and event venue. The proposal also includes several enhancements to other areas of EMPS outside of the proposed venue location. In order to allow for the proposed permanent use of EMPS, a designated public park in the Port Master Plan (PMP), as a year-round performance and event venue, a Port Master Plan Amendment (PMPA) was required to address public access, programming, park mitigation, lighting, and sea level rise adaptation. On January 9, 2018, the Board of Port Commissioners (Board), as Lead Agency under the California Environmental Quality Act (CEQA), conducted a public hearing and adopted Resolution No. 2018-019, certifying the Final Environmental Impact Report (EIR) and adopting findings of fact, a statement of overriding considerations, and a Mitigation Monitoring and Reporting Program (MMRP) for the Bayside Performance Park Enhancement Project and PMPA (collectively, Project).<sup>1</sup> Additionally, the Board conducted a public

hearing and adopted Resolution No. 2018-020, approving the PMPA and directed District staff to file the PMPA with the California Coastal Commission (Coastal Commission) for certification.

District staff subsequently filed the PMPA application with the Coastal Commission, and on November 8, 2018, the Coastal Commission unanimously certified the PMPA, finding the PMPA to be consistent with the California Coastal Act (Coastal Act) (Attachment A). The Coastal Commission's roll call vote on the PMPA, and the PMPA certification letter, are provided as Attachments B and C. The next steps in the process include the District's adoption of the subject PMPA, as certified by the Coastal Commission, as well as notification to the Coastal Commission of its action. Subsequently, the Coastal Commission would consider acceptance of the District's adoption of the PMPA as consistent with its November 2018 certification.

The Project requires, issuance of a non-appealable Coastal Development Permit (CDP) in accordance with the District's Coastal Development Permit (CDP) Regulations and the Coastal Act and Concept Approval in accordance with Board Policy (BPC) No. 357. After Coastal Commission's acceptance of the District's approval of the PMPA, as certified by the Coastal Commission, the project conforms to the land use designations of "Park/Plaza," Precise Plan text in the Centre City Embarcadero Planning District, and Project list (Table 11) of the certified Port Master Plan (PMP). The Project is also fully consistent with Chapter 8 of the Coastal Act. Moreover, because a lease - the vehicle for obtaining real property rights to the Project site - has not yet been executed and the last step to make the PMPA effective - Coastal Commission's acceptance of the District's approval of the PMPA, as certified by the Coastal Commission - has not occurred, authorization for issuance of the CDP is conditioned on the execution of a lease and the Coastal Commission's acceptance. The Concept Approval also would not become effective unless and until final acceptance of the PMPA occurs by the Coastal Commission. Staff has determined that the Project and the associated PMPA, Concept Approval, and CDP were sufficiently analyzed in the above-mentioned EIR.

### **RECOMMENDATION:**

Bayside Performance Park Enhancement Project at Embarcadero Marina Park South:

- A) Conduct public hearing and adopt resolution adopting the Port Master Plan Amendment, as certified by the California Coastal Commission, and directing the filing of notice of said adoption with the California Coastal Commission.
- B) Adopt resolution granting concept approval to the San Diego Symphony Orchestra Association for the Project, conditioned on satisfaction of the California Coastal Commission's acceptance of the District's adoption of the Port Master Plan Amendment, as certified by the California Coastal Commission, and approval and execution of a lease between the District and the San Diego Symphony Orchestra Association.
- C) Adopt resolution authorizing issuance of a non-appealable Coastal Development Permit to the San Diego Symphony Orchestra Association for the Project, conditioned on satisfaction of the California Coastal Commission's acceptance of the District's adoption of the Port Master Plan Amendment, as certified by the California Coastal Commission, and approval and execution of a lease between the District and San Diego Symphony Orchestra Association.

### **FISCAL IMPACT:**

The Board's adoption of the PMPA, as certified by the Coastal Commission, will have no direct fiscal impact to the District's Fiscal Year (FY) 18/19 approved budget as construction of the Project would be entirely funded by the Applicant. The proposed Board actions would enable the Symphony to expand its outdoor programming, currently held June through September, to include year-round events wherein the District would receive a percentage of gross ticket sales and concessions subject to the basic terms described in a binding Letter of Intent (LOI) authorized by the Board on January 9, 2018 (Resolution No. 2018-021) (Attachment D).

