

**CALIFORNIA COASTAL COMMISSION**

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Filed: 2/6/2013  
49th Day: 3/27/13  
Staff: D. Lilly-SD  
Staff Report: 2/12/13  
Hearing Date: 3/7/13

## 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

**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:** Commissioner Esther Sanchez and Commissioner Brian Brennan; Unite Here Local 30

**Staff Recommendation:** Substantial Issue

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## **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.

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; the absence of the project on the list of proposed development in the Harbor Island/Lindbergh Field Planning District in the Port Master Plan; and the public access, recreation, and visual impacts associated with siting a new restaurant facility immediately adjacent to 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 for a project that is identified as an appealable development in the certified Port Master Plan. In 2009, the Port District first made a determination that the project was excluded (exempt) from coastal development permit requirements as both a demolition and reconstruction project, and as an addition to an existing structure. The Commission received notification of these actions on January 23, 2013. However, the project is not an addition to an existing structure, as the entire existing structure would be demolished, and it does not qualify as an exempt reconstruction project, as the new building will be located on the land, in an existing parking lot, and not on the same site as the existing structure.

In addition, 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 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 Port Master Plan Amendment must be obtained before the project can be found consistent with the certified PMP.

In addition, the new restaurant facility as proposed would have public access, recreation, and visual impacts. The restaurant would be located immediately adjacent to the shoreline, with new decks located over the existing revetment around the peninsula. Public access overlooks are proposed on both sides of the structure, but not along the shoreline. This design and siting is 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, eelgrass, and does not provide adequate protection against the introduction of non-native invasive species.

Therefore, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified PMP and the public access and recreation policies of the Coastal Act.

Standard of Review: Certified Port Master Plan; public access and recreation policies of the Coastal Act.

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Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Jurisdictional Boundaries

Exhibit 3 – Proposed Restaurant & Viewpoints

**I. APPELLANTS CONTEND THAT:** The project, as approved by the Port, is inconsistent with the certified PMP and public access and recreation policies of the Coastal Act with respect to the allowable exemptions under the PMP; protection of public access; public recreation; visual quality; biological resources; water quality; and geotechnical hazards.

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**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” to 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.

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**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.

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 to the de novo portion of the hearing on the merits of the project then, or at a later date.

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 test 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 for the subject 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.

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#### **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 public access and recreation policies of the Coastal Act.*

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#### **V. FINDINGS AND DECLARATIONS.**

The Commission finds and declares as follows:

**A. 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 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 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.

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. On that day, 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 (but this is not a coastal development permit). The appeal period was opened on January 24, 2013, and the Commissioner and public appeals received on February 6, 2013.

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 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.

## **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 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.

The "Replacement or Reconstruction" exclusion in Section 8.b. applies to developments "where the new structure will be located essentially on the same site as the structure replaced..." However, 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.

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.

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, 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.

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. CONSISTENCY WITH THE PORT MASTER PLAN**

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 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. The proposed restaurant should be reviewed along with the proposed hotel complex as part of a comprehensive PMPA looking at public access, views, circulation, and other coastal issues on the eastern peninsula.

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.

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 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.

The appellants contend that the project is not consistent with the certified Port Master Plan, and that approval of the project will have adverse impacts on public access, circulation, public recreation, visual quality, geologic stability, and biological resources.

1. Public Access and Recreation. 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 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 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, 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. Therefore, the appeal raises a substantial with regards to the appellants' contentions.

2. Enhancement and Maintenance Visual Quality. 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 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.

3. Protection of Natural Resources. 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 may be eelgrass beds in the vicinity of the barge, and the Port has not provided any analysis regarding the impacts relocating the barge could have on eelgrass, and no conditions requiring measures to prevent the spread of the invasive algae *Caulerpa taxifolia* have been added to the approval. 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. Therefore, the appeal raises a substantial with regards to the appellants' contentions.

4. 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 landside 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. The Port did not include an analysis of this potential impact. Therefore, the appeal raises a substantial with regards to the appellants' contentions.

#### **D. CONCLUSION**

In summary, excluding the proposed restaurant redevelopment and expansion from coastal development permit requirements is inconsistent with the certified PMP. 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, biological quality, and public safety; 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.

#### **E. 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.

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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.

(G:\San Diego\Reports\Appeals\2011\A-6-PSD-11-006 NEVP Coastal Access SI de novo stfprt March 23.doc)

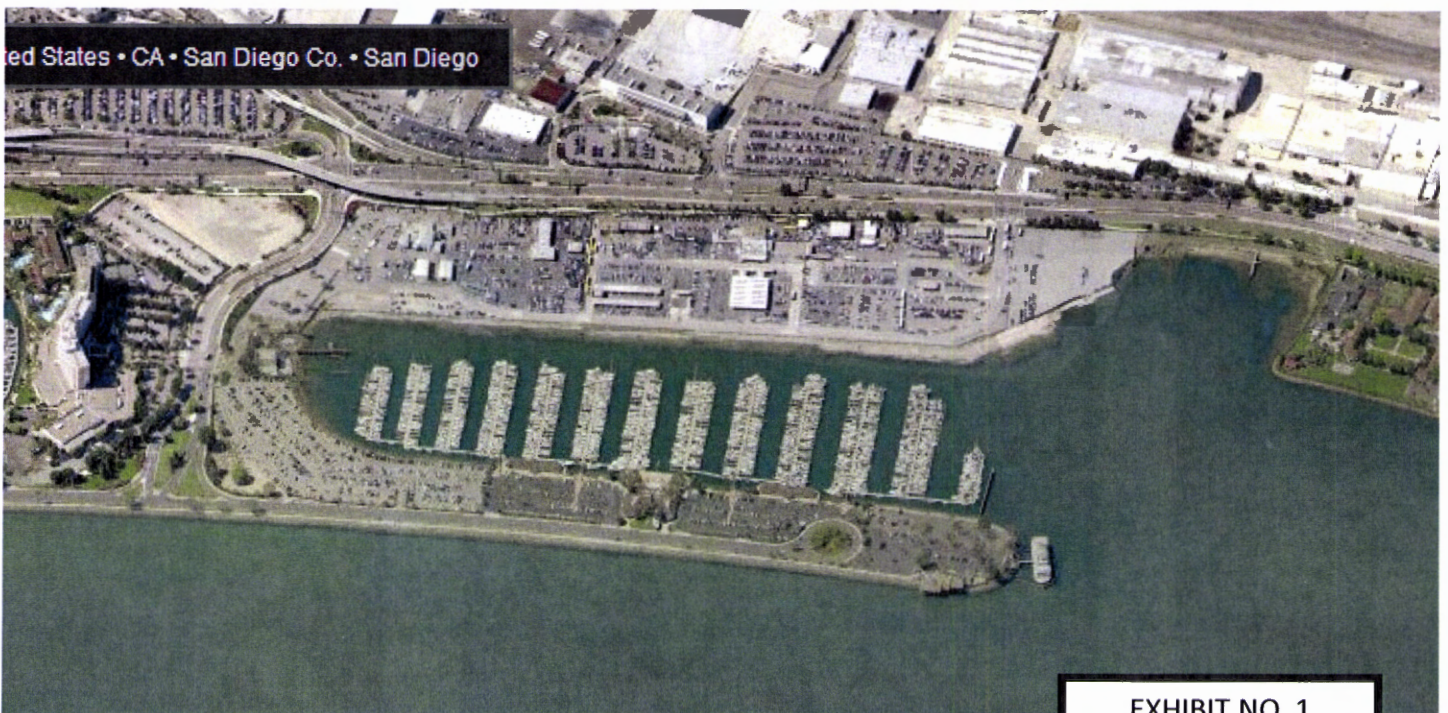
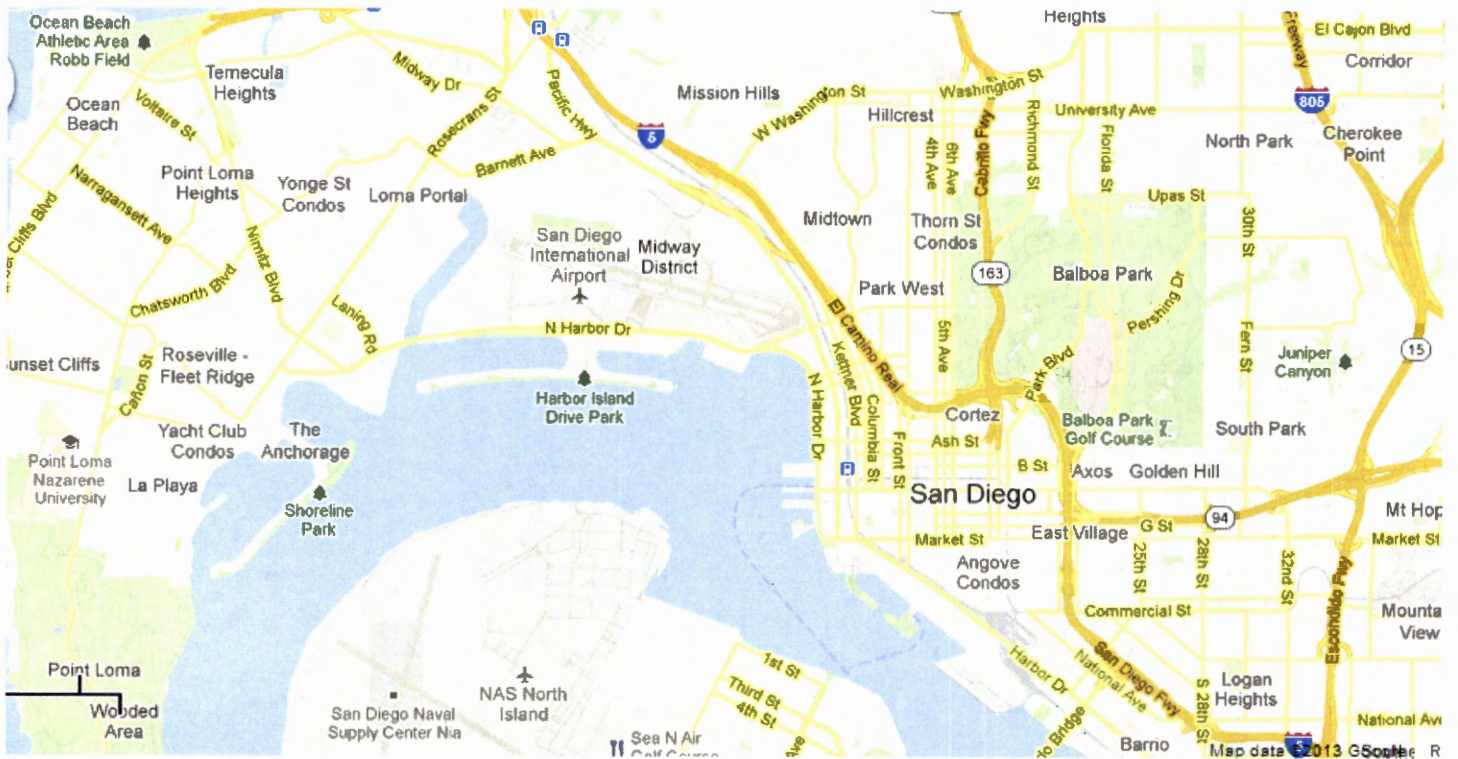


