

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



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original staff report](#)

# W12c

## Addendum

June 8, 2015

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item W12c**, final Commission action on Port of San Diego Port Master Plan Amendment **#6-PSD-MAJ-45-13 (Convention Center Expansion III)**, for the Commission Meeting of June 10, 2015

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Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 2, the following shall be added after the final paragraph under Findings and Declarations:

Commission staff has received correspondence requesting that the Commission not certify the Port's acceptance of the Commission's action approving the Port Master Plan Amendment (PMPA) because the Convention Center no longer holds a lease interest in the land area (known as Fifth Avenue Landing), where the Convention Center Expansion was approved to be located. The letter concludes that, for this reason, the Port Master Plan Amendment is no longer viable.

A second letter states that the Commission should take no action on the certification until it can be scheduled for a meeting in the San Diego region, because the financing mechanism for the Convention Center expansion has been held illegal by the Court of Appeal, and because the objections raised by the commenter regarding the original PMPA approval have not been addressed.

There is no need to postpone or deny Commission action on this item for the following reasons. The subject certification simply confirms that the Port governing body has taken a formal action adopting the PMPA as certified by the Commission; it is not a reevaluation of the merits of the amendment. The Port District is the property owner of all Port land, and the policy language and goals contained in the PMP are not dependent on the status of any particular tenant's lease agreement or associated litigation. In addition, the approved PMPA covers a variety of improvements unrelated to the Convention Center expansion, including construction of a new 500-room hotel tower, associated ballrooms, and various public access improvements. Thus, the Commission should accept the Board of Port Commissioners' action to adopt the Commission's certification to allow other elements of the PMPA to move forward, as feasible.

2. The attached Commissioner ex parte communication and letters of opposition shall be added as Exhibits #1 and #2 to the staff report.

## EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Greg Cox

1) Name or description of project:

**Final Commission action on Port of San Diego Port Master Plan  
Amendment #6-PSD-MAJ-45-13 (Convention Center Expansion III)**

2) Date and time of receipt of communication: June 2, 2015 at 1pm

3) Location of communication: Telephone

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication:

Art Engel

5) Identity of person(s) on whose behalf communication was made:

Art Engel

6) Identity of persons(s) receiving communication:

Greg Cox

7) Identity of all person(s) present during the communication:

Art Engel and Greg Cox

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Art Engel called me on June 2<sup>nd</sup> at 1pm to share that he would like this item withdrawn from consideration. He said the Convention Center has defaulted on their payment for the sublease of his adjacent property, on which this expansion would sit, and therefore they no longer have an interest in moving forward.

Date

6/3/15

Signature of Commissioner

Greg Cox

**TIMING FOR FILING OF DISCLOSURE FORM:** File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EXHIBIT NO. 1

Commissioner Ex Parte



RMPA #6-PSD-MAJ-45-13 Certification  
California Coastal Commission

## *Fifth Avenue Landing LLC*

June 4, 2015

VIA FED EX

Dr. Charles Lester  
Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

Re: *Final Commission Action On Port Of San Diego Master Plan  
Amendment No. 6-PSD-MAJ-45-13 (Convention Center Expansion III)*

Dear Dr. Lester:

Fifth Avenue Landing, LLC ("FAL") requests that the California Coastal Commission vote NO on agenda item W12c regarding the proposed final certification of the Port Master Plan Amendment No. 6-PSD-MAJ-45-13 ("Convention Center Amendment"). The San Diego Convention Center no longer retains any rights to build the Convention Center on this site which is the subject of the Port Master Plan Convention Center Amendment. Please circulate this submission as part of the materials for the Commissioners to review in connection with Item W12c. In sum, the Convention Center Amendment, which directly impacts the real property commonly known as 600 Convention Center Way, San Diego, California 92101 ("Property"), is no longer viable and should not be approved. As detailed below, FAL is now the beneficial owner of the Property. FAL will not be developing an expansion to the San Diego Convention Center and FAL objects to the Convention Center Amendment. Accordingly, the Convention Center Amendment serves no purpose and FAL requests it be denied.

