

**CALIFORNIA COASTAL COMMISSION**

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



[Click here to go to  
original staff report](#)

# W28a

## 3<sup>rd</sup> Addendum

March 7, 2017

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: 3<sup>rd</sup> Addendum to **Item W28a**, Dispute Resolution No. 6-17-0146-EDD  
(**Brigantine, Inc.**), for the Commission Meeting of March 8, 2017

---

The purpose of this addendum is to attach a comment letter from the owner of Anthony's Fish Grotto, which is the existing restaurant that is proposed to be redeveloped by Brigantine, Inc. as part of the Portside Pier project. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by a strikethrough and additions shall be underlined:

1. On Page 4 of the staff report, add the public comment letter provided on March 2, 2017 and attached to this addendum as a new exhibit, as follows:

Exhibit 11, Public Comment

**RECEIVED**

MAR 07 2017

MAR 07 2017

Date: March 2, 2017

To: California Coastal Commission

From: Craig Ghio

Re: Item No. W28a — in opposition to the Brigantine Project

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Even before the advent of the Coastal Commission, San Diego Port Commissioners were aware of the negative impact a large, view obstructing building in the middle of bay front would cause. When Anthony's was first conceived the desire was for a low slung building that fit into the wharf side atmosphere. Originally there was not an equipment screen on the roof as all HVAC systems were inside the roofline. Changes to the fire code mandated moving them to the roof. The original roof height was 16 feet. The new Brigantine proposal goes against the very heart of what the Coastal Act stands for—large boxy buildings that block views, shades the bay and are simply out of place.

My objections are as follows:

1. It increases the useable building square footage from 19,000 to 38,000 with a new second story, adding tremendous height and bulk to the building. The height negatively impacts views to and from the bay
2. Though existing piling are still serviceable the Brigantine's plan for two stories requires all existing piles to be removed and replaced, causing unnecessary disruption to the bay floor and sediments.
3. They proposed additional decking that increases shading of the bay.
4. They proposed a new dock that, as drawn, exceeds the existing lease line and adds additional shading to the bay along with additional pilings.
5. We have noticed in recent years that during storms and high tides that the glue-lam beams supporting the building are being encroached on by rising water levels. The height of the building above the high tide line in face of global warming needs to be assessed in any future redevelopment.
6. The existing Anthony's building, San Diego most recognized and iconic restaurant, is over 50 years old and was design by Fredrick Leibhart, a disciple and student of Frank Lloyd Wright and has historic significance. The Port of San Diego should be required to do some historical mitigation if it allows the removal of the existing building.
7. The proposed building design is incompatible with the atmosphere of the embarcadero and Maritime Museum.

The Coastal Commission has a once in fifty year opportunity to help create an uninterrupted grand esplanade from the B St. pier to the Coast Guard Station. When Anthony's was built at this location in 1965 the waterfront was dead, devoid of activity. That is no longer true. The waterfront teems

EXHIBIT NO. 11

6-17-0146-EDD

Public Comment Letter  
1 of 2 California Coastal Commission

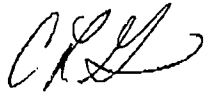


with joggers, families, tourists and is an active place; especially for the residents of the many new high rise condo's being developed. With so many upcoming restaurant opportunities at the Lane Field hotels, south Harbor Island, Pacific Gateway project and reimagined Seaport Village the need for a restaurant at this site is no longer necessary. With the upcoming development at these sites the Port has ample opportunity to recover any rent that maybe lost. I suggest that the Anthony's location be repurposed as a true front porch for the City of San Diego, an over the water extension of the County Administrations waterfront park. Use the existing substructure to create a deck that lets visitors and locals alike enjoy the views, sunshine and even a little fishing. What a spot it will be to view fireworks, the Parade of Lights and Fleet Week. Simply put, the Anthony's location now has a higher and better use than another restaurant. Another benefit of not having a restaurant at this site is less traffic congestion and less need of parking. This will allow for the wider esplanade proposed in the NEVP come to fruition.

Anthony's has no interest in getting the building back and we want to make sure that whatever replaces us is properly vetted and appropriate is size and design and simply not given a rubber stamp approval under the Ports Master Plan. We also hope that Coastal Commission sees this as an opportunity to create a waterfront that ALL San Diegans can enjoy for generations to come.

Regards,

Craig Ghio, CEO,



Anthony's Fish Grotto

9530 Murray Drive

La Mesa, Ca. 91942

**CALIFORNIA COASTAL COMMISSION**

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



# W28a

## 2<sup>nd</sup> Addendum

March 6, 2017

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: 2<sup>nd</sup> Addendum to **Item W28a**, Dispute Resolution No. 6-17-0146-EDD  
(**Brigantine, Inc.**), for the Commission Meeting of March 8, 2017

---

The purpose of this addendum is to respond to comment letters from the San Diego Unified Port District ("Port"), reference Exhibit 9, and applicant, reference Exhibit 8, received by the Commission on March 2, 2017, and attached to the Addendum posted on March 3, 2017. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~striketrough~~ and additions shall be underlined:

1. In response to the Port's and applicant's assertions that the Coastal Commission does not have authority to conduct a dispute resolution in this matter, add the following findings to the end of the "Dispute Resolution Procedures" section on Page 6 of the staff report:

The Port and applicant assert in comment letters provided on March 2, 2017 and attached to this staff report as Exhibits 8 and 9 that a dispute resolution hearing regarding the appealability of Port-issued CDP No. 2016-91 is not authorized by the Coastal Act. However, Section 30717, in the Coastal Act chapter regarding ports, requires appeals of Port decisions to be processed by the Commission in the same manner as appeals from local governments. Section 30717 states:

*Appeals [of port actions] shall be filed and processed by the commission in the same manner as appeals from local government actions as set forth in Chapter 7 (commencing with Section 30600) of this division. No appealable development shall take place until the approval becomes effective.*

Section 13569 of the Commission regulations (Cal. Code of Regs., tit. 14) addresses the handling of a dispute about whether a particular permit is appealable. Due to the express reference of Section 30717 to appeal procedures in the Coastal Act and associated regulations, it is appropriate to apply Section 13569 procedures to disputes about the appealability of Port coastal development permits. The Commission is in the best position to interpret its own regulations in order to carry out its legislative mandate. (See *Yamaha*

Corp. of America v. State Board of Equalization (1998) 19 Cal.4th 1, 12 [agency's interpretation of its own regulations entitled to judicial deference].)

Regarding the timing of when such a dispute resolution could be heard by the Commission, it is inaccurate that the hearing may take place only at the beginning of the permitting process, that is, on application to the Port. An unpublished court of appeal decision rejected that argument in a situation where the Commission's dispute resolution occurred after the local government action on the appeal. (See *North Pacifica LLC v. California Coastal Commission* (Dec. 22, 2004, A101434), p. 4 [nonpub. opn.].) Moreover, staff's objection comes as no surprise to the Port. Commission staff raised the issue of appealability at the earliest opportunity, that is, with comments on the Port's Mitigated Negative Declaration. (See Exhibit 2.) Commission staff continued to work with Port staff in hope of resolution before and after the Port's final action; thus, the dispute resolution hearing is taking place at the crucial juncture in which the Commission must resolve a conflict that has outlasted negotiations.

*North Pacifica LLC* also rejected the argument that the local entity must request the hearing, stating the "[t]he regulation, and the statutory scheme it implements, empowers the Commission with the authority to resolve appealability conflicts." (*Ibid.*) In short, the Port may not avoid the Commission's determination of appealability by simply refusing to request the dispute resolution hearing.

2. In response to the Port's and applicant's assertions that the Legislature would have said "restaurants" if it meant to include restaurants in the classifications of appealable projects, add the following findings beginning as the fourth full paragraph on Page 11 of the staff report.

The interpretation of Coastal Act Section 30715(a) lies at the heart of this dispute. The statute classifies appealable projects, including:

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

The Port and the Applicant reiterate that the Legislature would have said "restaurants" if it meant to include restaurants in the classifications of appealable projects. Statutory interpretation is not that simple. As the ultimate interpreter of statutes, a court's "fundamental task" is to "ascertain the intent of lawmakers so as to effectuate the purpose of the statute." (*People v. Blackburn* (2015) 61 Cal.4th 1113, 1123 [internal quotations and citations omitted].) A court begins with the text, giving the words their "usual and ordinary meaning," while "construing them in light of the statute as a whole and the statute's purpose. (*Ibid.*; internal quotations and citations omitted.) If "no" ambiguity appears in the statutory language, a court presumes "the Legislature meant what it said, and the plain meaning of the statute controls." (*Ibid.*; internal quotations and citations omitted.)

While staff presumes the Legislature meant what it said, there simply is no plain meaning of “shopping facilities.” It is a general term to describe commercial activity, and if only seen as plain language, is only qualified by the types of items for sale, that is, goods other than used for water-oriented purposes, and even that phrase is further qualified by “not principally devoted.” The Port and applicant cannot say with any authority that restaurants are not included under the umbrella of “shopping facility.” Restaurant patrons spend money on food and service, a commercial product that is not used for a water-oriented purpose.

To actually decide if restaurants are an appealable class then under shopping facilities, the Commission must look to the intent of the lawmakers to effectuate the purpose of the statute; it must construe in light of the statute as a whole and the statute’s purpose.

The purpose of 30715(a) becomes much clearer when examining the entire subdivision that classifies appealable projects from non-appealable projects. Over and over again, the language divides port business from projects that affect the wider world.

3. Add the following findings after the third full paragraph on Page 12 of the staff report:

Taking a closer look at the clause in question, the Legislature placed “shopping facilities” after “hotels” and “motels.” When two specific terms are followed by a general term, the canon of *ejusdem generis* is helpful, as long as it supports legislative intent. Under that canon:

...where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The rule is based on the obvious reason that if the Legislature had intended the general words to be used in their unrestricted sense, it would not have mentioned the particular things or classes of things which would in that event become mere surplusage.

(*Moore v. Conliffe* (1994) 7 Cal.4th 634, 671.) In line with the statute’s purpose, hotels and motels are developments that serve visitors, affecting the wider public, and potentially impacting coastal resources. Understanding shopping facilities in that context, restaurants are an obvious need not just of visitors, but of hotel and motel patrons in particular. It is not unreasonable to view restaurants as the kind of shopping facility that the Legislature intended to be reviewed by the Commission. The promotion of visitor-serving development is a common theme throughout the Coastal Act (e.g., § 30213 [lower cost visitor and recreational facilities shall be protected and encouraged]).

As explained in Section B.3. of the staff report, the trial court’s minute order deciding *San Diegans for Open Government*, Ca. No. 37-2013-00057492-CU-TT-CTL, sometimes referred to as the Sunroad decision, did not decide if restaurants as a class were appealable; it found that that particular project to be within the Commission’s jurisdiction in the first place. The Port and the applicant continue to pull one statement out of context. The transcript excerpt cited by the applicant does not change this result. In an informal

exchange with counsel, the judge opined that restaurants could have been named as a class of appealable projects, but the order does not make such a determination.

4. In response to the Port's contention that the restaurants listed in the PMP as appealable were listed as such because they were an accessory use to a larger appealable project, revise the third full paragraph on Page 13 of the staff report as follows:

The Port asserts in its February 6, 2017 letter, "Some restaurants have been listed as appealable in the PMP or issued an appealable CDP. However, the sole basis for the appealable characterization of such restaurants was the fact that they were part of a larger appealable category of development." The Port's statement, however, is contrary to the PMP. The PMP does contain a mechanism for identifying a component of a project as non-appealable development when it is part of a larger appealable project in the Project List, and alternatively, identifying a project component as appealable when it is part of a larger non-appealable project. Some components of larger appealable projects have been identified as non-appealable (i.e., vista points and Broadway Pier infrastructure improvements within the North Embarcadero Redevelopment Project) within the Project Lists included in the certified PMP. However, in no case are restaurants distinguished as non-appealable in the PMP, whether they occur alone, or as part of a larger project. And regardless, the Port's explanation does not account for the stand-alone restaurant project listed as appealable in the Imperial Beach Oceanfront Planning District Project List of the PMP. ~~instance is a restaurant listed as non-appealable when a part of a larger project. In addition, the Port's explanation does not account for the one stand-alone restaurant that is identified as appealable in the PMP.~~

**CALIFORNIA COASTAL COMMISSION**

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



# W28a

## Addendum

March 3, 2017

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item W28a**, Dispute Resolution No.  
6-17-0146-EDD (**Brigantine, Inc.**), for the Commission Meeting of March  
8, 2017

---

The purpose of this addendum is to attach comment letters from the San Diego Unified Port District ("Port") and project proponent as exhibits to the staff report. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by a strikethrough and additions shall be underlined:

1. On Page 4 of the staff report, add the project proponent's comments (attached to this addendum) provided on March 2, 2017 as Exhibit 8, as follows:  
Exhibit 8, March 2, 2017 Applicant Comments
2. On Page 4 of the staff report, add the Port's comments (attached to this addendum) provided on March 2, 2017 as Exhibit 9, as follows:  
Exhibit 9, March 2, 2017 Port Comments
3. On Page 4 of the staff report, add the Final Mitigated Negative Declaration (attached to this addendum) for the Portside Pier project as Exhibit 10, as follows:  
Exhibit 10, Final Mitigated Negative Declaration Portside Pier Restaurant Redevelopment Project SCH 2016081007
4. On Page 16 of the staff report, the third bullet shall be corrected, as follows:
  - Final ~~Environmental Impact Report (EIR)~~ Mitigated Negative Declaration for the Portside Pier Restaurant Redevelopment Project dated November 2016
5. On Page 16 of the staff report, add the following to the list of Substantive File Documents:
  - San Diegans for Open Government v. California Coastal Commission, May 8, 2014 Reporter's Transcript (Case No. 31-2013-00057492-CA-TT-CTL)  
(submitted by Applicant's attorney)

**From:** [Steven H. Kaufmann](#)  
**To:** ["phillip.arnold@bochcomedia.com"](#); ["effie.turnbull@laused.net"](#); ["mkshallenberger@gmail.com"](#); ["mvargas@miconstruct.com"](#); ["mluevanocoastal@gmail.com"](#); ["ehowell@pismobeach.org"](#); ["cgroom@smcgov.org"](#); ["greg.cox@sdcounty.ca.gov"](#); ["celina.luna@longbeach.gov"](#); [Brownsey, Donne@Coastal](#)  
**Cc:** [Ainsworth, John@Coastal](#); [Pederson, Chris@Coastal](#); [Mayer, Robin@Coastal](#); [Lee, Deborah@Coastal](#); [Schwing, Karl@Coastal](#); [Lasiter, Melody@Coastal](#); ["Jamee Patterson"](#); ["Mike Morton Jr"](#); [Rebecca Harrington \(rharrington@portofsandiego.org\)](#)  
**Subject:** Agenda Item W28a -- "Dispute Resolution" (Brigantine, Inc.)  
**Date:** Thursday, March 02, 2017 12:02:45 PM  
**Attachments:** [Letter to Chair Bochco and Commissioners re Dispute Resolution.PDF](#)  
[Exhibits 1-4, 6 and 7.pdf](#)  
[Exhibit 5.pdf](#)

---

Dear Chair Bochco, Commissioners and Staff,

The above agenda item is the last item on next Wednesday's agenda. Attached please find a letter from me to the Commission on behalf of Brigantine, Inc., dated today, along with the exhibits referenced in the letter. I've separated out Exhibit 5 because it is a little on the long side. I've also included a link of the letter and exhibits if that is helpful to you. The link expires on March 17. Thank you.

<https://app.box.com/shared/static/73wv9g73ftiu2jekilm9oz32tknbuux6.pdf>

*Steven H. Kaufmann*  
*Richards, Watson & Gershon*  
*355 S. Grand Avenue, 40<sup>th</sup> Floor*  
*Los Angeles, CA 90071-3101*  
*Tel: (213) 626-8484*  
*Fax: (213) 626-0078*  
*E-mail: [skaufmann@rwglaw.com](mailto:skaufmann@rwglaw.com)*  
*Tel.: 213.626.8484 x653*  
*Fax: 213.626.0078*



**RICHARDS | WATSON | GERSHON**

ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101  
Telephone 213.626.8484 Facsimile 213.626.0078

RICHARD RICHARDS  
(1916–1988)

GLENN R. WATSON  
(1917–2010)

HARRY L. GERSHON  
(1922–2007)

STEVEN L. DORSEY  
WILLIAM L. STRAUSS  
GREGORY W. STEPANICH  
QUINN M. BARROW  
CAROL W. LYNCH  
GREGORY M. KUNERT  
THOMAS M. JIMBO  
ROBERT C. CECCON  
STEVEN H. KAUFMANN  
KEVIN G. ENNIS  
ROBIN D. HARRIS  
MICHAEL ESTRADA  
LAURENCE S. WIENER  
B. TILDEN KIM  
SASKIA T. ASAMURA  
KAYSER O. SUME  
PETER M. THORSON  
JAMES L. MARKMAN  
CRAIG A. STEELE  
T. PETER PIERCE  
TERENCE R. BOGA  
LISA BOND  
ROXANNE M. DIAZ  
JIM G. GRAYSON  
ROY A. CLARKE  
MICHAEL F. YOSHIBA  
REGINA N. DANNER  
PAULA GUTIERREZ BAEZA  
BRUCE W. GALLOWAY  
DIANA K. CHUANG  
PATRICK K. BOBKO  
DAVID M. SNOW  
LOLLY A. ENRIQUEZ  
GINETTA L. GIOVINCO  
TRISHA ORTIZ  
CANDICE K. LEE  
JENNIFER PETRUSIS  
STEVEN L. FLOWER  
TOUSSAINT S. BAILEY  
AMY GREYSON  
DEBORAH R. HAKMAN  
D. CRAIG FOX  
MARICELA E. MARROQUIN  
SERITA R. YOUNG  
INDER KHALSA  
WHITNEY G. McDONALD  
SEAN B. GIBBONS  
STEPHANIE CAO  
PATRICK D. SKAHAN  
STEPHEN D. LEE  
YOUSUF N. AZIZ  
BRENDAN KEARNS  
KYLE H. BROCHARD  
NICHOLAS R. GHIRELLI  
ISRA SHAH  
ISAAC M. ROSEN  
ROMTIN PARVARESH  
ANDREW R. CONTREIRAS  
CASEY STRONG  
STEVEN A. NGUY  
MARVIN E. BONILLA  
BENNETT A. GIVENS  
LEE A. KAPLAN

**OF COUNSEL**

MITCHELL E. ABBOTT  
ROCHELLE BROWNE  
TERESA HO-URANO  
DIANA H. VARAT

**SAN FRANCISCO OFFICE**  
TELEPHONE 415.421.8484

**ORANGE COUNTY OFFICE**  
TELEPHONE 714.990.0901

**TEMECULA OFFICE**  
TELEPHONE 951.695.2373

**CENTRAL COAST OFFICE**  
TELEPHONE 805.439.3515

March 2, 2017

**W28a**

**VIA ELECTRONIC MAIL**

Dayna Bochco, Chair  
Commissioners  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 91405

**Re: "Dispute Resolution" - Permit Appealability  
6-17-0146-EDD (Brigantine, Inc.)**

Dear Chair Bochco and Commissioners:

This firm represents The Brigantine, Inc. ("Brigantine"). On December 13, 2016, the San Diego Unified Port District ("Port") approved a final, "non-appealable" CDP for Brigantine's "Portside Pier" project ("Project"). The Portside Pier project replaces a pre-coastal restaurant complex, Anthony's Fish Grotto. Like Anthony's, the Project is located almost entirely on a platform over San Diego Bay and consists of a new restaurant complex -- three restaurants and a coffee/gelato bar, a 3,711 square foot oceanfront public viewing deck on the second floor, a public walkway around the first floor, and a replacement dock to serve boating "dock and dine" patrons. Two renderings of the final, approved Project are attached as **Exhibit 1**.

The issue before the Commission is narrow. It involves only questions of jurisdiction – whether the "dispute resolution" proceeding itself is authorized by the Coastal Act or the Commission's Regulations, and whether the restaurant replacement project is "appealable" to the Commission under the Coastal Act. Although the Staff Report somewhat clouds the issue, the issue is not whether there is a substantial issue or whether the Project, as approved, is consistent with the Coastal Act.

Brigantine joins in the letters from the Port District regarding the jurisdictional issue. As discussed further below, a restaurant facility (including a "dock and dine" feature) is not among the categories of projects subject to appeal under the Coastal Act, and the Commission lacks authority to address the issue in the context of a "dispute resolution." The Staff Report places reliance on language in the Coastal Act that manifestly does not apply to the Port's approval of the Portside Pier Project. The staff recommendation attempts to squeeze a square into a round hole.

A copy of this letter has been provided to Coastal Commission Staff



Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 2

First, the Commission's procedures are governed by those expressly set forth in the Coastal Act and in the Commission's adopted Regulations. The Commission has no inherent authority to create procedures that are not otherwise in the Act or the Regulations. (*Security National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 419.) In this instance, Staff has made up a proceeding – "dispute resolution" – which is not provided for in the Coastal Act, the Commission's Regulations, or the Port's CDP Regulations, which the Commission certified to govern Port procedures. Simply put, the Commission has no jurisdiction to initiate a "dispute resolution" in this context. Moreover, the section of the Coastal Act on which Staff purports to rely applies only to LCPs, not the ports.

Second, while "appealable developments" are itemized in Section 30715 of the Coastal Act, restaurants, as here, are not included on the list and thus are not appealable. The Staff Report goes beyond any reasonable interpretation in attempting to cast restaurants as "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes," a specific appealable category set forth in Section 30715. The quoted language does nothing more than make appealable the Port's approval of an ordinary retail use that does not sell goods for water-oriented purposes. In other words, that kind of non-public trust use that can be anywhere. It has nothing at all to do with restaurants on tidelands. Had the Legislature intended to make restaurants appealable, it would have said so in plain and unmistakable terms. As Judge Prager, a well-respected San Diego jurist, stated repeatedly during oral argument in rejecting the Staff's position in *San Diegans for Open Government v. California Coastal Commission (Sunroad)*. SDSC Case No. 37-2013-00057492-CU-TT-CTL: "As a matter of statutory construction, I just don't see restaurants there [the Section of the Coastal Act on which Staff relies]." (Reporter's Transcript, p. 20, lines 2-3.) The Staff Report impermissibly seeks to relitigate an issue that the Court put to bed in the *Sunroad* case.

Finally, a "dock and dine" feature of a restaurant similarly does not constitute a "recreational small craft marina facility," which also is a specific appealable category in Section 30715. Neither the Commission nor the Port has ever treated "dock and dine" as appealable, and the Port Master Plan, which this Commission certified, specifically treats "dock and dine" as separate and distinct from "recreational small craft marina facilities."

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 3

Each of the foregoing points is discussed below.

A. **“Dispute Resolution” is not Available to Review Whether the Restaurant Approval is Appealable.**

The Commission’s regulatory authority under the Coastal Act is purely statutory in nature. Section 30333 of the Coastal Act authorizes the Commission to adopt regulations “to carry out the purposes and provisions of” the Coastal Act “and to govern procedures of the Commission.”

Here, Staff has simply invented a “dispute resolution” procedure. There is no provision in the Coastal Act, the Commission’s Regulations, or the Port’s separately certified CDP regulations that authorize a “dispute resolution” procedure to review a Port determination that a restaurant is a non-appealable development. Moreover, as discussed below, the provision of the Commission’s Regulations that Staff cites as support for this proceeding applies only to LCPs, not to the Ports.

Specifically, Chapter 8 of the Coastal Act, Section 30700 *et seq.*, governs “Ports.” There is no provision in Chapter 8 that provides for such a “dispute resolution.” Similarly, Sections 13600-13648 of the Commission’s Regulations govern “Ports.” Again, there is no provision in Sections 13600-13648 that authorizes a “dispute resolution.” The Commission has additionally certified the Port’s “Coastal Development Permit Regulations.” Similarly, there is no provision in the Port’s own certified Regulations that authorize a “dispute resolution.” There is, therefore, no jurisdictional basis for the proceeding that Staff has scheduled to review an appealability issue. It is pulled out of whole cloth.

As the Court of Appeal explained in *Security National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 419:

“The Commission, like all administrative agencies, has no inherent powers; it possesses only those powers that have been granted to it by the Constitution or by statute. [Citations.] ‘[A]n agency literally has no power to act ... unless and until [the Legislature] confers power upon it.’ [Citation.] That an agency has been granted some authority to act within a given area does not mean that it enjoys plenary authority to act in that area. [Citation.] As a consequence, if

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 4

the Commission takes action that is inconsistent with, or that simply is not authorized by, the Coastal Act, then its action is void. [Citations.]”

Thus, if the Commission were to act here consistent with the recommendation in the Staff Report, that action would be void.

The Staff Report (on pages 5 and 6) purports to rely on Section 13569 of the Commission’s Regulations as support for this proceeding. (A copy is attached as **Exhibit 2.**) Section 13569 does provide a process for dispute resolution concerning appealability. However, it does so exclusively in the context of a determination made by a local government implementing an LCP. That provision applies only to LCPs. It has nothing to do with Ports or the provisions of the Coastal Act or the Commission’s Regulations that govern Ports.

Moreover, even if the LCP provision were to apply (again, it does not), there would be two fatal problems with Staff’s reliance on it in any event. First, it deals with the local government’s designation of the development proposed as categorically excluded, appealable or non-appealable made “at the time the application for development within the coastal zone is submitted.” (Regulations, Section 13569.) That is not the case here. The proceeding here arises after the Port has approved the Project.

Second, Section 13569 does not in any sense give the Commission or its Staff any authorization to initiate a “dispute resolution.” In the LCP context, the local government makes the appealability determination. (Regulations, Section 13569(a).) Section 13569(b) provides: “If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director’s opinion.” (Emphasis added.) Here, this is a Commission Staff-initiated “dispute resolution.” Neither the Applicant nor the Port (which is not a “local government” for purposes of this regulation) has not made any request for a separate Executive Director determination of the appealability issue.

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 5

In short, there is no provision in the Coastal Act or the regulations governing Ports which authorize a dispute resolution, and the Section cited by Staff applies only in the LCP context, not in the context of an appeal determination made by a Port, and would not apply by its terms in any event.

**B. Restaurants are not Included in Coastal Act Section 30715 as “Appealable Developments”**

Assuming this “Dispute Resolution” proceeding were properly before the Commission, the Staff Report surprisingly attempts a redo of an argument that it recently lost in the San Diego Superior Court. Staff reargues that under the Coastal Act and the Port’s Permit Regulations, a restaurant is classified as an “appealable development.” However, there is nothing in the Act or the Port’s certified CDP Regulations that supports such a conclusion, and that was the precise conclusion of the court in *San Diegans for Open Government v. California Coastal Com. (Sunroad)*, discussed further below.

Section 30715 of the Coastal Act specifically identifies the developments which remain “appealable” after certification of a Port Master Plan. A restaurant is not one of the appealable developments.

Under Section 30715, the Legislature has designated the following developments as appealable:

- “(1) Developments for the storage, transmission, and processing of liquefied natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state and nation. A development which has significant impact shall be defined in the master plans.
- “(2) Waste water treatment facilities, except for those facilities which process waste water discharged incidental to normal port activities or by vessels.
- “(3) Roads or highways which are not principally for internal circulation within the port boundaries.

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 6

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

“(5) Oil refineries.

“(6) Petrochemical production plants.” **(The language on which Staff relies is bolded and italicized.)**

As it did in the previous case of the Sunroad restaurant on East Harbor Island, Staff argues that restaurants are appealable under Section 30715(a)(4) as “shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes.” (Staff Report, pp. 11-15.) This language, however, does not encompass “restaurants.” It specifically pertains to retail shopping facilities that are not principally devoted to the sale of commercial goods utilized for water-oriented purposes. In other words – ordinary shopping facilities that do not sell goods for water-oriented purposes are appealable.

By any reasonable interpretation, restaurants are not a “shopping facility,” nor do they involve “the sale of commercial goods.” No one says, “I’m really hungry. Let’s go to a ‘shopping facility not principally devoted to the sale of commercial goods utilized for water-oriented purposes.’” They say, quite simply, “Let’s go to a ‘restaurant’.” Staff’s interpretation would expand Commission appellate jurisdiction well beyond the plain language and intent underlying Section 30715(a)(4). In Section 30715(a)(4), the Legislature used plain terms to describe “office and residential buildings,” “hotels” and “motels.” It knew how to use a plain term to describe “restaurants,” but did not include restaurants, a clear and proper public trust use, as an appealable development.

Staff erroneously states that restaurants are appealable because they serve the general public and are not principally devoted to Port business activities, are not dependent on waterfront locations, and can be located anywhere. (Staff Report, p. 12.) This misconstrues the nature of a restaurant in the Port on tidelands. Restaurants

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 7

are, in fact, a well-recognized and perfectly proper public trust use. The State Lands Commission (SLC) administers public trust lands pursuant to the Public Trust Doctrine. It has prepared two policy documents to guide this Commission and the public generally. Its adopted “Public Trust Policy” explains:

“Ancillary or incidental uses, that is, uses that directly promote trust uses, are directly supportive and necessary for trust uses, or that accommodate the public’s enjoyment of trust lands, are also permitted.” (**Exhibit 3**, p. 1.)

The SLC cites “restaurants” as one example of a proper trust use. (*Id.*) The SLC’s separate discussion in “The Public Trust Doctrine” further explains that visitor-serving facilities, such as restaurants, also have been “approved as appropriate uses because as places of public accommodation, they allow broad access to the tidelands and, therefore, enhance the public’s enjoyment of these lands historically set apart for their benefit.” (**Exhibit 4**, p. 5.) It additionally explains that restaurants “are appropriate because they accommodate or enhance the public’s ability to enjoy tide and submerged lands and navigable waters.” (*Id.*, p. 7.) Staff’s attempt to diminish restaurant uses on Port tidelands is therefore meritless.

Staff also contends that restaurants are appealable because they fall under the “Specialty Shopping” designation in the PMP. (Staff Report, p. 13.) Staff, however, erroneously conflates “specialty shopping” with restaurants. The reference in the PMP to “Specialty Shopping” is to a conventional shopping center which “involves the planned assembly of stores, frequently operating within a unified building complex, designed to give patrons a varied selection of retail goods, personal services, and entertainment facilities.” (PMP, p. 20.) The PMP states that “activities found in specialty shopping areas” include restaurants and a host of other retail uses – exactly what you would expect to find in a shopping center. But nothing in the PMP designation equates a restaurant with shopping facilities, as described.

The Staff Report also takes another run at projects that were discussed in the Sunroad matter and which were before the court in the *San Diegans for Open Government* case. The Staff Report’s assertion that the vast majority of the restaurant projects and all recent ones are listed in the Port Master Plan as appealable is completely misleading. Over the years, the Port itself exempted eight restaurants like the one as issue (**Exhibit 5**, bates stamped pp. 427-455 and 624-648), and it approved

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 8

two CDPs which treated the restaurants proposed there as non-appealable. (*Id.*, bates stamped pp. 418-426). Another eight Coastal Commission permits simply included restaurants as part of substantial associated uses that are obviously appealable, such as hotels, an office building, or shopping facility with multiple stores. (*Id.*, pp. 1214-1319.) Only one project offered support for Staff's argument, an old Imperial Beach Port Master Plan amendment for a stand-alone restaurant, although it included an unidentified commercial use on a pier the details of which are not available. (*Id.*, p. 1607.) While courts generally consider and respect an agency's interpretation of a statute within its administrative jurisdiction, a court is not bound by an incorrect interpretation of an unambiguous statute, Section 30715(a)(4), and where the record, as here, fails to carry the indicia of reliability that normally requires deference. (*Dept. of Corrections & Rehab v. St. Personnel Bd.* (2013) 215 Cal.App.4<sup>th</sup> 1101, 1108; *Bolsa Chica Land Trust v. California Coastal Com.* (1999) 71 Cal.App.4<sup>th</sup> 493, 507.)

Not only does the Staff Report provide an inaccurate discussion of prior decisions, but most disappointing of all is its misstatement of the recent ruling of the San Diego Superior Court in *San Diegans for Open Government v. California Coastal Com. (Sunroad)*, rejecting exactly the same arguments that Staff makes again here that restaurants are appealable. There, the Port itself determined that the restaurant replacement project proposed was an excluded (or exempt) development. All parties agreed that the "exemption" determination was appealable under Section 30625 of the Coastal Act. However, based on Staff's recommendation, the Commission further took the position that approval of a restaurant also is appealable because it constitutes a "shopping facility not principally devoted to the sale of commercial goods utilized for water-oriented purposes," under Section 30714(a)(4). In the lawsuit that followed, the court specifically rejected the Commission's argument that restaurants constitute an appealable development. In its ruling, the Court stated that "the Project was not an 'appealable development,'" but went on to address and uphold the restaurant project because, as noted, all parties agreed that the Port's determination that the Sunroad project was exempt was expressly appealable to the Commission. (**Exhibit 6.**)

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 9

The Staff Report erroneously claims the trial court did not state that restaurants as a class of development that is appealable. (Staff Report, pp. 14-15.) Indeed, that is precisely what Judge Prager ruled. During oral argument, the court made unmistakably clear on several occasions that restaurants are not appealable:

- THE COURT: “I agree with Mr. Kaufmann. I don’t think restaurants come[] in that category.” (**Exhibit 7**, Reporter’s Transcript (“RT”) p. 18, lines 4-5; emphasis added.)
- THE COURT: To me, I agree with Mr. Kaufmann’s argument if the legislature wanted to say ‘restaurants’ they knew how to say ‘restaurants’.” (RT, p. 18, lines 11-21; emphasis added.)
- THE COURT: “As a matter of statutory construction, I just don’t see restaurants there.” (RT p. 20, lines 2-3; emphasis added.)
- MR. KAUFMANN: “. . . Around noon or so you are going to be hungry. You are going to turn to your clerk and you’re going to say, ‘I’m going to a shopping facility not principally devoted to the sale of commercial goods utilized for water-oriented purposes, and I’ll be back about 1:30.’ Or you might just say, ‘I’m going to a restaurant.’” (RT p. 23, lines 18-24.)
- THE COURT: “[t] just seems to me the pure question of statutory interpretation, this presents a situation. To me when [sic] I say to the legislature is if you wanted to put restaurants in there you should say ‘restaurants.’” (RT p. 28, lines 23-27; emphasis added.)

Staff’s assertion that the court did not “state that restaurants as a class are not appealable,” and that its ruling “does not have any bearing on a matter that is currently before the Commission” is, frankly, quite astounding and dead wrong. Consistent with Judge Prager’s ruling, the Port’s approval of a restaurant facility here did not constitute an appealable development under Section 30715.



Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 10

C. **“Dock and Dine” for a Restaurant is not Included Coastal Act Section 30715 as “Appealable Development.”**

The restaurant facility approved here also includes a “dock and dine” feature. As an afterthought, the Staff Report asserts, in one sentence, that the “dock and dine” aspect of the restaurant project constitutes a “recreational small craft marine-related facility,” appealable under Section 7.d(4)(d) of the Port’s Permit Regulations.<sup>1</sup> (Staff Report, p. 12.) Staff provides no explanation for this assertion, which equally lacks merit.

Section 30715(a)(4) of the Coastal Act specifically includes “recreational small craft marine-related facilities” as among the categories of development that are appealable to the Commission. The Port has numerous recreational small craft marinas throughout its jurisdiction. These are permanent facilities which indisputably would be appealable. The Legislature included this category of uses as appealable to ensure the protection of recreational small craft marinas for boaters. “Dock and dine” facilities, however, are not “recreational small craft marine related facilities,” nor have they ever been treated so, either by the Commission or the Port.

The Port has, for some time now, promoted a “dock and dine” program. There are 14 restaurants around San Diego Bay that currently offer “dock and dine.” None have been treated as appealable development, and none are shown as appealable on the project lists for each of the 10 Planning Districts within the Port.

In this case, “dock and dine” is a feature of the non-appealable restaurant project, and it permits a boater to tie up and disembark temporarily to dine. Section III of the PMP certified by the Commission includes a comprehensive discussion of Commercial Land Uses in the Port. (PMP, pp. 11-22.) The “Commercial Recreation” sub-category includes “dock and dine,” but it is treated as distinct from recreational small craft marina related facilities, which are separately discussed under “Pleasure Craft Marinas.” As stated in the certified PMP:

---

<sup>1</sup> It is not clear why the Staff Report cites to Section 7d(4)(d) of the Port’s Regulations. The provision simply repeats, in identical terms, Section 30715(a)(4) of the Coastal Act.

Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 11

“The Commercial Recreation category includes hotels, restaurants, convention center, recreational vehicle parks, specialty shopping, pleasure craft marinas, water dependent educational and recreational program facilities and activities, dock and dine facilities . . . , and sportfishing, which are discussed or illustrated in the various District Plans.” (PMP, p. 19; emphasis added.)

“Dock and dine” is not included in the PMP’s discussion “Pleasure Craft Marinas,” or otherwise discussed or treated as a “recreational small craft marina facility” per se or as a use considered as a part of such a facility. (PMP, p. 20.) In short, the Port’s decision to approve “dock and dine” as allowable feature of the restaurant project is not appealable.

**D. A Port Master Plan Amendment is Not Required for this Project**

The Staff Report appears to suggest that a Port Master Plan amendment is required to first add the Project to the PMP “project list.” (Staff Report, p. 3.) This has no merit.

As demonstrated above, and consistent with the Superior Court ruling, restaurants are not standalone projects that are appealable under Section 30715, and therefore need not be included in the PMP “project list” as appealable. Coastal Act section 30711(d)(4) states that a Port Master Plan must include, among other things:

“(4) Proposed projects listed as appealable in Section 30715 in sufficient detail to be able to determine their consistency with the policies of Chapter 3 (commencing with Section 3022) of this division.” (Emphasis added.)

Nothing in the Coastal Act mandates that *every* project proposed in a port – appealable, non-appealable or exempt – be approved first through a PMP amendment. Section 30715(d)(4) requires a “project list” only for appealable projects, and is explicit that the reference to “project list” apply only to “Proposed projects listed as appealable in Section 30715.”

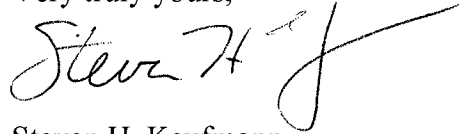
Dayna Bochco, Chair  
Commissioners  
March 2, 2017  
Page 12

### **CONCLUSION**

For all the foregoing reasons, The Brigantine respectfully requests that the Commission find that: (1) it lacks jurisdiction to review a Port determination that a project is non-appealable in the context of a Commission Staff-initiated “dispute resolution,” and (2) in any event, the Port’s approval of Portside Pier Project is not appealable.

We look forward to discussing these issues further with you at the upcoming hearing.

Very truly yours,

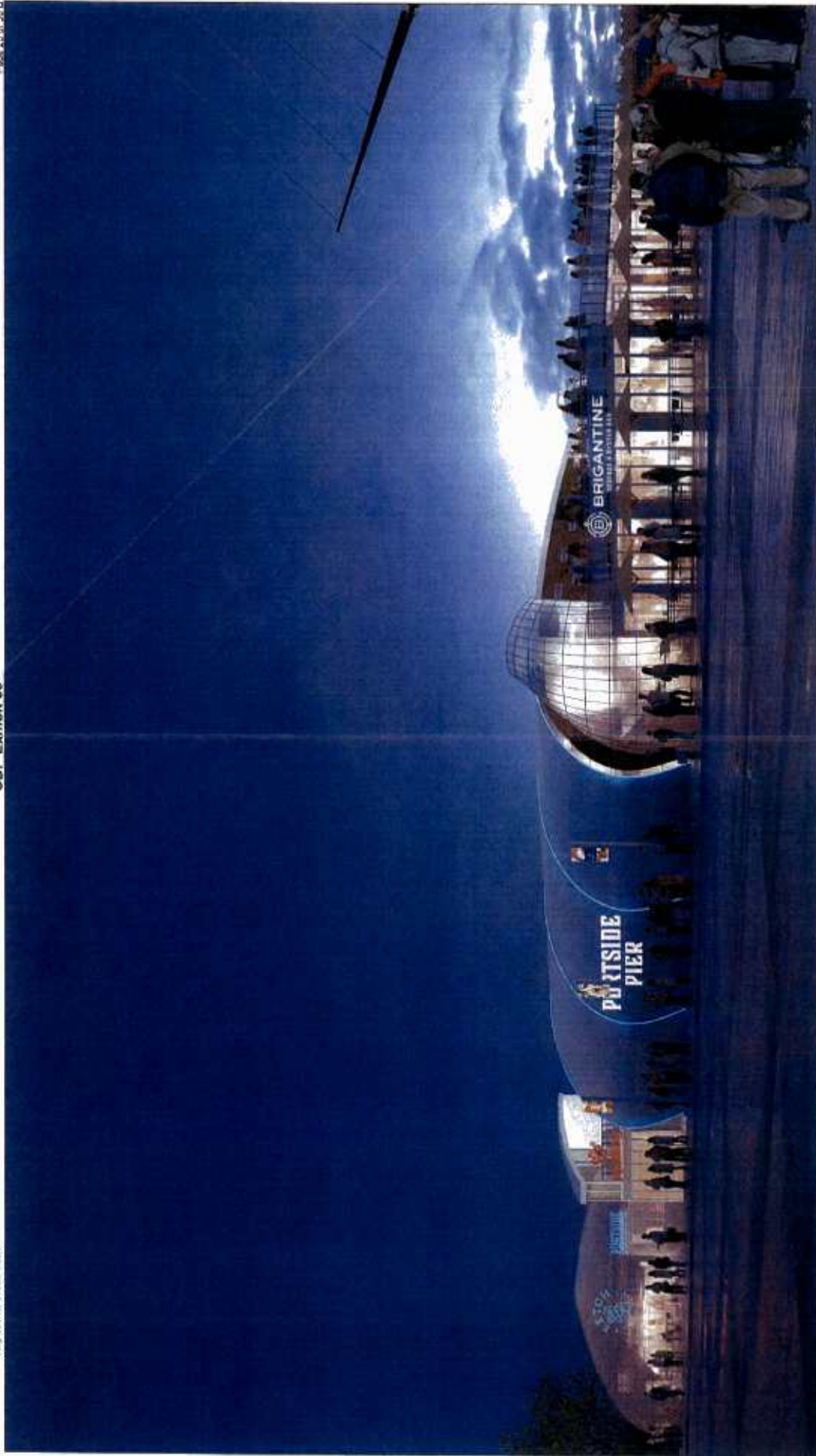


Steven H. Kaufmann

### **Attachments**

#### **Ccs (with attachments):**

Jack Ainsworth, Executive Director  
Chris Pederson, Chief Counsel  
Karl Schwing, Deputy Director  
Melody Lasiter, Coastal Program Analyst  
Jamee Jordan Patterson, Supervising Deputy Attorney General  
Honorable Port Commissioners  
Robert "Dukie" Valderrama, Chairman, Board of Port Commrs, SDUPD  
Randa Coniglio, President/CEO, SDUPD  
Thomas Russell, Esq., General Counsel, SDUPD  
Rebecca Harrington, Esq. Deputy General Counsel, SDUPD  
T. Scott Edwards, V. P. /Chief Operating Officer, SDUPD  
Shaun Sumner, Assistant V.P., Operations, SDUPD  
Wileen Manaois, Principal, Development Services, SDUPD  
Christi Hogin, Port Special Counsel  
Mike Morton, Jr., President/CEO, The Brigantine



RECON

W. JONES & STRENGTHENING OF THE CITY

10-31-15

Item

FIGURE 5D  
Architectural Renderings: Perspective from Northeast Promenade (Nighttime)  
Revised Version

# EXHIBIT 1





RECON

W:\JOBS\50151\new\graphics\mrd\fig5a.a 11.18.16 cm

**FIGURE 5a**  
Architectural Renderings: Perspective from Southwest (Water)  
Revised Version

[Home Table of Contents](#)**§ 13569. Determination of Applicable Notice and Hearing Procedures.**

14 CA ADC § 13569

## BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness

Title 14. Natural Resources

Division 5.5 California Coastal Commission [FNA1]

Chapter 8. Implementation Plans

Subchapter 2. Local Coastal Programs (LCPs) and State University or College Long Range Development Plans (LRDPs)

Article 17. Local Coastal Program Implementation Regulations

14 CCR § 13569

**§ 13569. Determination of Applicable Notice and Hearing Procedures.**

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

- (a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.
- (b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;
- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable;
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.

Note: Authority cited: Sections 30333 and 30620, Public Resources Code. Reference: Section 30600, Public Resources Code.

This database is current through 2/17/17 Register 2017, No. 7

14 CCR § 13569, 14 CA ADC § 13569

END OF DOCUMENT

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

# **Exhibit A**

## **PUBLIC TRUST POLICY**

For

The California State Lands Commission

The Legislature has given the California State Lands Commission authority over California's sovereign lands -- lands under navigable waters. These are lands to which California received title upon its admission to the Union and that are held by virtue of its sovereignty. These lands are also known as public trust lands. The Commission administers public trust lands pursuant to statute and the Public Trust Doctrine -- the common law principles that govern use of these lands.

### **Public Trust Doctrine**

The Public Trust Doctrine is set forth in common law. Several of its guiding principles are that:

I. Lands under the ocean and under navigable streams are owned by the public and held in trust for the people by government. These are referred to as public trust lands, and include filled lands formerly under water. Public trust lands cannot be bought and sold like other state-owned lands. Only in rare cases may the public trust be terminated, and only where consistent with the purposes and needs of the trust.

II. Uses of trust lands, whether granted to a local agency or administered by the State directly, are generally limited to those that are water dependent or related, and include commerce, fisheries, and navigation, environmental preservation and recreation. Public trust uses include, among others, ports, marinas, docks and wharves, buoys, hunting, commercial and sport fishing, bathing, swimming, and boating. Public trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or open space. Ancillary or incidental uses, that is, uses that directly promote trust uses, are directly supportive and necessary for trust

uses, or that accommodate the public's enjoyment of trust lands, are also permitted. Examples include facilities to serve visitors, such as hotels and restaurants, shops, parking lots, and restrooms. Other examples are commercial facilities that must be located on or directly adjacent to the water, such as warehouses, container cargo storage, and facilities for the development and production of oil and gas. Uses that are generally not permitted on public trust lands are those that are not trust use related, do not serve a public purpose, and can be located on non-waterfront property, such as residential and non-maritime related commercial and office uses. While trust lands cannot generally be alienated from public ownership, uses of trust lands can be carried out by public or private entities by lease from this Commission or a local agency grantee. In some cases, such as some industrial leases, the public may be excluded from public trust lands in order to accomplish a proper trust use.

III. Because public trust lands are held in trust for all citizens of California, they must be used to serve statewide, as opposed to purely local, public purposes.

#### **Commission Authority**

The Legislature has granted general authority to the Commission to manage trust lands. Unless otherwise expressly stated in the State Constitution or statutes, the public trust doctrine mandates the criteria for Commission management of trust lands. In carrying out its management responsibilities, the Commission commonly leases trust lands to private and public entities for uses consistent with the doctrine. Subject to the criteria in statutes and case law, the Commission may also exchange public trust lands for non-trust lands, lift the trust from public trust lands, enter into boundary line agreements, and otherwise generally manage trust lands. While most of the authority over public trust lands possessed by the Legislature is vested in the Commission, the Legislature, as the people's elected representatives, has not delegated the authority to modify uses permitted on public trust lands by the Public Trust Doctrine. There are times when the Legislature, exercising its retained powers, enacts laws dealing with public trust lands and uses for specified properties. This may include, in limited circumstances, allowing some non-trust uses when not in conflict with trust needs, in order to serve broader public trust purposes.



### **Implementation by the Commission of the Public Trust Doctrine.**

The Commission implements the Public Trust Doctrine through careful consideration of its principles and the exercise of discretion within the specific context of proposed uses. Factors such as location, existing and planned surrounding facilities, and public needs may militate in favor of a particular use in one area and against the same use in another. The Commission applies the doctrine's tenets to proposed projects with consideration given to the context of the project and the needs of a healthy California society, to meet the needs of the public, business and the environment. The Commission may also choose among competing valid trust uses. The Commission must also comply with the requirements of other applicable law, such as the California Environmental Quality Act. In administering its trust responsibilities, the Commission exercises its discretionary authority in a reasoned manner, accommodating the changing needs of the public while preserving the public's right to use public trust lands for the purposes to which they are uniquely suited.

### **Relationship of the Commission to Granted Lands**

The Legislature has granted certain public trust lands to local governments for management. A grantee must manage trust lands consistent with its own granting statutes and the Public Trust Doctrine. The Legislature has retained for the state, by delegating to the Commission, the power to approve land exchanges, boundary line agreements, etc.

The State Lands Commission exercises oversight over all granted lands. Generally, this means the Commission carries out this responsibility by working cooperatively with grantees to assure that requirements of the legislative grants and the Public Trust Doctrine are carried out and to achieve trust uses. The Commission monitors and audits the activities of the grantees to insure that they are complying with the terms of their statutory grants and with the public trust. With a few exceptions, grantees are not required to secure approval from the Commission before embarking on development projects on their trust lands nor before expending revenues generated from activities on these lands. However, where an abuse of the Public Trust Doctrine or violation of a legislative grant occurs, the Commission can advise the grantee of the abuse or

violation; if necessary, report to the Legislature, which may revoke or modify the grant; or file a lawsuit against the grantee to halt the project or expenditure.