### **COMPASS STRATEGIC GOALS:**

The Board's adoption of the PMPA, as certified by the Coastal Commission, will enable the Applicant to construct its Project after subsequent approvals, including without limitation a lease and CDP are obtained. The Project will further enhance the waterfront with a new year-round attraction and will provide additional public recreational amenities in the area.

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 that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

### **DISCUSSION:**

#### **Background**

Under the current PMP, EMPS is included in the Marina Zone subarea of the Centre City Embarcadero Planning District 3 of the PMP. The PMP land use designation for the site is Park/Plaza, which encourages and accommodates public access to and along the interface zone of land and water. As described in the Precise Plan, the Marina Zone is planned to be "intensively developed as a major public and commercial recreational complex." The PMP describes the 22-acre Embarcadero Marina Park, which includes EMPS and Embarcadero Marina Park North combined, as contributing to the transformation of the waterfront area into "an attractive commercial and recreational resource." The PMP further describes this waterfront area as a "lively activity center for residents and visitors alike."

On January 9, 2018, the Board, as Lead Agency under CEQA, conducted a public hearing and adopted Resolution No. 2018-019, certifying the EIR for the Project and adopted findings of fact, a statement of overriding considerations, and an MMRP. Additionally, after the Board's CEQA actions, the Board conducted a public hearing and adopted Resolution No. 2018-020, approving the PMPA and directed District staff to file the PMPA with the Coastal Commission for certification. The Board also adopted Resolution No. 2018-021 authorizing a binding LOI with the Applicant. The EIR and the Project approved by the District in 2018 are summarized below and are further described in the January 9, 2018 agenda sheet for the items, which is included as Attachment E to this agenda sheet

(without agenda sheet attachments).

The Applicant proposes to replace its temporary performance and event venue located on the northern 3.68 acres of the 10.8-acre EMPS with a permanent performance and event venue. Since 2004, the Applicant has operated a seasonal venue for 120 consecutive days (from June to September) for their Bayside Summer Nights series (formerly Summer Pops), during which time 37 performances are allowed with a capacity of up to 5,200 attendees. The permanent performance and event venue would consist of a 57-foot tall acoustic shell housing a stage (of similar height to the temporary stage house), back of house facilities, and rear steps with a public viewing deck; light-emitting diodes (LED) on the interior of the shell that would light the translucent material comprising the shell; stage lighting; a sloped synthetic turf lawn; a box office; two food pavilions; 42-inch tall perimeter fencing between the venue and public promenade and 8-foot tall fencing at the back-of-stage, both with moveable sections to allow for public access during non-event hours; and 68 restroom stalls located beneath the sloped lawn. The maximum capacity of the venue would be increased from 5,200 to 10,000 attendees. The majority of events are anticipated to involve less than 6,500 persons. However, as a requirement of the EIR, no more than six events a year would be allowed to occur with capacities between 8,000 to 10,000 persons. The number of events allowed would increase from 37 events (temporary venue programming limitation) to 55 full-day events or 110 half-day events which is equivalent to 15% of the year.<sup>2</sup> Non-symphony events, such as partnership performances and private rentals, would also be allowed but would be included in the 55 full- or 110 half-day limitation.

In addition to the 15% annual limitation, the Project would be subject to several other public access and programming conditions included in the CDP, including the following.

- The venue would remain open to the general public for 85% of the year (equivalent to 310 full-days or 620 half-days).
- District would be entitled to reserve up to five full-day (or 10 half-day) events per year as District or District-sponsored events. Of these five reserved full-days (or 10 half-days), two full-day (or four half-day) events would be reserved within the peak period<sup>3</sup> and three full-day (or six half-day) events within the non-peak period. These events would be counted within the 15% annual event limitation if they involve admission or constitute a rental for non-public use.
- During the peak period, no more than three consecutive full-day events would occur. A minimum of one full-day is required where the site would be open to the general public immediately after the three-consecutive full-day events.
- Four public events made free of charge to the general public would be provided each year. Of these four free events, a minimum of two would occur during the peak period. These events would not be counted within the 15% annual event limitation as they would not require admission for entry or constitute a rental for non-public use.
- General public access/circulation would remain open at all times on the public promenade surrounding the site, including during all events.
- When the site is open to the general public, temporary special events may continue to utilize the site (or any other portion of EMPS) when authorized via a District-issued Special Event Permit (SEP). Typical SEP events include 100 attendees or less, are non-exclusive to use within a park and/or promenade, and include activities such as birthday celebrations, showers,

runs/walks, weddings, picnics, filming, corporate receptions, festivals, and car shows.