In 2010 FAL sold its rights as ground lessee of the Property to the San Diego Convention Center Corporation, Inc. ("SDCCC"). As part of the consideration for that transaction, SDCCC made a promissory note in favor of FAL ("Note"). The Note was secured by a deed of trust of even date conveying all of SDCCC's interest in the Property as collateral for the benefit of FAL. The Note matured on May 6, 2015, and SDCCC defaulted on its obligation to pay FAL. Attached is a copy of the default letter dated May 12, 2015, sent by FAL's attorney advising SDCCC of its default.

Also attached is a copy of email correspondence from the President of SDCCC, Carol Wallace, acknowledging the SDCCC's default and agreeing to the prompt return of SDCCC's former interest in the Property to FAL via assignment in lieu of foreclosure. We anticipate recording the reconveyance document shortly.

EXHIBIT NO. 2

Letters of Opposition



PMPA #6-PSD-MAJ-45-13  
California Coastal Commission

June 4, 2015  
Page 2 of 2

Based on FAL's undisputed position as the beneficial owner of the Property, we request the Convention Center Amendment be denied. Were this amendment to be approved over the objection of FAL, the result will be to cause the California Coastal Commission, the San Diego Unified Port District, and FAL to all incur additional expenses and costs as part of the inevitable unwinding of that approval via future actions. Thank you for your consideration of this request.

Sincerely,

*Ray Carpenter*  
Ray Carpenter, LLC Member

Enclosures

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# FINCH • THORNTON • BAIRD<sup>LLP</sup>

ATTORNEYS AT LAW

David S. Demian  
ddemian@ftblaw.com

File 896.002

May 12, 2015

## **NOTICE OF DEFAULT, DEMAND FOR PAYMENT, AND DEMAND FOR TURNOVER OF RENTS**

### **VIA OVERNIGHT DELIVERY**

Mr. Steve Cushman  
Chairman  
San Diego Convention Center Corporation, Inc.  
111 West Harbor Drive  
San Diego, California 92101

Re: 600 Convention Center Way, San Diego, California

Dear Mr. Cushman:

We are attorneys for Fifth Avenue Landing, LLC ("FAL"). This letter constitutes FAL's notice to San Diego Convention Center Corporation, Inc. ("SDCCC") of SDCCC's default under the Promissory Note dated May 6, 2010 ("Note"), made by SDCCC in favor of FAL in the principal amount of \$12,500,000.00. FAL hereby demands immediate payment of all principal, unpaid interest, and late charges due under the Note through May 11, 2015, in the total amount of \$14,219,380.69. Interest continues to accrue at the daily rate of \$2,051.61.

FAL further demands SDCCC turnover all rents, issues, and profits from the real property located at 600 Convention Center Way, San Diego, California ("Property"), pursuant to the terms of the Deed of Trust and Assignment of Rents dated May 6, 2010 ("Deed of Trust") executed by SDCCC in favor of FAL to secure the Note and California Civil Code section 2938, subdivision (c)(4).

In the event SDCCC fails to cure its default and pay the amount owed to FAL under the Note, FAL intends to promptly move forward with an action to foreclose on SDCCC's interest in the Property under the Deed of Trust. Following provides additional information with respect to this notice of default and the above demands.

1. Name and Address for Payment

Fifth Avenue Landing, LLC  
Attn: Arthur E. Engel  
1311 First Avenue  
Coronado, California 92118

2. Address for Notices

Fifth Avenue Landing, LLC  
Attn: Arthur E. Engel  
1311 First Avenue  
Coronado, California 92118

With a copy to:  
David S. Demian, Esq.  
Finch, Thornton & Baird, LLP  
4747 Executive Drive, Suite 700  
San Diego, California 92121

3. Circumstances Giving Rise to FAL's Claim and General Description of the Indebtedness

Pursuant to its terms, the Note matured on May 6, 2015 ("Maturity Date"). Upon the Maturity Date, all principal and unpaid interest under the Note was due and payable by SDCCC to FAL. The total amount of principal and unpaid interest outstanding through May 11, 2015 is \$13,805,514.05. Interest continues to accrue on the unpaid amounts due at the daily rate of \$2,051.61.