## Exhibit B

### The Public Trust Doctrine

#### I. Origins of the Public Trust

The origins of the public trust doctrine are traceable to Roman law concepts of common property. Under Roman law, the air, the rivers, the sea and the seashore were incapable of private ownership; they were dedicated to the use of the public.<sup>1</sup> This concept that tide and submerged lands are unique and that the state holds them in trust for the people has endured throughout the ages. In 13<sup>th</sup> century Spain, for example, public rights in navigable waterways were recognized in *Las Siete Partidas*, the laws of Spain set forth by Alfonso the Wise.<sup>2</sup> Under English common law, this principle evolved into the public trust doctrine pursuant to which the sovereign held the navigable waterways and submerged lands, not in a proprietary capacity, but rather "as trustee of a public trust for the benefit of the people" for uses such as commerce, navigation and fishing.<sup>3</sup>

After the American Revolution, each of the original states succeeded to this sovereign right and duty. Each became trustee of the tide and submerged lands within its boundaries for the common use of the people.<sup>4</sup> Subsequently admitted states, like California, possess the same sovereign rights over their tide and submerged lands as the original thirteen states under the equal-footing doctrine.<sup>5</sup> That is, title to lands under navigable waters up to the high water mark is held by the state in trust for the people. These lands are not alienable in that all of the public's interest in them cannot be extinguished.<sup>6</sup>

---

<sup>1</sup>Institutes of Justinian 2.1.1.

<sup>2</sup>*Las Siete Partidas* 3.28.6 (S. Scott trans. & ed. 1932).

<sup>3</sup>*Colberg, Inc. v. State of California ex rel. Dept. Pub. Works* (1967) 67 Cal.2d 408, 416.

<sup>4</sup>*Martin v. Waddell* (1842) 41 U.S. (16 Pet.) 367, 410.

<sup>5</sup>*Pollard's Lessee v. Hagen* (1845) 44 U.S. (3 How.) 212, 228-29.

<sup>6</sup>*People v. California Fish Co.* (1913) 166 Cal. 576, 597-99; *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 524-25.

## II. Purpose of the Public Trust

The United States Supreme Court issued its landmark opinion on the nature of a state's title to its tide and submerged lands nearly 110 years ago, and although courts have reviewed tidelands trust issues many times since then, the basic premise of the trust remains fundamentally unchanged. The Court said then that a state's title to its tide and submerged lands is different from that to the lands it holds for sale. "It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing" free from obstruction or interference from private parties.<sup>7</sup> In other words, the public trust is an affirmation of the duty of the state to protect the people's common heritage of tide and submerged lands for their common use.<sup>8</sup>

But to what common uses may tide and submerged lands be put? Traditionally, public trust uses were limited to water-related commerce, navigation, and fishing. In more recent years, however, the California Supreme Court has said that the public trust embraces the right of the public to use the navigable waters of the state for bathing, swimming, boating, and general recreational purposes. It is sufficiently flexible to encompass changing public needs, such as the preservation of the lands in their natural state for scientific study, as open space and as wildlife habitat. The administrator of the public trust "is not burdened with an outmoded classification favoring one mode of utilization over another."<sup>9</sup>

The Legislature, acting within the confines of the common law public trust doctrine, is the ultimate administrator of the tidelands trust and often may be the ultimate arbiter of permissible uses of trust lands. All uses, including those specifically authorized by the Legislature, must take into account the overarching principle of the public trust doctrine that trust lands belong to the public and are to be used to promote public rather than

---

<sup>7</sup>*Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387, 452.

<sup>8</sup>*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441.

<sup>9</sup>*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.

exclusively private purposes. The Legislature cannot commit trust lands irretrievably to private development because it would be abdicating the public trust.<sup>10</sup> Within these confines, however, the Legislature has considerable discretion.

The Legislature already may have spoken to the issue of the uses to which particular tide and submerged lands may be put when making grants of these lands in trust to local government entities. Statutory trust grants are not all the same—some authorize the construction of ports and airports, others allow only recreational uses and still others allow a broad range of uses.

A further and often complicating factor is that granted and ungranted lands already may have been developed for particular trust uses that are incompatible with other trust uses or may have become antiquated. Some tidelands have been dedicated exclusively to industrial port uses, for example, and in these areas, recreational uses, even if also authorized by the trust grant, may be incompatible. Similarly, tidelands set aside for public beaches may not be suitable for construction of a cannery, even though a cannery may be an acceptable trust use. Piers, wharves and warehouses that once served commercial navigation but no longer can serve modern container shipping may have to be removed or converted to a more productive trust use. Historic public trust uses may have been replaced by new technologies. Antiquated structures on the waterfront may be an impediment rather than a magnet for public access and use of the waters. Public trust uses may and often do conflict with one another. The state and local tidelands grantees, as administrators of their respective public trust lands, are charged with choosing among these conflicting uses, with the Legislature as the ultimate arbiter of their choices.

For all these reasons, a list of uses or a list of cases without more may not be as useful as an analysis of public trust law applied to a specific factual situation.

---

<sup>10</sup>*Illinois Central Railroad v. Illinois*, *supra*, at 452-53.

### III. The Leasing of Tidelands

A few principles established by the courts are instructive in analyzing under the public trust doctrine the leasing of public trust lands for particular uses. For example, it was settled long ago that tidelands granted in trust to local entities may be leased and improved if the leases and improvements promote uses authorized by the statutory trust grant and the public trust. Leases for the construction of wharves and warehouses and for railroad uses, i.e., structures that directly promote port development, were approved early in the 20<sup>th</sup> century.<sup>11</sup> Later, leases for structures incidental to the promotion of port commerce, such as the Port of Oakland's convention center, were held to be valid because although they did not directly support port business, they encouraged trade, shipping, and commercial associations to become familiar with the port and its assets.<sup>12</sup> Visitor-serving facilities, such as restaurants, hotels, shops, and parking areas, were also approved as appropriate uses because as places of public accommodation, they allow broad public access to the tidelands and, therefore, enhance the public's enjoyment of these lands historically set apart for their benefit.<sup>13</sup>

These cases provide three guidelines for achieving compliance with the public trust when leasing tidelands for construction of permanent structures to serve a lessee's development project: (1) the structure must directly promote uses authorized by the statutory trust grant and trust law generally, (2) the structure must be incidental to the promotion of such uses, or (3) the structure must accommodate or enhance the public's enjoyment of the trust lands. Nonetheless, when considering what constitutes a trust use, it is critical to keep in mind the following counsel from the California Supreme Court: The objective of the public trust is always evolving so that a trustee is not burdened with outmoded classifications favoring the original and traditional triad of commerce, navigation and fisheries over those uses encompassing changing public needs.<sup>14</sup>

---

<sup>11</sup>*San Pedro etc. R.R. Co. v. Hamilton* (1911) 161 Cal. 610; *Koyner v. Miner* (1916) 172 Cal. 448; *Oakland v. Larue Wharf & Warehouse Co.* (1918) 179 Cal. 207; *City of Oakland v. Williams* (1929) 206 Cal. 315.

<sup>12</sup>*Haggerty v. City of Oakland* (1958) 161 Cal.App.2d 407, 413-414.

<sup>13</sup>*Id.* at p. 414; *Martin v. Smith* (1960) 184 Cal.App.2d 571, 577-78.

<sup>14</sup>*National Audubon Society v. Superior Court*, *supra*, at p. 434.

#### IV. Promotion of Trust Uses and Public Enjoyment of Trust Lands

Installations not directly connected with water-related commerce are appropriate trust uses when they must be located on, over or adjacent to water to accommodate or foster commercial enterprises. Examples include oil production facilities, freeway bridges and nuclear power plants.<sup>15</sup> Hotels, restaurants, shops and parking areas are appropriate because they accommodate or enhance the public's ability to enjoy tide and submerged lands and navigable waterways. The tidelands trust is intended to promote rather than serve as an impediment to essential commercial services benefitting the people and the ability of the people to enjoy trust lands.<sup>16</sup>

Nevertheless, the essential trust purposes have always been, and remain, water related, and the essential obligation of the state is to manage the tidelands in order to implement and facilitate those trust purposes for all of the people of the state.<sup>17</sup> Therefore, uses that do not accommodate, promote, foster or enhance the statewide public's need for essential commercial services or their enjoyment of the tidelands are not appropriate uses for public trust lands. These would include commercial installations that could as easily be sited on uplands and strictly local or "neighborhood-serving" uses that confer no significant benefit to Californians statewide. Examples may include hospitals, supermarkets, department stores, and local government buildings and private office buildings that serve general rather than specifically trust-related functions.

---

<sup>15</sup>See *Boone v. Kingsbury* (1928) 206 Cal.148, 183; *Colberg, Inc. v. State of California ex rel. Dept. Pub. Work*, *supra*, at pp. 421-22; and *Carstens v. California Coastal Com.* (1986) 182 Cal.App.3d 277, 289.

<sup>16</sup>*Carstens v. California Coastal Com.*, *supra*, at p. 289.

<sup>17</sup>Joseph L. Sax, "The Public Trust in Stormy Western Waters," October 1997.

## V. Mixed-Use Developments

Mixed-use development proposals for filled and unfilled tide and submerged lands have generally consisted of several structures, including non-trust use structures or structures where only the ground floor contains a trust use. While mixed-use developments on tidelands may provide a stable population base for the development, may draw the public to the development, or may yield the financing to pay for the trust uses to be included in the development, they ought not be approved as consistent with statutory trust grants and the public trust for these reasons. These reasons simply make the development financially attractive to a developer. Projects must have a connection to water-related activities that provide benefits to the public statewide, which is the hallmark of the public trust doctrine. Their failure to achieve this goal simply to make a development financially attractive sacrifices public benefit for private or purely local advantage. A mixed-use development may not be compatible with the public trust, not because it may contain some non-trust elements, but because it promotes a "commercial enterprise unaffected by a public use"<sup>18</sup> rather than promoting, fostering, accommodating or enhancing a public trust use.<sup>19</sup> That use, however, need not be restricted to the traditional triad of commerce, navigation and fishing. It is an evolving use that is responsive to changing public needs for trust lands and for the benefits these lands provide.<sup>20</sup>

Moreover, commercial enterprises without a statewide public trust use may violate the terms of statutory trust grants. Typically, grants allow tidelands to be leased, but only for purposes "consistent with the trust upon which said lands are held." This term is not equivalent to "not required for trust uses" or "not interfering with trust uses." Since leases of tidelands must be consistent with statutory trust grant purposes, leases which expressly contemplate the promotion of non-trust uses rather than trust uses would not comply with the terms of the trust grants.

---

<sup>18</sup>*City of Long Beach v. Morse* (1947) 31 Cal.2d 254, 261.

<sup>19</sup>*Haggerty v. City of Oakland*, *supra*, at pp. 413-14.

<sup>20</sup>*National Audubon Society v. Superior Court*, *supra*, at p. 434.



For these reasons, non-trust uses on tidelands, whether considered separately or part of a mixed-use development, are not mitigable. That is, unlike some environmental contexts where developments with harmful impacts may be approved so long as the impacts are appropriately mitigated by the developer, in the tidelands trust context, mitigation of a non-trust use has never been recognized by the courts. To the contrary, the California Supreme Court has said that just as the state is prohibited from selling its tidelands, it is similarly prohibited from freeing tidelands from the trust and dedicating them to other uses while they remain useable for or susceptible of being used for water-related activities.<sup>21</sup>

#### VI. Incidental Non-Trust Use

All structures built on tide and submerged lands should have as their main purpose the furtherance of a public trust use. Any structure designed or used primarily for a non-trust purpose would be suspect. Mixed-use development proposals, however, frequently justify non-trust uses as "incidental" to the entire project. The only published case in California in which a non-trust use of tidelands has been allowed focused on the fact that the real or main purpose of the *structure* was a public trust use and that the non-trust use would be incidental to the main purpose of the structure.<sup>22</sup> In this context, the court noted that because the real or main purpose of the structure was to promote public trust uses, non-trust groups could also use the facility, but the non-trust uses must remain *incidental* to the main purpose of the structure.<sup>23</sup> This is the state of the law, and it is supported by good policy reasons as well. If the test for whether a non-trust use is incidental to the main purpose of a development were not applied on a structure by structure basis, pressure for more dense coastal development may increase as developers seek to maximize the square feet of allowable non-trust uses. Disputes may arise as to how to calculate the square footage attributable to the proper trust uses versus non-trust uses, with open waterways and parking garages likely being the dominant trust uses and structures being devoted to non-trust uses.

It is beyond contention that the state cannot grant tidelands free of the trust merely because the grant serves some public purpose, such as increasing tax revenues or because the grantee might put the property to a commercial use.<sup>24</sup> The same reasoning applies to putting tidelands to enduring non-trust uses by building structures on them. Accordingly,

---

<sup>21</sup> *Atwood v. Hammond* (1935) 4 Cal.2d 31, 42-43.

<sup>22</sup> *Haggerty v. City of Oakland*, *supra*, at p. 413.

<sup>23</sup> *Ibid.*

<sup>24</sup> *National Audubon Society v. Superior Court*, *supra*, at p. 440.

the only enduring non-trust uses that may be made of tidelands without specific legislative authorization are those incidental to the main trust purpose applied on a structure by structure basis. Each structure in a mixed-use development on tidelands must have as its primary purpose an appropriate public trust use. If its real or main purpose is a trust use, portions of the structure not needed for trust purposes may be leased temporarily to non-trust tenants, provided that the non-trust use is incidental to the main purpose of the structure.

## VII. The Role of the Legislature

The Legislature is the representative of all the people and, subject to judicial review, is the ultimate arbiter of uses to which public trust lands may be put. The Legislature may create, alter, amend, modify, or revoke a trust grant so that the tidelands are administered in a manner most suitable to the needs of the people of the state.<sup>25</sup> The Legislature has the power to authorize the non-trust use of tidelands. It has done so rarely, and then on a case-specific basis.<sup>26</sup> Many of its actions have been a recognition of incidental non-trust uses or of a use that must be located on the tidelands. When these legislative actions have been challenged in court, the courts, understandably, have been very deferential, upholding the actions and the findings supporting them.<sup>27</sup>

The Legislature has provided a statutory framework for the leasing of tidelands for non-trust uses by the cities of Long Beach and San Francisco grounded on findings that the tidelands are *not required for* (San Francisco) or *not required for and will not interfere with* (Long Beach) the uses and purposes of the granting statute.<sup>28</sup> Where, as in these two statutes, the Legislature has authorized in general terms the use of tidelands for non-trust purposes, the statutes' provisions must be interpreted so as to be consistent with the paramount rights of commerce, navigation, fishery, recreation and environmental

---

<sup>25</sup>*City of Coronado v. San Diego Unified Port District* (1964) 227 Cal.App.2d 455, 474.

<sup>26</sup>For example, in Chapter 728, Statutes of 1994, the Legislature authorized tidelands in Newport Beach to continue to be put to non-trust uses for a limited term after it was determined that the tidelands had been erroneously characterized and treated as uplands by the city due to incorrect placement of the tidelands boundary.

<sup>27</sup>See, e.g., *Boone v. Kingsbury*, *supra*, at p. 183 and *City of Coronado v. San Diego Unified Port District*, *supra*, at pp. 474-75; but see *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 206-07, 212.

<sup>28</sup>Ch. 1560, Stats. 1959; Ch. 422, Stats. 1975. These statutes also provide for, *inter alia*, the lease revenues to be used to further trust uses and purposes.

protection. This means that the tidelands may be devoted to purposes unrelated to the common law public trust to the extent that these purposes are incidental to and accommodate projects that must be located on, over or adjacent to the tidelands. These non-trust uses are not unlimited, for there are limits on the Legislature's authority to free tidelands from trust use restrictions.<sup>29</sup>

To ensure that the exercise of the Long Beach and San Francisco statutes is consistent with the common law public trust, the tidelands to be leased for non-trust uses must have been filled and reclaimed and no longer be tidelands or submerged lands and must be leased for a limited term. The space occupied by the non-trust use, whether measured by the percentage of the land area or the percentage of the structure, should be relatively small. Finally, any structure with a non-trust use should be compatible with the overall project. Findings such as these are necessary because legislative authorizations to devote substantial portions of tidelands to long-term non-trust uses have generally been considered by the courts as tantamount to alienation.<sup>30</sup>

In several out-of-state cases, specific, express legislative authorizations of incidental leasing of publicly-financed office building space to private tenants solely for the purpose of producing revenue have been subject to close judicial scrutiny, although they did not involve tidelands trust use restrictions.<sup>31</sup> One case involved construction of an international trade center at Baltimore's Inner Harbor with public financing where legislation expressly permitted *portions* of the structure to be leased to private tenants for the production of income. Another was a condemnation case where the statute authorizing the New York Port Authority to acquire a site on which to build the World Trade Center was challenged on the basis that it allowed *portions* of the new structure to be used for no other purpose than the raising of revenue. In both cases, opponents of the projects argued that a publicly financed office building should not be permitted to have *any* private commercial tenants even though the respective legislatures had expressly allowed incidental private use of each building. The state courts in both Maryland and New York held that so long as the primary purpose of the office building was for maritime purposes connected with the port, legislation authorizing the leasing to private tenants was valid.<sup>32</sup> Although both cases

---

<sup>29</sup>*Illinois Central R.R. Co. v. Illinois, supra*, at pp. 452-54.

<sup>30</sup>*Atwood v. Hammond, supra*, at p. 42; see also *Illinois Central R.R. Co. v. Illinois, supra*, at pp. 454-53.

<sup>31</sup>*Lerch v. Maryland Port Authority* (1965) 240 Md. 438; *Courtesy Sandwich Shop, Inc. v. Port of New York Authority* (1963) 12 N.Y.2d 379.

<sup>32</sup>*Ibid.*

involve challenges to financing and condemnation statutes and do not involve the public trust, they are instructive because they demonstrate the importance to the courts, even in the context of public financing and condemnation, that when a portion of a structure is to be leased for the purpose of raising revenues to offset expenses, this incidental non-public leasing must have been legislatively authorized.

#### VIII. Exchanges of Lands

Situations where a local government or a private party acquires a right to use former trust property free of trust restrictions are rare.<sup>33</sup> In order for such a right to be valid, the Legislature must have intended to grant the right free of the trust and the grant must serve the purpose of the trust. Public Resources Code section 6307 is an example of the rare situation where abandonment of the public trust is consistent with the purposes of the trust.

Section 6307 authorizes the Commission to exchange lands of equal value, whether filled or unfilled, whenever it finds that it is "in the best interests of the state, for the improvement of navigation, aid in reclamation, for flood control protection, or to enhance the configuration of the shoreline for the improvement of the water and upland, on navigable rivers, sloughs, streams, lakes, bays, estuaries, inlets, or straits, and that it will not substantially interfere with the right of navigation and fishing in the waters involved." The lands exchanged may be improved, filled and reclaimed by the grantee, and upon adoption by the Commission of a resolution finding that such lands (1) have been improved, filled, and reclaimed, and (2) have thereby been excluded from the public channels and are no longer available or useful or susceptible of being used for navigation and fishing, and (3) are no longer in fact tidelands and submerged lands, the lands are thereupon free from the public trust. The grantee may thereafter make any use of the lands, free of trust restrictions.

In order for such an exchange of lands to take place, the Commission must find that the lands to be exchanged are no longer available or useful or susceptible of being used for navigation and fishing, taking into consideration whether adjacent lands remaining subject to the trust are sufficient for public access and future trust needs; that non-trust use of the lands to be freed of the public trust will not interfere with the public's use of adjacent trust lands; and that the lands that will be received by the state in the exchange not only are of equal, or greater, monetary value but also have value to the tidelands trust, since they will take on the status of public trust lands after the exchange. Only then can the Commission find that the transaction is in the best interests of the state, that the exchange of lands will promote the public trust and that it will not result in any substantial interference with the public interest in the lands and waters remaining.

---

<sup>33</sup>*National Audubon Society v. Superior Court*, *supra*, at p. 440.

56643p

2



Coastal Project No. N81-3-76

SAN DIEGO UNIFIED PORT DISTRICT

DOCUMENT NO. **14392**

FILED **DEC 14 1981**

MICROFILM NO. \_\_\_\_\_

OFFICE OF THE CLERK

**PORT OF SAN DIEGO  
AND LINDBERGH FIELD AIR TERMINAL**

(714) 291-3900 • P.O. Box 488, San Diego 92112

**COASTAL DEVELOPMENT PERMIT**

Applicant: Mr. Patrick E. Goddard  
Executive Vice-President  
Chart House Enterprises, Inc.  
7432 La Jolla Blvd.  
La Jolla, CA 92037

Agent: Joseph Lancor  
Project Architect  
853 Camino Del Mar  
Del Mar, CA 92014

Project: CHE, Inc. - San Diego Rowing Club Restoration

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and amended on December 2, 1980, Resolution No. 80-343, in accordance with the provisions for the issuance of an ☐ Emergency ☒ Non-appealable ☐ Appealable Development Permit.

Date of ☒ Board or ☐ Port Director action: November 10, 1981

Board of Port Commissioners Res. No.: 81-367

Date of Permit:

Coastal Project No.: N81-3-76

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

**DEVELOPMENT**

The San Diego Rowing Club was vacated several years ago. Since that time, the structure has gradually deteriorated as a result of the elements, vandalism, etc. Chart House Enterprises, Inc. plans to restore the structure, which is listed on the National Registry of Historic Places, for use as a dinner restaurant.

The project site includes a land area of approximately 0.55 acres and a water area of about 0.68 acres. The project consists of a restaurant with 200 seats and 75 bar seats, approximately 57 parking spaces, landscaping, removal of a connecting causeway, construction of a new 250 ft. long sheet pile bulkhead, and placement of about 275 ft. of revetment for shoreline erosion control.

CHE, Inc.  
Chart House Enterprises

COASTAL DEVELOPMENT PERMIT

TERMS AND CONDITIONS:

1. Restoration of the structure shall be in compliance with the State of California Historical Building Code, the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," and applicable portions of the Secretary of the Interior's "Standards for Historic Preservation Projects."
2. Restoration shall substantially conform to the structure's circa 1905-1908 configuration and design as reflected in the drawings on file in the Office of the District Clerk as Document No. 14127, except that the rowing shell dock shall be reconstructed on the easterly side of the structure.
3. Project Implementation shall include the concurrent development of the remainder of the workboat basin, including dredging, construction of a new sheet pile bulkhead, placement of revetment, and the securing of all necessary permits.

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within 2 years following final approval of the project by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to the Property Engineering Section of the San Diego Unified Port District.

If you have any questions on this permit, please contact the staff of the Property Engineering Section of the San Diego Unified Port District.

DON L. NAY, PORT DIRECTOR

By: Emily Hedges Kelley  
EMILY HEDGES KELLEY

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the Property Engineering Section of the San Diego Unified Port District.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

[Signature]  
Signature of Permittee

12-11-81  
Date

**REFERENCE  
COPY**

Re Coastal Development Permit - ]  
Chart House Enterprises, Inc., ]  
San Diego Rowing Club Restoration ]

**14392**

**RESOLUTION 81-367**

WHEREAS, the Board of Port Commissioners (Board) on August 28, 1981, approved in concept the "CHART HOUSE ENTERPRISES, INC. - SAN DIEGO ROWING CLUB RESTORATION" (Project) located on tidelands in the City of San Diego; and

WHEREAS, the San Diego Unified Port District (District) is the trustee of said tidelands; and

WHEREAS, the Project consists of restoration of the structure for use as a dinner restaurant with 200 seats and 75 bar seats, approximately 57 parking spaces, landscaping, removal of a connecting causeway, construction of a new 250 ft. long sheet pile bulkhead, and placement of about 275 ft. of revetment for shoreline erosion control; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for the construction of said Project; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

WHEREAS, the Board has adopted the Negative Declaration, "CHART HOUSE RESTAURANT - San Diego Embarcadero" (UPD #80220-23), NOW THEREFORE,

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


**000420**

81-367

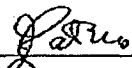
That the Board further finds that this proposed project which is  
entitled "CHARTHOUSE ENTERPRISES, INC. - SAN DIEGO ROWING CLUB  
RESTORATION" is consistent with and conforms to the coastal  
development concept for the Centre City/Embarcadero area of the Port  
Master Plan, and as such is a Non-appealable development which conforms  
to the District's certified Master Plan. Accordingly, the Port Director  
or his authorized representative is hereby authorized and directed to  
issue a Coastal Development Permit for said San Diego Rowing Club  
restoration project.

ADOPTED this 10th day of November, 1981.

Presented by: DON L. MAY, Port Director

  
\_\_\_\_\_  
ASSISTANT PORT DIRECTOR

Approved: JOSEPH D. PATELLO, Port Attorney

  
\_\_\_\_\_



San Diego Unified Port District  
Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified  
Port District on November 10, 1981, by the following vote:

Commissioners	Yeas	Nays	Excused	Absent	Abstained
Ben Cohen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Phil Creaser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. George James	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Rick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Daniel N. Spurr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Louie M. Wolfshamer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

Phil Creaser  
Chairman of the Board of Port Commissioners

CHRISTINE M. STEIN  
Clerk of the San Diego Unified Port District

By Sally Lombardo  
Deputy Clerk

(SEAL)

Resolution Number 81-367  
or  
Ordinance Number \_\_\_\_\_  
Adopted November 10, 1981



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3900 • P.O. Box 488, San Diego, California 92112

SAN DIEGO, UNIFIED PORT DISTRICT

Document No. 22125

COASTAL DEVELOPMENT PERMIT

Filed APR 29 1988

Office of the Clerk

Applicant: Mr. Robert S. Wilson  
Duckett-Wilson Development Company  
345 South Figueroa Street, Suite 302  
Los Angeles, CA 90071

Agent:

Project: Fish Market Restaurant

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of an ☐ Emergency ☒ Non-appealable ☐ Appealable Development Permit.

Date of ☒ Board or ☐ Port Director action: February 16, 1988

Board of Port Commissioners Resolution No. 88-57

Date of Permit: April 26, 1988

Coastal Project No. N87-3-385

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

## DEVELOPMENT

The proposed project consists of the demolition of the existing one-story, 225-seat, 10,500 sq. ft. "Tom Lai's" restaurant on the "C" Street Mole and its replacement with a new two-story, 516-seat, 16,300 sq. ft. "Fish Market" restaurant, which will include a retail seafood counter. A portion of the restaurant will be constructed on a new 180 ft. long, 30 ft. wide marginal wharf. The new wharf will replace a deteriorated, 20 ft. wide wooden wharf, which has been demolished. The new restaurant will feature shiplap siding and a mansard copper roof, with a bayside deck and small upstairs viewing balconies.



Coastal Project No.: N87-3-385

COASTAL DEVELOPMENT PERMIT

TERMS AND CONDITIONS:

N/A

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within 2 years following final approval of the project by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to the Property Engineering Section of the San Diego Unified Port District.

If you have any questions on this permit, please contact the staff of the Property Engineering Section of the San Diego Unified Port District.

DON L. NAY, PORT DIRECTOR

By:

JOHN P. PEARSON

Directions to Permittee: Permittee is to execute below and return ~~one copy~~ <sup>BOTH COPIES</sup> of this permit to the Property Engineering Section of the San Diego Unified Port District.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

John P. Pearson  
Signature of Permittee

4/19/88  
Date

22125

REFERENCE  
COPY  
22125

Re Coastal Development Permit - ]  
FISH MARKET RESTAURANT - "G" Street ]  
Mole, San Diego . . . . . ]

RESOLUTION 88-57

WHEREAS, the Board of Port Commissioners (Board) on June 30, 1987, granted conceptual approval for the Development of the Fish Market Restaurant (Project) located on tidelands in the City of San Diego; and

WHEREAS, on September 1, 1987, the Board granted conceptual approval of a revised plan for said Project in order for the Fish Market Restaurant to obtain a permit from the Army Corps of Engineers; and

WHEREAS, on February 16, 1988, the Board of the San Diego Unified Port District (District) granted a lease to Fish Market Restaurants, a general partnership, for the operation of a restaurant, cocktail lounge and fish market sales; and

WHEREAS, the San Diego Unified Port District is trustee of said tidelands; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for said Project; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

WHEREAS, the Board has adopted a Negative Declaration entitled "FISH MARKET RESTAURANT, G Street Mole" (UPD NO. 83356-69), NOW, THEREFORE,

000425

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


1. The Project, in general, consists of the demolition of the existing one-story Tom Lal's Restaurant located on the G Street Mole in the City of San Diego, and its replacement with a new two-story Fish Market Restaurant building of approximately 16,300 square feet, with a seating capacity not to exceed Five Hundred Sixteen (516); the Project includes an interior retail seafood counter and new 180 foot long marginal wharf, said wharf will extend out 30 foot bayward from the G Street Mole and will replace a portion of a demolished 20 foot wide wharf. Said Project is located in Planning District 3 of the Port Master Plan, the Precise Plan for which provides for land use as "COMMERCIAL: Commercial Recreation".

2. The proposed land use for the Project is consistent with the use and development concept for the Centre City Embarcadero area as provided in said Port Master Plan and, as such, is a Non-Appealable Development which conforms to the certified Port Master Plan.


3. The proposed Project which is entitled "THE FISH MARKET - "G" STREET MOLE" is consistent with and conforms to the Port Master Plan and, accordingly, the Port Director or his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project.

ADOPTED this 16th day of February, 1988.

Presented By: DON L. MAY, Port Director

By 

Approved: JOSEPH D. PATELLO, Port Attorney



SW  
2/16/88

SAN DIEGO UNIFIED PORT DISTRICT

DATE: November 8, 1993

AGENDA SHEET

NO.

75

SUBJECT: RJTA, Inc. dba Pacific Coral Reef Restaurant--Conceptual Approval for a New District Tenant and New Improvements

FACTUAL BACKGROUND:

Action Requested: Grant conceptual approval for San Diego Seafood Market Restaurant, Inc. as a new tenant and for proposed new improvements.

RJTA, Inc. dba Pacific Coral Reef Restaurant leased approximately 11,129 square feet of building area for its restaurant operations at the Harbor Seafood Mart. The restaurant closed earlier this year. The lease, which has been terminated due to RJTA's default, is summarized on the attached LEASE INFORMATION SUMMARY.

Upon default in repayment of its loan, RJTA's lender, First International Bank, appointed a receiver to conduct the sale of RJTA's assets including the lease, liquor license, and assorted furniture, fixtures and equipment (FF&E). Because of several lease defaults, including nonpayment of rent, the District proceeded with an unlawful detainer action against RJTA and took possession of the premises in August 1993. After the District's reentry, RJTA filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code.

RJTA has submitted a proposal to reinstate the lease and assign it to San Diego Seafood Market Restaurant, Inc. (SDSM). SDSM is a newly formed California corporation owned by investors Frank M. Parker (50%) and Shmuel Lasman (50%).

RJTA and SDSM are requesting conceptual approval of SDSM as a new tenant and for proposed modifications to the leased premises. If conceptual approval is granted, RJTA and SDSM will request a court order approving the proposed transaction prior to returning the matter to the Board for a decision, which would include adoption of an ordinance and a lease agreement. The conceptual approval sought here is not a final decision, does not give RJTA, SDSM, or any other party any rights, and is not a promise by the Board that it will ultimately reinstate the lease or otherwise consent to the proposed transaction.

Representatives of RJTA and SDSM will make a presentation to the Board regarding this proposal.

Conceptual approval of SDSM as a new District tenant is not subject to CEQA as amended. The proposed remodeling project is Categorically Exempt under CEQA, Section 15301, Existing Facilities: "Class 1 consists of reconstruction, repair, maintenance, or minor alteration

ACTION TAKEN: 11-15-93 - Conceptual approval granted, as conditioned in staff report herein.

SUBJECT: RJTA, Inc. dba Pacific Coral Reef Restaurant--  
Conceptual Approval for a New District Tenant  
and New Improvements

PAGE 2

25

FACTUAL BACKGROUND: (continued)

of existing public or private structures, facilities, mechanical equipment, and topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to: (a) Interior or exterior alterations . . . ."

ANALYSIS:

RJTA and SDSM are requesting conceptual approval of SDSM as a District tenant and for modifications to the leased premises. These requests are summarized as follows:

Proposed New Tenant Qualifications:

SDSM is owned by investors Frank M. Parker (50%) and Shirley Lasman (50%). Mr. Parker retired in 1960 from active duty in the Navy as a Rear Admiral. Since retirement, he has been active in real estate investment. Mrs. Lasman is an experienced investor with interests in real estate and other businesses.

Although the corporate stock is owned by Mr. Parker and Mrs. Lasman, an operating team will control and manage the restaurant operation. The operating team includes Anthony Burich, Peter A. Macaluso and William J. . . . combining over 75 years of experience in the food service industry. These individuals have experience operating restaurants including Manhattan of La Jolla, Paparazzi, . . . .

SDSM appears to have the financial resources and necessary experience to operate a Class A restaurant. If granted conceptual approval, SDSM has agreed to the following conditions for District consent to the lease and subsequent lease assignment. (these conditions will cure RJTA's known lease deficiencies)

1. All delinquent rent must be paid. Rent is due for the period commencing November 1, 1971 to the present. The amount of rent due to date is \$60,000. The District has collected a security deposit as partial payment of \$35,000 due. The minimum rent of \$0.00 per month due to accrue as this matter progresses.
2. SDSM must pay the \$35,000 lease security deposit.
3. SDSM must pay a sum of \$144,225 for new improvements to satisfy the requirement of the lease.

SUBJECT: RJTA, Inc. dba Pacific Coral Reef Restaurant--  
Conceptual Approval for a New District Tenant  
and New Improvements

PAGE 3

25

ANALYSIS: (continued)

4. SDSM must pay its share of assessment with the other Harbor Seafood Market tenants for the maintenance and operation of the joint-use facilities as required by the lease.
5. A personal guaranty for performance of the lease obligations must be provided by Frank M. Parker and Shirley Lasman.
6. Reimbursement must be made to the District in the amount of \$3,111 covering the District's attorney's fees and costs for the underwriting of the lease.

Proposed Modifications to the Premises:

Prior to the receiver taking possession of RJTA's assets, RJTA removed portions of F&B from the premises. Although most of these items were removed, they were simply delivered to the premises and not properly disposed of. The result of this action is that substantial work must be done to bring the property back to operating condition.

SDSM is proposing an American/Italian style seafood restaurant. Several modifications to the property are proposed to renovate and restart the business under the new concept. The proposed modifications to the property include installation of several aquariums along the west elevation, and relocation of the bar and food service area. The east-food/deli area will receive new wood lattice work, and a live lobster and crab tank. At the exterior, SDSM proposes new signage, planters, and color accent lighting. The estimated cost for this project is \$187,000.

The proposed signage has been reviewed and are generally acceptable. However, the proposed signage is not in conformance with the District's signage criteria established by the District in 1992. If the signage is approved, SDSM will be directed to redesign the signage to conform with current District criteria in its work.

PORT DIRECTION

1. Grant approval for the San Diego Seafood Market Restaurant, Inc.
2. Grant approval for new improvements as conditioned at



LEASE INFORMATION SUMMARY

Tenant: RJTA, Inc. dba Pacific Coral Reef Restaurant

Location: Harbor Seafood Mart building located at  
575-585 Harbor Lane, San Diego.

Area: Approximately 11,129 square feet of building area  
plus joint use of truck loading dock, truck parking  
area, and fish unloading pier.

Use: Seafood restaurant of 150 to 200 seats, nautical  
theme gift shop, delicatessen serving primarily  
seafood, and retail fish market.

Term: 4/1/90 - 3/31/95 (5 years)

At the District's sole discretion, the lease can be renewed for two additional five-year periods and one one-year, three-month period (4/1/95-3/31/00, 4/1/00-3/31/05 and 4/1/05-6/30/06) with the District having the right to terminate the lease on six months' notice. If the lease is not renewed or is subsequently terminated by the District, the District must reimburse RJTA for its unamortized investment by payment of the following applicable amount:

<u>Expiration Date</u>	<u>Amount of Payment to RJTA</u>
4/1/95 - 3/31/96	\$825,000
4/1/96 - 3/31/97	\$750,000
4/1/97 - 3/31/98	\$675,000
4/1/98 - 3/31/99	\$600,000
4/1/99 - 3/31/00	\$525,000
4/1/00 - 3/31/01	\$450,000
4/1/01 - 3/31/02	\$375,000
4/1/02 - 3/31/03	\$300,000
4/1/03 - 3/31/04	\$225,000
4/1/04 - 3/31/05	\$150,000
4/1/05 - 6/30/06	\$ 75,000

**Rent: Minimum Rent:**

1st &amp; 3rd year - \$40,000/yr. vs. percentage rents

2nd, 4th &amp; 5th year - \$80,000/yr. vs. percentage rents

Food and retail fish sales	3/1/92 - 3/31/95	6%
If five-year option exercised	4/1/95 - 2/28/97	6%
	3/1/97 - 3/31/00	7%

Alcoholic and nonalcoholic beverage sales	3/1/92 - 3/31/95	8%
If five-year option exercised	4/1/95 - 2/28/97	8%
	3/1/97 - 3/31/00	9%

Gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind		10%
---	--	-----

Washing machine commissions		25%
	(5% if tenant-owned)	

All other income		10%
------------------	--	-----

**Next Rent Review:** 4/1/95 (provided that District elects to exercise its right to renew the lease for the five-year period of 4/1/95-3/31/00)

**Tenant Investment:** Minimum of \$1,200,000 in new improvements.

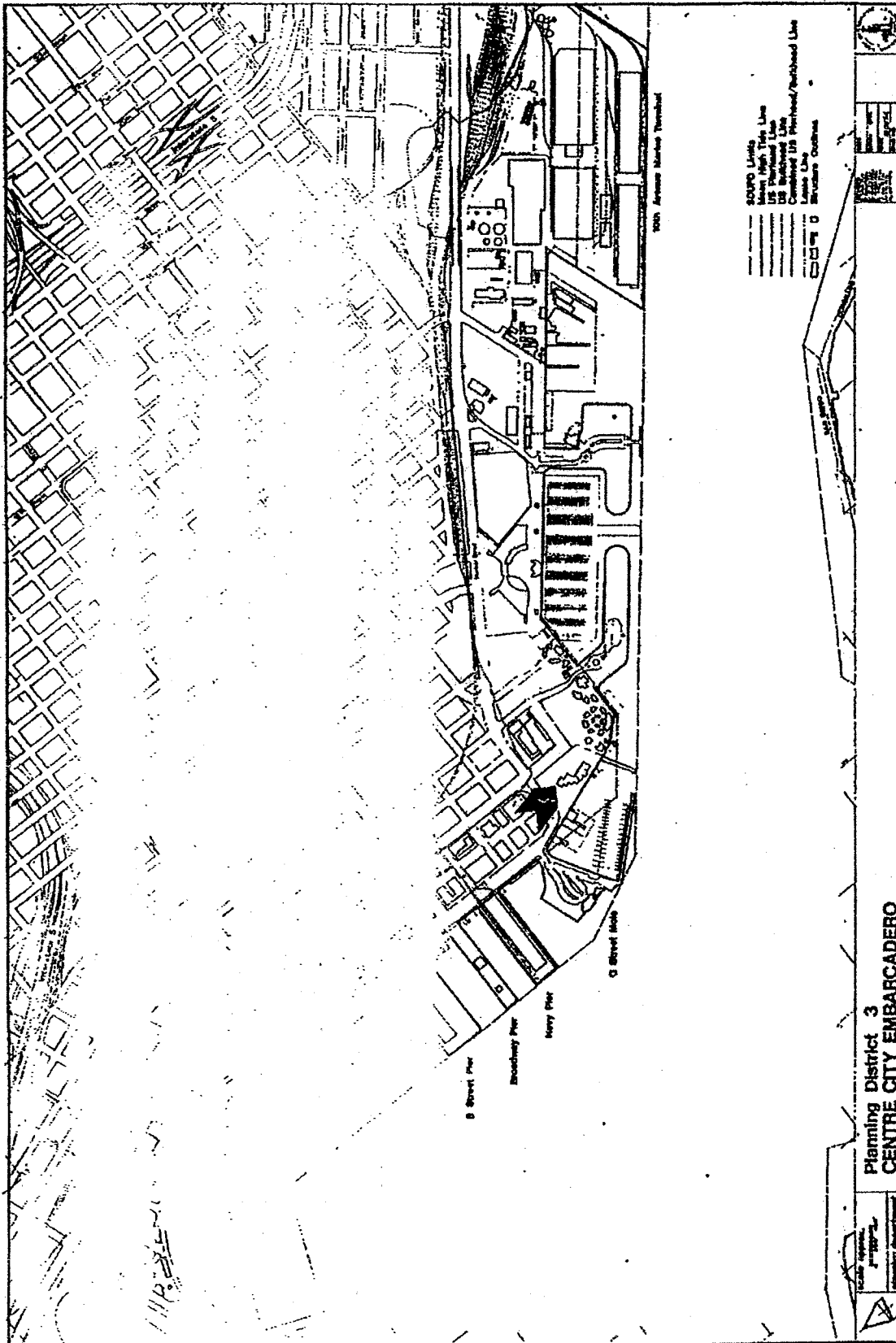
**Construction Completion:** 2/29/92

**District Maintenance Obligations:**

Roof (except for three-foot zone encompassing each skylight installed by tenant), exterior walls (except glass windows and doors), and main sewer and water lines outside perimeter walls of building.

**Improvement Summary:**

1st floor/retail space in Harbor Seafood Mart building, truck loading and parking area, and fish processing area.



**San Diego Unified Port District  
AGENDA SHEET**



**DATE:** April 7, 1995

Page 1 of 4

**SUBJECT:** CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE BAY'S RESTAURANT REMODEL PROJECT AND CONSENT TO SUBLEASE TO ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB RESTAURANT

**PORT DIRECTOR'S RECOMMENDATION:**

If parking shortfall is acceptable:

1. Grant conceptual approval for proposed subleasehold improvements.
2. Adopt resolution consenting to the sublease.

**EXECUTIVE SUMMARY:**

Holiday Inn is requesting District consent to the proposed sublease with Elephant and Castle, Inc. for operation of a restaurant and pub, which will replace the Home Port Restaurant and Shell's Lounge. Interior changes include remodeling of the restaurant and lounge in a Tudor/Victorian style characterized by dark wood finishes and authentic English antiques. Exterior changes include a patio area covered by three sail-like marquee canopies, new exterior signage, and modification of the Ash Street driveway. The project cost is estimated at \$1 million. The proposed project will increase Holiday Inn's parking shortfall by 24 spaces.

**FACTUAL BACKGROUND:**

**Proposed Sublease:**

H-I Joint Venture dba Holiday Inn on the Bay has a lease covering 6.11 acres of land on the southeast corner of Harbor Drive and Ash Street. The lease, which expires in 2029, is summarized on the attached LEASE INFORMATION SUMMARY.

Holiday Inn is requesting District consent to its proposed sublease with Elephant and Castle, Inc. dba The Elephant and Castle Pub Restaurant for a first-class, casual-

**ACTION TAKEN:** 04/18/95 - Board granted general conceptual approval for the proposed restaurant remodel and consented to the sublease -- Resolution 95-128.

20

**SUBJECT: CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE BAY'S RESTAURANT REMODEL PROJECT AND CONSENT TO SUBLEASE TO ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB RESTAURANT**

theme, full-service restaurant. The proposed sublease, covering 6,500 square feet of interior space plus a 2,602-square-foot patio area, is for a new restaurant, which will replace The Home Port Restaurant and Shell's Lounge located in the northwest corner of the ground floor of the main Holiday Inn tower. The restaurant will have 220 interior seats and 104 patio seats and will feature a localized menu, as well as authentic English food. The proposed sublease, which is for a 20-year term, including options, is summarized on the attached PROPOSED SUBLEASE INFORMATION SUMMARY.

**Proposed Remodeling Project:**

Holiday Inn has submitted plans for interior and exterior restaurant improvements for the area to be subleased to Elephant and Castle. The interior will be remodeled in a Tudor/Victorian style, incorporating elements of a typical English pub, including dark wood, brick walls, wood ceiling beams, pressed metal ceiling panels, and antique furnishings. A new kitchen, bar, seating areas, and rest rooms will be included within the restaurant area. A billiards area will also be created. The common wall separating the restaurant and the hotel reservation entry hall will be partially opened to provide an improved atmosphere for both areas and enhanced views of San Diego Bay.

Exterior improvements include a dining area featuring three sail-like marquee canopies at the front of the restaurant. Enhanced hardscape, a low-height decorative wall, and ornamental ironwork will accentuate the marquee structures. A new 125-square-foot foyer will be constructed for entry into the restaurant. The entry will include support columns on both sides of the double doors, a half-circle "Elephant and Castle" clerestory window, and an overhead sign. An "English-style," red telephone booth will be situated near the front entry. The rerouting of the hotel driveway will require the reconstruction of the Ash Street driveway curb cut and the removal or relocation of three palm trees.

The increased seating of the remodeled facilities will create an additional parking demand of 24 spaces. At the November 20, 1990 meeting, the Board conceptually approved plans for a slightly smaller restaurant in the same location at Holiday Inn; however, that project was not constructed. At that time, the Board was advised that the then existing 495-space parking shortfall would increase to a 528-space parking shortfall if the restaurant expansion and other improvements were approved. Because the hotel had operated for many years with little evidence of a parking problem, the Board approved the increase in restaurant seats.

20

**SUBJECT: CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE BAY'S RESTAURANT REMODEL PROJECT AND CONSENT TO SUBLEASE TO ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB RESTAURANT**

The estimated cost of the project is \$1 million. A representative of Holiday Inn will make a presentation to the Board describing the proposed project.

**Environmental Review:**

Staff has reviewed the potential environmental consequences of the proposed remodeling project and the proposed sublease and determined that the project is categorically exempt under CEQA, Section 15301: Existing Facilities "Class 1 consists of the operation . . . of existing public or private structures, facilities . . . involving negligible or no expansion of use beyond that previously existing . . ." and, further, that tenancy provisions have no effect on the environment as per State CEQA Guidelines Section 15061.

**ANALYSIS:**

The proposed sublease and remodeling project will convert the existing coffee-shop-style restaurant and existing lounge into a first-class, casual-theme restaurant and pub. The interior and exterior furnishings, fixtures, and design features will enhance the Holiday Inn. The restaurant patio area will create a unique attraction for the large number of pedestrians that frequent this portion of the Embarcadero area and will add to the festive ambience of the area.

Elephant and Castle, Inc. is a U.S. subsidiary of Elephant and Castle Group, Inc. Elephant and Castle operates 16 restaurants in the United States and Canada and appears qualified to operate the proposed restaurant. The parent corporation is a British Columbia, Canada corporation, which is traded on the NASDAQ and Pacific Stock Exchanges. The parent corporation appears to have adequate financial resources and is guaranteeing the sublease.

As a result of the proposed remodel project, the restaurant seating capacity will increase from 252 seats to 324 seats (72-seat increase), including the 104 patio seats that will be used on a seasonal basis only. Based on the District's current criteria of one parking space per three restaurant seats, the 72-seat increase may create a seasonal demand for an additional 24 parking spaces. Using the District's current parking criteria, the indicated shortfall of on-site parking at Holiday Inn will increase from 537 to 561 parking spaces.

20

Agenda Sheet  
Page 4 of 4

**SUBJECT: CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE BAY'S RESTAURANT REMODEL PROJECT AND CONSENT TO SUBLEASE TO ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB RESTAURANT**

Despite the parking shortfall indicated by the District's standard parking criteria, Holiday Inn's parking facilities are oftentimes underutilized. This may be explained by the fact that there is a charge for on-site parking and, as a result, many employees use public transportation or park off site. In addition, there are a substantial number of public parking spaces available in the vicinity of Holiday Inn.

Ace Parking, which manages the Holiday Inn parking facilities, recently completed an occupancy analysis of Holiday Inn's parking facilities. According to Ace, Holiday Inn's average monthly parking facility occupancy was 79.9% during 1994.

It has been the District's longstanding practice to utilize its parking criteria as a guideline for estimating the parking demand which may be created by certain types of uses. The District, however, reviews each proposed project on a case by case basis, and there are many tenancies whose projects have been approved with less than the number of parking spaces indicated by the District's parking criteria. For instance, the recent redevelopment of the Shelter Cove Marina requires 191 parking spaces under the District's criteria; however, only three spaces are provided on site. This development was allowed because Shelter Cove is adjacent to a large public parking lot. Recently, the Board has directed that the District's parking criteria be reviewed which may result in the Board adopting different requirements.

Under the terms of the master lease, the District will receive 3% from food sales; 5% from on-sale beverage sales; and 5% from gift, novelty, and souvenir sales. These are the District's current standard percentages.

**LEASE INFORMATION SUMMARY**

**Tenant:** H-I Joint Vonture dba Holiday Inn on the Bay

**Location:** 1355 North Harbor Drive

**Area:** 266,056 sq. ft. - land

**Use:** Hotel/motel, restaurant, cocktail lounge, specialty shops, parking structure, and related hotel purposes.

**Term:** 9/1/77 - 10/14/29 (52 years, 1 ½ months)

**Rent:** A minimum of \$700,000 per year or the cumulative total of the percentage rents below, whichever sum is greater:

Rental of guest rooms (including the gross income from in-room movies and similar forms of in-room entertainment) and rental of conference and banquet rooms (including related accommodation sales and services provided to conference and banquet room users).	6% through 9/30/96, then 7%
--	-----------------------------

On-sale beverages, barber and beauty shop operations, gifts, novelties, souvenirs, clothing sold from other than the specialty shop building located on Harbor Drive in front of the south hotel tower, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind.	5%
---	----

Food, off-sale beverages and clothing sold from the specialty shop building located on Harbor Drive in front of the south hotel tower.	3%
--	----

Vending or service machine commissions	25% (5% if Lessee owns machines)
--	----------------------------------

Telephone	6%
-----------	----



**Rent:** (Continuation)

Parking fees, office space rentals and 10%  
other activities and businesses allowed  
under this Lease and not otherwise provided for.

