

RESOLUTION 2014-105

RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT TO SAN DIEGO SYMPHONY FOR SYMPHONY SUMMER POPS CONCERT SERIES IN EMBARCADERO MARINA PARK SOUTH

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, San Diego Symphony Orchestra Association's (San Diego Symphony) Summer Pops Concert Series (Project or Summer Pops) is an approximately 4-month concert series (June to September) with up to 37 concerts and has historically been held on a portion of Embarcadero Marina Park South (EMPS); and

WHEREAS, the Project consists of (a) the use of a portion of EMPS (158,449 square feet or 3.64 acres) (Site) for a 4-month concert series (June to September) with up to 37 concerts typically on Thursdays, Fridays, Saturdays, and/or Sundays from 7:00 p.m. to 10:00 p.m., with the exception of four concerts ending no later than 10:30 p.m. and an occasional afternoon concert; (b) the use of the Site for associated rehearsals; (c) noise monitoring at two concerts throughout the concert season, with a maximum allowed noise limit of 95 dBA and with the possibility of modification of the noise monitoring requirements if the District receives a substantial number of noise complaints; (d) the erection of a temporary stage, cabaret tables, grandstand seating (fold-down chairs), food and beverage areas; (e) the placement of temporary restrooms, security fences, box office, communications/electrical cabling; (f) the dismantling of the improvements; and (g) restoration of the Site to the condition as maintained by the District prior to San Diego Symphony's occupancy of the Site; and

WHEREAS, the Project complies with all District policies and requirements; and

WHEREAS, the District is the trustee of said tidelands where the Project will be constructed; and

WHEREAS, the Project is located within Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan and is designated as "Park/Plaza and Promenade" in the Port Master Plan; and

WHEREAS, the Project conforms to the certified Port Master Plan because it is a short-term use of land for an event utilizing an existing park and promenade that will draw the public to the San Diego Bay thereby encouraging recreational opportunities and promoting public access to the waterfront; and

WHEREAS, the Project is located between the sea (as defined in the California Coastal Act) and the first inland continuous public road paralleling the sea and is fully consistent with California Public Resources Code Sections 30604(c), 30210-30224, and all applicable California Coastal Act policies; and

WHEREAS, the Project constitutes "development" pursuant to Section 30106 of the California Public Resources Code because, among other things, it constitutes a change in intensity of use at the Site and includes the placement or erection of structures on the Site; and

WHEREAS, in accordance with the District's Coastal Development Permit (CDP) Regulations, the Project is considered "Non-Appealable" because it does not qualify as an "Excluded," "Appealable," or "Emergency" development; and

WHEREAS, an application has been prepared for a non-appealable CDP to implement the Project; and

WHEREAS, the Board finds that said application and attachments contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that the Project conforms to the certified Port Master Plan; and

WHEREAS, the Board considered the non-appealable CDP at the May 6, 2014 Board meeting; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), California Public Resources Code Section 21000, et seq., and its implementing regulations, 14 California Code of Regulations Section 15000, et seq. (CEQA Guidelines) and the District's CEQA Guidelines, the Board of Port Commissioners (Board) adopted a Final Subsequent Mitigated Negative Declaration for the San Diego Symphony Summer Pops, Embarcadero Marina Park South Tidelands Use and Occupancy Permit (SMND) (UPD #83356-SMND-211; Clerk's Document No. 51555), including an associated Mitigation Monitoring and Reporting Program, on March 13, 2007 by Resolution 2007-49 and pursuant to CEQA Guidelines section 15164, an Addendum to the Final SMND (Clerk's Document No. 56435) was prepared and filed on April 20, 2010; and

WHEREAS, the Project falls within the scope of the Final SMND and Addendum to the Final SMND; and

WHEREAS, all materials with regard to the Project were made available to the Board for its review and consideration of the Project including, but not limited to, the Final SMND, the Addendum to the Final SMND, the associated Staff Report and Addenda Sheet and all documents and records filed in this proceeding by the District and all interested parties.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. The Board finds the facts recited above are true and further finds that this Board has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. The Project, in general, consists of:

a. The use of the Site for a 4-month concert series (June to September) with up to 37 concerts typically on Thursdays, Fridays, Saturdays, and/or Sundays from 7:00 p.m. to 10:00 p.m., with the exception of four concerts ending no later than 10:30 p.m. and an occasional afternoon concert;

b. The use of the Site for associated rehearsals;

c. Noise monitoring at two concerts throughout the concert season, with a maximum allowed noise limit of 95 dBA and with the possibility of modification of the noise monitoring requirements if the District receives a substantial number of noise complaints;

d. The erection of a temporary stage, cabaret tables, grandstand seating (fold-down chairs), food and beverage areas;

e. The placement of temporary restrooms, security fences, box office, communications/electrical cabling;

f. The dismantling of the improvements; and

g. Restoration of the Site to the condition as maintained by the District prior to San Diego Symphony's occupancy of the site.