In addition, per the Note, SDCCC agreed to pay a late charge equal to three percent (3%) of any payment due if not paid within five days of the due date. SDCCC failed to pay the amounts due under the Note within five days of the Maturity Date. Accordingly, SDCCC is responsible for a late charge of \$413,866.64, bringing the total amount due to FAL through May 11, 2015 to \$14,219,380.69. FAL has not received any payments with respect to the amount due. Consequently, SDCCC is in default under the terms of the Note and the Deed of Trust.

FAL has also incurred costs, expenses, and attorneys' fees in connection with SDCCC's default. FAL expects to incur additional costs, expenses, and attorneys' fees in enforcing its rights to recover the Property under the Deed of Trust. Under the terms of the Note, SDCCC is responsible for these costs, expenses, and attorneys' fees.

4. Names of Employees Causing Loss

FAL is presently unaware of the names of SDCCC's employees causing FAL's loss.

5. Amount Claimed

FAL demands immediate payment of the \$14,219,380.69 due and payable under the Note, plus interest through the date of payment. In the event FAL is forced to foreclose on the Property, the amount of FAL's claim shall be increased by the amount of FAL's costs, expenses, and attorneys' fees, along with late charges and accrued interest.

Mr. Steve Cushman  
May 12, 2015  
Page 3 of 3

6. Demand for Turnover of Rents, Issues, and Profits

Pursuant to California Civil Code section 2938, subdivision (c)(4), and subdivision B(5) of the Deed of Trust, FAL demands SDCCC turnover to FAL all rents, issues, and profits received for or in connection with the Property. Payment of such rents, issues, and profits shall be made to FAL at the payment address provided above. Moneys received by FAL shall be applied to SDCCC's indebtedness in accordance with the Note and Deed of Trust, provided, however, that neither the application nor the failure to so apply the rents, issues, or profits shall result in a loss of any lien or security interest that FAL may have in the Property or any other collateral, render any of SDCCC's obligations unenforceable, constitute a violation of Code of Civil Procedure section 726, or otherwise limit any rights available to FAL with respect to its security.

7. Conclusion

Please contact us immediately to discuss payment arrangements. As previously offered by FAL, FAL is willing to discuss a reconveyance of SDCCC's interest in the Property to FAL through assignment of lease in lieu of foreclosure in order to avoid the costs and expenses of a foreclosure action. FAL reserves all of its rights with respect to the Note, the Deed of Trust, and the claims described herein.

Very truly yours,



David S. Demian,  
Partner

DSD:hkr/3887144

cc: San Diego Convention Center Corporation, Inc.  
Attn: Ms. Carol Wallace, President and CEO (via email only)  
City of San Diego, City Council Members  
Fifth Avenue Landing, LLC



**From:** Carol Wallace [<mailto:Carol.Wallace@visitsandiego.com>]  
**Sent:** Thursday, May 28, 2015 2:00 PM  
**To:** Ray Carpenter; Arthur E. Engel ([art@flagshipsd.com](mailto:art@flagshipsd.com)) ([art@flagshipsd.com](mailto:art@flagshipsd.com))  
**Cc:** Ralph Hicks; Leslie Devaney ([ldevaney@stutzartiano.com](mailto:ldevaney@stutzartiano.com)); Christina M. Cameron ([ccameron@stutzartiano.com](mailto:ccameron@stutzartiano.com)); Tom Mazzocco; Andy Mikschl  
**Subject:** FAL Property

Dear Ray and Art

First Ray, thank you for your time on the phone this afternoon. You have always been responsive to our requests and we appreciate your efforts.

I regret to report that the SDCCC Board of Directors has voted not to extend the lease and directed staff to immediately begin the process to convey the property back to Fifth Avenue Landing. SDCCC attorneys are in the process to preparing documents and will be in contact with you and your attorneys. I have copied both Leslie Devaney and Christina Cameron in the event you wish to contact them directly.

I have previously provided a list of contracted events for the use of the Lot and /or Lawn through September 20, 2015. As soon as possible, I and my team would like to meet with you and your team to discuss deposition of these events. We will begin contacting these clients to make them aware of the change in circumstances and will assure them that SDCCC will be working with FAL to minimize any negative impacts to their events.

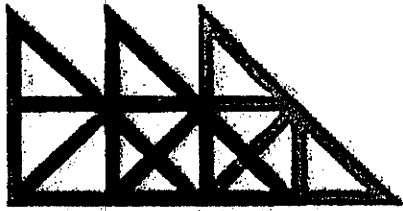
We continue to receive calls for rental of this property. Please provide us with a name and contact information so that we can refer these interested parties to FAL for follow up.