**Next Rent  
Review:**

9/1/97

**Improvement  
Summary:**

601 hotel guest rooms; 6,200 square feet banquet facilities;  
252 restaurant and lounge seats inside the hotel; free-standing  
restaurant with 275 seats; 14,468 square feet convention center and  
meeting rooms; 261-car parking garage; and 139 surface parking  
spaces.

**PROPOSED SUBLEASE INFORMATION SUMMARY**

**Tenant:** H-I Joint Venture dba Holiday Inn on the Bay

**Subtenant:** Elephant and Castle, Inc. dba The Elephant and Castle Pub Restaurant

**Guarantor:** Elephant and Castle Group, Inc. (Parent Corporation)

**Location:** 1355 North Harbor Drive, ground floor of northwest corner of main hotel tower.

**Area:** 6,500 Sq. Ft. - Building; 2,602 Sq. Ft. - Patio Area; 288 Sq. Ft. - Office; and five reserved parking spaces. There will be 220 interior seats and 104 patio seats.

**Use:** First-class, casual-theme, full-service restaurant.

**Term:** 3/1/1995 - 3/1/2015 (20 years, 1 day, including two five-year options)

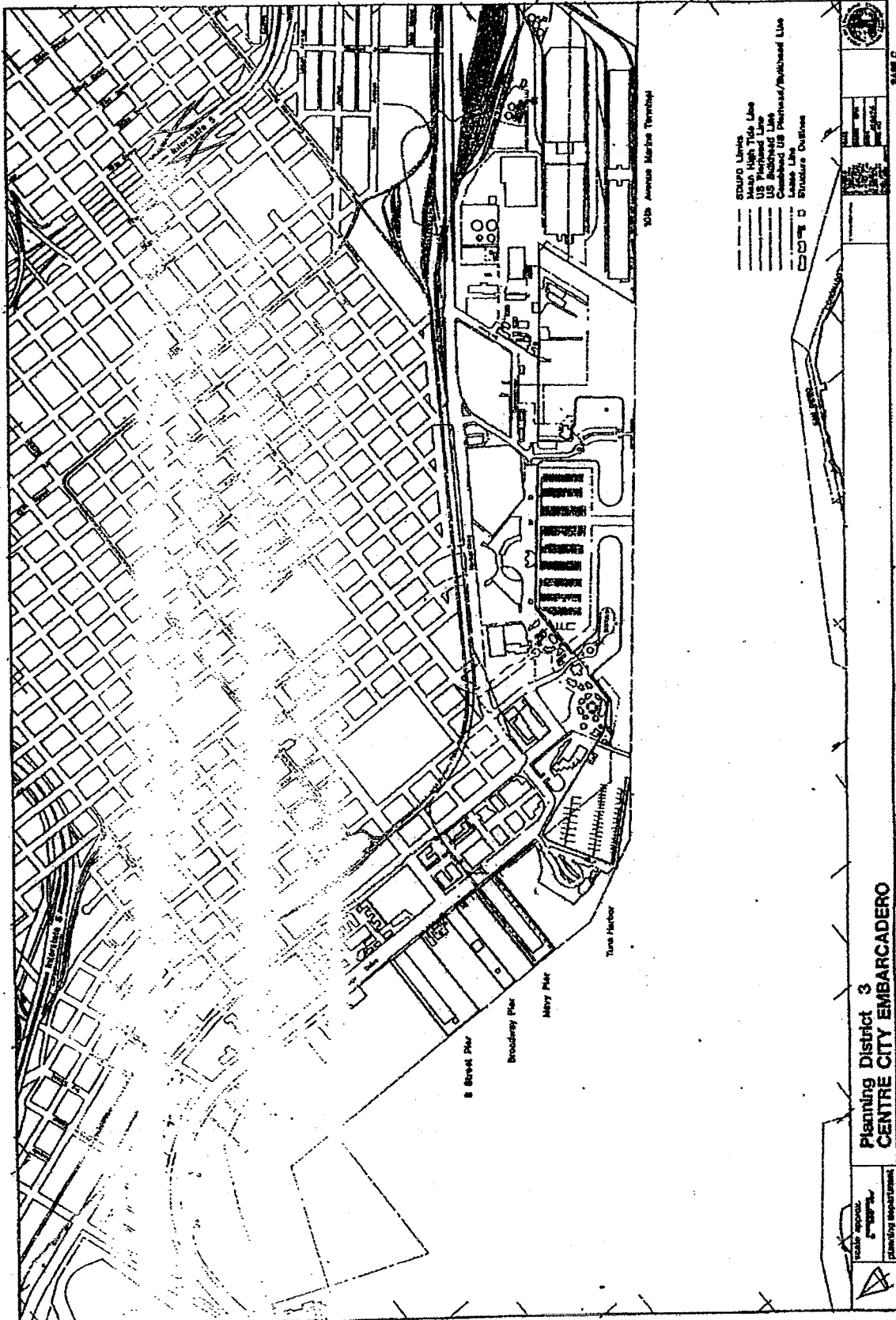
**Rent:** Minimum Rent

Years 1-2:	\$60,000 per year (\$9.23 psfY - restaurant area)
Years 3-10:	\$72,997 per year (\$11.23 psfY - restaurant area)
Years 11-15:	\$92,087 per year (\$14.17 psfY - restaurant area)
Years 16-20:	\$112,036 per year (\$17.24 psfY - restaurant area)

Minimum rent is versus 6% of gross sales.

In addition, \$3,300 per month (subject to annual CPI adjustments) for subtenant's share of utilities.

In the event the rent under the master lease increases for the sublease premises, the sublease rent automatically increases by the same amount. However, Tenant will receive a partial offset through reduction of the utilities payment.



**San Diego Unified Port District  
AGENDA SHEET**

7

**DATE:** November 6, 1998

Page 1 of 3

**SUBJECT:** ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA  
RESTAURANT RENOVATION

**EXECUTIVE SUMMARY:**

Anthony's Fish Grotto of La Mesa (Anthony's) operates the Star of the Sea Restaurant at 1360 North Harbor Drive in San Diego. Anthony's proposes to renovate the interior and exterior of the 3,353-square-foot Star of the Sea which is part of a 16,580-square-foot building that also includes Anthony's Fish Grotto Restaurant. The project's cost is approximately \$350,000 and requires Board approval. Staff has reviewed the plans for the proposed remodeling prepared by Anthony's design consultant, D.C. Roberts Design Associates. Staff is recommending approval of the project. A representative of Anthony's will be available to make a presentation to the Board.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Recommend Board review and grant conceptual approval of the proposed remodeling project for Anthony's Star of the Sea Restaurant.

**FACTUAL BACKGROUND:**

Anthony's proposes to remodel the Star of the Sea to give the restaurant a new, distinctive identity separate from Anthony's Fish Grotto Restaurant. Anthony's submitted final drawings in August 1998 and materials boards to the District in October 1998 for review of the proposed renovations. The proposed renovations are cosmetic in nature and contain no significant structural improvements. The new exterior design features stretched canvas on a metal frame over the existing roof. The exterior shingles will be replaced with stucco and limestone panels. Anthony's is also proposing a new exterior sign and menu board. The contemporary exterior design reflects the new elegant interior design. Anthony's proposes to remodel the interior bar/lounge and dining room. The bar/lounge will

**ACTION TAKEN:** 11/17/98 - Conceptual approval granted of proposed remodeling project.

**SUBJECT: ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA  
RESTAURANT RENOVATION**

be relocated to the promenade side of the building behind new glass windows and entrance doors.

Anthony's proposed remodeling will increase the number of seats in the Star of the Sea by five, from 124 to 129 seats (not a significant increase). The installation of a backflow preventer valve required by the City will result in the loss of one parking space.

Anthony's two restaurants are located in the area of the North Embarcadero Alliance Visionary Plan. When implemented, the Plan's proposed expansive esplanade would reduce parking along Harbor Drive in front of Anthony's. Also, a portion of Lane Field is currently leased to Anthony's, providing employee parking under a one-year Tidelands Use and Occupancy Permit. If Lane Field is developed, Anthony's will have to locate replacement parking.

**Environmental Review:**

The Port Master Plan land use designation for Planning District 3 is "COMMERCIAL-Commercial Recreation." The proposed project, which consists of interior and exterior remodeling, is in conformance with this land use designation as defined in Section III of the Port Master Plan.

This project is consistent with Public Resources Code Sections 30604(c) and 30210 through 30224, and the Coastal Act Public Access and Recreational Policies referenced therein.

The project is an excluded development under the District Coastal Development Permit Regulations, Section 8.a. Existing Facilities.

This project was found to be Categorical Exempt under CEQA Section a. Existing Facilities (SG 15301) (Class 1): "Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing, included but not limited to: (3) Interior and exterior alterations . . . ; (5) Minor exterior and interior alterations to incorporate architectural changes; and (7) Existing facilities used to provide electric power, natural gas, sewerage, or other public utility service."

**SUBJECT: ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA  
RESTAURANT RENOVATION**

**Treasurer's Certificate:**

Not required.

**Fiscal Impact:**

The project does not have a cost to the District. Revenues to the District may be enhanced as a result of the project.

**ANALYSIS:**

Anthony's is a valued, long-term tenant. The project will be Anthony's first renovation during its lease term aimed at enhancing its business in this location. The success of Anthony's business should be enhanced by this project. When implemented, the future infrastructure improvements in the North Embarcadero should accelerate the timeline for additional redevelopment in the area. This should have a positive impact on Anthony's business. Staff supports Anthony's request for approval of its plans to remodel the Star of the Sea Restaurant.

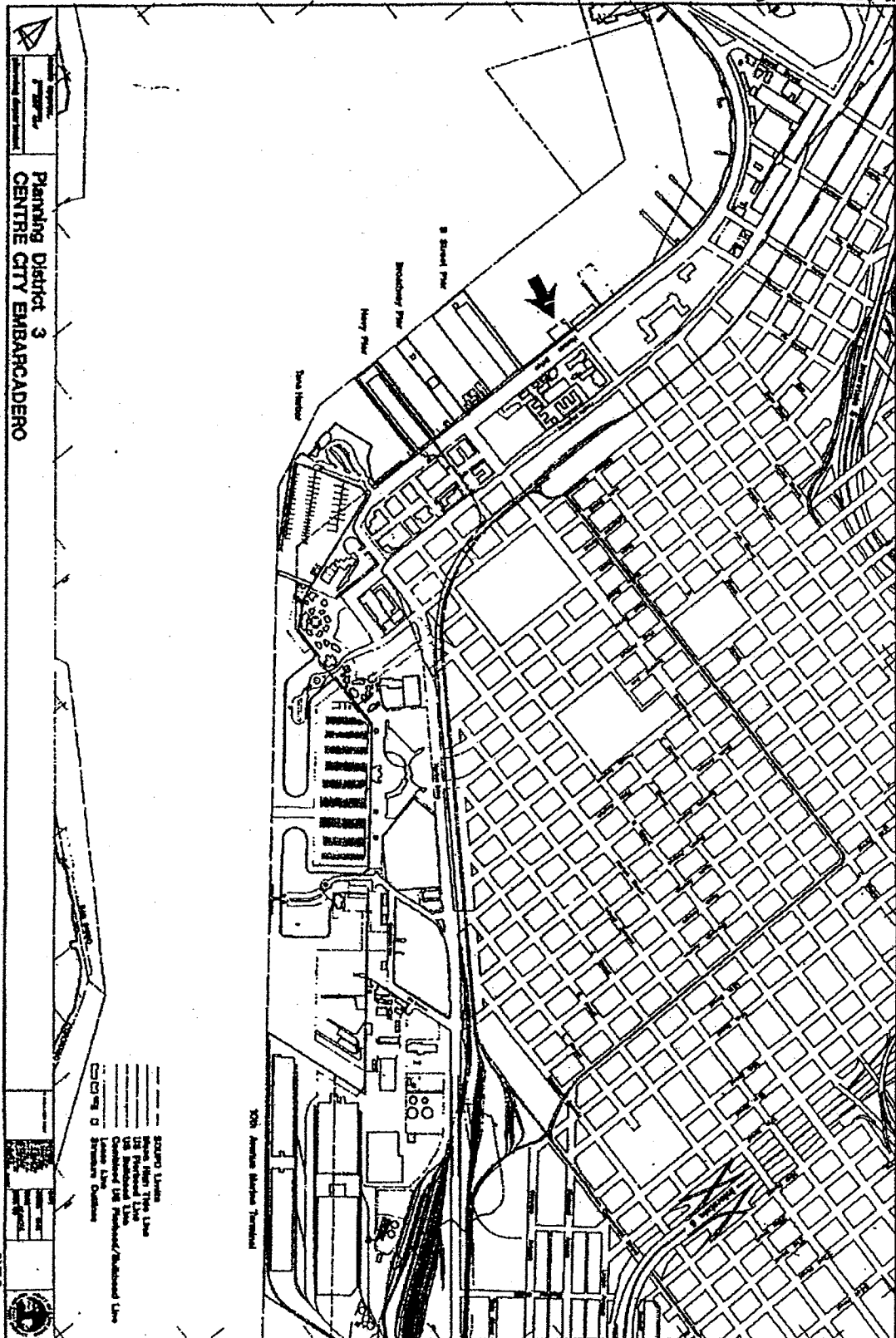
**LEASE INFORMATION SUMMARY**

Tenant: Anthony's Fish Grotto of La Mesa  
 Location: 1360 North Harbor Drive  
 Area: 31,500 sq. ft. - water  
 Use: Restaurant, bar, gift shop, and catering.  
 Term: 2/1/65 - 1/31/17 (52 years, including options)  
 Rent:

Food	3%
Beverages, gifts, novelties, souvenirs, cigars, cigarettes, etc.	5%
Vending machine commissions	25% (5% of gross if machines tenant-owned)
Other income	10%
Annual minimum rental	\$181,000

Option and  
Rent Review  
Period: 2/1/1995 - 1/31/2000 (5 years)

Improvement  
Summary: 357 restaurant seats (220 seats - Fish Grotto; 45 seats - Fishette; 92  
seats - Star of the Sea)





**AGENDA ITEM 10**

**SAN DIEGO UNIFIED PORT DISTRICT**

**DATE:** March 18, 2003

**SUBJECT: ADOPT RESOLUTION GRANTING CONCEPT APPROVAL FOR SUN HARBOR MARINA REDEVELOPMENT TO INCLUDE ADJACENT PROPERTY AND AUTHORIZE NEGOTIATION OF OPTION AGREEMENT FOR 40-YEAR LEASE**

**EXECUTIVE SUMMARY:**

Sun Harbor Marina (Sun Harbor), located at 5104 North Harbor Drive, has been a District tenant since 1983. Sun Harbor operates a marina, support services for both the marina and adjacent sportfishing tenants, and subleases to Pizza Nova restaurant and four marine service tenants. Sun Harbor has submitted concept plans to redevelop its existing improvements and build an additional 4,000 square feet on the existing Sun Harbor site plus the immediately adjacent 19,775 square foot property (the former Tarantino site). Capital investment for the project is projected to be approximately \$3.9 Million which justifies a 40-year lease term under BPC Policy 355.

A representative of Sun Harbor is available to make a presentation of the proposed project.

**RECOMMENDATION:**

Adopt Resolution granting concept approval for Sun Harbor Marina redevelopment to include adjacent property and authorize negotiation of Option Agreement for 40-year lease.

**FISCAL IMPACT:**

The fiscal impact to the District cannot be projected at this point, but the proposed 40-year Lease will include fair market rental for the leased premises. The fiscal impact will be known when Board approval is sought for the Lease.

**DISCUSSION:**

Sun Harbor has a lease with the District covering 45,000 square feet of land and 136,707 square feet of water area at 5104 North Harbor Drive. The existing three (3) year lease expires the earlier of March 31, 2004 or six (6) months following Coastal Commission certification of the Port Master Plan Amendment for the America's Cup

**ACTION TAKEN: 03/18/03 – Reso. 2003-57**

## **AGENDA ITEM 10**

**Page 2 of 4**

Harbor Shelter Island Area, and is summarized on the attached LEASE INFORMATION SUMMARY. The requested concept approval includes development of the 19,775 square foot adjacent site formerly occupied by Tarantino's Restaurant. Tarantino's Restaurant improvements were removed in the late 1990's and the now-paved lot is periodically leased for parking to nearby tenants.

Starting in early 1997, a master planning process developed recommendations for long-range improvement and redevelopment for the Shelter Island/America's Cup Harbor area. A preferred concept was adopted by the BPC in December of 1998. This preferred conceptual plan was refined into the current concept with an Environmental Impact Report (EIR) for the plan certified by the BPC on May 21, 2002. The final plan recommendations will be submitted to the California Coastal Commission as an amendment to the Port Master Plan within the next several months.

Sun Harbor has been applying for redevelopment plan approval since July, 1997 and has spent more than \$140,000 preparing redevelopment concepts to meet various District concerns. Because of past delays in redevelopment consideration, Board approval of Sun Harbor's current 3-year lease included agreement that Sun Harbor would be allowed a reasonable time after the Master Plan Amendment certification to submit a redevelopment proposal and negotiate a new lease in advance of the District issuing an RFP for the property.

One of the delays in Sun Harbor's redevelopment of its current site is due to the Master Plan's reconfiguration of the parking area immediately in front of the Sun Harbor property, and Sun Harbor's dependence on street parking in order to meet the District's parking criteria. SDUPD is working with the City of San Diego to arrive at a mutually agreeable plan for that area. Sun Harbor's current redevelopment proposal, because it includes the adjacent 19,775 square foot site, includes sufficient on-site parking to accommodate the proposed redevelopment. Sun Harbor's plan design leaves room for seamless, further redevelopment of the parcels once the Master Plan-related parking/density issues are resolved.

Sun Harbor's current application would replace the existing marina docks with a new docking system including an ADA-accessible gangway, relocate and rebuild the landside improvements, and add approximately 4,000 square feet of building area for marina support and office. Public art is being incorporated into the plan in accordance with BPC 609. Project planning will include compliance with the District's Standard Urban Storm Water Mitigation Plan program. Board decisions made with respect to guest docks will be incorporated into the lease agreement. The public promenade across the leased property is included in the redevelopment design, in accordance with the Master Plan.

Sun Harbor's proposed redevelopment is estimated to cost \$3.9 million, and since it anticipates replacing all of its existing buildings and new construction of additional space, qualifies pursuant to BPC 355 for a new 40-year lease. If the Board grants concept approval for Sun Harbor's proposed development, a six-month Option Agreement for a 40-year lease will be negotiated. In a future meeting the Board will be requested to grant the Option Agreement. During the option period, Sun Harbor will prepare final working drawings, obtain building permits and secure financing as conditions precedent to exercising the option and obtaining a 40-year lease.

**Environmental Review:****Exempt under CEQA.**

It has been determined that this project is Categorically Exempt pursuant to State Guidelines Section 15300.4 and Resolution 97-191, b. Replacement or Reconstruction (SG § 15302) (Class 2) and c. New Construction or Conversion of Small Structures (SG § 15303) (Class 3)

**COASTAL ASSESSMENT:**

The Port Master Plan Land use designation for this area (Planning District 1 -Precise Plan Figure 4) is "COMMERCIAL - Commercial Recreation / Commercial Boat Berthing." This proposed project, which consists of redevelopment of a marina, restaurant, marine storage and office, is in conformance with this land use designation, as defined in Section III of the Port Master Plan, in that the proposed uses are specifically permitted (Page 24,25,26)."

This project is located between the sea (as defined by the Coastal Act) and the first continuous public road paralleling the sea. This project is consistent with Public Resources Code Sections 30604(c), and 30210-30224, and the relevant Coastal Act public access and recreation policies referenced therein.

It was determined that this project is an Excluded Development under the District Coastal Development Permit Regulations, Section 8.a.; Existing Facilities, 8(b), Replacement or Reconstruction, Section 8.c, New Construction or Conversion of Small Structures.

---

**AGENDA ITEM 10**

**Page 4 of 4**

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:** Paul Fanfera  
Assistant Director, Real Estate  
  
Christine Richards  
Asset Manager, Real Estate

**AGENDA ITEM 32**

**SAN DIEGO UNIFIED PORT DISTRICT**

**DATE:** September 5, 2006

**SUBJECT: SAN DIEGO MARRIOTT HOTEL AND MARINA**

- A) RESOLUTION CONSENTING TO SUBLEASE TO ROY'S RESTAURANT AT THE SAN DIEGO MARRIOTT HOTEL AND MARINA**
- B) RESOLUTION GRANTING CONCEPT APPROVAL FOR ROY'S RESTAURANT**

**EXECUTIVE SUMMARY:**

Pacific Gateway, Ltd., is the District's lessee of the San Diego Marriott Hotel and Marina. Pacific Gateway requests permission to enter into a twenty-year sublease with Roy's Callone, LP dba Roy's to replace the former Yacht Club Restaurant. The sublease will be guaranteed by Roy's Holding Inc., which is an affiliate of Outback Steakhouse, Inc.

Pacific Gateway is also requesting concept approval for remodeling its former Yacht Club Restaurant for occupancy by Roy's restaurant.

**RECOMMENDATION:**

- A) Resolution consenting to long-term sublease from Pacific Gateway, Ltd., dba San Diego Marriott Hotel and Marina, to Roy's Callone, LP dba Roy's restaurant.**
- B) Resolution granting concept approval for remodeling former Yacht Club Restaurant for occupancy by Roy's restaurant.**

**FISCAL IMPACT:**

The District receives percentage rents (3% of food and 5% of beverages). Although increased food and beverage sales are anticipated as a result of the new Roy's concept, the fiscal impact is unknown.

**DISCUSSION:**

Pacific Gateway, Ltd., (Gateway) has a lease covering the San Diego Marriott and Marina (Marriott) located at 333 West Harbor Drive. The lease is summarized on the attached LEASE INFORMATION SUMMARY. Gateway is requesting consent to

<b>ACTION TAKEN: 09/05/06 - Resolution 2006-145 and 2006-146</b>
--

sublease the former Yacht Club Restaurant to Roy's Calione, LP dba Roy's. See attached SUBLEASE INFORMATION SUMMARY.

Roy's will replace the Yacht Club Restaurant, which faces the Marriott Marina on the South Embarcadero promenade with Roy's restaurant. The remodeling project requires Board approval since there will be changes to the silhouette including the installation of an exterior retractable canvas cover patio, and new subtenant monument signage on Harbor Drive. The estimated project cost is approximately \$1,975,000. Under separate contract, Marriott will upgrade the 2<sup>nd</sup> Floor restrooms with new finishes and an ADA compliant layout at an estimated cost of \$100,000.

The Marriott management has decided to replace the existing Yacht Club Restaurant, which has been in need of an updated theme and new finishes, with a totally new restaurant concept. The stand-alone theme restaurant building with banqueting facilities above faces the Marriott Marina on the South Embarcadero Promenade. The new restaurant concept, Roy's, is a very successful "Hawaiian Fusion" cuisine theme. Chef Roy Yamaguchi, winner of a prestigious James Beard best chef award, opened his first restaurant in Honolulu in 1988; there are now 33 Roy's restaurants worldwide.

Roy's is noted for its outstanding design concepts: subtle lighting, bold design concepts and fine finishes. The main dining room will be remodeled to include a glass enclosed wine "cellar" and a large exhibition kitchen open to the dining room. The existing kitchen will be converted to a large bar area, and the present elevator and stair shaft will be opened up to the bar and dining room. A third of the 2<sup>nd</sup> Floor area, now Marriott banquet space, will be remodeled to function, with the use of moveable partitions, as from one to four private dining rooms for Roy's customers. The remaining two-thirds of the area will remain Marriott's banquet area. An exterior dining/bar deck will open off of Roy's private dining areas. Roy's is remodeling the exterior patio to include a retractable shade cover, an exterior bar and a fire pit. The retractable patio cover can be opened or closed as diners prefer.

The patio cover will be a trademark Roy's purple color which will also be the background color on all of Roy's signage. The exterior signage package includes two monument signs on Harbor Drive that are necessary to identify and locate the waterfront restaurant blocked by the hotel buildings from the view of passersby.

The remodeled Roy's restaurant will have approximately 300 restaurant seats, inside and out. This is a 50 seat increase over the capacity of the existing Yacht Club Restaurant, but Marriott will still have a surplus of 514 parking spaces per the Board approved Tidelands Parking Guidelines.

**Port Attorney's Comments:**

Not applicable.

**Environmental Review:**

This project has been found to be **Categorically Exempt** according to CEQA under the following section:

15301, Existing Facilities: "Class 1 consists of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing.

**Coastal Assessment:**

The Port Master Plan Land use designation for this area (Planning District 3 - Precise Plan Figure 11) is "COMMERCIAL - Commercial Recreation." This project is consistent with that land use designation.

This project is located between the sea (as defined by the Coastal Act) and the first continuous public road paralleling the sea. This project is consistent with Public Resources Code Sections 30604(c), and 30210-30224, and the relevant Coastal Act public access and recreation policies referenced therein."

This project is an **Excluded Development** under the District Coastal Development Permit Regulations, Section 8.a., Existing Facilities: "The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:** Patti D. Phillips  
Senior Asset Manager, Real Estate

Clinton E. Kisner  
Architect, Real Estate

**LEASE INFORMATION SUMMARY**

**Tenant:** Pacific Gateway, Ltd., dba San Diego Marriott Hotel & Marina  
**Location:** 333 West Harbor Drive  
**Area:** 781,527 sq. ft. Land; 826,936 sq. ft. Water; 174,921 sq. ft. Navigation Easement  
**Use:** Hotel, marina, restaurants, cocktail lounges and retail shops.  
**Term:** 12/01/95 - 11/30/2061 (66 Years)  
**Rent:** Annual minimum of \$3,800,000 per year versus the following percentage rents:

<u>Rent Category</u>	<u>Percentage Rates</u>
Guest rooms	6%
On-sale beverages, barber and beauty shop, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, etc.	5%
Food and off-sale beverages	3%
Boat berth rentals, dock lockers, boat launch and retrieval	20%
Boat rentals – less than 20 ft. in length	10%
Boat charters – more than 20 ft.	6%
Vending or service machine commissions	25% (5% if Lessee owns machines)
Other	10%

**Next Rent Review:** 12/01/2006

**Improvement Summary:** 1,362 hotel rooms, 1,164 restaurant and lounge seats inside the hotel, 453 boat slips in marina, 1,839 parking spaces including 700 parking spaces in Convention Center parking garage.



**SUBLEASE INFORMATION SUMMARY**

**Tenant:** Pacific Gateway, LTD, dba San Diego Marriott Hotel & Marina.

**Subtenant** Roy's Calione, LP, dba Roy's.

**Location:** 333 West Harbor Drive.

**Area:** 7,486 sq. ft. restaurant building.

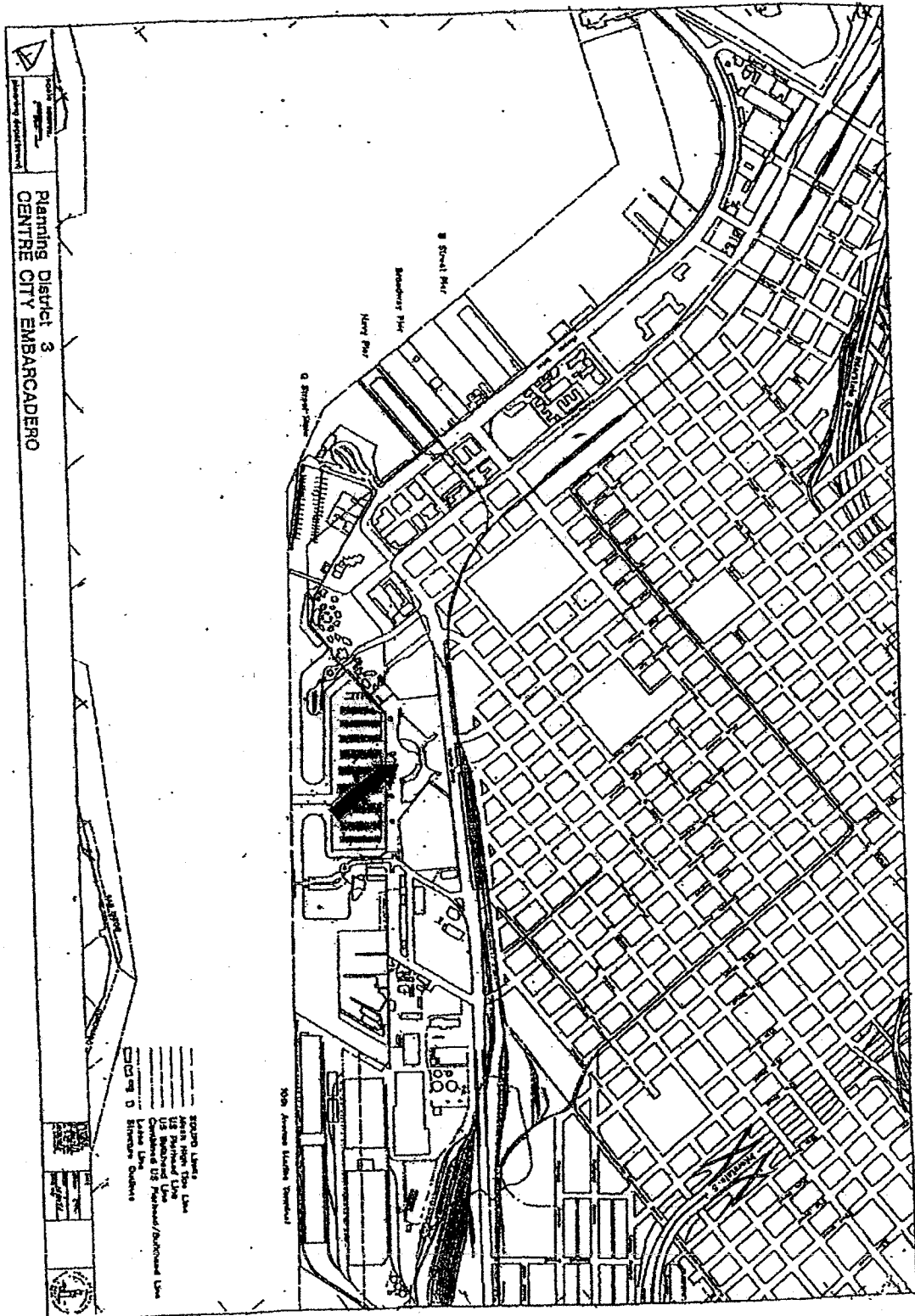
**Use:** Restaurant and cocktail lounge, including serving of alcoholic beverages.

**Term:** 10 years plus two (2) five-year options

**Rent:** Minimum rent plus 4% of gross sales in excess of breakpoint for applicable year at Roy's Restaurant.

Years 1 through 5	\$8,333/mo
Years 6 through 10	\$9,168/mo.
Years 11 through 15	\$10,083/mo.
Years 16 through 20	\$11,091/mo.

**Improvement Summary:** 10,877 sq. ft. 1<sup>st</sup> floor restaurant building, use of 4,257 sq. ft. of 2<sup>nd</sup> floor restaurant building, and limited use of 2,494 sq. ft. of 3<sup>rd</sup> floor restaurant building.



**SAN DIEGO UNIFIED PORT DISTRICT**

**DATE:** September 1, 2009

**SUBJECT: SHELTER ISLAND, INC. DBA BALI HAI**

**A) RESOLUTION GRANTING CONCEPT APPROVAL TO SHELTER ISLAND, INC. DBA BALI HAI FOR PROPOSED RESTAURANT RENOVATION**

**B) ORDINANCE GRANTING AN OPTION AGREEMENT WITH SHELTER ISLAND, INC. DBA BALI HAI FOR A NEW 30-YEAR LEASE, WITH A 10-YEAR OPTION**

**EXECUTIVE SUMMARY:**

Shelter Island, Inc. operates two restaurants on District Tidelands, the Bali Hai on Shelter Island and Tom Ham's Lighthouse on Harbor Island. Shelter Island, Inc. dba Bali Hai (Bali Hai) has submitted a proposal for a \$3,800,000 renovation of the Bali Hai restaurant. The redevelopment involves the following: complete renovation and remodel of the interior of the restaurant and banquet area, a new 500 square foot deck off of the upper dining room, a new façade facing the parking lot, a new roof, awnings and pergola surrounding the structure, construction of a new permanent pavilion and upgraded landscaping and hardscaping.

Subject to the Board's approval, an 18-month option has been negotiated with Bali Hai for a new lease. In accordance with BPC Policy No. 355, Bali Hai's \$3,800,000 investment will qualify for a 30-year lease term with a 10-year option to extend conditioned on performance factors. The new lease will include the applicable percentage rental rates approved by the Board on December 7, 2004. Minimum annual rent (MAR) under the new lease for the initial 10-year rental period will be as follows: \$300,000 adjusted to \$150,000 during a 12-month construction period, \$225,000 during a 12-month stabilization period, and \$270,000 during an additional 12-month stabilization period. A mid-term CPI adjustment will be required in year five.

**RECOMMENDATION:**

Adopt Resolution granting concept approval to Shelter Island, Inc. for proposed restaurant renovation; additionally, adopt Ordinance granting an Option Agreement with Shelter Island, Inc. for a new 30-year lease, with a 10-year option.

**FISCAL IMPACT:**

If approved, the Board action will result in an option payment of \$500. This proposed Board action will not result in further fiscal impact unless the option is exercised. However, if and when the option is exercised and the project has stabilized in year four, the MAR the District receives will increase from \$163,500 to \$300,000 - an increase of

ACTION TAKEN: 09-01-2009 - Resolution 2009-177 and Ordinance 2578

\$136,500 per year. Bali Hai's *projected* percentage rent payments to the District are approximately \$312,000 per year by year four, exceeding the minimum annual rent.

**COMPASS STRATEGIC GOALS:**

The redevelopment of the Bali Hai will strengthen the District's financial performance and modernize an older development on District Tideland.

This agenda item supports the following strategic goals:

- ☒ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☒ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☒ Ensure a safe and secure environment for people, property and cargo.
- ☒ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☒ Develop a high-performing organization through alignment of people, process and systems.
- ☒ Strengthen the Port's financial performance.
- ☐ Not applicable.

**DISCUSSION:**

**Background**

Bali Hai has a lease covering approximately 33,531 square feet of land and 35,180 square feet of water located at 2230 Shelter Island Drive on the northeast end of Shelter Island. A restaurant of approximately 17,600 square feet, a pavilion of approximately 2,350 square feet and a fixed pier and floating dock available for use by restaurant customers currently occupy the leasehold. The Bali Hai's 25-year lease with the District will expire in August 2015. The terms of the lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

**Proposed Project**

The Bali Hai has proposed a comprehensive renovation and upgrade of the existing facilities into a trendy, modern venue with a Polynesian flavor. The project includes a major rejuvenation of the exterior of the restaurant, enhanced landscaping and outdoor event area as well as a stylish floor to ceiling remodel of the interior. The renovation will be completed in two phases. Phase one of the remodel, which was administratively approved and successfully completed in July 2009, included the construction of a contemporary 2,350 square foot detached pavilion to replace the marquee tent. Phase two involves a complete renovation of the existing facilities. The existing amenities will be significantly upgraded and modernized throughout the leasehold. New components

include an outdoor deck and access to the terrace for better indoor/outdoor connections, and a private dining room. The total renovation, including both phases, is estimated to cost approximately \$3,800,000. Renderings showing the proposed renovation are attached as EXHIBIT A.

*Site Work Improvements:* The proposed exterior renovations include the modification of the garden to add greater flexibility for use as a gathering area as well as the construction of new hard surface paving and pathways. Existing healthy trees and most plant specimens will be retained using new, low water use strategies.

*Exterior Improvements:* The proposed exterior building improvements include the shielding of large expanses of glass around the building perimeter with cantilevered wood louvered awnings and trellised pergola, and construction of a new 500 square foot deck off the upper dining room. The materials and construction details for these components will be consistent with those used on the new pavilion. The new deck will seat approximately 36 dining guests. The façade facing the parking lot will incorporate a wooden screen comprising a public art installation and new, illuminated signage. This screen element will be designed by a local artist and submitted in compliance with BPC Policy No. 609.

*Interior Improvements:* The proposed interior renovation includes the complete demolition of all interior improvements on both floors. The new first floor interior will be a reconfigured banquet and function area. The new bar will be longer and relocated to accommodate a pair of doors to the exterior terrace and the grand stairway to the second floor will be opened up to improve the visual connection between the levels.

The second floor will be reconfigured with a new bar lounge in the location of the existing private function room. The existing circular bar at the center of the dining room will be removed and a new, signature bar will be positioned to optimize views towards the bay. A set of doors will lead out to the new exterior dining deck. Finally, a new private dining room with a seating capacity of 16 guests will be located on the east side of the restaurant next to the stairway.

The proposed renovation includes the replacement of essentially all floor, wall and ceiling materials and finishes, as well as the HVAC, lighting and sprinkler systems. New porcelain tile is proposed at the front entry and bar/lounge areas, new bamboo composite flooring in the high traffic areas and new carpet in the dining areas. The wood post and beam structure will be sandblasted to reveal its natural state and a new furnishing, fixture and equipment package will complete the remodel.

#### Proposed Project Team

Shelter Island, Inc. will develop this project. In addition to their restaurant leasehold on Shelter Island, Shelter Island, Inc. operates Tom Ham's Lighthouse restaurant on

Harbor Island. Shelter Island, Inc. is considered a tenant in good standing by the District.

Local architectural firm Graham Downes Architecture has been contracted to assist in the design of the new restaurant. Graham Downes has been involved in several local projects including JRDN, Nine-Ten, Chive, Laurel, Pasquale and Sunroad's 880 Harbor restaurant on Harbor Island.

**Proposed Operator**

Shelter Island, Inc. will also operate the renovated Bali Hai restaurant. Shelter Island, Inc.'s two restaurants, Bali Hai and Tom Ham's Lighthouse, recently received awards at the San Diego Chapter of the California Restaurant Association's 25<sup>th</sup> Annual Gold Medallion Awards Banquet. The Bali Hai received the "People's Choice Award" and Tom Ham's Lighthouse was voted "Best Sunday Brunch."

**Proposed Option Agreement**

The proposed option agreement is for an 18-month period. During the option period, Shelter Island, Inc. must submit for District approval the following:

- Working drawings
- Project financing
- Development permits including Coastal Development Permits, if applicable
- Performance bond
- Construction contract
- Equal Opportunity Employment Program

The proposed option terms are summarized on the attached PROPOSED OPTION INFORMATION SUMMARY.

**Proposed Lease Agreement**

**Term:** Bali Hai's \$3,800,000 investment in the restaurant renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per BPC Policy No. 355. Exercise of the option to extend shall be dependant upon Bali Hai maintaining its status as a tenant in good standing which is defined in the lease as requiring the following to be true for the five-year period preceding the option exercise:

- Premises maintained in good condition
- Rent paid promptly
- All provisions of lease complied with
- Gross revenue maximized
- Financial records accurately maintained and accessible to District

- Compliance with the District's policies on public accommodation and non-discriminatory employment and contracting

**Minimum Annual Rent:** The MAR for the 12-month construction period will be \$150,000, followed by a 12-month stabilization period rent of \$225,000 and an additional 12-month stabilization period rent of \$270,000. The MAR will then increase to \$300,000, which is equal to 100% of the stabilized rent generated by the restaurant based on the proforma submitted by Bali Hai. Since the Bali Hai's annual rental payments have rarely exceeded MAR under its existing lease, staff has determined that it would be prudent to set the MAR at 100% of the projected stabilized percentage rent for the initial 10-year rental period under the new lease. Bali Hai will pay the higher of the minimum rents or the District's standard percentage rental rates, which are projected to exceed these minimum rents after stabilization. The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

**Port Attorney's Comments:**

The Port Attorney has reviewed and approved the requested document for form and legality.

**Environmental/Coastal Review:**

The proposed project to renovate and remodel the existing Bali Hai restaurant leasehold is Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15301 (Existing Facilities) and Section 15304 (Minor Alterations to Land). The Bali Hai proposed improvements involve the remodeling of the interior and renovation of the existing exterior building structure with no substantial expansion of use beyond that previously existing.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:** Tony Gordon  
Senior Asset Manager, Real Estate

**SAN DIEGO UNIFIED PORT DISTRICT**

**DATE:** June 8, 2010

**SUBJECT: POINT LOMA SEAFOODS**

- A) RESOLUTION GRANTING CONCEPT APPROVAL TO MRS. KELLY'S, INC., DBA POINT LOMA SEAFOODS FOR PROPOSED RESTAURANT RENOVATION**
- B) ORDINANCE GRANTING AN OPTION AGREEMENT WITH MRS. KELLY'S, INC., DBA POINT LOMA SEAFOODS FOR A NEW 30-YEAR LEASE, WITH A 10-YEAR OPTION TO EXTEND**

**EXECUTIVE SUMMARY:**

Mrs. Kelly's, Inc., dba Point Loma Seafoods (PLS) operates a restaurant on District Tideland located at 2805 Emerson Street in America's Cup Harbor. PLS has proposed a \$2,700,000 redevelopment of the restaurant including demolition of the existing structure, construction of a new Monterey/Cannery style building, new outdoor dining area with fire pit and seating wall, new contemporary interior retail space and kitchen, and second story viewing terrace.

Subject to the Board's approval, an 18-month option has been negotiated with PLS for a new lease. In accordance with the Administrative Practices of BPC Policy No. 355, PLS' \$2,700,000 investment will qualify for a 30-year lease term with a 10-year option to extend, conditioned upon performance factors. The new lease will include Board-approved percentage rental rates and the new minimum annual rent (MAR) will increase from \$127,125 to \$153,274.

**RECOMMENDATION:**

- A) Adopt a Resolution granting concept approval to Mrs. Kelly's, Inc., for a proposed restaurant renovation;**
- B) Adopt an Ordinance granting an Option Agreement with Mrs. Kelly's, Inc., for a new 30-year lease, with a 10-year option to extend.**

**FISCAL IMPACT:**

If approved, the Board action will result in an option payment of \$500. During the option period, PLS will continue to pay improvement rent and the greater of percentage rent or MAR. When PLS enters into a new lease with the District, the MAR the District receives will increase from \$127,125 to \$153,274. It is anticipated that by year three after the stabilization periods, the percentage rents will exceed \$200,000 annually. During the option period and under the new lease the rent will be as follows:

**ACTION TAKEN: 06-08-2010 - Resolution 2010-95 and Ordinance 2612**



<b>Option Period:</b>	<b>Minimum annual rent:</b>
Option Rent (> percentage rent or MAR)	\$127,125
Option Improvement Rent	\$58,725
<b>Lease:</b>	
Construction minimum rent (50%):	\$76,637
Stabilization minimum rent Year 1 (75%):	\$114,995
Stabilization minimum rent Year 2 (85%):	\$130,283
Full minimum rent Year 3 (100%)	\$153,274

**COMPASS STRATEGIC GOALS:**

The redevelopment of the PLS leasehold will strengthen the District's financial performance and modernize an older development on District Tidelands.

This agenda item supports the following strategic goals:

- ☐ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☐ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☐ Ensure a safe and secure environment for people, property and cargo.
- ☒ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☐ Develop a high-performing organization through alignment of people, process and systems.
- ☒ Strengthen the Port's financial performance.
- ☐ Not applicable.

**DISCUSSION:****Background**

Mrs. Kelly's, Inc., has a lease covering approximately 11,882 square feet of land located at 2805 Emerson Street in America's Cup Harbor. An existing restaurant of approximately 7,904 square feet occupies the leasehold. PLS is currently on a holdover to their original lease, which expired on April 30, 2009, and is paying improvement rent to the District which will continue through the option period until the new lease has been executed. The terms of the lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

**Proposed Operator**

Mrs. Kelly's, Inc. is a multi-generational family-owned and operated business, comprised of the Jack and Beverly Christianson Family Trust (50%), and the John and Theresa Christianson Family Trust (50%). Since the early 1960's, PLS has been a tenant in good standing with the District and a community icon in San Diego.

**Proposed Option Agreement**

The proposed option agreement is for an 18-month period. During the option period, PLS is required to satisfy the conditions below:

- Schematic Plans (30% complete progress plans) – October 1, 2010
- Design Development Plans (60% complete progress plans) – February 1, 2011
- Working drawings (90% complete progress plans) – June 1, 2011
- Project financing or Equity Commitment (Letter of Commitment from bank or evidence of sufficient personal equity/cash) – August 1, 2011
- Development permits including Coastal Development Permits, if applicable – November 1, 2011
- Performance bond – November 1, 2011
- Construction contract – November 1, 2011
- Equal Opportunity Employment Program – November 1, 2011

The proposed option terms are summarized on the attached PROPOSED OPTION INFORMATION SUMMARY.

**Proposed Project**

PLS has proposed a new modern Monterey Cannery style stucco building with river-rock and heavy timber accents, a second story viewing terrace, a new outdoor dining area with seating wall and fire pit, enhanced landscaped planters, new hardscape to the existing building perimeter and parking lot, sustainable features and low-irrigation water systems. A lighthouse tower with a public art component will be added to the entry façade. The project proposes to preserve and enhance its connection to the pedestrian promenade reinforcing this destination point and the public's overall experience to the waterfront, and will compliment the new sportfishing redevelopments in America's Cup Harbor. A rendering is attached showing the proposed renovation.

As part of the redevelopment, PLS will be improving and incorporating all the outdoor public seating areas and the adjacent parking lot into their new leased area. Based upon the District's parking guidelines, 47 parking spaces are needed. However, because of the past history of intense parking usage at PLS, the new leasehold parcel will include 60 spaces. During the construction period PLS intends to operate out of a temporary satellite location using temporary trailers on the adjacent Kettenburg leasehold. This operation will provide continued employment for the

existing staff and food sales to the community. The project is estimated to cost approximately \$2,700,000.

**Proposed Lease Agreement**

**Term:** PLS' \$2,700,000 investment in the restaurant renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per BPC Policy No. 355. Exercise of the option to extend is contingent upon PLS maintaining its status as a tenant in good standing, which is defined in the lease as requiring the following to be true for the five-year period preceding the option exercise:

- Premises maintained in good condition
- Rent paid promptly
- All provisions of lease complied with
- Gross revenue maximized
- Financial records accurately maintained and accessible to District
- Compliance with the District's policies on public accommodation and non-discriminatory employment and contracting

**Minimum Annual Rent:** PLS has historically averaged over \$200,000 annually in rent revenue paid to the District. PLS will pay the higher of MAR or the District's standard percentage rental rates, which are projected to exceed MAR after the stabilization period. The new MAR of \$153,274 is equal to 75% of the average of the last three years percentage rent paid to the District. Stabilization Year's one and two are minimum rents and PLS will pay the greater of percentage or minimum rent. It is anticipated that sales will return to current levels and exceed the MAR by Year 3. The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Staff is recommending approval of the option agreement and the project.

**Port Attorney's Comments:**

The Port Attorney has reviewed and approved the requested document for form and legality.

