

SAN DIEGO UNIFIED PORT DISTRICT

RESOLUTION xxxx

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

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 1, (Port Act); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners (Board) to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, 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 (Lease)¹; and

WHEREAS, the leasehold, which is located at 1311 First Street in the City of Coronado, as shown on Attachment A to the corresponding agenda sheet to which this Resolution relates, includes a restaurant, a small office building, and a vacant restaurant pad; and

WHEREAS, the Lease, which is scheduled to expire on August 31, 2037, requires the development of two restaurant buildings and a small office building; and

WHEREAS, pursuant to the Lease, the two restaurants were to be constructed by December 31, 2008; and

WHEREAS, in 1989 prior to execution of the Lease, a larger commercial development project, within which leased premises are 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); and

WHEREAS, the Final EIR analyzed full-scale redevelopment including up to three full-service restaurants, other food and beverage services shops, retail and management

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.

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office space, a marina, and an underground parking garage, and on December 19, 1989, the Board certified the Final EIR (Resolution No. 89-382; District Clerk Document No. 24647); and

WHEREAS, on October 21, 1997, the Board authorized issuance of an appealable CDP to Port Coronado Associates/FLA for The Ferry Landing Expansion Project, and the CDP was issued on November 18, 1997 (CDP-97-3; Clerk's Document No. 36851); and

WHEREAS, 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; and

WHEREAS, an office building and one restaurant building, which is currently occupied by Il Fornaio, were completed in 1999; and

WHEREAS, in 2008, an Addendum to the Final EIR was prepared for the proposed construction of a second restaurant (District Clerk Document No. 53309) and a CDP amendment was issued (Amendment No.1 to CDP-97-3, District Clerk Document No. 53487); however, due to market conditions, the second restaurant was not constructed, and the CDP amendment expired; and

WHEREAS, on July 17, 2018, FLA received Concept Approval from the Board for the development of a new proposed 7,500 square foot restaurant building on the vacant pad adjacent to Il Fornaio restaurant (Project); and

WHEREAS, 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; and

WHEREAS, On July 17, 2018, by Resolution No. 2018-131 the Board approved the Second Addendum to the Final EIR (Clerk's Document No. 68850); and

WHEREAS, a CDP amendment is still needed to entitle the Project, and the proposed draft Amendment No. 2 of CDP-97-3 (see Attachment E to the corresponding agenda sheet to which this Resolution relates) includes construction and operation of the second single-story restaurant with outdoor seating areas and landscaping, lighting, and stormwater bio-infiltration, among other improvements; and

WHEREAS, 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, that the proposed amendment would be a material change due to the nature and extent of the proposed changes, and that material amendments are to be considered

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by the Board, along with consideration of consistency with the Port Master Plan (Plan); and

WHEREAS, the proposed development is located within Planning District 6, Coronado Bayfront, which is delineated on Precise Plan Map Figure 17 of the certified PMP; and

WHEREAS, the PMP land use designation within the limits of the Project is Commercial Recreation, and 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; and

WHEREAS, pursuant to the District's CDP Regulations, a public hearing is required for all appealable CDPs and material appealable CDP amendments, and 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, and certain interested parties to inform them that a public hearing will be conducted on CDP-97-3 Amendment No. 2; and

WHEREAS, a public hearing was held on September 10, 2024, and the Board found the terms of CDP-97-3 Amendment No. 2 to be in compliance 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; and

WHEREAS, approval of CDP-97-3 Amendment No. 2 and construction of the Project is 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.); and

WHEREAS, the previously approved project was analyzed in the Second Addendum to the Final EIR, and 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; and

WHEREAS, 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; and

WHEREAS, the 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,

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necessary, or convenient, for the promotion and accommodation of commerce and navigation; and

WHEREAS, the Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine, and consequently, the proposed Board actions are consistent with the Public Trust Doctrine; and

WHEREAS, the proposed Board actions conform with the Coastal Act process for the Project; and

WHEREAS, as described in the corresponding agenda sheet to which this Resolution relates, District staff and FLA have agreed on an approach that would enable and incentivize FLA to develop the Project; and

WHEREAS, for the reasons set forth in this Resolution and the corresponding agenda sheet to which this Resolution relates, District staff recommends the Board 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.

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. The current Board action, including without limitation authorizing the issuance of CDP-97-3 Amendment No. 2 to CDP to Ferry Landing Associates for The Ferry Landing Expansion Project (CDP-97-3; Clerk's Document No. 36851), 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, Clerk's Document No. 68850) to the Final EIR for The Wharf Development Project (SCH #88062222; UPD #83356-EIR-143; District Clerk Document No. 24647). Accordingly, the 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 Board finds that the proposed Project would not require further environmental review and no supplemental or subsequent CEQA has been triggered.

3. The Board finds that CDP-97-3 Amendment No. 2 to CDP to Ferry Landing Associates, LLC for The Ferry Landing Expansion Project (CDP-97-3; Clerk's Document No. 36851) 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 operation of wharves, docks, piers, slips, quays, and all other works,

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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 action is consistent with the Public Trust Doctrine.

4. Based on the entire record available to the Board and the findings set forth in this Resolution, the Executive Director or their designated representative is hereby authorized to issue CDP-97-3 Amendment No. 2 to CDP to Ferry Landing Associates, LLC for The Ferry Landing Expansion Project (CDP-97-3; Clerk's Document No. 36851). Said Amendment No. 2 shall require compliance with all the conditions set forth in Amendment No. 2; provided, however, as a condition of this approval, Ferry Landing Associates, LLC shall indemnify and hold the San Diego Unified Port 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 Amendment No. 2 to CDP and any development undertaken thereunder. Said indemnity and hold harmless condition is independent of any agreements by and between Ferry Landing Associates, LLC and the District.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September 2024, by the following vote: