

CALIFORNIA COASTAL COMMISSION

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W17a

Addendum

June 10, 2013

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 17a**, Appeal No. **A-6-PSD-13-005 (Sunroad Enterprises)**, for the Commission Meeting of June 12, 2013.

Staff recommends the following corrections be made to the above-referenced staff report. Additions are shown in underline, and deletions in ~~strike out~~:

1. The following paragraph shall be inserted after the first paragraph on the top of Page 32:

On May 28, 2013, staff received a review letter from the appellants and Earth Consultants International, dated May 23, 2013, raising concerns with the 2011 and 2012 Geocon reports and the adequacy of those reports in locating potential fault strands underlying the site. Dr. Johnsson has prepared a memorandum, dated June 4, 2013, responding to these concerns. The memorandum is attached to this staff report as Exhibit #16, and is incorporated herein by reference. As explained in detail in the memorandum, Dr. Johnsson has concluded that the additional information in support of the appeal does not raise a substantial issue with regard to fault surface rupture.

2. On Page 34, Special Condition #1 shall be revised as follows:

1. **Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval by the Executive Director, final site, building, and parking plans for the proposed development, including the barge, that have first been approved by the Port of San Diego. Said plans shall be in substantial conformance with the plans submitted with this application by Graham Downes Architecture dated April 8, 2013.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No

changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required

3. On Page 38, Special Condition #12 shall be corrected as follows:

12. Invasive Species. PRIOR TO COMMENCEMENT OF ANY IN WATER WORK, the applicant shall provide evidence that dredging of San Diego Bay can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia* as follows.

- a. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any in-water development authorized under this coastal development permit, the applicant shall undertake a survey of the project area (~~includes and~~ including any ~~other~~ areas where the bottom could be disturbed by project activities) and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate. [...]

4. The last paragraph on Page 48, continuing onto page 49, shall be revised as follows:

Although not actually built in the water, the newly reconstructed event facility on the barge will be a private structure continuously moored for private use over public tidelands or waters subject to the public trust. Typically, the Commission does not allow private structures to be built on public waters unless there is a public access component built into the development, such as piers and other docks that allow public access. The proposed barge is to be used for private events and periodic restaurant dining associated with the new restaurant located on the adjacent land area; however, it is not expected to be used for restaurant events every day, year round. In this particular case, the new smaller barge would replace the previously existing Reuben E. Lee restaurant that was located on a larger barge and was open to the general public for restaurant dining. The new barge, because it would not be used on a daily basis, and would most often be used for private events, would not be open for use by the general public when the restaurant is open similar to the proposed and pre-existing restaurant. When not being used for a function, the barge would be an excellent viewing point for the public for observing the harbor and the downtown skyline.

The applicant has stated there would be security concerns with allowing the public onto the barge when restaurant employees are not actively managing the space, both for the public, and for the restaurant property. However, there are numerous docks and piers, some with commercial facilities on them, which are publically accessible without constant on-site oversight. A limited portion of the barge, such as a deck or platform that could be also be used for the private restaurant functions,

could be designed to allow public access during the time period when the restaurant is not using it. Therefore, to mitigate for the adverse impacts of a private structure over public trust lands, thereby preventing the public from using the public trust tidelands occupied by the private structure for public trust uses, like swimming, fishing, boating. **Special Condition #13** requires the applicant to submit a public access plan for the barge that includes a design that will allow the public access onto some portion of the barge from the public accessway for strolling and observation when the barge is not being used by the restaurant for events. Access hours to the barge when not being used for an event shall be the same as those for the walkway itself (that is, from at all times that the restaurant is open, and from dawn through dusk, whichever provides greater public access). Appropriate signage that identified and directs the public to the public use area on the barge shall be included. Such a requirement serves to maximize public access opportunities for all persons on public trust lands consistent with Section 30210 of the Coastal Act.

5. The following paragraph shall be inserted prior to the second to last paragraph on the bottom of Page 56:

On May 28, 2013, staff received a review letter from the appellants and Earth Consultants International, dated May 23, 2013, raising concerns with the 2011 and 2012 Geocon reports and the adequacy of those reports in locating potential fault strands underlying the site. Dr. Johnsson has prepared a memorandum, dated June 4, 2013, responding to these concerns. The memorandum is attached to this staff report as Exhibit #16, and is incorporated herein by reference. As explained in detail in the memorandum, Dr. Johnsson has concluded that the project is not expected to be at risk with regard to fault surface rupture. He further notes that utility lines crossing faults or in areas susceptible to liquefaction always carry risk of rupture during a major earthquake. The applicant has incorporated into their project description an acknowledgment and agreement that these utilities must conform to best current practices, including flexible joints, to accommodate lateral movement and/or differential settlement/flotation due to liquefaction.

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4 June 2013

GEOTECHNICAL REVIEW MEMORANDUM

To: Diana Lilly, Coastal Program Analyst
From: Mark Johnsson, Staff Geologist
Re: Sunroad Enterprises Appeal (A-6-PSD-13-005)


This memorandum is a review of the following document, submitted by the appellants in support of the above referenced appeal:

- 1) Earth Consultants International, 2013, "Review of fault studies conducted for the restaurant proposed at the east end of East Harbor Island (880 Harbor Island Drive), in San Diego, California", 5 p. geotechnical review letter dated 23 May 2013 and signed by T. Gonzalez (CEG 1859).

Reference (1) is, in turn, a review of the following documents, which I previously reviewed. My review of these documents has been incorporated into the Substantial Issue portion of the Staff Report for this appeal:

- 2) Geocon, 2011, "Response to geotechnical review comments, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 5 p. geotechnical response letter dated 14 October 2011 and signed by S. F. Weedon (GE 2714) and A. Sadr (CEG 1778).
- 3) Geocon, 2012, "Second response to geotechnical review comments, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 6 p. geotechnical response letter dated 27 January 2012 (revised 19 March 2012) and signed by G. W. Cannon (CEG 2201 PE C058468) and S. F. Weedon (GE 2714).
- 4) Geocon, 2012, "Fault study addendum No. 1, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 2 p. fault study addendum report dated 28 August 2012 and signed by G. W. Cannon (CEG 2201 PE C058468) and S. F. Weedon (GE 2714).
- 5) Geocon, 2012, "Fault study addendum No. 2, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 2 p. fault study addendum report dated 11 September 2012 and signed by G. W. Cannon (CEG 2201 PE C058468).
- 6) Geocon, 2012, "Foundation plan review, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 2 p. review letter dated 15 May 2012 and signed by S. F. Weedon (GE 2714).
- 7) Ninyo and Moore, 2012, "Review of referenced geotechnical documents, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 4 p. geotechnical review letter dated 10 July 2012 and signed by J. T. Kent (PE GE) and J. Goodmacher (CEG).

/3

EXHIBIT NO. 16
APPLICATION NO.
A-6-PSD-13-5
Geotechnical Review
Memorandum
 California Coastal Commission

I also reviewed several documents not cited in reference (1). Some of these were cited by Earth Consultants International (ECI) in an earlier review (reference 12, below). My comments on these documents, including ECI's earlier review, have been incorporated into the Substantial Issue portion of the Staff Report for this appeal:

- 8) Terra Physics, 2005, "Final report, Seismic reflection survey to detect the Spanish Bight Fault Zone, Proposed East Harbor Island hotel site, San Diego Bay, California", p. geophysics report dated 5 October 2005 and signed by K. Hennon (RGP 886).
- 9) Terra Physics, 2006, "Final report, Seismic reflection survey to detect the Spanish Bight Fault Zone, (Trip #2 - Westward extension from original survey area_ Proposed East Harbor Island hotel site, San Diego Bay, California", p. geophysics report dated 8 February 2006 and signed by K. Hennon (RGP 886).
- 10) Geocon, 2006, "Geotechnical investigation and geologic fault investigation, East Harbor Island Hotel, San Diego, California", 20 p. geotechnical report dated 3 March 2006 and signed by J. J. Vettel (GE 2401), F. Khatib and M. S. Chapin (CEG 1149).
- 11) Ninyo and Moore, 2006, "Preliminary geotechnical evaluation and third-party review, proposed East Harbor Island Development Project, San Diego, California", 12 p. geotechnical review report dated 21 June 2006 and signed by R. D. Hallum (CEG 1484) and R. L. Irwin (CEG 1521).
- 12) Earth Consultants International, 2011, "Review of May 6, 2011 staff report on the Sunroad Harbor Island Hotel project, Agenda Item 23 of the San Diego Unified District Board Meeting to be held on May 10, 2011", 3 p. geotechnical review letter dated 9 May 2011 and signed by T. Gonzalez (CEG 1859).
- 13) Geocon, 2011, "Geotechnical investigation, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 26 p. geotechnical report dated 2 September 2011 and signed by S. F. Weedon (GE 2714) and G. W. Cannon (CEG 2201 PE C058468).
- 14) Geocon, 2012, "Foundation plan review, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 2 p. review letter dated 15 May 2012 and signed by S. F. Weedon (GE 2714).
- 15) TerraCosta Consulting Group, 2013, "Wave uprush and sea level rise discussion, 880 Harbor Island Drive, San Diego, California", 5 p. letter report dated 3 May 2013 and signed by W. F. Crampton (GE 245).

Finally, I have reviewed the applicant's response to reference (1):

- 16) TerraCosta Consulting Group, 2013, "Response to third-party review prepared by Earth Consultants International "Review of fault studies conducted for the restaurant proposed at the east end of East Harbor Island (8B0 [sic] Harbor Island Drive), in San Diego, California," dated May 23, 2013 (Earth Consultants project no. 3005.02), 800 Harbor Island Drive, San Diego, California", 5 p. letter report dated 31 May 2013 and signed by R. N. Hawk (CEG 1299 GE 2909) and W. F. Crampton (GE 245).

My review of reference (1) was complicated by the fact that many of the arguments made by the appellants are very graphical in nature, yet no figures illustrating these arguments are presented. I had to assemble graphics from disparate sources cited by the appellants and do my best to

14

interpret their verbal descriptions of the anomalies they describe in terms of the graphical elements in the original report(s).

I concur with the background information and introductory findings in reference (1) (hereafter referred to as ECI). Most notably, I concur with the characterization of the three faults mapped by Geocon as three splays of the active Spanish Bight Fault identified by others. I also concur with the conclusion that Geocon's "...use of CPTs [Cone Penetrometer Tests] for fault studies is a recognized method of investigation..." and that the spacing of the CPT borings performed by Geocon is "well within the spacing of 10 to 15 feet typically necessary to conduct a valid correlation of units and evaluation of faulting." I also recognize, as pointed out by ECI, that these faults are thought to be primarily strike-slip in nature, and that the CPT studies will only be able to detect vertical offsets in marker beds, limiting their effectiveness in constraining fault locations.

The core of ECI's findings are summarized in six bullet points. Below, I repeat these findings in *italics*, followed by my own comments on them.

1) *Geocon did not use and/or plot all of the CPT data in their most recent cross-sections (in their Fault Addendum from August 2012). We took some of the CPT data provided in their appendices, identified some of the critical stratigraphic contacts, plotted these data for CPTS 37, 39, 40 and 17 on their northern cross-section line, and carried several marker beds across the area. Our analysis suggests that there could be a fault between CPT-17 and CPT-43, near the east end of the proposed restaurant site. We find that there are several layers that connect relatively straight across between CPT-18 and CPT-17 (as shown on their revised March 2012 cross-section), but then these marker beds step up to the east, and/or change in thickness or character between CPT-17 and CPT-43. This disruption in the stratigraphy can be carried up section to at least 5 feet into the bottom of the Bay Deposits. The vertical offsets observed are typically in the order of 2 to 2.5 feet. From this analysis it is our opinion that the lack of faulting in the east side of the project has not been confirmed adequately. Furthermore, this step up to the east is also observed between CPTs 16A and 15 in their March 2012 report. Although Geocon shows continuity of two marker beds between CPT-16A and CPT-41 in their August 2012 report, there are differences in the character of the sediments that could be ascribed to strike-slip faulting.*

Here it would have been especially helpful to see a graphical representation of ECI's interpretation of these data. I examined the CPT data indicated, and saw no evidence for a fault between CPT-17 and CPT-43, which are very closely spaced. Since CPT-17 met refusal at a relatively shallow depth, it is likely that CPT-43 was advanced as a replacement. I did not observe the step-up or thickness change described by ECI, but I do note that variations in depths of marker horizons and their thickness may be attributed to a number of causes; a fault can only be identified with certainty if it extends laterally through more than one cross section, which this feature, if present, apparently does not. Similarly, I could not confirm the step-up to the east reported between CPA-16A and CPT-15, nor between CPT-16A and CPT-41.

2. *The faults at the west end of Geocon's northern interpreted cross-section can be carried up section to at least 5 to 10 feet into the Bay deposits, and thus nearly 50 feet higher than shown on their cross-section line. Our analysis also suggests that there is another fault between CPT-37 and CPT-38, which places the easternmost of these faults slightly closer to the proposed building. Geocon shows the faults in their cross-sections as vertical, but these faults probably dip to the west, especially if they are truly antithetic to a larger fault farther west. The CPT data certainly permit and suggest that the faults between CPT-27 and CPT-26, and between CPT-37 and CPT-38, dip to the west. This means that the faults'*

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projections to the ground surface should be shifted east from where shown on Geocon's map, and closer to the proposed building. The fault between CPT-31 and CPT-32 (in their southern cross-section) could also dip west, and project up to the ground surface at a location east of where shown on their map. The setback zone should be wide enough to accommodate uncertainties in how the fault projects to the ground surface.

Again, a graphical representation of ECI's interpretation of Geocon's data would have helped frame my review. Geocon has assumed that all of these faults are active, and extend to the surface, so ECI's interpretation that the faults at the west end of the northern cross section also offset Bay Mud deposits is fully consistent with Geocon's interpretation. Further, this fault is farther from the proposed building envelope than the easternmost fault, so such an interpretation is moot with respect to constraining the building envelope. I cannot comment on ECI's interpretation of a fault lying between CPT-37 and CPT-38; they have not presented any evidence for me to evaluate. The proposed westward dip of the easternmost fault is unsupported, but permissible, by the data. These uncertainties are, in my opinion, accommodated by the width of the fault **zone** portrayed by Geocon (see, for example, figure 1 of reference (4)). The recommended 10-foot setback is measured from the eastern edge of this **zone**.

3. It is not clear why Geocon has chosen to bend the easternmost of these faults in the southern portion of the site. There are no CPT or geophysical data in this area to support this interpretation. The fault could extend southward following the same strike defined by the two CPT lines, and thus could be closer to the proposed building than shown on Geocon's map. If the fault indeed bends across the site as shown, short secondary and tertiary faults can be expected to form to the east and northeast of the bend, in the area where proposed building is closest to the fault. The setback zone should be wide enough to include this zone of deformation. In our opinion, the setback zone should be wider than the 10-foot proposed in the areas where the fault bends.

The change in strike of the fault is mandated by the locations of the fault in seismic reflection line 4 and in the southern CPT section. I again note that Geocon has projected the fault to the surface as a **zone**, and uncertainties in the projection of the fault trace to the surface are accommodated by this zone. The recommended 10-foot setback is measured from the eastern edge of this **zone**.

4. A step-up to the west of several stratigraphic markers suggests that there is another fault between CPT-28 and CPT-29. A fault in this area may correspond with the fault in the geophysical line 4 that Geocon shows stopping short of CPT-28.

I concur that there is a vertical offset between CPT-28 and CPT-29 that could correspond to a fault between these borings. However, any such putative fault lies west of the eastern fault, which crosses the southern cross section between CPT-31 and CPT-32, and so would have no bearing on any setback for the proposed development.

5. The proposed reinforced foundation could help mitigate the secondary deformation and differential settlement that is anticipated to occur if this fault system ruptures during the lifetime of the project. It is not clear whether Geocon's recommendation that the structure be founded on piles driven into the Old Paralic deposits is part of the final proposed plan. Although a pile system could mitigate the damage resulting from liquefaction, if there are secondary or tertiary faults underlying a section of the structure, and these faults move, the pile system can actually result in unintended damage to the structure.

It is my understanding that of the three recommended liquefaction mitigation measures proposed by Geocon (ground improvements, pile foundation, or mat foundation), the applicant has chosen ground improvements in the form of stone columns within the building footprint. Such a mitigation measure is least likely to transmit differential movement and structural damage through fault rupture to the structure.


6. Utilities servicing the proposed structure are assumed to extend across the full width of the Spanish Bight fault zone. Even if the proposed restaurant building performs well during a surface fault-rupturing event, the utilities may be severely compromised, unless they are designed or strengthened in this area. Ruptured gas lines could pose a fire hazard to the structure and the people therein following an earthquake.

Utility lines crossing faults or in areas susceptible to liquefaction always carry risk of rupture during a major earthquake. If not already part of the project description or required by City code, I recommend a condition requiring that these utilities conform to best current practices, including flexible joints, to accommodate lateral movement and/or differential settlement/flotation due to liquefaction

I note that reference (16) makes many of the same points as my review in reference to the appellants' findings. In general, I concur with the conclusions of reference (16). Finally, I note that the interpretations and recommendations contained in the applicants' reports have been reviewed by City staff, who have required additional studies and recommendations, as well as two third-party reviewers (references 11 and 16), who have concurred with the revised interpretations and recommendations. I concur with these reviewers, and do not feel that the appeal raises a substantial issue with regard to fault surface rupture or liquefaction.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,



Mark Johnsson, Ph.D., CEG, CHG
Staff Geologist



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Blank**

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June 6, 2013

W 17a

VIA OVERNIGHT AND ELECTRONIC MAIL

Mary K. Shallenberger, Chair
and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

Re: Appeal No. A-6-PSD-13-005 (Sunroad Enterprises)
Agenda Item: W 17a
Hearing Date: June 12, 2013

Dear Chair Shallenberger and Members of the Commission:

This firm, along with McCabe and Company, represents Sunroad Enterprises (“Sunroad”) in the above matter. Working with Staff, Sunroad has revised its Reuben E. Lee Restaurant Replacement Project (“Project”) so that it now provides an additional public pedestrian walkway along the shoreline (east) side of the restaurant proposed. (See architectural renderings, Exhibit 1.) The new walkway segment connects with the pedestrian walkways the Project will also provide on the bay side and marina basin side of the Project, thus providing continuous public access along the east end of Harbor Island. For that reason, Sunroad is not contesting Substantial Issue on the appeals filed. As to the merits, Sunroad supports the recommendation of approval and the special conditions, except for Special Condition No. 13, which it asks be deleted.

The Project and the Requested Deletion of Special Condition No. 13

The appeals are unusual because they deal with a Project approved 5 years ago. On June 10, 2008, the San Diego Unified Port District approved Sunroad’s Project at the east end of Harbor Island. Pursuant to the Port’s certified CDP Regulations, the Port Board determined that the Project is an “Excluded Development” which does not require a Coastal Development Permit. Sunroad relied on the Port’s approval, exercised a long-term lease option and commenced the redevelopment of its \$9 million restaurant replacement project.

A copy of this letter has been provided to the CCC San Diego District Staff

19
Response from applicant

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Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 2

As approved by the Port, the Project involves (1) the demolition of the former 21,000 sq. ft. Reuben E. Lee Restaurant, which was located on a floating barge at the east end of Harbor Island, and its land-side improvements and (2) the construction of a new 13,650 sq. ft. restaurant on land and a new barge in the same location of the Reuben E. Lee but shifted landward to be entirely within the pierhead line, providing approximately 4,800 sq. ft. of primarily unenclosed event space. The Project opens up wide vistas of the downtown San Diego skyline, San Diego Bay, the Coronado Bay Bridge and Coronado, all of which have been blocked by the mass of the four-story, 68' high REL since 1968, and none of which were previously accessible by a designated public promenade. The restaurant is fully open to the public and diversifies the public visitor-serving restaurant experience with both water and land areas.

In approving the Project, the Port required a lengthy paved pedestrian walkway through the site (where none existed), extending and connecting the public sidewalks along the bay side and the marina basin side of East Harbor Island

Working with Staff, Sunroad has since made a substantial revision to the Project by also providing a public deck/path around the east (water side) of the Project between the proposed new restaurant and the barge, thus ensuring continuous public access to and along the shoreline and expansive views of the Bay and downtown skyline.

Special Condition No. 13 would impose an additional burden of requiring Sunroad to submit a public access plan for the barge that accommodates access over some portion of the barge for strolling and observation when the barge is not being used by the restaurant for events. Access hours would be at all times when the restaurant is open or from dawn to dusk, whichever provides greater public access.

Sunroad respectfully submits that Special Condition No. 13 goes too far, and it requests deletion of the condition for the following reasons. First, this additional condition takes unfair advantage of Sunroad's voluntary addition of a substantial public accessway around the perimeter of the restaurant. Second, it is unnecessary – the restaurant project will result in continuous public access around the east end of Harbor Island and full public views of the Bay and downtown San

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 3

Diego. Special Condition No. 13 will not afford more or better views than those available from the proposed elevated walkway. Third, Staff indicated that the Commission has endeavored to provide contiguous, continuous public access along the shoreline, wherever possible. This condition would not provide a contiguous connection, nor is it along the shoreline, and thus goes beyond the stated intent of public access set out as a goal by the Commission. Fourth, Sunroad cannot accept the liability associated with the necessity for policing the barge. The restaurant is located at an elevation significantly higher than the barge and at a distance from it. From an operational standpoint, there is no effective way to monitor or police unsupervised access on the lower barge facility from the restaurant, even if access on the barge was limited to a designated area, or to prevent unauthorized uses, unsafe activities (including by children) or vandalism. Moreover, the facility also would not be visible to Port security staff that pass occasionally through the parking area. Finally, because it will be heavily used for event and other public restaurant and bar-related activities, especially during the warm weather months, the barge will maintain tables, chairs, heat lamps, a bar, a galley and other limited facilities. It must be secure because it will be located in an exposed, exterior area.

The Project, as currently proposed and modified, will provide ample new public access and public coastal viewing opportunities. Special Condition No. 13 poses unnecessary and unwarranted operational, monitoring and liability problems, and should be deleted.

Coastal Act Issues

The Staff Report ably addresses the substantive Coastal Act issues raised by the Project, and concludes that, as conditioned, the Project is consistent with the public access, parking, eelgrass habitat protection and the hazard policies of the Port Master Plan and Coastal Act. Two issues merit brief discussion.

The primary issue raised by Staff on appeal is whether the Project should provide a public pedestrian walkway around the entire perimeter of the restaurant. Sunroad embraced the concept, designed a public deck/path around the east (water side) of the Project and incorporated it into the Project. The Staff Report appropriately concludes that the Project will be consistent with the Port Master Plan and the public access and recreation policies of the Coastal Act.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 4

Second, in an attempt to resurrect an issue on which it lost in *Unite Here Local 30 v. San Diego Unified Port District*, Unite Here contends the Project is not consistent with the certified Port Master Plan policies that require development to facilitate a tideland environment free of hazards to the health and welfare of the people of California resulting from seismic risk. It argues the Project would be located in a fault zone and that there is insufficient data to accurately determine the location and width of faulting on the project site.

The real focus of Unite Here's opposition is not this restaurant but rather a general opposition to hotel projects in the Port which do not include prenegotiated neutrality agreements,¹ including a separate 175-unit hotel project that Sunroad has proposed on another leasehold on Harbor Island. The EIR prepared for the hotel included and analyzed multiple geophysical studies prepared for the easterly portion of East Harbor Island. The fault lines were clearly indicated. Unite Here filed suit to challenge the adequacy of the EIR. The trial court in *Unite Here Local 30 v. San Diego Unified Port District*, SDSC Case No. 37-2011-00094537, ruled that the EIR adequately described seismic and geologic conditions in this area, and additionally rejected Unite Here's attempt to link this restaurant replacement project with the hotel project. (Staff Report, Exh. 13, 2/27/13 Letter from Richards, Watson & Gershon to Chair Shallenberger, Exh. 5 thereto, pp. 3-6 ["[T]here is sufficient evidence in the record to support the conclusion that the restaurant and [hotel] project can be done independently of one another," rejecting a CEQA piecemealing claim.) In its decision, the Port required this Project to be sited bayward of the easternmost fault line to avoid any seismic risk, and the City of San Diego included this in their review, along with a third party review, prior to issuing the building permit for the Project.

The Staff Report explains that the Commission's Staff Geologist, Dr. Mark Johnsson, has reviewed all of the geotechnical information provided and "has determined that, in his opinion, the project will be free of hazards to the health and welfare of the public. The Staff Report neatly summarizes the geotechnical review process. In addition to the 2006 Geocon report prepared for the hotel,

¹ A neutrality agreement is a contract between a union and an employer under which the employer agrees to support a union's attempt to organize its workforce.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 5

“... [A]dditional testing, including the advancement of numerous additional CPT borings, was undertaken in preparation for this development. These are reported on in a 2 September 2011 report by Geocon. This report was reviewed by the City of San Diego; responses to the review comments were provided in Geocon reports dated 14 October 2011 and 11 September 2012. These additional borings much more tightly constrained the location of the eastern splay of the Spanish Bight Fault and eliminated the possibility that a feature encountered in the area of the project footprint on a seismic reflection profile (Terra Physics 2005, 2006) was an additional fault. A third party review by Ninyo and Moore dated 10 July 2012 concurred, and the City approved the project in a footprint outside of a ten foot setback from the eastern edge of the fault zone as mapped in the latest Geocon reports. The Commission’s staff geologist has reviewed all of this material submitted by both the applicant and the data and the conclusion of the applicant’s reports that based on the data analysis, the development will be safe from geologic hazards for the life of the development. The eastern strand of the fault is very well constrained by CPT borings and seismic reflection profiles, and he concurs that a ten foot wide setback zone is adequate to assure safety from a fault rupture hazard.” (Staff Report, p. 56.)

Unite Here has submitted a further May 23, 2013 letter from ECI raising concerns about the adequacy of the 2011 and 2012 Geocon reports in locating potential fault strands underlying the site. The Staff Report notes that Dr. Johnsson has preliminarily concluded that those concerns are not warranted and will have a further response forthcoming in an addendum to the Staff Report. In addition, Sunroad has provided a further report prepared by TerraCosta dated May 31, 2013, which also concludes that ECI’s concerns are unfounded and that “no new information was provided which refuted or denigrated the validity of the Geocon reports or the conclusions and recommendations provided therein.” (Exhibit 2, p. 5.)

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 6

Appeal Issues

At this point, Sunroad is not contesting the appeals filed. The Staff Report does include, however, this firm's letter, dated February 27, 2013 concerning appeal-related procedural issues. (Staff Report, Exhibit 13.)

A. The Simple and Straight-Forward Route to Addressing the Appeals.

The clear procedural path with respect to the appeals is briefly described in the Staff Report at the top of page 9 under "Appeal Procedures" and at the bottom of page 40 and top of page 41 under "Project Description." Adhering to that path avoids a further convoluted interpretation in the Staff Report which argues that a stand-alone restaurant in the Port constitutes an appealable development.

Section 30717 of the Coastal Act deals with appeals of port projects. It provides in pertinent part:

"Appeals shall be filed and processed by the commission in the same manner as appeals from local government actions as set forth in Chapter 7 (commencing with Section 30600) of this division."

Section 30625 of the Act, in turn, deals with appeals and it provides in relevant part:

"... [A]ny appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission by an applicant, any aggrieved person, or any two members of the commission. The commission may approve, modify, or deny such proposed development . . ." (Emphasis added.)

Sections 30717 and 30625 permit the Commission to appeal an exemption and, as recommended by Staff here, to approve or modify the proposed development. That is all the authority the Commission requires here in order to approve Sunroad's Project, with conditions.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 7

The Staff Report offers extended discussion to support a further argument that restaurants constitute an appealable development. Section 30715 of the Act specifically identifies the developments which remain “appealable” following certification of a Port Master Plan. A restaurant is simply not one of the listed appealable developments in Coastal Act section 30715.

We had previously addressed this issue in our letter of February 27, 2013, which Staff has included as Exhibit 13 to the Staff Report. (Staff Report, Exh. 13, pp. 12-13.) As such, we will not attempt to repeat the points here to explain why the type of development singled out by Staff in Section 30715 – “shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes” – does not equate with a stand-alone “restaurant.”

In short, the better course here is the path set forth in Coastal Act sections 30717 and 30625. An exemption determination is appealable, and, as Staff has recommended, the Commission is authorized to approve the Project, with conditions.

B. A Port Master Plan Amendment is Not Required.

The Staff Report notes but dismisses the notion of a Port Master Plan (PMP) amendment that would first add the Project to the PMP “project list.” Sunroad agrees for several reasons.

First, as discussed, Coastal Act Sections 30717 and 30625 expressly provide that an exemption determination made by the Port governing body may be appealed, and that the Commission thereafter may proceed to approve, modify or deny the development. That is the posture of the instant appeal before the Commission. For that reason alone, a PMP amendment is not relevant. The Coastal Act permits approval of the Project.

Second, again as noted, a restaurant is not a project listed as “appealable” in Section 30715, and therefore need not be included in a PMP “project list.” Coastal Act section 30711(d)(4) states that a Port Master Plan must include, among other things:

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 8

“(4) Proposed projects listed as appealable in Section 30715 in sufficient detail to be able to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.” (Emphasis added.)

Nothing in the Coastal Act mandates that *every* project proposed in a port – appealable, non-appealable or exempt -- be approved first through a PMP amendment. Section 30715(d)(4) requires a “project list” for “appealable” projects, and is explicit that the reference to “project list” applies only to “Proposed projects listed as appealable in Section 30715.” Still, the Port Master Plan here notes the restaurant use in this area: “The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water’s edge.” (PMP, East Harbor Island Planning Sub-area of Planning District 2, p. 53.)

Finally, the Staff Report correctly points out that this Project is unusual because it was approved by the Port under an exemption five years ago. The fully described project is currently before the Commission, has been the subject of full public participation and input, and has been fully analyzed for consistency with the Port Master Plan and Coastal Act. It is properly before the Commission for decision.²

² In this and other port master plans, a project is often only referenced by a very brief description, leaving the site-specific considerations to be reviewed in connection with a permit application. For example, there are 10 projects listed at the end of the Harbor Island/Lindbergh Field Planning District. To illustrate the brevity of each project noted, the most detailed description of the projects provided on the “project list” is the very first project listed: “HOTEL COMPLEX: up to 500 rooms, restaurant, cocktail lounge, meeting and conference space; parking; landscape.” That is the beginning and end of the discussion. Every other project noted is referenced by an even briefer notation.

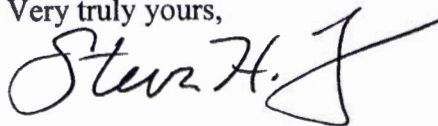
Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
June 6, 2013
Page 9

CONCLUSION

For all the foregoing reasons, Sunroad respectfully requests that the Commission approve the Project with conditions, except for Condition No. 13, which ensures that the Project is consistent with the certified Port Master Plan and the Coastal Act.

We look forward to discussing these issues further with you at the June 12, 2013 meeting.

Very truly yours,



Steven H. Kaufmann

Attachments

ccs (with attachments):

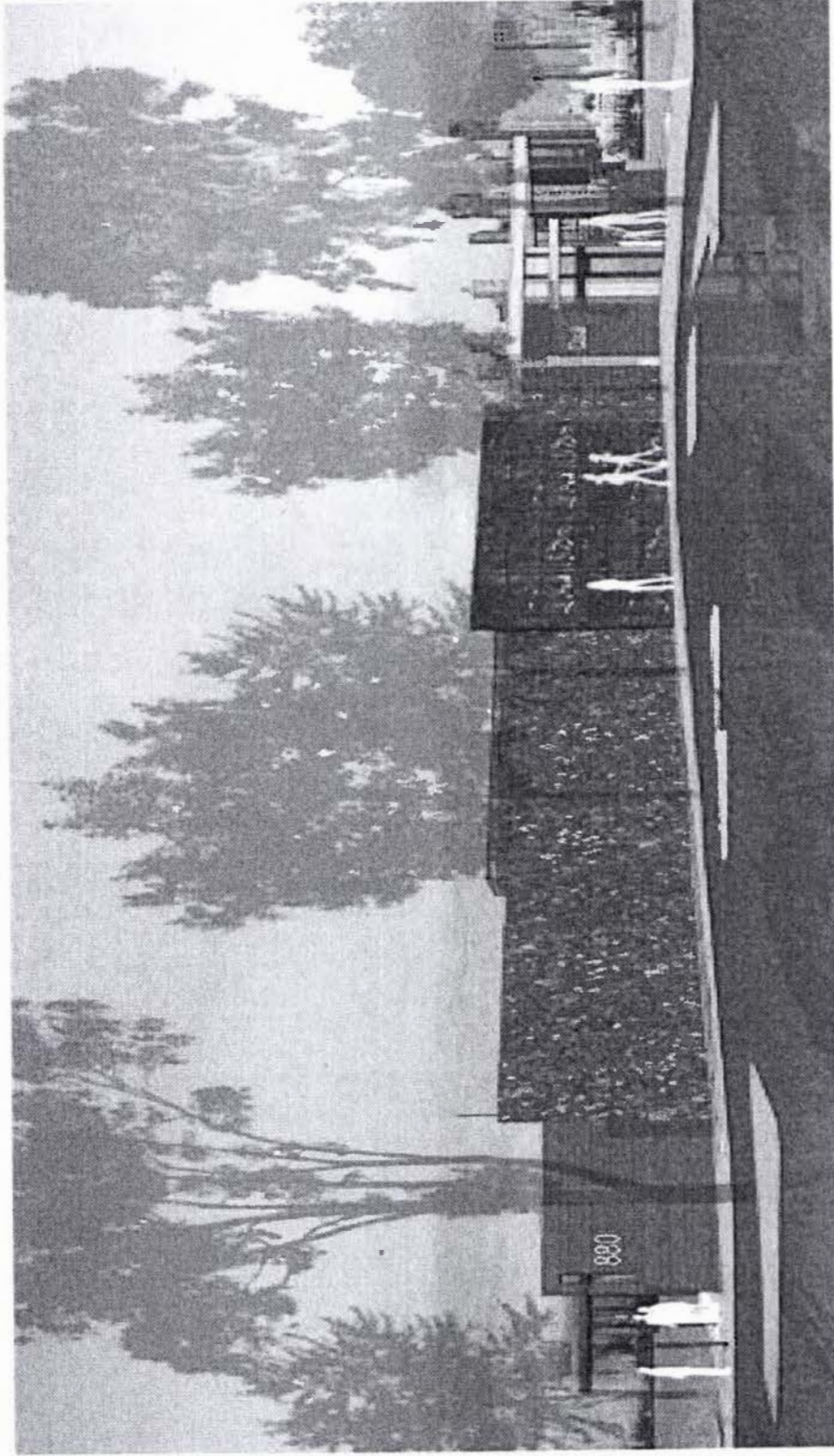
Dr. Charles Lester, Executive Director, CCC
Sherilyn Sarb, Deputy Director, CCC
Deborah Lee, District Director, CCC
Diana Lilly, CCC, Coastal Program Analyst, CCC
Hope Schmeltzer, Esq., Chief Counsel, CCC
Jamee J. Patterson, Esq., SDAG
Ann Moore, Chair, Board of Port Commissioners
Honorable Port Commissioners
Wayne Darbeau, President/CEO, SDUPD
Randa Coniglio, Ex. Vice Pres., SDUPD
Lesley Nishihira, Manager, Land Use Planning, SDUPD
Thomas Russell, Esq., Port Attorney, SDUPD
James Lough, Esq., Special Counsel, SDUPD
Uri Feldman, Sunroad Enterprises
Tom Story, Sunroad Enterprises
Susan McCabe, McCabe and Company
Anne Blemker, McCabe and Company

Architectural Renderings

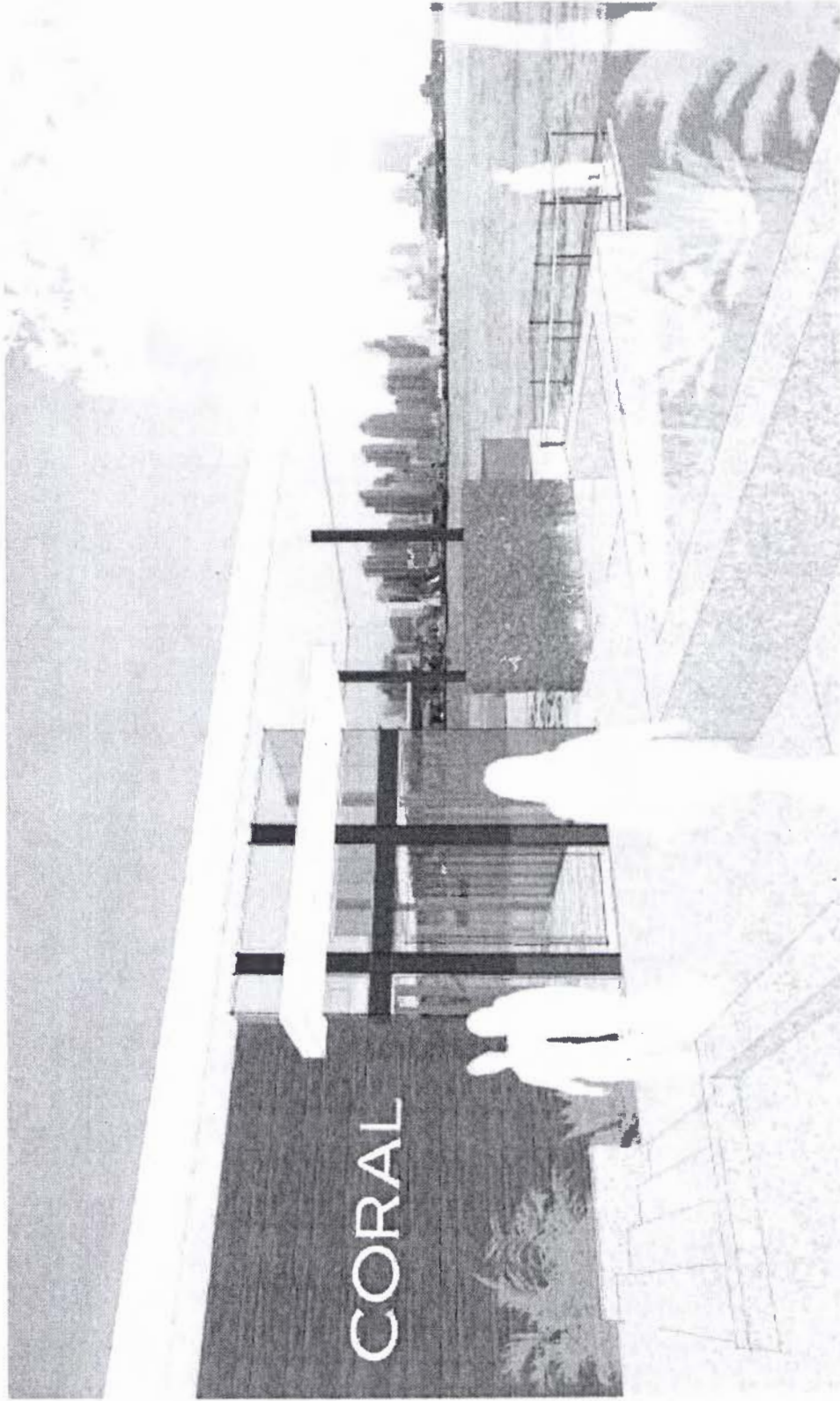


View 1—From Bay toward restaurant, walkway and barge

EXHIBIT 1



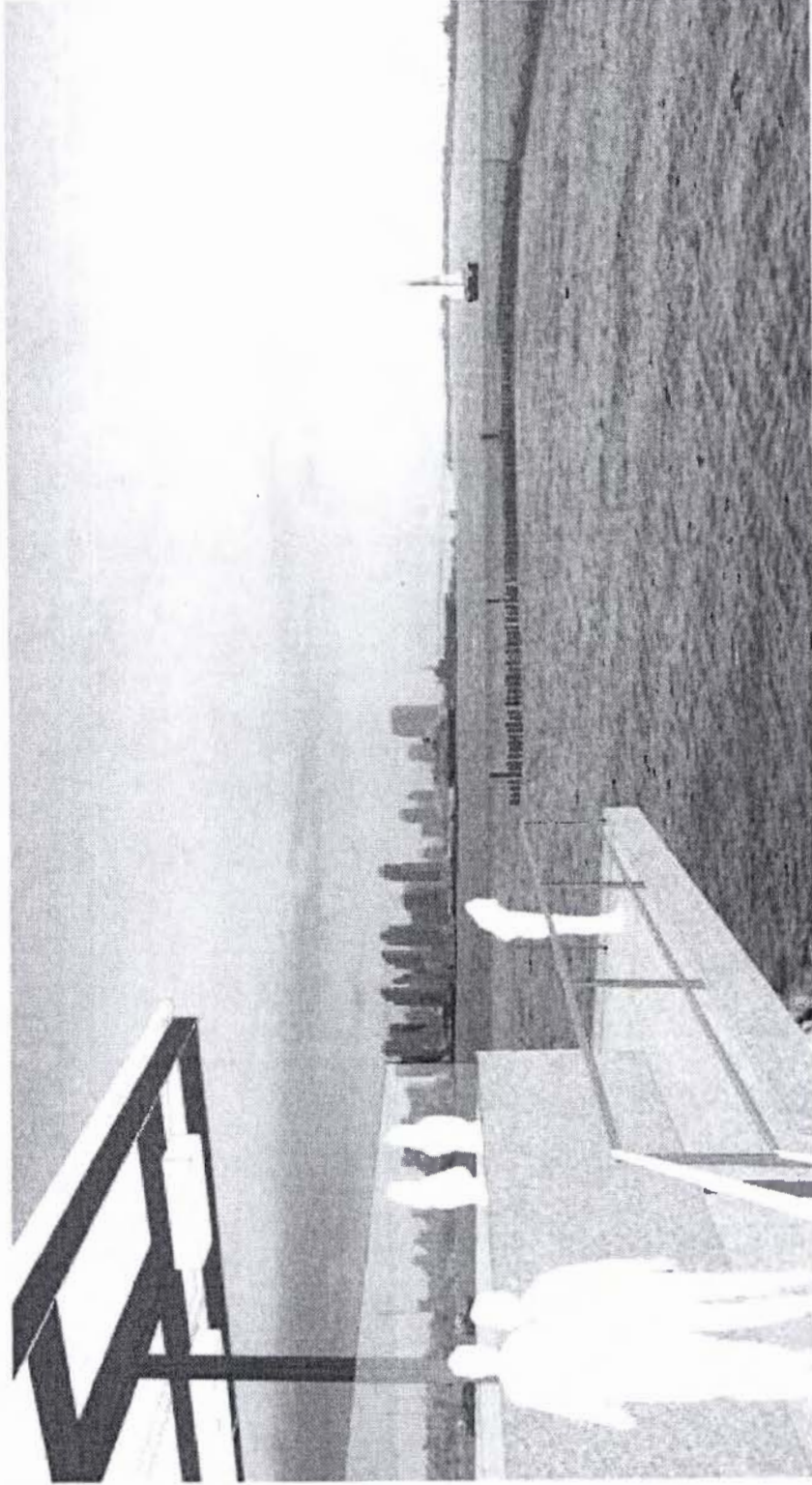
View 2—From parking lot toward restaurant



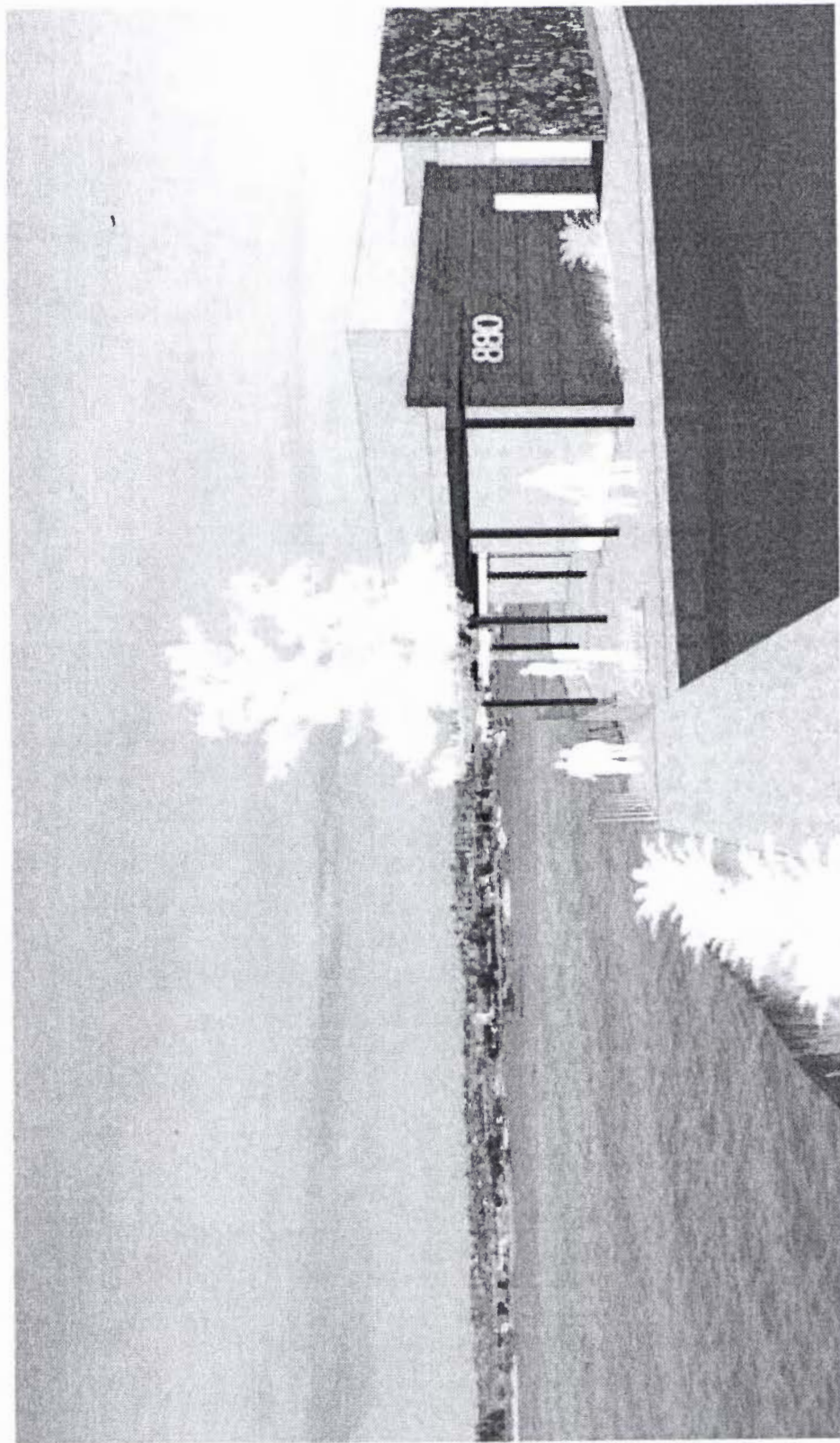
View 3—From front/bayside of restaurant toward downtown skyline



View 4—From bayside walkway toward downtown skyline and Coronado



View 5-From bayside walkway toward downtown skyline and Coronado
(further east)



View 6- From marina side walkway toward Pt. Loma



Project No. 2775
May 31, 2013

Geotechnical Engineering
Coastal Engineering
Maritime Engineering

Mr. Tom Story, V.P. Development
SUNROAD ENTERPRISES
4445 Eastgate Mall, Suite 400
San Diego, California 92121

RESPONSE TO THIRD-PARTY REVIEW
PREPARED BY EARTH CONSULTANTS INTERNATIONAL
"REVIEW OF FAULT STUDIES CONDUCTED FOR THE RESTAURANT
PROPOSED AT THE EAST END OF EAST HARBOR ISLAND
(8B0 HARBOR ISLAND DRIVE), IN SAN DIEGO, CALIFORNIA,"
DATED MAY 23, 2013 (EARTH CONSULTANTS PROJECT NO. 3005.02)
880 HARBOR ISLAND DRIVE
SAN DIEGO, CALIFORNIA

Dear Mr. Story:

TerraCosta Consulting Group, Inc. (TCG) has reviewed the May 23, 2013, letter prepared by Earth Consultants International (ECI) for UNITE HERE Local 30 regarding the proposed project, as well as the reports and comments prepared by Geocon, Inc. (the geotechnical consultant of record), The City of San Diego Development Services geology staff, and Ninyo and Moore, an outside consultant hired by the City of San Diego for third party review. The project has been approved for construction permits by the City of San Diego based on their acceptance of the Geocon studies, and concurrence of Ninyo and Moore. Based on our review of the ECI report, although ECI offered other interpretations of the Geocon data, no new data was provided that refuted the validity of the Geocon reports or the conclusions and recommendations provided therein. We have restated ECI's comments in italics below, followed by our responses.

1. Geocon did not use and/or plot all of the CPT data in their most recent cross-sections (in their Fault Addendum from August 2012). We took some of the CPT data provided in their appendices, identified some of the critical stratigraphic contacts, plotted these data for CPTs 37, 39, 40 and 17 on their northern cross-section line, and carried several marker beds across the area. Our analysis suggests that there could be a fault between CPT-17 and CPT-43, near the east end of the proposed restaurant site. We find that there are several layers that connect relatively straight across between CPT-18 and CPT-

17 (as shown on their revised March 2012 cross-section), but then these marker beds step up to the east, and/or change in thickness or character between CPT17 and CPT-43. This disruption in the stratigraphy can be carried up section to at least 5 feet into the bottom of the Bay Deposits. The vertical offsets observed are typically in the order of 2 to 2.5 feet. From this analysis it is our opinion that the lack of faulting in the east side of the project has not been confirmed adequately. Furthermore, this step up to the east is also observed between CPTs 16A and 15 in their March 2012 report. Although Geocon shows continuity of two marker beds between CPT-16A and CPT-41 in their August 2012 report, there are differences in the character of the sediments that could be ascribed to strike-slip faulting.

As with most geotechnical data of real systems, alternative interpretations can be made. It is unfortunate that ECI chose not to include graphics illustrating their interpretations and allowing the same scrutiny they applied to the Geocon report, but a review of the referenced reports did not reveal information that suggested the Geocon interpretation was erroneous.

The Geocon report was prepared by licensed geologists and engineers, and reviewed by licensed professionals at Ninyo and Moore, the City of San Diego geology staff, and the undersigned who found the Geocon interpretation of the data was reasonable, and appeared to accurately reflect the subsurface conditions. It should also be noted that the licensed professionals identified above have their predominant practice in San Diego, and are very familiar with San Diego geology.

It is also instructive to note the depositional environment of the sediments in question lends itself to lateral variations in elevation and material, which often show up as "differences in character" that could be explained by more than one geologic process.

2. The faults at the west end of Geocon's northern interpreted cross-section can be carried up section to at least 5 to 10 feet into the Bay deposits, and thus nearly 50 feet higher than shown on their cross-section line. Our analysis also suggests that there is another fault between CPT-37 and CPT-38, which places the easternmost of these faults slightly closer to the proposed building. Geocon shows the faults in their cross-sections as vertical, but these faults probably dip to the west, especially if they are truly antithetic to a larger fault farther west. The CPT data certainly permit and suggest that the faults between CPT-27 and CPT-26, and between CPT-37 and CPT-38, dip to the west. This means that the faults' projections to the ground surface should be shifted east from where shown on Geocon's map, and closer to the proposed building. The fault between CPT-31 and CPT-32 (in their southern cross-section) could also dip west, and project up to the



ground surface at a location east of where shown on their map. The setback zone should be wide enough to accommodate uncertainties in how the fault projects to the ground surface.

One assumes the reviewer is referring to Cross Section C-C'. As in Comment 1, graphics indicating what information was revisited by the reviewer would have been helpful, but our review of the cross section indicates that although multiple interpretations can be made, Geocon and subsequent reviewers have evaluated the data and presented their best interpretation of the fault location as required under the Alquist-Priolo Act. As above, the data may be interpreted to speculate various scenarios, and may also indicate effects of more than one geologic process besides faulting. However, Geocon's interpretation appears to be the most reasonable, and adequately addresses the risk of fault rupture as per the Act.

3. It is not clear why Geocon has chosen to bend the easternmost of these faults in the southern portion of the site. There are no CPT or geophysical data in this area to support this interpretation. The fault could extend southward following the same strike defined by the two CPT lines, and thus could be closer to the proposed building than shown on Geocon's map. If the fault indeed bends across the site as shown, short secondary and tertiary faults can be expected to form to the east and northeast of the bend, in the area where proposed building is closest to the fault. The setback zone should be wide enough to include this zone of deformation. In our opinion, the setback zone should be wider than the 10-foot proposed in the areas where the fault bends.

Geocon's reports explain in some detail their rationale for a minimized setback, again supported by three independent reviewers. Setback width is not mandated, but recommended by the consultant of record, as was done in this case, with careful consideration of the data, and the nature of the risk posed by antithetic, subsidiary faults to subsidiary fault systems like the Spanish Bight Fault. The change in strike was documented in two of Geocon's reports, beginning with the October 14, 2011, report.

4. A step-up to the west of several stratigraphic markers suggests that there is another fault between CPT-28 and CPT-29. A fault in this area may correspond with the fault in the geophysical line 4 that Geocon shows stopping short of CPT-28.

No specific information was provided by the reviewer that would indicate the fault location determined by Geocon was misinterpreted.



5. *The proposed reinforced foundation could help mitigate the secondary deformation and differential settlement that is anticipated to occur if this fault system ruptures during the lifetime of the project. It is not clear whether Geocon's recommendation that the structure be founded on piles driven into the Old Paralac deposits is part of the final proposed plan. Although a pile system could mitigate the damage resulting from liquefaction, if there are secondary or tertiary faults underlying a section of the structure, and these faults move, the pile system can actually result in unintended damage to the structure.*

The proposed foundation system is a stone column system that would mitigate the liquefaction potential, and would not be rigid and so not transmit shear by fault rupture.

6. *Utilities servicing the proposed structure are assumed to extend across the full width of the Spanish Bight fault zone. Even if the proposed restaurant building performs well during a surface fault-rupturing event, the utilities may be severely compromised, unless they are designed or strengthened in this area. Ruptured gas lines could pose a fire hazard to the structure and the people therein following an earthquake.*

The utility lines should be designed for the site conditions, including ground movement from liquefaction.

TCG CONCLUSION

In considering the CEQA goal to address hazards and minimize risks to proposed development in a fault rupture hazard zone, it is also important to consider that fault surface rupture as a direct risk has never resulted in a documented fatality in California. Seismic shaking is a hazard rigorously addressed by the California Building Code, but is a separate issue from fault rupture. In addition, it is important from a risk (CEQA) perspective that the fault in question is considered only a splay, not the main strand, of the Rose Canyon Fault Zone, which in turn is a member, but not the main strand of the San Andreas fault system. Finally, the antithetic or minor splays, which are the focus of this development and the review in question, are not part of the main strand of the Spanish Bight Fault.

Faults are breaks in the crust that occur at several kilometers in depth, break through the overlying sedimentary rock, and finally shear the softer sediments in the upper tens of meters from the surface, often breaking in wide zones due to the weaker nature of the



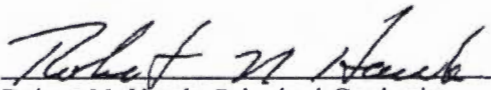
shallow sediments. In this case, the site is overlain with man-made hydraulic fill, which is loose, granular and saturated, and thus weak and subject to liquefaction due to seismic shaking. This fill layer cannot structurally transmit shear energy efficiently due to the loose nature of the materials, and will in effect provide insulation from the movement along the fault with respect to surface rupture. More importantly, the reinforced concrete mat foundation will make the single-story structure rigid and provide significant resistance to any shear from surface rupture. The stone column foundation will minimize liquefaction by relieving seismic pore pressure, but does not anchor the structure to the underlying formational materials, allowing the building to act independently of the ground movement that might occur due to fault movement. In effect, the liquefiable site conditions act to reduce the risk to the structure due to fault rupture.

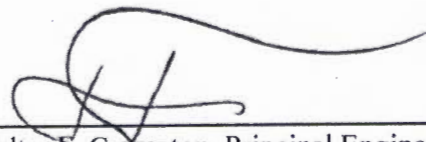
As stated above, no new information was provided which refuted or denigrated the validity of the Geocon reports or the conclusions and recommendations provided therein. Geocon discussed their evaluation of the fault location and rationale in detail, as well as their process for determining a reasonable setback from these features. In our opinion, the Geocon reports and project as designed adequately addresses the fault rupture hazard issue both from a CEQA perspective and from a health and safety perspective.

If you have any questions or require additional information, please give us a call.

Very truly yours,

TERRACOSTA CONSULTING GROUP, INC.


Robert N. Hawk, Principal Geologist
C.E.G. 1299, R.G.E. 2909


Walter F. Crampton, Principal Engineer
R.C.E. 23792, R.G.E. 245

RNH/WFC/jg



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June 6, 2013

RECEIVED

JUN 06 2013

Diana Lilly, Coastal, Coastal Program Analyst
California Coastal Commission
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Item 17 (a): Appeal No. A-6-PSD-13-005
Sunroad Enterprises

Dear Ms. Lilly:

As the authorized representative of the San Diego Unified Port District, I have been asked to convey that the Port District is supportive of Staff's main recommendation to find a substantial issue and approve the Sunroad Enterprises Project with the conditions recommended in the Staff Report.

As to the alternative recommendation to return the matter to the Port District, the Port does not support this alternative. Returning the matter to the Port would create unnecessary Project delays and raise significant legal issues that have nothing to do with the Project.

The first question facing this Commission is whether an exclusion granted by the Port Board of Commissioners on June 10, 2008 is properly before the Commission. The propriety of the exclusion is subject to Coastal Commission review. However, for stand-alone restaurant uses that are consistent with the Port Master Plan, it is the position of the San Diego Unified Port District that state law vests jurisdiction in the hands of the Port District to grant either exclusions or non-appealable coastal development permits as is appropriate.

Response from Port
39

PUBLIC RESOURCES CODE SECTION 30715 (NON-APPEALABLE COASTAL DEVELOPMENT PERMITS)

As part of a due diligence review being conducted by the Port, it has been determined that past stand-alone restaurants have been approved either by an exclusion from the Coastal Act or through the issuance of a non-appealable Coastal Development Permit. In each of these instances, the Port Master Plan Land Use Designation for the site has been Commercial Recreational. This is consistent with PRC § 30715, which states as follows:

30715. (a) Until such time as a port master plan or any portion thereof has been certified, the commission shall permit developments within ports as provided for in Chapter 7 (commencing with Section 30600). After a port master plan or any portion thereof has been certified, the permit authority of the commission provided in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development contained in the certified plan or any portion thereof and shall at that time be delegated to the appropriate port governing body, except that approvals of any of the following categories of development by the port governing body may be appealed to the commission:

- (1) Developments for the storage, transmission, and processing of liquefied natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state and nation. A development which has a significant impact shall be defined in the master plans.
- (2) Waste water treatment facilities, except for those facilities which process waste water discharged incidental to normal port activities or by vessels.
- (3) Roads or highways which are not principally for internal circulation within the port boundaries.
- (4) Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities.
- (5) Oil refineries.
- (6) Petrochemical production plants.

(b) If maintenance dredging is part of, or is associated with, any category of development specified in paragraphs (1) to (6), inclusive, of subdivision (a), the commission shall not consider that maintenance dredging in its review and approval of those categories.

Under § 30715(a), once a port master plan is approved, the Coastal Commission no longer has authority over projects within a Port District unless it falls under one of the six exceptions listed above.

In Coastal Staff's alternative recommendation, they argue that "restaurants" fall under the definition of appealable developments found in § 30715(a)(4). This subsection lists "hotels", "motels" and "shopping facilities" among the specifically defined uses. Appealable "shopping facilities" are restricted to those facilities that sell "commercial goods" that are not "water oriented". From the plain language of the subsection, it is apparent that "restaurants" do not fit into this category.

Restaurants are not principally devoted to the sale of "commercial goods". Restaurants sell food consumed on site, not commercial goods. The water front restaurants allow the patron to enjoy the "water oriented" coastal location. Restaurants are visitor-serving commercial-recreational uses that allow for high numbers of coastal visitors each day.

The Coastal Act intended to exclude restaurant uses that receive Coastal Development Permits from appeal. In order to fit restaurants under the 30714(a)(4) appealable class, the very purpose of a waterside restaurant must be ignored. Based on the plain reading Public Resources Code § 30715, the Port District and the Coastal Commission have routinely treated restaurants as non-appealable items even though they usually require Coastal Development Permits. In this case, the appeal and the finding of a substantial issue is based on the Commission's general authority to review "exclusions" from the Coastal Act, not on the exception found in § 30715(a)(4).

PORT MASTER PLAN ISSUES

One of the questions raised by the alternative recommendation relates to whether a Port Master Plan Amendment is needed to add a stand-alone restaurant to the Plan's Project List. The site of this restaurant is designated Commercial Recreational in the Port Master Plan. Under Public Resources Code § 30711(a)(1), the Port Master Plan must include appropriate land use designations for all types of developments, whether appealable or non-appealable.

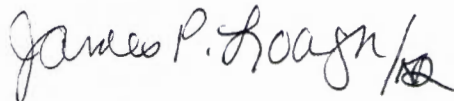
Under § 30711(a)(4), projects approved with appealable Coastal Development Permits must be placed on the Port Master Plan Project List. Section 30711 does not require that excluded or non-appealable Coastal Development Permit projects be contained in a Port Master

Plan Project List. While exclusions are appealable, they are not required to be listed on the Project List contained in the Port Master Plan. Here, the Project is consistent with the Commercial Recreation designation in the Port Master Plan.

The purpose of this correspondence is to point out to the Commission that the Port District supports the Coastal Staff recommendation to approve the Sunroad Project with the addition of the coastal access element. Returning the matter to the Port would cause undue delays and likely result in the approval of the project that is currently before the Commission. However, it would also raise legal issues that do not affect the approval of the actual project before the Commission.

Sincerely,

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

A handwritten signature in dark ink, appearing to read "James P. Lough" with a stylized flourish at the end.

James P. Lough
Special Counsel for the
San Diego Unified Port District

:jpl

cc: Ann Moore, Chair- Port District Board of Commissioners
Bob Nelson, Port District Board of Commissioners
Dan Malcolm, Port District Board of Commissioners
Lou Smith, Port District Board of Commissioners
Robert Valderrama, Port District Board of Commissioners
Rafael Castellanos, Port District Board of Commissioners
Marshall Merrifield, Port District Board of Commissioners
Wayne Darbeau, President & CEO, Port District
Thomas A. Russell, Port Attorney

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ELIZABETH KLEBANER
RACHAEL E. KOSS
JAMIE L. MAULDIN
ROBYN C. PURCHIA
ELLEN L. TRESKOTT

May 28, 2013

RECEIVED

MAY 30 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Via Facsimile and U.S. Mail

Chair Mary K. Shallenberger and
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Fax: (415) 904-5400

Re: Appeal No. A-6-PSD-13-005
Subject: New Development on East Harbor Island and Reuben
E. Lee Barge

Dear Chair Shallenberger and Commissioners:

We write on behalf of UNITE HERE Local 30 to provide additional support for why the Coastal Commission should find that the appeals of the San Diego Unified Port District's exemption of Sunroad Marina Partner, LP's Reuben E. Lee restaurant project ("REL Project") from coastal development permit ("CDP") requirements raise a substantial issue, why neither the Port nor the Commission can issue a CDP for the REL Project and why detailed review of the REL Project is critical. Attached is a letter from independent expert and licensed geologist Tania Gonzalez, which provides evidence that the REL Project is located in an area of active earthquake fault strands, most of which have not been accurately located.¹ Therefore, the REL Project is inconsistent with the Port Master Plan ("PMP") and the California Coastal Act.

Planning Goal VIII of the PMP provides that the Port will "[e]stablish guidelines and standards facilitating the retention and development of an

¹ **Attachment A:** Letter from Tania Gonzalez to Rachael Koss re: Review of Fault Studies Conducted for the Restaurant Proposed at the East End of East Harbor Island (880 Harbor Island Drive) in San Diego, California, May 23, 2013.
2421-049cv

Response from Appellants
43

aesthetically pleasing tideland environment free of...hazards to the health and welfare of the people of California.” Section 30253 of the Coastal Act requires that new development “[m]inimize risks to life and property” in areas of high geologic hazard. The REL Project is inconsistent with the PMP and the Coastal Act because Sunroad’s proposed setback zone of 10 feet is insufficient to account for uncertainties in the location and width of faulting on the REL Project site. Also, data indicates that additional faulting exists under the REL Project and within the proposed setback zone.²

Sunroad’s consultant, Geocon, used cone penetration testing (“CPT”) to detect faults on the REL Project site. However, as Ms. Gonzalez explains, “CPT studies for fault studies can only detect vertical offsets in the stratigraphy, and the sensitivity of the stratigraphic separations is in the order of 1 or 2 feet, meaning that pure strike-slip offsets with no vertical separation, or small offsets, will not be captured with this method.”³ Therefore, “a fault-setback zone established from such a study should incorporate an uncertainty that reflects the limitations of the method defining the precise physical location and geometrical characteristics (strike and dip) of the fault, and the fact that small vertical offsets could be missed.”⁴ According to Ms. Gonzalez, Sunroad’s proposed 10-foot setback is not wide enough to accommodate for these uncertainties.

Further, Ms. Gonzalez concludes that there is potential faulting on the REL Project site that was not identified or analyzed by Geocon.⁵ Alarming, Geocon’s data indicates an additional fault underlies the east end of the REL Project.⁶ Also, the data indicates the presence of a fault in Sunroad’s proposed setback zone.⁷

Because Sunroad’s proposed 10-foot setback zone is insufficient to account for uncertainties in CPT testing, and because the data indicates additional faulting under the REL Project and within the setback zone, the REL Project does not constitute development free of health and safety hazards and is not sited so as to minimize risks to life and property. Therefore, the REL Project is inconsistent with Planning Goal VIII of the PMP and section 30253 of the Coastal Act, the appeals raise a substantial issue and a CDP cannot be issued.

² *Id.*

³ *Id.*, p. 1.

⁴ *Id.*

⁵ *Id.*, pp. 3-4.

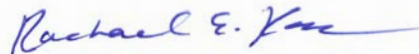
⁶ *Id.*, p. 3.

⁷ *Id.*

May 28, 2013
Page 3

We look forward to discussing these issues with you at the appeal hearing.
Thank you for your attention to this matter.

Sincerely,



Rachael E. Koss
Tanya A. Gulesserian

REK:clv
Attachment

cc:

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Sherilyn Sarb, Deputy Director
Deborah Lee, District Director
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Matt Christen, Staff Attorney (matt.christen@coastal.ca.gov)

ATTACHMENT A



Project No: 3005.02
May 23, 2013

To : **Adams Broadwell Joseph & Cardozo**
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Attention: **Ms. Rachael E. Koss**

Subject: **Review of Fault Studies Conducted for the Restaurant Proposed at the East End of East Harbor Island (880 Harbor Island Drive), in San Diego, California**

References:

Geocon Incorporated, 2011, Response to Geotechnical Review Comments, East Harbor Island Restaurant, 880 Harbor Island Drive, San Diego, California; Consulting Report signed by Shawn Foy Weedon, GE 2714 and Ali Sadr, CEG 1778, Project No. 07569-52-02, dated October 14, 2011.

Geocon Incorporated, 2012a, Second Response to Geotechnical Review Comments, East Harbor Island Restaurant, 880 Harbor Island Drive, San Diego, California; Consulting report signed by Garry W. Cannon, CEG 2201, RCE 56468 and Shawn Foy Weedon, GE 2714, Project No. 07569-52-02, dated January 27, 2012, revised March 19, 2012.

Geocon Incorporated, 2012b, Fault Study Addendum No. 1, East Harbor Island Restaurant, 880 Harbor Island Drive, San Diego, California; Consulting report signed by Garry W. Cannon, CEG 2201, RCE 56468 and Shawn Foy Weedon, GE 2714, Project No. 07569-52-02, dated August 28, 2012.

Geocon Incorporated, 2012c, Fault Study Addendum No. 2, Response to City Letter, East Harbor Island Restaurant, 880 Harbor Island Drive, San Diego, California; Consulting report signed by Garry W. Cannon, CEG 2201, Project No. 07569-52-02, dated September 11, 2012.

Ninyo & Moore, 2012, Review of Referenced Geotechnical Documents, East Harbor Island Restaurant, 880 Harbor Island Drive, San Diego, California; Consulting report signed by Jeffrey T. Kent, PE, GE, Senior Engineer, and Jonathan Goodmacher, PG, CEG, Principal Geologist, Project No. 107342001, dated July 10, 2012.

Dear Ms. Koss,

At your request, we have conducted a review of the geologic studies conducted by Geocon for the proposed restaurant at the east end of East Harbor Island, including the supplemental studies and reviews, respectively, conducted by Terra Physics and Ninyo & Moore for this

project. The reports reviewed are referenced above; additional reports and maps that we reviewed previously for this project are provided in the References section.

Our proposed scope of work included three main tasks:

1. Review of the reports referenced above, in addition to a review of readily available geological maps and literature on the Spanish Bight fault, and City of San Diego and State guidelines for fault investigations;
2. Review of the cross-section lines prepared by Geocon to independently assess the continuity of the geologic units and evidence of faulting associated with the Spanish Bight fault; and
3. Preparation of this letter report summarizing our findings of the first two tasks.

BACKGROUND

The Spanish Bight fault is one of three fault zones in the San Diego Bay region that coalesce northward into the Rose Canyon fault zone. The location of the Spanish Bight fault, and the other two splays to the east, the Coronado and the Silver Strand faults, has been defined in the offshore region, both in San Diego Bay and farther south, by offshore geophysical surveys conducted by Kennedy and others (1977), Kennedy and Welday (1980), and Kennedy and Clark (1999a, b).

According to Kennedy and Welday (1980), the Spanish Bight fault is "one of the most conspicuous faults" in San Diego Bay, obvious in all of the sub-bottom profiles that they did in the bay, and displacing sediments at or near the bay floor. Kennedy and Clark (1999a, as reported in Treiman, 2002) report that in San Diego Bay the Spanish Bight fault dips about 75 degrees to the east. The fault zone, which in the area of North Island consists of two strands, likely controlled the location and shape of the Spanish Bight, a wide indentation in the shoreline (now filled in) that separated North Island on the west from Coronado Island on the east. The down-dropped bight area suggests that the fault locally has a normal component of movement, forming a graben between the two fault strands, but researchers agree that these faults, as part of the Rose Canyon fault system, are predominantly strike-slip in character.

Treiman's (2002) and Kennedy and Welday's (1980) mapping of the Spanish Bight fault through the North Island area differ – according to Treiman, it is the west strand of the fault that continues northward to the East Harbor Island area, whereas Kennedy and Welday map the east strand as the more regionally extensive fault that continues northward to East Harbor. Kennedy and Welday also map a second, more northeasterly striking fault that splays off just north of North Island, but Treiman did not include this fault in the Alquist-Priolo Earthquake Fault Zone map. The City of San Diego maps the Spanish Bight fault through the easternmost end of the East Harbor Island area, in the area where the proposed restaurant is proposed.

FINDINGS

Geocon conducted a phased fault study that, as of August 2012, included the emplacement and analysis of 43 CPTs. The spacing between CPTs varies; in the restaurant area, most CPTs are about 15 feet apart, but in the fault zone, they are as close as 3 feet. This spacing is well within the spacing of 10 to 15 feet typically necessary to conduct a valid correlation of geologic units and evaluation of faulting. The use of CPTs for fault studies is a recognized

method of investigation, especially where trenching is difficult or impossible due to shallow groundwater, soft sediments, the occurrence of a deep Holocene section, or because man-made obstructions or a small project area do not permit the use of trenching equipment. However, CPT studies for fault studies can only detect vertical offsets in the stratigraphy, and the sensitivity of the stratigraphic separations is in the order of 1 to 2 feet, meaning that pure strike-slip offsets with no vertical separation, or small offsets, will not be captured with this method. As a result, a fault-setback zone established from such a study should incorporate an uncertainty that reflects the limitations of the method in defining the precise physical location and geometrical characteristics (strike and dip) of the fault, and the fact that small vertical offsets could be missed. These issues are discussed further in the paragraphs below.

Based on our analysis of the above-referenced reports, we find the following:

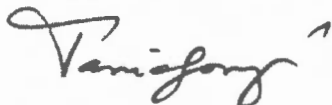
1. Geocon did not use and/or plot all of the CPT data in their most recent cross-sections (in their Fault Addendum from August 2012). We took some of the CPT data provided in their appendices, identified some of the critical stratigraphic contacts, plotted these data for CPTs 37, 39, 40 and 17 on their northern cross-section line, and carried several marker beds across the area. Our analysis suggests that there could be a fault between CPT-17 and CPT-43, near the east end of the proposed restaurant site. We find that there are several layers that connect relatively straight across between CPT-18 and CPT-17 (as shown on their revised March 2012 cross-section), but then these marker beds step up to the east, and/or change in thickness or character between CPT-17 and CPT-43. This disruption in the stratigraphy can be carried up section to at least 5 feet into the bottom of the Bay Deposits. The vertical offsets observed are typically in the order of 2 to 2.5 feet. From this analysis it is our opinion that the lack of faulting in the east side of the project has not been confirmed adequately. Furthermore, this step up to the east is also observed between CPTs 16A and 15 in their March 2012 report. Although Geocon shows continuity of two marker beds between CPT-16A and CPT-41 in their August 2012 report, there are differences in the character of the sediments that could be ascribed to strike-slip faulting.
2. The faults at the west end of Geocon's northern interpreted cross-section can be carried up section to at least 5 to 10 feet into the Bay deposits, and thus nearly 50 feet higher than shown on their cross-section line. Our analysis also suggests that there is another fault between CPT-37 and CPT-38, which places the easternmost of these faults slightly closer to the proposed building. Geocon shows the faults in their cross-sections as vertical, but these faults probably dip to the west, especially if they are truly antithetic to a larger fault farther west. The CPT data certainly permit and suggest that the faults between CPT-27 and CPT-26, and between CPT-37 and CPT-38, dip to the west. This means that the faults' projections to the ground surface should be shifted east from where shown on Geocon's map, and closer to the proposed building. The fault between CPT-31 and CPT-32 (in their southern cross-section) could also dip west, and project up to the ground surface at a location east of where shown on their map. The setback zone should be wide enough to accommodate uncertainties in how the fault projects to the ground surface.
3. It is not clear why Geocon has chosen to bend the easternmost of these faults in the southern portion of the site. There are no CPT or geophysical data in this area to

support this interpretation. The fault could extend southward following the same strike defined by the two CPT lines, and thus could be closer to the proposed building than shown on Geocon's map. If the fault indeed bends across the site as shown, short secondary and tertiary faults can be expected to form to the east and northeast of the bend, in the area where proposed building is closest to the fault. The setback zone should be wide enough to include this zone of deformation. In our opinion, the setback zone should be wider than the 10-foot proposed in the areas where the fault bends.

4. A step-up to the west of several stratigraphic markers suggests that there is another fault between CPT-28 and CPT-29. A fault in this area may correspond with the fault in the geophysical line 4 that Geocon shows stopping short of CPT-28.
5. The proposed reinforced foundation could help mitigate the secondary deformation and differential settlement that is anticipated to occur if this fault system ruptures during the lifetime of the project. It is not clear whether Geocon's recommendation that the structure be founded on piles driven into the Old Paralac deposits is part of the final proposed plan. Although a pile system could mitigate the damage resulting from liquefaction, if there are secondary or tertiary faults underlying a section of the structure, and these faults move, the pile system can actually result in unintended damage to the structure.
6. Utilities servicing the proposed structure are assumed to extend across the full width of the Spanish Bight fault zone. Even if the proposed restaurant building performs well during a surface fault-rupturing event, the utilities may be severely compromised, unless they are designed or strengthened in this area. Ruptured gas lines could pose a fire hazard to the structure and the people therein following an earthquake.

We hope that this provides you with the information that you need at this time. Should you have any questions regarding this letter report, please do not hesitate to contact us. Thank you for the opportunity to be of service.

Respectfully submitted,
EARTH CONSULTANTS INTERNATIONAL, INC.



Tania Gonzalez, CEG 1859
Vice-President

ADDITIONAL REFERENCES

- California Geological Survey, 2003, Revised Official Map, Earthquake Fault Zones, Point Loma Quadrangle; Scale: 1:24,000, effective May 1, 2003.
- City of San Diego Development Services Department, 2011, Guidelines for Geotechnical Reports, available online at <http://www.sandiego.gov/development-services/industry/pdf/geoguidelines.pdf>
- Geocon Incorporated, 2006, Geotechnical Investigation and Geologic Fault Investigation, East Harbor Island Hotel, San Diego, California; Unpublished consulting report prepared for Sunroad Enterprises, San Diego, California, Geocon Project No. 07569-22-01, dated March 3, 2006.
- ICF Jones & Stokes, 2009, Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment, Draft Environmental Impact Report, Volume 1; Report prepared for San Diego Unified Port District, San Diego, California, ICF J&S Project No. 00977.08, dated December 2009.
- ICF International, 2011, Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment, Final Environmental Impact Report, UPD No. 83356-EIR-783, SCH No. 2006021027, Volume 1 of 5; report prepared for San Diego Unified Port District, San Diego California; report dated May 2011.
- Kennedy, M.P., and Clarke, S.H., 1999a, Analysis of late Quaternary faulting in San Diego Bay and hazard to the Coronado Bridge: California Division of Mines and Geology Open-File Report 97-10A.
- Kennedy, M.P., and Clarke, S.H., 1999b, Age of faulting in San Diego Bay in the vicinity of the Coronado Bridge – an Addendum to – Analysis of late Quaternary faulting in San Diego Bay and hazard to the Coronado Bridge: California Division of Mines and Geology Open File Report 97-10B.
- Kennedy, M.P., and Welday, E.E., 1980, Character and recency of faulting offshore, metropolitan San Diego, California: California Division of Mines and Geology Map Sheet 40, Scale: 1:50,000.
- Ninyo & Moore, 2006, Preliminary Geotechnical Evaluation and Third-Party Review, Proposed East Harbor Island Development Project, San Diego, California; Unpublished consulting report prepared for Mooney/Jones & Stokes, San Diego, California, Ninyo & Moore Project No. 105871001, dated June 21, 2006.
- Terra Physics, 2006, Final Report, Seismic Reflection Survey to Detect the Spanish Bight Fault Zone (Trip #2 – Westward Extension from Original Survey Area), Proposed East Harbor Island Hotel Site, San Diego Bay, California; report included as Appendix C in Geocon's report above; Terra Physics Project No. 05-53, dated February 8, 2006.
- Treiman, J.A., 2002, Silver Strand Fault, Coronado Fault, Spanish Bight Fault, San Diego Fault and Downtown Graben, Southern Rose Canyon Fault Zone, San Diego, California: California Division of Mines and Geology Fault Evaluation Report FER-245, dated June 17, 2002.

CALIFORNIA COASTAL COMMISSION

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W17a

Filed: 2/6/2013
49th Day: Waived
Staff: D. Lilly-SD
Staff Report: 5/31/13
Hearing Date: 6/12/13

STAFF REPORT AND RECOMMENDATION ON APPEAL

Appeal No.: A-6-PSD-13-005

Applicant: Sunroad Enterprises

Local Government: San Diego Unified Port District

Decision: Exempted

Location: 880 Harbor Island Drive, Port District, San Diego, San Diego County

Approved Project Description: Demolition of an existing 4-deck, approximately 20,000 sq.ft. restaurant located on a floating barge, relocation of the barge to entirely within the pierhead line, reconstruction of 4,800 sq.ft. of primarily unenclosed event space on the barge; construction of a new one-story restaurant building on land adjacent to the barge consisting of approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior spaces and decks for outside dining venues and lounge space; reconfiguration of existing 308 space parking lot to 306 spaces, including 10 tandem spaces; removal and replacement of parking lot trees.

Appellants: Commissioners Esther Sanchez and Brian Brennan; Unite Here Local 30

Staff Recommendation: Substantial Issue; Approval with Conditions on de novo

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

Staff also recommends that the Commission APPROVE the de novo permit with special conditions.

The subject project is for demolition and reconstruction of an existing restaurant located on a floating barge located offshore of the East Harbor Island peninsula, and construction of new restaurant facilities on the land adjacent to the barge. The project also includes relocating the existing barge closer to land to entirely within the Port District's permit jurisdiction, instead of mostly within the Commission's jurisdiction, as it was originally.

The primary issues raised by the subject development are the project's inconsistency with the certified Port Master Plan (PMP) regulations regarding exclusions from coastal development permit requirements; and the public access, recreation, and visual impacts associated with siting a new restaurant facility immediately adjacent to the shoreline, without providing public access along the shoreline.

The subject appeal is unusual in that it is an appeal of the Port's decision to allow development to proceed without requiring a coastal development permit. In 2009, the Port District issued a determination that the project was excluded (exempt) from coastal development permit requirements as both an addition to an existing structure, and as a demolition and reconstruction project. The Commission did not receive notification of this action until it was brought to staff's attention in January 2013 by a member of the public. The Port forwarded a copy of the exemption to Commission staff on January 23, 2013. However, the subject project is not an addition to an existing structure, as the entire existing structure would be demolished, nor does it qualify as an exempt reconstruction project, as only reconstruction projects in the same location potentially qualify for exemption, and the new restaurant building will be located on the land in an existing parking lot, not on the same site as the existing floating barge.

In addition, the new restaurant facility as exempted by the Port would have had significant public access, recreation, and visual impacts. The restaurant was originally proposed to be located immediately adjacent to the shoreline, with new decks located over the existing revetment around the peninsula. Public access overlooks were proposed on both sides of the structure, but not along the shoreline. This design and siting was in direct conflict with PMP policies requiring that access be provided along the waterfront wherever possible with promenades and paths. The public access and recreation policies of the Coastal Act clearly support designing new development with shoreline physical and visual access, not relegating public access and views to narrow corridors adjacent to or behind private development. The new facility could also potentially impact water quality and does not provide adequate protection against the introduction of non-native invasive species.

The absence of the project on the list of proposed development in the Harbor Island/Lindbergh Field Planning District in the Port Master Plan is also a serious concern. A new restaurant adjacent to the water is not considered or contemplated in the certified Port Master Plan. The Port Master Plan for the Harbor Island/Lindbergh Field Planning Area 2 designates the land area at the eastern end of the East Harbor Island peninsula as commercial recreation, but the only development contemplated in that subarea is a new hotel complex with restaurant and retail uses specifically associated with the hotel development. Because the proposed project will result in a new development not considered or approved in the certified PMP, a substantial issue is raised with regard to conformity with the PMP.

One issue raised by the appellants, UNITE HERE Local 30, that has been determined to not raise a substantial issue is geologic stability. The Commission's geologist has reviewed the appellant's contention that the site is not consistent with the certified Port Master Plan policies that require development to facilitate a tideland environment free of hazards to the health and welfare of the people of California resulting from seismic risk. The appellants contend that the restaurant would be located in a fault zone and that there is insufficient data to accurately determine the location and width of faulting on the project site. However, the Commission's geologist, Dr. Mark Johnsson, has reviewed the appeal and substantive file documents and has determined that, in his opinion, the information provided regarding faulting on the site is adequate and a substantial issue does not exist with respect to the grounds on which the appeal was raised relative to geologic stability of the proposed structure.

On May 28, 2013, as this staff report was being completed, staff received a review letter from the appellants and Earth Consultants International dated May 23, 2013 raising concerns with the 2011 and 2012 Geocon reports and the adequacy of those reports in locating potential fault strands underlying the site. A preliminary review by the Commission's staff geologist concludes that these concerns are not warranted and that no substantial issue exists with regard to the grounds on which the appeal was filed. A more detailed review of this May 23, 2013 letter will be forthcoming in an addendum to this staff report.

Because of the above-described inconsistencies with the PMP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified PMP and the Chapter 3 policies of the Coastal Act.

Staff further recommends approval of the project on de novo as conditioned. In consultation with Commission staff, the applicant has made substantial revisions to the proposed project to provide public access along the shoreline. The project now includes a public deck/path around the east (water side) of the project, between the proposed new restaurant structure and the barge. This will allow the public continuous access to and along the shoreline, as well as access to views of the water and the downtown skyline.

Special Conditions have been placed on the project addressing public access, public recreation, parking, and the protection of biological resources. Specifically, Special Conditions #1, #2, #4, and #6 requires the submittal of final project plans showing the proposed public walkways, signage, drainage, and landscaping. Special Condition #3 requires a parking management program that requires the public be allowed to use the parking lot when the restaurants are not open, and that a minimum of 10 spaces on the site be designated specifically for public parking only from dawn to dusk. Special Condition #5 requires submittal of a tsunami information plan. Special Condition #7 requires that the applicant participate in and contribute a fair share to the implementation of the Port District's on-going bayside shuttle system, as required by the Port District. Special Condition #8 requires that the applicant seek an amendment to this permit to retain the public accessway if it is threatened by sea level rise in the future. Special Condition #9 requires the applicant to waive any rights to future shoreline protection in the future. Special Condition #10 requires the applicant to assume all risks associated with construction in a hazard location. Special Condition #11 requires that project liability and any future attorney fees shall be paid by the applicant. Special Condition #13 requires the applicant to prepare and implement a public access plan for the barge portion of the development that include a design for the barge that allows the public access onto some portion of the barge from the public accessway for strolling and observation when the barge is not being used by the restaurant for events. Finally, Special Condition #12 requires the applicant to provide evidence that dredging of San Diego Bay can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia*.

With regard to the requirement that new development be included in the Port Master Plan, staff is recommending that Commission determine that in this particular case, approval of the project will not impact coastal resources, or prejudice the ability of the San Diego Unified Port District to implement its certified Port Master Plan consistent with Chapter 3 of the Coastal Act. Because the Port did not process as a Port Master Plan Amendment to include the project in the PMP, the Commission could deny the de novo permit and send the applicant back to the Port District to have the Port process either a project specific Port Master Plan Amendment or a broader PMPA that includes the subject project. Assuming the Commission found that PMPA consistent with Chapter 3 of the Coastal Act, the Port would then be able to issue an appealable coastal development permit for the project.

However, this could put the applicant in a difficult position, as the Port District may not be willing to process the necessary approvals, putting the applicant at risk of violating the Coastal Act if he were to proceed with the development per the Port's exemption. As discussed herein, the applicant has made substantial revisions and improvements to the project to increase public access and recreational opportunities on the site, and the project can be conditioned as described herein to be consistent with the Chapter 3 policies of the Coastal Act, which is the same standard of review as that which the Commission uses when it reviews a Port Master Plan Amendment. Even if a Port Master Plan and appealable Port coastal development permit was issued for the project, it is highly likely that the project would be appealed to the Commission, putting the development in precisely the same place it is now before the Commission. As a result of the Commission's appeal of the Port's exemption, the project has now been the subject of

much the same level of public participation and scrutiny under the policies of the Coastal Act as it would be were to undergo additional review through the Port Master Plan process. At this point, approval of the project as conditioned will allow construction of the proposed high-priority commercial recreation and public access improvements to proceed, without any adverse impacts to coastal resources.

However, it should be clear that approval of this project in no way sanctions or endorses the manner in which the subject project was excluded from the PMPA and coastal permit process. Future projects should be incorporated into the PMP as mandated by the Coastal Act, and categorized as appealable or non-appealable developments per the standards of Section 30715.

Standard of Review: The certified San Diego Unified Port District Port Master Plan incorporated Chapter 3 of the Coastal Act as its standard of review for appealed permits.

TABLE OF CONTENTS

I. APPELLANTS CONTENTION.....	8
II. LOCAL GOVERNMENT ACTION.....	8
III. APPEAL PROCEDURES.....	8
III. APPEAL MOTION AND RESOLUTION	9
IV. FINDINGS AND DECLARATIONS.....	10 42
A. PROJECT DESCRIPTION AND HISTORY.....	10
B. CATEGORICAL EXCLUSION DETERMINATION.....	11
C. APPEALABLE DEVELOPMENTS UNDER THE COASTAL ACT.....	17
D. INCLUSION IN THE PORT MASTER PLAN.....	22
E. CONSISTENCY WITH THE PORT MASTER PLAN & CHAPT. 3 POLICIES	23
F. CONCLUSION.....	33
G. SUBSTANTIAL ISSUE FACTORS.....	33
V. PERMIT MOTION AND RESOLUTION.....	34
VI. STANDARD CONDITIONS.....	34
VII. SPECIAL CONDITIONS.....	35
VIII. FINDINGS AND DECLARATIONS.....	42
A. PROJECT DESCRIPTION.....	42
B. PUBLIC ACCESS/RECREATION/VISITOR-SERVING USE PRIORITY.....	43
C. VISUAL QUALITY.....	52
D. BIOLOGY/WATER QUALITY.....	53
E. SHORELINE HAZARDS.....	54
F. LOCAL COASTAL PLANNING	59
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT	60

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Jurisdictional Boundaries](#)

[Exhibit 3 – Approved Restaurant & Viewpoints](#)

[Exhibit 4 – Proposed Restaurant & Walkway](#)

[Exhibit 5 – Proposed vs. Approved Deck](#)

[Exhibit 6 – Public Deck Cross-Sections](#)

[Exhibit 7 – Cross-Section of Deck and Barge](#)

[Exhibit 8 – Rendering of West Side of Proposed Project](#)

[Exhibit 9 – Rendering of East Side of Proposed Project](#)

[Exhibit 10 – Commission Appeals](#)

Exhibit 11 – Unite Here Local 30 Appeal & Correspondence

Exhibit 12 – Port Approval

Exhibit 13 – Comments from Applicant

Exhibit 14 – Past Restaurant Permits from Port

Exhibit 15 – Ex Parte

I. APPELLANTS CONTEND THAT: The project, as exempted by the Port, is inconsistent with the certified PMP and Chapter 3 policies of the Coastal Act with respect to the allowable exemptions under the PMP; the requirement for a Port Master Plan Amendment, protection of public access; public recreation; visual quality; biological resources; water quality; and geotechnical hazards.

II. LOCAL GOVERNMENT ACTION. The project was given a categorical exclusion (exemption) from coastal development permit requirements by Port staff on February 24, 2009. On March 22, 2012, Port granted conditional “Project Review and Approval” of the development. The Port transmitted notification of these actions to the Commission on January 23, 2013. The Project Review and Approval contains conditions addressing the construction of public view points, signage requirements, and building and engineering requirements.

III. APPEAL PROCEDURES. After certification of a Port Master Plan (PMP), the Coastal Act provides for limited appeals to the Coastal Commission of certain port governing body’s actions on coastal development permit applications. The types of appealable projects are outlined in section 30715 of the Coastal Act. In addition to appealable projects listed in section 30715 of the Coastal Act, section 30625(a) provides that an action on a claim of exemption for any development by a port governing body may be appealed. Section 30625(a) also states that the Commission “may approve, modify or deny such proposed development....” Finally, the Port Master Plan also lists excluded (exempted) development as appealable to the Commission.¹

After the port governing body has taken final action on an appealable project, it must send a notice of that approval to the Commission. Cal. Pub. Res. Code § 30717; 14 C.C.R. § 13641. This notice must indicate how the approved project is “consistent with the certified port master plan and the California Coastal Act” 14 C.C.R. § 13641(a); Cal. Pub. Res. Code § 30717. Upon proper receipt of a valid notice of appealable development, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30717; 14 C.C.R. § 13641(b). If an appeal is filed during the appeal period, the effectiveness of the port governing body’s approval of the CDP is suspended until the Commission takes final action on the appeal. 14 C.C.R. § 13641(c). The Commission will process the appeal in the same manner that it processes appeals from local government actions approving CDPs. *Id.*

Section 30625(b)(3) of the Coastal Act requires the Commission to hear an appeal of a port decision after certification of a PMP unless the Commission determines that no substantial issue exists as to conformity with the certified PMP. If the staff recommends “substantial issue” and no Commissioner objects, the Commission may proceed directly

¹ “Non-appealable developments are those **not classified in these regulations in section 7.a.(1) as “Excluded,”** in 7.a.(2) as “Emergency,” or in 7.a.(4) as “Appealable.” (emphasis added) In other words, the Port’s action that a proposed development is excluded development is an action that is appealable to the Commission under the Port’s regulations.

to the de novo portion of the hearing on the merits of the project then, or at a later date. In the context of an appeal of the Port's action to exclude development, pursuant to section 30625(a) of the Coastal Act, the Commission may approve such a determination, deny it or modify it, including a modification where the Commission determines that the development is not excluded and requires a permit and then approving a conditional permit to mitigate for impacts associated with the proposed development.

If the staff recommends "no substantial issue," or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable legal standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Port Master Plan and the Chapter 3 policies of the Coastal Act.

The Commission will not take public testimony during this phase of the appeal hearing unless at least three Commissioners request it. The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. However, in this particular case, because there was no public hearing or public review given at the Port District when the project was issued an exclusion, all parties may be considered qualified to speak at the substantial issue stage of this project should the Commission vote to hold a public hearing at this stage in the appeal process. At the time of the de novo portion of the hearing, any person may testify.

IV. MOTION AND RESOLUTION

The staff recommends the Commission adopt the following resolution:

Motion:

I move that the Commission determine that Appeal No. A-6-PSD-13-005 raises NO substantial issue as to conformity with the certified Port Master Plan .

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-6-PSD-13-005 presents a substantial issue as to conformity with the Certified Port Master Plan and/or the Chapter 3 policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND HISTORY

The subject project has been revised since the project was appealed. The following description applies to the project as it was approved by the Port. A description of the current revised project is located in the de novo portion of this report.

The Reuben E. Lee was a 4-deck, approximately 20,000 sq.ft. restaurant built on a floating barge tethered in the water on the east end of the Harbor Island peninsula on tidelands in San Diego Bay. The majority of the barge was located outside the pierhead line, and thus within the Commission's original permit jurisdiction, with a smaller portion within the Port's coastal permit jurisdiction. The land area next to the barge is developed with existing, approximately 300 space parking lot serving both the Reuben E. Lee, and the Island Prime restaurant located on the waterfront on the southern side of the peninsula, just west of the Reuben E. Lee site.

On February 24, 2009, the Port of San Diego issued a Categorical Determination of Proposed Coastal Development for the Reuben E. Lee Restaurant Replacement that found the project to be excluded (exempted) from coastal development permit requirements. At that time, the proposed project consisted of 1) demolition of the entire restaurant, with the exception of the existing barge hull, and accessory structures including mooring piles and an adjacent breakwater; 2) construction of a new 1-story galley, restrooms, covered and open food and beverage service areas totaling approximately 9,000 sq.ft. on the barge; 3) construction of an approximately 16,500 sq.ft., single-story restaurant, lounge, and banquet facility on the land adjacent to the barge; 4) reconfiguration of the existing approximately 308 space parking lot to 306 parking spaces, including 10 tandem employee/valet spaces, resulting in the removal and replacement up to 10 existing trees in the parking lot. Total restaurant seating would decrease from 900 seats to 809 seats.

The new landside restaurant and outdoor dining was to be located immediately adjacent to the water. A public sidewalk would be constructed on the inland side of the restaurant, with two new public viewpoints created on either side of the proposed building, and one new public viewpoint created next to the Island Prime restaurant.

The Port does not typically transmit exemption determinations to the Commission, and no work has taken place on the site; thus, Commission staff was unaware of the Port's

2009 action until a member of the public inquired about the status of approvals granted for the Reuben E. Lee. In response to Commission staff's request for information, on January 23, 2013, Port staff emailed a copy of the February 24, 2009 Categorical Determination to Commission staff. The Port also transmitted a copy of the Port's "Project Review and Approval" dated March 22, 2012, granting conditional approval of the Reuben E. Lee (now known as 880 Harbor Island Restaurant) Renovation Project (but this is not a coastal development permit).

The project given approval with conditions on March 22, 2012 varies somewhat from the project approved in the Categorical Determination in 2009. As approved in March 2012, the existing facility on the floating barge would be demolished and reconstructed as a 4,800 sq.ft. primarily unenclosed function space. The barge would be relocated slightly landward to be entirely within the pierhead line, so as to be completely within the Port District's jurisdiction. Exterior deck areas on both the floating barge and the landside structure would be increased by creating cantilevered decks over the existing rock revetment along the shoreline side of the site. This additional space would be used for outside dining venues and lounge space. In total, the land-based restaurant would have approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior space, for a total new area of 27,505 sq.ft. Total seating capacity is expected to be between 600 and 800 seats, including the barge. At least one existing coral tree would be removed and replaced with a new tree.

Sometime around April 2012, the barge with the restaurant structure was towed to a shipyard to initiate demolition and reconstruction activities. However, on or around December 12, 2012, the structure took on water and partially sank, and may not be salvageable.

The appeal period was opened on January 24, 2013, and the Commissioner and public appeals were received on February 6, 2013. Therefore, the appellants submitted timely appeals.

B. CATEGORICAL EXCLUSION DETERMINATION

The San Diego Unified Port District Coastal Development Permit Regulations govern the issuance of Port permits, exemptions (referred to as "exclusions" in the Port regulations), and appeals. The Port District determined that the proposed project is exempt from issuance of a coastal development permit under the following sections of the Permit Regulations:

8. Excluded Developments

- 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, including but not limited to:

- (3) Streets, sidewalks, gutters, bicycle and pedestrian paths, and similar facilities; [...]
 - (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 sq.ft., whichever is less; or additions to existing structures of not more than 10,000 sq.ft. of floor area, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive; [...]
- b. Replacement or Reconstruction: Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
- (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
 - (2) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction. [...]
- d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:
- (1) Land Grading, except where located in a waterway, wetland, officially designated scenic area, or in officially mapped areas of severe geologic hazard;
 - (2) New gardening or landscaping;
 - (7) Minor trenching or back filling where the surface is restored.

The March 2012 Project Review and Approval cites Section 8.b., “Replacement or Reconstruction”, as the reason the project was found to be an Excluded Development under the District’s Coastal Development Permit Regulations.

None of the above exclusion language used to exempt the development from coastal permit requirements applies to the proposed project. The exclusion for “Existing Facilities” in Section 8.a. applies to “minor alteration[s]...involving negligible or no expansion of use beyond that previously existing...,” including additions to existing structures. However, the proposed development includes demolishing the entire existing restaurant structure, leaving only the foundation (the barge hull) and several minor accessory improvements. Thus, the proposed work on the barge is demolition and reconstruction, not an addition. The new restaurant structure proposed on the land is not an addition to an existing structure, both because the existing structure is being demolished, and because a new unattached structure, separated in space and by water, is not an addition to an existing structure, but a stand-alone new structure.

The “Minor Alterations to Land” exclusion in Section 8.d. covers projects limited to minor alterations to land, water, and/or vegetation such as grading, landscaping, and minor trenching, which does not involve the removal of mature, scenic trees. As noted, the project is considerably larger in scope and scale than minor alterations to land, and a development cannot be segmented into components that might be exempt if taken individually. In addition, the original exemption included the removal of mature scenic tree(s), the revised proposal still includes the removal of at least one mature coral tree and the proposed parking lot revisions will reduce the number of parking spaces, which is typically not considered exempt from permit requirements. Thus, this section of the Port’s regulations is not applicable to the proposed development.

The project clearly involves both demolition and reconstruction of an existing structure (the barge), and construction of a separate new structure (the landside restaurant). The project applicant’s attorney has suggested that the Port District appropriately excluded the proposed development from coastal development permit requirements for three reasons, the first of which is that the reconstructed restaurant is located on the same site as the demolished restaurant. The other two arguments are that a restaurant is not an appealable development under the Coastal Act, and the development is not required to be included on the project list in the Port Master Plan, because only appealable projects are required to be on the project list. None of these points is accurate or applicable to the proposed development; the first point is discussed below, and the second two points are discussed in the following section of the staff report.

Project Site and Location

The Port’s “Replacement or Reconstruction” exclusion in Section 8.b. is very specific. As described above, Port District regulations allow the exclusion of “replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced...” The applicant’s attorney has stated that the existing Reuben E. Lee restaurant (prior to the barge being towed away and demolished) consisted of both land and water facilities, with approximately 1/3 of the facilities on land, and 2/3 on water. Thus, the proposed project “site,” with approximately 2/3 of the facilities on land, and 2/3 on water, is “essentially on the same site as the structure being replaced.”

However, this characterization of the existing project site is not accurate, nor does it correctly portray the relevant distinctions between the existing subject site and the proposed site. The Port regulations appropriately draw a distinction between replacing a development in the same location and rebuilding in a different location, because different locations have different site needs, constraints, and impacts. The Reuben E. Lee restaurant has always been a restaurant located on the water. As Exhibit #2 shows, the only landside facilities associated with the restaurant are walkways leading to the barge and a covered gazebo used on occasion to direct patrons to the barge. Other than these minor hardscape improvements, 100% of the existing restaurant facility—seating, kitchen, storage, front of the house, back of the house, restrooms, etc.—are located in the water on the barge. The proposed project, by contrast, would result in approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior seating space, for a total

new area of 27,505 sq.ft. located directly on the shoreline, in an area that is currently an unenclosed parking area.

The proposed landside development in no way resembles or replicates the existing floating restaurant, in fact or in impact to coastal resources. A permanent land location cannot by any reasonable interpretation be considered essentially the same site as a floating barge on the water. Water and land development sites have different physical requirements and different impacts on coastal resources and are not interchangeable.

The Port's interpretation of the excluded development determination as it relates to the proposed development raises a substantial issue. Controlling statutes are used to interpret administrative regulations, like the certified San Diego Port District's PMP regulations, adopted pursuant to the controlling statutes which in the case of adoption of the PMP, is the Coastal Act. (Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Board (2003) 109 Cal.App.4th 1687, 1695-1696.) If the words of a regulation are unclear and ambiguous, courts "examine the context in which the language appears using the interpretation that best harmonizes the statute internally..." (Id. at p. 1696.) Further, "[r]egulations are not interpreted in a manner that results in absurd consequences or defeats the core purpose of their adoption." (Ibid.) Thus, relevant Coastal Act provisions provide interpretive tools for interpreting administrative regulations adopted thereunder, like port master plan regulations.

In the present case, section 30610(g)(1) provides support for the interpretation that replacement of a structure on a different part of the affected property than the site where the replaced structure once stood is not exempt development. In the context of siting replacement structures exempt from CDP requirements, section 30610(g)(1) provides that the replacement of any structure (aside from public works facilities) destroyed by a disaster is exempt from CDP requirements only if the new structure is "for the same use as the destroyed structure, shall not exceed either the floor area, height or bulk of the destroyed structure by more than 10 percent, and shall be sited **in the same location on the affected property** as the destroyed structure." (emphasis added) The applicant relies on section 8.b.(1) of the PMP, which provides that a replacement structure is excluded development if it is "located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to: (1) [r]eplacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity." While the trigger for exempt replacement structures is different (Coastal Act requiring a disaster while the PMP allows replacement without a disaster), the requirements of section 8.b.(1) of the PMP had to be consistent with the language with its controlling statute and, more particularly, section 30610(g)(1) of the Coastal Act when the Commission certified the port's CDP regulations. Given this context of the controlling statute in interpreting the excluded development provision in the PMP, it is clear that the intent of the PMP provision is that the replacement structure is exempt only if it is placed in the same location on the affected property, not if it is placed anywhere on the affected property not in the same location.

The applicant has cited an October 2007 email from Commission staff to Port Staff providing direction to the Port District regarding the Reuben E. Lee barge, as evidence that the current project is exempt from permit requirements (see Exhibit #13). However, the email in question was in response to Port Staff's inquiry about permit requirements for redevelopment of the existing barge, as that barge was located mostly within the Commission's jurisdiction and partially within the Port's jurisdiction. Commission staff correctly advised the Port that "when a development that requires a coastal development permit straddles both the Port and the State's jurisdiction, both agencies have to issue a CDP for their portions of the project." Commission staff's reference to the "particular development that raised the question in this case [that] may end up being deemed exempt from permit requirements" is clearly referencing potential work on the existing barge that straddles two jurisdictions and was the subject of the email. At no time during that 2007 exchange (or any subsequent time until Commission's staff 2013 inquiry) did the Port suggest or inform Commission staff that any new structures would be constructed on the land. Despite Commission's staff request in 2007 that the Port advise the applicant to send redevelopment plans to Commission staff for review and a determination of permit requirements, no such plans were ever received by Commission staff. Thus, there has never been any suggestion or conclusion by Commission staff that construction of a new restaurant building on the land next to an existing barge would be exempt from coastal development permit requirements.

It is worth noting that at the time the Categorical Determination was made, the waterside portion of the project was located largely in the Commission's permit jurisdiction, and was proposed to remain in that location. Even having made a determination that the portion of the project within the Port's jurisdiction was exempt from permit requirements, only the Commission can make a decision on permit requirements for the development proposed on the rest of the barge lying in the Commission's jurisdiction; this determination could not have been made by the Port.

The applicant's attorney has stated that because the Port approved the renovation of Tom Ham's Lighthouse restaurant on the western end of Harbor Drive and revisions to Sun Harbor Marina's improvements as "Excluded Developments," both of which include some land and some water components, that the proposed project should be similarly excluded. The Port did not send notice of this projects to the Commission, and therefore, Commission staff did not have the opportunity to review this project at the time it was exempted. However, review of the Port's "Project Review and Approval," for the restaurant, indicates that this project consisted of "a comprehensive renovation and upgrade of the existing facilities...within the existing building footprint." New decks, new outdoor terrace dining, and new public shoreline promenade were also part of the project, with an increase in building square footage was approximately 1,500 sq.ft. The Port did not do an analysis of the amount of demolition involved; thus, it is unclear if the extent of the demolition was such that the project should have been characterized as "demolition and reconstruction" rather than a "minor alteration of an existing structure." However in any case, in contrast to the subject project, the Tom Ham's Lighthouse renovation was clearly renovation of an existing structure in the same location. Thus, there is nothing in the Port's exclusion of Tom Ham's Lighthouse that suggests the subject project should be similarly excluded. Commission staff have not yet received a

copy of or been able to review the Port's exclusion of development at Sun Road Harbor. If this project included demolishing an in-water structure and constructing a new, non-attached building in a currently vacant area, then this project should likely also not have been granted an exclusion under the certified Port regulations.

The Port District has submitted examples of five other restaurants projects approved by the Port (see Exhibit #14). Four of the projects were granted coastal development permit exemptions, including the San Diego Seafood Market Restaurant in 1993; the Elephant and Castle Pub at the Holiday Inn on the Bay's in 1995; Anthony's Star of the Sea Restaurant in 1998; and Roy's Restaurant at the Marriott Hotel and Marina in 2006. Again, none of these projects were reported to or reviewed by Commission staff at the time of approval; however, subsequent review of the project description indicates that each exempted development was renovation of an existing restaurant at the same site as the existing restaurant. In contrast, the two projects involving substantial changes—demolition and reconstruction of the Fish Market Restaurant in 1988, and restoration of the vacant San Diego Rowing Club structure for use as a restaurant in July 1980—were both granted coastal development permits. (However, the permits were not categorized as appealable, which is discussed in further detail below). Thus, based on the information provided by the Port, it appears that the Port's general practice has been to exempt only minor renovations of existing structures, and require coastal development permits for significant revisions. The subject exemption of complete demolition and then construction of a new separate structure in a new location as proposed in the Reuben E. Lee project is not consistent with the Port's historic practice.

To allow the interpretation that excluded development under the Port's certified PMP includes replacing a structure anywhere on a lot, leased or otherwise, would result in absurd consequences and defeat the core purpose of the adoption of the regulations, to further the protection of coastal resources. (See, *Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Board*, *supra*, 109 Cal.App.4th at p. 1696-1698 [narrowly construing alcohol control board regulations involving face-to-face identification of cited sellers by decoy minors on the seller's premises would defeat the core rationale of regulations concerning decoy buy operations].) Section 30009 of the Coastal Act provides that the Coastal Act "shall be liberally construed to accomplish its purposes and objectives." In interpreting section 30009, courts have found that "[w]hen a provision of the Coastal Act is at issue, [they] are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations." (*McAllister v. California Coastal Commission* (2008) 169 Cal.App.4th 912, 928.) Section 30001.5(a) of the Coastal Act provides that one of the basic goals of the state for the coastal zone are to "[p]rotect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources." As a point of emphasis, if a property owner on a 5 acre parcel claims an exemption to replace his or her 5000 square foot home from one side of the property to the opposite side, while on the same property (or "site" as the applicant alleges), the purpose and objectives of the Coastal Act would be violated since there would be no evaluation of the impacts of the proposed development on a building location where no building previously existed. To exempt such development from CDP regulations would be inconsistent with underlying goals of the Coastal Act and does not give the highest priority to

environmental considerations that are raised by the proposed development's location on a completely new building site on the affected property. Furthermore, there is no Commission precedent that establishes that practice of exempting a replacement structure on a completely different building site within the confines of a lot's property lines when such a replacement structure would have significant adverse impacts on coastal resources, like the proposed structure. Thus, the only reasonable interpretation of the port's CDP regulations relating to excluded development under section 7.b.(1) is that a replacement commercial structure is only excluded if it is sited in the same location on the affected property. Therefore, the proposed project is not an excluded development because it does not constitute the construction of a replacement structure on the same site, which would be on the Reuben E. Lee floating barge in this case, on the affected property.

The applicant's attorney's interpretation that an in-water site is essentially the same as a land-based site would set a significant adverse precedent for future development in the Port, and create a PMP prejudice situation. The Port of San Diego has restaurants located throughout the tidelands trust. If land and water sites were considered interchangeable, a shoreline restaurant could be rebuilt in or on the water and be considered the "same" site, even though in-water construction can obviously have numerous impacts on environmental and public resources that land-side construction does not. Other potentially significant impacts from constructing a new structure are relevant only to land-based structures, such as the presence of a major earthquake fault on Shelter Island (discussed in greater detail, below). This issue would not be relevant to redevelopment of a structure on a floating barge. The subject project is a prime example of how different sites have different impacts, and why the Port regulations do not exempt new construction in a different location.

Because the project is not an addition, is not located on the same site, and is not a minor alteration of land, the project cannot be excluded from permit requirements. Therefore, the project is inconsistent with the certified Port Master Plan regulations, and the appeal raises a substantial issue with regards to the appellants' contentions.

C. APPEALABLE DEVELOPMENTS UNDER THE COASTAL ACT

Restaurants Are Appealable Development

Section 30715 of the Coastal Act states:

Section 30715 Permit authority; appealable approvals

(a) Until such time as a port master plan or any portion thereof has been certified, the commission shall permit developments within ports as provided for in Chapter 7 (commencing with Section 30600). After a port master plan or any portion thereof has been certified, the permit authority of the commission provided in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development contained in the certified plan or any portion thereof and shall at that time be delegated to the appropriate

port governing body, except that approvals of any of the following categories of development by the port governing body may be appealed to the commission:

(1) Developments for the storage, transmission, and processing of liquefied natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state and nation. A development which has a significant impact shall be defined in the master plans.

(2) Waste water treatment facilities, except for those facilities which process waste water discharged incidental to normal port activities or by vessels.

(3) Roads or highways which are not principally for internal circulation within the port boundaries.

(4) Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities.

(5) Oil refineries.

(6) Petrochemical production plants.

(b) If maintenance dredging is part of, or is associated with, any category of development specified in paragraphs (1) to (6), inclusive, of subdivision (a), the commission shall not consider that maintenance dredging in its review and approval of those categories.

Unlike many of California's commercial-oriented ports, the San Diego Unified Port District tidelands has a large visitor-serving, public access and recreation component that includes public parks, public accessways, hotels, restaurants, retail shopping districts, and recreational boating facilities, as well as more traditional industrial and commercial fishing facilities. The certified Port Master Plan categorizes restaurants under two commercial recreation land uses, "Hotels and Restaurants," which obviously describes uses commonly associated with hotels, and "Specialty Shopping," which includes stores and restaurants that are not specifically associated with boating and marine services (those uses are categorized as "Marine Sales and Services"). There are currently eleven new restaurants proposed and listed on the project lists for various districts in the PMP; some are part of proposed hotel developments, others are within shopping districts such as Seaport Village. Several restaurants, such as proposed restaurants on new piers at Grape Street (PMPA #27) and on the existing Imperial Beach pier (PMPA #24), and in the Chula Vista Harbor District (PMPA #41), are *not* associated with either hotel or shopping facilities. However, in every case, each restaurant proposed in the PMP is categorized as an appealable development.

Notwithstanding the fact that the Port issued an exemption for the proposed development which, alone, constitutes a basis for the Commission's appellate jurisdiction, the applicant's attorney contends that the Commission would also not have appellate jurisdiction over the proposed restaurant development because it is not appealable development under the Port's PMP or the Coastal Act. As noted above, section 30715(a)(4) of the Coastal Act and Section 7d.(4)(d) of the Port Master Plan's CDP Regulations provide that appealable developments are, in relevant part, "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes." The applicant argues that the type of proposed development, a restaurant, is not a shopping facility under meaning of section 30715(a)(4) of the Coastal Act and its Port Master Plan equivalent provision (CDP regulations, Section 7d.(4)(d).). The applicant contends that since these provisions did not explicitly include restaurants as a type of appealable development, then the legislature intended to exclude that type of development from the reach of the Commission's appellate jurisdiction for port projects. The applicant's legal interpretation of section 30715(a)(4) of the Coastal Act is flawed for the reasons set forth below.

The applicant's attorney's interpretation of section 30715(a)(4) of the Coastal Act and its identical language in section 7d.(4)(d) of the PMP is an impermissibly narrow interpretation of the provision. Further, while this administrative proceeding is quasi-judicial and not a purely judicial proceeding, it is important to note that the applicant's attorney did not cite to any legal authority to support his interpretation of section 30715(a)(4) of the Coastal Act. In situations where an attorney fails to cite legal authority to support his or her legal position, courts treat the legal position "as waived and pass it without consideration." (Consumer Advocacy Group, Inc. v. ExxonMobil Corp. (2008) 168 Cal.App.4th 675, 694.) Nonetheless, staff addresses the applicant's attorney's statutory interpretation notwithstanding its lack of citations to legal precedent to support it.

Generally, when interpreting statutory language, courts "construe the language of a statute 'so as to effectuate the purpose of the law' and in conformity with a well-settled principle of statutory construction that 'the objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in [the provision's] interpretation, and where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is thereby enlarged or restricted and especially to avoid absurdity or to prevent injustice.'" (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 232.) Further, statutory language is interpreted by giving effect to the statute as the whole statute and every clause thereof, "leaving no part of the provision useless or deprived of meaning." (California Assn. of Psychology Providers v. Rank (1990) 51 Cal.3d 1, 18.) Additionally, Section 30009 of the Coastal Act provides that the Coastal Act "shall be liberally construed to accomplish its purposes and objectives." In interpreting section 30009, courts have found that "[w]hen a provision of the Coastal Act is at issue, [they] are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations." (McAllister v. California Coastal Commission (2008) 169 Cal.App.4th 912, 928.) In consideration of

the foregoing legal framework, section 30715(a)(4) of the Coastal Act necessarily includes restaurants as an appealable development for the following reasons.

First, considering the language of section 30715 of the Coastal Act as a whole, the categories of appealable development relate to development that has no water-oriented purpose consistent with typical port-related operations. Subsection (a)(2) calls out waste-water treatment facilities as appealable unless the facility processes waste incidental to normal port activities or by vessels. Subsection (a)(3) calls out roads that are not principally for internal circulation within port boundaries. In other words, roads that are used for port-related operations like Quay Avenue in the City of National City, which solely provides a north-south route between port-related storage facilities. Subsection (a)(4) calls out office and residential buildings as appealable if they are not principally devoted to the administration of activities within the port. Subsection (a)(4) also calls out shopping facilities if they are not principally devoted to the sale of commercial goods utilized for water-oriented purposes. Considering the foregoing, and by giving effect to the statutory section as a whole, the exceptions to appealable development in the relevant subsections of section 30715 of the Coastal Act only apply if there is a water-oriented purpose that is consistent with port-related operations. Key words like “normal port activities,” “internal circulation within port boundaries;” “administration of activities within the port,” and “water-oriented purposes” illustrate the underlying intent of section 30715 that the stated exceptions to appealable developments are those that have a principal interaction with water-oriented and port-related operations. Therefore, since restaurants serve the general public and not just port employees and cargo ship pilots on break as their ships are loaded, the consideration of related provisions in section 30715 of the Coastal Act that have exceptions concerning port-related operations lead to an interpretation that restaurants are appealable development because they are not principally devoted to water-oriented purposes consistent with typical port-related operations.

Second, a restaurant is a type of “shopping facility” and to conclude otherwise would lead to absurd results. As noted above, the meaning of words can be enlarged or restricted to avoid absurdity in the interpretation of statutory language. “Shopping facility” is not defined in the Merriam-Webster Dictionary. “Shopping center,” however, is defined in the Merriam-Webster Dictionary. Facility is defined as “something (as a hospital) that is built, installed, or established to serve a particular purpose.”² “Center” is defined as “a facility providing a place for a particular activity or service <a day-care center>.” (emphasis added)³ Given the synonymous nature of “center” and “facility,” the definition of “shopping center” shall be used to establish that a restaurant is necessarily included as an appealable development under section 30715(a)(4) of the Coastal Act. Merriam-Webster defines “shopping center” as “a group of retail stores and service establishments usually with ample parking facilities and usually designed to serve a community or neighborhood.” (emphasis added)⁴ Several dictionary sources define “restaurant” as a place or establishment where people from the public pay to sit and eat meals that are

² <http://www.merriam-webster.com/dictionary/facility>

³ <http://www.merriam-webster.com/dictionary/center>.

⁴ <http://www.merriam-webster.com/dictionary/shopping%20center>.

served to them.⁵⁶⁷⁸⁹ Clearly, to interpret “shopping facility” as not necessarily including restaurants as an appealable development given the definition of the “shopping center,” which is synonymous to “shopping facility” and includes service establishments like restaurants, would lead to an absurd result inconsistent with the enlarged meaning of the term “shopping facility.” This plain reading of the term “shopping facility” further bolsters the Commission’s precedent of treating restaurants as appealable development and supports the purpose of section 30715, noted above, which is to retain appellate jurisdiction over development that is not a principally related to water-oriented and port-related operations.

Finally, there is no basis to find that a restaurant is a shopping facility that is principally devoted to the sale of commercial goods utilized for water-oriented purposes, and is thus still non-appealable. As noted above, restaurants are establishments that serve food and drinks to people for consumption within the restaurant. The definition of restaurant does not include a description that a restaurant sells goods utilized for water-oriented purposes.

Over the last 25 years, the Commission has received notice of approximately ten coastal development permits issued by the Port District for restaurant projects, including new restaurants associated with hotels (A-6-PSD-89-352/Kona Kai; A-6-PSD-02-48/Lowes Coronado Bay Resort; A-6-PSD-04-598/Convention Center Hilton; 6-PSD-06-298/Kona Kai; 6-PSD-06-300/Bartell Hotels; A-6-PSD-08-4/Lane Field), two new restaurant buildings at the existing Coronado Ferry Landing (6-PSD-97-186), and construction of a major addition to an existing restaurant (6-PSD-02-002/Jimsair Restaurant). All of these projects were characterized as appealable.

As noted above, the Port has submitted copies of two permits issued for restaurant-related development that were not categorized as appealable. The first, Coastal Project No. 81-367 was approved in 1981 for redevelopment of the San Diego Rowing Club on the Embarcadero Marina South as a restaurant building. The second, Coastal Project No. N87-3-385, was approved in 1988 for demolition of an existing one-story restaurant on the G Street Mole and construction of a new 2-story restaurant, the Fish Market. With regard to the Rowing Club project, the file on this project suggests this project may have been processed atypically. The Port’s Categorical Determination for the project states “Although use as a restaurant is not an appropriate use of the area designated in Precise plan Figure 11, a condition for Master Plan certification specifically provided for restoration of the historic Rowing Club boathouse. Thus, the project is in compliance with the certified Port Master Plan.” Thus, the permit was approved despite its inconsistency with the PMP, because of a specific clause in the PMP certification.

There is no indication in the 1988 Fish Market project approval of why the development was not classified as appealable. It may have been an oversight on the part of Commission staff; Commission staff were unable to find any Commission file material

⁵ <http://www.thefreedictionary.com/restaurant>

⁶ <http://oxforddictionaries.com/definition/english/restaurant>

⁷ <http://www.answers.com/topic/restaurant>

⁸ <http://dictionary.reference.com/browse/restaurant>

⁹ <http://en.wikipedia.org/wiki/Restaurant>

regarding the project, and there is no evidence that the project was appealed. Nevertheless, despite this past characterization, the vast majority of restaurant projects over the years, and all of the recently proposed restaurants, have been listed in the Port Master Plan as appealable. Recategorizing restaurants as non-appealable developments would be inconsistent with the intent of the Coastal Act, and with long-standing Commission precedent. Therefore, for reasons stated above and relying on principles of statutory interpretation, the proposed restaurant is an appealable development under section 30715(a)(4). of the Coastal Act

D. INCLUSION IN THE PORT MASTER PLAN

The Appellants assert that the project should first be reviewed by the Port through a Port Master Plan amendment. However, the applicant's attorney claims that a Port Master Plan amendment is not required for a restaurant replacement project. The applicant mistakenly relies on the statement in the certified PMP that "the eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge." The PMP is a planning document that is both descriptive of existing development on the tidelands, and proscriptive regarding future development. There are two existing restaurants located on the eastern end of the peninsula; that statement has been in the PMP since it was originally adopted by the Commission in 1980. That description does not apply to or authorize construction of a new restaurant building 33 years later. The Coastal Act requires that all projects for which the Port exercises its permit issuance authority must be included in the PMP. Section 30715 of the Coastal Act states in relevant part: "After a port master plan or any portion thereof has been certified, the permit authority of the commission ... shall no longer be exercised by the commission over any new development contained in the certified plan or any portion thereof and shall at that time be delegated to the appropriate port governing body ..." (emphasis added). Thus, the commission's permit-issuing authority is delegated to the Port solely for "new development contained in the certified plan." Section 30715 does not distinguish between appealable and non-appealable development when referring to the delegation of permit-issuing authority over new development if it is contained in the PMP, rather, the only distinction is that the permit-issuing delegation over new development contained in the PMP is that some new development contained in the PMP is subject to appellate review by the Commission. Thus, if such new development is not contained in the certified plan, the Port does not have the authority to approve the project, without first amending the certified plan.

This interpretation of Section 30715 of the Coastal Act is supported by Section 30718 of the Coastal Act, which requires Ports to provide the Commission with CEQA documentation for "developments approved by the commission in a certified master plan" that are not appealable. Section 30718 therefore acknowledges that the Commission must approve, as part of the PMP, the actual developments proposed within a port, even if such developments are non-appealable. In addition, the Commission's regulations include a section defining the required contents of a master plan for appealable development and procedures for the Commission to review such projects if the proposed development is not well defined at the time of a port's submittal. *See* 14 CCR §13625(b). Section 13625(c) of the Commission's regulations allows the procedures outlined for

appealable developments to be used for any other proposed developments that are not well defined. Section 13625(c) would be unnecessary if Ports were only required to include appealable developments in their PMPs.

The applicant argues that because Section 30711(a)(4) of the Coastal Act specifies that Ports must submit additional detailed information related to appealable projects, this means that it need not list, or submit to the Commission for review through a PMP Amendment, non-appealable projects. This conclusion cannot be implied from the language of 30711(a)(4), which simply explains that ports must include additional information for the Commission to review appealable projects, not that no information is required to be listed regarding non-appealable projects.

Furthermore, Section 30711(a) of the Coastal Act states "[a] port master plan shall include all of the following: (1) The proposed uses of land and water areas, where known." Section 30711(b) states that "[a] port master plan shall contain information in sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of this division." Section 30711 therefore requires that all proposed uses of land and water areas contain sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of Chapter 8 of the Coastal Act.

The certified Port Master Plan itself reflects the fact that all proposed development, whether appealable or not, must be included in the plan. It states "[a] listing of development projects, covering both appealable and non-appealable categories, is provided in the discussion for each of the nine Planning Districts" (PMP pg.2). If the applicant's interpretation of the Coastal Act were accepted, the Commission would have no review authority over non-appealable developments within the Port's jurisdiction when the Commission considers whether or not to approve a Port Master Plan and its amendments. As described above, this interpretation is inconsistent with the plain language of the Coastal Act.

Because there is no provision for a restaurant on the land at this site in the Port Master Plan, either in the text of the plan, or on the project list, construction of a new restaurant building on this site should be accompanied by a Port Master Plan Amendment to add the restaurant to the Project List and incorporate the proposal into an integrated public access plan for Harbor Island. There is a pending PMPA for a hotel and restaurant complex by the same lessee immediately to the west of the subject site; however, the proposed landside restaurant was not incorporated into that PMPA.

E. CONSISTENCY WITH THE PORT MASTER PLAN AND CHAPTER 3 POLICIES OF THE COASTAL ACT

The proposed development also contains a number of significant inconsistencies with the following Port Master Plan goals and policies:

VI. THE PORT DISTRICT WILL INTEGRATE THE TIDELANDS INTO A FUNCTIONAL REGIONAL TRANSPORTATION NETWORK

- Encouraging development of improved major rail, water and air systems linking the San Diego region with the rest of the nation.
- Improved automobile linkages, parking programs and facilities, so as to minimize the use of waterfront for parking purposes
- Providing pedestrian linkages
- Encouraging development of non-automobile linkage systems to bridge the gap between pedestrian and major mass systems.

VIII. THE PORT DISTRICT WILL ENHANCE AND MAINTAIN THE BAY AND TIDELANDS AS AN ATTRACTIVE PHYSICAL AND BIOLOGICAL ENTITY.

- Views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.
- Establish guidelines and standards facilitating the retention and development of an aesthetically pleasing tideland environment free of noxious odors, excessive noise, and hazards to the health and welfare of the people of California.

IX. THE PORT DISTRICT WILL INSURE PHYSICAL ACCESS TO THE BAY EXCEPT AS NECESSARY TO PROVIDE FOR THE SAFETY AND SECURITY, OR TO AVOID INTERFERENCE WITH WATERFRONT ACTIVITIES.

- Provide "windows to the water" at frequent and convenient locations around the entire periphery of the bay with public right-of-way, automobile parking and other appropriate facilities.
- Provide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.

X. THE QUALITY OF WATER IN SAN DIEGO BAY WILL BE MAINTAINED AT SUCH A LEVEL AS WILL PERMIT HUMAN WATER CONTACT ACTIVITIES.

- Insure through lease agreements that Port District tenants do not contribute to water pollution.

- Cooperate with the Regional Water Quality Control Board, the County Health Department, and other public agencies in a continual program of monitoring water quality and identifying source of any pollutant.
 - Adopt ordinances, and take other legal and remedial action to eliminate sources of pollution.
- XI. THE PORT DISTRICT WILL PROTECT, PRESERVE, AND ENHANCE NATURAL RESOURCES, INCLUDING NATURAL PLANT AND ANIMAL LIFE IN THE BAY AS A DESIRABLE AMENITY, AN ECOLOGICAL NECESSITY, AND A VALUABLE AND USABLE RESOURCE.
- Keep apprised of the growing body of knowledge on ecological balance and interrelationships.
 - Administer the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust.

The certified Port Master Plan also states:

Plan Certification and Appeals

All Port District tidelands are covered by the Coastal Act; some are regulated by the provisions of Chapter 8 (Ports) and some by Chapter 3 (Coastal Resources Planning and Management Policies). Areas excluded from Chapter 8 are wetlands, estuaries and existing recreational areas, which have been delineated by the Coastal Commission on maps derived from the original Coastal Plan prepared in 1976. Certain developments, which would normally be located in port developments, are specifically designated by the Act as appealable, the appeal being based on whether the development is in conformance with applicable policies of Chapter 3.

Applicable policies of Chapter 3 include the following:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

[...]

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30230.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....

Section 30230.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the

character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253.

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (4) Minimize energy consumption and vehicle miles traveled.
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

1. Contentions that Raise a Substantial Issue.

A. Public Access and Recreation. The appellants assert that the proposed project would be inconsistent with the PMP and Coastal Act policies protecting and enhancing public access and recreation. The proposed restaurant would be located on public trust lands at the end of the Harbor Island peninsula. Both of the two existing restaurants at this location were constructed prior to passage of the Coastal Act, and as such, there is no continuous improved walkway around the end of the peninsula next to the shoreline. There is a formal public access path nearby that is highly utilized by the public for strolling and jogging, but the path terminates adjacent to the Island Prime restaurant, next to the parking lot that serves both restaurants.