**Environmental/Coastal Review:**

The proposed project to renovate the existing PLS restaurant leasehold is a replacement in-kind of the existing building structure with limited expansion of no change in use or capacity and therefore Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15301 (Existing Facilities) and Section 15304 (Minor Alterations to Land) and Categorically Excluded under Sections 8.b (1) and (2) of the District's Coastal Development Permit Regulations.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:** Kristine A. Zortman  
Senior Asset Manager, Real Estate

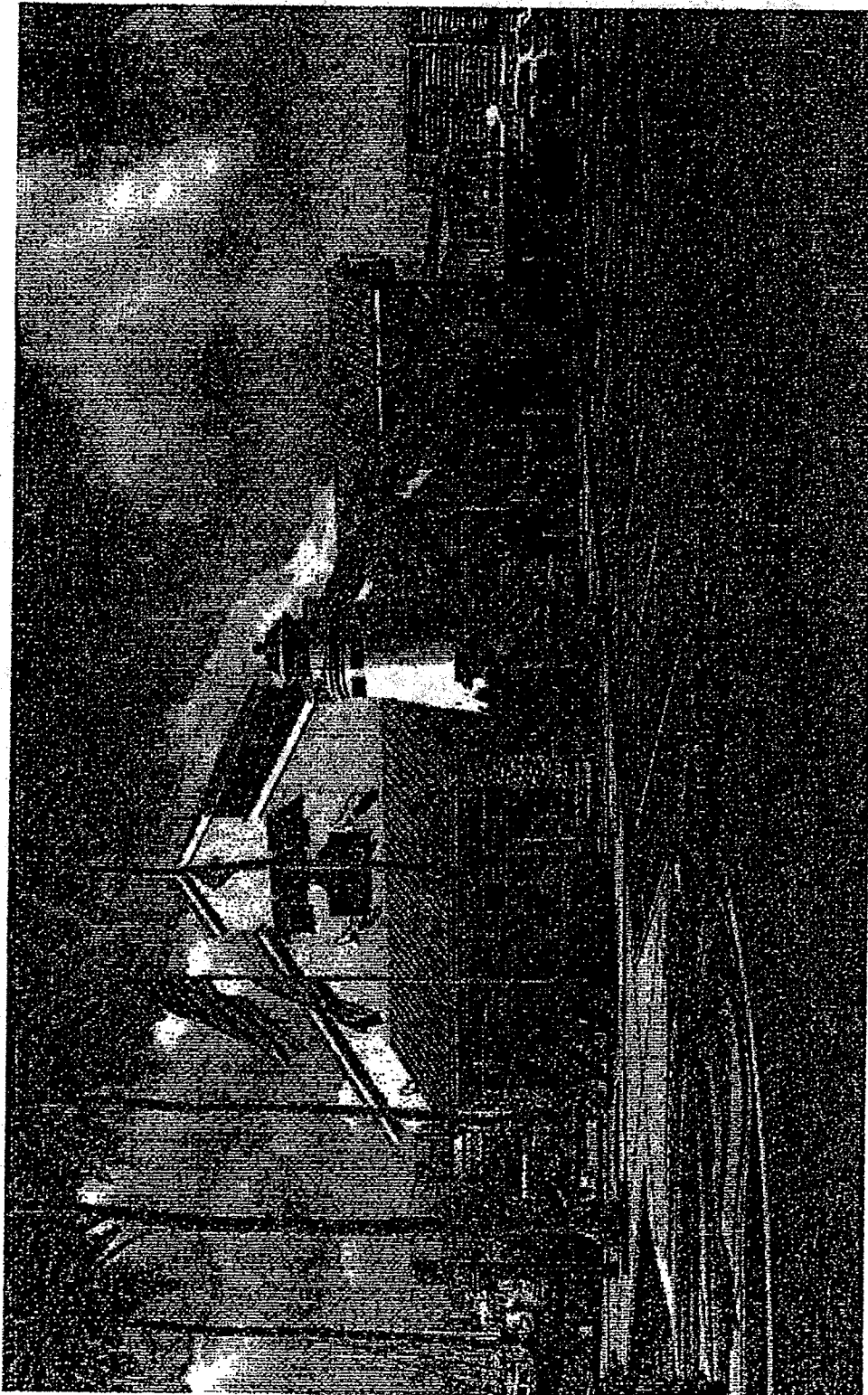
**EXISTING AND PROPOSED LEASE INFORMATION SUMMARY, MRS. KELLY'S, INC.**

	EXISTING	PROPOSED
<b>Lessee:</b>	Mrs. Kelly's, Inc.	Same
<b>Location:</b>	2805 Emerson Street	Same
<b>Area:</b>	11,882 sq. ft. – land	37,013 sq. ft. – land (increased to include parking)
<b>Use:</b>	Limited service restaurant; sale of beer and wine, retail fish sales, wholesale fish activities which include cleaning, smoking, filleting, icing, processing and exchanging fish; and sale of gifts and souvenirs; and telecommunications equipment	Same with the addition of public parking for customers and employees.
<b>Term:</b>	30 Years – 5/1/79-4/30/09	Forty years as follows: 30 Years plus 10 Year Option to Extend (Option for additional lease term extension based upon tenant in good standing)
<b>Minimum Annual Rent:</b>	Minimum annual rent of \$127,125	Minimum annual rent: \$153,274 Construction rent (50%): \$ 76,637 Stabilization rent Year 1 (75%): \$114,995 Stabilization rent Year 2 (85%) \$130,283 Minimum rent Years 3-5: \$153,274
<b>Percentage Rental Rates:</b>	Food 3% Beverages on premises 5% Beverages off premises 3% Gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals 5% Groceries 3% Vending machine merchandise 5% Vending machine commissions 25% Other Income 10%	Same as existing with the following additional items: Fish exchanging operations, including can exchange, fish icing, fish smoking, and fillet services 3% Telecommunications 50% Unauthorized use 20%

	EXISTING	PROPOSED
<b>Flat Rent:</b>	Wholesale fish activities \$261/mo	See Fish Exchanging percentage rent above
<b>Rent Reviews:</b>	Rent reviews every five years.	Rent reviews every ten years.
<b>CPI Adjustments:</b>	Not applicable	CPI adjustments every five years for non-rent review years
<b>Construction Period:</b>		One year from commencement.
<b>Current Improvements:</b>	7,904 square foot building	8,704 square foot building
<b>Proposed Project:</b>		<p><b>Minimum Investment - \$2.7 million</b></p> <p>Demolition to existing foundation, new modern restaurant facility, incorporating an outdoor seating area with fire pit, second story viewing terrace with overflow seating, a lighthouse element proposed for public art, sustainable building materials, including dual glazed glass windows, recycled concrete materials, water efficient irrigation systems, and other energy efficient efforts. Business operations are proposed to continue through the construction process on adjacent leasehold. Leases will incorporate public plaza areas, public parking, and trash enclosures and storage/cleanouts.</p>
<b>Public Art:</b>		Board Policy 609 - 1% of total project cost
<b>Security Deposit:</b>		Waiving in lieu of construction guaranty and fund control
<b>Lease Guaranty:</b>		Jack and John Christianson for a period of five years

**PROPOSED OPTION AGREEMENT SUMMARY**

<b>Project:</b>	<b>Minimum Investment - \$2.5 million</b> Demolition to existing foundation, new modern restaurant facility, incorporating an outdoor seating area with fire pit, second story viewing terrace with overflow seating, a lighthouse element proposed for public art, sustainable building materials, including dual glazed glass windows, recycled concrete materials, water efficient irrigation systems, and other energy efficient efforts. Business operations are proposed to continue through the construction process in trailers onsite. Leases will incorporate public plaza areas, public parking, and trash enclosures and storage/cleanouts.
<b>Term:</b>	Eighteen months
<b>Option Fee:</b>	\$500
<b>Option Rent:</b>	Minimum annual rent of \$127,125 (plus improvement rent)
<b>Conditions Precedent to Exercise of Option:</b>	Schematic plans, preliminary plans, and working drawings approved by District; Project financing, development permits and performance bond/fund control; Post the lease security deposit; Provide Equal Employment Opportunity Program; Enter into construction contract;
<b>Guaranty:</b>	Jack and John Christianson







Attachment to Agenda Sheet No. 26

**SAN DIEGO UNIFIED PORT DISTRICT**  
San Diego, Ca.



3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 - www.portofsandiego.org

## PROJECT REVIEW AND APPROVAL

**DATE:** January 23, 2013

**TENANT:** Shelter Island, Inc. dba Tom Ham's Lighthouse

**PROJECT TITLE:** Restaurant Renovation and Site Improvements  
(WORKING DRAWINGS)

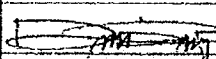
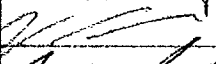
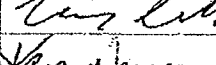
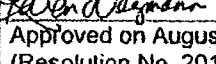
**COST ESTIMATE:** \$3,500,000

**PROJECT LOCATION:** 2150 Harbor Island Drive, San Diego, California 92101

**PROJECT NUMBER:** 005-001-3034

**PLANNING DISTRICT:** Planning District 2, (Lindberg Field/Harbor Island),  
Precise Plan Figure 9, Subarea 22

The above project is hereby granted a **CONDITIONAL APPROVAL** as noted in this **PROJECT REVIEW AND APPROVAL** memo, with **CONDITIONS OF APPROVAL** as indicated below and further set forth in this memo (Tenant signature required on last page of approval letter):

	Project Cost:	Approving Authority:	Initials:	Signature/Date:
<input checked="" type="checkbox"/>	All projects	Darwin Vasquez Architect, RE	DV	 1/23/13
<input checked="" type="checkbox"/>	Under \$100,000	Jenner Smith Asset Manager, RE	JS	 1/23/13
<input checked="" type="checkbox"/>	\$100,000 to \$250,000	Anthony Gordon Area Manager, RE	AG	 1/23/13
<input checked="" type="checkbox"/>	\$250,000 to \$500,000	Karen Weymann Director, RE	KJW	 1/23/13
<input checked="" type="checkbox"/>	Over \$500,000, or as indicated below	BOARD APPROVAL REQUIRED		Approved on August 14, 2012 (Resolution No. 2012-119 )

Conditions of Approval:			
<input checked="" type="checkbox"/>	Project Specific Conditions	<input type="checkbox"/>	Waterside Conditions
<input checked="" type="checkbox"/>	Standard Conditions	<input checked="" type="checkbox"/>	Traffic Control Conditions
<input checked="" type="checkbox"/>	Storm water Conditions	<input type="checkbox"/>	Clean up Conditions
<input type="checkbox"/>	Signage Conditions	<input type="checkbox"/>	Hot Work Conditions
<input checked="" type="checkbox"/>	Utilities Conditions	<input type="checkbox"/>	UDT
<input type="checkbox"/>	Environmental Conditions	<input type="checkbox"/>	Other

**REAL ESTATE AGREEMENTS related to project approval:**

- ☒ LEASE CONFORMANCE—project complies with existing lease terms
- ☐ LEASE or TUOP negotiations pending
- ☐ SUBLEASE approval needed
- ☐ EASEMENT
- ☐ RIGHT OF ENTRY

**PROJECT DESCRIPTION**

Ms. Susan Baumann, President of Shelter Island, Inc. dba Tom Ham's Lighthouse, has submitted for approval the accompanying working drawings and attached correspondence of the proposed Tom Ham's Lighthouse Restaurant Renovation. The site is located at 2150 Harbor Island Drive, San Diego, California on the westerly side of Harbor Island.

The Board granted concept approval of the Tom Ham's Lighthouse Restaurant Renovation (Project No. 005-001-2876, Resolution No. 2012-119 on August 14, 2012, and the Restaurant Renovation and Site Improvement working drawings are in substantial conformance with the Board approved concept.

The project consists of a comprehensive renovation and upgrade of the existing facilities into a contemporary venue within the existing building footprint. The project includes a major renovation, which will reposition the restaurant as a dining destination by adding outdoor dining, outdoor cocktail area, and new bar and cocktail lounge taking full advantage of the panoramic views of San Diego Bay and the skyline. The existing amenities will be significantly upgraded and modernized throughout the leasehold. New components include an outdoor deck dining area, relocation of the bar and lounge area and addition of a new public shoreline promenade. All interior surfaces in the public areas will be updated including the restrooms. Working drawings are prepared by Graham-Downes Architecture.

The project will cost approximately \$3.5 Million.

Scope of work will include demolition, renovation of existing structure and site improvements:

**MAJOR PROJECT COMPONENTS**

**Second Level - Interior:**

- Demolish existing bar and construct new L-shaped bar and cocktail lounge at the northern end of the dining room.
- New decorative window panels along the front of the building. The design of the windows has been modified from the concept drawings.
- The area of existing bar will be converted into a keg room.
- Updated ceiling and refinished exposed beams.
- Upgraded windows all throughout the dining area.
- New built-in banquet/ booth seatings.

SHELTER ISLAND, INC. dba TOM HAM'S LIGHTHOUSE  
Restaurant Renovation and Site Improvements – Working Drawings  
Project Number: 005-001-3034  
Page 3

- New floor finish.
- New doors with panic hardware.

**Second Level – Exterior:**

- A new terrace dining will be constructed to replace the existing tile roof. The proposed deck will be approximately 14' wide by 100' long (1,400 sq. ft.) with new clear glass railing enclosure.
- New exterior stair to dining terrace. The stair location was shifted from the concept drawing to the north end of the dining terrace so it will obstruct less views from the restaurant interiors at both levels.
- New access doors to deck.
- New accessible ramp.

**First Level – Interior:**

- Reconfigured banquet and function area with leveled flooring.
- New ceilings and lighting in banquet rooms.
- Remodeled service bar and service station.
- New ADA access ramp.
- Upgrades to the main stair.
- Upgraded windows throughout the banquet room.
- New storage space underneath the new stair.
- New main door.

**First Level – Exterior:**

- Replace existing wood rails with glass railings on steel posts.
- New exterior stair to main floor.
- Existing deck will be recoated with a slip resistant and durable traffic coating.
- Demolish existing wood trellis, wood posts and concrete pads at the deck area.
- Demolish existing stair.
- New roof eaves along South and West side of the building.

**Site Improvements:**

- Addition of an outdoor landscape garden plaza to accommodate special gatherings and a wedding venue.
- Update the building appearance at the point of arrival.
- Construction of two (2) new lookout areas with bench seating.

- Reconfigured parking lot and new right-of-way improvements including new driveways, accessible sidewalk and new landscaping.
- Remove portions of the existing wood trellis in front of the building to create space for the new exterior stair.
- New 8 foot wide shoreline public promenade along the perimeter of the leasehold.
- Open up wall to courtyard in front of the lighthouse.
- Relocate the historic fog bell currently situated in the parking lot, to the entrance for display.
- Existing anchor will stay in its current location.
- New paving and landscape. Low water usage plants will be added to the new appearance of the renovated restaurant.

#### PARKING ANALYSIS

Construction of the promenade reduces the parking on the leasehold from 200 stalls to approximately 192 stalls. Since the District's parking guidelines require 0.25 spaces (Restaurant - Harbor Island) per restaurant seat (e.g. 444 seats x .25 = 111 spaces), the proposed parking exceeds current District guidelines, ensuring an adequate reserve of public parking on the west end of Harbor Island. Therefore, the 111 spaces required are sufficiently covered by the spaces available (192). Parking lot and drive entrances will be reconfigured to allow for a shoreline public promenade around the end of the island. Passenger drop-off and parking space currently located at entrance will also be reconfigured to allow the landscape area in front.

	Existing	Proposed
Parking Spaces	200	192
Restaurant Seating Capacity	368	444
Building Square Footage	21,360 sq. ft.	22,832 sq. ft.

#### SHORELINE PUBLIC PROMENADE

A new eight (8) foot wide shoreline public promenade will be constructed along the perimeter of the leasehold. It will include a west facing lookout with bench seating area for public to enjoy. The shoreline promenade will be connected to the existing Harbor Island public promenade that goes around Harbor Island. The renovation project will also include two (2) public lookout points located on the west end of the leasehold and on the south eastern corner of the leasehold adjacent to the new Plaza Garden Court.

#### LANDSCAPING

Landscaping improvements in the parking areas includes removal of two (2) shade trees and will be replaced with approximately seven (7) shade trees. A portion of the existing parking lot located at the southeastern corner of the leasehold will be converted into a landscape garden plaza to accommodate special events and weddings.

#### SIGNAGE

No signage has been submitted in this proposal.

#### WATERSIDE

Not applicable.

#### UTILITIES

Submitted site plan, architectural, civil, mechanical, plumbing and electrical engineering drawings and designs for construction shall be subject to City of San Diego's Building department's permit review process. Some existing utilities will be relocated as necessary. A utility relocation plan must be submitted to the District for review.

#### INTER DEPARTMENTAL REVIEW

A Stormwater Pollution Prevention Plan (SWPPP) is required for this project and the SWPPP has been approved by ELUM. An approved Standard Urban Stormwater Mitigation Plan (SUSMP) is required for this project before start of any site work activities (If Applicable). Please coordinate with Allison Vosskuhler, Senior Environmental Specialist, at (619) 686-6434.

#### PUBLIC ART

Tom Ham's Lighthouse must comply with the Port Public Art Program (BPC Policy No. 606) TENANT PERCENT FOR ART requirement. The District is in receipt of a Tom Ham's Lighthouse public art proposal.

#### ENGINEERING

All right-of-way improvements and accessibility features must comply with the District's standards. The new accessible sidewalk ramps need to match the existing Port District improvements. All existing utilities in that area shall be taken into consideration for the new location of the driveway and must be protected in place or relocated as necessary.

#### ENVIRONMENTAL AND LAND USE MANAGEMENT

District Environmental and Land Use Management Department has reviewed the project and determined that this project is exempt under CEQA and excluded under the Coastal Act. (See CEQA and Coastal Review sections below.)

Categorical Exemptions

- a. Existing facilities (SG § 15301) (Class 1): Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:
  - (3) Interior and exterior remodeling or alterations, involving negligible or no expansion of use beyond that previously existing, including, but not limited to, marine terminal facilities, and marine-oriented commercial, industrial, and public and commercial recreational facilities, including buildings, piers, wharves, marine ways; railroads; airport facilities, runways, taxiways, aprons, and ancillary structures to those facilities; or mechanical systems and equipment.
- d. Minor Alterations to Land: (SG § 15304) (Class 4): Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including but not limited to:
  - (5) New gardening or landscaping. (97191-X-5474)

COASTAL ASSESSMENT

Port Master Plan Reference:

The project is located in Planning District 2, Harbor Island/Lindbergh Field, which is delineated on Precise Plan Map Figure 9. The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation. The project conforms to the certified Port Master Plan because the project proposes interior and exterior alterations of an existing commercial structure consistent with the certified land use designation.

CATEGORICAL DETERMINATION

The above project proposes renovations to an existing commercial structure with an increase of approximately 1,500 square feet, which is less than the increase described below. This project is consistent with the existing certified land use designation and is Categorically Excluded under Sections 8.a (5) and (12) and 8.d (2) of the District's *Coastal Development Permit Regulations*, as follows:

Excluded Developments

8a. Existing facilities:

The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

- (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 square feet, whichever is less; or additions to existing structures of not more than

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

(12) Interior and exterior remodeling of airport facilities, marine terminal facilities, existing marine-oriented industrial structures, and commercial or recreational facilities;

d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:

(2) New gardening or landscaping; (C12-2-640)

The District is approving the proposed project subject to the following conditions, as noted on page 1 of this Project Review and:

**PROJECT SPECIFIC CONDITIONS:**

1. The tenant must acquire proper permits and approval from the District prior to initiating any construction activities on the site.
2. Tom Ham's Lighthouse shall install standard San Diego "Coastal Access" signs in clear view along the promenades at the entrances into the leasehold from Harbor Island Drive.
3. An approved Standard Urban Stormwater Mitigation Plan (SUSMP) is required for this project before start of any site work activities (if Applicable).
4. Final cost estimate and construction schedule shall be submitted for District review.
5. Tom Ham's Lighthouse is encouraged to incorporate as many energy and resource conscious measures as possible in the design and operation of this facility.
6. A Right-of-Entry Permit must be obtained for any construction or related activities (staging, etc.) within the District Tidelands. Please contact Jenner Smith, Senior Asset Manager (619) 686-6289 for coordination of the permit.
7. It is Tom Ham's Lighthouse responsibility to ensure structural integrity and durability of the proposed deck. The building remodel shall be engineered by a licensed structural / civil engineer.
8. Fire Department access must be reviewed and approved by the City of San Diego's Fire Marshall.
9. Construction staging areas and temporary facilities will need to be defined and submitted to the District for approval



10. The proposed Plaza Garden Court shall be accessible to the public when events are not occurring and will include a bench seating area near the south eastern corner of the leasehold.
11. Tenant to complete the Tenant Percent for Art program (BPC No. 608) for this project.
12. This project qualifies the Tenant for a new thirty (30) year lease with one ten (10) year option.

**STANDARD CONDITIONS:**

1. All applicable permits must be obtained (including, but not limited to, all applicable City of San Diego permits and approvals, Army Corps of Engineers (ACOE) and Regional Water Quality Control Board (RWQCB) permits and all applicable code regulations and conditions of approval must be met. All final outside agency inspection approvals must be available for District inspection when the project is completed.
2. Notify the District's Project Architect if a District Construction Inspector is needed a minimum of 72 hours prior to commencement of work on the project. The District Construction Inspector assists the tenant in complying with District conditions of approval pertaining to construction and also assists with coordinating access to the District's utilities and services. The District Construction Inspector does not review or sign-off for building code compliance; this is the City of San Diego Building Inspection Department's responsibility.
3. Tom Ham's Lighthouse and/or their contractor must provide the District with a copy of any application made to any governmental regulatory agency for development or construction permits or license within 5 days of making said application and a copy of the permit, license or other authorization issued by any governmental regulatory agency within 10 days of its receipt.
4. Tom Ham's Lighthouse is responsible for compliance with the Americans with Disabilities Act (ADA) which became effective January 26, 1992.
5. All materials and debris generated by the project must be disposed of off District tidelands and in accordance with federal, state, and local ordinances.
6. Tom Ham's Lighthouse and/or their contractor must provide the District with a copy of the approved set of working drawings and a copy of the City of San Diego Building Permit within 10 days of its receipt.
7. District improvements, including right-of-way improvements such as sidewalks, curb, gutters, landscaping damaged as a result of this project, shall be repaired or replaced to the satisfaction of the District.
8. As-built drawings must be submitted to the District within 60 days of the project's completion.
9. Any new outdoor dining areas shall be submitted as a comprehensive proposal, complete with barriers that comply with the requirements of the Alcoholic Beverages Commission.

10. This working drawings approval letter is not intended and does not operate to modify or amend Tom Ham's Lighthouse existing obligations to the District under the terms of its lease with the District. In the event of a conflict or material inconsistency between the terms of this approval and the terms of the lease, the terms of the lease shall control.

**STORMWATER CONDITIONS:**

1. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit), as adopted, amended, and/or modified. The Municipal Permit prohibits any activities that could degrade stormwater quality.

Post- construction / operational use of this project site must comply with the Municipal Permit and District direction related to permitted activities, including the requirements found in the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: [www.portofsandiego.org/sandiego\\_environment/jurmp.asp](http://www.portofsandiego.org/sandiego_environment/jurmp.asp) or by contacting the District Environmental and Land Use Management Department at (619) 686-6254.

2. This project requires the development and implementation of a District Storm Water Pollution Prevention Plan (SWPPP) for projects that are less than one acre. The District SWPPP must describe the implementation and maintenance of the Storm Water Pollution Prevention Best Management Practices (BMPs) used to prevent unauthorized discharges to the stormwater conveyance system from construction activities.
3. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations must be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean must be reported immediately to the District Environmental and Land Use Management Department (619) 686-6254, in order to address any regulatory permit requirements regarding spill notifications.

**TRAFFIC CONTROL CONDITIONS:**

1. Implementation of traffic control plans must conform with the latest edition of the Caltrans Traffic Manual and submitted to the City of San Diego for approval.
2. It is the responsibility of the tenant and his Contractor when performing work on or adjacent to a highway or street to install and maintain adequate traffic safety devices for the traveling public as well as the workers.

**UTILITIES CONDITIONS:**

1. All underground electrical except low voltage; i.e., 24 volts or less, as in sprinkler controllers and cable TV, shall be encased in three inches of 2,500 psi minimum strength

concrete all around. All underground high voltage encasement must include yellow plastic warning tape running the length of the run.

2. All ground transformers, junction boxes, mechanical equipment, trash enclosures and other aboveground equipment must be sufficiently landscaped, screened with earth berms, shrubbery, small trees, or heavy ground cover or similar screening methods to lessen visual impacts.
3. Any proposed and probable utility outages shall be coordinated with the District's Construction Inspector at (619) 725-6059.
4. Specialized mechanical and electrical equipment is not reviewed by the District. The applicant is responsible for providing an installation that conforms to the manufacturer's printed instructions, and which meets all applicable safety and environmental standards. Design adequate enclosures to fully conceal the equipment from view.
5. Tenant is responsible for notification, approval and coordination of the agencies responsible for the various utilities and public facilities that may be affected by this project.
6. All temporary facilities shall be removed within 60 days after the substantial completion of construction.
7. The contractor must contact Underground Service Alert at 800-422-4133 at least two working days before digging.
8. Utility company markings painted on sidewalks and streets to prevent underground lines from being dug up during construction must be removed within 30 days after work is completed.

Tenant: Please have an authorized representative sign in the area below accepting the conditions set forth in this approval letter. Please return a signed copy of this letter to the District no later than February 7, 2013. If a signed copy of this letter is not returned by February 7, 2013, this Conditional Approval will be null and void.

I hereby accept the Conditions of Approval as set forth in this PROJECT REVIEW AND APPROVAL letter:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Distribution List:**

- ☒ Ken Silhwagon, Inspector
- ☒ A. Vosskuhler, ELUM
- ☒ J. Smith, Senior Asset Manager, Real Estate

SDUPD Docs No. 561445

A-6-PSD-89-352



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3900 • P.O. Box 488, San Diego, California 92112

To: MR. PETER DOUGLAS  
EXECUTIVE DIRECTOR  
CALIFORNIA COASTAL COMMISSION  
631 HAWARD STREET  
SAN FRANCISCO, CA 94105

Date: November 21, 1989

TIME RECEIVED 938  
man

RECEIVED  
NOV 22 1989  
CALIFORNIA  
COASTAL COMMISSION

## NOTICE OF BOARD ACTION on a Coastal Development Permit for

Project: KONA KONA CLUB REDEVELOPMENT

Coastal Project No.: 89-1-268

By Resolution No. 89-357, dated November 4, 1989, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below.

- ☒ This development has been approved as submitted.
- [ ] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this Notice.

The following noted [X] item applies to this finding.

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Port Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- ☒ This action is APPEALABLE under Section 30715 of the California Coastal Act of 1976. This Notice will be sent within five (5) days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this Notice. Prospective appellants should contact the Coastal Commission for more information.

DON L. NAY, PORT DIRECTOR

By:

JOHN P. PEARSON

ASSOCIATE PROJECT ANALYST

UPD Form No. 741 (Revised 10/88)

001214

Re Coastal Development Permit -                 ]  
KONA KAI CLUB REDEVELOPMENT . . .             ]

RESOLUTION 89-357

WHEREAS, the San Diego Unified Port District (District) and Kona Kai Resort Associates, a California General Partnership, are parties to a lease, as amended, for the operation of a hotel and related facilities located on Shelter Island Drive, San Diego; and

WHEREAS, the Board of Port Commissioners (Board) on March 7, 1989, granted conceptual approval for Kona Kai Resort Associates to redevelop said hotel and related facilities (Project) located on tidelands in the City of San Diego; and

WHEREAS, the San Diego Unified Port District is trustee of said tidelands; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for the construction of said Project; and

WHEREAS, the Board held a noticed public hearing on the Coastal Development Permit on November 21, 1989; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

WHEREAS, the Board has certified the Environmental Impact Report entitled "KONA KAI CLUB REDEVELOPMENT, Shelter Island" (UPD No. 83356-EIR-178), NOW, THEREFORE,

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

That the Board further finds:

1. The Project consists of the demolition of the existing Kona Kai Club facilities and redevelopment into a 318-room hotel with club facilities. Located within three major structures, said Project will include two restaurants, banquet and meeting room space, commercial shops, a health club, recreational facilities, and a 900-space subterranean parking garage. The 41' height limit will be strictly observed. A sheet pile bulkhead and waterfront promenade will be installed along the shoreline.

2. The Project is located in Planning District 1 of the Port Master Plan, the Precise Plan for which provides for use as "COMMERCIAL - Commercial Recreation." The proposed use for the Project is consistent with the use and development concept for the Shelter Island/La Playa area as provided in said Port Master Plan.

3. The proposed Project which is entitled "KONA KAI CLUB REDEVELOPMENT" is consistent with and conforms to the Port Master Plan and, accordingly, the Port Director of his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project. Said Permit shall require conformance and compliance with the mitigation measures in the resolution which certified the Environmental Impact Report for said Project.

ADOPTED this 21st day of November, 1989.

Presented By: DON L. NAY, Port Director

By

*Jamil Kellum*

Approved:

JOSEPH D. PATELLO, Port Attorney

*J. Patello*

San Diego Unified Port District

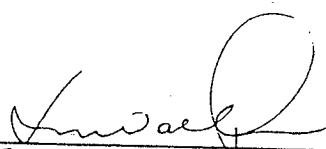
Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified Port District on November 21, 1989, by the following vote:

Commissioners	Yeas	Nays	Excused	Absent	Abstained
Raymond W. Burk	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
W. Daniel Larsen	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Robert Penner	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Milford W. Portwood	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Delton C. Reopelle	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
William B. Rick	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>X</u>
Louis M. Wolfsheimer	<u>      </u>	<u>      </u>	<u>X</u>	<u>      </u>	<u>      </u>

AUTHENTICATED BY:

  
Chairman of the Board of Port Commissioners

CHRISTINE M. STEIN  
Clerk of the San Diego Unified Port District

By: Mary Sue Karaman  
Deputy Clerk

(Seal)

Resolution Number: 89-357

or

Ordinance Number:       

Adopted: 11/21/89

001217

6-PSD-97-186



## Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 488, San Diego, California 92112-0488

### COASTAL DEVELOPMENT PERMIT

Applicant: Arthur Engle  
Port Coronado Associates / Ferry Landing Associates  
P.O. Box 13308  
San Diego, CA 92170-3308

Agent: George Palermo, General Manager  
Ferry Landing Associates, LLC  
1511 Marine Way  
Coronado, CA 92118

Project: THE FERRY LANDING EXPANSION

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Development Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-243, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a ☐ Emergency ☐ Non-appealable ☒ Appealable Coastal Development Permit.

Date of Board Action: October 21, 1997

BPC Resolution No. 97-248

Date of Permit: November 18, 1997

Application No. 97018-62-42

Permit No. CDP-97-3

The project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Section 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

001218

Document No. **36851**  
Filed **DEC 18 1997**  
SD UNIFIED PORT DISTRICT Clerk's Office



**DEVELOPMENT**

Construction of two restaurants with a total of approximately 18,500 square feet of gross floor area, extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices, parking for approximately 255 vehicles, rip-rap and revetment shoreline protection, and landscaping. The project is further described in the Environmental Assessment for the Ferry Landing Expansion dated July 20, 1995, and in current plans on file with the San Diego Unified Port District.

**STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within two years following the date of permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid until two copies of the permit have been returned to the Planning and Environmental Management Department of the San Diego Unified Port District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations and provisions of the permit.

**SPECIAL PROVISIONS**

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm, (b) keep construction equipment as far as possible from sensitive receptors, and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.

2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting.
3. To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from residences.
4. To minimize noise from normal operations, the permittee will relocate the access/egress driveway west of A Street (extended).
5. To minimize noise, a sound attenuation wall will be constructed at the property line on the south and east side of the project site. The height of the wall will be no higher than 8 feet, however it may be less than 8 feet if agreed to, in writing, by the abutting property owner.
6. The permittee will arrange for pick-up of trash dumpsters between 7:00 am and 7:00 pm.

If you have any questions concerning this permit, please contact the Planning and Environmental Management Department of the San Diego Unified Port District.

LAWRENCE M. KILLEEN, Executive Director

By: John Wehbring  
JOHN L. WEHBRING, Senior Environmental  
Planner

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Altso  
Signature of Permittee

11/26/97  
Date

DRAFT

COASTAL DEVELOPMENT PERMIT  
AMENDMENT

Applicant: Arthur Engle  
Port Coronado Associates / Ferry Landing Associates  
P.O. Box 13308  
San Diego, CA 92170-3308

Agent: George Palermo, General Manager  
Ferry Landing Associates, LLC  
1511 Marine Way  
Coronado, CA 92118

Project: THE FERRY LANDING EXPANSION

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California coastal Act of 1976 and the Coastal Development Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-243, and on February 14, 1980, Resolution No. 84-62, in accordance with the provisions for the issuance of a [ ] Emergency [ ] Non-appealable [X] Appealable Coastal Development Permit.

Date of Board Action:	October 21, 1997	Amendment: <del>xxxxxx</del> 2008
BPC Resolution No.	97-248	Amendment: 2008- <del>xxx</del>
Date of Permit:	November 18, 1997	Amendment: <del>xxxxxx</del> 2008
Application No.	97018-62-42	Amendment: 2008 013-62-154
Permit No.	CDP-97-3	

The project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Section 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This amendment is limited to the modifications described below and set forth in material on file with the San Diego Unified Port District (District). All remaining terms, conditions, limitations and provisions of CDP-97-3 unless noted as deleted in this amendment are to remain in effect.

### **DEVELOPMENT- Amendment**

Insert – The applicant has completed one single story restaurant of approximately 11,700 square feet, the extension of the bicycle path along the waterfront, approximately 6,500 square feet of two story office space, a paved parking lot for 269 vehicles, the relocation of the access/egress driveway west of A Street (extended), a sound attenuation wall on the south and east side of the project site, revetment shoreline protection, and landscape improvements for most of the 3.9 acre site. The applicant proposes to construct the second single story restaurant of approximately 11,500 square feet, pavement approaches to the restaurant entry/service areas and adjacent landscape improvements to complete development of the entire site. The project is further described in the Environmental Assessment for Arthur's Prime Steak House (Second Restaurant) dated April 15, 2008, and in plans attached to this permit amendment.

### **STANDARD PROVISIONS - Amendment**

1. Insert - Permittee shall adhere strictly to the plans for the second restaurant project as approved by the San Diego Unified Port District, attached and made a part of this permit amendment.
5. Insert – Permittee shall commence the second restaurant development within two (2) years following the date of permit amendment issuance by the District.
8. Insert - This permit amendment shall not be valid until two copies of the permit amendment have been returned to the Land Use Planning Department of the San Diego Unified Port District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, condition, limitations and provisions of the permit amendment.

### **Insert - SHORT TERM CONSTRUCTION MEASURES**

1. Insert - To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to occur weekdays from 7:00 am to 7:00 pm as much as practical; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. Insert - To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting of work areas.
3. Insert - To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.

4. Insert - All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Insert - Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Insert - Access points onto local paved roads shall be kept clean and swept as necessary, if visible soil material is carried onto adjacent public paved roads, using a water sweeper.
7. Insert - Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Insert - Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. Insert - All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Insert - Diesel equipment shall use low-sulfur diesel fuel.
11. Insert - Electric equipment shall be used to the maximum extent feasible during construction.
12. Insert - Construction employees shall be provided with transit and ride share information.
13. Insert - Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Insert - Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Insert - All Port of San Diego tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Pennit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate StormSewer 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 Pennit). This pennit was recently adopted in January of

2007, and replaces the previous pennit Order No 2001-01. All jurisdictions are required to be in full compliance with Order R9-2007-0001 by January 24, 2008. The Municipal Pennit prohibits any activities that could degrade stomnwater quality.

Post-constaiction / operational use of this project site must comply with the Municipal Pennit and District direction related to pemnitted 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/sandiegoenvironment/susmp.asp> or by contacting the Environmental Services Department, (619) 686-6254.

16. Insert - This project is subject to the Port Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, 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) that meets District requirements. Project approval requires full implementation of all USMP structural and non-structural BMPs throughout the life of the project.

Insert - The Port is currently modifying its development and redevelopment processes that will include modifications to the Port SUSMP, greater reliance of low impact design techniques and the incorporation of a Hydro-modification plan. These changes are being made to meet the requirements of the newly adopted Municipal Permit. During this transition period and until the updated Port SUSMP is final, the project USMP is to be designed to follow the County of San Diego's Draft Model SUSMP as revised November 6, 2007, and the Municipal Permit. A link to these interim guidance documents can be found on the District website  
<http://www.portofsandiego.org/sandiegoenvironment/susmp.asp>

Insert - The implementation and maintenance of the USMP BMPs constitute regulatory obligations for the leasee, and failure to comply with the Municipal Permit, the JURMP, or the Port approved USMP, including the specific BMPs contained therein, may be considered a default under the lease.

17. Insert – Any previously unidentified historic resources discovered during project construction will be afforded full protection by the permittee and contractor until qualified personnel can assess their importance.

#### **SPECIAL PROVISIONS - Amendment**

1. Delete - To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm, (b) keep construction equipment as far as possible from sensitive receptors, and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.

2. Delete - To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting.
3. Delete - To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from residences.
6. Delete - The permittee will arrange for pick-up of trash dumpsters between 7:00 am and 7:00 pm.
1. Insert - The permittee will arrange for pick-up of trash dumpsters between 8:00 am and 5:00 pm.
2. Insert - The permittee will require operators to use and regularly maintain after-burners or carbon filters on exhaust venting to reduce odorous emissions from food establishments.
3. Insert - To reduce natural gas, electrical energy and water consumption, the permittee's architect and contractor will design and construct the building structures for efficient energy use. Energy and water saving devices will be installed as part of the proposed project.
6. Insert - Trash compactors will be fully enclosed behind sound proof material.
7. Insert - Air conditioning units will be out-of-sight from adjacent residential dwellings with a solid wall buffer to prevent noise impacts.

If you have any questions concerning this permit amendment, please contact the Land Use Planning Department of the San Diego Unified Port District.

BRUCE B. HOLLINGSWORTH, Executive Director

By: \_\_\_\_\_  
JOHN W. HELMER, Acting Director  
Land Use Planning Department

I have read and understand the terms, conditions, limitations, and provisions of the permit and this amendment, and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

001225



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 120488, San Diego, California 92112-0488

[www.portofsandiego.org](http://www.portofsandiego.org)

November 15, 2001

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

**RECEIVED**

NOV 19 2001

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

## **NOTICE OF BOARD ACTION on a Coastal Development Permit for**

Project: JIMSAIR RESTAURANT/OFFICE REMODEL  
2904 Pacific Highway, San Deigo, CA 92101

### PROJECT DESCRIPTION

The proposed project consists of an approximately 13,200 square foot, three-story addition to the Jimsair restaurant and corporate office. The project also proposes to realign the current parking lots in front of the Jimsair Building on Pacific Highway to accommodate the addition. The restaurant facility would incorporate a separate sewer system with a grease interceptor system, as well as enlarge the dining area and expand the existing kitchen and restrooms. The corporate office addition would provide additional lobby space, offices, conference rooms, restrooms, flight planning rooms and employee facilities. Upgrades would be made to the entire Jimsair facility for compliance with the Americans with Disabilities Act (ADA), including the installation of an elevator, accessible restrooms and shower facilities, and wider hallways and doors.

### PROJECT LOCATION

The project is located at 2904 Pacific Highway, San Diego, CA 92101.

### CONSISTENCY WITH CERTIFIED PORT MASTER PLAN AND CALIFORNIA COASTAL ACT

The project is located in Planning District 2, Lindbergh Field/Harbor Island on property designated as Airport Related Commercial. The proposed project is the expansion of an existing aviation company's restaurant and office. Aviation service leasing and restaurants are both allowable uses under the Airport Related Commercial land use designation. Therefore, the project conforms with the planned use designation, and is thus consistent with the certified Port Master Plan.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The project is consistent with the Chapter 3 policies of the Coastal Act as follows:

### ARTICLE 2-PUBLIC ACCESS

The project is consistent with Sections 30210, 30211, 30212, 30212.5, and 30214. This site

**001226**



operates within Lindbergh Field and is not adjacent to coastal resources. The nearest recreational amenity south of the site is the public promenade along North Harbor Dr. and Harbor Dr., which will not be impacted by this proposed project. The proposed project: will not affect access to recreational opportunities; will not interfere with the public's right of access to the sea because it is not adjacent to the sea; does constitute "new development", however, adequate access exists nearby (Pacific Highway) so no public access route is required; parking facilities are distributed throughout the site (north and south parking lot) to the extent feasible; and the expansion of Jimsair would not affect or limit public access to coastal resources.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222.5, and 30224. The proposed project operates within Lindbergh Field and therefore would not impact: coastal areas suited for water-oriented recreational activities; oceanfront land suitable for recreational use; upland area to support coastal recreational uses; and recreational boating use of coastal waters.

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The proposed project operates within Lindbergh Field and therefore would not involve: marine resources; water bodies; Jimsair does involve crude oil, gas, petroleum products, and hazardous materials, however, protection against spillage is enforced through a Hazardous Materials Business Plan, Stormwater Pollution Prevention Plan, as well as adherence to OSHA and CalOSHA regulations. The proposed project does not involve: diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project operates within Lindbergh Field and therefore the project: is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. The proposed project: will be located in close proximity to existing developed areas; will not impact scenic coastal areas because it is not located adjacent to coastal resources; will improve the visual quality of the area with its design; will not impact public access to the coast since it is not adjacent to the coast; and provides adequate parking facilities. Jimsair currently provides a bus stop and is located near a trolley stop. The proposed project: is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not significantly increase energy consumption and vehicle miles traveled. The proposed project is not: a visitor destination point for recreational uses; public works facility; associated with a sewage treatment plant; nor is it a coastal-dependent development.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not

involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

BOARD ACTION

By Resolution No. 2001-256 dated November 13, 2001, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- [ ] This development has been approved as submitted.
- [X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. Two speakers were present at hearing on November 13, 2001. One via speaker phone, Noel Nuedeck, emphasized that the project must comply with Title 24, as well as Americans with Disabilities (ADA) requirements. The second speaker, Jack Monger, supported the project.

DENNIS P. BOUEY  
Executive Director

By: \_\_\_\_\_



WILLIAM B. CHOPYK  
Manager, Planning Services

Enclosure(s): Attachment A

Jimsair Restaurant/Office Remodel Final Negative Declaration

cc: Howard Bass, Jimsair Applicant  
Dan Wilkens, SDUPD  
Ralph Hicks, SDUPD  
Bryan Enarson, Airport Properties  
Chris Murphy, Airport Properties  
John Lorman, Procopio Cory Hargreaves & Savitch

## **ATTACHMENT A**

### **STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall perform all work in accordance with applicable federal, state, and local regulations.
5. Permittee shall conform to the permit rules and regulations of the District.
6. Permittee shall commence development within two (2) years following the date of permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. The permittee shall be responsible for the cleanup and proper disposal of any debris deposited on any city street, public right-of-way or public/private properties.
10. Permittee shall minimize the release of major urban area runoff pollutants such as sediment, nutrients, oxygen-demanding substances, road salts, heavy metals, petroleum hydrocarbons, pathogenic bacteria, and viruses.

### **SHORT TERM CONSTRUCTION MEASURES**

**001229**

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.

3. To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from boat docking areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be covered.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be swept twice per day if visible soil material is carried onto adjacent public paved roads using a water sweeper (once during the day and once at the end of the day).
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Project proponent shall prevent trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Project proponent shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented.
14. Project proponent shall require all employees that are exposed to noise levels in excess of OSHA hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Permittee shall implement appropriate erosion and sediment control practices during the construction stage in order to reduce sediment loadings to surface waters.

#### **ENVIROMENTAL PROVISIONS**

**001230**

1. Permittee shall promptly inform the District of its discovery of any debris, solid waste, hazardous waste, or any other material, including soils or groundwater, extracted or removed in connection with actions undertaken on the premises during the course of this project.
2. Permittee shall minimize the release of major urban area runoff pollutants such

as sediment, nutrients, oxygen-demanding substances, road salts, heavy metals, petroleum hydrocarbons, pathogenic bacteria, and viruses.

3. The permittee shall be responsible for the cleanup and proper disposal of any debris deposited on any city street, public right-of-way or public/private properties.
4. Prior to construction, permittee shall prepare and implement a Stormwater Pollution Prevention Plan including Best Management Practices. Best Management Practices shall be applied to prevent stormwater run-off from entering storm drains and the San Diego Bay.

#### **SPECIAL PROVISIONS**

1. Permittee shall comply with all conditions in the Conditional Project Approval Letter issued by the Port District.
2. Permittee shall comply with all Title 24/Americans with Disabilities Act (ADA) requirements.
3. A transit easement for the Metropolitan Transit Development Board (MTDB) shall be included in the revised Jimsair lease.



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 120488, San Diego, California 92112-0488  
www.portofsandiego.org

March 28, 2002

Brian Manning  
Loews Coronado Bay Resort  
4000 Coronado Bay Road  
Coronado CA 92118

**RECEIVED**

APR 02 2002

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

## NOTICE OF BOARD ACTION on a Coastal Development Permit for


Applicant: Brian Manning, Loews Coronado Bay Resort, (619) 424-4000  
Project: Loews Coronado Bay Resort Spa Expansion  
Location: 4000 Coronado Bay Road, Coronado CA 92118

### PROJECT DESCRIPTION

The proposed project consists of the spa conversion/expansion located at the Loews Coronado Bay Resort Spa Expansion at 4000 Coronado Bay Road in Coronado. The proposed project consists of an 8,680-square-foot conversion and expansion of the existing 3,967-square-foot fitness center to a new spa facility. The proposed spa conversion and expansion would increase the size of the spa facility to 10,197 square feet of building area, with an additional 2,450-square-foot outdoor patio area, for a total spa area of 12,647 square feet. The spa facility expansion will replace the easternmost two of the existing five tennis courts. The existing spa area will be reconfigured and remodeled, and the spa conversion and expansion will include: a main reception area, lounge, juice bar, hair/nail salon, a 300-square-foot retail area, aerobics and weight rooms, two new jacuzzis, and 10 indoor treatment rooms. The new outdoor patio will contain four outdoor massage cabanas and a Watsu massage pool. The new spa expansion wing will have an exterior covered walkway with new hardscape and a decorative entry trellis. The existing pool deck area above the spa facility will be extended over the spa expansion area and will include a new architectural trellis, perimeter hedge, and railing. The project appearance will match that of the existing hotel, with the proposed height of the expanded spa facility at 11 feet. The spa conversion and expansion will take about 10 months to complete.

001232

EXHIBIT NO. 6
APPLICATION NO.
<b>A-6-PSD-02-063</b>
Notice of Board Action
Page 1 of 4

 California Coastal Commission

CONSISTENCY WITH CERTIFIED PORT MASTER PLAN

The project site is located in Planning District 8, Silver Strand South, on property classified in the Port Master Plan as Commercial Recreation. The proposed project is the conversion and expansion of an existing spa facility, which is an ancillary hotel use. Hotels and ancillary uses are allowable under the Commercial Recreation land use designation. Therefore, the proposed project conforms to the certified Port Master Plan.

CONSISTENCY WITH CALIFORNIA COASTAL ACT

The project is consistent with the Chapter 3 policies of the Coastal Act, as follows:

ARTICLE 2—PUBLIC ACCESS. The project is consistent with Sections 30210, 30211, 30212, 30212.5, and 30214. The Port Master Plan does not designate any areas on or near the Loews site for public access since the entire isle is part of a tenant leasehold. Furthermore, the proposed project will result in the replacement of two of the five existing tennis courts with the spa expansion, and it is anticipated that the three remaining tennis courts will be sufficient in meeting existing and future demand of the hotel. The proposed project: will not interfere with the public's right of access to the sea; parking facilities on the project site are distributed throughout several sites (to the extent feasible for a hotel facility); and public access to the existing hotel facility would not be affected or limited.

ARTICLE 3—RECREATION. The proposed project is consistent with Sections 30220, 30221, 30222.5, and 30224. The proposed project is located within an existing hotel facility, and therefore would not impact: coastal areas suited for water-oriented recreational activities, oceanfront land suitable for recreational use; upland area to support coastal recreational uses; and recreational boating use of coastal waters.

ARTICLE 4—MARINE ENVIRONMENT. The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The proposed project will be located within an existing hotel facility, and therefore does not involve: any marine resources; any water bodies; use of crude oil, gas, petroleum products, or hazardous substances; diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline-altering construction; alterations of rivers and streams; and Bolsa Chica wetlands.

ARTICLE 5—LAND RESOURCES. The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project will be located within an existing hotel facility, and therefore, the project: will not be located in or adjacent to any environmentally sensitive habitat areas; would not involve any prime agricultural land; will not involve productive soils and timberlands; and would not involve archaeological or paleontological resources.

ARTICLE 6—DEVELOPMENT. The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. Consistent with Section 30250, the new commercial development will be located within an existing developed area. Consistent with Section 30251, the height of the spa expansion will match that of the existing hotel at 11 feet. Consistent with Section 30252, the proposed project will provide adequate parking facilities as the Loews' parking supply of 644 spaces exceeds the hotel's parking requirement of 534 spaces by 110 spaces, or 21 percent. Consistent with Section 30253, the proposed project: will not contribute significantly to erosion or geologic instability; will not negatively impact air quality; and will not increase energy consumption or vehicle miles traveled. Consistent with Sections 30254 and 30254.4, the proposed project does not involve public works facilities and does not involve the development of a sewage treatment plant. Consistent with Section 30255, the proposed project does not preclude any coastal-dependent development.

ARTICLE 7--INDUSTRIAL DEVELOPMENT. The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project: does not involve a coastal-dependent industrial facility or use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### BOARD ACTION

By Resolution No. 2002-73, dated March 26, 2002, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- ☒ This development has been approved as submitted.
- ☐ This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- ☐ This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- ☒ This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.



Mr. Brian Manning  
Page 4  
March 28, 2002

BRUCE B. HOLLINGSWORTH  
Executive Director

By: Bill Chopyk  
WILLIAM B. CHOPYK  
Manager, Planning Services

cc: ✓ Sherilyn Sarb, CA Coastal Commission  
David Watson, Gray Cary Ware & Freidenrich  
Steve Kawashima, Hotel Organizing Project

001235

FINAL



**SAN DIEGO UNIFIED PORT DISTRICT**

Land Use Planning Department  
P.O. BOX 120488  
SAN DIEGO, CA 92112-0488  
(619) 686-6283  
Fax: (619) 686-6508

**RECEIVED**

DEC 09 2004

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**LETTER OF TRANSMITTAL**

**Hand Delivered**

Date: December 7, 2004

To: California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Attention: Ms. Sherilyn Sarb, District Manager

Subject: HILTON SAN DIEGO CONVENTION CENTER HOTEL  
Harbor Drive and Eighth Avenue in South Embarcadero; San Diego, California

☒ For Your Review  
☐ For Your Approval  
☐ Per Your Request

☐ For Your Comment  
☐ For Your Records

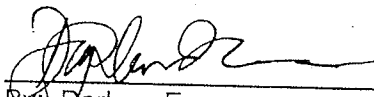
**DESCRIPTION:**

Attached for your review is a Notice of Board Action on an appealable Coastal Development Permit for the subject project.

If you have any comments or questions, please call me at (619) 686-6473. Thank you.

**SAN DIEGO UNIFIED PORT DISTRICT  
LAND USE PLANNING DEPARTMENT**

**RECEIVED BY:**

  
By: Darlene Erenea  
Assistant Planner

\_\_\_\_\_  
CALIFORNIA COASTAL COMMISSION

DATE: \_\_\_\_\_

001236



Unified Port  
of San Diego

3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • www.portofsandiego.org

December 7, 2004

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

**RECEIVED**

DEC 09 2004

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**NOTICE OF BOARD ACTION  
on a Coastal Development Permit for**

Project: HILTON SAN DIEGO CONVENTION CENTER HOTEL  
Harbor Drive and Eighth Avenue in South Embarcadero; San Diego, California

**PROJECT DESCRIPTION**

The Hilton San Diego Convention Center Hotel leasehold is located at intersection of Harbor Drive and Eighth Avenue in Planning District 3, Centre City Embarcadero, which is delineated on the certified Port Master Plan Precise Plan Map Figure 11. The proposed project area is situated in the city of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified Port Master Plan. Hilton San Diego Convention Center, LLC (HSDCC, also referred to herein as "Permittee") proposes to develop a hotel and supporting facilities (including restaurant, retail, meeting space, ballroom, health club, spa, and swimming pool), public art, street improvements to facilitate traffic to and from the hotel, and a new public park/plaza and promenade along the waterfront. The proposed Hilton Convention Center Hotel (Hotel) is intended to satisfy the demand for hotel rooms to serve the San Diego Convention Center and hospitality needs of downtown San Diego.

