

FILE NUMBER: 2024-333

DATE: Tuesday, September 10, 2024

SUBJECT: Ferry Landing Associates Restaurant Development

DESCRIPTION: A) Conduct a Public Hearing and Adopt Resolution Authorizing Issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 to Ferry Landing Associates LLC for the Ferry Landing Associates Second Restaurant Building Project at the Ferry Landing in Coronado.

B) Adopt an Ordinance Granting an Option to Lease Agreement to Ferry Landing Associates, LLC, which Option includes an Amended and Restated Lease, a Fifth Amendment to Lease, a Memorandum and Quitclaim Deed, and a Parking and Access Easement Agreement, and also Conditionally Approving a 20-year Long-Term Sublease with Island Times, LLC.

EXECUTIVE SUMMARY:

In 1997, the District and Ferry Landing Associates, LLC, a California limited liability company ("FLA"), entered into a 40-year Lease for approximately four acres of land and three acres of water area on the bayfront in Coronado, south of the Ferry Landing Marketplace. ("Current Lease")¹. The leasehold, which is located at 1311 First Street in the City of Coronado ("Property") as shown on Attachment A – Aerial Location Map, includes a restaurant, a small office building, and a vacant restaurant pad.

The Current Lease, which is scheduled to expire on August 31, 2037, requires the development of two restaurant buildings and a small office building. The two restaurants were to be constructed by December 31, 2008. The small office building and one restaurant building, which is currently occupied by Il Fornaio, were completed in 1999; however; the second restaurant was never built. In 2018, FLA received Concept Approval from the Board of Port Commissioners (Board) for the development of a new proposed 7,500 square foot restaurant building on the vacant pad adjacent to Il Fornaio restaurant.

The proposed operator for the new restaurant is Island Times, LLC (Social Syndicate), part of a local restaurant group which operates several community focused concepts such as Rosie O'Grady's and The Rabbit Hole in Normal Heights, La Doña and OB Surf Lodge in Ocean Beach, The Local Pacific Beach, and the Monarch Ocean Pub in Del Mar, the latter of which will be the concept used for the Coronado site. The new restaurant would increase revenue for the District and serve the community of Coronado with an exciting new dining option.

District staff and FLA have agreed on an approach that if approved by the Board, would enable FLA to: (1) develop the vacant restaurant pad with the previously approved 7,500

¹ Lease recorded in the Office of the District Clerk on March 26, 1998 as Document No. 36616, as amended by Amendment No. 1 recorded on April 2, 2002 as Document No. 42938, Amendment No. 2 recorded on August 11, 2005 as Document No. 49282, Amendment No. 3 recorded on July 2, 2008 as Document No. 53657, and Amendment 4 recorded on September 1, 2016 as Document 65563.

square foot restaurant; (2) upon completion of the new restaurant, obtain an additional 12 years of lease term; and (3) provide for the vacant restaurant parcel to be turned over to the District if FLA is unsuccessful in developing the parcel.

The recommended approach includes the following transaction components:

- Enter into an Option to Lease Agreement (“Option”) (see Attachment B – Option Agreement) for the entire current leasehold, that contains four exhibits: (i) An Amended and Restated Lease (“A&R Lease”); (ii) a Fifth Amendment to the Current Lease (“Fifth Amendment”); (iii) a Memorandum and Quitclaim Deed (“Memorandum and Quitclaim”); and (iv) a Parking Easement Agreement (“Parking Easement”);
- Concurrently with the execution of the Option, FLA to deliver to the District executed counterparts of the Fifth Amendment, the Memorandum and Quitclaim, and the Parking Easement;
- If FLA timely completes the pre-development conditions set forth in the Option, FLA would be entitled to enter into the A&R Lease with District;
- If FLA timely develops the new restaurant pursuant to the terms of the A&R Lease, FLA would be entitled to extend the term of the A&R Lease by 12 years through August 31, 2049; and
- If FLA fails to timely satisfy the preconditions in the Option, the Current Lease would remain in effect, the Fifth Amendment and Memorandum and Quitclaim would become effective and remove the vacant restaurant pad and adjacent waterside parcel from the premises under the Current Lease, and the Parking Easement would become effective to provide for the shared use between FLA and the District (or future tenant of the vacant restaurant parcel) of the parking lot and drive aisles located on the Property.