We have appreciated the cooperative relationship this Corporation has always had with your organization and we hope to continue to work together in the future.

Sincerely,

Carol

Carol Wallace | President & CEO  
**SAN DIEGO CONVENTION CENTER CORPORATION**  
111 W. Harbor Drive, San Diego, CA 92101  
619.525.5101 | 619.525.5132 (fax)  
[first.last@visitsandiego.com](mailto:first.last@visitsandiego.com)  
[Website](#) - [Blog](#) - [Facebook](#) - [Twitter](#)



San Diego Convention Center

25 YEARS OF SUCCESS

cc: 55  
NOTICE TO CALIFORNIA COASTAL COMMISSIONERS  
COPIES HAVE BEEN FORWARDED TO STAFF

RECEIVED

JUN 05 2015

Service List - Via Overnight Delivery

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Ms. Effie Turnbull-Sanders  
Commissioner  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

Ms. Dayna Bochco  
Commissioner  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

Ms. Jana Zimmer  
Vice-Chair  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

Ms. Wendy Mitchell  
Commissioner  
12949 Blairwood Drive  
Studio City, California 91604

Mr. Mark Vargas  
Commissioner  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

Ms. Mary K. Shallenberger \*sent via cert. mail  
Commissioner  
P.O. Box 354  
Clements, California 95227-0354

Ms. Martha McClure  
Supervisor  
981 H Street, Suite 200  
Crescent City, California 95531

Mr. Steve Kinsey  
Supervisor & Chair  
3501 Civic Center Drive, Suite 329  
San Rafael, California 94903-4193

Ms. Carole Groom  
Supervisor  
400 County Center  
Redwood City, California 94063

Mr. Erik Howell  
Councilmember  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

Mr. Roberto Uranga  
Councilmember  
333 W. Ocean Boulevard, 14th Floor  
Long Beach, California 90802

Mr. Gregory Cox  
Supervisor  
1600 Pacific Highway, Room 335  
San Diego, California 92101

Mr. John Laird  
Ms. Janelle Beland  
Secretary  
1416 Ninth Street, Room 1311  
Sacramento, California 95814-5570

Mr. Brian P. Kelly  
Mr. Dale Jones  
Secretary  
915 Capitol Mall, Suite 350B  
Sacramento, California 95814

Lt. Gov. Gavin Newsom  
Ms. Jennifer Lucchesi  
Mr. Kevin Schmidt  
Chair  
100 Howe Avenue, Suite 100 South  
Sacramento, California 95825-8202

Dr. Charles Lester  
Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
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Ms. Sherilyn Sarb  
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7575 Metropolitan Drive, Suite 103  
San Diego, California 92108-4402

Ms. Diana Lilly  
Coastal Program Analyst - San Diego Area Office  
7575 Metropolitan Drive, Suite 103  
San Diego, California 92108-4402

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# **BRIGGS LAW CORPORATION**

*San Diego Office:*  
814 Morena Boulevard, Suite 107  
San Diego, CA 92110

*Telephone: 619-497-0021*  
*Facsimile: 619-515-6410*

*Please respond to: Inland Empire Office*

*Inland Empire Office:*  
99 East "C" Street, Suite 111  
Upland, CA 91786

*Telephone: 909-949-7115*  
*Facsimile: 909-949-7121*

*BLC File(s): 1434.13*

8 June 2015

The Honorable Members of the  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**Via Personal Delivery to San Diego office**

Re: Opposition to Item 12c on Agenda for June 10, 2015 (Port of San Diego Port Master Plan Amendment #6-PSD-MAJ-45-13, Convention Center Expansion III)

Dear Coastal Commissioners:

On behalf of the San Diego Navy Broadway Complex Coalition and San Diegans for Open Government, I am writing to urge you to take no action on the above-referenced matter until it can be scheduled for a meeting in the San Diego region.

First, the expansion is no longer viable because the financing mechanism has been held illegal by the Court of Appeal. *See City of San Diego v. Shapiro*, 228 Cal. App. 4th 756 (2014).

