

CALIFORNIA COASTAL COMMISSION

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90th Day: 8/17/14
Staff: A. Sackett-SD
Staff Report: 6/25/14
Hearing Date: 7/09/14

STAFF REPORT: AMENDMENT

Application No.: **A-6-PSD-13-005-A1**

Applicant: **Sunroad Enterprises**

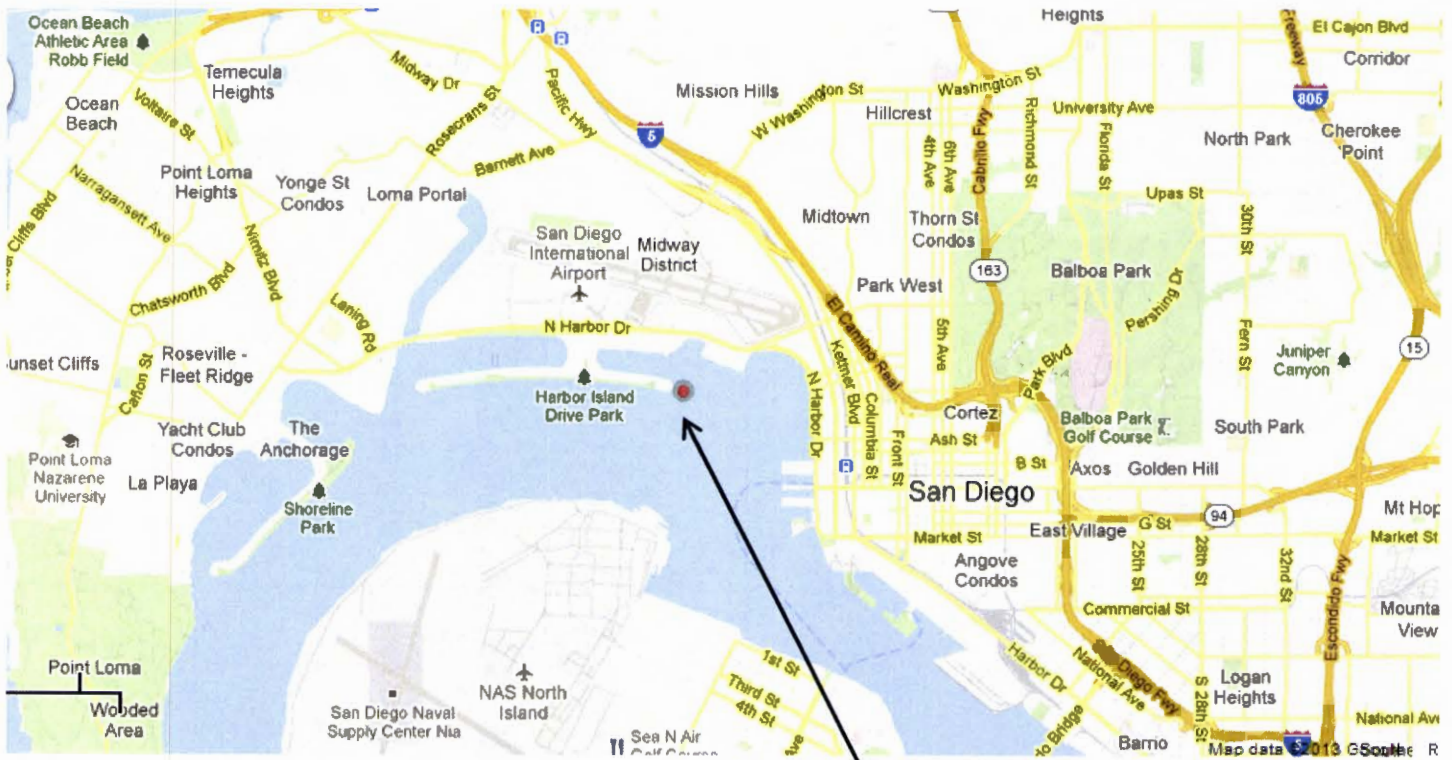
Local Government: San Diego Unified Port District

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

Original Project Description: Demolition of an existing 4-deck, 20,000 sq.ft. restaurant on a floating barge, relocation of the barge to entirely within the pierhead line, construction of 4,800 sq.ft. of unenclosed event space on the barge; construction of a new one-story restaurant on land adjacent to the barge consisting of 12,220 sq.ft. of enclosed floor area, 15,285 sq.ft. of exterior spaces and decks for outside dining; reconfiguration of existing 308 space parking lot to 306 spaces.