Construction and operation of the proposed approximately 7,500 square foot single story restaurant located on the vacant restaurant pad adjacent to the Il Fornaio was analyzed in a Second Addendum to the Final Environmental Impact Report for the Coronado Boatyard Plan Amendment - The Wharf Development Project adopted by the Board on July 17, 2018 pursuant to Resolution No. 2018-131. In addition, and as further discussed below, construction of the new restaurant will require the issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 (Attachment E – Draft CDP Amendment). The Project, as conditioned, is consistent with the certified Port Master Plan (“PMP”) and Chapter 3 and Chapter 8 of the California Coastal Act.

RECOMMENDATION:

A) Conduct a public hearing and adopt a Resolution authorizing issuance of Amendment No. 2 of Appealable Coastal Development Permit 97-3 To Ferry Landing Associates LLC for the Ferry Landing Associates Second Restaurant Building Project at the Ferry Landing In Coronado.

B) Adopt an Ordinance granting an Option to Lease Agreement to Ferry Landing Associates, LLC, which Option includes an Amended and Restated Lease, a Fifth Amendment to Lease, a Memorandum and Quitclaim Deed, and a Parking and Access

Easement Agreement, and also conditionally approving a Long-Term Sublease with Island Times, LLC.

FISCAL IMPACT:

Should the new restaurant open as anticipated in 2027, initial annual percentage rent from the new restaurant to the District is anticipated to be \$384,450. Entering into the Option Agreement will have no direct fiscal impacts to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Current Lease

FLA and the District entered into a 40-year Lease in 1997 for approximately four acres of land and three acres of water area on the bayfront in Coronado, south of the Ferry Landing Marketplace (see Attachment A – Location Map) (“Property”). The Current Lease, which expires on August 31, 2037, requires the development of two restaurant buildings and a small office building. The two restaurants were to be constructed by December 31, 2008. The small office building and one restaurant building, which is currently occupied by Il Fornaio, were completed in 1999; however, despite FLA’s repeated efforts to do so, the second restaurant building has yet-to-be completed. Development of the vacant restaurant parcel would not qualify for a lease term extension pursuant to Board of Port Commissioners Policy No. 355 since it is a requirement under the Current Lease.

Proposed Project

The proposed new restaurant was granted Concept Approval by the Board on July 17, 2018. The proposed restaurant includes construction and operation of an approximately 7,500 square foot single-story restaurant up to 23 feet high, with outdoor seating areas and landscaping improvements. The proposed restaurant building would provide space for one or two restaurants and would accommodate a total of approximately 300 guests, including approximately 190 indoor guests and 110 outdoor guests. Solar panels are proposed for the roof, along with heating, ventilation, and air conditioning units as well as tankless natural gas water heaters. All mechanical equipment would be enclosed within a recessed well. Railing is proposed around the outdoor patio areas, including a low-

profile wall between the restaurant building and the shoreline public walkway. A covered 224 square foot utility and trash area is proposed at the southeastern side of the building and an underground, appropriate size, grease interceptor tank is proposed in the southeastern corner of the site, adjacent to the proposed utility and trash area. Three bio-filtration areas for stormwater are proposed, including two at each entrance of the restaurant building and one between the outdoor seating area and the walkway.

Parking for the project would be provided within the existing 269 spaces in the parking lot on the Property. No changes to the current parking configuration are proposed with the exception of re-striping to include handicapped-accessible parking stalls. Bicycle racks would be installed at the southwestern portion of the site along the sidewalk and at the three existing concrete viewing decks over the San Diego Bay.

The proposed landscaping includes grasses and drought tolerant plants and palm trees. The palm trees would be located toward the parking lot and low-lying vegetation would be planted toward San Diego Bay. Existing overhead lighting located along the 15-foot-wide shoreline public pathway would be removed and replaced with low-profile bollard lighting, with a correlated color temperature of 2,700 kelvins or less, along both sides of the pathway. The bollards will match the lighting output of the existing overhead lighting to allow for pedestrian and bicycle safety as well as uninterrupted views of the nighttime downtown San Diego skyline.

Construction of the new restaurant shell is expected to take nine months with an additional nine months to complete tenant improvement work for a total construction timelines of 18 months, with an expected groundbreaking in late 2025. Construction would occur in three phases: 1) preliminary earthwork; 2) foundation work; and 3) building construction and exterior site work.

Parcel Bifurcation and Option to Lease

Staff believes that Social Syndicate (as discussed in the Sublease subsection below) would be a good operator for the site and the development would benefit the District by increasing rent and resulting in improvements with an extensive useful life beyond the extended lease term. However, given the multiple unsuccessful attempts to develop the vacant parcel since Current Lease's commencement, staff and FLA have negotiated an approach that would enable FLA to purchase term and develop the vacant parcel while giving the District undisputed site control of the vacant restaurant parcel if FLA is ultimately unsuccessful.

The proposed transactional structure involves granting FLA an Option to Lease ("Option") that includes several preconditions to be satisfied before the District would be obligated to enter into a pre-negotiated Amended and Restated Lease for the Property ("A&R Lease"). These conditions would ensure that FLA has the necessary permits, entitlements, financing, equity commitments, restaurant operator agreement, and construction contract in place prior to entering into the A&R Lease. The proposed Option is attached to this Agenda Sheet as Attachment B, and the A&R Lease is included as Exhibit A to the Option.

Should FLA successfully satisfy the preconditions to executing the A&R Lease, FLA would (i) be granted a new A&R Lease for the Property through August 31, 2037, (ii) upon timely developing the new proposed restaurant, be granted an option to extend the term through August 31, 2049, and (iii) be obligated to pay the term extension fee described below.

Also attached to the Option are (i) a Fifth Amendment to the Current Lease (Exhibit B to Option, "Fifth Amendment"), (ii) a Memorandum and Quitclaim Deed (Exhibit C to Option, "Memorandum and Quitclaim"), and (iii) a Parking and Access Easement (Exhibit D to Option, "Parking Easement"). The Option requires that FLA execute these three documents concurrently with FLA's execution of the Option and deliver them to District, with District obligated to hold them in escrow pending the successful or unsuccessful exercise of the Option. If FLA is unable to timely satisfy the Option's preconditions and executed the A&R Lease, the Current Lease will remain in effect, and the District is entitled to sign and make effective the Fifth Amendment, the Memorandum and Quitclaim, as well as the Parking Easement, and record the latter two with the San Diego County Recorder. The Fifth Amendment and Memorandum and Quitclaim will have the effect of removing the vacant restaurant pad and adjacent water parcel from the Current Lease, and the Parking Easement will govern the shared use, maintenance, operation, and costs of the parking lot and drive aisles located on the Property. The Parking Easement would run with the land and therefor benefit any future tenant of the District who agrees to develop the vacant restaurant pad.

Purchase of Term

Staff analyzed a purchase of 12 years of additional lease term, which was calculated as the difference between (i) the present value of the District's income stream under the existing Lease term extended by 12 years to 2049; and (ii) the present value of the District's income stream under the existing Lease term expiring in 2037, plus the reversionary value of the existing improvements at the expiration of the Current Lease, which would be deferred if the Current Lease term were extended. Based on the foregoing, District staff calculated a purchase of term fee of \$792,000 (net present value), which takes into consideration current interest rates as well as construction and labor costs. In exchange for the additional 12 years of lease term, and to take into account the time value of money, FLA would pay a total extension fee of \$1,000,000 via yearly \$100,000 payments commencing in 2030 through the remainder of the A&R Lease Term. FLA being granted the term extension is conditioned upon FLA successfully exercising its rights under the Option to execute the A&R Lease and thereafter timely developing the new restaurant pursuant to the terms of the A&R Lease.

Amended and Restated Lease

The A&R Lease, the execution of which is conditioned on FLA successfully satisfying the preconditions in the Option, also contains numerous deadlines and penalties in order to incentivize FLA to successfully construct and open the new restaurant. Under the A&R Lease, and subject to specifically enumerated force majeure delays, FLA is required to commence construction of the new restaurant no later than 30 days after the A&R Lease's effective date and to complete construction within 577 days of the effective date after

expending a minimum investment of \$6,400,000. If construction is not timely completed, FLA owes an additional rent payment of \$11,500 per month, which additional rent increases to \$23,000 per month if the new restaurant isn't completed within two years of the aforementioned effective date.

In the event the new restaurant is not timely completed within 2.5 years of the A&R Lease's effective date, then the District has the option to exercise a streamlined remedy of removing the vacant restaurant parcel and adjacent waterside parcel from the leasehold via a Quitclaim Deed attached to the A&R Lease as Exhibit J and effectuating the aforementioned Parking Easement attached to the Option as Exhibit D.