The 10.22-acre site for the proposed Hotel is located across from the San Diego Convention Center, at the intersection of Harbor Drive and Eighth Avenue. The proposed project will include the following features:

- 1,000 to 1,200-room, maximum 500-foot high Hotel tower, including retail shops, restaurants, and meeting and ballroom space;
- Recreation facilities for Hotel guests, including health club and outdoor swimming pool;
- Direct access from the Hotel to the new public park/plaza;
- A new 4.3-acre public park/plaza and promenade along the waterfront, including landscape, hardscape, lighting, fountains, public restroom facilities;
- Public art;
- Street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel

Permittee proposes to develop a new water taxi dock located adjacent to the east side of the existing mole pier to serve Hotel guests and the general public. Development of the new water taxi dock was permitted to the District in the Coastal Development Permit for the Sediment Remediation and Aquatic Enhancement at Former Campbell Shipyard Project (Application No. 2004 011-36-142, dated August 31, 2004, SDUPD Document No. 47805). Development of the new water taxi dock will be assigned to

Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

Portions of the Hotel Design Development Plans (dated November 15, 2004), which highlight the proposed project's conformance with the certified Port Master Plan, are included as Attachment B of the Notice of Board Action. A full copy of the Design Development Plans may be accessed by contacting the District Land Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

The proposed project was evaluated in the South Embarcadero Redevelopment Program 2 and Port Master Plan Amendment Program Environmental Impact Report (EIR). The Final EIR for the South Embarcadero Redevelopment Program 2 and Port Master Plan Amendment, identified as UPD #83356-EIR-435 and SCH #1997051014, was certified by the Board on April 17, 2001, per Resolution 2001-71. The current proposed project has been compared to the Board-certified Final EIR and the adopted Findings of Fact and Statement of Overriding Considerations. The project description is in substantial compliance with the environmental impact information contained in the referenced documents.

Pursuant to CEQA Guidelines Section 15164(a), the District finds that none of the conditions described in Sections 15162 and 15163 call for preparation of a subsequent EIR or supplement to an EIR. An Addendum dated November 2004 was prepared to address minor technical changes in the proposed project. The EIR and Addendum are filed with the Office of the District Clerk as Document No. 42492 and Document No. 48049, respectively. No further environmental review is required.

#### **PROJECT LOCATION**

The project is located at Harbor Drive and Eighth Avenue in South Embarcadero in San Diego, California.

#### **CONSISTENCY WITH CERTIFIED PORT MASTER PLAN AND CALIFORNIA COASTAL ACT**

The project site is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11. The proposed project is listed as Project 16 of the Table 11 Project List in the Port Master Plan as "Convention Center Hotel Complex and Marina." The Port Master Plan classifications of the land area within the limits of the proposed project are Commercial Recreation, Park/Plaza, Promenade, Comfort Station, Specialized Berthing, Recreational Boat Berthing, Ship Navigation Corridor, and Vista Area. The proposed project will result in the development of a hotel and supporting facilities, and a new public park/plaza along the waterfront. The proposed uses for the project area conform to the certified Port Master Plan and facilitate the certified use designations.

Mitigation Monitoring and Reporting Program requirements will be followed pursuant to the mitigation measures outlined in the Final EIR.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The proposed project is consistent with the Chapter 3 policies of the Coastal Act as follows:

#### **ARTICLE 2-PUBLIC ACCESS**

The proposed project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214.

The proposed project is located at the intersection of Harbor Drive and Eighth Avenue, and is adjacent to coastal resources. The nearest existing recreational amenity, located north of the site, is the Embarcadero Marina Park South, which will not be impacted by this proposed project. The proposed project will: enhance access to recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing a new 4.3-acre public park and recreational boating access at a new water taxi dock that will be available for general public use\*; constitute "new development", but will enhance public access from the nearest public roadway to the shoreline and along the coast by providing new shoreline promenade along the waterfront and pedestrian access along two major points, Eighth Avenue and the extension of the Embarcadero promenade, and resulting in street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel; and will enhance public access to coastal resources. Public parking will be available in the new 2000-car public parking facility developed by the District at the intersection of Harbor Drive and Eighth Avenue. At least 899 or the 2000 maximum parking spaces shall be provided for Hotel guest use. The remaining parking spaces shall be designated for general public use.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222, 30222.5, 30223, and 30224. The proposed project will not adversely impact: coastal areas suited for water-oriented recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; recreational boating use of coastal waters. The proposed project will enhance oceanfront land suitable for recreational use by providing a new 4.3 waterfront park and promenade and may provide for a new water taxi dock available for Hotel guests and the general public.\*

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The proposed project does not involve: diking or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands. The proposed project will involve the filling of open coastal waters with a water taxi dock adjacent to the existing mole pier.\* Analysis of increased water coverage as a result of possibly developing the water taxi dock was analyzed in the Coastal Development Permit for the Sediment Remediation and Aquatic Enhancement at Former Campbell Shipyard Project (Application No. 2004 011-36-142, dated August 31, 2004, SDUPD Document No. 47805). The proposed project will be subject to the Standard Urban Stormwater Mitigation Plan requirements of the Municipal Stormwater Permit (NPDES Permit No. CAS0108758). SUSMP requirements are meant to incorporate Best Management Practices in the design phase of new development projects.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and

---

\*Development of the new water taxi dock will be assigned to Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

30255. The proposed project: will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses via new pedestrian-oriented retail and restaurant areas with outdoor seating to activate the promenade; will enhance scenic and visual qualities of coastal areas by respecting the Eighth Avenue view corridor in accordance with the South Embarcadero Urban Design and Signage Guidelines, as amended and providing 4.3 acres of new waterfront park/plaza area to maintain public views to the Bay from Harbor Drive; will be designed to protect views to and along the ocean and scenic coastal areas in accordance with the South Embarcadero Urban Design and Signage Guidelines, as amended; will enhance public access to the coast by providing pedestrian access along two major corridors, Eighth Avenue and a minimum 35-foot wide promenade along the water's edge in accordance with the South Embarcadero Urban Design and Signage Guidelines, as amended, and providing new bicycle racks and striped pedicab holding areas to facilitate public recreational waterfront access opportunities in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program. The proposed project: is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not increase energy consumption and vehicle miles traveled, but such potential impacts have been addressed in the Final EIR; is a coastal dependent development. The proposed project is not: a special community or neighborhood, which because of their unique characteristics, are popular visitor destination points for recreational uses; public works facility; nor associated with a sewage treatment plant.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### BOARD ACTION

By Resolution adopted on November 30, 2004, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- ☐ This development has been approved as submitted.
- ☒ This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

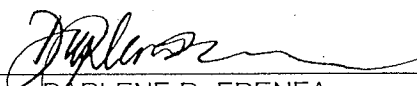
The following noted [X] item applies to this finding:

- ☐ This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- ☒ This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. One

speaker was present at the public hearing on November 30, 2004. April Boling of the San Diego Convention Center Corporation was the only speaker present at the public hearing. Ms. Bowling expressed her support for the Hotel development and told the Board that the hotel will play a "pivotal role in the success of the Convention Center," which attracts 70 conventions per year, draws 1 million visitors and pumps \$1 billion in the economy. She contends that there is "absolutely a need for the hotel." Ms. Boling also stated that without this hotel, the Convention Center is unable to realize its full potential. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved the proposed project at the November 30, 2004 hearing.

BRUCE B. HOLLINGSWORTH  
President/CEO

By:   
DARLENE D. ERENEA  
Assistant Planner, Land Use Planning

Enclosure(s): Attachment A: Draft Coastal Development Permit Conditions  
Attachment B: Exhibit A to the Draft Coastal Development Permit

## ATTACHMENT A

**Project:** Hilton San Diego Convention Center Hotel

**Location:** Harbor Drive and Eighth Avenue in South Embarcadero; San Diego, California

### **DEVELOPMENT**

Hilton San Diego Convention Center, LLC (HSDCC, also referred to herein as "Permittee") proposes to develop a hotel and supporting facilities (including restaurant, retail, meeting space, ballroom, health club, spa, and swimming pool), public art, street improvements to facilitate traffic to and from the hotel, and a new public park/plaza and promenade along the waterfront. The proposed Hilton Convention Center Hotel (Hotel) is intended to satisfy the demand for hotel rooms to serve the San Diego Convention Center and hospitality needs of downtown San Diego.

The 10.22-acre site for the proposed Hotel is located across from the San Diego Convention Center, at the intersection of Harbor Drive and Eighth Avenue. The proposed project will include the following features:

- 1,000 to 1,200-room, maximum 500-foot high Hotel tower, including retail shops, restaurants, and meeting and ballroom space;
- Recreation facilities for Hotel guests, including health club and outdoor swimming pool;
- Direct access from the Hotel to the new public park/plaza;
- A new 4.3-acre public park/plaza and promenade along the waterfront, including landscape, hardscape, lighting, fountains, public restroom facilities;
- Public art;
- Street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel

Permittee proposes to develop a new water taxi dock located adjacent to the east side of the existing mole pier to serve Hotel guests and the general public. Development of the new water taxi dock was permitted to the District in the Coastal Development Permit for the Sediment Remediation and Aquatic Enhancement at Former Campbell Shipyard Project (Application No. 2004 011-36-142, dated August 31, 2004, SDUPD Document No. 47805). Development of the new water taxi dock will be assigned to Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

Portions of the Hotel Design Development Plans (dated November 15, 2004), which highlight the proposed project's conformance with the certified Port Master Plan, are attached as Exhibit A of the Coastal Development Permit. A full copy of the Design Development Plans may be accessed by contacting the District Land Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

### **STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the conceptual development plans and comply with the conditions of approval for the project, as approved by the Board of Port Commissioners on



January 28, 2003. Schematic designs were submitted to the District on August 30, 2004. Design Development Plans were submitted to the District on November 15, 2004.

2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. This project is subject to the Standard Urban Stormwater Mitigation Plan (SUSMP) requirements of the Municipal Stormwater Permit (NPDES Permit No. CAS0108758). SUSMP requirements are meant to incorporate Best Management Practices (BMPs) in the design phase of new development and significant redevelopment projects. The SUSMP process requires the development and submission of an engineering study that details the incorporation of permanent BMPs, including structural devices designed to capture and/or treat a specified volume or rate of stormwater runoff before it enters the stormwater conveyance system. The SUSMP must contain all the information required by the latest version of the "Port SUSMP Document" available from the District or at the District website at [http://www.portofsandiego.org/sandiego\\_environment/storm-water.asp](http://www.portofsandiego.org/sandiego_environment/storm-water.asp). The SUSMP must be signed by a registered civil engineer in the State of California who has experience or access to experience in the design and implementation of effective urban runoff pollution prevention strategies.

In accordance with Section 10.05.A.3 of the District Code, project approval requires submission of a project specific SUSMP that meets District requirements. Project approval requires full implementation of all SUSMP structural and non-structural BMPs. The continued implementation and maintenance of the SUSMP BMPs constitute regulatory obligations for the leaseholder, and failure to comply with the Municipal Permit or the District-approved SUSMP, including the specific BMPs contained therein, may be considered a default under the lease.

6. Permittee shall be responsible for compliance with Americans with Disabilities Act and Title 24 specifications.
7. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
8. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
9. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
10. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.

## SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, Permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am. In order to mitigate potential traffic and noise conflicts during construction, Permittee shall notify the San Diego Convention Center (SDCC) of their construction activities and conduct meetings with SDCC and Dole Fresh Fruit Company.
2. To minimize fugitive air emissions during construction, the Permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper (once during the day and once at the end of the day).
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
14. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000002, and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "General

Construction Storm Water Permit”), as adopted, amended, and/or modified. The District is responsible for submitting the Notice of Intent to comply with the General Construction Storm Water Permit. The Permittee and/or contractor must comply with the General Construction Storm Water Permit and District direction related to permitted activities. Construction activity subject to the General Construction Storm Water Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor must prepare and submit the SWPPP for review and approval by the District prior to site work.

## SPECIAL PROVISIONS

1. Permittee shall comply with all applicable FEIR mitigation measures contained in the Final Environmental Impact Report (FEIR) for the South Embarcadero Redevelopment Program 2 and Port Master Plan Amendment certified by the Board of Port Commissioners on April 17, 2001, per Resolution 2003-71. Refer to Exhibit 2 of the Option Agreement between the District and Permittee for appropriate obligations required to be completed by the Permittee, as adopted by the Board of Port Commissioners on August 6, 2002, per Ordinance 2193. Mitigation measures are briefly outlined below. Permittee shall refer to the FEIR and Exhibit 2 of the Option Agreement for specific details regarding each mitigation measure.

### a) Land Use

- The lights on the waterfront promenade shall be shielded or directed away from the Bay so as not to interfere with the pilot navigation of cargo vessels into Berths 10-1 and 10-2.
- Permittee shall adhere to the conceptual and schematic designs approved by the District, which confirm that Permittee has complied with a hotel design that includes a maximum of 1,200 rooms, and that the tower and ancillary structures are less than 500 feet in height.

### b) Traffic

- A proportional share contribution shall be paid to comply with those traffic measures outlined in the FEIR by either the Permittee or the District. The Permittee shall pay for the cost of improvements to Eighth Avenue required for the Hotel.
- Permittee shall confirm that the roadway configuration includes the median, truck lane, and access elements outlined in the FEIR.
- Permittee shall complete, to the satisfaction of the District Executive Director, a Construction Coordination Plan that addresses traffic management with SDCC during Hotel construction. The plan shall be consistent with the plan outline provided in the FEIR.
  - i. *Traffic Management:* Construction traffic shall be managed to (1) avoid disruption of traffic on Eighth Avenue and Convention Way, (2) avoid conflicts with truck traffic for SDCC events and (3) avoid conflicts with general traffic during SDCC, District, and Ballpark events.
  - ii. *Existing Convention Way and Eighth Avenue:* Travel lanes shall not be blocked for construction purposes unless absolutely essential for the project and, in those circumstances, shall be done in a manner that minimizes the impact on SDCC and District operations.
  - iii. *Deliveries of Construction Materials and Equipment:* Shall be scheduled to avoid conflicts with truck traffic for SDCC events and general traffic

during SDCC, District, or Ballpark events.

- Permittee shall complete, to the satisfaction of the District Executive Director, an Event Coordination Plan that addresses traffic management with SDCC during Hotel operations. The plan shall be consistent with the plan outline provided in the FEIR.
- The one-way roadway under the existing Harbor Drive bridge from the south side to the north side would be for District and 10<sup>th</sup> Avenue Marine Terminal users. Hotel traffic, service vehicles, etc. should not have access to the under-bridge roadway. The District may provide Permittee with written approval to allow Hotel service vehicles access to the under-bridge roadway at a later time.

c) Parking

- At least 899 of the 2000 maximum parking spaces in the District parking structure shall be available for Hotel guest use to ensure the appropriate mix of parking is available for hotel guests and the general public.

d) Urban Design

- Permittee shall adhere to the conceptual and schematic designs approved by the District, which confirm that the Permittee has complied with those urban design measures outlined in the FEIR and are briefly described as follows:
  - i. The Hotel structures shall avoid "walling off" the waterfront visual and public access from Harbor Drive and the Park Boulevard view corridor.
  - ii. The Hotel design shall provide pedestrian access along two major points, Eighth Avenue and the extension of the Embarcadero Promenade, in conformance with the South Embarcadero Urban Design + Signage Guidelines, as amended. Hotel development shall provide landscaped setbacks or street-front retail along these access ways. Improve the Eighth Avenue "gateway" by providing a 20-foot-wide pedestrian walkway, with 12-foot planting strips between the Eighth Avenue right-of-way and the pedestrian walkway and a 12-foot-wide planting setback between the walkway and Hotel development. Include pedestrian-oriented uses compatible with the commercial recreation land use, such as retail shops or restaurants, with outdoor seating in order to activate the promenade. Project components shall meet the 20-foot building height for buildings on the promenade, stepping back to 50 feet in the development area. Create a pedestrian-scaled public environment.
  - iii. Provide a landscaping plan that is consistent with the South Embarcadero Planting Guidelines, as amended.
  - iv. Create 4.3 acres of new park/plaza area to the north of the Park Boulevard view corridor extension, along the waterfront between the Fifth Avenue Landing site and the Hilton Hotel. The design of the park shall be consistent with the South Embarcadero Urban Design + Signage Guidelines, as amended, and shall include public access linkages, unobstructed view corridors, and a variety of interactive elements (i.e. fountain, public art, etc.). The park shall have a single uniform design that is consistent with the adjacent leaseholds.
  - v. Provide public restroom facilities in proximity to the public pier and park/plaza adequate to service the needs of the public.

e) Water Quality

- Permittee shall prepare a SWPPP in accordance with NPDES permit requirements and the Port's Stormwater Management and Discharge Control Ordinance, as outlined in the FEIR.

- No discharges of any material or waste, including potable water, wash water, dust, soil, trash and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations must be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean must be reported immediately to the Recreation and Environmental Services Department, in order to address any regulatory permit requirements regarding spill notifications. BMPs must be implemented by the Permittee to control the potential release of any materials or wastes being handled or stored on-site which could enter the stormwater conveyance system due to wind or stormwater runoff.
- Hazardous or potentially hazardous materials (i.e., cement, lubricants, solvents, fuels, other refined petroleum hydrocarbon products, wash water, raw sewage) that are used or generated during the construction of the Hotel shall be handled, stored, used, and disposed of in accordance with NPDES permitting requirements and applicable federal, state, and local laws and regulations. BMPs include preparation and implementation of a hazardous substance spill prevention/contingency plan (including material safety data sheets); providing adequate worker training and education; minimizing the volume of hazardous or potentially hazardous materials stored at the site at any one time; providing secured storage areas for compatible materials, with adequate spill containment; labeling containers; and keeping records, manifests, and other tracking information up to date.
- Permittee shall provide, to the satisfaction of the District, an integrated Pest Management Program. This program shall be consistent with the District's own Integrated Pest Management Program.

f) Air Quality

- Permittee shall minimize equipment exhaust emissions by reasonably available measures, as outlined in the FEIR.
- Permittee shall complete, to the satisfaction of the District Executive Director, a Construction Coordination Plan that addresses construction dirt and dust with the Hotel during construction, as outlined in the FEIR.
- Enhanced dust control measures shall be used and the total disturbance area shall be maintained at less than 9 acres in size, as outlined in the FEIR.
- Site remediation procedures shall comply with all applicable rules and regulations of appropriate regulatory agencies, and remediation contractors shall obtain any necessary permits.

g) Noise

- Permittee shall complete, to the satisfaction of the District Executive Director, a Construction Coordination Plan that addresses construction noise with SDCC during construction, as outlined in the FEIR.

h) Public Services and Utilities: Solid Waste

- *Demolition and Construction Waste Reduction:* Permittee shall incorporate a demolition and construction waste management plan into construction contract documents. The prime contractor and subcontractors shall be made aware of the provisions in the solid waste management plan during the bidding process and at construction progress meetings. Source separation of construction materials such as wood, aggregate, dry wall, glass, cardboard, and certain plastics reduces contamination, thereby making recycling much more cost effective.
- *Recycled-Content Products:* The architect and specifying engineers shall

incorporate recycled-content products into the project specifications, where applicable and feasible. Recycled-content products should be specified in order to "close the loop" between recycling, manufacturing, and the construction industry.

- *Facility Operation Waste Reduction:* Source reduction, source separation, and recycling mitigation measures should focus on these materials. Source reduction measures should include the onsite recycling of green waste into mulch and onsite reuse of the product, employee training programs, or other programs designed to prevent the generation of waste. Source separation measures should include separation of reusable and recyclable materials such as paper, glass, and green waste, thereby enabling recyclable material collection facilities to process and market the materials to remanufacturers. Provisions need to be made during the design, budgeting, and construction of the project for recycling containers and space allocation.
- *Waste Management Plan:* The City of San Diego Environmental Services Department proposes that a waste management plan should document those components outlined in the FEIR.

i) Seismic/Geologic Hazards

- *High Groundwater:* Permittee shall retain a licensed geotechnical engineer, who shall prepare a comprehensive geotechnical evaluation, including development-specific subsurface exploration and laboratory testing, shall be conducted prior to design and issuance of a grading permit for the project as required by the City of San Diego. The purpose of subsurface evaluation shall be to (1) further evaluate the subsurface conditions in the area of the proposed structures; (2) provide specific data on potential geologic and geotechnical hazards; and (3) provide information pertaining to the engineering characteristics of earth materials at the project site, including development-specific subsurface exploration and laboratory testing. The geotechnical engineer shall use the data from the evaluation to prepare recommendations for grading/earthwork, surface and subsurface drainage, temporary and/or permanent dewatering, foundations, pavement structural sections, and other pertinent geotechnical design considerations shall be formulated. The specific recommendations for the proposed project, which shall be included in the final grading plans.
- *Strong Ground Motion and Surface Rupture:* Site-specific geotechnical studies shall be prepared by a licensed geotechnical engineer as required by the City of San Diego Building Department, to support structural design and obtain a building permit. The evaluation shall include fault evaluations for each human-occupancy structure (a structure intended for 2,000 or more human occupancy hours per year) that reasonably demonstrates the absence of active faults below the structure shall occur. Such an evaluation shall include analysis of subsurface data relative to faulting obtained during the design phase of the project. The potential for relatively strong seismic ground motions shall be considered in the design of proposed improvements. Specifically, the proposed project shall be designed in accordance with the recommendations in the geotechnical evaluation as well as all applicable requirements for UBC Seismic Zone 4.
- *Liquefaction and Seismically Induced Settlement:* Permittee shall perform a comprehensive geotechnical evaluation, prepared by a licensed geotechnical engineer prior to design and construction of any structures, which shall include site-specific subsurface exploration and laboratory testing; (1) incorporate in the

final plans for the proposed project all site-specific recommendations identified in the evaluation; (2) design and construct all structures to be reinforced and supported using ground modification or deep foundation piles; and (3) incorporate remedial grading or surcharging and monitoring by means of settlement monuments to mitigate for seismically induced settlement impacts.

- *Corrosive Soils:* Permittee shall perform a site-specific soils evaluation during the design phase of the proposed project, prepared by a licensed geotechnical engineer, and incorporate all site-specific recommendations identified in the evaluation in the design of all structures for the project, and protect all structural steel reinforcement in proposed structures from the corrosive effects of the marine environment in which the site is located.
  - *Subsidence:* Permittee shall retain a licensed geotechnical engineer, who shall perform an evaluation of the effect of dewatering on nearby structures, during the design phase and prior to the commencement of construction activity on the project site.
2. No pile-driving in the sediment remediation cap is permitted.
  3. The new water taxi dock shall be available for hotel guests and the general public.\*
  4. The water taxi dock shall be set back a distance sufficient to preserve the continued use of the Tenth Avenue Marine Terminal Berths 1 and 2 for commercial cargoes.\*
  5. Permittee shall provide airport shuttle service to and from the San Diego International Airport for Hotel guests and the general public.
  6. At no time shall public access to the waterfront promenade be fenced, screened, or blocked off by any structure.
  7. The Hotel restaurant areas shall provide outdoor seating to activate the promenade.
  8. Access to the Hotel restaurant and retail areas shall open outward to the promenade.
  9. The Hotel outdoor snack bar shall provide an opening on the promenade to promote pedestrian access along the waterfront.
  10. In order to promote pedestrian activities along the waterfront, seasonal vending carts shall operate in the park and/or outside the first 26 feet of promenade adjacent to the water's edge (so not to obstruct pedestrian access along the waterfront).
  11. The park will be developed and open to the general public prior to or concurrent with occupancy of the Hotel.
  12. At minimum, the public/park areas of Permittee's lease area shall be open and available for public use between the hours of 6:00 am and 10:00 pm, seven days a week, unless

---

\*Development of the new water taxi dock will be assigned to Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

Permittee is directed in writing by the District's Executive Director, in his sole and absolute discretion, to maintain a different schedule.

13. Permittee will provide appropriate public access directional and informational signs to demark public pedestrian access to the waterfront in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program and the South Embarcadero Urban Design + Signage Guidelines, as amended.
14. Permittee will incorporate educational displays into the design of public accessways as participation in the educational signage program in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program and the South Embarcadero Urban Design + Signage Guidelines, as amended.
15. Permittee will provide new bicycle racks and striped pedicab holding areas to facilitate public recreational waterfront access opportunities in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program.
16. The raised planter located between the south side of the hotel and adjacent to the waterfront promenade shall be developed at a maximum 32 inches high, including plant material.
17. The guardrail along the waterfront promenade shall be transparent in design, in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended.
18. Within the 120 feet wide view corridor centered on the row of Park Boulevard, Permittee shall maintain a minimum 60 feet wide clear zone (centered within the view corridor) with landscape planting on either side, in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended.
19. Permittee shall define the edges of the Park Boulevard view corridor as a formal corridor by plant materials accompanied by landscape furnishings (i.e. lighting, benches, etc.) in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended. The plant palette will utilize a mixture of tall vertical trees (i.e. Palms), with canopy trees of varying heights, shrubs, and flowering ground covers that will express a clear sense of linear room leading to the bayfront. Evergreens should be used to the extent feasible in order to maintain a year-round foliage and color.
20. Permittee shall use paving materials of high quality and expressive of the corridor as a design element unto itself in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended. Opportunities to link with the Ballpark district and the future waterfront development should be considered in determining the appropriate palette. The quality and intensity of materials (treatment) may in fact vary as the corridor interfaces with different land use conditions.
21. Permittee shall use lighting and furnishings that are pedestrian-scaled and conform to the recommendations embodied within the South Embarcadero Urban Design + Signage Guidelines, as amended. The lighting element shall be legible and help define the view corridor.



Draft

ATTACHMENT B



Unified Port  
of San Diego

# Hilton San Diego Convention Center Hotel

---

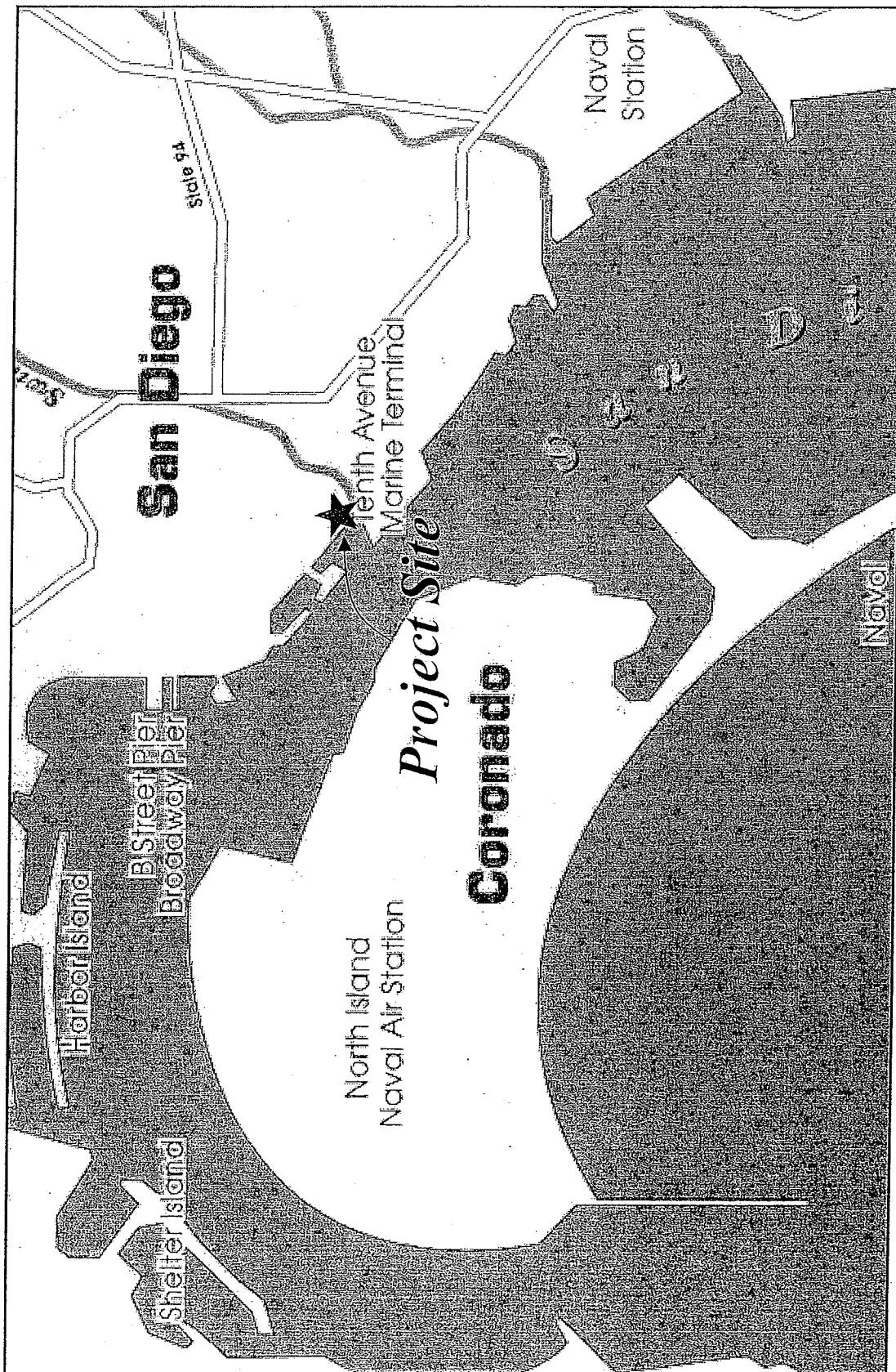
Exhibit A  
to the Coastal Development Permit

*November 2004*

001251

Draft

# Hilton Hotel Location



# Draft

## Project Elements

- Located directly across from the San Diego Convention Center at the intersection of Harbor Drive and Eighth Avenue
- 1,190-room, 32-story, 385-foot high Hotel tower, including retail shops, restaurants, and meeting and ballroom space
- Recreation facilities for Hotel guests, including health club and outdoor swimming pool;
- Direct access from the Hotel to the new public park/plaza;
- A new 4.3-acre public park/plaza and promenade along the waterfront, including landscape, hardscape, lighting, fountains, public restroom facilities;
- Public art;
- A new water taxi dock to serve Hotel guests and the general public; and,
- Street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel

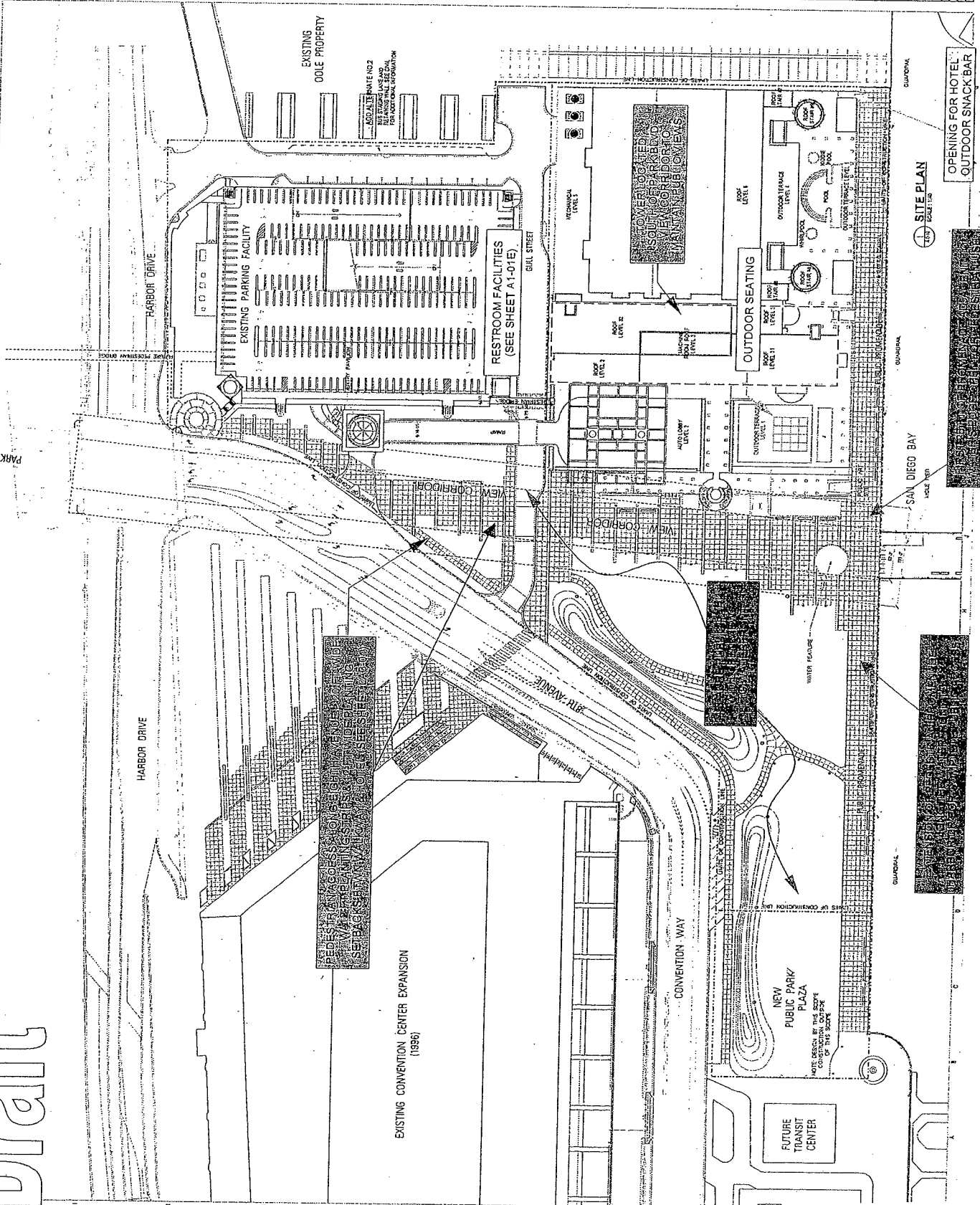
Draft

REVISIONS AND SHEET DATA	
NO.	DATE
1	10/1/88
2	10/1/88
3	10/1/88
4	10/1/88
5	10/1/88
6	10/1/88
7	10/1/88
8	10/1/88
9	10/1/88
10	10/1/88
11	10/1/88
12	10/1/88
13	10/1/88
14	10/1/88
15	10/1/88
16	10/1/88
17	10/1/88
18	10/1/88
19	10/1/88
20	10/1/88
21	10/1/88
22	10/1/88
23	10/1/88
24	10/1/88
25	10/1/88
26	10/1/88
27	10/1/88
28	10/1/88
29	10/1/88
30	10/1/88
31	10/1/88
32	10/1/88
33	10/1/88
34	10/1/88
35	10/1/88
36	10/1/88
37	10/1/88
38	10/1/88
39	10/1/88
40	10/1/88
41	10/1/88
42	10/1/88
43	10/1/88
44	10/1/88
45	10/1/88
46	10/1/88
47	10/1/88
48	10/1/88
49	10/1/88
50	10/1/88
51	10/1/88
52	10/1/88
53	10/1/88
54	10/1/88
55	10/1/88
56	10/1/88
57	10/1/88
58	10/1/88
59	10/1/88
60	10/1/88
61	10/1/88
62	10/1/88
63	10/1/88
64	10/1/88
65	10/1/88
66	10/1/88
67	10/1/88
68	10/1/88
69	10/1/88
70	10/1/88
71	10/1/88
72	10/1/88
73	10/1/88
74	10/1/88
75	10/1/88
76	10/1/88
77	10/1/88
78	10/1/88
79	10/1/88
80	10/1/88
81	10/1/88
82	10/1/88
83	10/1/88
84	10/1/88
85	10/1/88
86	10/1/88
87	10/1/88
88	10/1/88
89	10/1/88
90	10/1/88
91	10/1/88
92	10/1/88
93	10/1/88
94	10/1/88
95	10/1/88
96	10/1/88
97	10/1/88
98	10/1/88
99	10/1/88
100	10/1/88

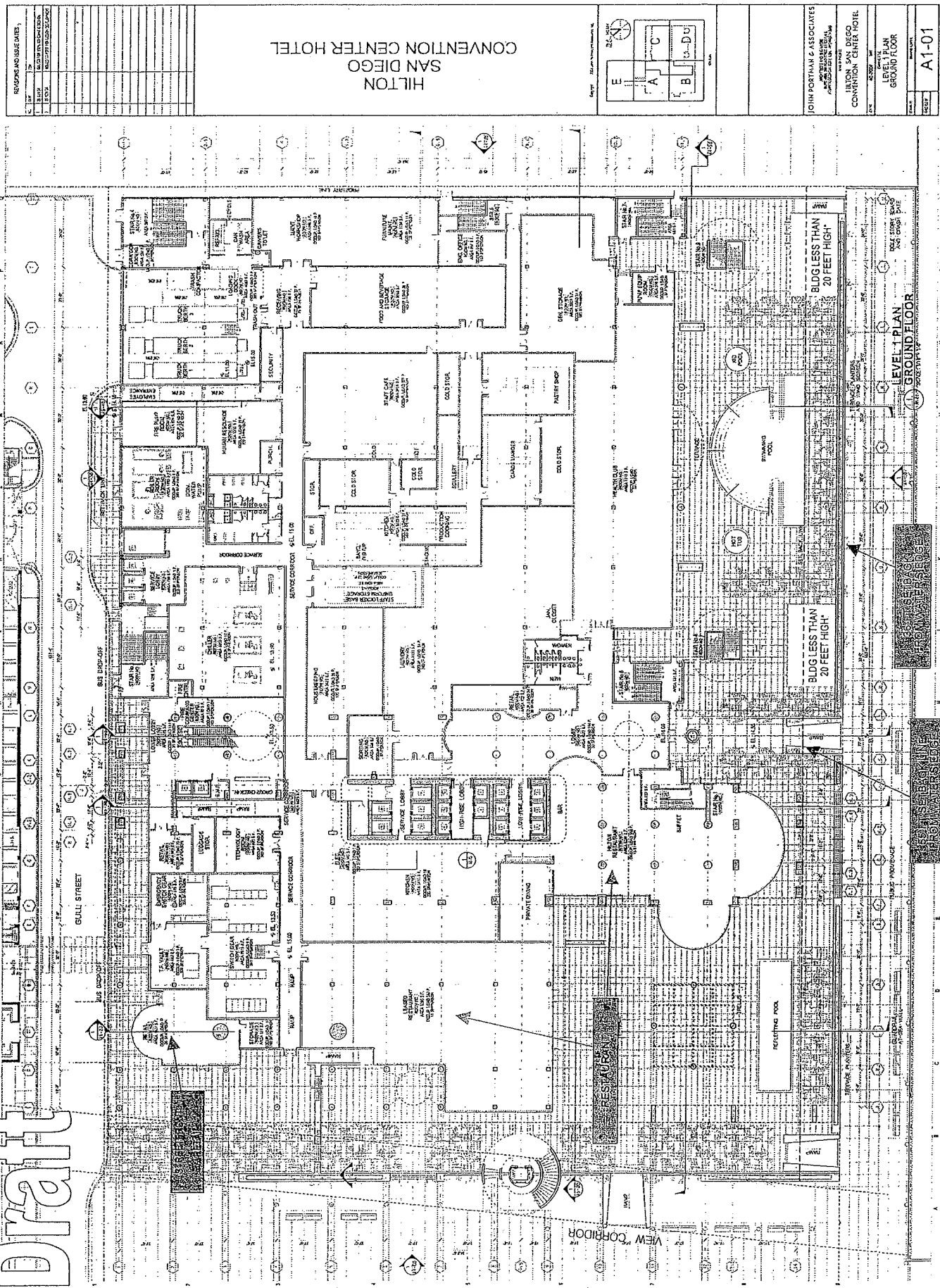
HILTON  
SAN DIEGO  
CONVENTION CENTER HOTEL

JOHN PORTMAN & ASSOCIATES  
ARCHITECTURAL  
FIRM  
SAN DIEGO, CALIFORNIA  
1000 MARINER DRIVE  
SAN DIEGO, CALIFORNIA 92108  
TEL: (619) 594-1000  
FAX: (619) 594-1001

CONVENTION CENTER HOTEL  
ARCHITECTURAL  
SITE PLAN  
A0-10



Draft



001255

\* REFER TO SHEET A4-10



October 16, 2006

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

RECEIVED  
OCT 23 2006

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**NOTICE OF BOARD ACTION  
on a Coastal Development Permit for**

Project: Shelter Pointe Hotel Expansion Project  
1551 Shelter Island Drive, San Diego, California

**PROJECT LOCATION**

The Shelter Pointe Hotel Expansion project is located at 1551 Shelter Island Drive in Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan map Figure 4 (Page 52 of the PMP). The project site is located on the southwestern tip of Shelter Island and is adjacent to the Kona Kai Marina to the north, Shelter Island Drive to the south, the Harbor Police Station to the west and the Island Palms Hotel leasehold to the east. The project location is shown in the attached Figures 1 and 2.

**PROJECT DESCRIPTION**

The proposed project area is situated in the city of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Atlas-Kona Kai, LLC (referred to herein as "Permittee") proposes to redevelop the existing Shelter Pointe Hotel leasehold with the following: (1) relocation and renovation of an existing restaurant, (2) expansion and upgrades of conference meeting space, (3) construction of a new pool, (4) construction of two new guest wings, (5) construction of a new parking garage with attached housekeeping and marina facilities, and (6) construction and enhancement of new promenade (Figure 3). The project area is approximately 9.85 acres. The proposed construction would occur over a period of about 12 months. The upgrade and renovation of the existing hotel will be in the second phase.

**1. Restaurant/Conference Meeting Space**

The interior ground floor footprint of the current hotel facility would be redeveloped and upgraded, including an 18,733 square foot expansion to accommodate a new hotel lobby and restaurant location. The hotel restaurant, AJ's Waterside Grille, would be relocated to the new location. The new restaurant location would accommodate 120 guest seats. The existing restaurant space would be converted into a banquet room, adding approximately 4,000 square feet of meeting space.

After room layout reorganization and renovations to existing rooms, the hotel would have an additional 8,000 square feet of conference space for a total of 21,500 square feet of meeting space, including approximately eight rooms larger than 1,000 square feet.

## 2. Pool/Guest Wings

The current hotel building layout includes five separate buildings covering a total of 62,937 square feet. Four of these buildings are smaller, detached complexes, collectively covering approximately 10,554 square feet. The large primary structure is approximately 52,383 square feet. The footprints of these structures would not be affected by the proposed project.

A new swimming pool is proposed to be constructed east of the existing pool located south of the main hotel building and north of the detached guest room buildings.

Two new three-story "guest wings" are proposed to be built to the north of the existing hotel on the western portion of the existing surface parking lot north of the existing hotel. The maximum height of the new guest wings would be 41 feet above mean lower low water (MLLW), or 26 feet above grade. Together, the total number of new rooms in these guest wings would be 158, bringing the post-project facility guest room total to 287. The southeast guest wing would be built on a footprint of approximately 14,834 and the northeast guest wing would be built on a footprint of approximately 15,719 square feet, for a total of 30,553 square feet. The post-expansion hotel coverage is expected to have a footprint of approximately 112,223 square feet.

The guest wings would connect to the northern portion of the lobby and to the southeast corner of the proposed parking structure. A 45-foot view corridor and public access point would separate the two guest wings, and another 45-foot view corridor and public access point would separate the eastern most guest wing and the parking structure. Architectural features of the guest wing would be designed to be consistent with elements of the existing hotel.

## 3. Parking Structure/Parking Lots

The proposed project would not affect the 130 existing parking spaces in the south surface lot currently serving the hotel's detached south complexes and a portion of the primary structure. After encroachment from construction of the guest wings, and re-striping for maximum efficiency, parking provided by the north surface lot would be reduced from 380 to 184 spaces. To fulfill parking obligations, a new parking structure at the northern end of the project site would be constructed, containing 230 spaces, which would provide 34 additional spaces to the property. The height of the parking structure would be 39 feet above MLLW, or 25 feet above grade. The structure would include a subsurface basement level and three above-grade levels on a footprint of approximately 21,717 square feet.

The project also proposes to demolish the existing 3,142-square-foot marina building and 518-square-foot associated structure. The marina building would be rebuilt as an approximately 2,681 square foot attachment to the parking structure. Additional housekeeping facilities, totaling approximately 2,614 square feet, would also be constructed as part of the parking structure. The proposed project would increase the footprint of the demolished structures by 1,635 square feet.

## 4. Landscaping & Enhanced Promenade

Incorporation of existing hotel architectural styling (e.g. cupolas and gables not to exceed 41 feet above MLLW) and enhanced landscaping are proposed to add visual appeal to the finished project. Ornamental non-invasive landscaping, including palm trees, flowering trees, and tropical flowering plants, would be placed around the perimeter of the parking structure and the new guest wings consistent with existing vegetation. Figure 4 depicts where vegetation would be planted. Also, dilapidated areas of the project site would be replaced with



upgraded structures and amenities.

The promenade adjacent to the project area would be paved with decorative patterns, widened to at least ten feet in width, and enhanced with additional landscaping, signage, bench seating, and public art (see Figure 2 and Attachment B - Shelter Pointe Hotel Expansion Pedestrian Public Access Program). Two 45-foot corridors between the new guest wings and between the eastern guest wing and the parking garage will provide view and public access to the Shelter Island Drive and San Diego Bay.

Portions of the Hotel Design Development Plans, which highlight the proposed project's conformance with the certified Port Master Plan, are included as Attachment C of the Notice of Board Action. A full copy of the Design Development Plans may be accessed by contacting the District's Land Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

Pursuant to CEQA Guidelines Section 21604.5, the District evaluated the proposed project in the Shelter Pointe Hotel Expansion Mitigated Negative Declaration (MND). The Final MND found that the overall project with the incorporation of a Mitigation Measures and Monitoring Program will have no substantially adverse effects to earth, water, air quality, biological resources, hazards, and noise, nor would the project otherwise have potentially significant adverse impacts to land use, population and housing, geology, transportation and circulation, energy and mineral resources, public services, utilities and service systems, aesthetics, cultural resources, or recreation. Mitigation Monitoring and Reporting Program requirements will be followed pursuant to the mitigation measures outlined in the Final MND.

The Final MND for the Shelter Pointe Hotel Expansion, identified as UPD #83356-MND-683 and SCH #2006071037, was certified by the Board on October 10, 2006, per Resolution 2006-165. The Final MND has been filed with the Office of the District Clerk as Document No. 51132. No further environmental review is required.

#### **CONSISTENCY WITH CERTIFIED PORT MASTER PLAN & CALIFORNIA COASTAL ACT**

The project site is located in the Bay Corridor Planning Subarea of Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of PMP). The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation. The Commercial Recreation category includes hotels, restaurants, convention center, recreational vehicle parks, specialty shopping, pleasure craft marinas, and sport fishing. The proposed project includes expanding hotel services, banquet room and meeting space, restaurant services, parking, public art, promenade and landscape improvements, which are allowed under the certified use designation, therefore the proposed project is consistent with the Commercial Recreation designation and the certified Port Master Plan.

The proposed project is not listed on Table 7, which is the Project List for Planning District 1. However, the policy surrounding the Project Lists (Page 49 of the PMP) is that the Project List is meant to be a listing of known proposed projects in sufficient detail to judge the plan's consistency with the Coastal Act. The project list is not intended to be an exclusive listing, rather it describes major projects or smaller projects that are well defined at the time of the writing of the PMP. Some future projects, not listed at this time but consistent with the land use classification grouping indicated in the Plan maps and identified in the Plan narrative, are anticipated to be added, just as some

projects will need to be modified to respond to future changing environmental, financial and other conditions. Therefore while the PMP does not list this specific project on the Project List, it does state in the narrative that the major emphasis of the development program for Planning District 1 is directed toward the renovation of obsolete structures, improvement in the quality of landscape, and enhancement of visual and physical access to the bayfront (Page 50 of the PMP). The proposed project does renovate obsolete structures, improves the quality of landscape, and enhances visual and physical access to the bayfront by enhancing the promenade. Therefore, the project is consistent with the PMP's vision for this District.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The proposed project is consistent with the Chapter 3 policies of the Coastal Act as follows:

#### ARTICLE 2-PUBLIC ACCESS

The proposed project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214. The project is located adjacent to coastal resources. The nearest existing recreational amenities, located south of the site, include a park areas, boat launching ramp and a fishing pier along Shelter Island Drive. These amenities will not be impacted by this proposed project. The proposed project will: enhance access to recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing an enhanced public pedestrian promenade, public access points and signage, pedestrian seating and environmental interpretative signage (see Attachment B - Shelter Pointe Hotel Expansion Pedestrian Public Access Program). Access to the pedestrian promenade may be obstructed during the construction phase of the project, however access will be temporarily redirected around the project site via a detour for users of the walkway. The detour area required would be limited to only that which is necessary to circumvent the area under construction. Further, a detour would only be implemented when needed to ensure safety of pedestrians. The temporary redirection of pedestrian access through the project site is necessary for safety considerations and would be dismantled as soon as the construction site clears. Public parking off Shelter Island Drive will not be affected by the proposed project, and the Final MND found that on-site parking is consistent with the Port's Parking Guidelines.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222, 30222.5, 30223, and 30224. The proposed project will not adversely impact: coastal areas suited for water-oriented recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; recreational boating use of coastal waters. The proposed project will enhance oceanfront land suitable for recreational use by providing an enhanced promenade that can be accessed by both hotel guests and the general public.

