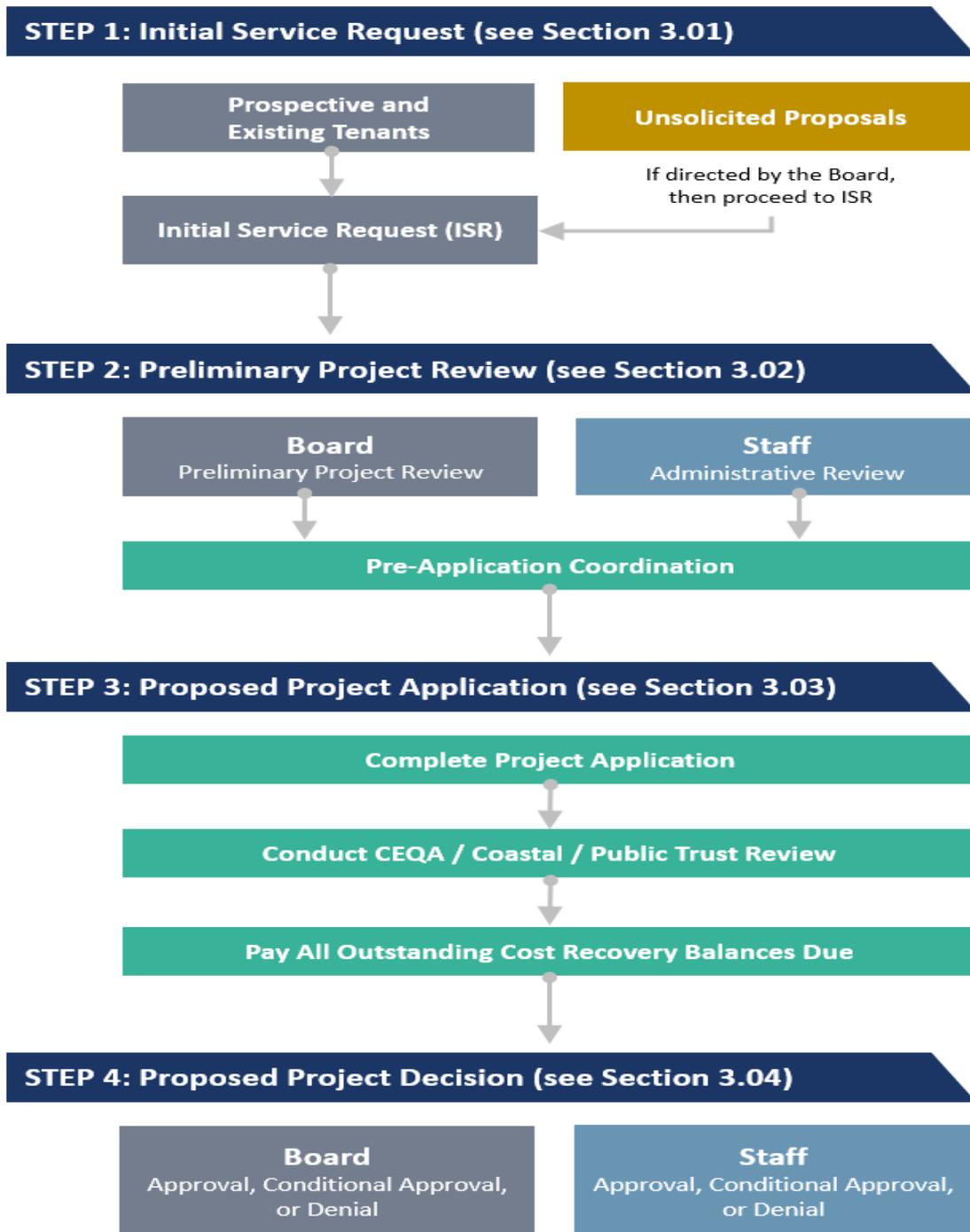


ARTICLE 3

TENANT PROJECT REVIEW



**SECTION NO. 3.00 – GENERAL PROVISIONS**

- (a) Title. The title of this Article shall be “Tenant Project Review.”
- (b) Purpose and Intent. The purpose and intent of this Article is to set forth requirements to process tenant project applications within the District’s jurisdiction; to establish clear guidelines, processes, and general time frames for the exercise of authority; to ensure that the District’s costs of granting development rights are reimbursed; and to ensure that the District can protect the public health, safety, and welfare.
- (c) Scope. This Article shall apply within the geographical limits and jurisdiction of the District including any areas subsequently acquired by any means.
- (d) Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance, is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
- (e) Definitions. Certain words and phrases used herein are defined in Section 3.08, unless the context requires a different meaning.