- All event seating and tables would be non-permanent/temporary and promptly removed during extend periods of time (more than 5 days) when no events are scheduled.
- All perimeter fencing would include large removable/moveable sections to provide sufficient public access into the site during non-event hours. Said fencing would be promptly opened after an event and would remain open when no events are scheduled.

As part of the Project, additional improvements to EMPS would include expanding the width of the public promenade around the site from 8 feet to 12 feet; installing new benches along the promenade; replacing existing park lighting with shielded, low correlated color temperature (2,700-3,000 Kelvins) LED lighting; reconfiguring the parking lot to add four parking spaces; replacing basketball courts and fitness equipment; refurbishing the gazebo and restrooms; landscaping; and installing 228 10-foot high solar panels (the solar panels must be installed prior to January 2030 per the MMRP).

The PMPA authorizes the permanent closure of 0.35 acres (15,090 square feet) of park space to accommodate the proposed stage, back of house facilities, box office, and food pavilions facilities. These areas would always be off limits to the general public. To mitigate for this loss, the PMPA and MMRP include a provision that requires the Applicant to fund the creation of an equal amount of park space elsewhere on District tidelands, with priority given to expanding Pepper Park in National City in order to improve coastal access in this community. The amount of \$256,000<sup>4</sup> to fund the creation of the park would be due to the District prior to the commencement of grading or construction activities on the site.

#### Coastal Commission Certification of the PMPA

After the January 9, 2018 Board actions, District staff filed a PMPA application with the Coastal Commission for consideration. During review of the PMPA application, Coastal Commission staff requested several inclusions be added to the PMPA to clarify guarantees for the protection of public access, potential impacts to avian species due to lighting, and sea-level rise adaptation.<sup>5</sup> The PMPA modifies text of the Marina Zone subarea of the Centre City Embarcadero Planning District, adds the proposed Project as a non-appealable project to the Centre City Embarcadero Project List<sup>6</sup> (Table 11), and modifies the text of the South Embarcadero Public Access Program (SE PAP) to allow for the Project. The PMP text revisions are indicated in double-underline in Attachment A and include the following: a description of existing conditions at EMPS regarding the temporary performance venue; a description of the Project including venue design and programming, on-site parking allowances, public access signage, and transportation demand management strategies; provisions for public access to EMPS and low-cost visitor opportunities; mitigation for the permanent loss of park space; lighting provisions (controls on event and public art lighting to protect avian migration); and sea level rise adaptation strategies (venue shall be sited and designed to ensure safety and stability without relying on shoreline armoring). The SE PAP has been modified to incorporate public access provisions for the Project including programming of events (i.e., 15% of the year would be available for private events and 85% of the year would be available to the general public); a description of those portions of EMPS that must be open to the general public at all times (i.e., promenade and fishing pier) and those that may be closed to the general public during events (i.e., public viewing deck, steps, and lawn); and a description of additional public improvements to EMPS (included with

Attachments A and G).

After inclusion of the requests, Coastal Commission staff recommended approval of the PMPA. At the November 8, 2018 Coastal Commission hearing, the Coastal Commission unanimously approved certification of the PMPA, finding the PMPA to be consistent with Chapter 8 of the Coastal Act and praising the Project and District and Coastal Commission staffs' cooperation. Attachment A shows the PMPA, as certified by the Coastal Commission with strikeout/underlines to illustrate the revisions made subsequent to the Board's January 9, 2018 PMPA approval. Correspondence received at the Coastal Commission hearing is included as Attachment F.

### **Concept Approval**

Pursuant to Board Policy No. 357, plans for new tenant development must be presented to the Board for approval if the project is estimated to cost more than \$500,000. The Project cost is approximately \$45 Million. The components of the proposed Project are further detailed in the attached draft CDP (Attachment G).