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The project does not involve: diking or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands. The proposed project will be subject to the Standard Urban Stormwater Mitigation Plan requirements of the Municipal Stormwater Permit. SUSMP requirements are meant to incorporate Best Management Practices in the design phase of new development projects. The project will also require Storm Water Pollution Prevention Program (SWPPP), and prior to the

issuance of a building permit, a professional dewatering contractor shall prepare a site-specific dewatering system if it is determined one is needed for construction of the parking garage.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. The proposed project: will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses via new pedestrian-oriented hotel and restaurant areas, signage and bench seating to activate the promenade; will enhance scenic and visual qualities of coastal areas by respecting the Shelter Island Development Guidelines (pg. 57 of the certified PMP) for low-profile building silhouettes that maintain an inviting pedestrian scale. As defined in the PMP, "low profile" means the height of all buildings in the proposed project is limited to 41 feet above mean lower low water (MLLW) (approximately 26 feet above ground level). The maximum height of the new guest wings would be 41 feet above MLLW, or 26 feet above grade. Public views and access to the Yacht Basin from Shelter Island Drive will be protected by two 45-foot public access points between the new guest wings and the between the eastern guest wing and parking garage (see attached Pedestrian Public Access Program). These points will be clearly designated with public coastal access signage. The new promenade along the water's edge will be a minimum of 10 feet to allow pedestrian passing to occur without obstruction.

The proposed project is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not increase energy consumption and vehicle miles traveled. The proposed project is not a special community or neighborhood, which because of their unique characteristics, are popular visitor destination points for recreational uses; public works facility; nor associated with a sewage treatment plant. Therefore the proposed project is consistent with the Coastal Act.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### **BOARD ACTION**

By Resolution adopted on November 30, 2004, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- [ ] This development has been approved as submitted.
- [X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. There were not any speakers present at the public hearing on October 10, 2006. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved the proposed project at the October 10, 2006 hearing.

BRUCE B. HOLLINGSWORTH  
President/CEO

By: C.D. Magnus  
C.D. Magnus  
Assistant Redevelopment Planner,  
Land Use Planning

Enclosure(s): Figure 1 – Project Location in Vicinity of Big Bay  
Figure 2 – Project Location Map  
Figure 3 -- Drawings of Newly Enhanced Promenade  
Attachment A: Draft Coastal Development Permit Conditions  
Attachment B: Shelter Pointe Hotel Expansion Pedestrian Public Access Program  
Attachment C: Hotel Development Plans

**ATTACHMENT A**  
**COASTAL DEVELOPMENT PERMIT**

**Applicant:** Willis E. "Bill" Short II  
Atlas-Kona Kai, LLC  
500 Hotel Circle North  
San Diego, CA 92108

**Project:** Shelter Pointe Hotel Expansion Project

**Location:** 1551 Shelter Island Drive, San Diego, California

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a ☐ Emergency ☐ Non-appealable ☒ Appealable Coastal Development Permit.

**Date of Board Action:** October 10, 2006

**Board of Port Commissioners Resolution Number:** 2006-165

**Date of Permit:** October 24, 2006

**Application Number:** 2006 07-42-144

**Permit Number:** CDP-2006-07

The proposed project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

**DEVELOPMENT**

The proposed project area is situated in the City of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Atlas-Kona Kai, LLC (referred to herein as "Permittee") proposes to redevelop the existing Shelter Pointe Hotel leasehold with the following: (1) relocation and renovation of an existing restaurant, (2) expansion and upgrades of conference meeting space, (3) construction of a new pool, (4) construction of two new guest wings, (5) construction of a new parking garage with attached housekeeping and marina facilities, and (6) construction and enhancement of new promenade

(Figures 5). The project area is approximately 9.85 acres. The proposed construction would occur over a period of about 12 months. The renovation of the existing hotel is not included in the original 12 months.

1. Restaurant/Conference Meeting Space

The interior ground floor footprint of the current hotel facility would be redeveloped and upgraded, including an 18,733 square foot expansion to accommodate a new hotel lobby and restaurant location. The hotel restaurant, AJ's Waterside Grille, would be relocated to the new location. The new restaurant location would accommodate 120 guest seats. The existing restaurant space would be converted into a banquet room, adding approximately 4,000 square feet of meeting space.

After room layout reorganization and renovations to existing rooms, the hotel would have an additional 8,000 square feet of conference space for a total of 21,500 square feet of meeting space, including approximately eight rooms larger than 1,000 square feet.

2. Pool/Guest Wings

The current hotel building layout includes five separate buildings covering a total of 62,937 square feet. Four of these buildings are smaller, detached complexes, collectively covering approximately 10,554 square feet. The large primary structure is approximately 52,383 square feet. The footprints of these structures would not be affected by the proposed project.

A new swimming pool is proposed to be constructed east of the existing pool located south of the main hotel building and north of the detached guest room buildings.

Two new three-story "guest wings" are proposed to be built to the north of the existing hotel on the western portion of the existing surface parking lot north of the existing hotel. The maximum height of the new guest wings would be 41 feet above mean lower low water (MLLW), or 26 feet above grade. Together, the total number of new rooms in these guest wings would be 158, bringing the post-project facility guest room total to 287. The southeast guest wing would be built on a footprint of approximately 14,834 and the northeast guest wing would be built on a footprint of approximately 15,719 square feet, for a total of 30,553 square feet. The post-expansion hotel coverage is expected to have a footprint of approximately 112,223 square feet.

The guest wings would connect to the northern portion of the lobby and to the southeast corner of the proposed parking structure. A 45-foot view corridor and public access point would separate the two guest wings, and another 45-foot view corridor and public access point would separate the eastern most guest wing and the parking structure. Architectural features of the guest wing would be designed to be consistent with elements of the existing hotel.

3. Parking Structure/Parking Lots

The proposed project would not affect the 130 existing parking spaces in the south surface lot currently serving the hotel's detached south complexes and a portion of the primary structure. After encroachment from construction of the guest wings, and re-striping for maximum efficiency, parking provided by the north surface lot would be reduced from 380 to 184 spaces. To fulfill parking obligations, a new parking structure at

the northern end of the project site would be constructed, containing 230 spaces, which would provide 34 additional spaces to the property. The height of the parking structure would be 39 feet above MLLW, or 25 feet above grade. The structure would include a subsurface basement level and three above-grade levels on a footprint of approximately 21,717 square feet.

The project also proposes to demolish the existing 3,142-square-foot marina building and 518-square-foot associated structure. The marina building would be rebuilt as an approximately 2,681 square foot attachment to the parking structure. Additional housekeeping facilities, totaling approximately 2,614 square feet, would also be constructed as part of the parking structure. The proposed project would increase the footprint of the demolished structures by 1,635 square feet.

4. Landscaping & Enhanced Promenade

Incorporation of existing hotel architectural styling (e.g. cupolas and gables not to exceed 41 feet above MLLW) and enhanced landscaping are proposed to add visual appeal to the finished project. Ornamental non-invasive landscaping, including palm trees, flowering trees, and tropical flowering plants, would be placed around the perimeter of the parking structure and the new guest wings consistent with existing vegetation. Figure 4 depicts where vegetation would be planted. Also, dilapidated areas of the project site would be replaced with upgraded structures and amenities.

The promenade adjacent to the project area would be paved with decorative patterns, widened to at least ten feet in width, and enhanced with additional landscaping, signage, bench seating, and public art (see Figure 2 and Attachment B - Shelter Pointe Hotel Expansion Pedestrian Public Access Program). Two 45-foot corridors between the new guest wings and between the eastern guest wing and the parking garage will provide view and public access to the Shelter Island Drive and San Diego Bay.

#### **STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.

8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.
10. If Standard Urban Stormwater Mitigation Planning (SUSMP) requirements apply, project proponent must submit an Urban Stormwater Mitigation Plan (USMP) to the Port describing how the project will meet SUSMP requirements, prior to final construction plan approval.

#### **SHORT TERM CONSTRUCTION MEASURES**

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm as much as practical; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Diesel equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.



13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. This project is subject to the Regional Water Quality Control Order No. 2001-01, (NPDES Permit No. CAS0108758), Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Municipal Storm Water Permit), as adopted, amended, and/or modified. This permit applies to construction activities that result in the disturbance of land area including clearing, grading, excavation, removal and replacement of soil or surface pavement, an reconstruction of existing facilities. The construction activity herein requires development and implementation of Port Storm Water Pollution Prevention Plan (Port SWPPP). The Port SWPPP must describe the implementation and maintenance of the storm water pollution prevention Best Management Practices (BMPs) used to control discharges to the storm water conveyance system from construction activities. Construction activities include temporary and/or related activities, such as staging areas, equipment and material storage sites, waste management areas, temporary plant sites, and borrow pit operations, which may be outside the construction limits. The tenant must prepare and submit a Port SWPPP for review and approval by the District prior to work. The Port SWPPP template is available on the Port's website at [http://www.portofsandiego.org/sandiego\\_environment](http://www.portofsandiego.org/sandiego_environment) (NOTE: This Project is NOT subject to State Water Resources Control Board Order No. 99-08-DWQ, (NPDES General Permit No. CAS000002) Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Storm Water Permit)).

#### **SPECIAL PROVISIONS**

1. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements (attached as Exhibit C) as described in the "Shelter Pointe Hotel Expansion Project" Final Mitigated Negative Declaration (SCH #2006071037; UPD #83356-MND-683; Clerk Document No. 51132), dated October 2006, and adopted by Resolution No. 2006-163.
2. Permittee shall install standard San Diego "Coastal (Bay) Public Access" signs in clear view at the pass-thru openings for public access to and from the project site.
3. Permittee shall install Environmental Interpretative Signage along the promenade to educate the public about the environmental resources surrounding the area.
4. The new promenade within the limits of the project site shall be a minimum of ten feet in width in all locations and shall be clearly delineated for public use. The promenade shall include decorative patterns, which will be enhanced with landscaping, public art, seating and signage. The promenade shall connect to the promenade of the adjacent parcel to the west

and will wrap back around to the public right-of-way to the east creating a continuous pedestrian experience.

5. Permittee shall ensure that all public access points and the promenade area shall remain unobstructed. At no time shall public access to the waterfront promenade be fenced, screened, or blocked off by any structure.
6. Permittee shall protect and keep free of obstructions the 45-foot view corridors and public access separating the two new guest wings and between the northern guest wing and the parking garage to allow view and public access to the Shelter Island Drive and San Diego Bay.
7. Public access improvements (i.e. promenade, public art, signage, seating, etc.) shall be completed & open to the public at the time of project completion.
8. Permittee shall only enhance the project site with vegetation that is non-invasive to the project area.
9. Permittee shall leave the promenade open during construction but lateral access may be redirected as required. Access to the pedestrian path may be temporarily redirected around the project site via a temporary detour for users of the walkway during project construction. The detour area required would be limited to only that which is necessary to circumvent the area under construction and must be clearly delineated with signs. Further, a detour shall only be implemented when needed to ensure safety of pedestrians. Any detour would redirect pedestrians back to the promenade once the construction site is cleared.
10. The height of all buildings in the proposed project is limited to 41 feet above mean lower low water (approximately 26 feet above ground level).

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District at (619) 686-6283.

BRUCE B. HOLLINGSWORTH  
Executive Director

By: \_\_\_\_\_  
RALPH T. HICKS  
Director, Land Use Planning

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee  
C. Willis E. Short II, Atlas Kona-Kai, LLC

\_\_\_\_\_  
Date

001268

ATTACHMENT B

# **SHELTER POINTE HOTEL EXPANSION PUBLIC ACCESS PROGRAM**

SAN DIEGO UNIFIED PORT DISTRICT  
LAND USE AND PLANNING DEPARTMENT  
3165 PACIFIC HIGHWAY  
SAN DIEGO, CALIFORNIA 92101-1128  
(619) 686-6583

October 16, 2006

001269

**Contents:**

- 1. Shelter Pointe Hotel Expansion Public Access Program**
- 2. Shelter Pointe Hotel Expansion Public Access Map**

**1. Shelter Pointe Hotel Expansion Public Access Program**

**Project Location**

The Shelter Pointe Hotel Expansion project is located at 1551 Shelter Island Drive in Subarea 13 of Planning District 1 in the certified Port Master Plan (PMP). The Applicant and Port Tenant for this project is Atlas-Kona Kai, LLC. The project site is located on the southwestern tip of Shelter Island and is adjacent to the Kona Kai Marina to the north, the Harbor Police Station to the west, Shelter Island Drive to the south, and the Island Palms Hotel Site to the east.

**Public Access Program Components**

The purpose of the Shelter Pointe Hotel Expansion Public Access Program is to define and implement the proposed pedestrian-based system by providing extensive public access through and around the project location. It complies with the policies of the PMP by providing physical access points along and to the water and by enhancing the existing pedestrian promenade.

**Enhanced Promenade**

The existing public pedestrian promenade that connects the project site with the adjacent properties to the east and the west currently consists of 750 linear feet of disconnected pathway that varies between eight and fourteen feet in width.

The new project proposes to leave the 470 linear feet of the promenade adjacent to the existing hotel building intact as is today. The remaining 280 linear feet of the existing promenade located adjacent to the existing hotel building will be enhanced by decorative pavement, non-invasive landscaping, environmental signage, bench seating and public art. This area will then connect to an additional 780 linear feet of new promenade that will be constructed to match the newly enhanced promenade. This new promenade area will border the newly constructed meeting space, guest wings and parking garage that are proposed.

All newly enhanced promenade areas will be a minimum of ten-feet wide, ensuring that these promenade areas will easily accommodate two-way pedestrian passing. The new promenade areas will directly connect to the existing promenade walkway to the west, which wraps around the backside of the existing hotel building. It will also directly connect to the newly enhanced promenade that is being constructed on the Island Palms Hotel property adjacent to the property to the east. This will make for a continuous pedestrian experience where the public can enjoy access to the water all along the Yacht Basin and through to San Diego Bay.

**Public Access Points & Signage**

A coastal public access signage program will be incorporated along the north side of Shelter Island Drive to allow pedestrians to know where access points are available from the street. Access points will be clearly designated with an appropriately sized sign, which will be provided and maintained by the Applicant. The design of these signs will coordinate with the overall motif of the area and will clearly indicate public coastal access is available for the general public at the designated points.

Access for the general public will be provided as shown on the attached Public Access Map. There will be two public access points where the new buildings are being constructed: 1) a 45-foot corridor between the two new guest wings, and 2) a 45-foot corridor between the eastern guest wing and the parking garage. These accessways will create visual and physical linkages from Shelter Island Drive through the project site to the promenade and Yacht Basin beyond. The access point that currently is to the west of the existing hotel building will not be reduced in size or functional capacity by the new project.

#### **Pedestrian Seating**

The proposed project shall provide twelve bench seats along the promenade as shown on the attached exhibit. The seating will be designed and placed so as to provide a view of the Shelter Island Yacht Basin and the vessels berthed within the Kona Kai Marina. The seating will be designed to be as maintenance free as possible with any necessary maintenance provided by the project Applicant. The design shall coordinate with the surrounding motif and will be clearly designated for public use.

#### **Environmental Interpretative Signage**

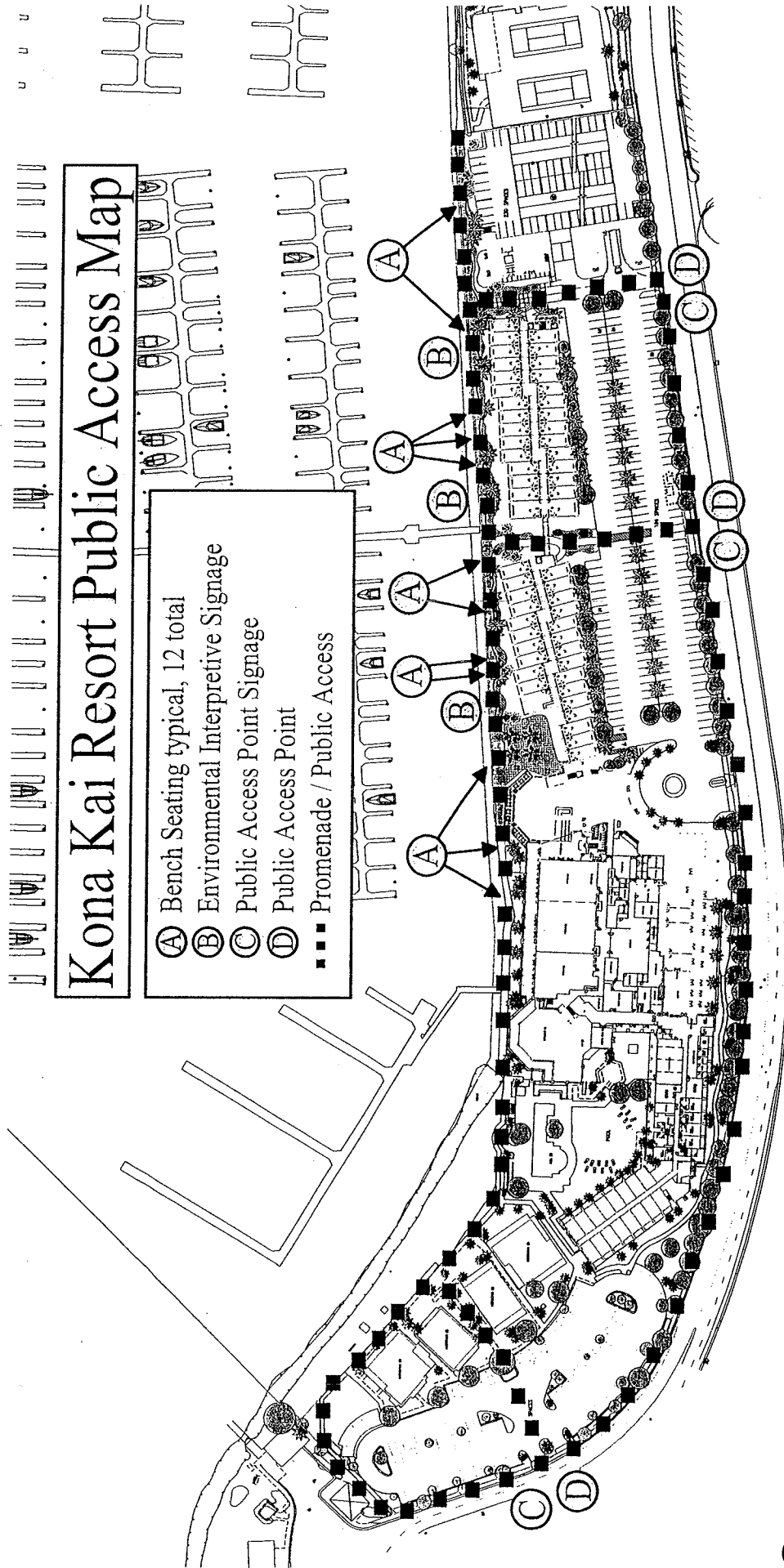
Three environmental interpretative signs will be provided along the promenade as indicated on the attached exhibit. This signage will be designed and maintained by the Applicant. The design will coordinate with the elements of the surrounding area, and attention will be paid to the marine wildlife in the area with special emphasis on the intertidal zone. Once the Public Art Committee reviews and approves the Applicant's proposal, works of public art will also augment the environmental interpretative signage program.

## **2. Shelter Pointe Hotel Expansion Public Access Map**

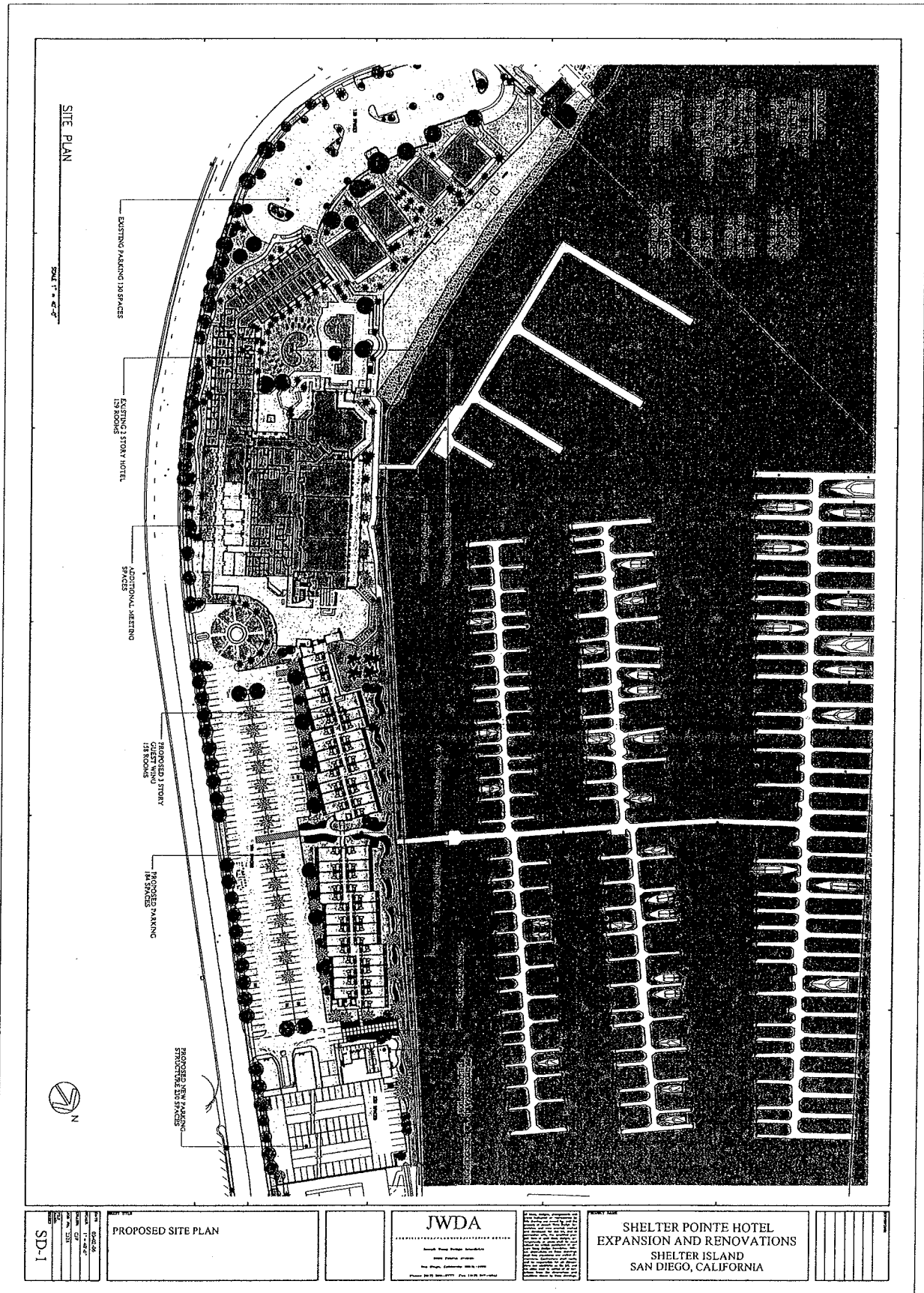
(See attached)

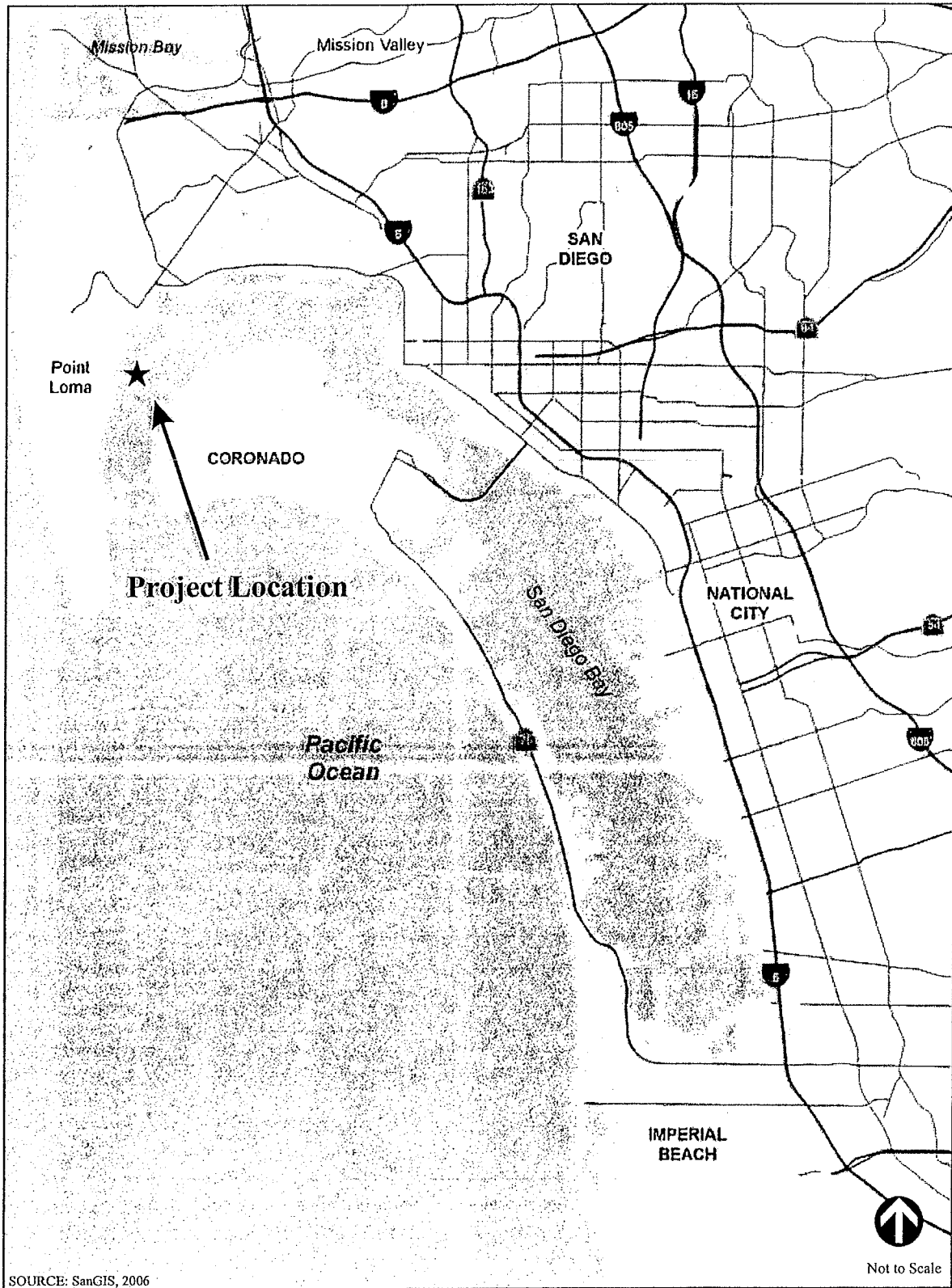
# Kona Kai Resort Public Access Map

- Ⓐ Bench Seating typical, 12 total
- Ⓑ Environmental Interpretive Signage
- Ⓒ Public Access Point Signage
- Ⓓ Public Access Point
- Promenade / Public Access



# Attachment C



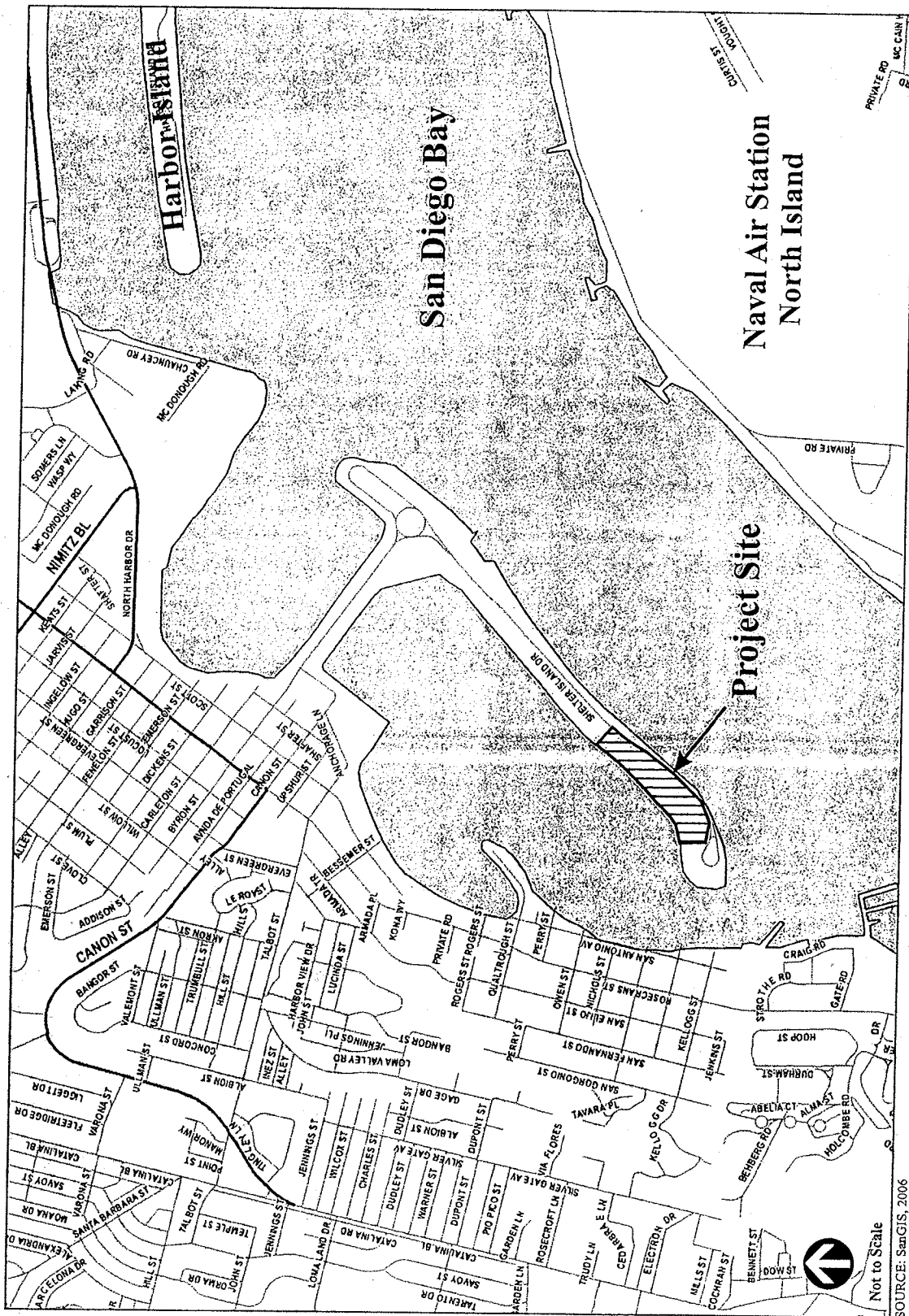


VICINITY MAP

FIGURE 1

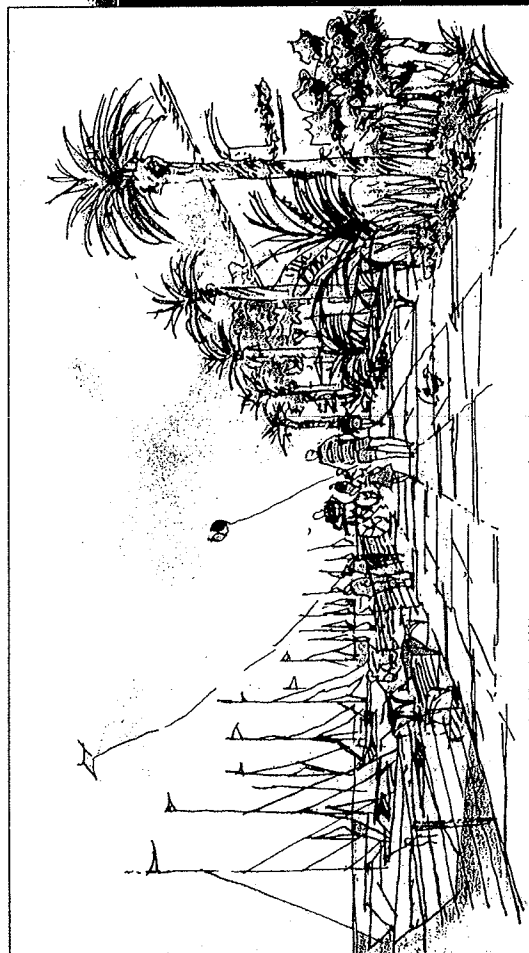
001274





LOCATION MAP

FIGURE 2



# FIGURE 3

October 16, 2006

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

**NOTICE OF BOARD ACTION  
on a Coastal Development Permit for**

Project: Island Palms West Hotel Project  
1901 Shelter Island Drive, San Diego, California

**PROJECT LOCATION**

The Island Palms West Hotel project is located at 1901 Shelter Island Drive in Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of the PMP). The project site is surrounded by the Kona Kai Marina to the north, which includes 518 vessel slips constructed to the pierhead line, the Best Western Island Palms Hotel Building to the east, the Shelter Pointe Hotel to the west, Shelter Island Drive and a public park and pedestrian walkway to the south (see Figure 1 for Project location in the vicinity of the Big Bay).

**PROJECT DESCRIPTION**

The proposed project area is situated in the City of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Bartell Hotels (referred to herein as "Permittee") proposes to redevelop the existing Island Palms West Hotel leasehold with the following: (1) demolition of the existing two-story Voyager Restaurant, (2) construction of a new three-level (41-feet above the mean lower low water (MLLW)), 25,600 square foot hotel building, (3) construction of a restroom accessible from the existing pool area, (4) conversion of three existing two-level townhouse units in the Island Palms building into six standard guestrooms, and (5) conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. The project area is approximately 3.42 acres.

**001277**

**1. Existing Island Palms Building**

The existing Island Palms guestroom building currently contains 78 guestrooms: 73 standard guestrooms and five two-level townhouse units. The project proposes the following changes to this structure:

**RECEIVED**

OCT 23 2006

- Conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. A new elevator system will also be installed near the lobby area;
- Conversion of three existing standard guestrooms into administrative offices, restrooms, and other hotel support facilities;
- Conversion of three existing two-level townhouse units into six standard guestrooms;
- Conversion of two existing two-level townhouse units into two standard guestrooms and a 1,330 square foot dining area;
- Conversion of an existing standard guestroom into a new exercise room;
- Construction of a restroom accessible from the existing pool area;

## 2. New Hotel Building

The project proposes demolition of the existing two-story Voyager Restaurant and construction of a new three-level, 25,600 square foot hotel building. The new hotel will contain 48 standard guestrooms and 2,000 square feet of marina services, including an office, storage, laundry and bathroom facilities. Marina trash and recycling will be located within the hotel service yard/loading area located between the hotel and garage.

The finished grade in front of the hotel will be lowered by approximately four feet to allow easy access into the existing parking garage and to keep the roof ridge line below the height limit of 41 feet above Mean lower low water (MLLW). The public pedestrian walkway will remain at the current level of approximately 10.5 feet above MLLW. The ground floor level will be 11 feet above MLLW. The Project (the remodeled existing building plus the new hotel) will result in a total of 125 guestrooms.

## 3. Parking Structure/Parking Lots

The project does not propose any subterranean parking, and the existing 48 parking space garage will not be demolished. The existing garage will be reconfigured to eliminate the ramp to the west and to add accessible spaces. This will result in a net change of zero parking spaces within the structure. A total of 27 new surface parking spaces will be added to the existing 48 surface spaces. The net result is a total of 119 on-site parking spaces.

## 4. Public Access and View Corridors

The existing segment of pedestrian public walkway between the Kona Kai Marina and the existing Voyager Restaurant currently consists of a 5-foot wide concrete slab. The new project proposes to demolish the Voyager Restaurant and build a new hotel building that will be placed such that the area between the Kona Kai Marina and the new building will be approximately 18-feet wide. This area will be enhanced with a 190 feet of 8-foot wide meandering pedestrian walkway and 10 feet of non-invasive landscaped areas (see Figure 2 for drawings of the enhanced public pedestrian walkway area). The enhanced public walkway will also include public bench seating, public access signage, and may also include public art (dependent on what the Public Art Committee decides).

The proposed project includes the removal of 12 trees on the site, including king trees and Mexican fan palms. However, the removal of these trees is temporary as they will be replanted or replaced in kind upon completion of construction. All landscaping added, replanted or replaced will be non-invasive to the existing vegetation in the project area.

The segment of existing public pedestrian walkway between the Kona Kai Marina and the existing hotel building is approximately 5-feet wide and 440-feet long and will remain as is. Also, the segment of walkway between the Kona Kai Marina and the existing parking garage is approximately 5-feet wide and 150-feet long and will remain as is.

There are three public access points that provide view corridors from Shelter Island Drive to the Kona Kai Marina and the Yacht Basin beyond:

- Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide
- Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide
- Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide

Public access from Shelter Island Drive to the public pedestrian walkway will be provided at each of these three locations and will be clearly delineated by an appropriate Coastal Bay Public Access Signage Program (See Attachment B – Island Palms West Hotel Pedestrian Public Access Program).

Portions of the Hotel Design Development Plans, which highlight the proposed project's conformance with the certified Port Master Plan, are included as Attachment C of the Notice of Board Action. A full copy of the Design Development Plans may be accessed by contacting the District's Land Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

Pursuant to CEQA Guidelines Section 21604.5, the District evaluated the proposed project in the Island Palms West Hotel Project Mitigated Negative Declaration (MND). The Final MND found that the overall project with the incorporation of the Mitigation Monitoring and Reporting Program would have no significant adverse impacts to air quality, hazards and hazardous materials, hydrology/water quality, and noise, nor would the project otherwise have potentially significant adverse impacts to aesthetics, agricultural resources, biological resources, cultural resources, geology/soils, land use and planning, mineral resources, population and housing, or utilities/service systems. Mitigation Monitoring and Reporting Program requirements will be followed pursuant to the mitigation measures outlined in the Final MND.

The Final MND for the Island Palms West Hotel Project, identified as UPD #83356-MND-682 and SCH #2006061166, was certified by the Board on October 10, 2006, per Resolution 2006-166. The Final MND has been filed with the Office of the District Clerk as Document No. 51133. No further environmental review is required.

#### **CONSISTENCY WITH CERTIFIED PORT MASTER PLAN & CALIFORNIA COASTAL ACT**

The project site is located in the Bay Corridor Planning Subarea of Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of the PMP). The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation. The Commercial Recreation category includes hotels, restaurants, convention center, recreational vehicle parks, specialty shopping, pleasure craft marinas, and sport fishing. The proposed project includes expanding hotel services and the associated parking, public art, and landscape improvements, which are allowed under the certified use

designation; therefore, the proposed project is consistent with the Commercial Recreation designation and the certified Port Master Plan.

The proposed project is not listed on Table 7, which is the Project List for Planning District 1. However, the policy surrounding the Project Lists (Page 49 of the PMP) is that the Project List is meant to be a listing of known proposed projects in sufficient detail to judge the plan's consistency with the Coastal Act. The project list is not intended to be an exclusive listing, rather it describes major projects or smaller projects that are well defined at the time of the writing of the PMP. Some future projects, not listed at the time of the writing of the PMP, but consistent with the land use classification grouping indicated in the Plan maps and identified in the Plan narrative, were anticipated to be added, just as some projects will need to be modified to respond to future changing environmental, financial and other conditions. Therefore, while the PMP does not list this specific project on the Project List, it does state in the narrative that the major emphasis of the development program for Planning District 1 is directed toward the renovation of obsolete structures, improvement in the quality of landscape, and enhancement of visual and physical access to the bayfront (Page 50 of the PMP). The proposed project does renovate obsolete structures, improves the quality of landscape, and enhances visual and physical access to the bayfront by enhancing the public pedestrian walkway and access points. Therefore, the project is consistent with the PMP's vision for this District.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The proposed project is consistent with the Chapter 3 policies of the Coastal Act as follows:

#### ARTICLE 2-PUBLIC ACCESS

The proposed project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214. The project is located adjacent to coastal resources. The nearest existing recreational amenities, located south of the site, includes a park area, boat launching ramp and a fishing pier along Shelter Island Drive. These amenities will not be impacted by this proposed project. The proposed project will enhance access to recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing a new area of enhanced public pedestrian walkway. This section of the walkway will be at least 8-feet wide and 190-feet long in the new area and will easily accommodate two-way pedestrian passing. The project also has three public access points from Shelter Island Drive to the Yacht Basin that will be clearly designated by a coastal (bay) public access signage program from Shelter Island Drive through to the yacht basin. Pedestrian bench seating will also be provided (see Attachment B – Island Palms West Hotel Project Pedestrian Public Access Program). Access to the pedestrian walkway may be obstructed during the construction phase of the project, however access will be temporarily redirected around the project site via a detour for users of the walkway. The detour area required would be limited to only that which is necessary to circumvent the area under construction. Further, a detour would only be implemented when needed to ensure the safety of pedestrians. The temporary redirection of pedestrian access through the project site is necessary for safety considerations and would be dismantled as soon as the construction site clears. Existing public parking off Shelter Island Drive will not be affected by the proposed project, and the Final MND found on-site parking sufficient for the proposed project.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222, 30222.5, 30223, and 30224. The proposed project will not adversely impact coastal areas suited for water-oriented recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; recreational boating use of coastal waters. The proposed project will enhance oceanfront land suitable for recreational use by providing an enhanced 190-foot pedestrian public walkway area that can be accessed by both hotel guests and the general public. Public access signs will be placed along the walkway to clearly display that the walkway is open to the public.

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The project does not involve diking or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands. The proposed project will be subject to the Standard Urban Stormwater Mitigation Plan requirements of the Municipal Stormwater Permit. SUSMP requirements are meant to incorporate Best Management Practices in the design phase of new development projects. The project will also require Storm Water Pollution Prevention Program (SWPPP) during construction. The project is not anticipated to encounter groundwater during construction; however, if groundwater is encountered, a mitigation measure has been added to the Final MND's Mitigation Monitoring and Reporting Program to ensure that impacts caused by groundwater dewatering remain below a level of significance.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. The proposed project will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses via the new pedestrian-oriented areas with bench seating, signage, and public art to activate the both the existing segments of the pedestrian public walkway and the newly widened and enhanced public walkway area. The project will enhance scenic and visual qualities of coastal areas by respecting the Shelter Island Development Guidelines (pg. 57 of the certified PMP) for low-profile building silhouettes that maintain an inviting pedestrian scale. As defined in the PMP, "low profile" means that the height of all buildings in the proposed project is limited to 41 feet above mean lower low water (MLLW) (approximately 26 feet above ground level) The maximum height of the new guest wings would be 41 feet above mean lower low water (MLLW), or 26 feet above grade.

Public access to the Yacht Basin from Shelter Island Drive will be protected by three public access points on the project site: 1) Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide, 2) Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide, and 3) Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide. Public access from Shelter Island Drive to the public pedestrian walkway is provided at each of these

three locations and will be clearly delineated by a public coastal (bay) access signage program (See Attachment B – Island Palms West Hotel Pedestrian Public Access Program). The new public walkway area along the water's edge will be a minimum of 8 feet to allow two-way pedestrian passing to occur in this area without obstruction. The new walkway shall connect to the existing walkway areas to the east and the west creating a 780-foot continuous pedestrian experience along the project site.

The proposed project is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area nor will require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not increase energy consumption and vehicle miles traveled. The proposed project is not a special community or neighborhood, which because of their unique characteristics, are popular visitor destination points for recreational uses; public works facility; nor associated with a sewage treatment plant, and therefore is consistent with the Coastal Act.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### **BOARD ACTION**

By Resolution adopted on October 10, 2006, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- [ ] This development has been approved as submitted.
- [X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. There were not any speakers present at the public hearing on October 10, 2006. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved



the proposed project at the October 10, 2006 hearing.

BRUCE B. HOLLINGSWORTH  
President/CEO

By: C. D. Magnus  
C.D. Magnus  
Assistant Redevelopment Planner,  
Land Use Planning

Enclosure(s): Attachment A: Draft Coastal Development Permit Conditions  
Attachment B: Island Palms West Pedestrian Public Access Program  
Attachment C: Hotel Development Plans  
Figure 1 – Project Location Map  
Figure 2 -- Drawings of Newly Enhanced Pedestrian Public Walkway

**ATTACHMENT A**  
**COASTAL DEVELOPMENT PERMIT**

**Applicant:** Richard Bartell  
Bartell Hotels  
4875 N. Harbor Drive, 5<sup>th</sup> Floor  
San Diego, CA 92106

**Project:** Island Palms West Hotel Project

**Location:** 1901 Shelter Island Drive, San Diego, California

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a ☐ Emergency ☐ Non-appealable ☒ Appealable Coastal Development Permit.

**Date of Board Action:** October 10, 2006

**Board of Port Commissioners Resolution Number:** 2006-168

**Date of Permit:** October 24, 2006

**Application Number:** 2006 08-42-144

**Permit Number:** CDP-2006-06

The proposed project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

**DEVELOPMENT**

The proposed project area is situated in the city of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Bartell Hotels (referred to herein as "Permittee") proposes to redevelop the existing Island Palms Hotel leasehold with the following: (1) demolition of the existing two-story Voyager Restaurant, (2)

construction of a new three-level (41-feet above the mean lower low water (MLLW)), 25,600 square foot hotel building, (3) construction of a restroom accessible from the existing pool area, (4) conversion of three existing two-level townhouse units in the Island Palms building into six standard guestrooms, and (5) conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. The project area is approximately 3.42 acres.

1. Existing Island Palms Building

The existing Island Palms guestroom building currently contains 78 guestrooms: 73 standard guestrooms and five two-level townhouse units. The project proposes the following changes to this structure:

- Conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. A new elevator system will also be installed near the lobby area;
- Conversion of three existing standard guestrooms into administrative offices, restrooms, and other hotel support facilities;
- Conversion of three existing two-level townhouse units into six standard guestrooms;
- Conversion of two existing two-level townhouse units into two standard guestrooms and a 1,330 square foot dining area;
- Conversion of an existing standard guestroom into a new exercise room;
- Construction of a restroom accessible from the existing pool area;

2. New Hotel Building

The project proposes demolition of the existing two-story Voyager Restaurant and construction of a new three-level, 25,600 square foot hotel building. The new hotel will contain 48 standard guestrooms and 2,000 square feet of marina services, including an office, storage, laundry and bathroom facilities. Marina trash and recycling will be located within the hotel service yard/loading area located between the hotel and garage.

The finished grade in front of the hotel will be lowered by approximately four feet to allow easy access into the existing parking garage and to keep the roof ridge line below the height limit of 41 feet above Mean lower low water (MLLW). The public pedestrian walkway will remain at the current level of approximately 10.5 feet above MLLW. The ground floor level will be 11 feet above MLLW. The Project (the remodeled existing building plus the new hotel) will result in a total of 125 guestrooms.

3. Parking Structure/Parking Lots

The project does not propose any subterranean parking, and the existing 48 parking space garage will not be demolished. The existing garage will be reconfigured to eliminate the ramp to the west and to add accessible spaces. This will result in a net change of zero parking spaces within the structure. A total of 27 new surface parking spaces will be added to the existing 48 surface spaces. The net result is a total of 119 on-site parking spaces.

4. Public Access and View Corridors

The existing segment of pedestrian public walkway between the Kona Kai Marina and the existing Voyager Restaurant currently consists of a 5-foot wide concrete slab. The new project proposes to demolish the Voyager Restaurant and build a new hotel

building that will be placed such that the area between the Kona Kai Marina and the new building will be approximately 18-feet wide. This area will be enhanced with a 190 feet of 8-foot wide meandering pedestrian public walkway and 10 feet of non-invasive landscaped areas (see Figure 2 for drawings of the enhanced public pedestrian walkway area). The enhanced public walkway will also include public bench seating, public access signage, and may also include public art (depending on what the Public Art Committee decides).

The proposed project includes the removal of 12 trees on the site, including king trees and Mexican fan palms. However, the removal of these trees is temporary as they will be replanted or replaced in kind upon completion of construction. All landscaping added, replanted or replaced will be non-invasive to the existing vegetation in the project area.

The segment of existing public pedestrian walkway between the Kona Kai Marina and the existing hotel building is approximately 5-feet wide and 440-feet long and will remain as is. Also, the segment of walkway between the Kona Kai Marina and the existing parking garage is approximately 5-feet wide and 150-feet long and will remain as is.

There are three public access points that provide view corridors from Shelter Island Drive to the Kona Kai Marina and the Yacht Basin beyond:

- a. Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide
- b. Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide
- c. Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide

Public access from Shelter Island Drive to the public pedestrian walkway will be provided at each of these three locations and will be clearly delineated by an appropriate Coastal (Bay) Public Access Signage Program (See Attachment B – Island Palms West Hotel Pedestrian Public Access Program).

#### STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.

7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.
10. If Standard Urban Stormwater Mitigation Planning (SUSMP) requirements apply, project proponent must submit an Urban Stormwater Mitigation Plan (USMP) to the Port describing how the project will meet SUSMP requirements, prior to final construction plan approval.

#### SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm as much as practical; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Diesel equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.