However, although not designated in the Port Master Plan as a formal walkway, as seen on Exhibit #2, the public can currently walk up to and along the waterfront in this location, albeit through an existing parking lot, at the location of the proposed new landside restaurant. People can and do walk and jog through the parking lot to get to the end of the peninsula. This access and viewpoint would be eliminated by the proposed project. The approved new landside restaurant and outdoor dining would be located immediately adjacent to the water, with no public access between the building and the shoreline. As approved, a public sidewalk would be constructed on the inland side of the restaurant, with two new public viewpoints created on both sides of the proposed building, and one new public viewpoint next to the existing waterfront restaurant located west of the subject site. However, this design and siting is in direct conflict with the PMP policy requiring that access be provided along the waterfront wherever possible with promenades and paths.

The majority of the public tidelands in the Port of San Diego have been developed to various degrees. Thus, most of the projects that come before the Port District are redevelopment projects. The certified PMP and past Commission action have consistently supported the position that new development and redevelopment of existing leaseholds must provide public shoreline access between the upland development and the waterfront. As various public leaseholds redevelop, the Commission believes it is incumbent upon the Port, under its statutory trust responsibilities, to ensure that public trust lands are redeveloped in a manner that enhances, not reduces, public access opportunities.

The proposed restaurant construction provides a prime opportunity for creating and formalizing continuous public access along the shoreline. Recent examples of this type of action on San Diego County public trust lands include public shoreline lateral accessways improvements incorporated into redevelopment at the Shelter Pointe Hotel and the Island Palms West Hotel on Shelter Island, America's Cup Harbor, the National City Marina, and the draft proposed Harbor Island Sunroad Hotel project, which is located immediately adjacent to the subject site. All of these are redevelopment projects on public trust lands that have, or are planning to, incorporate lateral public access along the waterfront on sites that have historically not provided it. All of the new development included in the recently approved Chula Vista Bayfront Master Plan was designed so that public access is provided along the shoreline. The subject development should not proceed without similarly remedying past oversights in incorporating public access into the project between the upland tenant leasehold and the waterfront.

The subject site is fairly constrained due to the presence of earthquake faults across the parking lot. However, public access must be one of the first priorities when planning and designing for the (re)development of public tidelands. The proposed development is a brand new structure; the building could be designed to accommodate public access, although it might require a reduction in the size of the proposed restaurant, the amount of outdoor seating, or other design revisions. The proposed project is perfectly positioned to incorporate public pedestrian access across the subject site, linking to the sidewalk next to the existing Island Prime restaurant east of the barge, and extending on to the north

side of the site. Instead, as approved, the new restaurant eliminates the existing public access that is currently available along the water.

In addition, the proposed new restaurant structure will result in the loss of at least two parking spaces, and 10 spaces out of the existing 308 spaces will be converted to valet/employee parking spaces. A draft parking analysis for the project indicates that a minimum of 310 parking spaces are required to meet the demand for parking at the site. Thus, the proposed 308 spaces, with the addition of valet services (which allows more cars to fit on a site), should result in adequate parking to serve the use. However, recently, the Port has been addressing parking issues and the requirement to develop non-automobile linking systems by requiring tenants to participate in the Port's newly developed and expanding shuttle service. However, no such requirements or mitigation measures have been included in the proposed project.

The proposed overlook points on either side of the restaurant would not preserve or enhance the level or quality of public access that exists on the site currently, while the location of the new landside restaurant structure would significantly reduce existing access to the shoreline. This omission of public shoreline access is inconsistent with the certified PMPA, the Coastal Act, and the public trust mandate that projects promote public access. The proposed removal of public pedestrian shoreline access in conjunction with the subject request raises a significant issue with regard to consistency with the Port Master Plan and the public access and recreation policies of the Coastal Act.

B. Enhancement and Maintenance of Visual Quality. The appellants assert that the proposed development would have an adverse impact on public views and visual quality. The subject site is a highly scenic area, and the two existing restaurants in this area are recognized for providing spectacular views of the water and downtown skyline for their patrons. In addition to the direct public access blockage, the availability of public views of the waterfront from around and near the new restaurant would also be significantly different as a result of the siting of the new restaurant on land, thus raising a substantial issue. From some vantage points, water views could improve, as prior to its demolition, the Reuben E. Lee had four levels of seating, while the proposed restaurant has only one. However from other vantage points, such as adjacent sidewalks, parking areas, and the vehicle cul-de-sac, existing views of the skyline would be permanently blocked, as the new building would block access to the shoreline side of the structure. As with public access, the views from the proposed viewpoints would be no better than existing views from the site, while the approved restaurant building would block the existing expansive views of the bay and downtown from the parking area, and potentially also encroach on views from the east end of Harbor Island Drive. Therefore, the appeal raises a substantial issue with regards to the appellants' contentions.

C. Protection of Natural Resources. The appellants contend that the proposed development would adversely impact on the biological resources of San Diego Bay. The project includes relocating the barge planned for the reconstructed restaurant facilities westward to a location entirely within the Port District's jurisdiction. A 2001 bay wide eelgrass survey determined that there are no eelgrass beds in the new location. However, the approved project does not include conditions requiring measures to prevent the spread

of the invasive algae *Caulerpa taxifolia*. Nor does the approval include a landscape plan or condition that prohibits use of non-invasive species. The use of invasive species in the urban environment is inconsistent with the resource protection provisions within the PMP that require the preservation and enhancement of natural resources, and keeping appraised of new information on ecological balance and interrelationships. Therefore, the appeal raises a substantial with regards to the appellants' contentions.

2. Contentions That Do Not Raise a Substantial Issue

Geotechnical Hazards/Public Safety. The appellants contend that the project is not consistent with the certified Port Master Plan policies that require development to facilitate a tideland environment free of hazards to the health and welfare of the people of California resulting from seismic risk. The appellants contend that the restaurant would be located in a fault zone and that there is insufficient data to accurately determine the location and width of faulting on the project site. However, the Commission's geologist, Dr. Mark Johnsson, has reviewed the appeal and substantive file documents and has determined that, in his opinion, a substantial issue does not exist with respect to the grounds on which the appeal was raised.

Specifically, the appellants contend that:

...development will occur in a fault zone and there is insufficient data to accurately determine the location and width of the faulting on the project sites. The REL [Reuben E. Lee] Project is located in an area of active earthquake fault strands, several of which were detected (though not further studied or confirmed to the public) beneath the site. Sunroad's consultant, Geocon, identified only one potential fault splay in between its proposed hotel and restaurant developments. However, Geocon failed to collect sufficient data to accurately locate existing faulting on and around these sites.

Citing a letter by Earth Consultants International (ECI) dated 9 May 2011, the appellants conclude that "there is potential faulting on the REL Project site that was not identified or analyzed by Geocon."

The 2011 ECI letter referred, however, only to the conclusions drawn from a 2006 Geocon report performed for another development (a four-story hotel) lying to the west of the subject site. In fact, that report identified three active strands of the Spanish Bight Fault crossing the site, making use of rather sparse Cone Penetrometer Test (CPT) borings and a geophysical survey (reported in Terra Physics reports dated 2005 and 2006). The 2006 Geocon report concluded that, despite the presence of a number of geologic hazards (in addition to faulting, the site is subject to liquefaction and lateral spread, strong ground shaking, and induction by tsunami and/or seiche), the development was feasible provided that the recommendations contained in the report were adhered to. Another geotechnical investigation and third party review (Ninyo and Moore, 2006) reached the same conclusions.

As pointed out in the 2011 ECI report, these investigations concentrated on a development envelope west of the proposed Reuben E. Lee Project. Dr. Johnsson concurs with their conclusions that the 2006 Geocon report did not contain sufficient data to fully constrain the potential for faulting at the eastern tip of East Harbor Island, the proposed location of the Reuben E. Lee development. However, additional testing, including the advancement of numerous additional CPT borings, was undertaken in preparation for this development. These are reported on in a 2 September 2011 report by Geocon. This report was reviewed by the City of San Diego; responses to the review comments were provided in Geocon reports dated 14 October 2011 and 27 January 2012. The applicants agreed to extend testing to the east, and the results of this additional testing are reported on in Geocon reports dated 28 August 2012 and 11 September 2012. These additional borings much more tightly constrained the location of the eastern splay of the Spanish Bight Fault and eliminated the possibility that a feature encountered in the area of the project footprint on a seismic reflection profile (Terra Physics 2005, 2006) was an additional fault. A third party review by Ninyo and Moore dated 10 July 2012 concurred, and the City approved the project in a footprint outside of a ten foot setback from the eastern edge of the fault zone as mapped in the latest Geocon reports. The Commission's staff geologist has reviewed all of this material submitted by both the applicant and the appellant, UNITE HERE Local 30, and concurs with the data collected, the analysis of the data and the conclusion of the applicant's reports that based on the data analysis, the development will be safe from geologic hazards for the life of the development. The eastern strand of the fault is very well constrained by CPT borings and seismic reflection profiles, and he concurs that a ten foot wide setback zone is adequate to assure safety from a fault rupture hazard.

Thus, there is no evidence that the proposed project is not consistent with the certified Port Master Plan regarding health and welfare, and no substantial issue is raised regarding this issue raised by the appellants.

F. CONCLUSION

In summary, excluding the proposed restaurant redevelopment from coastal development permit requirements is inconsistent with the certified PMP and Chapter 3 of the Coastal Act. Based on the above discussion, it is clear that the development requires review pursuant to a coastal development permit. In addition, the project may have impacts on public access, public recreation, parking, views, and biological quality; thus, the project is potentially inconsistent with many provisions of the certified PMP. Therefore, the appeal raises a substantial issue with regards to the appellants' contentions.

G. SUBSTANTIAL ISSUE FACTORS

As discussed above, there is inadequate factual and legal support for the Port's determination that the proposed development is consistent with the certified PMP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance and the decision creates a poor precedent with respect

to the proper interpretation of the Port's PMP, as the Port's determination of when development requires a coastal development permit and a Port Master Plan Amendment are not only incorrect interpretations of the PMP, but they could also set an adverse precedent elsewhere along the coast. In addition, the coastal resources potentially affected by the decision—including blockage of public access and views along the shoreline, water quality, and marine resources, are significant.

V. STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolutions:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-PSD-13-005 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Port Master Plan and Chapter 3 policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

VI. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VII. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for review and written approval by the Executive Director, final site, building, and parking plans for the proposed development that have first been approved by the Port of San Diego. Said plans shall be in substantial conformance with the plans submitted with this application by Graham Downes Architecture dated April 8, 2013.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Final Public Access Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for review and written approval by the Executive Director, a final Public Access Program. Said plans shall be in substantial conformance with the plans submitted with this application by Graham Downes Architecture dated April 8, 2013, and shall include the following:
 - a. The public accessways shall remain on the subject site for public use for the life of the subject development. Access to the public walkways shall be available at least at all times that the restaurant is open, and from dawn through dusk, whichever provides greater public access.
 - c. Any gates or closure apparatus associated with the public walkway shall be controlled with an automatic unlocking mechanism that ensures the walkway will be opened to the public no later than dawn every day. Said mechanism shall be adjusted as necessary throughout the year in order to ensure the accessway is open during the required hours.
 - b. A signage plan that identifies and directs the public to the public accessways. The plan shall identify the location and message of the signage and shall require the

signage to be installed prior to or concurrent with the commencement of the restaurant opening.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Final Parking Management Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval by the Executive Director, a final Parking Management Program. Said plans shall include the following:

- a. Parking demand reduction strategies that will be implemented on the site, either permanently, or during periods when parking demand exceeds capacity. Such measures may include, but are not limited to, valet parking, requiring off-site employee parking (at the adjacent Sunroad Marina parking lot); shared parking with Sunroad Marina, and event shuttle services.
- b. Existing signs on the site restricting parking lot on the site to “customers only” shall be revised to indicate that public parking is permitted when the restaurants on the site are not open.
- c. A minimum of 10 spaces on the site shall be designated for public parking only from dawn to dusk.
- d. The program shall identify the location and message of the parking-related signage. Signage shall be installed prior to or concurrent with the commencement of the restaurant opening.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **Final Drainage Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a final drainage and runoff control plan documenting, graphically and through notes on the plan, that runoff from the roof, parking areas, and other impervious surfaces will be collected and directed into pervious areas on the site (landscaped areas) for infiltration and/or percolation in a non-erosive manner, prior to being conveyed off-site.

The permittee shall undertake the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the

Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Tsunami Information Plan: PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a Tsunami Preparedness Plan. The plan shall include, at a minimum:

- a. An education component for both employees and visitors, which may include such efforts as:
 - i. Training and drills for employees
 - ii. Informative maps and signs.
- b. An evacuation component that covers all at-risk areas on the property, which may include maps, signs, sirens or public address system warnings, and other informative efforts, and provides for coordination with local emergency personnel (Fire Department/lifeguards) for evacuation of public access paths and along the property. The evacuation plan should be coordinated with the local Fire Department as lead agency to insure consistency with plans for the area and other applicable local, state or federal agencies, including, but not limited to the U.S. Federal Emergency Management Administration.
- a. If any toxic chemicals will be used on the premises, the plan should also include steps to minimize the uncontrolled release of these chemicals, through the use of flood proof storage containers, storage of bulk materials at a more inland location, etc.
- b. The plan should be reviewed by on-site staff on at least an annual basis, possibly in conjunction with earthquake or fire drills, to insure it can be implemented if needed.

To the extent practicable, the tsunami preparedness plan shall use existing educational materials, if appropriate, and in situations where new materials are necessary, the applicant shall make those materials available to the local Office of Emergency Services and for other users.

The applicant shall undertake the development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No change to the final plan shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

6. Landscape Plans: By acceptance of this permit, the applicant agrees to the following:

- a. Landscaping on the site shall emphasize the use of drought-tolerant and native species. Use of drought-tolerant, non-invasive ornamental species and lawn area is allowed as a small component. No plant species listed as invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.
- b. The planting plan shall be implemented within 60 days of completion of construction.
- c. All required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- d. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

The permittee shall undertake the development in accordance with the landscape plans. Any proposed changes to the plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 7. **Parking Management and Transit Opportunity Plan:** By acceptance of the permit, the applicant agrees to participate in and contribute a fair share to the implementation the Port District's on-going bayside shuttle system that would serve and connect tideland uses along the waterfront, as required by the Port District.
- 8. **Future Response to Sea Level Rise.** By acceptance of this Permit, the applicant agrees that if in the future the approved public access way is threatened by sea level rise, the applicant shall seek an amendment to this coastal development permit to revise the project such that safe continuous public access will be maintained along the shoreline side of the structure. Such revisions could include but are not limited to: redesigning the wall next to the dining area to allow waves to pass through the wall and to minimize reflected wave energy that could be deleterious to the safe use of the adjacent walkway; revisions to the seaward portion of the public accessway wall or foundation; or relocation of the public improvements further inland (but bayward of the private improvements). Alternatives that avoid impacts to scenic visual resources, public access and recreation and shoreline processes shall be given precedence.

9. **No Future Shoreline Protective Device:** By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-PSD-13-005 including, but not limited to, the barge, restaurant, and decks, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
10. **Assumption of Risk, Waiver of Liability and Indemnity Agreement:** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wave action and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
11. **Liability for Costs and Attorneys Fees:** The applicant shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
12. **Invasive Species.** PRIOR TO COMMENCEMENT OF ANY IN WATER WORK, the applicant shall provide evidence that dredging of San Diego Bay can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia* as follows.
 - a. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit, the applicant shall undertake a survey of the project area (includes and any other areas where the bottom could be disturbed by project activities) and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

- b. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- c. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - 1. For the review and written approval of the Executive Director; and
 - 2. To the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (DFG) (858-467-4218) or the National Marine Fisheries Service (NMFS) (562-980-4043).
 - 3. If *Caulerpa* is found, then the NMFS and DFG contacts shall be notified within 24 hours of the discovery.
- d. If *Caulerpa* is found, prior to the commencement of dredging, the applicant shall provide evidence to the Executive Director for review and written approval either that the *Caulerpa* discovered within the project and/or buffer area has been eradicated or that the project has been revised to avoid any contact with *Caulerpa*. No changes to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 13. Barge Public Access Plan: PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a public access plan for the barge portion of the development. The plan shall include a design for the barge that allows the public access onto some portion of the barge from the public accesway for strolling and observation when the barge is not being used by the restaurant for events. Access hours to the barge when not being used for an event shall be the same as those for the walkway itself (that is, from at all times that the restaurant is open, and from dawn through dusk, whichever provides greater public access). Appropriate signage that identified and directs the public to the public use area on the barge shall be included.

The applicant shall undertake the development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No change to the final plan shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

A. Project Description. The detailed project description and history is described above under the substantial issue findings on Page 42 of this report and is incorporated herein by reference. However, since the project was appealed, the applicants have made substantial revisions to the proposed project to respond to the issues raised in the appeal.

The proposed landside restaurant has been redesigned and reoriented on the site in order to accommodate a new continuous public walkway on the bayside of the structure (see Exhibit #4). The public path was accommodated by reducing the total amount of outdoor decking as compared to the plans approved by the Port in March 2012, and by shifting the building such that the west wall of the structure is now on the setback line from the mapped earthquake faulting. The new walkway will be 6 feet wide, and located slightly below the level of the proposed restaurant deck, such that views will be available from both levels. The 6-foot wide walkway matches the width of the existing path along the south side of Harbor Island Drive. The bayward side of the walkway would have a glass windscreen to maintain views. The path would be accessible from both sides of the proposed restaurant. Some portions of the path would be constructed on top of the existing riprap, some areas would be above the riprap, and in several locations, the accessway would extend out over the water. The elevated portions of the path will be cantilevered from the existing concrete walls that were constructed with the original Reuben E. Lee, and will not require any in water construction.

Both the restaurant and the floating dock structure have been reconfigured and revised. Exhibit #5 shows a comparison of the plan approved by the Port, and the revised proposal. As with the revised project, the project approved by the Port included restaurant decks that extended over the existing riprap and over the water. The Port approved plan included 1,846 sq.ft. of new deck over riprap, 2,133 sq.ft. of new deck over the water, and 5,030 sq.ft. of new gangway/floating barge area. (Although the plans describe the gangway and floating barge, the existing (now former) Reuben E. Lee was a floating barge with gangways). The proposed plan reduces the amount of each of these categories, and includes 1,372 sq.ft. of new deck over riprap, 1,445 sq.ft. of deck over water, and 5,099 sq.ft. of gangway/floating barge.

The proposed landside restaurant will have approximately 13,541 sq.ft. of enclosed floor area. The project no longer includes any enclosed area on the boat; a shade structure will be the only structure on the barge. Exterior decks on land will comprise approximately 9,309 sq.ft. In total, the project area—including all landside improvements, the floating barge, and the gangways—will be approximately 22,850 sq.ft. This represents an approximately 2,750 sq.ft. reduction from the 25,600 “total project area” in the project approved by the Port in March 2012.

Section 30625(a) of the Coastal Act provides that an action on a claim of exemption for any development by a port governing body may be appealed. Section 30625(a) also

states that the Commission “may approve, modify or deny such proposed development...” In the context of an appeal of the Port’s action to exclude development, the Commission may approve such a determination, deny it or modify it, including a modification where the Commission determines that the development is not excluded and requires a permit and then approving a conditional permit to mitigate for impacts associated with the proposed development. In this case, as discussed further below, the Commission modifies the Port’s exclusion determination by issuing a permit for the proposed development.

For appeals of permits issued by the San Diego Unified Port District the standard of review both for substantial issue and for the merits of an appealable project is consistency with the certified port master plan and Chapter 3 policies as provided for in the port master plan.

B. Categorical Exclusion Determination

The San Diego Unified Port District Coastal Development Permit Regulations govern the issuance of Port permits, exemptions (referred to as “exclusions” in the Port regulations), and appeals. The Port District determined that the proposed project is exempt from issuance of a coastal development permit under the following sections of the Permit Regulations:

8. Excluded Developments

- d. **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, including but not limited to:
 - (3) Streets, sidewalks, gutters, bicycle and pedestrian paths, and similar facilities; [...]
 - (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 sq.ft., whichever is less; or additions to existing structures of not more than 10,000 sq.ft. of floor area, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive; [...]
- e. **Replacement or Reconstruction:** Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
 - (3) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.

- (4) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction. [...]
- d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:
 - (3) Land Grading, except where located in a waterway, wetland, officially designated scenic area, or in officially mapped areas of severe geologic hazard;
 - (4) New gardening or landscaping;
 - (7) Minor trenching or back filling where the surface is restored.

The March 2012 Project Review and Approval cites Section 8.b., “Replacement or Reconstruction”, as the reason the project was found to be an Excluded Development under the District’s Coastal Development Permit Regulations.

None of the above exclusion language used to exempt the development from coastal permit requirements applies to the proposed project. The exclusion for “Existing Facilities” in Section 8.a. applies to “minor alteration[s]...involving negligible or no expansion of use beyond that previously existing...,” including additions to existing structures. However, the proposed development includes demolishing the entire existing restaurant structure, leaving only the foundation (the barge hull) and several minor accessory improvements. Thus, the proposed work on the barge is demolition and reconstruction, not an addition. The new restaurant structure proposed on the land is not an addition to an existing structure, both because the existing structure is being demolished, and because a new unattached structure, separated in space and by water, is not an addition to an existing structure, but a stand-alone new structure.

The “Minor Alterations to Land” exclusion in Section 8.d. covers projects limited to minor alterations to land, water, and/or vegetation such as grading, landscaping, and minor trenching, which does not involve the removal of mature, scenic trees. As noted, the project is considerably larger in scope and scale than minor alternations to land, and a development cannot be segmented into components that might be exempt if taken individually. In addition, the original exemption included the removal of mature scenic tree(s), the revised proposal still includes the removal of at least one mature coral tree and the proposed parking lot revisions will reduce the number of parking spaces, which is typically not considered exempt from permit requirements. Thus, this section of the Port’s regulations is not applicable to the proposed development.

The project clearly involves both demolition and reconstruction of an existing structure (the barge), and construction of a separate new structure (the landside restaurant). The project applicant’s attorney has suggested that the Port District appropriately excluded the proposed development from coastal development permit requirements for three reasons, the first of which is that the reconstructed restaurant is located on the same site as the demolished restaurant. The other two arguments are that a restaurant is not an appealable development under the Coastal Act, and the development is not required to be

included on the project list in the Port Master Plan, because only appealable projects are required to be on the project list. None of these points is accurate or applicable to the proposed development; the first point is discussed below, and the second two points are discussed in the following section of the staff report.

Project Site and Location

The Port's "Replacement or Reconstruction" exclusion in Section 8.b. is very specific. As described above, Port District regulations allow the exclusion of "replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced..." The applicant's attorney has stated that the existing Reuben E. Lee restaurant (prior to the barge being towed away and demolished) consisted of both land and water facilities, with approximately 1/3 of the facilities on land, and 2/3 on water. Thus, the proposed project "site," with approximately 2/3 of the facilities on land, and 2/3 on water, is "essentially on the same site as the structure being replaced."

However, this characterization of the existing project site is not accurate, nor does it correctly portray the relevant distinctions between the existing subject site and the proposed site. The Port regulations appropriately draw a distinction between replacing a development in the same location and rebuilding in a different location, because different locations have different site needs, constraints, and impacts. The Reuben E. Lee restaurant has always been a restaurant located on the water. As Exhibit #2 shows, the only landside facilities associated with the restaurant are walkways leading to the barge and a covered gazebo used on occasion to direct patrons to the barge. Other than these minor hardscape improvements, 100% of the existing restaurant facility—seating, kitchen, storage, front of the house, back of the house, restrooms, etc.—are located in the water on the barge. The proposed project, by contrast, would result in approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior seating space, for a total new area of 27,505 sq.ft. located directly on the shoreline, in an area that is currently an unenclosed parking area.

The proposed landside development in no way resembles or replicates the existing floating restaurant, in fact or in impact to coastal resources. A permanent land location cannot by any reasonable interpretation be considered essentially the same site as a floating barge on the water. Water and land development sites have different physical requirements and different impacts on coastal resources and are not interchangeable.

The Port's interpretation of the excluded development determination as it relates to the proposed development raises a substantial issue. Controlling statutes are used to interpret administrative regulations, like the certified San Diego Port District's PMP regulations, adopted pursuant to the controlling statutes which in the case of adoption of the PMP, is the Coastal Act. (Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Board (2003) 109 Cal.App.4th 1687, 1695-1696.) If the words of a regulation are unclear and ambiguous, courts "examine the context in which the language appears using the interpretation that best harmonizes the statute internally...." (Id. at p. 1696.) Further, "[r]egulations are not interpreted in a manner that results in absurd consequences or

defeats the core purpose of their adoption.” (Ibid.) Thus, relevant Coastal Act provisions provide interpretive tools for interpreting administrative regulations adopted thereunder, like port master plan regulations.

In the present case, section 30610(g)(1) provides support for the interpretation that replacement of a structure on a different part of the affected property than the site where the replaced structure once stood is not exempt development. In the context of siting replacement structures exempt from CDP requirements, section 30610(g)(1) provides that the replacement of any structure (aside from public works facilities) destroyed by a disaster is exempt from CDP requirements only if the new structure is “for the same use as the destroyed structure, shall not exceed either the floor area, height or bulk of the destroyed structure by more than 10 percent, and shall be sited **in the same location on the affected property** as the destroyed structure.” (emphasis added) The applicant relies on section 8.b.(1) of the PMP, which provides that a replacement structure is excluded development if it is “located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to: (1) [r]eplacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.” While the trigger for exempt replacement structures is different (Coastal Act requiring a disaster while the PMP allows replacement without a disaster), the requirements of section 8.b.(1) of the PMP had to be consistent with the language with its controlling statute and, more particularly, section 30610(g)(1) of the Coastal Act when the Commission certified the port’s CDP regulations. Given this context of the controlling statute in interpreting the excluded development provision in the PMP, it is clear that the intent of the PMP provision is that the replacement structure is exempt only if it is placed in the same location on the affected property, not if it is placed anywhere on the affected property not in the same location.

The applicant has cited an October 2007 email from Commission staff to Port Staff providing direction to the Port District regarding the Reuben E. Lee barge, as evidence that the current project is exempt from permit requirements (see Exhibit #13). However, the email in question was in response to Port Staff’s inquiry about permit requirements for redevelopment of the existing barge, as that barge was located mostly within the Commission’s jurisdiction and partially within the Port’s jurisdiction. Commission staff correctly advised the Port that “when a development that requires a coastal development permit straddles both the Port and the State’s jurisdiction, both agencies have to issue a CDP for their portions of the project.” Commission staff’s reference to the “particular development that raised the question in this case [that] may end up being deemed exempt from permit requirements” is clearly referencing potential work on the existing barge that straddles two jurisdictions and was the subject of the email. At no time during that 2007 exchange (or any subsequent time until Commission’s staff 2013 inquiry) did the Port suggest or inform Commission staff that any new structures would be constructed on the land. Despite Commission’s staff request in 2007 that the Port advise the applicant to send redevelopment plans to Commission staff for review and a determination of permit requirements, no such plans were ever received by Commission staff. Thus, there has never been any suggestion or conclusion by Commission staff that construction of a new

restaurant building on the land next to an existing barge would be exempt from coastal development permit requirements.

It is worth noting that at the time the Categorical Determination was made, the waterside portion of the project was located largely in the Commission's permit jurisdiction, and was proposed to remain in that location. Even having made a determination that the portion of the project within the Port's jurisdiction was exempt from permit requirements, only the Commission can make a decision on permit requirements for the development proposed on the rest of the barge lying in the Commission's jurisdiction; this determination could not have been made by the Port.

The applicant's attorney has stated that because the Port approved the renovation of Tom Ham's Lighthouse restaurant on the western end of Harbor Drive and revisions to Sun Harbor Marina's improvements as "Excluded Developments," both of which include some land and some water components, that the proposed project should be similarly excluded. The Port did not send notice of this projects to the Commission, and therefore, Commission staff did not have the opportunity to review this project at the time it was exempted. However, review of the Port's "Project Review and Approval," for the restaurant, indicates that this project consisted of "a comprehensive renovation and upgrade of the existing facilities...within the existing building footprint." New decks, new outdoor terrace dining, and new public shoreline promenade were also part of the project, with an increase in building square footage was approximately 1,500 sq.ft. The Port did not do an analysis of the amount of demolition involved; thus, it is unclear if the extent of the demolition was such that the project should have been characterized as "demolition and reconstruction" rather than a "minor alteration of an existing structure." However in any case, in contrast to the subject project, the Tom Ham's Lighthouse renovation was clearly renovation of an existing structure in the same location. Thus, there is nothing in the Port's exclusion of Tom Ham's Lighthouse that suggests the subject project should be similarly excluded. Commission staff have not yet received a copy of or been able to review the Port's exclusion of development at Sun Road Harbor. If this project included demolishing an in-water structure and constructing a new, non-attached building in a currently vacant area, then this project should likely also not have been granted an exclusion under the certified Port regulations.

The Port District has submitted examples of five other restaurants projects approved by the Port (see Exhibit #14). Four of the projects were granted coastal development permit exemptions, including the San Diego Seafood Market Restaurant in 1993; the Elephant and Castle Pub at the Holiday Inn on the Bay's in 1995; Anthony's Star of the Sea Restaurant in 1998; and Roy's Restaurant at the Marriott Hotel and Marina in 2006. Again, none of these projects were reported to or reviewed by Commission staff at the time of approval; however, subsequent review of the project description indicates that each exempted development was renovation of an existing restaurant at the same site as the existing restaurant. In contrast, the two projects involving substantial changes—demolition and reconstruction of the Fish Market Restaurant in 1988, and restoration of the vacant San Diego Rowing Club structure for use as a restaurant in July 1980—were both granted coastal development permits. (However, the permits were not categorized as appealable, which is discussed in further detail below). Thus, based on the information

provided by the Port, it appears that the Port's general practice has been to exempt only minor renovations of existing structures, and require coastal development permits for significant revisions. The subject exemption of complete demolition and then construction of a new separate structure in a new location as proposed in the Reuben E. Lee project is not consistent with the Port's historic practice.

To allow the interpretation that excluded development under the Port's certified PMP includes replacing a structure anywhere on a lot, leased or otherwise, would result in absurd consequences and defeat the core purpose of the adoption of the regulations, to further the protection of coastal resources. (See, *Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Board*, *supra*, 109 Cal.App.4th at p. 1696-1698 [narrowly construing alcohol control board regulations involving face-to-face identification of cited sellers by decoy minors on the seller's premises would defeat the core rationale of regulations concerning decoy buy operations].) Section 30009 of the Coastal Act provides that the Coastal Act "shall be liberally construed to accomplish its purposes and objectives." In interpreting section 30009, courts have found that "[w]hen a provision of the Coastal Act is at issue, [they] are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations." (*McAllister v. California Coastal Commission* (2008) 169 Cal.App.4th 912, 928.) Section 30001.5(a) of the Coastal Act provides that one of the basic goals of the state for the coastal zone are to "[p]rotect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources." As a point of emphasis, if a property owner on a 5 acre parcel claims an exemption to replace his or her 5000 square foot home from one side of the property to the opposite side, while on the same property (or "site" as the applicant alleges), the purpose and objectives of the Coastal Act would be violated since there would be no evaluation of the impacts of the proposed development on a building location where no building previously existed. To exempt such development from CDP regulations would be inconsistent with underlying goals of the Coastal Act and does not give the highest priority to environmental considerations that are raised by the proposed development's location on a completely new building site on the affected property. Furthermore, there is no Commission precedent that establishes that practice of exempting a replacement structure on a completely different building site within the confines of a lot's property lines when such a replacement structure would have significant adverse impacts on coastal resources, like the proposed structure. Thus, the only reasonable interpretation of the port's CDP regulations relating to excluded development under section 7.b.(1) is that a replacement commercial structure is only excluded if it is sited in the same location on the affected property. Therefore, the proposed project is not an excluded development because it does not constitute the construction of a replacement structure on the same site, which would be on the Reuben E. Lee floating barge in this case, on the affected property.

The applicant's attorney's interpretation that an in-water site is essentially the same as a land-based site would set a significant adverse precedent for future development in the Port, and create a PMP prejudice situation. The Port of San Diego has restaurants located throughout the tidelands trust. If land and water sites were considered interchangeable, a shoreline restaurant could be rebuilt in or on the water and be considered the "same" site, even though in-water construction can obviously have numerous impacts on

environmental and public resources that land-side construction does not. Other potentially significant impacts from constructing a new structure are relevant only to land-based structures, such as the presence of a major earthquake fault on Shelter Island (discussed in greater detail, below). This issue would not be relevant to redevelopment of a structure on a floating barge. The subject project is a prime example of how different sites have different impacts, and why the Port regulations do not exempt new construction in a different location.

Because the project is not an addition, is not located on the same site, and is not a minor alteration of land, the project cannot be excluded from permit requirements. Thus, the proposed development requires a coastal development permit. Therefore, the Commission modifies the Port's exclusion determination by issuing a coastal development permit and provides the following findings to support the issuance of the permit.

C. Public Access/Recreation/Visitor-Serving Use Priority. Relevant Coastal Act policies include Sections 30210, 30211, 30212, 30221, 30223, cited above.

The proposed project consists of demolition of an existing restaurant on a floating barge, construction of a new restaurant building on the land adjacent to the barge, and redevelopment of the barge as a function/event space for the restaurant.

The existing floating restaurant at the end of Harbor Island has been closed for several years. The proposed development will provide a new and upgraded visitor-serving use for the area. Visitor-serving commercial recreational uses are a high priority use under the Coastal Act. However, although restaurants are a high-priority use, as originally proposed, the structure would have been located immediately along the shoreline, blocking visual and physical access to the waterfront. Currently, the public can walk all along the shoreline in this location, albeit in an existing parking lot.

Thus, the project was revised as described above to provide a public walkway on decks along the shoreline side of the restaurant. This walkway will be open and available to the public whenever the restaurant is open. Outside of restaurant hours, the walkway will be open between dawn and dusk, reflecting the same operating hours as other Port public parks and piers. In addition, the project will include a continuous pathway in front of the restaurant, for joggers or other pedestrians who may not wish to use the path around the far side of the restaurant. Thus, as revised, the project will maintain and improve public access to the shoreline. **Special Condition #2** requires that the applicant submit a final public access program documenting the location of the public accessway, signage directing the public to the walkway, and hours of operation. Because the hours that the walkway will be open including some times when the restaurant will not be open for business (for example, early morning hours), the condition requires that any gates or closure apparatus associated with the public walkway be controlled with an automatic unlocking mechanism that ensures the walkway will be opened to the public no later than dawn every day, without having to rely on an employee opening the accessway. As the required hours of operation are at a minimum, dawn to dusk, this will require that the

mechanism be adjusted as necessary throughout the year in order to ensure the accessway is open during the required daylight hours.

As described above, in some areas the proposed new public walkway will partially extend over the existing riprap, and in some spots, over the water. As described above, the current proposal actually involves less over-water decking than the approved project. Nevertheless, the Commission typically discourages the construction of any new development over the water, to minimize potential adverse impacts on biological resources and conflicts with use of public waterways for water-dependent uses such as boating related activities. Thus whenever possible, development should be sited and designed on the land so as not to extend out over the water.

However, the subject site is unusually constrained due to the presence of an earthquake fault that runs through the eastern peninsula of Harbor Island (discussed in detailed below, under Geologic and Shoreline Hazards). The proposed restaurant has been located as far away from the shoreline as possible while still maintaining a safe setback from the earthquake fault. The structure could, of course, be reduced in size to avoid constructing any portion of the public accessway over the water. However, the applicant has submitted an analysis documenting that the restaurant size is the minimum necessary to create a feasible business given the market requirements of a project in this location (such as the costs associated with the leasing and developing the site). Compared to the Reuben E. Lee, which had 21,000 sq.ft., the proposed project will have approximately 13,650 sq.ft. to provide the same three functions of banquet, bar lunge, and restaurant. According to the applicant's analysis, it would be financially infeasible to reduce the size of the facility any more than it has been and still have a functional operation.

In addition, the shoreline side of the proposed restaurant, where the deck will be located, is adjacent to the former and proposed barge location. This area is current partially enclosed by an existing concrete pile breakwater that has historically protected the Reuben E. Lee and is proposed to remain in place to protect the barge event space. This area is not available for recreation or other water uses, regardless of whether or not any development extends over the water. As discussed below, under Biology/Water Quality, there is no eelgrass in this location. Thus, given the physical and economic constraints on the site, the absence of impacts to coastal resources associated with the over-water deck, and the benefit to the public from the improved public accessway, allowing a small portion of the proposed project to extend out over the water can be found consistent with the public access and priority use policies of the Coastal Act.

Although not actually built in the water, the newly reconstructed event facility on the barge will be a private structure continuously moored over public waters. Typically, the Commission does not allow structures to be built on public waters unless there is public access built into the development, such as piers and other docks that allow public access. The proposed barge is not expected to be used for events every day, year round. When not being used for a function, the barge would be an excellent viewing point for observing the harbor and the downtown skyline. The applicant has stated there would be security concerns with allowing the public onto the barge when restaurant employees are not actively managing the space, both for the public, and for the restaurant property.

However, there are numerous docks and piers, some with commercial facilities on them, which are publically accessible without constant on-site oversight. A limited portion of the barge could be designed to allow public access during the time period when the restaurant is not using it. Therefore, **Special Condition #13** requires the applicant to submit a public access plan for the barge that includes a design that will allow the public access onto some portion of the barge from the public accessway for strolling and observation when the barge is not being used by the restaurant for events. Access hours to the barge when not being used for an event shall be the same as those for the walkway itself (that is, from at all times that the restaurant is open, and from dawn through dusk, whichever provides greater public access). Appropriate signage that identified and directs the public to the public use area on the barge shall be included.

As noted previously, a parking analysis for the project indicates that the approximately 308 proposed parking spaces, plus valet services, should ensure that adequate parking is available on the site to serve both the proposed restaurant and the existing Island Prime restaurant. However, the entire parking area at the end of Harbor Island is current signed as restricted to “customer parking only.” As noted, this scenic area is a very popular and highly used destination for the public for strolling and jogging, but the only public parking spaces in the area are a limited number of spaces in pull-outs on the bayward side of Harbor Island Drive. In addition, several years ago, the Port District delineated specific spaces in these pull-out areas to prevent large-size vehicles from using the spaces, which substantially reduced the capacity of public parking.

Particularly since the Reuben E. Lee closed, the existing parking lot on the site has been underutilized the majority of the day, especially when Island Prime is closed. This area represents a potential public parking reservoir in a high-demand location that is currently underserved. In 2007, when the applicant was initially working with the Port to redevelop the site, a Draft Parking Management Plan was prepared for the site (see Exhibit #12). This plan included potential parking demand reduction strategies for the project , including implementing valet parking for either or both of the restaurants; directing restaurant employees to park at the adjacent Sunroad Marina parking lot (which the applicant indicates is never fully occupied by marina tenants); sharing parking with Sunroad Marina; and providing special event shuttle service. The subject site is public tidelands, and use of these and other parking management strategies should allow the parking on the site to be jointly utilized by both patrons of the restaurant and the public at least to a limited extent, thereby increasing public access and recreational opportunities on the site.

Therefore, **Special Condition #3** requires the applicant to prepare and submit a final parking management program that requires implementation of parking demand reduction strategies, permit public parking in the lot when the restaurants on the site are not open. Most of the demand for public parking at the subject site is expected to occur during daylight hours. Thus, the condition also requires that a minimum of 10 spaces on the site be designated for public parking only, from dawn to dusk.

To further maximize public access to coastal waters consistent with section 30210 of the Coastal Act, alternative forms of transit must be developed to serve the waterfront. In

recent approvals of new Port projects that increase the intensity of development, the Port and the Commission have required that lessees provide alternative parking programs and facilities in order to maintain and promote public access to the coast. The Port has an on-going downtown summer shuttle service that has just begun its second year of operation, and projects such as the Lane Field hotel development (A-6-PSD-08-4-A1) and the Marriott Expansion (PMPA #43), have been required to either contribute to the operation of a shuttle that must be operating prior to occupancy of the project (Marriott) and/or provide an alternative shuttle if the Port's shuttle does not continue operations (Lane Field). The closest shuttle stop to the project site is at the Sheraton San Diego Hotel and Marina on Harbor Island, which is approximately ½ mile from the proposed development. The Port has indicated it hopes to extend shuttle service in the future to additional locations.

The subject project is considerably smaller in scope and scale than past projects that have been required to ensure a shuttle serves the project site prior to commencement of these projects, and the subject project is not expected to significantly intensify use of the site beyond what existed when the Reuben E. Lee was in operation. Thus, requiring extension of the shuttle to the project site at this time is not essential to provide maximum access to the waterfront. However, all Port tenant development/redevelopment projects should participate in the Port's public transit programs to encourage development of non-automobile linkage systems to bridge the gap between pedestrian and major mass systems, and minimize energy consumption and vehicle miles traveled. Therefore, **Special Condition #7** requires that the applicant participate in and contribute a fair share to the implementation the Port District's on-going bayside shuttle system that would serve and connect tideland uses along the waterfront, as required by the Port District.

Thus, as conditioned, the project will have a positive impact on public access and recreation, by creating a new high-priority commercial recreational use, and an improved public access and viewing area. Public parking and public transit opportunities will be expanded and supported. Therefore, the project will be consistent with the public access, public recreation, and priority use policies of the Coastal Act.

D. Visual Quality. Relevant Coastal Act policies include Section 30251, cited above.

The proposed redevelopment of the existing barge is not expected to have any adverse impact on the visual quality of the area. The Reuben E. Lee was previously a 4-story structure, and the proposed new event facilities on the barge will be mostly open, with the shaded structure a maximum of 18 feet in height. The proposed restaurant structure will result in some blockage of existing public views of the skyline and water from the eastern portion of Harbor Island, as seen from the existing parking lot and the vehicular cul-de-sac at the end of Harbor Island Drive.

However, the public access improvements proposed on the shoreline side of the restaurant will provide formalized pedestrian access to the views beyond the building, which when combined with the smaller structure on the barge, should improve views overall for pedestrians. There will also be two new formalized public viewing areas on

both sides of the proposed new structure. New lighting, landscaping, and pedestrian walkways on the inland side of the restaurant should also provide a pleasant visual environment. Compared to the original project approved by the Port, the current proposal creates a wider opening between the existing Island Prime restaurant and the proposed new restaurant and shifts the angle of the proposed south restaurant wall further to the north, to open views in this area. The proposed project also includes more expansive hardscape between the existing and new restaurants to make the area more inviting to the public. Therefore, the proposed project can be found consistent with the visual protection policies of the Coastal Act.

E. Biology/Water Quality. Relevant Coastal Act policies include Section 30231, cited above.

The applicant has submitted a 2001 bay wide eelgrass survey determined that there are no eelgrass beds in the location where the barge is proposed to be relocated. Thus, the barge relocation should not adversely impact eelgrass. However, the approved project does not include conditions requiring measures to prevent the spread of the invasive algae *Caulerpa taxifolia*.

A relatively recent issue around the world and specifically in San Diego waterbodies is the presence of the invasive green alga, *Caulerpa taxifolia* that has been discovered within Agua Hedionda Lagoon in north San Diego County. *Caulerpa* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250-ft depth. Because of toxins in its tissues, *Caulerpa* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing.

Because of the grave risk to native habitats, in 1999 *Caulerpa* was designated a prohibited species in the United States under the Federal Noxious Weed Act. AB 1334, enacted in 2001 and codified at California Fish and Game Code Section 2300, forbids possession of *Caulerpa*. In June 2000, *Caulerpa* was discovered in Agua Hedionda Lagoon, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *Caulerpa* has been shown to tolerate water temperatures down to at least 50° F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *Caulerpa* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *Caulerpa* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *Caulerpa* infestations.

If *Caulerpa* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. Thus, the Commission typically requires that prior to commencement of any in water development that involves disturbance of the water bottom, surveys must be done of the project area and a buffer area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey protocol must be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

The proposed project will require anchoring of the barge in a new location, which will result in disturbance of the water bottom. Therefore, in order to assure that the proposed project does not cause the dispersal of *Caulerpa*, and adverse impacts to the biological productivity of the bay, **Special Condition #12** has been attached. **Special Condition #12** requires the applicant, prior to commencement of any in water activities, to survey the project area and any other areas where the bottom could be disturbed by project activities, for the presence of *Caulerpa*. If *Caulerpa* is found to be present in the project area, then prior to commencement of any dredging, the applicant must provide evidence that the *Caulerpa* within the project site has been eradicated (the applicant could seek an emergency permit from the Executive Director to authorize the eradication) or that the project has been revised to avoid any disturbance of *Caulerpa*. If revisions to the project are proposed to avoid contact with *Caulerpa*, then the applicant shall consult with the local Coastal Commission office to determine if an amendment to this permit is required.

In order to insure that invasive plant species are not brought onto the site, **Special Condition #6** prohibits the use of any invasive plant species on the site. The condition also prohibits the use of rodenticides containing any anticoagulant compounds.

In order to reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, **Special Condition #4** requires that runoff from the roof and other impervious surfaces be directed into the landscaped areas on the site for infiltration and/or percolation, prior to being conveyed off-site. Directing runoff through landscaping for filtration of on-site runoff in this fashion is a well-established Best Management Practice for treating runoff from relatively small developments such as the subject proposal.

Therefore, as conditioned, the project is consistent with the resource protection policies of the Coastal Act.

F. Shoreline and Geologic Hazards. Relevant Coastal Act policies include Section 30235 and 30253, cited above.

Shoreline Hazards

The project is located immediately adjacent to the shoreline of San Diego Bay. The location is potentially at risk from wind waves that could be generated within San Diego Bay, from boat wake and, in rare cases, from tsunami inundation. The new restaurant will be at about elevation +15' MLLW and the shoreline is currently protected by a riprap revetment. The event deck and dock will be at least partially protected by the existing concrete pile breakwater that previously protected the Reuben E. Lee. No changes are proposed to the existing shoreline improvements. Due to the potential for flooding and wave impacts, the applicant has provided a wave uprush study (TerraCosta Consulting Group, May 24, 2013).

The report from TCG states that given the current wave environment within the bay, “the proposed restaurant and outside dinning will not be exposed to any wave uprush either from wind waves or boat wakes.” In addition, by the year 2050 or near the end of the project lease, “the median MSLR [Mean Sea Level Rise], projection would still not result in any overtopping, with the upper bound projection in 2050 just starting to experience wave overtopping the Harbor Island revetment.” With regard to the lifespan of the structure, which the Commission typically estimates at 75 years for this area, the report goes on to note that “clearly, by the year 2100, most projections suggest that overtopping will be more prevalent.” The TCG reports further acknowledges that even given today’s existing wave environmental, “overtopping will occasionally occur...the perimeter public walkway would be closed during periods of high waves combined with King Tides.” Thus, there may be times, even during time period of the lease, that access and use of the proposed project will not be safe due to flooding of adjacent areas. Likewise, use of the access and walkway seaward of the proposed restaurant could be compromised before the project site experiences wave overtopping or flooding.

When reviewing a development in a hazardous location, the Commission is concerned both with the future need for additional shoreline protection, which can have adverse impacts on public access, recreation, biologic resources, and visual quality, and with the risk to the proposed public improvements. The public walkway is located nearest to and partially over the shoreline, which is appropriate for providing the best views and public access, but also puts it at greatest risk for damage from wave action. While occasional closure of the walkway during the relatively infrequent concurrence of storms and high tides may be reasonable, the public improvements must not be considered expendable should they be threatened by rising tides in the future. Adaptation plans must be developed to ensure safe use of the public access over the full lease or project life of the restaurant, whichever is longer.

The TCG report states that with regard to adaptive strategies for accommodating the potential for sea level rise and the associated more frequent wave overtopping and wave-induced impact forces:

...the contemplated design of this project is ideally suited to accommodate even relatively large increases in MSLR...a 20-inch-tall perimeter structural wall exists around the entire outside dining area, essentially providing a very effective flood wall protecting the entire restaurant and outside dining area. After 1.8 feet of MSLR, when waves start to overtop the Harbor Island rock revetment, the

northwesterly and southwesterly ends of the structural perimeter wall could be slightly redesigned to accommodate flood gates and, as necessary, a relatively short attractive flood wall incorporated into the westerly face of the restaurant to provide an additional 20± inches of flood protection to mitigate the potential for future MSLR. If necessary at that time, the 20-inch-tall structural perimeter flood wall could be elevated a small amount and an additional wave deflector incorporated into this perimeter flood wall to provide even more effective mitigation for any future MSLR.

Thus, the site is expected to be reasonably safe, and there are potential alternatives to ensure the public improvements remain accessible. However, there is a risk that the anticipated future changes to storm waves, erosion and sea level could be larger than what has been used in the siting and design of the proposed structure. As such, **Special Condition #9** requires that the applicant waive any rights to construct shoreline protection under 30235 of the Coastal Act. Only with this waiver can the project be found to be consistent with Section 30235, which prohibits new development that requires future shoreline protection.

If the public improvements are threatened in the future, **Special Condition #8** requires that the applicant apply for an amendment to this permit to revise the project to such that safe continuous public access will be maintained along the shoreline side of the structure. For example, as noted, the proposed low wall between the dining area and the walkway could function as a floodwall. However, this wall could also exacerbate the wave impacts to the walkway, augmenting the flood and wave impacts experienced along the public access area. An alternative could be to redesigning the wall next to the dining to allow waves to pass through the wall and to minimize reflected wave energy that could be deleterious to the safe use of the walkway. Other potential alternatives could include the flood wall noted in the report; revisions to the seaward portion of the public accessway wall or foundation; or relocation of the public improvements further inland (but bayward of the private improvements). In all cases, alternatives that avoid impacts to scenic visual resources, public access and recreation and shoreline processes must be given precedence.

Based on examination of the CalEMA tsunami inundation maps, this site may experience overtopping, fast moving water and flooding during a tsunami. The proposed project is intended to attract people and, at times, large groups of people might congregate at this location. Tsunamis have a low occurrence frequency, but when they occur they can be very destructive, and they cannot be ignored due to their rarity. **Special Condition #5** requires that the applicant, in conjunction with the local Office of Emergency Services, prepare a tsunami preparedness plan. This plan should include the development of an evacuation plan which will identify the manner in which the facility will be notified about tsunami watches and warnings, how this information will be provided to the patrons and nearby public, and routes for safe evacuation. If any toxic chemicals will be used on the premises, the plan should also include steps to minimize the uncontrolled release of these chemicals, through the use of flood proof storage containers, storage of bulk materials at a more inland location, etc. The plan should be reviewed by on-site staff on at least an

annual basis, possibly in conjunction with earthquake or fire drills, to insure it can be implemented if needed.

Given that the applicant has chosen to construct a structure in this location despite these risks, the applicant must assume the risks. Accordingly, **Special Condition #10** requires the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit.

Geologic Hazards

The appellants contend that the project is not consistent with the certified Port Master Plan policies that require development to facilitate a tideland environment free of hazards to the health and welfare of the people of California resulting from seismic risk. The appellants contend that the restaurant would be located in a fault zone and that there is insufficient data to accurately determine the location and width of faulting on the project site. However, the Commission's geologist, Dr. Mark Johnsson, has reviewed the appeal and substantive file documents and has determined that, in his opinion, that the project will be free of hazards to the health and welfare of the public.

Specifically, the appellants contend that:

...development will occur in a fault zone and there is insufficient data to accurately determine the location and width of the faulting on the project sites. The REL [Reuben E. Lee] Project is located in an area of active earthquake fault strands, several of which were detected (though not further studied or confirmed to the public) beneath the site. Sunroad's consultant, Geocon, identified only one potential fault splay in between its proposed hotel and restaurant developments. However, Geocon failed to collect sufficient data to accurately locate existing faulting on and around these sites.

Citing a letter by Earth Consultants International (ECI) dated 9 May 2011, the appellants conclude that "there is potential faulting on the REL Project site that was not identified or analyzed by Geocon."

The 2011 ECI letter referred, however, only to the conclusions drawn from a 2006 Geocon report performed for another development (a four-story hotel) lying to the west of the subject site. In fact, that report identified three active strands of the Spanish Bight Fault crossing the site, making use of rather sparse Cone Penetrometer Test (CPT) borings and a geophysical survey (reported in Terra Physics reports dated 2005 and 2006). The 2006 Geocon report concluded that, despite the presence of a number of geologic hazards (in addition to faulting, the site is subject to liquefaction and lateral spread, strong ground shaking, and induction by tsunami and/or seiche), the development was feasible provided that the recommendations contained in the report were adhered to. Another geotechnical investigation and third party review (Ninyo and Moore, 2006) reached the same conclusions.

As pointed out in the 2011 ECI report, these investigations concentrated on a development envelope west of the proposed Reuben E. Lee Project. Dr. Johnsson concurs with their conclusions that the 2006 Geocon report did not contain sufficient data to fully constrain the potential for faulting at the eastern tip of East Harbor Island, the proposed location of the Reuben E. Lee development. However, additional testing, including the advancement of numerous additional CPT borings, was undertaken in preparation for this development. These are reported on in a 2 September 2011 report by Geocon. This report was reviewed by the City of San Diego; responses to the review comments were provided in Geocon reports dated 14 October 2011 and 27 January 2012. The applicants agreed to extend testing to the east, and the results of this additional testing are reported on in Geocon reports dated 28 August 2012 and 11 September 2012. These additional borings much more tightly constrained the location of the eastern splay of the Spanish Bight Fault and eliminated the possibility that a feature encountered in the area of the project footprint on a seismic reflection profile (Terra Physics 2005, 2006) was an additional fault. A third party review by Ninyo and Moore dated 10 July 2012 concurred, and the City approved the project in a footprint outside of a ten foot setback from the eastern edge of the fault zone as mapped in the latest Geocon reports. The Commission's staff geologist has reviewed all of this material submitted by both the applicant and the appellant, UNITE HERE Local 30, and concurs with the data collected, the analysis of the data and the conclusion of the applicant's reports that based on the data analysis, the development will be safe from geologic hazards for the life of the development. The eastern strand of the fault is very well constrained by CPT borings and seismic reflection profiles, and he concurs that a ten foot wide setback zone is adequate to assure safety from a fault rupture hazard. Thus, there is substantial evidence to support a finding that the project is consistent with the certified port master plan and section 30253 of the Coastal Act.

As long as the applicant complies with the recommendations of the geotechnical reports associated with the project, the project is not expected to be at risk from faulting. The subject site is subject to additional hazards that were addressed in the geologic reports performed for the project. These include: liquefaction and lateral spread accompanied by strong ground shaking during a major earthquake, and inundation either during major wave events (particularly as sea level continues to rise in the future) or during a major tsunami or seiche. Mitigation measures for liquefaction and lateral spread are recommended in the 2006 and August 2012 Geocon reports and include soil improvements (stone columns), deep foundations (helical piles) and/or a mat foundation. Seismic design parameters to mitigate for ground shaking are provided in these reports, consistent with the California Building Code. Again, the Commission's staff geologist, Dr. Mark Johnsson, has reviewed these measures and agrees that they are adequate to assure geologic stability as required under section 30253 of the Coastal Act and provide a tideland environment free of geologic hazards to the health and welfare by the Port Master Plan.

Therefore, as conditioned, the proposed project will assure stability and structural integrity, and is not expected to require the construction of shoreline protective devices, consistent with the hazard protection policies of the Coastal Act.

G. Local Coastal Planning. As discussed in the substantial issue portion of this report, construction of a new restaurant building on the landside portion of Harbor Island is a project that is neither discussed in the text of the certified Port Master Plan nor included on the PMP project list. Thus, one way for the Commission to proceed on de novo review of the development would be to deny the permit, and send the applicant back to the Port District to have the Port to process either a project specific Port Master Plan Amendment or a broader PMPA that includes the subject project. Assuming the Commission found that PMPA consistent with Chapter 3 of the Coastal Act, the Port would then be able to issue an appealable coastal development permit for the project.

However, the circumstances of this particular development are unusual. The project was exempted over four years ago by the Port District, which continues to maintain that no Port Master Plan Amendment or permit is required for the project. This could put the applicant in a difficult position, as the Port District may not be willing to process the necessary approvals, putting the applicant at risk of violating the Coastal Act if he were to proceed with the development per the Port's exemption. As discussed above, the applicant has made substantial revisions and improvements to the project to increase public access and recreational opportunities on the site, and the project can be conditioned as described herein to be consistent with the Chapter 3 policies of the Coastal Act, which is the same standard of review as a Port Master Plan Amendment receives. Even if a Port Master Plan and appealable Port coastal development permit was issued for the project, it is highly likely that the project would be appealed to the Commission, putting the development in precisely the same place it is now before the Commission. As a result of the Commission's appeal of the Port's exemption, the project has now been the subject of much the same level of public participation and scrutiny under the policies of the Coastal Act as it would be were to undergo additional review through the Port Master Plan process.

Nevertheless, the lack of strict conformance to the procedural regulations of the Coastal Act has also placed the Commission in a difficult position. The subject approval in no way sanctions or endorses the manner in which the subject project was excluded from the PMPA and coastal permit process. The public and the Commission rely on the Port Master Plan to set forth a comprehensive long-range plan and policies for the various Port Districts, and that includes evaluating new shoreline structures such as the proposed project. As discussed herein, the subject project does not fall under the exemptions set forth in the adopted Port District Coastal Development Permit Regulations and should have been reviewed as an appealable coastal development permit. Non-port related uses such as the proposed restaurant are given extra scrutiny under the Coastal Act as appealable projects because they often have more direct impacts on the general public than uses that are principally related to water-oriented and port-related operations. Only as revised and conditioned in this permit can the project be found consistent with the coastal resource protection policies of the Coastal Act.

Pursuant to section 13056(g) of the Commission's regulations, the Commission may require an applicant to reimburse it for any additional reasonable expenses incurred in processing permit applications including litigation costs or fees that the Commission may incur in defending a judicial challenge to the Commission's approval of the permit. Therefore, the Commission, in approving this permit, imposes **Special Condition #12**, requiring the applicant to reimburse the Commission in full for all Coastal Commission costs and attorneys fees in connection with defending any action brought by a party, other than the applicant, challenging the Commission's approval or issuance of this permit.

Since the proposed project has been redesigned and conditioned to avoid impacts on public access, public recreation, biological resources, water quality, views, and hazards and is consistent with Chapter 3 of the Coastal Act, the Commission finds that approval of the project, in this particular case, will not prejudice the ability of the San Diego Unified Port District to continue to implement its certified Port Master Plan.

H. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures include submittal of final public access plans, drainage plans, and a tsunami plan will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A – Substantive File Documents

SUBSTANTIVE FILE DOCUMENTS: Appeal by Commissioners Sanchez and Brennan filed 2/6/13; Appeal by Unite Here Local 30 filed 2/6/13; Certified San Diego Unified Port District Port Master Plan. In addition, the following documents were reviewed in the geotechnical analysis contained herein:

Terra Physics, 2005, "Final report, Seismic reflection survey to detect the Spanish Bight Fault Zone, Proposed East Harbor Island hotel site, San Diego Bay, California", p. geophysics report dated 5 October 2005 and signed by K. Hennon (RGP 886).

Terra Physics, 2006, "Final report, Seismic reflection survey to detect the Spanish Bight Fault Zone, (Trip #2 - Westward extension from original survey area_ Proposed East Harbor Island hotel site, San Diego Bay, California", p. geophysics report dated 8 February 2006 and signed by K. Hennon (RGP 886).

Geocon, 2006, "Geotechnical investigation and geologic fault investigation, East Harbor Island Hotel, San Diego, California", 20 p. geotechnical report dated 3 March 2006 and signed by J. J. Vettel (GE 2401), F. Khatib and M. S. Chapin (CEG 1149).

Ninyo and Moore, 2006, "Preliminary geotechnical evaluation and third-party review, proposed East Harbor Island Development Project, San Diego, California", 12 p. geotechnical review report dated 21 June 2006 and signed by R. D. Hallum (CEG 1484) and R. L. Irwin (CEG 1521).

Earth Consultants International, 2011, "Review of May 6, 2011 staff report on the Sunroad Harbor Island Hotel project, Agenda Item 23 of the San Diego Unified District Board Meeting to be held on May 10, 2011", 3 p. geotechnical review letter dated 9 May 2011 and signed by T. Gonzalez (CEG 1859).

Geocon, 2011, "Geotechnical investigation, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 26 p. geotechnical report dated 2 September 2011 and signed by S. F. Weedon (GE 2714) and G. W. Cannon (CEG 2201 PE C058468).

Geocon, 2011, "Response to geotechnical review comments, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 5 p. geotechnical response letter dated 14 October 2011 and signed by S. F. Weedon (GE 2714) and A. Sadr (CEG 1778).

Geocon, 2012, "Second response to geotechnical review comments, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 6 p. geotechnical response letter dated 27 January 2012 (revised 19 March 2012) and signed by G. W. Cannon (CEG 2201 PE C058468) and S. F. Weedon (GE 2714).

Geocon, 2012, "Fault study addendum No. 1, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 2 p. fault study addendum report dated 28 August 2012 and signed by G. W. Cannon (CEG 2201 PE C058468) and S. F. Weedon (GE 2714).

Geocon, 2012, "Fault study addendum No. 2, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 2 p. fault study addendum report dated 11 September 2012 and signed by G. W. Cannon (CEG 2201 PE C058468).

Geocon, 2012, "Foundation plan review, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 2 p. review letter dated 15 May 2012 and signed by S. F. Weedon (GE 2714).

Ninyo and Moore, 2012, "Review of referenced geotechnical documents, East Harbor Island restaurant, 880 Harbor Island Drive, San Diego, California", 4 p. geotechnical review letter dated 10 July 2012 and signed by J. T. Kent (PE GE) and J. Goodmacher (CEG).

TerraCosta Consulting Group, 2013, "Wave uprush and sea level rise discussion, 880 Harbor Island Drive, San Diego, California", 5 p. letter report dated 3 May 2013 and signed by W. F. Crampton (GE 245).

Earth Consultants International, 2013, "Review of fault studies conducted for the restaurant proposed at the east end of East Harbor Island (880 Harbor Island Drive), in San Diego, California", 5 p. geotechnical review letter dated 23 May 2013 and signed by T. Gonzalez (CEG 1859).

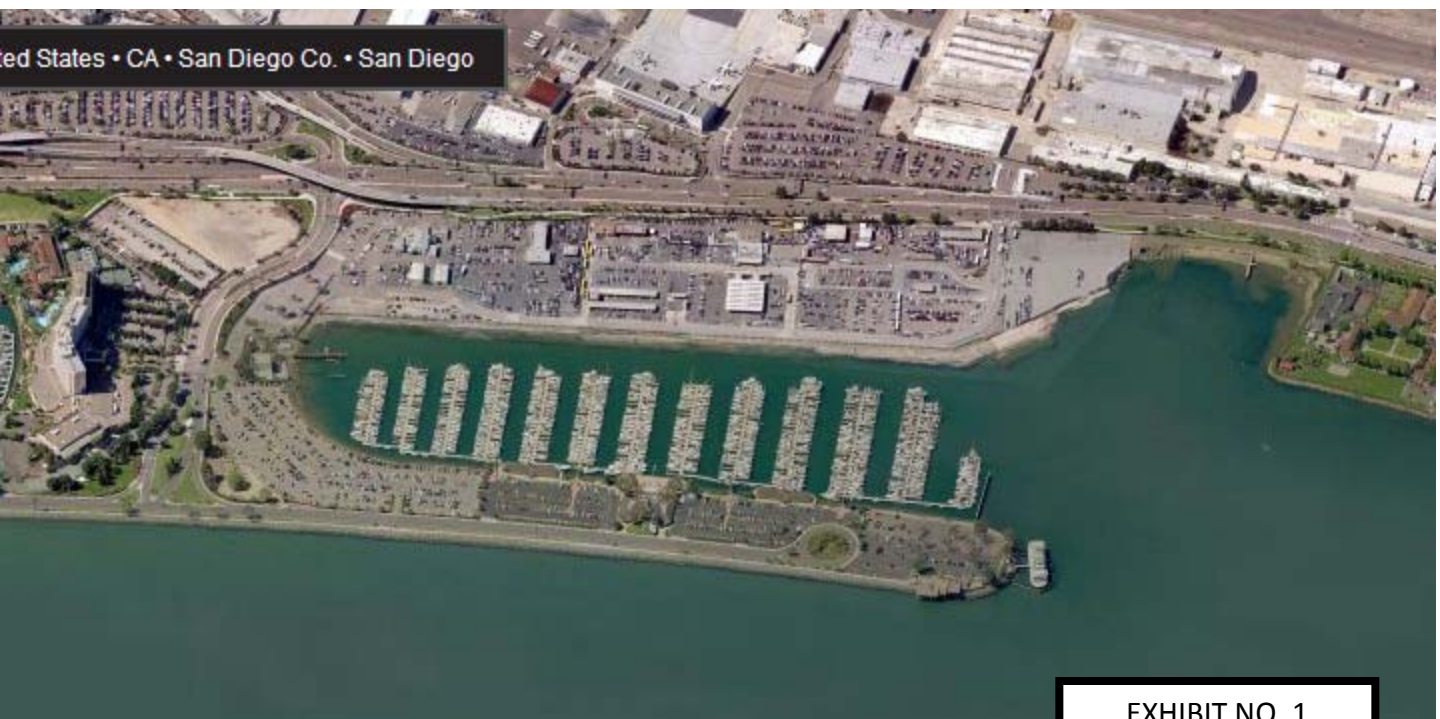
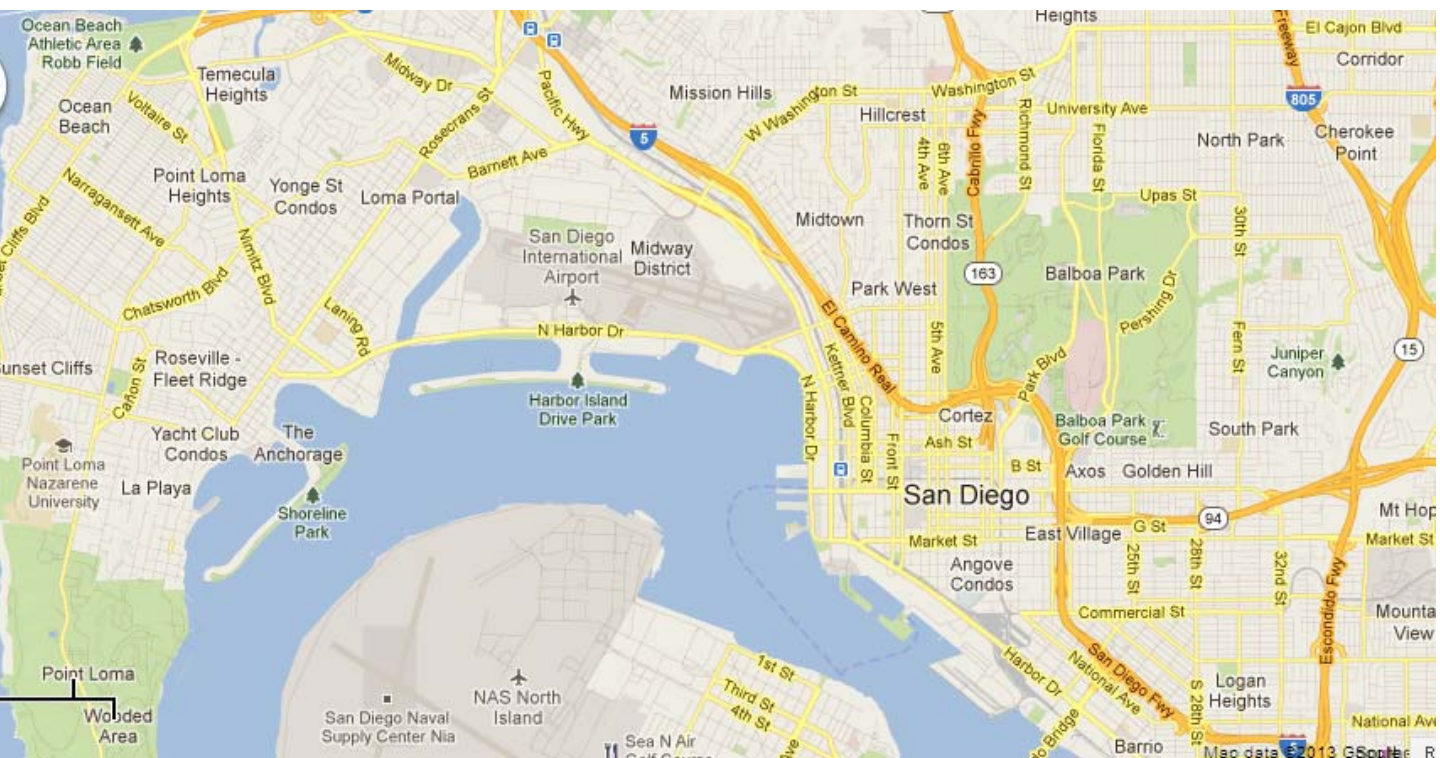


EXHIBIT NO. 1

APPLICATION NO.

A-6-PSD-13-5

Location Map



California Coastal Commission

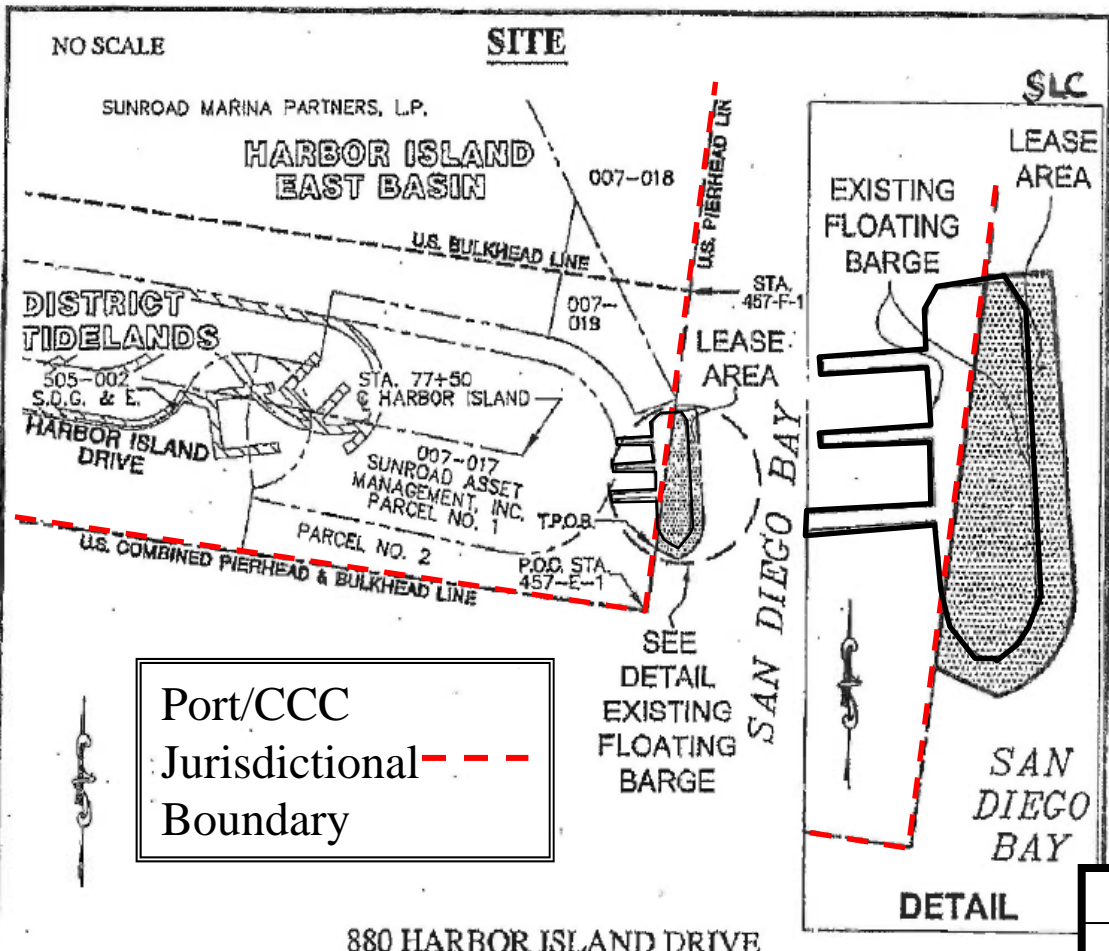
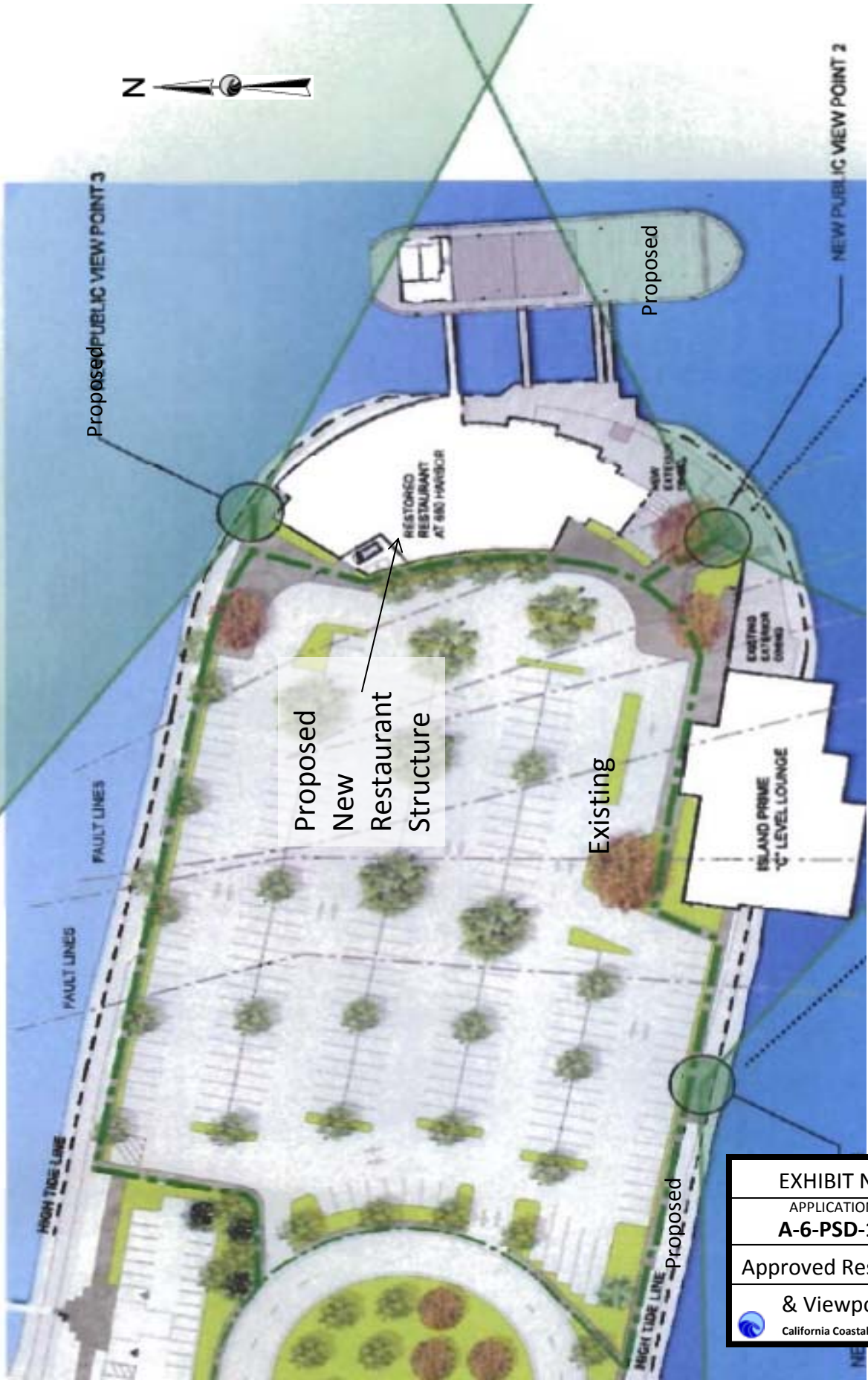


EXHIBIT NO. 2
APPLICATION NO. A-6-PSD-13-5
Jurisdictional Boundaries
 California Coastal Commission



Proposed
New
Restaurant
Structure

Existing

Proposed

Proposed PUBLIC VIEW POINT 3

NEW PUBLIC VIEW POINT 2

Proposed

EXHIBIT NO. 3
APPLICATION NO. A-6-PSD-13-5
Approved Restaurant & Viewpoints
 California Coastal Commission

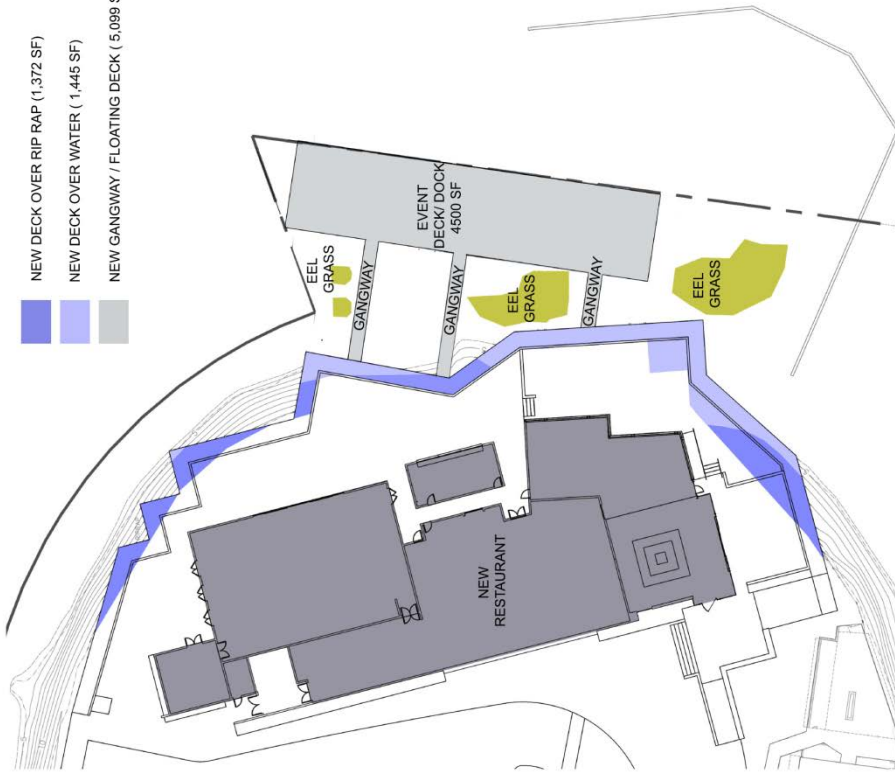
04.08.13

California Coastal Commission

NEW DECK OVER RIP RAP (1,372 SF)

NEW DECK OVER WATER (1,445 SF)

NEW GANGWAY / FLOATING DECK (5,099 SF)



04.08.13

NEW DECK OVER RIP RAP (1,846 SF)

NEW DECK OVER WATER (2,133 SF)

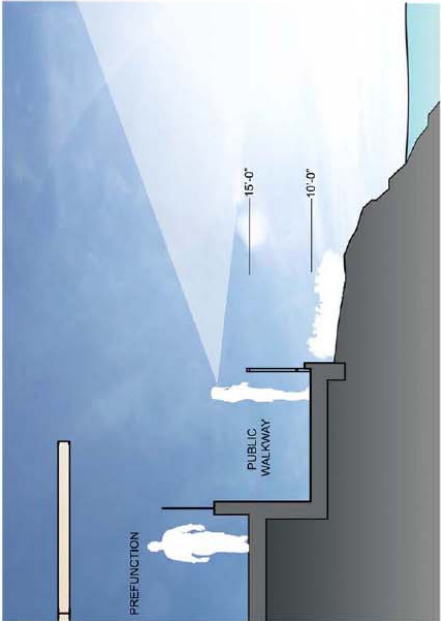
NEW GANGWAY / FLOATING DECK (5,030 SF)



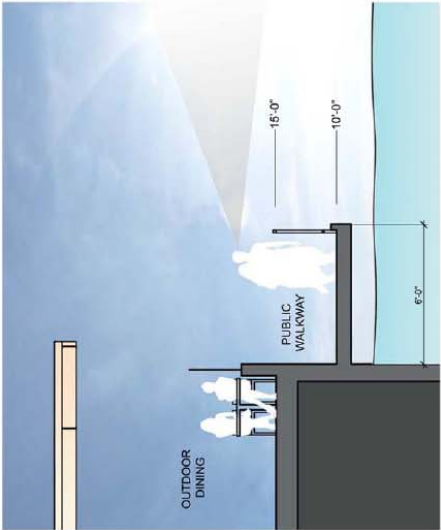
PORT APPROVED PLAN

FIGURE 2 - HARBOR ISLAND EAST- COMPARISON OF PROPOSED NEW DECK AREAS

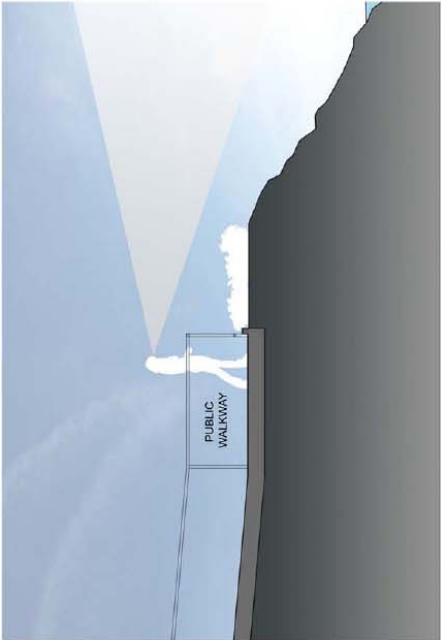
120
EXHIBIT NO. 5
APPLICATION NO.
A-6-PSD-13-5
Proposed vs. Approved
Deck
 California Coastal Commission



C



B

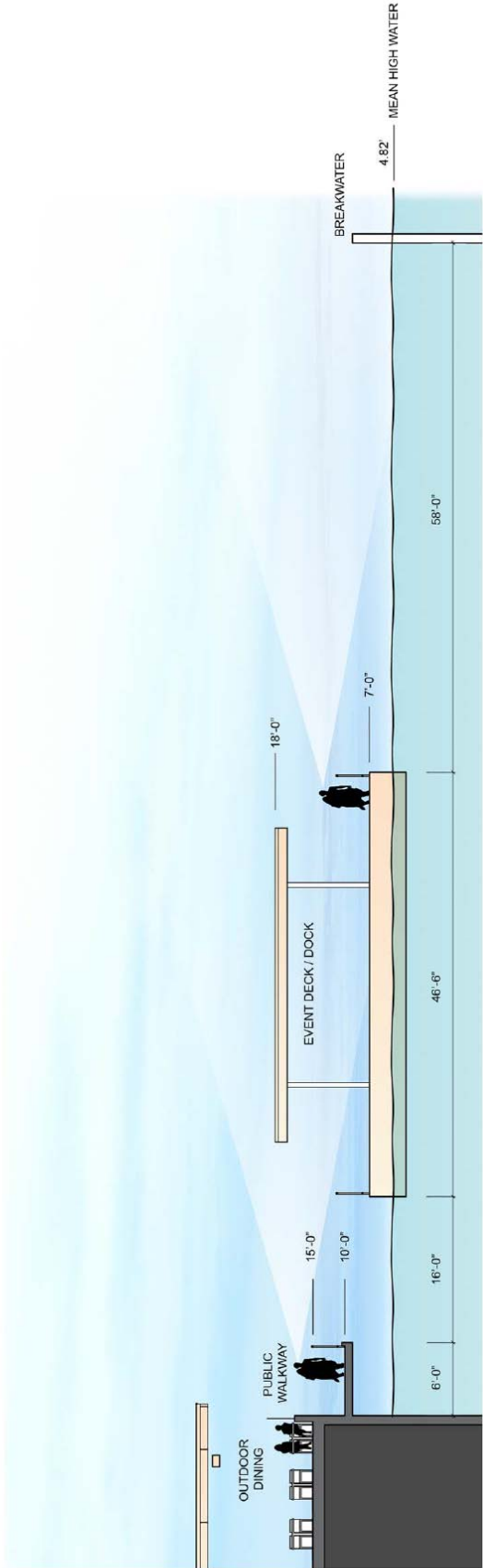


A

04.08.13


HARBOR ISLAND SECTIONS AT PUBLIC WALKWAYS

EXHIBIT NO. 6
APPLICATION NO. A-6-PSD-13-5
Public Deck
Cross-Sections California Coastal Commission



04.08.13


SECTION B

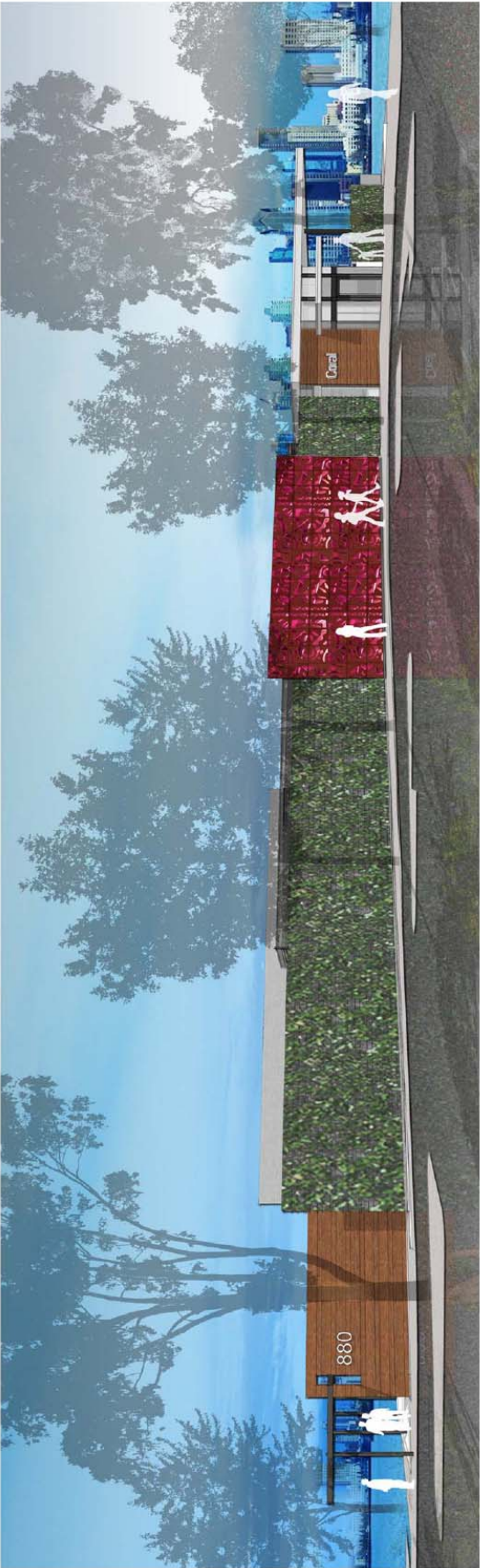
EXHIBIT NO. 7
APPLICATION NO. A-6-PSD-13-5
Cross-Section of Deck and Barge
 California Coastal Commission



VIEW 1


04.08.13

EXHIBIT NO. 8
APPLICATION NO. A-6-PSD-13-5
Rendering of west side of proposed project
 California Coastal Commission



VIEW 2

04.08.13

EXHIBIT NO. 9
APPLICATION NO. A-6-PSD-13-5
Rendering of east side of proposed project
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

DIEGO AREA
METROPOLITAN DRIVE, SUITE 103
DIEGO, CA 92108-4402
767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Ester Sanchez
Mailing Address: 300 North Coast Hwy
Oceanside, CA 92054

Phone Number: 760-435-0971

RECEIVED

FEB 06 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

1. Name of local/port government: San Diego Unified Port District
2. Brief description of development being appealed: Categorical Exclusion of demolition of existing 20,000 sq.ft. restaurant located on a floating barge, relocation of the barge to entirely within the pierhead line, reconstruction of 9,000 sq.ft. of new restaurant facilities on the barge; construction of a one-story restaurant on land adjacent to the barge consisting of approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior outdoor dining space; reconfiguration of existing 308 space parking to lot 306 spaces, including 10 tandem spaces; removal and replacement of parking lot trees.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
880 Harbor Island Drive, San Diego, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☐
 - c. Denial: ☐
 - d. Other: ☒ Categorical Exclusion

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-PSD-13-05

DATE FILED: February 6, 2013

DISTRICT: San Diego

EXHIBIT NO. 10
APPLICATION NO.
A-6-PSD-13-5
Commissioner
Appeals
California Coastal Commission

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
- b. ☐ City Council/Board of Supervisors d. ☒ Other Port Executive Officer

Date of local government's decision: 1/24/09 (Additional approval granted 3/33/12)

Local government's file number (if any): Cat Det 2009-008-23-154; Project No. 007-017-2474

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Uri Feldman
Sunroad Enterprises
4445 Eastgate Mall, Suite 400
San Diego, CA 92121

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

See Attachment #1

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated 2/6/13

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Esther C. Andley
Appellant or Agent

Date: 2/6/13

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment A

02/06/2013

Project Description and History

The Reuben E. Lee was a 4-deck, approximately 20,000 sq.ft. restaurant constructed on a floating barge tethered in the water east of the Harbor Island peninsula in San Diego Bay. The majority of the barge was located outside the pierhead line, and thus within the Commission's original permit jurisdiction, with a smaller portion within the Port's permit jurisdiction.

On February 24, 2009, the Port of San Diego issued a Categorical Determination of Proposed Coastal Development for the Reuben E. Lee Restaurant Replacement. At that time, the proposed project consisted of 1) demolition of the entire restaurant excepting the existing barge hull, and accessory structures including mooring piles and an adjacent breakwater; 2) construction of a new 1-story galley, restrooms, covered and open food and beverage service areas totaling approximately 9,000 sq.ft. on the barge; 3) construction of an approximately 16,500 sq.ft., single-story restaurant, lounge, and banquet facility on the land adjacent to the barge; 4) reconfiguration of the existing approximately 308 space parking lot to 306 parking spaces, including 10 tandem employee/valet spaces, resulting in the removal and replacement up to 10 existing trees in the parking lot. Total restaurant seating would decrease from 900 seats to 809 seats.

The new landside restaurant and outdoor dining would be located immediately adjacent to the water. A public sidewalk would be constructed on the inland side of the restaurant, with two new public viewpoints created on either side of the proposed building, and one new public viewpoint next to the existing Island Prime restaurant, a waterfront restaurant located west of the subject site.

The San Diego Unified Port District Coastal Development Permit Regulations govern the issuance of Port permits, exemptions (referred to as "exclusions" in the Port regulations), and appeals. The Port District determined that the proposed project is exempt from issuance of a coastal development permit under the following sections of the Permit Regulations:

8. Excluded Developments

- 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, including but not limited to:
 - (3) Streets, sidewalks, gutters, bicycle and pedestrian paths, and similar facilities; [...]
 - (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 sq.ft., whichever is less; or additions to existing structures of not more than

10,000 sq.ft. of floor area, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive; [...]

- b. Replacement or Reconstruction: Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
 - (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
 - (2) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction. [...]
- d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:
 - (1) Land Grading, except where located in a waterway, wetland, officially designated scenic area, or in officially mapped areas of severe geologic hazard;
 - (2) New gardening or landscaping;
 - (7) Minor trenching or back filling where the surface is restored.

Under the Coastal Act and the Port's Permit Regulations, a restaurant is classified as an appealable development, under the category of "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes." The Port's Permit Regulations, Section 7 Categorical Determination, Subsection (d)(4), states:

If a proposed development is classified as being appealable, a copy of the determination shall be forwarded within ten (10) working days to the Coastal Commission.

However, the February 24, 2009 Categorical Determination was not transmitted to the Coastal Commission until January 23, 2013, when it was emailed to Commission staff in response to an inquiry by staff regarding approvals that had been granted by the Port for the Reuben E. Lee. At that time, in addition to the Categorical Determination, the Port transmitted a copy of the Port's "Project Review and Approval" dated March 22, 2012, granting conditional approval of the Reuben E. Lee (now known as 880 Harbor Island Restaurant) Renovation Project.

The project given approval with conditions on March 22, 2012 varies somewhat from the project approved in the Categorical Determination in 2009. As revised, the existing facility on the floating barge would be demolished and reconstructed as a 4,800 sq.ft. primarily unenclosed function space. The barge would be relocated slightly landward to entirely within the pierhead line, so as to be completely within the Port District's jurisdiction. Exterior deck areas on both the floating barge and the landside structure

would be increased by creating cantilevered decks over the existing rock revetment along the shoreline side of the site. This additional space would be used for outside dining venues and lounge space. In total, the land-based restaurant would have approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior space, for a total new area of 27,505 sq.ft. Total seating capacity is expected to be between 600 and 800 seats, including the barge. At least one existing coral tree will be removed and replaced with a new tree.

The Project Review and Approval cites Section 8.b. Replacement or Reconstruction (cited above) as the reason the project was found to be an Excluded Development under the District's Coastal Development Permit Regulations.

Sometime around April 2012, the barge with the restaurant structure was towed to a shipyard to initiate demolition and reconstruction activities. However, on or around December 12, 2012, the structure took on water and partially sank, and may not be salvageable.

In any event, the proposed project envisions reconstruction of an entirely reconstructed restaurant facility on a barge, as well as a new stand-alone restaurant on the land adjacent to the barge.

Consistency with the Port Master Plan

As described in detail below, the exclusion language used to exempt the development from CDP requirements does not apply because the proposed development involves expansion of the existing use off the barge and onto the land. There is no provision for a restaurant on the land at this site in the Port Master Plan. This would require a Port Master Plan Amendment to add the restaurant to the Project List and incorporate the proposal into an integrated public access plan for Harbor Island. There is a pending PMPA for a hotel and restaurant complex by the same lessee immediately to the west of the subject site; however, the proposed landside restaurant was not incorporated into that PMPA.

As described above, the 2009 Categorical Determination and the 2012 Project Review and Approval cite several provisions of the District's Coastal Development Permit Regulations in excluding the development from coastal permit requirements. However, none of these exclusions apply to the subject development.

Existing Facilities

This exemption applies to "minor alteration[s]...involving negligible or no expansion of use beyond that previously existing..." including additions to existing structures.

The proposed development includes demolishing the entire existing restaurant structure, leaving only the foundation (the barge) and several accessory structures. Thus, the work on the barge is demolition and reconstruction, not an addition. The new restaurant structure proposed on the land is not an addition to an existing structure, both because the

existing structure is being demolished, and because an unattached structure, separated in space and by water, is not an addition to an existing structure, but a new structure.

Replacement or Reconstruction

This exclusion applies to developments "where the new structure will be located essentially on the same site as the structure replaced..." The majority of the proposed development consists of construction of a new structure on the land next to the reconstructed floating facility on a barge. A permanent land location cannot by any reasonable interpretation be considered essentially the same site as a floating barge on the water. Water and land development sites have different physical requirements and different impacts on coastal resources and are not interchangeable.

Minor Alterations to Land

This exemption covers projects limited to minor alterations to land, water, and/or vegetation such as grading, landscaping, and minor trenching, which does not involve the removal of mature, scenic trees. As noted, the project is considerably larger in scope and scale than minor alterations to land, and a development cannot be segmented into components that might be exempt if taken individually. In addition, the original exemption included the removal of mature scenic tree(s), the revised proposal still includes the removal of at least one mature coral tree and the proposed parking lot revisions will reduce the number of parking spaces, which is typically not considered exempt from permit requirements. Thus, this section of the Port's regulations is not applicable to the proposed development.

It is worth noting that at the time the Categorical Determination was made, the waterside portion of the project was located largely in the Commission's permit jurisdiction, and was proposed to remain in that location. As early as 2007, Commission staff informed Port staff in writing that when development that requires a coastal development permit straddles both the Port and the State's permit jurisdiction, both agencies have to issue a coastal development permit for their portions of the project. Even having made a determination that the portion of the project within the Port's jurisdiction was exempt from permit requirements, the decision on permit requirements for the development proposed on the rest of the barge remained the Commission's, and could not have been made by the Port.

Therefore, because the project is not an addition, is not located on the same site, and is not a minor alteration of land, the project cannot be excluded from permit requirements.

The proposed development also contains a number of significant inconsistencies with the following Port Master Plan goals and policies:

VI. THE PORT DISTRICT WILL INTEGRATE THE TIDELANDS INTO A FUNCTIONAL REGIONAL TRANSPORTATION NETWORK

- Encouraging development of improved major rail, water and air systems linking the San Diego region with the rest of the nation.

- Improved automobile linkages, parking programs and facilities, so as to minimize the use of waterfront for parking purposes
- Providing pedestrian linkages
- Encouraging development of non-automobile linkage systems to bridge the gap between pedestrian and major mass systems.

VIII. THE PORT DISTRICT WILL ENHANCE AND MAINTAIN THE BAY AND TIDELANDS AS AN ATTRACTIVE PHYSICAL AND BIOLOGICAL ENTITY.

- Views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.

IX. THE PORT DISTRICT WILL INSURE PHYSICAL ACCESS TO THE BAY EXCEPT AS NECESSARY TO PROVIDE FOR THE SAFETY AND SECURITY, OR TO AVOID INTERFERENCE WITH WATERFRONT ACTIVITIES.

- Provide "windows to the water" at frequent and convenient locations around the entire periphery of the bay with public right-of-way, automobile parking and other appropriate facilities.
- Provide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.

XI. THE PORT DISTRICT WILL PROTECT, PRESERVE, AND ENHANCE NATURAL RESOURCES, INCLUDING NATURAL PLANT AND ANIMAL LIFE IN THE BAY AS A DESIRABLE AMENITY, AN ECOLOGICAL NECESSITY, AND A VALUABLE AND USABLE RESOURCE.

- Keep appraised of the growing body of knowledge on ecological balance and interrelationships.
- Administer the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust.

The approved new landside restaurant and outdoor dining would be located immediately adjacent to the water. A public sidewalk would be constructed on the inland side of the restaurant, with two new public viewpoints created on either side of the proposed building, and one new public viewpoint next to the existing waterfront restaurant located west of the subject site. However, this design and siting is in direct conflict with the PMP policy requiring that access be provided along the waterfront wherever possible with promenades and paths.

The certified PMP and past Commission action has consistently supported the position that new development and redevelopment of existing leaseholds must provide public shoreline access between the upland development and the waterfront. The public can currently walk up to and along the waterfront in this location, albeit in a parking lot. The approved viewpoints would not provide notably superior access than currently available in the existing parking area, while the location of the new landside restaurant structure would significantly reduce existing access to the shoreline.

In addition to the direct public access blockage, the approved project provides no visual analysis of the impact the new landside structure would have on public views. As with public access, the views from the proposed viewpoints would be no better than existing views from the site, while the approved restaurant building would block the existing expansive views of the bay and downtown. As approved, the development is inconsistent with the public access and visual protection policies of the PMP.

The proposed new restaurant structure will result in the loss of at least two parking spaces, and 10 spaces out of the existing 308 spaces will be converted to valet/employee parking spaces. A draft parking analysis for the project indicates that a minimum of 310 parking spaces are required to meet the demand for parking at the site. Recently, the Port has been addressing parking issues and the requirement to develop non-automobile linking systems by requiring tenants to participate in the Port's newly developed and expanding shuttle service. However, no such requirements or mitigation measures have been included in the proposed project.

The project includes relocating the barge planned for the reconstructed restaurant facilities to an unspecified location that will be entirely within the Port District's jurisdiction. There is no information regarding the impacts this could have on eelgrass, and no condition requiring measures to prevent the spread of the invasive algae *Caulerpa taxifolia*. Conditions addressing water quality associated with the barge and the landside restaurant are vague and do not include any specific conditions regarding development on the water. The approval does not include a landscape plan or condition that prohibits use of non-invasive species. The use of invasive species in the urban environment is inconsistent with the resource protection provisions within the PMP that require the preservation and enhancement of natural resources, and keeping apprised of new information on ecological balance and interrelationships.

Attachment #1 List of Interested Parties

Sara Wan
22350 Carbon Mesa Rd
Malibu CA 90265

Ian Trowbridge
3444 Hawk Street
San Diego, CA 92103

David Gotfredson
KFMB News 8 Producer
7677 Engineer Rd.
San Diego, CA 92111

Tanya A. Gulesserian
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
1775 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Brian Brennan
Mailing Address: 45 Fremont Street, Suite 2000
San Francisco, CA 94105

Phone Number: 415-904-5200

RECEIVED
FEB 06 2013
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

1. Name of local/port government: San Diego Unified Port District
2. Brief description of development being appealed: Categorical Exclusion of demolition of existing 20,000 sq.ft. restaurant located on a floating barge, relocation of the barge to entirely within the pierhead line, reconstruction of 9,000 sq.ft. of new restaurant facilities on the barge; construction of a one-story restaurant on land adjacent to the barge consisting of approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior outdoor dining space; reconfiguration of existing 308 space parking to lot 306 spaces, including 10 tandem spaces; removal and replacement of parking lot trees.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
880 Harbor Island Drive, San Diego, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☐
 - c. Denial: ☐
 - d. Other: ☒ Categorical Exclusion

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-PSD-13-05

DATE FILED: February 6, 2013

DISTRICT: San Diego

5. Decision being appealed was made by (check one):

a. ☐ Planning Director/Zoning
Administrator

c. ☐ Planning Commission

b. ☐ City Council/Board of
Supervisors

d. ☒ Other Port Executive Officer

Date of local government's decision: 1/24/09 (Additional approval granted 3/33/12)

Local government's file number (if any): Cat Det 2009-008-23-154; Project No. 007-017-2474

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Uri Feldman
Sunroad Enterprises
4445 Eastgate Mall, Suite 400
San Diego, CA 92121

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

See Attachment #1

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

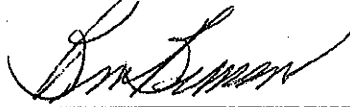
See Attachment "A" Dated 2/6/13

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: _____

2/5/2013

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Attachment A

02/06/2013

Project Description and History

The Reuben E. Lee was a 4-deck, approximately 20,000 sq.ft. restaurant constructed on a floating barge tethered in the water east of the Harbor Island peninsula in San Diego Bay. The majority of the barge was located outside the pierhead line, and thus within the Commission's original permit jurisdiction, with a smaller portion within the Port's permit jurisdiction.

On February 24, 2009, the Port of San Diego issued a Categorical Determination of Proposed Coastal Development for the Reuben E. Lee Restaurant Replacement. At that time, the proposed project consisted of 1) demolition of the entire restaurant excepting the existing barge hull, and accessory structures including mooring piles and an adjacent breakwater; 2) construction of a new 1-story galley, restrooms, covered and open food and beverage service areas totaling approximately 9,000 sq.ft. on the barge; 3) construction of an approximately 16,500 sq.ft., single-story restaurant, lounge, and banquet facility on the land adjacent to the barge; 4) reconfiguration of the existing approximately 308 space parking lot to 306 parking spaces, including 10 tandem employee/valet spaces, resulting in the removal and replacement up to 10 existing trees in the parking lot. Total restaurant seating would decrease from 900 seats to 809 seats.

The new landside restaurant and outdoor dining would be located immediately adjacent to the water. A public sidewalk would be constructed on the inland side of the restaurant, with two new public viewpoints created on either side of the proposed building, and one new public viewpoint next to the existing Island Prime restaurant, a waterfront restaurant located west of the subject site.

The San Diego Unified Port District Coastal Development Permit Regulations govern the issuance of Port permits, exemptions (referred to as "exclusions" in the Port regulations), and appeals. The Port District determined that the proposed project is exempt from issuance of a coastal development permit under the following sections of the Permit Regulations:

8. Excluded Developments

- 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, including but not limited to:
 - (3) Streets, sidewalks, gutters, bicycle and pedestrian paths, and similar facilities; [...]
 - (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 sq.ft., whichever is less; or additions to existing structures of not more than

10,000 sq.ft. of floor area, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive; [...]

- b. Replacement or Reconstruction: Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
 - (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
 - (2) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction. [...]
- d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:
 - (1) Land Grading, except where located in a waterway, wetland, officially designated scenic area, or in officially mapped areas of severe geologic hazard;
 - (2) New gardening or landscaping;
 - (7) Minor trenching or back filling where the surface is restored.

Under the Coastal Act and the Port's Permit Regulations, a restaurant is classified as an appealable development, under the category of "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes." The Port's Permit Regulations, Section 7 Categorical Determination, Subsection (d)(4), states:

If a proposed development is classified as being appealable, a copy of the determination shall be forwarded within ten (10) working days to the Coastal Commission.

However, the February 24, 2009 Categorical Determination was not transmitted to the Coastal Commission until January 23, 2013, when it was emailed to Commission staff in response to an inquiry by staff regarding approvals that had been granted by the Port for the Reuben E. Lee. At that time, in addition to the Categorical Determination, the Port transmitted a copy of the Port's "Project Review and Approval" dated March 22, 2012, granting conditional approval of the Reuben E. Lee (now known as 880 Harbor Island Restaurant) Renovation Project.

The project given approval with conditions on March 22, 2012 varies somewhat from the project approved in the Categorical Determination in 2009. As revised, the existing facility on the floating barge would be demolished and reconstructed as a 4,800 sq.ft. primarily unenclosed function space. The barge would be relocated slightly landward to entirely within the pierhead line, so as to be completely within the Port District's jurisdiction. Exterior deck areas on both the floating barge and the landside structure

would be increased by creating cantilevered decks over the existing rock revetment along the shoreline side of the site. This additional space would be used for outside dining venues and lounge space. In total, the land-based restaurant would have approximately 12,220 sq.ft. of enclosed floor area, and 15,285 sq.ft. of exterior space, for a total new area of 27,505 sq.ft. Total seating capacity is expected to be between 600 and 800 seats, including the barge. At least one existing coral tree will be removed and replaced with a new tree.

The Project Review and Approval cites Section 8.b. Replacement or Reconstruction (cited above) as the reason the project was found to be an Excluded Development under the District's Coastal Development Permit Regulations.

Sometime around April 2012, the barge with the restaurant structure was towed to a shipyard to initiate demolition and reconstruction activities. However, on or around December 12, 2012, the structure took on water and partially sank, and may not be salvageable.

In any event, the proposed project envisions reconstruction of an entirely reconstructed restaurant facility on a barge, as well as a new stand-alone restaurant on the land adjacent to the barge.

Consistency with the Port Master Plan

As described in detail below, the exclusion language used to exempt the development from CDP requirements does not apply because the proposed development involves expansion of the existing use off the barge and onto the land. There is no provision for a restaurant on the land at this site in the Port Master Plan. This would require a Port Master Plan Amendment to add the restaurant to the Project List and incorporate the proposal into an integrated public access plan for Harbor Island. There is a pending PMPA for a hotel and restaurant complex by the same lessee immediately to the west of the subject site; however, the proposed landside restaurant was not incorporated into that PMPA.

As described above, the 2009 Categorical Determination and the 2012 Project Review and Approval cite several provisions of the District's Coastal Development Permit Regulations in excluding the development from coastal permit requirements. However, none of these exclusions apply to the subject development.

Existing Facilities

This exemption applies to "minor alteration[s]...involving negligible or no expansion of use beyond that previously existing..." including additions to existing structures.

The proposed development includes demolishing the entire existing restaurant structure, leaving only the foundation (the barge) and several accessory structures. Thus, the work on the barge is demolition and reconstruction, not an addition. The new restaurant structure proposed on the land is not an addition to an existing structure, both because the

existing structure is being demolished, and because an unattached structure, separated in space and by water, is not an addition to an existing structure, but a new structure.

Replacement or Reconstruction

This exclusion applies to developments "where the new structure will be located essentially on the same site as the structure replaced..." The majority of the proposed development consists of construction of a new structure on the land next to the reconstructed floating facility on a barge. A permanent land location cannot by any reasonable interpretation be considered essentially the same site as a floating barge on the water. Water and land development sites have different physical requirements and different impacts on coastal resources and are not interchangeable.

Minor Alterations to Land

This exemption covers projects limited to minor alterations to land, water, and/or vegetation such as grading, landscaping, and minor trenching, which does not involve the removal of mature, scenic trees. As noted, the project is considerably larger in scope and scale than minor alterations to land, and a development cannot be segmented into components that might be exempt if taken individually. In addition, the original exemption included the removal of mature scenic tree(s), the revised proposal still includes the removal of at least one mature coral tree and the proposed parking lot revisions will reduce the number of parking spaces, which is typically not considered exempt from permit requirements. Thus, this section of the Port's regulations is not applicable to the proposed development.

It is worth noting that at the time the Categorical Determination was made, the waterside portion of the project was located largely in the Commission's permit jurisdiction, and was proposed to remain in that location. As early as 2007, Commission staff informed Port staff in writing that when development that requires a coastal development permit straddles both the Port and the State's permit jurisdiction, both agencies have to issue a coastal development permit for their portions of the project. Even having made a determination that the portion of the project within the Port's jurisdiction was exempt from permit requirements, the decision on permit requirements for the development proposed on the rest of the barge remained the Commission's, and could not have been made by the Port.

Therefore, because the project is not an addition, is not located on the same site, and is not a minor alteration of land, the project cannot be excluded from permit requirements.

The proposed development also contains a number of significant inconsistencies with the following Port Master Plan goals and policies:

VI. THE PORT DISTRICT WILL INTEGRATE THE TIDELANDS INTO A FUNCTIONAL REGIONAL TRANSPORTATION NETWORK

- Encouraging development of improved major rail, water and air systems linking the San Diego region with the rest of the nation.

- Improved automobile linkages, parking programs and facilities, so as to minimize the use of waterfront for parking purposes
- Providing pedestrian linkages
- Encouraging development of non-automobile linkage systems to bridge the gap between pedestrian and major mass systems.

VIII. THE PORT DISTRICT WILL ENHANCE AND MAINTAIN THE BAY AND TIDELANDS AS AN ATTRACTIVE PHYSICAL AND BIOLOGICAL ENTITY.

- Views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.

IX. THE PORT DISTRICT WILL INSURE PHYSICAL ACCESS TO THE BAY EXCEPT AS NECESSARY TO PROVIDE FOR THE SAFETY AND SECURITY, OR TO AVOID INTERFERENCE WITH WATERFRONT ACTIVITIES.

- Provide "windows to the water" at frequent and convenient locations around the entire periphery of the bay with public right-of-way, automobile parking and other appropriate facilities.
- Provide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.

XI. THE PORT DISTRICT WILL PROTECT, PRESERVE, AND ENHANCE NATURAL RESOURCES, INCLUDING NATURAL PLANT AND ANIMAL LIFE IN THE BAY AS A DESIRABLE AMENITY, AN ECOLOGICAL NECESSITY, AND A VALUABLE AND USABLE RESOURCE.

- Keep appraised of the growing body of knowledge on ecological balance and interrelationships.
- Administer the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust.

The approved new landside restaurant and outdoor dining would be located immediately adjacent to the water. A public sidewalk would be constructed on the inland side of the restaurant, with two new public viewpoints created on either side of the proposed building, and one new public viewpoint next to the existing waterfront restaurant located west of the subject site. However, this design and siting is in direct conflict with the PMP policy requiring that access be provided along the waterfront wherever possible with promenades and paths.

The certified PMP and past Commission action has consistently supported the position that new development and redevelopment of existing leaseholds must provide public shoreline access between the upland development and the waterfront. The public can currently walk up to and along the waterfront in this location, albeit in a parking lot. The approved viewpoints would not provide notably superior access than currently available in the existing parking area, while the location of the new landside restaurant structure would significantly reduce existing access to the shoreline.

In addition to the direct public access blockage, the approved project provides no visual analysis of the impact the new landside structure would have on public views. As with public access, the views from the proposed viewpoints would be no better than existing views from the site, while the approved restaurant building would block the existing expansive views of the bay and downtown. As approved, the development is inconsistent with the public access and visual protection policies of the PMP.

The proposed new restaurant structure will result in the loss of at least two parking spaces, and 10 spaces out of the existing 308 spaces will be converted to valet/employee parking spaces. A draft parking analysis for the project indicates that a minimum of 310 parking spaces are required to meet the demand for parking at the site. Recently, the Port has been addressing parking issues and the requirement to develop non-automobile linking systems by requiring tenants to participate in the Port's newly developed and expanding shuttle service. However, no such requirements or mitigation measures have been included in the proposed project.

The project includes relocating the barge planned for the reconstructed restaurant facilities to an unspecified location that will be entirely within the Port District's jurisdiction. There is no information regarding the impacts this could have on eelgrass, and no condition requiring measures to prevent the spread of the invasive algae *Caulerpa taxifolia*. Conditions addressing water quality associated with the barge and the landside restaurant are vague and do not include any specific conditions regarding development on the water. The approval does not include a landscape plan or condition that prohibits use of non-invasive species. The use of invasive species in the urban environment is inconsistent with the resource protection provisions within the PMP that require the preservation and enhancement of natural resources, and keeping apprised of new information on ecological balance and interrelationships.

Attachment #1 List of Interested Parties

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Ian Trowbridge
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San Diego, CA 92103

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KFMB News 8 Producer
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CALIFORNIA COASTAL COMMISSION
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: UNITE HERE Local 30

Mailing Address: 2436 Market Street

City: San Diego

Zip Code: 92102

Phone: (619) 516-3737

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Diego Unified Port District

2. Brief description of development being appealed:

Reuben E. Lee Restaurant Project: construction of indoor/outdoor bars, restaurant, banquet hall, promenade, vista areas; demolishing and removal of floating barge restaurant, including towing and renovation of barge

3. Development's location (street address, assessor's parcel no., cross street, etc.):

880 Harbor Island Drive
San Diego, CA 92101

Parcel No. 007-017

4. Description of decision being appealed (check one.):

- ☒ Approval; no special conditions
☐ Approval with special conditions:
☐ Denial

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FEB 06 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-6-PSD-13-5

DATE FILED:

2/6/13

DISTRICT:

San Diego

EXHIBIT NO. 11

APPLICATION NO.

A-6-PSD-13-5

Unite Here Appeal

& Correspondence

California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☐ City Council/Board of Supervisors
☐ Planning Commission
☒ Other

6. Date of local government's decision: February 24, 2009

7. Local government's file number (if any): 2009-008-23-154

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Uri Feldman, Vice President
Sunroad Enterprises
4445 Eastgate Mall Suite 400
San Diego, CA 92121

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See Exhibit 1

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Rachael E. Koss
Signature of Appellant(s) or Authorized Agent

Date: 02/05/13

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

Rachael Koss / Tanya Gulossarian / Adams
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Rachael Koss
Joseph Adams
Carla Adams

Bridgette Adams
Signature of Appellant(s)

Date: 2-5-13

EXHIBIT 1

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FEB 06 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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A PROFESSIONAL CORPORATION

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RACHAEL E. KOSS
JAMIE L. MAULDIN
ROBYN C. PURCHIA
ELLEN L. TRESCOTT

February 5, 2012

By Overnight Mail

Chairwoman Mary Shallenberger and
Honorable Commissioners
c/o Diana Lilly, Coastal Program Analyst
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RECEIVED

FEB 06 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Reasons Supporting Appeal of the Issuance of a Categorical Exclusion
from a Coastal Development Permit for the Reuben E. Lee Restaurant
Project (Local Permit No. 2009-008-23-154 / Application No. 6-PSD-13-
010)

Dear Chairwoman Shallenberger and Commissioners:

We write on behalf of UNITE HERE Local 30 and its members and their families¹ to provide the reasons supporting this appeal of the San Diego Unified Port District's ("Port") action on the above-referenced coastal development permit and determination that Sunroad Marina Partners, LP's ("Sunroad") Reuben E. Lee restaurant project, located at 880 Harbor Island Drive on East Harbor Island ("REL Project"), is categorically excluded from coastal development permit ("CDP") requirements. On February 24, 2009, the Port issued a "Categorical Determination"

¹ UNITE HERE Local 30 represents more than 4,000 workers in the San Diego region on employment, civil rights, and public health issues before municipal, county, and state bodies. UNITE HERE is concerned about public and worker health and safety risks and environmental and public service impacts from development and, therefore, has a strong interest in enforcing land use and environmental laws. UNITE HERE's members work, reside and recreate in the City and County of San Diego. Accordingly, the Project's environmental and health impacts will directly affect these members. Also, environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Finally, members are concerned about projects that carry serious environmental risks and public service infrastructure demands without providing countervailing employment and economic benefits to local workers and communities.

for the REL Project, finding that the REL Project is an “excluded development” under Sections 8.a, 8.b and 8.d of the Port’s 1986 Coastal Development Permit Regulations. UNITE HERE submits this appeal, because the REL Project is inconsistent with the Port’s Port Master Plan (“PMP”) and the public access and recreation policies and other policies of the California Coastal Act, and the REL Project requires a PMP amendment and CDP.

The PMP identifies the east end of East Harbor Island as vacant. This is where the REL Project is proposed. The REL Project involves construction of new buildings, including indoor and outdoor bars, a restaurant, a banquet hall, a new promenade that will be located landside of these buildings, and new vista areas/viewing platforms on East Harbor Island, in Planning Area 2, Subarea 23 of the PMP. The REL Project also involves demolishing and removing all four decks of the 19,000 square-foot REL Sternwheeler floating barge restaurant, which is an over-the-water barge attached to a fixed platform, towing the barge to another facility where a new event platform and dining area will be constructed, and then towing the renovated barge back to East Harbor Island where it will be reinstalled over the water. In approximately April 2012, Sunroad towed the barge,² without first obtaining approval from the Coastal Commission and, in December 2012, the barge sunk in the San Diego Bay.

The REL Project is inconsistent with the PMP, because the Project is proposed in an area that the PMP identifies as vacant. Therefore, the Project requires a PMP amendment. Further, the REL Project is inconsistent with the planning goals of the PMP and the public access and recreation policies and other policies of the Coastal Act, because the REL Project will impede public access, block views, adversely impact natural resources, increase pollutants in the San Diego Bay and pose risks from geologic hazards. Finally, the Coastal Act requires Sunroad to obtain a CDP for the REL Project, including the removal and towing of the barge. For these reasons, UNITE HERE requests that the Coastal Commission find that the appeal raises a substantial issue with respect to the grounds on which the appeal has been filed.

² **Attachment A:** “Waterfront Mystery: Where’s The Reuben E. Lee?” The San Diego Union-Tribune (May 9, 2012, updated May 10, 2012.)
2421-040ev

I. REL PROJECT HISTORY

East Harbor Island has three main parcels: an airport parking lot on the western parcel, a marina on the central parcel, and a restaurant area on the eastern parcel. Sunroad and its subsidiaries hold a long-term lease from the Port on the marina parcel and another lease on the adjacent restaurant parcel on East Harbor Island.³ The only other property on the island is the airport parking leasehold, and that lease will expire this year.⁴

In February 2006, the Port released a Notice of Preparation of a Draft Environmental Impact Report for the "Sunroad Harbor Island Hotel & Port Master Plan Amendment Project," pursuant to the California Environmental Quality Act. Sunroad proposed to redevelop all three leaseholds. Sunroad proposed to construct two new hotels, dismantle/relocate the REL floating restaurant and expand development on its restaurant leasehold at 880 Harbor Island Drive, demolish structures on its adjacent marina leasehold at 955 Harbor Island Drive, construct hotels, restaurants, retail shops, a new marina building, new parking and a new public promenade, narrow Harbor Island Drive from four lanes to three and replace "the existing traffic circle at the end of Harbor Island Drive with a smaller turnaround." A PMP amendment was required.⁵

The Port completed the Draft EIR in January 2007, but the Port never released it to the public. Instead, Sunroad withdrew its comprehensive proposal. Regarding the redevelopment of Sunroad's marina and restaurant leaseholds, Sunroad withdrew its proposal, not because it intended to abandon the project, but because Port staff was concerned that the environmental impacts would be too great.⁶ Among other things, Sunroad proposed buildings on top of a known active earthquake fault.⁷ Also, the Coastal Commission's approval was required, and the

³ **Attachment B:** San Diego Unified Port District Board Meeting Staff Report, May 10, 2011, Agenda Item 23.

⁴ **Attachment C:** Notice of Preparation for Sunroad Harbor Island Hotel & Port Master Plan Amendment Project, February 2, 2006, p. 2.

⁵ **Attachment C.**

⁶ **Attachment D:** San Diego Unified Port District Board Meeting Staff Report, September 2, 2008, Agenda Item 34.

⁷ **Attachment E:** Excerpts from San Diego Unified Port District Board Meeting Minutes, June 10, 2008.

Commission warned that “new uses extending out over the water could result in environmental impacts, and would not likely be supported by Commission staff.”⁸

Sunroad apparently developed a ‘workaround’ to these problems. In April 2007, several months after it withdrew the comprehensive redevelopment proposal, Sunroad submitted a new application to redevelop the REL restaurant.⁹ At a Port Board meeting in November 2007, Sunroad noted that the restaurant project had “been in process for over a year,” apparently referring to the comprehensive redevelopment proposal.¹⁰ In December 2007, Port staff informed the Board that they would exempt the project from CEQA review.¹¹

In June 2008, Port staff sought the Board’s approval for the REL Project as a stand-alone project, exempt from CEQA as a “replacement or reconstruction” activity that would not require review and approval by the Coastal Commission.¹² At that time, Sunroad had already presented to Port staff its adjacent “160 room limited service hotel concept” for the marina leasehold, but Port staff made no mention to the Board about the adjacent hotel proposal.¹³ When a Board member asked about the relationship between the restaurant proposal and a potential hotel, Sunroad stated, “if a hotel development was to be considered, it would be placed west of the earthquake fault.”¹⁴

The Port Board approved the REL Project in June 2008, and the Port began negotiating a tidelands lease with the State Lands Commission (“SLC”).¹⁵ Months later, the Port drafted a CEQA exemption document and indicated to the SLC that the Port was not required to “submit anything” about the over-the-water restaurant project to the Coastal Commission.¹⁶ The Port’s exemption document, dated

⁸ **Attachment F:** Letter from Diana Lily to John Helmer re: Sunroad Harbor Island Project, June 7, 2006.

⁹ **Attachment G:** Environmental Assessment for REL Project, May 19, 2008, p. 5.

¹⁰ **Attachment H:** Excerpts from San Diego Unified Port District Board Meeting, November 13, 2007.

¹¹ **Attachment I:** Excerpts from San Diego Unified Port District Board Meeting, December 11, 2007.

¹² **Attachment J:** San Diego Unified Port District Board Meeting Staff Report, June 10, 2008, Agenda Item 33.

¹³ **Attachment K:** Email from Robert Amezcuita to Annette Dahl re Sunroad Chronology, September 29, 2010.

¹⁴ **Attachment J**, p. 166.

¹⁵ *Id.*, p. 167.

¹⁶ **Attachment L:** Email Correspondence between Anthony Gordon and Kenneth Foster re: 880 Harbor project (Reuben E Lee).

February 24, 2009, explained that the REL Project was exempt from CEQA because it involved only a “minor alteration” to the REL restaurant and/or qualified as a “replacement or reconstruction” of the floating barge.¹⁷ The Port Board approved the SLC lease and a sublease to Sunroad in June 2010.¹⁸

The Port reviewed Sunroad’s hotel proposal on a similar timeline as the REL Project. Sunroad submitted the hotel proposal in early 2008, and in August 2008 Port staff scheduled a presentation to the Board about Sunroad’s “revised hotel concept to redevelop the east end of Harbor Island.”¹⁹ Sunroad would construct a hotel on the marina leasehold, realign Harbor Island Drive, and relocate designated open space in the existing traffic circle, which would require a PMP amendment.²⁰ The PMP amendment would allow additional uses on East Harbor Island that were not previously authorized by the PMP. Instead of authorizing only one 500-room hotel, restaurant, and cocktail lounge, the Port proposed to amend the PMP to allow two or more hotels, multiple restaurants, multiple cocktail lounges and an entirely new use—commercial retail.²¹ When the Board considered the hotel proposal in September 2008, it was clear that “significant work” had taken place between Sunroad and Port staff, and Sunroad explained that it had offered “to develop a master plan for the entire end of Harbor Island.”²² The Board again inquired about the overlap between the REL Project and hotel proposals, and Sunroad confirmed that it “planned to move the proposed hotel and the proposed restaurant development along the same overlapping construction time line to minimize disruptions to the businesses operating in the area.”²³

In September 2008, four months after Sunroad submitted its environmental assessment for the REL Project, it submitted an environmental assessment for the hotel project and PMP amendment.²⁴ In December 2008, Port staff requested more

¹⁷ **Attachment M:** San Diego Unified Port District CEQA Determination for Reuben E. Lee Restaurant, February 24, 2009.

¹⁸ **Attachment N:** Excerpts from San Diego Unified Port District Board Meeting Minutes, July 6, 2010, p. 240.

¹⁹ **Attachment O:** Memorandum from Annette Dahl to Board of Port Commissioners re Sunroad Asset Management – Revised Hotel Concept, August 13, 2008.

²⁰ **Attachment D.**

²¹ **Attachment P:** Excerpts from Sunroad Harbor Island Hotel Project and East Harbor Island Subarea PMP Amendment, Recirculated Portions of Draft IR, November 2010.

²² **Attachment Q:** Excerpts from San Diego Unified Port District Board Action Agenda, September 2, 2008.

²³ *Id.*

²⁴ **Attachment R:** Environmental Assessment of Sunroad Hotel Project, September 5, 2008.

February 5, 2013

Page 6

information from Sunroad for purposes of CEQA review, including information about the “proposed open space replacement.”²⁵ Sunroad responded:

The master plan amendment speaks to the entire East end of Harbor Island. We are proposing replacing the 17,425 sft of open space designation [in the traffic circle] with 21,700 of open space and walkways on the restaurant parcel. We need to confirm that the master plan change to incorporate this does not join the projects, which are two independent events.²⁶

However, these activities on East Harbor Island were interrelated:

- The PMP amendment depended on the REL Project to provide new viewing platforms and a public promenade along the Bay, to compensate for lost open space at the hotel project site.²⁷
- The REL Project depended on the hotel project to provide a new “looped” water line to meet City of San Diego standards.²⁸
- The hotel and REL Project would share other infrastructure, including a new sewer line that would have been extended to the REL Project leasehold as part of the hotel project, and a new public promenade that would have connected the two leaseholds and surrounded the entire project.²⁹

²⁵ **Attachment S:** Email Correspondence between Uri Feldman and Anthony Gordon re: Harbor Island Hotel Comments.

²⁶ *Id.*

²⁷ **Attachment T:** Excerpts from 2008 Port Master Plan and Proposed Port Master Plan Amendment and Sunroad Harbor Island Hotel Project and East Harbor Island Subarea PMP Amendment Draft EIR, and [compare maps of old and new PMP “Precise Plans,” showing expansion of the promenade and viewing areas on restaurant parcel, EIR states that impacts to recreation from the PMP amendment will be less than significant because open space lost at the hotel project site will be offset by the expanded promenade, Sunroad will replace open space at the hotel project site with walkways and viewing platforms at the restaurant project site].

²⁸ E.g. **Attachment U:** Water Study for Harbor Island Hotel, March 23, 2009 [water mains serving more than two fire hydrants must be looped, and the “existing system does not meet this standard,” so the looped system installed for the hotel project will be extended to the restaurant project as “required” to meet City standards for the restaurant project].

²⁹ See **Attachment V.**

- The hotel and REL Project were closely related in time, physical location, and the entity undertaking the action.³⁰
- Sunroad always intended to redevelop both leaseholds together.³¹

Despite the obvious connections between the REL Project and hotel proposals (adjacent locations, same applicant, same timeframe, interrelated features, and a history of being proposed as one project), the Port apparently shared Sunroad's eagerness not to "join the projects." In December 2008, Port staff prepared a new NOP of an EIR for the "Sunroad Harbor Island Hotel & Port Master Plan Amendment Project," the same project name as Sunroad's comprehensive redevelopment proposal. This time, the Port only intended for the new EIR to address the hotel project and PMP amendment, not the REL Project. Instead, that same month, the Port was drafting its CEQA exemption document for the REL Project to submit to the SLC.³² The Port and Sunroad met to discuss "the latest developments with both projects," but continued to distinguish them as separate projects for CEQA purposes.³³ However, conducting separate review for each proposal makes each one appear less significant and masks the environmental consequences of Sunroad's redevelopment of East Harbor Island. These impacts may be more significant when analyzed as one project.³⁴

In June 2011, the Port approved the Sunroad Harbor Island Hotel and PMP amendment. However, in May 2012, a San Diego Superior Court set aside the Port's approval based on the Port's failure to analyze the PMP amendment's

³⁰ See **Attachment Q** [projects will use same overlapping construction timeline]; **Attachment W**: Excerpts from Marine Resources Assessment Sunroad Hotel Project, September 2006; **Attachment J** figures [site plans for initially proposed comprehensive project and current proposals]; and **Attachment B** [Sunroad is the parent company for both leaseholds].