Sublease

FLA's requested a 12-year lease term extension will facilitate a 20-year sublease with Island Times, LLC dba Social Syndicate, a local restaurant group which operates several community focused concepts such as Rosie O'Grady's and The Rabbit Hole in Normal Heights, La Doña and OB Surf Lodge in Ocean Beach, The Local Pacific Beach, and the Monarch Ocean Pub in Del Mar, the latter of which will be the proposed concept for the Coronado site. Staff's preliminary due diligence indicates that the Monarch Ocean Pub concept is a well-run operation and would be a good fit for the site as well as increase revenue to the District. Without an anticipated term extension, Social Syndicate will not commit to the project. It is unlikely that the vacant restaurant parcel could be feasibly developed by a tenant via a subtenant at the cost of over \$6.4 million with only 13 years of term remaining under the Current Lease.

As part of the proposed Board action, staff recommends the Board approve of FLA's sublease with Island Times, LLC ("Sublease")²; provided that such approval is conditioned upon FLA and Island Times executing a Second Amendment to Sublease substantially in the form attached hereto as Attachment D. The proposed Second Amendment contains the District's standard terms and conditions included in consents to subleases as set forth in Section 11.6 of the proposed A&R Lease.

California Environmental Quality Act (CEQA)

In 1989, a larger commercial development project, within which the proposed new restaurant ("Project") site is located, was analyzed pursuant to CEQA in the Final EIR (SCH #88062222; UPD #83356-EIR-143; District Clerk Document No. 24647) for The Wharf Development Project ("Final EIR"). The Final EIR analyzed full-scale redevelopment including up to three full-service restaurants, other food and beverage services shops, retail and management office space, a marina, and an underground parking garage. On December 19, 1989, the Board certified the Final EIR (Resolution No. 89-382; District Clerk Document No. 24647). In 1999, the first restaurant currently dba as the Il Fornaio was constructed. In 2008, an Addendum to the Final EIR was prepared for the proposed construction of a second restaurant ("First Addendum") (District Clerk Document No. 53309) and a CDP amendment was issued (Amendment No.1 to CDP-97-

² Sublease (as amended by First Amendment to Sublease) attached as Attachment C.

3, District Clerk Document No. 53487). However, due to market conditions, the second restaurant was not constructed, and the CDP amendment expired.

In October 2015, Ferry Landing Associates submitted an application for a revised project to construct a one-story building with the option to operate up to two restaurants within. On January 12, 2016, the Project was presented to the Board for preliminary project review at which time the Board authorized staff to commence the environmental review process pursuant to CEQA. A Second Addendum to the Final EIR, dated July 2018, was prepared to analyze changes to The Wharf Development Project, and to document that none of the conditions in CEQA Guidelines Sections 15162 and 15163, triggering preparation of a subsequent or supplemental EIR, occurred. On July 17, 2018, by Resolution No. 2018-131 the Board approved the Second Addendum to the Final EIR (Clerk's Document No. 68850). A CDP amendment is still needed to entitle the Project.

Coastal Development Permit

On October 21, 1997, the Board authorized issuance of an appealable CDP to Port Coronado Associates/Ferry Landing Associates for The Ferry Landing Expansion Project (Attachment F – CDP-97-3). The CDP was issued on November 18, 1997 (CDP-97-3; Clerk's Document No. 36851). The Ferry Landing Expansion Project involved construction of two restaurants with a total of approximately 18,500 square feet of gross floor area, extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices, parking for approximately 255 vehicles, riprap and revetment shoreline protection, and landscaping. These improvements were completed, with the exception that only one restaurant was constructed.

On May 6, 2008, the Board authorized issuance of an amendment to CDP-97-3 (CDP-97-3 Amendment No. 1) to authorize construction of a second single story restaurant of approximately 11,500 square feet, pavement approaches to the restaurant entry/service areas and adjacent landscape improvements. The CDP was issued on May 27, 2008 (Clerk's Document No. 53487). The restaurant was never built, and the CDP amendment has since expired.

The proposed draft Amendment No. 2 of CDP-97-3 (see Attachment E – CDP-97-3 Amendment No. 2) includes construction and operation of the second single-story restaurant with outdoor seating areas and landscaping, lighting and stormwater bio-infiltration improvements.

