

RESOLUTION 2017-117

RESOLUTION AUTHORIZING ISSUANCE OF NON-APPEALABLE COASTAL DEVELOPMENT PERMIT FOR THE PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT

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, the U.S. Sand Sculpting Challenge and Dimensional Art Exhibition (Project) has occurred annually on North Embarcadero since 2012 and 3D Art Expo LLC, as the project proponent and applicant is proposing to hold the Project as a five-day temporary event from Thursday, August 31, 2017 through Monday, September 4, 2017 with installation and take down taking an additional nine (9) days for a total period of August 26, 2017 through September 8, 2017; and

WHEREAS, the proposed Project would utilize all of Broadway Pavilion, Pier, and Plaza, located at 1000 N. Harbor Drive in San Diego, California, as well as a portion of the area between the adjacent promenade and N. Harbor Drive, and the District would provide event sponsorship in the form of service fee waivers for the Project; and

WHEREAS, the Project generally includes the installation, removal and operation of temporary structures, including amusement rides, concession vendor stands, entertainment stages, exhibition booths and a "Kid Zone," as well as a sand sculpting competition and art exhibition; and

WHEREAS, access to the "Kid Zone" and the Broadway Pier would require a paid ticket, but the public promenade adjacent to Broadway Pier, running linear to the shoreline, would be partially used for sponsor installations and booths and would remain open to general public use at all times and an unobstructed pedestrian passageway from the promenade to N. Harbor Drive would be maintained at all times; and

WHEREAS, parking for the Project would be accommodated in nearby public parking lots, including the B Street Pier parking lot operated by ABM Parking Services, with approximately 2,000 available parking spaces in the vicinity and information and incentives for public transit use have been distributed via the event organizers website; and

WHEREAS, the Project is located in the Civic Zone Subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan, and the land use designations within the limits of the Project site are Marine Terminal, Park/Plaza, and Promenade; and

WHEREAS, the Project, which is a temporary special event, is consistent with the existing certified land and water use designations, which allow for park-activating recreational uses that are ancillary to public uses; and

WHEREAS, the Project is consistent with the applicable special conditions and Programming Criteria of the NEVP Phase 1 Coastal Development Permit (CDP) (specifically, the Broadway Pier Design Principles and Programming Plan), which authorizes the use of Broadway Pier for special events, such as festivals; and

WHEREAS, the Project constitutes “development” under Section 30106 of the California Coastal Act (Coastal Act) as it will involve the construction of temporary structures and a temporary increase in intensity of land use; and

WHEREAS, in accordance with the California Coastal Commission (CCC) Temporary Event Guidelines (Guidelines), temporary events shall not be excluded from CDP requirements if they (1) are held between Memorial Day Weekend and Labor Day; and (2) occupy all or a portion of a sandy beach area or the District’s equivalent of shoreline parks/plaza; and (3) involve a charge for general public admission or seating where no fee is currently charged for use of the same area; and

WHEREAS, the proposed Project meets all of the Guidelines criteria and requires the issuance of a CDP as it is being held from August 26, 2017 to September 8, 2017, will charge admission for the “Kid Zone” and is located adjacent to the Bay on a pavilion, a pier, and park/plaza area; and

WHEREAS, pursuant to the District’s CDP Regulations, the Project has been determined to be a “non-appealable” development because it is not considered an “excluded,” “emergency,” or “appealable” development; and

WHEREAS, pursuant to the Coastal Act, the proposed development is considered “non-appealable” because it is not the type of “appealable” development listed in Section 30715 of Chapter 8 of the Coastal Act, which specifies the sole categories of development that may be appealed to the CCC; and

WHEREAS, the “non-appealable” category of development is supported by the record, including the plain language of Section 30715, and the certified PMP, the District’s CDP Regulations and the characteristics of the Project; and

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

WHEREAS, the Board of Port Commissioners (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 August 8, 2017 Board meeting; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA) statutes and guidelines, the Project is Categorically Exempt pursuant to CEQA State Guidelines Sections 15304 (Minor Alterations to Land), 15311 (Accessory Structures), and/or 15323 (Normal Operations of Facilities for Public Gatherings) and Sections 3.d. (6) and/or 3.i. of the District's Guidelines for Compliance with CEQA.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (Board) 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. In general, the Project consists of the installation, removal and operation of temporary structures, including amusement rides, concession vendor stands, entertainment stages, exhibition booths and a "Kid Zone," as well as a sand sculpting competition and art exhibition.