Second, none of the objections raised in connection with the Coastal Commission's hearings on the expansion in 2013 and 2014 have been addressed, including but not limited to the expansion's inconsistency with the Coastal Act. My clients incorporate those objections by this reference.

Accordingly, I urge you not to approve the above-referenced matter. If you do approve it, however, please consider this to be a request under the California Public Records Act for a copy of any and all notices that may be issued by the Commission to reflect your approval.

Sincerely,

BRIGGS LAW CORPORATION

*Cory J. Briggs*  
Cory J. Briggs

**RECEIVED**

JUN 08 2015

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



# W12c

May 28, 2015

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: Charles Lester, Executive Director  
Sherilyn Sarb, Deputy Director  
Diana Lilly, Senior Planner, San Diego District

SUBJECT: **Final Commission action on Port of San Diego Port Master Plan Amendment #6-PSD-MAJ-45-13 (Convention Center Expansion III)**  
to revise text, graphics, and project list to provide for the construction of an approximately 720,000 sq.ft. addition to the Convention Center; construction of a 5-acre rooftop park/plaza atop the Center, realignment and narrowing of Convention Way bayward, construction of a 1,900 sq.ft. public plaza and public parking next to the relocated water transit center; improvements to the existing pier for use as a public recreational viewpoint; removal of the landscape mounds blocking water views next to the existing Hilton hotel tower; pedestrian scale furnishings and public art, approximately 15,000 sq.ft. of visitor-serving uses such as retail, museums, and display cases on the bayward façade of the Center; construction of a new 372-foot high, 500-room hotel tower and associated ballrooms. For Commission consideration at the meeting of June 10, 2015.

**I. STAFF RECOMMENDATION:**

The staff recommends the Commission adopt the following motion:

**MOTION:** *I move that the Commission accept the Port of San Diego's adoption of the Commission's certification of Port Master Plan Amendment No. 6-PSD-MAJ-45-13.*

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

**ACCEPTANCE**

The Commission hereby accepts the Board of Port Commissioners' adoption on March 4, 2014, of Coastal Commission certification of the Port of San Diego Port Master Plan Amendment No. 6-PSD-MAJ-45-13.

## **II. FINDINGS AND DECLARATIONS.**

The Commission finds and declares as follows:

A. Port Master Plan Amendment Certification. California Code of Regulations, Title 14, Section 13632(e) states that:

*The certification of a port master plan [or amendment] shall not become effective until the port governing body takes formal action adopting such plan [amendment] as certified by the commission and the commission has received notice of such action, including the final EIR adopted for such action and the commission has accepted the formal action as consistent with its certification.*

On October 11, 2013, the Commission certified the Port of San Diego Port Master Plan Amendment No. 6-PSD-MAJ-45-13. On March 4, 2014, the Board of Port Commissioners of the San Diego Unified Port District adopted the Commission's certification of plan Amendment No. 6-PSD-MAJ-45-13. Therefore, the Commission staff recommends that the Commission accept the Board's March 4, 2014 action.

Attachment: San Diego Unified Port District Board of Port Commissioner's resolution 2014-56 adopting the Coastal Commission's certification of Port Master Plan Amendment No. 6-PSD-MAJ-45-13.

**RESOLUTION 2014-56**

**RESOLUTION ADOPTING THE SAN DIEGO  
CONVENTION CENTER PHASE III EXPANSION  
AND EXPANSION HOTEL PORT MASTER PLAN  
AMENDMENT, AS CERTIFIED BY THE  
CALIFORNIA COASTAL COMMISSION AND  
DIRECTING THE FILING OF NOTICE OF SAID  
ADOPTION AND THE FINAL ENVIRONMENTAL  
IMPACT REPORT AND ADDENDUM WITH THE  
CALIFORNIA COASTAL COMMISSION**

**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**, on September 19, 2012, pursuant to the California Environmental Quality Act (CEQA), Public Resources Code Section 21000, et seq., and its implementing regulations, 14 California Code of Regulations Section 15000, et seq. (CEQA Guidelines), the Board of Port Commissioners (Board) adopted Resolution No. 2012-135, certifying a Final Environmental Impact Report (Final EIR) for the San Diego Convention Center Phase III Expansion (Phase III Expansion) and Expansion Hotel, and associated Port Master Plan Amendment (PMPA), and adopting Findings of Fact and a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Program (MMRP) for the same; and