3. Having reviewed and considered all the materials made available to the Board, the Board further finds and determines:

a. The applicable provisions of CEQA, the CEQA Guidelines and the District CEQA Guidelines have been duly observed in the considerations of this matter and all of the previous proceedings related thereto;

b. The Project falls within the scope of the analysis in the Final Subsequent Mitigated Negative Declaration for the San Diego Symphony Summer Pops, Embarcadero Marina Park South Tidelands Use and Occupancy

Permit (SMND) (UPD #83356-SMND-211; Clerk's Document No. 51555), which was approved by the Board of Port Commissioners on March 13, 2007 by Resolution 2007-49 and the Addendum to the Final SMND (Clerk's Document No. 56435, filed on April 20, 2010), both of which have been completed in compliance with CEQA, the CEQA Guidelines and District CEQA Guidelines for implementation thereof; and

c. There is no substantial evidence that the Project would have a significant environmental effect on the environment with implementation of the mitigation measures identified in the Final SMND and the Mitigation Monitoring and Reporting Program; and

d. There is no substantial evidence that the Project will have a significant unmitigated effect on the environment; and

e. The Project shall implement the mitigation measures identified in the Final SMND and Mitigation Monitoring and Reporting Program; and

f. The Final SMND and Addendum to the Final SMND are complete and adequate; and

g. The Final SMND and Addendum to the Final SMND were presented to the Board and the Board has fully reviewed and considered the information contained therein prior to authorizing the issuance of the non-appealable CDP.

4. Pursuant to California Public Resources Code Section 21152 and CEQA Guidelines Section 15075, the Clerk of the Board shall cause a Notice of Determination to be filed with the Clerk of the County of San Diego and the State Office of Planning and Research.

5. Pursuant to California Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15074(c), the location and custodian of the documents and other materials which constitute the record of proceedings on which this Resolution is based is the Clerk, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92101.

6. 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 use designations within the limits of the Project are Park/Plaza and Promenade.

7. The Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. Pursuant to California Public Resources Code Section 30106, the Project constitutes "development" because, among other things, it constitutes a change in intensity of use at the Site and includes the placement or erection of structures on the

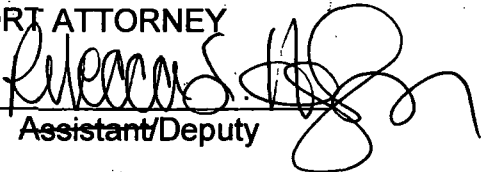
Site. In accordance with the District's CDP Regulations, the Project is considered "development" but is "Non-Appealable" because it does not qualify as an "Excluded," "Appealable," or "Emergency" development. The Project conforms to the certified Port Master Plan because it is a short-term use of land for an event utilizing an existing park and promenade that will draw the public to the San Diego Bay thereby encouraging recreational opportunities and promoting public access to the waterfront and, as such, is a Non-Appealable Development that conforms to the certified District Master Plan. The Project is also consistent with California Public Resources Code Sections 30715.5, 30718, 30604(c) and 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

8. Based on the entire record available to the Board and the findings set forth in this Resolution, the Executive Director or his designated representative is hereby authorized and directed to issue a Non-Appealable CDP for the Project, entitled "San Diego Symphony Summer Pops Concert Series." Said Non-Appealable CDP shall require compliance with all the conditions set forth in the Non-Appealable CDP, including, but not limited to, the mitigation measures in the Final SMND and Mitigation Monitoring and Reporting Program.

APPROVED AS TO FORM AND LEGALITY:

PORT ATTORNEY

By: Assistant/Deputy



PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 6th day of May 2014, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama

NAYS: None.

EXCUSED: None.

ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Laura Nicholson
Deputy District Clerk

(Seal)