EXHIBIT NO. 1

APPLICATION NO.

**A-6-PSD-13-5**

Location Map



California Coastal Commission



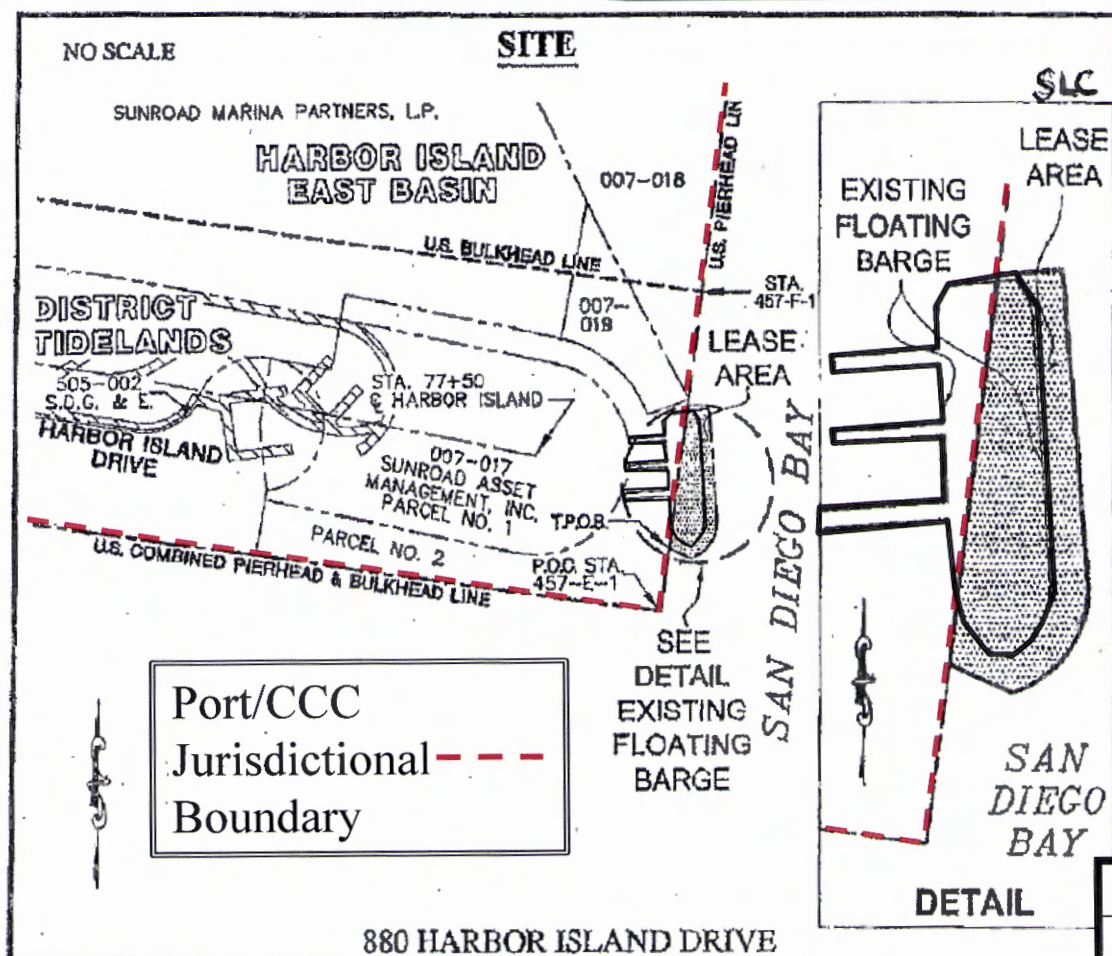
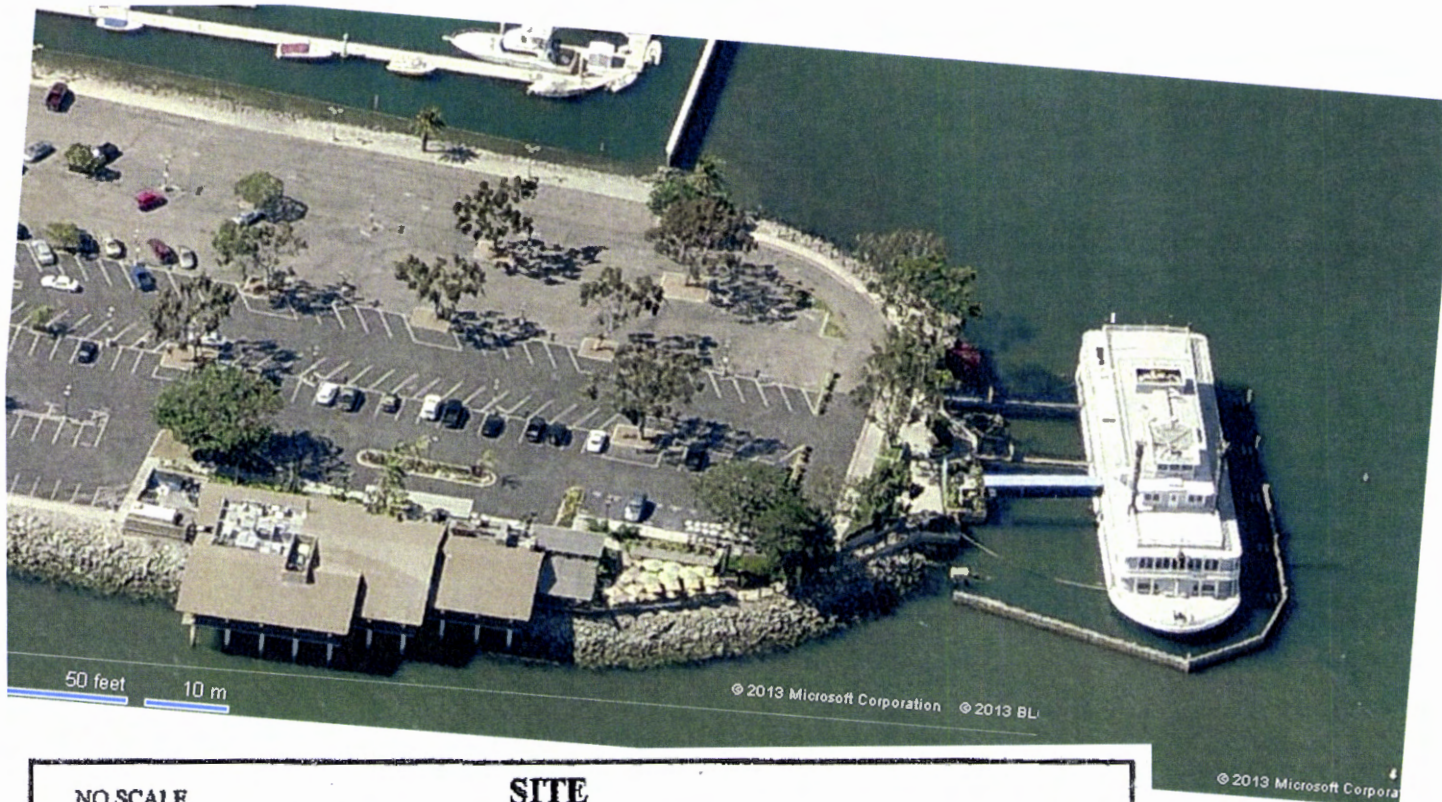


EXHIBIT NO. 2

APPLICATION NO.

