



**CEQA and COASTAL DETERMINATIONS
and
NOTICE OF APPROVAL**

Project: Tideland Use and Occupancy Permit to Fish Market Restaurants for Outdoor Dining at Centre City Embarcadero
Location: 1 Tuna Lane #3, San Diego, CA 92101
Parcel No.: 018-040 and 018-038
Project No.: 2020-068a
Applicant: Dwight Colton, President, Fish Market Restaurants, Inc., 1 Tuna Lane #3, San Diego, CA 92101
Date Approved: June 8, 2020 **Revised:** Feb 10, 2021

PROJECT DESCRIPTION

The proposed project is the extension of a Tideland Use and Occupancy Permit (TUOP) to Fish Market Restaurants, Inc. (Tenant), for their use of approximately 1,800 square feet of land area located in the City of San Diego, California. The area proposed for use under this TUOP is proposed to be used only and exclusively for the purpose of an expanded dining area for guests of the Tenant during normal operating hours of the existing Fish Market Restaurant (Restaurant), which is located immediately adjacent to the TUOP property. The TUOP would permit food service operations within the TUOP area seven (7) days a week during business hours and for no other purpose whatsoever without the prior written consent of the Executive Director of District in each instance. The Tenant would be required to maintain the public path to the bay throughout daily service. Additionally, the District reserves the right to require a change in hours of operations and/or seating arrangement. The Tenant would be responsible for compliance with all laws and regulations associated with the activities on or in connection with the above-described premises, including those regulations, guidelines, and standards adopted by relevant agencies related to the coronavirus 2019 (COVID-19), and in all uses thereof, including those regulating stormwater and hazardous materials.

The TUOP area is proposed by the Tenant as a result of regulations related to COVID-19 that place restrictions on indoor dining. With the addition of the TUOP area, the Restaurant would be capable of accommodating approximately the same number of patrons that would usually be served by the Restaurant, absent COVID-19 restrictions. Therefore, the TUOP would not expand the existing Restaurant patronage and no permanent improvements would be constructed. In addition, the TUOP area consists of a public promenade so while the use of the TUOP area would change, it would be temporary in nature, would expand an existing adjacent Restaurant use within the TUOP area during Restaurant operation, and would maintain public access.

It is anticipated that the TUOP amendment would increase the term of the TUOP by approximately nine (9) months, extending the expiration date from January 31, 2021 to October 31, 2021. The TUOP may be terminated by the District or Tenant as a matter of right and without cause at any time upon providing forty-eight (48) hours' notice in writing to the other party of such termination.

The following categorical determinations are based on the project submittal and all project information known to the District as of the date of this determination.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

CATEGORICAL DETERMINATION

Categorical Exemption: SG §15301, Class 1/Section 3.a: Existing Facilities

- 3.a. Existing Facilities (SG § 15301) (Class 1): Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:
- (4) New and renewed short-term tenancy agreements which do not result in change in the existing use. This exemption does not apply to any new development associated with the

activities of the tenant. This exception is also inapplicable if the cumulative impact of continuing the existing use or conditions in the same place, over time, is significant.

The proposed project is determined to be Categorically Exempt pursuant to the CEQA Guidelines and the Section of the District's *Guidelines for Compliance with CEQA* as identified above. This is appropriate for the proposed project because it consists of a TUOP for an expanded dining area for an existing restaurant and would not result in a significant cumulative impact due to the continuation of the existing use. 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).

Pursuant to CEQA Guidelines Section 15062, a 35-day statute of limitations for this CEQA exemption shall apply from the date a Notice of Exemption is posted with the San Diego County Clerk, or a 180-day statute of limitations for this CEQA exemption shall apply if no Notice of Exemption is filed.

CALIFORNIA COASTAL ACT

PORT MASTER PLAN CONSISTENCY

Planning District: 3 - Centre City Embarcadero (Precise Plan Figure 11)

Land Use Designations: Commercial Recreation; and Park/Plaza

The proposed project conforms to the certified Port Master Plan because it consists of a TUOP for an expanded dining area for an existing restaurant, consistent with the existing certified Land use designations. The proposed project would not change the use of the site nor would it interrupt or expand the existing conforming use of the site.

CATEGORICAL DETERMINATION

Categorical Exclusion: Section 8.a: Existing Facilities

- 8.a. Existing Facilities: The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.

The proposed project is determined to be Categorically Excluded pursuant to the Section of the District's *Coastal Development Permit Regulations* as identified above. This is appropriate for the proposed project because it consists of a TUOP for an expanded dining area for an existing restaurant and would involve negligible expansion of use beyond that previously existing.

Pursuant to California Coastal Act Section 30717, there is a 10-working-day period to appeal this "Coastal Act Categorical Determination of Exclusion" to the California Coastal Commission.

CALIFORNIA PUBLIC TRUST DOCTRINE

The proposed project complies with Section 87.(a)(2) of the Port Act, which allows for all visitor-serving 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 project is consistent with the Public Trust Doctrine.

JOE STUYVESANT
President/CEO

Determination by:
Michael Paul
Assistant Planner
Development Services

Signature: Michael Paul
Date: Feb 10, 2021

Deputy General Counsel

Signature: Chris Burt
Date: Feb 10, 2021