³¹ See **Attachment Q**; **Attachment C** [both actions conceived of as one project in Port's February 2006 NOP]; **Attachment H**, p. 240.

³² See **Attachment L**.

³³ See **Attachment X** [map showing features to be implemented with "construction of the hotel" and with construction of the restaurant project, the "880 Harbor Project"], [Sunroad and Port staff held weekly meetings to discuss both projects], ["Please mark the Rueben E. Lee project site as not part of the proposed [hotel] project"], ["Please only show [the portion of the public promenade that] will be located on [the hotel] leasehold"], [Port's application to SLC described the restaurant project as "part of a larger redevelopment project"].

³⁴ See **Attachment Y** [PMP amendment and hotel project require Coastal Commission approval and a Coastal Development Permit, but REL Project was "excluded" from these requirements], [significant traffic and local fire service impacts from the hotel project require mitigation, and these impacts would increase when analyzed with the REL Project].

allowance of multiple hotels, as required by CEQA.

II. THE REL PROJECT IS INCONSISTENT WITH THE PMP

The REL Project is inconsistent with the PMP because the PMP designates the REL Project site as vacant and the REL Project is not contained in the PMP. Before the Project can proceed, the PMP must be amended.

A. The REL Project is Inconsistent with the Plain Language of the PMP

The REL Project is inconsistent with the PMP. The PMP identifies the east end of East Harbor Island as “vacant.”³⁵ In other words, the REL Project is *not actually contained* in the Port’s PMP. The Coastal Act requires the PMP to describe the “proposed uses of land and water areas, where known.”³⁶ The Port’s PMP includes precise plans for each of its nine planning districts. The PMP states that each precise plan contains a “listing of development projects, covering both appealable and non-appealable categories” under the Coastal Act.³⁷ Each precise plan in the PMP contains a project list that includes all Coastal Act “developments” within that planning area. The PMP explains that the purpose of the project list is to comply with the Coastal Act and the Commission’s Guidelines:

Each Precise Plan section contains . . . a project list describing each project, its location, its developer as either Port District or tenant, its appealable classification and an estimate of its starting date. The project list, a rather detailed commentary, has been included in order to comply with the Coastal Act guideline for content of port master plans. The guideline calls for a listing of proposed projects in sufficient detail to judge the plan’s consistency with the Coastal Act. The project list is not intended to be an exclusive listing, rather it describes major projects or smaller projects that are well defined at the time of writing.³⁸

The PMP project list for Planning Area 2 does not include the nine million dollar REL Project or its associated new promenade segments and vista points.

³⁵ PMP, p. 52.

³⁶ Pub. Resources Code § 30711(a)(1).

³⁷ PMP, p. 2.

³⁸ *Id.*, p. 42.

This is inconsistent with the PMP's statement that each precise plan will list the well-defined development projects within that planning area. It is also inconsistent with the project lists for other planning areas, which do include restaurant projects, demolition and reconstruction projects, and promenade projects.³⁹ In order to avoid internal inconsistency within the PMP and comply with the Commission's regulations, the PMP must list the REL Project in the project list for Planning Area 2.⁴⁰

Because the PMP designates the REL Project site as vacant and the REL Project is not listed in the PMP, the REL Project is inconsistent with the PMP and the Port must amend its PMP before the Project can be considered. Therefore, UNITE HERE requests that the Commission find that the appeal raises a substantial issue with respect to the grounds on which the appeal has been filed.

B. The REL Project Requires A CDP

1. *The REL Project Is a "Development" Under the Coastal Act*

The Coastal Act states that "[a]ny person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit."⁴¹ "Development" includes the "construction, reconstruction, demolition, or alteration of the size of any structure."⁴² The REL Project involves all of these activities. Therefore, the REL Project requires a CDP unless otherwise exempt from the Coastal Act.

2. *The REL Project is Not Exempt from the Coastal Act*

a. The Port Improperly Excluded the REL Project from Its Own CDP Requirements

None of the exclusions in the Port's 2009 "Categorical Determination" for the REL Project apply. Therefore, the Port incorrectly excluded the REL Project from the requirement to obtain a CDP pursuant to the Coastal Act.

³⁹ *Id.*, p. 51 [reconstruction and promenade projects], p. 69 [promenade and restaurant projects], p. 81 [demolition and reconstruction project], p. 89 [accessways and paths], p. 112 [restaurant project and demolition and reconstruction projects].

⁴⁰ See 14 C.C.R. § 13625.

⁴¹ Pub. Resources Code § 30600(a).

⁴² *Id.*, § 30106.

i. *Existing Facilities Exclusion*

The “Existing Facilities” exclusion does not apply to the REL Project for several reasons. First, the “key consideration” under the exclusion is “whether the project involves negligible or no expansion of an existing use.” The REL barge had been vacant and unused. The east end of Harbor Island is currently vacant. The Project application notes that customer visits to the REL restaurant, as compared to the adjacent Island Prime restaurant, will more than triple as a result of the Project. Water, power, and gas consumption will more than double, and the REL Project will result in hundreds of new seats spread out through various restaurant, bar, and banquet facilities. This is much more than a “negligible” expansion of use.

Second, the exclusion *only* applies to the “minor alteration” of “existing structures,” whereas the REL Project will involve the construction of entirely new structures. Third, the exclusion applies for “additions to existing structures” of less than 10,000 square feet, if all public services and facilities are available and the project is not located in an environmentally sensitive area. Even though the Port indicated that the “square footage” of the REL restaurant would increase by less than 10,000 square feet, this is not accurate for purposes of determining whether the Existing Facilities exclusion applies. The total square footage of the resulting structures would have only increased by less than 10,000 square feet, when one considers the “vertical” square footage, rather than the total floor area to be developed. However, subsection (e) of the Existing Facilities exclusion specifically refers to the increase in the “floor area” of a structure. The REL Project would have resulted in the addition of over 10,000 square feet of floor area dedicated to new structures. Finally, not all public services are available for the REL Project, and the Project is located in an environmentally sensitive coastal area.⁴³

ii. *Replacement or Reconstruction Exclusion*

This exclusion applies to the “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.” The relevant example provided in the Regulations is the

⁴³ **Attachment U** [utilities study indicating that the existing water and fire suppression system at the REL restaurant is not a “looped” system that meets City of San Diego standards, and must be upgraded].

“replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.” Courts do not expand this exemption “beyond the reasonable scope of its plain language.”⁴⁴

The REL Project will not be located on the same site as the existing REL barge, but will include thousands of square feet of *new* structures located on currently vacant land on East Harbor Island. Nor will the REL Project be the same size as the previous barge. The total square footage within the structures would increase, and the total floor area occupied by the structures would increase. The purpose of the facilities will be expanded to include bars and banquet facilities, and the seating capacity of the REL restaurant will also be expanded. This exclusion does not apply.

iii. *Minor Alterations to Land Exemption*

The Minor Alterations to Land Exemption only applies to alterations in the “condition of land, water, and/or vegetation,” such as minor grading or landscaping. It simply does not apply to the REL Project.

In sum, the REL Project is not excluded from the requirement to obtain a CDP.

b. Most of the REL Project Has Been Outside of the Jurisdiction of the Port and Requires a CDP from the Commission

The Coastal Act states that after a PMP is certified, the Commission shall no longer exercise its authority to issue CDPs for “any new development contained in the certified [PMP].”⁴⁵ Therefore the Port is charged with issuing CDPs for developments within its jurisdiction and that are contained in its PMP.

Here, the REL Project is *not actually contained* in the Port’s PMP. The PMP identifies the east end of East Harbor Island as vacant.

Furthermore, the majority of the REL barge, prior to being towed without a permit, was not within the Port’s jurisdiction, but was located on 1/3 of an acre of

⁴⁴ *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 698.

⁴⁵ Pub. Resources Code § 30715.
2421-040cv

state submerged tidelands under the jurisdiction of the SLC.⁴⁶ The SLC issued a lease to the Port for the REL Project on July 1, 2011, and also approved a sublease from the Port to Sunroad.

The Port and Sunroad are aware that because a large portion of the REL Project was outside Port jurisdiction, a CDP from the Commission is required. Commission staff indicated this in an e-mail from 2007.⁴⁷ The SLC also indicated that the REL Project requires Commission approval, and the lease issued by SLC for the REL Project is “subject to” any required CDP. Furthermore, the Port’s 2009 Categorical Determination for the REL Project states that Sunroad must obtain “Coastal Commission processing for a portion of the facility outside the Port District’s Port Master Plan jurisdiction,” and must submit that documentation to the Port prior to beginning construction.

The determination that Sunroad must obtain a CDP from the Commission for the REL Project is consistent with the Coastal Act. The Port issues CDPs pursuant to Chapter 8 of the Coastal Act, which only governs “those portions of the . . . San Diego Unified Port District” located within the coastal zone.⁴⁸ Accordingly, the Port’s PMP only covers the land and water areas within its jurisdiction. Both the Coastal Act and the Commission’s regulations contemplate that some projects may require a CDP from both the Commission and a local agency, and that transboundary projects still require a CDP from the agency with jurisdiction over a portion of the project.⁴⁹

Here, because the REL Project is not in the PMP, the Port must amend its PMP prior to having permit jurisdiction over the REL Project. Also, because the REL barge had been straddling Port and state boundaries, prior to its removal without a permit, Sunroad must obtain a CDP from the Commission.⁵⁰

⁴⁶ See **Attachment Z**.

⁴⁷ *Id.* [“Our legal staff researched the issue, and have concluded that when a development that requires a coastal development permit straddles both the Port and the State’s jurisdiction, both agencies have to issue a CDP for their portions of the project”].

⁴⁸ Pub. Resources Code § 30700; *see id.* §§ 30702, 30703, 30706 [the policies of Chapter 8 only apply to projects in “port areas” and “within the jurisdiction of ports”], § 30710 [Commission must file “a map delineating the present legal geographical boundaries of each port’s jurisdiction within the coastal zone”].

⁴⁹ Pub. Resources Code § 30601.3; 14 C.C.R. 13050.5 [developments located only partly within the coastal zone require a CDP for parcels or structures located there].

⁵⁰ An August 29, 2012 Letter from the Unified Port of San Diego to Sunroad appears to approve a modification of the REL Project to relocate the barge entirely within the jurisdiction of the Port.

c. Removing and Towing the REL Restaurant Barge Offsite is Development that Requires a CDP

Under the Coastal Act, any “development” in the coastal zone requires a CDP.⁵¹ The Coastal Act defines “development” broadly.

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land . . .; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure . . . As used in this section, “structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.⁵²

Sunroad’s removal, towing and reconstruction of the REL restaurant barge qualifies as “development.”⁵³ Yet, the barge was moved in 2012 without a permit and, last month, it sank.

Since an existing eelgrass bed that was created for mitigation for a prior development exists where the barge was located before it was moved, Sunroad’s failure to obtain a CDP for the removal precluded the ability to monitor possible impacts to the eelgrass.

Further, towing the REL barge may have released contaminated sediments that have not been evaluated by an agency. According to documents prepared for

UNITE HERE hereby appeals the Port’s August 29, 2012 approval, and any and all CDP approvals issued by the Port for the REL Project.

⁵¹ Pub. Resources Code § 30600(a).

⁵² *Id.*, § 30106.

⁵³ See *S. Pac. Transp. Co. v. California Coastal Comm’n.*, 520 F. Supp. 800, 803 (N.D. Cal. 1981) (court held that the Coastal Commission had jurisdiction over the removal of railroad tracks because it fell within the definition of a “development”).

Sunroad's hotel project, the area was filled with hydraulic dredging.⁵⁴ A likely source of the fill was the bottom sediments from the adjacent area to the north, in the vicinity of the former Tow Basin Facility. This is concerning because the hydraulic fill obtained from the Tow Basin Facility area may have contained PCBs. In fact, PCBs have been detected in sediments of the catch basins at concentrations of up to 6,900 parts per million.⁵⁵ Sunroad's failure to obtain a CDP prior to towing the barge precluded adequate evaluation of potential contamination of the Bay.

Because the Port's exclusion of the REL Project from CDP requirements is inconsistent with the Coastal Act, UNITE HERE requests that the Commission find that the appeal raises a substantial issue with respect to the grounds on which the appeal has been filed.

III. THE REL PROJECT IS INCONSISTENT WITH THE PMP'S PLANNING GOALS AND COASTAL ACT POLICIES

The REL Project is inconsistent with the PMP's planning goals and the policies of the Coastal Act because it will: (1) impede public access; (2) block views from public viewing areas; (3) adversely impact natural resources; (4) increase pollutants in the San Diego Bay; and (5) pose risks from geologic hazards. Because the REL Project is inconsistent with the PMP and the public access and recreation and other policies of the Coastal Act, UNITE HERE requests that the Commission find that the appeal raises a substantial issue with respect to the grounds on which the appeal has been filed.

A. The REL Project's Impact on Views is Inconsistent with PMP Planning Goal VIII and Coastal Act Section 30251

PMP Planning Goal VIII is to "enhance and maintain the bay and tidelands as an attractive physical and biological entity."⁵⁶ Further, "views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent."⁵⁷ Section 30251 of the Coastal Act requires that new developments be sited and designed to "protect views

⁵⁴ **Attachment AA:** Letter from Matt Hagemann to Rachael Koss re: Sunroad Harbor Island Hotel Project, May 4, 2011, pp. 1-2 (citing Hazardous Materials Technical Study, Sunroad Harbor Island Project, East Harbor Island Drive, San Diego, Ca, July 14, 2006, pp. 5, 9).

⁵⁵ **Attachment AA,** pp. 1-2.

⁵⁶ PMP, p. 9.

⁵⁷ *Id.*

to and along the ocean . . . to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.”

The REL Project proposes a wall of buildings that will block views of the San Diego skyline and San Diego Bay to the east and provide only a few small public viewing areas. Thus, the REL Project does not protect or enhance views or the aesthetic quality of this prime waterfront location. The REL Project is inconsistent with PMP Planning Goal VIII and Coastal Act Section 30251.

B. The REL Project is Inconsistent with the Public Access Provisions of PMP Planning Goal IX and Coastal Act section 30212

PMP Planning Goal IX is to “insure physical access to the bay except as necessary to provide for the safety and security, or to avoid interference with waterfront activities.”⁵⁸ Further, this PMP goal is to “[p]rovide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.”⁵⁹ The PMP also states “[m]aximum access to the shoreline is encouraged except where security or public safety factors would negate.”⁶⁰ Section 30212 of the Coastal Act requires that new development provide public access “to the shoreline and along the coast.”⁶¹ The REL Project is inconsistent with PMP Planning Goal IX, its implementing policy and Coastal Act section 30212. The REL Project does not insure public access to the bay. Instead, the REL Project provides private uses which will obstruct public access.

The proposed promenade at the REL Project site will not extend to the shoreline and along the coast, but will instead be located landward of the Project’s new bars, restaurants, and banquet facility.⁶² According to Port staff, a continuous shoreline promenade would be inconsistent with the REL Project because it would require moving the restaurant west, on top of existing earthquake fault lines. Port staff’s argument is unsupported for three reasons. First, the 2006 geologic reports that Port staff relied on are outdated and are insufficient to accurately determine

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ PMP, p. 13.

⁶¹ Pub. Resources Code § 30212(a).

⁶² San Diego Unified Port District Categorical Determination of Proposed Coastal Development for Reuben E. Lee Restaurant Replacement, February 24, 2009, Figures – Design – Public Access. 2421-040cv

the location and width of faulting at the terminus of East Harbor Island. Without knowing the location of the fault, the Port cannot support its contention that the restaurant cannot be moved to allow for a continuous promenade. The most staff could suggest is that more testing must be conducted to determine the location of the faulting and subsequently, the appropriate location for the restaurant and public promenade. Second, it is feasible for the size of the new landside structures on the REL Project site to be reduced to allow for a shoreline public promenade. Third, the Port's rationale regarding the fault zone is inconsistent with earlier excuses provided by Sunroad, namely that a public promenade between the restaurants and shoreline is not possible because of "operational constraints" due to the "restaurant layout and the shared liquor license."⁶³ The changing rationale for the failure to provide public access to the bay and along the coast is insufficient to excuse compliance with Goal IX of the PMP, its implementing policy and Coastal Act section 30212.

The REL Project also limits public access by failing to provide public parking. With no requirement to provide public parking, the REL Project fails to ensure public access to the bay. As proposed, the Project is inconsistent with Planning Goal IX of the PMP, its implementing policy and Coastal Act section 30212.

C. The REL Project's Impacts on Natural Resources is Inconsistent with PMP Planning Goal XI and Coastal Act Sections 30230 and 30240

PMP Planning Goal XI is to "protect, preserve, and enhance natural resources, including natural plant and animal life in the bay as a desirable amenity, an ecological necessity, and a valuable and usable resource."⁶⁴ The resource protection policies of Chapter 3 of the Coastal Act require protection of marine resources and environmentally sensitive habitat areas ("ESHAs"). Specifically, section 30230 of the Coastal Act requires that marine resources be maintained and enhanced. Section 30240 requires that ESHAs be protected against any significant disruption of habitat values, and development adjacent to ESHAs "be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat. . . areas."

The REL Project is directly adjacent to a large, healthy bed of underwater eelgrass, which was created in 1989 as mitigation for impacts that resulted from the

⁶³ Attachment E, p. 166.

⁶⁴ PMP, p. 9.

creation of the Sunroad Resort Marina.⁶⁵ There are also several smaller eelgrass beds in the more immediate vicinity of the REL restaurant platform. Substantial adverse effects might occur to these eelgrass beds from the removal and reinstallation of the REL barge, and the construction of new landside buildings that may shadow the eelgrass beds. There is no evidence that demolishing, moving, and reinstalling the REL barge, or building new land-side structures associated with the REL Project, will maintain, protect, preserve, or enhance the marine environment and the biological productivity at the east end of Harbor Island, or prevent impacts to the adjacent eelgrass beds there. Thus, the REL Project is inconsistent with PMP Planning Goal XI and sections 30230 and 30240 of the Coastal Act.

D. The REL Project's Impact on Water Quality is Inconsistent with Coastal Act Section 30231

Section 30231 of the Coastal Act requires that water quality of coastal waters "shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff..." The REL Project involves towing a permanently moored barge, which may release contaminated sediments that have not been evaluated by an agency. According to documents prepared for Sunroad's hotel project, the area was filled with hydraulic dredging.⁶⁶ A likely source of the fill was the bottom sediments from the adjacent area to the north, in the vicinity of the former Tow Basin Facility. This is concerning because the hydraulic fill obtained from the Tow Basin Facility area may have contained PCBs. In fact, PCBs have been detected in sediments of the catch basins at concentrations of up to 6,900 parts per million.⁶⁷ The REL Project will not maintain, restore or minimize adverse effects to the water quality of the bay and, therefore, does not comply with section 30231 of the Coastal Act.

E. The REL Project Places People and Property at Risk and is Therefore Inconsistent with Coastal Act Section 30253

Section 30253 of the Coastal Act requires that new development shall "[m]inimize risks to life and property" in areas of high geologic hazard. The REL

⁶⁵ As shown in figures 4.2-2 and 4.2-3 of the Port's Draft EIR for the PMPA, and discussed on the surrounding pages therein.

⁶⁶ **Attachment AA:** Letter from Matt Hagemann to Rachael Koss re: Sunroad Harbor Island Hotel Project, May 4, 2011, pp. 1-2 (citing Hazardous Materials Technical Study, Sunroad Harbor Island Project, East Harbor Island Drive, San Diego, Ca, July 14, 2006, pp. 5, 9).

⁶⁷ **Attachment AA,** pp. 1-2.

Project fails to meet this requirement because development will occur in a fault zone and there is insufficient data to accurately determine the location and width of faulting on the project sites. The REL Project is located in an area of active earthquake fault strands, several of which were detected (though not further studied or confirmed to the public) beneath the site. Sunroad's consultant, Geocon, identified only one potential fault splay in between its proposed hotel and restaurant developments. However, Geocon failed to collect sufficient data to accurately locate existing faulting on and around these sites.

The only active fault strand that was appropriately studied and confirmed to the public is located directly beneath the site of the new promenade. However, Tania Gonzalez, an independent expert and licensed geologist, concluded that there is potential faulting on the REL Project site that was not identified or analyzed by Geocon.⁶⁸ Because Sunroad's data is insufficient to adequately locate faulting on the development sites, Gonzalez recommended that Sunroad perform additional testing to determine the location and width of potential faults on those sites. Gonzalez also concluded that, given the lack of data, Geocon's recommended "setback" area could not be supported.⁶⁹ The REL Project is not sited so as to minimize risks to life and property and, therefore, does not comply with section 30253 of the Coastal Act.

IV. CONCLUSION

The REL Project is inconsistent with the PMP and requires a PMP amendment because the Project is proposed in an area that the PMP identifies as vacant. Further, the REL Project is inconsistent with the planning goals of the PMP and the public access, recreation, and other policies of the Coastal Act because the REL Project will impede public access, block views, adversely impact natural resources, increase pollutants in the San Diego Bay, and pose risks from geologic hazards. Finally, the Coastal Act requires Sunroad to obtain a CDP for the REL Project. UNITE HERE respectfully requests that the Coastal Commission find that the appeal raises a substantial issue with respect to the grounds on which the appeal has been filed.

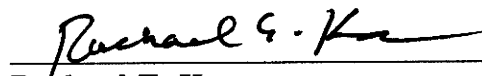
⁶⁸ **Attachment BB:** Letter from Tania Gonzalez to Rachael Koss re: Sunroad Harbor Island Hotel Project, May 9, 2011.

⁶⁹ *Id.*

February 5, 2013
Page 19

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rachael E. Koss", is written over a horizontal line.

Rachael E. Koss
Tanya A. Gulesserian

Attorneys for UNITE HERE Local 30

REK:clv
Attachments

ATTACHMENT A

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FEB 06 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

WATERFRONT MYSTERY: WHERE'S THE REUBEN E. LEE?

By [Diane Bell \(/staff/diane-bell/\)](#) 12:01 a.m. May 10, 2012 Updated 8:54 p.m. May 9, 2012

The Reuben E. Lee is gone. For 43 years, the paddle-wheeler restaurant, really a faux boat on a barge, has been moored at the foot of Harbor Island. Although oddly out of place as a New Orleans-style riverboat on San Diego Bay, it once was a favorite place for dining and celebrations of special occasions by many longtime San Diegans. The restaurant closed in 2004. In late April, the boat disappeared.

Will it ever return? That seems to be in question.

The innovative Cohn Restaurant Group had been working for more than three years with lease holder Sunroad Enterprises to plan a new restaurant on the site. The boat, never designed to operate, was found to be in need of such a major overhaul, it didn't make financial sense. So discussion turned to using it as a public event space with a new restaurant on shore beside it.

David Cohn said Sunroad has towed the paddle-wheeler to a boatyard to have it surveyed in order to decide what to do. Port spokeswoman Marguerite Elicone confirmed that Sunroad submitted drawings in 2010 that included a barge but "whether the Reuben E. Lee is on the barge we don't know ... We hope and expect it will be back."

On the take: Since the early '70s, Cal Western School of Law Dean Steve Smith has been collecting highly coveted Kentucky Derby official commemorative glasses, which have a new design each year. Every May, when he and his wife, Lera, hold a Kentucky Derby party at their Point Loma home, he takes out his cherished glasses to serve mint juleps to his guests — mostly attorneys, judges and law professors.

Inevitably, Smith ends up with far fewer glasses at party's end, thanks to visitors pocketing them as souvenirs. Imagine Smith's amusement when he received a lovely note from one guest — thanking him for the (pilfered) glass.

Encore: Local attorney David Casey and his wife, Lisa, just returned from a South Pacific cruise for their 25th anniversary. It was on the day their ship crossed the international date line, turning back the clock a full day. So they celebrated their silver anniversary twice.

Into the fire: When Julie Meier Wright retired from running S.D.'s Regional Economic Development Corp., she had bigger visions — California's faltering economy and mobilizing 14 economic regions within the state to address the crucial issues of job creation and business stimulation.

After mini-summits in each region, area leaders, along with California Lt. Gov. Gavin Newsom, will now share their thoughts Friday in Santa Clara. It's the first California Economic Summit and features economist Thomas Friedman.

"I have failed at retirement," confesses Wright, "but am working on issues very important to San Diego." More details are on the website caeconomy.org (<http://caeconomy.org>).

diane.bell@utsandiego.com

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AGENDA ITEM 23

SAN DIEGO UNIFIED PORT DISTRICT

DATE: May 10, 2011

SUBJECT: SUNROAD HARBOR ISLAND HOTEL

- A) ORDINANCE GRANTING OPTION AGREEMENT FOR 55-YEAR LEASE**
- B) CONDUCT PUBLIC HEARING, CERTIFY ENVIRONMENTAL IMPACT REPORT, ADOPT FINDINGS OF FACT AND A STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPT MITIGATION MONITORING AND REPORTING PROGRAM, AND DIRECT FILING OF THE NOTICE OF DETERMINATION**
- C) CONDUCT PUBLIC HEARING, APPROVE PORT MASTER PLAN AMENDMENT, AND DIRECT FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION**
- D) RESOLUTION GRANTING CONCEPT APPROVAL FOR HOTEL PROJECT**

EXECUTIVE SUMMARY:

Sunroad Enterprises ("Sunroad") has two adjacent leases on Harbor Island with the District under separate entities. Sunroad Marina Partners, LP is the tenant for the Sunroad Resort Marina¹ and Sunroad Asset Management, Inc. is the tenant for the Island Prime and former Reuben E. Lee restaurants², both located on Harbor Island. This agenda sheet addresses the business terms of the option and lease agreement, certification of the environmental impact report (EIR), approval of the Port Master Plan Amendment (PMPA) and concept approval for the proposed development of a new hotel on the 600-slip Sunroad Resort Marina leasehold.

In June 2008, Sunroad submitted a proposal for the development of a \$30 million, 175-room limited service hotel. In September 2008, District staff commenced environmental review of the proposed hotel and associated PMPA.³ The District hired an environmental consultant to prepare the EIR, held a public scoping meeting, and completed the Draft EIR which was made available for public review in late 2009. Comments received on the Draft EIR warranted revisions to and recirculation of portions of the Draft EIR. The Recirculated Portions of the Draft EIR were made available for public review in late 2010.

¹ SDUPD Clerk's Document Number 20323, filed 2/2/1987, SDUPD Lease to Harbor Cove Marina Partners of Property Located on Harbor Island Drive, San Diego, California for Forty Years, Commencing February 1, 1987 and Ending January 31, 2027

² SDUPD Clerk's Document Number 3108, filed 2/20/1968, SDUPD Lease with Bankers Life Insurance Company of Nebraska for Operation of a Restaurant, Cocktail Lounge and Gift Shop and Related Facilities thru April 30, 2028

³ SDUPD BPC Meeting dated September 2, 2008, Agenda Item No. 34: Sunroad Asset Management A) Preliminary Project Review for the Proposed Hotel Development on the Sunroad Resort Marina Parcel by Sunroad Asset Management, Inc. B) Direct Staff to Proceed with Environmental Review for the Proposed Hotel Development on the Sunroad Resort Marina Parcel by Sunroad Asset Management, Inc. C) Resolution Waiving BPC Policy No. 110 and Authorizing a Three-Party Agreement between Sunroad Asset Management, Inc., Jones and Stokes Consulting, and the Port District for Environmental Review Consulting Services for a Period of 12 Months and for a Fee Not to Exceed \$140,000, BPC Resolution No. 2008-188

San Diego Unified Port District Board Meeting – May 10, 2011

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The existing certified Port Master Plan (PMP) describes a high quality hotel of up to 500 rooms on the westernmost parcel of East Harbor Island (located west of the project site), which is currently used by the San Diego International Airport for employee parking. The draft PMPA modifies portions of the Planning District 2, Harbor Island/Lindbergh Field, precise plan text, map, and land use acreage tables to change the 500-room hotel to multiple hotels with a cumulative total of up to 500 rooms, and includes the proposed road and traffic circle realignment that are part of the hotel development. The 175 hotel rooms proposed as part of the project would constitute a portion of the 500 total hotel rooms on East Harbor Island.

A 36-month option has been negotiated with Sunroad for a new 55-year lease which incorporates both the marina currently operating on the leasehold and the proposed hotel. Exercise of the option would be contingent upon the Board's certification of the EIR and approval of the PMPA in its sole and absolute discretion, the Coastal Commission's certification of the PMPA, and the approval of an appealable CDP. In accordance with Board Policy No. 355 (BPC 355), Sunroad's \$30 million investment will qualify for a new 55-year lease term for the entire project.

Staff recommends that the Board grant an option agreement, certify the EIR, adopt the PMPA, and grant concept approval to Sunroad for development of a 175-room hotel on Harbor Island. This project is expected to generate additional revenue from the existing leasehold as well as drive additional business to adjacent tenants. The project will also improve public access on Harbor Island by enhancing the existing promenade from the adjacent restaurant parcel along the east Harbor Island basin.

RECOMMENDATION:**Sunroad Harbor Island Hotel**

- A) Adopt Ordinance Granting Option Agreement with Sunroad Marina Partners, LP for New 55-Year Lease for a 175-Room Hotel on Harbor Island
- B) Conduct Public Hearing and Adopt Resolution Certifying the "Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment" Environmental Impact Report, Adopting Findings of Fact and a Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Project, and Directing Staff to File the Notice of Determination
- C) Conduct Public Hearing and Adopt Resolution Approving East Harbor Island Subarea Port Master Plan Amendment and Directing Staff to File with the California Coastal Commission for Certification
- D) Adopt Resolution Granting Concept Approval for the Hotel Project

FISCAL IMPACT:

Granting the option will result in a non-refundable payment to the District of \$109,250 as consideration for granting the option.

The proposed Board action will not result in further fiscal impact. Sunroad's current minimum annual rent for the marina is \$900,000. Last year the marina paid approximately \$1,100,000 in percentage rent to the District. If the option is exercised, the new rent schedule will accelerate from flat rent of \$900,000 in year one of the new lease to an estimated total minimum and percentage rent of \$2,065,000 in year five, an increase of \$825,000 over the estimated marina rent upon stabilization for the new project.

COMPASS STRATEGIC GOALS:

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

- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☒ Strengthen the Port's financial performance.

DISCUSSION:**Background:**

Sunroad currently has a 50-year lease with the District for a 600-slip marina on Harbor Island that will expire in 2037. The proposed hotel would be built on the same leasehold and operate in conjunction with the marina.

The east end of Harbor Island has long been envisioned as a hotel site. An entitlement has been in place for a 500-room hotel on the westernmost parcel of east Harbor Island since 1990. The District has reviewed several proposals for large resort style hotels over the years. The District has been working with Sunroad since early 2005 to redevelop the marina parcel and add a hotel. On December 6, 2005, the Board directed staff to proceed with environmental review of a 600-room hotel proposed by Sunroad on the eastern end of Harbor Island.⁴ The hotel consisted of a multi-phase, 24-story tower with structured parking, meeting space, and restaurants. Due to an economic downturn combined with staff concerns regarding impacts to views, biological resources, geotechnical considerations, traffic/circulation, FAA height restrictions and public services, Sunroad withdrew their hotel submittal. As such, the environmental review was halted and the project was abandoned.

⁴ SDUPD BPC Meeting dated December 6, 2005, Action Agenda Item No. 27. A) Preliminary Project Review for the Proposed Redevelopment of East Harbor Island by Sunroad Asset Management, Inc.; B) Direct Staff to Proceed with Environmental Review for the Proposed Redevelopment of East Harbor Island by Sunroad Asset Management, Inc.

At the September 2008 Board meeting, the Board was presented with preliminary plans for a new hotel proposed by Sunroad to redevelop the east end of Harbor Island with a 160-room limited service hotel which was increased to 175 rooms at the request of the Board. The Board subsequently authorized commencement of environmental review of the new project.

Proposed Project:

Sunroad has proposed to develop a 175-room, four-story limited service hotel with ancillary meeting and fitness space, common areas, an exterior pool, and surface parking on east Harbor Island. The proposed hotel would be similar in quality and amenities to a Courtyard by Marriott or a Hilton Garden Inn. The proposed development will be located on the east end of the existing Sunroad marina leasehold and will replace an existing locker building and some parking, with the existing marina offices to remain. While the project will remove 111 of the existing marina parking spaces, based on a parking analysis conducted by traffic consultants Linscott, Law and Greenspan the project will contain adequate surface parking for both the hotel and marina. The project will increase public access on East Harbor Island by enhancing the public promenade along the Harbor Island East Basin to connect to the promenade that will be located on the adjacent redeveloped restaurant leasehold. Sections of Harbor Island Drive located immediately to the south of the proposed hotel, the traffic circle, and the underlying utilities will be realigned to accommodate the project. The Sunroad Resort Marina will remain open for business during the hotel construction. The project is shown in the attached PROPOSED PROJECT SITE LAYOUT and PROPOSED PROJECT SCHEMATICS.

The limited service nature of the hotel will provide a lower price point as compared to full service competitors. Sunroad is projecting an average daily rate (ADR) of \$210 and revenue per available room (RevPar) of \$169 with 81% occupancy in year five. This translates into an estimated \$825,000 in new revenue to the District in year five in addition to \$1,240,000 already being generated by the marina. Based on a May 2009 District-commissioned study of the Sunroad proposal conducted by Maurice Robinson & Associates, LLC, these projections are attainable compared to other similar hotels in the area. In addition, the hotel is likely to generate business at the adjacent Island Prime restaurant and the former Reuben E. Lee restaurant once it is redeveloped.

Proposed Developer:

This project will be developed by Sunroad Marina Partners, LP which is wholly owned by Sunroad, which in turn is wholly owned by Aaron Feldman. The company was founded in San Diego in 1977 and is comprised of real estate holdings and automotive divisions. In addition to their marina on Harbor Island, Sunroad operates the Island Prime restaurant on District tidelands through a subtenant (Kirschcohn, Inc.) of its subsidiary, Sunroad Asset Management, Inc., and is under option to redevelop the

former Reuben E. Lee restaurant located on the same leasehold.⁵ Sunroad has a successful track record of off-tidelands development which includes commercial, resort, residential and automotive projects. Sunroad is considered a tenant in good standing by the District.

The development team includes local architects Awbrey Cook & McGill, a firm specializing in hospitality with specific experience in building limited service hotels.

Proposed Operator:

Sunroad has represented that negotiations with a top national hotel brand catering to business and personal travelers are nearing completion. Sunroad will be required to submit the hotel brand selection and management agreement to the District for approval as a condition of the proposed option agreement.

Proposed Option Agreement:

The proposed option agreement is for a 36-month period and is described in the attached PROPOSED OPTION AGREEMENT INFORMATION SUMMARY and also attached in draft form. This 36-month option period ensures ample time for Sunroad to secure financing for the project without returning to the Board for an option extension. In addition, since the underlying Sunroad lease does not expire until 2037, there is no opportunity cost associated with a longer option period. As an incentive for early exercise of the option, if Sunroad is able to exercise the option within 24-months of the commencement date, the rent schedule will include an additional year of flat rent. This early exercise incentive is discussed further in the Proposed Lease section below.

The non-refundable consideration for the option agreement is \$109,250. Pursuant to BPC 355, the consideration was calculated by taking 25% of the difference between the current minimum annual rent of \$900,000 and the projected first year's minimum annual rent of \$1,337,000 ($.25 \times \$437,000 = \$109,250$).

During the option period, Sunroad must submit several items for District approval which are listed on the attached PROPOSED OPTION AGREEMENT INFORMATION SUMMARY. The option deliverables include the following:

⁵ SDUPD Clerk's Document Number 53527, filed June 13, 2008, SDUPD Option to Lease Agreement to Sunroad Harbor Island, Inc.

Deliverables	Due to District (months after option commencement)
CEQA document certified and PMPA approved:	before option exercise
Schematic drawings (30% design):	10
Development plans (60% design):	18
Hotel brand selection:	18
Working drawings (90% design):	22
Hotel management agreement:	32
Project financing:	32
Development permits including a Coastal Development Permit:	32
Performance bond:	32

The due dates above represent a three year option period. All deliverables would need to be submitted and approved prior to 24-months after the commencement date of the option for Sunroad to qualify for the early exercise incentive. After all the conditions precedent have been satisfied, Sunroad may exercise the option, enter into the new lease and begin construction.

Proposed Lease:

Lease Term: The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY and the proposed new lease is attached in draft form. Sunroad's proposed hotel development qualifies for a 55-year lease term per BPC 355. BPC 355 describes two methods for determining the term of a lease. If the project is a new development, then the term is determined by an analysis of the useful life of the new improvements. If the project is a redevelopment of existing improvements, then the calculation of the term is based on a comparison of the ratio of the leasehold replacement cost as redeveloped to the proposed capital investment in the project. Because the hotel will be a new development and the marina is in like-new condition the term is based on the useful life of the project as a new development. (If the project involved the redevelopment of the marina improvements only, the calculation of the lease term would be based on an analysis of the capital investment in the redevelopment.) This approach is consistent with similarly situated hotel/marinas on tidelands where the hotel and marina are viewed as a single project and therefore qualify for a longer term than just a marina. According to the life expectancy tables published by Marshall Valuation Service and included in BPC 355, the useful life of a four-story, good quality, limited service hotel is 55 years.

Sunroad's \$30 million investment would also qualify for a 55-year lease term extension as a redevelopment project. However, the calculation for a redevelopment project requires that the capital investment is used to upgrade or replace the existing improvements and not for new development. Since the leasehold is currently developed with a marina and the capital investment is for a new hotel, this method is less applicable than the useful life calculation described above.

Rent Schedule: Sunroad Resort Marina's minimum annual rent is currently \$900,000 and last year the District received approximately \$1,100,000 in total percentage rent from the marina. Once the proposed option is exercised, a new rent schedule will be effective which combines the minimum rent for the hotel and marina and includes several years of flat rent during construction and the new project's ramp-up period.

Ramp-up Period: A flat rent schedule is proposed for the first three to four years of the new lease depending on when Sunroad exercises the option. The District currently generates approximately \$1,100,000 in rent from the marina. Once the new lease is in place, during the two year construction period the marina rent will be replaced with flat rent of \$900,000 for year one and \$1,000,000 for year two. The flat rent will continue at \$1,100,000 for year three and either \$1,200,000 for year four if Sunroad exercises the option early or projected percentage rent of \$1,830,000 if Sunroad does not exercise the option early. Once the project is completed and has reached stabilization in year five of the lease and the percentage rent schedule is in place, the estimated percentage rent payment to the District will be \$2,065,000, an increase of \$825,000 over projected marina revenues in that year.

The flat rent structure during the early years of the lease is expected to greatly increase Sunroad's ability to finance the project because it eliminates uncertainty in the amount of rent being paid during the initial ramp-up period. In addition, Sunroad anticipates a potential reduction in marina revenue during the construction of the hotel because slip renters may want to avoid construction impacts from the hotel project.

Early Option Exercise Incentive: Depending on when Sunroad exercises the option, there are two possible rent schedules. If Sunroad is able to exercise the option within 24-months of the commencement date, the flat rent schedule will continue for the first four years of the lease. If Sunroad does not exercise the option within 24-months of the commencement date, the fixed rent schedule will only continue for the first three years of the lease. The District will begin receiving percentage rent in the same year in either scenario because a one year delay in exercising the option will result in one year less of flat rent. If Sunroad exercises the option in two years the flat rent schedule will continue for the first four years of the lease. If Sunroad exercises the option in three years the flat rent schedule will continue for the first three years of the lease. This is intended to provide an incentive for Sunroad to exercise the option early.

The proposed (combined) rent schedule is shown in the table below:

Year	Rent if Option is exercised before 24 months	Estimated Rent (per pro-forma)	Rent if option is exercised after 24 months	Estimated Rent (per pro-forma)
1	\$900,000 flat	\$900,000	\$900,000 flat	\$900,000
2	\$1,000,000 flat	\$1,000,000	\$1,000,000 flat	\$1,000,000
3	\$1,100,000 flat	\$1,100,000	\$1,100,000 flat	\$1,100,000
4	\$1,200,000 flat	\$1,200,000	\$1,337,000 MAR vs. %	\$1,830,000
5	\$1,337,000 MAR vs. %	\$2,065,000	\$1,483,000 MAR vs. %	\$2,065,000
6+	\$1,483,000 MAR vs. %	\$2,129,000	\$1,483,000 MAR vs. %	\$2,129,000

The lease would be subject to rent reviews beginning in year 10 and every 10 years thereafter in addition to mid-term CPI adjustments beginning in year 15. The minimum rent will not be set at less than 75% of the average total percentage rents paid during the prior three years per the terms of the proposed lease.

Marina Maintenance Audits: Since the Sunroad Resort Marina will already be approximately 27-years old upon commencement of the new lease, staff has included a requirement that marina maintenance audits be completed at Sunroad's expense every five years beginning in 2027 (10-years prior to the marina's current termination date). Sunroad will be obligated to complete any work identified as required in the maintenance audit. If Sunroad does not complete the work identified in the audit, the District may require that Sunroad deposit three percent of gross revenues annually into a reserve account to pay for maintenance. If the District consents to a transfer of Sunroad's interest in the lease, the reserve account requirement will also be triggered.

Port Master Plan Amendment:

The proposed project includes the East Harbor Island Subarea PMPA to modify portions of the Planning District 2, Harbor Island/Lindbergh Field, precise plan text, map, and land use acreage tables. The existing certified PMP precise plan text describes a high quality hotel of up to 500 rooms on the westernmost parcel of East Harbor Island (located west of the project site), which is currently used by the San Diego International Airport for employee parking. A copy of the draft East Harbor Island Subarea PMPA is attached.

Draft PMPA: To facilitate development of the proposed project, the draft PMPA includes the following revisions to the PMP:

- Updating the PMP land use acreage tables and Precise Plan for Planning District 2, Harbor Island/Lindbergh Field to the commercial recreation, street, open space (traffic circle), and promenade designations;
- Updating the Planning District 2, Harbor Island/Lindbergh Field, Project List to change the 500-room hotel to multiple hotels with a cumulative total of up to 500 rooms, and include the proposed road and traffic circle realignment. The 175 hotel rooms proposed as part of the project would constitute a portion of the 500 total hotel rooms on East Harbor Island.

In compliance with the California Coastal Act (Section 30712), the District issued a Notice of Completion and Public Hearing of the draft PMPA on Saturday, April 9, 2011 in the San Diego Union Tribune and Monday, April 11, 2011 in the San Diego Daily Transcript. This provided the required 30-day notice to members of the public, organizations, and governmental agencies of the completion of the draft PMPA and the public hearing for adoption by the Board.

Sunroad has requested District staff consider processing an appealable Coastal Development Permit (CDP) for the proposed project closer to Coastal Commission certification of the PMPA as a way to potentially expedite the entitlement process for the project. Typically, projects are processed linearly, whereby District staff requests the Board authorize issuance of the CDP following PMPA certification by Coastal Commission. This would be the first time the District would process a CDP prior to certification of the PMPA. Sunroad has assumed the potential risks and costs associated with this process.

Coastal Commission Feedback: Staff has met with local Coastal Commission staff in person and via telephone to discuss the draft PMPA. In addition, Port and Coastal Commission staffs exchanged letters discussing Coastal Commission concerns regarding the proposed project. Throughout this process, Port staff has worked through concerns raised in respect to views, site accessibility, pedestrian linkages, signage, a shuttle, and activating uses. However, outstanding issues with Coastal Commission staff regarding the PMPA include 1) development of a shoreline promenade throughout the entire length of East Harbor Island, and 2) provision of low-cost accommodations. These issues are discussed further below:

Shoreline Promenade: The PMPA Precise Plan (Figure 9 of the PMPA) for Planning District 2 includes extending the pedestrian promenade to the east end of Harbor Island to incorporate the location of the promenade and public viewing platforms on the Reuben E. Lee Restaurant Replacement site, a project that was approved by the Board in June 2008. Coastal Commission staff requested the PMPA include the following modified language: "The existing promenade along the southern side of Harbor Island Drive will be extended alongside and adjacent to the shoreline to the eastern portion of the East Harbor Island subarea..." However, this language would not be consistent with the previously-approved Reuben E. Lee restaurant redevelopment project.

Development of a shoreline promenade alongside the Reuben E. Lee redevelopment project would require shifting the project westward, on top of existing earthquake fault lines. The location of the fault lines on East Harbor Island can be found in Appendices H-1 and H-2 of the Draft EIR. Along with a promenade fronting the Reuben E. Lee restaurant redevelopment, the approved restaurant redevelopment will provide three public viewing platforms. Staff contends these new public access opportunities will be at least equal to the public access opportunity afforded by a promenade directly adjacent to the shoreline.

Low-cost Accommodations: In addition, Coastal Commission staff is requesting policy language that addresses the affordability of overnight accommodations and the provision of or in-lieu funding for low-cost accommodation facilities. The District is currently developing an affordable accommodations policy to address this issue. In addition, the project is anticipated to have an ADR that is considered be a "moderate cost."

Environmental Impact Report:

The "Sunroad Harbor Island Hotel and East Harbor Island Subarea Port Master Plan Amendment" Final EIR has been prepared in accordance with California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) and the State CEQA Guidelines. The Final EIR consists of five volumes, organized as follows: Volume 1 contains the comment letters regarding the Draft EIR and Recirculated Portions of the Draft EIR and the District's response to those letters; Volumes 2, 3, and 4 include the Draft EIR and its two volumes of appendices; and Volume 5 includes the Recirculated Portions of the Draft EIR and its associated appendices.

Draft EIR: Environmental review of the project, pursuant to CEQA, began in September 2008 at the direction of the Board. The Draft EIR evaluated a number of environmental issues including land use; biological resources; aesthetics; hydrology and water quality; hazards and hazardous materials; transportation, traffic, and parking; air quality; noise; geology and soils; public services and utilities; and recreation. The Draft EIR identified significant mitigable impacts to biological resources, hazards and hazardous materials, noise, geology and soils, and cumulative public services and utilities (solid waste). The Draft EIR also identified direct and cumulative unmitigable impacts to public services and utilities (fire protection services) and cumulative unmitigable impacts to traffic.

The Draft EIR analyzed the project and two alternatives - the CEQA-required No Project Alternative and the Reduced Project Alternative. The Reduced Project Alternative evaluated a 69-room hotel as that was the size hotel that would avoid all significant cumulative traffic impacts. Although the Reduced Project Alternative would avoid all cumulative traffic impacts associated with the project, it would not reduce or substantially avoid any of the other significant impacts identified for the project. The Draft EIR concluded that the Reduced Project Alternative could avoid the project's

potential impacts on traffic and would meet most of the project objectives, but it may not be feasible for economic reasons, as defined in Section 15364 of the State CEQA Guidelines.

The Draft EIR, dated December 2009, was made available for 45-day public review period from December 10, 2009 through January 25, 2010. The District received four comment letters (totaling 32 comments) on the Draft EIR from the California State Clearinghouse, Department of Toxic Substances Control, California Native American Heritage Commission, and the City of San Diego ("City"). The four comment letters are summarized as follows:

- California State Clearinghouse informed the District that the Draft EIR was distributed to various state agencies for their review.
- The California Native American Heritage Commission provided comments that express concern for potential buried Native American cultural resources and recommends consultation with local Native American tribes to identify any potential cultural resources. The letter also indicated that neither the project site nor any property within a one-half mile radius of the project site is located within the Native American Heritage Commission's Sacred Lands File Inventory. As identified in the Draft EIR, the project site is located on fill and no buried cultural resources or human remains are anticipated to be discovered during the project's site disturbance activities. No further action is required.
- The Department of Toxic Substances Control comment letter reiterated their concerns from the 2009 letter they provided on the Notice of Preparation. Those concerns regarding potential hazardous materials at the site were fully addressed in the Hazardous and Hazardous Materials and Air Quality chapters of the Draft EIR and mitigation was provided to fully mitigate these potential impacts to a level less than significant.
- The City provided comments on the preservation of uplands views, the project's solid waste generation, and the project's traffic analysis, including requests for clarification on some of the traffic analysis assumptions and methodology. The City indicated that the traffic analysis included in the Draft EIR did not use the most recent significance thresholds adopted by the City, and that incorrect roadway classifications and roadway capacities were used in the traffic analysis. The traffic analysis was revised as a result of this comment letter. The additional traffic, view, and solid waste comments raised by the City are addressed in the Final EIR.

With the exception of the City comments indicating the incorrect roadway classifications and roadway capacities were used in the traffic analysis, staff determined that all other comments did not raise any significant environmental issues not already included in the Draft EIR. Responses to the four comment letters are provided in the Final EIR.

Recirculated Portions of the Draft EIR: In response to comments received from the City on the Draft EIR, the traffic analysis was revised to incorporate the most recent significant thresholds and the correct roadway classifications and capacities. The revisions changed the conclusions of the cumulative traffic analysis, which warranted recirculation of the portions of the Draft EIR that were affected by a revision to the traffic analysis – Traffic, Cumulative Impacts, and Alternatives.

Due to the revised significance thresholds, roadway classifications, and roadway capacities, the 69-room hotel Reduced Project Alternative evaluated in the Draft EIR no longer avoided all significant cumulative traffic impacts. The 69-room hotel avoids four of the six significant cumulative traffic impacts. In addition, the Recirculated Portions of the Draft EIR added a second scenario – a 123-room hotel – to the Reduced Project Alternative. The 123-room hotel avoids three of the six significant cumulative traffic impacts. The Recirculated Portions of the Draft EIR concluded that the Reduced Project Alternative would not achieve several of the fundamental objectives of the project, and thus would be undesirable from a policy standpoint.

The Recirculated Portions of the Draft EIR was made available for a 45-day public review period from November 24, 2010 to January 10, 2011. The Recirculated Portions of the Draft EIR identified new traffic impacts - one additional cumulative intersection impact and two new cumulative street segment impacts. The District received five comment letters (totaling 27 comments) on the Recirculated Portions of the Draft EIR from the Department of Toxic Substances Control, the California Native American Heritage Commission, City of San Diego (two separate comment letters), and Adams Broadwell Joseph & Cardozo Attorneys on behalf of UNITE HERE. The Department of Toxic Substances Control and California Native American Heritage Commission letters are identical to the letters submitted on the Draft EIR. The remaining three comment letters are summarized as follows:

The two City comment letters had remaining comments that warranted clarification on some of the traffic analysis assumptions and methodology, as well as water and sewer main information for the project developer, and information on the project developer's contribution towards the construction of a new fire station. The water and sewer main comment did not address the adequacy of the EIR. The new fire station contribution comment did not address the adequacy of the EIR because the EIR identified a significant unavoidable impact to fire protection services and requires the Project Applicant to pay a fair-share contribution towards the construction of a new fire station. Responses providing clarification on the traffic comments are provided in the Final EIR.

The Adams Broadwell Joseph & Cardozo comment letter did not address the accuracy or adequacy of the Recirculated Portions of the Draft EIR but indicated they are still reviewing the Draft EIR and Recirculated Portions of the Draft EIR and requested to be notified by mail and email of all proposed actions related to the project. Adams Broadwell Joseph & Cardozo's client, UNITE HERE, has previously received all notifications on the public comment periods for the Notice of Preparation and

Scoping Meeting, Draft EIR, Recirculated Portions of the Draft EIR, and Notice of Completion and Public Hearing of the PMPA.

Staff determined that the comment letters did not raise any significant environmental issues not already included in the Draft EIR or Recirculated Portions of the Draft EIR. Responses to the five comment letters are provided in the Final EIR.

Mitigation Monitoring and Reporting Program: As concluded by the Draft EIR and Recirculated Portions of the Draft EIR, the project would result in various potentially significant environmental impacts. With the exception of the significant unmitigable public services and utilities (fire protection services), cumulative traffic, and cumulative public services and utilities (fire protection services) impacts, all project-level and cumulative impacts can be mitigated to below a level of significance with the implementation of the mitigation measures outlined in the Draft EIR and Recirculated Portions of the Draft EIR. These mitigation measures include various construction and operation-related mitigations. All mitigation measures, when they are to be carried out, the party responsible for carrying out them out, and their monitoring and reporting procedures are contained in the Mitigation Monitoring and Reporting Program (MMRP), which has been prepared in compliance with CEQA Guidelines Section 15097.

Findings of Fact and Statement of Overriding Considerations: CEQA requires the Board to adopt Findings of Fact for all significant project impacts, including impacts that are considered less than significant after mitigation and impacts that are considered significant and unmitigable. In addition, the significant and unmitigable impacts require the Board to also adopt a Statement of Overriding Considerations identifying that the District has balanced the specific economic, legal, social, technological, and other benefits of the project, including region-wide or statewide environmental benefits, against its unavoidable (unmitigable) significant environmental risks in determining whether to approve the project. The District finds that, pursuant to CEQA Guidelines Section 15093, the benefits of the project, including but not limited to increased employment opportunities and enhanced access to the shoreline, outweigh its significant adverse environmental impacts and, therefore, such impacts are considered acceptable. Accordingly, staff recommends the District adopt the Statement of Overriding Considerations.

Copies of the Final EIR, Findings of Fact and Statement of Overriding Considerations, and MMRP have been provided to the Board.

Port Attorney's Comments:

The Port Attorney's Office has reviewed the issues set forth in this agenda sheet and there are no legal concerns. The Board may analyze the issues presented and take appropriate action.

AGENDA ITEM 23

Page 14 of 14

Environmental Review:

The proposed Board action completes the CEQA process for this project.

Equal Opportunity Program:

Not applicable.

PREPARED BY: Tony Gordon
Area Real Estate Manager

Anna Buzaitis
Assistant Redevelopment Planner
Environmental and Land Use Management

ATTACHMENT C

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San Diego Unified Port District
P.O. Box 120488
San Diego, California 92112-0488
(619) 686-6583

**NOTICE OF PREPARATION
OF A DRAFT ENVIRONMENTAL IMPACT REPORT**

PROJECT TITLE: "SUNROAD HARBOR ISLAND HOTEL & PORT MASTER PLAN
AMENDMENT" (UPD #83356-EIR-686)

APPLICANT(S): Sunroad Holding Corporation and
San Diego Unified Port District (Lead Agency)

LOCATION: Redevelopment of three leaseholds located on the east end of Harbor
Island in Subarea 23 of the Harbor Island/Lindbergh Field Planning Area
District 2 of the Port Master Plan. The leaseholds are:

1. 8.4-acre parking lot northeast of the Harbor Island Drive T
Intersection, San Diego, CA
2. 955 Harbor Island Drive, San Diego, CA
3. 880 Harbor Island Drive, San Diego, CA

The east end of Harbor Island Drive from the T intersection to the traffic
circle is also included in the proposed redevelopment.

REFERENCE: CA ad. Code, Title 14, Secs. 15375; 15082; 15103 and PRC SEC
21080.4

The San Diego Unified Port District will be the Lead Agency and will prepare an environmental
impact report for the project identified below. We need to know the views of your agency as to the
scope and content of the environmental information, which is germane to your agency's statutory
responsibilities in connection with the proposed project. Your agency will need to use the EIR
prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the probable environmental effects are contained in the
attached materials. A copy of the Initial Study is not attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible
date but not later than 30 days after receipt of this notice. Comments regarding environmental
concerns will be accepted until 5:00 p.m., March 8, 2006, and should be sent via certified mail
to C.D. Magnus, San Diego Unified Port District, Land Use Planning Department, P.O. Box
120488, San Diego, California, 92112-0488. Please provide the name of a contact person for
your agency.

A public scoping meeting for this project will also be held on Tuesday, February 21, 2006
at 6:00 p.m. at the Embarcadero Planning Center (formerly Coral Reef Restaurant) at 688
Harbor Lane, San Diego, California.

Date:

Feb. 2, 2006

Signature:

John W. Hahn

Title:

John Hahn
Planning Services Manager

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SAN DIEGO COAST DISTRICT



NOTICE OF PREPARATION
of a
DRAFT ENVIRONMENTAL IMPACT REPORT
for the
"SUNROAD HARBOR ISLAND HOTEL &
PORT MASTER PLAN AMENDMENT PROJECT"
(UPD #83356-EIR-666)

**within the East Harbor Island Subarea (23) of the Harbor Island/Lindbergh Field
Planning District 2 of the San Diego Unified Port District Port Master Plan**

ENVIRONMENTAL REVIEW PROCESS

On December 8, 2005 the San Diego Unified Port District Board of Commissioners considered the Preliminary Project Review and directed staff to proceed with an environmental review of the proposed site redevelopment of the Sunroad Harbor Island Hotel & Port Master Plan Amendment Project. Port District staff determined that an Environmental Impact Report (EIR) would be required to address the proposed redevelopment and that a Port Master Plan Amendment would be necessary.

NOTICE OF PREPARATION

Publication of this Notice of Preparation (NOP) initiates the Port District's compliance with CEQA for the proposed project. The NOP is the first step in the CEQA process. Public comments are requested within thirty (30) days of NOP issuance, so comments will be accepted until 8:00 p.m. March 8, 2006. Comments regarding environmental concerns should be addressed to the San Diego Unified Port District, Land Use Planning Department, P.O. Box 120488, San Diego, California, 92112-0488. The Lead Agency (the Port District) will review the comments generated by the NOP to determine what issues should be addressed in the EIR. Other opportunities to comment on the environmental effects of the proposed project include:

- A public scoping meeting that will be held on Tuesday, February 21, 2006 at 8:00 p.m. at the Embarcadero Planning Center (formerly Coral Reef Restaurant) at 585 Harbor Lane, San Diego, California
- A forty-five (45) day public review period for the Draft EIR
- A public hearing for certification of the EIR and consideration of the adoption of a Port Master Plan Amendment to facilitate the proposed redevelopment.

ENVIRONMENTAL SETTING

The San Diego Unified Port District (Port District) has planning jurisdiction over tidelands including San Diego Bay and its hinterland. The Port Master Plan (PMP) establishes ten

- 1 -

planning districts covering 5,480 acres of the Port District tidelands. The Sunroad Harbor Island Hotel & Port Master Plan Amendment Project is located in the East Harbor Island Subarea 23 (Figure 1) of the Harbor Island/Lindbergh Field Planning District 2 portion of the Port Master Plan (Figure 2). The Harbor Island/Lindbergh Field Planning District 2 covers an approximate total of 995 acres, consisting of 815 acres of tidelands and 180 acres of submerged tidelands. District 2 is located east of Shelter Island and Point Loma, north of Coronado, and northwest of downtown San Diego. Subarea 23 covers an 81-acre portion of Harbor Island, south of the San Diego International Airport in the northern portion of San Diego Bay. This area consists of 25 acres of tidelands and 56.5 acres of submerged tidelands.

PROJECT DESCRIPTION

The proposed Sunroad Harbor Island Hotel & Port Master Plan Amendment Project encompasses the redevelopment of three leaseholds located in Subarea 23 of District 2 of the Port Master Plan. Two of these leaseholds are currently leased by Sunroad Holding Corporation. The third leasehold is currently leased to the San Diego County Regional Airport Authority (SDCRAA) through December 31, 2013 (with 180-day cancellation rights by either party).

The existing Sunroad leasehold located at the tip of the peninsula at 880 Harbor Island Drive is currently developed with the Island Prime Restaurant, which will be incorporated into the proposed redevelopment, and the vacant Reuben E. Lee Steamwheel Restaurant, which will either be dismantled or relocated.

The existing Sunroad Marina Partners leasehold located at 955 Harbor Island Drive is currently developed with a 600-slip marina, support buildings for the marina and surface parking. The landside elements of this leasehold are to be demolished, and a new marina building and parking for the marina will be built as part of the proposed development. The proposed development only affects the landside of this leasehold.

The San Diego County Regional Airport Authority leasehold, which is located at the northeast corner of the T intersection of Harbor Island Drive, is currently used as a surface parking lot for San Diego International Airport employees. This site has previously been entitled for a 500-room hotel and the surface parking is considered an interim use.

In addition to the three leaseholds specified above, the east end of Harbor Island Drive from the T intersection to the traffic circle is also included in the proposed redevelopment.

The project description presented in this Notice of Preparation includes the following physical changes to the areas mentioned above (see attached Figure 3 for a site plan):

1. Demolition of all existing structures except the Island Prime Restaurant and the Reuben E. Lee Steamwheel. The Reuben E. Lee will eventually either be dismantled or relocated.
2. Construction of two hotel towers totaling up to 600 Rooms and approximately 53,000 square feet of flexible indoor meeting and function space that will stand up to 280 feet in height.

- 2 -

3. Construction of approximately 15,000 square feet of spa area
4. Construction of approximately 35,000 square feet of restaurants and approximately 38,000 square feet of retail plazas at various locations in the proposed development
5. Construction of a new marina building and a beach club with a pool
6. Approximately 1,500 surface and structured parking spaces to be built in phases
7. Landscaping improvements including a "Great Lawn" open grassy area, an approximately 1.75-acre central square surrounded by a retail and restaurant plaza, meandering landscaped pathways, and an improved promenade along the Bay
8. Infrastructure improvements including narrowing of the east end Harbor Island Drive from four lanes to three lanes in Subarea 23, and the replacement of the existing traffic circle at the end of Harbor Island Drive with a smaller turnaround
9. Evaluation of an alternative scenario of the project in which a portion of the rooms will be marketed and operated as timeshare rentals
10. A Port Master Plan Amendment will be drafted to address any needed land use designation and text changes

ENVIRONMENTAL CONSIDERATIONS

The EIR will address the following probable environmental effects: traffic/circulation/parking, coastal access, visual resources, aesthetics, air quality, biological resources, recreation, Port Master Plan and Coastal Act consistency, cumulative impacts, geotechnical and others as identified as part of the Notice of Preparation process. The EIR will address a reasonable range of alternatives, as required by CEQA.

PORT MASTER PLAN

In the late 1960's, Harbor Island was formed into a peninsula from dredged material in the northern portion of San Diego Bay. In the Port Master Plan, the filled land area and the waters between the peninsula and the mainland to the north are devoted to Commercial Recreation and Recreation Boat Berthing uses (Figure 2). These uses include hotels, marinas, marine related businesses, and restaurants as well as public piers and a promenade providing public access to the shoreline of San Diego Bay. The Port Master Plan description for Subarea 23 includes the following language:

"The last project, a high quality hotel of approximately 500 rooms, is sited to be responsive to views of San Diego Bay, the airport, and the downtown San Diego skyline. Maximum building heights establish consistency with airport approach paths. The hotel complex includes restaurant, cocktail lounge, meeting and conference space,

recreational facilities, including piers, and ancillary uses. A marina of approximately 550 slips is located adjacent to the hotel and occupies most of the basin. The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge."

The proposed project primarily includes those uses outlined in this description, however some elements of the proposed project will warrant an Amendment to the Port Master Plan.

COMMENTS

Comments regarding environmental concerns should be addressed to the San Diego Unified Port District, Land Use Planning Department, P.O. Box 120488, San Diego, California, 92112-0488. Public comments on the NOP will be accepted until 5:00 p.m. on March 8, 2006.

FIGURE 1 - Planning Subarea

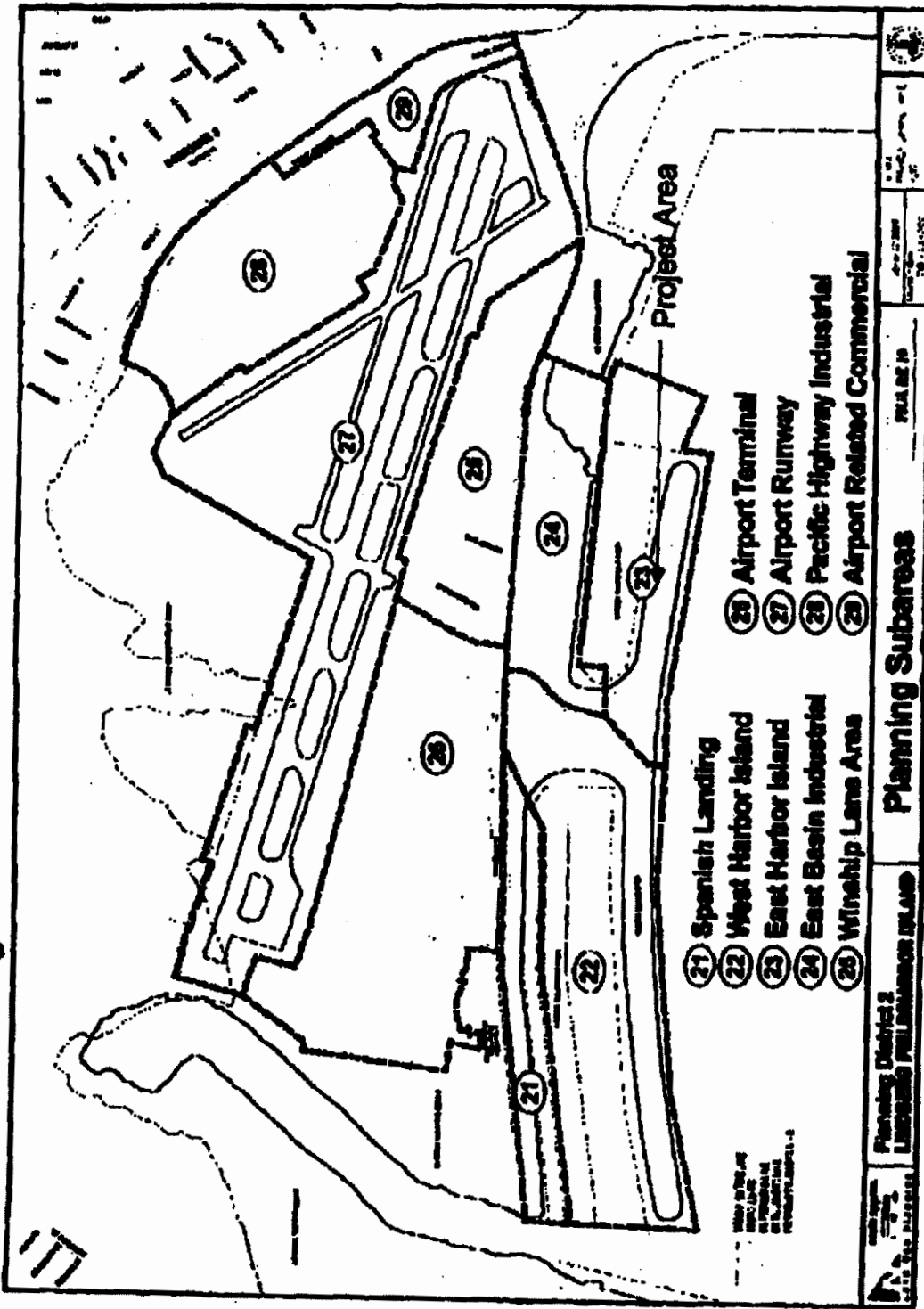


FIGURE 2 -- Precise Plan

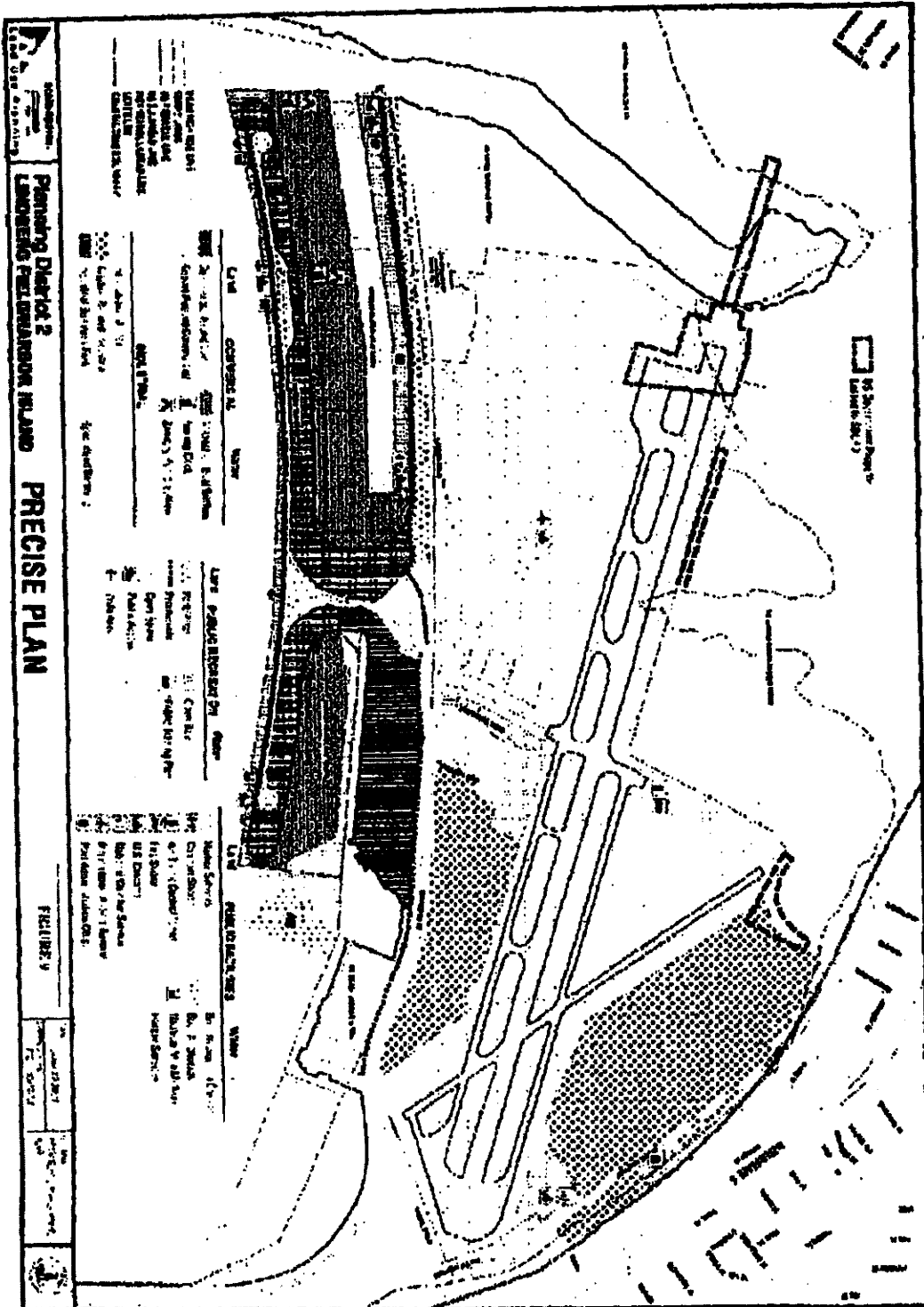
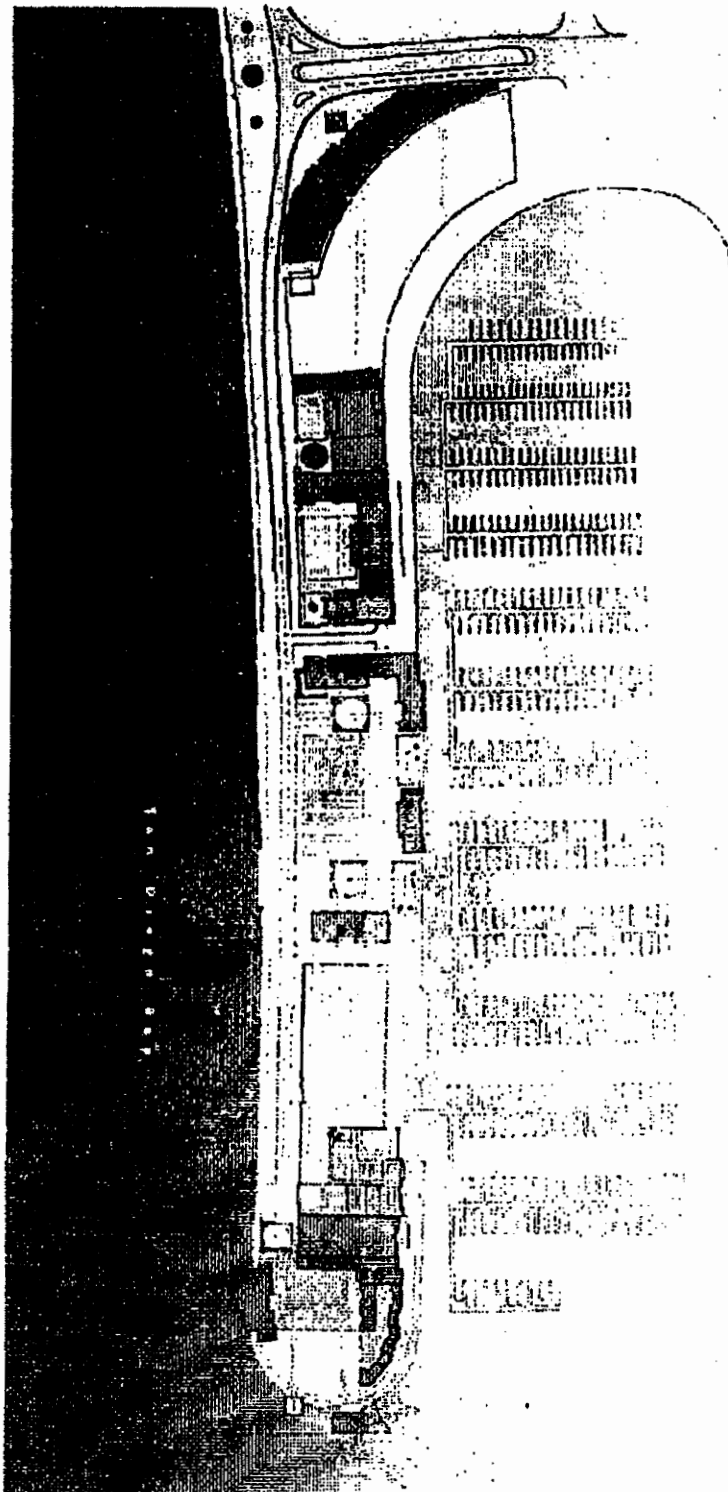


FIGURE 3 - Proposed Site Plan



ATTACHMENT D

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SAN DIEGO COAST DISTRICT

(8)

REFERENCE
COPY

AGENDA ITEM 34

54181

SAN DIEGO UNIFIED PORT DISTRICT

DATE: September 2, 2008

SUBJECT: **SUNROAD ASSET MANAGEMENT**

- (2)
- A) PRELIMINARY PROJECT REVIEW FOR THE PROPOSED HOTEL DEVELOPMENT ON THE SUNROAD RESORT MARINA PARCEL BY SUNROAD ASSET MANAGEMENT, INC.
 - B) DIRECT STAFF TO PROCEED WITH ENVIRONMENTAL REVIEW FOR THE PROPOSED HOTEL DEVELOPMENT ON THE SUNROAD RESORT MARINA PARCEL BY SUNROAD ASSET MANAGEMENT, INC.
 - C) RESOLUTION WAIVING BPC POLICY NO. 110 AND AUTHORIZING A THREE-PARTY AGREEMENT BETWEEN SUNROAD ASSET MANAGEMENT, INC., JONES AND STOKES CONSULTING, AND THE PORT DISTRICT FOR ENVIRONMENTAL REVIEW CONSULTING SERVICES FOR A PERIOD OF 12 MONTHS AND FOR A FEE NOT TO EXCEED \$140,000

EXECUTIVE SUMMARY:

On December 6, 2005, the Board of Port Commissioners ("Board") directed staff to proceed with environmental review of a 600-room hotel proposed by Sunroad Asset Management, Inc. ("Sunroad") on the eastern end of Harbor Island. The hotel consisted of a multi-phase, 24-story tower with structured parking, meeting space, and restaurants. Due to the recent economic downturn combined with staff concerns regarding impacts to views, biological resources, geotechnical, traffic/circulation, and public services, Sunroad withdrew their hotel submittal due to project feasibility.

Sunroad has now submitted a new proposal to redevelop the east end of Harbor Island with a limited service hotel. The hotel will be approximately 95,000 square feet, consisting of approximately 160 hotel rooms, limited meeting space (approximately 5,000 square feet) and common areas. The hotel will be a four-story structure with surface parking.

Staff is requesting direction from the Board to begin the environmental and coastal analysis as the first step in responding to Sunroad's proposed project. A three-party agreement between the District, Sunroad, and Jones & Stokes Consulting will need to be executed for the environmental analysis to commence. The project and three-party agreement will be further explained in the Discussion section.

RECOMMENDATION:

- A) Preliminary project review for the proposed hotel development on the Sunroad Resort Marina parcel by Sunroad Asset Management, Inc.

ACTION TAKEN: 09-02-08 - Resolution 2008-188

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AR4635

- B) Direct staff to proceed with environmental review for the proposed hotel development on the Sunroad Resort Marina parcel by Sunroad Asset Management, Inc.
- C) Resolution waiving BPC Policy No. 110 and authorizing a three-party agreement between Sunroad Asset Management, Inc., Jones and Stokes Consulting, and the Port District for environmental review consulting services for a period of 12 months and for a fee not to exceed \$140,000.

FISCAL IMPACT:

This proposed Board action will not result in any fiscal impact to the District.

DISCUSSION:

Project Description

Sunroad withdrew their previous proposal and has now submitted a new plan and conceptual design for a hotel development on East Harbor Island. Sunroad is proposing to construct a limited service hotel of approximately 160 rooms. The project will be approximately 95,000 square feet consisting of hotel rooms, limited meeting space (approximately 5,000 square feet) and common areas. The hotel will be a four-story structure with surface parking, which is more efficient and will have fewer impacts than the original 600-room hotel proposal. The limited service nature of the hotel will provide a lower price point as compared to full service competitors.

The proposed development will be located on the east end of the Sunroad Resort Marina leasehold and will replace an existing locker building and some parking, with the existing Marina offices to remain. The proposed development anticipates moving the existing traffic circle to realign the road and lot lines.

Sunroad anticipates that construction of the hotel will be a 12 to 18-month process. Construction would commence upon receipt of all necessary approvals and permits. Sunroad projects that the design and permitting of the hotel can happen within an 18-month period under an Option Agreement with the District.

Three-Party Agreement

On February 14, 2006, the Board authorized the Executive Director to enter into a three party agreement between the District, Sunroad and Jones and Stokes Associates to prepare an Environmental Impact Report (EIR) for a 600-room, twin tower hotel project. The three-party agreement allows the District to have project management and oversight of the EIR preparation and the consultants while all invoices are paid by the applicant. In this way, no direct District funds are spent on the EIR preparation. Jones and Stokes was selected through a competitive proposal process and prepared a

"screencheck" Draft EIR which was submitted to the District in January 2007. Since that time, there has been no further activity on that project or on the EIR and on April 30, 2007 the term of the three-party agreement expired.

Since the existing screencheck Draft EIR already contains background information and analysis that would still be applicable for the revised 160-room hotel project, Staff believes that retaining Jones and Stokes on a sole source basis through a new three-party agreement results in considerable savings in terms of time, expense and project familiarity. Therefore, Staff recommends that the Board waive BPC Policy No. 110 and authorize the Executive Director to enter into a three-party agreement between the District, Sunroad and Jones and Stokes Associates to prepare an EIR for the revised hotel project. Jones and Stokes estimates that the EIR will cost approximately \$140,000, all of which will be borne by Sunroad.

Development Team

Sunroad Asset Management, Inc. is wholly owned by Sunroad Holding Corporation (dba Sunroad Enterprises), which is wholly owned by Aaron Feldman. The company was founded in San Diego in 1977 and is composed of real estate holdings and automotive divisions. Sunroad entities have developed over 1.5 million square feet of commercial offices, Sunroad Resort Marina, Maderas Golf Course, Pacific Honda, Kearny Mesa Toyota, Toyota Chula Vista, Toyota California, and Sunroad Centrum among others.

Sunroad has a long-term relationship with the District and is considered to be a tenant in good standing in accordance with BPC Policy No. 355. Sunroad owns and operates the Sunroad Resort Marina and owns the Island Prime Restaurant on Harbor Island operated by The Cohn Restaurant Group. Sunroad also received Board approval in June 2008 to redevelop the retired Rueben E. Lee restaurant on Harbor Island.

Sunroad has teamed up with local architects Awbrey Cook & McGill, a local firm specializing in hospitality with specific experience in building limited service hotels.

Lease Considerations

The subject of this Agenda Sheet is to commence environmental review for planning purposes. Subject to the results of that review, the next step would be to commence negotiations with Sunroad for an Option Agreement to lease and redevelop the property, in conjunction with Board approval.

The remaining lease term for Sunroad Marina Partners is approximately 19 years. Following commencement of the EIR, staff will begin negotiations with Sunroad for lease documents needed for the proposed development. The terms of the existing lease is summarized on the attached LEASE INFORMATION SUMMARY.

Project Benefits

Upon completion, the proposed development will generate the following beneficial impacts for the economy and create new amenities for the area:

- Increase District revenues
- Increase local employment opportunities
- Increase local TOT and sales taxes
- Realize the potential of this unique waterfront real estate, which is currently underdeveloped
- Re-energize the Harbor Island area with new local venues and access to views of the city and bay

Conclusion

District staff recommends Board approval to commence environmental review, waive BPC 110 and to enter into a three party agreement with Jones and Stokes Consulting to begin drafting the EIR. The proposed hotel has the potential to capitalize on the spectacular views from the site, act a catalyst to re-energize and re-invent the east end of Harbor Island, and to provide a valuable new asset to the District and to San Diego.

Port Attorney's Comments:

The Port Attorney has reviewed and approved the three party agreement for form and legality.

Environmental Review:

Sunroad has prepared or will prepare a number of preliminary environmental analyses including but not limited to parking, traffic, geotechnical and visual. Upon authorization by the Board to commence environmental review, Land Use Planning staff will retain Jones & Stokes Consulting to draft the EIR on behalf of Sunroad and the District.

Port Master Plan – Compliance with Current Land Use Designation

The proposed project will require a Port Master Plan Amendment. The previous 600-room hotel proposal included hotel facilities on the marina parcel and an adjacent parcel to the west which was the subject of the East Harbor Island Hotel site Port Master Plan Amendment (PMPA) of 1990. The 1990 PMPA entitled the westerly 6.4-acre parcel for a hotel complex of 400 to 500 rooms. The Sunroad Resort Marina is identified in the current Port Master Plan as "A marina of approximately 550 slips is located adjacent to the hotel and occupied most of the basin." Hotel use on the marina parcel needs to be added to the Port Master Plan text. In addition the 160-room hotel project proposes to change Street designated land to Commercial Recreation and

relocate Open Space from the existing cul-de-sac to achieve higher public recreational benefits. Modification of the Harbor Island Precise Plan land use designations and adding the hotel use to the existing marina parcel requires the preparation and approval of a Port Master Plan amendment.

Coastal Development Permit

The proposed project will require an Appealable Coastal Development Permit (CDP). The District's Coastal Development Permit Regulations indicate an Appealable CDP is required when hotels are proposed for development on lands within California Coastal Commission certified Port Master Plan jurisdiction. The CDP would not be issued until after the Coastal Commission certifies the Port Master Plan amendment.

Equal Opportunity Program:

Not applicable.

PREPARED BY: Anthony Gordon
 Asset Manager, Real Estate

 Tricia A. Wagner
 Assistant Asset Manager, Real Estate

 William Briggs
 Senior Redevelopment Planner, Land Use Planning

ATTACHMENT E

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SAN DIEGO COAST DISTRICT

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Bixler at 1:02 p.m., Tuesday, June 10, 2008, in the Board Room at 3165 Pacific Highway, San Diego, California.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Bixler, Black, Najera, Rios, Spane, and Valderrama;
OFFICERS Bennett, Liner, McEntee and Redmon.

Absent: None.

Excused: Cushman for non-District related business.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Chairman Bixler led the Pledge of Allegiance.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Rios, seconded by Commissioner Najera, the Board approved, in a single vote, the minutes submitted for the special meetings of: April 28, 2008, April 29, 2008, and May 6, 2008; and the regular meeting of May 6, 2008 by the following vote: Yeas-Bixler, Black, Najera, Rios, Spane, Valderrama; Nays-None; Excused-Cushman; Absent-None; Abstained-None.

PUBLIC COMMENTS

Agenda Item 4. The following members of the public addressed the Board: David Leo addressed the Board and supported Resolution 2008-80, the Board of Port Commissioners of the San Diego Unified Port District opposes the Initiative known as "The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative"; Robert Kard, San Diego County Air Pollution Control District, addressed the Board regarding the District's Clean Air Program; and Sharon Cloward, San Diego Port Tenants Association, addressed the Board regarding Operation Clean Sweep.

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ACTION AGENDA

SUNROAD HARBOR ISLAND, INC.

Agenda Item 33ab. Annette Dahl, Area Real Estate Manager, Real Estate, addressed the Board and presented the staff recommendation regarding the Sunroad Harbor Island proposed development. Ms. Dahl introduced Uri Feldman, Sunroad Harbor Island, Inc., who addressed the Board regarding the project. Mr. Feldman introduced Graham Downes, Graham Downes Architecture, who addressed the Board regarding the proposed restaurant design. Mr. Downes introduced David Cohn, President, Cohn Restaurant Group, who addressed the Board regarding the restaurant's operations management. Mr. Cohn introduced Chef Deborah Scott. Tony Gordon, Real Asset Manager, Real Estate, addressed the Board regarding the option agreement. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Rios requested and received clarification regarding the restaurant's impact on a potential hotel development on the land mass. Mr. Feldman stated that due to an earthquake fault at the proposed original hotel location, the restaurant was being placed east of the earthquake fault, and if a hotel development was to be considered, it would be placed west of the earthquake fault. Mr. Feldman stated that the restaurant would not interfere in the development of a hotel in the future.

Commissioner Valderrama commended the staff for their presentation, and acknowledged the development team for their innovative use of the property to design a restaurant with a unique and beautiful concept that incorporates the benefits of the waterfront.

Commissioner Najera thanked the staff and the Sunroad Harbor Island, Inc. development team for working collaboratively to design a great facility.

Chairman Bixler requested, for the record, clarification of the design layout and the availability for the public access to the pedestrian promenade. Ms. Dahl stated that staff had worked with Sunroad to explore the opportunity to place a promenade between the restaurant and the waters edge, and that operational constraints existed because of the restaurant layout and the shared liquor license. Ms. Dahl stated that the developers did propose to include three public viewing platforms connected by the new promenade in their conceptual design. Chairman Bixler stated that the matter of public access must be addressed as a matter of significance and not addressed as an after

thought in the design. Mr. Feldman responded that a public promenade is not currently available on the property, and the development plan includes three enhanced viewpoints that were designed without obstruction to the sight lines. Mr. Feldman stated that the viewpoints were designed to encourage members of the public to visit the bay front.

Chairman Bixler requested that staff explore the possibility of ensuring continuation of the current dock and dine program with the adjacent Sunroad Marina in the event either leasehold changed ownership. In response to the Chairman's comments, Ms. Dahl stated that staff was currently working on a dock and dine policy that would apply to all restaurant parcels. Additionally, because the two leaseholds were adjacent and had common ownership, they enjoyed the benefit of a dock and dine program, but if the leaseholds were separated, there would not be any water area available for dock and dine. Mr. Wilkens suggested that Chairman Bixler include as part of the motion his request that staff explore the suggestion that dock and dine become a permanent part of the leasehold. Mr. Feldman stated that, in light of the parking lot facilities, and the dock and dine provisions during the negotiation process, the Sunroad team requested that staff consider the two parcels be joined as one leasehold. Mr. Feldman further reported that the District staff stated that they did not feel that parking and dock and dine were a sufficient nexus for the leases to be joined and the properties were required to operate as two independent leases. Mr. Feldman expressed his concern that if in the future, changes to the ownership of the leasehold were to occur, then Sunroad did not wish to encumber the marina or the restaurants with the responsibility of dock and dine. Mr. Wilkens suggested that staff would explore the request from the Chairman and discuss the concerns of the tenant and following those negotiations staff would request further direction from Board if it was required.

Commissioner Valderrama stated that he did not feel that incorporating dock and dine into the restaurant lease negotiations would be appropriate at the present time.

Commissioner Valderrama made a motion to accept the staff recommendation to approve the concept approval for the proposed restaurant renovation as presented. Duane Bennett, Port Attorney, requested and received confirmation from Commissioner Valderrama that his motion included items 33a and 33b.

On motion of Commissioner Valderrama, seconded by Commissioner Najera, the Board, in a single vote, approved **Ordinance 2504**, Granting an Option Agreement with Sunroad Harbor Island, Inc. for a new 40-Year Lease, and **Resolution 2008-108**, Granting Approval to Sunroad Harbor Island, Inc. for proposed Restaurant Renovation

by the following vote: Yeas-Bixler, Black, Najera, Rios, Valderrama; Nays-None; Excused-Cushman and Spane; Absent-None; Abstained-None.

Chairman Bixler announced that the Board would take a ten-minute break before the next agenda item.

Chairman Bixler called the meeting back to order at 3:13 p.m.

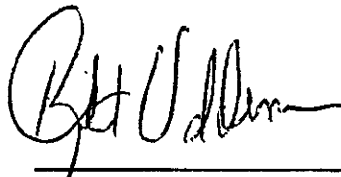
ORDINANCE GRANTING LEASE AMENDMENT NO. 8 TO THE SAN DIEGO MOORING COMPANY, LLC LEASE AUTHORIZING THE ADDITION OF 25 DUAL-POINT MOORINGS AT THE LAUREL STREET ROADSTEAD (A-3 ANCHORAGE) IN SAN DIEGO

Agenda Item 34. Wendy Fan, Asset Manager, Maritime Operations and Properties, addressed the Board and presented the staff recommendation regarding the Ordinance Granting Lease Amendment No. 8 to the San Diego Mooring Company, LLC Lease Authorizing the addition of 25 Dual-Point Moorings at the Laurel Street Roadstead (A-3 Anchorage) in San Diego. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Bixler requested, for the record, and received confirmation from Ms. Fan that the A-8 permit holders and A-9 (disabled) permit holders that are on the waiting list would be offered one of the moorings in the A-3 Anchorage and following the installation of the moorings, those permit holders would have 30 days to relocate to their assigned location within the A-3 Anchorage. Ms. Fan stated that following the 30 day relocation opportunity, San Diego Mooring Company has the right to rent any of the non-committed moorings to public. Chairman Bixler confirmed with Ms. Fan that there was no specific or guaranteed mooring location assignment among the available moorings for the A-8 permit holders or A-9 (disabled) permit holders. Ms. Fan stated that the San Diego Mooring Company would be responsible for assigning the location of the mooring to the A-8 permit holders or A-9 (disabled) permit holders, and it was her presumption that the assignments would be made based on a first come first served basis. Chairman Bixler requested and received confirmation from Dan Wilkens, Executive Vice President, that the matter was accurately stated and that among the available moorings there was no specific or guaranteed mooring location assignment for the A-8 permit holders or A-9 (disabled) permit holders who were on the waiting list and San Diego Mooring Company would manage the mooring locations assignments.

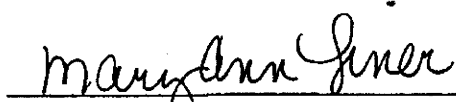
June 10, 2008

page 175

A handwritten signature in black ink, appearing to read "B. H. Allen", written over a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in black ink, appearing to read "Mary Ann Jiner", written over a horizontal line.

Clerk of the San Diego Unified Port District

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CALIFORNIA COASTAL COMMISSION

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



June 7, 2006

John Helmer
Planning Services Manager
Port of San Diego
P.O. Box 120488
San Diego, CA 92112-0488

Re: Sunroad Harbor Island Hotel Project

Dear Mr. Helmer:

Staff has reviewed the Notice of Preparation for the above-referenced hotel project, and is in receipt of the May 22, 2006 comment letter on the project from Annette Dahl of the Port District, and the May 19, 2006 Sunroad Proposal Commentary from Port staff. We have also received a draft site plan dated May 25, 2006. Commission staff understands that the proposed project is in the early stages of development, and offers these preliminary comments on potential Coastal Act issues.

The project site consists of the eastern peninsula of Harbor Island. This area is currently developed with a 600-slip marina, restaurants, and surface parking. The proposed project includes demolition of the majority of the existing landside structures including the marina support buildings, and construction of a 500-room hotel and new marina support buildings. The Island Prime Restaurant will remain, and the Reuben E. Lee Sternwheeler will eventually be dismantled or relocated.

The Coastal Act emphasizes the need to protect and provide for public access to and along the coast, and to provide low-cost recreational facilities, particularly in new development projects. In addition, the subject site is on public trust lands. Because of this, it is particularly important that development on the site provide adequate public access and recreational benefits consistent with the Coastal Act and the certified Port Master Plan.

In general, Commission staff agrees with the concerns outlined by Port staff regarding public access, public views, and connectivity. Although there are few public amenities currently on the site, almost the entire site is currently accessible to the public. In contrast, as proposed, it appears that the hotel development would limit public access on the site to a walkway along only one side of the peninsula, and a small landscaped space at the east end of the site. There are no identified view corridors provided across the site to preserve public views. In addition, although difficult to tell from a site plan, there appears to be little almost no interaction between the hotel space and the limited public spaces.

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The proposed project would occupy the entire eastern peninsula of the island, and significant amounts of public access and recreational amenities must be an integral part of the project. A continuous, pedestrian-friendly promenade must be provided around the entire site. The ground floor of the hotel should contain a variety of activating uses such as restaurants, newspaper stands, outdoor cafes with sit down and walkup service, or gift shops easily accessible to the public. Rather than present a wall of private uses adjacent to the public walkways, the hotel should strive for a "permeable" building design, that is, one that emphasize contains multiple entrances that allow people to pass in and out of the buildings gracefully and enjoyably, promoting connectivity between the public spaces and the hotel.

As proposed, the hotel design includes a parking structure for hotel guests on the western portion of the site that physically and psychologically blocks off the public just at the point where there should be an inviting front door to the rest of the site. There are no obvious public amenities provided within or along the development that would draw the pedestrians or bicyclists through and around the site, or down to the small green area at the very eastern end of the site, and these uses must be provided. Attractions such as moveable kiosks, a clock, interactive art and water features, and amenities such as drinking fountains, dog fountains, and interpretive signage might serve to draw the public around the peninsula and throughout the proposed hotel buildings.

Hotel gardens, courtyards, and plazas open and attractive to the public should be distributed throughout the site, not just at one end. Where feasible, these spaces could be designed to serve a dual purpose of being an area for small hotel events and a space for the public to use during the daytime when not in use by the hotel.

Commission staff agree with Port staff's comments that blocking off vehicular access to the existing restaurants will adversely impact these visitor-serving uses. Overall, parking on the site should be made available for both hotel guests and visitors, and clearly marked as open to the public. A parking study should be done to assure that adequate parking is provided for hotel, restaurant, and marina users, but in addition, the potential for providing alternative methods of transportation within the Port tidelands/Embarcadero area of downtown San Diego, and an assessment of the costs and mechanisms involved in developing a public shuttle/transit opportunity to serve this area, should be provided.

As noted by Port staff, new uses extending over the water could result in environmental impacts, and would not likely be supported by Commission staff.

The proposed project may include timeshare units in the hotel development. The Coastal Act promotes and preserves a full range of public access opportunities along the shoreline, including the provision of lower cost visitor-serving facilities that serve and support coastal visitors. Timeshares and/or other multiple ownership arrangements typically involve the selling of units, and therefore, involve an initial investment that may be exclusionary to broad segments of the population. Such ownership also tends to encourage longer, rather than more transient-oriented, stays. Given those factors, this

June 7, 2006

Page 3

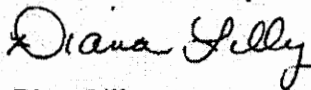
agency does not view timeshares and other fractional ownerships as high priority uses. Given that the subject site is on public property in a prime visitor-serving location, staff may not be able to support the use of timeshares at this location.

In summary, hotels and restaurants are considered to be public trust uses, even though they may be privately owned and operated, because they draw large numbers of people to the shoreline and provide facilities for them to enjoy the shoreline once they are there. But a well-designed waterfront development opens up access to the water for wide range of individuals, not just paying hotel guests and restaurant patrons. It provides large, signature open spaces where people can eat, shop, people watch, play games, stroll, or bring a picnic and spend long Sunday afternoons. With its prime waterfront location, the subject site must be developed with significant public spaces and must provide for significant public accessibility and permeability, with walkways, viewing areas and public spaces throughout. Buildings containing uses that would animate the space both during the day and at night should be provided. It is not sufficient to provide public access only along the waterside of one side of the site, but rather, the entire site must be activated and accessible to the public. Private uses should not encroach into the public walkway, and view corridors through the site towards the Bay should be incorporated into the project design.

As a final note, late this afternoon I received by email an updated environmental assessment for the project, which contains additional information. Commission staff will review this latest information and any new information as it becomes available in the course of the development process; however, this letter does not include comments on the updated environmental assessment received today.

Thank you for the opportunity to comment. If you have any questions, please feel free to call me.

Sincerely,



Diana Lilly
Coastal Planner

(G:\San Diego\DIANA\PORT\Sunroad Hotel\Sunroad comments.doc)

ATTACHMENT G

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WORKING PROJECT TITLE: _____

APPLICANT'S REFERENCE NUMBER (if applicable): _____

ENVIRONMENTAL ASSESSMENT
(To be completed by Applicant)

Applicant	Preparer of EA
Name: Uri Feldman	Name: Thomas Story
Title: Vice President	Title: Vice President
Organization: Sunroad Enterprises	Organization: Sunroad Enterprises
Address: 4445 Eastgate Mall Suite 400	Address: 4445 Eastgate Mall Suite 400
State, Zip Code: San Diego, CA 92121	State, Zip Code: San Diego, CA 92121
Telephone: (858) 362-8500	Telephone: (858) 362-8500

I. PROJECT DESCRIPTION

- A. Describe the type of development proposed, including all phases of project construction and operation, in a self-explanatory and comprehensive fashion. Discuss the need for the project and include site size, square footage, building footprint, number of floors, on-site parking, employment, phased development, and associated projects. If the project involves a variance, indicate the reason and any related information.

The proposed project is located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/-20,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with refurbished access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking. A Parking Management Plan has been prepared as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees may need to be removed. A minimum of 1:1 tree replacement will be planted on site.

A paved pedestrian walkway is proposed through the site with connections at each end with the public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold: (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately northwest of the proposed replacement restaurant. The applicant shall prepare and submit for approval a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSWP) for long term operation of the facility prior to beginning construction on the project. The applicant will apply for and obtain both an U. S. Army Corps of Engineers permit and a San Diego Regional Water Quality Control permit for the proposed project if required.

Redevelopment of most of the barge hull and operation of the supporting business and social event

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Page 1

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venue is dependent upon the applicant obtaining a lease, either directly or through the District. Applicant will secure all necessary approvals from the State Lands Commission including CEQA review documentation, and Coastal Commission processing for that portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting those instruments of service to the District for recording.

- B. Describe project appearance, any proposed signs, and how the design of the project would be coordinated with the surroundings.

The design of the proposed project would be incorporated into the existing layout of the land. Harbor Island is a recreational and tourist area with hotels, restaurants, and marina facilities. The lighting, and signage associated with the proposed project will be designed to work within the natural setting of the project site. The remodeled venue will result in a reduced bulk and scale as well as enhanced public access and viewing opportunities.

- C. Describe how the public would be affected by the project.

The proposed project would reinvigorate a deteriorated facility which will provide services to residents of San Diego as well as tourists. "Dock and dine" options will be available through the adjacent Sunroad Resort Marina. Previously the end of the island was greatly enhanced with the creation of Island Prime, which has been one of the Port's greatest restaurant successes, and Sunroad Resort Marina, which is one of the Port's top marinas. The venue will have both restaurant as well as banquet space, providing additional opportunities for the public to utilize the venue. Public access, pedestrian promenades and traffic circulation will be enhanced. The existing views from the leasehold will be improved with the elimination of the four story superstructure of the Ruben E. Lee. ADA access will be improved to current standards and requirements.

- D. Describe how the project could attract more people to the area or enable additional people to use the area, and what additional service businesses would be required.

The proposed project would attract additional residents and tourists to Harbor Island due to its aesthetic appeal, outstanding location and the reputation it will earn for excellent service and the quality of the food served. The banquet and event space is projected to be highly desired due to it's unique views of downtown San Diego, the Bay, the Coronado Bay Bridge and Coronado. No additional service businesses would be required.

II. ENVIRONMENTAL SETTING

- A. Describe the existing project site and surrounding area including: the type and intensity of land/water use; structures, including height; landscaping and naturally occurring land plants and animals, and marine life; land and water traffic patterns, including peak traffic and congestion; and any cultural, historical, or scenic aspects.

The proposed project would be located on Harbor Island, at the eastern end of Harbor Island Drive. Harbor Island is a man-made peninsula that comes out from the shore line into the San Diego Bay. This street provides shelter to the existing basin located between the wharf and the island.

At the east end of Harbor Island Drive there is a traffic circle, which routes vehicular traffic back around to the west. East of the traffic circle is a 145,979-square-foot parcel of land, which consists of a parking lot and the Island Prime Restaurant. Just east of the parking lot, within the San Diego Bay, is a vessel named the Ruben E. Lee. This vessel is anchored and attached to Harbor Island via utility hook ups and access ramps, and is enclosed by a break water. This vessel served as a four story restaurant, prior to its temporary closure for the mentioned remodeling. Surrounding the vessel is an existing breakwater, which will be maintained.

The Reuben E. Lee's deck demolition and barge hull deck remodeling is proposed in the vessel's existing water lease location. The work will be performed under the authorization of an Army Corps of Engineers permit and a San Diego Regional Water Quality Control Board permit. If required by either of the permits, the work will be performed in an approved boatyard. otherwise demolition and construction activities will be performed with best Management Practices (BMPs) to prevent contaminants entering San Diego Bay. If remodeling off-site is required the barge will be brought back and repositioned in the exact existing location. Total time for demolition and remodeling is expected to be less than one year. Salvage for reuse of the existing finish work and structural materials will be pursued to the maximum extent possible as determined by interests and needs identified by commercial or not-for-profit organizations. Materials not reused will be segregated and processed for recycling.

Construction of the project will incorporate efficiencies in the ordering of materials. On-site segregation improves the percentage of materials that can be recycled, and the value of the materials. The site will be designed and construction staff will be educated to maximize on-site separation of materials. Construction efficiencies will include not over-ordering, on-site re-use, and coordinated measuring before cutting materials so that cut ends are usable for other parts of the project. Any excess unused materials will be recycled or donated for reuse.

III. ENVIRONMENTAL ANALYSIS

- A. Compare the existing project area, improvements, and activities with what would exist after implementation of the proposed project. Data concerning the present condition should be entered before the slash (/); those after the project is completed should be given after the slash (/).

(1) Existing/proposed land area: 145,979 / 145,979 sq. ft.

water area: 91,536 / 91,536 sq. ft.

(2) Existing/proposed land area for:

structures: 10,612 / 27,112 sq. ft.

landscape: 8,200 / 9,600 sq. ft.

pavement: 134,800 / 122,530 sq. ft.

undeveloped: 16,950 / 14,800 sq. ft.

(3) Number of existing/proposed floors of construction:

4 / 1

(4) Principle height of existing/proposed structures:

68 / 28 ft.

(5) For land development, indicate extent of grading:

excavation: 1,100 cu. yards., 10,000 sq. ft.

fill: 1,100 cu. yards., 10,000 sq. ft.

*As measured to Mean High Tide Line. Square footage listed in IIA. is based on property lines.

Describe method, source of fill, and location of spoil disposal:

Cut and fill will be balanced on-site

- (6) For water development, indicate extent of dredging and fill:

Dredging: 0 cu. yards., 0 sq. ft.

fill: 0 cu. yards., 0 sq. ft.

Describe method and location of spoil disposal:

N.A.

- (7) Describe existing/proposed method of solid waste disposal and amounts involved.

An enclosure with a dumpster currently serves the site. Waste services are provided 2 to 3 time per week.

- (8) Describe existing/proposed drainage system improvements and what materials other than domestic wastes, are/would be discharged into the sewer system:

The remodeling of the Ruben E Lee is expected to be able to utilize the existing drainage systems and hookups, which connect directly to the existing sewer system. Additional storm water detention facilities and BMP's will be used to satisfy the current RWQCB storm water management standards.

- (9) Describe the existing/proposed fire protection needs of the site and proposed project, and the nature and location of existing/proposed facilities:

Current fire protection at the site consists of fire hydrants. The remodel will include all necessary fire and safety improvements to insure compliance with all applicable codes.

- (10) Describe existing/proposed public access to San Diego Bay through the project site, including any controlled access:

Visual access to the bay is currently available to the public via Harbor Island Drive and the sidewalk immediately adjacent to the bay side of Harbor Island Drive. The sidewalk also provides public pedestrian access to the hotels, restaurants and businesses on Harbor Island. The remodeling of the Ruben E. Lee will also include the extension of the sidewalk onto the leasehold, to access three new public view areas as well as the existing Island Prime restaurant and the remodeled Ruben E. Lee. The public view areas will be located to the west side of Island Prime, between the two restaurants and immediately north of the remodeled restaurant.

- (11) Existing/proposed slips,
piers:

0 / 0

docks or marine ways:

4 / 4

- (12) Existing/projected employees per day: 80 / 260

(13) Existing/projected customers or visitors per day: 500 / 1700

(14) Explain the projections for (12) and (13):

Currently the Island Prime Restaurant operates with approximately 80 employees and has about 500 visitors per day. It is expected that the remodeled Ruben E Lee will attract about 1.5 times as many visitors and operate with slightly more employees.

(15) Existing/projected daily motor vehicle round trips associated with the site and the proposed project:

1,020 ADT / 3,100 ADT

(16) Existing/projected mileage for daily motor vehicle round trips associated with the site and the proposed project:

4.7 / 4.7

(17) Existing/projected total round trip daily motor vehicle miles traveled associated with site and the proposed project:

4,794 / 14,570

(18) Explain the projections for (15), (16) and (17):

Numbers extrapolated by using the results of the Parking and Traffic Study prepared by LLG on February 13, 2007, Page 15.

(19) Existing/proposed parking spaces: On Site: 308 / 306

Other if used by project: _____ /

Specify location(s):

If necessary, overflow capacity exists at the adjacent Sunroad Resort Marina

(20) Explain the parking space requirements and compare with applicable standards:

Current parking standards for Restaurant Use are one space per 9.3 ksf, as per the Port's parking guidelines (without counting allowances for adjustment factors, including proximity to airport, shared parking potential, and dock and dine facilities). This yields a requirement of 294 to 310 spaces before adjustments. The parking lot will be re-striped to accommodate a minimum of 306 vehicles.

(21) Existing/ projected water consumption: 3,000 / 7,500 gal./day

(22) Existing/projected electrical power consumption:	9,000	/	22,500	kwhr/month
---	-------	---	--------	------------

(23) Existing/projected gas/oil consumption: 30-60 / 75-150 therms/day or gal/day

B. Indicate whether or not the following may result from or may apply to the proposed project or its effects.

		YES	NO
(1)	Substantial change in the existing land/water use of the site.		X
(2)	Incompatibility with approved Port Master Plan.		X
(3)	Part of a larger project or series of projects.		X
(4)	Involve the demolition or removal of existing improvements, including landscaping.	X	
(5)	Substantial change in the existing features of San Diego Bay, tidelands, or beaches.		X
(6)	Significant increase in demands on parking or transportation facilities.		X
(7)	Substantial increase in demand for municipal services (police, fire, etc.)		X
(8)	Significant increase in amounts of solid waste or litter.		X
(9)	Involvement with potentially hazardous materials, such as toxic substances, flammables, or explosives.		X
(10)	Substantial increase in fossil fuel consumption (electricity, oil, natural gas, etc.) or in water consumption.		X
(11)	Interference with scenic views or vistas from existing residential areas or from adjacent uplands.		X
(12)	Decreased access to public facilities or recreational resources.		X
(13)	Substantial change in the employment base of the community.		X
(14)	Substantial increase in dust, ash, smoke, fumes, or odors in project vicinity.		X
(15)	Significant change in San Diego Bay water quality or alteration of existing drainage patterns into San Diego Bay.		X
(16)	Increase the possibility of erosion of tidelands or siltation of San Diego Bay.		X
(17)	Substantial increase in existing noise or vibration levels in the vicinity.		X
(18)	Require any variance from existing environmental standards (air, water, noise, etc.).		X
(19)	Involve soil stability or geological hazards.		X
(20)	Substantial decrease in the habitat of any land plants or animals, or marine life.		X

IV. ENVIRONMENTAL EFFECTS

Describe environmental effects, which could result from the project:

A. Physiographic changes to San Diego Bay, tidelands, or beaches:

The remodel will retain the hull of the Ruben E Lee and stay within the existing width and length dimensions of the hull. The existing 68' tall structure will be replaced with a one story 875 square foot galley and restrooms on the hull, making the water based facilities much reduced in bulk and scale. The balance of the project's square footage will be shifted to the immediately adjacent land area where the restaurant, bar, and meeting room will be located within a single story structure. Minimal grading within the structure's footprint will be required to accommodate the existing grade

difference between the south and north sides of East Harbor Island.

- B. Increased demands on urban support systems, including: parking, streets, sewers, utilities, and transportation:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling.

- C. Increased energy consumption due to operation of the project:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling. Energy star appliances where available in commercial grade will be used where practicable.

- D. Changes in appearance of the project site and views from/to the site which could be affected by the project:

Replacing a 68 foot tall boat with a 28 foot tall restaurant will reduce the project's bulk and scale. The addition of sidewalks and viewing platforms will further enhance view opportunities from the site. Views of the site will be also enhanced as the low profile structure and landscaping will be more in scale with the other existing buildings. The height of the refurbished project will be much lower than the existing Ruben E. Lee. The visual effect of the proposed remodeled project will be much improved, with an emphasis on open architecture that takes advantage of San Diego's mild climate and the site's unique views of the water and downtown.

- E. Changes in air quality from both stationary and mobile sources, including any dust, odors, fumes, chemical vapors, water sprays, etc.:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling. There may be some temporary air quality impacts during the construction phase of the proposed project. Fugitive dust, fumes from construction equipment, and water sprays are anticipated to occur. These emissions would be controlled through standard emission control practices and Best Management Practices as required by state and local laws and ordinances. No impacts would occur from the operation of the proposed project.

- F. Changes in the bay water quality, including those, which could result from the removal and/or construction of structures in the water:

During construction Best Management Practices will be implemented to insure that any contamination is contained. Work has already begun to identify and secure the needed permits from the appropriate resource agencies and entities.

- G. Changes in the sound environment, which could occur on or off-site, both from construction and operational noise generated by the project:

Temporary impacts are anticipated to occur due to construction activities. The hours of construction activities will be limited to ensure that noise levels would not significantly impact sensitive receptors within the project vicinity. No operational noise impacts are anticipated to occur. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling.

- H. Describe any change to plant or animal life, including landscaping:

No changes are expected to occur to any aquatic species. Most existing mature trees will be incorporated into the design of the proposed project. Any tree removal and replacement would conform to BPC Policy 454, Tidelands Forestry Management Policy. All applicable guidelines and

requirements related to tree removal and replacement will be met. Approximately 10 trees, eucalyptus and pine, may be removed to accommodate the remodel. All trees removed will be replaced with an equal or greater number of broad canopy trees, suitable to the site and climate. Additional landscaping will be integrated into the architectural design to complement the architecture, and views of the site.

V. MITIGATING MEASURES

- A. Describe all proposed mitigating measures, or those already incorporated in the project to mitigate potentially significant environmental effects, if any:

No impacts to least tern nesting sites will occur as a result of project implementation. The Port District's mapping and identification of Least Tern nesting sites does not include any part of Harbor Island. The Port District's published (web site) information states that "Nesting sites on Port tidelands include the D Street Fill, Chula Vista Wildlife Reserve, and the South Bay Salt Works".

There are several trees located throughout the project site. The proposed project shall be designed around the existing trees (to the extent feasible). All applicable guidelines and requirements related to tree removal and replacement shall be met.

The proposed project shall adhere to all storm water requirements and follow the Standard Urban Storm Water Mitigation Plan (SUSMP) requirements.

Any other mitigation measures identified in studies will be implemented as required.

-
- B. Specify how and when the mitigating measures will be carried out:

During the construction phase of the proposed project current best management practices (BMPs) shall be implemented, to avoid water quality impacts.

-
- C. Explain the extent and effectiveness of mitigation expected and how this was determined:

Implementation of BMPs would ensure that proper activities and actions would occur to prevent water and air quality impacts.

-
- D. Describe other mitigation measures considered and indicate why they were discarded:

No other mitigation measures were considered.

VI. BACKGROUND INFORMATION

A. Pre-Application Project Processing

- (1) Indicate if the conceptual plans have been presented to the Board of Port Commissioners or Port Staff. If so, describe in what form, and give date and result:

A formal Project Proposal was presented to Annette Dahl on April 2, 2007, including proposed development plans, cost and revenue projections, and a request for lease extension per Board Policy 355. Conceptual Plans and a Project Proposal was presented on April 12, 2007 at a meeting with Paul Fanfera and Commissioner Vilaplana. Further requested information was provided to Annette Dahl on April 27, 2007 regarding potential construction methods. A meeting was held with Port Real Estate and Planning Staff, including John Helmer, Candice Magnus, Annette Dahl, and Tom Marshall on May 14, 2007, regarding the potential construction alternatives. At Port Planning and Real Estate Staff's request, a tour of the property was organized on May 22, 2007. Further requested information was delivered to Annette Dahl

regarding site plans, renderings, and conceptual floor plans on June 3, 2007. Further descriptions, an EA and a Lessee's Questionnaire was submitted in a package to Annette Dahl on June 20, 2007.

-
- (2) Indicate if project plans have been submitted to Port Staff. If so, describe in what form, to whom submitted, give date and result:

Project submittals were delivered to Annette Dahl on April 2, 2007, April 27, 2007, and June 3, 2007. We are awaiting a proposal from Port Real Estate Staff on lease terms

-
- (3) List all environmental consultations and processing contacts with other agencies, firms or individuals in connection with this project. Give agency, name, phone, date, subject and result of consultation:

The Port presented the project at the regular meeting with the resource agencies on June 12, 2007. All involved agencies were present, including ACE, RWQCB, F&W, F&G, Fisheries, NOAA. Sunroad answered questions on the project and was given guidance that the applicable permit would most likely be a Section 10 from the Army Corps of Engineers.

-
- (4) List project plans or working drawings approved by the Port at this site:

Title _____

Date: _____

Port Engineering File Number: _____

B. Permit Background

- (1) List all other public agencies which have approval or permit authority related to this project and indicate type required, e.g., City building permits, Coastal permit, WQCB, APCD, Army Corps, EPA, FAA, Coast Guard, etc.:

Army Corps of Engineers, Section 10
Coast Guard
City Permits

There is a potential need for approvals through either the State Lands Commission and/or the Coastal Commission. The Port, as lead agency, will guide the Tenant as to these requirements.

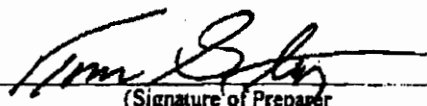
-
- (2) Pending permits or variances at this site:

Indicate any permits or variances applied for. Agency, type, file number, date, phone number, and name of person who is processing the permit application or variance request must be included:

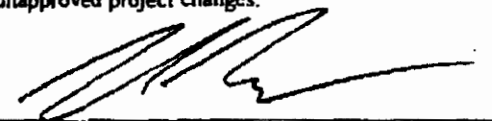
None.

VII. CERTIFICATION

- A. **Certification:** This Environmental Assessment was prepared by me for/as the applicant and I hereby certify that the statements furnished in the above and in the attached exhibits disclose relevant information to determine environmentally significant effects, as required for the San Diego Unified Port District Initial Study. It has been prepared to the best of my ability, and the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

 (Signature of Preparer)	May 19, 2008 (Date)
Tom Story (Print Name)	Vice President (Title)
Sunroad Enterprises (Organization)	858-362-8500 (Telephone)
4445 Eastgate Mall Suite 400 (Address)	
San Diego, CA 92121 (City, State, Zip Code)	

- B. **Applicant Certification:** I hereby certify that the project-related facts, statement, and information furnished above and in the attached exhibits, and in any other form to the preparer of this Environmental Assessment or to the San Diego Unified Port District are true and correct to the best of my knowledge and belief. I am duly authorized to and do hereby accept and commit the applicant to the implementation of all mitigation measures listed in this Environmental Assessment and of the project as herein described. I understand that non-compliance with any of the mitigation measures, or changes in the project as herein described shall be grounds to invalidate any or all project approvals or permits regardless of the stage of project development or operation. I will notify the San Diego Unified Port District immediately in writing of any changes in the proposed project, and I acknowledge that project changes may require additional environmental evaluation. I shall hold the San Diego Unified Port District harmless of any cost or damages resulting from consequences of non-compliance or unapproved project changes.

 (Signature of Applicant)	May 19, 2008 (Date)
Uri Feldman (Print Name)	Vice President (Title)
Sunroad Enterprises (Organization)	(858) 362 -8500 (Telephone)
4445 Eastgate Mall #400 (Address)	
San Diego, CA 92121 (City, State, Zip Code)	

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**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Rios at 9:03 a.m. Tuesday, November 13, 2007, in the City of Imperial Beach Council Chambers, 825 Imperial Beach Boulevard, Imperial Beach, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Bixler, Black, Cushman, Najera, Rios, Spane and Valderrama;
OFFICERS, Bennett, Liner, Heinrichs and McEntee.

Absent: None.

Excused: None.

APPROVAL OF MINUTES

Agenda Item 2. On a motion of Commissioner Valderrama, seconded by Commissioner Black, the Board approved the minutes submitted for the special meetings of October 9, 2007, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMENTS

Agenda Item 3. Mayor Jim Janney welcomed the Board and expressed his personal appreciation for the partnership that the District and the City of Imperial Beach have shared.

CONSENT AGENDA

Chair Rios announced that consent agenda item 22, Resolution Stating Opposition to All Unauthorized and Unpermitted Encroachments on District Tidelands, would be pulled for a separate discussion.

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Commissioner Spane concurred with Commissioner Cushman's recollection that in 2006 the Board agreed that no precedent was being set with the project. Commissioner Spane expressed his opposition to the enhancement fee and his opposition to changing the Port Master Plan. Commissioner Spane concluded his remarks stating that amending the Port Master Plan appeared to be setting a precedent and the Board should carefully consider the decision in light of the lack of the Real Estate committee's opportunity to review the matter.

Commissioner Black requested and received clarification whether, in the past, the District has imposed a community benefit fee on any project? Mr. Hicks stated the District had never imposed such fees on development projects. Commissioner Black stated she was opposed to residential projects on the tidelands and she would not support amending the Port Master Plan to specifically support the residential component of timeshares.

Commissioner Valderrama requested and Mr. Kaufman indicated that Woodfin supported Commissioner Cushman's recommendation to accept the staff recommendation with the removal of the enhancement fee component.

Commissioner Valderrama made a motion to approve the staff recommendation with the removal of the enhancement fee and with the understanding that this is a one time deal and that hopefully the project will be approved at the state level and, if it does not, the Board will re-address the issue at a later day. Commissioner Cushman seconded the motion.

On a motion by Commissioner Valderrama, seconded by Commissioner Cushman, the Board adopted the staff recommendation to accept all of the proposed Port Master Plan Amendment as presented, with the removal of the enhancement fee, by the following vote: Yeas-Bixler, Cushman, Rios, Valderrama; Nays-Black, Najera, Spane; Excused-None; Absent-None; Abstained-None.

DIRECTION TO STAFF REGARDING SUNROAD ASSET MANAGEMENT, INC.'S PROPOSED RENOVATION OF THE FORMER REUBEN E. LEE RESTAURANT

Agenda Item 35. Paul Fanfera, Senior Director, Real Estate presented the staff recommendations regarding Sunroad Asset Management, Inc.'s proposed renovation of the former Reuben E. Lee Restaurant and requested direction to staff. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Uri Feldman with Sunroad Asset Management, Inc. presented the Board with an update on the project. Mr. Feldman introduced Ralph Linder, Project Architect at Gensler who presented the concept.

Commissioner discussion ensued. Commissioner Cushman suggested that following the Board discussion the item be tabled for 30 days to allow staff and the tenant to continue negotiations.

Commissioner Spane requested and received clarification from Mr. Fanfera that each tenant requesting redevelopment of their property does receive a set of guidelines that explains the requirements to present a project for preliminary approval to the Board. Commissioner Spane agreed with Commissioner Cushman's recommendation to continue the negotiations for 30 days and to return to the Board in December.

Commissioner Najera also concurred with Commissioner Cushman's suggestion to table the item for 30 days. Commissioner Najera explained that, based on his unique position in the construction industry and in his opinion, due to the complete redesign of the property, more time may be required to address the preliminary concept design and approval. Commissioner Najera requested staff and the developers work together to move the project forward.

Commissioner Black requested staff and the tenant continue negotiations and return in 30 days with more specific information regarding the re-design of the property and what the project will look like.

Commissioner Valderrama also supported continuing negotiations for 30 days.

Chair Rios requested and received clarification from Mr. Fanfera regarding the tenant's request to extend their lease to 40 years. Mr. Fanfera explained that the request for the extension was only for the Reuben E. Lee Restaurant property. Mr. Fanfera also stated that staff has been doing research into the length of restaurant lease awards and he will be making a presentation to the Real Estate Committee regarding the findings and then, following outreach with the Port Tenant's Association, staff will present their recommendation to the Board. Mr. Fanfera concluded his remarks stating that, at this time, staff did not recommend extending the lease term to 40 years.

Commissioner Valderrama explained further that under Board Policy 355, a 40 year lease was possible; however staff was considering a recommendation to the Board to amend the policy. Mr. Fanfera explained that an amendment to the Board Policy would apply to all free standing restaurants.

Commissioner Cushman made a motion to table the discussion for 30 days.

Commissioner Najera requested and received clarification from Aaron Feldman, President of Sunroad Holding Corporation, that the project has been in process for over a year. Mr. Feldman expressed his concern that it appears to Sunroad that the project is being delayed while staff implements a new lease term policy and he requested that the Board consider moving forward to award a 40 year lease for the Reuben E. Lee Restaurant property under the current Board Policy 355. Commissioner Najera stated that since the project has been in process for more than a year, he had concerns if the delay in negotiations was to facilitate a change in the policy.

Commissioner Black explained that the staff consideration of amending the policy has come because some restaurateurs have not been as responsive to investing in their properties as others may have. Commissioner Black requested that staff consider, on a go forward basis, grandfathering some properties that are in the pipeline for a rent review. Commissioner Black concluded her remarks by stating that the Board was looking for specific information regarding the redesign of the property and what the project will look like.

On a motion by Commissioner Cushman, seconded by Commissioner Najera, the Board directed staff to table the item for 30 days and continue negotiations, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Bixler requested that when staff makes their report regarding the recommendations for Board Policy 355, the report, in a generic sense, include any other projects that are in the hopper that may be affected by a change to policy and recommendations for next steps.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF DECEMBER 11, 2007

Agenda Item 36. On a motion of Commissioner Valderrama, seconded by Commissioner Black, the Board approved the proposed agenda of December 11, 2007, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

ORDINANCE GRANTING LEASE AMENDMENT NO. 8 TO THE SAN DIEGO MOORING COMPANY, LLC AUTHORIZING THE ADDITION OF 25 DUAL-POINT

November 13, 2007

page 245


Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:


Clerk of the San Diego Unified Port District

ATTACHMENT I

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The special meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Rios at 9:00 a.m. Tuesday, December 11, 2007, in the City of National City Council Chambers, 1243 National City Boulevard, National City, California.

ROLL CALL

Agenda Item 1.

Present: COMMISSIONERS Bixler, Black, Cushman, Najera, Rios, Spane and Valderrama;
OFFICERS, Hollingsworth, Liner, Heinrichs and McEntee.

Absent: None.

Excused: None.

APPROVAL OF MINUTES

Agenda Item 2. On a motion of Commissioner Black, seconded by Commissioner Najera, the Board approved the minutes submitted for the special meeting of November 13, 2007, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PUBLIC COMMENTS

Agenda Item 3. Commissioner Cushman introduced Jerry Butkiewicz and acknowledged his work with the District and thanked him for his efforts. The following members of the public addressed the Board regarding an ongoing labor dispute with Harborside Refrigerated Services: Jerry Butkiewicz, San Diego-Imperial Counties Labor Council; R.J. Washburn, Bo Bellina, David Krivasich, Thorton Hohney, Efren Montes, Jr. and Maria Montes.

Garamina Avellis, Unite Here, addressed the Board regarding the proposed Woodfin Suites Brand Hotel at the Lane Field Development Project.

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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Commissioner Bixler supported Mayor Morrison's comments regarding keeping the member cities informed. Commissioner Bixler stated that the member cities will be consulted if the District sees the opportunity to acquire a strategic or tactical property in the proposed buffer zones.

Ms. Anderson clarified that the staff's intent was to only present the item to allow for Board discussion, and the next step was to work with the member cities, and begin public outreach efforts. Ms. Anderson concluded her remarks stating that the item would return to the Board for consideration in the future.

DIRECTION TO STAFF REGARDING SUNROAD ASSET MANAGEMENT, INC.'S PROPOSED RENOVATION OF THE FORMER REUBEN E. LEE RESTAURANT

Agenda Item 22. Commissioner Cushman made a motion to accept the staff's recommendation to move forward with the renovation. Commissioner Black seconded the motion. Chairman Rios requested the staff presentation.

Annette Dahl, Area Real Estate Manager, presented the staff recommendations regarding Sunroad Asset Management, Inc.'s proposed renovation of the former Reuben E. Lee Restaurant and requested direction to staff. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Uri Feldman with Sunroad Asset Management, Inc. presented the Board with a project update. Mr. Feldman introduced Ralph Linder, Project Architect at Gensler, who presented the design concept. Mr. Feldman introduced David Cohen, President and Founder of the Cohen Restaurant Group. Mr. Cohen introduced Chef Deborah Scott and then he presented the restaurant concept. Mr. Feldman concluded his presentation by stating that his organization was committed to working with staff regarding the negotiations with the California State Lands Commission, and that Sunroad was looking forward to negotiating a new option agreement with the maximum lease term, as indicated in the existing District Policy 355.

Commissioner discussion ensued. Chairman Rios requested and received clarification regarding the total number of seats planned for the restaurant, and Mr. Feldman confirmed the design was for no more than 900 seats. Chairman Rios also requested clarification regarding the relationship with the California State Lands Commission.

Ms. Dahl continued with the staff presentation, and explained that the floating restaurant is on a barge that is partially located within the jurisdiction of the California

State Lands Commission. Ms. Dahl explained that even though the Board could approve the redevelopment concept, a lease would also have to be negotiated with the State Lands Commission. Ms. Dahl explained the District has secured a CEQA exemption for the project; however, State Lands would also have to concur with the exemption. Ms. Dahl explained that it was still undetermined if a Coastal Commission permit would be required because the structure would be towed to a boatyard for construction and returned upon completion. Ms. Dahl explained staff had planned to resolve the permitting issues during the option period.

Paul Fanfera, Director, Real Estate explained that the State Lands Commission would have an interest in the concept approval, the financial terms, and arrangements between Sunroad and the District. He also stated that the tenant would be very much involved in the process and the negotiations with the State Lands Commission. Mr. Fanfera explained that any concept approval is subject to the concurrence of the State Lands Commission and there may be fees or costs associated with securing that approval.

Commissioner Spane requested an update regarding the parking plan. Ms. Dahl explained that staff had made progress and will continue to work with Sunroad on developing the parking management plan.

Commissioner Najera requested and received clarification from staff regarding the State Lands Commission negotiations. Ms. Dahl explained that the State Lands component will require additional documentation and time. Mr. Fanfera explained that staff had not been involved in State Lands Commission negotiations before and the situation is unique. Commissioner Najera requested and received clarification regarding the impact on the timeline with negotiations with the State Lands Commission. Mr. Fanfera explained that the District has an existing lease with the State Lands Commission; however, the current term is shorter than Sunroad or the District feel is acceptable for a restaurant of the type being considered. Commissioner Najera requested and received confirmation from Mr. Feldman as to whether his team had considered relocating the restaurant. Mr. Feldman explained that Sunroad had investigated alternatives for relocating the restaurant in the immediate area; however, none were acceptable.