**WHEREAS**, on September 19, 2012, the Board adopted Resolution No. 2012-136, approving the PMPA and directed District staff to file the PMPA with the California Coastal Commission (Coastal Commission); and

**WHEREAS**, the Phase III Expansion, Hotel Expansion and PMPA are collectively referred to as "Project"; and

**WHEREAS**, the applicant for the Phase III Expansion component of the Project is the City of San Diego (City) and the applicant for the Expansion Hotel component of the Project is One Park Boulevard, LLC (OPB); and

**WHEREAS**, the City and OPB are herein referred to as "Applicants"; and

**WHEREAS**, the Phase III Expansion component of the Project contemplated in the PMPA approved by the Board in 2012 included: (a) relocating Convention Way bayward of its present location and narrowing the roadway from approximately 50 feet to 25 feet, (b) adding approximately 740,000

square feet of functional space to the existing Convention Center, including approximately 220,150 square feet of exhibit hall space, 101,500 square feet of meeting rooms, 78,470 square feet of ballroom space, and 336,030 square feet of service and support space, (c) adding up to 42,500 square feet of visitor-serving retail space, (d) constructing of an approximate 5-acre rooftop park/plaza that would be accessible from six exterior access points, including elevators, stairs, and an inclined walkway, and one point of access from the interior of the Convention Center, (e) relocating the Water Transportation Center onto the western portion of the Project site, (f) realigning and upgrading existing utility infrastructure, and (g) removing a multi-purpose surface lot associated with operations and restriping of parking spaces in the Convention Center garage; and

**WHEREAS**, the Hotel Expansion component of the of the Project contemplated in the PMPA approved by the Board in 2012 included: (a) adding up to 500 hotel rooms in a new guestroom tower adjacent to the Hilton Hotel, including a portion of the tower cantilevering over the existing Hilton Hotel entry ramp and the existing hotel parking garage, (b) adding approximately 55,000 net square feet of meeting and ballroom space, a 10,000 square foot fitness/spa facility, and up to 2,500 square feet of retail space, and (c) realigning and upgrading existing utility infrastructure; and

**WHEREAS**, the PMPA analyzed by the Final EIR included revisions to the Planning District 3, Centre City Embarcadero precise plan including revisions to (a) the precise plan text, including a detailed description of the proposed Phase III Expansion's rooftop park/plaza, updated areas with existing conditions, and removing the Spinnaker Hotel project, a 250-room hotel with meeting space and ballrooms, located on the waterside of Convention Way, on the northwestern portion of the existing Project site, (b) the land use acreage table to reflect proposed changes to the commercial recreation, park/plaza, promenade, open space, and street land use designations, (c) the project list to remove the Spinnaker Hotel project, relocate the Water Transportation Center to the west of the former Spinnaker Hotel site and add (i) the Phase III Expansion, (ii) the realignment of Convention Way, (iii) the Hotel Expansion, and (d) the boundaries of the Marina Zone and Convention Way Basin Subareas; and

**WHEREAS**, District staff submitted an application for the PMPA to the Coastal Commission for its consideration and certification; and

**WHEREAS**, during the Coastal Commission staff's review and Coastal Commission's consideration of the PMPA, the application was revised to include the following changes, in summary format: (a) slightly pulling back and angling the southeast corner of the Phase III Expansion to preserve views of the water from the existing Park Boulevard pedestrian bridge, which will result in a reduction of approximately 5,175 square feet in each level (approximately 20,700 square feet total) of the Phase III Expansion, (b) improvement of a 1,900 sq. ft.