Proposed Amendment: Increase size of barge/event space from 4,800 sq.ft. to 6,250 sq.ft.; enclose a 1,320 sq. ft. portion of the barge/event space for kitchen and restrooms with approximately 10 ft. high wall, reorient floating barge/event space to shift the north side of the barge approximately 10 feet to the east and the south side of the barge approximately 40 feet to the easts.

Staff Recommendation: Approval



Subject Site



EXHIBIT NO. 1	
Location Map	
	A-6-PSD-13-005-A1 California Coastal Commission



Proposed location

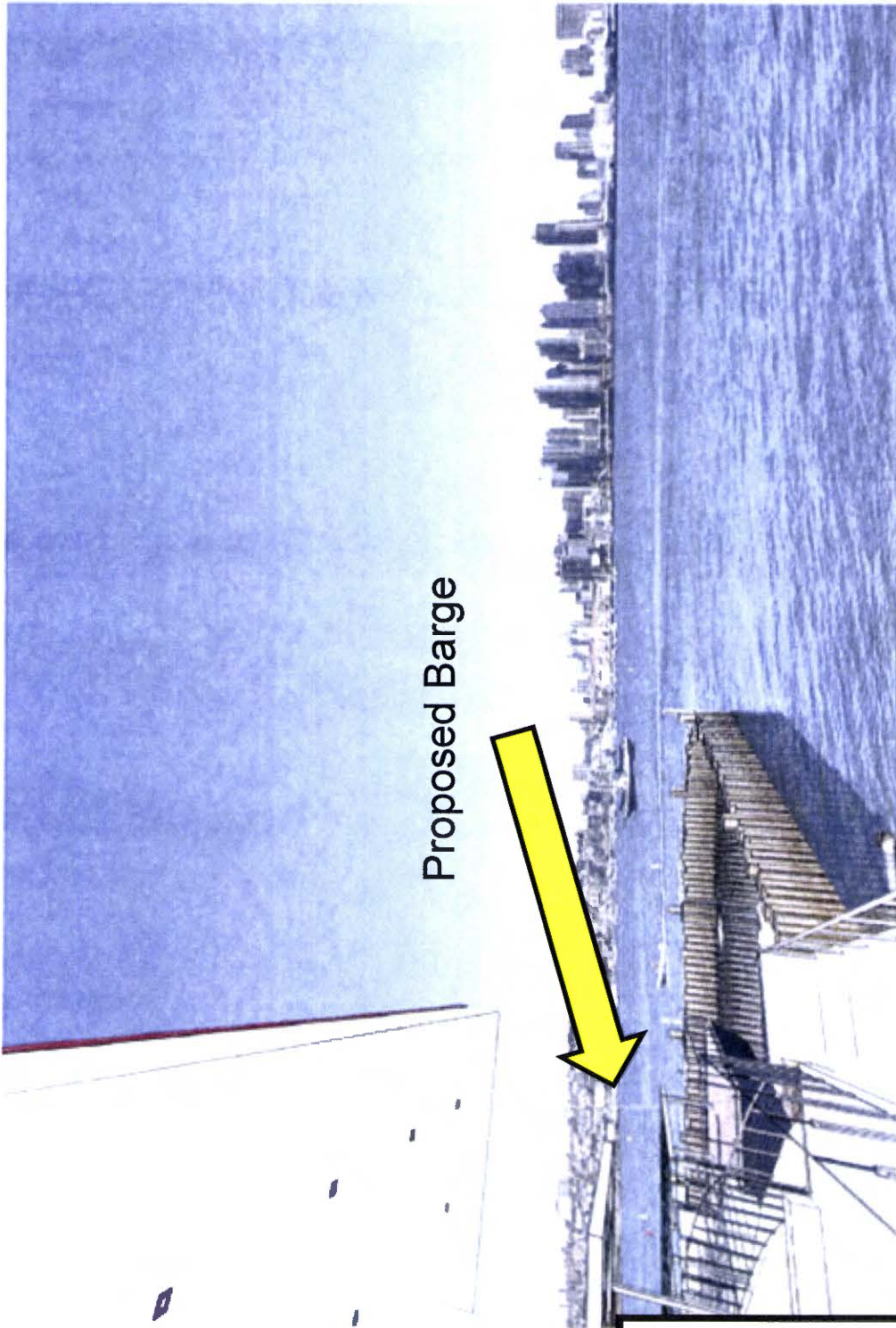


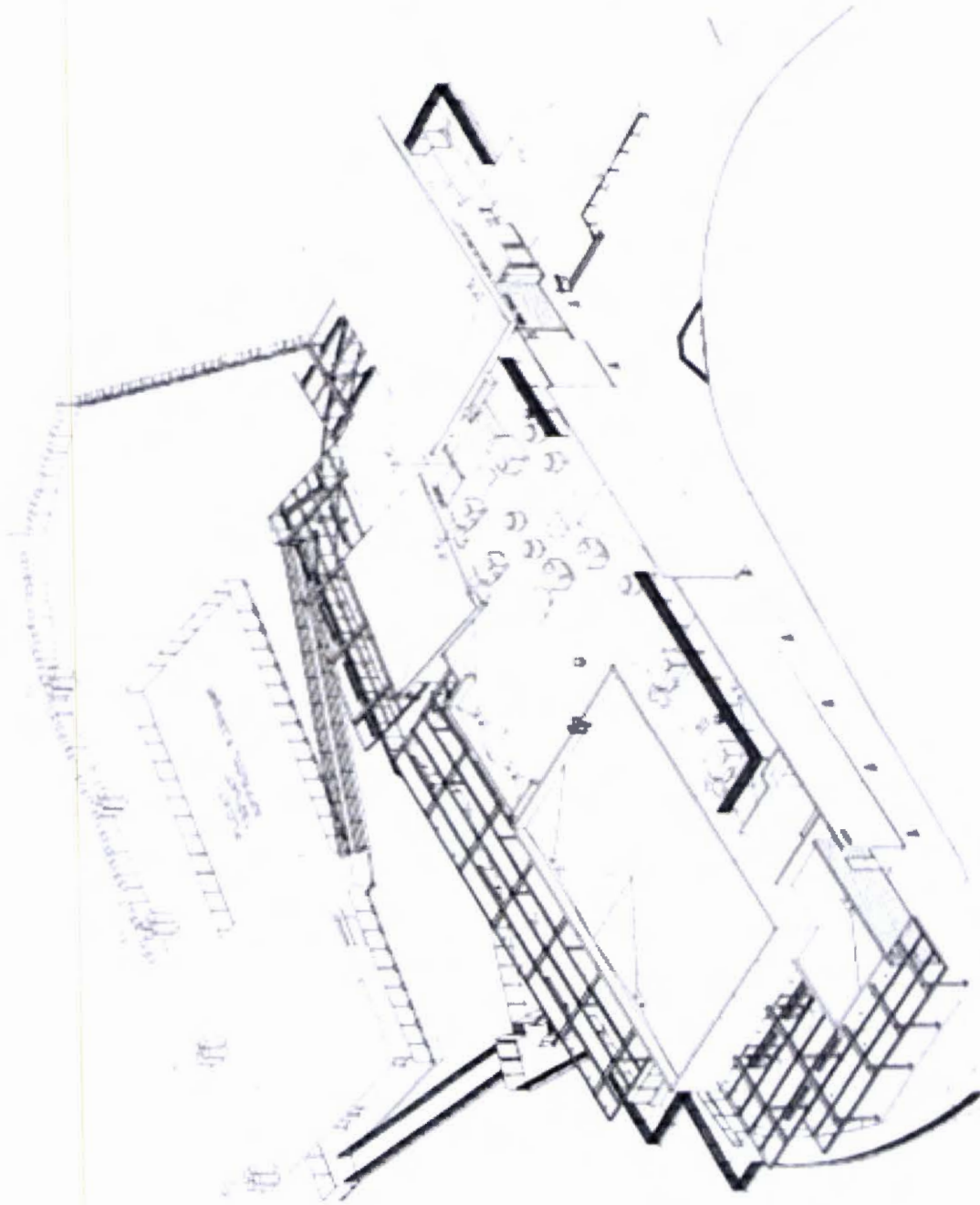
EXHIBIT NO. 2

Visual Simulation

A-6-PSD-13-005-A1

California Coastal Commission





Harbor Island Restaurant & Banquet

EXHIBIT NO. 3

**Proposed Barge Location and
Walkways**

A-6-PSD-13-005-A1




California Coastal Commission



FIGURE 1 - HARBOR ISLAND EAST LEASEHOLD PUBLIC ACCESS PLAN

04.08.13

EXHIBIT NO. 4	
Approved Restaurant and Walkway	
	A-6-PSD-13-005-A1
California Coastal Commission	

SUMMARY OF STAFF RECOMMENDATION

Major Coastal Act issues associated with this project include public access, parking, biological resources and visual quality. The original Reuben E. Lee restaurant project consisted of demolishing and reconstructing a floating barge previously used as a restaurant, as a 4,800 sq.ft. primarily unenclosed event/function space to be used in conjunction with construction of a new one-story 12,220 sq.ft. land-side restaurant adjacent to the barge. In the original permit the barge would have been relocated slightly landward to entirely within the pierhead line, so as to be completely within the Port District's jurisdiction. Total seating capacity would have been between 600 and 800 seats, including the barge/event space. A 10-foot high shade structure would have covered a portion of the barge/event space.