**A-6-PSD-13-5**

Jurisdictional

Boundaries



California Coastal Commission



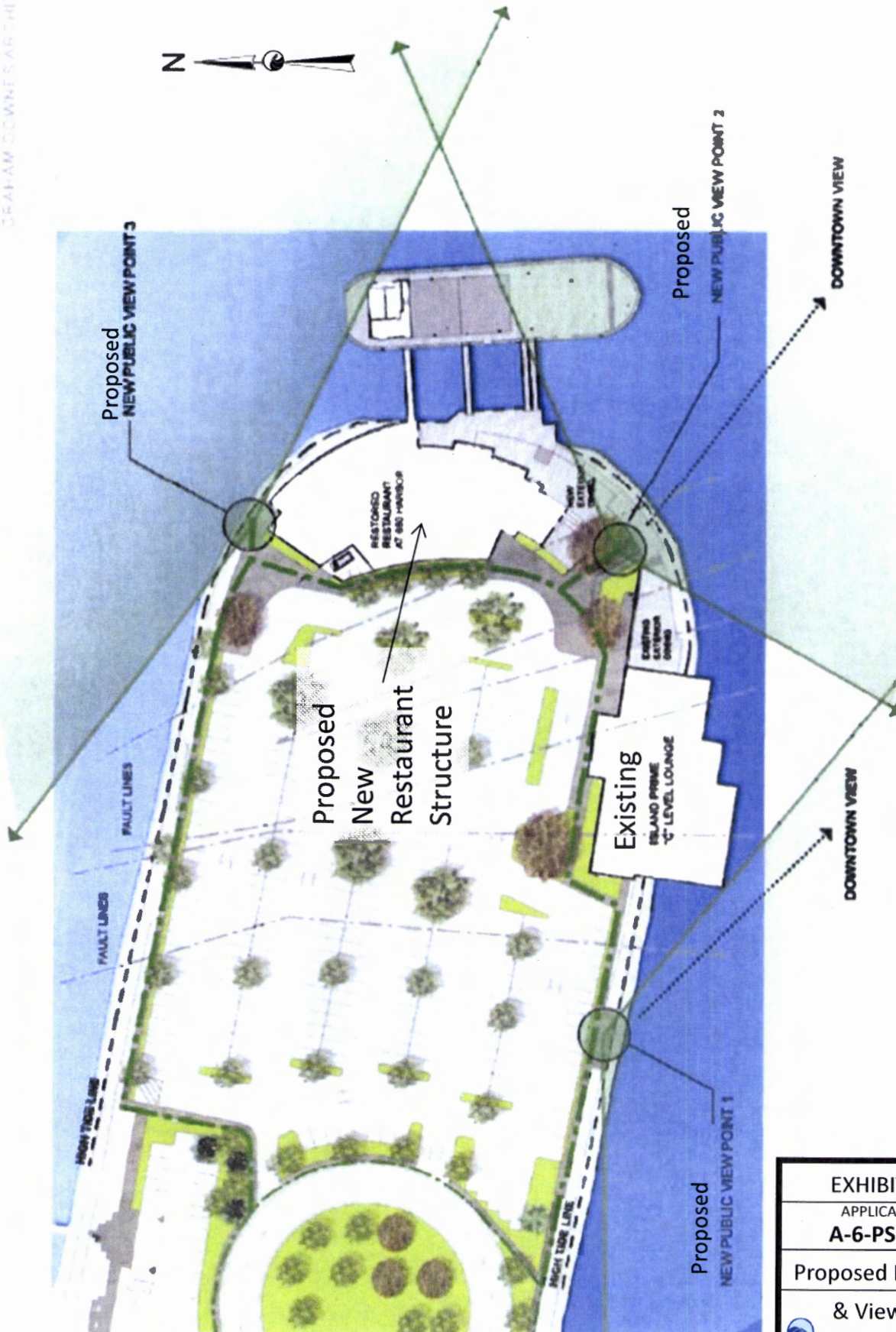



EXHIBIT NO. 3	
APPLICATION NO.	
A-6-PSD-13-5	
Proposed Restaurant	
& Viewpoints	
	California Coastal Commission

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
15 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: 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. 4
APPLICATION NO.
<b>A-6-PSD-13-5</b>
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

AN DIEGO AREA  
575 METROPOLITAN DRIVE, SUITE 103  
AN DIEGO, CA 92108-4402  
319) 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.)

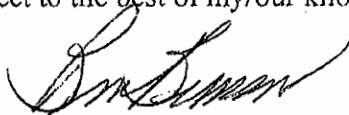
*See Attachment "A" dated 2/6/13*

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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.

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#### 8. Excluded Developments

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  - (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.
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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

EXHIBIT NO. 5

APPLICATION NO.

**A-6-PSD-13-5**

2009 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

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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)

<b>Applicant</b>	<b>Preparer of EA</b>
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.

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- 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.

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- 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.

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- 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 its unique views of downtown San Diego, the Bay, the Coronado Bay Bridge and Coronado. No additional service businesses would be required.

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## **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.

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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 times 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, 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

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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.

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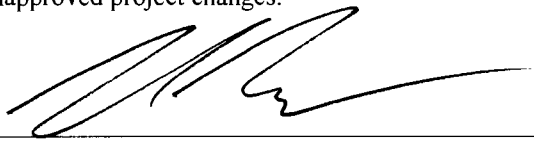
**VII. CERTIFICATION**



- 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)	



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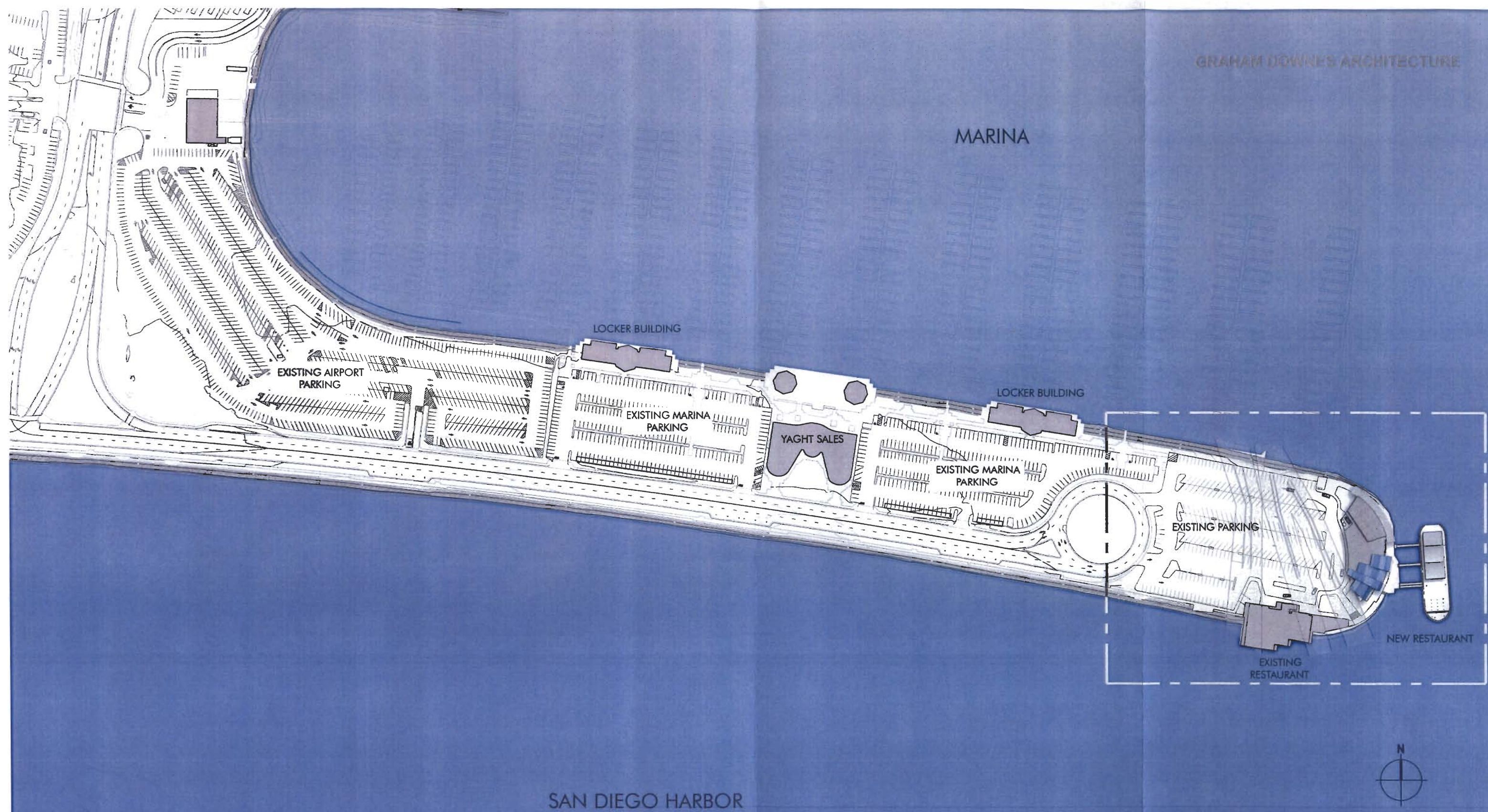
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SAN DIEGO HARBOR