Commissioner Valderrama stated that the District has a very willing capable partner and felt the negotiations with the State Land's Commission could be managed. Commissioner Valderrama also supported honoring the existing lease terms under Board Policy 355.

Commissioner Bixler commented on the design of maintaining the riverboat stacks in the design and requested clarification regarding the design rationale for utilizing recycled materials on the façade of the restaurant. Mr. Linder clarified that the recycled decking materials would add some texture to the façade and would accentuate the entryway. Mr. Linder also explained that his firm had a commitment to sustainability and looked for appropriate opportunities to utilize reclaimed materials in an effort to minimize the impact of old building materials in area landfills. Mr. Linder addressed that the inclusion of the masts may afford some rigging opportunities to market corporate events and/or decorate the deck with flags or banners.

On a motion by Commissioner Cushman, seconded by Commissioner Najera, the Board directed staff to return to the Board with a complete package and provide an update on the negotiations with the State Lands Commission, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Chairman Rios announced that item 23 would require a closed session discussion prior to hearing the item and it would be heard at the end of the regular session.

RESOLUTION AUTHORIZING INCREASE OF \$1,500,000 TO THE DISTRICT'S TOTAL PROJECT COST FOR THE NORTH EMBARCADERO VISIONARY PLAN PHASE ONE DESIGN AND AUTHORIZE PAYMENTS UP TO \$2,079,220.50 FOR DISTRICT'S SHARE OF AGREEMENT WITH PROJECT DESIGN CONSULTANTS FOR FINAL PHASE ONE DESIGN

Agenda Item 24. Linda Scott, Engineering and Construction, presented the staff recommendations for the North Embarcadero Visionary Plan Phase One design. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

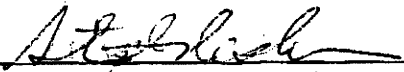
Commissioner discussion ensued. Commissioner Spane requested and received clarification on the source of the \$1.5 million dollar increased funding request. Jeff McEntee, CFO/ Treasurer explained the funds would be allocated from the residual cash flow from FY2006.

Commissioner Valderrama stated he supported the staff recommendation and requested that, in the future, staff provide a report on the balance of the residual cash flow fund as future allocation requests are considered.

Commissioner Bixler requested clarification regarding the recommendation for the District to fund the design and planning of Phase One, which extends beyond the

December 11, 2007

page 274


Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:


Clerk of the San Diego Unified Port District

ATTACHMENT J

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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SAN DIEGO UNIFIED PORT DISTRICT

DATE: June 10, 2008

SUBJECT: SUNROAD HARBOR ISLAND, INC.

- A) ORDINANCE GRANTING AN OPTION AGREEMENT WITH SUNROAD HARBOR ISLAND, INC. FOR A NEW 40-YEAR LEASE**
- B) RESOLUTION GRANTING APPROVAL TO SUNROAD HARBOR ISLAND, INC. FOR PROPOSED RESTAURANT RENOVATION**

EXECUTIVE SUMMARY:

Sunroad Enterprises (Sunroad) is the parent company of two entities that have leases on Harbor Island with the District; a marina site leased by Sunroad Marina Partners, Inc. and a restaurant site on the east end of Harbor Island leased by Sunroad Asset Management, Inc. This agenda sheet addresses the proposed redevelopment of the restaurant site.

Sunroad has submitted a proposal for the renovation of the former Reuben E. Lee floating restaurant (REL), one of two restaurants on their leasehold located at the east end of Harbor Island. Sunroad's proposed \$9 million redevelopment will include a major reduction in the bulk and scale of the REL, construction of a new 11,750 square foot restaurant facility on land adjacent to the REL, re-surfacing and re-striping of the surrounding parking areas, installation of new landscaping and construction of related site improvements.

An 18-month option has been negotiated with Sunroad for a new lease which incorporates both the Island Prime restaurant currently operating on the leasehold, and the REL. The proposed lessee is Sunroad Harbor Island, Inc. a new subsidiary of Sunroad. In accordance with Board Policy 355, Sunroad's \$9 million investment will qualify for a new 30-year lease term with a 10-year option to extend. The new lease will include the applicable percentage rental rates approved by the Board on December 7, 2004. Minimum annual rent under the new lease will be \$225,000 during an 18-month construction period, \$324,750 for a 12-month stabilization period followed by a ramp up to \$450,000 for the remainder of the 10-year rental period, with a mid-term CPI adjustment.

Part of the REL is located in waters under the jurisdiction of the California State Lands Commission (CSLC). Staff is currently negotiating a lease with the CSLC staff that will be presented to the CSLC Board for their approval during the 18-month option period. This property will be leased by the District and subsequently subleased to Sunroad. Sunroad's option agreement includes a condition that a lease with CSLC be finalized prior to its exercise.

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RECOMMENDATION:

Adopt Ordinance granting an Option Agreement with Sunroad Harbor Island, Inc. for a new 40-year lease; additionally, adopt Resolution granting approval to Sunroad Harbor Island, Inc. for proposed restaurant renovation.

FISCAL IMPACT:

The Board action will result in an option payment of \$500. If Sunroad decides to extend the option, the consideration is \$2,560 for the first 30-day extension, \$5,300 for the second 30-day extension and \$10,600 for the third and final 30-day extension.

This proposed Board action will not result in further fiscal impact unless the option is exercised; however, if and when the option is exercised and the project has stabilized in year three, the minimum annual rent the District receives will increase from \$324,750 to \$450,000 - an increase of \$125,250 per year. Sunroad's *projected* percentage rent payments to the District are approximately \$600,000 per year by year three, exceeding the minimum annual rent.

DISCUSSION:

Sunroad acquired the restaurant leasehold in May 2003 and closed the REL in December of that year. Sunroad subsequently spent \$2 million renovating the former Reuben's Restaurant, which was reopened in 2005 as the Island Prime restaurant. Sunroad desires to renovate the REL restaurant site, which was constructed in 1969 on a barge and permanently moored at the Harbor Island site, and extend the term of their existing lease.

Sunroad currently has a 55-year lease that will expire in 2023 which includes 145,979 square feet of land and 91,650 square feet of water. The site is improved with two restaurants, the Island Prime and the REL, as well as parking areas and landscaping. The existing and proposed leases are described in the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Proposed Project:

Sunroad is proposing the complete renovation and remodeling of the approximate 22,500 square foot REL restaurant facility located at 880 Harbor Island Drive. The final square footage will be smaller than the current facility due to a more efficient use of space resulting in 11,750 square feet of enclosed space on land plus 7,400 square feet of primarily unenclosed function space on the floating barge (875 square feet will be enclosed on the barge). The new 809-seat restaurant will utilize a stripped down version of the floating barge as an outdoor event area with supporting indoor dining, bar and banquet facilities located on land adjacent to the barge. The project will also include significant enhancements to public access bordering the site and the

Page 3 of 5

development of three new public viewpoints. A site plan and renderings of the REL project are attached.

The Island Prime restaurant will remain open for business during the REL renovation.

The project described above qualifies for a 40-year lease term pursuant to Board Policy 355, which can be executed upon exercise of the option described below.

Proposed Developer:

Sunroad Harbor Island, Inc., a new entity created by Sunroad with the same beneficial ownership, will develop this project. In addition to their restaurant leasehold on Harbor Island, Sunroad operates a 608-slip marina on District tidelands through its subsidiary, Sunroad Marina Partners, LP. Sunroad is considered a tenant in good standing by the District.

Local architectural firm Graham Downes Architecture has been contracted to assist in the design of the new restaurant. Graham Downes has been involved in several local projects including JRDN, Nine-Ten, Chive, Laurel and Pasquale.

Proposed Operator:

Sunroad has entered into an agreement with Cohn Restaurant Group to manage the operations and final conceptual design of the new restaurant project. Cohn Restaurant Group is a leading multi-unit restaurant operator in San Diego with about a dozen upscale and casual dining restaurants. In addition to Island Prime, Cohn Restaurant Group's portfolio includes The Prado, Indigo Grill, Kemo Sabe, Dakota Grill, Blue Point, Thee Bungalow, among others. Most of Cohn Restaurant Group's restaurants offer dining, event planning and catering services.

Proposed Option Agreement:

The proposed option agreement is for an 18-month period and can be extended by up to 90 days at the sole discretion of the District. The nonrefundable consideration for the option agreement is \$500. If the option term is extended, the nonrefundable option consideration will be \$2,560 for the first 30-day extension, \$5,300 for the second 30-day extension and \$10,600 for the third and final 30-day extension. During the option period, Sunroad must submit for District approval the following:

- Schematic drawings, development plans, working drawings
- Parking management plan
- Management agreement for operation of the REL
- Project financing
- Development permits including Coastal Development Permits, if applicable
- Performance bond
- Construction contract

- Equal Opportunity Employment Program

In addition, the District must enter into a lease with CSLC for the parcel in their jurisdiction and Sunroad must agree to a sublease with the District for that parcel. After all the preceding items have been satisfied, Sunroad may exercise the option and enter into the new lease. The proposed option agreement terms are described on the attached OPTION INFORMATION SUMMARY.

Proposed Lease:

Sunroad's \$9 million investment in the REL renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per Board Policy 355. Exercise of the option to extend shall be dependant upon Sunroad maintaining its status as a tenant in good standing. The minimum annual rent for the 18-month construction period will be \$225,000, followed by a 12-month stabilization period rent of \$324,750, which is equal to the current minimum annual rent that Sunroad is paying. The minimum annual rent will then increase to \$450,000, which is equal to 75% of the first year rent for both restaurants based on the proforma submitted by Sunroad. Sunroad will pay the higher of the minimum rents or the District's standard percentage rental rates, which are projected to exceed these minimum rents.

The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

California State Lands Commission Property:

A portion of the REL is located in waters outside of the Port's jurisdiction. A lease for this water area will be required with the CSLC. Any project approvals granted by the District may also be subject to approval by the CSLC. Before the option agreement can be exercised, the District must obtain a long-term lease from the State of California and enter into a sublease with Sunroad Harbor Island, Inc. covering the water area in CSLC's jurisdiction.

Port Attorney's Comments:

The Port Attorney has reviewed and approved the requested document for form and legality.

Environmental Review:

Staff has determined that this project, as proposed by the applicant, will be located on the same site, will have substantially the same purpose and capacity as the restaurant being replaced and will therefore be Categorically Exempt under the CEQA Guidelines in Section 15302, Class 2, Replacement or Reconstruction.

Coastal Permitting Review:

The REL restaurant is located in the East Harbor Island Planning Sub-area of Planning District 2 in the Port Master Plan (PMP). The PMP description indicates "The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge." There is a water designation of Commercial Recreation that generally encompasses the REL water footprint as well as the land side of this leasehold. Restaurants are a permitted use within the Commercial Recreation designation and therefore, the project is consistent with the PMP.

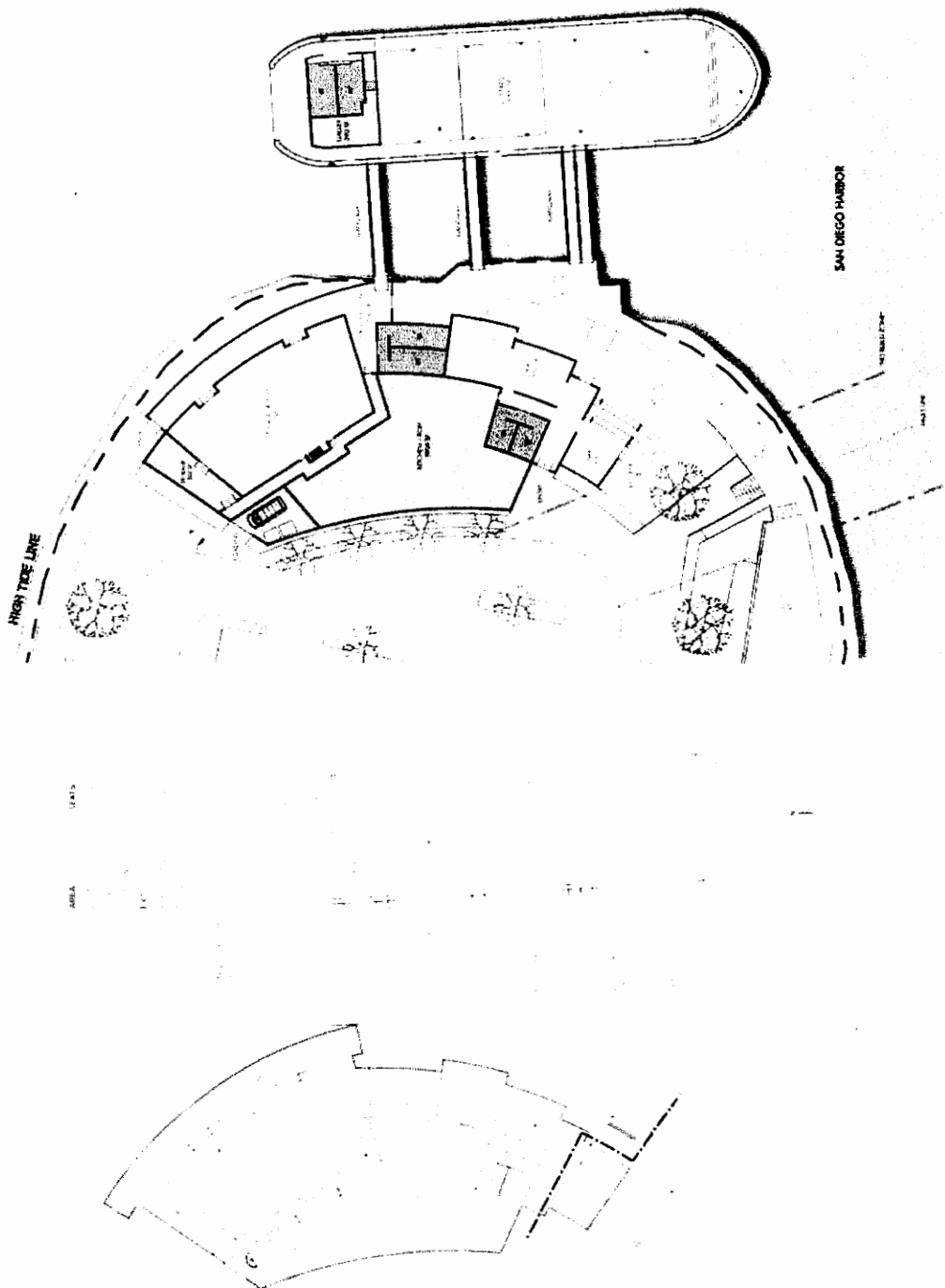
Based on information provided by the applicant, staff has determined that the project is the replacement of a commercial structure on the same site as the structure replaced, with a new structure of substantially the same size, purpose and capacity. Therefore the project is an Excluded Development under the provision of the District's Coastal Development Permit Regulations.

In its current location, a portion of the REL vessel is located within California State Lands Commission (CSLC) submerged lands jurisdiction. The applicant has been advised that it may be necessary to obtain a separate Coastal approval for the State Lands' portion directly from the California Coastal Commission.

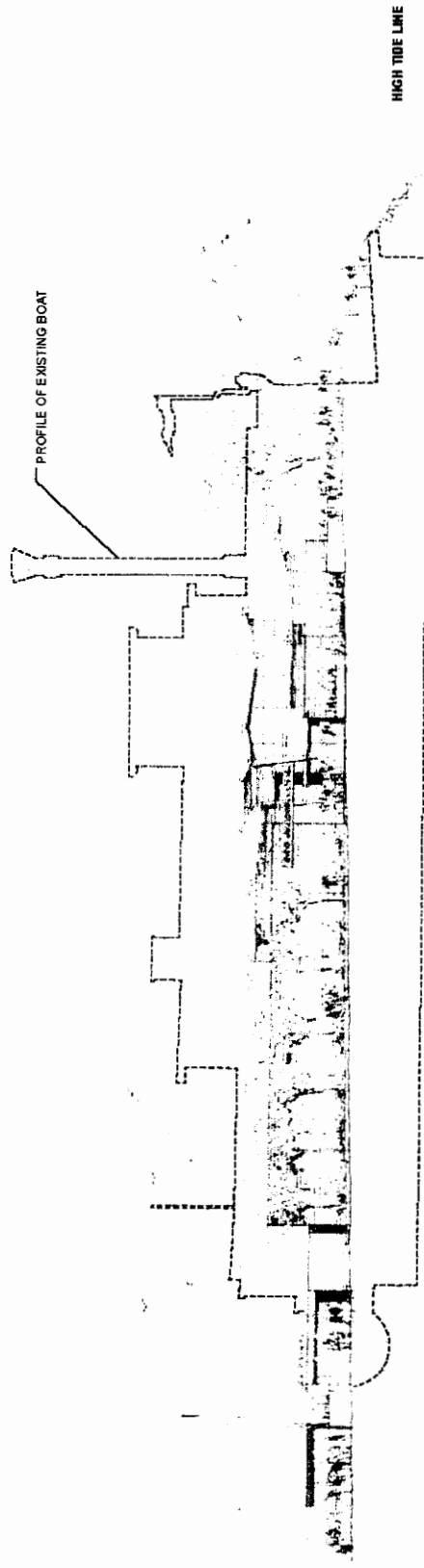
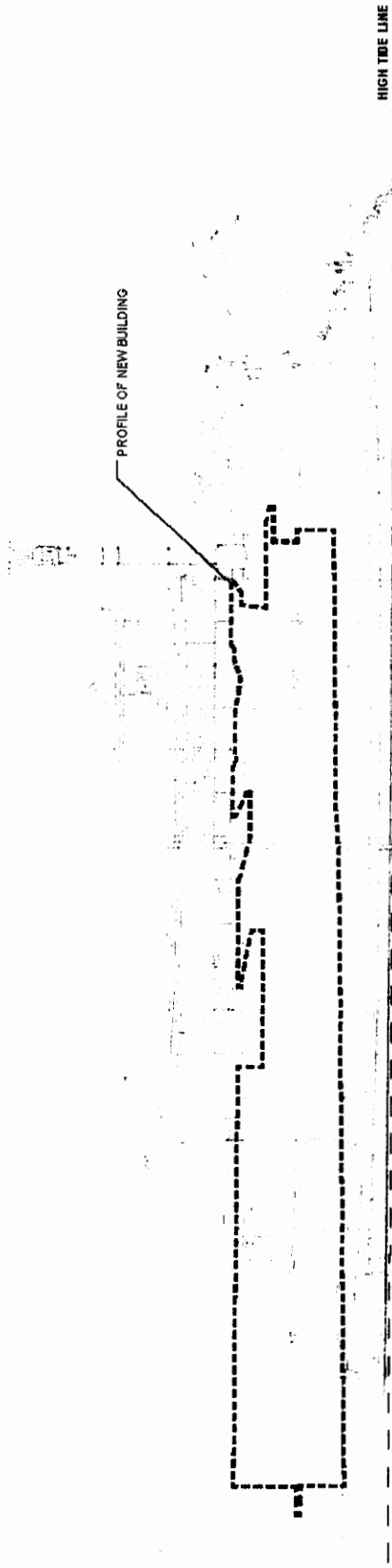
Equal Opportunity Program:

Not applicable.

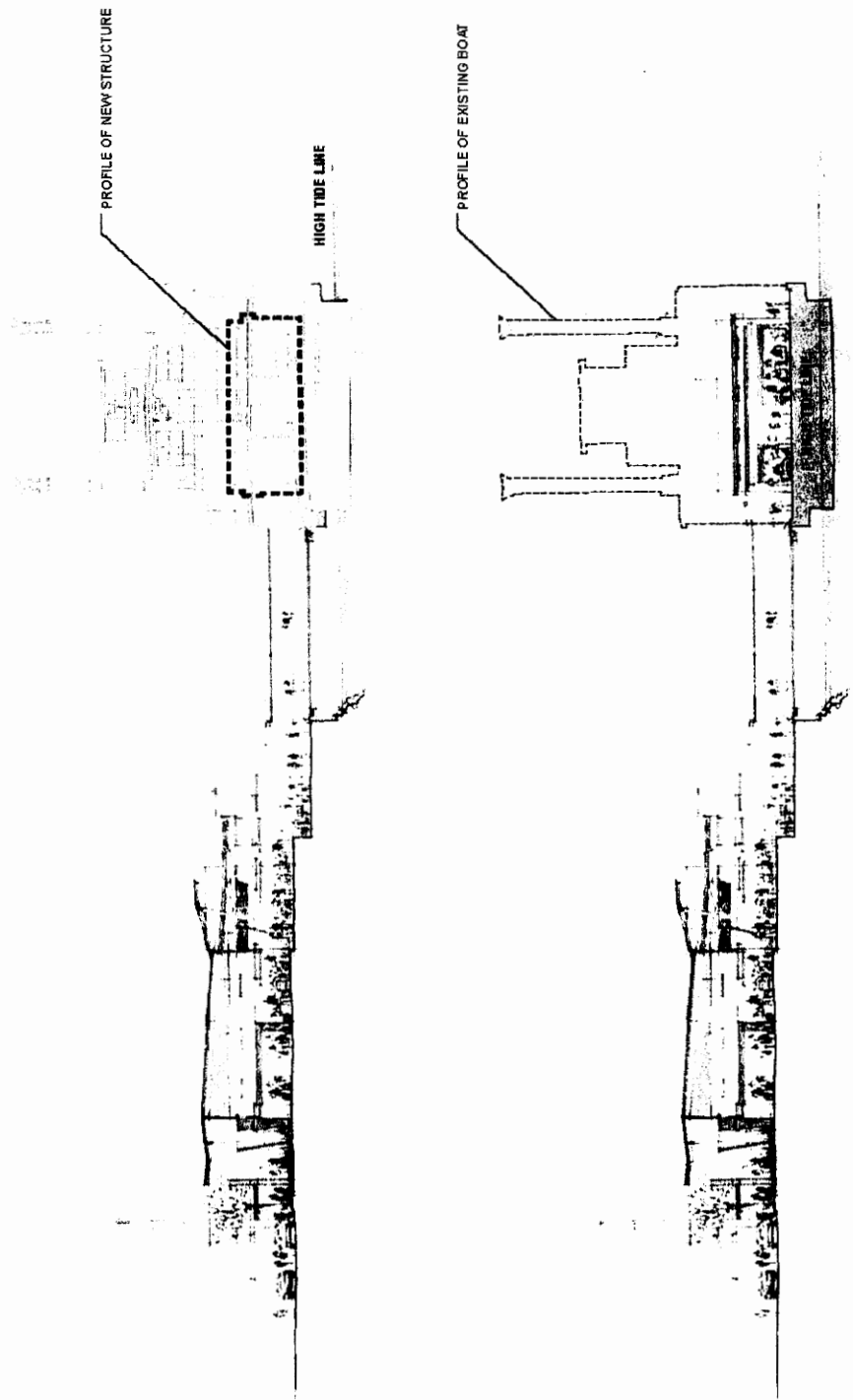
PREPARED BY: Tony Gordon
Asset Manager, Real Estate



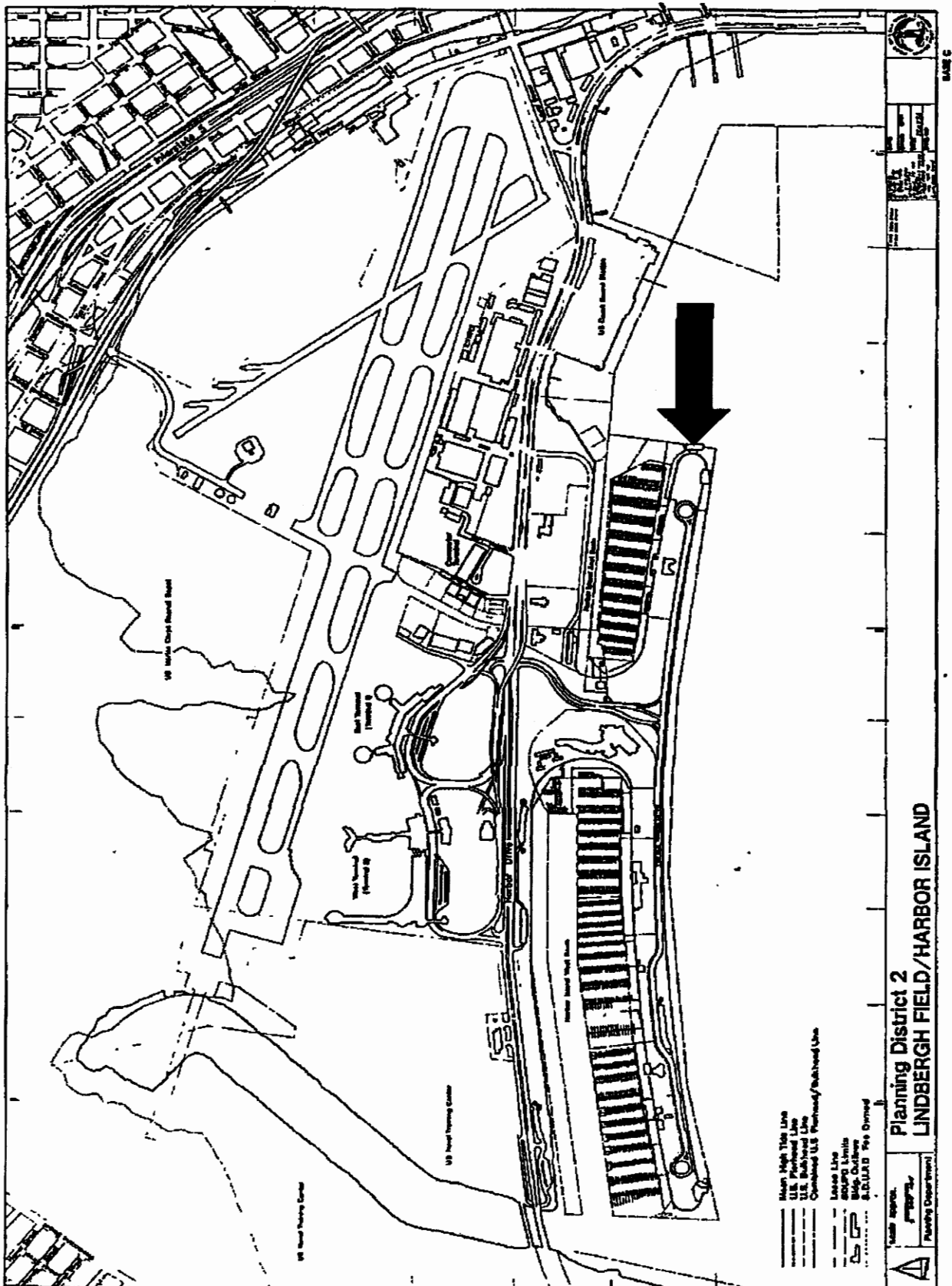
SEATING PLAN / LAYOUT PLAN



WEST ELEVATION



SOUTH SECTION



ATTACHMENT K

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SAN DIEGO COAST DISTRICT

Yvon Uribe - Sunroad Chronology

From: Robert Amezcuita
To: Annette Dahl
Date: 9/29/2010 9:51 AM
Subject: Sunroad Chronology
CC: Yvon Uribe

Hi Annette:

To the best of my memory here are some salient events in the recent history of Sunroad. Maybe you and Yvon can use it to research the Board communications regarding these events.

May 2003: Sunroad acquires Ameritas leasehold
Nov 2003: Sunroad submits sketches for site redevelopment including 2 hotels and timeshares
Nov 2003: Sunroad proposed expanding the marina outside of their leasehold.
Dec 2003: Reuben's and REL restaurants are closed
May 2004: Sunroad East HI - proposes 4 restaurants and eliminate old Reuben E. Lee boat.
Aug 2004: I did project review on the 4 restaurants and marina expansion
Dec 2004: Island Prime remodel is approved
Feb 2005: Construction underway for Island Prime
April 2005: Sunroad puts on hold the 4 restaurants and marina expansion proposal
Aug 2005: Sunroad submits hotel 200 + 400 rooms. It has a timeshare component. REL boat is eliminated. I did project review.
Dec 2005: Board approves the Hotel concept and directs start of EIR with timeshares questioned. CCC Diane Lilly to review and advise.
Feb 2006: NOP for Sunroad Hotel issued
Jun 2006: Revised EA / 200 + 250 rooms submitted REL boat stays.
July 2006: Staff stops working on the Hotel project due to negotiations impasse.
Aug 2006: Sunroad divides project into phases and submits 200 room hotel as Phase I.
Sep 2006: Sunroad presents to Board revised plan.
Jan 2007: Sunroad withdraws 600 room hotel project due to feasibility concerns. Consultants halt CEQA work prior to DEIR circulation
Nov 2007: Sunroad submits EA for the "Barge" restaurant
Dec 2007: Sunroad presents to Board REL restaurant. Directed to further refine the concept.
Jan 2008: Sunroad presents 160 room limited service hotel concept to staff.
June 2008: Board approved REL 880 Harbor concept and option.
Aug 2008: Sunroad submits 150 room hotel EA and other documentation in three binders to Trish Wagner.
Sep 2008: Sunroad presents 150 room business hotel to Board and launches CEQA.
Dec 2008: NOP for Sunroad Hotel up to 210 rooms is issued.
Dec 2009: Draft EIR available for public comment
Apr 2010: Negotiations ongoing for 175 room hotel. EIR is not certified until business deal is agreed.
Sep 2010: Tony Gordon working on latest Board memo regarding Sunroad negotiations.

I haven't been involved in the most recent history. Perhaps Yvon can research this. Anna Buzaitis (7263) from LUP may have other Board contact info.

Thx!
RHA x6064

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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

ATTACHMENT L

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

From: "Anthony Gordon" <agordon@portofsandiego.org>
To: "Kenneth Foster" <FosterK@slc.ca.gov>
Date: 01/06/2009 11:56 AM
Subject: Re: 880 Harbor project (Reuben E Lee)
Attachments: RealEstate-BPC355-AdminPractices[1].pdf

Ken,
Happy new year. I hope you had a nice vacation.

Regarding your question about the lease term calculation, the Port follows guidelines contained in its Administrative Practices (which are guidelines that implement Board Policy 355 - District Real Estate Leasing Policy). I have attached a copy of the document to this email.

Per the Administrative Practices, the length of a new or extended lease term should be based on the reasonable life expectancy of the improvements. The life expectancy guidelines are based on life expectancy tables published by Marshall Valuation Service. The life expectancy for a restaurant is 30-40 years. The developer was given a 30-year term with a 10-year option to extend because of the large capital investment being made in the new development. In order to exercise the 10-year option to extend, the tenant must be in good standing with the Port which means they pay their rent on time, the property is free of deferred maintenance and the tenant is maximizing the gross revenue potential of the property.

I am working with the developer to provide you with a company profile and information to assist with your due diligence. As they are a privately held company, they are reluctant to release their financial statements. We will see what they provide and go from there.

I will get you a copy of the CEQA exemption upon completion.

Thanks,
Tony

>>> "Kenneth Foster" <FosterK@slc.ca.gov> 12/18/2008 1:31 PM >>>
Hi Tony,

Thanks for quick response, and I'll look forward to receiving the additional info when you have it available.

FYI, I'll be out of the office on vacation starting mid-day Wednesday 12/24, and will be back in Monday January 5.

Ken

>>> "Anthony Gordon" <agordon@portofsandiego.org> 12/18/2008 12:42 PM >>>
Ken,

Thanks for the update and follow up letter. I will be compiling the requested information over the next several days and respond appropriately.

Our Land Use Planning department is finalizing the CEQA exemption, after which we will provide you with an official copy. Since this project is categorically exempt, we are not required to submit anything to Coastal.

Regarding the past revenues, when Sunroad acquired the leasehold in 2003, they closed down the floating restaurant. Therefore, the restaurant has not generated any revenue for about 5 years. If you would like a more comprehensive revenue history, please let me know.

I have attached a copy of the Signature and Certification page as requested in your letter. I will also put a hard copy in the mail. Sorry for the oversight.

Thanks,

Tony

Tony Gordon
Senior Asset Manager
Real Estate
(619) 686-6287
agordon@portofsandiego.org

>>> "Kenneth Foster" <FosterK@slc.ca.gov> 12/12/2008 2:54 PM >>>
Hi Tony,

We had our meeting this morning to discuss the Port's rent proposal for the 880 Harbor project. Reactions to the proposal were generally favorable, but several issues/concerns came up that will require clarification or additional information before we can make a determination on the rent.

The Port is requesting a term of 30 years, with a one-time 10-year option to extend. 25 years is typically the maximum term we establish for similar uses, and we typically don't incorporate extension options into lease language. In order for us to make a determination as to the term, we will require written justification from the Port for the requested lease period.

We will also require information on the developer to evaluate their stability and likelihood of continuing as an ongoing concern.

Past revenues from the Reuben E Lee were not considered in the proposal.

On a related note, what is the current status of the Port's CEQA review? The Port's 'Inter-Staff Communication' document identifying the project as being Categorically Exempt is labeled as a 'DRAFT'. Has the Port as the Lead Agency approved the project? Also, have applications been submitted to the Coastal Commission, Army Corps, and Regional Water Quality Control Board as mentioned in the document? If so, what is the current status of each?

Thanks!

Ken

Kenneth Foster

Public Land Management Specialist
Southern California Region
Land Management Division

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

ATTACHMENT M

SAN DIEGO UNIFIED PORT DISTRICT

INTER-STAFF COMMUNICATION

Date: February 24, 2009

To: Anthony Gordon, Asset Manager, Real Estate Division

From: William J. Briggs, Senior Redevelopment Planner, Land Use Planning Department

Subject: CEQA DETERMINATION – Reuben E. Lee Restaurant Replacement, San Diego, CA

Staff has reviewed the proposed project located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/- 19,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking as illustrated on the attached site plan. A Parking Management Plan has been prepared and is attached as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees will need to be removed. A minimum of 1:1 tree replacement will be planted on site as illustrated on the attached site plan.

A paved eight foot minimum width pedestrian walkway is proposed through the site with connections at each end with the public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold: (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately west of the proposed replacement restaurant as illustrated on the attached site plan. The applicant shall prepare and submit for approval a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSWP) for long term operation of the facility prior to beginning construction on the project. The applicant will apply for and obtain both an U. S. Army Corps of Engineers permit and a San Diego Regional Water Quality Control permit for the proposed project.

Redevelopment of most of the barge hull and operation of the supporting business and social event venue is dependent upon the applicant obtaining a lease, either directly or through the District, from the State Lands Commission, obtaining CEQA review documentation, and Coastal Commission processing for that portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting those instruments of service to the District for recording.

Based upon the above description, the project is determined to be Categorical Exempt pursuant to CEQA Guidelines Sections 15301 – Class I, 15302 – Class II, 15304 – Class IV, and Resolution 97-191:

Categorical Exemptions (Article 19, SG §§ 15300 - 15329)

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:

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(2) 10,000 square feet if:

- (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
- (B) The area in which the project is located is not environmentally sensitive.

b. Replacement or Reconstruction (SG § 15302) (Class 2): Includes replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site and will have substantially the same purpose and capacity as the structure being replaced. This exemption includes, but is not limited to:

(2) Replacement or reconstruction of marine terminal facilities, and marine-oriented commercial, industrial, and public and commercial recreational facilities, including buildings, piers, piers, wharves, marine ways; railroads; airport facilities, runways, taxiways, aprons, and ancillary structures to those facilities; electrical and mechanical systems and equipment; where the new structure will be on essentially the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

d. Minor Alterations to Land (SG § 15304) (Class 4): Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including, but not limited to:

- (4) Grading of land with a slope of less than 10%, except in waterways, wetlands, officially designated scenic areas or officially mapped areas of severe geologic hazard.
- (5) New gardening or landscaping.
- (7) Minor trenching and backfilling where the surface is restored.

File: 83356 - X - 792

ATTACHMENT N

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Valderrama at 1:03 p.m., Tuesday, July 6, 2010, in the Board Room at 3165 Pacific Highway, San Diego, California.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Commissioner Cushman led the Pledge of Allegiance.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Bixler, Burdick, Cushman, Padilla, Peters, Smith, and Valderrama.

OFFICERS Bennett, Liner, Kirkpatrick, McEntee, and Wurster.

Absent: No Commissioners absent.

Excused: No Commissioners excused.

Agenda Item 3. On motion of Commissioner Smith, seconded by Commissioner Burdick, the Board approved, the minutes submitted for the special meeting of May 18, 2010 by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

On motion of Commissioner Smith, seconded by Commissioner Padilla, the Board approved the minutes submitted for the special meeting of June 8, 2010, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 14. **Resolution 2010-106**, Establishing Rent for National Steel and Shipbuilding Company for the property at the Southwest Corner of Belt and Sicard for the period January 1, 2005 through December 31, 2014, was adopted as part of the consent agenda.

Agenda Item 15A. **Ordinance 2614**, Accepting 40 year Lease from California State Lands Commission for use of 12,886 square foot Water Parcel Adjacent to Sunroad Asset Management, Inc. Leasehold on Harbor Island, was adopted as part of the consent agenda.

Agenda Item 15B. **Ordinance 2615**, Contingent on Approval of (15A) Ordinance Granting Amendment No. 4 to Lease with Sunroad Asset Management, Inc. to Incorporate 14 year Sublease of California State Lands Commission Parcel into Lease, was adopted as part of the consent agenda.

Agenda Item 27. **Resolution 2010-111**, Consenting to change of control of Manchester Grand Resorts, L.P. dba Manchester Grand Hyatt Hotel to Hyatt Hotels Corporation with conditions, was adopted as part of the consent agenda.

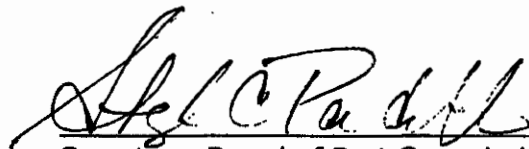
RESOLUTION SELECTING AND AUTHORIZING AN AGREEMENT WITH ENVIRON INTERNATIONAL CORPORATION TO PROVIDE TECHNICAL CLIMATE ACTION PLANNING SERVICES ON AN AS NEEDED BASIS FOR AN AMOUNT NOT TO EXCEED \$300,000 FOR TWO YEARS

Agenda Item 5. Commissioner discussion ensued. As there was a difference of three points between the two highest qualified responding bidders, Commissioner Bixler recommended that staff consider splitting the consulting contract between them. Commissioner Peters stated that it was his recommendation to pull the item and refer it back to the Environmental Committee to define the scope of work. Commissioner Bixler requested that staff bring the item back for Board consideration in early fall.

On a motion by Commissioner Bixler, seconded by Commissioner Peters, the Board voted to refer **Consent Agenda Item 5**, a Resolution selecting and authorizing an agreement with ENVIRON International Corporation to provide technical climate action planning services on an as needed basis for an amount not to exceed \$300,000 for two years, back to the Environmental Committee for further review, and for consideration at a regular board meeting in the future, by the following vote: Yeas-Bixler, Burdick, Cushman, Padilla, Peters, Smith, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

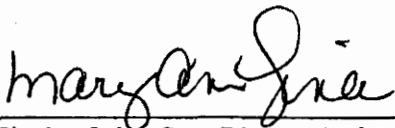
July 6, 2010

page 259

A handwritten signature in cursive script, appearing to read "Shel C. Padilla", written over a horizontal line.

Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

A handwritten signature in cursive script, appearing to read "Margarita Garcia", written over a horizontal line.

Clerk of the San Diego Unified Port District

ATTACHMENT O

SAN DIEGO UNIFIED PORT DISTRICT

MEMORANDUM

INFORMATION

AUG 15 2008

8

Date: August 13, 2008

To: Board of Port Commissioners

From: Annette Dahl
Area Manager, Real Estate

Tricia Wagner
Assistant Asset Manager, Real Estate

Subject: Sunroad Asset Management – Revised Hotel Concept

At the September 2nd Board Meeting, District Staff and Sunroad Asset Management, Inc. (Sunroad) will present a revised hotel concept to redevelop the east end of Harbor Island with a limited service hotel on the Sunroad Resort Marina parcel. Sunroad is seeking to receive Board approval to commence environmental review for the proposed hotel.

Due to project feasibility, Sunroad withdrew their previous 600-room hotel project presented to the Board at the December 6, 2005 Board Meeting. The new hotel concept includes approximately 95,000 square feet; consisting of approximately 150 hotel rooms, limited meeting space (approximately 5,000 square feet) and common areas. The hotel will be a four (4)-story structure with surface parking.

The attached drawings and site plans depict Sunroad's new concept for the Harbor Island Hotel Project. Please contact Tricia Wagner at (619) 725-6095 or Annette Dahl at (619) 686-6306 with any questions.

Yvon Uribe - Sunroad Chronology

From: Robert Arnezquita
To: Annette Dahl
Date: 9/29/2010 9:51 AM
Subject: Sunroad Chronology
CC: Yvon Uribe

Hi Annette:

To the best of my memory here are some salient events in the recent history of Sunroad. Maybe you and Yvon can use it to research the Board communications regarding these events.

May 2003: Sunroad acquires Ameritas leasehold
Nov 2003: Sunroad submits sketches for site redevelopment including 2 hotels and timeshares
Nov 2003: Sunroad proposed expanding the marina outside of their leasehold.
Dec 2003: Reuben's and REL restaurants are closed
May 2004: Sunroad East HI - proposes 4 restaurants and eliminate old Reuben E. Lee boat.
Aug 2004: I did project review on the 4 restaurants and marina expansion
Dec 2004: Island Prime remodel is approved
Feb 2005: Construction underway for Island Prime
April 2005: Sunroad puts on hold the 4 restaurants and marina expansion proposal
Aug 2005: Sunroad submits hotel 200 + 400 rooms. It has a timeshare component. REL boat is eliminated. I did project review.
Dec 2005: Board approves the Hotel concept and directs start of EIR with timeshares questioned. CCC Diane Lilly to review and advise.
Feb 2006: NOP for Sunroad Hotel issued
Jun 2006: Revised EA / 200 + 250 rooms submitted REL boat stays.
July 2006: Staff stops working on the Hotel project due to negotiations impasse.
Aug 2006: Sunroad divides project into phases and submits 200 room hotel as Phase I.
Sep 2006: Sunroad presents to Board revised plan.
Jan 2007: Sunroad withdraws 600 room hotel project due to feasibility concerns. Consultants halt CEQA work prior to DEIR circulation
Nov 2007: Sunroad submits EA for the "Barge" restaurant
Dec 2007: Sunroad presents to Board REL restaurant. Directed to further refine the concept.
Jan 2008: Sunroad presents 160 room limited service hotel concept to staff.
June 2008: Board approved REL 880 Harbor concept and option.
Aug 2008: Sunroad submits 150 room hotel EA and other documentation in three binders to Trish Wagner.
Sep 2008: Sunroad presents 150 room business hotel to Board and launches CEQA.
Dec 2008: NOP for Sunroad Hotel up to 210 rooms is issued.
Dec 2009: Draft EIR available for public comment
Apr 2010: Negotiations ongoing for 175 room hotel. EIR is not certified until business deal is agreed.
Sep 2010: Tony Gordon working on latest Board memo regarding Sunroad negotiations.

I haven't been involved in the most recent history. Perhaps Yvon can research this. Anna Buzaitis (7263) from LUP may have other Board contact info.

Thx!
RHA x6064

ATTACHMENT P

The PMP Amendment, described below, is included in this Draft EIR as Appendix B.

The land side of the East Harbor Island Subarea is designated for Commercial Recreation uses (Figure 3-12). Commercial Recreation uses include, but are not limited to hotels, restaurants, specialty shops, and pleasure craft marinas. The existing PMP description for the East Harbor Island Subarea includes the following language:

The east end of Harbor Island, subarea 23, has been the last subarea to complete phased development. The last project, a high quality hotel of approximately 500 rooms, is sited to be responsive to views of San Diego Bay, the airport, and the downtown San Diego skyline. Maximum building heights establish consistency with airport approach paths. The hotel complex includes restaurant, cocktail lounge, meeting and conference space, recreational facilities, including piers, and ancillary uses. A marina of approximately 550 slips is located adjacent to the hotel and occupies most of the basin. The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge.

The hotel referenced in the PMP was proposed for the westernmost parcel of East Harbor Island (the parcel located west of the Project site). This parcel is currently used by SDIA for employee parking. Although the Proposed Project generally includes those uses outlined in this description, the PMP would need to be amended to allow those uses on all of East Harbor Island, including the Project site. The portion of the Project site that the hotel would be constructed on already has the proper land use designation for a hotel use—Commercial Recreation. The proposed changes to the traffic circle and roadway also warrant an amendment to the PMP.

The Project's PMP Amendment would revise the East Harbor Island Subarea discussion as follows:

The east end of Harbor Island, subarea 23, ~~has been~~ is the last subarea to complete phased development and is designated commercial recreation. ~~The last project, a future development in this subarea includes high quality two or more hotels totaling approximately 500 rooms, which are is. These hotels will be~~ sited to be responsive to views of San Diego Bay, the airport, and the downtown San Diego skyline. Maximum building heights ~~will be~~ establish consistency with ~~adopted~~ aircraft approach paths and Federal Aviation Administration (FAA) regulations. ~~The hotel complex may include typical supporting facilities such as swimming pools, spas, commercial retail, restaurants, cocktail lounges, meeting and conference space, recreational facilities, including piers, and ancillary uses.~~ A marina of approximately 550 slips is located adjacent to the hotels and occupies most of the basin. The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge.

The existing promenade along the southern side of Harbor Island Drive will be extended to the eastern portion of the East Harbor Island subarea and along Harbor Island East Basin frontage as the subarea is developed or redeveloped. The promenade will provide pedestrian access around East Harbor Island and will connect the hotel developments, marina, and restaurants to the rest of

Harbor Island. The promenade will be located to provide views of the San Diego Bay, the downtown San Diego skyline, and the Harbor Island East Basin. Public access will be maintained along the promenade. Private uses shall not obstruct the public promenades. When the promenade is located within a private leasehold or on a Port development site, improvements and the promenade will be sited to allow uninterrupted pedestrian flow. Benches and overlooks/viewing decks adjacent to the promenade will be sited to provide multiple viewing opportunities in a manner that does not obstruct pedestrian flow. Public access and other path-finding signage, as well as signage identifying that the promenade is open to the public, will be placed at strategic locations throughout East Harbor Island to guide guests and visitors to and from public use areas, restaurants, and other facilities.



[discussion for Planning District 2 – see Appendix B of EIR for complete Draft PMP Amendment]

All hotel developments should provide shuttle service to and from the airport and information regarding other transit opportunities. [paragraph moved to general discussion for Planning District 2 – see Appendix B of EIR for complete Draft PMP Amendment]

A parking management plan will be prepared for each hotel development. [paragraph moved to general discussion for Planning District 2 – see Appendix B of EIR for complete Draft PMP Amendment]

As the East Harbor Island subarea is developed or redeveloped, Harbor Island Drive may be resized and realigned to optimize use of East Harbor Island. This may allow for increased and enhanced public enjoyment of the bay. The promenade and new public access features (i.e., benches) will provide enhanced open space and public access opportunities within the East Harbor Island subarea. Proportionate to the type and extent of development or redevelopment, activating uses such as restaurants, outdoor seating and dining areas, and retail shops open to the public may will be integrated into the hotel development or redevelopment.

A public promenade parallels the active ship channel of the bay and ensures pedestrian and bicycle coastal access. Landscaped open space on Harbor Island Drive is retained with the street design of an upgraded and modified “T” intersection. Utility capacity is expanded to meet increased service needs.

The PMP Amendment would also include the following:

- updating the Precise Plan map, as identified in Figure 3-12;
- updating the Lindbergh Field/Harbor Island: Planning District 2 project list to change the 500-room hotel to multiple hotels with a cumulative total of 500 rooms and include the traffic circle/road realignment; and

- updating the land use acreage tables within the PMP to reflect increased promenade acreage, increased street acreage, reduced open space acreage, and reduced commercial recreation acreage.

Table 3-1 includes the revised Land Use acreages for Lindbergh Field/Harbor Island; Planning District 2 from the PMP Amendment. Appendix B of this Draft EIR includes each of the components of the proposed PMP Amendment.

The following Environmental Analysis sections provide a project-level analysis of all potential impacts associated with the proposed 175-room hotel (including ancillary construction activities such as roadway realignment, etc.). All subsequent development projects (i.e., the 325 hotel rooms remaining from the originally allowed 500 hotel rooms) proposed as a result of the PMP Amendment would require additional project-level environmental analysis to ensure any unidentified impacts are addressed. There are no plans for developing more than the proposed 175-room hotel at this time.

Table 3-1. Precise Plan Land Use Allocation—Lindbergh Field/Harbor Island; Planning District 2

Land Use	Acres	
	Existing	Revised
Commercial	90.6	<u>90.2</u>
Airport-related Commercial	38.0	
Commercial Recreation	52.6	<u>52.2</u>
Industrial	631.8	
Aviation-related Industrial	130.6	
Industrial Business Park	33.1	
International Airport	468.1	
Public Recreation	<u>26.2</u>	<u>26.7</u>
Open Space	<u>7.5</u>	<u>7.2</u>
Park	16.4	
Promenade	<u>2.3</u>	<u>3.1</u>
Public Facilities	66.8	<u>66.7</u>
Harbor Services	1.3	
Streets	<u>65.5</u>	<u>65.4</u>
Total		815.4
Note:		
Does not include		
Leased Federal Land	22.5 acres	
State Submerged Tidelands	41.3 acres	
Leased Uplands	4.1 acres	
Revised acreage includes East Harbor Island Subarea PMPA		
Source: Port District 2009a		

ATTACHMENT Q

ACTION AGENDA

RESOLUTION APPROVING ENVIRONMENTAL PROJECTS AS RECOMMENDED BY THE ENVIRONMENTAL COMMITTEE FOR AN AMOUNT NOT TO EXCEED \$974,750

Agenda Item 33. Item Continued.

SUNROAD ASSET MANAGEMENT

Agenda Item 34abc. Anthony (Tony) Gordon, Asset Manager, Real Estate addressed the Board and presented the staff report regarding the preliminary design of the proposed hotel development project on the Sunroad Resort Marina Parcel on the eastern end of Harbor Island. Uri Feldman, Sunroad Marina Partners (Sunroad), addressed the Board and presented the high-end, limited-use, hotel design and project concept. John Helmer, Director, Land Use Planning addressed the Board regarding the environmental review process, the proposed Port Master Plan amendment, and the regulatory considerations of the project. (A copy of the staff report is on file in the Office of the District Clerk.)

Commissioner Najera left the dais at 2:33 p.m. and returned to the dais at 2:35 p.m.

Commissioner discussion ensued. Chairman Bixler expressed his concern regarding the dramatic proposal change, from a 26-story property to a four-story property, outlined in the developer's proposal.

Paul Fanfera, Senior Director, Real Estate, stated that staff and the Sunroad development team had reviewed the changes made to the initial proposal. Following meetings to review the proforma, and in consideration of the current area-market trends that were defined, in major part, by the site's immediate proximity to the airport, staff understood the tenant's concern that the original 26-story full-service hotel proposal would not achieve the average daily room rate (revenue) target necessary to make the project economically feasible. Mr. Fanfera further stated, that the revised proposal was likely the only high-end project that would legitimately fit the site, and, if the project worked, an expansion may be considered.

Mr. Feldman explained that the proposed number of rooms for the first tower, as presented in the revised proposal, included the consideration of several factors: consultations with the District staff; building height considerations as set forth by the Federal Aviation Administration (FAA); and, as a limited-service hotel, the proposed

operator indicated that, to meet the guest's expectations, only 150 rooms would be able to be well serviced. Mr. Feldman stated that due to the roadway re-configuration the project would require a California Environmental Quality Act (CEQA) review and that Sunroad had offered to develop a master plan for the entire end of Harbor Island. Sunroad stated that staff had informed them that participation in a competitive bidding process would be required, by any developer, for the parcel that was currently leased to the airport for employee parking.

Commissioner Spane requested and received clarification regarding the difference between a full-service and limited-service hotel. Mr. Feldman stated that an example of a full-service hotel was the Marriott and a limited-service hotel was a Courtyard by Marriott. Commissioner Spane requested and received confirmation from Mr. Feldman that the proposed development is a hotel and not a timeshare.

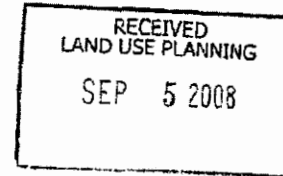
Commissioner Rios stated it appeared that significant work had taken place between Sunroad and the Real Estate department. Commissioner Rios requested clarification as to whether there were any considerations to develop a larger project on the parcel in the future. Mr. Feldman stated that based on future economics, and as the District considers the parcel currently operated as airport employee parking, Sunroad would consider a further development. Commissioner Rios requested and received confirmation that Mr. Feldman planned to move the proposed hotel and the proposed restaurant development along the same overlapping construction time line to minimize disruptions to the businesses operating in the area. Commissioner Rios requested and received clarification from Mr. Feldman that based upon the hotel income proforma, and after stabilization of approximately three to five years, the District would receive approximately \$750,000 annually in additional rent. Commissioner Rios requested and received confirmation that Mr. Feldman and Sunroad would not be making any requests for rent subsidies or credits from the District.

Commissioner Valderrama requested and received clarification from Mr. Feldman as to whether Sunroad would consider a different concept for the property if the airport-parking parcel was available for development. Because of the existing and proposed restaurants and the meeting space currently available, Mr. Feldman stated that at the present time Sunroad would likely consider a project that was not too dissimilar from the project presented. Mr. Feldman stated that if the airport parcel were to become available then consideration may be given to develop a project that was more similar to the initial plan. Mr. Feldman also explained that such a decision would also be based upon economic factors, California Coastal Commission considerations, and FAA considerations.

ATTACHMENT R

WORKING PROJECT TITLE: _____
APPLICANT'S REFERENCE
NUMBER (if applicable): _____

ENVIRONMENTAL ASSESSMENT
(To be completed by Applicant)



Applicant

Uri Feldman
(Name)

Vice President
(Title)

Sunroad Asset Management
(Organization)

4445 Eastgate Mall Suite 400
(Address)

San Diego, CA 92121
(State, Zip Code)

(858) 362-8500
(Telephone)

Preparer of EA

Tom Story
(Name)

Vice President
(Title)

Sunroad Asset Management
(Organization)

4445 Eastgate Mall Suite 400
(Address)

San Diego, CA 92121
(State, Zip Code)

(858) 362-8500
(Telephone)

I. PROJECT DESCRIPTION

- A. *Describe the type of development proposed, including all phases of project construction and operation, in a self-explanatory and comprehensive fashion. Discuss the need for the project and include site size, square footage, building footprint, number of floors, on-site parking, employment, phased development, and associated projects. If the project involves a variance, indicate the reason and any related information.*

The proposed project anticipates the construction, in a single phase, of a 210 room, limited service hotel of approximately 125,000 square feet within the existing marina parking lot. Rooms will comprise approximately 95,000 square feet, Fitness and meeting rooms comprise approximately 5,000 square feet and the balance (20,000 s.f.) will be common areas. The project is expected to be five stories in height and will be surfaced parked.

Existing open spaces, public views and public access will be increased and the quality of the public's experience will be enhanced. Parking for the hotel, and existing marina and restaurants will be located in the same area parking currently exists. Existing paved areas will be reconfigured as necessary to accommodate ingress and egress to the hotel and to make more efficient use of the existing parking areas.

Harbor Island Drive and the existing traffic circle at the east end of Harbor Island Dr. form the southern boundary of parcel No. 1 of the tidelands portion of the lease (Project Site) and are also proposed for realignment and reduction in size. With these actions it is expected that the existing lease lines between the Marina lease (Project Site) and the adjacent restaurant lease to the east will be adjusted.

- B. *Describe project appearance, any proposed signs, and how the design of the project would be coordinated with the surroundings.*

The project will reflect the culture, climate and environmental setting of coastal San Diego. Timeless, classical elegance will be the signature look for all aspects of the architectural interior and exterior treatments as well as the surrounding landscapes. At night, the hotel will be lit to accentuate the architectural design and highlight its location on the waters edge.

Existing free public parking will be retained and existing and new parking areas will be planned to minimize the parking footprints and maximize efficiencies.

Views from the project site will remain expansive. As one approaches the project from Harbor Drive, distant views of Coronado and San Diego Bay will be framed by the trees and landscaping. Turning east, visitors will have unobstructed views of San Diego Bay, downtown and the Coronado Bridge on their right. Harbor Island Drive will transition from a four lane road to three lanes.

- C. *Describe how the public would be affected by the project.*

Today East Harbor Island is virtually non-existent in the minds of most residents of the region. The proposed project would provide the public another water front destination in addition to the Island Prime and the soon to be remodeled 880 Harbor Island Dr. restaurants. .

In addition, the proposed project would serve as a focal point for tourists and would provide additional employment opportunities. In redesigning the public areas, Sunroad will continue to maintain public promenades, landscaped areas and view corridors consistent with the Port Master Plan.

- D. *Describe how the project could attract more people to the area or enable additional people to use the area, and what additional service businesses would be required.*

The general public as well as tourists and community members will be attracted to the area due to the introduction of a hotel to East Harbor Island. The hotel along with the enhancements to the pedestrian promenade will further "activate" the site and increase the public's awareness and use of East Harbor Island and its spectacular views of the downtown skyline.

No additional service businesses would be required.

II. ENVIRONMENTAL SETTING

- A. *Describe the existing project site and surrounding area including: the type and intensity of land/water use; structures, including height; landscaping and naturally occurring land plants and animals, and marine life; land and water traffic patterns, including peak traffic and congestion; and any cultural, historical, or scenic aspects.*

The proposed project would be located on Harbor Island, at the eastern end of Harbor Island Drive. Harbor Island is a peninsula of land joined in the middle to previously filled tidelands along North Harbor Drive. The peninsula is artificial, built in the late 1950's as a place for dredged sand deposits. The site is entirely man-made; therefore, there are no cultural-historic aspects that relate to San Diego's natural past at this site. The peninsula forms two sheltered basins providing shelter to the boats docked in marina slips. At the eastern end of Harbor Drive there is a traffic circle, which routes vehicular traffic back around to Harbor Island Drive. No congestion is present at the site entrance street.

Several species of trees exist on-site, including: Coral, Magnolia, Eucalyptus, Podocarpus and a large specimen Ficus tree. Shrubbery of various types, including, Indian Hawthorne, Lantana, and annuals also exist on the site. All of the existing plant materials are non-native.

The site is bordered on the north and south by rock rip-rap shoreline protection with the northern side housing the 600 slips of the Sunroad Marina. To the east of the project site is a leasehold with two restaurants and their associated parking area. The Island Prime restaurant is a single story, post and beam, wood and concrete structure built on the side of the island that overhangs the bay on concrete piers. Just east of the parking lot, within the San Diego Bay, is a vessel named the Reuben E. Lee Sternwheeler. The sternwheeler is a replica of an early American steam powered riverboat. This vessel is anchored and attached to Harbor Island via utility hook ups and access ramps, and is enclosed by a break water. This vessel served as a three story restaurant, and is currently closed for business. On the project site's west side is another large parking lot currently leased to the Regional Airport Authority as airport employee parking.

A single story building that houses the Marina's administrative offices as well as several commercial businesses, such as yacht brokers, office space and a deli are located on parcel No. 1 and will remain. There are also two locker facilities located on the parcel. The westerly lockers and a swimming pool will remain. The easterly locker facility will be demolished to accommodate the proposed hotel and some if the lockers in this facility will be replaced either within the ground floor of the hotel or in a separate structure adjacent to the hotel. Marina parking east of the Marina building will be reconfigured to accommodate the hotel and hotel parking.

III. ENVIRONMENTAL ANALYSIS

A. Compare the existing project area, improvements, and activities with what would exist after implementation of the proposed project. Data concerning the present condition should be entered before the slash (/); those after the project is completed should be given after the slash (/).

(1) Existing/proposed land area:	259,050 / 315,050	sq. ft.
water area:	1,056,370 / 1,056,370	sq. ft.
(2) Existing/proposed land area for:		
structures:	29,700 / 64,700	sq. ft.
landscape:	61,300 / 95,350	sq. ft.
pavement:	168,000 / 155,000	sq. ft.
undeveloped:	0 / 0	sq. ft.

(3) Number of existing/proposed floors of construction: 1 / 5

(4) Principle height of existing/proposed structures: 15 / 90 ft.

(5) For land development, indicate extent of grading:

excavation: 10,000 cu. yards., 35,000 sq. ft.

fill: 0 cu. yards., 0 sq. ft.

Describe method, source of fill, and location of spoil disposal:

To be determined. Clean fill; landfill disposal, if needed.

(6) For water development, indicate extent of dredging and fill:

dredging: 0 cu. yards., 0 sq. ft.

fill: 0 cu. yards., 0 sq. ft.

Describe method and location of spoil disposal:

Not applicable

(7) Describe existing/proposed method of solid waste disposal and amounts involved.

A trash enclosure with a dumpster currently serves the site. The operations will utilize trash dumpsters as needed.

- (8) *Describe existing/proposed drainage system improvements and what materials other than domestic waste, are/would be discharged into the sewer system:*

There are existing storm water drains within the project site. If new or additional SUSMP and SWPPP plans will be prepared to comply with the Port of San Diego Storm Water Ordinance requirements. In addition, a Bio-filtration System and/or a mechanical Baysaver Separation System is proposed to enhance stormwater containment.

- (9) *Describe the existing/proposed fire protection needs of the site and proposed project, and the nature and location of existing/proposed facilities:*

The site is currently served by stand pipe water service for fire protection. The stand pipes are located within the eastern end of the project site. The new development will be reviewed by the City of San Diego Fire Department to ensure compliance with the Uniform Fire Code. The onsite circulation system and fire hydrants will conform to all applicable code requirements and city ordinances.

- (10) *Describe existing/proposed public access to San Diego Bay through the project site, including any controlled access:*

Public access to the bay is currently provided by Harbor Island Drive. In addition, a pedestrian promenade is located along the south side of Harbor Island Drive, and provides pedestrian access to the project site and the San Diego Bay. A pedestrian path will be provided connecting the hotel and the restaurants to the east. In addition pedestrian access will be enhanced around the hotel.

- (11) *Existing/proposed slips, piers:* unchanged
docks or marine ways: unchanged

- (12) *Existing/projected employees per day:* 5-10 / 35 - 45

- (13) *Existing/ projected customers or visitors per day:* 150/350

- (14) *Explain the projections for (12) and (13):* Project is a limited service hotel with no on-site restaurants and we assume 1 employee per 12 hotel rooms for house care. We also assume an occupancy average rate of one person per room per night.

- (15) *Existing/projected daily motor vehicle round trips associated with the site and the proposed project:* Traffic study to be provided by LLG

- (16) *Existing/projected mileage for daily motor vehicle round trips associated with the site and the proposed project:* Traffic study to be provided by LLG.

- (17) *Existing/projected total round trip daily motor vehicle miles traveled associated with site and the proposed project:* Traffic study to be provided by LLG

- (18) *Explain the projections for (15), (16) and (17):* Traffic calculation explanation to be included in the study.

- (19) *Existing/proposed parking spaces: On Site:* 560 / approximately 510

Other if used by project: none

Specify location(s): n/a

- (20) *Explain the parking space requirements and compare with applicable standards:* Parking Study to be provided by LLG using Port parking guidelines and existing parking counts.

- (21) Existing/projected water consumption: 500 / 38,000 gal./day
 (22) Existing/projected electrical power consumption: 1,000 / 134,000 kwhr./month
 (23) Existing/projected gas/oil consumption: 30-60 / 435 therms/day or gal/day

B. Indicate whether or not the following may result from or may apply to the proposed project or its effects.

	<u>YES</u>	<u>NO</u>
(1) Substantial change in the existing land/water use of the site.	X	
(2) Incompatibility with approved Port Master Plan.	X	_____
(3) Part of a larger project or series of projects.	_____	X
(4) Involve the demolition or removal of existing improvements, including landscaping.	X	_____
(5) Substantial change in the existing features of San Diego Bay, tidelands, or beaches.	_____	X
(6) Significant increase in demands on parking or transportation facilities.	X	
(7) Substantial increase in demand for municipal services (police, fire, etc.)	_____	X
(8) Significant increase in amounts of solid waste or litter.	X	
(9) Involvement with potentially hazardous materials, such as toxic substances, flammables, or explosives.	_____	X
(10) Substantial increase in fossil fuel consumption (electricity, oil, natural gas, etc.) or in water consumption.	X	
(11) Interference with scenic views or vistas from existing residential areas or from adjacent uplands.	_____	X
(12) Decreased access to public facilities or recreational resources.	_____	X
(13) Substantial change in the employment base of the community.	_____	X
(14) Substantial increase in dust, ash, smoke, fumes, or odors in project vicinity.	_____	X
(15) Significant change in San Diego Bay water quality or alteration of existing drainage patterns into San Diego Bay.	_____	X
(16) Increase the possibility of erosion of tidelands or siltation of San Diego Bay.	_____	X
(17) Substantial increase in existing noise or vibration levels in the vicinity.	_____	X
(18) Require any variance from existing environmental standards (air, water, noise, etc.).	_____	X
(19) Involve soil stability or geological hazards.	_____	X
(20) Substantial decrease in the habitat of any land plants or animals, or marine life.		X

IV. ENVIRONMENTAL EFFECTS

Describe environmental effects which could result from the project:

A. Physiographic changes to San Diego Bay, tidelands, or beaches:

There are no least tern nesting sites on-site; thus, no impacts to least terns would occur. The Spanish Bight fault appears to cross the east end of Harbor Island, as shown by the most recent work of the California Geological Survey and USGS scientists (Mike Kennedy and Sam Clarke). A geologic study to test for both seismic features and soil stability will be conducted as part of the environmental review.

B. *Increased demands on urban support systems, including: parking, streets, sewers, utilities, and transportation:*

The construction of the hotel would increase demands on the existing urban support systems by generating increases in traffic, parking demand, sewer usage, water usage, and trash disposal. The proposed development would provide any additional infrastructure necessary to accommodate the increased demand for these services. The environmental review for the proposal will evaluate the environmental impact.

C. *Increased energy consumption due to operation of the project:*

The proposed project will increase energy consumption. The impact of this increase will be assessed in the environmental impact report.

D. *Changes in appearance of the project site and views from/to the site which could be affected by the project:*

The project site currently houses a marina building and two locker buildings. Views to the site will generally be from Harbor Drive north and east of the site, and from San Diego Harbor south of the site. The addition of a five-story hotel will have minimal affect on views from all directions, as the building will only be noticeable from the bay and Harbor Drive.

E. *Changes in air quality from both stationary and mobile sources, including any dust, odors, fumes, chemical vapors, water sprays, etc.:*

There would be some temporary air quality impacts during the construction phase of the proposed project. Fugitive dust, fumes from construction equipment, and water sprays are anticipated to occur. These emissions would be controlled through standard emission control practices as required by state and local laws and ordinances. No impacts would occur from the operation of the proposed project.

F. *Changes in the bay water quality, including those which could result from the removal and/or construction of structures in the water:*

Urban runoff must be treated by implementing the Regional Water Quality Control Boards (RWQCBs) National Pollution Discharge Elimination System (NPDES) permit program and BMPs established in a Storm Water Pollution Prevention Plan (SWPPP). Development of a SWPPP and conformance with NPDES permit program will ensure that impacts to water quality would be less than significant. A biofiltration system is proposed to enhance stormwater containment (BaySaver Separation System).

G. *Changes in the sound environment which could occur on or off-site, both from construction and operational noise generated by the project:*

Temporary impacts are anticipated to occur due to construction activities. The hours of construction activities will be limited to ensure that noise levels would not significantly impact sensitive receptors within the project vicinity. No operational noise impacts are anticipated to occur.

H. *Describe any change to plant or animal life, including landscaping:*

There are several trees within the project site. Mature and scenic trees will be incorporated into the design of the proposed project (to the extent feasible). Any tree removal and replacement would conform to BPC Policy 454, Tidelands Forestry Management Policy. All applicable guidelines and requirements related to tree removal and replacement will be met.

V. MITIGATING MEASURES

- A. *Describe all proposed mitigating measures, or those already incorporated in the project to mitigate potentially significant environmental effects, if any:*

No impacts to least tern nesting sites will occur as a result of project implementation. The Port District's mapping and identification of Least Tern nesting sites does not include any part of Harbor Island. The Port District's published (web site) information states that "Nesting sites on Port tidelands include the D Street Fill, Chula Vista Wildlife Reserve, and the South Bay Salt Works."

There are several trees located throughout the project site. All applicable guidelines and requirements related to tree removal and replacement shall be met.

The proposed project will adhere to all storm water requirements and follow the Standard Urban Storm Water Mitigation Plan (SUSMP) requirements.

Any other mitigation measures identified in studies will be implemented as required.

- B. *Specify how and when the mitigating measures will be carried out:*

The mature and scenic trees within the project site shall be retained in the design phase of the project to the maximum extent feasible.

During the construction phase of the proposed project current best management practices (BMPs) shall be implemented to avoid water quality impacts.

- C. *Explain the extent and effectiveness of mitigation expected and how this was determined:*

Incorporation of the existing mature and scenic trees into the design plan for the proposed project would minimize the need to mitigate for the removal of mature trees. The biomass will be replaced for any removal of mature trees on site in conformance with all applicable guidelines and requirements related to tree removal and replacement.

Implementation of BMPs would ensure that proper activities and actions would occur to prevent water quality impacts. The implementation of SUSMPs would ensure that waste water is properly treated and discarded.

- D. *Describe other mitigation measures considered and indicate why they were discarded:*

No other mitigation measures were considered.

VI. BACKGROUND INFORMATION

- A. Pre-Application Project Processing

- (1) *Indicate if the conceptual plans have been presented to the Board of Port Commissioners or Port Staff. If so, describe in what form, and give date and result:*

The conceptual plans were submitted to the Port of San Diego for review in conjunction with this Environmental Assessment (EA). The proposed renovation of the Island Prime Restaurant was approved by the Port on December 28, 2004. Sunroad and Island Prime spent significant funds in improvements to the site and the location of the new Island Prime restaurant. The new top-end restaurant opened in the summer of 2005. Conceptual Approval and initiation of environmental review of the Hotel project was approved by the Board of Port Commissioners in December 2005. Numerous updates have been given to Port Staff and select Port Commissioners since.

- (2) *Indicate if project plans have been submitted to Port Staff. If so, describe in what form, to whom submitted, give date and result:*

The project plans have been submitted to Port staff and Commissioners on several occasions. Port Staff has seen preliminary site plans and preliminary elevations.

- (3) *List all environmental consultations and processing contacts with other agencies, firms or individuals in connection with this project. Give agency, name, phone, date, subject and result of consultation:*

RWQCB – Water Quality Certification
Port of San Diego – Coastal Development Permit

- (4) *Last project plans or working drawings approved by the Port at this site:*

Title: _____

Date: _____

Port Engineering File Number: _____

B. Permit Background

- (1) *List all other public agencies which have approval or permit authority related to this project and indicate type required, e.g., City building permits, Coastal permit, WQCB, APCD, Army Corps, EPA, FAA, Coast Guard, etc.:*

City Building Permit–
Port of San Diego – Coastal Development Permit, Port Master Plan Amendment
Federal Aviation Administration – SDCRAA???
California Coastal Commission – Port Master Plan Amendment Adoption

- (2) *Pending permits or variances at this site:*

Indicate any permits or variances applied for. Agency, type, file number, date, phone number, and name of person who is processing the permit application or variance request must be included:

None.

VII. CERTIFICATION

- A. Certification: This Environmental Assessment was prepared by me for/as the applicant and I hereby certify that the statements furnished in the above and in the attached exhibits disclose relevant information to determine environmentally significant effects, as required for the San Diego Unified Port District Initial Study. It has been prepared to the best of my ability, and the facts, statements, and information presented are true and correct to the best of my knowledge and belief.


(Signature of Preparer)

Tom Story
(Print Name)

Sunroad Asset Management
(Organization)

4445 Eastgate Mall Suite 400
(Address)

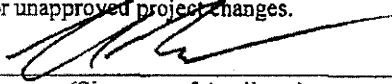
San Diego, CA 92121
(City, State, Zip Code)

9/3/08
(Date)

Vice President
(Title)

(858) 362-8500
(Telephone)

- B. Applicant Certification: I hereby certify that the project-related facts, statement, and information furnished above and in the attached exhibits and in any other form to the preparer of this Environmental Assessment or to the San Diego Unified Port District are true and correct to the best of my knowledge and belief. I am duly authorized to and do hereby accept and commit the applicant to the implementation of all mitigation measures listed in this Environmental Assessment and of the project as herein described. I understand that non-compliance with any of the mitigation measures, or changes in the project as herein described shall be grounds to invalidate any or all project approvals or permits regardless of the stage of project development or operation. I will notify the San Diego Unified Port District immediately in writing of any changes in the proposed project, and I acknowledge that project changes may require additional environmental evaluation. I shall hold the San Diego Unified Port District harmless of any cost or damages resulting from consequences of non-compliance or unapproved project changes.


(Signature of Applicant)

Uri Feldman
(Print Name)

Sunroad Asset Management
(Organization)

4445 Eastgate Mall Suite 400
(Address)

San Diego, CA 92121
(City, State, Zip Code)

9/3/08
(Date)

Vice President
(Title)

(858) 362-8500
(Telephone)

ATTACHMENT S

Anna Buzaitis - RE: Harbor Island Hotel Comments

From: Uri Feldman <ufeldman@sunroadenterprises.com>
 To: Anthony Gordon <agordon@portofsandiego.org>
 Date: 12/5/2008 5:34 PM
 Subject: RE: Harbor Island Hotel Comments
 CC: Anna Buzaitis <abuzaiti@portofsandiego.org>, Annette Dahl
 <adah1@portofsandiego.org>, Patricia Wagner
 <pwagner@portofsandiego.org>, Robert Amezquita
 <ravezqui@portofsandiego.org>, Tom Story
 <tstory@sunroadenterprises.com>
 Attachments: Data Sheet.zip

Tony,

We have reviewed your email from earlier this week and are responding to your questions, as promised. Our responses are in blue This augments the responses provided on December 1, 2008. Please feel free to contact me with any points of clarification.

- Electronic copies of hotel plans.
 - attached. It is a SMB file.
- Updated parking study.
 - We have requested this from LLG. Expect to have it shortly.
- Proposed street realignment (number of lanes in each direction, etc.).
 - 2 lanes going east. One going west. Elimination is of one of the west facing lanes.
- Proposed open space replacement.
 - As discussed, the master plan amendment speaks to the entire East end of Harbor Island. We are proposing replacing 17,425 sft of open space designation currently in the turn-around (Circle is 16,050 sft, Triangle is 1,375 sft) with 21,700 of open space and walkways on the restaurant parcel. We need to confirm that the master plan change to incorporate this does not join the projects, which are two independent events.
- Public access and circulation plan, particularly along the bay front and through the hotel site.
 - These will be prepared and submitted separately.

In addition to the information requested above, please comment on the following:

- The totals on page 2 do not reflect the total parking counts on the following pages. Please account for this discrepancy.
 - I do not see the issue on Page 2. Please provide a copy of specifically where you are looking so that we can address it.
- Some of the rooms have restrooms on the window-side of the room which limits the viewing space. Is there a reason for this type of room arrangement?
 - The prototype units for the hotel flag have all of the bathrooms on the window side. It makes for a much better room alignment in their standard rooms.

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Only "resort" rooms with balconies have the bathrooms moved towards the inside.

• Many of the rooms have "resort" in their title which appears contrary to the limited-service nature of the hotel. Please provide additional information regarding the planned hotel operations. Will this be a resort hotel or a limited service/ business hotel?

- "resort" rooms are those that have balconies. The "standard" rooms do not. This is the hotel flag's description of the room and has not changed the concept for the hotel. The hotel flag chose the terminology to distinguish the geographic location of the hotels.

As mentioned before, we look forward to our meeting on December 8, and hope that the Port is able to provide us a revised schedule at that time. As we discussed by phone, our expectation is that this closely matches the intended approval date of April agreed upon at our August 1st meeting and approved by the Board at the September meeting.

Best,

Uri

-----Original Message-----

From: Anthony Gordon [mailto:agordon@portofsandiego.org]
Sent: Monday, December 01, 2008 3:57 PM
To: Uri Feldman
Cc: Anna Buzaitis; Annette Dahl; Patricia Wagner; Robert Amezcuita; Tom Story
Subject: Harbor Island Hotel Comments

Uri,
District staff has reviewed your Harbor Island Hotel Pre-Development Submittal. Below is a list of additional information that is required to continue with the CEQA review as well as some preliminary comments and questions regarding the proposed hotel design. Please provide the following information:

- Electronic copies of hotel plans.
- Updated parking study.
- Proposed street realignment (number of lanes in each direction, etc.).
- Proposed open space replacement.
- Public access and circulation plan, particularly along the bayfront and through the hotel site.

In addition to the information requested above, please comment on the following:

- The totals on page 2 do not reflect the total parking counts on the following pages. Please account for this discrepancy.
- Some of the rooms have restrooms on the window-side of the room which limits the viewing space. Is there a reason for this type of room arrangement?

• Many of the rooms have "resort" in their title which appears contrary to the limited-service nature of the hotel. Please provide additional information regarding the planned hotel operations. Will this be a resort hotel or a limited service/ business hotel?

We look forward to discussing these comments at our meeting on December 8. If you have any questions prior to that meeting, please contact me.

Regards,

Tony

Tony Gordon

ATTACHMENT T



Although implementation of the Proposed Project would increase the number of visitors to East Harbor Island, the addition of the promenade on the Project site, in addition to ancillary facilities provided by the hotel development, would provide adequate recreational opportunities for visitors to the hotel. The Proposed Project would include a pool and spa for hotel guests. Therefore, the addition of the proposed hotel would not result in an increased demand for existing recreational facilities that would result in substantial deterioration of or the need to physically alter those facilities. In addition, the Proposed Project would enhance recreational opportunities and provide for additional coastal access as required by the Coastal Act by extending the promenade along the basin side of the proposed hotel. As a result, the Proposed Project would result in less-than-significant impacts on existing recreational facilities.

4.11.4.2 Construction of Recreational Facilities

The Proposed Project would provide enhanced recreational opportunities at the water's edge. The public promenade along the basin side of the hotel is intended for public recreational use and coastal access. Landscape improvements, benches for seating, and signage identifying the area as open to the public would be included adjacent to the promenade.

Impacts on the physical environment associated with the provision of the promenade along the basin side of the proposed hotel are evaluated as a project component in this Draft EIR and addressed in the previous EIR sections.

4.11.4.3 Port Master Plan Amendment

The PMP Amendment would not involve a change in land use to accommodate the total allotment of 500 hotel rooms by way of several small hotels across East Harbor Island; the Project site already has the proper land use designation to accommodate a hotel use. There are no plans for developing more than the proposed 175-room hotel at this time. Any future development would require a project-level analysis at the time that development is identified. As such, approval of the PMP Amendment would not result in direct impacts related to an increased demand for recreational facilities.

Future development projects proposed in accordance with the PMP Amendment would be subject to additional environmental review in accordance with CEQA at the time applications are submitted to the Port District. The potential for future developments on East Harbor Island to result in direct impacts related to increased demand for recreational facilities would be evaluated when applications for development are submitted to the Port District.

The PMP Amendment also includes reducing the size of the traffic circle on East Harbor Island. The reduction in the size of the traffic circle would remove approximately 0.34 acre from the Open Space designation. The open space within the traffic circle currently contains shrubs and trees and is unusable for public recreational opportunities. As shown in Figure 3-6, the promenade

designation would be added along the northern and eastern borders of East Harbor Island. As shown in Table 3-1, the overall acreage of the promenade designation would increase with implementation of the PMP Amendment. With the expanded promenade designation, future redevelopment projects on East Harbor Island would provide for enhanced public access that is not currently provided for in the existing Precise Plan.

4.11.5 Significant Impacts

No significant impacts on recreational facilities would result from development of the Proposed Project.

4.11.6 Mitigation Measures

No significant impacts on recreational facilities have been identified; therefore, no mitigation measures are required.

4.11.7 Significance of Impacts after Mitigation

No mitigation measures are required because the Proposed Project would not result in any significant impacts on recreational facilities.

Anna Buzaitis - RE: Harbor Island Hotel Comments

From: Uri Feldman <ufeldman@sunroadenterprises.com>
 To: Anthony Gordon <agordon@portofsandiego.org>
 Date: 12/5/2008 5:34 PM
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 Attachments: Data Sheet.zip

Tony,

We have reviewed your email from earlier this week and are responding to your questions, as promised. Our responses are in blue This augments the responses provided on December 1, 2008. Please feel free to contact me with any points of clarification.

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 - attached. It is a 5MB file.
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Anna Buzaitis - RE: Questions on latest Sunroad EA

From: Anna Buzaitis
To: James Harry
Date: 2/3/2009 4:05 PM
Subject: RE: Questions on latest Sunroad EA
Attachments: Sunroad Project Site.pdf

**** VIEW THIS EMAIL IN HTML ****

Hi Jim-

Here's some answers...not all, but some. They are in blue, below. See you tomorrow!

Thanks,
Anna

>>> "James Harry" <jharry@jsanet.com> 1/27/2009 10:16 AM >>>
Anna -Thanks for the info - I had a few more questions on the
EA/Project description

* The EA and site plan don't provide too much detail on the improvements proposed to the promenade - could you please fill in the blanks on the following write up or revise as appropriate? Enhancements proposed to the Promenade as a part of the project include the addition of landscaping and widening the pedestrian and bicycle access areas. A pedestrian path will also be provided that circles the proposed hotel. The pedestrian path proposed around the hotel will be a Class III facility approximately ___ feet wide and consist of material.

Please use this language...

"A public promenade will be provided along the water side of the project site, along the Harbor Island East Basin. The promenade will be a Class III facility, approximately XX feet wide and will consist of hard surface pavement. Adjacent to the pathways will be landscape improvements, benches for seating, and signage identifying the area as open to the public."

We are not sure of the width yet.

* The EA states that the PMP open space within the traffic circle would be relocated - but I don't think the EA says where it would be relocated and the relocated open space is also not shown on the site plan - has the location been determined? And if so should we have it added to the site plan graphic?

Existing open space area proposed for removal will be redistributed in the proposed promenade and overlook area along the basin.

* Is the following discussion on utilities accurate? The EA and site plan do not provide any specifics on a proposal to move facilities

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AR5058

OK.

In addition, items listed in the 12/18/08 email from Tony Gordon are still needed by the EIR consultant in order to complete the project description of the EIR. In particular, the items needed to complete the EIR project description are:

- * Parking/traffic study (with indication that the 175-room hotel would have similar impacts as the 210-room hotel)

To be provided at meeting.

- * Site plan showing proposed open space replacement on the hotel/marina parcel Responded to in email of December 5, 2008. Open space is to be replaced in Restaurant parcel, as per our prior discussions.

- * Public access and circulation plan, particularly along the bayfront and around the hotel site

Ok. Being prepared.

- * Any additional information you can provide regarding public recreational amenities on site (park benches, promenade, etc.)

Ok. Being prepared.

- * Site plan showing proposed lane configuration in front of the hotel

Ok. Being prepared.

- * Site plan showing existing utilities and proposed utility realignment Attached.

- * Description of parking plan during construction

We should discuss this further so that I understand what you are looking for.

Receipt of these items is pertinent for keeping the project on schedule.

Thank you and please let me know if you have any questions.

Thank you,
Anna

Anna Buzaitis
Assistant Redevelopment Planner
Land Use Planning
PORT OF SAN DIEGO
3165 Pacific Highway
San Diego, CA 92112-0488
619.686.7263
619.686.6508 (fax)
abuzaiti@portofsandiego.org

ATTACHMENT U

WATER STUDY
FOR
HARBOR ISLAND HOTEL

SAN DIEGO UNIFIED PORT DISTRICT

MARCH 23, 2009
Revised: APRIL 2, 2009

Prepared for:
Sunroad Enterprises
4445 Eastgate Mall, Suite 400
San Diego, CA 92121

Prepared By:

LATITUDE 33 PLANNING AND ENGINEERING
4933 Paramount Drive, Second Floor
San Diego, CA 92123
Voice (858) 751-0633
Fax (858) 751-0634
(LATITUDE 33 JOB NO. 971.0)

C. John Eardensohn RCE 34584
Registration Expires 9-30-2009

PREPARED BY: NAB
CHECKED BY: CJE

I. INTRODUCTION

The purpose of this report is to evaluate the hydraulics of the proposed onsite potable water associated with the proposed Harbor Island Hotel. The intent is to provide a level of detail needed to preliminarily assess water demands and overall function of the proposed system.

The proposed project includes the construction of a 4-story hotel. The existing marina and off site restaurants will remain. The existing public water was constructed in 1967 and was aligned under the roadway (Harbor Island Drive). The road alignment was subsequently changed and the water line is no longer located under the roadway. The proposed hotel will be sited over the existing public water main. The public water main is proposed to be realigned to allow construction of the hotel and correspond with the realignment of Harbor Island Drive.

II. PROJECT DESCRIPTION

This water study has been prepared in support of the design of the public water facilities associated with the construction of this project. The public water system is owned and maintained by the City of San Diego.

Existing Condition

Currently the project site is developed and includes a marina and associated parking areas. Contiguous to and east of the project site is another leasehold currently developed with two existing restaurants. The project site is served by existing 10-inch A.C.P., which is reduced to an existing 8-inch line just west of the proposed hotel site, and continues easterly to serve the existing restaurants. There are currently 3 fire hydrants off of the existing main serving the hotel site and marina leasehold, and another 4 hydrants off the main serving the restaurants within the easternmost leasehold. City of San Diego standards require that water mains serving more than 30 equivalent dwelling units (EDU) or 2 fire hydrants must be looped. The existing system does not meet this standard. A looped system has been designed per S.D.U.P.D. tenant project No. 007-012-2199 and City of San Diego drawing No. 29977-D, but was cancelled in or around 2005. This report analyzes the existing system assuming the cancelled project will be built, as the looped system would be required to serve the existing property under the city's criteria.

Proposed Project

The proposed project includes the construction of a 4-story hotel. The existing marina and off site restaurants will also remain. The existing 8" A.C. dead-end public water will be removed and replaced with a 12" PVC system relocated within the realigned Harbor Island Drive. An extension of the planned looped system into the easternmost leasehold will be required to meet City of San Diego redundancy standards for the easterly leasehold. The proposed public water extension will begin near the Harbor Island Drive cul-de-sac and will continue into the restaurant leasehold. Two new commercial fire hydrants, one fire service and one domestic service will be built to serve the proposed hotel.

III. METHODOLOGY

The City of San Diego's Water Department's Facility Design Guidelines for Capital Improvement Projects was used for system layout and performance standards. Per the guide, each water main must be capable of supplying a minimum static pressure of at least 65 pounds

The connection points to the City of San Diego's planned 12" looped water system were modeled as infinite reservoirs with a static HGL consistent with the City of San Diego's Water Department Water Map, see Appendix E. This study also assumes that the proposed hotel, will possess a fire sprinkler system and utilize construction materials/techniques that would require a maximum fire flow of 4,000 GPM. Water demands were calculated using either, the land use (Appendix C) or fixture units where plumbing plans were available. Peak flows were calculated using the peaking factor zone map (Appendix E).

IV. DESIGN DOCUMENTATION

V. ANALYSIS

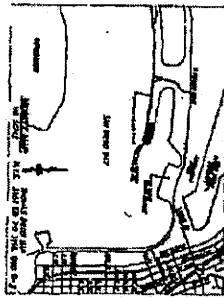
Pressure regulators will be required for all services exceeding 80 psi. A more detailed analysis of these and other water system appurtenances should be performed to satisfy final engineering requirements.

VI. CONCLUSION

This report has been prepared to quantify the water demand associated with the proposed Harbor Island Hotel and to evaluate the hydraulics of the proposed onsite water system and existing infrastructure. The analysis demonstrates that the added demand of the hotel, combined with the existing land use demands are adequately served by the existing 10" supply offsite, and extension of a new 12" main across the project's frontage in the realigned Harbor Island Drive. This extension would reach the east end of the island to serve the existing restaurants.

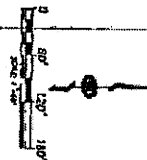
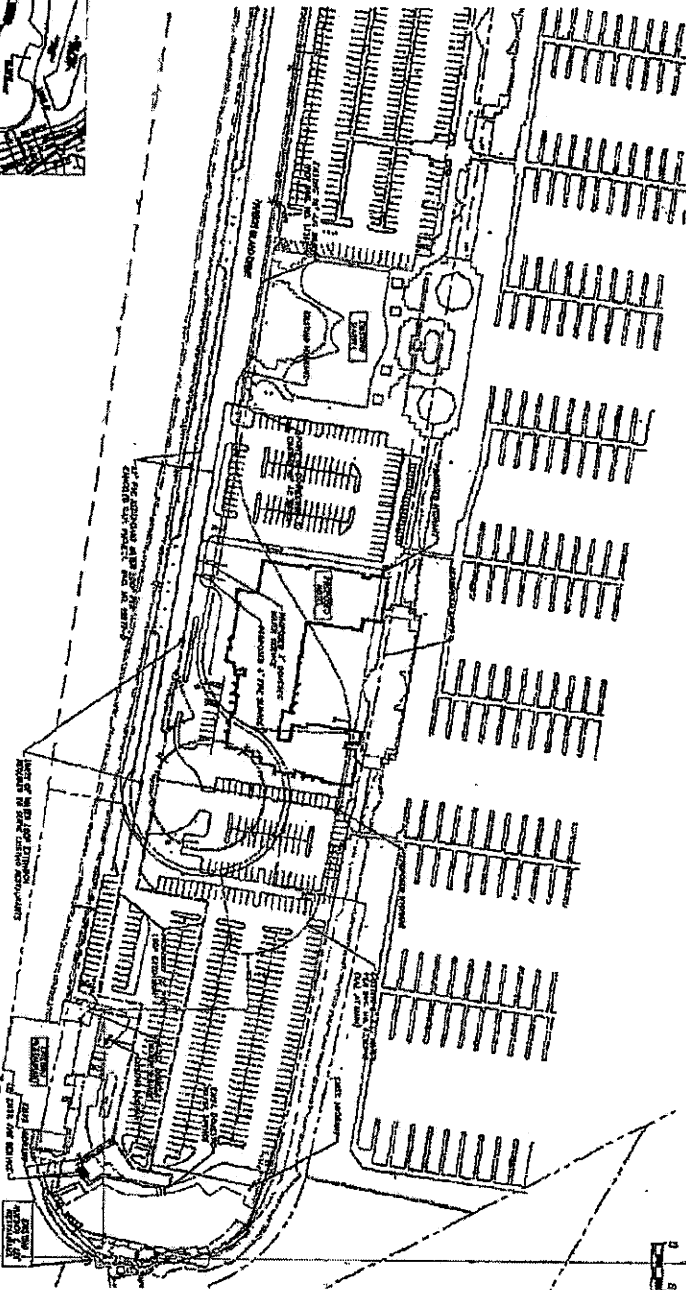
Current City of San Diego standards require that water mains serving more than 30 equivalent dwelling units (EDU) or 2 fire hydrants must be looped. A looped 12" PVC main in Harbor Island Drive as was proposed with city drawing No. 29977-D per S.D.U.P.D. tenant project No. 007-012-2199 is assumed to be provided in order to meet the city's requirement for redundant supply. According to the calculations provided herein, there will be no adverse impacts as a result of the development.

HARBOR ISLAND HOTEL WATER STUDY MAP



LEGEND

OTHER MAPS ARE:
 1. HARBOR ISLAND HOTEL
 2. HARBOR ISLAND HOTEL
 3. HARBOR ISLAND HOTEL
 4. HARBOR ISLAND HOTEL
 5. HARBOR ISLAND HOTEL
 6. HARBOR ISLAND HOTEL
 7. HARBOR ISLAND HOTEL
 8. HARBOR ISLAND HOTEL
 9. HARBOR ISLAND HOTEL
 10. HARBOR ISLAND HOTEL



Appendix 88
 Harbor Island Hotel
 Water Study Map
 10/1/68

ATTACHMENT V

Fitness and meeting rooms would total approximately 8,000 square feet. Common areas—including exterior features such as the pool and spa—would total approximately 15,000 square feet of the Project site.

Specific lighting plans have not been developed. However, the structure is proposed to be lit at night for security and aesthetic purposes. All lighting will be consistent with the City of San Diego Outdoor Lighting Regulations.

The projected number of fulltime hotel employees would range from 35 to 40.

1.3.2 Open Areas, Promenade, and Landscaping

The PMP defines four public access categories (Classes I–IV) that require development of physical accessways depending on the intended degree of public shoreline access. The existing Class I promenade, identified in the PMP, includes pedestrian access along Harbor Island Drive. The portion of the promenade located south of the Project site (along the bay) would not be altered as a part of the Proposed Project.

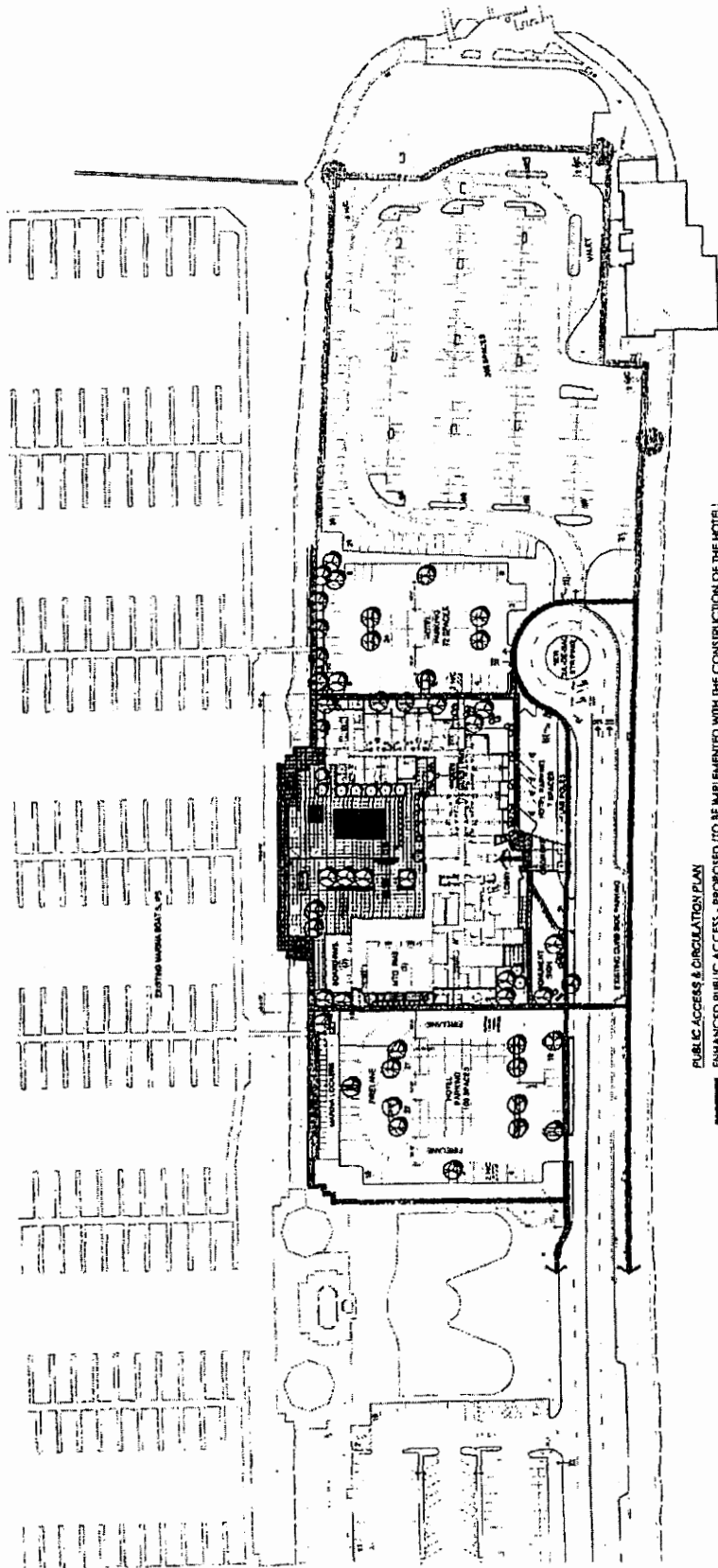
The Project proposes enhanced public access within East Harbor Island. The Project will include a pedestrian promenade along the Harbor Island East Basin side of the hotel and would connect to the promenade that will be extended along the eastern end of Harbor Island, as part of the Reuben E. Lee restaurant redevelopment. The proposed promenade will consist of a 10-foot-wide hardscape path extending from the existing promenade to the hotel and would also extend along the northern perimeter of the hotel to allow access to the restaurants at the eastern border of Harbor Island. Pedestrian access would also be available adjacent to the hotel building to provide access to Harbor Island Drive. Additional public access enhancements include landscaping, benches, and signage adjacent to the pathways identifying the promenade as open to the public.

The traffic circle would be reconfigured to accommodate the ingress and egress of the hotel and a realignment of the easternmost portion of Harbor Island Drive.

The landscape improvements currently proposed are conceptual. A detailed landscape plan would be prepared for review and approval of the Port District prior to construction of the hotel. Certain mature and scenic trees would be incorporated into the exterior design of the hotel and common areas.

1.3.3 Parking

A total of 457 parking spaces for shared use with the hotel and marina guests would be provided in two parking lots. To accommodate the hotel and parking lots immediately west and east of the hotel, 111 parking spaces of the existing 291-space lot currently located east of the marina building would be eliminated. A 72-space parking lot would be located east of the hotel, and a 101-space lot



- PUBLIC ACCESS & CIRCULATION PLAN**
- ENHANCED PUBLIC ACCESS - PROPOSED [TO BE IMPLEMENTED WITH THE CONSTRUCTION OF THE HOTEL]
 - EXISTING PUBLIC PROMENADE/WALKWAYS
 - ENHANCED PUBLIC ACCESS - APPROVED [TO BE IMPLEMENTED WITH THE CONSTRUCTION OF THE 830 HARBOR PROJECT]
 - PUBLIC VIEWPOINTS



HARBOR ISLAND HOTEL
PUBLIC ACCESS & CIRCULATION PLAN

FEBRUARY 10, 2003
PRE-DEVELOPMENT SUBMITTAL
A.7

AW
AWBERRY
COOK
MCGILL
ARCHITECTS
1000 West 10th Street, Suite 100
San Diego, CA 92101
Tel: 619.594.1000
Fax: 619.594.1001

I. INTRODUCTION

The proposed Harbor Island Hotel project is a development within the San Diego Unified Port District (SDUPD) jurisdiction. The project includes the construction of a 4-story hotel, and associated site improvements.

II. PROJECT DESCRIPTION

This sewer study has been prepared in support of the design of the public sewer facilities associated with the construction of this project. The public sewer system is owned and maintained by the City of San Diego.

The existing public sewer was constructed in 1967 and was aligned under the roadway (Harbor Island Drive). The road alignment was subsequently changed and the sewer is no longer under the road. The proposed hotel will be sited over the existing sewer alignment. The sewer will be realigned to allow construction of the hotel and correspond with the realignment of Harbor Island Drive.

Existing Condition

Currently the project site is developed and includes a marina and associated parking areas. Contiguous to and east of the project site is another lease hold currently developed with two restaurants. The project site is served by an existing 8-inch vitrified clay sewer main constructed per SDUPD drawing #926. There are no records of any existing public sewer easements on the site.

Proposed Project

The proposed project includes the construction of a 4-story hotel. The existing marina and off site restaurants will also remain. The existing onsite public sewer will be removed. A new 8-inch pvc public sewer will be constructed to serve the existing and proposed improvements. The public sewer will begin in front of the existing restaurants and continue westerly through Harbor Island Drive, eventually reconnecting with the existing public sewer. The existing restaurants will connect at the easterly end of the realigned public main. The existing marina and proposed hotel will connect to the public sewer at points within Harbor Island Dr.

III. METHODOLOGY

This sewer study has been prepared in general conformance with the City of San Diego Sewer Design Guide, dated June 11, 2001 (2004 Edition). This study will estimate the sewer flows (on-site and Offsite) for the proposed project. In addition, this sewer study will evaluate the existing 8-inch public sewer main in Harbor Island Dr. to confirm its conformance to City of San Diego standards. The following City of San Diego hydraulic requirements/standards for public sewer mains will be verified:

1. The ratio of depth of flow in the main (dn) to the diameter of main (D) or $dn/D < 0.5$ for wet weather flows – Section 1.3.3.1 on page 1-6

2. The minimum cleansing velocity (V) is greater than or equal to 2 feet per second or $V \geq 2$ f.p.s. – Section 1.3.3.3 on page 1-6

IV. ANALYSIS

The analysis consists of estimating the sewer flows (on-site) for the existing condition and the proposed project. In addition, the analysis will include an evaluation of the existing 8-inch public sewer main in Harbor Island Drive for the proposed condition.

Existing Condition Sewer Flow

The existing sewer generation was analyzed to provide a baseline to compare the flows from the proposed improvements. The existing off-site sewer flows were determined by using the Equivalent Population shown in Table 1-1 of the Sewer Design Guide (see calculations in Appendix 2).

Existing Condition Sewer Flow

The existing public system in Harbor Island Drive was evaluated by estimating sewer flows for the existing site and adjacent property based on fixture units. The estimated on-site flows for the project were estimated by using the zoning/land use and the Equivalent Population shown in Table 1-1 of the Sewer Design Guide, page 1-12. The exact points at which the marina connects to the public sewer main are unknown. Based on the lateral locations shown on SDUPD dwg # 926, it was assumed that half of the flow from the marina enters the public system at MH 32 and the remaining flows enter at MH 31. See Appendix 2 for the existing condition sewer flow calculations.

Proposed Project Flow

The existing public system in Harbor Island Drive was evaluated by estimating sewer flows based on a combination of the existing condition as described above plus an estimate of the on-site sewer flow for the proposed project. The proposed condition analysis was based on the proposed number fixture units for this project. This method provides a more representative sewer flow compared to using the figures from the Table 1-1 of the City of San Diego's Sewer Design Guide because the proposed project size and scope are well defined. The proposed hotel project will discharge to the public main in Harbor Island Drive at one point via an 8" lateral in reach 2. The sewer flows from the proposed hotel will combine with the flows from the existing restaurants at the west end of the proposed project in the vicinity of MH C. Using a peak factor of 1.5, the proposed wet weather peak flow from the 2 restaurants, the proposed hotel and the existing marina are 75,180 gpd, 99,480 gpd, and 42,561 gpd, respectively.

Evaluation of the Harbor Island Drive Existing Sewer Main

The existing 8-inch public sewer main in Harbor Island Drive was evaluated for the proposed project identified above. The existing public sewer system has segments/reaches that convey different amounts of sewer flow and/or have different pipe gradients/slopes. The evaluation of the existing system is limited to verifying that the City of San Diego's requirement for minimum cleansing velocity (V greater than or equal to 2 f.p.s.) and maximum depth of flow to diameter of pipe (dn/D not to exceed 0.5) is met. Information about the existing sewer pipe was obtained from SDUPD drawings #926 and #1468. Refer to Appendix 6 (copy of as-built plans) for

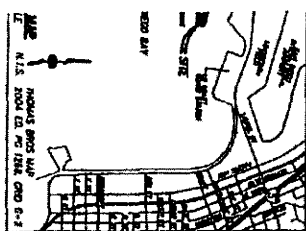
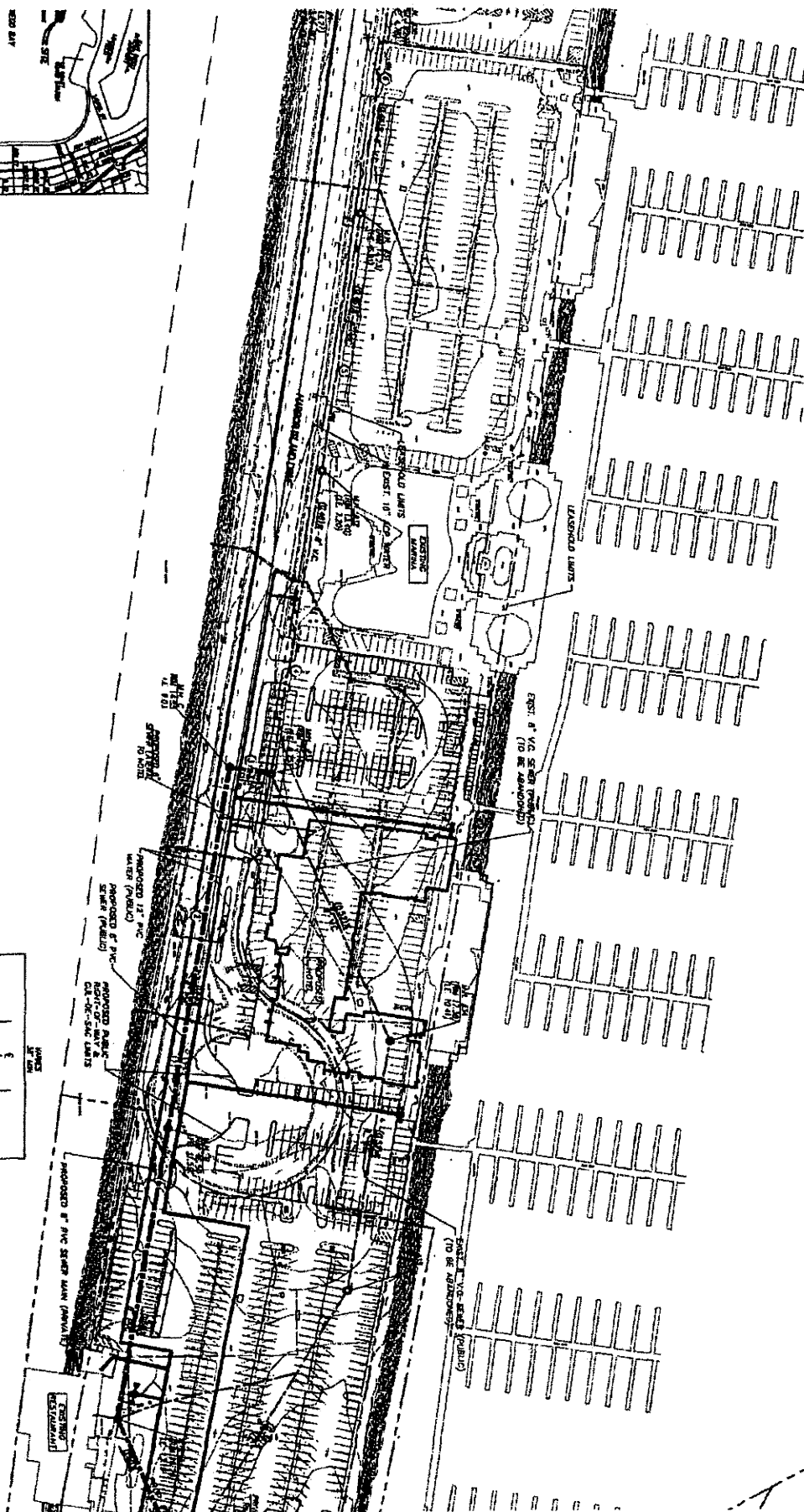
identification of the segments/reaches analyzed. The existing system was analyzed from the proposed connection just west of the proposed hotel (MH 33) westerly in Harbor Island Drive up to the existing 15" VCP sewer (MH 4). The hydraulic calculations are summarized in Appendix I.

V. CONCLUSION

This sewer study has included an estimate of the sewer flows for the proposed project. The estimates of sewer flow within this report include an estimate of offsite flows from existing uses as well as onsite flows from the proposed project. The evaluation of the existing 8" v.c. public sewer adjacent to the project demonstrates that the existing public sewer main will maintain the City of San Diego's minimum cleansing velocity and maximum dn/D requirements in accordance with the City of San Diego Sewer Design Guide, dated June 11, 2001 (2004 Edition) for the proposed project identified herein. The existing public sewer run is constrained by fixed elevations near the restaurants to the east, and the existing system to the west. The existing public system is characterized by minimal pipe slopes, low cleansing velocities and is currently located outside of the public roadway. The proposed pipe is to be realigned within a relocated Public Roadway, and the resulting pipe slope of the new public sewer is increased, contributing to increased velocities and better pipe capacity. The proportion of the realigned sewer easterly of MH B will be outside of the proposed public street dedication and therefore will be a private sewer main. The analysis also identified the necessary lateral size for the hotel connection as an 8" diameter service (see Appendix 3). The proposed 8" line is of sufficient capacity to handle the increased sewer demand (as demonstrated in the supporting calculations), and will support acceptable pipe velocities. Therefore the proposed project does not cause any significant impacts to the existing offsite public 8-inch sewer system.

Appendix 1
SEWER MAP

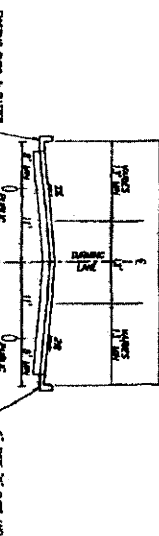
HARBOR ISLAND SEWER STUDY MAP



LEGEND

EXISTING SANITARY SEWER & MANHOLE
 PROPOSED SANITARY SEWER & MANHOLE
 EXISTING WATER MAIN
 PROPOSED WATER MAIN
 EXISTING LANDSCAPED PARK

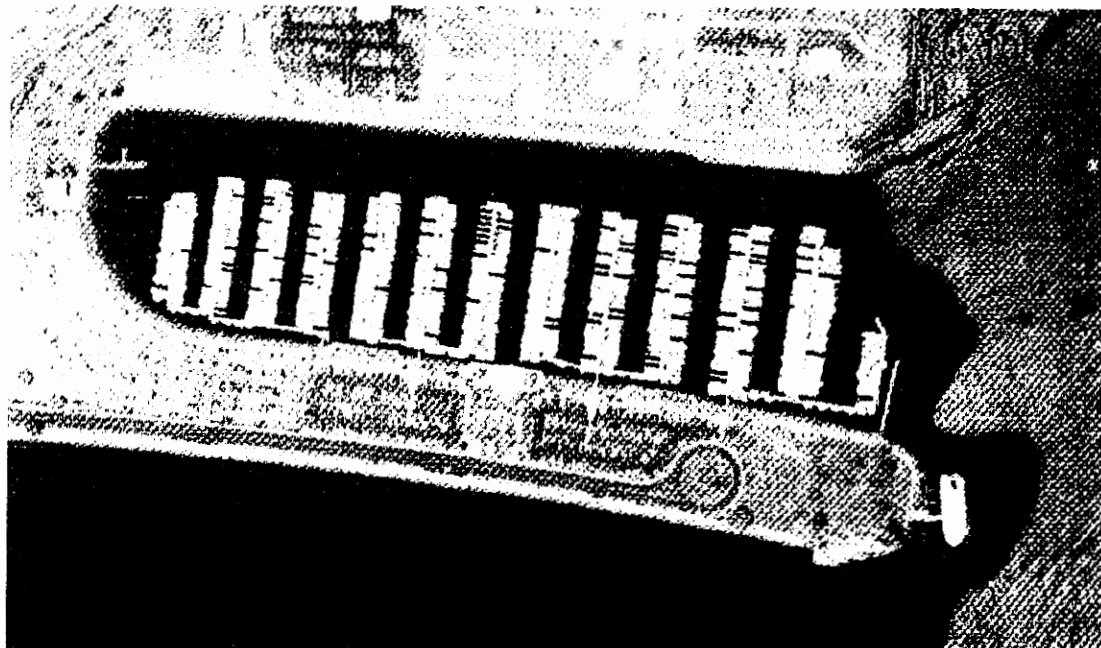
1/2" = 1' (1/2" = 1' SCALE)
 1/4" = 1' (1/4" = 1' SCALE)
 1/8" = 1' (1/8" = 1' SCALE)
 1/16" = 1' (1/16" = 1' SCALE)



1/2" = 1' (1/2" = 1' SCALE)

ATTACHMENT W

**Marine Resources Assessment
Sunroad Hotel Project
Sunroad Marina, Harbor Island
San Diego, CA**



Prepared for:

Jones & Stokes
9903 Businesspark Avenue
San Diego, CA 92131

Prepared by:
Weston Solutions, Inc.
2433 Impala Drive
Carlsbad, CA 92008

September 2006

AR0463

Introduction

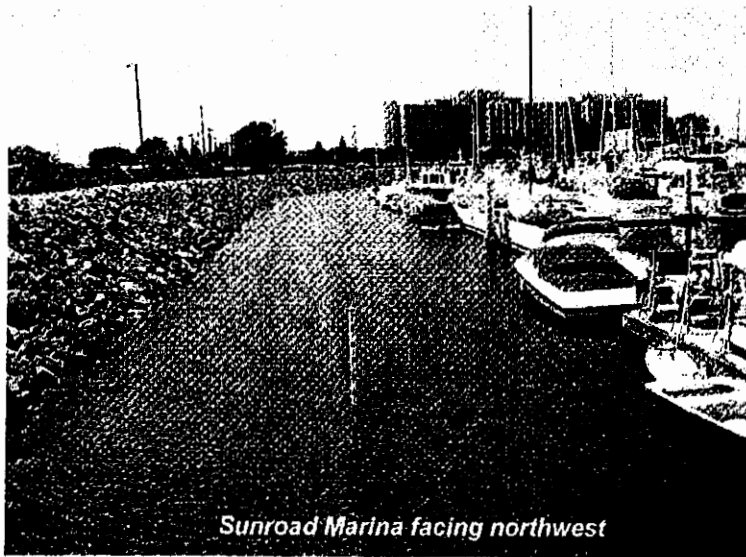
Study Purpose

Sunroad Asset Management, Inc. has proposed constructing several buildings on Harbor Island in San Diego Bay, the largest of which would be a 400-room, 21-story hotel tower with consideration for a second hotel tower, planned in Phase III of construction, that would house 200 rooms, a restaurant, retail stores, and a parking structure. The proposed project would involve the demolition of most of the existing structures on the marina property located on Harbor Island Drive. The hotel complex replacing the current structures and parking lots on the property would be considered a mixed use resort, containing, hotel accommodations, restaurants, retail shopping, a spa, and a marina. A schematic of the proposed resort design is provided in Appendix A.

Weston Solutions was contracted by Jones & Stokes to perform a field survey within the proposed project area to describe marine biological resources, map the distribution of any observed eelgrass beds, and assess potential impacts from the proposed project on marine resources. This data will be included as part of a Draft Environmental Impact Report (DEIR).

Project Site & Vicinity

The marine environment at Sunroad Marina consists of a sand and mud bottom habitat ranging in depth from 0.0 to 17 feet (0- 5 meters) below MLLW. This area supports eelgrass beds (*Zostera marina*), associated macroinvertebrates, and fish. Riprap occurs along the southern, eastern, and western boundaries of the project area while extensive marina docks and dock pilings occur throughout the majority of



Sunroad Marina facing northwest

the project area. The hard substrate within the marina supports a fouling community while the intertidal mudflats, which span the length of Sunroad Marina property, support benthic fish and invertebrates as well as foraging shorebirds. At low tide, approximately 10 to 15 feet (3.0- 4.6 meters) of intertidal beach is exposed between the waters edge and the rock riprap separating the upland habitat from the tidelands along the entire 2200-foot (670-meter) marina property. A

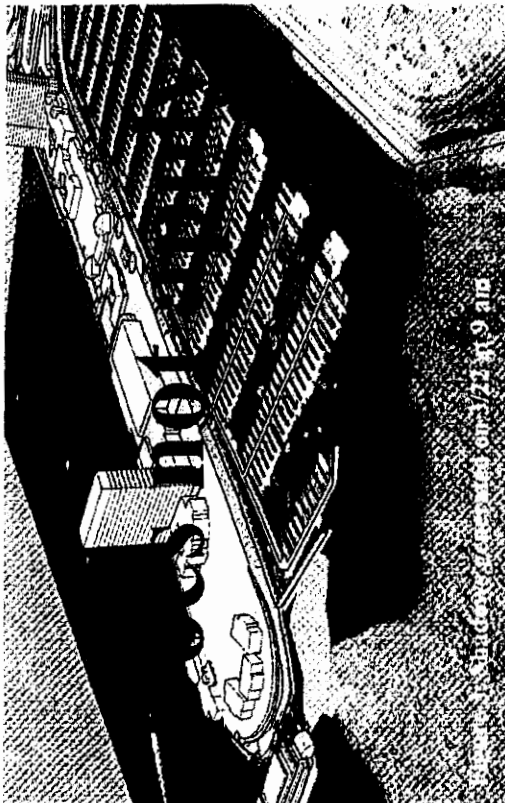


Image 1: Structure generated on 7/27 at 9 am

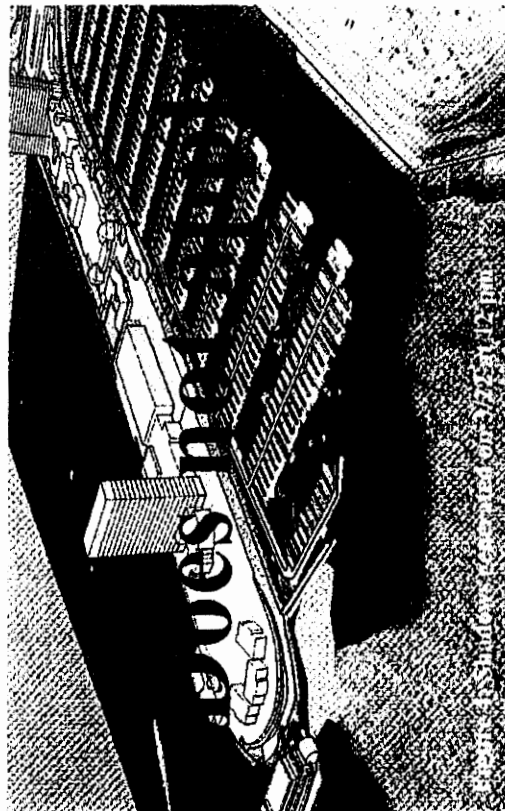


Image 2: Structure generated on 7/27 at 12 pm

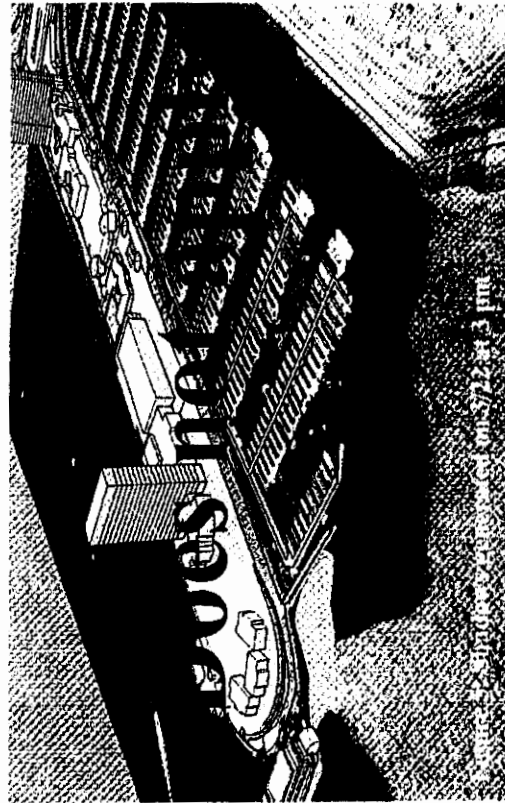


Image 3: Structure generated on 7/27 at 3 pm

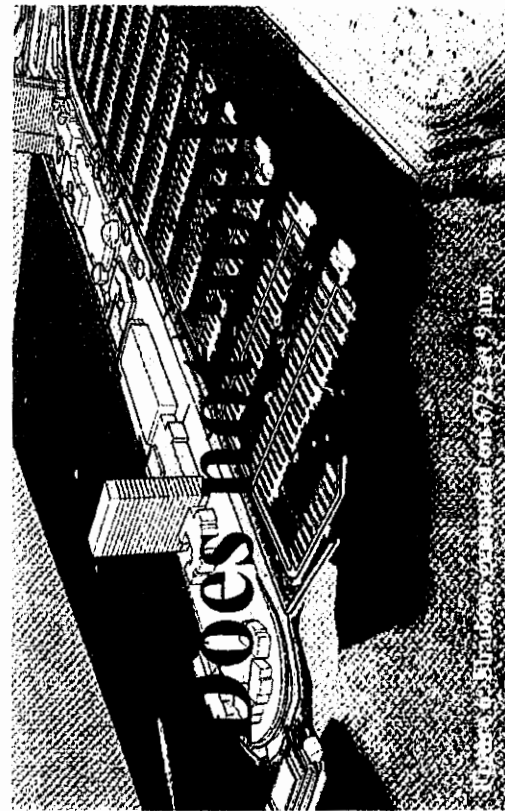
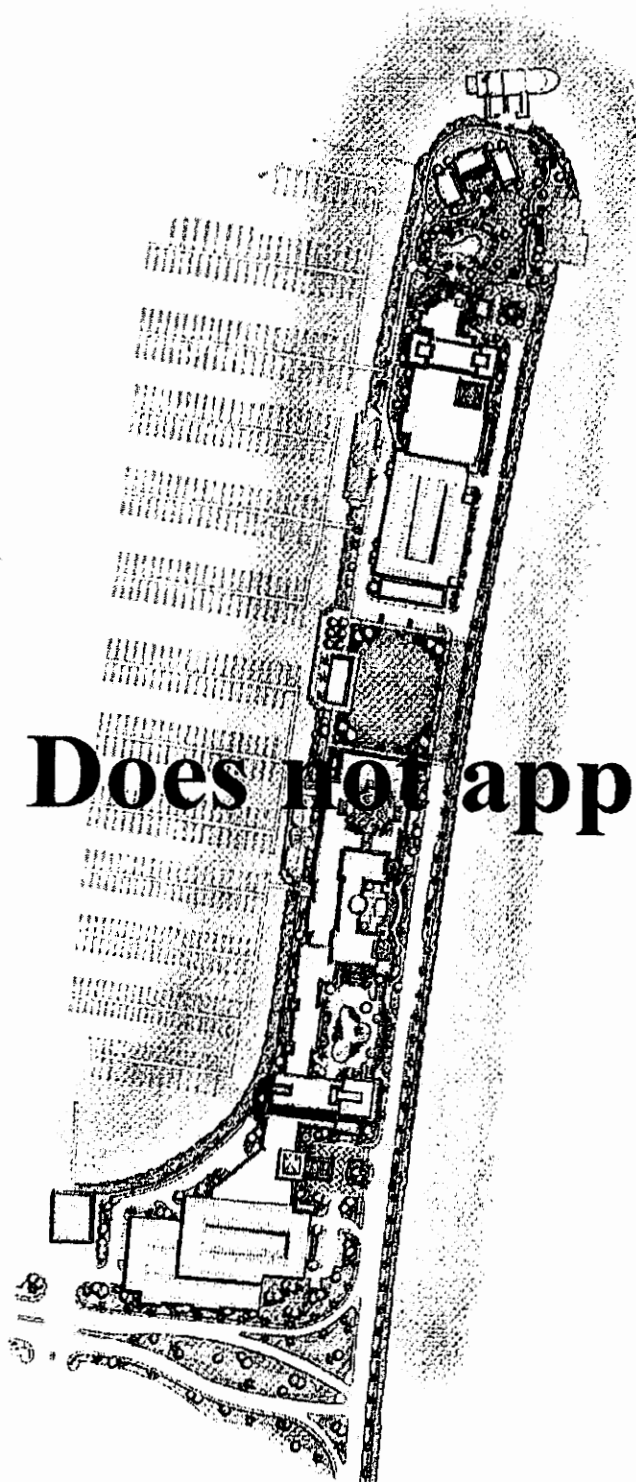


Image 4: Structure generated on 7/27 at 9 pm

Appendix A
Site Plan of Proposed Hotel

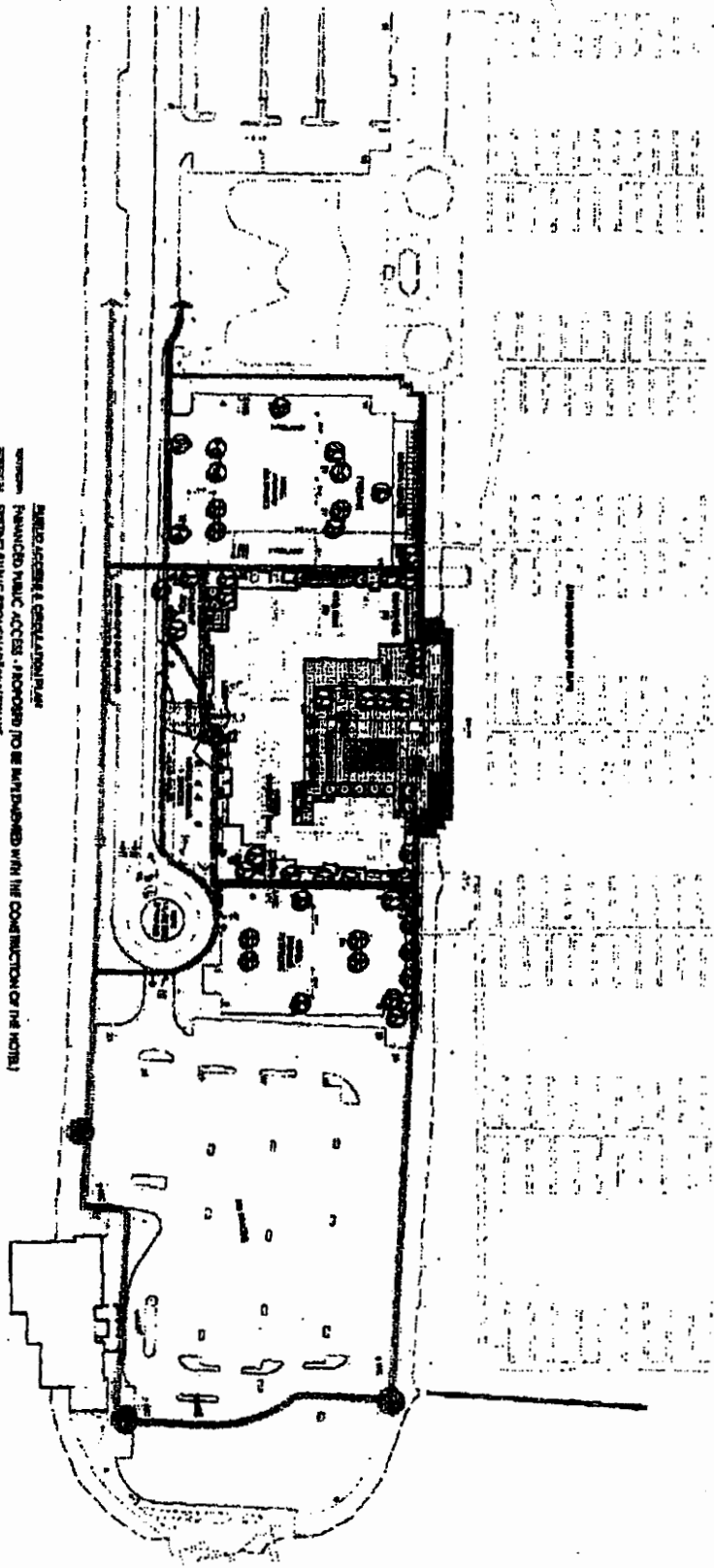
Does not apply



ATTACHMENT X

HARBOR ISLAND HOTEL
PUBLIC ACCESS & CIRCULATION PLAN

- SHIELD ACCESS & CIRCULATION PLAN**
- REMOVED PUBLIC ACCESS - APPROVED TO BE REMOVED WITH THE CONSTRUCTION OF THE HOTEL
 - REMOVED PUBLIC PROWLER/ADULTS ONLY
 - REMOVED PUBLIC ACCESS - APPROVED TO BE REMOVED WITH THE CONSTRUCTION OF THE 800 HARBOUR PROJECT
 - PUBLIC VIEWINGS



REMOVED TO 200
THE CIRCULATION PLAN
A.I.



From: Tom Story <tstory@sunroadenterprises.com>
To: Uri Feldman <ufeldman@sunroadenterprises.com>, Anthony Gordon <agordon@p...
Date: 11/11/2009 4:41 PM
Subject: RE: Sunroad SLC and Hotel Update

All,
A call tomorrow (9 am?) would be fine. Tony, what number do you want us to call?