12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. This project is subject to the Regional Water Quality Control Order No. 2001-01, (NPDES Permit No. CAS0108758), Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Municipal Storm Water Permit), as adopted, amended, and/or modified. This permit applies to construction activities that result in the disturbance of land area including clearing, grading, excavation, removal and replacement of soil or surface pavement, an reconstruction of existing facilities. The construction activity herein requires development and implementation of Port Storm Water Pollution Prevention Plan (Port SWPPP). The Port SWPPP must describe the implementation and maintenance of the storm water pollution prevention Best Management Practices (BMPs) used to control discharges to the storm water conveyance system from construction activities. Construction activities include temporary and/or related activities, such as staging areas, equipment and material storage sites, waste management areas, temporary plant sites, and borrow pit operations, which may be outside the construction limits. The tenant must prepare and submit a Port SWPPP for review and approval by the District prior to work. The Port SWPPP template is available on the Port's website at [http://www.portofsandiego.org/sandiego\\_environment](http://www.portofsandiego.org/sandiego_environment) (NOTE: This Project is NOT subject to State Water Resources Control Board Order No. 99-08-DWQ, (NPDES General Permit No. CAS000002) Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Storm Water Permit)).

#### SPECIAL PROVISIONS

1. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements as described in the "Island Palms West Hotel Project" Final Mitigated Negative Declaration (SCH #2006061166; UPD #83356-MND-682; Clerk Document No. 51133), dated October 2006, and adopted by Resolution No. 2006-166.
2. Permittee shall install standard San Diego "Coastal (Bay) Public Access" signs in clear view at the pass-thru openings for public access to and from the project site from Shelter Island Drive and through to the yacht basin.
3. The new pedestrian public walkway area shall be a minimum of eight feet in width, 190-feet long and shall be clearly delineated for public use. The public walkway shall be enhanced with landscaping, bench seating, public access signage and potentially public art (depending on what is approved by the Public Art Committee). The new walkway shall connect to the existing walkway areas to the east and the west creating a 780-foot

continuous pedestrian experience along the project site.

4. Permittee shall ensure that all public access points and the pedestrian public walkway area shall remain unobstructed to allow view and public access to Shelter Island Drive and San Diego Bay. At no time shall public access to the waterfront public walkway be fenced, screened, or blocked off by any structure.
5. Permittee shall leave the pedestrian public walkway open during construction but lateral access may be redirected as required. Access to the walkway may be temporarily redirected around the project site via a temporary detour for users of the walkway during project construction. The detour area required would be limited to only that which is necessary to avoid the area under construction and must be clearly delineated with signs. Further, a detour shall only be implemented when needed to ensure the safety of pedestrians. Any detour would redirect pedestrians back to the designated public walkway once the construction site is cleared.
6. Public access improvements (i.e. new enhanced pedestrian public walkway area, public access signage, bench seating, etc.) shall be completed and open to the public at the time of project completion.
7. Permittee shall only enhance the project site with vegetation that is non-invasive to the existing vegetation in the project area.
8. The height of all buildings in the proposed project is limited to 41 feet above mean lower low water (approximately 26 feet above ground level).

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District at (619) 686-6283.

BRUCE B. HOLLINGSWORTH  
Executive Director

By: \_\_\_\_\_  
RALPH T. HICKS  
Director, Land Use Planning

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee  
**Richard Bartell, Bartell Hotels**

\_\_\_\_\_  
Date

**Attachment B**

**ISLAND PALMS WEST HOTEL  
EXPANSION**

**PEDESTRIAN PUBLIC ACCESS  
PROGRAM**

SAN DIEGO UNIFIED PORT DISTRICT  
LAND USE AND PLANNING DEPARTMENT  
3165 PACIFIC HIGHWAY  
SAN DIEGO, CALIFORNIA 92101-1128  
(619) 686-6583

October 16, 2006

**001290**



**Contents:**

<b>1. Island Palms West Hotel Pedestrian Public Access Program</b>
<b>2. Island Palms West Hotel Pedestrian Public Access Map</b>

**1. Island Palms West Hotel Pedestrian Public Access Program**

**Project Location**

The Island Palms West Hotel Project is located at 1901 Shelter Island Drive in Subarea 13 of Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The Permittee and Port Tenant for this project is Bartell Hotels. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of the PMP). The project site is surrounded by the Kona Kai Marina to the north, which includes 518 vessel slips constructed to the pierhead line, the Best Western Island Palms Hotel Building to the east, the Shelter Pointe Hotel to the west, Shelter Island Drive and a public park and pedestrian walkway to the south (see Figure 1 for Project location in the vicinity of the Big Bay).

**Pedestrian Public Access Program Components**

The purpose of the Island Palms Hotel Public Access Program is to define and implement the proposed pedestrian-based system by providing extensive public access through and around the project location. This Program complies with the policies of the PMP by providing physical access points along and to the water and by enhancing the existing pedestrian public walkway.

*Enhanced Pedestrian Public Walkway*

The existing segment of pedestrian public walkway between the Kona Kai Marina and the existing Voyager Restaurant currently consists of a 5-foot wide concrete slab. The new project proposes to demolish the Voyager Restaurant and build a new hotel building that will be placed such that the area between the Kona Kai Marina and the new building will be approximately 18-foot wide. This area will be enhanced with 190 feet of 8-foot wide meandering pedestrian walkway and 10 feet of non-invasive landscaped areas (see Figure 2 for drawings of the enhanced public pedestrian walkway area). The enhanced public walkway will also include public bench seating, public access signage, and may also include public art (dependent on the decisions of the Public Art Committee).

The new public walkway area will be 8-feet wide to ensure that two-way pedestrian passing can be easily accommodated along the expanse of this segment, which will be approximately 190-foot long. The new public walkway area will directly connect to the existing 440-foot walkway to the east in front of the existing Island Palms Hotel building. It will also directly connect to the existing 150-foot walkway area in front of the existing parking garage to the west. This will make for 780 linear feet of continuous pedestrian experience where the public can enjoy access to the water all along the Yacht Basin. All landscaping that is added, replanted or replaced will be non-invasive to the existing vegetation in the project area.

The segment of existing public pedestrian walkway between the Kona Kai Marina and the existing hotel building is approximately 5-feet wide and 440-feet long and will remain as is. Also, the segment of walkway between the Kona Kai Marina and the existing parking garage is

approximately 5-feet wide and 150-feet long and will remain as is.

#### *Public Access Points & Signage*

There are three public access points that provide view corridors from Shelter Island Drive to the Kona Kai Marina and the Yacht Basin beyond:

- Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide
- Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide
- Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide

Public access from Shelter Island Drive to the public pedestrian walkway will be provided at each of these three locations and will be clearly delineated by an appropriate Coastal Bay Public Access Signage Program. Access for the general public will be provided as shown on the attached Public Access Map. These access points will create visual and physical linkages from Shelter Island Drive through the project site to the public walkway and Yacht Basin beyond.

A coastal public access signage program will be incorporated along the north side of Shelter Island Drive to allow pedestrians to know where access points are available from the Street. Access points will be clearly designated with an appropriately sized sign, which will be provided and maintained by the Permittee. The design of these signs will coordinate with the overall motif of the area and will clearly indicate public coastal (bay) access is available for the general public at the designated points.

#### *Pedestrian Seating*

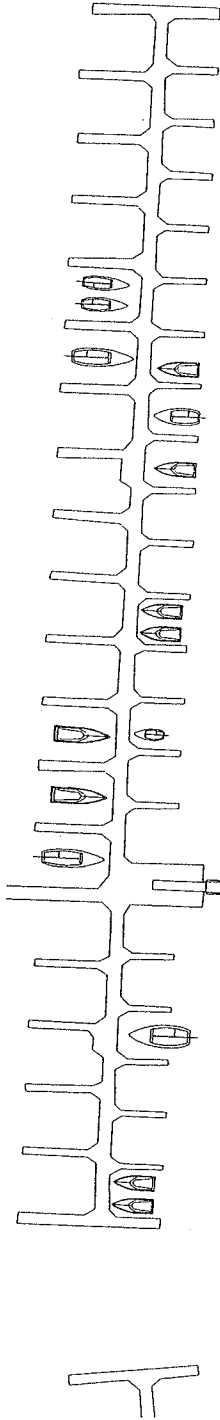
The proposed project shall provide 3 bench seats along the pedestrian public walkway as shown on the attached Public Access Map. The seating will be designed and placed so as to provide a view of the Shelter Island Yacht Basin and the vessels berthed within the Kona Kai Marina. The seating will be designed to be as maintenance free as possible with any necessary maintenance provided by the Permittee. The design shall coordinate with the surrounding motif and will be clearly designated for public use.

#### *Public Art*

Once the Public Art Committee reviews and approves the Applicant's project, works of public art will also augment the proposed public access improvements somewhere on the project site. The public art may be placed along the pedestrian public walkway or will be located somewhere else on the project site.

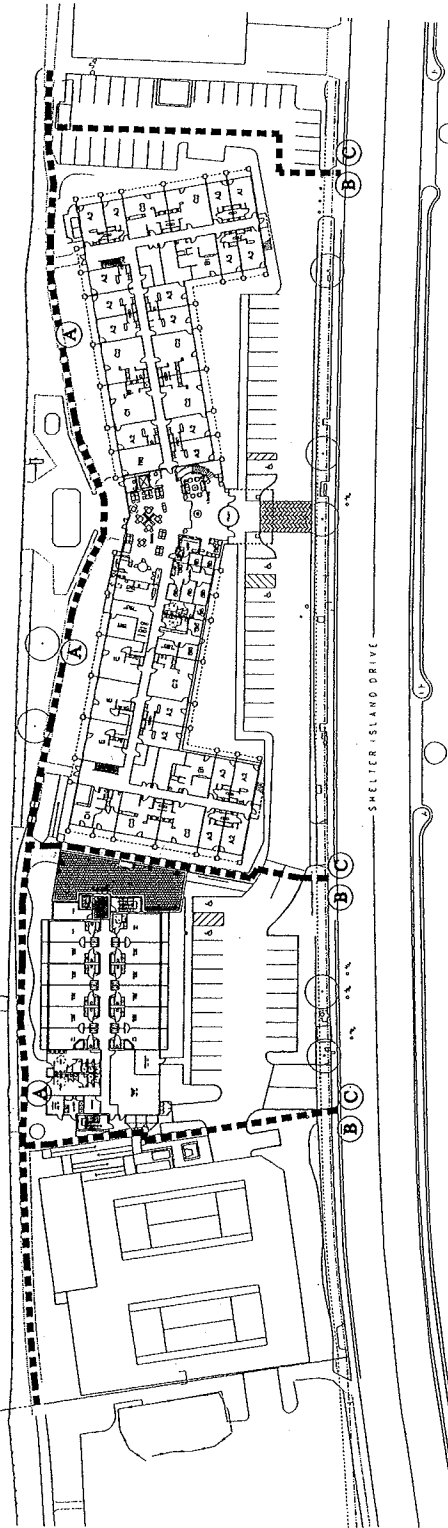
## **2. Island Palms West Hotel Public Access Map**

(See attached)



HGI SHELTER ISLAND PUBLIC ACCESS MAP

- (A) BENCH SEATING TYPICAL
- (B) PUBLIC ACCESS POINT SONAGE
- (C) PUBLIC ACCESS POINT
- PROMENADE / PUBLIC ACCESS

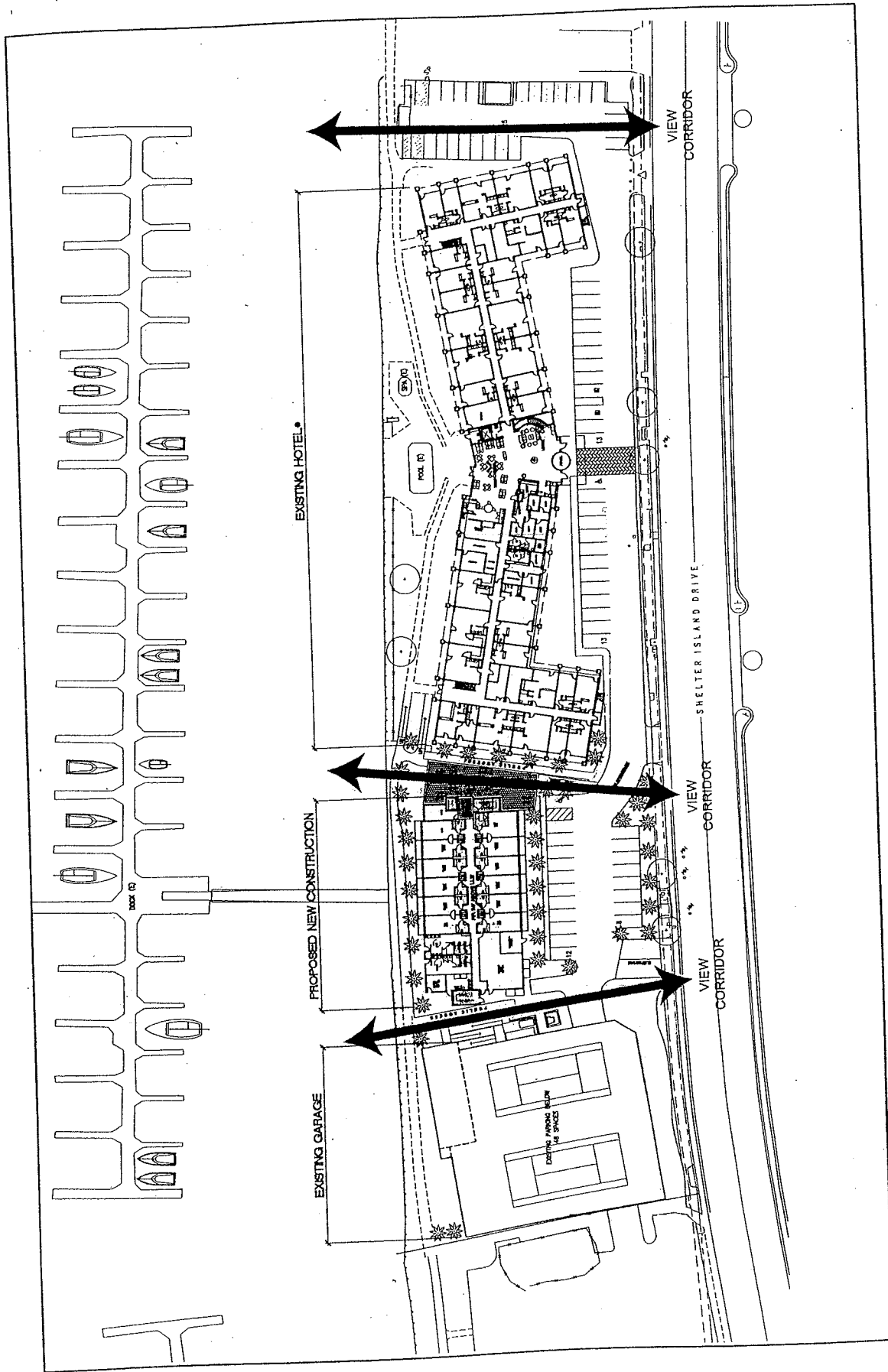


SHELTER ISLAND DRIVE

HILTON GARDEN INN SHELTER ISLAND  
SAN DIEGO, CALIFORNIA

JWDA

10/12/2006  
PUBLIC ACCESS MAP  
NTX



Source: JWDA 2006

Figure 1  
Revised Site Plan

Not to Scale

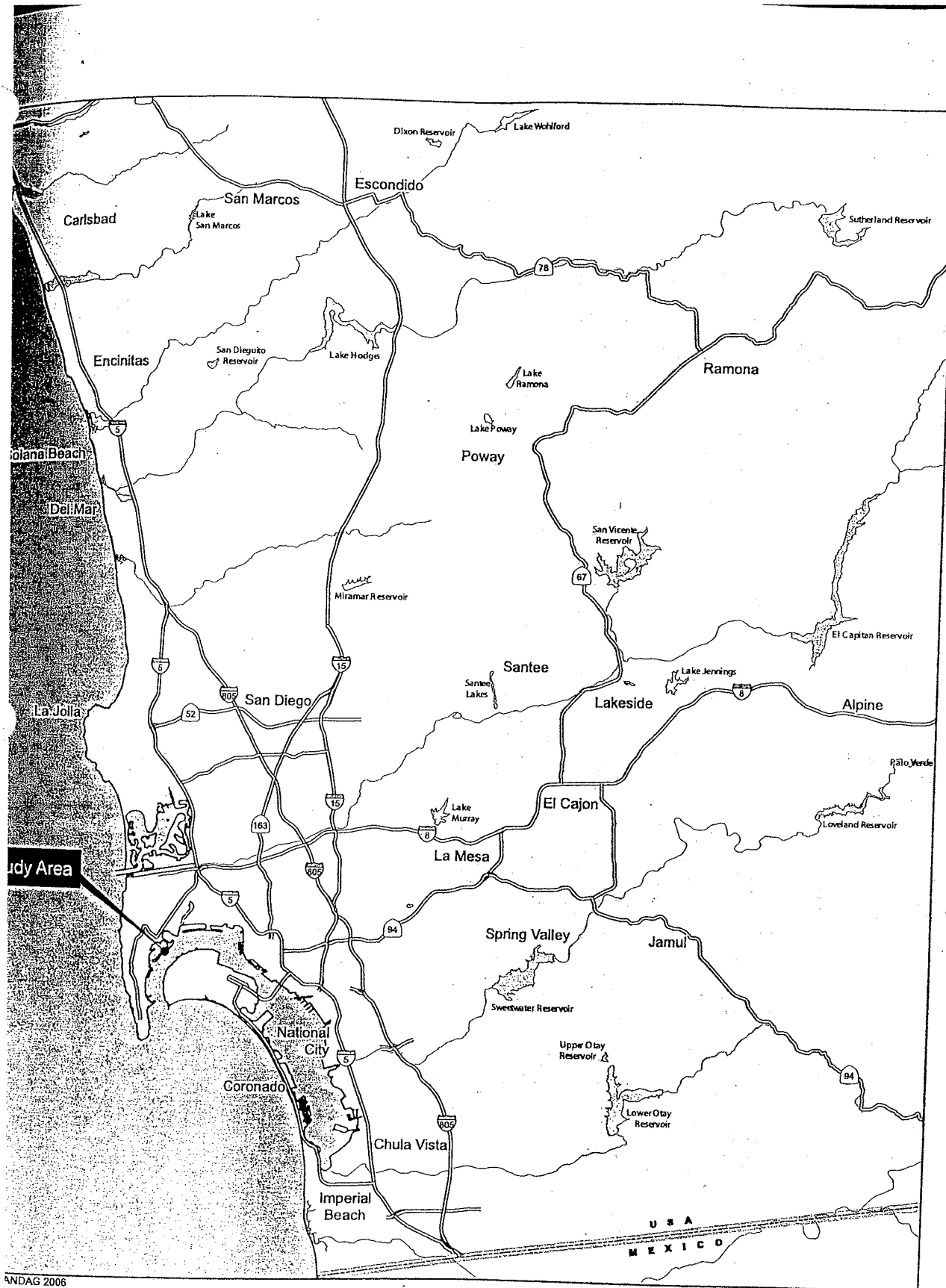
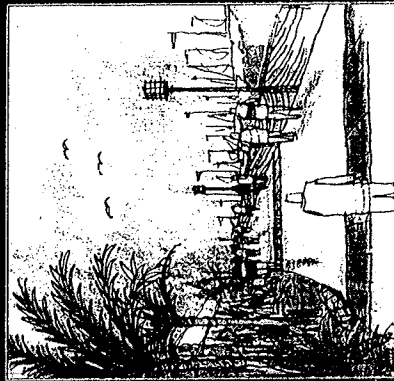


Figure 1  
Regional Map

# Promenade and View Corridors



Spot Perspectives

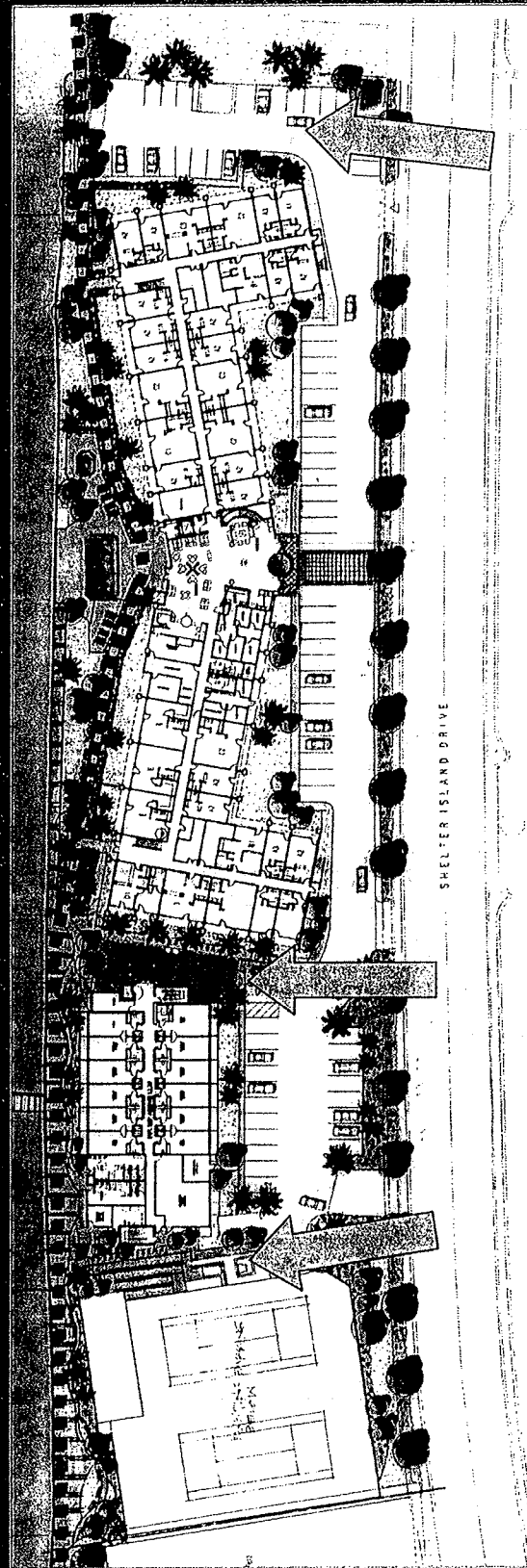


Figure 2

**NOTICE OF BOARD ACTION  
On An Appealable Coastal Development Permit**

**Project:** North Embarcadero Visionary Plan, Lane Field North and South Development Project

**Location:** North of Broadway Street between Pacific Highway and Harbor Drive, San Diego, California

**Date:** January 15, 2008

**RECEIVED**

**JAN 16 2008**

**PROJECT LOCATION**

The Lane Field Development Project (Project) site is located at the intersection of Harbor Drive and Broadway Street in Planning District 3, Centre City Embarcadero, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The Project site is delineated on Precise Plan Map Figure 11. The Project site is adjacent to the United States Navy (Navy) property located at 1220 Pacific Highway to the north and bounded by Pacific Highway to the east, Broadway Street to the south, and Harbor Drive to the west. The Project is situated in the city of San Diego on Coastal Zone State Tidelands administered by the San Diego Unified Port District under a certified PMP.

**PROJECT DESCRIPTION**

The North Embarcadero Alliance Visionary Plan Master Environmental Impact Report (NEVP MEIR) analyzed the infrastructure improvements outlined in the NEVP along with four subsequent projects including the Lane Field Development. Lane Field Developers San Diego, LLC (referred to herein as ("Permittee")) proposes to redevelop the Project site as follows:

**1. Existing Surface Parking**

The approximately 5.7 acre Lane Field site is currently occupied by a 880-space surface parking lot operated by Five Star Parking. Temporary structures are also located on the leasehold including an information booth, ticket sales booth, a shed, and an ATM. All existing facilities will be removed/demolished prior to or as part of construction of the Project. Site infrastructure will remain or will be relocated as necessary. An existing monument to the former Lane Field baseball stadium located on the site will be relocated within the Project boundaries.

## 2. Parking Structure

A subterranean parking structure containing approximately 1,330 spaces will be constructed as part of the Project. The parking structure will be two-levels constructed across the majority of the Project site below grade and beneath the proposed structures and plaza. Primary access to the parking structure will be from the Project driveway at the prolongation of C Street off Pacific Highway with additional access off Pacific Highway.

The Project will provide all parking on-site with an additional 300 public parking spaces beyond peak demand projected for the hotel and retail operations. The parking structure will be operated by Permittee or its designee as a combined self-park and valet facility serving hotel guests, retail patrons, and waterfront visitors. Parking fees will be set at market rates. Additionally, parking garage capacity could expand to 1,552 spaces through an all-valet configuration to allow the Permittee to accommodate additional parking demand during special events if the need should arise.

## 3. Lane Field North

Lane Field North, the parcel north of the prolongation of "C" Street between Pacific Highway and Harbor Drive, will include a hotel, retail, and public parking. At approximately 17 stories, the hotel on Lane Field North will be approximately 205-feet tall and will include approximately 275 guest rooms, a health club/spa of approximately 15,000 square feet, pools, ballrooms, and meeting rooms.

A three-story podium building surrounding the hotel will include approximately 30,000 square feet of visitor serving retail. The rooftop of the podium building will include a publicly-accessible terrace activated by outdoor dining and special event areas offering views of San Diego Bay and Coronado. The rooftop will be accessible to the public and hotel guests via glass-faced elevator located at the street level on Harbor Drive and from escalators and elevators located within the hotel lobby. Public art will also be incorporated into areas of the site to which the public has access.

A portion of the subterranean parking facility described above will be located on two levels below Lane Field North and will serve hotel guests, retail patrons, and other waterfront visitors.

## 4. Lane Field South

**001298**

Lane Field South, the parcel immediately south of Lane Field North, includes the prolongation of "C" Street and the area between Pacific Highway and Harbor Drive south to Broadway. The site will include a hotel, retail, and public parking.





At approximately 22 stories, the hotel on Lane Field South will be approximately 275-feet tall and will include approximately 525 guest rooms, a health club/spa of approximately 15,000 square feet, pools, ballrooms, and meeting rooms.

A three-story podium building surrounding the hotel will include approximately 50,000 square feet of visitor serving retail. The rooftop of the podium building will include a publicly-accessible terrace activated by outdoor dining and special event areas offering views of San Diego Bay and Coronado. The rooftop will be accessible to the public and hotel guests via glass-faced elevator located at the street level on Harbor Drive and from escalators and elevators located within the hotel lobby. Public art will also be incorporated into areas of the site to which the public has access, which, in addition to the areas described above, include the prolongation of "C" Street and the Broadway Plaza.

A portion of the subterranean parking facility described above will be located on two levels below Lane Field South and will serve hotel guests, retail patrons, and other waterfront visitors.

#### 5. Public Access and View Corridors

The Project includes the prolongation of "C" Street as a view corridor and private drive. The location is approximately 10 feet to the north of the location described in the North Embarcadero Visionary Plan schematic design. This alignment allows for better coordination of the site development plan, corresponds to the site planning efforts on an adjacent parcel to the east across Pacific Highway (being developed by the Irvine Company), facilitates ingress and egress to the site, and enhances the view corridor. The prolongation of "C" Street has never been and is not intended to be a dedicated public street or undedicated tidelands street, but rather a private drive serving as the main point of entry to the parking garage and hotels, and facilitating vehicular and pedestrian circulation throughout the Project.

Plaza areas will be open to the public along the prolongation of "C" Street, at a park/plaza located along Broadway, and on the rooftops of the podium buildings surrounding the hotels. These public areas will be activated by restaurants, retail, and public art, and will offer views of San Diego Bay and Coronado. The plazas and public areas in combination with the set backs and step backs applied to structures establish the view corridors along Broadway and the prolongation of "C" Street. Street trees and landscaping along Broadway have been coordinated with and are consistent with the NEVP JPA requirements, the members of which include the District, City of San Diego, and Center City Development Corporation.

#### 6. Construction

001299

The underground parking structure will require dewatering during construction only and excavation of approximately 115,000 cubic yards of material. The excavated material will be exported off-site and disposed of or used for beach sand replenishment if determined suitable. The estimated duration of construction is approximately 36 months. To the extent possible, construction staging for equipment, materials as well as vehicular parking will occur primarily onsite. Construction employee parking will be accommodated both onsite and offsite at a location which will be chosen based on its proximity to the Project site and to public transportation. The Permittee will provide and implement a construction parking management plan.

#### ARTICLE 1-CONSISTENCY WITH CERTIFIED PORT MASTER PLAN & CALIFORNIA COASTAL ACT

The Project site is located within the Civic Zone subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 12 of the Port Master Plan (PMP). The PMP recognizes that the development of Lane Field is the most important component of the Civic Zone. While the PMP refers to Lane Field as the entire area bounded by Pacific Highway, Broadway, Harbor Drive and Ash Street, the Project includes only the Lane Field North and South sites and does not include at this time the Navy Facilities Engineering Command site, also known as 1220 Pacific Highway. The PMP states that a 600 to 800 room hotel is the primary use of this site with an array of other development options intended to retain flexibility. The PMP Precise Plan land use map designates the Lane Field site as Commercial Recreation with a strip of Park/Plaza designation along Harbor Drive. The Permittee has prepared the Lane Field Public Access Program to ensure that public access requirements of the PMP and the Coastal Act are incorporated into the Project. The Lane Field Public Access Program defines the pedestrian access integrated throughout the site and identifies management of the public access. The areas governed by the Lane Field Public Access Program include the ground level, the rooftop of the podium buildings surrounding the hotels, and the vertical circulation elements.

The attached Table A Development Intensity at Lane Field and Entitlements describes the Project in terms of various development standards and compares them to those development standards described in the PMP and the NEVP MEIR. As indicated in this table, the Lane Field Project either conforms to or is less intensive than the existing PMP entitlement maximums and the Lane Field Subsequent Project analyzed in the NEVP MEIR in terms of building height, Floor Area Ratios (FARs), setbacks, stepbacks, parking and total number of hotel rooms. Staff has analyzed the Project and has determined that it is consistent with the PMP text and land use designation.

The Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The Project is not

**001300**



considered "Excluded" under the District's Coastal Development Permit Regulations (Regulations). In accordance with the Regulations, the Project is "Appealable" because it does not qualify as a "Non-Appealable" or "Emergency" development. Appealable Coastal Development Permits (CDP) can be appealed to the California Coastal Commission within 10 working days of the Coastal Commission's receipt of the CDP.

Copies of the Categorical Determination, CDP application, and draft CDP have been provided to the Board. Special conditions will be incorporated into the CDP (Attachment A) to ensure Project conformance with the NEVP MEIR mitigation requirements as set out in the Initial Study.

#### ARTICLE 2-PUBLIC ACCESS

The Project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214. The Project is located adjacent to coastal resources. The closest existing coastal access and recreational amenities consist of the promenade along the downtown waterfront on the west side of Harbor Drive, which is adjacent to the Project. In addition to the promenade, piers open to the public, public restaurants, the USS Midway Aircraft Carrier Museum, and long and short term watercraft experiences (cruises and tours) are available to the public along the promenade in the vicinity of the Project. These existing amenities will not be adversely impacted by the Project and may benefit from the increased number of waterfront visitors which will be drawn to the Project.

The Project will enhance access and recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing a park/plaza areas and sidewalks that are all connected at street level throughout the Project as well as publicly-accessible terraces activated by outdoor dining and special event areas offering views of San Diego Bay and Coronado accessible via two glass-faced elevators located at the street level public plazas (see Attachment B Lane Field Public Access Program).

Public pedestrian access will be provided along the "C" Street prolongation, creating an additional pedestrian linkage between the waterfront to the west and transit areas to the east including the nearby Santa Fe Depot (Amtrak, Coaster, and Trolley station). The public pedestrian sidewalk through the center of the Project will be between 17 feet and 34 feet on the north side of the street and between 12 feet and 22 feet on the south side of the street. The broadest areas will be at the west and east ends of the prolongation of "C" Street, along which visitor-serving retail will be located. Seating opportunities may be provided in the broadest portions, particularly on the north side where sunlight will be greatest. The sidewalks narrow on both sides of the prolongation of "C" Street at the approximate midpoint around a loop wherein vehicles will

001301



circulate. Additionally, the center of the vehicular loop will feature a prominent public art waterscape reflecting the waterfront character of the Project.

A public sidewalk and park/plaza area will extend the length of the Project adjacent to Broadway that will expand from 55 feet at the eastern end to 110 feet at the western end. The park/plaza will provide informal public seating, landscaped islands intended to be engaged by the public, and may include a water feature. Sidewalks will be provided along the Project adjacent to Harbor Drive and Pacific Highway to facilitate north-south pedestrian movement connecting the prolongation of "C" Street with public plaza areas on Broadway Street to the south and the future "B" Street to the north. The sidewalk along the Project adjacent to Pacific Highway will be approximately 12 feet wide. The sidewalk along the Project adjacent to Harbor Drive will be approximately 25 feet wide. Adjacent to the Harbor Drive sidewalk will be glass-faced elevators for public access to the rooftop terraces that occupy the west end of the podium structures surrounding the hotels. Both terraces will provide public views of San Diego Bay and Coronado, and will be activated by outdoor dining and special event areas available to the public. Public access to the rooftop terraces will be provided consistent with the hours of operation of the hotel and retail facilities, currently anticipated to be from 6 am through 2 am.

Public access to the existing sidewalks along the Project adjacent to Pacific Highway, Broadway Street, and Harbor Drive will be temporarily unavailable during construction. Detours will be signed and provided as necessary to ensure the safety of pedestrians. The detour will be removed as soon as construction clears and the sidewalks, including the enhancements to public access described above, are re-opened.

The existing 880 public parking spaces would be displaced by the Project. In accordance with the NEVP MEIR, 300 public parking spaces in addition to the parking spaces required to satisfy peak demand for the Project, will be provided onsite. Parking will be managed as a combined valet and self park facility with the flexibility to be operated as an all-valet facility as demand dictates. Management of the facility shall ensure that no less than 300 spaces are available to the public at all times. During construction, no public parking will be available onsite to replace the displaced surface parking, but public parking serving the North Embarcadero area will be provided in accordance with the NEVP Parking Management Plan(s) implemented consistent with the requirements of the NEVP MEIR. Construction parking will be provided both on-site and off-site on a property to be chosen based on its proximity to the Project site and to public transportation. Attachment C Lane Field Parking Management Plan details the Permittee's planned management of parking during construction and operation of the Project.

#### ARTICLE 3-RECREATION

001302

The Project is consistent with Section 30220, 30221, 30222, 3022.5, 30223, and 30224. The Project will not adversely impact coastal areas suited for water-orientated recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; or recreational boating use of coastal waters. The Project will enhance oceanfront land suitable for recreational use by providing new hotels, retail, and restaurant amenities for visitors as well as enhanced public plazas, sidewalks, and rooftop terraces with views of San Diego Bay and Coronado. The Project is a subsequent project described in the NEVP and intended to improve the recreational waterfront experience of the Bay for visitors. Revenues from the Project will also help fund the NEVP public improvements, including broadening the promenade along Harbor Drive, realigning Harbor Drive, and improving water quality during flood events. Public access signage will be strategically placed within the Project to clearly identify plazas, sidewalks, lobbies, elevators, and rooftop terraces open to the public.

#### ARTICLE 4-MARINE ENVIRONMENT

The Project is consistent with Section 30230, 30231, 30232, 30233, 30234, 30234.5, 30225, 30236, and 30237. The Project does not involve diking or dredging of open coastal waters, wetlands, estuaries, or lakes; commercial fishing or recreational boating facilities; any fishing activities; any natural shoreline altering construction; alterations of rivers or streams; or Bolsa Chica wetlands. The Project will be subject to the Standard Urban Stormwater Mitigation Plan (SUSMP) requirements of the Municipal Stormwater Permit. SUSMP requirements are meant to incorporate Best Management Practices including Low Impact Development features in the design phase of new development projects. The Project will also require implementation of a Storm Water Pollution Prevention Program (SWPPP) during construction. Construction of the Project will encounter groundwater during construction and require dewatering activities in accordance with mitigation measures, which stipulate that discharge shall meet the effluent limits specified by the RWQCB (order No. 90-31) and Federal National Pollution Discharge Elimination System (NPDES) requirement.

#### ARTICLE 5-LAND RESOURCES

The Project is consistent with Section 30240, 30241, 30241.5, 30242, 30243, and 30244. The Project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or Paleontological resources.

#### ARTICLE 6-DEVELOPMENT

**001303**

The Project is consistent with Section 30250, 30251, 30252, 30253, 30254, 30254.5, and 30254. The Project will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses by providing new hotel rooms, visitor-serving retail, restaurants, and pedestrian orientated plazas, sidewalks, public art, public seating, public elevators, and public rooftop terraces with views of San Diego Bay and Coronado. The Project will enhance the destination experience of the San Diego waterfront providing more appealing views than currently exist and facilitating enhanced view experiences of existing areas consistent with the setback and step back requirements presented in the certified PMP (page 75) as outlined in the attached Table "A." The south hotel tower will be approximately 275 feet tall and the north hotel tower will be approximately 205 feet tall. Both towers will be orientated east-to-west to enhance views of San Diego Bay and Coronado and to enhance the Broadway and prolongation of "C" Street view corridors.

Public access will be provided through the Project along the prolongation of "C" Street, plazas and sidewalks along Broadway, sidewalks along Harbor Drive and Pacific Highway, the lobby of the south hotel tower, and on rooftop terraces on the third floor of the podium buildings surrounding the hotels, as well as vertically via elevators from Harbor Drive to the podium building rooftops. Public pedestrian access along the prolongation of "C" Street and widened access along Broadway Street will enhance public access to San Diego Bay particularly from public transit stations (Santa Fe train and trolley station) by providing a more direct and inviting route westward than currently exists. The rooftop terraces will increase visual public access by providing public areas that afford elevated views across San Diego Bay accessed directly via public elevators from public areas at street level. Retail and restaurant uses of the Project will activate the public areas permeating the Project, thereby enhancing the appeal and use of the area by the public without encumbering public access.

The site is not located within a State designated Alquist-Priolo Earthquake Fault Zone but is within the City of San Diego Downtown Special Fault Zone. Geocon Incorporated prepared a Geotechnical and Geologic Fault Report in May 2007 because the site is adjacent to a City of San Diego Downtown Special Fault Zone. The geophysical survey included supplemental cone penetration test (CPT) soundings. The results of the geophysical survey and associated CPT data indicate that faulting is not evident at the site indicating that no active or potentially active faults transect the site. Hydraulic fills and Bay Deposits present are considered unsuitable for the support of the structures and will be required to be removed where they cannot be recompacted to meet structural engineering standards. The recommendations contained in the Geotechnical and Geologic Fault Report must be followed during site preparation activities. The geotechnical recommendations include specific measures for dewatering, pile driving,



**Unified Port  
of San Diego**

3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • www.portofsandiego.org

excavation slopes, shoring, trenching, concrete, drainage, and construction and post construction consideration.

Implementation of the Project will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area nor will require improvements that would substantially alter natural landforms along bluffs and cliffs; and will not result in significant air quality impacts. The Project has been designed with features such as 'fuel cell cogeneration' that will minimize energy consumption consistent with the intent of the California Legislature Assembly Bill 32 (see Attachment D Lane Field Sustainability Initiatives Global Warming Assessment). The Project is located in close proximity to regional and local rail stations as well as nearby water transit, cruise ship berths and the San Diego International Airport and has been designed with features such as an airport shuttle system to minimize vehicle miles traveled.

The Project is not located in a special community or neighborhood, which because of its unique characteristics, is a popular visitor destination point for recreational uses; public works facility; nor associated with a sewage treatment plant.

**ARTICLE 7-INDUSTRIAL DEVELOPMENT**

The Project is consistent with Section 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The Project does not involve a coastal-dependent use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemicals facilities; thermal electric generating plants, or oil production and transport.

**BOARD ACTION**

By Resolution 2008-15 adopted on January 8, 2008, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- [ ] This development had been approved as submitted.
- [X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this Notice.

The following noted [X] item applies to this finding:

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.

**001305**

- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above stated date to the California Coastal Commission. Appeals must be filed with Commission within ten (10) working days of receipt by the California Coastal Commission of this notice. Prospective appellants should contact the California Coastal Commission for more information.

Two (2) correspondences by interested parties were received on this Coastal Development Permit (see Attachment E). There were **twenty-six (26)** speakers present at the public hearing on January 8, 2008. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved the Project at the January 8, 2008 hearing.

BRUCE B. HOLLINGSWORTH  
Executive Director

By:   
RALPH T. HICKS  
Director, Land Use Planning

Enclosure(s): Attachment A: Appealable Coastal Development Permit Conditions  
Attachment B: Lane Field Public Access Program  
Attachment C: Lane Field Parking Management Plan  
Attachment D: Lane Field Sustainability Initiatives Global Warming Assessment  
Attachment E: Correspondence on Appealable Coastal Development Permit  
Figure 1: Project Location Map  
Table A: Development Intensity at Lane Field and Entitlements

001306



**ATTACHEMENT A**  
**[DRAFT] COASTAL DEVELOPMENT PERMIT**

**Applicant:** Lane Field San Diego Developers, LLC  
655 West Broadway Street, Suite 1450  
San Diego, California 92101

**Project:** North Embarcadero Visionary Plan Lane Field Development Project

**Location:** North of Broadway Street between Pacific Highway and Harbor Drive

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a [ ] Emergency [ ] Non-appealable [X] Appealable Coastal Development Permit.

**Date of Board Action:** January 08, 2008

**Board of Port Commissioners Resolution Number:** 2008-xxx

**Date of Permit:** January 23, 2008

**Application Number:** 2007-07-49-144

**Permit Number:** CDP-2008-01

The proposed project is located between the first inland continuous public road paralleling the sea (as defined in the California Coastal Act) and the second inland continuous public road paralleling the sea. The project is fully consistent with Public Resource Code Sections 30604(c), 30210-30224, and the California Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

**DEVELOPMENT**

The proposed project is situated in the city of San Diego on Coastal Zone State Tidelands administered by the San Diego Unified Port District under a certified

**001307**



PMP. Lane Field Developers San Diego, LLC (referred to herein as ("Permittee")) proposes to redevelop the Lane Field leasehold with the following: (1) demolition/removal of existing temporary structures and existing surface parking, (2) construction of a two-level subterranean project and public parking garage containing approximately 1,330-spaces, (3) creation of a public pedestrian landscaped park/plaza along the Broadway Street frontage in front of retail stores and restaurants as well as public terraces at the fifth floor ("Podium Level"), (4) construction of an approximately 205-foot tall hotel with approximately 275 rooms and approximately 30,000 square feet of retail/restaurant tower on the northerly portion of the leasehold (Lane Field North), and (5) construction of an approximately 275-foot tall hotel with approximately 525 rooms and approximately 50,000 square feet of retail/restaurant on the southerly portion of the leasehold (Lane Field South). The project area is approximately 5.7 acres.

#### 1. Existing Surface Parking

The approximately 5.7 acre Lane Field leasehold is currently a 880-space surface parking lot operated by Five Star Parking. Temporary structures are also located on the leasehold including an information booth, ticket sales booth, a shed, and an ATM. All existing facilities will be removed/demolished. Necessary infrastructure components will remain or be relocated as necessary. An existing monument for the former Lane Field will be relocated within the project boundaries.

#### 2. Parking Structure

A subterranean parking structure containing approximately 1,330 spaces will be constructed as part of the proposed project. The parking structure will be two-levels constructed across the majority of the leasehold below grade and beneath the proposed structures and plaza. Access to the parking structure will be from the project driveway at the prolongation of C Street off Pacific Highway with additional access directly off Pacific Highway at the northern extremity of the leasehold.

The proposed project will be self-parked with an additional 300 public parking spaces not dedicated to hotel operations or to the retail. The parking structure will be operated by Permittee or its designee as a combined self-park and valet facility with the ability to be operated entirely as a valet facility dependant on management's assessment of needs but in such a manner that the additional 300 parking spaces will remain available to the public. Parking fees will be set at market rates. Additionally, parking garage capacity could expand to 1,552 spaces by utilizing additional valet parking to allow the operator to accommodate peak parking demand during special events if the need should arise.



### 3. Lane Field North

On the parcel north of the prolongation of "C" Street, between Pacific Highway and Harbor Drive, the proposed Lane Field North hotel will include a hotel lobby, approximately 275 guest rooms and suites, approximately 30,000 square feet of retail and restaurants, a health club and spa of approximately 15,000 square feet, and ballrooms and meeting rooms. Retail and restaurant areas will be located at the ground to third floor elevations along the western, southern, and eastern frontage of Lane Field North. Additional amenities will include a Podium Level event terrace with dining and refreshment facilities at the west end of the structure, to which public access will be provided by a glass-faced elevator from the sidewalk and by both escalators and elevators from the hotel lobby. Offering views toward the San Diego Bay, the terrace deck will feature outdoor dining and event areas. Public art will also be incorporated into the public spaces on the site. A rooftop lounge and event terrace will also be available for public access using express elevators available from within the hotel lobby. The proposed Lane Field North hotel will be approximately 17 stories with an approximate height of 205-feet.

### 4. Lane Field South

The proposed Lane Field South hotel will include approximately 525 guest rooms and suites, approximately 50,000 square feet of retail uses, including street level restaurants and shopping, ballrooms, meetings rooms, and pools. Retail and restaurant areas will be located at ground to third floor elevations along the western, southern, northern and eastern frontage of Lane Field South. Additional amenities will include a Podium Level event terrace with dining and refreshment facilities at the west end of the structure, to which public access will be provided by an elevator from the sidewalk and by both escalators and elevators from the hotel lobby. The terrace deck will feature outdoor dining, event areas, and provide views of the Bay and Broadway. Public art will also be incorporated into the public spaces on the site. The proposed Lane Field South hotel will be approximately 22 stories, with a height of approximately 275 feet.

### 5. Public Access and View Corridors

The proposed project includes the prolongation of "C" Street approximately 10 feet to the north of its original location as a designated view corridor described in the North Embarcadero Visionary Plan schematic design. The purpose of this adjustment is to allow better alignment and coordination of the site development plan with site planning efforts on an adjacent parcel to the east (being developed by the Irvine Company), to facilitate ingress and egress to the site, and to enhance the view corridor. "C" Street is proposed to be a private drive facilitating

access through the proposed project, but historically has never been and is not intended to be a dedicated public street or undedicated tidelands street.

The proposed project will provide public access into the site and parking facilities at the prolongation of "C" Street off Pacific Highway as well as public pedestrian access through the development from Pacific Highway to Harbor Drive and the waterfront. Plaza areas will also be open to the public along the prolongation of "C" Street, the Broadway Street frontage of the project and on the third floor terraces of each of the proposed hotels. These public areas will be activated by restaurant and retail facilities as well as seating and public art provisions in addition to the beneficial near waterfront location of the site. The plazas and public areas in combination with the set backs and step backs applied to structures maintains the public view corridors along Broadway and C Street. Street trees and landscaping along Broadway Street have been coordinated with and are consistent with NEVP JPA requirements, the members of which include the District, City of San Diego, and Center City Development Corporation.

#### 6. Construction

The underground parking structure will require dewatering during construction only and excavation of approximately 115,000 cubic yards of material. The excavated material will be exported off-site and disposed of or used for beach sand replenishment if determined suitable. The estimated duration of construction is approximately 36 months. To the extent possible, construction staging for equipment, materials as well as vehicular parking will occur primarily onsite. Construction employee parking will be accommodated both onsite and offsite at a location which will be chosen based on its proximity to the proposed project site and to public transportation. As part of the Lane Field development, the Permittee will provide a construction parking management plan.

#### STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state, and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.

001310



6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.
10. All Port of San Diego 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). This permit was recently adopted in January of 2007 and replaces the previous permit Order No 2001-01. All jurisdictions are required to be in full compliance with Order R9-2007-0001 by January 24, 2008. 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/susmp.asp](http://www.portofsandiego.org/sandiego_environment/susmp.asp) or by contacting the Environmental Services Department, (619) 686-6254.
11. This project is subject to the Port Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, 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) that meets District requirements. Project approval requires full implementation of all USMP structural and non-structural BMPs throughout the life of the project.

The Port is currently modifying its development and redevelopment processes

that will include modifications to the Port SUSMP, greater reliance of low impact design techniques and the incorporation of a Hydromodification plan. These changes are being made to meet the requirements of the newly adopted Municipal Permit. During this transition period and until the updated Port SUSMP is final, the project USMP is to be designed to follow the County of San Diego's Draft Model SUSMP as revised November 6, 2007, and the Municipal Permit. A link to these interim guidance documents can be found on the District website

[http://www.portofsandiego.org/sandiego\\_environment/susmp.asp](http://www.portofsandiego.org/sandiego_environment/susmp.asp)

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 Port approved USMP, including the specific BMPs contained therein, may be considered a default under the lease.

#### SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the Permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the Permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 5 minutes during construction once they arrive on the construction site.

001312



9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000002, and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "General Construction Storm Water Permit"), as adopted, amended, and/or modified. The District is responsible for submitting the Notice of Intent to comply with the General Construction Storm Water Permit. The Permittee and/or contractor must comply with the General Construction Storm Water Permit and District direction related to permitted activities. Construction activity subject to the General Construction Storm Water Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor must prepare and submit the SWPPP for review and approval by the District prior to site work.

#### SPECIAL PROVISIONS

1. Following construction, the applicant shall implement the "Lane Field Public Access Program" throughout operation of the project to the satisfaction of the District.