The proposed amendment is necessary to accommodate flatter ramps necessary for ADA access and would shift the north end of the barge approximately 10 feet to the east and the south end of the barge approximately 40 feet to the east. It would also increase the size of floating dock from 4,800 sq.ft. to 6,250 sq.ft. and enclose a 1,320 sq. ft. portion of the floating dock to construct a kitchen and restrooms with approximately 10 feet high walls and roofline consistent with the approved solid canopy.

The reorientation and increase in size of the barge will not impede public access along the approved shoreline public promenade and will not significantly alter the visual impacts. The proposed amendment does not trigger additional parking requirements because it does not propose any increase in seating.

To address potential adverse impacts the Commission staff is recommending **Special Conditions 1** and **2** that would require the submittal of revised plans for the barge/event space, and require that prior conditions of approval of the permit remain in full force and effect.

Commission staff recommends **approval** of coastal development permit amendment A-6-PSD-13-004-A1 as submitted.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Location Map
- Exhibit 2 – Visual Simulation
- Exhibit 3 – New Site Plan
- Exhibit 4 – Approved Site Plan

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. A-6-PSD-13-004-A1 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves coastal development permit amendment A-6-PSD-13-004-A1 and adopts the findings set forth below on grounds that the development as amended and 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.

II. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 14. Final Revised Barge/Event Space Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit for the review and written approval by the Executive Director, final plans for the proposed barge/event space 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 Jon Starr Architect, dated April 5th, 2014.

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

- 15. Prior Conditions of Approval.** All prior conditions of approval of the permit not revised herein shall remain in full force and effect.

III. FINDINGS AND DECLARATIONS

A. PROJECT HISTORY/ AMENDMENT DESCRIPTION

Project 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 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 have decreased from 900 seats to 809 seats.

The project was appealed by the Commission and by Unite Here Local 30 to address inconsistencies with the certified Port Master Plan (PMP) and the public access policies of the Coastal Act, including the 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.

In June 2013, the Commission approved a de novo permit for the demolition of the floating restaurant structure and relocation of the barge to entirely within the pierhead line, construction of 4,800 sq.ft. of unenclosed event space on the barge a solid canopy covering the north portion of the barge, and construction of a one-story, 13,541 sq.ft. land-side restaurant with approximately 9,309 sq.ft. of decks, and reconfiguration of the existing 308 space parking lot to 306 spaces, including 10 tandem spaces.