Tom

----- Original Message -----

From: Anthony Gordon <agordon@portofsandiego.org>
To: Uri Feldman
Sent: Wed Nov 11 16:30:25 2009
Subject: Re: Sunroad SLC and Hotel Update

We're happy to meet or we can update you over the phone.

-----Original Message-----

From: Uri Feldman <ufeldman@sunroadenterprises.com>
To: ufeldman@gmail.com <ufeldman@gmail.com>
Cc: Anna Buzaitis <abuzaiti@portofsandiego.org>
Cc: Annette Dahl <adahl@portofsandiego.org>
To: Anthony Gordon <agordon@portofsandiego.org>
Cc: Tom Story <tstory@sunroadenterprises.com>

Sent: 11/11/2009 10:41:37 AM
Subject: RE: Sunroad SLC and Hotel Update

Tony,

Thanks for your email. Sounds like you made some good progress. Our preference would be to meet, even if briefly, so as to confirm the EIR status.

Uri

-----Original Message-----

From: Anthony Gordon [mailto:agordon@portofsandiego.org]
Sent: Tuesday, November 10, 2009 5:10 PM
To: ufeldman@gmail.com; Uri Feldman
Cc: Annette Dahl; Tom Story
Subject: Sunroad SLC and Hotel Update

Uri,
Annette and I met last week with Grace Kato and Jennifer Luchesi from State Lands to discuss the 880 project. Jennifer was very familiar with the project and the current terms offered by SLC. She suggested that it would be helpful to present the project to Barbara Dugal and the SLC management team in person in order to really emphasize the unique nature of this project. Jonathon Clay also advocated a visit to Sacramento to meet with the appropriate management staff in person. In addition, the SLC is having their December meeting at the Port which will provide us with an opportunity to do a site visit with their staff. We are currently exploring a visit to Sacramento in advance of the December meeting.

We have not received feedback from senior management regarding the approach to the capital investment in the hotel that was discussed at our last meeting. A sensitivity analysis is circulating but we will probably not get a response prior to our meeting on Thursday (tomorrow is a holiday). Therefore, I would suggest that we postpone our Thursday meeting until we are able to get input from senior management.

Regards,
Tony

Tony Gordon
Senior Asset Manager
Real Estate
(619) 686-6287
agordon@portofsandiego.org

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 9.0.704 / Virus Database: 270.14.60/2495 - Release Date: 11/10/09 11:56:00

From: Anthony Gordon
To: ADM 5 Conf-Rm 1st Fl; Anna Buzaitis; Annette Dahl; Anthony Gordon; L...
Date: 5/12/2010
Time: 2:00 PM - 3:00 PM
Subject: Sunroad Weekly Meeting
Place: ADM 5 Conf-Rm 1st Fl

Weekly meeting to discuss hotel and restaurant projects. With Uri Feldman, Tom Story, Annette Dahl, Anna Buzaitis and Tony Gordon.

From: Anthony Gordon
To: Anna Buzaitis; Tom Story; Uri Feldman
CC: Annette Dahl; John Helmer; William Briggs
Date: 11/24/2008 2:44 PM
Subject: RE: Three Party Agreement for Harbor Island Hotel

Tom,
I believe there is a projected schedule for completion of the EIR included in the 3-Party Agreement. We are also working on a project timeline that includes both the CEQA process and the negotiation of the business deal, option and lease. Uri and I discussed scheduling a meeting next week to discuss the timeline for the hotel project, comments on the preliminary hotel drawings and comments on the 30% drawings for 880 Harbor. I will forward you information this week as it is assembled in preparation for next week's meeting (which I will schedule).

Regards,

Tony

>>> Tom Story <tstory@sunroadenterprises.com> 11/24/2008 2:29 PM >>>

Anna,

Three party agreement was just delivered. Thank you. I believe Uri has contacted Tony about a meeting. I'd also like to discuss the projected schedule for completing the EIR. If you have anything relating to that, that you can share with us, I'd appreciate it. Thx

Tom

-----Original Message-----

From: Anna Buzaitis [<mailto:abuzaiti@portofsandiego.org>]
Sent: Monday, November 24, 2008 12:56 PM
To: Tom Story; Uri Feldman
Cc: Anthony Gordon; John Helmer; William Briggs
Subject: Three Party Agreement for Harbor Island Hotel

Uri and Tom-

FYI - our intern is dropping off your copy of the 3-Party Agreement this afternoon. It should be there before 3pm. Please let me know if you have any questions.

Thank you,
Anna

Anna Buzaitis
Assistant Redevelopment Planner
Land Use Planning
PORT OF SAN DIEGO
3165 Pacific Highway
San Diego, CA 92112-0488
619.686.7263
619.686.6508 (fax)
abuzaiti@portofsandiego.org

From: Anthony Gordon
To: Anna Buzaitis; Annette Dahl; Anthony Gordon; Patricia Wagner; Robert...
Date: 12/4/2008 8:47 AM
Subject: Re: Sunroad Pre Meeting

Please meet in the RE conference room.

Thanks,
Tony

>>> Anthony Gordon 11/26/2008 3:02 PM >>>

This meeting has been scheduled to prepare for the meeting with Sunroad on December 8. I want to make sure we are all up to speed on the latest developments with both projects.

Regards,
Tony

From: Anthony Gordon
To: ufeldman@sunroadenterprises.com
CC: Anna Buzaitis; Annette Dahl; Robert Amezquita; tstory@sunroadenterpri...
Date: 2/20/2009 2:37 PM
Subject: Meeting Follow Up
Attachments: Sunroad Marina Lease Extension Agenda 2-20-09.doc; 1323.pdf

Uri,

Thank you for meeting with the Port team on Wednesday to discuss the 880 Harbor and Harbor Island hotel projects. Per our discussions at that meeting, below is a list of information to be provided by Sunroad as part of the hotel review:

- * Verification from the City of San Diego that the existing sewer capacity is sufficient to handle the addition of a 175-room hotel on Harbor Island. Jones and Stokes has also requested a sewer write-up for the proposed project. To keep things clean, they would like it to be specific to the 175-room hotel concept, not the 250-room concept. In the write-up they are looking for a short discussion of the proposed demand (specific to the 175-room hotel concept) and the capacity/capability of the existing sewer system.
- * Site plan clearly delineating the project site (including the road realignment and parking areas), the leasehold area (excluding the water area), the street alignment with arrows indicating the direction of traffic flow and the promenade along the basin-side. Please make sure the parking totals are consistent with the traffic report. Please mark the Reuben E. Lee project site as not part of the proposed project.
- * Utility realignment plan including sewer, water and electric.
- * CAD drawings indicating proposed lease boundary.
- * Response from FAA regarding the Part 77 study.

In addition, the Port has committed to providing the following information:

- * Sample parking management plan for 880 Option (attached, please disregard the comments).
- * Agenda Sheet for marina
- * Preference regarding the inclusion or exclusion of sidewalks in leasehold boundary.
- * Preliminary open issues/ business issues list.
- * Draft Option and Lease language.
- * Eligibility of Harbor Island utility relocation to be included on the federally funded infrastructure project list.
- * Status of SLC negotiations.

Please let me know if I left anything off of the list.

Regards,
Tony

Tony Gordon
Senior Asset Manager
Real Estate
(619) 686-6287
agordon@portofsandiego.org

Cc: Anthony Gordon; William Briggs; Uri Feldman
Subject: Re: Harbor Site Update

Hi Tom-

Thank you for making the revisions to the site plan. Unfortunately, there are a some small changes to be made.

- Lease lines. After looking at the lease lines, we have decided it would be better to not show the existing lease boundary of the site. Please remove the lease lines from both the hotel parcel and the restaurant parcel. Also, I spoke with Jim Harry (ICF Jones & Stokes) and he said it is okay (from a CEQA standpoint) that the project area is shown as segmented (i.e., not including the marina building).

- Project Area notation. Instead of using hatching to depict the project area, I suggest using shading. I think the hatching brings in too many lines. Shading the project area should make it easier to depict.

- Parking. I'm hoping that there are three parking spaces that I am looking over somewhere on the site plan. But if not, the parking numbers are still not adding up. The western parking lot (277 spaces) is now consistent with the parking study, but the total number of parking spaces is still not consistent between the parking/traffic study (460 spaces) and the site plan (457 spaces). I'm not sure if it would be easier for LLG to change the few pages where the study indicates 460 parking spaces will be provided, or, if it would be easier to change the site plan numbers.

- Promenade. Please denote the portion of the promenade that will be along the basin. My suggestion is to show it with a thin dashed line (if this is the case, add dashed line to the legend too). Please only show what will be located on this leasehold.

Please give me a call if you have any questions.

Thank you,
Anna

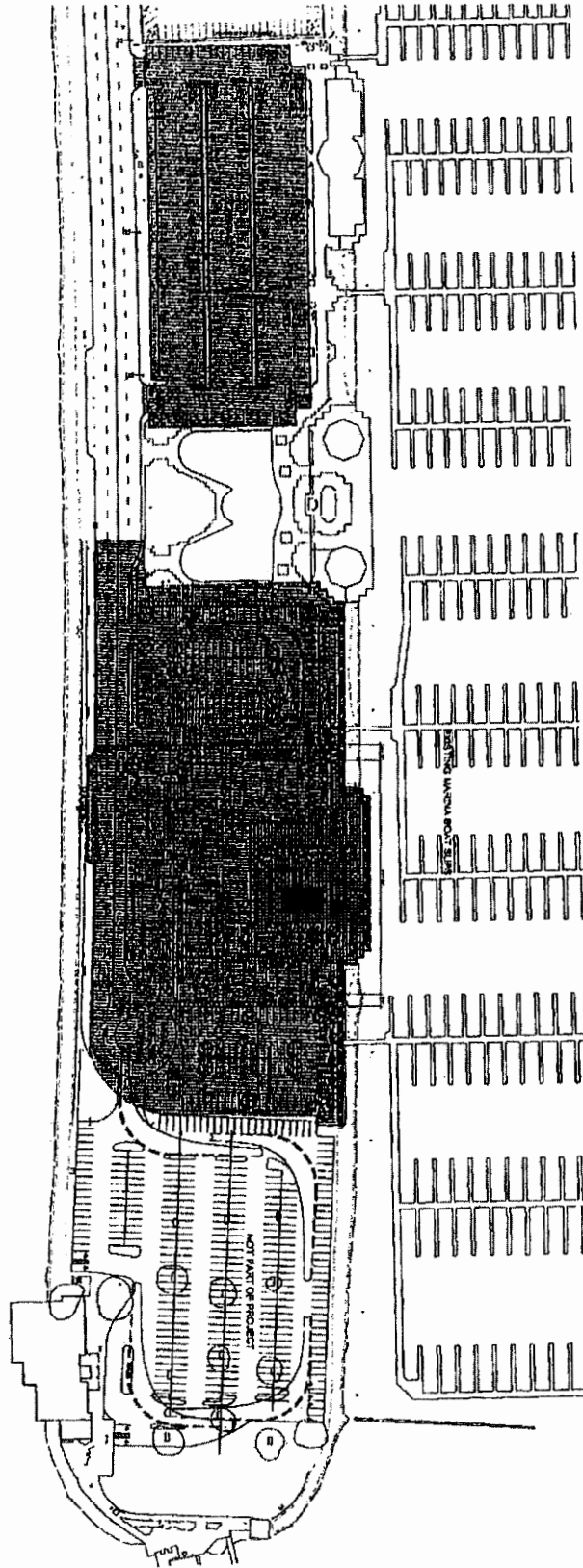
Anna Buzaitis
Assistant Redevelopment Planner
Land Use Planning
PORT OF SAN DIEGO
3165 Pacific Highway
San Diego, CA 92112-0488
619.686.7263
619.686.6508 (fax)
abuzaiti@portofsandiego.org

>>> Tom Story <tstory@sunroadenterprises.com> 2/25/2009 9:25 AM >>>

Anna,
See attached site plan depicting the project area and the newly confirmed, field verified, parking counts (west parking lot.) Let me know if this is satisfactory.

We are still working on providing you an accurate graphic depicting the existing and proposed utilities and should have that to you shortly. A meeting with City staff on the sewer capacity issue is being scheduled.

file:///C:/Documents and Settings/unstanley/Local Settings/Temp/XPgrpwise/49A7A994POR... 3/1/2010



PLAN LEGEND

PROJECT AREA

PUBLIC PROMENADE

HARBOR ISLAND HOTEL
SITE PLAN



AMREY
COOK
MCCALL

1000 10th Street, Suite 100
San Francisco, CA 94103
Phone: 415.774.1000

Anna Buzaitis - RE: Harbor Island Hotel Water Study

From: "Noel Barnett" <noel.barnett@latitude33.com>
To: "Tom Story" <tstory@sunroadenterprises.com>, "Uri Feldman" <ufeldman@sunroadenterprises.com>
Date: 4/2/2009 10:57 AM
Subject: RE: Harbor Island Hotel Water Study
CC: "John Eardensohn" <john.eardensohn@latitude33.com>, "Uri Feldman" <ufeldman@sunroadenterprises.com>, "Anna Buzaitis" <abuzaiti@portofsandiego.org>
Attachments: HARBOR ISLAND Study-reduced.pdf

All,
I have revised the water study to incorporate Tom's requested changes. Please note that some of the references have been removed from this *reduced* version in order to send electronically. I will provide hardcopies of the *full* version to both Sunroad and Anna.

Anna,
Could you please provide me with an address to deliver/send copies of the utility plan and water study.

Tom,
Would you like a hard copy of the water study? If so, how many, and is the 4445 Eastgate Mall address appropriate for delivery/sending?

Please let me know if I can be of further assistance.

Thank You,

Noel Barnett, P.E., LEED^{AP}
Latitude 33 Planning and Engineering
4933 Paramount Drive, Second Floor
San Diego, CA. 92123
P: (858) 751-0633 x130
F: (858) 751-0634

-----Original Message-----

From: Tom Story [mailto:tstory@sunroadenterprises.com]
Sent: Thursday, April 02, 2009 9:38 AM
To: Noel Barnett; Uri Feldman
Cc: 'John Eardensohn'; Uri Feldman; Anna Buzaitis
Subject: RE: Harbor Island Hotel Water Study

Noel,
Only 2 comments on the water study.
Pg 1 2nd paragraph 3rd sentence. Revise to read 'and the water line is no longer located under the roadway.

Pg 1 Existing Conditions 7th line leasehold is one word.

With these changes pls submit to Anna at the Port.

Also, on the revised utility map, do not modify the project area to include all of the new and relocated facilities east and west of the project area.

ENVIRONMENTAL REVIEW CHECKLIST
PRC Sections 6370, et seq and 21000, et seq

Work Order # W 26298

Negotiator: FOSTER K

Applicant: UNIFIED PORT OF SAN DIEGO

Date Checklist Submitted:

RA#: 2108

County: San Diego

1. Project Location:

APPLICATION FOR A NEW GENERAL LEASE - PUBLIC AGENCY USE AND
AUTHORIZATION OF A SUBLEASE OF SOVEREIGN LANDS IN SAN DIEGO BAY FOR
THE OPERATION OF A FLOATING BARGE AS PART OF AN UPLAND RESTAURANT
FACILITY ON HARBOR ISLAND IN THE CITY OF SAN DIEGO.

2. The proposed project is situated on land identified as possessing significant environmental values:

a. ☐ No (No further "significant lands" evaluations required)

b. ☒ Yes

(1) The subject land is identified as 37-009-000 in the "Inventory of Unconveyed State School Lands and Tide and Submerged Lands Possessing significant Environmental Values" December 1, 1975.

(2) The following land use classification has been assigned: c) Multiple Use

(3) The subject land was nominated to be included in the "Inventory" by:

Name/Agency: California Department of Fish and Game

(4) Contacts made regarding the compatibility of the project with the identified "significant environmental values":

(a) Name/Agency:

Telephone:

Title:

Comments: CDFG does not comment on existing facilities

(b) Name/Agency:

Telephone:

Title:

Comments:

(5) Staff comments/recommendations regarding "significant lands":

3. The Proposed Project:

a. ☒ is exempt:

(1) ☒ The activity is not a project as defined in Section 15378 CCR. (Sec. 15060 (c)(3) CCR)

(2) ☐ Not a project which will have a potential for causing a significant effect on the environment. (Sec. 15061 (b)(3) CCR)

(3) ☐ By statute: (a) ☐ Title settlement in lieu of litigation. (Sec. 21080.11 PRC) (d) ☐ Ministerial project. (Sec. 15268 CCR)

(b) ☐ Ongoing project. (Sec. 15261 CCR)

(e) ☐ Emergency Project. (Sec. 15269 CCR)

(c) ☐ Feasibility and planning studies. (Sec. 15262 CC)

(4) ☒ As a Categorical Exemption.

Class: 2; Replacement or Reconstruction

CCR: 15302(b)

Title 14

Class:

CCR:

Class:

CCR:

b. ☐ Should be processed with

as the Lead Agency.

c. ☐ Should be processed with the State Lands Commission as the Lead Agency.

(1) ☐ requires the preparation of an Initial Study to determine whether a negative Declaration or an EIR will be required for the project.

(2) ☐ requires the preparation of an EIR.

4. Staff Comments:

Class 2 -Remodeling of existing 50 year old replica sternwheeler, known as Reuben E. Lee restaurant located within State Land's jurisdiction. This is a part of a larger redevelopment project within the Port of San Diego's jurisdiction. Not a project - Sublease: Checklist revised by Crystal Spurr on 01/07/2010.

Checklist Completed By:

Date:

Concurred By:

Date:

Crystal Spurr 1/7/2010 *Phil G. Allen* 1/7/10

Form 69.6 (06/2000)

AR4899

ATTACHMENT Y

Chapter 1

Executive Summary

1.1 Proposed Project

This environmental impact report (EIR) is prepared pursuant to the California Environmental Quality Act (CEQA), Public Resources Code (PRC) Section 21000, et seq., and its implementing guidelines (CEQA Guidelines), California Code of Regulations (CCR), Title 14, Section 15000, et seq., to analyze the potential environmental impacts of the Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment (Proposed Project). The Lead Agency for the environmental review of the Proposed Project is the San Diego Unified Port District (Port District). The proponent of the Proposed Project is Sunroad Marina Partners, LP. The Proposed Project plans to replace an existing marina locker building and surface parking with a 4-story hotel with a maximum of 175 rooms. The Proposed Project also includes an amendment to the Port Master Plan (PMP) to address changes in land use resulting from reconfiguring an eastern portion of Harbor Island Drive and the traffic circle at its eastern terminus.

1.1.1 Environmental Setting

The Proposed Project site is located in the southern portion of San Diego County at the northern end of San Diego Bay. The Project site is on the east end of Harbor Island and is within the jurisdiction of the Port District. The Port District regulates development within its jurisdiction in accordance with the PMP. The Project site is the location of the Proposed Project improvements (the hotel and adjacent parking lots, the parking lot located west of the existing Sunroad Resort Marina building, and the roadway and traffic circle realignment areas). The Project site is currently developed with a marina locker building, parking lots, traffic circle, and part of Harbor Island Drive. The Project vicinity refers to areas near the Project site but that are located outside of where improvements are proposed.

Existing Conditions and Surrounding Land Uses

The Project site is currently developed with commercial recreational uses associated with the adjacent marina facility, i.e., a marina locker building and

1.3 Project Description

The Proposed Project involves the partial redevelopment of one leasehold, which is currently leased by Sunroad Marina Partners, LP, located at 955 Harbor Island Drive. This leasehold is currently developed with a marina, support buildings, and surface parking. The proposed redevelopment would only affect the land side of this leasehold. The traffic circle, located at the east end of Harbor Island Drive, as well as a portion of Harbor Island Drive are also included in the proposed redevelopment.

The Project description as proposed in this Draft EIR includes the following physical changes to the Project site:

- demolition of one existing locker building and parking lot east of the existing marina building;
- construction of a limited service 4-story hotel with a total floor area of approximately 117,000 square feet, consisting of a maximum of 175 rooms, fitness and limited meeting space (approximately 8,000 square feet), and common areas;
- reduction of the traffic circle and realignment of the road and leasehold lines;
- reconfiguration of existing paved areas as necessary to accommodate ingress and egress to the hotel and surface parking;
- enhanced public access along the Harbor Island East Basin; and
- realignment of existing sewer, water, and utility lines.

The Project also proposes an amendment to the PMP to address the changes in land use resulting from reconfiguring East Harbor Island Drive and the traffic circle at its eastern terminus, and providing for the existing allowed 500 hotel rooms (currently allowed only on the parcel used by SDIA for employee parking) to be spread across multiple hotels (together totaling no more than 500 rooms) on East Harbor Island.

1.3.1 Proposed Hotel

The floor area of the proposed hotel would total approximately 117,000 square feet and include a maximum of 175 rooms, fitness and meeting space, and common areas. The meeting rooms would facilitate functions and conferences for guests. The 175 rooms, which would make up approximately 94,000 square feet of the hotel, would be distributed over four floors. The height of the structure is proposed to be approximately 65 feet. Architectural details and fenestrations may cause the maximum building height to reach 75 feet. The maximum height approved by the Federal Aviation Administration and San Diego County Airport Land Use Commission for the Proposed Project is 86 feet above mean sea level in order to accommodate features such as a flag pole.

The construction staging area would be on the Project site, east of the marina building and west of the proposed hotel footprint. During construction the 277-space parking lot located west of the marina building would be available for marina use. The existing public parking spaces along East Harbor Island Drive would remain available for public use during construction.

The foundation of the proposed hotel would be constructed using stone columns or Helical Earth Anchor Technology (HEAT anchors). The Proposed Project would not utilize pile driving.

1.3.6 Design Features

Energy conservation and sustainability features would be incorporated into the design and construction of the Proposed Project. These features will provide energy and water efficiency equivalent to 15% in excess of standards required by California's Energy Efficiency Standards for Residential and Nonresidential Buildings (Title 24, Part 6 of the California Code of Regulations). These features will be incorporated as conditions of approval of the Project.

1.3.7 Port Master Plan Amendment

The Project proposes an amendment to the PMP to address the proposed land use changes necessary to implement the Project. The changes warranting a PMP Amendment include the reconfiguration of East Harbor Island Drive and the traffic circle at its eastern terminus, and allowing the 500-room hotel currently allowed in the PMP to be spread across multiple hotels on East Harbor Island. The Proposed Project includes development of a 175-room hotel, which would constitute a portion of the 500 total hotel rooms allowed on East Harbor Island.

The PMP Amendment, described below, is included in this Draft EIR as Appendix B.

The hotel referenced in the PMP was proposed for the westernmost parcel of East Harbor Island (the parcel located west of the Project site). This parcel is currently used by SDIA for employee parking. Although the Proposed Project generally includes those uses outlined in this description, the PMP would need to be amended to allow those uses on all of East Harbor Island, including the Project site. The portion of the Project site that the hotel would be constructed on already has the proper land use designation for a hotel use—Commercial Recreation. The proposed changes to the traffic circle and roadway also warrant an amendment to the PMP.

The Project's PMP Amendment would revise the East Harbor Island Subarea discussion as follows:

The east end of Harbor Island, subarea 23, has been the last subarea to complete phased development and is designated commercial recreation. The last project, a future development in this subarea includes high quality hotels totaling approximately 500 rooms, which are sited to be responsive to views of San Diego Bay, the airport, and the downtown San Diego skyline. Maximum building heights will be established consistently with adopted aircraft approach paths and Federal Aviation Administration (FAA) regulations. The hotel-hotels complex may include typical supporting facilities such as swimming pools, spas, commercial retail, restaurants, cocktail lounges, meeting and conference space, recreational facilities, including piers, and ancillary uses. A marina of approximately 550 slips is located adjacent to the hotels and occupies most of the basin. The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge.

The existing promenade along the southern side of Harbor Island Drive will be extended to the eastern portion of the East Harbor Island subarea and along the Harbor Island East Basin as the subarea is developed or redeveloped. The promenade will provide pedestrian access around East Harbor Island and will connect the hotel developments, marina, and restaurants to the rest of Harbor Island. The promenade will be located to provide views of the San Diego Bay, the downtown San Diego skyline, and the Harbor Island East Basin. Public access will be maintained along the promenade. Private uses shall not obstruct the public promenades. Benches and overlooks adjacent to the promenade will be sited to provide viewing opportunities in a manner that does not obstruct pedestrian flow. Public access and other path-finding signage will be placed at strategic locations throughout East Harbor Island to guide guests and visitors to and from public use areas, restaurants, and other facilities.

A public access plan will be prepared and implemented for each hotel development. The public access plans will include information on signage, amenities, and public information to inform and invite the public to and around East Harbor Island and downtown San Diego.

All hotel developments should provide shuttle service to and from the airport and information regarding other transit opportunities.

A parking management plan will be prepared for each hotel development.

As the East Harbor Island subarea is developed or redeveloped, Harbor Island Drive may be resized and realigned to optimize use of East Harbor Island. This may allow for increased and enhanced public enjoyment of the bay. The promenade and new public access features (i.e., benches) will provide enhanced open space and public access opportunities within the East Harbor Island subarea. Proportionate to the development or redevelopment, activating uses such as restaurants, outdoor seating and dining areas, and retail shops open to the public may be integrated into the hotel development or redevelopment.

A public promenade parallels the active ship channel of the bay and ensures pedestrian and bicycle coastal access. Landscaped open space on Harbor Island

Drive is retained with the street design of an upgraded and modified "T" intersection. Utility capacity is expanded to meet increased service needs.

The PMP Amendment would also include the following:

- updating the Precise Plan map;
- updating the Lindbergh Field/Harbor Island Planning District 2 project list to change the 500-room hotel to multiple hotels with a cumulative total of 500 rooms and include the traffic circle/road realignment; and
- updating the land use acreage tables within the PMP to reflect increased promenade acreage, increased street acreage, reduced open space acreage, and reduced commercial recreation acreage.

Table 1-1 includes the revised Land Use acreages for Lindbergh Field/Harbor Island: Planning District 2 from the PMP Amendment. Appendix B of this Draft EIR includes each of the components of the proposed PMP Amendment.

The following Environmental Analysis sections provide a project-level analysis of all potential impacts associated with the proposed 175-room hotel project (including ancillary construction activities such as roadway realignment, etc.). All subsequent development projects (i.e., the 325 hotel rooms remaining from the originally allowed 500 hotel rooms) proposed as a result of the PMP Amendment would require additional project-level environmental analysis to ensure any unidentified impacts are addressed. There are no plans for developing more than the proposed 175-room hotel at this time.

Table 1-1. Precise Plan Land Use Allocation—Lindbergh Field/Harbor Island: Planning District 2

Land Use	Acres	
	Existing	Revised
Commercial	90.6	90.2
Airport-related Commercial	38.0	
Commercial Recreation	52.6	52.2
Industrial	631.8	
Aviation-related Industrial	130.6	
Industrial Business Park	33.1	
International Airport	468.1	
Public Recreation	26.2	26.7
Open Space	7.5	7.2
Park	16.4	
Promenade	2.3	3.1
Public Facilities	66.8	66.7

Significant Impact	Proposed Mitigation	Level of Significance After Mitigation
		the construction of the fire station at the Liberty Station site, the Port District cannot assure that this mitigation measure would be implemented, and the impacts would remain significant and unmitigated.
Cumulative Impacts		
Transportation, Traffic, and Parking		
TR-C1: Project traffic would contribute to the degradation of operations at the North Harbor Drive/Harbor Island Drive/Terminal 1 intersection in excess of City of San Diego thresholds during the AM and PM peak hours.	MM TR-C1: North Harbor Drive / Harbor Island Drive / Terminal 1 intersection (East Airport Entrance). The Project Applicant shall contribute a fair share percentage of 8.9% towards restriping the northbound approach to provide a left-turn lane, a shared left-turn/thru lane, a thru lane, and a right-turn lane. The fair share contribution shall be paid to the City of San Diego traffic impact fee program. The improvements at this intersection shall include the following: remove the northbound right-turn lane's "free" movement and introduce right-turn "overlap" phasing; retain the north/south "split" signal phasing; and restripe the eastbound approach to convert the right-turn lane to a shared/thru right-turn lane. Modifications to the triangular median in the southeast portion of the intersection are expected.	Implementation of Mitigation Measures MM TR-C1, MM TR-C2, and MM TR-C3 would mitigate impacts of the Proposed Project to less-than-significant levels. However, the intersections to be improved are within the jurisdiction of the City of San Diego. The mitigation measures are, therefore, contingent upon the action of the City of San Diego and are outside of the jurisdiction of the Port District. In addition,
Sunroad Harbor Island Hotel Project and East Harbor Island Subarea PMP Amendment, Draft EIR	1-19	December 2009 ICF J&S 00977.08

Significant Impact	Proposed Mitigation	Level of Significance After Mitigation
<p>TR-C2: Project traffic would contribute to the degradation of operations at the North Harbor Drive/Rental Car Access Road intersection in excess of City of San Diego thresholds during the PM peak hours.</p>	<p>MM TR-C2: North Harbor Drive / Rental Car Access Road intersection.</p> <p>The Project Applicant shall contribute a fair share percentage of 1.8% towards the reconfiguration of the westbound approach to provide an additional thru lane. To accommodate the additional lane, widening and modifications to the median / roadway shall be required. The fair share contribution shall be paid to the City of San Diego traffic impact fee program.</p>	<p>the City does not have an adopted plan or program that lists these intersection improvements. Therefore, the Port District cannot assure that these measures would be implemented, and the impacts would remain significant and unmitigated until the mitigation is implemented.</p>
<p>TR-C3: Project traffic would contribute to the degradation of operations at the North Harbor Drive/Laurel Street intersection in excess of City of San Diego thresholds during the PM peak hours.</p>	<p>MM TR-C3: North Harbor Drive / Laurel Street intersection.</p> <p>The Project Applicant shall contribute a fair share percentage of 1.8% towards the reconfiguration of the eastbound approach to provide a third left-turn lane and restriping the south-bound approach to provide a single shared left-turn/right-turn lane. To accommodate the additional lane, widening and modifications to the median/roadway shall be required. All three eastbound lanes on Laurel Street shall continue to Pacific Highway, where the number 1 lane would trap into the left-turn lane(s). An overhead sign bridge(s) shall be implemented to instruct drivers of the trap lane. The fair share contribution shall be paid to the City of San Diego traffic impact fee program.</p>	

Sunroad Harbor Island Hotel Project and East Harbor Island Subarea
PMP Amendment, Draft EIR

1-20

December 2009

ICF J&S 00977.08

Significant Impact	Proposed Mitigation	Level of Significance After Mitigation
<p>PUB-C1: The Proposed Project would contribute to cumulative demands on the fire protection and emergency response service of the City of San Diego Fire Department. Due to one of the responding fire stations being above its annual workload capacity, the Fire Department has indicated that a new fire station is necessary in the area. The increased demand for fire protection service associated with the Proposed Project would contribute to the need for the City to construct an additional fire station.</p>	<p>Public Services and Utilities</p> <p>Significant cumulative impact PUB-C1, the Proposed Project's contribution of demand to the City Fire Department's fire protection and emergency response services, is similar to its project-level impact (see Section 4.10, "Public Services and Utilities"). The Proposed Project would place demand on a fire station that is above its annual response workload capacity—conditions that are likely to worsen further with the addition of cumulative development. Implementation of Mitigation Measure MM PUB-1 could mitigate the Proposed Project's contribution to this cumulative impact to a less-than-significant level.</p>	<p>Implementation of Mitigation Measure MM PUB-1 could mitigate the Proposed Project's impacts on fire services to a less-than-significant level. However, this mitigation measure entails establishment by the City Fire Marshal of a development impact fee program, by which the Project Applicant would pay impact fees for its demand on fire services. This mitigation measure is contingent upon action of the City of San Diego, is outside of the jurisdiction of the Port District, and may not be feasible. The City has identified the construction of the fire station at Liberty Station (former Naval Training Center) as a Tier-2, low priority, project. The City has also not identified any</p>

Significant Impact	Proposed Mitigation	Level of Significance After Mitigation
<p>PUB-C2: The Proposed Project involves commercial construction of more than 40,000 square feet; therefore, it would contribute to a significant cumulative impact on solid waste facilities.</p>	<p>MM PUB-C1: Prior to the issuance of any demolition, grading, or construction permits, the Project Applicant shall prepare a waste management plan and submit it for approval to the City's Environmental Services Department. The plan shall include the following, as applicable:</p> <ul style="list-style-type: none"> ■ Tons of waste anticipated to be generated ■ Material type of waste to be generated ■ Source separation techniques for waste generated ■ How materials will be reused on site ■ Name and location of recycling, reuse, and landfill facilities where recyclables and waste will be taken if not reused on site ■ A "buy-recycled" program for green construction products, including mulch and compost ■ How the project will aim to reduce the generation of construction/ demolition debris ■ How waste reduction and recycling goals will be communicated to subcontractors 	<p>financing plans that will assure that the station is constructed. Because the construction of this fire station is not identified as a high priority by the City, the Port District cannot assure that this mitigation measure would be implemented, and the cumulative impact would remain significant and unmitigated.</p>
<p>PUB-C2: The Proposed Project involves commercial construction of more than 40,000 square feet; therefore, it would contribute to a significant cumulative impact on solid waste facilities.</p>	<p>MM PUB-C1: Prior to the issuance of any demolition, grading, or construction permits, the Project Applicant shall prepare a waste management plan and submit it for approval to the City's Environmental Services Department. The plan shall include the following, as applicable:</p> <ul style="list-style-type: none"> ■ Tons of waste anticipated to be generated ■ Material type of waste to be generated ■ Source separation techniques for waste generated ■ How materials will be reused on site ■ Name and location of recycling, reuse, and landfill facilities where recyclables and waste will be taken if not reused on site ■ A "buy-recycled" program for green construction products, including mulch and compost ■ How the project will aim to reduce the generation of construction/ demolition debris ■ How waste reduction and recycling goals will be communicated to subcontractors 	<p>Implementation of Mitigation Measure MM PUB-C1 would mitigate the Project's cumulative impact on solid waste facilities to below a level of significance.</p>

Chapter 2 Introduction

2.1 Background

The project addressed in this Draft Environmental Impact Report (EIR) is the Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan (PMP) Amendment (Project or Proposed Project). The Project is within the jurisdiction of the San Diego Unified Port District (Port District).

On September 2, 2008, the Board of Port Commissioners (BPC) directed staff to proceed with environmental review of the Proposed Project. The easternmost portion of East Harbor Island, which includes the Project site, is currently leased to Sunroad Marina Partners, LP (Sunroad). Because the PMP's Planning District 2 Precise Plan identifies a 500-room hotel on the westernmost parcel of East Harbor Island, a PMP Amendment is required to allow the hotel use on the Proposed Project site.

2.2 Project Objectives

The objectives of the Proposed Project are as follows:

- Implement the Port Master Plan's goal to develop East Harbor Island with commercial recreation uses.
- Increase public use of the waterfront by providing additional visitor serving commercial recreation uses.
- Enhance public access to the waterfront by providing additional publicly accessible facilities and amenities consistent with the Port Master Plan.
- Promote East Harbor Island as a public water front destination.
- Strengthen the existing water-oriented commercial recreation uses on East Harbor Island.
- Provide a hotel that draws on the existing water-oriented commercial recreation uses on East Harbor Island.

Land Use

The Project site is located on Harbor Island, which is within the Lindbergh Field/Harbor Island Planning District (Planning District 2) of the PMP. Harbor Island is a thin strip of manmade, filled tidelands formed in an east-west direction in the shape of two adjacent peninsulas in the northern portion of San Diego Bay. The U.S. Coast Guard Station and SDIA are located north of Harbor Island. A ship navigation corridor is located south of Harbor Island, and Naval Air Station (NAS) North Island is located south of Harbor Island, across the bay. Two hotels, the ten-story Sheraton San Diego Hotel and the nine-story Hilton San Diego Airport Hotel, are located on West Harbor Island. Harbor Island Drive runs the length of Harbor Island and provides access to the Project site from the west.

More specifically, the Project site is located on East Harbor Island (Subarea 23 of Planning District 2), the eastern of the two peninsulas. East Harbor Island houses an approximately 550-slip marina (Sunroad Resort Marina), an employee parking lot for SDIA, restaurants, and a bayside public promenade. There are 12 existing public street/surface parking spaces along Harbor Island Drive on East Harbor Island, adjacent to the existing bayside promenade.

The filled tidelands within the East Harbor Island Subarea are mostly designated Commercial Recreation in the PMP, with two small areas designated as Open Space. A bayside public promenade is also designated on the East Harbor Island Subarea. The Street land use designation is applied to Harbor Island Drive in the PMP.

The existing Project site includes approximately 5 acres of filled tidelands containing one marina locker building and a parking lot for the marina. The Project site is currently designated as Commercial Recreation with the exception of an Open Space area within the traffic circle at the east end of Harbor Island Drive, and the Street designation on Harbor Island Drive. Additional explanation of these land use designations is provided below with a discussion of the PMP.

Water Use

Submerged tidelands are located north, south, and east of the Project site. The East Harbor Island submerged tidelands are designated as Recreational Boat Berthing, Commercial Recreation, Open Bay, Boat Anchorage, and Boat Navigation Corridor. These submerged tidelands contain approximately 550 operational boat slips for private craft, an eelgrass mitigation area, the vacant on-water Reuben E. Lee restaurant, a boat navigation channel, and portions of the San Diego Bay. No submerged tidelands are located on the Project site.

Coastal Access

Access to the shoreline varies throughout the Project vicinity. The northern shoreline on the Project site is comprised of asphalt pavement elevated above the waterline with rock riprap at the point where the land and water meet. A bayside public promenade is located south of the Project site, and runs from West Harbor Island (off site) to the Island Prime restaurant, southeast of the Project site. The promenade provides the public with visual and recreational access to the waterfront.

The PMP describes four classes of public shoreline access (Classes I–IV) within the Port District jurisdiction. The existing promenade along Harbor Island's southern boundary is within the Class I access category, which indicates unleased property with direct physical access to the shoreline and public recreation areas, and includes public parks, promenades, boat launching ramps, fishing piers, and bicycle corridors. The northern portion of the Project site is within the Class III access category, which indicates leased, developed shoreline areas with commercial recreational facilities including restaurants, hotels, and marinas, on which the lessee controls access. The PMP identifies a Vista Area located immediately west of the Island Prime Restaurant, along the promenade. The focal point of this Vista Area is oriented toward the bay, facing away from the Project site.

4.1.2.2 Regulatory Environment

The policies, goals, and planning guidance in the PMP relevant to the Project are discussed below.

Port Master Plan

The PMP is the principal planning and land use plan that pertains specifically to the Project and the Project site. The following section presents the PMP policies, goals, and planning guidance that are relevant to the Project.

Background

The Port District drafted the PMP in accordance with state law to guide development within the tidelands held in trust by the Port District for the State of California. The PMP was adopted by the Board of Port Commissioners in 1980 and certified by the Coastal Commission on January 21, 1981. The PMP was last amended in February 2009.

The PMP is intended to provide official planning policies, consistent with a general statewide purpose, for the physical development of tide and submerged lands conveyed and granted in trust to the San Diego Unified Port District. The PMP is

incorporated by reference in this Draft EIR pursuant to CEQA Guidelines Section 15150. The PMP is used as a reference by the Board of Port Commissioners when reviewing policy decisions or policy changes, as a guide and basis for programming by the Port District staff of capital improvement projects, as an informational document by other governmental agencies when coordinating efforts with the Port District, and by individuals and organizations as a source of public information on the Port District's policies.

The PMP is organized into four sections. Section I includes introductory material that outlines legislation relevant to the Port District's jurisdiction and its relationship to the federal and state governments, provides an overview of the public planning process within Port District jurisdiction, and delineates the geographic scope of the Port District trust land relative to federal and state jurisdiction. Section II presents specific planning, land use, and water use goals maintained by the Port District. Section III presents the Port District's planning and environmental conservation strategies, and defines the various land and water use designations applied by the Port District to area within its jurisdiction; it also discusses planning-related policy pursuant to each designation. Section IV compiles the Precise Plans for the PMP's 10 planning districts.

Planning Goals

Section II of the PMP sets forth planning goals and related policies for development and operation of land within the Port District's jurisdiction. The goals and related policies pertinent to the Project are presented below. Portions of the specific PMP goals that do not pertain to the Project are not included in the Draft EIR. The Project site is limited to the tidelands (land-side), and as such PMP goals related to direct impacts on or modifications to the bay are not addressed.

- Goal I** Provide for the present use and enjoyment of the bay and tidelands in such a way as to maintain options and opportunities for future use and enjoyment.
- Goal II** The Port District, as trustee for the people of California, will administer the tidelands to provide the greatest economic, social, and aesthetic benefits to present and future generations.
- Goal III** The Port District will assume leadership and initiative in determining and regulating the use of the bay and tidelands.
- Encourage industry and employment generating activities which will enhance the diversity and stability of the economic base.
 - Encourage private enterprise to operate those necessary activities with both high and low margins of economic return.

- Goal IV** The Port District, in recognition of the possibility that its actions may inadvertently tend to subsidize or enhance certain other activities, will emphasize the general welfare of statewide considerations over more local ones and public benefits over private ones.
- Develop the multiple purpose use of the tidelands for the benefit of all the people while giving due consideration to the...facts and circumstances related to the development of tideland port facilities.
 - Encourage non-exclusory uses on tidelands.
- Goal VI** The Port District will integrate the tidelands into a functional regional transportation network.
- Providing pedestrian linkages.
- Goal VIII** The Port District will enhance and maintain the bay and tidelands as an attractive physical and biological entity.
- Each activity, development, and construction should be designed to best facilitate its particular function, which function should be integrated with and related to the site and surroundings of that activity.
 - Views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.
- Goal IX** The Port District will insure physical access to the bay except as necessary to provide for the safety and security, or to avoid interference with waterfront activities.
- Provide "windows to the water" at frequent and convenient locations around the entire periphery of the bay with public right-of-way, automobile parking and other appropriate facilities.
 - Provide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.
- Goal X** The quality of water in San Diego Bay will be maintained at such a level as will permit human water contact activities.
- Goal XIII** The Port District will maintain its master plan current, relevant, and workable, in tune with circumstances, technology, and interest of the people of California.

- The ALUCP, pursuant to FAA directives, incorporated Federal Aviation Regulations (FAR) Part 77 height restriction into the plan. The regulations require that anyone proposing to construct an object that could affect the navigable airspace around an airport submit information about the proposed construction to the FAA. Such a project is subject to FAA review pursuant to FAR Part 77, wherein the FAA may determine that a project feature is a hazard to airspace navigation. Furthermore, in order to ensure that no further incompatible uses will be created outside the AIA the ALUCP states that any use, whether within or outside the defined AIA, that the FAA finds to be a "hazard" or an "obstruction which would have a significant adverse impact," should be determined not to be in conformance with the ALUCP. The Project is subject to FAR Part 77 review by the FAA.

California Coastal Act

The California Coastal Act, which went into effect in 1977, granted the Coastal Commission the authority to review and approve plans proposed for implementation within the coastal zone under the jurisdiction of a local government or a port district. The Coastal Commission has permitting authority over lands in the coastal zone unless the Coastal Commission has certified a city's local coastal plan or a port district's master plan, at which point the permitting authority is signed over to the respective agency. The Project site is located entirely within the coastal zone and, therefore, is subject to the Coastal Act.

Permitting authority for projects within Port District jurisdiction lies with the Port District. The Coastal Commission, however, reviews amendments to the PMP for conformance with Chapters 3 and 8 of the Coastal Act. Chapter 3 governs coastal resources planning and management policies, and protects public access and recreation within the coastal zone. Chapter 8 governs ports within the coastal zone, and contains operating policies and requirements for implementing master plans. Once the Coastal Commission has certified a PMP Amendment, the Port District would then have the authority to issue a Coastal Development Permit for projects within its jurisdiction. The Proposed Project is considered an appealable development under the Coastal Act.

Public Trust Doctrine

The Public Trust Doctrine, as overseen by the State Lands Commission and considered by the Coastal Commission, is the overriding policy that governs the appropriate land uses that are allowable on public lands, which includes the Port District tidelands. The Public Trust Doctrine allows commercial use that provides public access to public lands, and prohibits residential uses, and non-exclusory/privatized uses because they would limit public access. Section IV of the Public Trust Doctrine states that the "tidelands trust is intended to promote

restaurant redevelopment. The expanded promenade would provide for enhanced public access (public promenade) on East Harbor Island that is not currently provided for in the existing Precise Plan. The allowance in the PMP Amendment for multiple hotels and the proposed land use revisions on East Harbor Island does not conflict with the existing Precise Plan because no substantial changes are proposed to the allocation of uses from that anticipated by the existing Precise Plan.

In addition, future development projects proposed in accordance with the PMP Amendment would be subject to additional environmental review in accordance with CEQA at the time applications are submitted to the Port District. The potential for future developments on East Harbor Island to result in land use impacts would be evaluated when applications for development are submitted to the Port District.

4.1.5 Significant Impacts

The Proposed Project does not conflict with the overall goals of the PMP because the Project would enhance the opportunity for usage and enjoyment of East Harbor Island through the construction of commercial (hotel) and recreational (promenade) uses. The Project would not conflict with surrounding land uses, water uses, or coastal access. Therefore, the Project would not result in any significant conflicts with the PMP. The Project would also not conflict with the ALUCP, the Coastal Act, or the Public Trust Doctrine. Furthermore, the PMP Amendment requires approval by the Coastal Commission before the Port District can grant a Coastal Development Permit for the Proposed Project. The Project would not obstruct land or water use in the vicinity of the site, and would improve coastal access by enhancing the existing promenade and extending a promenade along the basin side of the Project site.

4.1.6 Mitigation Measures

The Proposed Project would not result in significant impacts on land use, water use, or coastal access.

4.1.7 Significance of Impacts after Mitigation

No mitigation measures are required because the Proposed Project would not result in significant land use, water use, or coastal access impacts.

Chapter 2

Executive Summary

Project Description

The Proposed Project involves the partial redevelopment of one leasehold, which is currently leased by Sunroad Marina Partners, LP, located at 955 Harbor Island Drive. This leasehold is currently developed with a marina, support buildings, and surface parking. The proposed redevelopment would only affect the land side of this leasehold. The traffic circle, located at the east end of Harbor Island Drive, as well as a portion of Harbor Island Drive are also included in the proposed redevelopment. The proposed components of the project are shown in Figures 2-1 and 2-2.

The Project description includes the following physical changes to the Project site:

- demolition of one existing locker building and parking lot east of the existing marina building;
- construction of a limited service 4-story hotel with a total floor area of approximately 117,000 square feet, consisting of a maximum of 175 rooms, fitness and limited meeting space (approximately 8,000 square feet), and common areas;
- reduction of the traffic circle and realignment of the road and leasehold lines;
- reconfiguration of existing paved areas as necessary to accommodate ingress and egress to the hotel and surface parking;
- enhanced public access along the Harbor Island East Basin; and
- realignment of existing sewer, water, and utility lines.

The Project also proposes an amendment to the Port Master Plan (PMP) to address the changes in land use resulting from reconfiguring East Harbor Island Drive and the traffic circle at its eastern terminus, and providing for the existing allowed 500 hotel rooms (currently allowed only on the parcel used by San Diego International Airport for employee parking) to be spread across multiple sites (together totaling no more than 500 rooms) on East Harbor Island.

Proposed Hotel

The floor area of the proposed hotel would total approximately 117,000 square feet and include a maximum of 175 rooms, fitness and meeting space, and common areas. The meeting rooms would facilitate functions and conferences for guests. The 175 rooms, which would make up approximately 94,000 square feet of the hotel, would be distributed over four floors. The height of the structure is proposed to be approximately 65 feet (see Figures 2-3 and 2-4). Architectural details and fenestrations may cause the maximum building height to reach 75 feet. The maximum height approved by the Federal Aviation Administration and San Diego County Airport Land Use Commission for the Proposed Project is 86 feet above mean sea level in order to accommodate features such as a flag pole.

Fitness and meeting rooms would total approximately 8,000 square feet. Common areas—including exterior features such as the pool and spa—would total approximately 15,000 square feet of the Project site.

and construct a similar size restaurant landside, instead of on top of the barge. The barge was proposed to be used as a 1-story event space. The REL restaurant replacement project was exempted from CEQA because it involved demolishing the four floors of the existing REL superstructure and transferring the square footage that was in the four stories over to a landside restaurant. The landside restaurant would be a similar size as the 4-story restaurant on the barge. No legal challenges were filed and the statute of limitations has long ago expired. The State Lands Commission agreed with the CEQA exemption of the REL Restaurant Replacement project during their June 2010 approval of the sublease for the restaurant. The restaurant project was excluded from the Coastal Act because it was replacing, or reconstruction, a restaurant that was an existing use that is allowed under the existing certified PMP.

Further, the REL was included in the cumulative projects list of the cumulative impacts analysis of the hotel EIR. The REL was not a new use; that site was used as a restaurant from the 1960s to 2003, so there would not be any new environmental impacts.

Section IV.A COMMENT – The EIR fails to establish the baseline for analyzing impacts associated with the Spanish Blight Fault, an active earthquake fault

RESPONSE: The comment letter asserts that the EIR fails to establish the baseline for analyzing impacts associated with the Spanish Blight Fault for three reasons: (1) there was not sufficient data collected to accurately locate faulting; (2) elevation control for cone penetration tests (CPT) and borings was not provided; and (3) cross-sections for borings were likely skewed. The Project geologist, Geocon, reviewed the comments provided in Section IV.A and provided the following responses to this comment:

Data Collection

The location of the fault(s) was evaluated using geophysics and confirmed with boring and CPT data. This is the same method used in earlier studies offshore to establish the Alquist-Priolo zone. The Project geologist concurs that the spacing of the borings and CPT does not meet the currently required spacing of 15 feet as described in the 2011 City of San Diego guidelines. However, the study was performed prior to the issuance of the guidelines and the use of closely spaced CPTs was not necessary given the preliminary nature of the development plans. The geotechnical study, as presented, identified the approximate location of the zone of faulting so that setbacks could be established during the conceptual design of the hotel facility such as parking lots, pools and landscaping over fault zones and buildings outside of fault zones. Additional work will be performed and a final report will be submitted to the City of San Diego (for review during the building permit process) once a final plan is available. That final report will include updated seismic design parameters that are consistent with the edition of the building code in place when the project is submitted to the City of San Diego for building permit review. The new building code will not change the absence or presence of faulting or whether liquefaction occurs, since it is already known that the site is susceptible to such.

A refined fault investigation has recently been completed for the Reuben E. Lee restaurant replacement site. That fault investigation used closely spaced CPTs and

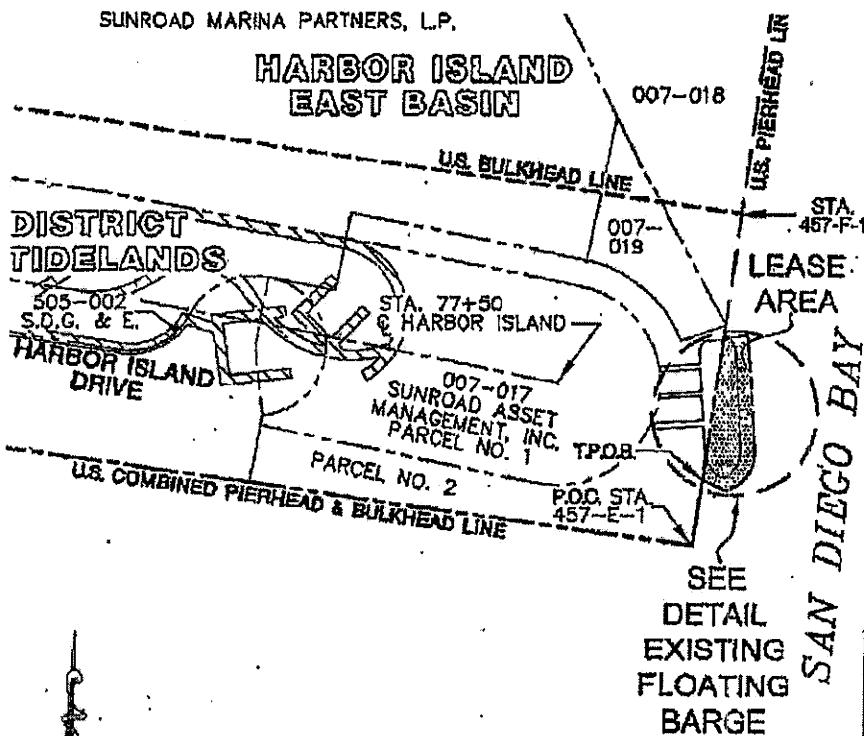
ATTACHMENT Z

NO SCALE

SITE

SUNROAD MARINA PARTNERS, L.P.

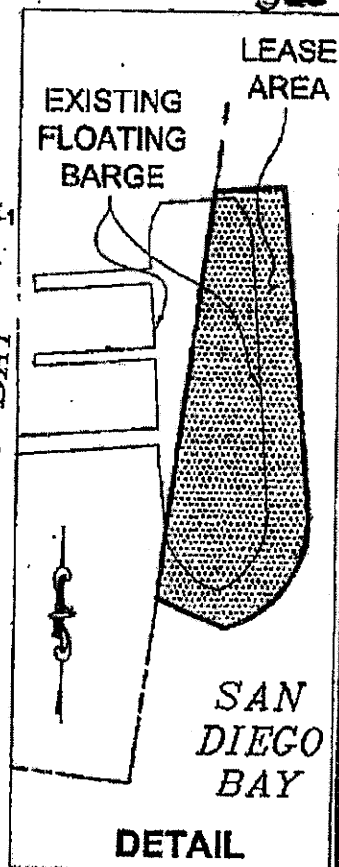
HARBOR ISLAND EAST BASIN



SLC

LEASE
AREA

EXISTING
FLOATING
BARGE



SAN
DIEGO
BAY

880 HARBOR ISLAND DRIVE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

WP 8876.1

SAN DIEGO UNIFIED PORT
DISTRICT - 880 HARBOR
RESTAURANT
COMMERCIAL LEASE
SAN DIEGO COUNTY



JWP-01/10

William Briggs - Fwd: Port/State Split Jurisdiction

From: John Helmer
To: Annette Dahl; William Briggs
Date: 10/29/2007 11:52 AM
Subject: Fwd: Port/State Split Jurisdiction
CC: Ellen Corey Bom; Wendy Slao

This is from the Coastal Commission staff regarding the split jurisdiction issue for the Rueben E Lee. Interesting.

>>> "Diana Lilly" <dlilly@coastal.ca.gov> 10/29/2007 12:46 PM >>>

Hi John,

Our legal staff researched the issue, and have concluded that when a development that requires a coastal development permit straddles both the Port and the State's jurisdiction, both agencies have to issue a CDP for their portions of the project. The legislative "fix" that allows the Coastal Commission to issue the CDP when a development is in both city and state jurisdiction responds to a particular section of the Coastal Act governing LCP's, and the companion section of the Coastal Act in the section governing PMPs was not similarly amended. It was probably just overlooked, because this may be the first time the question has ever come up.

As we discussed, the particular development that raised the question in this case may end up being deemed exempt from permit requirements, so hopefully there won't be too much of a burden on the applicant. Please let the applicant know that when the redevelopment plans are drawn up, he can submit them to me for review.

Thanks,

Diana Lilly
Coastal Planner

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
(619) 767-2370

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

COURTYARD BY MARRIOTT EMERYVILLE
5555 SHELLMOUND STREET
EMERYVILLE, CALIFORNIA

MONDAY, JUNE 28, 2010
10:31 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

J&K COURT REPORTING, LLC (916) 476-3171

1 will be ordered following that. And we have the existing
2 acreage, about 43 miles, on the lake that's controlled,
3 that we do need to convert some of that away from water.
4 So any guidance that this Commission could give us is
5 greatly appreciated.

6 Thank you very much.

7 CHAIRPERSON CHIANG: Great. Thank you, Marty.

8 Next item, please.

9 EXECUTIVE OFFICER THAYER: That concludes all of
10 the Regular Session items.

11 CHAIRPERSON CHIANG: Or do we have to do 35?

12 EXECUTIVE OFFICER THAYER: Oh, I'm sorry, you're
13 right. We have -- Item 35 was taken off the Consent
14 Calendar.

15 Item 35, the presentation will be made -- I'm not
16 sure -- do we need to make a presentation?

17 LAND MANAGEMENT SPECIALIST FOSTER: I have some
18 background information.

19 EXECUTIVE OFFICER THAYER: This is the item that
20 consists of a proposal by the Port of San Diego to lease
21 land from -- in San Diego Bay from the Commission, which
22 it would add to -- the Port would add to land that it
23 controls, in order to have one lease for the continued
24 restaurant use. There used to be a restaurant there,
25 which will be reconstructed and relocated at this site.

1 percentage of rent for the barge, as discussed in the
2 calendar item, would be based on a percentage of the gross
3 revenue received by the Port as the lessee, with a minimum
4 rental figure collected against a percentage of gross
5 revenue.

6 --oOo--

7 LAND MANAGEMENT SPECIALIST FOSTER: This
8 concludes my background presentation. And I'm available
9 to answer questions. And I understand Irene McCormack
10 with the Port is also available to answer questions as
11 well.

12 ACTING CHAIRPERSON ARONBERG: Thank you. I have
13 two speaker cards on this item. Do any of the
14 Commissioners have anything to say before we start calling
15 on speakers?

16 Let's call Irene McCormack followed by Lee
17 Strieb.

18 CHIEF COUNSEL FOSSUM: Madam Chair, I'd like to
19 mention one thing. In an earlier version of the staff
20 report, there was a statement as to approvals having been
21 acquired already involving the Corps of Engineers, the
22 Coastal Commission, Port District and regional water
23 quality control board. That's been amended to say that
24 those are required as a condition of our lease, rather
25 than they've already been obtained.

FILE COPY

**CALENDAR ITEM
C35**

A 39
S 79

06/28/10
W 26298
K. Foster

**GENERAL LEASE - COMMERCIAL USE
AND APPROVAL OF A SUBLEASE**

APPLICANT:

San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92112

PROPOSED SUBLESSEE:

Sunroad Asset Management, Inc.
4445 Eastgate Mall Suite 400
San Diego, CA 92121

AREA, LAND TYPE, AND LOCATION:

0.30 acre, more or less, of sovereign land in San Diego Bay, adjacent to Harbor Island, San Diego County.

AUTHORIZED USE:

Renovation, use, and maintenance of a barge to be used as a floating restaurant and event facility.

LEASE TERM:

40 years, beginning June 28, 2010.

CONSIDERATION:

Year One: \$3,000 per year; **Years Two and Three:** A minimum of \$6,000 per year against a percentage of Lessee's gross income from gross sales revenues generated by the sublease on the Leased Premises in excess of the minimum annual rental; **Year Four and forward:** a minimum of \$12,009 per year against a percentage of Lessee's gross income from revenues generated by the sublease on the Leased Premises in excess of the minimum annual rental, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the Lease.

CALENDAR ITEM NO. C35 (CONT'D)

5. **Lease:** Pursuant to the Commission's delegation of authority and State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; Title 14, California Code of Regulations, section 15302.

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

6. **Sublease:** Pursuant to the Commission's delegation of authority and State CEQA Guidelines [Title 14, California Code of Regulations, section 15060 (c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS REQUIRED:

San Diego Unified Port District, California Coastal Commission, California Regional Water Quality Control Board, and the U.S. Army Corps of Engineers.

EXHIBITS:

- A. Site and Location Map
- B. Legal Land Description

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease: Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a categorically exempt project, Class 2, Replacement or Reconstruction; Title 14, California Code of Regulations, section 15302.

Sublease: Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3)

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

County: San Diego

SPACE ABOVE THIS LINE FOR RECORDER'S USE

W 26298

LEASE PRC 8876.1

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions
Exhibit A	Sublease
Exhibit B	Annual Report Form

SECTION 1.

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the CALIFORNIA STATE LANDS COMMISSION (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202); pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to the San Diego Unified Port District, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

19. Lessee will require the contractor(s) to maintain a logbook during any removal and/or construction operations conducted under the Lease within the Lease Premises and lands subject to Lessor's jurisdiction to keep track of all debris created by objects of any kind that fall into the water. The logbook should include the type of debris, date, time, and location to facilitate identification and location of debris for recovery and site clearance verification. All waste material and debris created by Lessee shall be promptly and entirely removed from the Lease Premises and lands subject to Lessor's jurisdiction.
20. Any vessels, equipment, or machinery to be used on the Lease Premises are limited to those which are directly required to perform the authorized use and shall not include any vessels, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor's jurisdiction.
21. No vessel or equipment refueling, maintenance, or repairs shall be permitted within the Lease Premises or lands subject to Lessor's jurisdiction, with the exception of maintenance to the barge as authorized in Section 1.
22. All vessels, equipment, machinery, tools or other property taken onto or placed within the Lease Premises or lands subject to Lessor's jurisdiction shall remain the property of the Lessee and/or its authorized contractors. Such property shall be promptly and properly removed by Lessee, at its sole risk and expense.
23. Lessor accepts no responsibility for any damages to any property, including any vessels, equipment, machinery, or tools within the Lease Premises or lands subject to Lessor's jurisdiction.
24. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to, waves, storm waves, tsunamis, earthquakes, flooding and erosion.
 - b. To assume the risks of injury and damage to Lessee, its agents, employees, contractors, permittees, invitees and guests and the Leased Lands from such hazards in connection with the development and use of the Leased Lands subject to any Coastal Development Permit.
 - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury and/or damage from such hazards to Lessee, its agents, employees, contractors, permittees, invitees and guests.
 - d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries, or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any Coastal Development Permit involving the Leased Lands, except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins, or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. **RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY**

(a) **Reservations**

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

6. **RULES, REGULATIONS, AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. **INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

8. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

12. Notwithstanding the provisions of Paragraph 12(a) of Section 4 -- General Provisions, the barge as described in Section 1 -- Authorized Improvements shall not be subject to any claims of title by the Lessor during the lease term or upon the expiration or sooner termination of this Lease. All other provisions of Paragraph 12 of Section 4 -- General Provisions shall remain in full force and effect with respect to the barge, and all provisions of Paragraph 12 of Section 4 -- General Provisions shall remain in full force and effect without modification with respect to all other improvements located on the Lease Premises.
13. Prior to the start of all removal, renovation, maintenance and construction activities on the Lease Premises, Lessee will provide to Lessor copies of all permits and authorizations from all federal, state, and local agencies having jurisdiction over such project, which shall comply with all safety regulations, terms and conditions of such permits and authorizations.
14. Lessor acknowledges that the barge is planned to be removed to an off-site facility for renovation purposes. Lessor further acknowledges that the barge may be removed to an off-site facility for other maintenance or renovation activities throughout the term of the lease. Prior to the commencement of any removal activities, Lessee will submit to Lessor's staff copies of any additional permits, authorizations, and/or environmental analysis documents pertaining to such removal and off-site renovation and other maintenance activities.
15. Lessee will provide Lessor with prior written notice of the removal date(s) for the barge, and shall further provide written notice of the completed off-site renovation and other maintenance activities and subsequent replacement of the barge on the Lease Premises.
16. Lessee agrees that upon the removal of the barge from the Lease Premises, the barge shall be prohibited from being returned to the Lease Premises until such time as the planned off-site renovation and other maintenance activities have been completed, or a revised plan for on-site completion of such renovation and other maintenance activities has been submitted to Lessor for review and consideration for approval.
17. Thirty days prior to commencement of any construction activities occurring on the Lease Premises, including but not limited to the removal, on-site renovation, or replacement of the renovated barge, Lessee will provide to Lessor a construction schedule time line chart showing all significant work activities that will take place during the course of such project. Additionally, Lessee will submit, for Lessor's staff review and comment, a copy of the construction contractor's work execution plan that provides the details of the manpower, equipment, construction methods, and procedures to be employed for each significant activity, safety procedures, etc.
18. Prior to commencement of any construction activities occurring on the Lease Premises as described herein, Lessee will provide to Lessor a project-specific hazardous spill contingency plan, with specific designation, including direct contact information, of the onsite person who will have responsibility for implementing the plan. The plan shall also provide for the call out of additional spill containment and clean up resources in the event of an incident that exceeds the rapid clean up capability of the onsite work force. In addition, in the event of an oil spill during construction that impacts State waters, notification is to be made as soon as possible to the State Office of Emergency Services at (800) 852-7550 and also to the Commission's 24-hour emergency response number (562) 590-5201 and other applicable agencies.

ATTACHMENT AA



Technical Consultation, Data Analysis and
Litigation Support for the Environment

525 Broadway, Suite 203
Santa Monica, California 90401

Matt Hagemann
Tel: (949) 887-9013
Email: mhagemann@swape.com

May 4, 2011

Rachael Koss
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Sunroad Harbor Island Hotel Project Final Environmental Impact Report

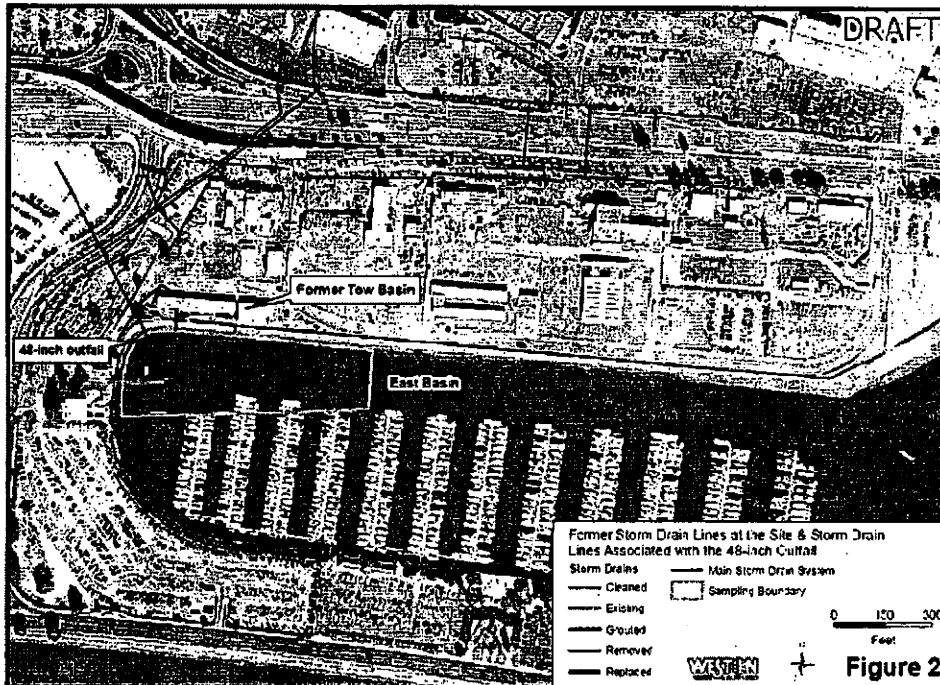
Dear Ms. Koss:

I have reviewed the December 2009 Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment Draft Environmental Impact Report (DEIR). I have also reviewed the November 2010 portions of the DEIR that were recirculated and the May 2011 Final Environmental Impact Report and the response to comments.

The DEIR fails to describe the existing setting for conducting an analysis of potential hazards associated with development of the Project. The DEIR fails to address fill material, including the potential that PCBs may be present in soil at concentrations that would pose a risk to construction workers and future occupants of the site. Once the site is adequately described, the Port must conduct a thorough analysis of public health and environmental impacts associated with exposure of contaminants to the environment.

A 2006 report¹ states that the site was filled in 1961 (p. 5) and that the source of the fill was hydraulic dredging (p. 9). A likely source of the fill would be bottom sediments from the adjacent area to the north, in the vicinity of the former Tow Basin (see figure below).

¹ Hazardous Materials Technical Study, Sunroad Harbor island Project, East Harbor Island Drive, San Diego, California, July 14, 2006, DEIR Appendix D-1



Source: East Basin Evaluation of Data Distribution and Identification of Former Tow Basin COPCs, San Diego, California, July 9, 2009, p. 9

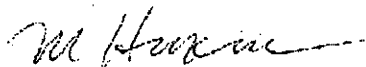
Hydraulic fill obtained from the area of the Tow Basin may potentially contain PCBs. According to the 2006 report, PCBs have been detected in sediments of the catch basins at concentrations of up to 6,900 parts per million (p. 17). The 2006 report states that the source of PCBs was the paint on structure surfaces associated with the Tow Basin Building. This portion of the release was granted closure in 2004.

However, documents obtained online from the Department of Toxics Substances Control Envirostor website indicate that the source of the PCBs at the Tow Basin are not certain. A 2009 report² identifies PCBs as a contaminant of concern at the Tow Basin in the East Basin. Because PCBs are known to be associated with Tow Basin sediments, PCBs may have been present in sediment in 1961 at the time of dredging and may have therefore been emplaced beneath the area proposed for the project.

Health effects resulting from PCB exposure may include liver damage, anemia, acne-like skin conditions and stomach and thyroid gland injuries. The DEIR should be revised to include an assessment of the source of the fill materials and the potential that PCBs may be present in soil at concentrations that would pose a risk to construction workers and future occupants of the site.

² East Basin Evaluation of Data Distribution and Identification of Former Tow Basin COPCs, San Diego, California, July 9, 2009, p. 9

Sincerely,

A handwritten signature in cursive script, appearing to read "Matt Hagemann", with a horizontal line extending from the end of the signature.

Matt Hagemann, P.G. C.Hg.



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Litigation Support for the Environment

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Matthew F. Hagemann

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Regulatory Compliance
CEQA Review
Expert Witness**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certification:

California Professional Geologist, License Number 8571.

Professional Experience:

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Senior Environmental Analyst, Komex H₂O Science, Inc (2000 – 2003);
- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);

- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Lead analyst in the review of numerous environmental impact reports under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions and geologic hazards.
- Lead analyst in the review of environmental issues in applications before the California Energy Commission.
- Technical assistance and litigation support for TCE vapor intrusion concerns.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.
- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the

development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted public hearings, and responded to public comments from residents who were very concerned about the impact of designation.
- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nationwide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9. Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and Hagemann, M., 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and Hagemann, M.F. 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukanaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

ATTACHMENT BB



Project No: 3005
May 9, 2011

To : Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Attention: Ms. Rachael E. Koss and Ms. Tanya Gulesserian

Subject: Review of May 6, 2011 Staff Report on the Sunroad Harbor Island Hotel Project, Agenda Item 23 of the San Diego Unified Port District Board Meeting to be held on May 10, 2011

Dear Ms. Koss and Ms. Gulesserian,

At your request we have reviewed a report released on May 6, 2011 by San Diego Unified Port District staff on the Sunroad Harbor Island Hotel Project. The report, on Pages 9-10, discusses the development of a promenade at the east end of Harbor Island, adjacent to the proposed Reuben E. Lee Restaurant redevelopment project. Specifically, on page 10, staff state "Development of a shoreline promenade alongside the Reuben E. Lee redevelopment project would require shifting the project westward, on top of existing earthquake fault lines." You have asked us to review the adequacy of this statement using the data presented in Appendices H-1 (Geocon, 2006 and Terra Physics, 2006) and H-2 (Ninyo & Moore, 2006) of the Environmental Impact Report for the Sunroad Harbor Island Hotel Project (ICF Jones & Stokes, 2009; ICF International, 2011).

The fault line referred to in the staff report is the easternmost of three faults zoned by Geocon (2006) in the eastern half of Harbor Island. Although Geocon conducted a fault study in the area using borings and cone penetrometer tests (CPTs), their borings and CPTs were spaced too far apart to confirm the presence of these features, and accurately locate them (see Earth Consultants International, 2011). In fact, the fault locations appear to be based entirely on Terra Physics interpretation as shown on their Figure 2, which is entitled "Reflection Survey Map Showing Possible Faults Interpreted Solely From the Reflection Data," as Geocon simply had no data from which to infer two separate faults (Faults A and B) between their boring B-2 and CPT-4. According to Geocon's cross-section A-A', the location of Fault C (the fault that staff has argued would limit the western extension of the proposed restaurant) is based on a rise in the stratigraphy between their boring B-1 and their CPT-8 (CPT-5 was not deep enough to help define the location of this feature). In Geocon's cross-section, Fault C is shown as closer to B-1 than CPT-8, but in fact, it could be anywhere between the two points, which are about 110 feet apart. Given that there are no other borings in this area to help narrow the location of the fault, Fault C could be located farther east and thus closer to the proposed restaurant buildings. As we indicated in our May 5 report, the 25-foot wide structural setback zones proposed by Geocon are inconsistent with, and unsupported by the wide gaps between borings and CPTs used to locate these faults.

We did not address the following issue in our May 5, 2011 review because it did not impact the proposed hotel site, which was the area that we were originally asked to address. However, Terra Physics' Figure 2 shows another possible fault, labeled F5, east of Geocon's fault C that, if it does

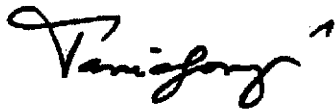
May 9, 2011

exist, would underlie the Reuben E. Lee development as currently proposed. As with the other faults to the west, Geocon did not emplace sufficient borings and CPTs in the easternmost portion of the site to confirm or refute the existence of this fault. Geocon (2006) states that this feature is "speculated to be" a differential settlement feature because it does not appear in any of the other seismic lines. However, Terra Physics makes it clear in their report that if this feature, which has offsets of 6 to 8 feet, has a north-northwesterly trend, it would have not been captured in their other lines because these did not extend far enough eastward.

Based on our review of the reports referenced, we conclude that the Geocon (2006) study did not adequately address the location of the traces of the Spanish Bight fault through the eastern half of Harbor Island. Their study included too few data points and no elevation control from which to prepare cross-sections that can be used to confidently locate the faults and determine structural setbacks. The 25-foot wide structural setbacks defined by Geocon suggest that the fault traces have been precisely located through the area, but the wide spacing between actual data points indicates otherwise. Thus, the 25-foot wide structural setback established for Fault C, which is used to define the western limits of the new restaurant proposed at the east end of the island, is an approximation at best (the fault could be anywhere between the about 110-foot wide distance between boring B-1 and CPT-8). The fault may project farther east, under the proposed restaurant buildings. Furthermore, Terra Physics (2006) identified another possible fault to the east of Geocon's Fault C that would also underlie the proposed restaurant.

Thank you for the opportunity to be of continued service on this project. If you have any questions, please don't hesitate to contact us.

Respectfully submitted,
EARTH CONSULTANTS INTERNATIONAL, INC.



Tania Gonzalez, CEG 1859
Vice-President

References:

Earth Consultants International, Inc., 2011, Review of Fault Studies Conducted for the Hotel Proposed on East Harbor Island, San Diego, California; Project No. 3005, dated May 5, 2011.

Geocon Incorporated, 2006, Geotechnical Investigation and Geologic Fault Investigation, East Harbor Island Hotel, San Diego, California; Unpublished consulting report prepared for Sunroad Enterprises, San Diego, California, Geocon Project No. 07569-22-01, dated March 3, 2006.

May 9, 2011

(Included as Appendix H-1 of the Draft EIR for the Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment.)

ICF Jones & Stokes, 2009, Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment, Draft Environmental Impact Report, Volume 1; Report prepared for San Diego Unified Port District, San Diego, California, ICF J&S Project No. 00977.08, dated December 2009.

ICF International, 2011, Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment, Final Environmental Impact Report, UPD No. 83356-EIR-783, SCH No. 2006021027, Volume 1 of 5; report prepared for San Diego Unified Port District, San Diego California; report dated May 2011.

Ninyo & Moore, 2006, Preliminary Geotechnical Evaluation and Third-Party Review, Proposed East Harbor Island Development Project, San Diego, California; Unpublished consulting report prepared for Mooney/Jones & Stokes, San Diego, California, Ninyo & Moore Project No. 105871001, dated June 21, 2006. (Included as Appendix H-2 of the Draft EIR for the Sunroad Harbor Island Hotel Project and East Harbor Island Subarea Port Master Plan Amendment.)

Terra Physics, 2006, Final Report, Seismic Reflection Survey to Detect the Spanish Bight Fault Zone (Trip #2 – Westward Extension from Original Survey Area), Proposed East Harbor Island Hotel Site, San Diego Bay, California; Terra Physics Project No. 05-53, dated February 8, 2006. (Report included as Appendix C in Geocon's 2006 report referenced above.)

ADAMS BROADWELL JOSEPH & CARDOZO

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PAMELA N. EPSTEIN
TANYA A. GULESSERIAN
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
JAMIE L. MAULDIN
ROBYN C. PURCHIA
ELLEN L. TRESCOTT

May 8, 2013

Via Facsimile and U.S. Mail

Chair Mary K. Shallenberger and
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
(415) 904-5400

RECEIVED

MAY 13 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Appeal No. A-6-PSD-13-005
Subject: New Development on East Harbor Island and Reuben
E. Lee Barge

Dear Chair Shallenberger and Commissioners:

We write on behalf of UNITE HERE Local 30 regarding the pending appeals of the San Diego Unified Port District's exemption of Sunroad Marina Partner LP's ("Sunroad") Reuben E. Lee restaurant project ("Project") from coastal development permit ("CDP") requirements under the Port's Coastal Development Permit Regulations ("CDP Regulations"). We also write regarding Sunroad's failure to obtain a CDP prior to towing the Reuben E. Lee Barge. For the first time, on January 23, 2013, the Port notified the Coastal Commission of its February 24, 2009 exemption. On January 28, 2013, the Commission noticed a 10-day appeal period, which expired on February 6, 2013. UNITE HERE Local 30 timely appealed the Port's issuance of a CDP exemption. Commissioners Sanchez and Brennan also timely appealed.

On February 27, 2013, Sunroad responded to the appeals. In its response, Sunroad argues that: (1) UNITE HERE Local 30 lacks standing to appeal; (2) the Port's exemption determination is not appealable to the Coastal Commission; (3) the Project does not require a Port Master Plan amendment; (4) the Port properly exempted the Project from CDP requirements as a "replacement or reconstruction" project; and (5) removing and towing the Reuben E. Lee barge is not "development" that requires a CDP. Sunroad's arguments are unsupported.

I. UNITE HERE LOCAL 30 HAS STANDING TO APPEAL UNDER THE COASTAL ACT

The Coastal Act states that “any aggrieved person” may appeal a port’s claim of exemption to the Commission.¹ The Coastal Act defines an “aggrieved person” as any person who “appeared at a public hearing of the...port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the...port governing body of the nature of his concerns *or who for good cause was unable to do either.*”²

In this case, on June 10, 2008, the Port held a public hearing on the Project when it approved a resolution that the Project is an exempted development under the Port’s CDP regulations. Sunroad argues that UNITE HERE Local 30 lacks standing to appeal the Port’s exemption because, “UNITE HERE was at all times fully aware of this Project, but simply did not appear at the hearing or make its views otherwise known at the June 2008 public hearing...”³ However, at that time, UNITE HERE Local 30 was unaware of the Project and had no notice of the meeting. Because UNITE HERE Local 30 was not aware of the Project at the June 10, 2008 hearing, it could not have appeared at the hearing, nor could it notify the Port of any concerns regarding the Project prior to the hearing.

On January 28, 2013, the Commission noticed a 10-day appeal period, during which UNITE HERE Local 30 timely appealed the Port’s exemption. Since UNITE HERE Local 30 is aggrieved by the Port’s action and has “good cause” for not appearing at the public hearing or informing the Port of its concerns prior to the hearing, UNITE HERE Local 30 has standing to appeal the Port’s action.

¹ Pub. Resources Code § 30625(a).

² *Id.*, § 30801 (emphasis added).

³ Letter from Steven H. Kauffman to Mary K. Shallenberger re: Appeal No. A-6-PSD-13-005, February 27, 2013, pp. 5-6, fn. 2.

II. THE PORT'S EXEMPTION DETERMINATION IS APPEALABLE TO THE COASTAL COMMISSION

Contrary to Sunroad's contention, the Port's determination that the Project is excluded (or exempt)⁴ from CDP requirements is appealable to the Coastal Commission for four reasons.

First, the Coastal Act states that "any appealable action on a coastal development permit or *claim of exemption for any development by a ... port governing body may be appealed to the commission* by an applicant, any aggrieved person, or any two members of the commission."⁵ The Port issued a categorical determination excluding the Project from CDP requirements. Therefore, the Port's exemption determination for the Project may be appealed to the Coastal Commission.

Second, the Port's CDP Regulations allow the Port's determination to be appealed to the Coastal Commission. The Regulations state "[n]on-appealable developments are those not classified in these regulations in Section 7.a.(1) as "Excluded," in 7.a.(2) as "Emergency," or in 7.a.(4) as "Appealable[.]"⁶ In other words, *appealable* developments are those classified as "excluded," "emergency" or "appealable." Here, the Port classified the Project as an "excluded" development and, therefore, it is appealable.

Third, the Coastal Act states that after a port master plan ("PMP") is certified, the Commission shall no longer exercise jurisdiction "over any new development *contained in* the certified [PMP]."⁷ This means that the Port is charged with issuing CDPs for developments within its jurisdiction and that are contained in its PMP. Here, **the Project is not contained in the certified PMP.** The PMP designates the east end of East Harbor Island as "vacant."⁸ The PMP only recognizes that "[t]he eastern end of the peninsula is anchored by restaurants"⁹ because it is anchored by the existing Island Prime restaurant and the Reuben E. Lee floating barge restaurant. However, the PMP designates the east end of East

⁴ In the Port's CDP regulations, the term "excluded" has the same meaning as "exempt". Therefore, these terms will be used interchangeably.

⁵ *Id.*, § 30625(a) (emphasis added).

⁶ See **Attachment A**, excerpts from CDP Regulations, § 7.d.(3).

⁷ Pub. Resources Code § 30715(a) (emphasis added).

⁸ See **Attachment B**, excerpts from PMP, p. 52.

⁹ *Id.*, p. 53.

Harbor Island as "vacant."¹⁰ The PMP does not yet include the new land-based restaurant.

Furthermore, the majority of the barge (before it was towed) was not within the Port's jurisdiction, but was located on 1/3 of an acre of state submerged tidelands under the jurisdiction of the State Lands Commission. Therefore, a large portion of the Project is outside Port jurisdiction and the Project requires a CDP from the Coastal Commission. The Commission has jurisdiction over the Project and, therefore, the Port's exemption determination is appealable to the Commission.

Finally, the PMP provides that a restaurant, such as the Project, is appealable to the Commission. There are currently 11 new restaurants proposed and listed in the Port's PMP. Some of the restaurants are associated with hotel developments, other restaurants are associated with shopping facilities, and some restaurants are not associated with either a hotel or a shopping facility.¹¹ However, the Port classifies *all* of the restaurants as appealable developments in its PMP.

Thus, the Port's determination that the Project is excluded from CDP requirements is appealable to the Coastal Commission.

III. THE PROJECT REQUIRES AN AMENDMENT TO THE PMP

The Project requires a PMP Amendment to include the new land-based restaurant in the list of development in Planning Area 2. Sunroad argues that the absence of the Project from the PMP is inconsequential, and that the Port routinely approves restaurant projects without PMP amendments and that no PMP

¹⁰ *Id.*, p. 52.

¹¹ See **Attachment B** (*Restaurants associated with hotels* (Hotel Complex includes a restaurant and is classified as appealable (PMP, p. 57); Convention Center Hotel Complex and Marina includes restaurants and is classified as appealable (PMP, p. 69); Spinnaker Hotel includes restaurants and is classified as appealable (PMP, p. 69); and Resort Conference Center (H-3) includes a restaurant and is classified as appealable (PMP, p. 103)); *Restaurants associated with shopping facilities* (Bay City/Sun Harbor Redevelopment includes a restaurant and is classified as appealable (PMP, p. 51); Old Police Headquarters Rehabilitation includes restaurant uses and is classified as appealable (PMP, p. 69); Pier Walk Building includes a restaurant and is classified as appealable (PMP, p. 69); First Street Commercial Area includes a restaurant and is classified as appealable (PMP, p. 89); and Ferry Terminal (H-12) includes a restaurant and is classified as appealable (PMP, p. 105)); *Restaurants Not Associated with Hotels or Shopping Facilities in the PMP* (North Embarcadero Redevelopment includes a restaurant and is classified as appealable (PMP, p. 69); and Restaurant is classified as appealable (PMP, p. 120)).)

amendment is required in this case. Sunroad's arguments are unsupported by the law and Port and Commission precedent.

The Coastal Act requires the PMP to describe the "proposed uses of land and water areas, where known."¹² The PMP states that each precise plan for its nine planning districts contains a "listing of development projects, covering both appealable and non-appealable categories" under the Coastal Act.¹³ Each precise plan contains a project list that includes all Coastal Act "developments" within that planning area. The PMP explains that the purpose of the lists is to comply with the Coastal Act and the Commission's Guidelines:

Each Precise Plan section contains . . . a project list describing each project, its location, its developer as either Port District or tenant, its appealable classification and an estimate of its starting date.

The project list, a rather detailed commentary, has been included in order to comply with the Coastal Act guideline for content of port master plans. The guideline calls for a listing of proposed projects in sufficient detail to judge the plan's consistency with the Coastal Act. The project list is not intended to be an exclusive listing, rather it describes major projects or smaller projects that are well defined at the time of writing.¹⁴

The PMP identifies the east end of East Harbor Island as "vacant."¹⁵ The PMP recognizes that "[t]he eastern end of the peninsula is anchored by restaurants,"¹⁶ because it is anchored by the existing Island Prime restaurant and the Reuben E. Lee floating barge restaurant. However, the PMP's project list for Planning Area 2 does not list the new land-based restaurant on East Harbor Island.

Furthermore, a closer look at the PMP shows that the project lists for other planning areas include restaurant projects, demolition and reconstruction projects,

¹² Pub. Resources Code § 30711(a)(1).

¹³ **Attachment B**, p. 2.

¹⁴ *Id.*, p. 42.

¹⁵ *Id.*, p. 52.

¹⁶ *Id.*, p. 53.

and promenade projects.¹⁷ In order to comply with Coastal Act and the Commission's regulations, and avoid internal inconsistency within the PMP, the PMP must list the Project in the project list for Planning District 2.¹⁸

Because the PMP designates the Project site as vacant and the Project is not listed in the PMP, the Project is not an allowable use on State tidelands within Planning District 2. Therefore, the Port must amend its PMP to list the Project before a CDP for the Project can be considered.

IV. THE PROJECT IS NOT A REPLACEMENT OR RECONSTRUCTION PROJECT AND IS NOT EXEMPT FROM THE REQUIREMENT TO OBTAIN A CDP

The Port improperly exempted the Project from CDP requirements when it classified the Project as a "replacement or reconstruction" project. The "replacement or reconstruction" exemption applies to the "replacement or reconstruction of *existing* structures and facilities where the new structure will be located essentially *on the same site* as the structure replaced and will have substantially the same purpose and capacity as the structure replaced."¹⁹

The Project is not a replacement or reconstruction project because the Project will not be located on the same site as the barge in the water. Instead, the Project will be located on currently vacant land. Land and water sites are not interchangeable. In addition, the total square footage of the Project would increase, and the total floor area occupied by the structures would increase. The purpose of the facilities will be expanded to include bars and banquet facilities, and the seating capacity of the restaurant will also be expanded.

Sunroad argues that the Port's CDP regulations do not distinguish between "land" and "water" and, therefore, the Project's new structures on the land will essentially be located on the same site as the barge in the water. However, nowhere in the CDP regulations does it state, or even imply, that "land" and "water" are interchangeable. Development on land is different from development in the water,

¹⁷ *Id.*, p. 51 [reconstruction and promenade projects], p. 69 [promenade and restaurant projects], p. 81 [demolition and reconstruction project], p. 89 [accessways and paths], p. 112 [restaurant project and demolition and reconstruction projects].

¹⁸ See 14 C.C.R. § 13625.

¹⁹ **Attachment A**, § 8.b (emphasis added).

with different development requirements and effects. Therefore, Sunroad's argument fails.

Sunroad further argues that the Reuben E. Lee Barge Restaurant is located on the land and in the water and, thus, exempt from CDP requirements as a replacement project, just like Tom Ham's Lighthouse restaurant is located on the land and in the water and exempt from CDP requirements. However, Tom Ham's Lighthouse restaurant renovation is easily distinguished from the Reuben E. Lee Project. Prior to its renovation, Tom Ham's Lighthouse restaurant *existed on the land* and extended over the water. Here, there is no restaurant on the land. The land where the Project would be built is vacant. Moreover, there is no evidence that the Port's CDP exemption of the Tom Ham's Lighthouse restaurant project was proper, because the Port did not provide notice of its exemption to the Coastal Commission and there was no opportunity to review the Port's action.

In sum, the "Replacement or Reconstruction" exemption does not apply to Project because the Project will not be located on the same site as the barge in the water and will not have substantially the same purpose and capacity as the structure replaced. Instead, the Project will include thousands of square feet of new structures located on currently vacant land, will have new uses and will be substantially larger. The CDP Regulations do not provide that development on land and water are interchangeable. Therefore, the Project does not qualify as a replacement or reconstruction and requires a CDP.

V. REMOVING, TOWING, RENOVATING, AND REINSTALLING THE BARGE IS DEVELOPMENT WHICH REQUIRES A CDP

Sunroad argues that removing and towing the Reuben E. Lee barge off-site, where it would be renovated and then towed back to and reinstalled at the Project site, does not constitute "development" requiring a CDP. Sunroad is wrong.

The State Lands Commission lease with the Port for the Project site acknowledges that the removal and renovation of the barge is development, even though it incorrectly states that the development is excluded from Port CDP requirements. According to the lease, "the barge is planned to be removed to an off-site facility for renovation purposes and [] this renovation has been determined to be...an Excluded *Development* under Sections 8a (3) and (5), b (1) and (2), and d

(1), (2), and (7) of the District's Coastal Development Permit Regulations."²⁰ Importantly, the State Lands Commission's and the Port's classification of the removal and renovation as "development" is consistent with the Coastal Act.

The Coastal Act defines "development" broadly.

"Development" means, on land, in or under water, the **placement or erection of any solid material or structure**; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, **removing**, dredging, mining, or extraction of **any materials**; change in the density or intensity of use of land . . . ; change in the intensity of use of water, or of access thereto; **construction, reconstruction, demolition, or alteration of the size of any structure** . . . As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.²¹

The Reuben E. Lee barge has (or *had* before it was towed and sunk) several characteristics which qualify it as a development "structure" under the Coastal Act. Specifically, the barge has a hull, mooring piles, drainage systems, permanent utility hookups, no propulsion mechanism and a breakwater. Further, it was fixed for 43 years before it was towed and sunk. Therefore, Sunroad's removal, towing, reconstruction and reinstallation of the barge structure is "development" that requires a CDP.

VI. CONCLUSION

In sum, Sunroad's arguments in response to the appeals are unsupported and incorrect. The Port's exemption determination is appealable to the Coastal Commission, and UNITE HERE Local 30 has standing to appeal the Port's exemption. The Project is not a "replacement or reconstruction" project under the Port's CDP Regulations and, therefore, does not qualify for an exemption. The Port must amend its PMP prior to considering a CDP for the Project. Finally, removing and towing the Reuben E. Lee barge is "development" that also requires a CDP.

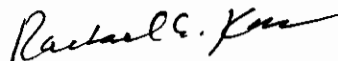
²⁰ See **Attachment C**, Lease Agreement between State Lands Commission and San Diego Unified Port District for 0.30 Acres of Sovereign Land Adjacent to 880 Harbor Island Drive, San Diego Bay, July 6, 2011, Exhibit A, p. 3, paragraph (e)(2) (emphasis added).

²¹ Pub. Resources Code § 30106 (emphasis added).

May 8, 2013
Page 9

We look forward to discussing these issues with you prior to the appeal hearing. Thank you for your attention to this matter.

Sincerely,



Rachael E. Koss

REK:clv
Attachments

cc:

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ATTACHMENT A

(28)

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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SAN DIEGO UNIFIED PORT DISTRICT

Document No. **19171**

Filed **FEB 18 1986**

Office of the Clerk

SAN DIEGO UNIFIED PORT DISTRICT

COASTAL DEVELOPMENT PERMIT REGULATIONS

Adopted by the Board of Port Commissioners
of the San Diego Unified Port District
July 1, 1980
Resolution No. 80-193, Document No. 12937

Amended by the Board of Port Commissioners
of the San Diego Unified Port District
December 2, 1980, Resolution No. 80-343

Amended by the Board of Port Commissioners
of the San Diego Unified Port District
February 14, 1984, Resolution No. 84-62

CATEGORICAL DETERMINATION

-4-

7. Categorical Determination

- a. At the time any development is subject to review for the issuance of a Coastal Development Permit, the Director shall determine the category of development.
- b. A categorical determination shall be made by the Director and shall contain sufficient information to determine into which of the four categories specified in Section 7.d. of these regulations the development shall be placed. This determination shall be made with reference to the certified Port Master Plan, including maps, and land use designations.
- c. The categorical determination shall be made as a part of the project plan approval process, in accordance with established District Development Approval procedures.
- d. Categories of development are defined as follows:
 - (1) Excluded developments are those defined in Section 8 of these regulations;
 - (2) Emergency developments are those necessary to maintain, repair, restore, demolish, protect, or replace property or facilities damaged, destroyed, or threatened by imminent danger from a sudden, unexpected occurrence, which demands immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes, but is not limited to, such occurrences as fire, flood, windstorm, earthquake, or other soil or geologic movements, as well as occurrences as riot, accident, or sabotage;

19171 7

CATEGORICAL DETERMINATION

-5-

- (3) Non-appealable developments are those not classified in these regulations in Section 7.a.(1) as "Excluded," in 7.a.(2) as "Emergency," or in 7.a.(4) as "Appealable";
- (4) Appealable developments are:
- (a) Developments for the storage, transmission, and processing of liquefied natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state and nation;
 - (b) Waste water treatment facilities, except such facilities which process waste water discharged incidental to normal port activities;
 - (c) Roads or highways which are not principally for internal circulation within the Port boundaries;
 - (d) Office and residential buildings not principally devoted to administration of activities within the Port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marine-related facilities;
 - (e) Oil refineries;
 - (f) Petrochemical production plants.
- e. The categorical determination shall be made within thirty (30) working days of the developer's project plan submittal.

19171

8

CATEGORICAL DETERMINATION

-6-

- f. The determination shall be furnished the applicant.
- g. Appeals from the determination shall be made to the Board of Port Commissioners.
- h. A fee, as determined by the Director, may be charged for processing a categorical determination.
- i. If a proposed development is classified as being appealable, a copy of the determination shall be forwarded within ten (10) working days to the Coastal Commission.

19171

9

EXCLUDED DEVELOPMENTS

-7-

8. Excluded Developments

No Coastal Development Permit shall be required for the following types of development, under the following conditions:

- 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, including but not limited to:
- (1) Interior or exterior alterations involving such things as partitions, plumbing, and electrical conveyances;
 - (2) Public and private utilities used to provide electric power, natural gas, sewer, or other utility services;
 - (3) Streets, sidewalks, gutters, bicycle and pedestrian paths, and similar facilities;
 - (4) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health, safety, District policy, or as required by contractual conditions;
 - (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 square feet, whichever is less; or additions to existing structures of not more than 10,000 square feet of floor area, if the project is in an area where all public services and facilities are available to

19171

10

EXCLUDED DEVELOPMENTS

-8-

allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive;

- (6) Addition of safety or health protection devices for use during construction of, or in conjunction with, existing structures, facilities, mechanical equipment, or topographical features, including navigational devices;
 - (7) New copy on existing on- and off-premise signs;
 - (8) Maintenance and control of existing vegetation;
 - (9) Demolition and removal of individual small structures, except where structures are of historical, archaeological, or architectural significance;
 - (10) Repair, maintenance, or minor alteration of existing mooring facilities, floats, piers, bulkhead, revetment, buoys, or similar structures;
 - (11) Periodic maintenance dredging which involves negligible or no enlargement of the existing facility;
 - (12) Interior and exterior remodeling of airport facilities, marine terminal facilities, existing marine-oriented industrial structures, and commercial or recreational facilities;
 - (13) Maintenance of wildlife habitat area, fish enhancement structures, streamflows, and stream channels (clearing of debris) to protect fish and wildlife resources.
- b. Replacement or Reconstruction: Replacement or reconstruction of existing structures and facilities where the new structure will

EXCLUDED DEVELOPMENTS

-9-

// be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

- (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity;
- (2) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity;
- (3) Replacement, stabilization, or reconstruction of mooring facilities, floats, piers, bulkhead, revetment, shoreline protection, buoys, or similar structures.

c. New Construction or Conversion of Small Structures:

Construction and location of limited numbers of new, small facilities or structures and installation of small, new equipment and facilities, involving negligible or no change of existing use of the property, including but not limited to:

- (1) Commercial, industrial, and recreational structures designed for an occupant load of thirty (30) persons or less, if not in conjunction with the building of four (4) or more structures, and if not involving the use of significant amounts of hazardous substances;
- (2) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction;
- (3) Accessory structures, including, but not limited to,

19171

12

EXCLUDED DEVELOPMENTS

-10-

on-premise signs, small parking lots, fences, walkways, swimming pools, miscellaneous work buildings, temporary trailers, small accessory piers, minor mooring facilities, buoys, floats, pilings, or similar structures; and seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar structures;

- d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but limited to:

- (1) Land grading, except where located in a waterway, wetland, officially designated scenic area, or in officially mapped areas of severe geologic hazard;
- (2) New gardening or landscaping;
- (3) Filling of earth into previously excavated land with material compatible with the natural features of the site;
- (4) Minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;
- (5) Minor temporary uses of land and water having negligible or no permanent effects on the environment, including festivals, boating activities, parades, and running or bicycling events;

EXCLUDED DEVELOPMENTS

-11-

- (6) Minor trenching or backfilling where the surface is restored;
- (7) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable local, state, and federal regulatory agencies.
- e. Information Collection: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major significant disturbance to an environmental resource.
- f. Inspections: Activities limited to inspection, checking or performance or quality of an operation, examining the health and safety of a project, or related activities.

ATTACHMENT B



Unified Port
of San Diego

PORTMASTERPLAN



SAN DIEGO UNIFIED PORT DISTRICT

print Oct/2012

Port Master Plan

SAN DIEGO UNIFIED PORT DISTRICT



Unified Port
of San Diego

Board of Port Commissioners - 2012

Louis M. Smith.....	Coronado	Chairman
Ann Moore	Chula Vista	Vice Chairman
Lee Burdick	San Diego	Secretary
Dan Malcolm	Imperial Beach	Commissioner
Robert "Dukie" Valderrama.....	National City.....	Commissioner
Bob Nelson	San Diego	Commissioner
Scott H. Peters	San Diego	Commissioner

Print Date October 2012

Includes all Port Master Plan Amendments through 2012

rights. While the Master Plan study area includes all of the bay and its hinterland, the actual plan area addresses only the 5,480 acres of Port tidelands.

The **Usefulness of the Plan** relates directly to its status as an official statement of public policy adopted by the Board of Port Commissioners. It serves a number of useful purposes, which include use by the Port Board as a reference indicating needed policy changes and as a guide for policy decisions; by the Port staff as a basis for capital improvements programming and for rendering services; by other governmental agencies as necessary information leading to coordinated efforts; and to individuals as an accurate source of information, as an indication of new opportunities for private action and investment, and as a basis for protecting existing development.

Plan Certification and Appeals

The Port District Master Plan is to be submitted to the California Coastal Commission for review and certification as to conformance with the Coastal Act. After plan certification, either in its entirety or in part, coastal development permit authority for projects occurring within the San Diego Unified Port District's jurisdiction resides with the Board of Port Commissioners. For those portions of the plan not certified, the uncertified areas will remain under the permit authority of the California Coastal Commission.

Coastal Act Port Master Plans are to be prepared and adopted by the port governing body. The county and the port member cities are to incorporate the certified Port Master Plan into their own local coastal programs. Port Master Plans are to contain the following plan elements: 1) land and water use; 2) port facilities; 3) environmental inventory, impact analysis and mitigation; 4) a listing of appealable projects; and 5) provision for public hearings and public participation in port planning and development decisions.

All Port District tidelands are covered by the Coastal Act; some are regulated by the provisions of Chapter 8 (Ports) and some by Chapter 3 (Coastal Resources Planning and Management Policies). Areas excluded from Chapter 8 are wetlands, estuaries and existing recreation areas, which have been delineated by the Coastal Commission on maps derived from the original Coastal Plan prepared in 1976. Certain

developments, which would normally be located in port developments, are specifically designated by the Act as appealable, the appeal being based on whether the development is in conformance with applicable policies of Chapter 3. If these projects are appealed by anyone, final review of the project is returned to the California Coastal Commission. A substantial portion of the Port District Master Plan deals with appealable developments. A listing of development projects, covering both appealable and non-appealable categories, is provided in the discussion for each of the nine Planning Districts.

Public Hearings and Public Participation

The public planning process is concerned with finding solutions for problems that have arisen or may arise from land use situations. The process of seeking solutions to public problems on a general, long range and comprehensive basis involved public hearings and public participation in Port District planning and development decisions.

The Port District, due to its basic purpose and organizational structure as a special district, utilizes governmental processes and hearings, and citizen participation and involvement in a little different manner than the more familiar general purpose form of government, such as a city or county. This difference is noteworthy in the activities related to the Board of Port Commissioners.

Board of Port Commissioners serves as the policy making body of the District and gives overall direction to the District's operational and administrative staffs in accordance with the multi-faceted interests of the overall District and each city. The Commissioners serve without pay. They are appointed to a four-year term by the City Councils of the cities included in the District - San Diego, National City, Chula Vista, Imperial Beach, and Coronado. The Commissioners, representative of the cities, are selected in an appointive process conducted in a public forum, involving public hearings and citizen participation. Commissioners are representative of the positions the City Councils select in appointment. The Commissioners report back to the City Councils and, in some instances, the Commissioners' reports are scheduled at the public meetings of the City Councils. These meetings with local officials and

in trust and for the preservation and physical development of the tide and submerged lands conveyed or granted to the San Diego Unified Port District. The Precise Plan is geared to the flexible, short-term and precise budgeting and scheduling needs that arise in the plan implementation.

The adoption of the Precise Plan is not intended to create an inflexible, static, unmanageable set of guidelines for development, nor is it desirable to stifle individual initiative and creativity. A major purpose of this detailed program is to serve as a short-term management tool. As such, the plans and programs are, by necessity, flexible and subject to modifications to meet the circumstances and problems involved in plan implementation. For this short term planning period, continued review of the development program and modifications to the plan are anticipated to occur rather frequently due to the immediate and precise scale of planning involvement, and due to the decisions made in an effort to solve the ever-occurring problems of plan implementation. Pending changes are, of course, subject to environmental assessment and to public hearings and public comment.

Precise Plan Interpretation

The Precise Plan planning principles, policies and objectives are expressed graphically on plan maps, illustrations, and in written form in this document and subsequent amendments.

Several illustrations, diagrams, and a map have been prepared to assist in conveying the intent and purpose of each Precise Plan. The figures contained herein are for illustrative purposes only and are subject to change. The Precise Plan Land and Water Use Element Map is a part of each plan. The level of detail indicated in each land or water use on the map is scaled to parcel lines. About a dozen land or water use activities occupy a very small area but are still of enough significance to merit illustration, and are done by symbols. The level of locational detail for symbols portrayed on the map is to within the general area indicated. An explanation of the legend of these maps has

already been covered in the earlier discussions about general land and water use categories that appear in this document. More specifics about the applicable planning policies can be found in the discussion for each Planning District.

Each Precise Plan section contains an introductory description of the planning area, a statement of the major problems and an exposition of the plan concept. The introductory comments are followed by a narrative description of the plan by planning subareas, a table on proposed land and water use allocation and a project list describing each project, its location, its developer as either Port District or tenant, its appealable classification and an estimate of its starting date.

The project list, a rather detailed commentary, has been included in order to comply with the Coastal Act guideline for content of port master plans. The guideline calls for a listing of proposed projects in sufficient detail to judge the plan's consistency with the Coastal Act. The project list is not intended to be an exclusive listing, rather it describes major projects or smaller projects that are well defined at the time of writing. Some future projects, not specifically listed at this time but consistent with the land use classification grouping indicated in the Plan maps and identified in the Plan narrative, are anticipated to be added, just as some projects will need to be modified to respond to future changing environmental, financial and other conditions. The estimated construction dates are also subject to change and have been included in this document primarily as a management tool, rather than as an inflexible capital improvement program. Finally, change is anticipated in the appealable/non-appealable classifications as new projects are better defined and redevelopment opportunities are identified. For example, a project in the appealable classification could change to non-appealable by simply changing the merchandise in a retail activity without any physical modification to the outside of a structure. Where project dates are not listed, it is because they cannot be estimated at this time.

TABLE 7: PROJECT LIST

**SHELTER ISLAND:
PLANNING DISTRICT 1**

	SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
1. BEACH STABILIZATION AND REPLENISHMENT: (Kellogg Beach) Construct rock groin, backfill with sand	11	P	N	2003-20
2. SHORELINE PROTECTION: Channel side of peninsula; maintain revetment	13	P	N	2003-20
3. SHELTER ISLAND DRIVE: Modify street, curb and gutter; install landscaping, street trees, irrigation, street furnishings, sculpture	14	P	N	2003-05
4. PUBLIC SHORESIDE PARK: Shelter Island Drive at Anchorage Lane; remove paving; install landscaping, irrigation, promenade, park furnishings	14	P	N	2003-05
5. MARINE EQUIPMENT BUILDING: Remove, replace and relocate building and landscaping	14	T	N	2003-05
6. BOAT BUILDING AND REPAIR: Renovate and upgrade facilities	14	T	N	2003-05
7. BOAT SALES: Remove, replace and relocate structures and piers	14	T	N	2003-05
8. MARINE SERVICE CENTER: Remove existing building and construct new building for marine related services	14	T	N	2003-05
9. BOAT YARD: Renovate/replace building, piers and facilities	14	T	N	2003-05
10. SHORELINE PROTECTION: Break up and embed existing rubble; install filter blanket and rock revetment	16	P	N	2003-05
11. SHORELINE PARK: Reconfigure trailer-in-tow parking, construct park lawn area, relocate/renovate pavilion building	13	P	N	2005-07
12. KETTENBURG BOATYARD: Remove and replace obsolete structures and construct walk-up food plaza including through connecting pedestrian/bicycle access to Sportfish Landing promenade and Shelter Island Drive	15	P	N	2003-04
13. NO. HARBOR DRIVE: Partial street vacation, roadway realignment, landscaping, traffic calming, parking and pedestrian/bicycle access improvements	15	P	Y	2003-05
14. HOTEL EXPANSION: Add rooms, pedestrian/bicycle accessway and renovate structures, install landscaping and parking improvements	15	T	Y	2004-06
15. BAY CITY/SUN HARBOR REDEVELOPMENT: <u>New restaurant</u> , retail and marina services, public improvements including view corridors, pedestrian/bicycle access, open marina green park area with water taxi recreational boat access and new 50-slip marina.	15	T	<u>Y</u>	2004-06

P- Port District T- Tenant N- No Y- Yes

HARBOR ISLAND: PLANNING DISTRICT 2



Precise Plan Concept

Planning District 2 embraces two different activities - the transportation hub of San Diego International Airport (Lindbergh Field) with its ancillary commercial and industrial activities, and Harbor Island with its public parks and tourist commercial orientation. Each serves an important function in the regional economy and, in some ways, they are associated together. Both have been intensely developed and are recognized as being stabilized for the future envisioned in the Master Plan.

Lindbergh Field is included in the Comprehensive Planning Organization's Regional Transportation Plan with the statement that it is "the site most suitable for serving the commercial air transportation needs of the San Diego region through 1995." The Master Plan retains Lindbergh Field in its present configuration, adding to the passenger terminal and making improvements in parking and access. Aviation related industries and commerce will also be retained.

Development of unleased parcels on Harbor Island is expected to be completed with the construction of the hotel on the east basin. Along Harbor Drive, from the Navy Estuary to the Coast Guard facility, planning concepts focus on providing a sense of entry into downtown San Diego for travelers coming via Lindbergh Field and Point Loma, with activities and landscape features that strengthen the image of San Diego as a pleasant place to visit. Considerable attention must be paid to improvements in the general appearance of existing industrial uses and the planned expansion of these uses. Public park, pedestrian

promenade and open space are reserved on the bayside and in the circulation gateway of Harbor Island. Coastal access is enhanced by a shoreline park with leisure facilities, including restroom, and a 1.3 mile bayside public pathway.

Land and Water Use Allocations

The Harbor Island/Lindbergh Field Planning District contains an approximate total of 996 acres, consisting of about 816 acres of tidelands and 180 acres of submerged tidelands. **Table 8** summarizes the land and water use allocations proposed in the Precise Plan. As in the Shelter Island Planning District, a significant portion of the area is already developed and is under long term lease commitment. The east end of the Harbor Island peninsula is vacant and thus offers development potential uncomplicated by the presence of structures or lease interest. A balanced allocation of use activities is provided within the major use categories of commercial, industrial, public recreation, and public facilities.

The use allocation table, the **Precise Plan Map**, and the following text supplement the general plan guideline presented in the preceding part of this document.

Harbor Island/Lindbergh Field Planning Subareas

Planning District 2 has been divided into nine subareas (**Figure 10**) to provide a more specific explanation of the intent of the Plan.

Spanish Landing Park

Spanish Landing Park, subarea 21, extends along the north bank of the Harbor Island West Basin and occupies 11.2 acres of land. Another 1.3 acres is designated for promenade in the form of a bicycle and pedestrian path. This area is completely developed except for the possibility of a fishing pier near the west end. Approximately one mile of public access to the shore is provided by this park. Historic markers located in the park commemorate Juan Rodriguez Cabrillo's discovery of San Diego Bay in 1542, and the exploratory party of Gaspar de Portola in 1769-70.

West Harbor Island

West Harbor Island, subarea 22, has been completely developed with commercial recreational uses such as hotels, restaurants, marinas, and marine related commercial business. No changes to this 37.7-acre commercial recreation area are anticipated.

East Harbor Island

The east end of Harbor Island, subarea 23, has been the last subarea to complete phased development. The last project, a high quality hotel of approximately 500 rooms, is sited to be responsive to views of San Diego Bay, the airport, and the downtown San Diego skyline. Maximum building heights establish consistency with aircraft approach paths. The hotel complex includes restaurant, cocktail

lounge, meeting and conference space, recreational facilities, including piers, and ancillary uses. A marina of approximately 550 slips is located adjacent to the hotel and occupies most of the basin. The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge.

A public promenade parallels the active ship channel of the bay and insures pedestrian and bicycle coastal access. Landscaped open space on Harbor Drive is retained with the street design of an upgraded and modified "T" inter-section. Utility capacity is expanded to meet increased service needs.

Anchorage A-9, Cruiser Anchorage, is a 9.2 acre anchorage area located south of the United States Coast Guard Air Station near the East Harbor Island Basin. The boundaries of the anchorage are

**TABLE 8: Precise Plan Land and Water Use Allocation
HARBOR ISLAND/LINDBERGH FIELD: PLANNING DISTRICT 2**

LAND USE	ACRES	WATER USE	ACRES	TOTAL ACRES	% of TOTAL
COMMERCIAL	90.6	COMMERCIAL	105.8	196.4	20%
Airport Related Commercial	38.0	Recreational Boat Berthing	105.8		
Commercial Recreation	52.6				
INDUSTRIAL	631.8	INDUSTRIAL	11.2	643.0	65%
Aviation Related Industrial	130.6	Specialized Berthing	11.2		
Industrial Business Park	33.1				
International Airport	468.1				
PUBLIC RECREATION	26.2	PUBLIC RECREATION	45.0	71.2	7%
Open Space	7.5	Open Bay/Water	45.0		
Park	16.4				
Promenade	2.3				
PUBLIC FACILITIES	66.8	PUBLIC FACILITIES	18.0	84.8	8%
Harbor Services	1.3	Harbor Services	5.3		
Streets	65.5	Boat Navigation Corridor	12.7		
TOTAL LAND AREA	815.4	TOTAL WATER AREA	180.0		
PRECISE PLAN LAND AND WATER ACREAGE TOTAL				995.4	100%

Note: Table 8 Does not include:

<i>Leased Federal Land</i>	<i>22.5 acres</i>
<i>State Submerged Tidelands</i>	<i>41.3 acres</i>
<i>Leased Uplands</i>	<i>4.1 acres</i>

occupied by the U.S. Marine Corps Recruit Depot; however, the exact location, design and ownership will be decided at a later date, and is subject to negotiation with the U.S. Navy. It is not intended to serve as a shortcut or bypass between Point Loma and Hillcrest, so it has been narrowed as it enters Harbor Drive.

Airport Related Commercial

Commercial uses associated with the airport have been delineated on the Precise Plan. They include a cluster of uses along Pacific Highway near Laurel

Street. While individual leases may change from time to time, it is intended to continue these existing areas in airport related commercial use. Other uses included are car rental, offices, private general aviation services, restaurants, government offices, service stations, flight food preparation, aircraft maintenance, and similar uses. The total area now shown in this category is 38.0 acres.

The existing Port District Administration Building at Sassafras Street will continue to serve the District.

TABLE 9: PROJECT LIST

HARBOR ISLAND/LINDBERGH FIELD: PLANNING DISTRICT 2

	SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
1. HOTEL COMPLEX: up to 500 rooms, <u>restaurant</u> , cocktail lounge, meeting and conference space; parking; landscape	23	T	<u>Y</u>	1993-94
2. PORT ADMINISTRATION BUILDING RENOVATION: Renovate building; Construct parking structure; install landscaping	29	P	N	1993-95
3. AIRPORT ACCESS ROAD: Construct	27	P	Y	1995-96
4. FUEL FACILITY: Expansion to north side of airport	25	P	N	1992-93
5. ACCESS ROADS: Revise airport internal road system	26	P	N	1993-94
6. LAUREL STREET: Widen between Harbor Drive and Pacific Highway	27	P	Y	1994-95
7. NEW AIRPORT TERMINAL: Construct facility; apron; taxiway	26	P	N	1993-95
8. ANCHORAGE FACILITY: Install perimeter marker buoys at Anchorage A-9	23	P	Y	1995-96
9. CONVAIR LAGOON: Sediment remediation	24	T	N	1996-97
10. INTERIM EMPLOYEE PARKING LOT: Construct airport employee parking lot and staging area for taxis, shuttle vans and charter buses; replace storm drain	26	P	N	2001-03

P- Port District T- Tenant N- No Y- Yes

TABLE 11: Project List

CENTRE CITY/EMBARCADERO:
PLANNING DISTRICT 3

	SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
1. NORTH HARBOR DRIVE, GRAPE TO BROADWAY: Reduce traffic lanes; install landscaping, irrigation; develop bike path	33	P	Y	2005-20
2. PUBLIC ACCESS: Pedestrian access improvements to waterfront and promenade	35	T	N	2007-08
3. LANE FIELD DEVELOPMENT: 600-to-800-room hotel, office building, retail, and parking	33	T	Y	2005-10
4. NORTH EMBARCADERO REDEVELOPMENT: (a) Visionary Plan public improvements, (b) esplanade, (c) street improvements, (d) vista points, (e) Grape Street piers replacement + <u>restaurant</u> , (f) park and plaza areas, (g) Broadway Pier cruise ship terminal (approximately 60,000 sq. ft., maximum 50-foot building height) to cover no more than 50 percent of the pier, public events space, 15,000 sq. ft. public recreation and viewing area, a 25-foot wide public access corridor along the southern side of the pier, and infrastructure improvements, (h) B and C Street linkages between Pacific Highway and North Harbor Drive	31-34	P	Y*	2005-20
5. PASSENGER TERMINAL AT B STREET PIER: Cruise Ship Terminal Modernization	33	P	N	2006-10
6. WATER TRANSIT CENTER: Prepare site, construct buildings, piers, pedestrian access and landscape improvements to and along the San Diego Bay shoreline to accommodate water-based transportation including a ferry landing, water taxi access and public boat access	36	T	N	2007-10
7. CONVENTION CENTER HOTEL COMPLEX AND MARINA: Construct 1000 to 1200-room hotel tower, a lobby, ballroom, meeting rooms, retail shops, <u>restaurants</u> , other ancillary uses, above-grade parking structure, marina, piers, pedestrian access, boat access, park/plaza, and landscape improvements	36	T	Y	2006-08
8. SPINNAKER HOTEL: Construct 250-room hotel with meeting rooms, ballroom, <u>restaurants</u> , retail shops, other ancillary uses, pedestrian access, with bridge to Convention Center, surface parking spaces, and landscape improvements	36	T	Y	2007-10
9. PEDESTRIAN BRIDGE OVER HARBOR DRIVE: Self-anchored suspension bridge over Harbor Drive connecting to public parking garage to Eighth Avenue	35	T	N	2006-08
10. EIGHTH AVENUE PEDESTRIAN CROSSING: At grade pedestrian crossing to be completed with pedestrian bridge over Harbor Drive	35	T	N	2006-10
11. OLD POLICE HEADQUARTERS REHABILITATION: Rehabilitation and adaptive reuse of historically designated Old Police Headquarters building with a mix of specialty retail, entertainment and <u>restaurant</u> uses; reconfiguration of surrounding parking areas; and, pedestrian access, plaza and landscape improvements.	34,35	T	Y	2007-08
12. PIER WALK BUILDING: Remove existing Harbor Seafood Mart building and construct new Pier Walk building to accommodate existing commercial fish processing operations, as well as associated retail, <u>restaurant</u> and other services/support uses.	34	T	Y	2008-09
13. BAYFRONT PARK: Construct new bayfront public park along the southern edge of Harbor Drive, between the waterfront and Pacific Highway, including lawn and landscaped areas, walkways, as well as other park/plaza features	34	P	N	2009-10

P- Port District T- Tenant N- No Y- Yes

* "Vista Points" and Broadway Pier infrastructure improvements are non-appealable projects.

cruising vessels. The boundaries of the anchorage are proposed to be identified by marker buoys and shown on bay charts. Control over the anchorage is to be exercised by the Port District. The existing National City small craft-launching ramp provides landing and shoreside support services consisting of automobile parking, restrooms, public telephone, drinking water, trash disposal, and docking facilities.

Marina

This commercial recreation area shown on the Planning District Map is designed to accommodate the needs of workers in the nearby industrial area, people enjoying the nearby recreational park, and the adjacent

marina and attendant commercial facilities. Uses could include a restaurant or coffee shop, convenience store, bait and tackle shop, boat slips and dry storage, lodging and other business activities consistent with public demand. Activities associated with the boat launch ramp, such as the sale and repair of trailered boats, boating equipment sales, water ski gear, and selected marine hardware, are appropriate uses.

The location and design of the commercial area, and possibly even its market feasibility, is dependent on improved access to Interstate 5. The additional traffic and increased activity in this presently isolated property would greatly enhance its attractiveness for commercial enterprise.

TABLE 15: Project List

NATIONAL CITY BAYFRONT: PLANNING DISTRICT 5

	SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
1. CONTAINER WHARF: Extend rock revetment and apron wharf 1,000 feet. Excavate, drive support piles, place rock, construct wharf.	54	P	N	1988-99
2. COMPLETION OF TERMINAL WHARF: Extend rock revetment and apron wharf an additional 2,400 feet, to Sweetwater Wharf. Construct as above.	56	P	N	1998-99
3. SECOND CONTAINER CRANE: Install second container crane, miscellaneous equipment. Pave backup area.	54	P	N	1998-99
4. CONTAINER TRACK EXTENSION: Convert 500 feet of Berth 3 to a container wharf.	54	P	N	1998-99
5. MECHANICAL BULKLOADER: Install bulkloader, paving, railroad siding, conveyors, unloading pit.	54	P	N	1997-98
6. SHIPYARD: Construct shipyard facilities, buildings, cranes, dry-dock.	56	T	N	1993-94
7. COMMERCIAL SUPPORT AREA: Construct buildings, parking, landscape.	58	T	Y	1995-96
8. MECHANICAL UNLOADER: Erect cargo handling equipment.	54	P	N	1995-96
9. CONNECTING STREET: Linking Harbor Drive to Tidelands Avenue north of the Civic Center Drive.	51	P	N	1993-97
10. PEPPER PARK PUBLIC RESTROOMS: Demolish and remove existing structure, drinking fountain, public pay phone, and landscape materials. Construct new ADA compliant restroom facility, drinking fountain, public pay phone, walkways and landscape improvements.	58	P	N	2006-08
11. RECREATIONAL MARINA: Install marina docks, utility services, shoreside structures, walkways, landscape improvements and parking area.	59	T	Y	1994-95
12. AQUATIC CENTER: Construct restrooms, locker rooms, offices, classrooms, watercraft storage, paved exterior activity areas, security walls, fencing, lighting, and landscape improvements. Remove temporary classroom and storage facility and return pavement area to parking use.	58	T	Y	2006-08

P- Port District T- Tenant N- No Y- Yes

Table 17: Project List

CORONADO BAYFRONT:
PLANNING DISTRICT 6

		SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
1.	ORANGE AVENUE PARK AND FERRY LANDING: Construct park, ferry dock and passenger waiting shelter, accessways	61-61	P	N	1987-88
2.	FIRST STREET COMMERCIAL AREA: Construct <u>restaurant</u> , commercial buildings, parking and landscaping, pier and slips	62	T	Y	1984-85
3.	PUBLIC FISHING PIER: Construct pier, restroom, bait and tackle shop, parking and accessways	62	P	N	1984-85
4.	SHORELINE ACCESSWAY: Fill or bridge over bay water, install landscaping, bicycle/pedestrian path	61-64	P	N	1983-84
5.	LOOP ROAD: Bay fill, install paving, curb, gutters, utilities, streettrees	63-64	P	Y	1983-84
6.	HOTEL COMPLEX: Construct hotel, accessory uses, parking, landscaping, recreational facilities	63	T	Y	1984-85
7.	TIDELANDS PARK: Install landscaping, play fields, park furnishings	64	P	N	1984-85
8.	SHORELINE PROTECTION: Install stone revetment, other protection	Various	P	N	1983-84
9.	BAY BRIDGE ROADSTEAD ANCHORAGE: Install boundary markers and mooring buoys, dinghy float and ramp, and lighting	64	P	Y	1984-85
10.	GLORIETTA BAY ANCHORAGE: Install boundary markers	66	P	Y	1984-85
11.	STRAND WAY RECONFIGURATION: Vacate portion of street; construct sidewalk; enhance bike path; install landscaping. Narrowwidth of remaining street portion; construct shoreline promenade; install landscaping, benches, and lighting	66	P	Y	2003-05
12.	POCKET PARK: Remove paving; construct passive use park lawnarea; install public art	66	P	N	2003-05
13.	SHORELINE STABILIZATION: Remove existing riprap; replace withnew riprap; construct seawall	66	P	N	2003-05

P- Port District T- Tenant N- No Y- Yes

TABLE 19: Project List (cont'd)

		SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
10. H STREET EXTENSION: Extend H Street to Marina Parkway.	74	P	Y	UNDERWAY	
11. RESORT CONFERENCE CENTER (H-3): Construct resort conference center, including a portion of the allowed 2,850 hotel rooms in the Harbor District, up to 100,000 square feet of <u>restaurant</u> , up to 20,000 square feet of retail, up to 415,000 square feet of net meeting space, and other associated ancillary uses. The bayward portion of this site will be developed with a 150-foot wide public open space esplanade inland of E Street, and a specialty retail shopping village consisting of buildings no more than 35 feet in height with commercial retail on the ground floor, and hotel/conference center uses above. The special shopping area shall be interspersed with plazas, landscaping, public art and other pedestrian oriented public amenities. Maximum heights are limited to 240 feet for the hotel and 120 feet for the conference center.	74	T	(Y)	Phase I	
12. INTERIM SURFACE PARKING LOT (H-18): Construction of approximately 1,100 surface parking spaces for use as collector and off-site parking lot.	74	T/P	N	Phase I	
13. SIGNATURE PARK EXTENSION (HP-1N, HP-1S, H-1AS, H-8): A 25-acre extension of Sweetwater Signature Park into Harbor District, including improvements to existing Bayside Park as detailed in Planning District text.	74	P	N	Phase I / IV	
14. HARBOR DISTRICT ROADWAY AND INFRASTRUCTURE IMPROVEMENTS: Reconfiguration of existing (H Street, J Street and Marina Parkway) and construction of new interior (E Street, Street A and C) roadways, as well as necessary utility improvements and pedestrian/bicycle connections to support planned projects. All new streets are appealable category developments.	74	P	Y	Phase I - III	
15. HARBOR DISTRICT BAYWALK (HP-3): Development of new Baywalk promenade along the shoreline.	74	P	N	Phase I - IV	
16. H STREET PIER (FIRST HALF) (HP-28): Construct new 60-foot wide, 300-linear-foot pier at terminus of extended H Street corridor above existing open water area (only portion eastward of existing navigation channel; second half of total 600-linear-foot pier totaling 36,000 square feet to be constructed in Phase IV following realignment of navigation channel).	74	P	Y	Phase II	
17. HARBOR RESORT HOTEL AND CULTURAL/RETAIL (H-23): Construct hotel with portion of allowed 2,850 rooms in Harbor District, associated conference room, retail, and ancillary uses, along with up to 200,000 square feet of cultural/retail uses and integrated open space; maximum heights are limited to 300 feet for the hotel and 65 feet for the cultural/retail uses.	74	T	Y	Phase II	

TABLE 19: Project List (cont'd)

		SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
27. FERRY TERMINAL (H-12): Construct ferry terminal with second story <u>restaurant</u> /retail totaling up to 10,000 to 25,000 square feet of building area; building height is limited to 25 feet (30 feet with architectural or mechanical features).	74	T	(Y)		Phase IV
OTAY DISTRICT					
28. RECREATIONAL VEHICLE PARK (O-3A, O-3B): Construct replacement recreational vehicle park with minimum 237 spaces, along with supporting ancillary uses with building heights limited to 25 feet (30 feet with architectural or mechanical features).	76	T	Y		Phase I
29. OTAY DISTRICT ROADWAY AND INFRASTRUCTURE IMPROVEMENTS: Reconfiguration of existing and construction of new interior roadways (Street B), as well as necessary utility improvements and pedestrian/bicycle connections to support planned projects.	76	P	Y		Phase III
30. OTAY DISTRICT WETLAND AND UPLAND HABITAT MITIGATION (OP-2A, OP-2B): Creation, restoration, and enhancement of identified wetland and upland habitat areas, as well as the establishment of buffers; replacement of existing concrete Telegraph Canyon Creek channel with wider, naturally vegetated channel.	76	P	N		Phase III
31. SOUTH PARK (OP-1A, OP-1B): Development of 24-acre park in Otay District, including associated public amenities, promenades, and parking areas as detailed in Planning District text.	76	P	N		Phase III

P- Port District T- Tenant N- No Y- Yes

Phase I refers to the time period of approximately 1-7 years after PMPA certification

Phase II refers to the time period of approximately 4-10 years after PMPA certification

Phase III refers to the time period of approximately 11-17 years after PMPA certification

Phase IV refers to the time period of approximately 18-24 years after PMPA certification

beach, Pier Plaza, and the Pier. The District and City of Imperial Beach will perform a cooperative peak parking demand and supply monitoring study for five years following the completion of Pier Plaza redevelopment, and will annually meet to confer with the California Coastal Commission to review its findings and recommendations.

In the event that additional parking demand from projects implemented as a result of the Port Master Plan is identified by the monitoring program, the Port will provide appropriate mitigation for it.

TABLE 24: PROJECT LIST

IMPERIAL BEACH OCEANFRONT:
PLANNING DISTRICT

	DEVELOPER	APPEALABLE	APPROXIMATE FISCAL YEAR
1. BEACH SAND REPLENISHMENT: supplement sand supply as opportunity and feasibility permit	Various	N	Various
2. PIER PLAZA: demolish structures; construct restrooms and concession buildings, stage, tot lot, lighting, landscaping, irrigation, shoreline protection, enhanced paving, park furniture, street ending improvements on Elm and Elder Avenue	P	N	1997-98
3. PIER SADDLE: expand pier deck area with placement of pilings	P	N	1999-2000
4. RESTAURANT: construct <u>restaurant</u> and ancillary commercial uses on expanded pier platform when market demands	T	Y	2000-2005
5. PUBLIC SAFETY BUILDING: construct building for lifeguard and other public services; install erosion protection, parking, beach access, landscaping, irrigation system	P	N	2000-01
6. DUNES PARK EXPANSION: demolish structures; construct public restrooms, install paving, landscaping, park furniture, irrigation system, erosion protection	P	N	1998
7. ENHANCE 11 STREET ENDS: demolish and reconstruct; automobile travel and parking space, curb and gutter, drainage, shoreline protection, enhanced paving, lighting, fencing, landscape irrigation	P	N	1997-2002
8. ENHANCE STREET END, PALM AVE: demolish structures, construct curb and gutter, public restroom, shoreline protection, sidewalk, enhanced paving, lighting, fencing, drainage, landscape and irrigation	P	N	1999-2000
9. AUTOMOBILE PARKING FACILITIES: renovate lot with parking structure and irrigation	T	N	1999-2000

P- Port District T- Tenant N- No Y- Yes

ATTACHMENT C

SLC lease

(d) Insurance

- (1) Lessee shall be required to provide evidence to Lessor that the State of California is named as an additional insured on all insurance certificates required by this Expansion Space lease, and that the insurer will not cancel the insured's coverage without 30 days prior written notice to Lessor, and that the State of California will not be responsible for any premiums or other assessments on the policy.