In accordance with Section 14.d of the District CDP Regulations, the Development Services Director determined that CDP-97-3 Amendment No. 2 is necessary, and that the proposed amendment would be a material change due to the nature and extent of the proposed changes. The District's CDP Regulations require material amendments to be considered by the Board, along with consideration of consistency with the PMP.

The proposed development is located within Planning District 6, Coronado Bayfront, which is delineated on Precise Plan Map Figure 17 of the certified PMP. The PMP land use designation within the limits of the Project is Commercial Recreation. Therefore, since a restaurant is an allowable use within this land use designation, the proposed CDP-97-

3 Amendment No. 2 involving construction of a restaurant, is consistent with the certified PMP.

Pursuant to the District's CDP Regulations, a public hearing is required for all appealable CDPs and material appealable CDP amendments. In accordance with Section 11.d. of the CDP Regulations, on August 28, 2024 notices were mailed to certain property owners and occupants surrounding the project site, City of Coronado Mayor, City of Coronado Manager, California Coastal Commission ("CCC"), and certain interested parties to inform them that a public hearing will be conducted on CDP-97-3 Amendment No. 2. Board action on CDP-97-3 Amendment No. 2 may be appealed to the CCC pursuant to Chapter 7 of Division 20 of the Public Resources Code within 10 working days after the CCC receives a notice of the Board's decision on CDP Amendment No. 2. After the CCC receives the notice of the Board's decision, if a written appeal is not filed within 10 working days, the Executive Director may issue CDP-97-3 Amendment No. 2 immediately.

Conditions are incorporated into the CDP-97-3 Amendment No. 2 to ensure conformance with applicable policies and District's requirements, and applicable mitigation measures from the Second Addendum to the Final EIR's Mitigation, Monitoring and Reporting Program. District staff recommends the Board conduct a public hearing and adopt a resolution to authorize issuance of appealable CDP-97-3 Amendment No. 2 to FLA to allow for construction and operation of a restaurant. A copy of the draft CDP-97-3 Amendment No. 2 is provided as Attachment E to this agenda sheet.

Conclusion

FLA has demonstrated a strong desire to develop the vacant parcel into an exciting new restaurant concept. If approved by the Board, the Option and associated documents would incentivize FLA to successfully complete construction, and a failure to timely do so would permit the District to remove the vacant pad and accompanying waterside parcel from the leasehold under a streamlined procedure to allow the District to select a new developer for the parcel.

Staff believes that FLA successfully developing the restaurant and having it operated by Social Syndicate would benefit the District by introducing an exciting new concept to the District's restaurant portfolio, increasing rent, and resulting in improvements with an extensive useful life beyond the extended term of the A&R Lease.

For these reasons and others set forth in this agenda sheet, staff recommends the Board approve of the Option to Lease substantially in the form attached hereto as Attachment B as well as approve of the Sublease conditioned upon FLA and Island Times executing the Second Amendment to Sublease substantially in the form attached hereto as Attachment D.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet and the attachments as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board actions are not a separate project for CEQA purposes but are a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist. (2012) 206 Cal.App.4th 1036.) The previously approved project was analyzed in an Addendum (“Second Addendum”) to the Final EIR for The Wharf Development Project (SCH #88062222; UPD #83356-EIR-143; District Clerk Document No. 24647). On December 19, 1989, by Resolution No. 89-382, the Board certified the Final EIR. On July 17, 2018, by Resolution No. 2018-131 the Board approved the Second Addendum to the Final EIR for The Wharf Development Project dated July 2018 (Clerk’s Document No. 68850). Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no further environmental review is required. Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, the Final EIR and Addenda, the District finds that the proposed Project would not require further environmental review and no supplemental or subsequent CEQA has been triggered.

The proposed Board actions comply 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 operation 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. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The Board actions conform with the Coastal Act process for the Project. If the Board authorizes issuance of an amendment to appealable CDP-97-3, District staff would notify CCC staff in accordance with Coastal Act Section 30717. The Executive Director would issue CDP-97-3 Amendment No. 2 after the tenth working day after CCC staff receives notification, unless an appeal is filed with the CCC within that time frame.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A: Aerial Location Map
Attachment B: Option Agreement (with Attachments)
Attachment C: Sublease Agreement (as amended by First Amendment)
Attachment D: Second Amendment to Sublease
Attachment E: Draft Amendment No. 2 to Coastal Development Permit CDP-97-3
Attachment F: Coastal Development Permit CDP-97-3 for The Ferry Landing
Expansion