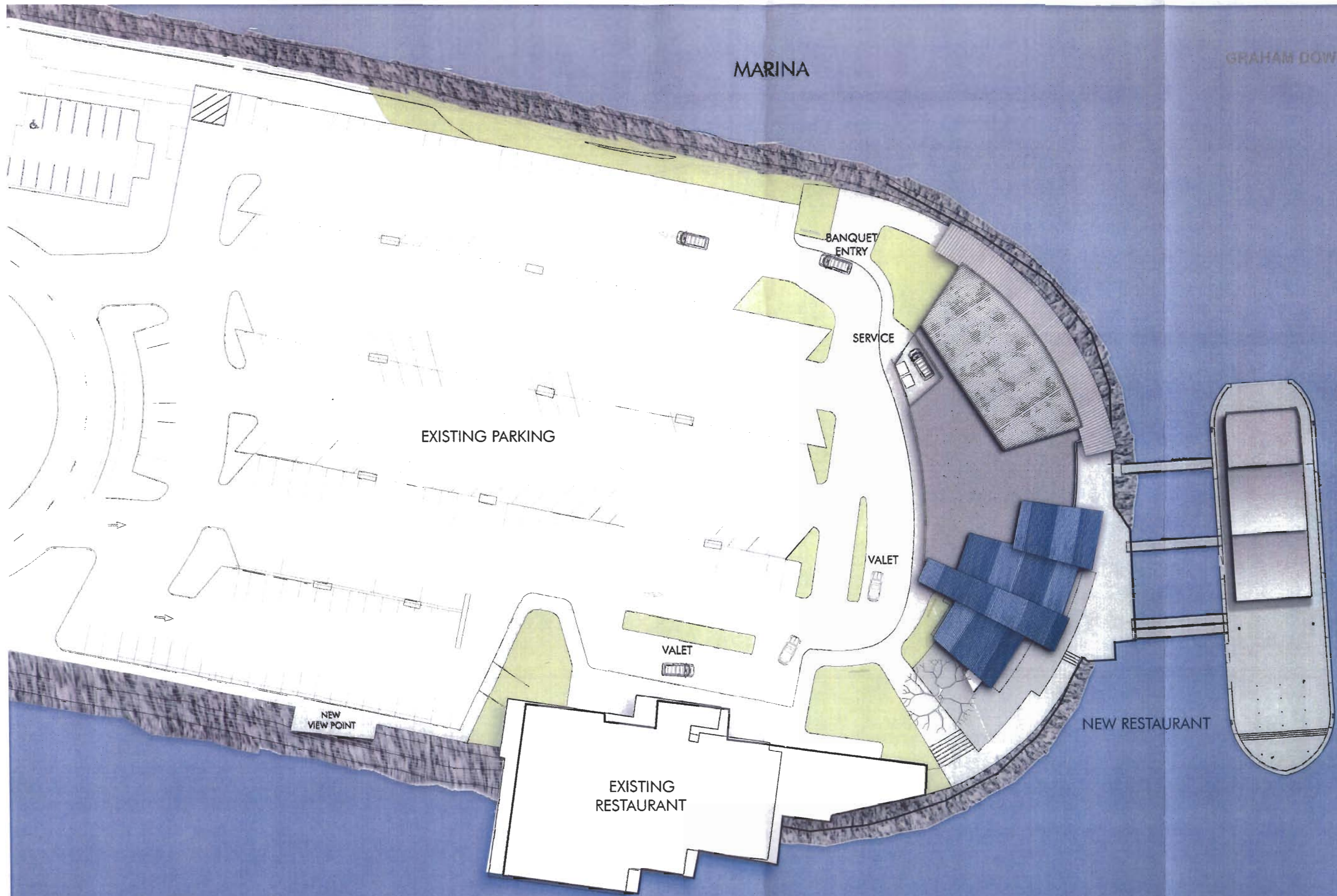
880 HARBOR

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VICINITY MAP



MARINA



880 HARBOR

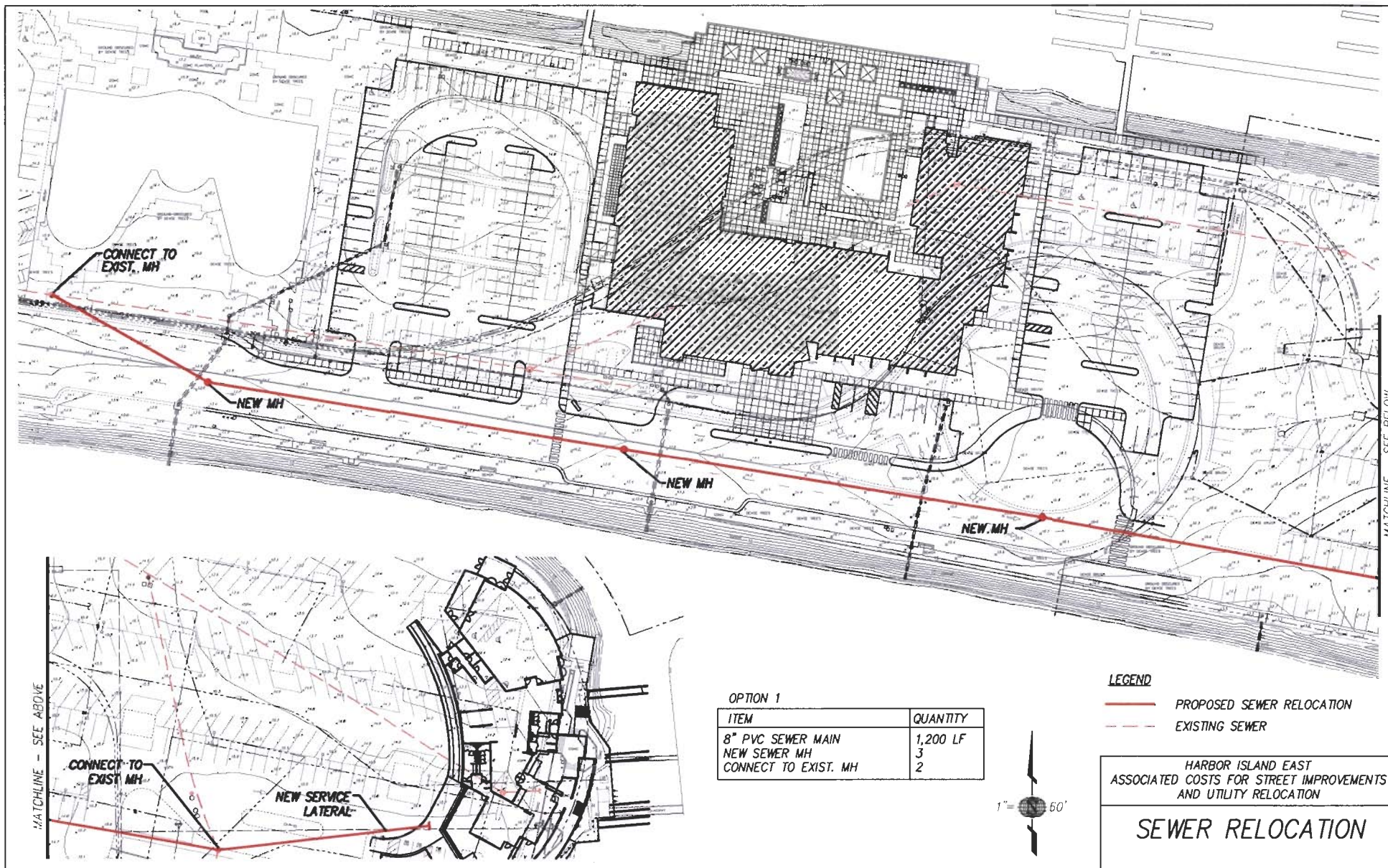
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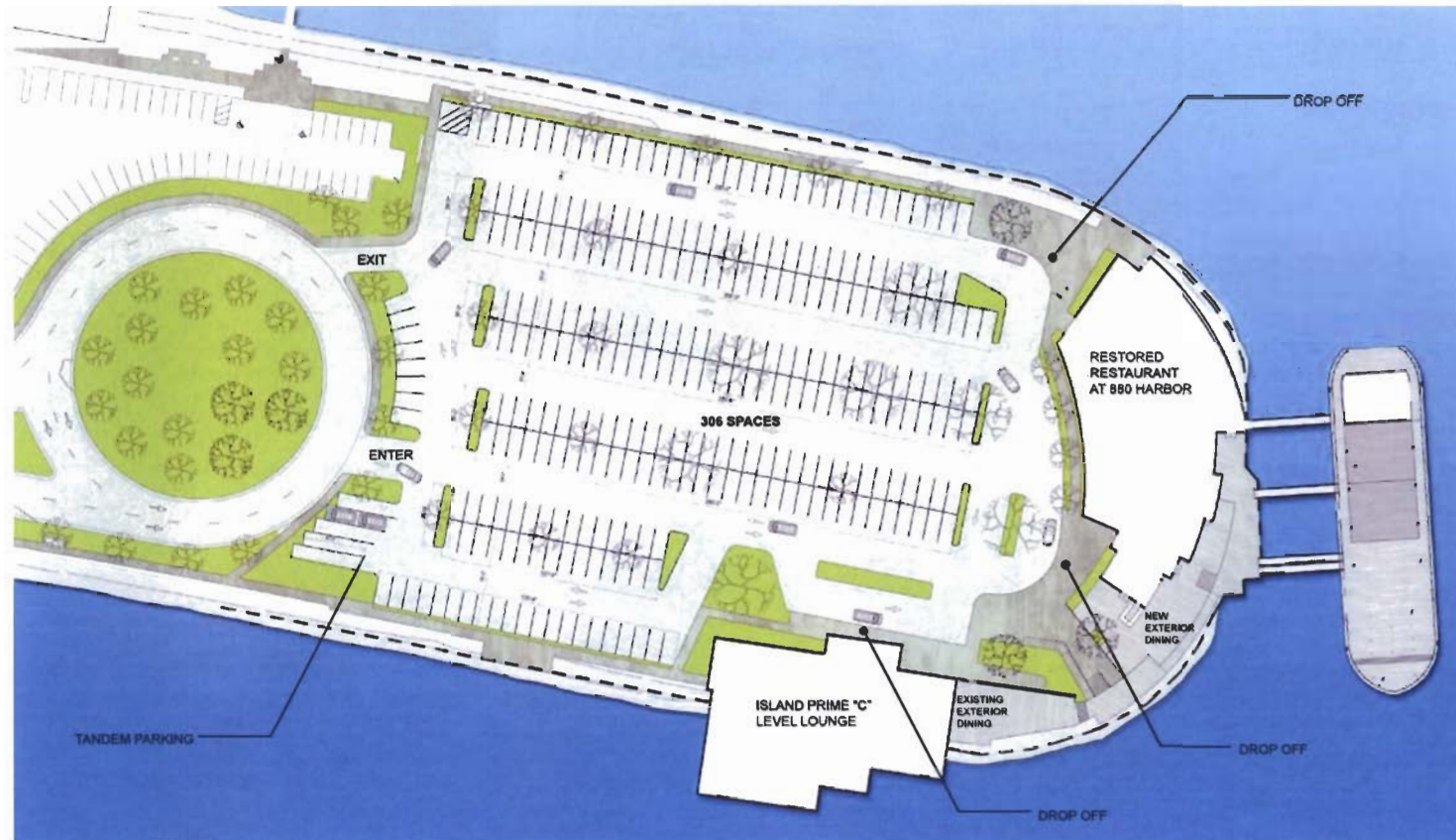
SITE PLAN