(e) Project Information Requirements

- (1) Prior to the start of all removal, renovation, maintenance and construction activities on the Expansion Space, Lessee will provide to Lessor copies of all permits and authorizations from all federal, state, and local agencies having jurisdiction over the project, which shall comply with all safety regulations, terms and conditions of such permits and authorizations.
- (2) Lessor acknowledges that the barge is planned to be removed to an off-site facility for renovation purposes and that this renovation has been determined to be Categorically Exempt pursuant to California Environmental Quality Act Guidelines Sections 15301 Class I, 15302 Class II, 15304 Class IV, and Resolution 97-191 and an Excluded Development under Sections 8a (3) and (5), b (1) and (2), and d (1), (2), and (7) of the District's Coastal Development Permit Regulations. Lessor further acknowledges that the barge may be removed to an off-site facility for other maintenance or renovation activities throughout the term of the lease. Prior to the commencement of any removal activities, Lessee will submit to Lessor copies of any additional permits, authorizations, and/or environmental analysis documents pertaining to such removal and offsite renovation and other maintenance activities.
- (3) Lessee will provide Lessor with prior written notice of the removal date for the barge, and shall further provide written notice of the completed off-site renovation and other maintenance activities and subsequent replacement of the barge on the Expansion Space.
- (4) Lessee agrees that upon the removal of the barge from the Expansion Space, the barge shall be prohibited from being returned to the Expansion Space until such time as the planned off-site renovation and other maintenance activities have been completed, or a revised plan for on-site completion of such renovation and other maintenance activities has been submitted to Lessor for review and consideration for approval.

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May 20, 2013

RECEIVED

MAY 22 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Via Facsimile and U.S. Mail

Chair Mary K. Shallenberger and
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
(415) 904-5400

Re: Appeal No. A-6-PSD-13-005
Subject: New Development on East Harbor Island and Reuben
E. Lee Barge

Dear Chair Shallenberger and Commissioners:

We write on behalf of UNITE HERE Local 30 to provide additional legal support for why the Coastal Commission should find that the appeals of the San Diego Unified Port District's exemption of Sunroad Marina Partner, LP's Reuben E. Lee restaurant project ("REL Project") from coastal development permit ("CDP") requirements raise a substantial issue due to inconsistency with the Port Master Plan ("PMP") and why neither the Port nor the Commission can issue a CDP for the REL Project until the Port amends its PMP.

I. The Appeals Raise A Substantial Issue Because the Project Does Not Conform to the PMP

The Coastal Act provides for appeals of a port's action to the Commission under two scenarios: (1) Section 30715 provides for appeals of a port's permit approval of certain categories of development; and (2) Section 30625 provides for appeals of a port's claim of exemption from permit requirements. In this case, section 30625 governs the appeals of the Port's permit exemption for the REL Project.

The California Coastal Act (“Coastal Act”)¹ provides ports with permitting authority for development proposed in port areas *when the development is contained in the port’s certified port master plan*.² When a proposed development is *not* contained in a port’s certified master plan, the Commission retains permitting authority over the development.³ Former Coastal Commission Executive Director Peter Douglas explained this in a report to Commissioners:

[t]he Coastal Act requires that all projects for which the Port exercises its permit issuance authority must be included in the PMP. Section 30715 states in relevant part: “After a port master plan or any portion thereof has been certified, the permit authority of the commission...shall no longer be exercised by the commission over any new development contained in the certified plan or any portion thereof and shall at that time be delegated to the appropriate port governing body...” (emphasis added). Thus, the commission’s authority is delegated to the Port solely for “new development contained in the certified plan.” If such new development is not contained in the certified plan, the Port does not have the authority to approve the project.⁴

The only exception to exclusive port jurisdiction over new development contained in the certified PMP is that a port’s approval of any of six categories of development listed in section 30715(a)(1) through (6) may be appealed to the Commission. Thus, section 30715 of the Coastal Act only governs appeals of a port’s approval of permits for certain categories of development which are *under the port’s permitting authority* (i.e., development contained in the certified port master plan).⁵

When a proposed development is *not* contained in a port’s certified master plan, Chapter 7 of the Coastal Act (commencing with section 30600) governs permit issuance and appeals.⁶ Section 30625 of the Coastal Act provides that a “*claim of exemption* by a...port governing body may be appealed to the commission...”⁷ Section 30625(b) sets forth the standard of review for all appeals. With respect to

¹ Pub. Resources Code §§ 30000, *et seq.*

² Coastal Act § 30715(a).

³ *Id.* §§ 30702, 30715(a).

⁴ **Attachment 1:** Report from Peter Douglas, Executive Director to Commissioners and Interested Persons re: Port of San Diego De Minimis Port Master Plan Amendment PSD-DM-40-09 (Broadway Pier Cruise Ship Terminal), March 19, 2009, p. 4 (Port ultimately processed a PMP amendment).

⁵ Coastal Act § 30715(a).

⁶ *Id.* §§ 30702, 30715(a).

⁷ Emphasis added.

appeals to the Commission after certification of a port master plan, the Commission shall hear an appeal unless it determines “that no substantial issue exists as to *conformity with the certified port master plan*.”⁸

The distinction between sections 30715 and 30625 is well established. The Coastal Act provides the same distinction for appeals of local governments’ actions to the Commission, which Commission staff has recognized. Specifically, section 30603 of the Coastal Act applies to appeals of local government actions on *CDP applications* and section 30625 applies to appeals of *claims of exemption*. Commission staff made this very point when a city’s CDP exemption was appealed to the Commission:

The City’s argument that [the] Commission lacks statutory authority to hear this appeal disregards the express language of Section 30625(a) and misreads section 30603.

As explained in the staff report, Section 30625(a) provides that a ‘claim of exemption for any development by a local government may be appealed to the Commission. The City argues that, pursuant to Section 30603, the only actions that may be appealed to the Commission are actions by local governments on CDP applications for the categories of development listed in Section 30603(a). Section 30603(a), however, does not address appeals of claims of exemption. It simply defines what categories of local government actions on CDP applications are appealable. By definition, a claim of exemption does not involve a CDP application. The language from Section 30603(a) that the City relies upon therefore does not govern here.’⁹

Section 30625 of the Coastal Act – not sections 30603 (in the case of a local government) or 30715 (in the case of a port) – governs appeals of claims of exemption.

Here, the REL Project is *not* contained in the PMP. The PMP designates the east end of East Harbor Island, where the REL Project would be located, as “vacant.”¹⁰ In addition, the PMP’s project list for Planning Area 2 does not list the

⁸ Coastal Act § 30625(b)(3) (emphasis added).

⁹ **Attachment 2:** Second Addendum to Staff Report, Item Th12a, Appeal No. A-5-DPT-10-082, May 11, 2010, p. 3 (Commission ultimately found that the appeal raised a substantial issue and denied the permit at the de novo hearing).

¹⁰ PMP, p. 52.

Project. In other words, the PMP does not yet include the new land-based REL Project. Because the REL Project is *not* contained in the PMP, the Port does not have authority to approve the REL Project. Since section 30715 governs appeals of new development contained in the PMP that fall within listed categories of development, section 30715 of the Coastal Act is inapplicable in this case.

Since the REL Project is not contained in the PMP and the appeals are of the Port's claim of exemption, *section 30625 of the Coastal Act applies*. The Port's claim of exemption is appealable, and the Commission shall hear the appeal unless it determines that no substantial issue exists as to conformity with the certified port master plan. In this case, a substantial issue exists with respect to conformity with the Port's certified PMP, because the certified PMP designates the REL Project site as "vacant." In addition, the PMP's project list for Planning Area 2 does not list the Project. Further, as set forth in our appeal, a substantial issue exists because the Project is inconsistent with the planning goals of the PMP.¹¹ In other words, the PMP does not yet include the new land-based REL Project and the REL Project does not conform to the planning goals currently established in the plan. Finally, because the REL Project is *not* contained in the PMP, the Port does not even have authority to approve the REL Project.

II. Neither the Commission Nor the Port Can Issue a CDP for the REL Project Prior to the Port Amending Its PMP

Once the Commission finds that the appeals raise a substantial issue with respect to consistency with the PMP, the Commission considers *de novo* whether the CDP exemption for the REL Project conforms to the PMP. As discussed above and in the appeals, it does not.¹²

The Commission would not have the option to consider *sua sponte* whether to approve a CDP for the REL Project for the first time. As explained below, the Commission cannot approve a CDP for the REL Project because, to do so, would

¹¹ Letter from Rachael E. Koss to Mary Shallenberger and Commissioners re: Reasons Supporting Appeal of the Issuance of a Categorical Exclusion from a Coastal Development Permit for the Reuben E. Lee Restaurant Project, February 5, 2013, pp. 14-17 (the REL Project's impact on views is inconsistent with PMP Planning Goal VIII, the REL Project is inconsistent with public access provisions of PMP Planning Goal IX, the REL Project's impacts on natural resources is inconsistent with PMP Planning Goal XI).

¹² Even if the Commission were to also consider the CDP's consistency with the Coastal Act, the Commission could not approve the CDP since the REL Project is inconsistent with sections 30251, 30212, 30230, 30240, 30231 and 30253 of the Coastal Act (*see Id.*, pp. 14-18).

constitute a de facto amendment to the PMP, which is clearly prohibited by the Coastal Act.

In a memorandum from former Coastal Commission Chief Counsel Ralph Faust to Peter Douglas, Mr. Faust explained that, after the Commission certifies a port master plan, the standard of review when a port considers a CDP "is the certified [] plan."¹³ Referring to appeals of a port's issuance of a CDP under section 30715 of the Coastal Act, Mr. Faust stated that the Commission's actions on an appeal of a port's issuance of a CDP under section 30715 "are also governed by the certified [] plan."¹⁴

Thus, when the Commission, a local government or a port makes a decision on whether to issue a coastal development permit after the Commission has certified such a plan or program, the permitting agency must determine whether the proposed development will comply with the policies and standards set forth in its plan or program...¹⁵

Mr. Faust relied on the standard in section 30715.5 of the Coastal Act, which states, "[n]o developments within the area covered by the certified port master plan shall be approved by the port governing body unless it finds that the proposed development conforms with such certified plan."

This same standard in section 30715.5 also applies to the Commission's consideration of a permit for development *not* contained in a certified PMP. When the Commission considers a CDP for any new development not contained in the certified PMP, but within the area covered by the certified PMP, the Commission must determine whether the project conforms to the certified plan, just as the Port and the Commission would under section 30715.5 of the Coastal Act. To read the statute any other way in this circumstance would result in a violation of the Act. Simply put, the Commission cannot approve a CDP for development that is inconsistent with a port master plan because the Commission's approval would constitute a de facto amendment of the port master plan, which would violate the Coastal Act.

¹³ **Attachment 3**, Memorandum from Ralph Faust, Chief Counsel to Peter Douglas, Executive Director re: Enforceability of Nonpoint Source Pollution Control Program, October 21, 1999, p. 4.

¹⁴ *Id.*

¹⁵ *Id.*

Under the Coastal Act, a certified port master plan may only be amended by *a port governing body*.¹⁶ The Coastal Act requires the port to solicit information, provide notice and hold a public hearing on any proposed amendment. The amendment takes effect after the port's review process and after the Commission certifies the amendment. The Coastal Act prohibits the Commission from amending a port master plan *sua sponte*.¹⁷

Here, the Commission is required to consider whether issuing a CDP for the REL Project conforms to the PMP, pursuant to section 30715.5 of the Coastal Act, because the failure to do so could result in a *de facto* amendment to the PMP prohibited by the Act. The Commission cannot issue a CDP for the REL Project because the Project is inconsistent with the PMP. The PMP designates the REL Project site at the east end of East Harbor Island as "vacant."¹⁸ In addition, the PMP's project list for Planning Area 2 does not list the REL Project. Consequently, *before* the Commission or the Port may consider a CDP for the REL Project, the Port must amend its PMP.

As Mr. Douglas explained in a report to the Commissioners, under the Coastal Act and Coastal Commission Regulations,¹⁹ *all* proposed development must be included in a port master plan.²⁰ Specifically,

[Coastal Act] [s]ection 30718 [] acknowledges that the Commission must approve, as part of the PMP, the actual developments proposed within a port, even if such developments are non-appealable. In addition, the Commission's regulations include a section defining the required contents of a master plan for appealable development and procedures for the Commission to review such projects if the proposed development is not well defined at the time of a port's submittal. See 14 CCR § 13625(b). The next section (13625(c)) allows the procedures outlined for appealable developments to be used for any other proposed developments that are not well defined. Section 13625(c) would be unnecessary if Ports were only required to include appealable developments in their PMPs.

¹⁶ Coastal Act §§ 30712, 30716(a).

¹⁷ *Id.*

¹⁸ PMP, p. 52.

¹⁹ 14 Cal.Code Regs. § 13001 et seq.

²⁰ **Attachment 1**, pp. 4-5.

The Port argues that because Section 30711(a)(4) specifies that Ports must submit additional detailed information related to appealable projects, this means that it need not list, or submit to the Commission for review through a PMP Amendment, non-appealable projects. This conclusion cannot be implied from the language of 30711(a)(4), which simply explains that ports must include additional information for the Commission to review appealable projects.

Furthermore, Section 30711(a) of the Coastal Act states “[a] port master plan shall include all of the following: (1) The proposed uses of land and water areas, where known.” Section 30711(b) states that “[a] port master plan shall contain information in sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of this division.” Section 30711 therefore requires that all proposed uses of land and water areas contain sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of Chapter 8 of the Coastal Act.²¹

In addition, in his report, Mr. Douglas explained that the Port’s PMP supports the conclusion that all proposed development must be included in the PMP.

The certified Port Master Plan itself reflects the fact that all proposed development, whether appealable or not, must be included in the plan. It states “[a] listing of development projects, covering both appealable and non-appealable categories is provided in the discussion for each of the nine Planning Districts” (PMP pg.2). If the Port’s interpretation of the Coastal Act were accepted, the Commission would have no review authority over non-appealable developments within the Port’s jurisdiction. As described above, this interpretation is inconsistent with the plain language of the Coastal Act.²²

Here, because the PMP designates the REL Project site as vacant and the Project is not listed in the PMP, the Project is inconsistent with the PMP. Therefore, the Port must amend the PMP before a CDP can be considered for the REL Project. Anything less would violate the California Coastal Act.

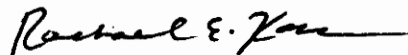
²¹ *Id.*

²² *Id.*, p. 5.

May 20, 2013
Page 8

We look forward to discussing these issues with you at the appeal hearing.
Thank you for your attention to this matter.

Sincerely,



Rachael E. Koss
Tanya A. Gulesserian

REK:
Attachments

cc:

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Drive, Suite 103, San Diego, CA 92108; (619)767-2384
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Hope Schmeltzer, Chief Counsel
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Attachment 1

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4421
(619) 767-2370



March 19, 2009

W11b

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: PETER DOUGLAS, EXECUTIVE DIRECTOR

SUBJECT: **PORT OF SAN DIEGO DE MINIMIS PORT MASTER PLAN
AMENDMENT PSD-DM-40-09 (Broadway Pier Cruise Ship Terminal)**
(For Commission review at its meeting of April 8 - 10, 2009)

The Coastal Act was amended January 1, 1995 to provide for a more streamlined method to review amendments to port master plans (PMP). Section 30716(c) allows the Executive Director to make a determination that a proposed PMP Amendment is de minimis in nature. The Executive Director must determine that the proposed amendment: 1) has no impact, either individually or cumulatively, on coastal resources; 2) is consistent with the policies of Chapter 3; and 3) does not propose any change in land use or water use or any change in the allowable use of property. Section 30716(c) requires the local government to notice the proposed de minimis LCP amendment 21 days prior to submitting it to the Executive Director either through: 1) publication in a newspaper of general circulation; 2) posting onsite and offsite the area affected by the amendment; or 3) direct mailing to owners of contiguous property. If the Executive Director makes the determination that the proposed amendment qualifies as a "de minimis" amendment and finds the public notice measures have been satisfied, such determination is then reported to the Commission for its concurrence.

An Initial Study/Addendum to the North Embarcadero Alliance Visionary Plan Master Environmental Impact Report was approved by the Board of Port Commissioners in June 2007 (Res. 2007-126) for construction of a new cruise ship terminal. The Port District exempted the proposed amendment from review under the California Environmental Quality Act (Notice of Exemption dated 12/18/08). A public hearing on the proposed PMP amendment was held and the Board of Port Commissioners adopted the amendment on February 3, 2009 as Resolution #2009-37.

The amendment request was received in the Commission office on March 3, 2009, and deemed to be de minimis by the Executive Director on March 17, 2009.

1. BACKGROUND/HISTORY

At the Commission meeting of March 14, 2001, the Commission approved the San Diego Unified Port District Port Master Plan (PMP) Amendment #27 creating a new "North Embarcadero Overlay District" within the existing Waterfront district. The amendment anticipated a number of new projects in the North Embarcadero including the redevelopment of Lane Field; the narrowing of Harbor Drive from four lanes to three

between Grape Street and Pacific Highway; the extension of B and C Streets between Pacific Highway and North Harbor Drive; construction of a new 25-foot wide pedestrian esplanade along the water's edge at Harbor Drive; the replacement of three existing industrial piers with one new public pier at Grape Street; construction of a small commercial recreation facility on the new Grape Street Pier; construction of a restaurant on the bayfront inland of the Grape Street Pier; modernization of the cruise ship terminal at the B Street Pier; and docking the U.S.S. Midway Aircraft Carrier for use as a museum on the south side of Navy Pier.

With regard to Broadway Pier, the amendment added the following language to the text of the Port Master Plan:

A FAR of 2.0 applies to the B Street and Broadway piers...

...Broadway Pier will continue to provide recreational space on its plaza and viewing platform, as well as accommodating commercial shipping and miscellaneous vessel berthing, including day cruisers. Improvements to the pier will include paving, plantings, lighting, and furniture.

In addition, the following project was added to the project list:

12. NORTH EMBARCADERO REDEVELOPMENT: (a) Visionary Plan public improvements, (b) esplanade, (c) street improvements, (d) vista points, (e) Grape Street piers replacement + restaurant, (f) park and plaza areas, (g) **Broadway Pier infrastructure improvements**, (h) B and C Street linkages between Pacific Highway and North Harbor Drive [Emphasis added].

The approved amendment allowed for infrastructure improvements, but did not specifically identify construction of a new cruise ship terminal.

In June 2007, the Board of Port Commissioners authorized approval of a non-appealable coastal development permit (CDP-2007-03) for construction of a new, approximately 51,500 sq.ft., 38-foot high cruise ship terminal building and associated improvements including a ground transportation area, service area, and public viewing area (see Exhibit #4). The Port District does not routinely send a notice of final action to the Commission for non-appealable permits. Thus, after becoming aware of the port permit several months later, Commission staff contacted Port staff to express concerns that an amendment to the certified Port Master Plan was required before a new cruise ship terminal could be approved. After several months of discussion between Port and Commission staff, proposed language was developed to amend the certified PMP to add construction of a new terminal with public access and recreation improvements to the PMP project list for submittal to the Executive Director as a de minimis amendment.

However, as noted in the proposed PMPA submittal, staff at the Port District have continued to assert that the cruise ship terminal project was envisioned by the existing certified PMP, and that a PMPA is "technically unnecessary since it is classified as non-

appealable; the PMP only requires a listing of appealable projects." The Commission does not concur. Further analysis of this point of contention is warranted because the extent of development that must be considered and analyzed as a PMP amendment is fundamental to port planning under the Coastal Act.

The Proposed Cruise Ship Terminal is Not Included in the Certified PMP

The existing certified PMP and the record are clear that while cruise berthing is currently allowed at Broadway Pier, no new terminal building was envisioned on Broadway Pier when the Commission approved the North Embarcadero PMP. There was no mention of a new cruise ship terminal on Broadway Pier in the Master EIR adopted for the North Embarcadero Visionary Plan/PMPA. Thus, an addendum to the EIR was prepared to cover this new project. This clearly demonstrates that the new terminal was not reviewed or evaluated in the PMP, as the Plan could not legally have included a project that had not undergone environmental review.

Only the projects contained in the "Table 11: Project List" were approved as part of the North Embarcadero PMPA. The purpose of the project list in the Port Master Plan is to identify upcoming projects that have received plan-level Commission review and approval as consistent in concept with the Coastal Act. (Coastal permit review is still required to implement particular projects). All future projects must be included on this list, with the exception of minor alterations to existing structures or on-going operations consistent with the Master Plan. As noticed above, the only projects on the project list for Broadway Pier are "infrastructure improvements" described in the text as including "paving, plantings, lighting, and furniture."

Exhibit #5 is a copy of a letter from Port Planning Services Manager William Chopyk dated September 25, 2000, responding to Commission staff concerns and questions about various aspects of the North Embarcadero PMPA. Throughout the letter, Mr. Chopyk confirms that development "not listed as a project on Table 11...would require a subsequent Port Master Plan amendment and additional environmental review" (see Items nos. 5, 6, 7, 8, and 9). For Broadway Landing, the letter specifically states that "The project list, Table 11 (DPMPA page 76) describes [the] only Broadway Pier infrastructure improvements, i.e., water and sewer lines, electrical improvement, pier repairs, etc.," further confirming that no new buildings were proposed as part of the amendment.

Port staff have stated that the sentence in the PMP that an "FAR of 2.0 applies to the B Street and Broadway piers" is sufficient indication that construction of a new building on Broadway Pier is consistent with the approved Plan. The Commission respectfully disagrees. Even in the absence of the PMP language and Port correspondence describing the limited development contemplated on Broadway Pier, a simple policy statement of FAR limits for an area does not constitute approval of substantial new structures or uses not reviewed for consistency with the Coastal Act through the PMP certification process. Broad policy statements outlining guidelines for future development are entirely appropriate in the PMP, but they do not substitute for the required textual descriptions of

specific projects. The proposed project is therefore clearly not included in the certified PMP.

The PMP Must Include All Future Projects

The Coastal Act requires that all projects for which the Port exercises its permit issuance authority must be included in the PMP. Section 30715 states in relevant part: "After a port master plan or any portion thereof has been certified, the permit authority of the commission ... shall no longer be exercised by the commission over any new development contained in the certified plan or any portion thereof and shall at that time be delegated to the appropriate port governing body ..." (emphasis added). Thus, the commission's authority is delegated to the Port solely for "new development contained in the certified plan." If such new development is not contained in the certified plan, the Port does not have the authority to approve the project.

This interpretation of Section 30715 is supported by Section 30718, which requires Ports to provide the Commission with CEQA documentation for "developments approved by the commission in a certified master plan" that are not appealable. Section 30718 therefore acknowledges that the Commission must approve, as part of the PMP, the actual developments proposed within a port, even if such developments are non-appealable. In addition, the Commission's regulations include a section defining the required contents of a master plan for appealable development and procedures for the Commission to review such projects if the proposed development is not well defined at the time of a port's submittal. *See* 14 CCR §13625(b). The next section (13625(c)) allows the procedures outlined for appealable developments to be used for any other proposed developments that are not well defined. Section 13625(c) would be unnecessary if Ports were only required to include appealable developments in their PMPs.

The Port argues that because Section 30711(a)(4) specifies that Ports must submit additional detailed information related to appealable projects, this means that it need not list, or submit to the Commission for review through a PMP Amendment, non-appealable projects. This conclusion cannot be implied from the language of 30711(a)(4), which simply explains that ports must include additional information for the Commission to review appealable projects.

Furthermore, Section 30711(a) of the Coastal Act states "[a] port master plan shall include all of the following: (1) The proposed uses of land and water areas, where known." Section 30711(b) states that "[a] port master plan shall contain information in sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of this division." Section 30711 therefore requires that all proposed uses of land and water areas contain sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of Chapter 8 of the Coastal Act.

The certified Port Master Plan itself reflects the fact that all proposed development, whether appealable or not, must be included in the plan. It states "[a] listing of development projects, covering both appealable and non-appealable categories, is provided in the discussion for each of the nine Planning Districts" (PMP pg.2). If the Port's interpretation of the Coastal Act were accepted, the Commission would have no review authority over non-appealable developments within the Port's jurisdiction. As described above, this interpretation is inconsistent with the plain language of the Coastal Act.

In summary, the record is clear that a new cruise ship terminal was not part of the approved Port Master Plan. All significant development projects must be listed in the certified PMP. Commission review of a PMP amendment or concurrence with the Executive Director's determination of de minimis is required for the proposed development to proceed.

2. PROPOSED AMENDMENT

The proposed amendment contains the following addition to the existing Port Master Plan Table 11 Project List:

4. NORTH EMBARCADERO REDEVELOPMENT: (a) Visionary Plan public improvements, (b) esplanade, (c) street improvements, (d) vista points, (e) Grape Street piers replacement + restaurant, (f) park and plaza areas, (g) Broadway Pier cruise ship terminal (approximately 60,000 sq.ft., maximum 50-foot building height) to cover no more than 50 percent of the pier, public events space, 15,000 sq.ft. public recreation and viewing area, a 25-foot wide public access corridor along the southern side of the pier, and infrastructure improvements, (h) B and C Street linkages between Pacific Highway and North Harbor Drive.

Broadway Pier is currently designed for "Park/Plaza" and "Marine Terminal" uses, and the proposed amendment would not change that land use designation.

The Board of Port Commissioners resolutions that approve and convey the proposed de minimis LCP amendment are attached. The amendment was properly noticed through newspaper publication and direct mail. Several letters of opposition to the project were received at the Port level, and these letters are attached as Exhibit #6.

Following is a brief explanation of the purpose for or intent of the change and the reasons why it is de minimis pursuant to Section 30514 of the Coastal Act.

DISCUSSION

Broadway Pier has historically been used for commercial docking, public access, and as a public viewing and recreational area. The existing PMP provides for use of the Broadway Pier as a cruise ship terminal. The Port uses Broadway Pier as its auxiliary cruise berth; "B" Street Pier, with its two berths, is the primary cruise facility. Broadway

Pier is used when "B" Street is full and there is a need for a third berth on the same day. In addition, the Broadway Pier facility will be used to allow the Port to undertake the seismic pier repairs and facility improvements needed at the existing "B" Street Pier.

Since the terrorist attacks of September 11, 2001, public access to the Broadway Pier has been restricted when cruise ships are present. The Port District has indicated that in 2006, Broadway Pier was closed for a total 58 days for cruise ships, military vessels and educational/research vessels. Cruise ship traffic in San Diego has increased significantly in the last decade, and Broadway Pier is likely to continue to be used more frequently as an auxiliary terminal.

Section 30708 of Chapter 8 of the Coastal Act states "All port related developments shall be located, designed, and constructed so as to: (a) Minimize substantial adverse environmental impacts." The construction of a new permanent building on the pier could potentially impact public views, access and recreational opportunities. The importance of the open nature of the pier is specifically referenced in the USS Midway Mitigation and Monitoring Program, (North Embarcadero Final EIR, Section 4, Page 4-12) which states "[t]he significant visual impact on views from the G Street Mole would be offset and mitigated by the similar nearby public views available from the Broadway Pier."

However, the proposed PMPA, and the project, have been designed with public access corridors and operational features to ensure impacts to coastal resources are avoided. The site is currently and will continue to be used as an auxiliary terminal, a long-established visitor-serving use appropriate for a downtown pier located adjacent to the existing main terminal. There have been several small buildings on the pier for many years, (some of which have recently been demolished) so public views from the pier have never been entirely unobstructed. While the proposed terminal will be considerably larger than the existing structures, the amendment includes specific parameters to which the development must conform, including a limit on the building size, height, and pier coverage. A public access corridor on the south side of the building, no less than 25-feet in width, must be provided, along with a 15,000 sq.ft. public recreation and viewing area and public events space.

With regard to traffic, as described in the EIR addendum for the terminal, the new building is not expected to result in a direct increase in cruise ship activities, but would rather increase the efficiency of passenger embarkation and disembarkation, improve access to various ground transportation opportunities, and provide an improved aesthetic experience for the general public. The project is expected to improve traffic flow and circulation along Harbor Drive in the vicinity of the Broadway Pier, since providing additional designated parking areas for these vehicles on the pier should reduce the potential stacking of busses, taxis and shuttle vehicles.

Several letters of objections to the proposed PMPA received by the Port (see Exhibit #6) note that construction of a large terminal on Broadway Pier is inconsistent with the vision of the North Embarcadero Visionary Plan (NEVP) adopted by the Port. The NEVP illustrations show Broadway Pier as mostly open for public access. The general

description in the NEVP is that a "small structure, up to 1,500 square feet in site area, [that] may be constructed to service visiting ships...At the base of the pier, food and craft kiosks line a small commercial area. The central portion of the pier is left clear to accommodate temporary and changing events" (NEVP pg. 57 & 97-98).

However, while some specific recommendations of the Visionary Plan were adopted as part of the PMP in Amendment #27, the entirety of the Visionary Plan's body of recommendations are identified as guidance only for the Port in implementing the PMP. The Visionary Plan is a conceptual-level, illustrative planning document with a number of different project scenarios identified for the area. The Visionary Plan itself has not been incorporated into the Port Master Plan and is not the standard of review for coastal development permits issued by the Port District.

Thus, as proposed, the proposed amendment would allow for construction of a new permanent cruise ship terminal, a high-priority use under the Coastal Act, while ensuring that public access and recreation functions continue to be available on the dock when cruise ships are not present. The amendment does not consist of any changes in land or water use, or any change in the allowable use of property. The dock will continue to function as a commercial/industrial use with public access, views and recreation available. The proposed building has been designed to protect and preserve public access to the shoreline. Therefore, as proposed, the amendment does not have any impact, either individually or cumulatively, on coastal resources. All the proposed de minimis modifications are consistent with the public access and recreation policies and section 30252 of the Act.

CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The California Environmental Quality Act (CEQA) requires less environmentally damaging alternatives to proposed projects to be considered and the imposition of mitigation measures to lessen significant adverse effects that may result from proposals. For the reasons discussed in this report, the proposed project has no significant adverse environmental effects within the meaning of the California Environmental Quality Act.

DETERMINATION

The Executive Director determines that the Port of San Diego PMP amendment is de minimis. Based on the information submitted by the Port, the proposed PMP amendment will have no impact, either individually or cumulatively, on coastal resources. It is consistent with the policies of Chapter 3 of the Coastal Act. The amendment does not propose any change in land use or any change in the allowable use of property. The Port has properly noticed the proposed amendment. As such, the amendment is de minimis pursuant to Section 30716(c).

MOTION: *I move that the Commission concur with the Executive Director's determination that the PMP amendment, as submitted, is de minimis.*

STAFF RECOMMENDATION:

The Executive Director recommends that the Commission **concur** in this determination. Unless three or more members of the Commission object to this determination, the amendment shall become effective and part of the certified PMP ten (10) days after the date of the Commission meeting.

Attachment 2

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



May 11, 2010

SECOND ADDENDUM**Th12a**

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: SOUTH COAST DISTRICT STAFF

SUBJECT: SECOND ADDENDUM TO ITEM Th12a, CALIFORNIA COASTAL COMMISSION APPEAL NO. A-5-DPT-10-082 FOR THE COMMISSION MEETING OF MAY 13, 2010.

I. Revision to Staff Report

Commission staff recommends changes to the staff report to respond to the letter dated May 5, 2010, from the attorney for the City of Dana Point. Text added shown in underline, text deleted shown in ~~strike-through~~, as shown below:

On page 18, add new Section D to the staff report, as follows:

D. Response to City of Dana Point Letter dated May 5, 2010

The City Attorney for the City of Dana Point submitted a letter dated May 5, 2010, faulting Commission staff for not working with the City to resolve public access issues at the Dana Point Headlands and arguing that the Commission lacks jurisdiction to appeal the City's determination that no coastal development permit is required to authorize limitations on use of the public access trails.

In response to the City Attorney's claims, Commission staff did make an effort to work with City staff and address the issues raised by the gates and restricted hours. Commission staff met with City staff at the subject site in early October 2009 to identify issues prior to the City accepting the public facilities. Commission staff sent a follow-up letter dated October 20, 2009 (Exhibit 6) explaining concerns with the Headlands facilities, identified preferred solutions, and also identified the procedures the City should follow with regard to establishing hours of operation (by way of a CDP) and installing gates (that would require an LCP amendment). In a letter dated November 5, 2009, from the City of Dana Point's Director of Community Development, it became clear that the City did not agree with the process requirements provided by Commission staff. Commission staff sent a follow-up letter to the City dated November 20, 2009 (Exhibit 7) and also met with City staff, the City Attorney, and representatives from Headlands Reserve LLC shortly thereafter to discuss possible resolution. Commission staff met again with these same individuals and additional City staff at the site in February 2010, advising them of staff's preferred resolution, and also identifying the procedures the City would need to follow if they wished to pursue approval of the hours and gates they wanted. Commission staff followed up again with a letter in early March 2010 (Exhibit 8). Instead of responding to Commission staff's letter, and without any contact from the City advising of their intended course of action, the City scheduled the

City Council meeting on the urgency ordinance that is the subject of this appeal. Learning of the hearing the day of the hearing, Commission staff sent a letter to the City Council urging them not to adopt the ordinance, and additionally, expressly offering to extend our enforcement deadline as a means of providing additional time for us to work together. Nevertheless, the ordinance was adopted by the City. Finally, while Commission staff has advised the City to minimize the hours of accessway closure, it has never suggested that the City could not establish operating hours (i.e. that it must keep the accessways open 24 hours a day). Rather, as expressly stated in the LCP, Commission staff has consistently taken the position that a coastal development permit is needed for establishing such hours and that access should be maximized.

The City makes two basic arguments for why it believes the Commission lacks jurisdiction over this matter: that the Coastal Act does not limit the power of local governments to declare and abate nuisances and that the City's action here is not appealable to the Commission.

Nuisance Abatement

Like numerous other state environmental statutes, the Coastal Act contains a "savings clause" that provides that the Act does not limit "the power of any city . . . to declare, prohibit, and abate nuisances." Pub. Res. Code § 30005(b), see also Health & Safety Code § 5415(b) (sewage), Health & Safety Code § 41509(a) (air quality), Health & Safety § 46001(b) (noise control), Pub. Res. Code § 2715(a) (surface mining), Pub. Res. Code § 4514(a) (forestry), Water Code § 13002(b) (water quality). The primary purpose of these savings clauses is to clarify that the statutes are not intended to preempt local governments from exercising their police power to address nuisances that fall within the scope of those state statutes. See *People v. City of Los Angeles*, 160 Cal.App.2d 494, 502-04 (1958), see also *Pacific Lumber Co. v. State Water Resources Control Board*, 37 Cal.4th 921 (2006) (construing similar savings clause with respect to state agency authority). Absent the savings clauses, those state statutes could be interpreted as preempting any local action to address nuisances that fall within the scope of these statutes. *O'Connell v. City of Stockton*, 41 Cal.4th 1061, 1067-68 (2007). These savings clauses, therefore, were intended to preserve a wide range of remedies to address environmental problems.

The City's invocation of Section 30005(b) as a basis for shielding actions that conflict with Coastal Act policies from Coastal Act review goes beyond the core purpose of the savings clause. Nonetheless, the language of Section 30005(b) is not expressly limited to situations where a local government is attempting to accomplish Coastal Act objectives through its nuisance abatement authority. Consequently, where a local government properly declares a nuisance and requires abatement measures that are narrowly targeted at abating the declared nuisance, those measures do not require a coastal development permit (CDP).

Although Section 30005(b) does exempt nuisance abatement from CDP requirements, it is not a limitless exemption. As the Coastal Act itself directs, the Act shall be liberally construed to accomplish its purposes and objectives. *McAllister v. California Coastal Commission*, 169 Cal.App.4th 912, 928 (2008), Pub. Res. Code § 30009. In addition, courts narrowly construe exemptions from statutory requirements. See, e.g., *Save Our*

Carmel River v. Monterey Peninsula Water Management Dist., 141 Cal.App.4th 677, 696 (2006) (narrowly construe CEQA categorical exemptions), Citizens for a Better Environment v. Dep't of Food and Agriculture, 171 Cal.App.3d 704, 711 (1985) (narrowly construe Public Records Act exemptions).

Here, the City's measures to restrict use of the public access trails address not only unlawful activities such as vandalism and trespassing, but also otherwise entirely lawful use of the trails by the general public. Notably, the City did not declare otherwise lawful use of the trails to itself constitute a nuisance. The promotion of public access and coastal recreation is among the primary objectives of the Coastal Act, so to construe Section 30005(b) as exempting significant restrictions on lawful public access and recreation from Coastal Act review would defeat one of the primary purposes of the Coastal Act. See Pub. Res. Code §§ 30001.5(c), 30210-30223, 30604(c).

The City does not cite any authority for its position that any action that a local government characterizes as nuisance abatement is exempt from Coastal Act permitting requirements regardless of whether that action primarily targets the nuisance itself or instead restricts a broad range of otherwise legal, non-nuisance activity. The caselaw the City cites in footnote 2 of its letter regarding other statutory savings clauses does not help the City's argument. Both cases involve situations where public agencies invoked nuisance or other authority in order to address environmental problems. Neither involved situations where an agency attempted to take an action contrary to statutory goals of environmental protection. See Pacific Lumber Co., 37 Cal.4th 921, City of Los Angeles, 160 Cal.App.2d 494.

The City also argues the "index letter" from the Attorney General's Office dated May 18, 1978 supports its position that CDPs are not required for actions to abate nuisances. The index letter concludes, however, by pointing out that a CDP is required for activity that exceeds what is necessary to abate the nuisance. The index letter therefore actually supports requiring a CDP in this instance because the City's actions go significantly beyond nuisance abatement.

Appealability

The City's argument that Commission lacks statutory authority to hear this appeal disregards the express language of Section 30625(a) and misreads section 30603.

As explained in the staff report, Section 30625(a) provides that a "claim of exemption for any development by a local government" may be appealed to the Commission. The City argues that, pursuant to Section 30603, the only actions that may be appealed to the Commission are actions by local governments on CDP applications for the categories of development listed in Section 30603(a). Section 30603(a), however, does not address appeals of claims of exemption. It simply defines what categories of local government actions on CDP applications are appealable. By definition, a claim of exemption does not involve a CDP application. The language from Section 30603(a) that the City relies upon therefore does not govern here.

In footnote 4 of its letter, the City argues that appeals of claims of exemption under Section 30625 should be limited to claims that a proposed development is exempt

pursuant to Section 30610. Section 30625, however, does not contain any such limitation. Moreover, this argument is incompatible with the City's primary argument that Section 30603 provides the complete and exclusive definition of what local government actions are appealable to the Commission. Even if appeals of claims of exemption were limited to claims of exemption under Section 30610, under the City's theory, those appeals would still not be appealable because they are not actions on CDP applications pursuant to Section 30603. The City's argument fails to give meaning to the provision of Section 30625 authorizing appeals of claims of exemption and should therefore be rejected.

Finally, the City argues that the Commission lacks authority to review the City's urgency ordinance. This argument mischaracterizes the appeal. The Commission is reviewing only the City's decision not to require a CDP prior to implementing the ordinance.

II. Copy of letter from Attorney General dated May 18, 1978 cited in the City's May 5, 2010 letter and identified in the response above.

III. Sample of form letter in support of the staff recommendation; 61 individuals signed and submitted such letters, which are on file at the Commission's South Coast District Office. One letter was modified by hand to indicate support of the City's action.

Attachment 3

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

**MEMORANDUM**

October 21, 1999

TO: Peter Douglas, Executive Director
Jaime Kooser, Deputy Director

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel

SUBJECT: **Enforceability of Nonpoint Source Pollution Control Program**

We are writing to address the scope of the Coastal Commission's authority to enforce the nonpoint source pollution control provisions of the Coastal Zone Management Act. (16 U.S.C. § 1451 *et seq.*) Section 6217 of that Act provides that each state "for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act ... shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section." (16 U.S.C. § 1455b.) The Coastal Zone Management Act explains that the "purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in conjunction with other State and local authorities." (16 U.S.C. § 1455b(a)(1).) You have asked whether the Commission can enforce those nonpoint pollution control provisions.

The Coastal Commission implements the policies of California's Coastal Act. (Public Resources Code § 30000 *et seq.*) A central focus of the Coastal Act is the protection and, where feasible, restoration, of coastal water quality. The Act includes numerous enforceable policies that are directed toward that objective. For example, section 30230 provides that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The Commission is required specifically to control runoff in section 30231:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum

populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition, Coastal Act policies limit development in numerous other ways to protect water quality. (See Attachment 1.)

The Commission implements these protective policies as it undertakes its three major regulatory tasks. Its first regulatory responsibility is to review and certify plans that address how development will occur along the California coast. Most of those plans are developed by local governments and are called "local coastal programs". (Public Resources Code § 30500 *et seq.*) Plans are also prepared by port districts (Public Resources Code § 30711 *et seq.*), colleges and universities (Public Resources Code § 30605) and proponents of public works projects (*id.*).

The Commission reviews those plans to determine whether they are consistent with applicable policies of the Coastal Act, including those related to water quality. If the Commission determines that a plan is not consistent with the policies of the Coastal Act, it is required to deny certification of the plan. In that event the Commission generally suggests modifications to the plan that the local government or other plan proponent could adopt.²⁰⁹ Once the plan has been modified to incorporate the changes identified by the Commission, it can be resubmitted to the Commission for certification. Following certification by the Commission of a plan, any amendments to the plan must be submitted to the Commission. Until the Commission certifies an amendment, the measure has no legal effect for purposes of the Coastal Act.

The Commission has the authority to enforce Coastal Act provisions relating to water quality, including nonpoint source pollution. As described above, the Commission is required to refuse to certify plans and amendments which it determines do not meet the Coastal Act's water quality requirements. The Commission is additionally authorized to identify appropriate changes to those plans and amendments to bring them into conformity with the Coastal Act's water quality provisions. Such changes may include nonpoint source pollution management measures necessary to bring a plan or amendment into conformity with Coastal Act provisions relating to water quality.

The Commission's second regulatory task is to review applications for coastal development permits. The Coastal Act provides that any person who wishes to pursue "development" in the

²⁰⁹ The procedures for processing those modifications differ depending on the type of plan reviewed by the Commission. A discussion of the specific procedural mechanisms involved is beyond the scope of this memo.

coastal zone must obtain a coastal development permit. (Public Resources Code § 30600.)
“Development” is broadly defined in Public Resources Code § 30106 to mean:

“... on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.”

The Commission performs its permit review function with respect to development within the coastal zone until the Commission has certified a local coastal program for each coastal city and county or a port master plan for that jurisdiction. (Public Resources Code §§ 30600(c), 30715(a).) In determining whether or not to approve a particular coastal development permit application, the Commission applies the Coastal Act's policies concerning coastal protection, which include the policies to protect coastal water quality that are cited above. (Public Resources Code §§ 30604, 30715(a).) As a condition of approving coastal development permit applications, the Commission may impose conditions to prevent and mitigate nonpoint source pollution in order to implement those water quality requirements.²¹⁰

After the Commission has certified a local coastal program, it delegates coastal development permitting authority to the local government. (Public Resources Code § 30519(a).) The Commission retains permitting jurisdiction over development proposed on tidelands, submerged

²¹⁰ The Coastal Act does not authorize the Commission to require a coastal development permit for the “removal or harvesting of major vegetation ... for agricultural purposes, kelp harvesting and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973...” (Public Resources Code § 30106.) Nevertheless, the Commission is authorized to regulate other development activities related to agriculture and forestry. As a condition of approval of such development, the Commission may require that nonpoint source pollution control measures be undertaken in order to find that the development meets Coastal Act water quality standards.

lands and public trust lands. (Public Resources Code § 30519(b).) Similarly, the Commission delegates coastal development authority to a port once the Commission has certified the port's master plan. (Public Resources Code § 30519(b).)

Local governments' and ports' decisions concerning applications for coastal development permits may be appealed to the Coastal Commission in certain instances. (Public Resources Code §§ 30603, 30715.) The standard of review for permit decisions after the Commission has certified a local coastal program or a port master plan is the certified program or plan. (Public Resources Code §§ 30604(b), 30715.5.) The Commission's actions on appeals are also governed by the certified program or plan. (*Id.*) As noted above, those planning documents must meet the Coastal Act's standards concerning water quality, including nonpoint source pollution. Thus, when the Commission, a local government or a port makes a decision on whether to issue a coastal development permit after the Commission has certified such a plan or program, the permitting agency must determine whether the proposed development will comply with the policies and standards set forth in its plan or program, including those related to water quality. If the Commission or other permitting agency determines that the proposed development will not comply with those standards, it may impose conditions on the project to bring it into compliance with the standards in the plan or program, including any management measures to prevent or mitigate nonpoint source pollution. Alternatively, the Commission or other permitting agency may deny the development.

The applicable requirements concerning water quality are found in the Coastal Act. Thus, a coastal development permit application may not be approved unless it complies with the water quality requirements contained in the Coastal Act or in certified plans and programs.

The Coastal Commission's third major regulatory responsibility is federal consistency review under the Coastal Zone Management Act. (16 U.S.C. § 1451 *et seq.*) The Commission reviews activities conducted by the federal government, federally issued licenses and permits, plans for exploration and production of the outer continental shelf, and federally funded activities. (16 U.S.C. § 1456.) The Commission reviews each proposed activity to determine whether it is consistent with the California Coastal Management Program. The Program includes the Coastal Act and those local coastal programs that have been formally approved by the Office of Ocean and Coastal Resource Management for incorporation into the State's program. The Commission must determine that the proposed activity is consistent with those policies and standards, including any required nonpoint source pollution control measures.

As noted above, the Coastal Act includes policies to protect coastal water quality. Therefore, in performing federal consistency review, the Commission is authorized to apply those water quality standards and to "disagree" or "object" as appropriate to those activities and projects that do not comply with those standards. (*Id.*, 15 C.F.R. §§ 930.32(a), 930.39, 930.42, 930.79.)

Peter Douglas/Jaime Kooser
October 21, 1999
Page 5

For the reasons set forth above, we conclude that the Coastal Commission has adequate legal authority under the Coastal Act to enforce water quality requirements related to nonpoint source pollution.

Attachment

G:\Legal\Legal Advice\To Staff\Non-Point Source Program.doc

ATTACHMENT 1

Coastal Act Policies Relevant to the Control of Polluted Runoff

§	Summary of Coastal Act Policy
30012	Carry out a public education program to promote coastal conservation.
30230	Maintain, enhance, and where feasible restore marine resources.
30231	Maintain and, where feasible, restore biological productivity and the quality of coastal waters, streams, wetlands, estuaries and lakes through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.
30232	Protect against the spillage of crude oil, gas, petroleum products, or hazardous wastes.
30233	Limit the alteration of wetlands, coastal waters, estuaries; provide for feasible mitigation measures to minimize adverse environmental effects.
30235	Phase out or upgrade where feasible existing marine structures causing water stagnation contributing to pollution problems and fish kills.
30236	Limit hydromodification of rivers and streams; channelizations, dams, other substantial alterations of rivers and streams shall incorporate best mitigation measures feasible.
30240	Protect environmentally sensitive habitat areas (ESHAs). Site and design new development in areas adjacent to ESHAs to prevent significant adverse impacts.
30243	Protect long-term productivity of soils and timberlands.
30250	Site and design new development so as to not have significant adverse impacts, either individually or cumulatively, on coastal resources.
30251	Minimize alteration of natural land forms.
30253	Assure that new development is stable, has structural integrity, and does not contribute significantly to erosion.
30705	Control impacts of dredging in specified port areas.
30706 (b)	Minimize harmful effects to coastal waters, including water quality, from the nature, location, and extent of any fill (seaward of the mean high tide line within the jurisdiction of ports), including disposal of dredge spoils, and minimize reductions of volume, surface area, or circulation of water.
30708 (a) and (d)	Locate, design, and construct all port-related development so as to (a) minimize substantial environmental impacts and (d) provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible.

EXHIBIT NO. 12

APPLICATION NO.

A-6-PSD-13-5

Port Approval



California Coastal Commission

San Diego Unified Port District

**CATEGORICAL DETERMINATION
of Proposed Coastal Development**

Project: Reuben E Lee Restaurant Replacement, San Diego, CA
Location: Harbor Island: Planning District 2
Parcel No: 007-017
Planning No: 2009-008-23-154
Applicant: Uri Feldman, Vice President, Sunroad Enterprises
Date: February 24, 2009

Project Description:

The proposed project is located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/-19,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking as illustrated on the attached site plan. A Parking Management Plan has been prepared and is attached as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees will need to be removed. A minimum of 1:1 tree replacement will be planted on site as illustrated on the attached site plan. The applicant will apply for and obtain both an U. S. Army Corps of Engineers (USACE) permit and a San Diego Regional Water Quality Control permit for the proposed project for any proposed over-the-water and/or in-water work. Documentation of the applications and permits shall be submitted to the District for recording prior to beginning construction.

A paved pedestrian walkway is proposed through the site with connections at each end with the existing public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold; (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately west of the proposed replacement restaurant as illustrated on the attached site plan. The applicant shall prepare, submit and obtain approval for a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSMP) for long term operation of the facility prior to beginning construction.

Redevelopment of most of the barge hull and operation of the supporting business and social event venue is dependent upon the applicant obtaining a lease, either directly or through the District, from the State Lands Commission (SLC), obtaining CEQA review documentation, and Coastal Commission processing for a portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting the approved documents to the District for recording prior to beginning construction.

Port Master Plan Reference:

The project site is located in Planning District 2, Harbor Island and is delineated on the Precise Plan Map Figure 9. The Port Master Plan water use designation within the limit of the proposed

project is Commercial Recreation. The proposed project will conform to the certified Port Master Plan because the project proposes the redevelopment of an existing approved use under the current certified plan.

CATEGORICAL DETERMINATION:

The above project is determined to be an Excluded Development under Sections 8. a. (3) & (5), b. (1) & (2) and d. (1), (2), & (7) of the District's Coastal Development Permit Regulations:

8. EXCLUDED DEVELOPMENTS

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, including but not limited to:

- (3) Streets, sidewalks, gutters, bicycle and pedestrian paths, and similar facilities;
- (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 square feet, whichever is less; or additions to existing structures of not more than 10,000 square feet of floor area, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive;

b. **Replacement or Reconstruction:** Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

- (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
- (2) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction.

d. **Minor Alterations to Land:** Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:

- (1) Land grading, except where located in a waterway, wetland, officially designated scenic area, or in officially mapped areas of severe geologic hazard;
- (2) New gardening or landscaping;
- (7) Minor trenching or back filling where the surface is restored;

CHARLES D. WURSTER
President/Chief Executive Officer

Determination by:
William J. Briggs
Senior Redevelopment Planner

Signature: 

Date: Feb 24 2009

cc: i. Mc Cormack, Executive Office
J. Helmer, Land Use Planning

E. Maher, Environmental Services A. Gordon, Real Estate
R. Amezcua, Real Estate

SAN DIEGO UNIFIED PORT DISTRICT

INTER-STAFF COMMUNICATION

Date: February 24, 2009

To: Anthony Gordon, Asset Manager, Real Estate Division

From: William J. Briggs, Senior Redevelopment Planner, Land Use Planning Department

Subject: CEQA DETERMINATION – Reuben E. Lee Restaurant Replacement, San Diego, CA

Staff has reviewed the proposed project located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/- 19,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking as illustrated on the attached site plan. A Parking Management Plan has been prepared and is attached as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees will need to be removed. A minimum of 1:1 tree replacement will be planted on site as illustrated on the attached site plan.

A paved eight foot minimum width pedestrian walkway is proposed through the site with connections at each end with the public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold; (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately west of the proposed replacement restaurant as illustrated on the attached site plan. The applicant shall prepare and submit for approval a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSWP) for long term operation of the facility prior to beginning construction on the project. The applicant will apply for and obtain both an U. S. Army Corps of Engineers permit and a San Diego Regional Water Quality Control permit for the proposed project.

Redevelopment of most of the barge hull and operation of the supporting business and social event venue is dependent upon the applicant obtaining a lease, either directly or through the District, from the State Lands Commission, obtaining CEQA review documentation, and Coastal Commission processing for that portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting those instruments of service to the District for recording.

Based upon the above description, the project is determined to be Categorical Exempt pursuant to CEQA Guidelines Sections 15301 – Class I, 15302 - Class II, 15304 - Class IV, and Resolution 97-191:

Categorical Exemptions (Article 19, SG §§ 15300 - 15329)

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:

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(2) 10,000 square feet if:

- (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
- (B) The area in which the project is located is not environmentally sensitive.

b. Replacement or Reconstruction (SG § 15302) (Class 2): includes replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site and will have substantially the same purpose and capacity as the structure being replaced. This exemption includes, but is not limited to:

(2) Replacement or reconstruction of marine terminal facilities, and marine-oriented commercial, industrial, and public and commercial recreational facilities, including buildings, piers, piles, wharves, marine ways; railroads; airport facilities, runways, taxiways, aprons, and ancillary structures to those facilities; electrical and mechanical systems and equipment; where the new structure will be on essentially the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

d. Minor Alterations to Land (SG § 15304) (Class 4): Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including, but not limited to:

- (4) Grading of land with a slope of less than 10%, except in waterways, wetlands, officially designated scenic areas or officially mapped areas of severe geologic hazard.
- (5) New gardening or landscaping.
- (7) Minor trenching and backfilling where the surface is restored.

880 Harbor Island Drive Restaurant (Reuben E. Lee Replacement)

Attachments to the CEQA and Coastal Categorical Determinations

1. Environmental Assessment – May 19, 2008
2. Aerial Photo w/Lease lines
3. Vicinity Map w/fault lines, proposed replacement restaurant on land side – 04/01/08
4. Proposed Restaurant Illustrations/Details
 - Site Plan – 04/01/08
 - Sewer Relocation – Option 1
 - Parking Plan - 06/10/08
 - Parking Management Plan – Draft 12/04/2007 (Final due at option signing)
 - Floor Plan – 04/01/08
 - Seating Plan – 04/15/08
 - West Elevation – 04/01/08
 - Cross Section – 04/01/08
 - Public Access
 - 880 Harbor *Design – Public Access*
 - 06/10/08
 - Feb 10, 2009
 - Landscape Plan (Tree Replacement) 06/10/08
5. Lease Plat – July 25, 2007
6. U S Army Corps of Engineers Application & Permit [To Be Submitted (TBS)]
7. San Diego Regional Water Quality Control Application & Permit [TBS]
8. Storm Water Pollution Prevention Plan (SWPPP) [TBS]
9. Standard Urban Stormwater Mitigation Plan (SUSMP) [TBS]
10. State Lands Commission (SLC) lease for water area outside of PMP [TBS]
11. SLC lease area CEQA review/determination documentation [TBS]
12. SLC lease area California Coastal Commission consistency/determination [TBS]

WORKING PROJECT TITLE: _____

APPLICANT'S REFERENCE NUMBER (if applicable): _____

ENVIRONMENTAL ASSESSMENT
(To be completed by Applicant)

Applicant	Preparer of EA
Name: Uri Feldman	Name: Thomas Story
Title: Vice President	Title: Vice President
Organization: Sunroad Enterprises	Organization: Sunroad Enterprises
Address: 4445 Eastgate Mall Suite 400	Address: 4445 Eastgate Mall Suite 400
State, Zip Code: San Diego, CA 92121	State, Zip Code: San Diego, CA 92121
Telephone: (858) 362-8500	Telephone: (858) 362-8500

I. PROJECT DESCRIPTION

- A. Describe the type of development proposed, including all phases of project construction and operation, in a self-explanatory and comprehensive fashion. Discuss the need for the project and include site size, square footage, building footprint, number of floors, on-site parking, employment, phased development, and associated projects. If the project involves a variance, indicate the reason and any related information.

The proposed project is located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/-20,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with refurbished access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking. A Parking Management Plan has been prepared as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees may need to be removed. A minimum of 1:1 tree replacement will be planted on site.

A paved pedestrian walkway is proposed through the site with connections at each end with the public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold; (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately northwest of the proposed replacement restaurant. The applicant shall prepare and submit for approval a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSWP) for long term operation of the facility prior to beginning construction on the project. The applicant will apply for and obtain both an U. S. Army Corps of Engineers permit and a San Diego Regional Water Quality Control permit for the proposed project if required.

Redevelopment of most of the barge hull and operation of the supporting business and social event

venue is dependent upon the applicant obtaining a lease, either directly or through the District. Applicant will secure all necessary approvals from the State Lands Commission including CEQA review documentation, and Coastal Commission processing for that portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting those instruments of service to the District for recording.

- B. Describe project appearance, any proposed signs, and how the design of the project would be coordinated with the surroundings.

The design of the proposed project would be incorporated into the existing layout of the land. Harbor Island is a recreational and tourist area with hotels, restaurants, and marina facilities. The lighting, and signage associated with the proposed project will be designed to work within the natural setting of the project site. The remodeled venue will result in a reduced bulk and scale as well as enhanced public access and viewing opportunities.

- C. Describe how the public would be affected by the project.

The proposed project would reinvigorate a deteriorated facility which will provide services to residents of San Diego as well as tourists. "Dock and dine" options will be available through the adjacent Sunroad Resort Marina. Previously the end of the island was greatly enhanced with the creation of Island Prime, which has been one of the Port's greatest restaurant successes, and Sunroad Resort Marina, which is one of the Port's top marinas. The venue will have both restaurant as well as banquet space, providing additional opportunities for the public to utilize the venue. Public access, pedestrian promenades and traffic circulation will be enhanced. The existing views from the leasehold will be improved with the elimination of the four story superstructure of the Ruben E. Lee. ADA access will be improved to current standards and requirements.

- D. Describe how the project could attract more people to the area or enable additional people to use the area, and what additional service businesses would be required.

The proposed project would attract additional residents and tourists to Harbor Island due to its aesthetic appeal, outstanding location and the reputation it will earn for excellent service and the quality of the food served. The banquet and event space is projected to be highly desired due to it's unique views of downtown San Diego, the Bay, the Coronado Bay Bridge and Coronado. No additional service businesses would be required.

II. ENVIRONMENTAL SETTING

- A. Describe the existing project site and surrounding area including: the type and intensity of land/water use; structures, including height; landscaping and naturally occurring land plants and animals, and marine life; land and water traffic patterns, including peak traffic and congestion; and any cultural, historical, or scenic aspects.

The proposed project would be located on Harbor Island, at the eastern end of Harbor Island Drive. Harbor Island is a man-made peninsula that comes out from the shore line into the San Diego Bay. This street provides shelter to the existing basin located between the wharf and the island.

At the east end of Harbor Island Drive there is a traffic circle, which routes vehicular traffic back around to the west. East of the traffic circle is a 145,979-square-foot parcel of land, which consists of a parking lot and the Island Prime Restaurant. Just east of the parking lot, within the San Diego Bay, is a vessel named the Ruben E. Lee. This vessel is anchored and attached to Harbor Island via utility hook ups and access ramps, and is enclosed by a break water. This vessel served as a four story restaurant, prior to its temporary closure for the mentioned remodeling. Surrounding the vessel is an existing breakwater, which will be maintained.

The Reuben E. Lee's deck demolition and barge hull deck remodeling is proposed in the vessel's existing water lease location. The work will be performed under the authorization of an Army Corps of Engineers permit and a San Diego Regional Water Quality Control Board permit. If required by either of the permits, the work will be performed in an approved boatyard, otherwise demolition and construction activities will be performed with best Management Practices (BMPs) to prevent contaminants entering San Diego Bay. If remodeling off-site is required the barge will be brought back and repositioned in the exact existing location. Total time for demolition and remodeling is expected to be less than one year. Salvage for reuse of the existing finish work and structural materials will be pursued to the maximum extent possible as determined by interests and needs identified by commercial or not-for-profit organizations. Materials not reused will be segregated and processed for recycling.

Construction of the project will incorporate efficiencies in the ordering of materials. On-site segregation improves the percentage of materials that can be recycled, and the value of the materials. The site will be designed and construction staff will be educated to maximize on-site separation of materials. Construction efficiencies will include not over-ordering, on-site re-use, and coordinated measuring before cutting materials so that cut ends are usable for other parts of the project. Any excess unused materials will be recycled or donated for reuse.

III. ENVIRONMENTAL ANALYSIS

- A. Compare the existing project area, improvements, and activities with what would exist after implementation of the proposed project. Data concerning the present condition should be entered before the slash (/); those after the project is completed should be given after the slash (/).

(1) Existing/proposed land area: 145,979 / 145,979 sq. ft.

water area: 91,536 / 91,536 sq. ft.

(2) Existing/proposed land area for:

structures: 10,612 / 27,112 sq. ft.

landscape: 8,200 / 9,600 sq. ft.

pavement: 134,800 / 122,530 sq. ft.

undeveloped: 16,950 / 14,800 sq. ft.

(3) Number of existing/proposed floors of construction: 4 / 1

(4) Principle height of existing/proposed structures: 68 / 28 ft.

(5) For land development, indicate extent of grading:

excavation: 1,100 cu. yards., 10,000 sq. ft.

fill: 1,100 cu. yards., 10,000 sq. ft.

*As measured to Mean High Tide Line. Square footage listed in IIA. is based on property lines.

Describe method, source of fill, and location of spoil disposal:

Cut and fill will be balanced on-site

- (6) For water development, indicate extent of dredging and fill:

Dredging: 0 cu. yards., 0 sq. ft.

fill: 0 cu. yards., 0 sq. ft.

Describe method and location of spoil disposal:

N.A.

- (7) Describe existing/proposed method of solid waste disposal and amounts involved.

An enclosure with a dumpster currently serves the site. Waste services are provided 2 to 3 time per week.

- (8) Describe existing/proposed drainage system improvements and what materials other than domestic wastes, are/would be discharged into the sewer system:

The remodeling of the Ruben E Lee is expected to be able to utilize the existing drainage systems and hookups, which connect directly to the existing sewer system. Additional storm water detention facilities and BMP's will be used to satisfy the current RWOCB storm water management standards.

- (9) Describe the existing/proposed fire protection needs of the site and proposed project, and the nature and location of existing/proposed facilities:

Current fire protection at the site consists of fire hydrants. The remodel will include all necessary fire and safety improvements to insure compliance with all applicable codes..

- (10) Describe existing/proposed public access to San Diego Bay through the project site, including any controlled access:

Visual access to the bay is currently available to the public via Harbor Island Drive and the sidewalk immediately adjacent to the bay side of Harbor Island Drive. The sidewalk also provides public pedestrian access to the hotels, restaurants and businesses on Harbor Island. The remodeling of the Ruben E. Lee will also include the extension of the sidewalk onto the leasehold, to access three new public view areas as well as the existing Island Prime restaurant and the remodeled Ruben E. Lee. The public view areas will be located to the west side of Island Prime, between the two restaurants and immediately north of the remodeled restaurant.

- (11) Existing/proposed slips, 0 / 0
piers: _____

docks or marine ways: 4 / 4

- (12) Existing/projected employees per day: 80 / 260

(13) Existing/ projected customers or visitors per day: 500 / 1700

(14) Explain the projections for (12) and (13):

Currently the Island Prime Restaurant operates with approximately 80 employees and has about 500 visitors per day. It is expected that the remodeled Ruben E Lee will attract about 1.5 times as many visitors and operate with slightly more employees.

(15) Existing/projected daily motor vehicle round trips associated with the site and the proposed project:

1,020 ADT / 3,100 ADT

(16) Existing/projected mileage for daily motor vehicle round trips associated with the site and the proposed project:

4.7 / 4.7

(17) Existing/projected total round trip daily motor vehicle miles traveled associated with site and the proposed project:

4,794 / 14,570

(18) Explain the projections for (15), (16) and (17):

Numbers extrapolated by using the results of the Parking and Traffic Study prepared by LLG on February 13, 2007, Page 15.

(19) Existing/proposed parking spaces: On Site: 308 / 306

Other if used by project: _____ / _____

Specify location(s): If necessary, overflow capacity exists at the adjacent Sunroad Resort Marina

(20) Explain the parking space requirements and compare with applicable standards:

Current parking standards for Restaurant Use are one space per 9.3 ksf, as per the Port's parking guidelines (without counting allowances for adjustment factors, including proximity to airport, shared parking potential, and dock and dine facilities). This yields a requirement of 294 to 310 spaces before adjustments. The parking lot will be re-striped to accommodate a minimum of 306 vehicles.

(21) Existing/ projected water consumption: 3,000 / 7,500 gal./day

(22) Existing/projected electrical power consumption: 9,000 / 22,500 kwhr./month

(23) Existing/projected gas/oil consumption: 30-60 / 75-150 therms/day or gal/day

B. Indicate whether or not the following may result from or may apply to the proposed project or its effects.

		<u>YES</u>	<u>NO</u>
(1)	Substantial change in the existing land/water use of the site.		X
(2)	Incompatibility with approved Port Master Plan.		X
(3)	Part of a larger project or series of projects.		X
(4)	Involve the demolition or removal of existing improvements, including landscaping.	X	
(5)	Substantial change in the existing features of San Diego Bay, tidelands, or beaches.		X
(6)	Significant increase in demands on parking or transportation facilities.		X
(7)	Substantial increase in demand for municipal services (police, fire, etc.)		X
(8)	Significant increase in amounts of solid waste or litter.		X
(9)	Involvement with potentially hazardous materials, such as toxic substances, flammables, or explosives.		X
(10)	Substantial increase in fossil fuel consumption (electricity, oil, natural gas, etc.) or in water consumption.		X
(11)	Interference with scenic views or vistas from existing residential areas or from adjacent uplands.		X
(12)	Decreased access to public facilities or recreational resources.		X
(13)	Substantial change in the employment base of the community.		X
(14)	Substantial increase in dust, ash, smoke, fumes, or odors in project vicinity.		X
(15)	Significant change in San Diego Bay water quality or alteration of existing drainage patterns into San Diego Bay.		X
(16)	Increase the possibility of erosion of tidelands or siltation of San Diego Bay.		X
(17)	Substantial increase in existing noise or vibration levels in the vicinity.		X
(18)	Require any variance from existing environmental standards (air, water, noise, etc.).		X
(19)	Involve soil stability or geological hazards.		X
(20)	Substantial decrease in the habitat of any land plants or animals, or marine life.		X

IV. ENVIRONMENTAL EFFECTS

Describe environmental effects, which could result from the project:

A. Physiographic changes to San Diego Bay, tidelands, or beaches:

The remodel will retain the hull of the Ruben E Lee and stay within the existing width and length dimensions of the hull. The existing 68' tall structure will be replaced with a one story 875 square foot galley and restrooms on the hull, making the water based facilities much reduced in bulk and scale. The balance of the project's square footage will be shifted to the immediately adjacent land area where the restaurant, bar, and meeting room will be located within a single story structure. Minimal grading within the structure's footprint will be required to accommodate the existing grade

difference between the south and north sides of East Harbor Island.

- B. Increased demands on urban support systems, including: parking, streets, sewers, utilities, and transportation:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling.

- C. Increased energy consumption due to operation of the project:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling. Energy star appliances where available in commercial grade will be used where practicable.

- D. Changes in appearance of the project site and views from/to the site which could be affected by the project:

Replacing a 68 foot tall boat with a 28 foot tall restaurant will reduce the project's bulk and scale. The addition of sidewalks and viewing platforms will further enhance view opportunities from the site. Views of the site will be also enhanced as the low profile structure and landscaping will be more in scale with the other existing buildings. The height of the refurbished project will be much lower than the existing Ruben E. Lee. The visual effect of the proposed remodeled project will be much improved, with an emphasis on open architecture that takes advantage of San Diego's mild climate and the site's unique views of the water and downtown.

- E. Changes in air quality from both stationary and mobile sources, including any dust, odors, fumes, chemical vapors, water sprays, etc.:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling. There may be some temporary air quality impacts during the construction phase of the proposed project. Fugitive dust, fumes from construction equipment, and water sprays are anticipated to occur. These emissions would be controlled through standard emission control practices and Best Management Practices as required by state and local laws and ordinances. No impacts would occur from the operation of the proposed project.

- F. Changes in the bay water quality, including those, which could result from the removal and/or construction of structures in the water:

During construction Best Management Practices will be implemented to insure that any contamination is contained. Work has already begun to identify and secure the needed permits from the appropriate resource agencies and entities.

- G. Changes in the sound environment, which could occur on or off-site, both from construction and operational noise generated by the project:

Temporary impacts are anticipated to occur due to construction activities. The hours of construction activities will be limited to ensure that noise levels would not significantly impact sensitive receptors within the project vicinity. No operational noise impacts are anticipated to occur. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling.

- H. Describe any change to plant or animal life, including landscaping:

No changes are expected to occur to any aquatic species. Most existing mature trees will be incorporated into the design of the proposed project. Any tree removal and replacement would conform to BPC Policy 454, Tidelands Forestry Management Policy. All applicable guidelines and

requirements related to tree removal and replacement will be met. Approximately 10 trees, eucalyptus and pine, may be removed to accommodate the remodel. All trees removed will be replaced with an equal or greater number of broad canopy trees, suitable to the site and climate. Additional landscaping will be integrated into the architectural design to complement the architecture, and views of the site.

V. MITIGATING MEASURES

- A. Describe all proposed mitigating measures, or those already incorporated in the project to mitigate potentially significant environmental effects, if any:

No impacts to least tern nesting sites will occur as a result of project implementation. The Port District's mapping and identification of Least Tern nesting sites does not include any part of Harbor Island. The Port District's published (web site) information states that "Nesting sites on Port tidelands include the D Street Fill, Chula Vista Wildlife Reserve, and the South Bay Salt Works".

There are several trees located throughout the project site. The proposed project shall be designed around the existing trees (to the extent feasible). All applicable guidelines and requirements related to tree removal and replacement shall be met.

The proposed project shall adhere to all storm water requirements and follow the Standard Urban Storm Water Mitigation Plan (SUSMP) requirements.

Any other mitigation measures identified in studies will be implemented as required.

- B. Specify how and when the mitigating measures will be carried out:

During the construction phase of the proposed project current best management practices (BMPs) shall be implemented, to avoid water quality impacts.

- C. Explain the extent and effectiveness of mitigation expected and how this was determined:

Implementation of BMPs would ensure that proper activities and actions would occur to prevent water and air quality impacts.

- D. Describe other mitigation measures considered and indicate why they were discarded:

No other mitigation measures were considered.

VI. BACKGROUND INFORMATION

- A. Pre-Application Project Processing

- (1) Indicate if the conceptual plans have been presented to the Board of Port Commissioners or Port Staff. If so, describe in what form, and give date and result:

A formal Project Proposal was presented to Annette Dahl on April 2, 2007, including proposed development plans, cost and revenue projections, and a request for lease extension per Board Policy 355. Conceptual Plans and a Project Proposal was presented on April 12, 2007 at a meeting with Paul Fanfera and Commissioner Vilaplana. Further requested information was provided to Annette Dahl on April 27, 2007 regarding potential construction methods. A meeting was held with Port Real Estate and Planning Staff, including John Helmer, Candice Magnus, Annette Dahl, and Tom Marshall on May 14, 2007, regarding the potential construction alternatives. At Port Planning and Real Estate Staff's request, a tour of the property was organized on May 22, 2007. Further requested information was delivered to Annette Dahl

regarding site plans, renderings, and conceptual floor plans on June 5, 2007. Further descriptions, an EA and a Lessee's Questionnaire was submitted in a package to Annette Dahl on June 20, 2007.

- (2) Indicate if project plans have been submitted to Port Staff. If so, describe in what form, to whom submitted, give date and result:

Project submittals were delivered to Annette Dahl on April 2, 2007, April 27, 2007, and June 5, 2007. We are awaiting a proposal from Port Real Estate Staff on lease terms

- (3) List all environmental consultations and processing contacts with other agencies, firms or individuals in connection with this project. Give agency, name, phone, date, subject and result of consultation:

The Port presented the project at the regular meeting with the resource agencies on June 12, 2007. All involved agencies were present, including ACE, RWQCB, F&W, F&G, Fisheries, NOAA. Sunroad answered questions on the project and was given guidance that the applicable permit would most likely be a Section 10 from the Army Corps of Engineers.

- (4) Last project plans or working drawings approved by the Port at this site:

Title _____

Date: _____

Port Engineering File Number: _____

B. Permit Background

- (1) List all other public agencies which have approval or permit authority related to this project and indicate type required, e.g., City building permits, Coastal permit, WQCB, APCD, Army Corps, EPA, FAA, Coast Guard, etc.:

Army Corps of Engineers, Section 10

Coast Guard

City Permits

There is a potential need for approvals through either the State Lands Commission and/or the Coastal Commission. The Port, as lead agency, will guide the Tenant as to these requirements.


- (2) Pending permits or variances at this site:

Indicate any permits or variances applied for. Agency, type, file number, date, phone number, and name of person who is processing the permit application or variance request must be included:

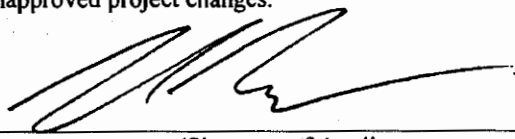
None.

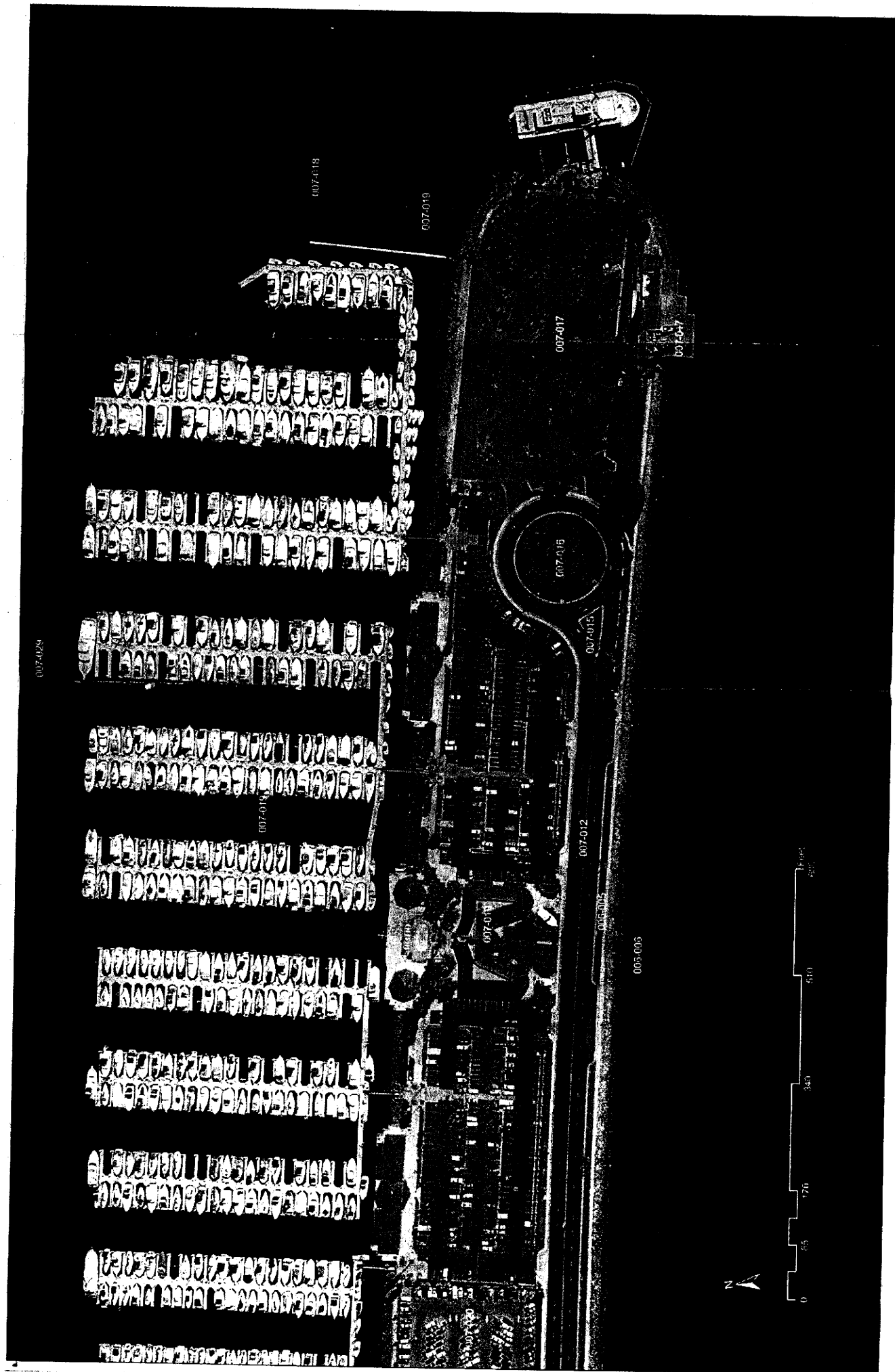
VII. CERTIFICATION

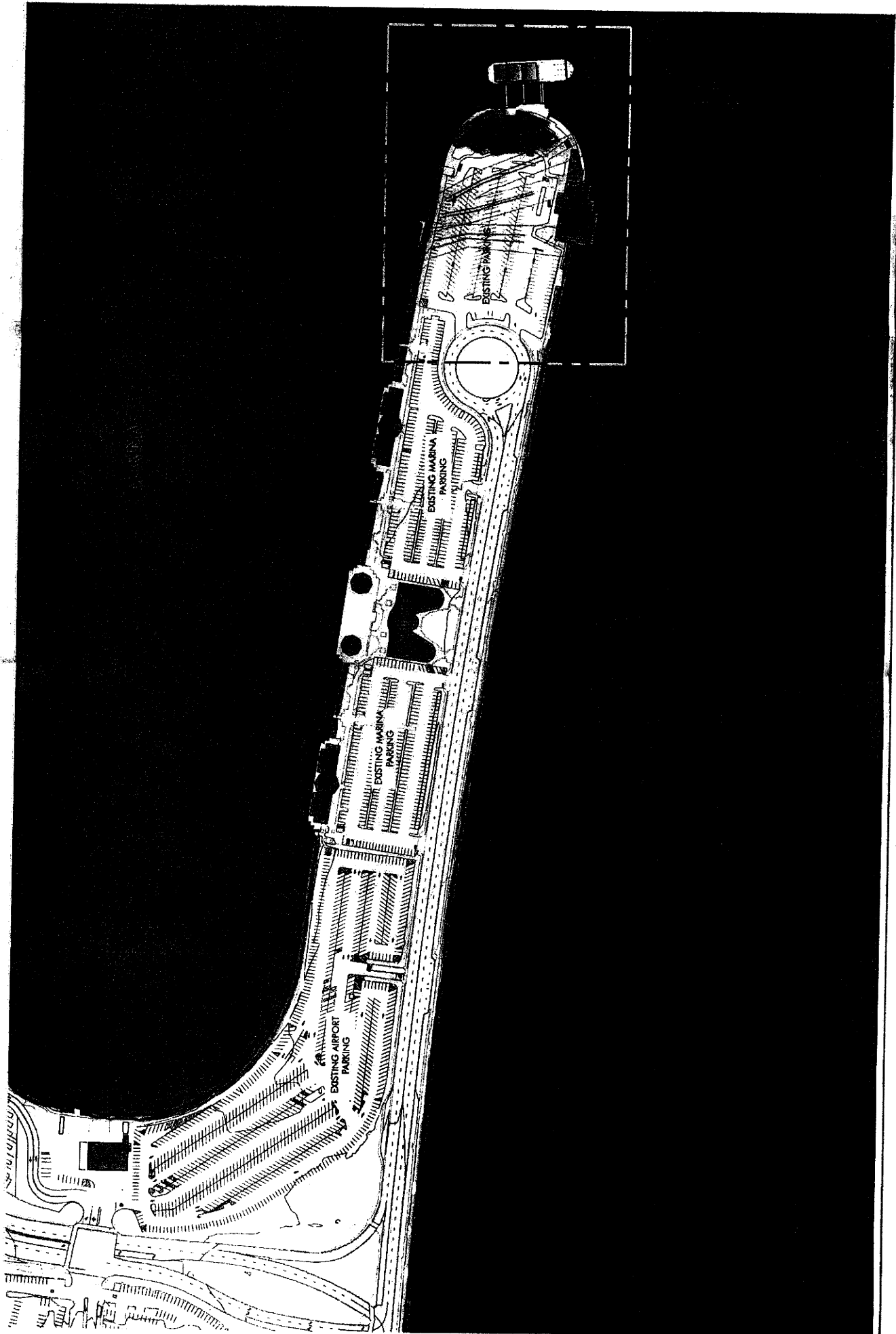
- A. Certification: This Environmental Assessment was prepared by me for/as the applicant and I hereby certify that the statements furnished in the above and in the attached exhibits disclose relevant information to determine environmentally significant effects, as required for the San Diego Unified Port District Initial Study. It has been prepared to the best of my ability, and the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

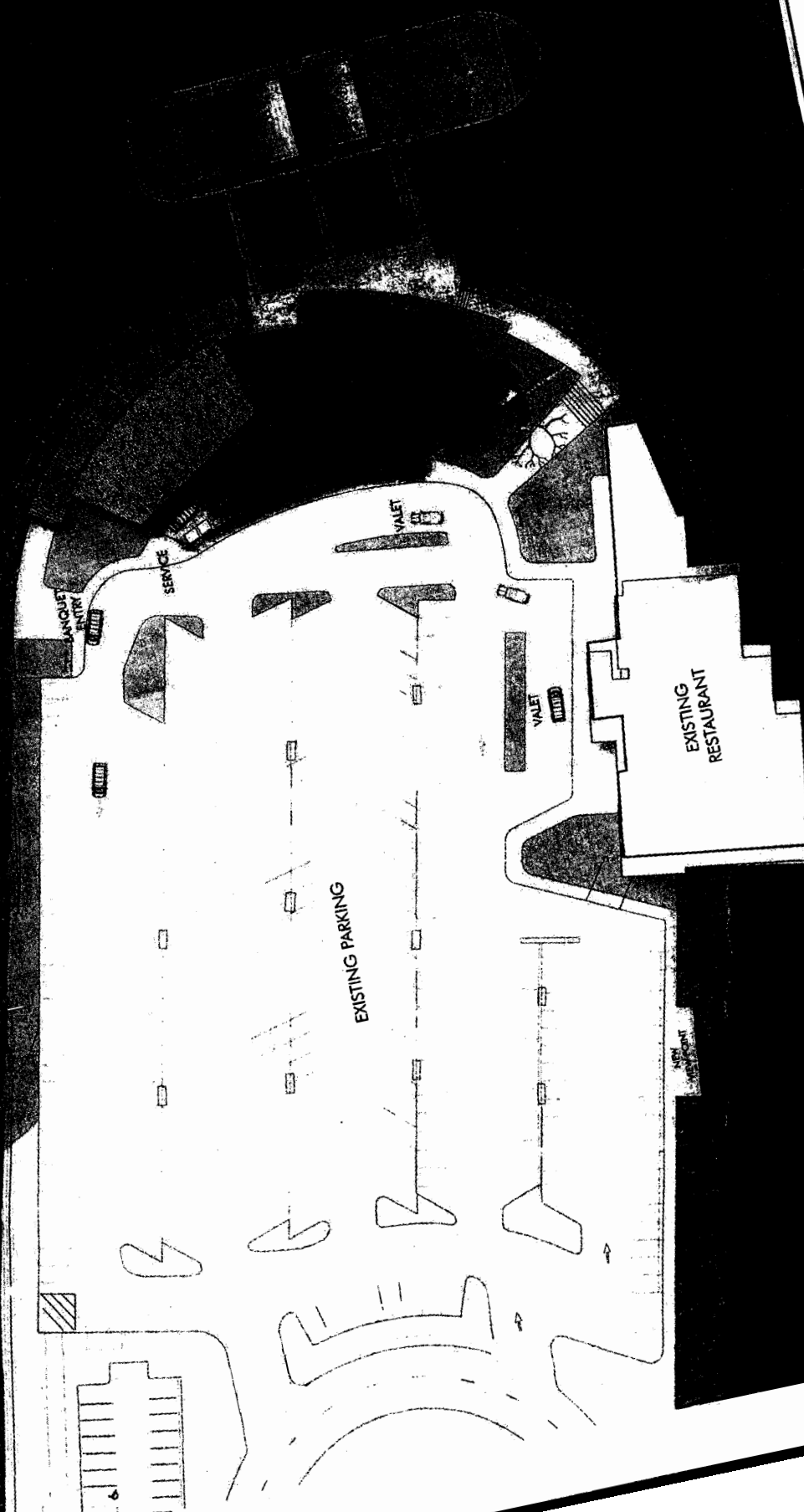
 (Signature of Preparer)	May 19, 2008 (Date)
Tom Story (Print Name)	Vice President (Title)
Sunroad Enterprises (Organization)	858-362-8500 (Telephone)
4445 Eastgate Mall Suite 400 (Address)	
San Diego, CA 92121 (City, State, Zip Code)	

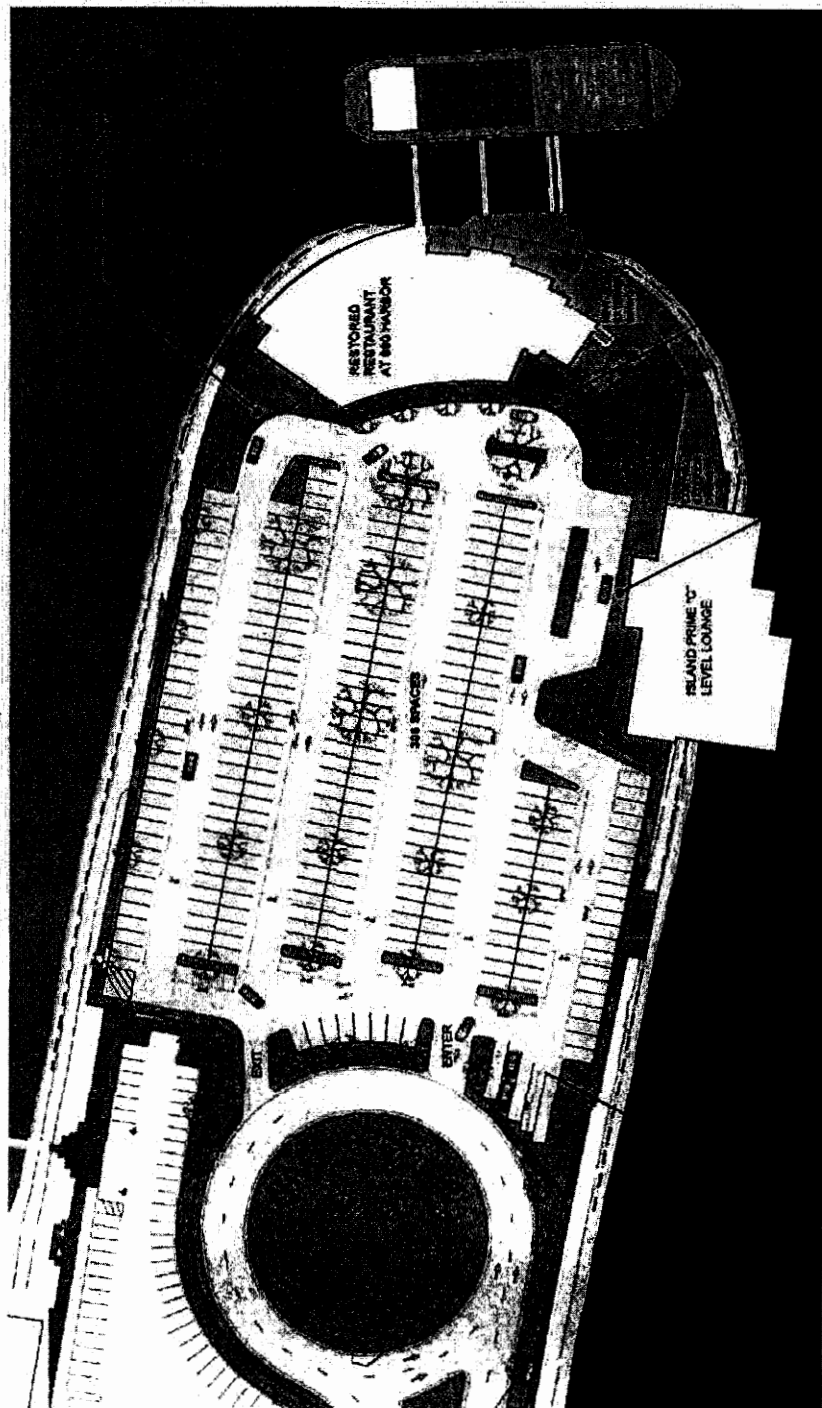
- B. Applicant Certification: I hereby certify that the project-related facts, statement, and information furnished above and in the attached exhibits, and in any other form to the preparer of this Environmental Assessment or to the San Diego Unified Port District are true and correct to the best of my knowledge and belief. I am duly authorized to and do hereby accept and commit the applicant to the implementation of all mitigation measures listed in this Environmental Assessment and of the project as herein described. I understand that non-compliance with any of the mitigation measures, or changes in the project as herein described shall be grounds to invalidate any or all project approvals or permits regardless of the stage of project development or operation. I will notify the San Diego Unified Port District immediately in writing of any changes in the proposed project, and I acknowledge that project changes may require additional environmental evaluation. I shall hold the San Diego Unified Port District harmless of any cost or damages resulting from consequences of non-compliance or unapproved project changes.

 (Signature of Applicant)	May 19, 2008 (Date)
Uri Feldman (Print Name)	Vice President (Title)
Sunroad Enterprises (Organization)	(858) 362 -8500 (Telephone)
4445 Eastgate Mall #400 (Address)	
San Diego, CA 92121 (City, State, Zip Code)	









800 HANSON
06.19.05

PARKING PLAN

Ruben E. Lee
Draft Parking Management Plan
12/4/2007

As documented in Sunroad's application to remodel the Ruben E. Lee, the existing parking lot at the east end of Harbor Island currently provides 308 parking spaces to service the Island Prime (IP) restaurant and the proposed remodel of the Ruben E. Lee (REL).

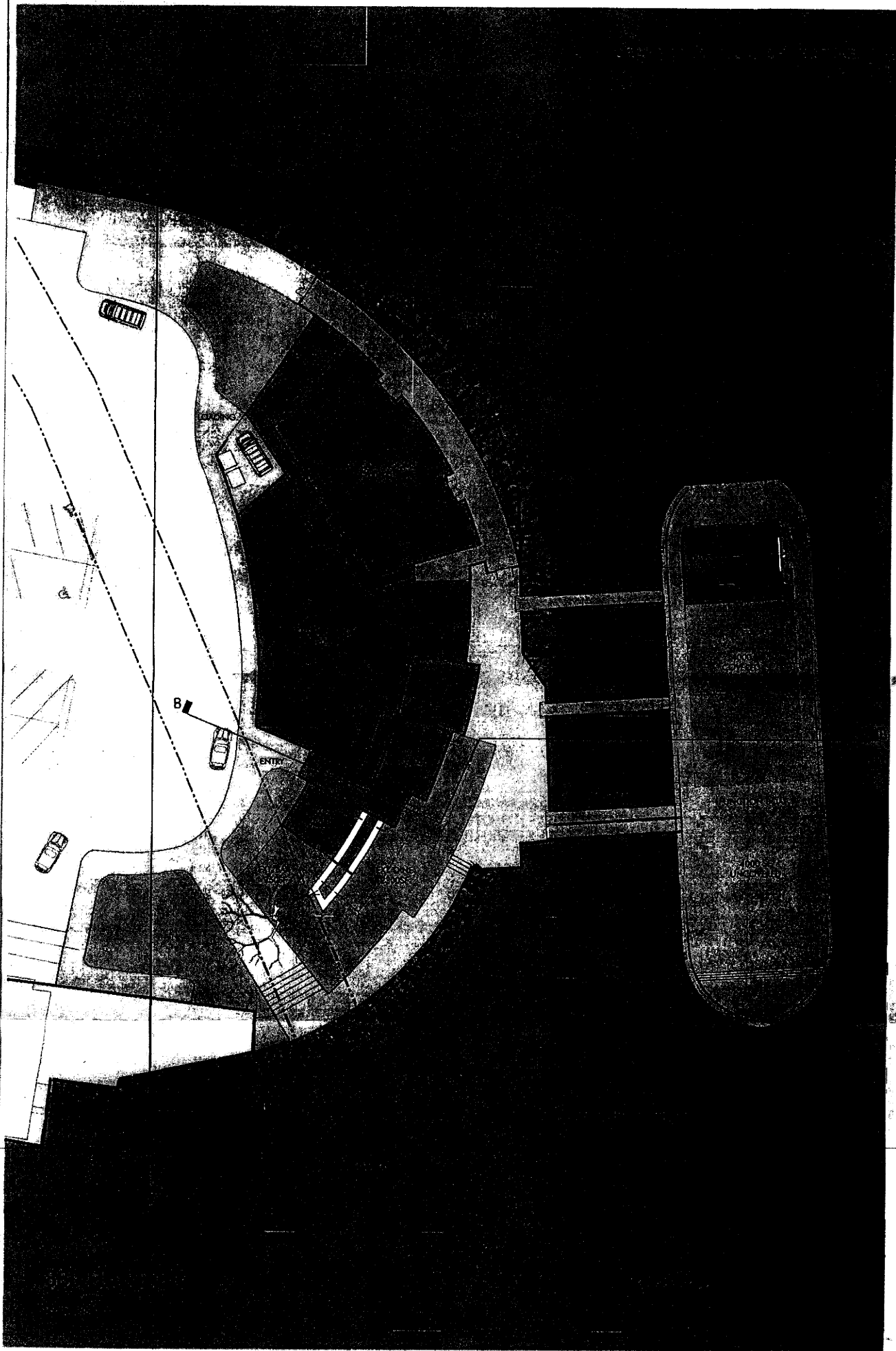
Using 1) the Ports existing parking ratio of .25 spaces/seat, 2) the maximum possible seat count for each restaurant, 340 for IP (IP currently has 322 seats) and 900 for REL, and 3) no adjustments (e.g. proximity to the airport, shared parking, etc.), 310 ^{spaces} ~~seats~~ are required. As has been previously confirmed by Port staff, some minor re-stripping of the existing parking lot will easily accommodate 2 additional spaces to achieve the maximum requirement of 310 spaces.

In the infrequent circumstance when parking demand might exceed the proposed capacity of 310 spaces, Sunroad will implement one or more of the following provisions to accommodate overflow parking;

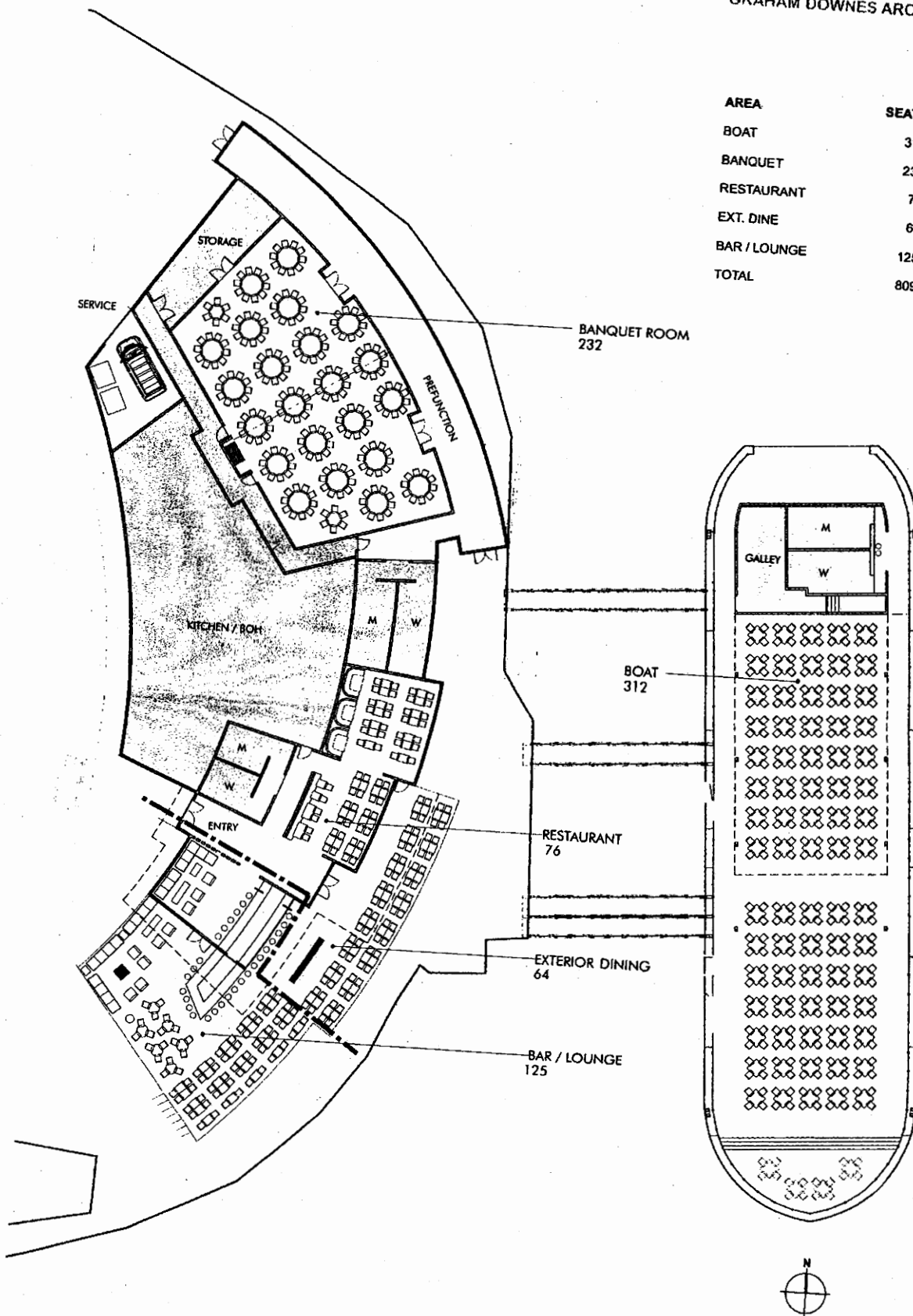
- 1) Valet Parking Service - Valet parking by either or both of the restaurants can substantially increase the number of cars that can be accommodated within the limits of the existing parking lot through compact parking the cars.
- 2) Shared Employee Parking - Restaurants employees will be directed to park in portions of the adjacent, Sunroad Marina parking lot. Since the existing parking ratio at the marina is one space per slip, the marina parking lot is never fully occupied by tenants of the marina. In addition, the peak demand for marina dependent parking is midday on weekends while it is expected that peak parking demand for the restaurants will be weekend evenings.
- 3) Shared Parking - For special events that are projected to generate exceptional demand, portions of the Sunroad Marina parking lot may be reserved for event guests and/or patrons of the restaurants.
- 4) Reserved Off-site Parking - Consistent with the current practice of other Port tenants off-site parking may occasionally be reserved. Depending on the season, weather conditions, and nature of the event, shuttle service may also be employed in conjunction with reserved off-site parking.
- 5) Controlled Access - For special events that are projected to generate exceptional demand, staff may be deployed to monitor and control access to the restaurant's parking lot.

} Can be
deployed
regular
basis

DRAFT



AREA	SEATS
BOAT	312
BANQUET	232
RESTAURANT	76
EXT. DINE	64
BAR / LOUNGE	125
TOTAL	809



880 HARBOR

04.15.08

SEATING PLAN

GRAHAM DOWNES ARCHITECTURE



WEST ELEVATION

880 HARBOR

04.01.08

GRAHAM DOWNES ARCHITECTURE



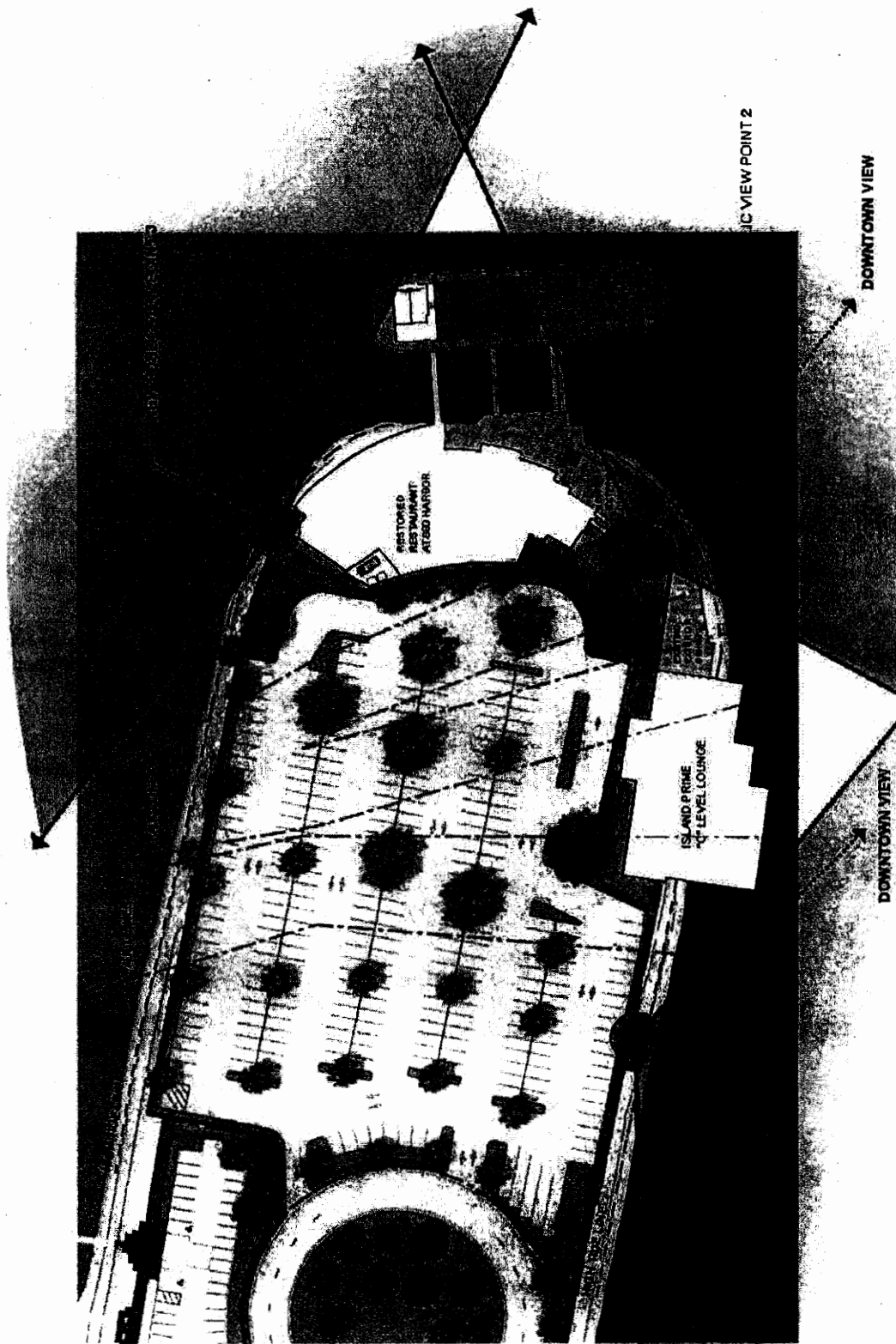
880 HARBOR

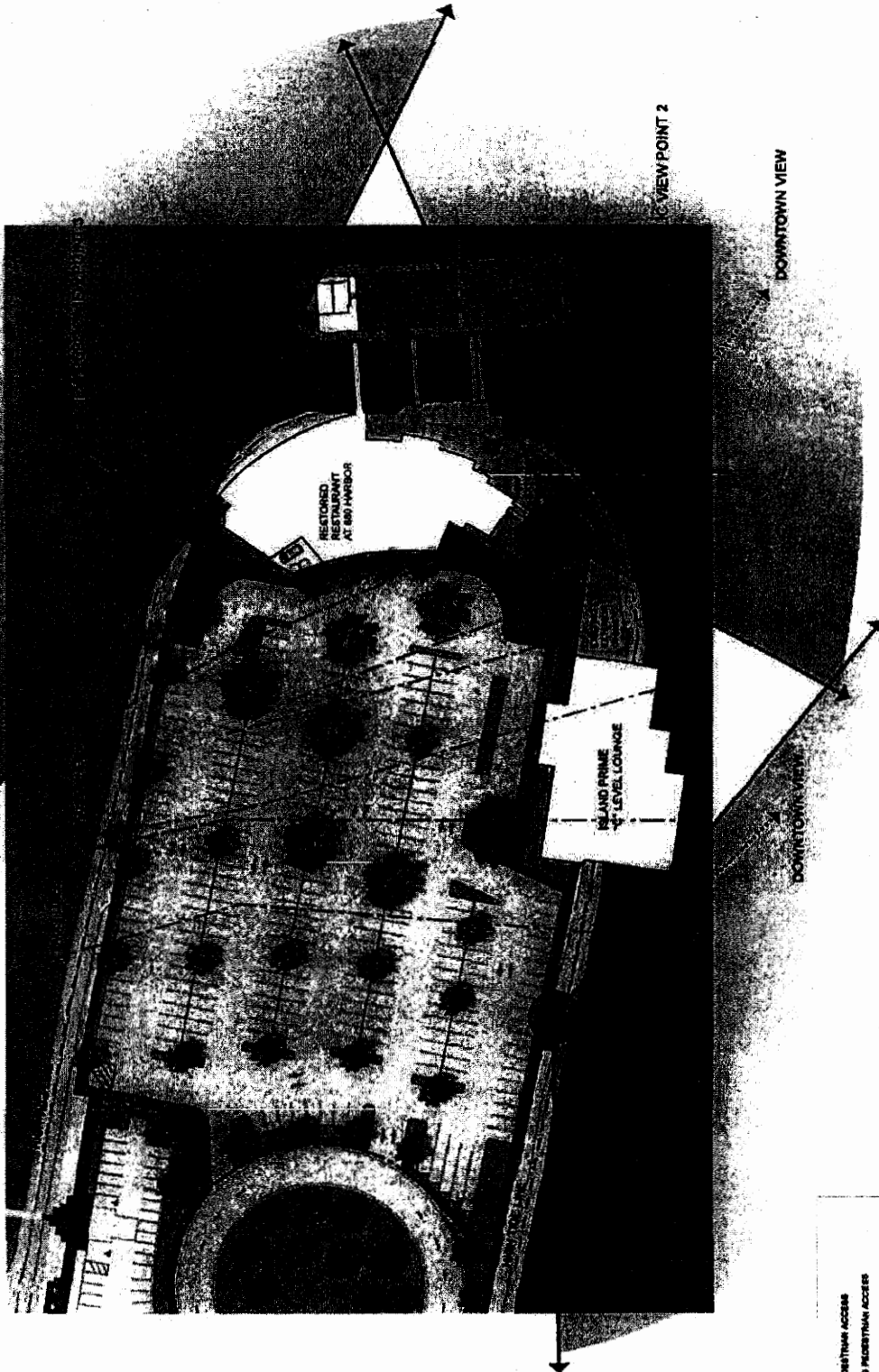
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CROSS SECTION

880 Harbor

Design - Public Access



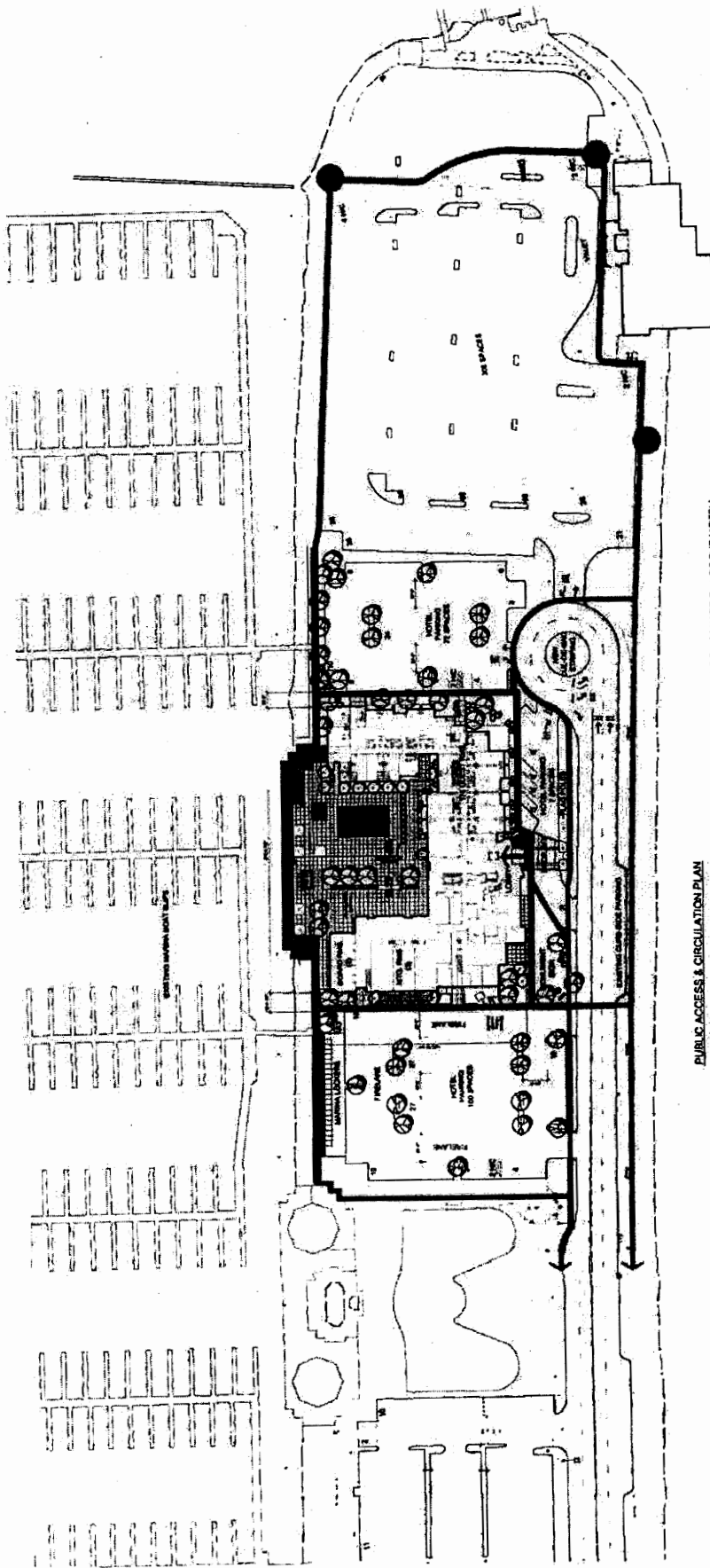


LEGEND

- NEW OR EXISTING PEDESTRIAN ACCESS
- EXISTING PEDESTRIAN ACCESS
- NEW PUBLIC VIEW POINT
- FIELD OF VIEW

830 MARION
06.10.08

SHEET 1



- PUBLIC ACCESS & CIRCULATION PLAN**
- ENHANCED PUBLIC ACCESS - PROPOSED (TO BE IMPLEMENTED WITH THE CONSTRUCTION OF THE HOTEL)
 - EXISTING PUBLIC PROMENADE/WALKWAYS
 - ENHANCED PUBLIC ACCESS - APPROVED (TO BE IMPLEMENTED WITH THE CONSTRUCTION OF THE 680 HARBOR PROJECT)
 - PUBLIC VIEWPOINTS

HARBOR ISLAND HOTEL
PUBLIC ACCESS & CIRCULATION PLAN



FEBRUARY 10, 2009
PRE-DEVELOPMENT SUBMITTAL
PROJECT, MAINE
1"=80'

A.1

AMBERY
COOK
MCGRILL
ARCHITECTS
1111 B. STREET
SUITE 100
PORTLAND, ME 04101
TEL: 207.774.1111
WWW.ACMGRILL.COM

NEW SIDEWALK TO CONNECT
WITH EXISTING ACCESS

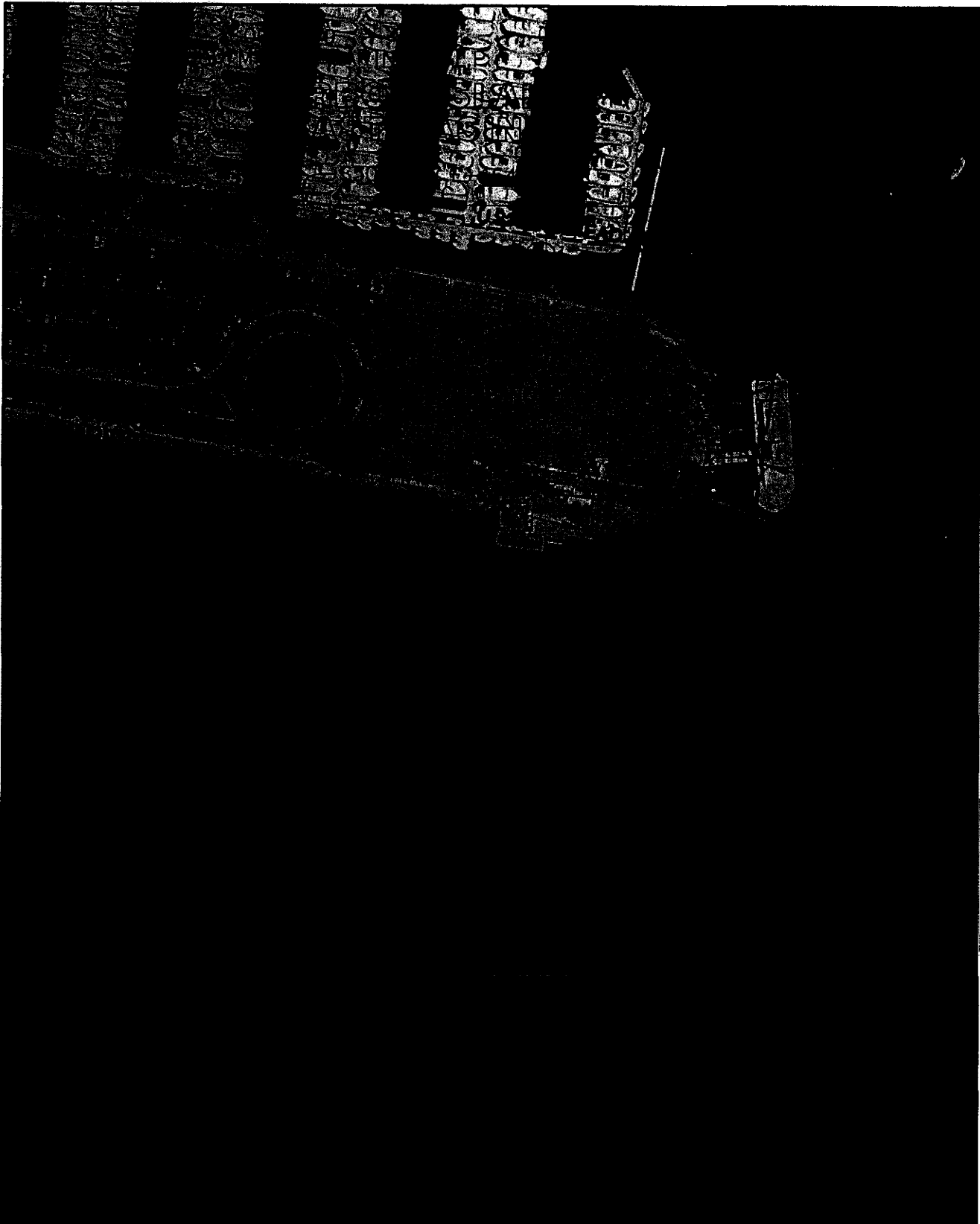
EXISTING SIDEWALK
AT MARINA



LEGEND
 TREES TO BE REMOVED 8
 TREES TO BE ADDED 14

800 HARBOR
05.10.08

GRAHAM DOWNES ARCHITECTURE



DRAWN JFD
CHECKED
REVIEWED
APPROVED
LAND SURVEYOR, S.D.U.P.D.

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF SAN DIEGO
SUNROAD ASSET MANAGEMENT, INC.

DATE JULY 25, 2007
SCALE 1"=200'
REF. FIELD SURVEY
DRAWING NO. SHEET 1 OF 1 007-017

DEVSERV\REM\007\007-017\007-017_072507.DWG



**Unified Port
of San Diego**

3165 Pacific Highway, San Diego, CA 92101
P.O. Box 120488, San Diego, CA 92112-0488
619.686.6200 • www.portofsandiego.org

August 29, 2012

Mr. Uri Feldman
Sunroad Enterprises
4445 Eastgate Mall, Suite 400
San Diego, CA 92121

Dear Mr. Feldman:

Re: Option to Lease Agreement between the San Diego Unified Port District and Sunroad Harbor Island, Inc., dated June 10, 2008, on file in the Office of the District Clerk bearing District Document No. 53527

The District is in receipt of the notice of Sunroad's intent to exercise the above-referenced option with a lease commencement date of August 1, 2012. Based on a review of the items submitted in accordance with the option, Sunroad has satisfied all of the conditions precedent listed in paragraph 5 of the option agreement and will be granted a new lease. Due to a minor modification to the project, a condition of the option is no longer applicable. This letter provides clarification regarding the completion of the option conditions affected by the modification to the project.

The modification to the project involves the relocation of the floating barge entirely within the jurisdiction of the District. Currently, a portion of the barge is located in California State Lands Commission jurisdiction. The District finds that the modification is substantially in conformance to the concept approved by the Board in June 2008 as stated in the Project Review and Approval dated March 22, 2012 and attached hereto as Exhibit A.

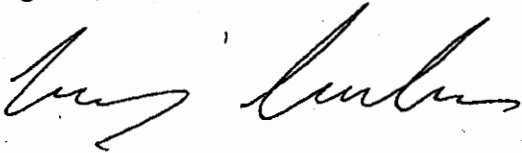
The modification was submitted to the District after the working drawings were approved by the District and applicable building permits obtained from the City of San Diego. The barge was not included in the scope of review for the City-issued building permits because the City does not issue building permits for barges. Therefore, no amended building permit is required and the District deems the option condition satisfied. In addition, based on the modification, since the modified plans do not show an encroachment into California State Lands Commission property, a California Coastal Commission-issued Coastal Development Permit is not required for the project and the option condition is no longer applicable.

Per the Project Review and Approval referenced above, Sunroad must submit to the District for approval four full sets of working drawings reflecting the modifications to the barge prior to initiating any construction activities (excluding demolition) on the leasehold. In addition, the renovated barge shall be located entirely within the District's jurisdiction. Pursuant to

Mr. Uri Feldman
Sunroad Enterprises
August 29, 2012
Page 2

the terms of the new lease commencing August 1, 2012, construction of the project must commence by October 1, 2012 and be completed by August 1, 2014.

Regards,

A handwritten signature in black ink, appearing to read 'Tony Gordon', written in a cursive style.

Tony Gordon
Area Real Estate Manager

Attachment: Exhibit A, Project Review and Approval

cc: Randa J. Coniglio, Executive Vice President, Operations
Karen J. Weymann, Director, Real Estate



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MAR 28 2012

Unified Port
of San Diego

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SAN DIEGO UNIFIED
PORT DISTRICT
REAL ESTATE3165 Pacific Highway, San Diego, CA 92101
P.O. Box 120488, San Diego, CA 92112
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www.portofsandiego.org

PROJECT REVIEW AND APPROVAL

DATE: March 22, 2012

TENANT: SUNROAD HARBOR ISLAND, INC
880 Harbor Restaurant

PROJECT TITLE: 880 Harbor Island Restaurant Renovation Project
(former Reuben E. Lee) [Design Revisions]

COST ESTIMATE: \$9,000,000

PROJECT LOCATION: 880 Harbor Island Drive, San Diego, CA 92101

PROJECT NUMBER: 007-017-2474

PLANNING DISTRICT: Planning District 2, (Lindbergh Field/Harbor Island), Precise
Plan Figure 9.

The above project is hereby granted a **CONDITIONAL APPROVAL** as noted in this PROJECT REVIEW AND APPROVAL memo, with **CONDITIONS OF APPROVAL** as indicated below and further set forth in this memo. (Tenant signature required on last page of approval letter.)

	Project Cost:	Approving Authority:	Initials:	Signature/Date:
<input checked="" type="checkbox"/>	All projects	Architect, RE	RHA	<i>[Signature]</i> 3/22/12
<input checked="" type="checkbox"/>	Under \$100,000	Asset Manager, RE	TG	<i>[Signature]</i> 3/22/12
<input checked="" type="checkbox"/>	\$100,000 to \$250,000	Area Manager, RE	TG	<i>[Signature]</i> 3/22/12
<input checked="" type="checkbox"/>	\$250,000 to \$500,000	Director, RE	KJW	<i>[Signature]</i> 3/23/12
<input checked="" type="checkbox"/>	Over \$500,000, or as indicated below	BOARD APPROVAL OBTAINED		June 10, 2008 Resolution No. 2008-108

Conditions of Approval:			
<input checked="" type="checkbox"/>	Project Specific Conditions	<input checked="" type="checkbox"/>	Waterside Conditions
<input checked="" type="checkbox"/>	Standard Conditions	<input type="checkbox"/>	Traffic Control Conditions
<input checked="" type="checkbox"/>	Storm water Conditions	<input type="checkbox"/>	Clean up Conditions
<input type="checkbox"/>	Signage Conditions	<input type="checkbox"/>	Hot Work Conditions
<input checked="" type="checkbox"/>	Utilities Conditions	<input type="checkbox"/>	UDT
<input checked="" type="checkbox"/>	Environmental Conditions	<input type="checkbox"/>	Other

REAL ESTATE AGREEMENTS related to project approval:

- ☒ LEASE CONFORMANCE—project complies with existing lease terms
☐ LEASE or TUOP negotiations pending
☐ SUBLEASE approval needed
☐ EASEMENT
☐ RIGHT OF ENTRY
☐ Other: _____

Exhibit A

PROJECT DESCRIPTION

On January 24, 2012, Mr. Uri Feldman, Vice President for Sunroad HARBOR ISLAND (Sunroad) submitted plans for a revision and update to the documentation and correspondence previously approved for the proposed renovation of the existing 21,000 sq.ft. former Reuben E. Lee Floating Restaurant on East Harbor Island (now to be known as 880 Harbor Restaurant). Said previous approval was dated November 1, 2011 and consisted of the City of San Diego's Building Department Submittal drawings. No Board action was necessary for this approval. After reviewing the current submittal, the overall concept generally conforms to District standards and policy and is in substantial conformance with the previously approved submittal drawings.

The following changes and updates are proposed in this plan revision:

1. The total enclosed spaces have been decreased to approximately 12,200 sq.ft. from approximately 13,620 sq.ft. previously proposed because approximately 1,600 sq.ft. of enclosed space on the barge has been eliminated. So an overall decrease in enclosed space of approximately 1,420 sq.ft. is proposed.
2. Sunroad proposes to reconfigure the exterior deck areas to approximately 15,285 sq.ft. from approximately 13,520 sq.ft. This includes the floating platform space.
3. The additional exterior deck spaces are achieved by creating cantilevered decks over the existing rock revetment along the shoreline side of the site. This additional space will be used for outside dining venues and lounge spaces.
4. The approximately 3,300 sq.ft. banquet room will have direct access to an exterior dining deck of approximately 3,485 sq.ft.
5. The restaurant will have direct access to an exterior dining deck of approximately 3,400 sq.ft. and an outdoor bar deck of approximately 2,500 sq.ft. is being added.
6. The restrooms are being consolidated from two facilities to one central facility.
7. The Reuben E. Lee barge will be remodeled into a single level floating platform with a smaller footprint (approximately 4,800 sq.ft.) which will be located entirely within the District's boundary and linked to the restaurant via gangways.
8. An existing coral tree will be removed.
9. Building heights will remain approximately the same. The overall silhouette of the facility remains consistent with the previous proposal. Slight level changes in the restaurant and banquet room will continue to step down from the restaurant level to the waterfront allowing for a low profile building as previously proposed.

The Real Estate Department has reviewed this submittal and found that the overall concept generally conforms to District standards and policy.

On June 10, 2008 the Board voted to approve the concept and grant an option for a 30 year lease with a 10 year lease extension to Sunroad (Resolution No. 2008-108). Sunroad has been working on the design development drawings as a part of their option agreement. The estimated project cost is \$9 million. By approving these plan revisions, the District is enabling Sunroad to proceed with plan changes at the City of San Diego's Building Department and eventually obtain a building permit in compliance with their option agreement and promptly begin construction activities upon exercising their option.

NEW BUILDING CONSTRUCTION OR RENOVATIONS

The existing faux sternwheeler will be replaced with a primarily unenclosed floating function space and a landside facility on the leasehold immediately adjacent to the floating single story structure. The land based facilities will include a restaurant, bar and a banquet event space.

A paved pedestrian walkway is proposed through the site with connections at each end to the public sidewalks along Harbor Island Drive. The public promenade connection will continue to straddle the landside of the buildings and have three public viewing deck locations as previously approved. The three public overlook viewing platforms will be located along the walkway within the leasehold; (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately west of the proposed replacement restaurant.

Sunroad proposes a new restaurant facility with the following features:

- a. The existing faux sternwheeler floating restaurant will be reconstructed as a primarily unenclosed function space (approx. 4,800 sq.ft.). It will continue to be moored within the same general location and linked by gangways. It will be located totally within the District's jurisdiction.
- b. A land-based single story restaurant, bar and banquet event space will replace the existing 4 story superstructure atop the barge. The total enclosed area is approximately 12,220 sq.ft. including service areas. The exterior spaces are approximately 15,285 sq.ft. for a total project net area of 27,505 sq.ft. Total seating capacity is expected to be between 600 and 800 seats (including the floating barge).

See attached drawings.

PARKING

The parking lot is reconfigured with capacity for up to 306 cars. This parking lot will be shared with the existing Island Prime restaurant.

LANDSCAPING

A new vegetation pallet is to replace the existing vegetation. A minimum of one-to-one tree replacement will be planted on site.

SIGNAGE

Signage is to be integrated into the building design, however, details are not yet proposed. No separate monument sign is proposed.

WATERSIDE

Access to existing Dock and Dine slips at the Sunroad Marina will continue to be provided for both venues: the Island Prime and the renovated restaurant as long as both leaseholds share common ownership.

No changes to the existing mooring basin or bulkhead are proposed. The floating event platform will be slightly repositioned to fit entirely within District's boundary.

UTILITIES

Reroute utilities as necessary.

PUBLIC ART

Public Art submittal pending.

STORM WATER - SUSMP & SWPPP

A SUSMP and SWPPP are required for this project.

INTER DEPARTMENTAL REVIEW

The District's Land Use Planning, Environmental Services, and the Engineering Departments have reviewed this project and their comments have been included below:

Environmental and Land Use Management:

- Storm Water Requirements Applicability Check list was filled out by the architect, and submitted to Allison Gutierrez
- This project is exempt under CEQA and excluded under the Coastal Act (see CEQA and Coastal Review sections below)

Public Art:

- Submittal pending

CEQA REVIEW

At the June 10, 2008 Board Meeting, this project was found to be **Categorically Exempt** according to CEQA under the following section: **15302, Replacement or Reconstruction (Class 2)**: "Includes replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site and will have substantially the same purpose and capacity as the structure being replaced. This exclusion includes, but is not limited to: (2) replacement or reconstruction of marine-oriented commercial, industrial, and public and commercial recreational facilities, including buildings, piers, piles, wharves,

railroads; airport facilities, runways, taxiways, aprons, and ancillary structures to those facilities; electrical and mechanical systems and equipment; where the new structure will be on essentially the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

(97191-X-5444)

COASTAL ASSESSMENT

The project site is located in Planning District 2, Lindbergh Field/Harbor Island and is delineated on the Precise Plan Map Figure 9. The Port Master Plan (land and) water use designation(s) within the limit of the proposed project (are) Commercial Recreation. The proposed project will conform to the certified Port Master Plan because the project proposes the redevelopment of an existing approved use under the current certified plan.