Amendment description:

The proposed amendment would increase the size of the proposed barge from 4,800 sq.ft. to 6,350 sq.ft. (133' x 47'). The amendment also includes 1,320 sq.ft. (approximately 33' x 40') of enclosed kitchen and restrooms. The walls of the enclosed space will be solid, approximately 10 feet in height, consistent with the solid canopy permitted in the

approved CDP. The proposed amendment would revise the location of floating dock orientation to shift the north side of the barge approximately 10 feet to the east and the south side of the barge approximately 40 feet to the east, within State waters. The landing points of the gangways remain the same but must also shift slightly in orientation to accommodate the changes in orientation of the barge.

No changes are proposed to the landside structure, parking lot layout, signage, decking, fencing/railings and the public walkway. Of the additional 1,450 sq. ft. size proposed for the barge, 1,320 sq.ft. will be enclosed for kitchen and restrooms. No increase in seating is proposed.

The Commission reviews the proposed project in a manner to ensure that it is consistent with applicable policies of Chapter 3 of the Coastal Act and the certified Port Master Plan.

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

The following Port Master Plan policies are relevant:

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.

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....

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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.

At the time the subject restaurant was approved, there were no provisions for a land-side restaurant at this site in the Port Master Plan; thus, in its approval of the project, the Commission recommended that the Port update the PMP to include the subject project. The Port is currently processing a PMPA to revise the extent of new hotel development west of the subject site, which is expected to include language adding the subject restaurant to the text of the Plan.

1. Public Access and Recreation. The proposed amendment would alter the location and size of the barge/event space and enclose a portion of it for a kitchen and restroom facility. No changes are proposed to the landside structure, parking lot layout, landscaping, signage, decking, fencing/railings and the public walkway. The approved new public promenade, landside restaurant and outdoor dining would not be affected by these revisions. In particular, the original CDP includes very specific provisions for public access on the barge/event space. Special Condition #13 requires:

By acceptance of this permit, the applicant agrees that public access to the barge shall be allowed whenever the barge is open for business, except when otherwise reserved for private events, and shall include signage as so stated posted at the entry to the barge.

This condition would not be affected by the proposed amendment. Relocation of the barge would not have any impact on recreational use of the water; the location is essentially the same as that of the previously existing restaurant barge, within an existing

breakwater separated from the main bay. The revised barge will be located partially within the pierhead line (the Port District's coastal permit jurisdiction, and partially beyond the pierhead line (in the Commission permit jurisdiction), similar to the previous restaurant barge.

In addition, the proposed new restaurant structure will not result in to the need for any additional parking, as parking for the project was previously calculated per seat, and no changes to the number of seats is proposed. Therefore, no impacts to public access and recreation are anticipated.

2. Enhancement and Protection of Visual Quality. Relocating the barge to the south will cause a minor change in views from the southern portion of the public shoreline promenade on the bayward side of the Island Prime restaurant, it will also open up public views along the promenade where the north end will shift south. The amendment application provides a visual analysis of the impact the relocated barge structure would have on public views, which demonstrates that no significant changes would result. Exhibit 2 is the visual simulation of the view from the public access point east of the Island Prime restaurant. It depicts the proposed project location and the approved project location of the barge. The visual difference from the proposed movement of the barge is negligible. Therefore, the amendment will not impact public views or the visual quality of Harbor Island.

3. Protection of Natural Resources. An eelgrass survey submitted with the amendment indicates that the proposed project will relocate the barge/event space slightly farther away from the existing eel grass beds and thus decrease the potential impacts to natural resources. The amendment will not alter Special Condition #12 of the original CDP that requires the applicant to provide evidence that dredging of San Diego Bay can occur without the risk of spreading invasive green alga *Caulerpa taxifolia*. Therefore, no impacts to the biological productivity of coastal waters will occur.

C. CONCLUSION

In summary, the proposed changes to the restaurant redevelopment are consistent with the certified PMP and Chapter 3 of the Coastal Act. Based on the above discussion, the development will not result in substantial impacts to coastal resources including public access, public recreation, parking, views and biological quality; thus, the project is consistent with the provisions of the certified PMP. Therefore, staff recommends approval of the proposed amendment.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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.

A-6-PSD-13-004-A1 (Sunroad Enterprises)

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing local government approval and maintaining requirements set forth by the original CDP that 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

(G:\San Diego\DIANA\2013 permit items\A-6-PSD-13-005-A1 Reuben E Lee Amendment Stf Rpt dl edits.docx)

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.