(Enacted April 3, 2024 - Ordinance No. 3129)

**SECTION NO. 3.01 – INITIAL SERVICE REQUEST**

- (a) Requirement to File an Initial Service Request. All Persons seeking to conduct an activity requiring possession of District real property shall first notify the Reviewing Department in writing of the proposed activity unless the activity has already been reviewed and approved by the District. Notification is effective only if made through an Initial Service Request. The Initial Service Request is not a Project Application.
  
- (b) Authority to Submit an Initial Service Request. An Initial Service Request may be submitted only if:
  - 1. The Person is an existing District tenant with the real property rights necessary to complete the activity; or
  - 2. The Person has a valid right to use the Property or a contingent interest in the Property for the activity; or
  - 3. Staff is in negotiations with the Person for the real property rights necessary to conduct the activity pursuant to one or more of the following authorities:
    - a) The Board has directed Staff to negotiate with the Person, or
    - b) The real property rights required to complete the activity are:
      - 1) Within Staff’s authority to grant and
      - 2) Staff authorizes the Person to submit an Initial Service Request

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- (c) Unsolicited Proposals. Nothing in this Article shall limit the Board’s discretion to consider Unsolicited Proposals. Any Commissioner, or Staff, may request to add an item to the Board agenda that would provide an informational presentation on an Unsolicited Proposal and recommend that the Board direct Staff to process it in accordance with this Article. If directed by the Board, then the Person with an Unsolicited Proposal may submit an Initial Service Request in accordance with the requirements of this Article. Nothing in this Article grants a right or entitlement to a Person that an Unsolicited Proposal will be placed on a Board agenda for Board consideration.
  
- (d) Evaluation of Initial Service Request. The Reviewing Department shall evaluate the activity described in the Initial Service Request to determine what District review may be required.
  - 1.) District Review Required. All activities require District review as determined by the Reviewing Department unless an exception applies.
  
  - 2.) Exceptions from District Review. No further review of the activity will be required, and the Reviewing Department shall notify the Person that the activity may move forward, only if

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there is no feature of the activity that could be considered a Project or Development, including but not limited to:

- 1. Routine interior maintenance and repairs.
- 2. Interior redecorating with like materials and finishes and replacement of interior furniture, fixtures, and equipment (FF&E).
- 3. Similar replacements of existing interiors.

(Enacted April 3, 2024 - Ordinance 3129)

**SECTION NO. 3.02 – PRELIMINARY PROJECT REVIEW**

(a) Reviewing Authority. The Reviewing Department shall determine whether the activity will be subject to Preliminary Project Review as described below.

1. Required - Preliminary Project Review. Preliminary Project Review is required if the activity may require a CEQA document (Environmental Impact Report (EIR) or Subsequent or Supplemental EIR, Mitigated Negative Declaration (MND) or Subsequent MND, or Negative Declaration) and at least one of the following:

- a) Board approval of a Coastal Development Permit (CDP) or a material amendment to an already approved CDP, or
- b) Board approval of an amendment to the Port Master Plan.

2. Requested - Staff Discretion to Request Preliminary Project Review. For an activity that does not meet the requirements above, the Director of the Reviewing Department may seek Preliminary Project Review for any reason including but not limited to regional impacts, cost, public profile, security, or any combination thereof.

3. Not Required – Staff Review and Approval Only. For all other activities not subject to Preliminary Project Review, Applicant shall proceed to Pre-Application Coordination.

(b) Board Direction to Commence Environmental Review. Activities subject to Preliminary Project Review must include a Pre-Design package for the Board’s

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review. The Board may, in its sole and absolute discretion, direct Staff to process the activity as a Proposed Project and commence CEQA review, commence CEQA review with modifications or options, or not commence CEQA review. Public Trust Doctrine review, and certain California Coastal Act reviews, can occur during CEQA review. Preliminary Project Review and direction to commence CEQA review shall not be considered an approval and the Board reserves all its legal discretion.

- (c) Pre-Application Coordination. As defined by the Reviewing Department, one or more coordination meetings between the Applicant and the District are required prior to Applicant filing a Project Application unless waived in writing by the Director of the Reviewing Department.

(Enacted April 3, 2024 – Ordinance 3129)

**SECTION NO. 3.03 – PROPOSED PROJECT APPLICATION**

- (a) Project Application. Applicants shall complete a Project Application which shall be returned to the District for processing. Staff shall prescribe the form in which Project Applications are made and maintain a list specifying the materials and information to be submitted with each Project Application.
  