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 <sup>spaces</sup> 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.

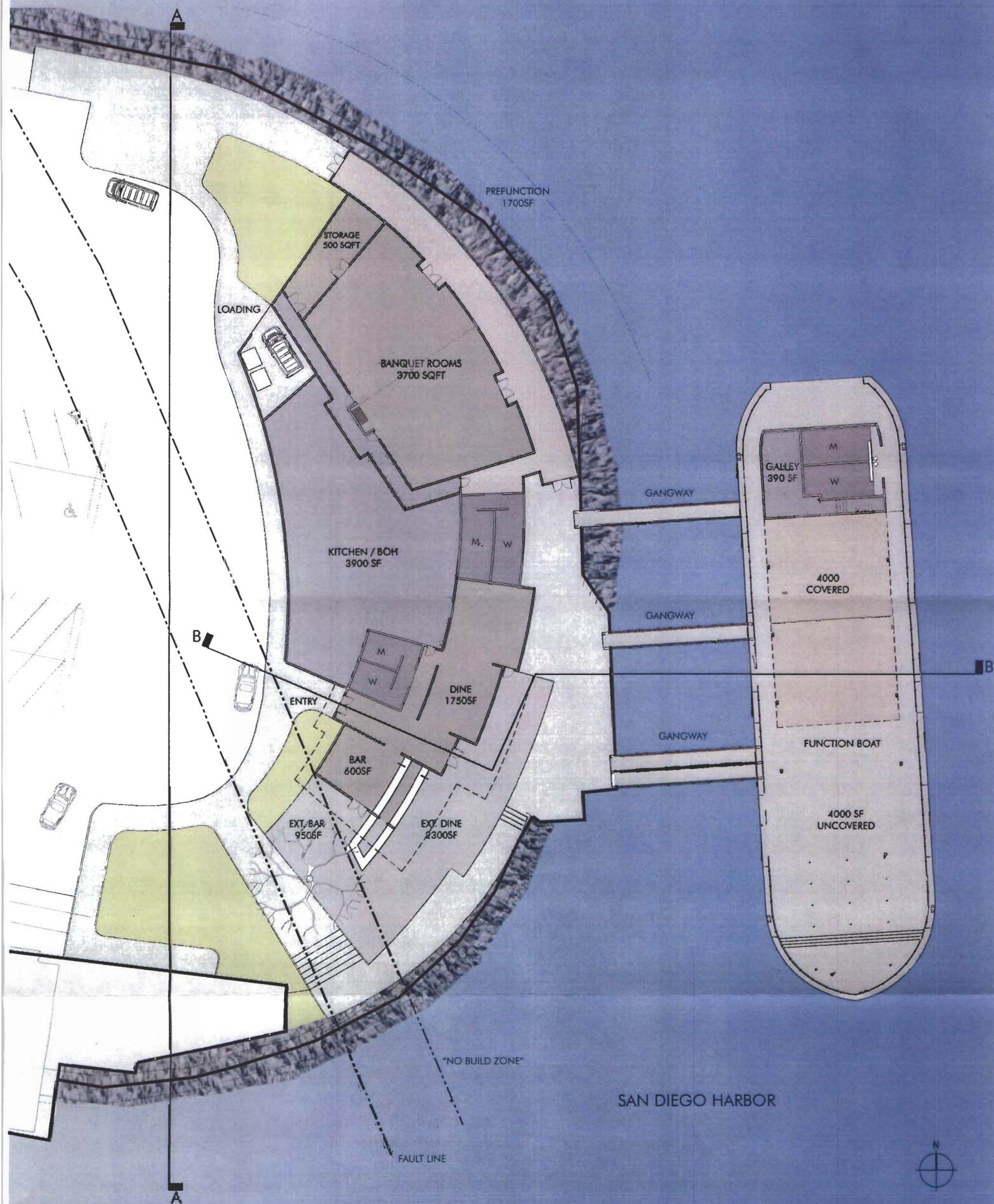
In the infrequent circumstance when parking demand might exceed the proposed capacity of 310 spaces, Sunroad will implement one or more of the following provisions to accommodate overflow parking;

- 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





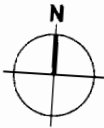
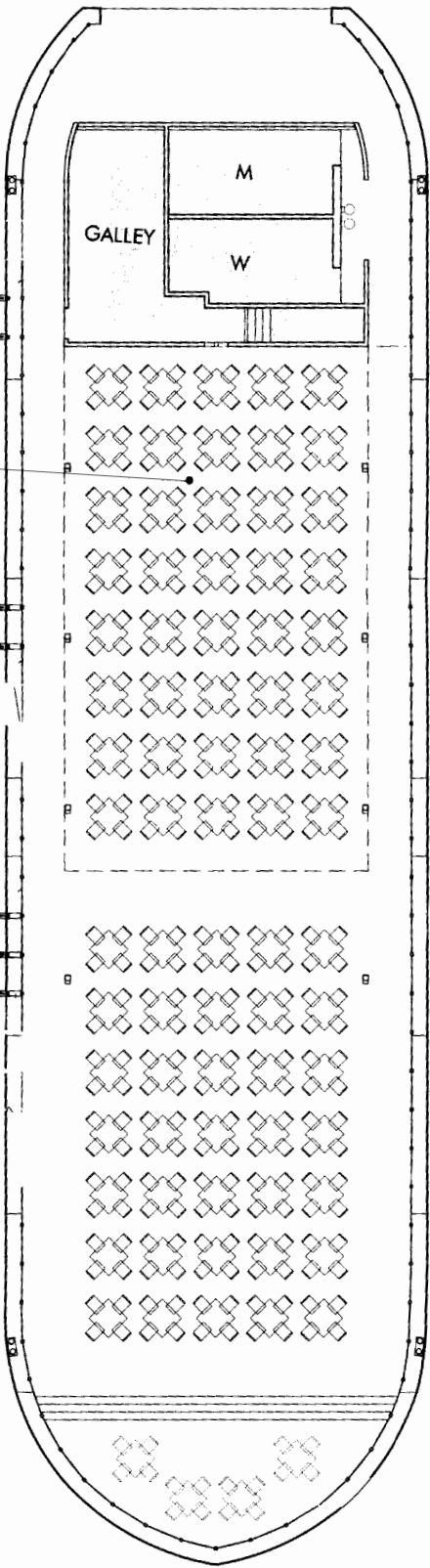
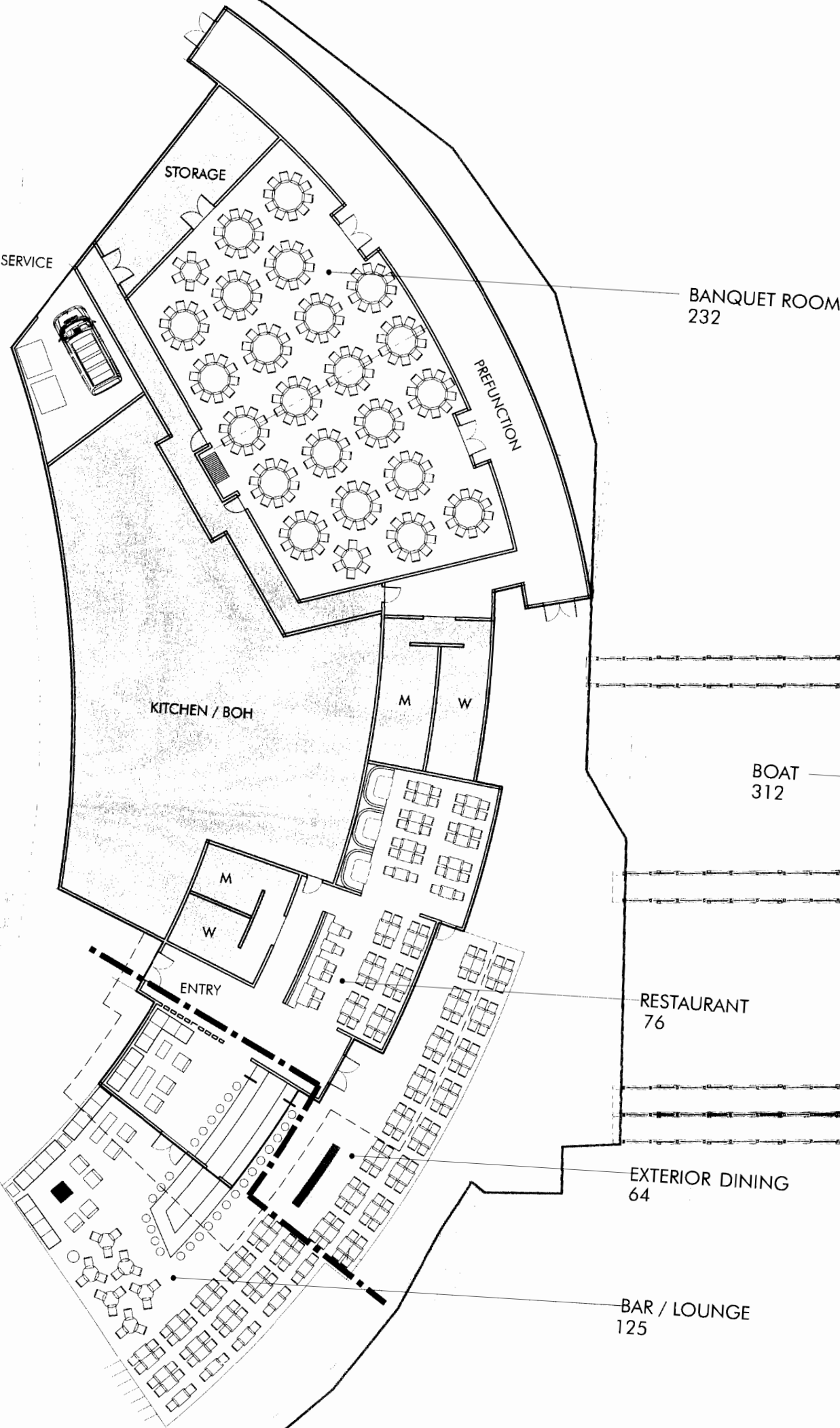
880 HARBOR