### **Coastal Development Permit**

A copy of a draft CDP is provided as Attachment G to this Agenda Sheet. The Applicant is required to comply with all applicable mitigation measures that are specified in the MMRP, the PMPA as certified by the Coastal Commission, the SE PAP, and Special Provisions of the draft CDP. Although the CDP would not be appealable to the Coastal Commission, District staff coordinated with Coastal Commission staff to ensure the Special Provisions adequately addressed all identified conformance items. As such, the Special Provisions would ensure project conformance with all applicable mitigation measures, policies, and implementation measures. Formal issuance of the CDP is conditioned on satisfaction of the Coastal Commission's acceptance of the District's adoption of the PMPA, as certified by the Coastal Commission, and approval and execution of a lease between the District and Applicant.

Under the Chapter 8 of the Coastal Act, the District's certified PMP and the District's CDP Regulations, the Project has been determined to be a "non-appealable" CDP as it is not listed in the categories of appealable development (see California Public Resources Code Section 30715 and Section 7(4) of the District's CDP Regulations). The Project is also located between the sea (as defined in the Coastal Act) and the first inland continuous road paralleling the sea, and the Project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein. The Project will enhance public access and public recreation by providing a permanent cultural amenity that would attract the general public to the waterfront during Symphony performances and other events. Project programming would provide various low-cost visitor-serving opportunities to promote public access, including some combination of reduced ticket pricing, free rehearsals, community events, and public educational programs offered free of charge to the general public. The Project also includes park improvements that would benefit the general public including an expanded promenade, benches, and refurbished/replaced exercise equipment, basketball courts, gazebo, and restrooms.

The Project conforms to the land use designations of "Park/Plaza," Precise Plan text, and Project list, and is therefore consistent with the certified PMP. Based on this finding, a conditional CDP may be

issued.

## **Condition to the Concept Approval and CDP Approval**

### Definitive Agreement (Lease)

As of the date of the Board's consideration of the CDP and Concept Approval, the District and Applicant have not entered into a definitive real estate agreement to give the Applicant real property rights to develop and operate the Project (Definitive Agreement). Therefore, authority to issue the CDP and the effectiveness of the Concept Approval are conditioned on the Board approving a Definitive Agreement and the execution of the same by the District and Applicant. This is added as a Special Provision of the draft CDP.

### Coastal Commission Acceptance of PMPA

Historically, the District has waited to request Board authorization to issue a CDP for a project that requires a PMPA until the PMPA has been fully certified - the last step pursuant to the Coastal Commission regulations (i.e., the step following the Board's action on the subject request). However, in an effort to reduce workload and improve the timing necessary for projects that require a PMPA and CDP, District staff, in coordination with the District's General Counsel office, obtained concurrence from Coastal Commission legal staff on the ability to "conditionally authorize" the issuance of a CDP, contingent (i.e., conditioned) on final acceptance of the PMPA by the Coastal Commission. Previously, the Board would adopt the PMPA, as certified by the Coastal Commission (i.e., the subject action of this agenda sheet). Following, the Coastal Commission would then accept the PMPA which would be followed by the Board authorizing issuance of a CDP. Under this linear process, the PMPA adoption and issuance of a CDP would occur at separate Board meetings, typically at least two to three months apart. Under the new process, District staff and the General Counsel's Office is recommending the Board adopt the PMPA, as certified by the Coastal Commission, and "conditionally authorize" issuance of a non-appealable CDP and conditionally approve Concept Approval at the same Board meeting.

Under this process, the Board conditionally approves issuance of a CDP and, for a non-appealable CDP, the approval of the issuance would be deemed automatically effective following Coastal Commission's acceptance of the PMPA. This condition is reflected in the draft Resolution authorizing issuance of the CDP (Attachment H). For this project, a execution of a lease is also required prior to issuance of the CDP.

## **Next Steps**

If the Board adopts the PMPA, as certified by the Coastal Commission, District staff will give notice of said adoption to the Coastal Commission, and the Coastal Commission will then accept the Board's action as being consistent with its certification. The Coastal Commission's final action on the PMPA is expected occur in early 2019.

Pending Board approval of a lease (anticipated for an early 2019 Board hearing), District staff will then issue a non-appealable CDP and concept approval to the Applicant. Construction of the Project is anticipated to commence October 2019, following the 2019 Bayside Summer Nights series, for an

approximate 10-month duration.