public plaza and public parking next to the relocated Water Transportation Center, (c) improvements to an existing pier for use as a public recreational viewpoint, (d) removal of the landscape mounds blocking water views next to the existing Hilton Hotel, (e) addition of direct pedestrian access from the Harbor Drive pedestrian bridge to the waterfront, (f) improvements to the proposed Park Boulevard corridor with additional landscaping, pedestrian scale furnishings and public art (g) the inclusion of approximately 15,000 sq. ft. of visitor-serving uses such as retail, museums, and display cases on the bayward façade of the Convention Center (h) revisions to the Convention Center Public Access Program (CCPAP) to include improvements in way-finding signage to enhance public access and encourage the public to use the new rooftop park, (i) incorporation of a "Public Realm Design Principles and Programming Plan" to describe how public use of the public spaces associated with the Convention Center will be developed, including limitations on how often these areas can be reserved for private functions, (j) language requiring the Coastal Development Permit for the Hotel Expansion to include a condition that the hotel developer develop on-site or off-site lower cost visitor accommodations, or pay an in-lieu fee based on a study conducted by the District, (k) requirement that after the Phase III Expansion is completed, quarterly meetings will be held and written quarterly reports will be provided to the Coastal Commission to describe the utilization of the rooftop park/plaza and promenade, park programming and activities implemented to invite the public to access the rooftop park/plaza, promenade and coast, and marketing activities and signage implemented to enhance way-finding and public usage of the rooftop park/plaza, promenade, and coastal access. After five years, a summary report will be submitted to the Coastal Commission, and (l) a requirement that the Coastal Development Permit for the Phase III Expansion shall include a condition requiring the City, in consultation with the Executive Director of the Coastal Commission, to reprioritize \$500,000 of the City's construction budget to implement alternative access measures to activate the rooftop park/plaza, focusing on enhancements to the existing stairways and skywalk (including paving treatments, public art, etc.); and

**WHEREAS**, in Resolution No. 2012-136, the Board resolved that the "[PMPA] shall not be effective unless and until an indemnity agreement is approved by the District which provides for the Applicants to indemnify the District for all attorneys' fees, costs and other expenses incurred by the District in the event of any third party legal challenge to the Final [EIR] or the [PMPA]"; and

**WHEREAS**, pursuant to Public Resources Code Sections 30714 and 30716 and Title 14, Section 13632(e) of the California Code of Regulations, in order for the PMPA to be fully certified, the Board must adopt a resolution approving the PMPA as certified by Coastal Commission and the District must notify the Coastal Commission of said approval, as well as transmit the CEQA analysis and other pertinent documents, to the Coastal Commission, and the Coastal Commission must accept the approval as consistent with its certification;

and

**WHEREAS**, the Board adopted an Addendum to the Final EIR that analyzed the project changes and made the appropriate findings under CEQA.

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

That the Port Master Plan Amendment pertaining to the Phase III Expansion and Hotel Expansion, on file in the office of the District Clerk as Document No. 61637 is approved, as certified by the Coastal Commission, and that the Executive Director or his designated representative is hereby authorized and directed to transmit this Resolution, together with the Final EIR, Addendum to the Final EIR, and all relevant other documents to the Coastal Commission for its acceptance; provided, however, that said transmittal to the Coastal Commission shall not occur until one or more indemnity agreement(s), the form and content of which shall be approved by the Executive Director or his designated representative in consultation with the Port Attorney, are entered into by the District and Applicants, which provide for the Applicants to indemnify the District for all attorneys' fees, costs and other expenses incurred by the District in the event of any third party legal challenge to the Final EIR, Addendum to the Final EIR or the Port Master Plan Amendment.

**BE IT FURTHER RESOLVED**, consistent with Public Resources Code Sections 30714 and 30716, and California Code of Regulations Title 14, Section 13632(e), the Port Master Plan Amendment shall not be effective until the Coastal Commission has received this Resolution, the Final EIR, Addendum to the Final EIR, and all relevant other documents and the District's approval as consistent with its certification.

APPROVED AS TO FORM AND LEGALITY:  
PORT ATTORNEY

  
By: Assistant/Deputy

2014-56

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4<sup>th</sup> day of March, 2014, by the following vote:


AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama

NAYS: None.

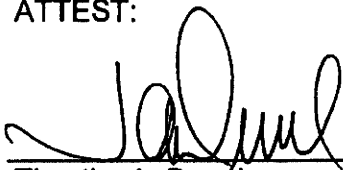
EXCUSED: None.

ABSENT: None.

ABSTAIN: None.

  
\_\_\_\_\_  
Robert E. Nelson, Chairman  
Board of Port Commissioners

ATTEST:

  
\_\_\_\_\_  
Timothy A. Deuel  
District Clerk

(Seal)