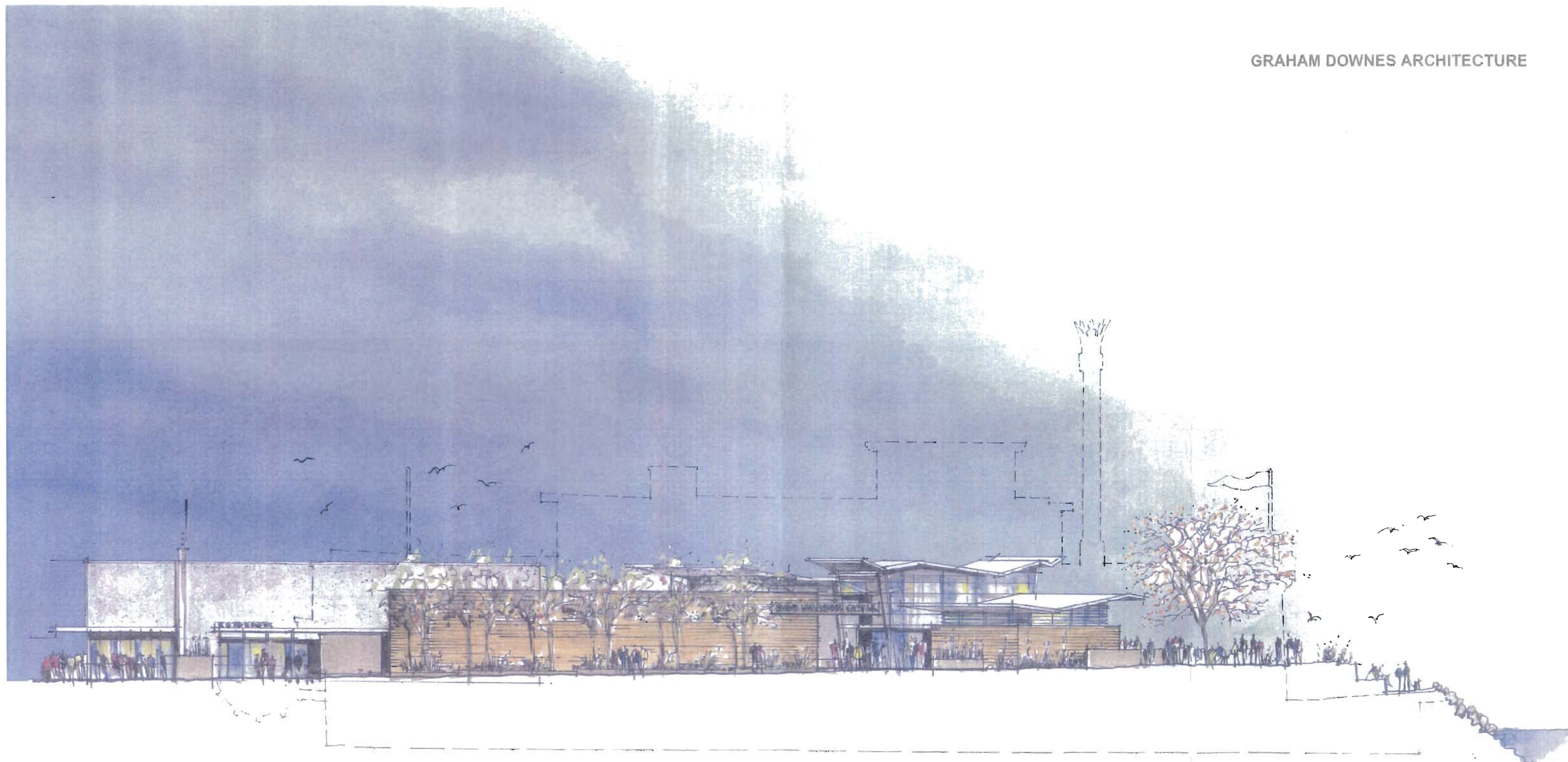
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RESTAURANT PLAN