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

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

### **Environmental Review:**

The proposed Board actions would adopt the PMPA, as certified by the Coastal Commission, conditionally grant Concept Approval, and conditionally authorize issuance of a non-appealable CDP for the proposed Project. In accordance with CEQA and its implementing guidelines, the potential impacts of the PMPA and proposed Project on the environment were analyzed in the "Bayside Performance Park Enhancement Project and Port Master Plan Amendment" (State Clearinghouse No. 2016121003; UPD #EIR-2016-176; Clerk Document Nos. 67699 and 67700), which was certified by the Board on January 9, 2018 by Resolution 2018-019. Staff has determined that the PMPA, Concept Approval, CDP, and proposed Project are adequately documented, described, disclosed, and analyzed in the EIR. As such, the Board's approval of the PMPA, as certified by the Coastal Commission, and the granting of Concept Approval per BPC No. 357, and authorization to issue a non-appealable CDP, are not separate "projects" for CEQA purposes but are simply additional governmental approvals 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 Board's actions are merely steps in furtherance of the original Project for which environmental review was performed, and no further environmental review is required. All applicable mitigation measures will be implemented for the Project and are included as conditions of the CDP for the Project.

Additionally, the recommended Board actions comply with Section 87 of the Port Act which allows for all 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 actions are consistent with the Public Trust Doctrine.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

Joseph Smith, AICP  
Department Manager  
Development Services

### **Attachment(s):**

Attachment A: PMPA Approved by Coastal Commission on November 8, 2018 (with an amended South Embarcadero Public Access Program)

Attachment B: Roll Call Vote from November 8, 2018 Coastal Commission Hearing



Attachment C: Coastal Commission PMPA Certification Letter  
Attachment D: Binding Letter of Intent approved by the Board on January 9, 2018  
Attachment E: Board Agenda Sheet dated January 9, 2018 (without attachments)  
Attachment F: Correspondence - Coastal Commission Hearing  
Attachment G: Draft Coastal Development Permit

<sup>1</sup> SDUPD BPC Meeting dated January 9, 2018, Agenda Item No. 19: Bayside Performance Park Enhancement Project and Port Master Plan Amendment: A) Conduct public hearing and adopt resolution certifying the Final Environmental Impact Report for the "Bayside Performance Park Enhancement Project and Port Master Plan Amendment," adopt Findings of Fact and Statement of Overriding Considerations, adopt Mitigation Monitoring and Reporting Program and direct filing of the Notice of Determination; B) Conduct public hearing and adopt resolution approving the Port Master Plan Amendment, and directing filing with the California Coastal Commission for certification; and C) Adopt a resolution authorizing a binding Letter of Intent (LOI) with the San Diego Symphony Orchestra Association for a Bayside Performance Park Enhancement Project within Embarcadero Marina Park South; Resolution Nos. 2018-019, 2018-020, and 2018-021.

<sup>2</sup> Half days are based on standard District park operating hours of 6 a.m. to 10:30 p.m., daily.

<sup>3</sup> "Peak period" is the summer months (Memorial Day weekend through Labor Day weekend) including weekdays and weekends. "Non-peak period" is the remaining months post-Labor Day weekend to pre-Memorial Day weekend.

<sup>4</sup> Construction cost estimate prepared by District Engineering dated April 11, 2018.

<sup>5</sup> As part of Board Resolution No. 2018-020, the Board authorized the District's "Executive Director or his/her designated representative...to amend the Port Master Plan Amendment application prior to the California Coastal Commission's certification, if necessary; provided, however, that the Port Master Plan Amendment, as certified by the California Coastal Commission, shall be presented to the Board for its final approval at a subsequent date." The subject PMPA includes all revisions made prior to the Coastal Commission's certification (Attachment A).

<sup>6</sup> The District's original PMPA submittal did not include the Project on the Project List (Table 11) since Public Resources Code Section 30711(a)(4) does not require that non-appealable developments - like the Project - to be listed on project lists within port master plans. District staff and the Office of the General Counsel initially disagreed to add the Project to Table 11 as requested by Coastal Commission staff. After coordination with Coastal Commission staff, District staff agreed to list the Project as a non-appealable project on Table 11, but reserved the District's right to decline to process a PMPA for a non-appealable development in order to add it on a PMP project list if the development was otherwise consistent with the PMP and also agreed to address the project listing issue more generally in the upcoming Port Master Plan Update (PMPU). The District submitted correspondence to Coastal Commission staff to this effect and requested its inclusion in the November 8, 2018 staff report. The letter was included in the public record for this PMPA.