- (b) Filing a Project Application. A Project Application shall be filed in accordance with the provisions of this Article and processed in accordance with applicable law. Project Applications shall be numbered consecutively in the order of their filing and shall become a part of the District’s official records. The Project Application shall include the materials and information required on the date the Project Application is filed, unless otherwise specified by the Port Code or applicable law.
  - 1. Evaluation for Completeness. The Project Application shall be deemed complete when the Reviewing Department has determined that the Project Application includes all information and materials required. At any time during the initial evaluation and subsequent processing of the Project Application, Staff may request that the Applicant clarify, simplify, or provide additional information or information required for the Project Application. Staff may also utilize third-party consultants acting under Staff’s direction to evaluate for completeness.

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- 2. Cost Recovery. All Proposed Projects shall be subject to the requirements of Article No. 2.00 Cost Recovery of this Port Code, including but not limited to responsibility for the costs of CEQA, Coastal Act, and project review, as well as the costs of environmental and coastal analysis or project management functions conducted by a third-party consultant through one or more three-party agreements in form and content satisfactory to the District. If third-party consultants are needed, Staff shall solely select the third-party consultant(s) and direct the third-party consultant(s). Staff may in their sole and absolute discretion, but have no duty to, share the environmental review with the Applicant prior to public review of the CEQA document if applicable. Staff shall prepare a cost estimate including third-party consultant costs required to complete the District’s review of the Proposed Project. Staff shall invoice the Applicant periodically for any applicable Cost Recovery Fees. Prior to the approval, conditional approval, or denial of a Proposed Project by Staff or the Board as applicable, Applicant must pay all applicable Cost Recovery fees. Nothing in this Article gives an Applicant a right to review or comment on administrative drafts of CEQA review, CDP(s), or amendments thereto or other analyses.
  
- 3. Withdrawal. An Applicant may withdraw a Project Application in writing at any time subject to payment in full for all amounts due to the District as of

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the effective date of withdrawal, including but not limited to cost recovery as defined in Article No. 2.00 Cost Recovery of this Port Code.

(Enacted April 3, 2024 – Ordinance 3129)

**SECTION NO. 3.04 – PROPOSED PROJECT DECISION**

- (a) Processing a Complete Project Application. Following receipt of a Complete Project Application, the Reviewing Department shall process it in accordance with all applicable District policies, procedures, and practices as well as all laws including but not limited to CEQA and the Coastal Act (including preparation of a CEQA document, Port Master Plan Amendment, or Coastal Development Permit as may be required), and ordinances adopted pursuant thereto, in addition to all other lawful requirements.
  
- (b) Discretionary Approval, Conditional Approval, or Denial. Once the Reviewing Department has completed its review and all CEQA review has been completed and approved, the Reviewing Department shall do one of the following:
  - 1. If Board review is required, then Staff shall present their recommendations regarding the Proposed Project to the Board for discretionary approval, conditional approval, or denial which may include, but not limited to, approval or adoption of a Port Master Plan Amendment, authorization of a CDP or material CDP Amendment, or other discretionary approvals.
  - 2. If Board review is not required, then Staff shall approve, conditionally approve, or deny the Proposed Project.
  
- (c) Written Approval or Denial of Proposed Project. All determinations made by the Reviewing Department, or the Board shall be communicated in writing to the Applicant. A Proposed Project that is approved or conditionally approved shall

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become an Approved Project and shall submit progressively detailed drawings and information as may be required by the Reviewing Department.

(d) Changes to an Approved Project. The Applicant shall comply with all conditions of approval. Applicant understands that the Approved Project cannot move forward until the Reviewing Department has provided written approval for the changes. Changes to an Approved Project shall be processed as follows:

1. Following approval, if an Applicant requests changes to an Approved Project including but not limited to drawings, plans, specifications, and revised project description narrative or summary of changes, then such changes shall be submitted to the Reviewing Department in writing and reviewed for substantial conformance to the Approved Project.
2. Changes to an Approved Project may require subsequent CEQA environmental review or additional Coastal Act processing as determined by Staff.

(e) Dispute Resolution Process. If the Applicant disagrees with the denial of a Proposed Project by the Reviewing Department or one or more conditions of approval imposed by Staff, then the Applicant may appeal as follows:

1. First, to the District’s Executive Director through a written objection clearly stating the reasons for the objection and filed with the Reviewing Department by no later than five (5) business days following the determination.