This project is an **Excluded Development** under the District Coastal Development Permit Regulations, **Section 8.b. Replacement or Reconstruction:** Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to: (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(C11-2-634)

The District is approving the proposed project subject to the following conditions, as noted on page 1 of this Project Review and:

PROJECT SPECIFIC CONDITIONS:

1. The plans reviewed in this project submittal are revision drawings only. Four full sets of working drawings will need to be provided to the District for review and approval prior to initiating any construction activities on the site.
2. No building shall be placed within any of the seismic fault setbacks as required by the City of San Diego.
3. No deck shall project beyond the existing rip-rap covered shore areas.
4. Public access as approved will be included on the leasehold.
5. The public view points and visual connections to the bay as proposed previously are to be preserved.
6. Include further design details regarding the scale and appearance of the proposed banquet hall.

Exhibit A

7. The final seat count and exiting will be subject to Fire Marshall review, approval, inspection and certification. For parking management purposes, Sunroad should always consider the highest seat count allowed.
8. Any repairs or modifications to the existing floating hull will need an inspection and report by a licensed engineer. The report shall be made available to the District for review. Any cathodic protection system and hull maintenance procedure shall also be submitted for review and approval by the District.
9. If the existing barge is not renovated and returned to the site, then it shall be properly disposed of at a permitted facility in accordance with federal, state, and local ordinances and shall in no circumstances be returned to the San Diego Bay or District Tidelands.
10. Sunroad is encouraged to incorporate as many energy and resource conscious measures as possible in the design and operation of this facility.
11. Include signage design for review and approval within the next working drawings submittal sets.

STANDARD CONDITIONS / OTHER CONDITIONS:

1. The District's Engineering Department, Chuck Sanders, Senior Construction Inspector (619) 725-6059, must be notified a minimum of 72 hours prior to commencement of work on the project.
2. A complete set of drawings (and specifications) stamped, with all of these conditions of approval affixed and with the original approval signature by authorized District staff, shall be on the job site at all times and available for review on request by District staff.
3. All applicable permits must be obtained (including, but not limited to, all applicable City of San Diego permits and approvals, Army Corps of Engineers (ACOE) and Regional Water Quality Control Board (RWQCB) permits) and all applicable code regulations and conditions of approval must be met. All final outside agency inspection approvals must be available for District inspection when the project is completed.
4. SUNROAD HARBOR ISLAND and/or their agent/contractor shall obtain, at no cost to the District, all necessary permits and authority from governmental entities and agencies and shall comply with all federal, state and local laws, ordinances, orders, rules and regulations, with respect to the activities on the premises undertaken pursuant to this project approval.
5. SUNROAD HARBOR ISLAND and/or their contractor must provide the District with a copy of any application made to any governmental regulatory agency for

development or construction permits or licenses within 5 days of making said application and a copy of any permit, license or other authorization issued by any governmental regulatory agency within 10 days of its receipt

6. This approval letter is not intended and does not operate to modify or amend SUNROAD HARBOR ISLAND's existing obligations to the District under the terms of its lease with the District. In the event of a conflict or material inconsistency between the terms of this approval and the terms of the lease, the terms of the lease shall control.
7. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit), as adopted, amended, and/or modified. The Municipal Permit prohibits any activities that could degrade stormwater quality. Post-construction / operational use of this project site must comply with the Municipal Permit and District direction related to permitted activities, including the requirements found in the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: (http://www.portofsandiego.org/sandiego_environment/jurmp.asp) or by contacting the District Environmental and Land Use Management Department, (619) 686-6254.

This project is subject to the District Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, concept approval of the project by the District is necessarily conditioned upon submission by the project proponent of a project specific urban Stormwater Mitigation Plan (USMP) using the District USMP template meeting all District requirements. Final project approval requires District approval of the project USMP and full implementation of all USMP structural and non-structural best management practices (BMPs) throughout the life of the project. The implementation and maintenance of the USMP BMPs constitute regulatory obligations for the lessee, and failure to comply with the Municipal Permit, the JURMP, or the District approved USMP, including the specific BMPs contained therein, and may be considered a default under the lease.

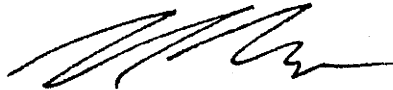
8. No discharges of any material or waste, including potable water, wash water, dust, soil, trash and debris, may contaminate stormwater or enter the storm water conveyance system. Any such material that inadvertently contaminates stormwater or enters the storm water conveyance system as part of the project must be removed immediately. All unauthorized discharges to the storm water conveyance system or the Bay or the ocean must be reported immediately to the Environmental and Land Use Management Department, in order to address any regulatory permit requirements regarding spill notifications.

9. Contractor shall ensure that training outlining this special condition is given to all employees. This training shall include the location of the storm drains on the job site, and the direct link between the storm drain system and the bay.
10. All materials used in the storm water pollution prevention program shall be properly disposed of at the completion of work. All temporary facilities shall be removed within ten days after substantial completion of this project.
11. Materials and debris generated by the project must be disposed of off District tidelands and in accordance with federal, state, and local ordinances.
12. All underground electrical lines being installed or moved, except low voltage (i.e., 24 volts or less as in sprinkler controllers and cable TV), shall be encased in three inches of concrete all around. All underground high voltage encasement, whether existing or new, must include yellow plastic warning tape running the length of the run before being buried.
13. Specialized mechanical and electrical equipment is not reviewed by the District. The applicant is responsible for providing an installation that conforms to the manufacturer's printed instructions, and which meets all applicable safety and environmental standards. Certain mechanical/electrical equipment may be placed on landside and linked to the boat via ship to shore connections. Design adequate enclosures to fully conceal all mechanical equipment from view.
14. Any foundation or anchoring work shall be coordinated with the existing underground utilities. No stormwater inlets, utility access manholes, etc. shall be obstructed. Any foundation or utility changes shall be approved by the District and shall be at the expense of this project. Said changes shall be noted on the as-built plans. Any site utilities, mechanical equipment and maintenance yards should be screened or concealed from public view and landscaped for better integration as allowable by current building codes and regulations.
15. Public Art options must meet the stipulations of Public Art Master Plan and receive the approval of the Director of Public Art. Contact the District's Public Art Department at (619) 686-7246 to initiate the process as early as possible.
16. Any new outdoor dining areas shall be submitted as a comprehensive proposal, complete with barriers that comply with the requirements of the Alcoholic Beverages Commission.
17. The Tenant shall pay special attention to BPC Policy 713 Tenant Landscaping Improvements and Maintenance and BPC Policy 715 Water Conservation. Any removal of existing mature trees shall need to be reviewed by the District per BPC Policy 454 Tidelands Forestry Management.

18. The Tenant is advised that any construction work that results in waterside work beyond the shoreline will require an Army Corps of Engineers permit; please contact the District's Environmental and Land Use Management Department Eileen Maher (619) 686-6532 for submittal guidelines.
19. The tenant is responsible for compliance with the Americans With Disabilities Act (ADA) which became effective January 26, 1992. The tenant shall provide the District with written certification that this project meets all pertinent ADA requirements and indemnification of the District from any liability arising from this project's failure to comply with the ADA requirements.

Tenant: Please have an authorized representative sign in the area below accepting the conditions set forth in this approval memo. Please return a signed copy of this letter to the District no later than **Monday, April 9, 2012**. If a signed copy of this letter is not returned by **Monday, April 9, 2012**, this Conditional Approval will be null and void.

I hereby accept the Conditions of Approval as set forth in this PROJECT REVIEW AND APPROVAL memo:

Signature: 
Print Name: URI Feldman
Title: EVP
Date: 3/22/2012

Distribution List:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Construction Inspector | <input checked="" type="checkbox"/> Asset Manager, RE |
| <input checked="" type="checkbox"/> Area Manager, RE | <input type="checkbox"/> Director, RE |
| <input checked="" type="checkbox"/> ELUM | |
| <input type="checkbox"/> Other _____ | |



RICHARDS | WATSON | GERSHON

ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101

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RICHARD RICHARDS
(1916-1988)

GLENN R. WATSON
(1917-2010)

HARRY L. GERSHON
(1922-2007)

February 27, 2013

TH 22e

VIA OVERNIGHT AND ELECTRONIC MAIL

Mary K. Shallenberger, Chair
and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

Re: Appeal No. A-6-PSD-13-005 (Sunroad Enterprises)
Agenda Item: Th 22e
Hearing Date: March 7, 2013

Dear Chair Shallenberger and Members of the Commission:

This firm, along with Susan McCabe, represents Sunroad Enterprises ("Sunroad") in the above matter. The letter explains why the Commission lacks jurisdiction to consider the purported appeals filed and, in any event, why the appeals present no substantial issue.

The appeals deal with a Project approved over four and a half years ago. On June 10, 2008, the San Diego Unified Port District approved Sunroad's Reuben E. Lee Restaurant Replacement Project ("Project") at the east end of Harbor Island. In its resolution of approval, the Board of Port Commissioners determined, as required by the Port's certified Coastal Development Permit ("CDP") Regulations, that the Project is an "Excluded Development" which does not require a Coastal Development Permit. The Port followed all the rules, and Sunroad relied on the Port's approval, exercised a long-term lease option and commenced the redevelopment of its \$9 million restaurant replacement project.

The Port's decision was unexceptional and consistent with past practice. In October 2007, while the matter was under consideration at the Port, Commission Staff wrote the Port to explain the issue of "split jurisdiction" because the then existing Reuben E. Lee restaurant straddled both Port jurisdiction and Commission original jurisdiction. Commission Staff noted: "As we discussed, the particular development that raised the question in this case may end up being deemed exempt from permit requirements, so hopefully there won't be too much of a burden on the applicant." (Exh. 1 [E-mail, 10/29/07 from Diana

A copy of this letter has been provided to the CCC San Diego District Staff

EXHIBIT NO. 13
APPLICATION NO.
A-6-PSD-13-5
Comments from
Applicant
California Coastal Commission

STEVEN L. DORSEY
WILLIAM L. STRAUSS
MITCHELL E. ABBOTT
GREGORY W. STEPANICH
ROCHELLE BROWNE
QUINN M. BARROW
CAROL W. LYNCH
GREGORY M. KUNERT
THOMAS M. JIMBO
ROBERT C. CECCON
STEVEN H. KAUFMANN
KEVIN G. ENNIS
ROBIN D. HARRIS
MICHAEL ESTRADA
LAURENCE S. WIENER
STEVEN R. ORR
B. TILDEN KIM
SASKIA T. ASAMURA
KAYSER O. SUME
PETER M. THORSON
JAMES L. MARKMAN
CRAIG A. STEELE
T. PETER PIERCE
TERENCE R. BOGA
LISA BOND
JANET E. COLESON
ROXANNE M. DIAZ
JIM G. GRAYSON
ROY A. CLARKE
WILLIAM P. CURLEY III
MICHAEL F. YOSHIBA
REGINA N. DANNER
PAULA GUTIERREZ BAEZA
BRUCE W. GALLOWAY
DIANA K. CHUANG
PATRICK K. BOBKO
NORMAN A. DUPONT
DAVID M. SNOW
LOLLY A. ENRIQUEZ
KIRSTEN R. BOWMAN
GINETTA L. GIOVINCO
TRISHA ORTIZ
CANDICE K. LEE
BILLY D. DUNSMORE
AMY GREYSON
DEBORAH R. HAKMAN
D. CRAIG FOX
MARICELA E. MARROQUIN
GENA M. STINNETT
JENNIFER PETRUSIS
STEVEN L. FLOWER
CHRISTOPHER J. DIAZ
ERIN L. POWERS
TOUSSAINT S. BAILEY
SERITA R. YOUNG
SHIRI KLIMA
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ANDREW J. BRADY
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Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 2

Lilly, CCC, to John Helmer, Port; emphasis added].) And, much like it has with other restaurant replacement projects, after analyzing this Project, the Port determined that Sunroad's Project constitutes an "excluded development." That determination was proper and not appealable.

The appeals now filed are highly unusual because they attempt to reach back to a Port approval and determination made over four and a half years ago. The principal issue presented is whether at this point the Commission has any jurisdiction at all, either by way of appeal or through the exercise of its original jurisdiction. We respectfully submit that the answer on both counts is "no."

As a threshold matter, the Commission should determine that the Unite Here appeal is improper and that it does not have standing to appeal or testify in this matter. Unite Here was completely aware of this Project. It did not, however, appear at the June 10, 2008 public hearing or otherwise make its views known to the Port Board. Accordingly, it is not an "aggrieved person" under the Coastal Act or the Port's certified CDP Regulations entitled to file an appeal (Pub. Res. Code §§ 30625, 30801), and it is not qualified to testify at the Substantial Issue hearing. (Tit. 14 Cal. Code Regs. § 13117.) Unite Here opposed an unrelated hotel project that Sunroad separately proposed on different leasehold. On April 18, 2012, the trial court in *Unite Here Local 30 v. San Diego Unified Port District*, San Diego Superior Court Case No. 37-2011-00094537, rejected that portion of the union's challenge to the EIR for the hotel which attempted to link this restaurant replacement project with the hotel project. Unite Here has alluded to that issue in its appeal, but without noting the result of the court case.

As to the absence of appeal jurisdiction, we demonstrate below that the Port fully complied with the Port CDP Regulations certified by the Commission in determining that the Reuben E. Lee restaurant replacement constitutes an exempt "Replacement or Reconstruction" which does not require a CDP. Sunroad's Project fell squarely within the "Excluded Development" category for "Replacements or Reconstruction." Unlike "appealable developments," which the Legislature specifically identified and listed in Section 30715 of the Coastal Act, an "Excluded Development" is not listed or appealable to the Commission.

To assert jurisdiction, the appeals essentially revise and/or misinterpret the Coastal Act, the certified Port Master Plan and the Port's certified CDP

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 3

Regulations. As the Commission knows, with respect to LCPs, the courts have held that a certified LCP may not be rewritten simply through the guise of an appeal. (*Security National Guaranty, Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 422-423 [the Commission may not lawfully amend a certified LCP through an appeal].) The same principle equally applies to the Port's certified Port Master Plan and CDP Regulations.

While "appealable developments" are itemized in Section 30715 of the Coastal Act, restaurants, as here, are not included on the list and thus are not appealable. The Staff Report goes beyond any reasonable interpretation in attempting to cast restaurants as "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes," a specific appealable category set forth in Section 30715. The quoted language does nothing more than make appealable the Port's approval of an ordinary retail use that does not sell goods for water-oriented purposes. In other words, that kind of non-public trust use can be anywhere. It has nothing at all to do with restaurants. Had the Legislature intended to make restaurants appealable, it would have said so in plain and unmistakable terms.

Further, even though Sunroad's Project, like other restaurant replacement projects approved by the Port, was exempt from the CDP requirement, the Project is nonetheless consistent with the certified Port Master Plan with respect to public access, parking, avoidance of eelgrass habitat and siting to avoid seismic risk. Contrary to the Staff Report, this Project opens up wide vistas of the downtown San Diego skyline, San Diego Bay, the Coronado Bay Bridge and Coronado, all of which have been blocked by the mass of the four-story, 68' high REL since 1968, and none of which were accessible by a designated public promenade. The restaurant is fully open to the public and diversifies the public visitor-serving restaurant experience with both water and land areas. In approving the Project, the Port extracted a lengthy paved pedestrian walkway through the site (where none existed), extending and connecting the public sidewalks along the Bay side and the marina basin side, and it required three new public overlook viewing platforms: (1) west of the Island Prime restaurant, (2) between the existing Island Prime restaurant and the replacement restaurant, and (3) immediately west of the replacement restaurant.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 4

Finally, although the matter at hand involves appeals, it bears noting that while a portion of the Reuben E. Lee was situated, in part, within Commission original jurisdiction, no CDP was required from the Commission simply to untie this floating barge from its mooring and tow it across the Bay to a shipyard facility. It is important to recognize that this is a common, everyday occurrence in San Diego Bay. Indeed, life in the Port (and, for that matter, every California port and marina) would grind to a halt if this kind of activity, which the Commission has never regulated or interfered with, somehow could not proceed without first going through the permit process.

In short, this is one of the rare instances where the Commission lacks appeal jurisdiction and, in any case, the appeals filed do not present a substantial issue.

I. BRIEF BACKGROUND

Sunroad's leasehold is located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac, and includes both land (145,979 sf) and water (91,650 sf) areas. Both areas are designated Commercial Recreation (CR) in the Port Master Plan; restaurants are a permitted use within the CR designation.

The certified Port Master Plan explains: "The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge."¹ (PMP, East Harbor Island Planning Sub-area of Planning District 2, p. 53.) The existing Island Prime restaurant is located on the land-side portion of Sunroad's leasehold and one-third of the restaurant cantilevers over the water. Until April 2012, the water-side portion of the leasehold included a replica sternwheeler, the Reuben E. Lee (REL), a four-story waterborne restaurant constructed on a floating barge structure and temporarily tied to a mooring on the land-side of the property and some permanently installed mooring posts on the water-side. The land-side portion of the restaurant included the parking areas, a waiting and reception area, signage and gangways to board the floating barge.

¹ As noted in the Port Master Plan, the eastern portion of Harbor Island is generally vacant except for the marina leasehold and the restaurants at the eastern end of the peninsula. (PMP, p. 52.)

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 5

The REL was constructed on a barge at a shipyard nearby on the Bay and towed to the site in 1968. In December 1967, the Port and the City of San Diego concluded that, as a floating vessel restaurant, the Reuben E. Lee did not come under the jurisdiction of the City of San Diego Building Department or the uniform building codes. The REL closed in 2003 and thereafter sat unused and deteriorating. Like many floating vessels in San Diego Bay, a portion of the floating barge was located within Port jurisdiction and a portion was located beyond the pierhead line on State tidelands.

A fundamental mistake and omission in the Staff Report is the date of the Port's approval. On June 10, 2008 (not February 24, 2009), following a noticed public hearing, the Port approved (1) an ordinance granting an option agreement with Sunroad for a new 40-year lease and (2) a resolution granting approval of Sunroad's proposed restaurant replacement of the REL. (Exhs. 2, 3 [meeting minutes].) In the resolution, the Board of Port Commissioners resolved:

"It has further been determined that the Project is the replacement of a commercial structure on the same site as the structure replaced, with a new structure of substantially the same size, purpose and capacity, and, therefore, the Project is an excluded development under the provision of the District's Coastal Development Permit Guidelines [Regulations]." (Exh. 2 [Port Board Resolution 2008-108, p. 18]; emphasis added.)

Appellant Unite Here did not testify or submit any written material at the June 10, 2008 hearing or in connection with the Project, and, as previously stated, it lacks standing to now appeal and, under the Commission's regulations, may not testify in this proceeding.²

² We respectfully request that legal staff rule on these issues prior to the Substantial Issue hearing. Because the Staff Report incorrectly focuses on the February 24, 2009 Categorical Determination subsequently issued by Port staff following the June 10, 2008 noticed public hearing, the Staff Report inaccurately states that the Unite Here appeal is valid because there was no public hearing or public review. (Staff Report, p. 6.) Even the Unite Here appeal acknowledges the June 10, 2008 hearing. Unite Here's appeal includes its "administrative record"

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 6

On February 24, 2009, pursuant to the Port Board's earlier June 10, 2008 resolution and determination, Port staff further issued its "Categorical Determination of Proposed Coastal Development" for the REL restaurant replacement, again citing the replacement/reconstruction exemption. (Exh. 4.)

The Categorical Determination described the project as follows: (1) demolition and removal of all four decks of the REL (~ 19,000 sf) at an off-site boat yard facility across the Bay; (2) retention of the floating barge and the mooring piles and existing breakwater around it in the same location; (3) construction of a single-story replacement dining restaurant, lounge and banquet facility (~ 16,500 sf) on the adjacent upland, sited to avoid known earthquake fault zones; (4) conversion of the stripped-down floating barge as an outdoor event area (~ 7,400 sf of unenclosed function space and 875 sf enclosed for restrooms and a galley); (5) reconfiguration of the existing 308 space parking lot to accommodate 306 parking spaces for the smaller use proposed (809 seats instead of 900 seats); and (6) replacement of 10 existing trees in the parking lot at a 10:1 ratio.

As approved by the Port, the Project reduced the height and mass of the 68 foot tall restaurant and floating barge from four stories to one story and open up expansive public views of the downtown San Diego skyline, San Diego Bay, the Coronado Bay Bridge, and Coronado which did not exist with the REL in place. The approval also required significant enhancements to public access throughout the site - a pedestrian walkway to connect with the existing promenade along Harbor Island Drive and on either side of the restaurant and the development of three new public viewpoints along the walkway: (1) west of the existing Island

from the union's CEQA lawsuit which, as noted, unsuccessfully attempted to link this Project to Sunroad's separate proposal on a different leasehold for a hotel. (Exh. 5, pp. 2-5.) Unite Here's letter and exhibits, coupled with the documents the Port has provided to Staff, demonstrate that Unite Here was at all times fully aware of this Project, but simply did not appear at the hearing or make its views otherwise known at the June 2008 public hearing, presumably because at the time its attention and real interest was focused on other projects. It is not a proper appellant (Pub. Res. Code §§ 30625, 30801) and, under the Commission's regulations, it is not qualified to testified at the substantial issue hearing. (Tit. 14 Cal. Code Regs. § 13117.)

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 7

Prime Restaurant, (2) between the two restaurants, and (3) immediately west of the replacement restaurant. (Exh. 6.)

On March 22, 2012, the Port granted "Conditional Approval" of a revision and update to the documentation and correspondence previously approved for the replacement and renovation of the existing 21,000 sf former REL. (Exh. 7.) The revisions were identified on Page 2 of the "PROJECT AND APPROVAL" form and include:

- The total enclosed space originally approved was decreased by 1,420 sf from 13,620 sf to approximately 12,200 sf.
- The restrooms were consolidated from two facilities to one central facility.
- The footprint of the floating barge was reduced in size by almost one-half (approximately 4,800 sf), and located entirely within the Port's area of jurisdiction.

In April 2012, the REL was sold to R.E. Staite Engineering. As an everyday occurrence in San Diego Bay, it was untied from its moorings and towed to a shipyard which R.E. Staite Engineering owns across the Bay.

On August 1, 2012, Sunroad exercised the option under its lease agreement with the Port, and on August 29, 2012, the Port confirmed via letter that all conditions precedent in the option agreement had been satisfied. Sunroad then commenced initial construction activities on this \$9 million project. (Exh. 8.)

On December 12, 2012, the REL, now owned by the shipyard owner, partially sank while moored at that facility.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 8

II. THE PORT PROPERLY CONCLUDED THAT THE REL RESTAURANT REPLACEMENT IS AN “EXCLUDED DEVELOPMENT” WHICH DOES NOT REQUIRE A COASTAL DEVELOPMENT PERMIT

A. The Port’s Categorical Determination

In its June 10, 2008 decision approving the Project, the Port Board of Commissioners determined that Sunroad’s REL restaurant replacement constitutes an “Excluded Development” which does not require a CDP. Port staff subsequently issued a Categorical Determination reflecting the Port Board’s decision. The Port followed the procedures that the Commission certified in the Port’s Coastal Development Permit Regulations. The Port’s determination was proper and not appealable.

The Port’s certified CDP Regulations divide proposed developments into four categories: (1) Excluded developments; (2) Emergency developments; (3) Non-appealable developments; and (4) Appealable developments. (Exh. 9 [Certified Port CDP Regulations], § 7(d)(1)-(4).) Section 7 of the Permit Regulations requires the Port to make a categorical determination as to the appropriate category for the development within 30 working days of the developer’s project plan submittal. (*Id.*, §§ 7(b), (c) and (e).) If the development is classified as “appealable,” then a copy of the determination must be forwarded to the Commission. (*Id.*, § 7(i).) If, however, a determination is made that the proposed development is an “excluded development,” then under the Permit Regulations there is no requirement that the determination be forwarded to the Commission, and there is no right to appeal the determination. Not surprisingly and by definition, the right to “appeal” applies only to “appealable development.”³ (Exh. 9 §§ 7 and 8.)

³ With respect to Categorical Determinations, the Port’s Permit Regulations in Section 7(d)(4) provide: “If a proposed development is classified as being appealable, a copy of the determination shall be forwarded within ten (10) working days to the Coastal Commission.” (Exh. 9; emphasis added.) As noted, there is no such provision governing the Port’s determination with respect to Excluded Developments.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 9

Section 8 of the certified CDP Regulations addresses “Excluded Developments.” It provides: “No Coastal Development Permit shall be required for the following types of development, under the following conditions:

- “b. Replacement or Reconstruction: Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
- (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
 - (2) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction. [...]” (Exh. 9, pp. 5-6.)

In its June 10, 2008 resolution approving the REL restaurant replacement, the Port Board explained:

“Based on information provided by the applicant, staff has determined that the project is the replacement of a commercial structure on the same site as the structure replaced, with a new structure of substantially the same size, purpose and capacity. Therefore the project is an Excluded Development under the provisions of the District’s Coastal Development Permit Regulations.” (Exh. 2 [Port Board Resolution 2008-108], p. 18.)

Subsequently, on February 24, 2009, the Port staff issued a Categorical Determination reflecting the Port Board’s determination. (Exh. 4.)

The Staff Report erroneously argues that the “Replacement or Reconstruction” exclusion in Section 8.b. does not apply, stating:

“... [T]he majority of the proposed development consists of construction of a new structure on the land next to the reconstructed floating facility on a barge. A permanent land location cannot by any reasonable

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 10

interpretation be considered essentially the same site as a floating barge on the water. Water and land development sites have different physical requirements and different impacts on coastal resources and are not interchangeable." (Staff Report, p. 9.)

Section 8.b states, in relevant part: "Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced" (Exh. 9, pp. 5-6; emphasis added.) Importantly, this exemption states that the new structure must be located essentially "on the same site." It does not distinguish between "land" and "water" areas, although it could have if that was what was intended.

The Commission and the Port know how to distinguish between "land" and "water" areas. Indeed, as noted in the Staff Report (p. 9), Section 8.d of the Port's certified Permit Regulations provides a separate exemption for "Minor Alterations to Land," which applies to "Minor public or private alterations in the condition of land, water, and/or vegetation" (Exh. 9, p. 7; emphasis added.) That exemption provides that such alterations in the condition of "land, water and/or vegetation" include, by way of example, "(3) Filling of earth into previously excavated land with material compatible with the natural features of the site." (*Id.*; emphasis added.) Thus, the regulation itself makes clear that "on the site" does not mean *either* "land" *or* "water." It is broader than that and does not distinguish between land and water areas, and consequently the language of the Replacement or Reconstruction" exclusion cannot be rewritten to create an appeal, as the Staff Report does here.

It bears emphasis that many leaseholds within the Port include both land and water areas and include developments which are located on both areas. In fact, all marinas have land and water areas on the same site. It is very common on most Port projects. On the very same site, the adjacent Island Prime restaurant, for example, is located on land and extends well over the water. Replacement or reconstruction of that restaurant would clearly qualify as "excluded development," regardless of its siting on both land and water portions of the leasehold. In August 2012, the Port approved the renovation of Tom Ham's Lighthouse restaurant at the opposite (western) end of Harbor Island as an "Excluded Development." That restaurant is likewise located on land but extends over the water. In March 2003,

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 11

the Port similarly approved Sun Harbor Marina's marina improvements and 4000 sf of new land-side marina support and office improvements as an "Excluded Development" based on replacement/reconstruction.

Finally, it is telling that in approving in approving a lease to the Port for the REL Project on July 1, 2011 and a sublease from the Port to Sunroad, the State Lands Commission included a "Location" and "Site" exhibit, which, consistent with the foregoing discussion, identified the "site" exactly as the Port has interpreted and applied the "Replacement or Reconstruction" exclusion in Section 8.b of the Port's certified CDP Regulations. (Exh. 10, also attached as Exhibit Z to the Unite Here appeal.)

**B. Neither the Coastal Act Nor the Port's Permit Regulations
Provide a Right of Appeal from a Categorical Determination
Which Determines a Proposed Project is an "Excluded
Development."**

Because the Port's Categorical Determination concluded that the Sunroad Project is an "Excluded Development," a notice of final action was not required and, consequently, none was provided to Commission Staff. As explained above, the Port's certified Permit Regulations provide that notice to Commission Staff is required only when development is "appealable." (Exh. 9; Port's certified CDP Regs. § 7(d)(4).)

This is echoed in the Commission's regulations. Section 13640 of the Commission's regulations requires that notice be provided to the Executive Director only with respect to "appealable developments" following certification of the Port Master Plan.

Here, Staff indicates that it first learned of the Port's "February 24, 2009" Categorical Determination in January 2013 when it requested and received the Categorical Determination from Port staff. The Port did not send Staff a notice of its 4 1/2 year old decision. The Staff Report has simply miscast the Port's response to its request for information as a notice which triggers an appeal. It does not.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 12

Simply put, the Port properly determined this project to be an “Excluded Development.” There is no basis for purported appeals from the Port’s decision, nor should the certified Port regulations be essentially rewritten through a purported appeal. (*Security National Guaranty, Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 422-423 [the Commission may not lawfully amend a certified LCP through an appeal].) Importantly, if the process created by Staff in this instance is to be followed, then any decision made by the Port in any of the categories set forth in the certified Port CDP regulations – excluded developments, emergencies, non-appealable developments and appealable developments -- may be appealed at will, years after the determination, despite express limitations in the Coastal Act and the Commission’s regulations that appeals are limited to “appealable developments.”

C. Restaurants are Not Included Coastal Act Section 30715 as “Appealable Developments.”

The Staff Report argues that under the Coastal Act and the Port’s Permit Regulations, a restaurant is classified as an “appealable development.” There is nothing, however, in the Act or the Port’s certified CDP Regulations that remotely supports such a conclusion. It is but an unsupported argument advanced to improperly expand appeal jurisdiction in this case.

Section 30715 of the Act specifically identifies the developments which remain “appealable” following certification of a Port Master Plan. A restaurant is not one of the appealable developments.

Under Section 30715, the Legislature has designated the following developments as appealable:

“(1) Developments for the storage, transmission, and processing of liquefied natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state and nation. A development which has significant impact shall be defined in the master plans.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 13

“(2) Waste water treatment facilities, except for those facilities which process waste water discharged incidental to normal port activities or by vessels.

“(3) Roads or highways which are not principally for internal circulation within the port boundaries.

“(4) Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities.”

“(5) Oil refineries.

“(6) Petrochemical production plants.” (Exh. 11.)

The Staff Report asserts that restaurants are appealable under Section 30715(a)(4) as “shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes.” This language plainly does not encompass restaurants. It specifically pertains to retail facilities that are not principally devoted to the sale of commercial goods utilized for water-oriented purposes. In other words – in the Port, ordinary shopping facilities that do not sell goods for water-oriented purposes are appealable; if they do, they are not appealable. By any reasonable interpretation, a restaurant is not a “shopping facility” and it does not involve “the sale of commercial goods.” No one says, “I’m really hungry. Let’s go to a ‘shopping facility not principally devoted to the sale of commercial goods utilized for water-oriented purposes.’” The interpretation offered by the Staff Report would simply expand Commission appellate jurisdiction well beyond the plain language and intent underlying Section 30715(a)(4). The Legislature used plain terms to describe “office and residential buildings,” “hotels” and “motels.” It knew how to use a plain term to describe “restaurants,” but did not include restaurants, a clear and proper public trust use, as an appealable development.

The Port’s approval of a restaurant replacement/reconstruction here did not constitute an appealable development under Section 30715.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 14

D. A Port Master Plan Amendment is Not Required for a Restaurant Replacement Project.

The Staff Report also incorrectly states that there is no provision for a restaurant on the land-side at this site in the Port Master Plan, and that a PMP amendment would be required to add this project to the “project list.” This is somewhat academic since Staff has now brought the Project before the Commission. In any event, the Staff Report is in error. The current Port Master Plan in fact does call for a restaurant on the water’s edge: “The eastern end of the peninsula is anchored by restaurants, which are uniquely suited on the water’s edge.” (Port Master Plan, p. 53.) Moreover, this Project is not appealable, and therefore need not be included in the “project list.” There is nothing unusual about how this restaurant replacement was handled. The Port has approved other similar projects – Tom Ham’s Lighthouse restaurant renovation at the east end of Harbor Island (approved in August 2012) and the Bali Hai restaurant renovation on Shelter Island (approved in October 2009) – as “excluded developments.”

Section 30711 states that a Port Master Plan must include, among other things:

“(4) Proposed projects listed as appealable in Section 30715 in sufficient detail to be able to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.” (Emphasis added.)

Contrary to Staff’s apparent position, nothing in the Coastal Act mandates that *every* project proposed in a port be the subject of a PMP amendment. To be sure, Section 30715(d)(4) expressly requires a “project list” for “appealable” projects, but it is explicit that the reference to “project list” applies only to “Proposed projects listed as appealable in Section 30715.” It does not require a project list for non-appealable projects, although it may be useful to include non-appealable projects in the project list to clarify upfront that they are not subject to appeal. That is exactly what has been done in the Port’s Port Master Plan. At the end of each of Planning District, there is a list of appealable and significant “non-appealable” projects, with an indication as to which is appealable. However, “Excluded Developments,” as defined in the Port’s certified CDP Regulations, are, by definition, those developments that do not require a CDP. Accordingly, it

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 15

would be make no sense to require that they go first through a Port Master Plan amendment. Indeed, that would mean that virtually any and all regulatory decisions made by a port must first be made by the Commission and included in the Port Master Plan. That, it is plain to see, would render the Port of San Diego and ports in general meaningless in the many, many decisions that they must make every day. Nothing in the Coastal Act suggests that was what was intended by the Legislature.

In any case, the whole point of including an appealable development in the “project list” is to ensure that it is reviewed for consistency with the Chapter 3 policies of the Coastal Act. There is frankly nothing magical about the “project lists” included in this and other Port Master Plans. Often a project is only referenced by brief description, leaving the site-specific considerations to be reviewed first by the Port and then by the Commission if an appeal is filed.⁴ When a project is indisputably appealable but is not, for some reason, on the project list, Commission consideration of the appeal moots out the need for separately listing it in the Port Master Plan.

E. Sunroad’s Restaurant Replacement is Consistent with the Port Master Plan.

Because an “Excluded Development” is exempt from obtaining a CDP requirement, there is no requirement that the Port expressly find the Project approved is consistent with the Port Master Plan. Nonetheless, contrary to the Staff Report, the restaurant replacement project is consistent with the Port Master Plan.

The Port Master Plan includes a several “goals” regarding public access:

⁴ For example, there are 10 projects listed at the end of the Harbor Island/Lindbergh Field Planning District. To illustrate the brevity of each project noted, the first project listed, “HOTEL COMPLEX: up to 500 rooms, restaurant, cocktail lounge, meeting and conference space; parking; landscape,” is the most detailed description of the projects provided on the “project list.”

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 16

“IX. THE PORT DISTRICT WILL INSURE PHYSICAL ACCESS TO THE BAY EXCEPT AS NECESSARY TO PROVIDE FOR THE SAFETY AND SECURITY, OR TO AVOID INTERFERENCE WITH WATERFRONT ACTIVITIES.

- Provide "windows to the water" at frequent and convenient locations around the entire periphery of the bay with public right-of-way, automobile parking and other appropriate facilities.
- Provide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.

X. Each activity, development and construction should be designed to best facilitate its particular function, which function should be integrated with and related to the site and surroundings of that activity.” (Emphasis added.)

The Staff Report asserts that the design and siting of the land-side of the replacement restaurant is in direct conflict with one policy above that access be provided along the waterfront wherever possible with promenades and paths. The PMP, however, must be read with reference to all of its policies, not just one.

The Port reviewed a project that proposed replacement of the four-story, 68 foot high REL with a low-profile, one-story restaurant and floating barge, which together provide covered and open food and beverage areas. The existing certified Port Master Plan does not identify a pedestrian access path at the east end of East Harbor Island. Instead, as to the REL, there were land-side improvements that supported the on-water restaurant including a parking lot, a passenger drop-off area, a waiting area and gangways for boarding the REL. The REL's massive four story superstructure blocked all views of the downtown San Diego skyline, San Diego Bay, the Coronado Bay Bridge and Coronado. The Port took into account the nature of the replacement restaurant, its integrated land and water function on this particular site, its ability to operate effectively as a restaurant with food and beverage areas connected but situated in two locations, and its location between an existing fault line (which it avoids) and the east edge of Harbor Island. Consistent with the foregoing Port Master Plan goals and policies, the Port

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 17

extracted from Sunroad a substantial public walkway where none exists to connect to the existing public promenade along Harbor Island Drive, three public overlooks – two created on either side of the reconstructed restaurant and one immediately west of the existing Island Prime restaurant. This provided what the Port Master Plan calls "windows to the water" at frequent and convenient locations around the entire site, a restaurant facility fully accessible to the public, and promenades and pedestrian access as required by the Port Master Plan.

Surprisingly, the Staff Report erroneously states that the viewpoints required by the Port "would not provide notably superior access than currently available in the existing parking area," and "the views from the proposed viewpoints would be no better than existing views from the site." (Staff Report, p. 6.) With the REL in place, there was no designated public access on the restaurant sites. One could view only the defunct, deteriorating REL. The removal of the REL superstructure in favor of the floating barge, along with the walkway and public viewing platforms, created for the first time since 1967 sweeping public views of the downtown San Diego skyline, San Diego Bay, Coronado and the Coronado Bridge. (See Exhibit 6.)

Next, the Staff Report points out that the draft parking analysis for the Project indicates that a minimum of 310 spaces are required to meet the demand for parking at the site, but 308 spaces will be provided, 10 of which will be converted to valet/employee parking. (Staff Report, p. 6.) There is nothing in the Port Master Plan which dictates the number of parking spaces required or how the parking requirement may be satisfied. The Staff Report fails to point out that the slight reduction in parking is because the restaurant does not need the additional spots based on Port parking guidelines, and additionally the seat count has reduced from 900 (REL) to 809 (the replacement restaurant). Further, the Staff Report does not point out that the "Draft Parking Management Plan (12/4/07)" provides that, as confirmed by Port staff, some minor re-striping of the existing parking lot will easily accommodate two additional spaces to achieve 310 spaces. (See Exh. 4, p. 21.)

The Staff Report correctly notes that the barge planned for the reconstructed restaurant facilities has been adjusted landward to water area now entirely within the Port's jurisdiction so that it no longer straddles the Port/Commission jurisdiction line. The Staff Report goes on to state, however,

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 18

that no information is provided regarding the impacts this could have on eelgrass and no conditions have been imposed to prevent the spread of *Caulerpa taxifolia*. (Staff Report, p. 6.) While the floating barge has been relocated slightly landward, the Port reviewed the eelgrass mapping in this area and the reoriented barge location avoids impacts to existing eelgrass.

Lastly, attempting to resurrect an issue it lost in *Unite Here Local 30 v. San Diego Unified Port District*, the Unite Here appeal contends that the project is not consistent with the certified Port Master Plan policies that require development to facilitate a tideland environment free of hazards to the health and welfare of the people of California resulting from seismic risk. It contends the Project would be located in a fault zone. The EIR prepared for the hotel, and with which Staff is familiar, included and analyzed a geophysical study for the easterly portion of East Harbor Island. The fault lines were clearly indicated. The court in the CEQA lawsuit found that the EIR adequately described seismic and geologic conditions in this area. (Exh. 5, pp. 5-6.) The Port required this Project to be sited bayward of the easternmost fault line to avoid any seismic risk, and the City of San Diego included this in their review prior to issuing the building permit for the Project.

In short, the Port properly issued its Categorical Determination which properly determined that this Project is an "Excluded Development," and does not require a Coastal Development Permit. Even so, the Project, as approved, is clearly consistent with the Port Master Plan.

**III. THE COMMISSION HAS NO PERMIT JURISDICTION OVER
THE PORTION OF THE FLOATING BARGE THAT WAS
BAYWARD OF THE PIERHEAD LINE**

Apart from the appeals, the Staff Report notes that a portion of the REL was located bayward of the pierhead line on State Tidelands and, therefore, within the area of Commission original jurisdiction. The Unite Here appeal goes further than Staff and argues that removing the floating barge from its mooring and towing it offsite to a shipyard required a CDP. That is wrong.

There is no dispute that the floating barge here straddled both Port (40%) and State jurisdiction (60%). That is common to many vessels anchored or

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 19

moored in San Diego Bay. Here, in 2012, the REL was sold to R.E. Staite Engineering, untied from its mooring and towed across the Bay to the shipyard owned by R. E. Staite Engineering. This is a common practice in San Diego Bay and in all other harbors and marinas. It does not constitute “development” within the meaning of the Coastal Act, and it bears emphasizing that the Commission has never asserted permit jurisdiction in that manner.

Unite Here argues that under Section 30106, which defines “development,” the removal and towing of the REL should be considered as the “grading, removing, dredging, mining or extraction of any materials,” and the “construction, reconstruction, demolition, or alteration of the size of any structure.” Neither category, however, remotely describes a floating vessel – and if it did, then virtually every barge, boat or ship in San Diego Bay (or, for that matter, in any port or marina) would require a CDP before it could be untied from its mooring and towed to a shipyard, repair facility or different berthing location.

The floating barge here was regarded as a floating vessel from its inception. In 1967, the Port determined that the REL did not come under the jurisdiction of the City of San Diego Building Department or the uniform building codes. It was tied to moorings, sold, and then untied and towed to the shipyard facility. This is consistent with the treatment of vessels generally under the Coastal Act and, in the case of San Diego Bay, the mooring of other similar floating vessels, none of which required a CDP separate from a lease agreement with the Port. These include all of the vessels maintained by the Maritime Museum of San Diego on the North Embarcadero in San Diego: The Star of India, Berkeley, Medea, Pilot, USS Dolphin, H.M.S. Surprise, B-39, and Californian. Each vessel has been tied to a mooring. And, just like the REL, each was renovated to provide a visitor-serving use so that it might be used as a floating venue for special events. (*See e.g.*, [www. sdmaritime.org](http://www.sdmaritime.org).)

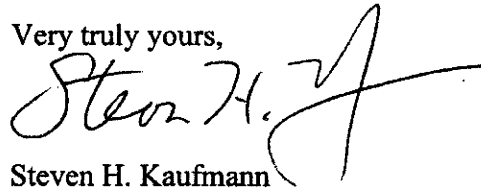
IV. CONCLUSION

Accordingly, for all the foregoing reasons, Sunroad Enterprises respectfully requests that the Commission find that it has no appeal jurisdiction in this instance. Alternatively, Sunroad asks that the Commission find that the appeals filed do not present a substantial issue.

Mary K. Shallenberger, Chair
Honorable Coastal Commissioners
February 27, 2013
Page 20

We look forward to discussing these issues further with you at the March 7, 2013 meeting.

Very truly yours,



Steven H. Kaufmann

Attachments

ccs (with attachments):

Dr. Charles Lester, Executive Director, CCC
Sherilyn Sarb, Deputy Director, CCC
Deborah Lee, District Director, CCC
Diana Lilly, CCC, Coastal Program Analyst, CCC
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James Lough, Esq., Special Counsel, SDUPD
Uri Feldman, Sunroad Enterprises
Tom Story, Sunroad Enterprises
Susan McCabe, McCabe and Company
Anne Blemker, McCabe and Company

San Diego Unified Port District

**CATEGORICAL DETERMINATION
of Proposed Coastal Development**

Project: Reuben E Lee Restaurant Replacement, San Diego, CA
Location: Harbor Island: Planning District 2
Parcel No: 007-017
Planning No: 2009-008-23-154
Applicant: Uri Feldman, Vice President, Sunroad Enterprises
Date: February 24, 2009

Project Description:

The proposed project is located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/-19,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking as illustrated on the attached site plan. A Parking Management Plan has been prepared and is attached as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees will need to be removed. A minimum of 1:1 tree replacement will be planted on site as illustrated on the attached site plan. The applicant will apply for and obtain both an U. S. Army Corps of Engineers (USACE) permit and a San Diego Regional Water Quality Control permit for the proposed project for any proposed over-the-water and/or in-water work. Documentation of the applications and permits shall be submitted to the District for recording prior to beginning construction.

A paved pedestrian walkway is proposed through the site with connections at each end with the existing public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold; (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately west of the proposed replacement restaurant as illustrated on the attached site plan. The applicant shall prepare, submit and obtain approval for a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSMP) for long term operation of the facility prior to beginning construction.

Redevelopment of most of the barge hull and operation of the supporting business and social event venue is dependent upon the applicant obtaining a lease, either directly or through the District, from the State Lands Commission (SLC), obtaining CEQA review documentation, and Coastal Commission processing for a portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting the approved documents to the District for recording prior to beginning construction.

Port Master Plan Reference:

The project site is located in Planning District 2, Harbor Island and is delineated on the Precise Plan Map Figure 9. The Port Master Plan water use designation within the limit of the proposed

project is Commercial Recreation. The proposed project will conform to the certified Port Master Plan because the project proposes the redevelopment of an existing approved use under the current certified plan.

CATEGORICAL DETERMINATION:

The above project is determined to be an Excluded Development under Sections 8. a. (3) & (5), b. (1) & (2) and d. (1), (2), & (7) of the District's Coastal Development Permit Regulations:

8. EXCLUDED DEVELOPMENTS

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, including but not limited to:

- (3) Streets, sidewalks, gutters, bicycle and pedestrian paths, and similar facilities;
- (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 square feet, whichever is less; or additions to existing structures of not more than 10,000 square feet of floor area, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive;

b. **Replacement or Reconstruction:** Replacement or reconstruction of existing structures and facilities where the new structure will be located essentially on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

- (1) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
- (2) Water main, sewer, electrical, gas, or other utility extensions of reasonable length to serve such construction.

d. **Minor Alterations to Land:** Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:

- (1) Land grading, except where located in a waterway, wetland, officially designated scenic area, or in officially mapped areas of severe geologic hazard;
- (2) New gardening or landscaping;
- (7) Minor trenching or back filling where the surface is restored;

CHARLES D. WURSTER
President/Chief Executive Officer

Determination by:
William J. Briggs
Senior Redevelopment Planner

Signature: _____
Date: _____

William J. Briggs
Feb 24 2009

cc: I. Mc Cormack, Executive Office
J. Helmer, Land Use Planning

E. Maher, Environmental Services A. Gordon, Real Estate
R. Arnezquita, Real Estate

SAN DIEGO UNIFIED PORT DISTRICT

INTER-STAFF COMMUNICATION

Date: February 24, 2009

To: Anthony Gordon, Asset Manager, Real Estate Division

From: William J. Briggs, Senior Redevelopment Planner, Land Use Planning Department

Subject: CEQA DETERMINATION – Reuben E. Lee Restaurant Replacement, San Diego, CA

Staff has reviewed the proposed project located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/- 19,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking as illustrated on the attached site plan. A Parking Management Plan has been prepared and is attached as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees will need to be removed. A minimum of 1:1 tree replacement will be planted on site as illustrated on the attached site plan.

A paved eight foot minimum width pedestrian walkway is proposed through the site with connections at each end with the public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold; (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately west of the proposed replacement restaurant as illustrated on the attached site plan. The applicant shall prepare and submit for approval a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSWP) for long term operation of the facility prior to beginning construction on the project. The applicant will apply for and obtain both an U. S. Army Corps of Engineers permit and a San Diego Regional Water Quality Control permit for the proposed project.

Redevelopment of most of the barge hull and operation of the supporting business and social event venue is dependent upon the applicant obtaining a lease, either directly or through the District, from the State Lands Commission, obtaining CEQA review documentation, and Coastal Commission processing for that portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting those instruments of service to the District for recording.

Based upon the above description, the project is determined to be Categorical Exempt pursuant to CEQA Guidelines Sections 15301 – Class I, 15302 - Class II, 15304 - Class IV, and Resolution 97-191:

Categorical Exemptions (Article 19, SG §§ 15300 - 15329)

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:

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(2) 10,000 square feet if:

- (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
- (B) The area in which the project is located is not environmentally sensitive.

b. Replacement or Reconstruction (SG § 15302) (Class 2): includes replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site and will have substantially the same purpose and capacity as the structure being replaced. This exemption includes, but is not limited to:

(2) Replacement or reconstruction of marine terminal facilities; and marine-oriented commercial, industrial, and public and commercial recreational facilities, including buildings, piers, piles, wharves, marine ways; railroads; airport facilities, runways, taxiways, aprons, and ancillary structures to those facilities; electrical and mechanical systems and equipment; where the new structure will be on essentially the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

d. Minor Alterations to Land (SG § 15304) (Class 4): Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including, but not limited to:

- (4) Grading of land with a slope of less than 10%, except in waterways, wetlands, officially designated scenic areas or officially mapped areas of severe geologic hazard.
- (5) New gardening or landscaping.
- (7) Minor trenching and backfilling where the surface is restored.

File: 83356 - X - 792

880 Harbor Island Drive Restaurant (Reuben E. Lee Replacement)

Attachments to the CEQA and Coastal Categorical Determinations

1. Environmental Assessment – May 19, 2008
2. Aerial Photo w/Lease lines
3. Vicinity Map w/fault lines, proposed replacement restaurant on land side – 04/01/08
4. Proposed Restaurant Illustrations/Details
 - Site Plan – 04/01/08
 - Sewer Relocation – Option 1
 - Parking Plan - 06/10/08
 - Parking Management Plan – Draft 12/04/2007 (Final due at option signing)
 - Floor Plan – 04/01/08
 - Seating Plan – 04/15/08
 - West Elevation – 04/01/08
 - Cross Section – 04/01/08
 - Public Access
 - 880 Harbor *Design – Public Access*
 - 06/10/08
 - Feb 10, 2009
 - Landscape Plan (Tree Replacement) 06/10/08
5. Lease Plat – July 25, 2007
6. U S Army Corps of Engineers Application & Permit [To Be Submitted (TBS)]
7. San Diego Regional Water Quality Control Application & Permit [TBS]
8. Storm Water Pollution Prevention Plan (SWPPP) [TBS]
9. Standard Urban Stormwater Mitigation Plan (SUSMP) [TBS]
10. State Lands Commission (SLC) lease for water area outside of PMP [TBS]
11. SLC lease area CEQA review/determination documentation [TBS]
12. SLC lease area California Coastal Commission consistency/determination [TBS]

WORKING PROJECT TITLE: _____

APPLICANT'S REFERENCE NUMBER (if applicable): _____

ENVIRONMENTAL ASSESSMENT
(To be completed by Applicant)

Applicant	Preparer of EA
Name: Uri Feldman	Name: Thomas Story
Title: Vice President	Title: Vice President
Organization: Sunroad Enterprises	Organization: Sunroad Enterprises
Address: 4445 Eastgate Mall Suite 400	Address: 4445 Eastgate Mall Suite 400
State, Zip Code: San Diego, CA 92121	State, Zip Code: San Diego, CA 92121
Telephone: (858) 362-8500	Telephone: (858) 362-8500

I. PROJECT DESCRIPTION

- A. Describe the type of development proposed, including all phases of project construction and operation, in a self-explanatory and comprehensive fashion. Discuss the need for the project and include site size, square footage, building footprint, number of floors, on-site parking, employment, phased development, and associated projects. If the project involves a variance, indicate the reason and any related information.

The proposed project is located at the eastern end of Harbor Island, east of the Harbor Island Drive cul-de-sac. The proposed project includes the demolition and removal of all four decks (+/-20,000 sf) of the existing 50 year old replica sternwheeler, known as the Reuben E. Lee restaurant. The supporting barge hull, mooring piles, and breakwater will be retained in the existing location with refurbished access ramps, refurbished deck, proposed galley, restrooms, covered and open food and beverage service areas of approximately 9,000 sf to accommodate business and social events. A proposed single story replacement dining restaurant, lounge and banquet facility of approximately 16,500 sf will be located on the adjacent landside, east of the known earthquake fault zones. The parking lot will be reconfigured for 306 parking spaces, 10 of which will be tandem for employee or valet parking. A Parking Management Plan has been prepared as part of the project. As part of the parking lot reconfiguration and landside restaurant construction, as many as 10 trees may need to be removed. A minimum of 1:1 tree replacement will be planted on site.

A paved pedestrian walkway is proposed through the site with connections at each end with the public sidewalks along Harbor Island Drive. Three public overlook viewing platforms will be located along the walkway within the leasehold: (1) west of the Island Prime restaurant, (2) between the two restaurants, and (3) immediately northwest of the proposed replacement restaurant. The applicant shall prepare and submit for approval a (1) Storm Water Pollution Prevention Plan (SWPPP) for site construction activities and a (2) Standard Urban Stormwater Mitigation Plan (SUSWP) for long term operation of the facility prior to beginning construction on the project. The applicant will apply for and obtain both an U. S. Army Corps of Engineers permit and a San Diego Regional Water Quality Control permit for the proposed project if required.

Redevelopment of most of the barge hull and operation of the supporting business and social event

venue is dependent upon the applicant obtaining a lease, either directly or through the District. Applicant will secure all necessary approvals from the State Lands Commission including CEQA review documentation, and Coastal Commission processing for that portion of the facility outside of the Port District's Port Master Plan jurisdiction and submitting those instruments of service to the District for recording.

- B. Describe project appearance, any proposed signs, and how the design of the project would be coordinated with the surroundings.

The design of the proposed project would be incorporated into the existing layout of the land. Harbor Island is a recreational and tourist area with hotels, restaurants, and marina facilities. The lighting, and signage associated with the proposed project will be designed to work within the natural setting of the project site. The remodeled venue will result in a reduced bulk and scale as well as enhanced public access and viewing opportunities.

- C. Describe how the public would be affected by the project.

The proposed project would reinvigorate a deteriorated facility which will provide services to residents of San Diego as well as tourists. "Dock and dine" options will be available through the adjacent Sunroad Resort Marina. Previously the end of the island was greatly enhanced with the creation of Island Prime, which has been one of the Port's greatest restaurant successes, and Sunroad Resort Marina, which is one of the Port's top marinas. The venue will have both restaurant as well as banquet space, providing additional opportunities for the public to utilize the venue. Public access, pedestrian promenades and traffic circulation will be enhanced. The existing views from the leasehold will be improved with the elimination of the four story superstructure of the Ruben E. Lee. ADA access will be improved to current standards and requirements.

- D. Describe how the project could attract more people to the area or enable additional people to use the area, and what additional service businesses would be required.

The proposed project would attract additional residents and tourists to Harbor Island due to its aesthetic appeal, outstanding location and the reputation it will earn for excellent service and the quality of the food served. The banquet and event space is projected to be highly desired due to it's unique views of downtown San Diego, the Bay, the Coronado Bay Bridge and Coronado. No additional service businesses would be required.

II. ENVIRONMENTAL SETTING

- A. Describe the existing project site and surrounding area including: the type and intensity of land/water use; structures, including height; landscaping and naturally occurring land plants and animals, and marine life; land and water traffic patterns, including peak traffic and congestion; and any cultural, historical, or scenic aspects.

The proposed project would be located on Harbor Island, at the eastern end of Harbor Island Drive. Harbor Island is a man-made peninsula that comes out from the shore line into the San Diego Bay. This street provides shelter to the existing basin located between the wharf and the island.

At the east end of Harbor Island Drive there is a traffic circle, which routes vehicular traffic back around to the west. East of the traffic circle is a 145,979-square-foot parcel of land, which consists of a parking lot and the Island Prime Restaurant. Just east of the parking lot, within the San Diego Bay, is a vessel named the Ruben E. Lee. This vessel is anchored and attached to Harbor Island via utility hook ups and access ramps, and is enclosed by a break water. This vessel served as a four story restaurant, prior to its temporary closure for the mentioned remodeling. Surrounding the vessel is an existing breakwater, which will be maintained.

The Reuben E. Lee's deck demolition and barge hull deck remodeling is proposed in the vessel's existing water lease location. The work will be performed under the authorization of an Army Corps of Engineers permit and a San Diego Regional Water Quality Control Board permit. If required by either of the permits, the work will be performed in an approved boatyard, otherwise demolition and construction activities will be performed with best Management Practices (BMPs) to prevent contaminants entering San Diego Bay. If remodeling off-site is required the barge will be brought back and repositioned in the exact existing location. Total time for demolition and remodeling is expected to be less than one year. Salvage for reuse of the existing finish work and structural materials will be pursued to the maximum extent possible as determined by interests and needs identified by commercial or not-for-profit organizations. Materials not reused will be segregated and processed for recycling.

Construction of the project will incorporate efficiencies in the ordering of materials. On-site segregation improves the percentage of materials that can be recycled, and the value of the materials. The site will be designed and construction staff will be educated to maximize on-site separation of materials. Construction efficiencies will include not over-ordering, on-site re-use, and coordinated measuring before cutting materials so that cut ends are usable for other parts of the project. Any excess unused materials will be recycled or donated for reuse.

III. ENVIRONMENTAL ANALYSIS

- A. Compare the existing project area, improvements, and activities with what would exist after implementation of the proposed project. Data concerning the present condition should be entered before the slash (/); those after the project is completed should be given after the slash (/).

(1) Existing/proposed land area: 145,979 / 145,979 sq. ft.

water area: 91,536 / 91,536 sq. ft.

(2) Existing/proposed land area for:

structures: 10,612 / 27,112 sq. ft.

landscape: 8,200 / 9,600 sq. ft.

pavement: 134,800 / 122,530 sq. ft.

undeveloped: 16,950 / 14,800 sq. ft.

(3) Number of existing/proposed floors of construction:

4 / 1

(4) Principle height of existing/proposed structures:

68 / 28 ft.

(5) For land development, indicate extent of grading:

excavation: 1,100 cu. yards., 10,000 sq. ft.

fill: 1,100 cu. yards., 10,000 sq. ft.

*As measured to Mean High Tide Line. Square footage listed in IIA. is based on property lines.

Describe method, source of fill, and location of spoil disposal:

Cut and fill will be balanced on-site

- (6) For water development, indicate extent of dredging and fill:

Dredging: _____ 0 cu. yards., _____ 0 sq. ft.
fill: _____ 0 cu. yards., _____ 0 sq. ft.

Describe method and location of spoil disposal:

N.A.

- (7) Describe existing/proposed method of solid waste disposal and amounts involved.

An enclosure with a dumpster currently serves the site. Waste services are provided 2 to 3 time per week.

- (8) Describe existing/proposed drainage system improvements and what materials other than domestic wastes, are/would be discharged into the sewer system:

The remodeling of the Ruben E Lee is expected to be able to utilize the existing drainage systems and hookups, which connect directly to the existing sewer system. Additional storm water detention facilities and BMP's will be used to satisfy the current RWOCB storm water management standards.

- (9) Describe the existing/proposed fire protection needs of the site and proposed project, and the nature and location of existing/proposed facilities:

Current fire protection at the site consists of fire hydrants. The remodel will include all necessary fire and safety improvements to insure compliance with all applicable codes..

- (10) Describe existing/proposed public access to San Diego Bay through the project site, including any controlled access:

Visual access to the bay is currently available to the public via Harbor Island Drive and the sidewalk immediately adjacent to the bay side of Harbor Island Drive. The sidewalk also provides public pedestrian access to the hotels, restaurants and businesses on Harbor Island. The remodeling of the Ruben E. Lee will also include the extension of the sidewalk onto the leasehold, to access three new public view areas as well as the existing Island Prime restaurant and the remodeled Ruben E. Lee. The public view areas will be located to the west side of Island Prime, between the two restaurants and immediately north of the remodeled restaurant.

- (11) Existing/proposed slips, _____ 0 / 0
piers: _____
docks or marine ways: _____ 4 / 4
- (12) Existing/projected employees per day: 80 / 260

(13) Existing/ projected customers or visitors per day: 500 / 1700

(14) Explain the projections for (12) and (13):

Currently the Island Prime Restaurant operates with approximately 80 employees and has about 500 visitors per day. It is expected that the remodeled Ruben E Lee will attract about 1.5 times as many visitors and operate with slightly more employees.

(15) Existing/projected daily motor vehicle round trips associated with the site and the proposed project:

1,020 ADT / 3,100 ADT

(16) Existing/projected mileage for daily motor vehicle round trips associated with the site and the proposed project:

4.7 / 4.7

(17) Existing/projected total round trip daily motor vehicle miles traveled associated with site and the proposed project:

4,794 / 14,570

(18) Explain the projections for (15), (16) and (17):

Numbers extrapolated by using the results of the Parking and Traffic Study prepared by LLG on February 13, 2007, Page 15.

(19) Existing/proposed parking spaces: On Site: 308 / 306

Other if used by project: /

Specify location(s):

If necessary, overflow capacity exists at the adjacent Sunroad Resort Marina

(20) Explain the parking space requirements and compare with applicable standards:

Current parking standards for Restaurant Use are one space per 9.3 ksf, as per the Port's parking guidelines (without counting allowances for adjustment factors, including proximity to airport, shared parking potential, and dock and dine facilities). This yields a requirement of 294 to 310 spaces before adjustments. The parking lot will be re-stripped to accommodate a minimum of 306 vehicles.

(21) Existing/ projected water consumption: 3,000 / 7,500 gal./day

(22) Existing/projected electrical power consumption: 9,000 / 22,500 kwhr./month

(23) Existing/projected gas/oil consumption: 30-60 / 75-150 therms/day or gal/day

B. Indicate whether or not the following may result from or may apply to the proposed project or its effects.

		<u>YES</u>	<u>NO</u>
(1)	Substantial change in the existing land/water use of the site.		X
(2)	Incompatibility with approved Port Master Plan.		X
(3)	Part of a larger project or series of projects.		X
(4)	Involve the demolition or removal of existing improvements, including landscaping.	X	
(5)	Substantial change in the existing features of San Diego Bay, tidelands, or beaches.		X
(6)	Significant increase in demands on parking or transportation facilities.		X
(7)	Substantial increase in demand for municipal services (police, fire, etc.)		X
(8)	Significant increase in amounts of solid waste or litter.		X
(9)	Involvement with potentially hazardous materials, such as toxic substances, flammables, or explosives.		X
(10)	Substantial increase in fossil fuel consumption (electricity, oil, natural gas, etc.) or in water consumption.		X
(11)	Interference with scenic views or vistas from existing residential areas or from adjacent uplands.		X
(12)	Decreased access to public facilities or recreational resources.		X
(13)	Substantial change in the employment base of the community.		X
(14)	Substantial increase in dust, ash, smoke, fumes, or odors in project vicinity.		X
(15)	Significant change in San Diego Bay water quality or alteration of existing drainage patterns into San Diego Bay.		X
(16)	Increase the possibility of erosion of tidelands or siltation of San Diego Bay.		X
(17)	Substantial increase in existing noise or vibration levels in the vicinity.		X
(18)	Require any variance from existing environmental standards (air, water, noise, etc.).		X
(19)	Involve soil stability or geological hazards.		X
(20)	Substantial decrease in the habitat of any land plants or animals, or marine life.		X

IV. ENVIRONMENTAL EFFECTS

Describe environmental effects, which could result from the project:

A. Physiographic changes to San Diego Bay, tidelands, or beaches:

The remodel will retain the hull of the Ruben E Lee and stay within the existing width and length dimensions of the hull. The existing 68' tall structure will be replaced with a one story 875 square foot galley and restrooms on the hull, making the water based facilities much reduced in bulk and scale. The balance of the project's square footage will be shifted to the immediately adjacent land area where the restaurant, bar, and meeting room will be located within a single story structure. Minimal grading within the structure's footprint will be required to accommodate the existing grade

difference between the south and north sides of East Harbor Island.

- B. Increased demands on urban support systems, including: parking, streets, sewers, utilities, and transportation:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling.

- C. Increased energy consumption due to operation of the project:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling. Energy star appliances where available in commercial grade will be used where practicable.

- D. Changes in appearance of the project site and views from/to the site which could be affected by the project:

Replacing a 68 foot tall boat with a 28 foot tall restaurant will reduce the project's bulk and scale. The addition of sidewalks and viewing platforms will further enhance view opportunities from the site. Views of the site will be also enhanced as the low profile structure and landscaping will be more in scale with the other existing buildings. The height of the refurbished project will be much lower than the existing Ruben E. Lee. The visual effect of the proposed remodeled project will be much improved, with an emphasis on open architecture that takes advantage of San Diego's mild climate and the site's unique views of the water and downtown.

- E. Changes in air quality from both stationary and mobile sources, including any dust, odors, fumes, chemical vapors, water sprays, etc.:

No changes expected. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling. There may be some temporary air quality impacts during the construction phase of the proposed project. Fugitive dust, fumes from construction equipment, and water sprays are anticipated to occur. These emissions would be controlled through standard emission control practices and Best Management Practices as required by state and local laws and ordinances. No impacts would occur from the operation of the proposed project.

- F. Changes in the bay water quality, including those, which could result from the removal and/or construction of structures in the water:

During construction Best Management Practices will be implemented to insure that any contamination is contained. Work has already begun to identify and secure the needed permits from the appropriate resource agencies and entities.

- G. Changes in the sound environment, which could occur on or off-site, both from construction and operational noise generated by the project:

Temporary impacts are anticipated to occur due to construction activities. The hours of construction activities will be limited to ensure that noise levels would not significantly impact sensitive receptors within the project vicinity. No operational noise impacts are anticipated to occur. The use is the same use that has existed for the last 47 or so years, with the exception of the temporary closure of the properties for remodeling.

- H. Describe any change to plant or animal life, including landscaping:

No changes are expected to occur to any aquatic species. Most existing mature trees will be incorporated into the design of the proposed project. Any tree removal and replacement would conform to BPC Policy 454, Tidelands Forestry Management Policy. All applicable guidelines and

requirements related to tree removal and replacement will be met. Approximately 10 trees, eucalyptus and pine, may be removed to accommodate the remodel. All trees removed will be replaced with an equal or greater number of broad canopy trees, suitable to the site and climate. Additional landscaping will be integrated into the architectural design to complement the architecture, and views of the site.

V. MITIGATING MEASURES

- A. Describe all proposed mitigating measures, or those already incorporated in the project to mitigate potentially significant environmental effects, if any:

No impacts to least tern nesting sites will occur as a result of project implementation. The Port District's mapping and identification of Least Tern nesting sites does not include any part of Harbor Island. The Port District's published (web site) information states that "Nesting sites on Port tidelands include the D Street Fill, Chula Vista Wildlife Reserve, and the South Bay Salt Works".

There are several trees located throughout the project site. The proposed project shall be designed around the existing trees (to the extent feasible). All applicable guidelines and requirements related to tree removal and replacement shall be met.

The proposed project shall adhere to all storm water requirements and follow the Standard Urban Storm Water Mitigation Plan (SUSMP) requirements.

Any other mitigation measures identified in studies will be implemented as required.

- B. Specify how and when the mitigating measures will be carried out:

During the construction phase of the proposed project current best management practices (BMPs) shall be implemented, to avoid water quality impacts.

- C. Explain the extent and effectiveness of mitigation expected and how this was determined:

Implementation of BMPs would ensure that proper activities and actions would occur to prevent water and air quality impacts.

- D. Describe other mitigation measures considered and indicate why they were discarded:

No other mitigation measures were considered.

VI. BACKGROUND INFORMATION

A. Pre-Application Project Processing

- (1) Indicate if the conceptual plans have been presented to the Board of Port Commissioners or Port Staff. If so, describe in what form, and give date and result:

A formal Project Proposal was presented to Annette Dahl on April 2, 2007, including proposed development plans, cost and revenue projections, and a request for lease extension per Board Policy 355. Conceptual Plans and a Project Proposal was presented on April 12, 2007 at a meeting with Paul Fanfera and Commissioner Vilaplana. Further requested information was provided to Annette Dahl on April 27, 2007 regarding potential construction methods. A meeting was held with Port Real Estate and Planning Staff, including John Helmer, Candice Magnus, Annette Dahl, and Tom Marshall on May 14, 2007, regarding the potential construction alternatives. At Port Planning and Real Estate Staff's request, a tour of the property was organized on May 22, 2007. Further requested information was delivered to Annette Dahl

regarding site plans, renderings, and conceptual floor plans on June 5, 2007. Further descriptions, an EA and a Lessee's Questionnaire was submitted in a package to Annette Dahl on June 20, 2007.

-
- (2) Indicate if project plans have been submitted to Port Staff. If so, describe in what form, to whom submitted, give date and result:

Project submittals were delivered to Annette Dahl on April 2, 2007, April 27, 2007, and June 5, 2007. We are awaiting a proposal from Port Real Estate Staff on lease terms

-
- (3) List all environmental consultations and processing contacts with other agencies, firms or individuals in connection with this project. Give agency, name, phone, date, subject and result of consultation:

The Port presented the project at the regular meeting with the resource agencies on June 12, 2007. All involved agencies were present, including ACE, RWQCB, F&W, F&G, Fisheries, NOAA. Sunroad answered questions on the project and was given guidance that the applicable permit would most likely be a Section 10 from the Army Corps of Engineers.

-
- (4) Last project plans or working drawings approved by the Port at this site:

Title _____

Date: _____

Port Engineering File Number: _____

B. Permit Background

- (1) List all other public agencies which have approval or permit authority related to this project and indicate type required, e.g., City building permits, Coastal permit, WQCB, APCD, Army Corps, EPA, FAA, Coast Guard, etc.:

Army Corps of Engineers, Section 10
Coast Guard
City Permits

There is a potential need for approvals through either the State Lands Commission and/or the Coastal Commission. The Port, as lead agency, will guide the Tenant as to these requirements.

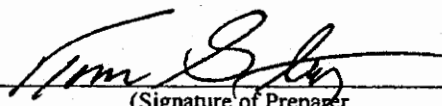
-
- (2) Pending permits or variances at this site:

Indicate any permits or variances applied for. Agency, type, file number, date, phone number, and name of person who is processing the permit application or variance request must be included:

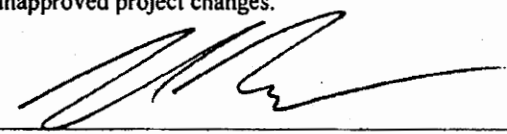
None.

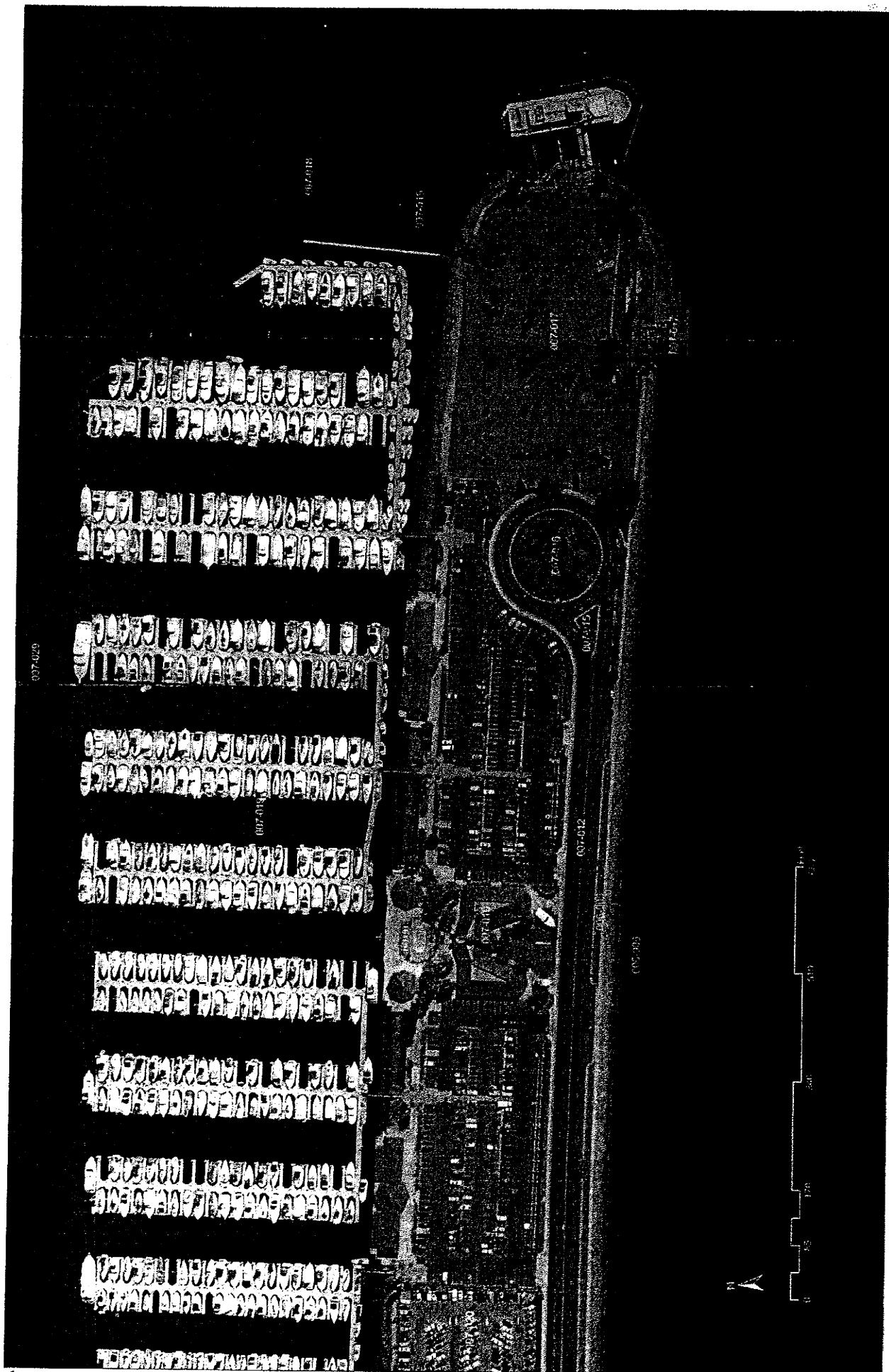
VII. CERTIFICATION

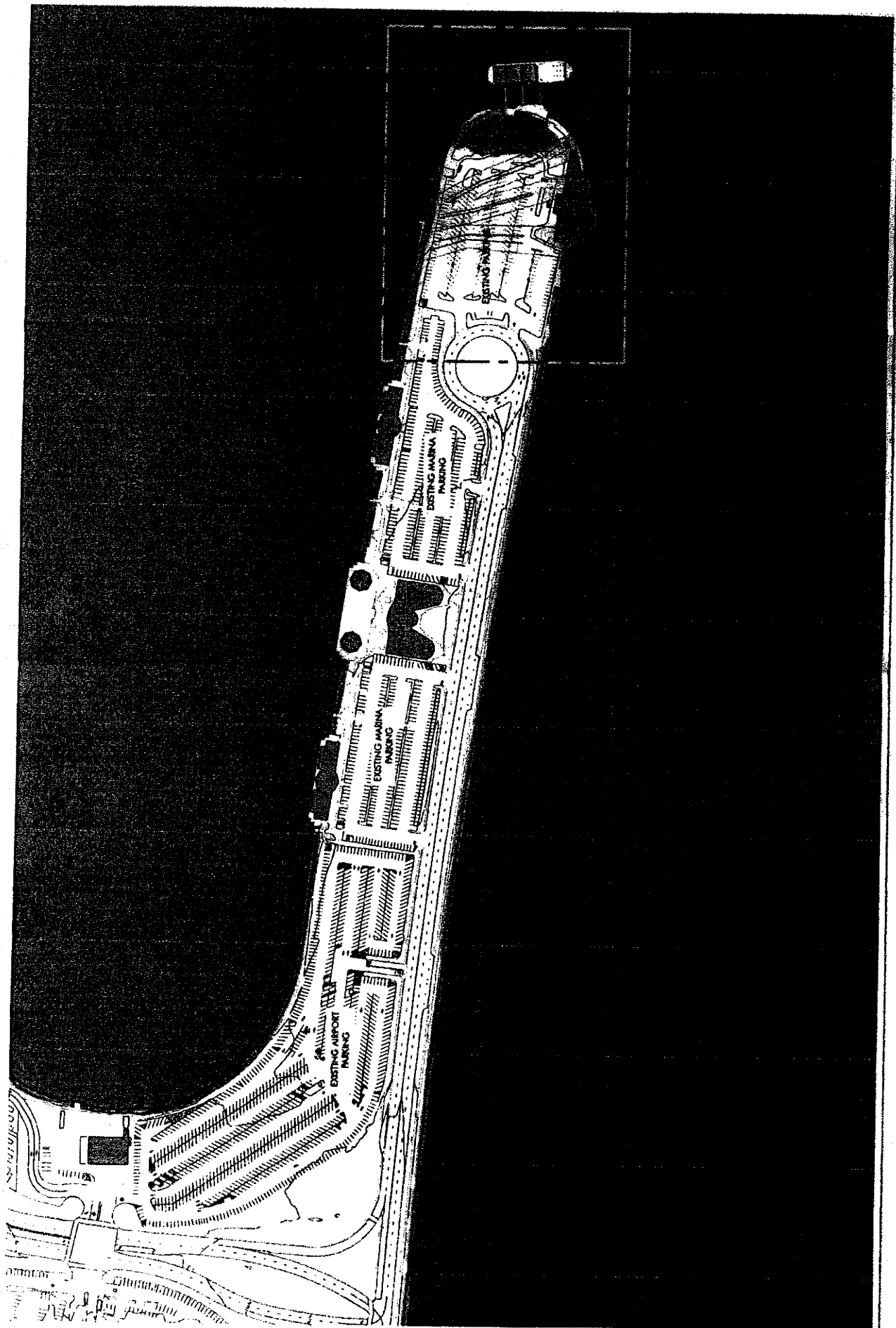
- A. **Certification:** This Environmental Assessment was prepared by me for/as the applicant and I hereby certify that the statements furnished in the above and in the attached exhibits disclose relevant information to determine environmentally significant effects, as required for the San Diego Unified Port District Initial Study. It has been prepared to the best of my ability, and the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

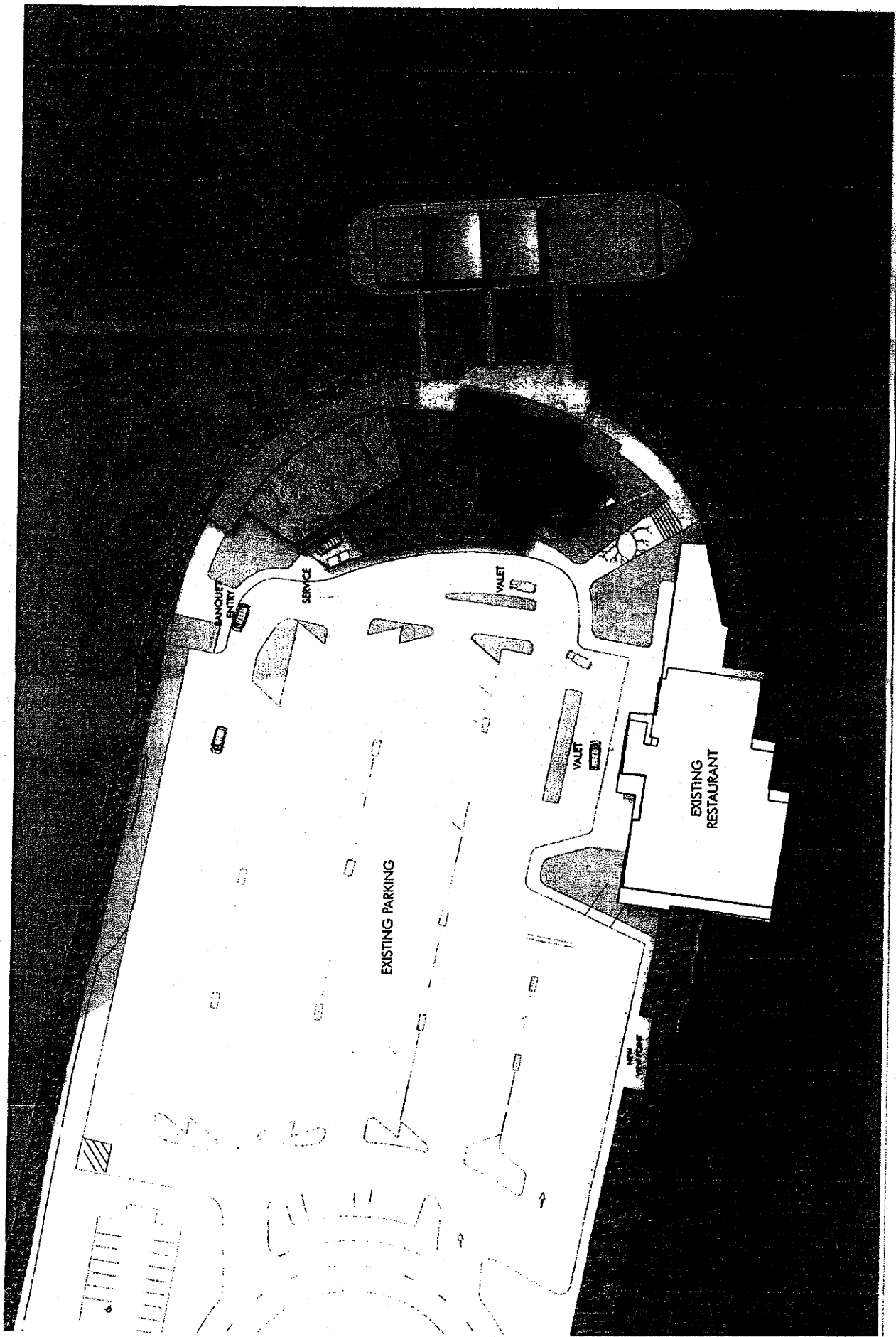
	May 19, 2008
(Signature of Preparer)	(Date)
Tom Story	Vice President
(Print Name)	(Title)
Sunroad Enterprises	858-362-8500
(Organization)	(Telephone)
4445 Eastgate Mall Suite 400	
(Address)	
San Diego, CA 92121	
(City, State, Zip Code)	

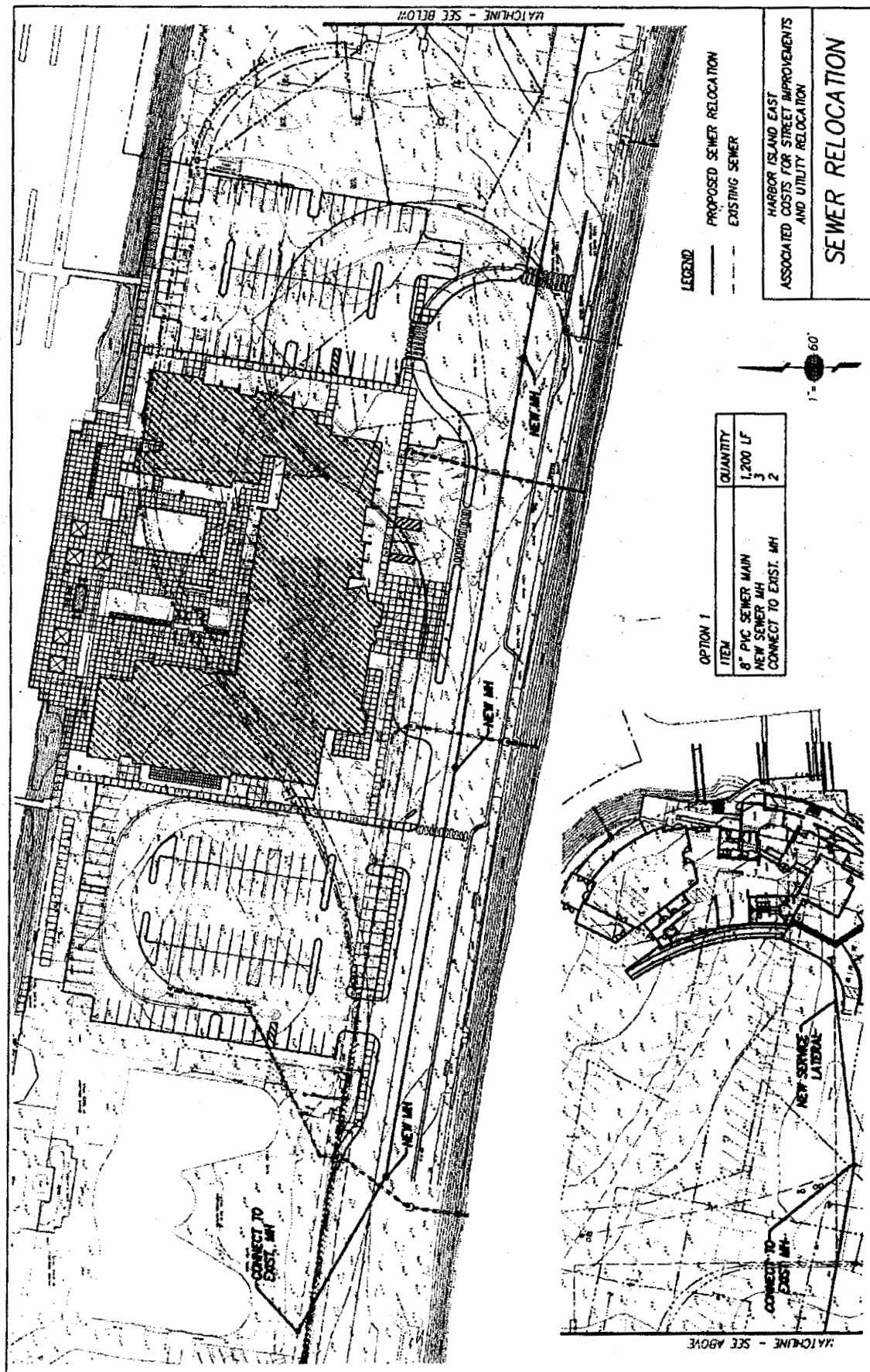
- B. **Applicant Certification:** I hereby certify that the project-related facts, statement, and information furnished above and in the attached exhibits, and in any other form to the preparer of this Environmental Assessment or to the San Diego Unified Port District are true and correct to the best of my knowledge and belief. I am duly authorized to and do hereby accept and commit the applicant to the implementation of all mitigation measures listed in this Environmental Assessment and of the project as herein described. I understand that non-compliance with any of the mitigation measures, or changes in the project as herein described shall be grounds to invalidate any or all project approvals or permits regardless of the stage of project development or operation. I will notify the San Diego Unified Port District immediately in writing of any changes in the proposed project, and I acknowledge that project changes may require additional environmental evaluation. I shall hold the San Diego Unified Port District harmless of any cost or damages resulting from consequences of non-compliance or unapproved project changes.

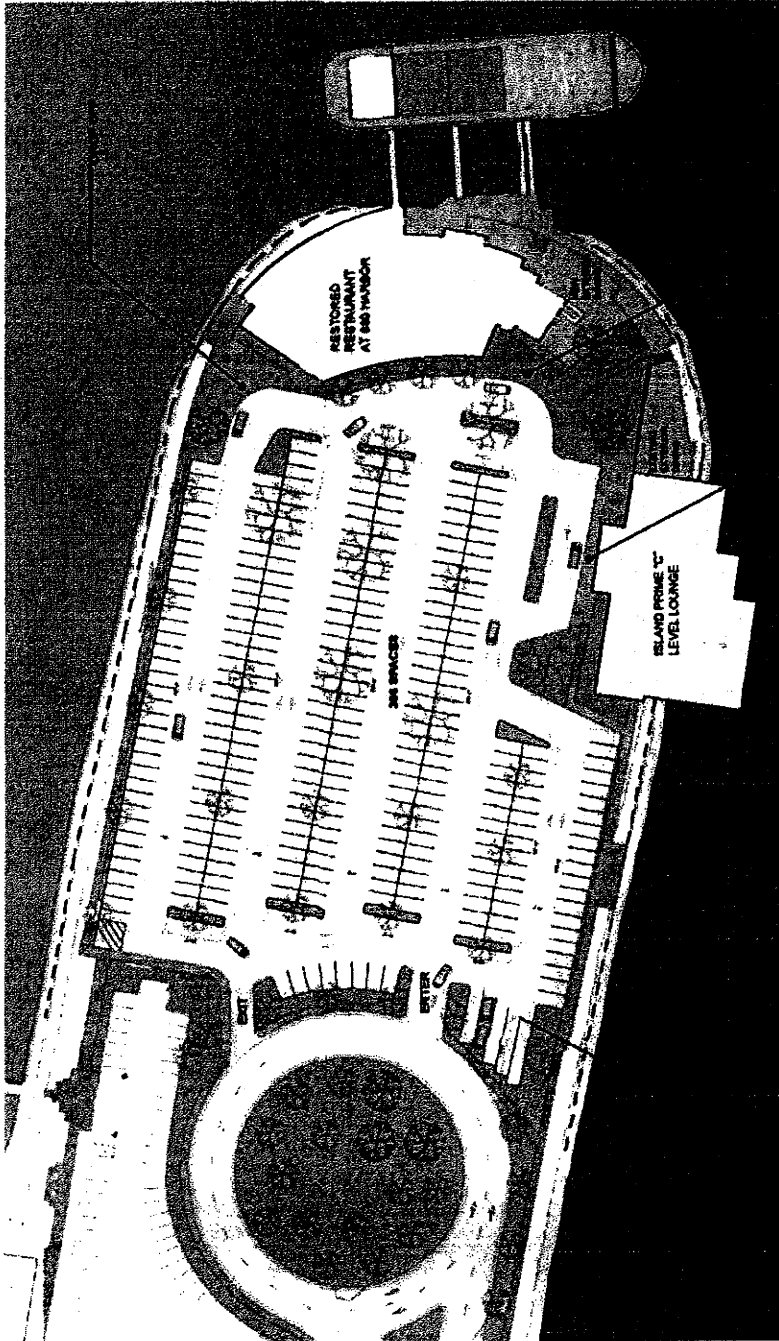
	May 19, 2008
(Signature of Applicant)	(Date)
Uri Feldman	Vice President
(Print Name)	(Title)
Sunroad Enterprises	(858) 362 -8500
(Organization)	(Telephone)
4445 Eastgate Mall #400	
(Address)	
San Diego, CA 92121	
(City, State, Zip Code)	











Ruben E. Lee
Draft Parking Management Plan
12/4/2007

As documented in Sunroad's application to remodel the Ruben E. Lee, the existing parking lot at the east end of Harbor Island currently provides 308 parking spaces to service the Island Prime (IP) restaurant and the proposed remodel of the Ruben E. Lee (REL).

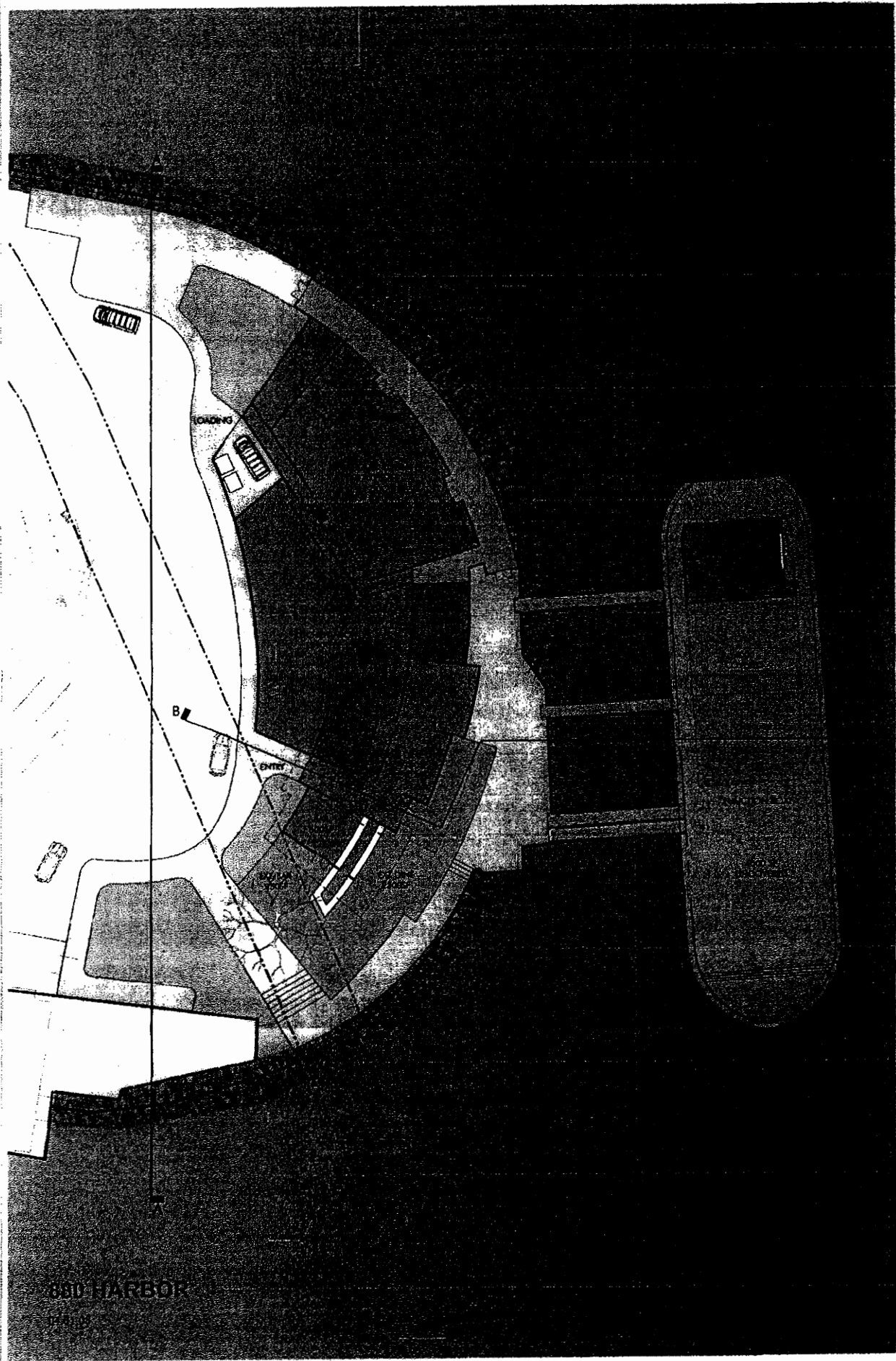
Using 1) the Ports existing parking ratio of .25 spaces/seat, 2) the maximum possible seat count for each restaurant, 340 for IP (IP currently has 322 seats) and 900 for REL, and 3) no adjustments (e.g. proximity to the airport, shared parking, etc.), 310 ^{spaces} seats are required. As has been previously confirmed by Port staff, some minor re-striping of the existing parking lot will easily accommodate 2 additional spaces to achieve the maximum requirement of 310 spaces.

In the infrequent circumstance when parking demand might exceed the proposed capacity of 310 spaces, Sunroad will implement one or more of the following provisions to accommodate overflow parking:

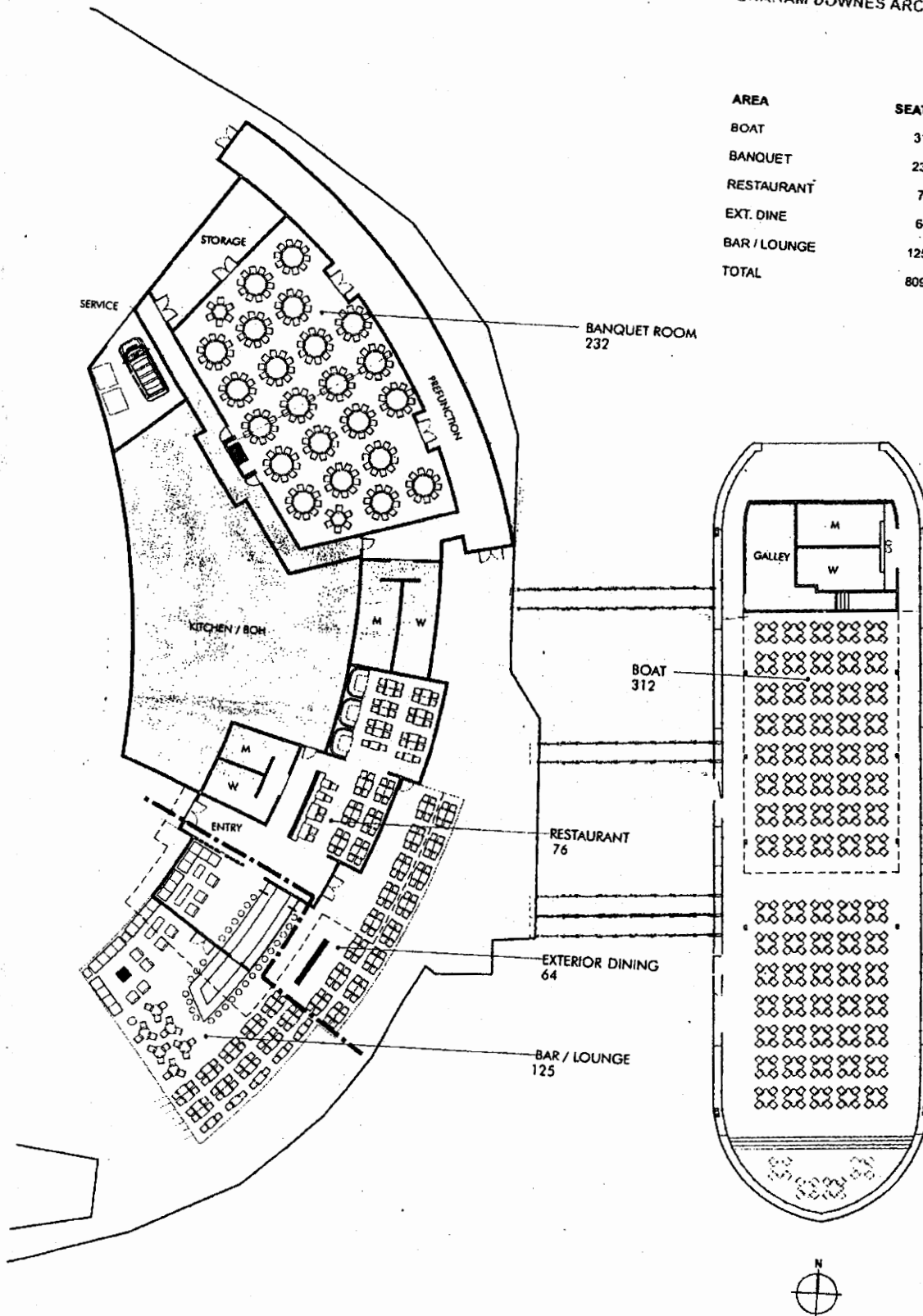
- 1) Valet Parking Service - Valet parking by either or both of the restaurants can substantially increase the number of cars that can be accommodated within the limits of the existing parking lot through compact parking the cars.
- 2) Shared Employee Parking - Restaurants employees will be directed to park in portions of the adjacent, Sunroad Marina parking lot. Since the existing parking ratio at the marina is one space per slip, the marina parking lot is never fully occupied by tenants of the marina. In addition, the peak demand for marina dependent parking is midday on weekends while it is expected that peak parking demand for the restaurants will be weekend evenings.
- 3) Shared Parking - For special events that are projected to generate exceptional demand, portions of the Sunroad Marina parking lot may be reserved for event guests and/or patrons of the restaurants.
- 4) Reserved Off-site Parking - Consistent with the current practice of other Port tenants off-site parking may occasionally be reserved. Depending on the season, weather conditions, and nature of the event, shuttle service may also be employed in conjunction with reserved off-site parking.
- 5) Controlled Access - For special events that are projected to generate exceptional demand, staff may be deployed to monitor and control access to the restaurant's parking lot.

} Can be
deployed
regular
basis

DRAFT



AREA	SEATS
BOAT	312
BANQUET	232
RESTAURANT	76
EXT. DINE	64
BAR / LOUNGE	125
TOTAL	809

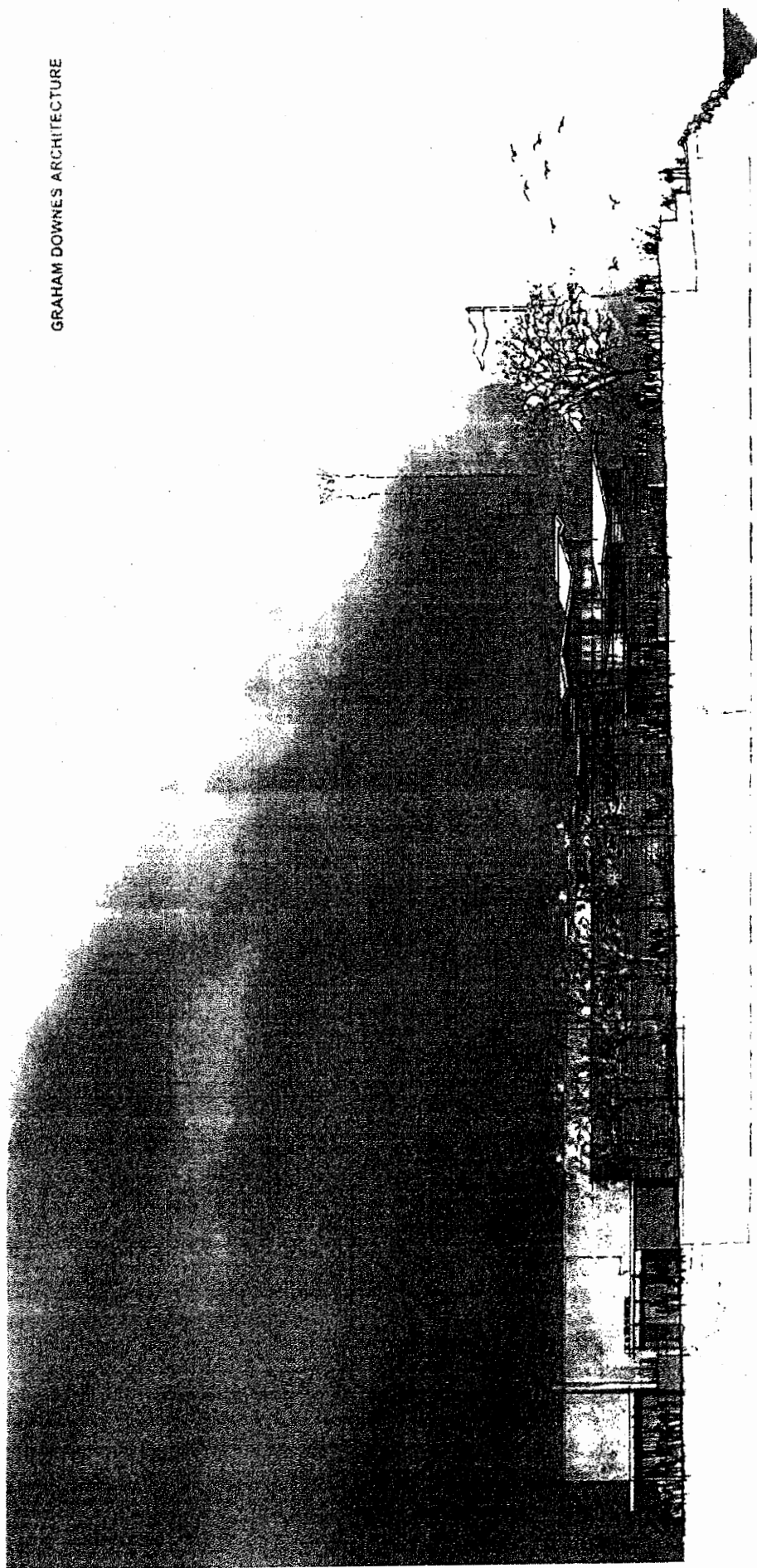


880 HARBOR

04.15.08

SEATING PLAN

GRAHAM DOWNES ARCHITECTURE



WEST ELEVATION

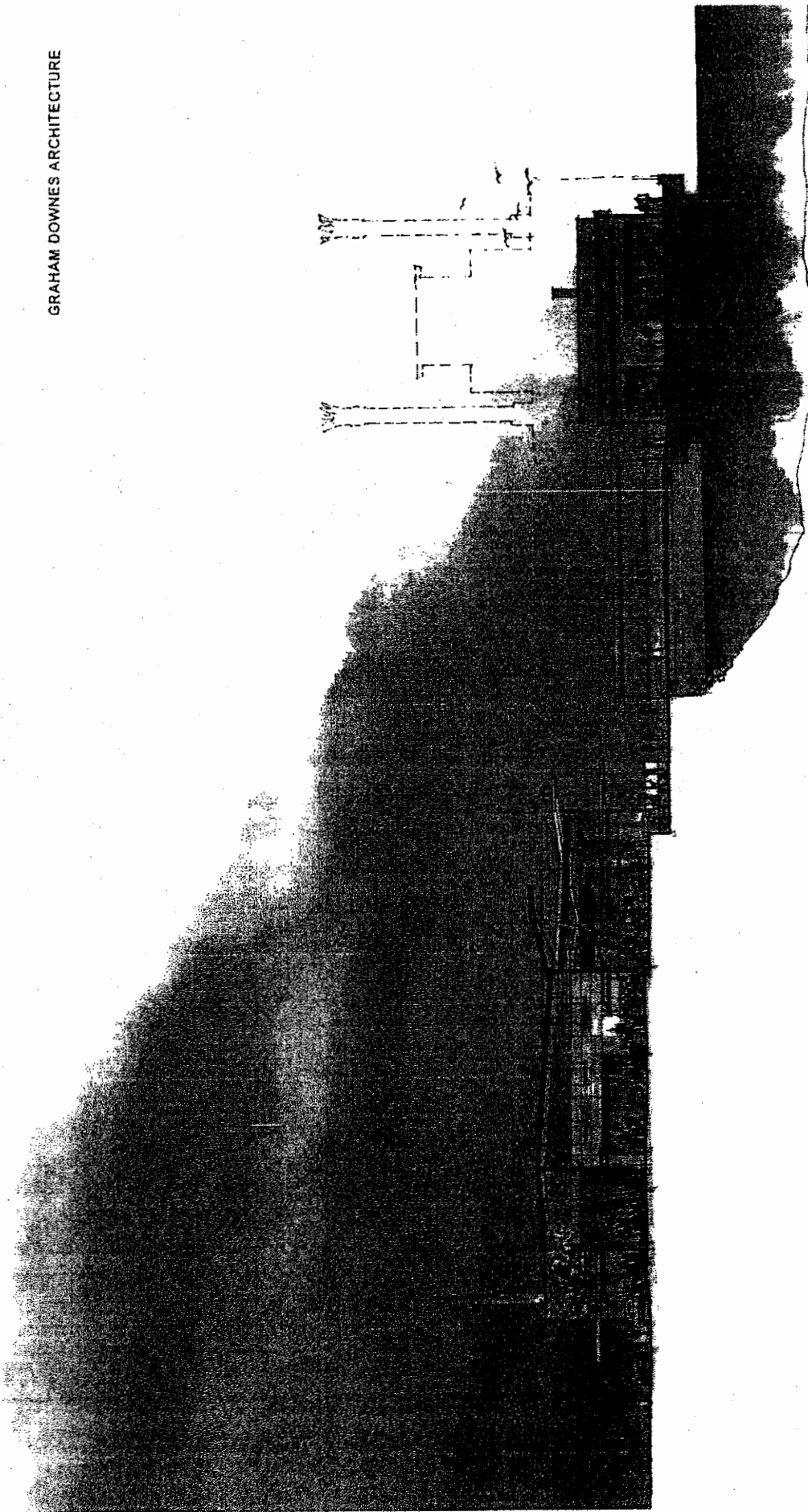
880 HARBOR

04.01.08

CROSS SECTION

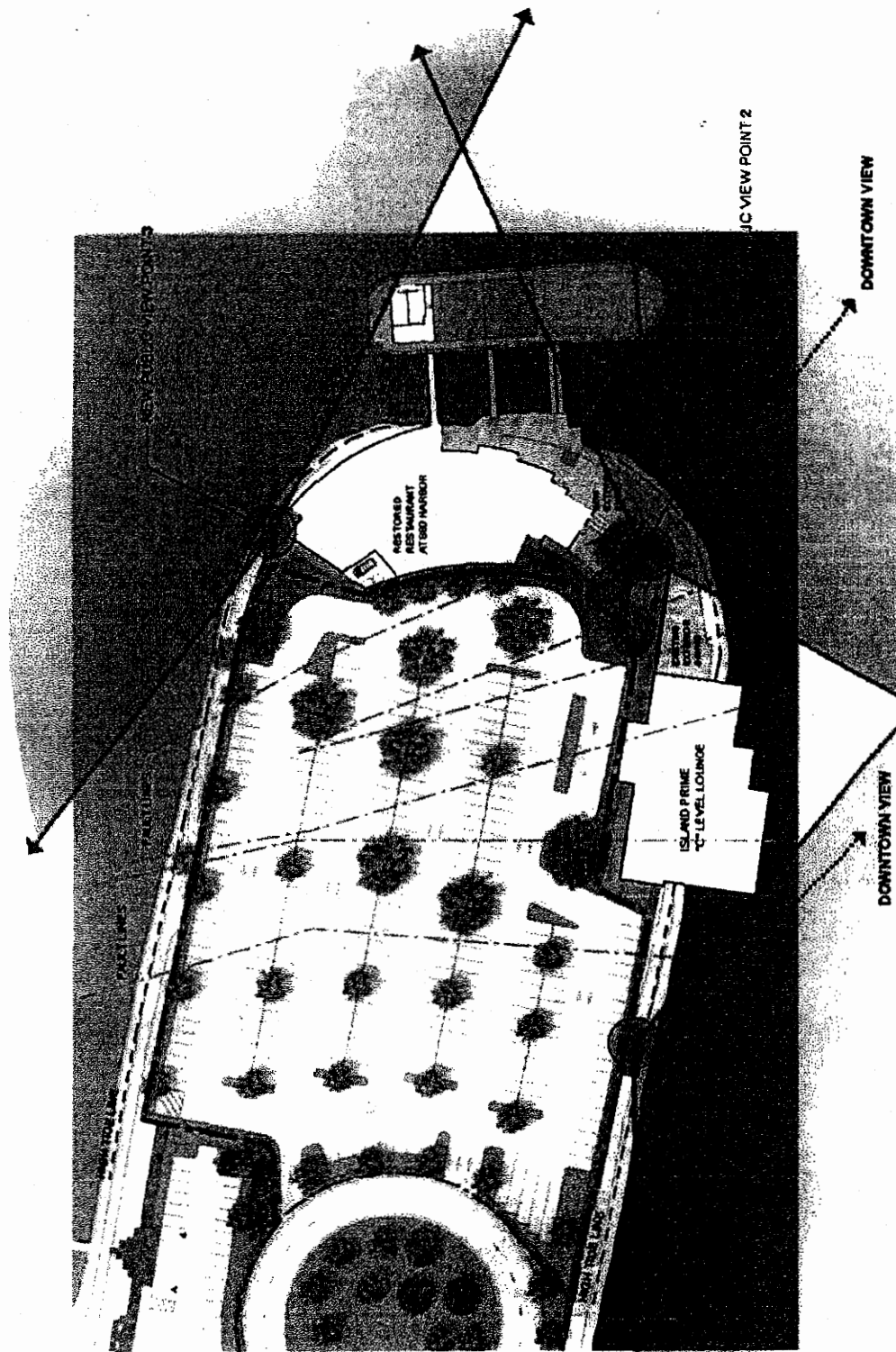
880 HARBOR

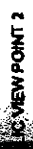
04.01.08



880 Harbor

Design - Public Access





DOWNTOWN VIEW

DOWNTOWN VIEW

1

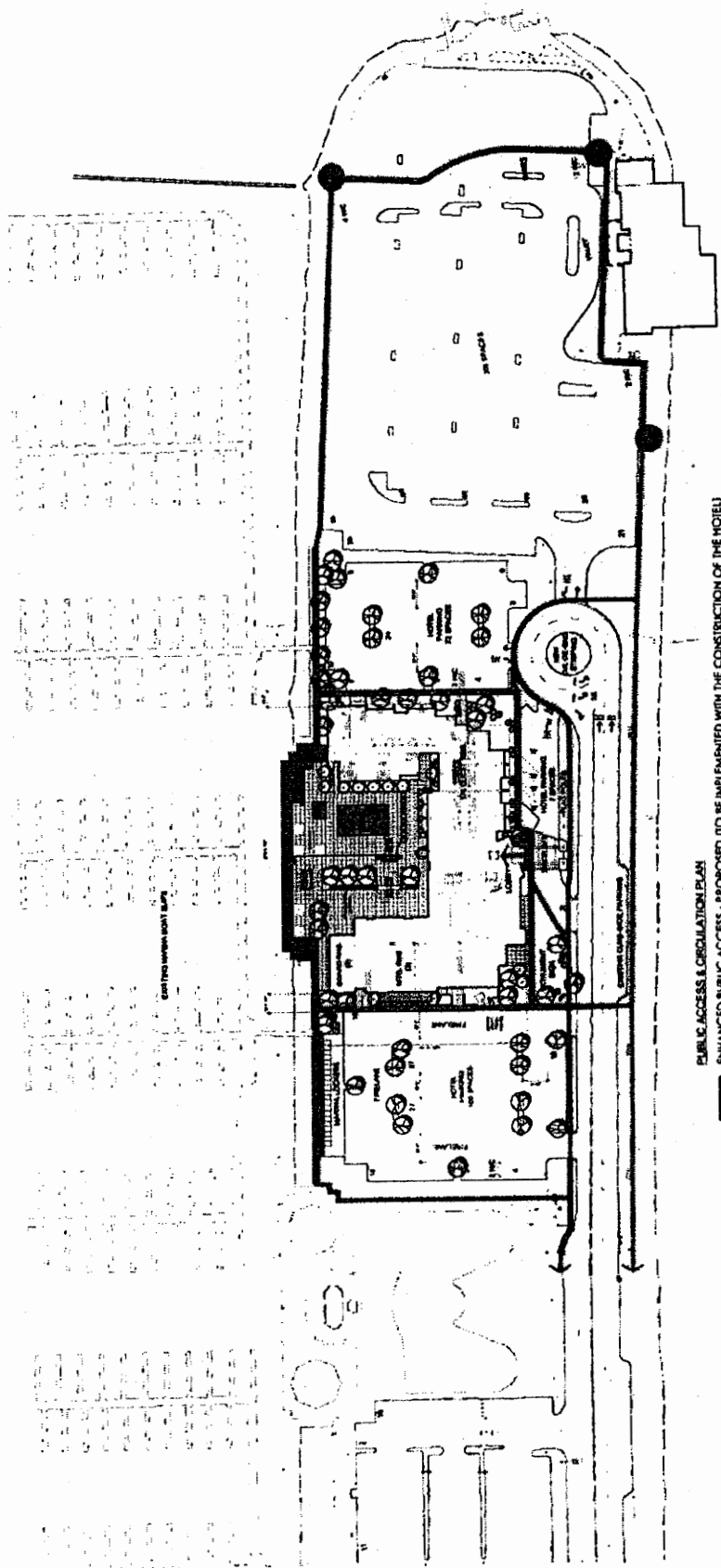
**RESTORED
RESTAURANT
AT THE HARBOR**

ISLAND PRINCE
-2- LEVEL 1 (OUNCE)

[illegible]

THE MANUSCRIPT

FILE



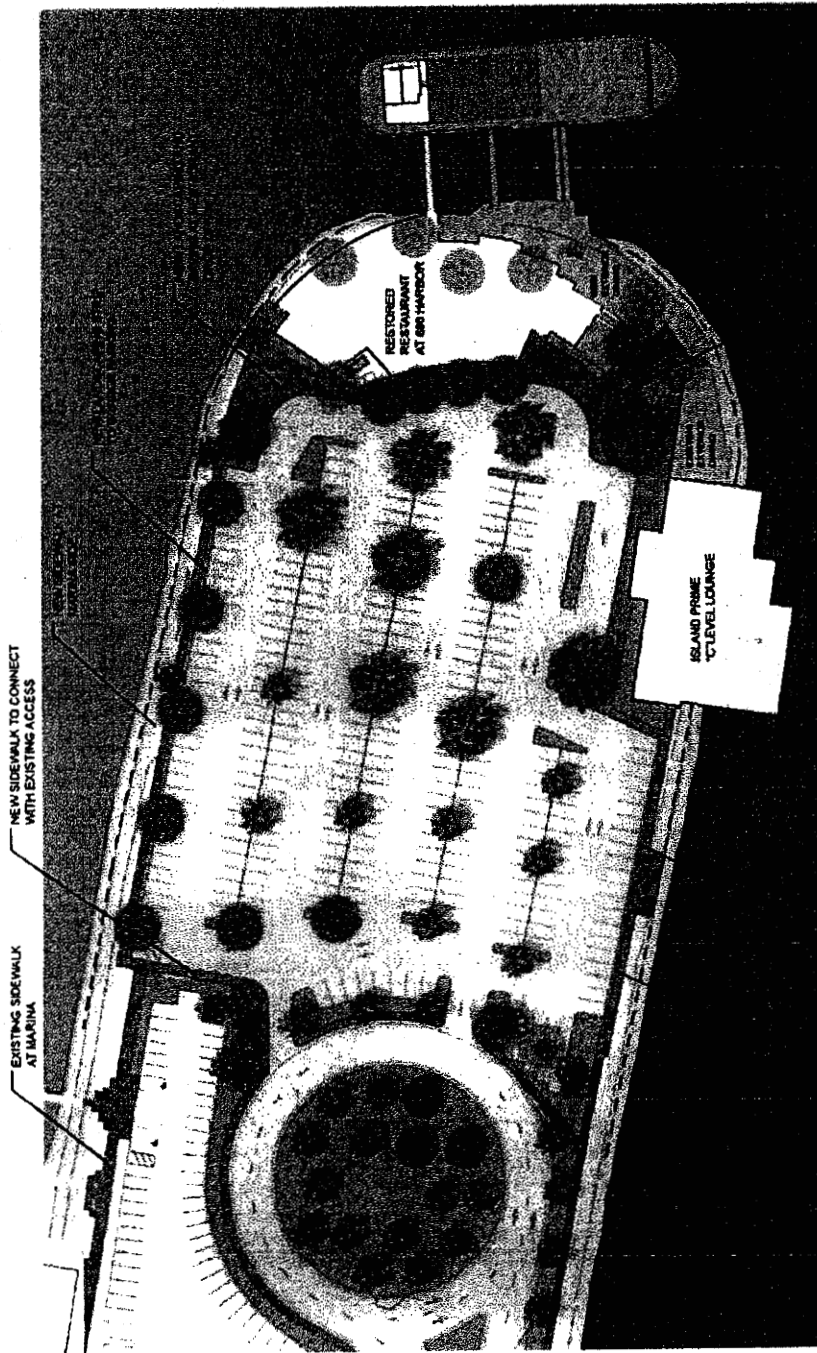
- PUBLIC ACCESS & CIRCULATION PLAN**
- ENHANCED PUBLIC ACCESS - PROPOSED (TO BE IMPLEMENTED WITH THE CONSTRUCTION OF THE HOTEL)
 - EXISTING PUBLIC PROMENADE/WALKWAYS
 - ENHANCED PUBLIC ACCESS - APPROVED (TO BE IMPLEMENTED WITH THE CONSTRUCTION OF THE BBO HARBOR PROJECT)
 - PUBLIC VIEWPOINTS

HARBOR ISLAND HOTEL
PUBLIC ACCESS & CIRCULATION PLAN



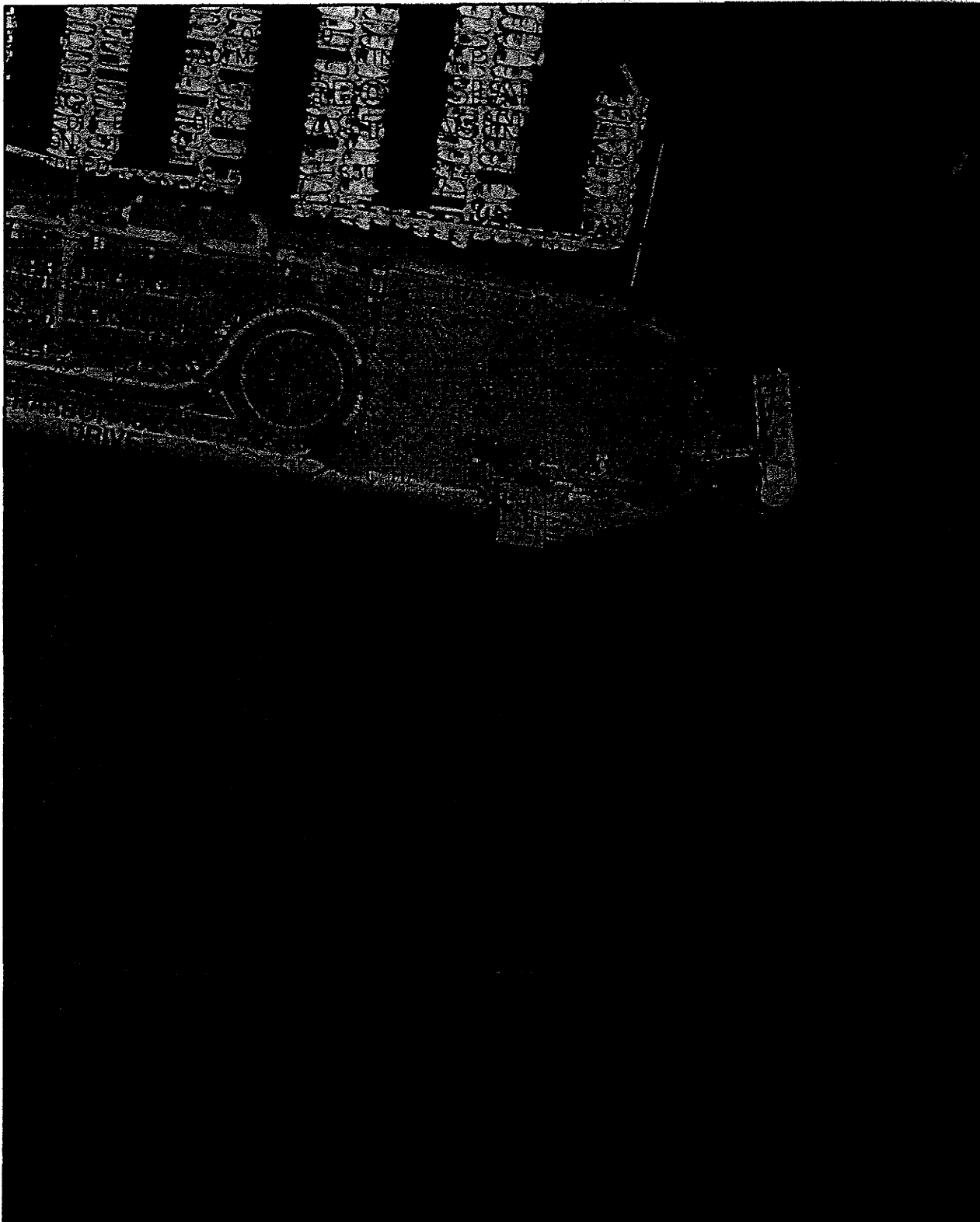
FEBRUARY 10, 2009
PRE-DEVELOPMENT SUBMITTAL
Project No. 09-001
A.1





- LEGEND**
- TREES TO BE REMOVED 9
 - TREES TO BE ADDED 14

LANDSCAPE PLAN



DRAWN JFD
CHECKED
REVIEWED
APPROVED
LAND SURVEYOR, SDLPD.

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND LEASE
WITHIN CORPORATE LIMITS OF SAN DIEGO
SUNROAD ASSET MANAGEMENT, INC.

DATE JULY 25, 2007
SCALE 1"=200'
REF. FIELD SURVEY
DRAWING NO. SHEET 1 OF 1 007-017

DEVSERV\REM\007-017\007-017_072507.DWG

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 04/18/2012

TIME: 01:45:00 PM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2011-00094537-CU-TT-CTL CASE INIT.DATE: 07/15/2011

CASE TITLE: Unite Here Local 30 vs. San Diego Unified Port District

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Hearing on Petition

APPEARANCES

The Court, having taken the above-entitled matter under submission on 04/17/12 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on petitioners/plaintiffs Unite Here Local ("UHL") and Ian Trowbridge's (sometimes collectively "Petitioners") petition for writ of mandate as follows:

The Court's tentative ruling will serve as the Court's Statement of Decision pursuant to California Rules of Court, rule 3.1590.

Petitioners are represented by Tanya A. Gulesserian and Ellen L. Trescott of Adams Broadwell Joseph & Cardozo.

Respondents/Defendants San Diego Unified Port District and Board of Port Commissioners of San Diego Unified Port District (collectively "Respondents") are represented by Michael M. Hogan of Hogan Law APC and Celia A. Brewer of the Office of the Port Attorney, San Diego Unified Port District. Real Party in Interest Sunroad Marina Partners, L.P. ("RPI") is represented by Steven M. Strauss, Summer J. Wynn, and Catherine J. O'Connor of Cooley LLP.

As a preliminary matter, RPI and Respondents filed joinders to each other's opposition briefs. In addition, Petitioners' request for judicial notice is denied.

Petitioners challenge Respondent's decision, on June 14, 2011, to certify the Environmental Impact Report ("EIR") for the Sunroad Harbor Island Hotel and the East Harbor Island Subarea Port Master Plan Amendment ("Project"). (Administrative Record ("AR") 0002-0006.)

DATE: 04/18/2012

MINUTE ORDER

Page 1

DEPT: C-71

Calendar No.

Exhibit 5

The Project will redevelop a portion of its leasehold at 955 Harbor Island Drive in San Diego. The current Project includes: (1) one limited service, four-story hotel with up to 175 rooms, approximately 8,000 square feet of fitness and meeting space, and common areas, (2) reduction in traffic circle size and realignment of the road and leasehold lines, (3) reconfiguration of existing paved areas as necessary to accommodate ingress and egress to the hotel and surface parking, (4) demolition of locker building and parking lot east of the existing marina building, (5) enhanced public access along the Harbor Island East Basin, (6) realignment of existing sewer, water, and utility lines, and (7) a PMP to address land use designation and text changes. (AR 8:0119-20; 51:4018-19.)

The Court has reviewed the record in light of the parties' briefs and the applicable law and concludes the petition for writ of mandate should be granted in part and denied in part for the reasons stated below.

Standard of Review. The parties agree that Petitioners' claims regarding piecemeal environmental review and future development under the PMP are subject to the "failure to proceed in the manner required by law" standard and Petitioners' claims regarding the adequacy of the EIR with respect to earthquake and soil contamination issues are subject to the substantial evidence test. Under the former standard, a court determines de novo whether an agency followed the procedures required by CEQA. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 899 (hereafter "*City of Long Beach*").) Under the latter standard, a court gives great deference to the agency's substantive conclusions. (*Ibid.*)

The first issue is whether Respondents piecemealed review of the Project.

As a preliminary matter, the Court declines to deny the motion on the ground that the challenge to the restaurant project is time-barred, as Petitioners correctly noted that courts have required agencies to consider projects that have already been approved when the issue of piecemealing is raised. (See *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 280; see also *Arviv Enterprises, Inc. v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Hixon v. County of Los Angeles* (1974) 38 Cal.App.3d 370, 376, 378-379; *City of Carmel-By-The Sea v. Bd. of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229, 251.)

"CEQA forbids 'piecemeal' review of the significant environmental impacts of a project." [Citation.] "Rather, CEQA mandates 'that environmental considerations do not become submerged by chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences.' [Citation.] Thus, the Guidelines define 'project' broadly as 'the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....' [Citation.]" (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 98 (hereafter "*City of Richmond*").)

In *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 396, the court announced the following test: "[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." Notably, the court in *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal.App.4th 1214, 1228 (hereafter "*Tuolumne*"), rejected "the position that a CEQA project excludes an activity that actually will be undertaken if the need for that activity was not fully attributable to the project as originally proposed." It also stated that

"whether an activity is an "integral" part of a CEQA project merely restates the question whether that activity is part of the "whole of an action" for purposes of Guidelines section 15378, subdivision (a)." (*Id.* at p. 1230.)

Preliminarily, the Court notes Petitioners' failure to apprise the Court of evidence from the record showing that Respondents considered the restaurant cumulatively and of evidence indicating that that the two projects are independent in their moving papers constitutes a failure of Petitioners' burden to fairly present the record. (*See Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 112-113.)