3. The Project is located in the Civic Zone Subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan. The land use designations within the limits of the Project site are Marine Terminal, Park/Plaza, and Promenade. Park-activating recreational uses that are ancillary to public uses are allowed uses under the Park/Plaza land use designation. Furthermore, the Project is consistent with the applicable special conditions and Programming Criteria of the NEVP Phase 1 Coastal Development Permit (CDP) (specifically, the Broadway Pier Design Principles and Programming Plan), which authorizes the use of Broadway Pier for special events, such as festivals. Therefore, the Project is consistent with the certified land use designations, the certified Port Master Plan, and the NEVP Phase 1 CDP, as a park-activating temporary special event/festival.

4. The Project site is identified as estuary/wetland on the 1975 Coastal Plan and consistent with Public Resource Code Section 30700, the Project must comply with the Chapter 3 and 8 policies of the California Coastal Act (Coastal Act). The Project's construction of temporary improvements and temporary intensification of the use of public areas are "development" as defined in Section 30106 of the Coastal Act. The temporary use of the Project site is fully consistent with applicable land uses identified in the Port Master Plan and Chapters 3 and 8 of the Coastal Act (see Cal. Public Resources Code Section 30700, et seq.).

5. In accordance with the California Coastal Commission (CCC) Temporary Event Guidelines (Guidelines), temporary events shall not be excluded from CDP requirements if they (1) are held between Memorial Day Weekend and Labor Day; and (2) occupy all or a portion of a sandy beach area or the District's equivalent of shoreline parks/plaza; and (3) involve a charge for general public admission or seating where no fee is currently charged for use of the same area. The proposed Project meets all of the Guidelines criteria and requires the issuance of a CDP as it is being held from August 26, 2017 to September 8, 2017, will charge admission for the "Kid Zone" and is located adjacent to the Bay on a pavilion, a pier, and park/plaza area.

6. In accordance with the District's CDP Regulations, the Project is "Non-Appealable" because it does not qualify as an "Excluded," "Appealable," or "Emergency" development. Furthermore, pursuant to the Coastal Act, the proposed development is considered "non-appealable" because it is not the type of "appealable" development listed in Section 30715 of Chapter 8 of the Coastal Act, which specifies the sole categories of development that may be appealed to the CCC within the District's jurisdiction. The non-appealable category of development is supported by the record, including, without limitation, the plain language of Section 30715, and the certified PMP, the District's CDP Regulations and the characteristics of the Project.

7. Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) and its implementing CEQA Guidelines, the Board of Port Commissioners (Board) has exercised its independent judgment and analyzed the proposed action and Project as described above. Based on the entire record, the Board finds that the proposed project is exempt from the provisions of CEQA and a Categorical Exemption is hereby issued pursuant to CEQA Guidelines Sections 15304 (Minor Alterations to Land), 15311 (Accessory Structures), and/or 15323 (Normal Operations of Facilities for Public Gatherings). The Board further determines that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

8. The Board also hereby finds that the proposed action or project complies with Section 87 of the Port Act. Section 87 of the Port Act expressly 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. Accordingly, the Board also finds the proposed action or project is consistent with the Public Trust doctrine.

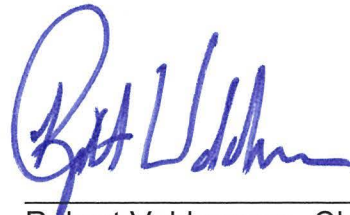
9. Based on the entire record available to the Board and the findings set forth in this Resolution, the Executive Director or her designated

representative is hereby authorized and directed to issue a Non-Appealable CDP for the "U.S. Sand Sculpting Challenge and Dimensional Art Exhibition at Broadway Pier." Said Non-Appealable CDP shall require compliance with all the conditions set forth in the Non-Appealable CDP; provided, however, as a condition of this approval, 3D Art Expo LLC shall indemnify and hold the District harmless against all third-party legal challenges, claims, lawsuits, proceedings, and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District, related to the District's approval of this Non-Appealable CDP. Said indemnity and hold harmless condition is independent of any agreements by and between 3D Art Expo LLC and the District.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

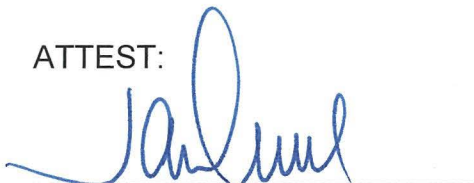

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of August 2017, by the following vote:
AYES: Bonelli, Castellanos, Malcolm, Merrifield, and Valderrama
NAYS: None.
EXCUSED: Moore, and Zucchet
ABSENT: None.
ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