AREA	SEATS
BOAT	312
BANQUET	232
RESTAURANT	76
EXT. DINE	64
BAR / LOUNGE	125
TOTAL	809



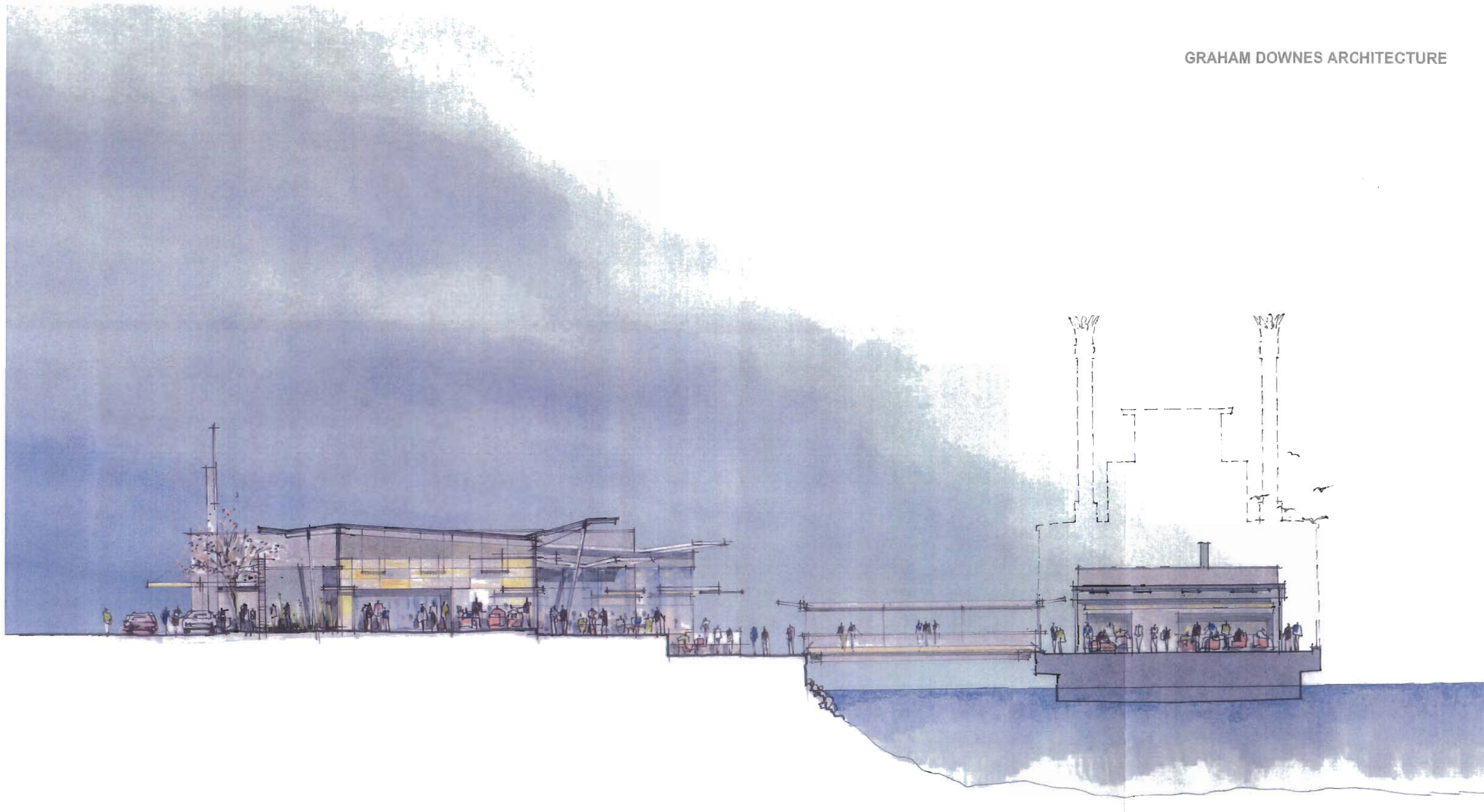


**880 HARBOR**

04.01.08

**WEST ELEVATION**





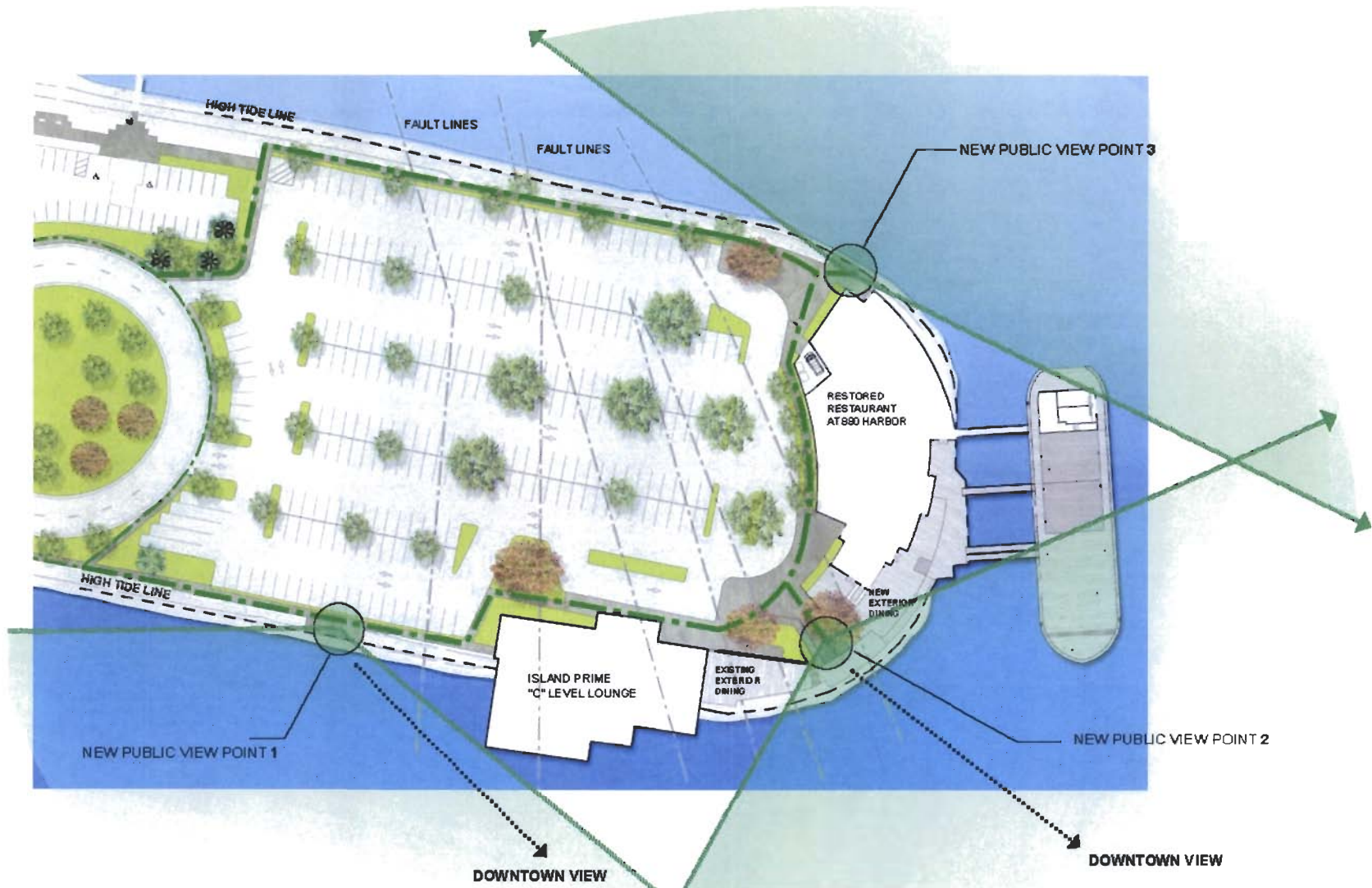
## 880 HARBOR

04.01.08

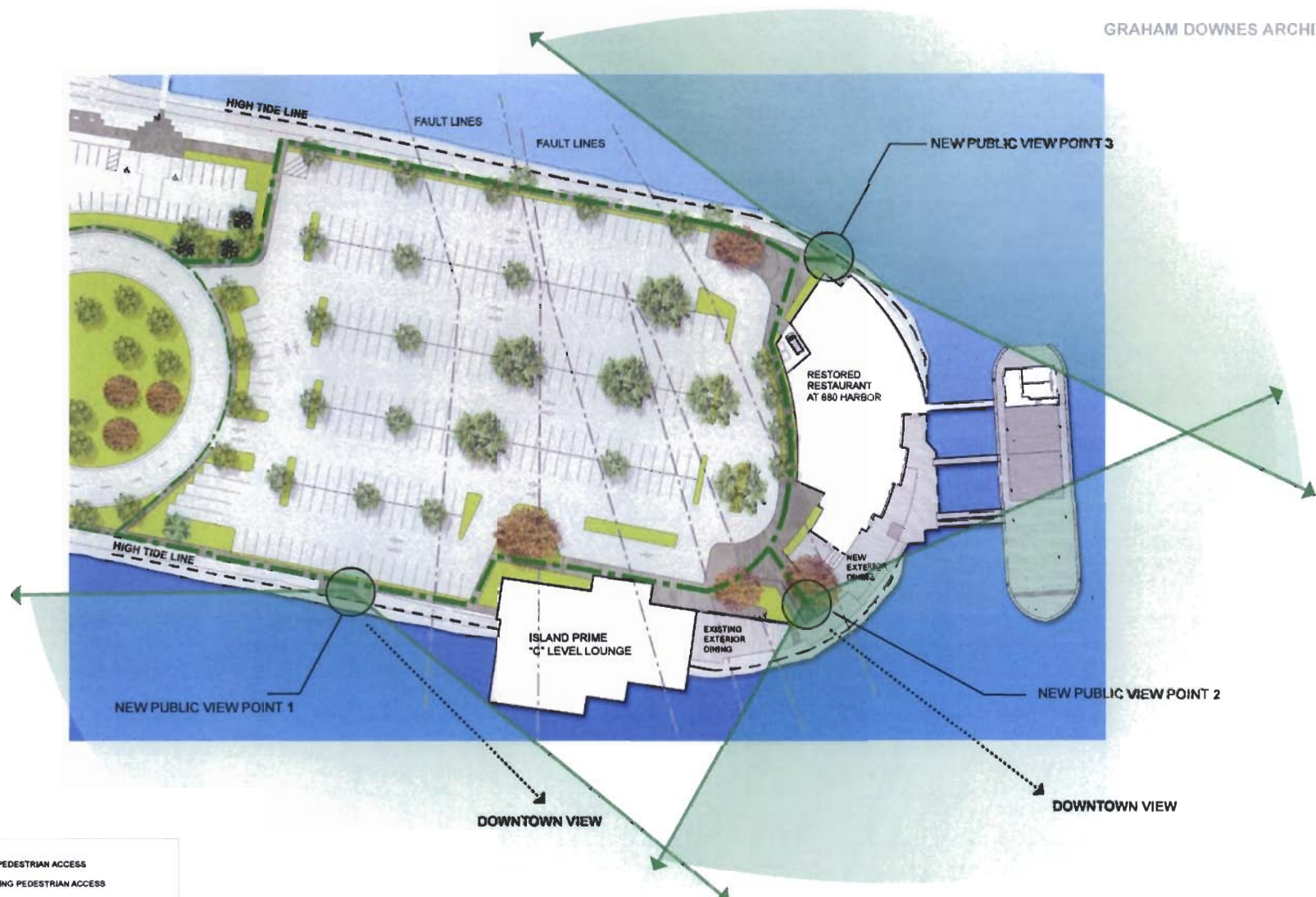
## CROSS SECTION

# 880 Harbor

## Design – Public Access





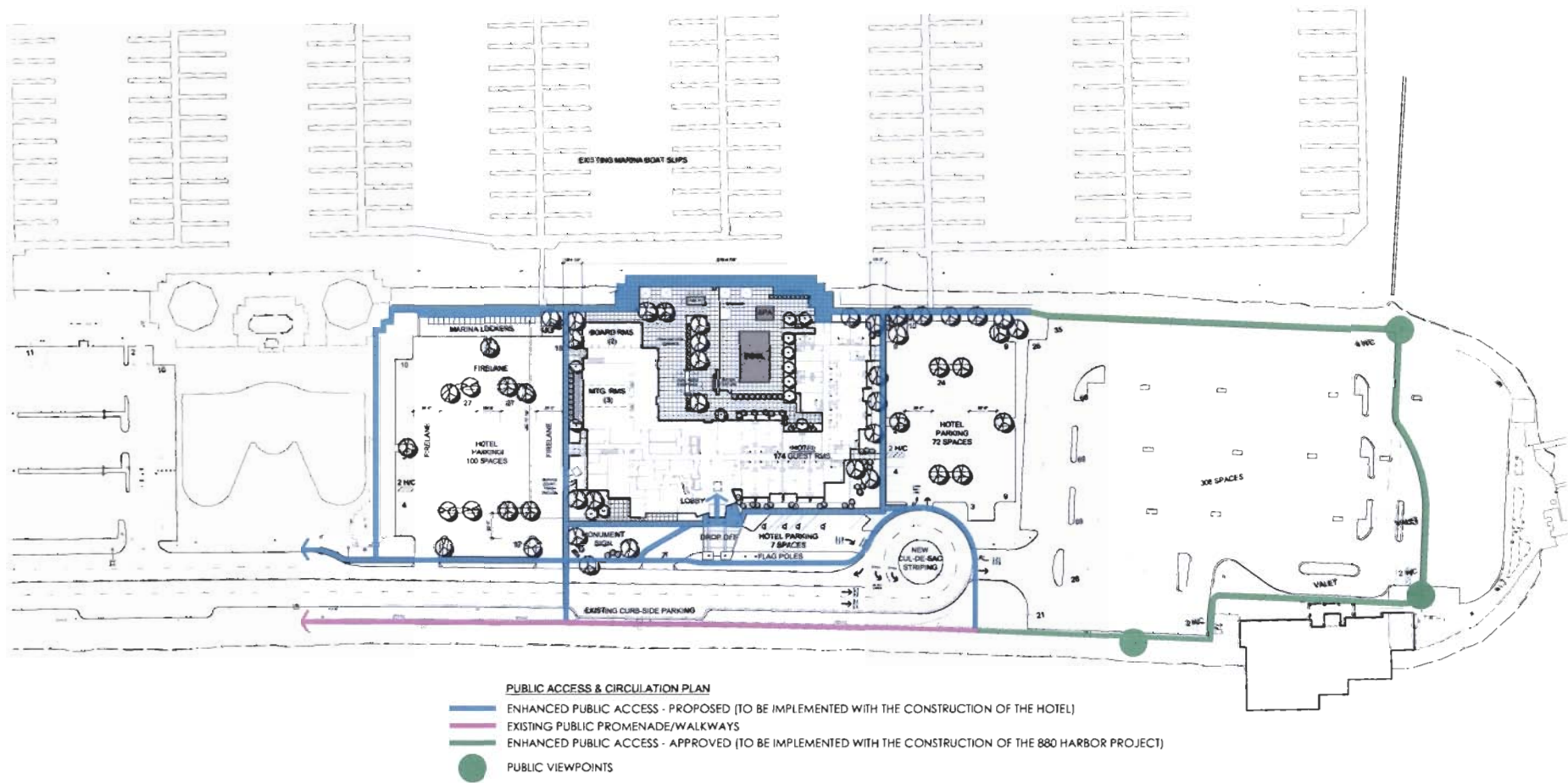


**LEGEND**

- NEW PEDESTRIAN ACCESS
- EXISTING PEDESTRIAN ACCESS
- NEW PUBLIC VIEW POINT
- FIELD OF VIEW

880 HARBOR  
06.10.08

SITE  
1



HARBOR ISLAND HOTEL  
PUBLIC ACCESS & CIRCULATION PLAN

FEBRUARY 10, 2009  
PRE-DEVELOPMENT SUBMITTAL  
Project No. 08-5301

1" = 40'-0"

SHEET  
A.1



**LEGEND**

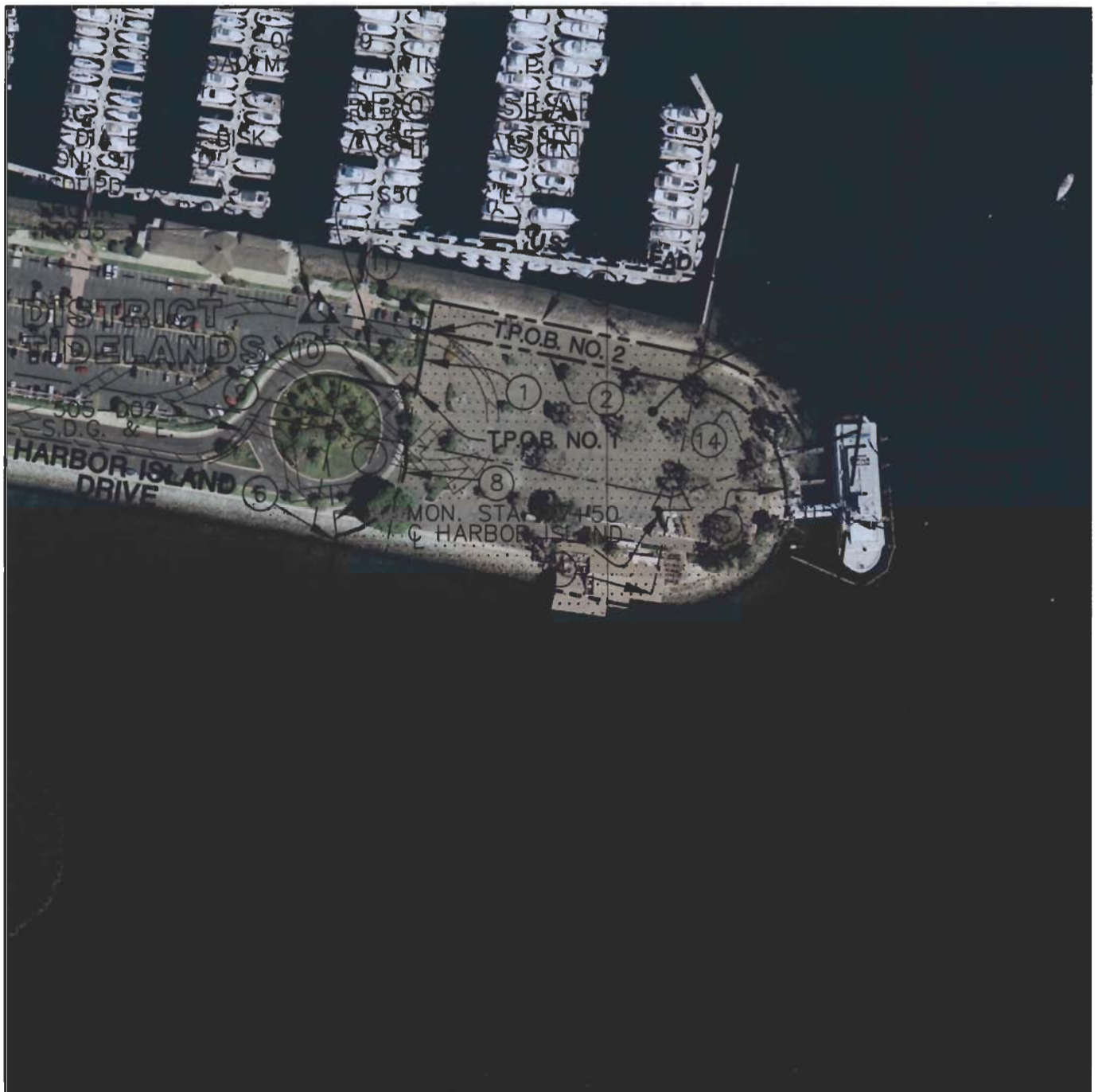
- TREES TO BE REMOVED 8
- TREES TO BE ADDED 14



880 HARBOR  
06.10.08

**LANDSCAPE PLAN**





DRAWN JED  
 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**



EXHIBIT NO. 6

APPLICATION NO.

**A-6-PSD-13-5**

2012 Port Approval



California Coastal Commission

---

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.

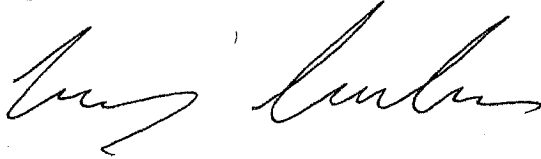
The modification was submitted to the District after the working drawings were approved by the District and applicable building permits obtained from the City of San Diego. The barge was not included in the scope of review for the City-issued building permits because the City does not issue building 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', with a stylized, cursive script.

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



RECEIVED

Unified Port  
of San Diego

APR 03 2012

SAN DIEGO UNIFIED  
PORT DISTRICT  
REAL ESTATE

MAR 28 2012

3165 Pacific Highway, San Diego, CA 92101

P.O. Box 120488, San Diego, CA 92112

619.686.6200 • 619.686.8142 fax

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: \_\_\_\_\_

## **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 DEPARMENTAL 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.

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](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: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



URI Feldman

EVA

3/22/2012

**Distribution List:**

- ☒ Construction Inspector
- ☒ Area Manager, RE
- ☒ ELUM
- ☐ Other \_\_\_\_\_

- ☒ Asset Manager, RE
- ☐ Director, RE