

## **RESOLUTION 2019-005**

### **RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT FOR THE FENDER SYSTEM UPGRADE AT NORTH BERTH OF B STREET PIER 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 District, as the applicant and project proponent, proposes the replacement and upgrade of an existing fender system (Project) located on the north berth of District-owned B Street Pier in San Diego, California; and

**WHEREAS**, the Project includes the removal and replacement of the existing deteriorated fender system with a new primary fender system designed for cruise ships, and a secondary fender system designed for smaller vessels and barges; and

**WHEREAS**, more particularly, the Project includes: (1) removal and disposal of existing timber and plastic fender piles, timber wales and chocks, hanging piles, steel hardware and all miscellaneous wood members; (2) installation of new pre-stressed concrete fender piles, foam-filled marine fenders, timber wales and chocks, steel wales and hardware, elastomeric fender elements, floating camels, safety ladders, and other incidental items of work; (3) the reconfiguration of the existing cluster pile system for the foam-filled fenders; and (4) the reorientation of existing riprap at the base of the mole pier; and

**WHEREAS**, the Project would result in a net decrease in bay fill and over-water coverage due to its design and would provide a more reliable energy absorbing system with increased protection against damage to both vessels and the pier; and

**WHEREAS**, the Project is located within the jurisdiction of the District and in the California Coastal Zone; and

**WHEREAS**, Section 30106 of the California Coastal Act defines "development" as, among other things, demolition and the placement or erection of any solid material or structure and consequently, the Project is considered "development" under the California Coastal Act; and

**WHEREAS**, the Project may have been excluded development under the District's CDP Regulations (Regulations), district staff recommended a "non-appealable" Coastal Development Permit (CDP) under Section 7.d.(3) of the

District's CDP Regulations (Regulations) because of California Coastal Commission staff's inquires as to the amount of fill and overwater coverage, as well as a request for an assurance that no increase in fill or overwater coverage occurs, and pursuant to Coastal Act Section 30715 and Sections 7.d.(4) of the Regulations which do not list fender marine systems for a marine terminal as appealable developments requiring an appealable CDP; and

**WHEREAS**, the need for the replacement and upgrade of the existing and deteriorated fender system does not constitute an "emergency" development under Section 7.d(2) of the Regulations; and

**WHEREAS**, the Project is conditioned to ensure that reorientation of riprap does not allow riprap to extend past the existing pier footprint and therefore not considered "excluded" under the Existing Facilities exclusion, Sections 8.a. of the Regulations; and

**WHEREAS**, the "non-appealable" category of development is supported by the record, including the plain language of Section 30715, the PMPA, the District's CDP Regulations and the characteristics of the Project; and

**WHEREAS**, accordingly, 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 application and attachments thereto contain correct and accurate statements of fact; and

**WHEREAS**, the Project site 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 (PMP); and

**WHEREAS**, fender systems are consistent with the certified PMP and the certified land and water use designations of the Project site for Marine Terminal and Terminal Berthing as fender systems are ancillary or accessory to a marine terminal and are allowed uses because they allow for the safe berthing of vessels; and

**WHEREAS**, the Project site is identified as an estuary on the 1975 Coastal Plan and, consistent with Public Resource Code Section 30700, the Project must comply with Chapters 3 and 8 of the Coastal Act; and

**WHEREAS**, as designed and conditioned, the Project results in a net decrease in 269.3 square feet of fill and 192 square feet of over-water coverage, resulting in a Project where there is no feasible less environmentally damaging alternative for a development that involves new or expanded port facilities, consistent with Public Resource Code Section 30233(a)(1); and

**WHEREAS**, the BPC considered the non-appealable CDP at the January 16, 2019 BPC meeting.

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

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

2. In general, the Project includes: 1) removal and disposal of existing timber and plastic fender piles, timber wales and chocks, hanging piles, steel hardware and all miscellaneous wood members; (2) installation of new pre-stressed concrete fender piles, foam-filled marine fenders, timber wales and chocks, steel wales and hardware, elastomeric fender elements, floating camels, safety ladders, and other incidental items of work; (3) the reconfiguration of the existing cluster pile system for the foam-filled fenders; and (4) the reorientation of existing riprap at the base of the mole pier.

3. The land and water use designations within the limits of the Project are Marine Terminal and Terminal Berthing and the Project is consistent the land and water use designations and the certified PMP.

4. The BPC finds that that the issuance of a Non-Appealable CDP and approving plans and specifications and awarding a contract for replacement and upgrade of the north berth of B Street Pier, is Categorically Exempt pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), 15304 (Minor Alterations to Land) and/or Sections 3.a. (1) (Existing Facilities), 3.b. (1) (Replacement or Reconstruction), and 3.d. (6) and (7) (Minor Alterations to Land) of the District's Guidelines for Compliance with CEQA because the project in question would involve no expansion of use beyond that previously existing, would be located on the same site and have substantially the same purpose and capacity as the structure being replaced, would not involve the removal of mature, scenic trees, and would have no permanent effects on the environment.

5. The BPC finds that the District has determined none of the six exceptions to the use of a categorical exemption apply to this Project (CEQA Guidelines Section 15300.2).

6. The proposed Board direction or action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operations of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient,

for the promotion and accommodation of commerce and navigation. Consequently, the proposed actions are consistent with the Public Trust Doctrine.

7. Based on the entire record available to the BPC and the findings set forth in this Resolution, the Executive Director or her designated representative is hereby authorized to issue a non-appealable CDP for the fender system upgrade at North Berth of B Street Pier Project.

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 16<sup>th</sup> day of January 2019, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, and Zucchet

NAYS: None.

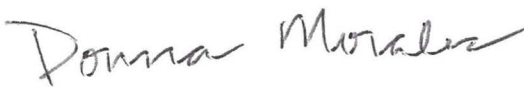
EXCUSED: Valderrama

ABSENT: None.

ABSTAIN: None.

  
Garry J. Bonelli, Chairman  
Board of Port Commissioners

ATTEST:

  
Donna Morales  
District Clerk

(Seal)