Here, Petitioners contend that Respondents violated CEQA by failing analyze the restaurant project and the hotel project together. More specifically, they contend that the following items to show that these projects are interrelated: (1) the PMP depends on the restaurant project to provide new viewing platforms and a public promenade along the Bay, to compensate for lost open space at the hotel Project site (Ex. 39, compare AR 0117 with AR 0133, 0342-0343, 4764, 5058, 5069), (2) the restaurant project depends on the hotel Project to provide a new looped water line that meets City of San Diego ("City") standards. (Ex. 40, AR 5404-5408), (3) the hotel and restaurant will share other infrastructure, including a new sewer line that will be extended to the restaurant leasehold as part of the hotel Project, and a new public promenade that will connect the two leaseholds and surround the entire Project (Ex. 41, AR 0086, 5096, 5256, 5675-5679), and (4) the hotel and restaurant projects are closely related in time, physical location, and the entity undertaking the action (Ex. 19, AR 4589 (timeline), Ex. 42, AR 0488, 0481, 0121 and RJN, Attach. D (site plans for initially proposed comprehensive project and current proposals); Ex. 3, AR 4149, 4643, 4896, 6918). Petitioners also argue that all the actions are closely related to the overall project objectives, that the RPI has always intended to redevelop both leaseholds together, and that conducting separate CEQA review for each proposal makes each one appear less significant and masks the environmental consequences of RPI's redevelopment of East Harbor Island.

As to the platforms and promenade being provided to compensate for lost open space, the RPI cited to evidence from the record which shows that the platforms, located on the restaurant site, were approved in 2007 with the restaurant, not the Project. (AR 699:6694; RJN, Ex. A, pp. 166-167, Ex. D, pp. 2-3.) In addition, RPI notes that to the extent that the current PMP recognized new view platforms and the extended promenade along the Bay, it is because the current PMP also updates the PMP to incorporate existing conditions on Harbor Island. Moreover, the project EIR clearly states that "removal of the open space area is compensated for by the provision of approximately 0.14 acres of public promenade on the basin (north) side of the hotel." (AR 8:0151, 8:0341.)

As to the water and sewer lines, the RPI cited to evidence in the record to show that the restaurant can independently be built on and use the existing water lines. In addition, the restaurant does not depend on the Project's sewer lines. (AR 8:0334, 8:0088, 8:0126, 8:0405, 50:3559, 50:3591, 51:4024.) Furthermore, a public promenade is not "shared infrastructure" that could prevent the two projects from operating independently.

As to the factors set forth in *Tuolumne*, RPI cited to evidence in the record to show that the restaurant and Project are proceeding under separate timelines. (Compare AR 8:0083-84, 8:0119, 8:0260, 8:0348 (restaurant operational by 2013) with 715:7130 (hotel not open until May 2015) and 83:4600.) In addition, the projects are on separate leaseholds and different entities hold the applicable leases and approvals for each project. (AR 81:4436, 74:4149.) The fact that the entities have a common parent does not make these two independent endeavors one project.

Also, any common overall objections, such as development with commercial recreational uses or increased public access to the waterfront, are objectives for all development along the Bay. This would not be sufficient to link the two projects. (See *Sierra Club v. W. Side Irr. Dist.* (2005) 128 Cal.App.4th 690, 698-700 (hereafter "*Sierra Club*"); *Sylvester v. U.S. Army Corps of Eng'rs.* (9th Cir. 1989) 884 F.2d 394, 400-401.)

As to RPIs development intentions, Petitioner can do no more than speculate on this issue. Furthermore, courts have held that prior plans for a comprehensive project do not forever define the scope of a later project. (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comms.* (2001) 91 Cal.App.4th 1344, 1361-1362 (hereafter "*Berkeley*").)

Finally, the project EIR considered the restaurant as a cumulative project. (AR 8:0348, 8:0356-82.) This is consistent with CEQA and effectively precludes a finding of improper piecemealing. California courts do not find improper segmentation or piecemealing where an agency has considered the related project in its cumulative impacts analysis. (See e.g., *City of Richmond, supra*, 184 Cal.App.4th at p. 99; *Sierra Club, supra*, 128 Cal.App.4th at p. 700; *Berkeley, supra*, 91 Cal.App.4th at pp. 1362-1363; *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 735-736; *Christward Ministry v. Super. Ct.* (1986) 184 Cal.App.3d 180, 190-191.) Petitioners cited no case stating otherwise.

Based on the foregoing, there is sufficient evidence in the record to support the conclusion that the restaurant and project can be done independently of one another. Therefore, the petition is denied as to this issue.

The second issue is whether Respondents adequately described and analyzed the whole Project.

As a preliminary matter, the Court notes that Respondents stated that the EIR at issue neither relies on a previous EIR nor compares the future development allowed under the current PMP to the development allowed under the prior PMP. Therefore, Petitioners arguments regarding Respondent's reliance on a prior EIR are moot.

Petitioners contend that Respondents failed to analyze the potential environmental impacts that may occur from allowing the development of multiple hotels, restaurants, cocktail lounges, and commercial retail on East Harbor Island.

Respondents contend that it was appropriate to defer analysis here because there are no plans to further develop the area encompassed by the current PMP other than what is currently proposed by the Project. They cite to cases which stand for the proposition that an EIR is not required to analyze the potential impacts of unspecified future development. (See e.g., *Rio Vista Farm Bureau Ctr. v County of Solano* (1992) 5 Cal.App.4th 351, 373.) They also note that the EIR states that "future development projects proposed in accordance with the PMP Amendment would be subject to additional environmental review in accordance with CEQA at the time applications are submitted the Port District." (AR 0134-0135, 0155-0156.)

However, courts have stated that "[a] general plan embodies an agency's fundamental policy decisions to guide virtually all future growth and development. 'Even if a general plan amendment is treated merely as a "first phase" with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a "first phase-general plan amendment" must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment. Only then can the ultimate effect of the amendment upon the physical environment be addressed.'" (*City of*

Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 409 (hereafter "*City of Redlands*"); see also *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182 (hereafter "*Stanislaus*"); see also CEQA Guidelines §15146.) In *Stanislaus*, the court distinguished a generalized plan from a specific plan for development. (*Id.* at pp. 199-200.) In the latter case, the court stated that deferral of analysis would be inappropriate.

Here, as in *Stanislaus*, the current PMP provides for increased development beyond what is currently proposed in the Project. It specifically states the type of development that will occur. Thus, it is distinguishable from cases like *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, which involved a generalized plan. As a result, it was under an obligation to analyze the impacts of the development in the current EIR. It is undisputed the no such evaluation occurred here.

As to Respondent's contention that no evaluation was necessary since the existing PMP already allowed for 500 hotel rooms, the Court notes that the impact of multiple hotels versus one hotel will necessarily be different. Also, the fact that the number of hotel rooms allowed on the previously studied portion of East Harbor Island would be reduced from 500 to 325 because of the proposed project does not relieve Respondent of the obligation to study impacts pursuant to City of Redlands and Stanislaus. Based on the foregoing, the petition is granted as to this issue.

The third issue is whether substantial evidence supports Respondents' conclusions regarding earthquake-related impacts.

As a preliminary matter, the Court notes that CEQA generally requires that baseline conditions are determined "at the time the notice of preparation is published [or] at the time environmental analysis is commenced." (CEQA Guidelines §15125(a).) At the time Respondents published the Project's NOP on December 22, 2008 and commenced its environmental review (AR-213:4979), the Geocon investigations were not more than three years old. (See AR 10:1630.) Thus, the geophysical study was not outdated.

Petitioners contend that Respondents failed to establish an accurate environmental baseline. However, Respondents presented evidence to show that Geocon's conclusion that Features A, B, and C are "most likely faults" and that Features F1-F5 "are speculated to be different settlement features"-that is, not faults represented an educated deduction and reasonable assumption based on verifiable data by licensed or certified geophysics and geotechnical experts. The analysis of potential seismic impacts was based on the opinions of certified geotechnical consultants (Geocon) relying on field investigation, core penetration tests ("CPTs"), laboratory testing, and seismic reflection survey data, among other data, which was obtained consistent with applicable industry standards and has been reviewed by a third-party geotechnical and environmental sciences consultant (Ninyo & Moore), and environmental consultants ICF Jones & Stokes, and Respondent's staff. (AR 8:0310-20, 10:1628-779, 10:1781-96; See CEQA Guidelines §15384.) The project EIR disclosed that the Project site is located in a seismically active area and near "three splays of the Spanish Bight Fault" which are "considered to be active" and "[e]ast of the Project site" on Harbor Island. (AR 8:0311, 8:0315.) The project EIR also discloses (1) several other known active faults in the region, (2) potential hazards associated with seismic activity, (3) the likelihood that the Project site would be subject to "moderate to severe ground shaking in the event of an earthquake along the Spanish Bight Fault or any other fault in the southern California or northern Baja California (Mexico) regions," and (4) the experts' opinion that "the potential for liquefaction, seismically induced settlement, and lateral spreading to occur on the Project site is considered high." (AR 8:0310-13.) These disclosures and others identified in Section 4.9 of the EIR, the Geocon investigations, and third-party review of the Geocon investigations prepared by Ninyo & Moore

adequately describe the baseline seismic and geologic conditions at the site and reflect a good faith and conscientious effort by Respondents to conduct an investigation and obtain documentation to support a determination of preexisting conditions. (See e.g., AR 8:0310-20, 10:1628-779, 10:1781-96, 711:7075-76, 712:7079-80.) Based on the evidence in the record, Respondents established an accurate environmental baseline.

Finally, the conclusions reached by Petitioners' expert, Tania Gonzalez, merely constituted an expert opinion that Respondents had the discretion to reject. (AR 699:6664-6667; see also *Eureka Citizens for Responsible Gov. v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-372; *Greenbaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 412-413.)

Based on the foregoing, the petition is denied as to this issue.

The fourth issue is whether substantial evidence supports Respondents' conclusions regarding hazardous materials.

Petitioners contend that Respondents failed to establish an accurate environmental baseline. However, Respondents presented evidence to show that the Tow Basin facility was constructed in 1954, but no dredging occurred there until 1966, five years after the Project site was filed. (AR 7051-7072.) Based on this information, Ninyo & Moore concluded that the Project site was not created with contaminated material dredged from the Tow Basin.

The conclusions reached by Petitioners' expert, Matt Hagemann, merely constituted an expert opinion that Respondent had the discretion to reject. (AR 699:6664-6667; see also *Eureka, supra*, 147 Cal.App.4th at pp. 371-372; *Greenbaum, supra*, 153 Cal.App.3d at pp. 412-413.)

Finally, Respondents were not required to perform the additional soil testing demanded by Petitioners. One, an EIR is not required to demonstrate the absence of environmental effects at a project site. (*Laurel Heights, supra*, 47 Cal.3d at p. 409.) Two, a lead agency is not required to conduct every test or perform all research recommended by project opponents or regulatory agencies. (CEQA Guidelines §15204(a); *Assn. of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396-1398.)

Based on the foregoing, the petition is denied as to this issue.

The fifth issue is whether the Alquist-Priolo Act ("Act") applies and, if so, did Respondents comply with its requirements.

One, Respondents are not subject to the Act because it only applies to cities and counties. (Pub. Resources Code §2623(a).)

Two, there is no project within a state-designated Alquist-Priolo Zone. (AR 8:0312, 51:4020.) The Act defines a project as a subdivision under the Subdivision Map Act or "structures for human occupancy." (Pub. Resources Code §2621.6.) The regulations elaborate on this and define a "structure for human occupancy" as any structure used on intended for supporting or sheltering any use or occupancy, which is expected to have a human occupancy rate of more than 2,000 person-hours per year." (Cal. Code Regs., tit. 14, §3601(e).) Thus, for the purposes of the Act, the only part of the proposed development that could arguable be regarded as a project is the hotel building; the rest of the development is parking lots, road improvements, and landscaping. (See AR 51:4018-21.)

CASE TITLE: Unite Here Local 30 vs. San Diego Unified Port District CASE NO: 37-2011-00094537-CU-TT-CTL

Three, Respondents have not violated the Act. The only thing that could result in a violation of the Act is construction of a structure for human occupancy astride an active fault. (*Cal. Oak Foundation v. Regents of the Univ. of Cal.* (2010) 188 Cal.App.4th 227, 249-250.) Substantial evidence shows that this will not be the case. (AR 8:0315-16, 10:1791, 711:7076, 712:7079-80, 712:7082, 712:7091.)

Based on the foregoing, the petition is denied as to this issue.

Based on the foregoing, the Court grants in part and denies in part Petitioner's writ. *Petitioner* is directed to prepare the Judgment.

IT IS SO ORDERED.

Ronald S. Prager

Judge Ronald S. Prager

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101


SHORT TITLE: Unite Here Local 30 vs. San Diego Unified Port District

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:

37-2011-00094537-CU-TT-CTL

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order dated 4/18/12 was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 04/18/2012.

Clerk of the Court, by: , Deputy

TANYA A GULESSERIAN
ADAMS BROADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD #1000
SOUTH SAN FRANCISCO, CA 94080

ELLEN L TRESPOTT
ADAMS BROADWELL JOSEPH & CARDOZO
601 GATEWAY GLVD # 1000
SOUTH SAN FRANCISCO, CA 94080

SUMMER J WYNN
COOLEY LLP
4401 EASTGATE MALL
SAN DIEGO, CA 92121

CELIA A BREWER
OFFICE OF THE PORT ATTORNEY, SAN DIEGO
UNIFIE
P O BOX 120488
SAN DIEGO, CA 92112-0488

STEVEN M STRAUSS
COOLEY LLP
4401 EASTGATE MALL
SAN DIEGO, CA 92121

MICHAEL M HOGAN
HOGAN LAW APC
225 BROADWAY STE 1900
SAN DIEGO, CA 92101

☐ Additional names and address attached.

CLERK'S CERTIFICATE OF SERVICE BY MAIL

Page: 1

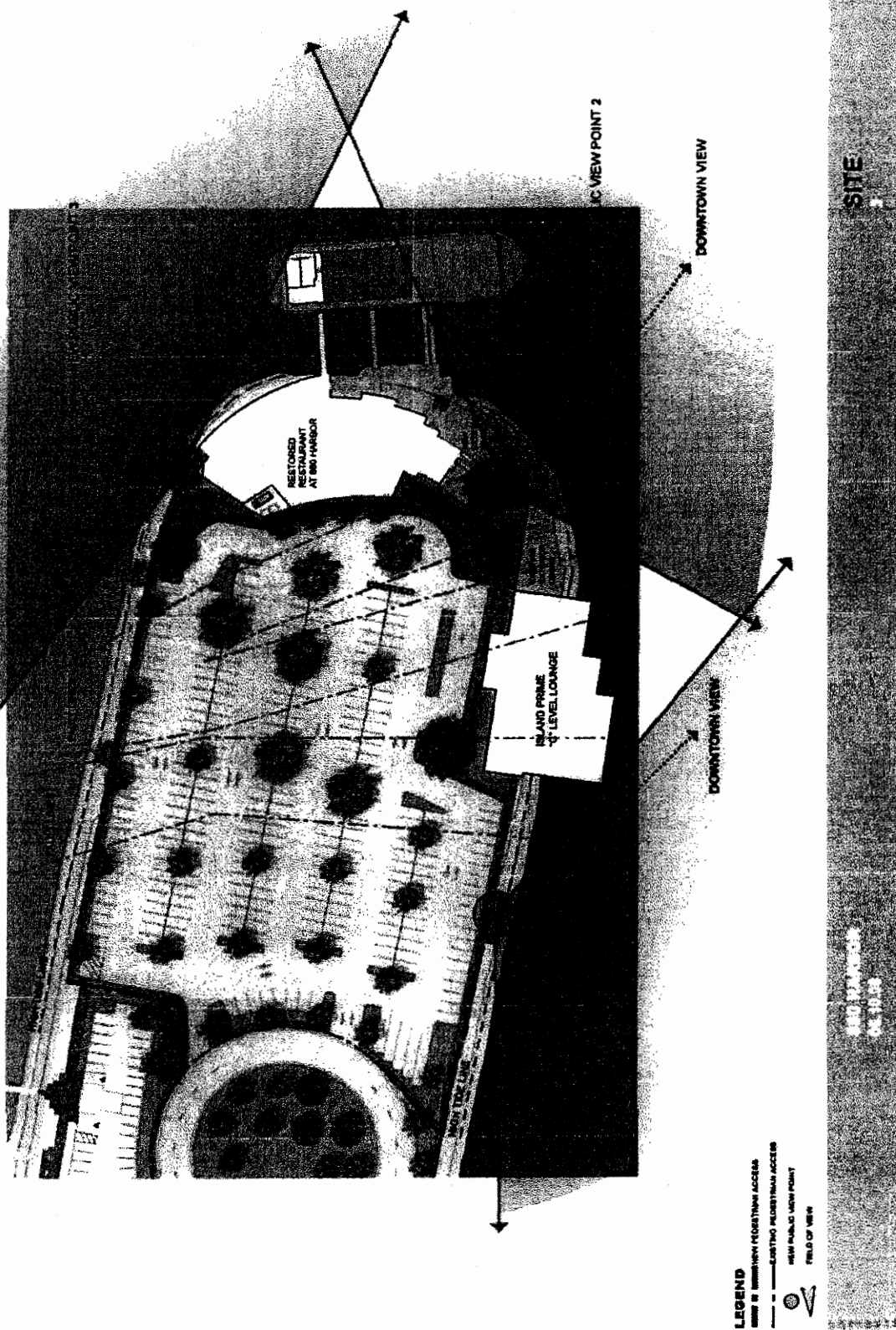


Exhibit 6

AGENDA ITEM 33

SAN DIEGO UNIFIED PORT DISTRICT

RECEIVED

DATE: June 10, 2008

FEB 15 2013

SUBJECT: SUNROAD HARBOR ISLAND, INC.

- A) ORDINANCE GRANTING AN OPTION AGREEMENT WITH SUNROAD HARBOR ISLAND, INC. FOR A NEW 40-YEAR LEASE**
B) RESOLUTION GRANTING APPROVAL TO SUNROAD HARBOR ISLAND, INC. FOR PROPOSED RESTAURANT RENOVATION
- COASTAL COMMISSION
DIEGO PORT DISTRICT

EXECUTIVE SUMMARY:

Sunroad Enterprises (Sunroad) is the parent company of two entities that have leases on Harbor Island with the District; a marina site leased by Sunroad Marina Partners, Inc. and a restaurant site on the east end of Harbor Island leased by Sunroad Asset Management, Inc. This agenda sheet addresses the proposed redevelopment of the restaurant site.

Sunroad has submitted a proposal for the renovation of the former Reuben E. Lee floating restaurant (REL), one of two restaurants on their leasehold located at the east end of Harbor Island. Sunroad's proposed \$9 million redevelopment will include a major reduction in the bulk and scale of the REL, construction of a new 11,750 square foot restaurant facility on land adjacent to the REL, re-surfacing and re-striping of the surrounding parking areas, installation of new landscaping and construction of related site improvements.

An 18-month option has been negotiated with Sunroad for a new lease which incorporates both the Island Prime restaurant currently operating on the leasehold, and the REL. The proposed lessee is Sunroad Harbor Island, Inc. a new subsidiary of Sunroad. In accordance with Board Policy 355, Sunroad's \$9 million investment will qualify for a new 30-year lease term with a 10-year option to extend. The new lease will include the applicable percentage rental rates approved by the Board on December 7, 2004. Minimum annual rent under the new lease will be \$225,000 during an 18-month construction period, \$324,750 for a 12-month stabilization period followed by a ramp up to \$450,000 for the remainder of the 10-year rental period, with a mid-term CPI adjustment.

Part of the REL is located in waters under the jurisdiction of the California State Lands Commission (CSLC). Staff is currently negotiating a lease with the CSLC staff that will be presented to the CSLC Board for their approval during the 18-month option period. This property will be leased by the District and subsequently subleased to Sunroad. Sunroad's option agreement includes a condition that a lease with CSLC be finalized prior to its exercise.

ACTION TAKEN: 06-10-08 - Ordinance 2504 and Resolution 2008-108

RECOMMENDATION:

Adopt Ordinance granting an Option Agreement with Sunroad Harbor Island, Inc. for a new 40-year lease; additionally, adopt Resolution granting approval to Sunroad Harbor Island, Inc. for proposed restaurant renovation.

FISCAL IMPACT:

The Board action will result in an option payment of \$500. If Sunroad decides to extend the option, the consideration is \$2,560 for the first 30-day extension, \$5,300 for the second 30-day extension and \$10,600 for the third and final 30-day extension.

This proposed Board action will not result in further fiscal impact unless the option is exercised; however, if and when the option is exercised and the project has stabilized in year three, the minimum annual rent the District receives will increase from \$324,750 to \$450,000 - an increase of \$125,250 per year. Sunroad's *projected* percentage rent payments to the District are approximately \$600,000 per year by year three, exceeding the minimum annual rent.

DISCUSSION:

Sunroad acquired the restaurant leasehold in May 2003 and closed the REL in December of that year. Sunroad subsequently spent \$2 million renovating the former Reuben's Restaurant, which was reopened in 2005 as the Island Prime restaurant. Sunroad desires to renovate the REL restaurant site, which was constructed in 1969 on a barge and permanently moored at the Harbor Island site, and extend the term of their existing lease.

Sunroad currently has a 55-year lease that will expire in 2023 which includes 145,979 square feet of land and 91,650 square feet of water. The site is improved with two restaurants, the Island Prime and the REL, as well as parking areas and landscaping. The existing and proposed leases are described in the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Proposed Project:

Sunroad is proposing the complete renovation and remodeling of the approximate 22,500 square foot REL restaurant facility located at 880 Harbor Island Drive. The final square footage will be smaller than the current facility due to a more efficient use of space resulting in 11,750 square feet of enclosed space on land plus 7,400 square feet of primarily unenclosed function space on the floating barge (875 square feet will be enclosed on the barge). The new 809-seat restaurant will utilize a stripped down version of the floating barge as an outdoor event area with supporting indoor dining, bar and banquet facilities located on land adjacent to the barge. The project will also include significant enhancements to public access bordering the site and the

development of three new public viewpoints. A site plan and renderings of the REL project are attached.

The Island Prime restaurant will remain open for business during the REL renovation.

The project described above qualifies for a 40-year lease term pursuant to Board Policy 355, which can be executed upon exercise of the option described below.

Proposed Developer:

Sunroad Harbor Island, Inc., a new entity created by Sunroad with the same beneficial ownership, will develop this project. In addition to their restaurant leasehold on Harbor Island, Sunroad operates a 608-slip marina on District tidelands through its subsidiary, Sunroad Marina Partners, LP. Sunroad is considered a tenant in good standing by the District.

Local architectural firm Graham Downes Architecture has been contracted to assist in the design of the new restaurant. Graham Downes has been involved in several local projects including JRDN, Nine-Ten, Chive, Laurel and Pasquale.

Proposed Operator:

Sunroad has entered into an agreement with Cohn Restaurant Group to manage the operations and final conceptual design of the new restaurant project. Cohn Restaurant Group is a leading multi-unit restaurant operator in San Diego with about a dozen upscale and casual dining restaurants. In addition to Island Prime, Cohn Restaurant Group's portfolio includes The Prado, Indigo Grill, Kemo Sabe, Dakota Grill, Blue Point, Thee Bungalow, among others. Most of Cohn Restaurant Group's restaurants offer dining, event planning and catering services.

Proposed Option Agreement:

The proposed option agreement is for an 18-month period and can be extended by up to 90 days at the sole discretion of the District. The nonrefundable consideration for the option agreement is \$500. If the option term is extended, the nonrefundable option consideration will be \$2,560 for the first 30-day extension, \$5,300 for the second 30-day extension and \$10,600 for the third and final 30-day extension. During the option period, Sunroad must submit for District approval the following:

- Schematic drawings, development plans, working drawings
- Parking management plan
- Management agreement for operation of the REL
- Project financing
- Development permits including Coastal Development Permits, if applicable
- Performance bond
- Construction contract

- Equal Opportunity Employment Program

In addition, the District must enter into a lease with CSLC for the parcel in their jurisdiction and Sunroad must agree to a sublease with the District for that parcel. After all the preceding items have been satisfied, Sunroad may exercise the option and enter into the new lease. The proposed option agreement terms are described on the attached OPTION INFORMATION SUMMARY.

Proposed Lease:

Sunroad's \$9 million investment in the REL renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per Board Policy 355. Exercise of the option to extend shall be dependant upon Sunroad maintaining its status as a tenant in good standing. The minimum annual rent for the 18-month construction period will be \$225,000, followed by a 12-month stabilization period rent of \$324,750, which is equal to the current minimum annual rent that Sunroad is paying. The minimum annual rent will then increase to \$450,000, which is equal to 75% of the first year rent for both restaurants based on the proforma submitted by Sunroad. Sunroad will pay the higher of the minimum rents or the District's standard percentage rental rates, which are projected to exceed these minimum rents.

The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

California State Lands Commission Property:

A portion of the REL is located in waters outside of the Port's jurisdiction. A lease for this water area will be required with the CSLC. Any project approvals granted by the District may also be subject to approval by the CSLC. Before the option agreement can be exercised, the District must obtain a long-term lease from the State of California and enter into a sublease with Sunroad Harbor Island, Inc. covering the water area in CSLC's jurisdiction.

Port Attorney's Comments:

The Port Attorney has reviewed and approved the requested document for form and legality.

Environmental Review:

Staff has determined that this project, as proposed by the applicant, will be located on the same site, will have substantially the same purpose and capacity as the restaurant being replaced and will therefore be Categorically Exempt under the CEQA Guidelines in Section 15302, Class 2, Replacement or Reconstruction.

Coastal Permitting Review:

The REL restaurant is located in the East Harbor Island Planning Sub-area of Planning District 2 in the Port Master Plan (PMP). The PMP description indicates "The eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water's edge." There is a water designation of Commercial Recreation that generally encompasses the REL water footprint as well as the land side of this leasehold. Restaurants are a permitted use within the Commercial Recreation designation and therefore, the project is consistent with the PMP.

Based on information provided by the applicant, staff has determined that the project is the replacement of a commercial structure on the same site as the structure replaced, with a new structure of substantially the same size, purpose and capacity. Therefore the project is an Excluded Development under the provision of the District's Coastal Development Permit Regulations.

In its current location, a portion of the REL vessel is located within California State Lands Commission (CSLC) submerged lands jurisdiction. The applicant has been advised that it may be necessary to obtain a separate Coastal approval for the State Lands' portion directly from the California Coastal Commission.

Equal Opportunity Program:

Not applicable.

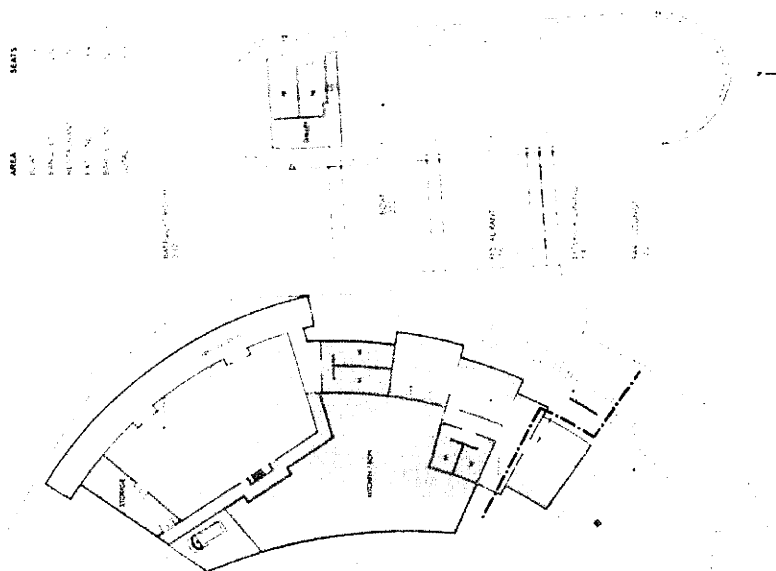
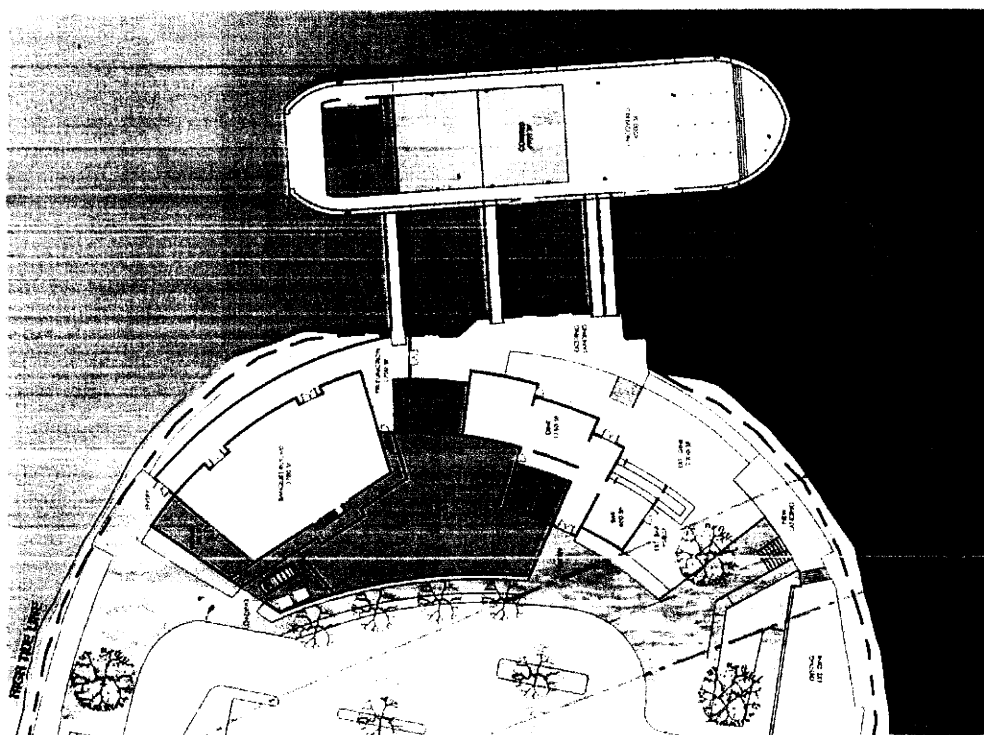
PREPARED BY: Tony Gordon
Asset Manager, Real Estate

OPTION INFORMATION SUMMARY

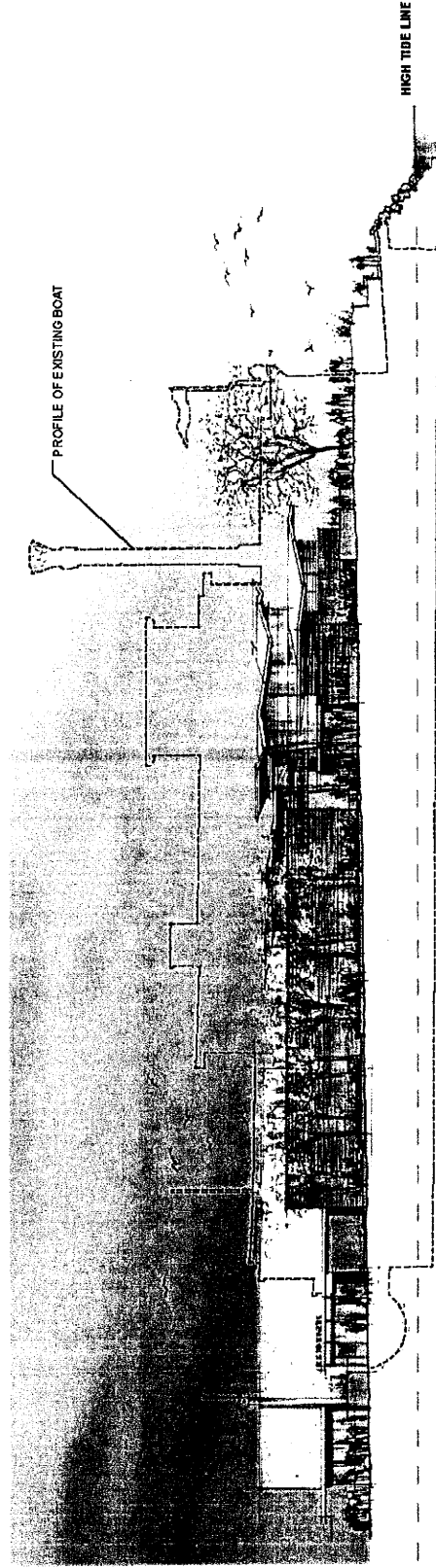
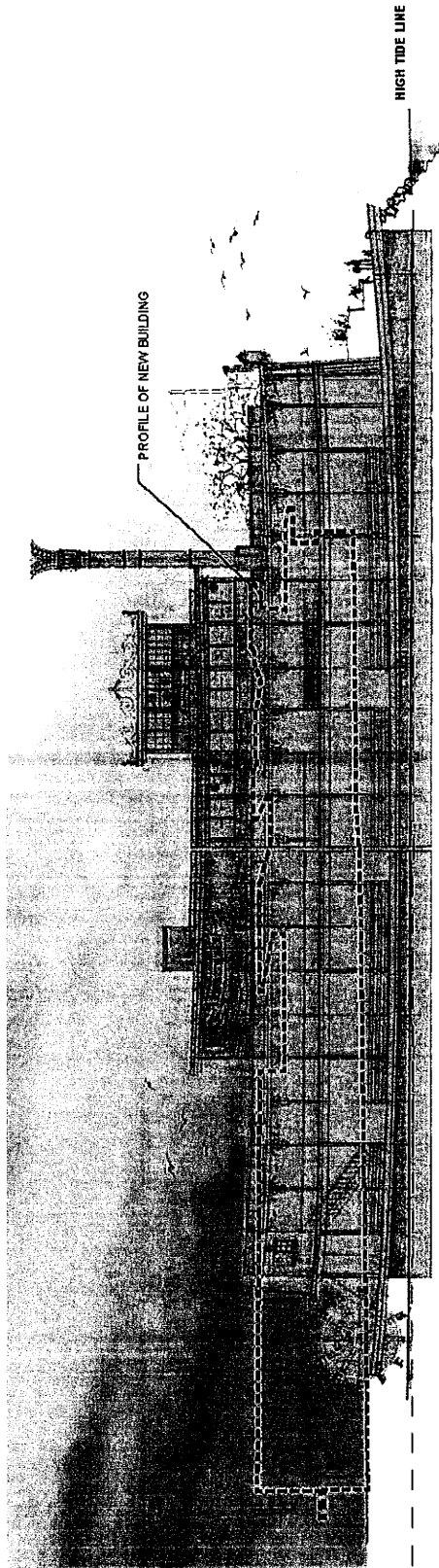
Optionee:	Sunroad Harbor Island, Inc.
Location:	880 Harbor Island Drive
Area:	145,979 square feet of land area 91,650 square feet of water area
Project:	Optionee's development is a restaurant project which consists of the complete renovation and remodeling of the approximately 22,500-square-foot floating restaurant formerly called the Reuben E. Lee and the redevelopment of the landscaping, lighting, signage, paving and utilities.
Term:	18 months plus three 30-day extension options
Option Consideration	\$500 1 st 30-day extension: \$2,650 2 nd 30-day extension: \$5,300 3 rd 30-day extension: \$10,600
Conditions to Option Exercise:	<p>Sunroad must submit the following for District approval:</p> <ul style="list-style-type: none"> • Schematic drawings, development plans, working drawings • Parking management plan • Management agreement for operation of the REL • Project financing • Development permits including Coastal Development Permits, if applicable • Performance bond • Construction contract • Equal Opportunity Employment Program. <p>In addition, the District must enter into a lease with CSLC for the parcel in their jurisdiction and Sunroad must agree to a sublease with the District for that parcel.</p>

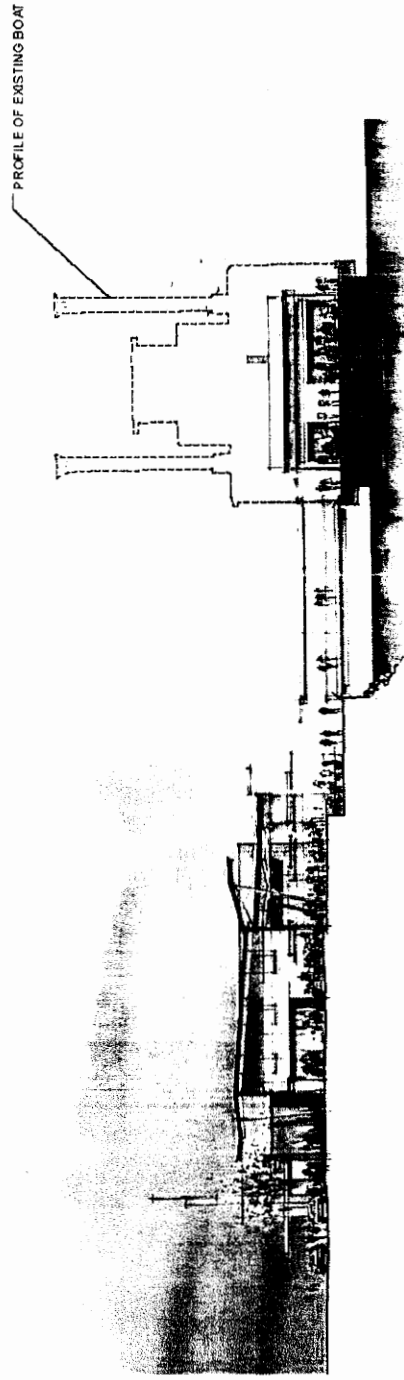
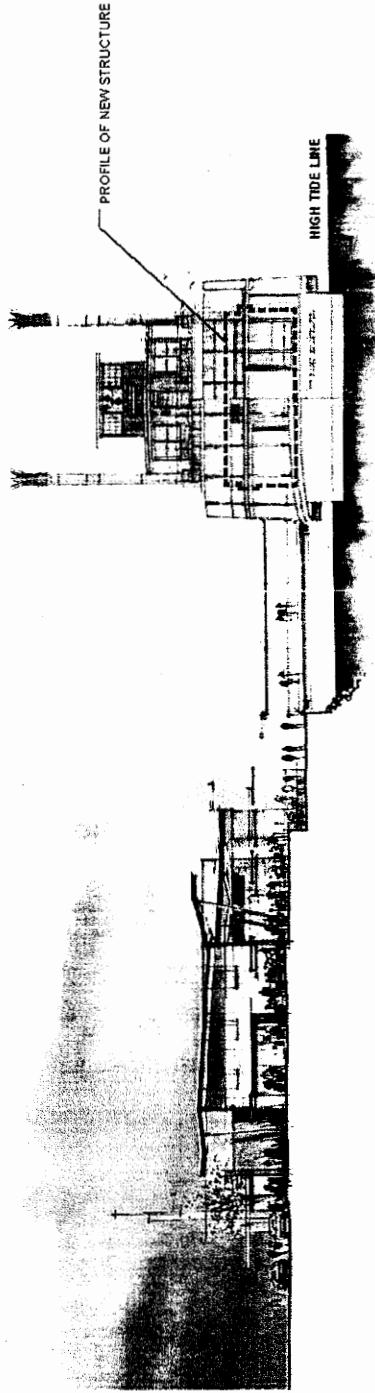
EXISTING AND PROPOSED LEASE INFORMATION SUMMARY

	<i>Existing Lease</i>	<i>Proposed Lease</i>
<i>Lessee</i>	Sunroad Asset Management, Inc.	Sunroad Harbor Island, Inc.
<i>Location</i>	880 Harbor Island Drive	Same
<i>Area</i>	145,979 SF Land 91,536 SF Water	Same Same
<i>Use</i>	Restaurant (2), Cocktail Lounge Gift Shop, Related Facilities	Same
<i>Term</i>	5/1/1968 - 4/30/2023 (55 years)	7/1/2008 - 6/30/2048 (40 years)
<i>Rent</i>	\$324,750/year vs percentage	Construction Period (18 months): \$225,000/ year vs percentage Stabilization Period (12 Months): \$324,750/ year vs. percentage Full Rent: \$450,000/ year vs. percentage
<i>Improvement Summary</i>	10,612 SF Restaurant (Island Prime) 22,500 SF Floating Restaurant (Reuben E Lee)	10,612 SF Restaurant (Island Prime) 11,750 SF Restaurant 7,400 SF Event Barge

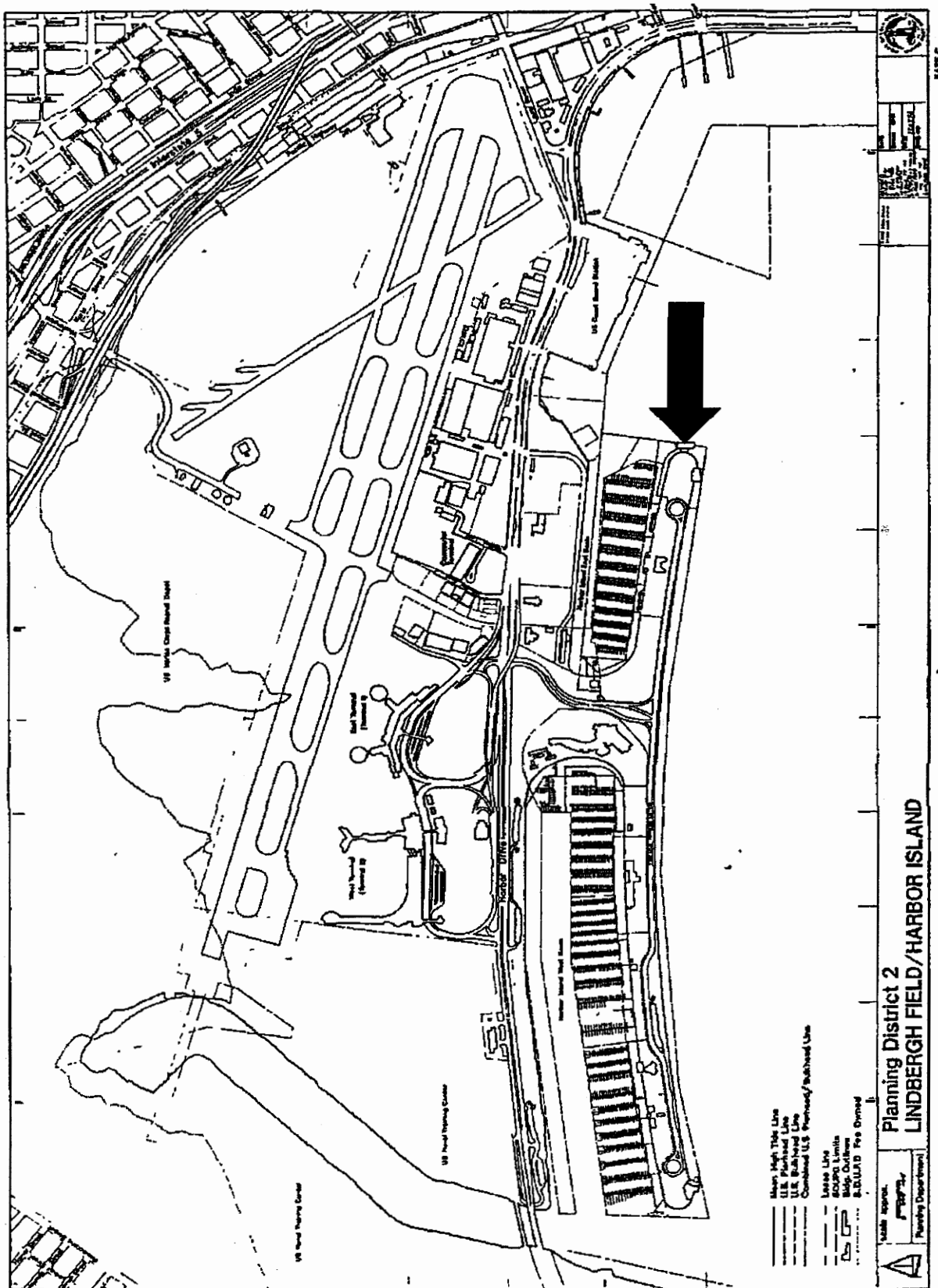


SEATING PLAN / LAYOUT PLAN





SOUTH SECTION



SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2504

AN ORDINANCE AUTHORIZING
AN OPTION TO LEASE AGREEMENT
WITH SUNROAD HARBOR ISLAND, INC.

The Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. The San Diego Unified Port District hereby grants an Option to Lease Agreement and authorizes the Executive Director or his authorized representative to execute said Option to Lease Agreement with Sunroad Harbor Island, Inc., a California corporation, to lease certain District premises located at 880 Harbor Island Drive in the City of San Diego, for the purposes of the operation of Two (2) restaurants and related activities. The Option to Lease Agreement is for a term of Eighteen (18) months commencing June 11, 2008, and ending on December 10, 2009, subject to earlier termination; provided, however, said term may be extended by up to Ninety (90) Days in accordance with the terms, covenants and conditions contained in said Option to Lease Agreement, on file in the office of the District Clerk. Further, in the event any of the events listed in Paragraph 14, Force Majeure, cause delay, said Option to Lease Agreement may be extended for no more than Two Hundred Forty (240) days.

Section 2. Upon timely performance and exercise of said Option to Lease Agreement, the Executive Director or his authorized representative is hereby directed to execute the Lease with Sunroad Harbor Island, Inc., which is attached to said Option to Lease Agreement.

Section 3. This ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners; provided, however, in the event Sunroad Harbor Island, Inc. does not satisfy the conditions set forth in Paragraph 5 of the Option to Lease

2504

Agreement, entitled Conditions Precedent, said Option to Lease Agreement shall be null and void and of no further force or effect.

SW
6/10/08

San Diego Unified Port District

Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified Port

District on June 10, 2008, by the following vote:

<u>Commissioners</u>	<u>Yeas</u>	<u>Nays</u>	<u>Excused</u>	<u>Absent</u>	<u>Abstained</u>
Michael Bixler	X				
Laurie J. Black	X				
Stephen P. Cushman			X		
Michael Najera	X				
Sylvia C. Rios	X				
Robert J. Spane			X		
Robert Valderrama	X				

AUTHENTICATED BY:

Michael A. Bixler
Chairman of the Board of Port Commissioners

MARY ANN LINER
Clerk of the San Diego Unified Port District

By: Mary Ann Liner
District Clerk

(Seal)

Resolution Number: _____

OR

Ordinance Number: 2504

Adopted: June 10, 2008

Re Sunroad Harbor Island, Inc.,]
]
Harbor Island, San Diego]
<hr/>	

RESOLUTION 2008-108

WHEREAS, Sunroad Enterprises is the parent company of two (2) entities that have leases on Harbor Island, a marina site leased by Sunroad Marina Partners, Inc., and a restaurant site on the east end of Harbor Island leased by Sunroad Asset Management, Inc.; and

WHEREAS, the San Diego Unified Port District (District) and Sunroad Asset Management, Inc. are parties to a Lease dated 4 March 1968, as amended and assigned, for premises located on Harbor Island Drive in the City of San Diego for the exclusive use of operation of a restaurant, cocktail lounge, gift shop and related facilities; and

WHEREAS, Sunroad Enterprises desires to renovate the former Reuben E. Lee floating restaurant, one of its two restaurants covered under said lease, and incorporate its other restaurant, Island Prime, into a new lease document; and

WHEREAS, Sunroad Enterprises has requested that the new lease document be issued to Sunroad Harbor Island, Inc., a new subsidiary of said Sunroad Enterprises; and

WHEREAS, pursuant to Ordinance 2504, adopted 10 June 2008, the District and Sunroad Harbor Island, Inc., a California corporation, entered into an Option to Lease Agreement (Option) for certain District premises located at 880 Harbor Island Drive in the City of San Diego, for a proposed lease term of Thirty (30) Years, subject to earlier termination, plus an option to extend said term for an additional Ten (10) Years, in accordance with the terms, covenants, and conditions contained therein, and provided further that said Option is subject to Sunroad Harbor Island, Inc. satisfying the conditions contained in said Option, and in particular Paragraph 5 thereof entitled Conditions Precedent, by 5:00 P.M. on December 10, 2009, provided, however, said term may be extended by up to Ninety (90) days; and

WHEREAS, in accordance with said Paragraph 5, entitled Conditions Precedent, the District is required to obtain a long-term lease from the State of California covering the water area described and delineated as said Parcel No. 3 (covering approximately 12,885 square feet), and in the event the District is unable to obtain said lease on terms acceptable to the District, then the District will be unable to sublease said Parcel No. 3 to Sunroad Harbor Island, Inc., and said Sunroad Harbor Island, Inc. will have no claim, cause of action or right to compensation or reimbursement from the District if the District does not timely obtain said lease from the State of California, or if the District and Sunroad Harbor Island, Inc. are unable to agree to the terms of a sublease and execute said sublease in accordance with the terms and conditions contained in said Paragraph 5; and

WHEREAS, pursuant to said Option, the District and Sunroad Harbor Island, Inc. have agreed to enter into a proposed lease for the operation of two (2) restaurants (including without limitation banquets and other events that are generally in keeping with the character and quality of such two [2] restaurants), as follows: i) a restaurant of approximately 10,612 gross square feet and a restaurant of approximately 22,500 square feet, including a floating barge, with a combined total of not less than 1,140 restaurant and cocktail lounge seats, nor a combined total of not more than 1,240 restaurant and cocktail lounge seats; ii) retail sales restricted to gift items, sundries and souvenirs, and iii) installation of telecommunications equipment with the prior written approval from the District, and for no other purposes whatsoever, and said proposed lease is attached to said Option as Exhibit No. 1 and is a part thereof; and

WHEREAS, in the event Sunroad Harbor Island, Inc. exercises said Option in accordance with all of the terms, conditions and covenants contained therein, by 5:00 P.M. on December 10, 2009, Sunroad Harbor Island, Inc. desires to enter into said proposed new lease with the District to redevelop said premises; and

WHEREAS, Sunroad Harbor Island, Inc. desires to completely renovate and remodel the former Reuben E. Lee floating restaurant (Project); and

WHEREAS, the proposed Project will consist of a reduction in the bulk and scale of the approximately 22,500 square foot Reuben E. Lee restaurant facility, and the final square footage will be smaller due to a more efficient use of space, resulting in approximately 11,750 square feet of enclosed space on land, plus approximately 7,400 square feet of primarily unenclosed function space on the floating barge (approximately 875 square feet will be enclosed on said barge); the new 809-seat restaurant will utilize a stripped down version of the floating barge as an outdoor event area with supporting indoor dining, bar and banquet facilities located on land adjacent to the barge; the Project will also include significant enhancements to public access bordering the site and the development of three (3) new public viewpoints; and

WHEREAS, in accordance with BPC Policy No. 357, entitled "Procedure for Approval of Tenant Project Plans", conceptual plans for proposed new development or alterations estimated to cost more than Five Hundred Thousand Dollars (\$500,000.00) or those which make a significant change in the silhouette or appearance of the area, shall be presented to the Board of Port Commissioners for approval prior to submittal of final working drawings for staff review and approval; and

WHEREAS, Sunroad Harbor Island, Inc.'s proposed Project is estimated to cost over Five Hundred Thousand Dollars (\$500,000.00) and will make a significant change in the silhouette or appearance of the area, NOW, THEREFORE,

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

1. That in the event Sunroad Harbor Island, Inc. exercises said Option in accordance with all of the terms, conditions and covenants contained therein, by 5:00 PM on December 10, 2009, and in the further event that the District and Sunroad Harbor Island, Inc. enter into the proposed new lease attached to said Option, the District hereby approves Sunroad Harbor Island, Inc.'s redevelopment.

2. It has been determined that the Project is Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines, Section 15302, Class 2, Replacement or Reconstruction.

3. It has further been determined that the Project is the replacement of a commercial structure on the same site as the structure replaced, with a new structure of substantially the same size, purpose and capacity, and, therefore, the Project is an excluded development under the provision of the District's Coastal Development Permit Guidelines.

BE IT FURTHER RESOLVED that in the event Sunroad Harbor Island, Inc. does not exercise said Option by 5:00 PM on December 10, 2009, and if the conditions set forth in said Option are not timely satisfied, and in the further event that Sunroad Harbor Island, Inc. does not enter into the lease attached to said Option, the above consent shall be null and void and of no force or effect.

ADOPTED this 10th day of June, 2008.

sw
6/10/08

San Diego Unified Port District

Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified Port

District on June 10, 2008, by the following vote:

<u>Commissioners</u>	<u>Yeas</u>	<u>Nays</u>	<u>Excused</u>	<u>Absent</u>	<u>Abstained</u>
Michael Bixler	X				
Laurie J. Black	X				
Stephen P. Cushman			X		
Michael Najera	X				
Sylvia C. Rios	X				
Robert J. Spane			X		
Robert Valderrama	X				

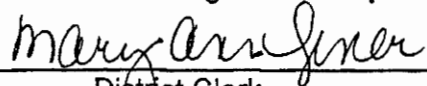
AUTHENTICATED BY:



Chairman of the Board of Port Commissioners

MARY ANN LINER

Clerk of the San Diego Unified Port District

By: 
District Clerk

(Seal)

Resolution Number: 2008-108

OR

Ordinance Number: _____

Adopted: June 10, 2008



566937 L

SAN DIEGO UNIFIED PORT DISTRICT



Coastal Project No. N81-3-76

DOCUMENT NO. **14392**
 FILED **DEC 14 1981**
 MICROFILM NO. _____
 OFFICE OF THE CLERK

**PORT OF SAN DIEGO
 AND LINDBERGH FIELD AIR TERMINAL**

(714) 291-3900 • P.O. Box 488, San Diego 92112

COASTAL DEVELOPMENT PERMIT

Applicant: Mr. Patrick E. Goddard
 Executive Vice-President
 Chart House Enterprises, Inc.
 7432 La Jolla Blvd.
 La Jolla, CA 92037

Agent: Joseph Lancor
 Project Architect
 853 Camino Del Mar
 Del Mar, CA 92014

Project: CHE, Inc. - San Diego Rowing Club Restoration

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and amended on December 2, 1980, Resolution No. 80-343, in accordance with the provisions for the issuance of an ☐ Emergency ☒ Non-appealable ☐ Appealable Development Permit.

Date of ☒ Board or ☐ Port Director action: November 10, 1981

Board of Port Commissioners Res. No.: 81-367

Date of Permit:

Coastal Project No.: N81-3-76


This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

DEVELOPMENT

The San Diego Rowing Club was vacated several years ago. Since that time, the structure has gradually deteriorated as a result of the elements, vandalism, etc. Chart House Enterprises, Inc. plans to restore the structure, which is listed on the National Registry of Historic Places, for use as a dinner restaurant.

The project site includes a land area of approximately 0.55 acres and a water area of about 0.68 acres. The project consists of a restaurant with 200 seats and 75 bar seats, approximately 57 parking spaces, landscaping, removal of a connecting causeway, construction of a new 250 ft. long sheet pile bulkhead, and placement of about 275 ft. of revetment for shoreline erosion control.

UPD Form No. 739

EXHIBIT NO. 14
APPLICATION NO.
6 A-6-PSD-13-5
Past Restaurant
Permits from Port
 California Coastal Commission

Page 1 of 2

CHE, INC.
 Chart House Enterprises

COASTAL DEVELOPMENT PERMIT

TERMS AND CONDITIONS:

1. Restoration of the structure shall be in compliance with the State of California Historical Building Code, the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," and applicable portions of the Secretary of the Interior's "Standards for Historic Preservation Projects."
2. Restoration shall substantially conform to the structure's circa 1905-1908 configuration and design as reflected in the drawings on file in the Office of the District Clerk as Document No. 14127, except that the rowing shell dock shall be reconstructed on the easterly side of the structure.
3. Project Implementation shall include the concurrent development of the remainder of the workboat basin, including dredging, construction of a new sheet pile bulkhead, placement of revetment, and the securing of all necessary permits.

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within 2 years following final approval of the project by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to the Property Engineering Section of the San Diego Unified Port District.

If you have any questions on this permit, please contact the staff of the Property Engineering Section of the San Diego Unified Port District.

DON L. NAY, PORT DIRECTOR

By: Emily Hedges Kelley
EMILY HEDGES KELLEY

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the Property Engineering Section of the San Diego Unified Port District.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

[Signature]
Signature of Permittee

12-11-81
Date

**REFERENCE
COPY**

Re Coastal Development Permit -]
Chart House Enterprises, Inc.,]
San Diego Rowing Club Restoration]

14392

RESOLUTION 81-367

WHEREAS, the Board of Port Commissioners (Board) on August 28, 1981, approved in concept the "CHART HOUSE ENTERPRISES, INC. - SAN DIEGO ROWING CLUB RESTORATION" (Project) located on tidelands in the City of San Diego; and

WHEREAS, the San Diego Unified Port District (District) is the trustee of said tidelands; and

WHEREAS, the Project consists of restoration of the structure for use as a dinner restaurant with 200 seats and 75 bar seats, approximately 57 parking spaces, landscaping, removal of a connecting causeway, construction of a new 250 ft. long sheet pile bulkhead, and placement of about 275 ft. of revetment for shoreline erosion control; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for the construction of said Project; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

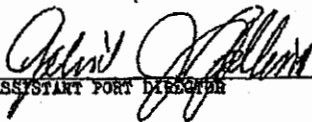
WHEREAS, the Board has adopted the Negative Declaration, "CHART HOUSE RESTAURANT - San Diego Embarcadero" (UPD #80220-23), NOW THEREFORE,

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

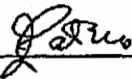
That the Board further finds that this proposed project which is
 1981 entitled "CHARHOUSE ENTERPRISES, INC. - SAN DIEGO ROWING CLUB
 RESTORATION" is consistent with and conforms to the coastal
 development concept for the Centre City/Embarcadero area of the Port
 Master Plan, and as such is a Non-appealable development which conforms
 to the District's certified Master Plan. Accordingly, the Port Director
 or his authorized representative is hereby authorized and directed to
 issue a Coastal Development Permit for said San Diego Rowing Club
 restoration project.

ADOPTED this 10th day of November, 1981.

Presented by: DON L. NAY, Port Director


 ASSISTANT PORT DIRECTOR

Approved: JOSEPH D. PATELLO, Port Attorney



San Diego Unified Port District
Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified
Port District on November 10, 1981, by the following vote:

Commissioners	Yeas	Nays	Excused	Absent	Abstained
Ben Cohen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Phil Creaser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. George James	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Rick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Daniel N. Spurck	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Louie M. Wolfshamer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

Phil Creaser
Chairman of the Board of Port Commissioners

CHRISTINE M. STEIN
Clerk of the San Diego Unified Port District

By *Sally Lombardo*
Deputy Clerk

(SEAL)

Resolution Number <u>81-367</u>
or
Ordinance Number _____
Adopted <u>November 10, 1981</u>



Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3900 • P.O. Box 488, San Diego, California 92112

COASTAL DEVELOPMENT PERMIT

SAN DIEGO, UNIFIED PORT DISTRICT

Document No. 22125

Filed APR 29 1988

Office of the Clerk

Applicant: Mr. Robert S. Wilson
Duckett-Wilson Development Company
345 South Figueroa Street, Suite 302
Los Angeles, CA 90071

Agent:

Project: Fish Market Restaurant

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of an ☐ Emergency ☒ Non-appealable ☐ Appealable Development Permit.

Date of ☒ Board or ☐ Port Director action: February 16, 1988

Board of Port Commissioners Resolution No. 88-57

Date of Permit: April 26, 1988

Coastal Project No. N87-3-385

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

DEVELOPMENT

The proposed project consists of the demolition of the existing one-story, 225-seat, 10,500 sq. ft. "Tom Lai's" restaurant on the "G" Street Mole and its replacement with a new two-story, 516-seat, 16,300 sq. ft. "Fish Market" restaurant, which will include a retail seafood counter. A portion of the restaurant will be constructed on a new 180 ft. long, 30 ft. wide marginal wharf. The new wharf will replace a deteriorated, 20 ft. wide wooden wharf, which has been demolished. The new restaurant will feature shiplap siding and a mansard copper roof, with a bayside deck and small upstairs viewing balconies.



COASTAL DEVELOPMENT PERMIT

TERMS AND CONDITIONS:

N/A

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within 2 years following final approval of the project by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to the Property Engineering Section of the San Diego Unified Port District.

If you have any questions on this permit, please contact the staff of the Property Engineering Section of the San Diego Unified Port District.

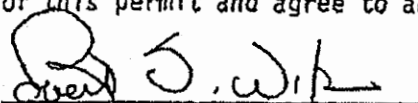
DON L. NAY, PORT DIRECTOR


By:

JOHN P. PEARSON

Directions to Permittee: Permittee is to execute below and return ~~one copy~~ ^{BOTH COPIES} of this permit to the Property Engineering Section of the San Diego Unified Port District.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.


Signature of Permittee

 4/19/88
Date

22125

REFERENCE
COPY
22125

Re Coastal Development Permit -]
FISH MARKET RESTAURANT - "G" Street]
Mole, San Diego]

RESOLUTION 88-57

WHEREAS, the Board of Port Commissioners (Board) on June 30, 1987, granted conceptual approval for the Development of the Fish Market Restaurant (Project) located on tidelands in the City of San Diego; and

WHEREAS, on September 1, 1987, the Board granted conceptual approval of a revised plan for said Project in order for the Fish Market Restaurant to obtain a permit from the Army Corps of Engineers; and

WHEREAS, on February 16, 1988, the Board of the San Diego Unified Port District (District) granted a lease to Fish Market Restaurants, a general partnership, for the operation of a restaurant, cocktail lounge and fish market sales; and

WHEREAS, the San Diego Unified Port District is trustee of said tidelands; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for said Project; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

WHEREAS, the Board has adopted a Negative Declaration entitled "FISH MARKET RESTAURANT, G Street Mole" (UPD NO. 83356-69), NOW, THEREFORE,

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

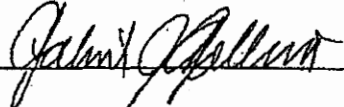
1. The Project, in general, consists of the demolition of the existing one-story Tom Lai's Restaurant located on the G Street Mole in the City of San Diego, and its replacement with a new two-story Fish Market Restaurant building of approximately 16,300 square feet, with a seating capacity not to exceed Five Hundred Sixteen (516); the Project includes an interior retail seafood counter and new 180 foot long marginal wharf, said wharf will extend out 30 foot bayward from the G Street Mole and will replace a portion of a demolished 20 foot wide wharf. Said Project is located in Planning District 3 of the Port Master Plan, the Precise Plan for which provides for land use as "COMMERCIAL: Commercial Recreation".

2. The proposed land use for the Project is consistent with the use and development concept for the Centre City Embarcadero area as provided in said Port Master Plan and, as such, is a Non-Appealable Development which conforms to the certified Port Master Plan.


3. The proposed Project which is entitled "THE FISH MARKET - "G" STREET MOLE" is consistent with and conforms to the Port Master Plan and, accordingly, the Port Director or his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project.

ADOPTED this 16th day of February, 1988.

Presented By: DON L. NAY, Port Director

By 

Approved: JOSEPH D. PATELLO, Port Attorney



**San Diego Unified Port District
AGENDA SHEET**

7

DATE: November 6, 1998

Page 1 of 3

SUBJECT: ANTHONY'S FISH GROTTTO OF LA MESA - STAR OF THE SEA
RESTAURANT RENOVATION

EXECUTIVE SUMMARY:

Anthony's Fish Grotto of La Mesa (Anthony's) operates the Star of the Sea Restaurant at 1360 North Harbor Drive in San Diego. Anthony's proposes to renovate the interior and exterior of the 3,353-square-foot Star of the Sea which is part of a 16,580-square-foot building that also includes Anthony's Fish Grotto Restaurant. The project's cost is approximately \$350,000 and requires Board approval. Staff has reviewed the plans for the proposed remodeling prepared by Anthony's design consultant, D.C. Roberts Design Associates. Staff is recommending approval of the project. A representative of Anthony's will be available to make a presentation to the Board.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Recommend Board review and grant conceptual approval of the proposed remodeling project for Anthony's Star of the Sea Restaurant.

FACTUAL BACKGROUND:

Anthony's proposes to remodel the Star of the Sea to give the restaurant a new, distinctive identity separate from Anthony's Fish Grotto Restaurant. Anthony's submitted final drawings in August 1998 and materials boards to the District in October 1998 for review of the proposed renovations. The proposed renovations are cosmetic in nature and contain no significant structural improvements. The new exterior design features stretched canvas on a metal frame over the existing roof. The exterior shingles will be replaced with stucco and limestone panels. Anthony's is also proposing a new exterior sign and menu board. The contemporary exterior design reflects the new elegant interior design. Anthony's proposes to remodel the interior bar/lounge and dining room. The bar/lounge will

ACTION TAKEN: 11/17/98 - Conceptual approval granted of proposed remodeling project.

**SUBJECT: ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA
RESTAURANT RENOVATION**

be relocated to the promenade side of the building behind new glass windows and entrance doors.

Anthony's proposed remodeling will increase the number of seats in the Star of the Sea by five, from 124 to 129 seats (not a significant increase). The installation of a backflow preventer valve required by the City will result in the loss of one parking space.

Anthony's two restaurants are located in the area of the North Embarcadero Alliance Visionary Plan. When implemented, the Plan's proposed expansive esplanade would reduce parking along Harbor Drive in front of Anthony's. Also, a portion of Lane Field is currently leased to Anthony's, providing employee parking under a one-year Tidelands Use and Occupancy Permit. If Lane Field is developed, Anthony's will have to locate replacement parking.

Environmental Review:

The Port Master Plan land use designation for Planning District 3 is "COMMERCIAL-Commercial Recreation." The proposed project, which consists of interior and exterior remodeling, is in conformance with this land use designation as defined in Section III of the Port Master Plan.

This project is consistent with Public Resources Code Sections 30604(c) and 30210 through 30224, and the Coastal Act Public Access and Recreational Policies referenced therein.

The project is an excluded development under the District Coastal Development Permit Regulations, Section 8.a. Existing Facilities.

This project was found to be Categorically Exempt under CEQA Section a. Existing Facilities (SG 15301) (Class 1): "Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing, included but not limited to: (3) Interior and exterior alterations . . .; (5) Minor exterior and interior alterations to incorporate architectural changes; and (7) Existing facilities used to provide electric power, natural gas, sewerage, or other public utility service."

**SUBJECT: ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA
RESTAURANT RENOVATION**

Treasurer's Certificate:

Not required.

Fiscal Impact:

The project does not have a cost to the District. Revenues to the District may be enhanced as a result of the project.

ANALYSIS:

Anthony's is a valued, long-term tenant. The project will be Anthony's first renovation during its lease term aimed at enhancing its business in this location. The success of Anthony's business should be enhanced by this project. When implemented, the future infrastructure improvements in the North Embarcadero should accelerate the timeline for additional redevelopment in the area. This should have a positive impact on Anthony's business. Staff supports Anthony's request for approval of its plans to remodel the Star of the Sea Restaurant.

LEASE INFORMATION SUMMARY

Tenant: Anthony's Fish Grotto of La Mesa

Location: 1360 North Harbor Drive

Area: 31,500 sq. ft. - water

Use: Restaurant, bar, gift shop, and catering.

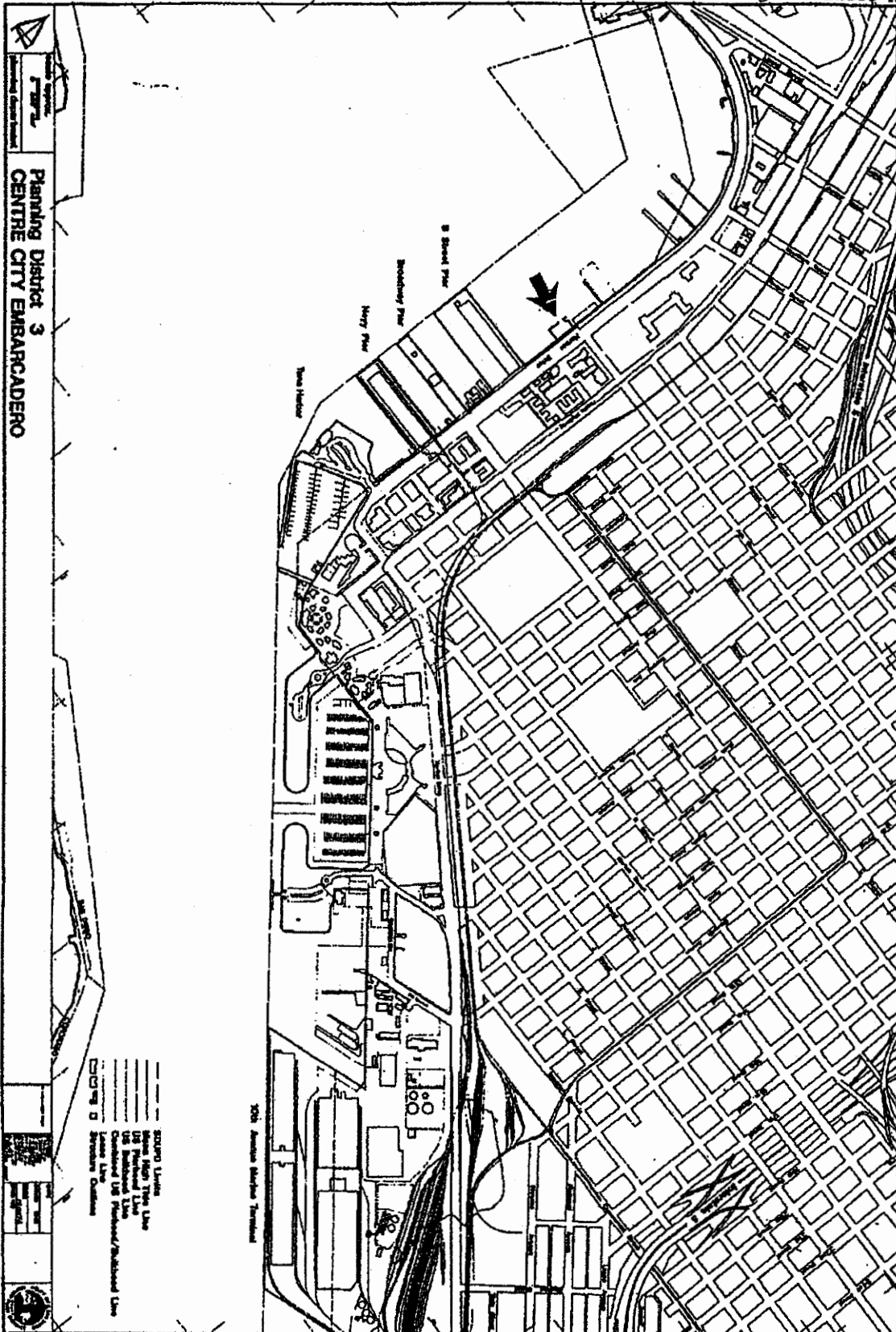
Term: 2/1/65 - 1/31/17 (52 years, including options)

Rent:

Food	3%
Beverages, gifts, novelties, souvenirs, cigars, cigarettes, etc.	5%
Vending machine commissions	25% (5% of gross if machines tenant-owned)
Other Income	10%
Annual minimum rental	\$181,000

Option and
Rent Review
Period: 2/1/1995 - 1/31/2000 (5 years)

Improvement
Summary: 357 restaurant seats (220 seats - Fish Grotto; 45 seats - Fishette; 92
seats - Star of the Sea)



AGENDA ITEM 32

SAN DIEGO UNIFIED PORT DISTRICT

DATE: September 5, 2006

SUBJECT: SAN DIEGO MARRIOTT HOTEL AND MARINA

- A) RESOLUTION CONSENTING TO SUBLEASE TO ROY'S RESTAURANT AT THE SAN DIEGO MARRIOTT HOTEL AND MARINA**
- B) RESOLUTION GRANTING CONCEPT APPROVAL FOR ROY'S RESTAURANT**

EXECUTIVE SUMMARY:

Pacific Gateway, Ltd., is the District's lessee of the San Diego Marriott Hotel and Marina. Pacific Gateway requests permission to enter into a twenty-year sublease with Roy's Callone, LP dba Roy's to replace the former Yacht Club Restaurant. The sublease will be guaranteed by Roy's Holding Inc., which is an affiliate of Outback Steakhouse, Inc.

Pacific Gateway is also requesting concept approval for remodeling its former Yacht Club Restaurant for occupancy by Roy's restaurant.

RECOMMENDATION:

- A) Resolution consenting to long-term sublease from Pacific Gateway, Ltd., dba San Diego Marriott Hotel and Marina, to Roy's Callone, LP dba Roy's restaurant.
- B) Resolution granting concept approval for remodeling former Yacht Club Restaurant for occupancy by Roy's restaurant.

FISCAL IMPACT:

The District receives percentage rents (3% of food and 5% of beverages). Although increased food and beverage sales are anticipated as a result of the new Roy's concept, the fiscal impact is unknown.

DISCUSSION:

Pacific Gateway, Ltd., (Gateway) has a lease covering the San Diego Marriott and Marina (Marriott) located at 333 West Harbor Drive. The lease is summarized on the attached LEASE INFORMATION SUMMARY. Gateway is requesting consent to

ACTION TAKEN: 09/05/06 - Resolution 2006-145 and 2006-146
--

sublease the former Yacht Club Restaurant to Roy's Calione, LP dba Roy's. See attached SUBLEASE INFORMATION SUMMARY.

Roy's will replace the Yacht Club Restaurant, which faces the Marriott Marina on the South Embarcadero promenade with Roy's restaurant. The remodeling project requires Board approval since there will be changes to the silhouette including the installation of an exterior retractable canvas cover patio, and new subtenant monument signage on Harbor Drive. The estimated project cost is approximately \$1,975,000. Under separate contract, Marriott will upgrade the 2nd Floor restrooms with new finishes and an ADA compliant layout at an estimated cost of \$100,000.

The Marriott management has decided to replace the existing Yacht Club Restaurant, which has been in need of an updated theme and new finishes, with a totally new restaurant concept. The stand-alone theme restaurant building with banqueting facilities above faces the Marriott Marina on the South Embarcadero Promenade. The new restaurant concept, Roy's, is a very successful "Hawaiian Fusion" cuisine theme. Chef Roy Yamaguchi, winner of a prestigious James Beard best chef award, opened his first restaurant in Honolulu in 1988; there are now 33 Roy's restaurants worldwide.

Roy's is noted for its outstanding design concepts: subtle lighting, bold design concepts and fine finishes. The main dining room will be remodeled to include a glass enclosed wine "cellar" and a large exhibition kitchen open to the dining room. The existing kitchen will be converted to a large bar area, and the present elevator and stair shaft will be opened up to the bar and dining room. A third of the 2nd Floor area, now Marriott banquet space, will be remodeled to function, with the use of moveable partitions, as from one to four private dining rooms for Roy's customers. The remaining two-thirds of the area will remain Marriott's banquet area. An exterior dining/bar deck will open off of Roy's private dining areas. Roy's is remodeling the exterior patio to include a retractable shade cover, an exterior bar and a fire pit. The retractable patio cover can be opened or closed as diners prefer.

The patio cover will be a trademark Roy's purple color which will also be the background color on all of Roy's signage. The exterior signage package includes two monument signs on Harbor Drive that are necessary to identify and locate the waterfront restaurant blocked by the hotel buildings from the view of passersby.

The remodeled Roy's restaurant will have approximately 300 restaurant seats, inside and out. This is a 50 seat increase over the capacity of the existing Yacht Club Restaurant, but Marriott will still have a surplus of 514 parking spaces per the Board approved Tidelands Parking Guidelines.

Port Attorney's Comments:

Not applicable.

Environmental Review:

This project has been found to be **Categorically Exempt** according to CEQA under the following section:

15301, Existing Facilities: "Class 1 consists of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing.

Coastal Assessment:

The Port Master Plan Land use designation for this area (Planning District 3 - Precise Plan Figure 11) is "COMMERCIAL – Commercial Recreation." This project is consistent with that land use designation.

This project is located between the sea (as defined by the Coastal Act) and the first continuous public road paralleling the sea. This project is consistent with Public Resources Code Sections 30604(c), and 30210-30224, and the relevant Coastal Act public access and recreation policies referenced therein."

This project is an **Excluded Development** under the District Coastal Development Permit Regulations, Section 8.a., Existing Facilities: "The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing.

Equal Opportunity Program:

Not applicable.

PREPARED BY: Patti D. Phillips
Senior Asset Manager, Real Estate

Clinton E. Kisner
Architect, Real Estate

LEASE INFORMATION SUMMARY

Tenant: Pacific Gateway, Ltd., dba San Diego Marriott Hotel & Marina

Location: 333 West Harbor Drive

Area: 781,527 sq. ft. Land; 826,936 sq. ft. Water; 174,921 sq. ft. Navigation Easement

Use: Hotel, marina, restaurants, cocktail lounges and retail shops.

Term: 12/01/95 - 11/30/2061 (66 Years)

Rent: Annual minimum of \$3,800,000 per year versus the following percentage rents:

<u>Rent Category</u>	<u>Percentage Rates</u>
Guest rooms	6%
On-sale beverages, barber and beauty shop, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, etc.	5%
Food and off-sale beverages	3%
Boat berth rentals, dock lockers, boat launch and retrieval	20%
Boat rentals - less than 20 ft. in length	10%
Boat charters - more than 20 ft.	6%
Vending or service machine commissions	25% (5% if Lessee owns machines)
Other	10%

Next Rent
Review: 12/01/2006

Improvement
Summary: 1,362 hotel rooms, 1,164 restaurant and lounge seats inside the hotel, 453 boat slips in marina, 1,839 parking spaces including 700 parking spaces in Convention Center parking garage.

SUBLEASE INFORMATION SUMMARY

Tenant: Pacific Gateway, LTD, dba San Diego Marriott Hotel & Marina.

Subtenant Roy's Calione, LP, dba Roy's.

Location: 333 West Harbor Drive.

Area: 7,486 sq. ft. restaurant building.

Use: Restaurant and cocktail lounge, including serving of alcoholic beverages.

Term: 10 years plus two (2) five-year options

Rent: Minimum rent plus 4% of gross sales in excess of breakpoint for applicable year at Roy's Restaurant.

Years 1 through 5 \$8,333/mo
Years 6 through 10 \$9,166/mo.
Years 11 through 15 \$10,083/mo.
Years 16 through 20 \$11,091/mo.

Improvement Summary: 10,877 sq. ft. 1st floor restaurant building, use of 4,257 sq. ft. of 2nd floor restaurant building, and limited use of 2,494 sq. ft. of 3rd floor restaurant building.

AGENDA ITEM 10

SAN DIEGO UNIFIED PORT DISTRICT

DATE: March 18, 2003

SUBJECT: ADOPT RESOLUTION GRANTING CONCEPT APPROVAL FOR SUN HARBOR MARINA REDEVELOPMENT TO INCLUDE ADJACENT PROPERTY AND AUTHORIZE NEGOTIATION OF OPTION AGREEMENT FOR 40-YEAR LEASE

EXECUTIVE SUMMARY:

Sun Harbor Marina (Sun Harbor), located at 5104 North Harbor Drive, has been a District tenant since 1983. Sun Harbor operates a marina, support services for both the marina and adjacent sportfishing tenants, and subleases to Pizza Nova restaurant and four marine service tenants. Sun Harbor has submitted concept plans to redevelop its existing improvements and build an additional 4,000 square feet on the existing Sun Harbor site plus the immediately adjacent 19,775 square foot property (the former Tarantino site). Capital investment for the project is projected to be approximately \$3.9 Million which justifies a 40-year lease term under BPC Policy 355.

A representative of Sun Harbor is available to make a presentation of the proposed project.

RECOMMENDATION:

Adopt Resolution granting concept approval for Sun Harbor Marina redevelopment to include adjacent property and authorize negotiation of Option Agreement for 40-year lease.

FISCAL IMPACT:

The fiscal impact to the District cannot be projected at this point, but the proposed 40-year Lease will include fair market rental for the leased premises. The fiscal impact will be known when Board approval is sought for the Lease.

DISCUSSION:

Sun Harbor has a lease with the District covering 45,000 square feet of land and 136,707 square feet of water area at 5104 North Harbor Drive. The existing three (3) year lease expires the earlier of March 31, 2004 or six (6) months following Coastal Commission certification of the Port Master Plan Amendment for the America's Cup

ACTION TAKEN: 03/18/03 – Reso. 2003-57

AGENDA ITEM 10

Page 2 of 4

Harbor Shelter Island Area, and is summarized on the attached LEASE INFORMATION SUMMARY. The requested concept approval includes development of the 19,775 square foot adjacent site formerly occupied by Tarantino's Restaurant. Tarantino's Restaurant improvements were removed in the late 1990's and the now-paved lot is periodically leased for parking to nearby tenants.

Starting in early 1997, a master planning process developed recommendations for long-range improvement and redevelopment for the Shelter Island/America's Cup Harbor area. A preferred concept was adopted by the BPC in December of 1998. This preferred conceptual plan was refined into the current concept with an Environmental Impact Report (EIR) for the plan certified by the BPC on May 21, 2002. The final plan recommendations will be submitted to the California Coastal Commission as an amendment to the Port Master Plan within the next several months.

Sun Harbor has been applying for redevelopment plan approval since July, 1997 and has spent more than \$140,000 preparing redevelopment concepts to meet various District concerns. Because of past delays in redevelopment consideration, Board approval of Sun Harbor's current 3-year lease included agreement that Sun Harbor would be allowed a reasonable time after the Master Plan Amendment certification to submit a redevelopment proposal and negotiate a new lease in advance of the District issuing an RFP for the property.

One of the delays in Sun Harbor's redevelopment of its current site is due to the Master Plan's reconfiguration of the parking area immediately in front of the Sun Harbor property, and Sun Harbor's dependence on street parking in order to meet the District's parking criteria. SDUPD is working with the City of San Diego to arrive at a mutually agreeable plan for that area. Sun Harbor's current redevelopment proposal, because it includes the adjacent 19,775 square foot site, includes sufficient on-site parking to accommodate the proposed redevelopment. Sun Harbor's plan design leaves room for seamless, further redevelopment of the parcels once the Master Plan-related parking/density issues are resolved.

Sun Harbor's current application would replace the existing marina docks with a new docking system including an ADA-accessible gangway, relocate and rebuild the landside improvements, and add approximately 4,000 square feet of building area for marina support and office. Public art is being incorporated into the plan in accordance with BPC 609. Project planning will include compliance with the District's Standard Urban Storm Water Mitigation Plan program. Board decisions made with respect to guest docks will be incorporated into the lease agreement. The public promenade across the leased property is included in the redevelopment design, in accordance with the Master Plan.

AGENDA ITEM 10

Page 3 of 4

Sun Harbor's proposed redevelopment is estimated to cost \$3.9 million, and since it anticipates replacing all of its existing buildings and new construction of additional space, qualifies pursuant to BPC 355 for a new 40-year lease. If the Board grants concept approval for Sun Harbor's proposed development, a six-month Option Agreement for a 40-year lease will be negotiated. In a future meeting the Board will be requested to grant the Option Agreement. During the option period, Sun Harbor will prepare final working drawings, obtain building permits and secure financing as conditions precedent to exercising the option and obtaining a 40-year lease.

Environmental Review:

Exempt under CEQA.

It has been determined that this project is Categorically Exempt pursuant to State Guidelines Section 15300.4 and Resolution 97-191, b. Replacement or Reconstruction (SG § 15302) (Class 2) and c. New Construction or Conversion of Small Structures (SG § 15303) (Class 3)

COASTAL ASSESSMENT:

The Port Master Plan Land use designation for this area (Planning District 1 -Precise Plan Figure 4) is "COMMERCIAL - Commercial Recreation / Commercial Boat Berthing." This proposed project, which consists of redevelopment of a marina, restaurant, marine storage and office, is in conformance with this land use designation, as defined in Section III of the Port Master Plan, in that the proposed uses are specifically permitted (Page 24,25,26)."

This project is located between the sea (as defined by the Coastal Act) and the first continuous public road paralleling the sea. This project is consistent with Public Resources Code Sections 30604(c), and 30210-30224, and the relevant Coastal Act public access and recreation policies referenced therein.

It was determined that this project is an Excluded Development under the District Coastal Development Permit Regulations, Section 8.a., Existing Facilities, 8(b), Replacement or Reconstruction, Section 8.c, New Construction or Conversion of Small Structures.

AGENDA ITEM 10

Page 4 of 4

Equal Opportunity Program:

Not applicable.

PREPARED BY: Paul Fanfera
Assistant Director, Real Estate

Christine Richards
Asset Manager, Real Estate

SAN DIEGO UNIFIED PORT DISTRICT

DATE: September 1, 2009

SUBJECT: SHELTER ISLAND, INC. DBA BALI HAI

- A) RESOLUTION GRANTING CONCEPT APPROVAL TO SHELTER ISLAND, INC. DBA BALI HAI FOR PROPOSED RESTAURANT RENOVATION**
- B) ORDINANCE GRANTING AN OPTION AGREEMENT WITH SHELTER ISLAND, INC. DBA BALI HAI FOR A NEW 30-YEAR LEASE, WITH A 10-YEAR OPTION**

EXECUTIVE SUMMARY:

Shelter Island, Inc. operates two restaurants on District Tidelands, the Bali Hai on Shelter Island and Tom Ham's Lighthouse on Harbor Island. Shelter Island, Inc. dba Bali Hai (Bali Hai) has submitted a proposal for a \$3,800,000 renovation of the Bali Hai restaurant. The redevelopment involves the following: complete renovation and remodel of the interior of the restaurant and banquet area, a new 500 square foot deck off of the upper dining room, a new façade facing the parking lot, a new roof, awnings and pergola surrounding the structure, construction of a new permanent pavilion and upgraded landscaping and hardscaping.

Subject to the Board's approval, an 18-month option has been negotiated with Bali Hai for a new lease. In accordance with BPC Policy No. 355, Bali Hai's \$3,800,000 investment will qualify for a 30-year lease term with a 10-year option to extend conditioned on performance factors. The new lease will include the applicable percentage rental rates approved by the Board on December 7, 2004. Minimum annual rent (MAR) under the new lease for the initial 10-year rental period will be as follows: \$300,000 adjusted to \$150,000 during a 12-month construction period, \$225,000 during a 12-month stabilization period, and \$270,000 during an additional 12-month stabilization period. A mid-term CPI adjustment will be required in year five.

RECOMMENDATION:

Adopt Resolution granting concept approval to Shelter Island, Inc. for proposed restaurant renovation; additionally, adopt Ordinance granting an Option Agreement with Shelter Island, Inc. for a new 30-year lease, with a 10-year option.

FISCAL IMPACT:

If approved, the Board action will result in an option payment of \$500. This proposed Board action will not result in further fiscal impact unless the option is exercised. However, if and when the option is exercised and the project has stabilized in year four, the MAR the District receives will increase from \$163,500 to \$300,000 - an increase of

ACTION TAKEN: 09-01-2009 - Resolution 2009-177 and Ordinance 2578

\$136,500 per year. Bali Hai's *projected* percentage rent payments to the District are approximately \$312,000 per year by year four, exceeding the minimum annual rent.

COMPASS STRATEGIC GOALS:

The redevelopment of the Bali Hai will strengthen the District's financial performance and modernize an older development on District Tidelands.

This agenda item supports the following strategic goals:

- ☐ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☐ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☐ Ensure a safe and secure environment for people, property and cargo.
- ☐ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☐ Develop a high-performing organization through alignment of people, process and systems.
- ☒ Strengthen the Port's financial performance.
- ☐ Not applicable.

DISCUSSION:

Background

Bali Hai has a lease covering approximately 33,531 square feet of land and 35,180 square feet of water located at 2230 Shelter Island Drive on the northeast end of Shelter Island. A restaurant of approximately 17,600 square feet, a pavilion of approximately 2,350 square feet and a fixed pier and floating dock available for use by restaurant customers currently occupy the leasehold. The Bali Hai's 25-year lease with the District will expire in August 2015. The terms of the lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Proposed Project

The Bali Hai has proposed a comprehensive renovation and upgrade of the existing facilities into a trendy, modern venue with a Polynesian flavor. The project includes a major rejuvenation of the exterior of the restaurant, enhanced landscaping and outdoor event area as well as a stylish floor to ceiling remodel of the interior. The renovation will be completed in two phases. Phase one of the remodel, which was administratively approved and successfully completed in July 2009, included the construction of a contemporary 2,350 square foot detached pavilion to replace the marquee tent. Phase two involves a complete renovation of the existing facilities. The existing amenities will be significantly upgraded and modernized throughout the leasehold. New components

include an outdoor deck and access to the terrace for better indoor/outdoor connections, and a private dining room. The total renovation, including both phases, is estimated to cost approximately \$3,800,000. Renderings showing the proposed renovation are attached as EXHIBIT A.

Site Work Improvements: The proposed exterior renovations include the modification of the garden to add greater flexibility for use as a gathering area as well as the construction of new hard surface paving and pathways. Existing healthy trees and most plant specimens will be retained using new, low water use strategies.

Exterior Improvements: The proposed exterior building improvements include the shielding of large expanses of glass around the building perimeter with cantilevered wood louvered awnings and trellised pergola, and construction of a new 500 square foot deck off the upper dining room. The materials and construction details for these components will be consistent with those used on the new pavilion. The new deck will seat approximately 36 dining guests. The façade facing the parking lot will incorporate a wooden screen comprising a public art installation and new, illuminated signage. This screen element will be designed by a local artist and submitted in compliance with BPC Policy No. 609.

Interior Improvements: The proposed interior renovation includes the complete demolition of all interior improvements on both floors. The new first floor interior will be a reconfigured banquet and function area. The new bar will be longer and relocated to accommodate a pair of doors to the exterior terrace and the grand stairway to the second floor will be opened up to improve the visual connection between the levels.

The second floor will be reconfigured with a new bar lounge in the location of the existing private function room. The existing circular bar at the center of the dining room will be removed and a new, signature bar will be positioned to optimize views towards the bay. A set of doors will lead out to the new exterior dining deck. Finally, a new private dining room with a seating capacity of 16 guests will be located on the east side of the restaurant next to the stairway.

The proposed renovation includes the replacement of essentially all floor, wall and ceiling materials and finishes, as well as the HVAC, lighting and sprinkler systems. New porcelain tile is proposed at the front entry and bar/lounge areas, new bamboo composite flooring in the high traffic areas and new carpet in the dining areas. The wood post and beam structure will be sandblasted to reveal its natural state and a new furnishing, fixture and equipment package will complete the remodel.

Proposed Project Team

Shelter Island, Inc. will develop this project. In addition to their restaurant leasehold on Shelter Island, Shelter Island, Inc. operates Tom Ham's Lighthouse restaurant on

Harbor Island. Shelter Island, Inc. is considered a tenant in good standing by the District.

Local architectural firm Graham Downes Architecture has been contracted to assist in the design of the new restaurant. Graham Downes has been involved in several local projects including JRDN, Nine-Ten, Chive, Laurel, Pasquale and Sunroad's 880 Harbor restaurant on Harbor Island.

Proposed Operator

Shelter Island, Inc. will also operate the renovated Bali Hai restaurant. Shelter Island, Inc.'s two restaurants, Bali Hai and Tom Ham's Lighthouse, recently received awards at the San Diego Chapter of the California Restaurant Association's 25th Annual Gold Medallion Awards Banquet. The Bali Hai received the "People's Choice Award" and Tom Ham's Lighthouse was voted "Best Sunday Brunch."

Proposed Option Agreement

The proposed option agreement is for an 18-month period. During the option period, Shelter Island, Inc. must submit for District approval the following:

- Working drawings
- Project financing
- Development permits including Coastal Development Permits, if applicable
- Performance bond
- Construction contract
- Equal Opportunity Employment Program

The proposed option terms are summarized on the attached PROPOSED OPTION INFORMATION SUMMARY.

Proposed Lease Agreement

Term: Bali Hai's \$3,800,000 investment in the restaurant renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per BPC Policy No. 355. Exercise of the option to extend shall be dependant upon Bali Hai maintaining its status as a tenant in good standing which is defined in the lease as requiring the following to be true for the five-year period preceding the option exercise:

- Premises maintained in good condition
- Rent paid promptly
- All provisions of lease complied with
- Gross revenue maximized
- Financial records accurately maintained and accessible to District

- Compliance with the District's policies on public accommodation and non-discriminatory employment and contracting

Minimum Annual Rent: The MAR for the 12-month construction period will be \$150,000, followed by a 12-month stabilization period rent of \$225,000 and an additional 12-month stabilization period rent of \$270,000. The MAR will then increase to \$300,000, which is equal to 100% of the stabilized rent generated by the restaurant based on the proforma submitted by Bali Hai. Since the Bali Hai's annual rental payments have rarely exceeded MAR under its existing lease, staff has determined that it would be prudent to set the MAR at 100% of the projected stabilized percentage rent for the initial 10-year rental period under the new lease. Bali Hai will pay the higher of the minimum rents or the District's standard percentage rental rates, which are projected to exceed these minimum rents after stabilization. The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Port Attorney's Comments:

The Port Attorney has reviewed and approved the requested document for form and legality.

Environmental/Coastal Review:

The proposed project to renovate and remodel the existing Bali Hai restaurant leasehold is Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15301 (Existing Facilities) and Section 15304 (Minor Alterations to Land). The Bali Hai proposed improvements involve the remodeling of the interior and renovation of the existing exterior building structure with no substantial expansion of use beyond that previously existing.

Equal Opportunity Program:

Not applicable.

PREPARED BY: Tony Gordon
Senior Asset Manager, Real Estate

SAN DIEGO UNIFIED PORT DISTRICT

DATE: June 8, 2010

SUBJECT: POINT LOMA SEAFOODS

- A) RESOLUTION GRANTING CONCEPT APPROVAL TO MRS. KELLY'S, INC., DBA POINT LOMA SEAFOODS FOR PROPOSED RESTAURANT RENOVATION**
- B) ORDINANCE GRANTING AN OPTION AGREEMENT WITH MRS. KELLY'S, INC., DBA POINT LOMA SEAFOODS FOR A NEW 30-YEAR LEASE, WITH A 10-YEAR OPTION TO EXTEND**

EXECUTIVE SUMMARY:

Mrs. Kelly's, Inc., dba Point Loma Seafoods (PLS) operates a restaurant on District Tidelands located at 2805 Emerson Street in America's Cup Harbor. PLS has proposed a \$2,700,000 redevelopment of the restaurant including demolition of the existing structure, construction of a new Monterey/Cannery style building, new outdoor dining area with fire pit and seating wall, new contemporary interior retail space and kitchen, and second story viewing terrace.

Subject to the Board's approval, an 18-month option has been negotiated with PLS for a new lease. In accordance with the Administrative Practices of BPC Policy No. 355, PLS' \$2,700,000 investment will qualify for a 30-year lease term with a 10-year option to extend, conditioned upon performance factors. The new lease will include Board-approved percentage rental rates and the new minimum annual rent (MAR) will increase from \$127,125 to \$153,274.

RECOMMENDATION:

- A) Adopt a Resolution granting concept approval to Mrs. Kelly's, Inc., for a proposed restaurant renovation;**
- B) Adopt an Ordinance granting an Option Agreement with Mrs. Kelly's, Inc., for a new 30-year lease, with a 10-year option to extend.**

FISCAL IMPACT:

If approved, the Board action will result in an option payment of \$500. During the option period, PLS will continue to pay improvement rent and the greater of percentage rent or MAR. When PLS enters into a new lease with the District, the MAR the District receives will increase from \$127,125 to \$153,274. It is anticipated that by year three after the stabilization periods, the percentage rents will exceed \$200,000 annually. During the option period and under the new lease the rent will be as follows:

ACTION TAKEN: 06-08-2010 - Resolution 2010-95 and Ordinance 2612

Option Period:	Minimum annual rent:
Option Rent (> percentage rent or MAR)	\$127,125
Option Improvement Rent	\$58,725
Lease:	
Construction minimum rent (50%):	\$76,637
Stabilization minimum rent Year 1 (75%):	\$114,995
Stabilization minimum rent Year 2 (85%):	\$130,283
Full minimum rent Year 3 (100%)	\$153,274

COMPASS STRATEGIC GOALS:

The redevelopment of the PLS leasehold will strengthen the District's financial performance and modernize an older development on District Tidelands.

This agenda item supports the following strategic goals:

- ☐ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☐ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☐ Ensure a safe and secure environment for people, property and cargo.
- ☒ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☐ Develop a high-performing organization through alignment of people, process and systems.
- ☒ Strengthen the Port's financial performance.
- ☐ Not applicable.

DISCUSSION:**Background**

Mrs. Kelly's, Inc., has a lease covering approximately 11,882 square feet of land located at 2805 Emerson Street in America's Cup Harbor. An existing restaurant of approximately 7,904 square feet occupies the leasehold. PLS is currently on a holdover to their original lease, which expired on April 30, 2009, and is paying improvement rent to the District which will continue through the option period until the new lease has been executed. The terms of the lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Proposed Operator

Mrs. Kelly's, Inc. is a multi-generational family-owned and operated business, comprised of the Jack and Beverly Christianson Family Trust (50%), and the John and Theresa Christianson Family Trust (50%). Since the early 1960's, PLS has been a tenant in good standing with the District and a community icon in San Diego.

Proposed Option Agreement

The proposed option agreement is for an 18-month period. During the option period, PLS is required to satisfy the conditions below:

- Schematic Plans (30% complete progress plans) – October 1, 2010
- Design Development Plans (60% complete progress plans) – February 1, 2011
- Working drawings (90% complete progress plans) – June 1, 2011
- Project financing or Equity Commitment (Letter of Commitment from bank or evidence of sufficient personal equity/cash) – August 1, 2011
- Development permits including Coastal Development Permits, if applicable – November 1, 2011
- Performance bond – November 1, 2011
- Construction contract – November 1, 2011
- Equal Opportunity Employment Program – November 1, 2011

The proposed option terms are summarized on the attached PROPOSED OPTION INFORMATION SUMMARY.

Proposed Project

PLS has proposed a new modern Monterey Cannery style stucco building with river-rock and heavy timber accents, a second story viewing terrace, a new outdoor dining area with seating wall and fire pit, enhanced landscaped planters, new hardscape to the existing building perimeter and parking lot, sustainable features and low-irrigation water systems. A lighthouse tower with a public art component will be added to the entry façade. The project proposes to preserve and enhance its connection to the pedestrian promenade reinforcing this destination point and the public's overall experience to the waterfront, and will compliment the new sportfishing redevelopments in America's Cup Harbor. A rendering is attached showing the proposed renovation.

As part of the redevelopment, PLS will be improving and incorporating all the outdoor public seating areas and the adjacent parking lot into their new leased area. Based upon the District's parking guidelines, 47 parking spaces are needed. However, because of the past history of intense parking usage at PLS, the new leasehold parcel will include 60 spaces. During the construction period PLS intends to operate out of a temporary satellite location using temporary trailers on the adjacent Kettenburg leasehold. This operation will provide continued employment for the

existing staff and food sales to the community. The project is estimated to cost approximately \$2,700,000.

Proposed Lease Agreement

Term: PLS' \$2,700,000 investment in the restaurant renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per BPC Policy No. 355. Exercise of the option to extend is contingent upon PLS maintaining its status as a tenant in good standing, which is defined in the lease as requiring the following to be true for the five-year period preceding the option exercise:

- Premises maintained in good condition
- Rent paid promptly
- All provisions of lease complied with
- Gross revenue maximized
- Financial records accurately maintained and accessible to District
- Compliance with the District's policies on public accommodation and non-discriminatory employment and contracting

Minimum Annual Rent: PLS has historically averaged over \$200,000 annually in rent revenue paid to the District. PLS will pay the higher of MAR or the District's standard percentage rental rates, which are projected to exceed MAR after the stabilization period. The new MAR of \$153,274 is equal to 75% of the average of the last three years percentage rent paid to the District. Stabilization Year's one and two are minimum rents and PLS will pay the greater of percentage or minimum rent. It is anticipated that sales will return to current levels and exceed the MAR by Year 3. The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Staff is recommending approval of the option agreement and the project.

Port Attorney's Comments:

The Port Attorney has reviewed and approved the requested document for form and legality.

Environmental/Coastal Review:

The proposed project to renovate the existing PLS restaurant leasehold is a replacement in-kind of the existing building structure with limited expansion of no change in use or capacity and therefore Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15301 (Existing Facilities) and Section 15304 (Minor Alterations to Land) and Categorically Excluded under Sections 8.b (1) and (2) of the District's Coastal Development Permit Regulations.

Equal Opportunity Program:

Not applicable.

PREPARED BY: Kristine A. Zortman
Senior Asset Manager, Real Estate

EXISTING AND PROPOSED LEASE INFORMATION SUMMARY, MRS. KELLY'S, INC.

	EXISTING	PROPOSED
Lessee:	Mrs. Kelly's, Inc.	Same
Location:	2805 Emerson Street	Same
Area:	11,882 sq. ft. – land	37,013 sq. ft. – land (increased to include parking)
Use:	Limited service restaurant; sale of beer and wine, retail fish sales, wholesale fish activities which include cleaning, smoking, filleting, icing, processing and exchanging fish; and sale of gifts and souvenirs; and telecommunications equipment	Same with the addition of public parking for customers and employees.
Term:	30 Years – 5/1/79-4/30/09	Forty years as follows: 30 Years plus 10 Year Option to Extend (Option for additional lease term extension based upon tenant in good standing)
Minimum Annual Rent:	Minimum annual rent of \$127,125	Minimum annual rent: \$153,274 Construction rent (50%): \$ 76,637 Stabilization rent Year 1 (75%): \$114,995 Stabilization rent Year 2 (85%) \$130,283 Minimum rent Years 3-5: \$153,274
Percentage Rental Rates:	Food 3% Beverages on premises 5% Beverages off premises 3% Gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals 5% Groceries 3% Vending machine merchandise 5% Vending machine commissions 25% Other Income 10%	Same as existing with the following additional items: Fish exchanging operations, including can exchange, fish icing, fish smoking, and fillet services 3% Telecommunications 50% Unauthorized use 20%

	EXISTING	PROPOSED
Flat Rent:	Wholesale fish activities \$261/mo	See Fish Exchanging percentage rent above
Rent Reviews:	Rent reviews every five years.	Rent reviews every ten years.
CPI Adjustments:	Not applicable	CPI adjustments every five years for non-rent review years
Construction Period:		One year from commencement.
Current Improvements:	7,904 square foot building	8,704 square foot building
Proposed Project:		<p>Minimum Investment - \$2.7 million</p> <p>Demolition to existing foundation, new modern restaurant facility, incorporating an outdoor seating area with fire pit, second story viewing terrace with overflow seating, a lighthouse element proposed for public art, sustainable building materials, including dual glazed glass windows, recycled concrete materials, water efficient irrigation systems, and other energy efficient efforts. Business operations are proposed to continue through the construction process on adjacent leasehold. Leases will incorporate public plaza areas, public parking, and trash enclosures and storage/cleanouts.</p>
Public Art:		Board Policy 609 - 1% of total project cost
Security Deposit:		Waiving in lieu of construction guaranty and fund control
Lease Guaranty:		Jack and John Christianson for a period of five years

PROPOSED OPTION AGREEMENT SUMMARY

Project:	Minimum Investment - \$2.5 million Demolition to existing foundation, new modern restaurant facility, incorporating an outdoor seating area with fire pit, second story viewing terrace with overflow seating, a lighthouse element proposed for public art, sustainable building materials, including dual glazed glass windows, recycled concrete materials, water efficient irrigation systems, and other energy efficient efforts. Business operations are proposed to continue through the construction process in trailers onsite. Leases will incorporate public plaza areas, public parking, and trash enclosures and storage/cleanouts.
Term:	Eighteen months
Option Fee:	\$500
Option Rent:	Minimum annual rent of \$127,125 (plus improvement rent)
Conditions Precedent to Exercise of Option:	Schematic plans, preliminary plans, and working drawings approved by District; Project financing, development permits and performance bond/fund control; Post the lease security deposit; Provide Equal Employment Opportunity Program; Enter into construction contract;
Guaranty:	Jack and John Christianson





Attachment to Agenda Sheet No. 26

SAN DIEGO UNIFIED PORT DISTRICT
San Diego, Ca.

PROJECT REVIEW AND APPROVAL

DATE: January 23, 2013

TENANT: Shelter Island, Inc. dba Tom Ham's Lighthouse

PROJECT TITLE: Restaurant Renovation and Site Improvements
(WORKING DRAWINGS)

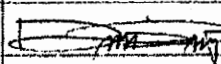
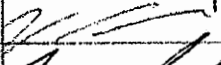
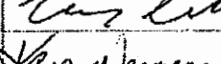
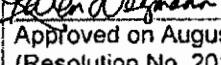
COST ESTIMATE: \$3,500,000

PROJECT LOCATION: 2150 Harbor Island Drive, San Diego, California 92101

PROJECT NUMBER: 005-001-3034

PLANNING DISTRICT: Planning District 2, (Lindberg Field/Harbor Island),
Precise Plan Figure 9, Subarea 22

The above project is hereby granted a **CONDITIONAL APPROVAL** as noted in this **PROJECT REVIEW AND APPROVAL** memo, with **CONDITIONS OF APPROVAL** as indicated below and further set forth in this memo (Tenant signature required on last page of approval letter):

	Project Cost:	Approving Authority:	Initials:	Signature/Date:
<input checked="" type="checkbox"/>	All projects	Darwin Vasquez Architect, RE	DV	 1/23/13
<input checked="" type="checkbox"/>	Under \$100,000	Jenner Smith Asset Manager, RE	JS	 1/23/13
<input checked="" type="checkbox"/>	\$100,000 to \$250,000	Anthony Gordon Area Manager, RE	AG	 1/23/13
<input checked="" type="checkbox"/>	\$250,000 to \$500,000	Karen Weymann Director, RE	KJW	 1/23/13
<input checked="" type="checkbox"/>	Over \$500,000, or as indicated below	BOARD APPROVAL REQUIRED		Approved on August 14, 2012 (Resolution No. 2012-119)

Conditions of Approval:	
<input checked="" type="checkbox"/> Project Specific Conditions	<input type="checkbox"/> Waterside Conditions
<input checked="" type="checkbox"/> Standard Conditions	<input checked="" type="checkbox"/> Traffic Control Conditions
<input checked="" type="checkbox"/> Storm water Conditions	<input type="checkbox"/> Clean up Conditions
<input type="checkbox"/> Signage Conditions	<input type="checkbox"/> Hot Work Conditions
<input checked="" type="checkbox"/> Utilities Conditions	<input type="checkbox"/> UDT
<input type="checkbox"/> Environmental Conditions	<input type="checkbox"/> Other

REAL ESTATE AGREEMENTS related to project approval:

- ☒ LEASE CONFORMANCE—project complies with existing lease terms
- ☐ LEASE or TUOP negotiations pending
- ☐ SUBLEASE approval needed
- ☐ EASEMENT
- ☐ RIGHT OF ENTRY

PROJECT DESCRIPTION

Ms. Susan Baumann, President of Shelter Island, Inc. dba Tom Ham's Lighthouse, has submitted for approval the accompanying working drawings and attached correspondence of the proposed Tom Ham's Lighthouse Restaurant Renovation. The site is located at 2150 Harbor Island Drive, San Diego, California on the westerly side of Harbor Island.

The Board granted concept approval of the Tom Ham's Lighthouse Restaurant Renovation (Project No. 005-001-2876, Resolution No. 2012-119 on August 14, 2012, and the Restaurant Renovation and Site Improvement working drawings are in substantial conformance with the Board approved concept.

The project consists of a comprehensive renovation and upgrade of the existing facilities into a contemporary venue within the existing building footprint. The project includes a major renovation, which will reposition the restaurant as a dining destination by adding outdoor dining, outdoor cocktail area, and new bar and cocktail lounge taking full advantage of the panoramic views of San Diego Bay and the skyline. The existing amenities will be significantly upgraded and modernized throughout the leasehold. New components include an outdoor deck dining area, relocation of the bar and lounge area and addition of a new public shoreline promenade. All interior surfaces in the public areas will be updated including the restrooms. Working drawings are prepared by Graham-Downes Architecture.

The project will cost approximately \$3.5 Million.

Scope of work will include demolition, renovation of existing structure and site improvements:

MAJOR PROJECT COMPONENTS

Second Level - Interior:

- Demolish existing bar and construct new L-shaped bar and cocktail lounge at the northern end of the dining room.
- New decorative window panels along the front of the building. The design of the windows has been modified from the concept drawings.
- The area of existing bar will be converted into a keg room.
- Updated ceiling and refinished exposed beams.
- Upgraded windows all throughout the dining area.
- New built-in banquet/ booth seatings.

- New floor finish.
- New doors with panic hardware.

Second Level – Exterior:

- A new terrace dining will be constructed to replace the existing tile roof. The proposed deck will be approximately 14' wide by 100' long (1,400 sq. ft.) with new clear glass railing enclosure.
- New exterior stair to dining terrace. The stair location was shifted from the concept drawing to the north end of the dining terrace so it will obstruct less views from the restaurant interiors at both levels.
- New access doors to deck.
- New accessible ramp.

First Level – Interior:

- Reconfigured banquet and function area with leveled flooring.
- New ceilings and lighting in banquet rooms.
- Remodeled service bar and service station.
- New ADA access ramp.
- Upgrades to the main stair.
- Upgraded windows throughout the banquet room.
- New storage space underneath the new stair.
- New main door.

First Level – Exterior:

- Replace existing wood rails with glass railings on steel posts.
- New exterior stair to main floor.
- Existing deck will be recoated with a slip resistant and durable traffic coating.
- Demolish existing wood trellis, wood posts and concrete pads at the deck area.
- Demolish existing stair.
- New roof eaves along South and West side of the building.

Site Improvements:

- Addition of an outdoor landscape garden plaza to accommodate special gatherings and a wedding venue.
- Update the building appearance at the point of arrival.
- Construction of two (2) new lookout areas with bench seating.

- Reconfigured parking lot and new right-of-way improvements including new driveways, accessible sidewalk and new landscaping.
- Remove portions of the existing wood trellis in front of the building to create space for the new exterior stair.
- New 8 foot wide shoreline public promenade along the perimeter of the leasehold.
- Open up wall to courtyard in front of the lighthouse.
- Relocate the historic fog bell currently situated in the parking lot, to the entrance for display.
- Existing anchor will stay in its current location.
- New paving and landscape. Low water usage plants will be added to the new appearance of the renovated restaurant.

PARKING ANALYSIS

Construction of the promenade reduces the parking on the leasehold from 200 stalls to approximately 192 stalls. Since the District's parking guidelines require 0.25 spaces (Restaurant - Harbor Island) per restaurant seat (e.g. 444 seats x .25 = 111 spaces), the proposed parking exceeds current District guidelines, ensuring an adequate reserve of public parking on the west end of Harbor Island. Therefore, the 111 spaces required are sufficiently covered by the spaces available (192). Parking lot and drive entrances will be reconfigured to allow for a shoreline public promenade around the end of the island. Passenger drop-off and parking space currently located at entrance will also be reconfigured to allow the landscape area in front.

	Existing	Proposed
Parking Spaces	200	192
Restaurant Seating Capacity	368	444
Building Square Footage	21,360 sq. ft.	22,832 sq. ft.

SHORELINE PUBLIC PROMENADE

A new eight (8) foot wide shoreline public promenade will be constructed along the perimeter of the leasehold. It will include a west facing lookout with bench seating area for public to enjoy. The shoreline promenade will be connected to the existing Harbor Island public promenade that goes around Harbor Island. The renovation project will also include two (2) public lookout points located on the west end of the leasehold and on the south eastern corner of the leasehold adjacent to the new Plaza Garden Court.

LANDSCAPING

Landscaping improvements in the parking areas includes removal of two (2) shade trees and will be replaced with approximately seven (7) shade trees. A portion of the existing parking lot located at the southeastern corner of the leasehold will be converted into a landscape garden plaza to accommodate special events and weddings.

SIGNAGE

No signage has been submitted in this proposal.

WATERSIDE

Not applicable.

UTILITIES

Submitted site plan, architectural, civil, mechanical, plumbing and electrical engineering drawings and designs for construction shall be subject to City of San Diego's Building department's permit review process. Some existing utilities will be relocated as necessary. A utility relocation plan must be submitted to the District for review.

INTER DEPARTMENTAL REVIEW

A Stormwater Pollution Prevention Plan (SWPPP) is required for this project and the SWPPP has been approved by ELUM. An approved Standard Urban Stormwater Mitigation Plan (SUSMP) is required for this project before start of any site work activities (If Applicable). Please coordinate with Allison Vosskuhler, Senior Environmental Specialist, at (619) 686-6434.

PUBLIC ART

Tom Ham's Lighthouse must comply with the Port Public Art Program (BPC Policy No. 608) TENANT PERCENT FOR ART requirement. The District is in receipt of a Tom Ham's Lighthouse public art proposal.

ENGINEERING

All right-of-way improvements and accessibility features must comply with the District's standards. The new accessible sidewalk ramps need to match the existing Port District improvements. All existing utilities in that area shall be taken into consideration for the new location of the driveway and must be protected in place or relocated as necessary.

ENVIRONMENTAL AND LAND USE MANAGEMENT

District Environmental and Land Use Management Department has reviewed the project and determined that this project is exempt under CEQA and excluded under the Coastal Act. (See CEQA and Coastal Review sections below.)

Categorical Exemptions

- 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:
 - (3) Interior and exterior remodeling or alterations, involving negligible or no expansion of use beyond that previously existing, including, but not limited to, marine terminal facilities, and marine-oriented commercial, industrial, and public and commercial recreational facilities, including buildings, piers, wharves, marine ways; railroads; airport facilities, runways, taxiways, aprons, and ancillary structures to those facilities; or mechanical systems and equipment.
- d. Minor Alterations to Land: (SG § 15304) (Class 4): Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including but not limited to:
 - (5) New gardening or landscaping. (97191-X-5474)

COASTAL ASSESSMENT

Port Master Plan Reference:

The project is located in Planning District 2, Harbor Island/Lindbergh Field, which is delineated on Precise Plan Map Figure 9. The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation. The project conforms to the certified Port Master Plan because the project proposes interior and exterior alterations of an existing commercial structure consistent with the certified land use designation.

CATEGORICAL DETERMINATION

The above project proposes renovations to an existing commercial structure with an increase of approximately 1,500 square feet, which is less than the increase described below. This project is consistent with the existing certified land use designation and is Categorically Excluded under Sections 8.a (5) and (12) and 8.d (2) of the District's *Coastal Development Permit Regulations*, as follows:

Excluded Developments

8a. 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, including but not limited to:

- (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 square feet, whichever is less; or additions to existing structures of not more than

10,000 square feet of floor area, if the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive.

- (12) Interior and exterior remodeling of airport facilities, marine terminal facilities, existing marine-oriented industrial structures, and commercial or recreational facilities;

- d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:

- (2) New gardening or landscaping; (C12-2-640)

The District is approving the proposed project subject to the following conditions, as noted on page 1 of this Project Review and:

PROJECT SPECIFIC CONDITIONS:

1. The tenant must acquire proper permits and approval from the District prior to initiating any construction activities on the site.
2. Tom Ham's Lighthouse shall install standard San Diego "Coastal Access" signs in clear view along the promenades at the entrances into the leasehold from Harbor Island Drive.
3. An approved Standard Urban Stormwater Mitigation Plan (SUSMP) is required for this project before start of any site work activities (If Applicable).
4. Final cost estimate and construction schedule shall be submitted for District review.
5. Tom Ham's Lighthouse is encouraged to incorporate as many energy and resource conscious measures as possible in the design and operation of this facility.
6. A Right-of-Entry Permit must be obtained for any construction or related activities (staging, etc.) within the District Tidelands. Please contact Jenner Smith, Senior Asset Manager (619) 686-6289 for coordination of the permit.
7. It is Tom Ham's Lighthouse responsibility to ensure structural integrity and durability of the proposed deck. The building remodel shall be engineered by a licensed structural / civil engineer.
8. Fire Department access must be reviewed and approved by the City of San Diego's Fire Marshall.
9. Construction staging areas and temporary facilities will need to be defined and submitted to the District for approval

10. The proposed Plaza Garden Court shall be accessible to the public when events are not occurring and will include a bench seating area near the south eastern corner of the leasehold.
11. Tenant to complete the Tenant Percent for Art program (BPC No. 608) for this project.
12. This project qualifies the Tenant for a new thirty (30) year lease with one ten (10) year option.

STANDARD CONDITIONS:

1. All applicable permits must be obtained (including, but not limited to, all applicable City of San Diego permits and approvals, Army Corps of Engineers (ACOE) and Regional Water Quality Control Board (RWQCB) permits and all applicable code regulations and conditions of approval must be met. All final outside agency inspection approvals must be available for District inspection when the project is completed.
2. Notify the District's Project Architect if a District Construction Inspector is needed a minimum of 72 hours prior to commencement of work on the project. The District Construction Inspector assists the tenant in complying with District conditions of approval pertaining to construction and also assists with coordinating access to the District's utilities and services. The District Construction Inspector does not review or sign-off for building code compliance; this is the City of San Diego Building Inspection Department's responsibility.
3. Tom Ham's Lighthouse and/or their contractor must provide the District with a copy of any application made to any governmental regulatory agency for development or construction permits or license within 5 days of making said application and a copy of the permit, license or other authorization issued by any governmental regulatory agency within 10 days of its receipt.
4. Tom Ham's Lighthouse is responsible for compliance with the Americans with Disabilities Act (ADA) which became effective January 26, 1992.
5. All materials and debris generated by the project must be disposed of off District tidelands and in accordance with federal, state, and local ordinances.
6. Tom Ham's Lighthouse and/or their contractor must provide the District with a copy of the approved set of working drawings and a copy of the City of San Diego Building Permit within 10 days of its receipt.
7. District improvements, including right-of-way improvements such as sidewalks, curb, gutters, landscaping damaged as a result of this project, shall be repaired or replaced to the satisfaction of the District.
8. As-built drawings must be submitted to the District within 60 days of the project's completion.
9. Any new outdoor dining areas shall be submitted as a comprehensive proposal, complete with barriers that comply with the requirements of the Alcoholic Beverages Commission.

10. This working drawings approval letter is not intended and does not operate to modify or amend Tom Ham's Lighthouse existing obligations to the District under the terms of its lease with the District. In the event of a conflict or material inconsistency between the terms of this approval and the terms of the lease, the terms of the lease shall control.

STORMWATER CONDITIONS:

1. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit), as adopted, amended, and/or modified. The Municipal Permit prohibits any activities that could degrade stormwater quality.

Post- construction / operational use of this project site must comply with the Municipal Permit and District direction related to permitted activities, including the requirements found in the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: www.portofsandiego.org/sandiego_environment/jurmp.asp or by contacting the District Environmental and Land Use Management Department at (619) 686-6254.

2. This project requires the development and implementation of a District Storm Water Pollution Prevention Plan (SWPPP) for projects that are less than one acre. The District SWPPP must describe the implementation and maintenance of the Storm Water Pollution Prevention Best Management Practices (BMPs) used to prevent unauthorized discharges to the stormwater conveyance system from construction activities.
3. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations must be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean must be reported immediately to the District Environmental and Land Use Management Department (619) 686-6254, in order to address any regulatory permit requirements regarding spill notifications.

TRAFFIC CONTROL CONDITIONS:

1. Implementation of traffic control plans must conform with the latest edition of the Caltrans Traffic Manual and submitted to the City of San Diego for approval.
2. It is the responsibility of the tenant and his Contractor when performing work on or adjacent to a highway or street to install and maintain adequate traffic safety devices for the traveling public as well as the workers.

UTILITIES CONDITIONS:

1. All underground electrical except low voltage, i.e., 24 volts or less, as in sprinkler controllers and cable TV, shall be encased in three inches of 2,500 psi minimum strength

concrete all around. All underground high voltage encasement must include yellow plastic warning tape running the length of the run.

2. All ground transformers, junction boxes, mechanical equipment, trash enclosures and other aboveground equipment must be sufficiently landscaped, screened with earth berms, shrubbery, small trees, or heavy ground cover or similar screening methods to lessen visual impacts.
3. Any proposed and probable utility outages shall be coordinated with the District's Construction Inspector at (619) 725-6059.
4. Specialized mechanical and electrical equipment is not reviewed by the District. The applicant is responsible for providing an installation that conforms to the manufacturer's printed instructions, and which meets all applicable safety and environmental standards. Design adequate enclosures to fully conceal the equipment from view.
5. Tenant is responsible for notification, approval and coordination of the agencies responsible for the various utilities and public facilities that may be affected by this project.
6. All temporary facilities shall be removed within 60 days after the substantial completion of construction.
7. The contractor must contact Underground Service Alert at 800-422-4133 at least two working days before digging.
8. Utility company markings painted on sidewalks and streets to prevent underground lines from being dug up during construction must be removed within 30 days after work is completed.

Tenant: Please have an authorized representative sign in the area below accepting the conditions set forth in this approval letter. Please return a signed copy of this letter to the District no later than February 7, 2013. If a signed copy of this letter is not returned by February 7, 2013, this Conditional Approval will be null and void.

I hereby accept the Conditions of Approval as set forth in this PROJECT REVIEW AND APPROVAL letter:

Signature: _____
Print Name: _____
Title: _____
Date: _____

Distribution List:

- ☒ Ken Stillwagon, Inspector
- ☒ A. Vosskuhler, ELUM
- ☒ J. Smith, Senior Asset Manager, Real Estate

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Reuben E. Lee Restaurant Replacement, San Diego

Date and time of receipt of communication:

Feb. 26, 2013, 1:00pm

Location of communication:

San Mateo County Board of Supervisors Office, Redwood City

Type of communication:

Phone conference

Person(s) in attendance at time of communication:

Susan McCabe, Steve Kaufmann, Tom Story, Anne Blemker

Person(s) receiving communication:

Carole Groom

Detailed substantive description of the content of communication:


The applicants assert there is no appeal jurisdiction in this instance because Restaurants are not included in the list of appealable developments under Section 30715 of the Coastal Act. They further assert no substantial issue with the development exists, contrary to Coastal Commission staff and appellants' opinion, citing consistencies with the Port Master Plan, which acknowledges the current existence of restaurants in the project area, and the provision of waterfront pedestrian access.

Date: February 28, 2013

Signature of Commissioner: Carole Groom

RECEIVED
MAR 06 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 15
APPLICATION NO. A-6-PSD-13-5
Ex Parte
 California Coastal Commission

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication: February 26 4:30 - 5pm

Location of communication:
(If communication was sent by mail or
facsimile, indicate the means of transmission.)

By phone

Identity of person(s) initiating communication: Sara Wain - Unite Here Local 30

Identity of person(s) receiving communication: Comm Robert Garcia

Name or description of project: Robert E Lee

Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

Appeal of decision by Port of San Diego - approval of
Robert E Lee; unite here recommends the appeal as staff ccc
does.

3/05/2013
Date

Port L
Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, complete this form, 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.

RECEIVED

MAR 06 2013

APPENDIX 2

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Reuben E. Lee Restaurant Replacement, San Diego

Date and time of receipt of communication:

Feb. 25, 2013, 2:00pm

Location of communication:

San Mateo County Board of Supervisors Office, Redwood City

Type of communication:

Phone conference

Person(s) in attendance at time of communication:

Rachel Koss, Tanya Gulesserian

Person(s) receiving communication:

Carole Groom

Detailed substantive description of the content of communication:

Appellants provided an overview of the project and discussed the reasons for their opposition.

They cited inconsistencies with the Port Master Plan, claiming a restaurant would require an amendment because a new restaurant was not explicitly listed as a potential use in the project area. In addition they contend the project does not comply with the PMP's recreational access policies. They further cite the potential for environmental degradation in the form of potential PCB contamination from the removal of the barge and the structure's potential to shade eel grass.

They contend this project does not qualify for an exemption from a Coastal Development Permit and that the environmental and recreational access impacts need raise substantial issues that require further analysis.

Date: February 28, 2013

Signature of Commissioner: _____

Carole Groom

RECEIVED

MAR 06 2013

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

A-6-PSD-135
SUNROW

Date and time of communication: February 26 4:30 - 5pm

Location of communication:
(If communication was sent by mail or
facsimile, indicate the means of transmission.)

By phone

Identity of person(s) initiating communication: Sara Wain - Unite Here Local 30

Identity of person(s) receiving communication: Comm. Robert Garcia

Name or description of project: Robert E Lee

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Appeal of decision by Port of San Diego - approval of
Robert E Lee; Unite Here recommends the appeal as staff CCC
does.

Received at Commission
Meeting

MAR 08 2013

From: _____

Port L

Signature of Commissioner

3/05/2013
Date

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, 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.

MAR 08 2013

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

From: _____

Name or description of project, LCP, etc.:

A-6-PSD-13-S (Second
Enterprise)

Date and time of receipt of communication:

3/4/13 11 AM

Location of communication:

phone

Type of communication (letter, facsimile, etc.)

conf call

Person(s) initiating communication:

Rachael Kass & Tanya
Quisenberry

Person(s) receiving communication:

Mary Challenburger

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

They said the applicant is suggesting that
the proj is exempt from requirement for a CDP
but that it is not because it is a demolition
a new restaurant on land which is currently
vacant.

They said the applicant is saying the proj is
not appealable, but it is

3/6/13
Date

Mary Challenburger
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

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FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

A-6-PSD-135
SUNROND

Date and time of communication: February 26 4:30 - 5pm

Location of communication:
(If communication was sent by mail or
facsimile, indicate the means of transmission.)

By phone

Identity of person(s) initiating communication: Sara Wain - Unite Here Local 30

Identity of person(s) receiving communication: Comm. Robert Garcia

Name or description of project: Robert E Lee

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Appeal of decision by Port of San Diego - approval of
Robert E Lee; Write Here recommends the appeal as staff CCC
does.

Received at Commission
Meeting

MAR 08 2013

3/05/2013
Date

From: _____

Port L

Signature of Commissioner

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If communication occurred within seven (7) days of the hearing, **complete** this form, 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.

APPENDIX 2

MAR 08 2013

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

From: _____

Name or description of project, LCP, etc.:

A-6-PSD-13-S (Second Entries)

Date and time of receipt of communication:

3/4/13 11 AM

Location of communication:

phone

Type of communication (letter, facsimile, etc.):

conf call

Person(s) initiating communication:

Rachael Kass + Taya Gukshin

Person(s) receiving communication:

Mary Challenburger

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

They said the applicant is suggesting that the proj is exempt from requirement for a CDP but that it is not because it is a demolition of a new restaurant on land which is currently vacant.

They said the applicant is saying the proj is not appealable, but it is

3/6/13
Date

Mary Challenburger
Signature of Commissioner

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If communication occurred within seven days of the hearing, complete this form, 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.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.:

Th 22e / Sunroad

Date and time of receipt of communication:

2/22 - 2:30 pm

Location of communication:

Telephone

Type of communication (letter, facsimile, etc.):

Person(s) initiating communication:

Sara Wann

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

See Attachment

2/22/13

Date

V. Bocho

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, 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.

Ms. Wan said they were entire agreement with staff report. The Port tried to exempt this new restaurant from the overall Master Plan, but it doesn't qualify as an exemption on any grounds.

The project is new development --- the old restaurant was on the barge, this one is much larger and on land.

No public access is provided; no analysis of public views or geogological analysis for faults.

Moved the barge from CCC jurisdiction to avoid permitting process. The barge sank, so probably not going to even be part of the new development anymore.

Existing eel grass beds were not reviewed ahead of moving the barge so have no idea what damage was done or what mitigation should be.

The applicant needs to make an overall amendment to the Port Master Plan to include this and the other new development, that is the hotel, at this site.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.:

Th 22e / Sunroad

Date and time of receipt of communication:

2/27 - 3:30

Location of communication:

Type of communication (letter, facsimile, etc.):

Telephone

Person(s) initiating communication:

Susan Thayer / Steve Kaufman /

Detailed substantive description of content of communication:

Tom Storey

(Attach a copy of the complete text of any written material received.)

see attached

2/27/13

Date

✓ Jock Co.

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, 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.

We went over their power point presentation, with mr. kaufman taking the lead. He expressed dismay that this was coming to us as an appeal rather than a dispute resolution.

Asked that we find we have no appeal jurisdiction or that there is no substantial issue.

Their position is that United Here is not a valid appealat – they didn't testify at the '08 hearing. United's interest is a hold over from a prior appeal where they wanted to link this to a Sunroad hotel by the traffic circle, but United lost.

Important legal fact here is what is the "site" – water, land or both. Applicants maintain that the land and water are the site of the Reuben E Lee and the new project. Showed a slide where State Lands defined this site as the entire leasehold, land (was parking and waiting area) and water (the boat). They stated that there are many harbor or marina "sites" that include land and water, citing Tom Hands Light House and the adjacent Island Prime restaurant.

Went over slides that showed improved public views and public access walkway around the peninsula.

Applicants other legal points stress that the PMP regulations allow for replacement projects of non appealable projects. Stand alone restaurants at the port are NOT appealable under any circumstances. This project is obviously not a "shopping facility".