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- 2. Second, if the District’s Executive Director concurs with Staff’s determination, then to the Board through a written objection clearly stating the reasons for the objection and filed with the Office of the District Clerk by no later than five (5) business days following the determination.

(Enacted April 3, 2024 – Ordinance 3129)

**SECTION NO. 3.05 – APPROVED PROJECT CONSTRUCTION**

- (a) Prior to commencement of construction, Applicants must provide the Reviewing Department the following:
  - 1. Verification that all pre-construction conditions have been completed to the satisfaction of the District, and
  - 2. Copies of any permits, licenses, approvals, or other authorizations necessary for commencement of construction issued by any governmental agency, as well as copies of permits subsequently obtained.
  
- (b) After the Approved Project is fully constructed, all Applicants shall deliver to the Reviewing Department a written notice of completion with As-Built Drawings and evidence that all required inspections have been passed, all required permits have been obtained, and all applicable conditions of approval have been satisfied. Applicants must also provide evidence of compliance and any applicable reports to resource and permitting agencies. A temporary Certificate of Occupancy shall be acceptable to the District for the purpose of complying with this section so long as it is followed by a final Certificate of Occupancy delivered to the District once obtained.

(Enacted April 3, 2024 – Ordinance 3129)

**SECTION NO. 3.06 – MONITORING AND INSPECTIONS**

- (a) District Staff Authority. The Executive Director and authorized designee may monitor activities and inspect facilities within or doing business from the District’s jurisdiction, whether or not occupied, at reasonable times, in a reasonable manner, and with reasonable notice to carry out the purposes of this Article or any applicable statute, rule, code or regulation enforceable by the District.
- (b) Construction Inspection. Staff shall inspect Approved Projects to ensure compliance with District conditions of approval to ensure construction is in substantial conformance to the conditions of the Project Approval, Field Directives, construction measures, and any special conditions identified in the Coastal Development Permit if applicable.
- (c) Scope of Monitoring. Monitoring may include any and all actions necessary to determine compliance with this Article, District-issued permits, and conditions of approval. Monitoring may include, but may not be limited to, sampling, taking measurements, metering, and placing devices necessary to sample, monitor, meter, record, visually inspect and review records. When samples are collected, the Applicant or Authorized Agent may request and receive split samples. Records, reports, analyses, or other information required under this Article may be inspected and copied, and photographs taken to document a condition and/or a violation of this Article.

(d) Inspection and Monitoring Work Product and Costs. Any work product not subject to the attorney-client privilege that is generated by the District pursuant to an inspection and monitoring shall be timely shared with the Applicant following Applicant's request in writing. All inspection and monitoring costs shall be borne by the District unless and to the extent the inspection and monitoring substantiates one or more violations, in which case, the Applicant shall pay all third-party costs excluding the District's staff time.

(Enacted April 3, 2024 – Ordinance 3129)

**SECTION NO. 3.07 – VIOLATIONS AND ENFORCEMENT**

(a) Violations. The following are violations of this Article and may be enforced by Staff or the Board, or both, under this Section 3 or Section 12 of the District’s Coastal Development Permit Regulations, or the Coastal Act, or all three:

1. Commencement of an activity which has not obtained the required discretionary approval pursuant to this Article.
2. Failure to comply with the conditions of a discretionary approval or causing, allowing, aiding, or abetting non-compliance.
3. Commencement of corrective actions for violations of this Article must commence within ten (10) business days after the District notifies the Applicant of a violation in writing, Applicant shall commence and diligently pursue to completion the activities necessary to correct the violation. Each day or part thereof that action necessary to correct a violation is not initiated and diligently pursued is a separate violation.
4. A separate violation may be considered to have taken place for each day of non-compliance with this Article exists.
5. It is unlawful to make any false statement or misrepresentation to the District or its agents concerning compliance with this Article. False statements or misrepresentations may include, but are not limited to, any misrepresentation in a voluntary disclosure, any submission of a report that omits required material facts without disclosing such omission, and any

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withholding of information required to be submitted by or pursuant to this Article. It is unlawful to conceal a violation of this Article.

- (b) Penalties. Violations related to a Coastal Development Permit or the Coastal Act may result in judicial action against the violator, referral to the California Coastal Commission, civil penalties, fines, a notice of violation recorded against the leasehold interest, a cease and desist order as authorized by the Port Act, the Port Code including but not limited to Article 0, the California Coastal Act (see Public Resource Code §30800 et seq.), or any other law, or any combination thereof.
- (c) Exclusions. Excluded from this Subsection are legal nonconforming uses established prior to enactment of regulations that require discretionary approval for the activity.
- (d) Notice of Violation. Staff shall orally notify the alleged violator by telephone or in person of the violation, followed by a written notice given by certified mail or hand delivered to the alleged violator. The notice shall include the following:
  - 1. A description of the activity which constitutes the violation.
  - 2. A statement that the described activity constitutes a violation of this Article.
  - 3. A statement that the described activity be immediately stopped and cured, or the alleged violator may be subject to penalties.
  - 4. The name, address, and phone number of the Staff which is to be contacted for further information.

(Enacted April 3, 2024 – Ordinance 3129)

**SECTION NO. 3.08 – DEFINITIONS**

(a) Definitions. Certain words and phrases used herein are defined in this Section unless the context requires a different meaning.

1. “Applicant” means any of the following:
  - a) a Person who has properly submitted a Project Application and is the record lessee of the real property that is the subject of the activity;
  - b) the record lessee’s Authorized Agent;
  - c) any other Person who can demonstrate a legal right, interest, or entitlement to the current or future use of the real property; or
  - d) a Person that has an existing legal agreement with the District to process a Project Application.
  
2. “Approved Project” means a Proposed Project which has been reviewed and approved with or without conditions and with or without modifications by Staff, the Board, or both in accordance with this Article and any applicable regulations and laws.
  
3. “As-Built Drawings” means all plans and specifications for the Approved Project that include all modifications to the original design during construction. For all Approved Projects approved by the Board, As-Built Drawings must include a fully functional, intelligent digital twin of the Approved Project suitable for the District’s use and reference.

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- 4. “Authorized Agent” means an agent acting on behalf of the record lessee as its representative where the record lessee has signed and submitted in writing a record granting the authority to represent the record lessee and to submit an Initial Service Request or file a Project Application and may include authorization to process the Application in part or entirety.
- 5. “Board” means the District’s Board of Port Commissioners.
- 6. “CEQA” means the State of California Guidelines for the California Environmental Quality Act, codified as California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq., and the District’s Guidelines for Compliance with CEQA on file in the Office of the District Clerk as Document No. 36294, as amended.
- 7. “Complete Project Application” means a Project Application that meets all submittal requirements as determined by the Reviewing Department.
- 8. “Development” means development as defined in California Public Resources Code Section [30106](#) and any associated laws, regulations, and judicial decisions.
- 9. “District CDP Regulations” means the San Diego Unified Port District’s Coastal Development Permit Regulations on file in the Office of the District Clerk as Document No. 19171, as amended from time to time.
- 10. “District Conditional Project Approval” means the written documentation issued by the Reviewing Department and countersigned by the Applicant

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that a Proposed Project is an Approved Project and specifying therein the extent of the approval(s) granted.

- 11. “Initial Service Request” means a form submitted by a Person to Reviewing Department to notify the District of a proposed activity to be conducted in the District’s jurisdiction, whether or not the activity is later determined to be a Project which includes a Pre-Design package.
- 12. “Person” means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.
- 13. “Pre-Design” means a brief project description accompanied by site plan, schedule, and cost estimate.
- 14. “Preliminary Project Review” means review by the Board to determine whether and to what extent an activity may become a Proposed Project.
- 15. “Project” means any activity consistent with the definition of a project under CEQA as codified in California Public Resources Code Section 21065 and any associated laws, regulations, and judicial decisions.
- 16. “Project Application” means an application for a Project submitted after an Applicant has completed the Initial Service Request process.
- 17. “Proposed Project” means any Project which is under review by the Reviewing Department and has not yet been approved by Staff, or the Board, or both as may be required.

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- 18. “Reviewing Department” means one or more District department(s) responsible for processing Project Applications as designated by the Executive Director from time to time.
- 19. “Staff” means District staff as determined by the District’s Executive Director or their designee.
- 20. “Substantial Conformance” means a minor change to an Approved Project which does not require further CEQA review and does not substantially change the original approval or the effect of the approval on surrounding property. Changes to Approved Projects including but not limited to the following, may be found to be in substantial conformance:
  - a) Necessary to comply with requirements from other public agencies.
  - b) Made to comply with original conditions of approval.
  - c) Minor revisions and modifications.
- 21. “Unsolicited Proposal” means any proposal for Development received by Staff or the Board which is not the result of a District-initiated solicitation (Request for Qualifications, Request for Proposals, or other) or submitted by an existing District tenant pursuant to Board policies.

(Enacted April 3, 2024 – Ordinance 3129)