2. The applicant shall maintain no less than 300 parking spaces available to the public within its managed parking facility throughout project operation, consistent with the North Embarcadero Visionary Plan Parking Management requirements.
3. The applicant shall implement the "Lane Field Construction Parking Management Plan" throughout project construction to the satisfaction of the District.
4. Prior to development, a subsurface remediation plan shall be developed and implemented. Such plan shall be consistent with the requirements of "Short Term Construction Measures" Item 13 above.
5. A subsurface mitigation plan shall be implemented during site excavation by a qualified archaeologist/paleontologist who meets the City's standards for an archaeological principal investigator. The plan shall include a detailed review of Sanborn fire insurance maps, directory search, and if warranted, limited testing of where the project archaeologist deems necessary for cultural materials recovery within the area impacted. The archaeologist/paleontologist shall conduct on-site observation during the site excavation process. All cultural material recovered and associated records shall be delivered to the curator of an appropriate San Diego County institution that meets the standards of the State Historical Resource Commission's *Guidelines for the Curation of Archaeological Collections* dated May 7, 1993.
6. A complete site contamination report in conformance with federal, State, and local regulations shall be completed for the project. The report shall include an existing conditions survey, detailed project description, and specific measures proposed to preclude upset conditions (accidents) from occurring. If hazardous materials are identified, a risk assessment and remediation efforts shall be conducted in conformance with federal, State, and local regulations.
7. A site-specific soil/groundwater assessment shall be performed by a qualified geologist/hydrologist in conformance with federal, State, and local regulations prior to soil disturbance in all areas where soil or water contamination sources are suspected of containing hazardous materials storage systems. Such an assessment shall include collecting and analyzing soil and/or groundwater samples. The presence of soils or groundwater contamination shall be remediated, if necessary, according to applicable federal, State, and local regulations prior to development of the site.

001314





8. The proposed project will be designed and constructed so that permanent dewatering is not required. Dewatering activity will be limited to the construction period as may be necessary. The North Embarcadero Visionary Plan Master Environmental Impact Report (certified in March 2000) (Master EIR) recommends that dewatering shall occur to lower the groundwater table to a minimum of 2 feet below the bottom of all removals and excavations.
9. Dewatering discharge shall meet the effluent limits specified by the RWQCB (order No. 90-31) and Federal National Pollution Discharge Elimination System (NPDES) requirement. Order No. 90-31 includes a prohibition of the discharge of dewatering effluent to San Diego Bay for new permanent dewatering operations. If the effluent is discharged to the City of San Diego sewer system, then the discharge shall meet the discharge requirements of the City.
10. In the event that dewatering effluent is discharged to surface waters, groundwater quality data will be required in advance, and possibly, a treatment system will be needed to meet federal, State, and local regulations.
11. If necessary, to identify locations of Underground Storage Tanks (USTs), a site-specific informational review and geophysical survey shall be conducted.
12. A contingency plan for UST removal and remediation shall be prepared. Such plan shall address contractor procedures in the event that an unknown UST is encountered during site redevelopment.
13. Permits to operate or close tanks must be obtained by the tank owner or operator in conformance with federal, State, and local regulations.
14. Soil/groundwater testing shall be performed prior to soil disturbance in conformance with federal, State, and local regulations, and subject to the approval of the jurisdictional agency (i.e., City of San Diego or Port District). Such an assessment shall include collecting and analyzing soil and/or groundwater samples. Soil or groundwater contamination shall be remediated according to applicable federal, State, and local regulations prior to development of the site. Implementation of BMPs to control erosion during construction shall be required regardless of whether or not the soil / groundwater is contaminated.
15. All earthwork activities shall be governed by the provisions of the NPDES general permit, which includes the preparation and

implementation of a SWPPP and BMPs to control runoff and sedimentation during construction and post construction.

16. Additional assessment of soil and/or groundwater shall be performed prior to soil disturbance in conformance with federal, State and local regulations.
17. Remediation shall be conducted according to applicable federal, State and local regulations prior to development of the site.
18. Transportation Demand Management (TDM) measurements, including Regional Air Quality Strategy (RAQS) mandated trip/Vehicle Miles Traveled (VMT) reduction and land use measures, shall be implemented for high-occupancy events at the hotels. Project related traffic is less than previously incorporated into the RAQS, which concludes that as long as forecast levels of growth and associated traffic are not exceeded, the RAQS contains enough mitigation of such growth to allow regional air quality standards to be met.
19. Alternative transit opportunities shall be provided by the Permittee for guests and employees, which may include but are not limited to a shuttle service to San Diego International Airport and the provision of bike racks.
20. Permittee shall comply with all applicable public access requirements including participation in a bayside shuttle system upon District implementation of that system.
21. Energy conservation measures will be implemented throughout project operation such that a 20 percent reduction compared to satisfying current Title 24 requirements is achieved. Measures from the applicants "Lane Field Sustainability Initiatives Global Warming Assessment" may be used and include but are not limited to: use of recycled water for landscaping; heat reclamation from central air conditioning; use of fuel cell technology for power cogeneration; and noticing of laundry reuse to guests.
22. Permittee shall investigate the suitability of excavated material for use as sand replenishment on a beach subject to approval by the US Army Corps of Engineers. Beaches within the District shall have first priority for selection. If material is deemed suitable for depositing on a District beach then such an action shall occur. If the material is deemed unsuitable for any District beach but suitable for another beach within San Diego County then that action shall occur. If the material is deemed unsuitable for use as beach replenishment for any beach within San



Diego County then the material shall be disposed of or recycled in accordance with applicable local, state, and federal regulations.

23. The project design shall comply with Title 24 of the California Code of Regulations, which includes establishing permissible horizontal sound transmission through shared walls, as well as vertical transmission of impulsive noise through floor/ceiling assemblies. In addition, the use of upgraded interior finishing and heavy window glass are standards required by Title 24. Compliance with these regulations meets the required 45 dBA CNEL interior levels even if the 65 dBA exterior levels are not met. Documentation of compliance shall be provided when building plans are filed.
24. If windows face the tracks along Pacific Highway, use of heavily upgraded glazing and/or heavy drapes is recommended to reduce hotel sleep interference from peak train noise levels.
25. An interior noise study shall be conducted for hotels at the time building plans are developed and measures required to ensure a 45 dB interior level for transient occupancy rooms shall be implemented. Documentation of compliance shall be when building plans are filed.
26. All construction activities shall comply with the City of San Diego's Noise Ordinance, which limits the allowable hours and establishes performance standards for construction activities.
27. Use pre-drilled piles or vibratory drivers if subsurface conditions can accommodate such methods.
28. Perform all pile driving activities on weekdays between 9:00 am and 5:00 pm.
29. Pile driving shall extend past the loose and unconsolidated bay deposits to a depth within the Bay Point Formation that is suitable for the support of proposed piles.
30. All structures shall be designed in accordance with the recommendation of the geotechnical evaluation, and with all applicable requirements of the Uniform Building Code (UBC) for Seismic Zone 4. Project specific design recommendations to limit structural damage or maintain function during an earthquake shall include foundation design parameters and specifications for deep foundations.

31. It is expected that large structures will be founded on some type of deep foundation system, which may consist of driven or cast-in place piles embedded into the underlying Bay Point Formation.
32. All structures shall be reinforced and supported using ground modification (e.g., dynamic compaction) or deep foundation piles.
33. Remedial grading or surcharging and monitoring by means of settlement monuments shall be incorporated into construction within the project area.
34. To assess and offset impacts associated with hydrostatic uplift, an evaluation of potential hydrostatic uplift activities during the time of geotechnical plan review regarding the design and construction of below-grade basement levels shall occur.
35. The project applicant shall prepare a waste management plan in consultation with the City of San Diego Environmental Services Department (ESD) which shall also approve the plan. The waste management plan shall include the following elements:
  - The type and quantity of solid waste expected to enter the waste stream.
  - Source separation techniques to be used and the location of on-site storage for separated materials as required by Municipal Code Section 101 2001.
  - The method of transport and destination of separated waste and/or construction debris not re-used on site.
  - A "buy-recycled" program for the project.An impact analysis spreadsheet completed by an ESD analyst. A copy of the waste management plan shall be submitted to ESD and the Port District. With respect to construction/demolition debris, the amount of this material being deposited in the landfill should be reduced by implementing any or all of the following mitigation techniques.
  - Onsite re-use of demolition material in the construction of the development activities
  - Separating construction debris for recycling-reuse by others

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District at (619) 686-6283.

BRUCE B. HOLLINGSWORTH  
Executive Director

001318



Unified Port  
of San Diego

3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • [www.portofsandiego.org](http://www.portofsandiego.org)

By: \_\_\_\_\_  
RALPH T. HICKS  
Director, Land Use Planning

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

DRAFT

001319

beach, Pier Plaza, and the Pier. The District and City of Imperial Beach will perform a cooperative peak parking demand and supply monitoring study for five years following the completion of Pier Plaza redevelopment, and will annually meet to confer with the California Coastal Commission to review its findings and recommendations.

In the event that additional parking demand from projects implemented as a result of the Port Master Plan is identified by the monitoring program, the Port will provide appropriate mitigation for it.

TABLE 24: PROJECT LIST

IMPERIAL BEACH OCEANFRONT:  
PLANNING DISTRICT

	DEVELOPER	APPEALABLE	APPROXIMATE FISCAL YEAR
1. BEACH SAND REPLENISHMENT: supplement sand supply as opportunity and feasibility permit	Various	N	Various
2. PIER PLAZA: demolish structures; construct restrooms and concession buildings, stage, tot lot, lighting, landscaping, irrigation, shoreline protection, enhanced paving, park furniture, street ending improvements on Elm and Elder Avenue	P	N	1997-98
3. PIER SADDLE: expand pier deck area with placement of pilings	P	N	1999-2000
4. RESTAURANT: construct <u>restaurant</u> and ancillary commercial uses on expanded pier platform when market demands	T	Y	2000-2005
5. PUBLIC SAFETY BUILDING: construct building for lifeguard and other public services; install erosion protection, parking, beach access, landscaping, irrigation system	P	N	2000-01
6. DUNES PARK EXPANSION: demolish structures; construct public restrooms, install paving, landscaping, park furniture, irrigation system, erosion protection	P	N	1998
7. ENHANCE 11 STREET ENDS: demolish and reconstruct; automobile travel and parking space, curb and gutter, drainage, shoreline protection, enhanced paving, lighting, fencing, landscape irrigation	P	N	1997-2002
8. ENHANCE STREET END, PALM AVE: demolish structures, construct curb and gutter, public restroom, shoreline protection, sidewalk, enhanced paving, lighting, fencing, drainage, landscape and irrigation	P	N	1999-2000
9. AUTOMOBILE PARKING FACILITIES: renovate lot with parking structure and irrigation	T	N	1999-2000

P- Port District    T- Tenant    N- No    Y- Yes

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/12/2014

TIME: 10:50:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2013-00057492-CU-TT-CTL** CASE INIT.DATE: 07/15/2013

CASE TITLE: **San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION**  
**[E-File]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

---

**EVENT TYPE:** Motion Hearing (Civil)

---

**APPEARANCES**

The Court, having taken the above-entitled matter under submission on 05/08/14 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on plaintiffs/petitioners San Diegans for Open Government (SDOG) and San Diego Navy Broadway Complex Coalition's (SDNBCC) (sometimes collectively Petitioners) petition for writ of mandate as follows:

The Court's tentative ruling will serve as the Court's Statement of Decision pursuant to California Rules of Court, rule 3.1590.

Petitioners are represented by Cory J. Briggs and Mekaela M. Gladden of the Briggs Law Corporation.

Respondent California Coastal Commission (Commission) is represented by Baine P. Kerr of the Office of the Attorney General. Respondent San Diego Unified Port District (Port District) is represented by Michael M. Hogan of Hogan Law APC. The Real Parties in Interest Sunroad Enterprises and Sunroad Harbor Island, Inc. (sometimes collectively RPIs) are represented by Steven H. Kaufman of Richards, Watson & Gershon, APC.

The Court has reviewed the record in light of the parties' briefs and the applicable law and concludes the petition for writ of mandate should be denied for the reasons stated below.

*Standard of Review.* Public Resources Code section 30801 provides for judicial review of Commission decisions by way of a petition for writ of administrative mandamus under Code of Civil Procedure section

---

DATE: 05/12/2014

MINUTE ORDER

DEPT: C-71

**EXHIBIT 6**

Page 1  
Calendar No.

1094.5. In reviewing a Commission decision, the trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the agency abused its discretion. (*Ross v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 921 (hereafter *Ross*)). Abuse of discretion is established if the Commission has not proceeded in the manner required by law, the decision is not supported by the findings or the findings are not supported by the evidence. (*Ibid.*) The Commission's findings and actions are presumed to be supported by substantial evidence. (*Ibid.*) A person challenging the Commission's decision bears the burden of showing that substantial evidence does not support the Commission's findings. (*Ibid.*)

When reviewing the Commission's decision, the court examines the whole record and considers all relevant evidence, including that which detracts from the decision. (*Ross, supra*, 199 Cal.App.4th at p. 921.) Although this task involves some weighing to fairly estimate the worth of the evidence, this limited weighing does not constitute independent review where the court substitutes its findings and inferences for those of the Commission. (*Id.* at p. 922.) Rather, the Commission weighs the preponderance of conflicting evidence, and the court may reverse its decision only if, based on the evidence before it, a reasonable person could not have reached the same conclusion the Commission reached. (*Ibid.*; accord *Ocean Harbor House v. Cal. Coastal Com.* (2008) 163 Cal.App.4th 215, 227 (hereafter *Ocean Harbor House*)). Substantial evidence upon which the Commission may base its decision includes opinion evidence of experts, oral presentations at the public hearing, photographic evidence, and written materials of staff. (*Whaler's Village Club v. Cal. Coastal Com.* (1985) 173 Cal.App.3d 240, 261 (hereafter *Whaler's Village Club*); *Coastal Southwest Dev. Corp. v. Cal. Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 532, 536 (hereafter *Coastal Southwest Dev. Corp.*)).

The ultimate task of statutory interpretation is for the judiciary, but the Commission's interpretation of the statutes and regulations under which it operates is entitled to "great weight," given the Commission's special familiarity with the regulatory and legal issues. (*Ross, supra*, 199 Cal.App.4th at p. 938; *Reddell v. Cal. Coastal Com.* (2009) 180 Cal.App.4th 956, 965-966; but see *Burke v. Cal. Coastal Com.* (2008) 168 Cal.App.4th 1098, 1106.)

As a preliminary matter, the Court notes that there is no dispute as to Petitioners' standing. Thus, it was not necessary for Petitioners' to provide extra record evidence i.e., declarations, to establish that they had standing to pursue the claims asserted here.

Also, Petitioners did not address the Port District's exhaustion argument in its opposition brief. Thus, the Court assumes that they do not contest this issue.

The first issue is whether the Commission violated the Coastal Act.

One, Public Resources Code section 30625 (section 30625) provides, in pertinent part: "any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed...The commission may approve, modify, or deny such proposed development..." Thus, the Commission has the authority to hear an appeal of development the Port District authorized pursuant to a claim of exemption, and may modify and approve such development on appeal.

Petitioners' contend that by issuing the permit, the Commission instituted a "de facto" amendment of the Plan. In this case, the Commission did not purport to amend the Plan or change any land use designation within it. It modified and approved the project, as section 30625 authorized. Port master plans are required to "include" proposed projects, and ports must certify that approved projects



"conform" to port master plans, but no provision of the Coastal Act states that the Commission may only approve development included in a project list when exercising its appellate jurisdiction over a claim of exemption. (See Pub. Res. Code, §§30711, 30715, 30715.5, 30112.)

Petitioners' interpretation of the Coastal Act would negate the requirement in section 30621 that the Commission hold a "de novo" hearing once appellate review is exercised, because there cannot be a "de novo" hearing if only one course of action is possible. (See *Coronado Yacht Club v. Cal. Coastal Com.* (1993) 13 Cal.App.4th 860, 871-872 (hereafter *Coronado Yacht Club*).)

Petitioners' argument that the Commission lacks authority to approve development not listed in a port master plan conflicts with Public Resources Code section 30715, which provides that the Commission's permitting authority is delegated to the Port "over any new development contained in the certified plan...." Read together with section 30625, this provision demonstrates that the Commission has authority to approve development not listed in a port master plan when exercising appellate jurisdiction over a port's claim of exemption, and it was not required by law to deny the permit application.

In sum, the fundamental flaw in Petitioners' argument is that it ignores the very Coastal Act provision which expressly authorized the Commission to "approve" or "modify" the Project.

Two, the Project was not an "appealable development", but even assuming it was, the Commission had express authority in section 30625 to "approve" and "modify" the Project.

Three, the Commission had the jurisdiction to conditionally approve the Project based on retained Commission jurisdiction.

Petitioners read the words in the second sentence of Public Resources Code section 30715 subd. (a), "contained in the certified plan," to mean that every development proposed in a port must be listed in the Port Master Plan. At the same time, they ignored the first sentence, which states that until a port master plan is certified, permit jurisdiction remains with the Commission. Consequently, assuming Petitioners' interpretation was correct, development not listed in the plan would remain subject to the Commission's original permit jurisdiction. It would not be delegated to the Port District at all. As applied here, the Port District's exercise of jurisdiction in the first instance would be irrelevant. The Commission would retain jurisdiction to conditionally approve the Project. Importantly, however, Petitioners not only ignore the first sentence of section 30715 subd. (a), but wrongly interpret the second sentence. The quoted words, in context, mean simply that after certification, jurisdiction over developments in the port master plan or portion thereof that is certified is delegated to the ports, with appeal jurisdiction reserved to the Commission. (See *Coronado Yacht Club, supra*, 13 Cal.App.4th at p. 872.) Furthermore, nothing in the Coastal Act mandates that every proposed development in a port be the subject of a port master plan amendment. (See Pub. Res. Code, §30711.) In Public Resources Code section 30711, the Legislature could have stated that a port master plan must include all developments, including exempt, emergency, and nonappealable development, but instead expressly stated only that "[p]roposed projects listed as appealable in Section 30715" be included.

Four, substantial evidence supports the Commission's determination that the Project, as modified, complied with the Coastal Act.

The Commission found that the new landside restaurant development, as the Port approved, would block waterfront access that was currently available through the existing parking lot. (11 AR 2778.) The Commission required Sunroad to re-design the project to provide a continuous public path along the

shoreline between the restaurant and the water. (11 AR 2654-2655.) The Commission further required Sunroad to allow public access to the floating barge, and to provide appropriate signage directing the public to the barge. (11 AR 2799.) Commission staff testified that the project, as revised, would maintain and improve public access along the shoreline. (11 AR 2654-2655.) The Commission concurred. (11 AR 2797.)

The Commission also found that the modified development would not have any adverse impact on the visual quality of the area because the proposed barge would be a maximum 18 feet in height, compared to the previous barge, the 4-story Reuben E. Lee. Moreover, the public access improvements on the shoreline side of the restaurant would provide pedestrian access to views beyond the building. (11 AR 2801.) Visual depictions that the Commission considered show that the project would provide shoreline public access and enhanced views of the water. (11 AR 2562-2571; 2816-2818; 1 AR 11-12.) The Commission also found the proposed project includes expansive landscaping and "hardscape" that would make the area more inviting to the public. (11 AR 2801.)

Petitioners claim that additional public input would have resulted in further measures to enhance public access and protect scenic views, but failed to identify any further measures or cite any evidence in the record supporting their position. (*Ibid.*)

The Commission concluded the project as modified and conditioned was consistent with the Coastal Act based on ample evidence that public access and views would be protected and enhanced. The evidence showed the project's public path and deck area would be preferable to the currently-available public access to the end of the peninsula via a parking lot, and the new floating barge would be significantly lower in height and bulk than the Reuben E. Lee. The Commission was entitled to consider this evidence and infer from it that the project would enhance, not diminish, public access and scenic views. (*Whaler's Village Club, supra*, 173 Cal.App.3d at p. 261; *Coastal Southwest Development Corp., supra*.) Petitioners do not offer any evidence contrary to the Commission's findings, and cannot carry their burden to defeat the presumption that substantial evidence supported the Commission's decision. (*Ocean Harbor House Homeowners Assn., supra*, 163 Cal.App.4th at p. 227.)

The second issue is whether the Commission violated CEQA

Under CEQA, a state agency's regulatory program may be exempted from the requirements of preparing initial studies, negative declarations and environmental impact reports if the Secretary of the Resources Agency certifies the program. (Pub. Res. Code, §21080.5.) A certified regulatory program remains subject to other CEQA policies, including the obligations to identify a project's adverse environmental effects, to mitigate those effects through the adoption of feasible alternatives or mitigation measures, and to justify its actions based on specific economic, social or other conditions. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230.)

The secretary certified the Commission's coastal development permit program under section 21080.5. (Cal. Code Regs., tit. 14, §15251(c).) A Commission staff report "complies with the relevant substantive and procedural requirements applicable to a certified regulatory program" for CEQA purposes. (*Ross, supra*, 199 Cal.App.4th at p. 933; see Cal. Code Regs., tit. 14, §§13057 [requirements for staff report]; 13096 [requiring written conclusions by Commission as to consistency of permit applications with CEQA].) The report must include "a description of the proposed activity with alternatives to the activity..." (Pub. Res. Code, §21080.5(d)(3)(A).) The consideration of alternatives need not be exhaustive, but "it must reasonably reflect that due consideration was given" to project alternatives. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 136.)

Here, the Commission staff report described two projects: the project the Port District approved, and the project that the Commission ultimately approved. The report found that the Port District approved project would total 27,505 square feet, and would provide two public viewpoints on either side of the proposed restaurant. (11 AR 2760.) The report stated that the Project would eliminate public access to the shoreline and water views, and that the proposed overlook points would not preserve or enhance the level or quality of public access that existed on the site. (11 AR 2778-2779.) It also found that, as a result of the elimination of public access to the shore, the project would block existing views of the downtown skyline and bay, (11 AR 2780.) In addition, the report noted that the Port District's proposal did not include conditions requiring measures to prevent the spread of the invasive algae *Caulpera taxifolia*. (*Ibid.*) In contrast, as described above, the modified development proposed to the Commission would be approximately 22,850 square feet--a significant reduction--and would include measures to ensure public access to the coast and protect scenic views, coastal biology and water quality. (11 AR 2790.)

In addition, the Commission considered and rejected alternatives requiring that the project be moved further away from the shoreline or shrunk in size. (11 AR 2798.) The restaurant could not be shifted inland because of setback requirements related to a seismic fault, and shrinking the project further would have required eliminating basic components of the project. (*Ibid.*; 11 AR 2781 [describing 10-foot setback zone].) And, such changes would be unnecessary because the project had been re-designed to avoid all significant environmental impacts. (11 AR 2797-2803.) The record thus contains substantial evidence that the Commission considered a reasonable range of feasible alternatives, imposed feasible mitigation measures to reduce the project's environmental impact, and adopted the least environmentally-damaging alternative.

Contrary to petitioners' assertion, the staff report's findings that "feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects on the environment," and "there are no further feasible mitigation measures that would substantially lessen any significant adverse effects on the environment" (11 AR 2808-2809), were supported by substantial evidence and complied with CEQA. (See *Sierra Club v. Cal. Coastal Com.* (1993) 19 Cal.App.4th 547, 556; see also *Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201, 1222-1223.)

Finally, the "Put it Back" alternative would not have required a CDP at all. Under the "Replacement or Reconstruction" exemption in both Section 8.b subd. (1) of the Port District's certified CDP regulations (5 AR 953-954) and the CEQA Guidelines (Cal. Code Regs., tit., 14, §15302(b)), RPIs could have put back a "Reuben E. Lee" or another restaurant on a barge without a permit, new public access, or new sweeping public views. An alternative must "substantially lessen a significant adverse impact that the activity may have on the environment." (Pub. Res. Code, §21080.5(d)(2)(A).) Petitioners' alternative would not achieve this goal. Any viable restaurant sitting on a barge would block views of downtown San Diego, the Bay, the Bridge, and Coronado. (11 AR 2576, 2581, 2587.) Moreover, counsel's generalized objection, without further explanation, made at the close of the public hearing, was barred in any event barred by the exhaustion doctrine. (Pub. Res. Code, §21177; *CREED v. City of San Diego* (2011) 196 Cal.App.4th 515, 527; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197-1198.)

Based on the foregoing, the Court denies the writ. The Commission is directed to prepare the Judgment.

**IT IS SO ORDERED.**

*Ronald S. Prager*

---

Judge Ronald S. Prager

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

Central  
330 West Broadway  
San Diego, CA 92101

**SHORT TITLE:** San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION [E-File]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2013-00057492-CU-TT-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 05/12/2014.

Clerk of the Court, by:  L. Ryan, Deputy

MEKAELA M GLADDEN  
BRIGGS LAW CORPORATION  
814 MORENA BOULEVARD # 107  
SAN DIEGO, CA 92110

STEVEN H KAUFMANN  
RICHARDS/ WATSON/ GERSHON  
355 S. GRAND. AVE, 40TH FLOOR  
LOS ANGELES, CA 90071

BAINE P KERR  
OFFICE OF THE ATTORNEY GENERAL  
300 SOUTH SPRING STREET # 1702  
LOS ANGELES, CA 90013

HAYLEY E PETERSON  
110 WEST A ST #1100  
SAN DIEGO, CA 92101

CORY J BRIGGS  
BRIGGS LAW CORPORATION  
99 EAST C STREET # 111  
UPLAND, CA 91786

MICHAEL M HOGAN  
HOGAN LAW APC  
225 BROADWAY STE 1900  
SAN DIEGO, CA 92101

☐ Additional names and address attached.

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**



1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN DIEGO

3  
4  
5 DEPARTMENT 71 HON. RONALD S. PRAGER

6  
7 SAN DIEGANS FOR OPEN )  
GOVERNMENT and SAN DIEGO )  
8 NAVY BROADWAY COMPLEX )  
COALITION, )

9 )  
Plaintiffs )  
10 and Petitioners, )

11 v. )

12 CALIFORNIA COASTAL )  
COMMISSION; SAN DIEGO )  
13 UNIFIED PORT DISTRICT; )  
and DOES 1 through 100, )

14 )  
Defendants )  
15 and Respondents. )

16 )  
SUNROAD ENTERPRISES; )  
SUNROAD HARBOR ISLAND, )  
17 INC.; and DOES 101 )  
Through 1,000, )

18 )  
Defendants and )  
19 Real Parties in )  
Interest. )

20 ) HEARING ON PETITION

21  
22  
23 REPORTER'S TRANSCRIPT

24 SAN DIEGO, CALIFORNIA  
25 MAY 8, 2014

26  
27 **EXHIBIT 7**  
28

1     APPEARANCES:

2     FOR THE PLAINTIFFS/PETITIONERS:

3                     BRIGGS LAW CORPORATION  
4                     BY: CORY BRIGGS, ESQ.  
5                     BY: MEKAELA M. GLADDEN, ESQ.  
6                     99 EAST "C" STREET, SUITE 111  
7                     UPLAND, CALIFORNIA 91786  
8                     (909) 949-7115

9     FOR THE SAN DIEGO UNIFIED PORT DISTRICT:

10                    HOGAN LAW, APC  
11                    BY: MICHAEL M. HOGAN, ESQ.  
12                    225 BROADWAY, SUITE 1900  
13                    SAN DIEGO, CALIFORNIA 92101  
14                    (619) 687-0280

15    FOR THE COASTAL COMMISSION:

16                    DEPARTMENT OF JUSTICE  
17                    BY: BAINE KERR, ESQ.  
18                    300 SOUTH SPRING STREET, SUITE 1702  
19                    LOS ANGELES, CALIFORNIA 90013  
20                    (213) 620-2210

21    FOR SUNROAD ENTERPRISES, SUNROAD HARBOR ISLAND, INC.:

22                    RICHARDS, WATSON, GERSHON  
23                    BY: STEVEN H. KAUFMANN, ESQ.  
24                    355 SOUTH GRAND AVENUE, 40TH FLOOR  
25                    LOS ANGELES, CALIFORNIA 90071  
26                    (213) 626-8484

27

28

29

30

31

32

33

34

35

36

                  KIRA ABERLE, CSR 12456  
                  COURT-APPROVED OFFICIAL  
                  REPORTER PRO TEMPORE  
                  (619) 358-9848



1 water-oriented purposes."

2 THE COURT: Yeah, that's -- you know, that  
3 language, I thought we are were parsing that language  
4 in. I agree with Mr. Kaufmann. I don't think  
5 restaurants comes in that category.

6 MR. BRIGGS: So, as you know from many years of  
7 having to sit through me arguing, I care about two  
8 things. Number one, winning, and two, making sure that  
9 even if I lose that your ruling doesn't have unintended  
10 consequences.

11 THE COURT: But if I say to you, Mr. Briggs,  
12 that I don't think restaurants is included in that  
13 language, that's just how I feel. You and I disagree on  
14 it. I mean, aren't I suppose to make rulings based upon  
15 what am I construing as facts here and I use the  
16 statute, and even though there's good authority in there  
17 it really isn't going to be dispositive about the  
18 outcome of this case.

19 To me, I agree with Mr. Kaufmann's argument  
20 that if the legislature wanted to say "restaurants" they  
21 knew how to say "restaurants" --

22 MR. BRIGGS: That's true. And it's also true  
23 that the Coastal Commission is the expert agency here --

24 THE COURT: I mean, wouldn't that still be  
25 arguable; too, because you could argue on the other side  
26 that you are supposed to give great deference to their  
27 construction of their own statutes.

28 MR. BRIGGS: We're having the argument today

1 we're here on an exemption.

2 THE COURT: As a matter of statutory  
3 construction, I just don't see restaurants there.

4 MR. BRIGGS: Well, at the same time, there's a  
5 principle of judicial reasoning that says don't reach  
6 issues that you need not reach. And since  
7 Mr. Kaufmann --

8 THE COURT: Anybody could argue they are the  
9 victor here.

10 MR. BRIGGS: Except you've now said twice, by  
11 my count, that you don't see the word "restaurant" --

12 THE COURT: And maybe I ought to hear from the  
13 AG on this. Why am I wrong on this?

14 MR. KERR: Well, your Honor, just to clarify  
15 the record a little bit, the Commission unanimously  
16 adopted revised findings following its approval of this  
17 permit, which they include -- Section 30715 includes  
18 restaurants. So that's the Commission's position and  
19 that was adopted.

20 THE COURT: You say it's the staff's position?

21 MR. KERR: Right. And the finding of the  
22 Commission --

23 THE COURT: What was their reasoning?

24 MR. KERR: The reasoning is that  
25 Subdivision A(4) mostly deals with visitor --  
26 exclusively deals with visitor services, and if you --

27 THE COURT: What is this language in there  
28 about, you know, commercial -- what was the language?

1 out my colleague representing the --

2 THE COURT: So I can understand, hotels,  
3 motels, and shopping facilities not -- in other words,  
4 hotels, motels, and shopping facilities catering to,  
5 like, people that are walking around Harbor Island; is  
6 that --

7 MR. KERR: Right.

8 THE COURT: And so the Commission's position is  
9 hotels, motels, and shopping facilities catering to  
10 tourists parking and walking around, that includes  
11 restaurants?

12 MR. BRIGGS: Correct.

13 THE COURT: That's your position?

14 MR. KERR: That's the Commission's position,  
15 yes.

16 MR. KAUFMANN: May I address that?

17 THE COURT: Yes.

18 MR. KAUFMANN: Thank you. I appreciate it.  
19 Around noon or so you are going to be hungry. You are  
20 going to turn to your clerk and you're going to say,  
21 "I'm going to a shopping facility not principally  
22 devoted to the sale of commercial goods utilized for  
23 water-oriented purposes, and I'll be back about 1:30."  
24 Or you might just say, "I'm going to a restaurant."

25 THE COURT: Are you saying that the Coastal  
26 Commission is hanging their hat on the restaurants come  
27 not within the hotels and motels but in the shopping  
28 facilities that aren't catering to -- shopping

1 THE COURT: Okay. I don't get to keep it?

2 MR. BRIGGS: Not until I autograph it.

3 So I'm going to stop beating a dead horse here  
4 in a moment. This -- lawsuits sometimes have unintended  
5 consequences, so conceded. What I'm trying to get your  
6 Honor to see is that you are contributing to that  
7 unnecessarily. Mr. -- we agree that there is appellate  
8 jurisdiction on the exemption issue, so why reach the  
9 other issue --

10 THE COURT: I think that Mr. Hogan made a good  
11 argument. You raised the argument, you risk that it is  
12 going to be rejected --

13 MR. BRIGGS: I didn't raise the argument,  
14 that's the thing.

15 THE COURT: You didn't raise the argument?

16 MR. BRIGGS: I did not raise that -- this  
17 restaurant issue. This isn't our issue. What I'm  
18 saying is that your tentative ruling takes the bait that  
19 Sunroad put out there and goes further than you need to  
20 go, which is the point Mr. Hogan and I agree on.  
21 Everybody administratively took the position that we're  
22 there on an exemption issue.

23 THE COURT: I just seems to me the pure  
24 question of statutory interpretation, this presents a  
25 situation. To me when I say to the legislature is if  
26 you wanted to put restaurants in there you should say  
27 "restaurants."

28 MR. BRIGGS: Then you just pulled the rug out



## SAN DIEGO UNIFIED PORT DISTRICT

OFFICE OF THE GENERAL COUNSEL

March 2, 2017

### **VIA EMAIL (WITHOUT ATTACHMENT E) AND HAND DELIVERED (WITH ALL ATTACHMENTS)**

California Coastal Commission  
San Diego Area  
ATTN: Deborah N. Lee  
Melody Lasiter  
7575 Metropolitan Drive, Ste 103  
San Diego, CA 92108  
[Deborah.Lee@coastal.ca.gov](mailto:Deborah.Lee@coastal.ca.gov)  
[Melody.Lasiter@coastal.ca.gov](mailto:Melody.Lasiter@coastal.ca.gov)

RE: Dispute Resolution Permit Appealability No. 6-17-0146-EDD (CDP No. 2016-91)

Dear Ms. Lee and Ms. Lasiter,

This letter supplements the February 6, 2017 letter sent by the San Diego Unified Port District (District) in regards to the February 2, 2017 Executive Director Determination on Appealability for the Portside Pier Project (Coastal Development Permit (CDP) Application No. 2016-91) (February 6th Letter), incorporated herein by reference.<sup>1</sup> This letter and the attachments are to be included in the California Coastal Commission (CCC or Commission) staff report for agenda Item 28 (as of March 2, 2017), Dispute Resolution No. 6-17-0146-EDD (Brigantine, Inc., San Diego), on March 8, 2017 (CCC staff report). The District requests that the attachments to the District's February 6th Letter also be included in the CCC staff report as they were missing from the published report and are integral to the District's position. Those attachments were provided to CCC staff at the time the letter was delivered to them, but for convenience, are being transmitted electronically again with this letter.

---

<sup>1</sup> Please note that the District was given less than 24-hours' notice that any written comments to be included in the CCC staff report must be submitted to CCC staff by noon on March 2, 2017, and hence, additional oral comments may be provided to the Commission on March 8, 2017.

The District's position that CDP No. 2016-91 was correctly issued as a non-appealable CDP, that the CCC has no authority to hold a "dispute resolution" hearing or review CDP No. 2016-91 (or any other District-issued non-appealable CDPs) and that the CCC is illegally usurping a Court decision between the parties has not wavered. For the reasons set forth herein, the CCC staff report only supports the District's position. This letter asserts additional grounds as to why the CCC's conduct is outside of its authority and clarifies the legal precedent that restaurants are not within the scope of Section 30715 of the California Coastal Act (Coastal Act).

As detailed in this letter, Section 13569 of the CCC regulations only applies to "local governments" and has no bearing on or applicability to ports. In any event, the procedures of Section 13569 were not followed and restaurants are not within the scope of Section 30715. Consequently, the CCC "dispute resolution" hearing on March 8th regarding the appealability of CDP No. 2016-91 is being conducted in excess of the CCC's authority.

**I. Section 13569 Does Not Apply to Ports and Does Not Give the CCC Authority or Jurisdiction to Hold a "Dispute Resolution" Hearing on the Appealability of CDPs Issued by the District**

CCC staff incorrectly relies on 14 California Code of Regulations (CCR) Section 13569 to assert that the CCC has authority and jurisdiction to hold a "dispute resolution" hearing on whether District-issued CDP 2016-91 is "appealable" under the Coastal Act. Yet, Section 13569 squarely does not apply to ports. As shown in Attachment B, the plain language of the regulation is crystal clear – it only applies to local governments with adopted Local Coastal Programs (LCPs). Every subsection of 13569 mentions "local governments" and sets forth a process for local governments or determinations of local governments. It simply does not mention ports.

Importantly, Section 13569 only appears in the Chapter 8, Subchapter 2, of the Commission's regulations, the scope of which is limited to LCPs and state university or college long range planning land use development plans (14 CCR § 13500 (defining the scope of Subchapter 2).) There are no similar provisions or reference to Section 13569 in the Subchapter 6 of regulation that apply to ports. (See 14 CCR §§ 13600-13648 (CCC regulations that apply to ports and accordingly, the District).) In contrast, other provisions of the Coastal Act and CCC regulation explicitly mention application to both LCPs/local governments and Port Master Plans/ports. (See e.g., Cal Pub. Res. Code § 30620.6 (citing Coastal Act provisions that apply to local governments and those that apply to ports); 14 CCR § 13641(c) ("Appeals [for Port-issued appealable approvals] shall be filed and processed by the Commission in the same manner as appeals from

local government actions as set forth in Chapter 7 of the Coastal Act and Chapter 5 of these regulations".) Moreover, there are no provisions of the Coastal Act or the District's CDP Regulations, which were approved by the CCC, that grant the CCC authority to hold the "dispute resolution" hearing on the appealability of Non-Appealable CDP No. 2016-91 or any other District-issued non-appealable CDP for a restaurant development.

Additional evidence of the inapplicability of Section 13569 is found in 14 CCR Section 13641, entitled "Appeals After Certification of Master Plan." Specifically, Section 13641(c) states that: "Appeals [for Port-issued appealable CDPs and exclusions] shall be filed and processed by the Commission in the same manner as appeals from local government actions as set forth in Chapter 7 of the California Coastal Act and Chapter 5 of these regulations." (Emphasis added.) This is the only cross reference to a Chapter of the CCC regulations that applies LCPs/local governments as also applicable to ports. Hence, Chapter 5 of the CCC regulations is the sole "manner" by which the CCC or any interested person may appeal or decide the appealability of a District-issued CDP. Section 13569, the illegal vehicle by which CCC staff is bringing this item before the CCC, is located in Chapter 8 of the CCC regulations - not Chapter 5.

Accordingly, the Coastal Act and the CCC's own regulations do not give the CCC authority or jurisdiction to hold the "dispute resolution" hearing over the appealability of a non-appealable CDP for restaurants issued by the District. The CCC's exercise of jurisdiction without Legislative authority to do so, like here, is illegal and an *ultra vires* action that is void by operation of law. (See *e.g.*, *Burke v. California Coastal Com.* (2008) 168 Cal.App.4th 1098, 1106; *Security Nat. Guar., Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 422.)

**II. While Inapplicable to Ports, the Process Codified in Section 13569 Does Not Give the CCC Executive Director or Staff the Ability to Unilaterally Agendize a "Dispute Resolution" Hearing**

As discussed in detail in Section I of this letter, Section 13569 does not give the CCC the authority or jurisdiction to hold a "dispute resolution" hearing for CDP No. 2016-91 or any other District-issued non-appealable CDPs for restaurants. Nonetheless, that Section includes a detailed and mandatory process for such hearings, which was not followed here. Section 13569 states that: "Where an applicant, interested person or local government has a question as to the appropriate designation for development, the following procedures shall establish whether the development is categorically excluded, non-appealable or appealable. . . ." (Emphasis added.) This provision expressly provides that Section 13569 establishes the exclusive procedures for the CCC to review whether local government's (not port's) approvals should be

excluded, issued an appealable CDP or issued a non-appealable CDP. That process is mandatory and must be followed. (*Common Cause of California v. Bd. of Supervisors of Los Angeles Co.* 49 Cal.3d 432, 443 (1989) (The word “may” in a statute is construed as permissive, whereas “shall” is construed as mandatory, particularly when both terms are used in the same statute); *Jones v. Catholic Healthcare West* (2007) 147 Cal.App.4th 300, 307 (“courts routinely construe the word “may” as permissive and words like “shall” or “must” as mandatory”).) Further, Section 13569 can only be triggered by “an applicant, interested person or local government.” Here, there was no applicant, interested person or local government that questioned the non-appealable nature of CDP No. 2016-91. Brigantine, Inc. did not question it and no local government questioned it. Neither did the District, a non-local governmental entity. No interested person questioned it.

Importantly, CCC staff and the Executive Director are not “interested persons” under the Coastal Act or the CCC regulations. Section 30323 of the Coastal Act defines an “interested person” as:

(a) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission. (b) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. (c) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

This is the sole definition of is “interested person” in the Coastal Act (found in Article 2.5 of the Coastal Act) and is instructive. Moreover, other provisions of the Coastal Act that use the term “interested person” or “interested parties” expressly denote a difference between the CCC and interested persons/parties, supporting the fact that the CCC and its staff are distinct entities from “interested persons.” (Coastal Act §§ 30335.1, 30606, 30620, 30712 and 30717 (listing separately Commission, governmental agencies and interested persons); see *also* 14 CCR §§ 13054 (interested person does not include CCC or CCC staff), 13302, 13504, 13537 (listing separately



from interested person, the executive director).) Consequently, Section 13569 cannot be unilaterally triggered by CCC staff.

Subsection (b) of 13569 states that after the local government makes a determination whether the development is excluded, appealable or non-appealable (pursuant to subsection (a)), "[i]f the determination of the local government is challenged by the applicant or interested person, or if the local government wishes to have a Commission determination as to the appropriate determination, the local government shall notify the Commission by telephone . . . and shall request an Executive Director's opinion." Here, the non-appealable CDP was not challenged by the applicant or an interested person and there was no request by a local government or the District for an Executive Director's opinion. Additionally, the CCC Executive Director did not transmit his determination within 2 working days of a request being made or inspection conducted as required by subsection (c). This could be because Section 13569 does not apply here and NO request was made as required by subsection (b) of 13569. Finally, subsection (d) states that if the Executive Director's determination differs from the determination of the "local government," the CCC shall hold a hearing for determining the designation at the "next Commission meeting . . . following the local government request." No local government has made a determination as the District is a port not a local government under the Coastal Act and CCC regulations.

In summary, not only does Section 13569 fail to give the CCC jurisdiction or authority to hold a "dispute resolution" hearing for CDP No. 2016-91, none of the mandatory procedures codified therein were triggered, let alone followed.

### **III. Section 30715 of the Coastal Act Does Not Include Restaurants and the CCC Staff's Interpretation that Only Water-Oriented Developments Are Non-Appealable is Nonsensical and Contradictory**

For the reasons set forth in the District's February 6th Letter, restaurants are non-appealable development under Section 30715 of the Coastal Act. CCC staff does not present any convincing, legal or substantial evidence to the contrary. Since the February 6<sup>th</sup> Letter is an attachment to the CCC staff report, I will not repeat its contents here, except to note that if the Legislature wanted to include restaurants in 30715 it could have specifically or used a broader term that clearly encompasses restaurants. (See e.g., Cal. Pub. Res. Code, § 32027.) It did not.

Coastal Act Section 30715 provides that the District's permitting authority transferred to the District upon certification of its Port Master Plan (PMP), which

occurred in 1981. That Section also lists six specific categories of development that may be subject to appeal to the CCC. Aside from approval of development within those categories, the decisions of the District are final and are not subject to CCC review. This is a statutory grant of authority from the California Legislature to ports, including the District, and may not be usurped by the CCC.

In attempting to include a category of development (restaurants) which is not included in the Coastal Act's list of appealable development for ports, CCC staff suggests the six categories of development could be recast into two: (1) maritime or water-oriented developments or port activities, which are non-appealable and (2) any other uses, as appealable. Rather than abiding by the categories as written by the Legislature, CCC staff redefines the category of appealable development and greatly broadens the scope of appealable projects from the plain language of the Coastal Act as enacted by the Legislature.

Commission staff allegedly finds justification for its unlawful expansion of the categories of appealable development based on the context of Section 30715 and the general goals and policies of the Coastal Act. This approach runs afoul of several well-established rules of statutory construction. In accordance with the statutory canon that the expression of one thing is the exclusion of another (*expressio unius est exclusio alterius*), there is a legal presumption that when a list of categories are included in a statute, the Legislature intended to exclude whatever is missing from the list. Adding categories to an enumerated list impermissibly rewrites the statute. Here, Section 30715 includes a list of appealable categories of development – none of which include “restaurants” – and the CCC cannot insert restaurants into that list.

Furthermore application of “broad purposes” of legislation cannot be made at the expense of specific provisions. In other words, specific provisions prevail over general ones. Nonetheless, the CCC staff's proposed reading of Section 30715 is inconsistent with the broader structure of the Coastal Act, which delegates to ports the responsibility of implementing the Coastal Act upon certification of a Port Master Plan and, for the most part, limits the CCC's role post-certification of Port Master Plan to review of amendments to the Port Master Plan and an appeal of the six specific categories of development enumerated in Section 30715. If the Legislature intended that the District only had authority to issue non-appealable CDPs for water-oriented uses or port activities, Section 30715 would have been expressly written in a way to do so, but it was not.

The plain language of Section 30715 also contradicts the CCC staff's assertion. Section 30715(a)(4) includes "recreational small craft marina related facilities" and "commercial fishing facilities" – both clearly water-oriented categories of development as neither can be located outside of the water. Moreover, transmission of liquefied natural gas and crude oil – specified as appealable under Section 30715(a)(1) – are water-oriented activities as they may be transported by vessel. Commission staff posits that the project is a "shopping facility not principally devoted to the sale of commercial goods utilized for water-oriented purposes" and because it is not water-oriented or related to the Port's normal activities it is subject to appeal. In the very same staff report CCC staff then posits that the dock and dine facility (a use that is totally water-oriented) is a recreational small craft marina-related facility subject to appeal. This contradiction refutes the proposition that non-water-oriented development is subject to appeal. Commission staff is advancing contradictory theories in its unfounded attempt to categorize the project as subject to Section 30715.

To the extent that there is uncertainty about the meaning of the Coastal Act, which in the District's opinion there isn't, it is the constitutional role of the courts to interpret the Coastal Act – not the CCC. This already occurred in *San Diegans for Open Government v. California Coastal Commission; San Diego Unified Port District*, Case. No. 37-2013-00057492-CU-TT-CTL (2013) (Restaurant Lawsuit) where both the CCC and the District were parties. That decision is binding on the parties. As elaborated on in the Brigantine's letter, submitted by Steven Kauffman, and incorporated herein by reference, the decision holds that restaurants are not appealable. The issue whether restaurants were "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes" was squarely before the Court, it was fully briefed by the parties and was repeatedly addressed by the judge. (See Mr. Kauffman's Letter and Attachment C, Parties' Briefs in the Restaurant Lawsuit.) It is disingenuous, at the very least, to assert the issue was not decided by the Court. The CCC, as an executive branch of the government, should not and cannot act contrary to the court's decision without violating the separation of powers doctrine. (See *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal.4th 287,297-298; See, e.g., *In re McLain* (1923) 190 Cal. 376, 379; *People's Federal Sav. & Loan Ass'n v. State Franchise Tax Bd.* (1952) 110 Cal.App.2d 696, 700.)

**IV. Restaurant Listed in the PMP, As Appealable, Are Associated or Accessory Uses to an Appealable Category of Development and Occurred Prior to the Restaurant Lawsuit**

As stated in the District's February 6<sup>th</sup> Letter, with the exception of one restaurant, all the restaurants listed on appealable project list of the District's PMP are associated with or an accessory use to an appealable development:

- Planning District 1: (15) Bay City/Sun Harbor Development: New 50-slip marina with restaurant. Small craft marinas are appealable.
- Planning District 2: (1) Hotel complex: Up to 500 rooms, restaurant. . . . Hotels are appealable.
- Planning District 3: (4) North Embarcadero Redevelopment: Grape Street piers replacement and restaurant. Demolition of former commercial fishing support facility AND restaurant. Commercial fishing facilities are appealable.
- Planning District 3: (7) Hilton San Diego Bayfront: 1200 hotel rooms with restaurants. Hotels are appealable.
- Planning District 3: (11) Old Police Headquarters Rehabilitation: Specialty retail, entertainment, and restaurant uses. The specialty retail – the primary use – not principally devoted to the sale of commercial goods utilized for water-oriented uses is appealable.
- Planning District 3: (12) Pier Walk Building: New Pier Walk building to accommodate existing commercial fish processing operations, as well as associated retail, restaurant, and other services/support uses. Commercial fishing facilities are appealable.
- Planning District 6: (2) First Street Commercial Area: Construct restaurant, commercial buildings, parking and landscaping, pier and slips. Specialty Shopping in the commercial buildings are appealable.
- Planning District 7 (11) Resort Conference Center: Up to 100,000 square-feet with restaurant. Hotel is an appealable development.
- Planning District 7: (27) Ferry Terminal: Ferry terminal with second story restaurant/retail. Recreational small craft marine-related facility is appealable.
- Planning District 10: (4) Restaurant: construct restaurant and ancillary commercial uses on expanded pier platform when market demands. This was listed as appealable due to the unknown nature of the “commercial

uses” and the pressure by CCC staff that it would be denied without it being on the appealable list.

Regardless of the District’s PMP characterization of these restaurants, they were drafted into the PMP prior to the Restaurant Lawsuit and going forward the District may issue non-appealable CDPs for ALL restaurants consistent with the Court’s 2013 ruling in the Restaurant Lawsuit. Moreover, a notice of final determination, whether transmitted to the CCC staff in the past, is clearly not required by the District’s CDP regulations for non-appealable developments (see February 6<sup>th</sup> Letter). The District also added the CCC staff to the notification list for the final Mitigated Negative Declaration (MND) and the final action of the CDP. The CCC was notified as any other stakeholder on the list. In fact, CCC staff was notified several times starting that the Board of Port Commissioners were contemplating adoption of the final MND and Non-Appealable CDP 2016-91 (stating on December 1, 2016) and the approvals had occurred (January 10, 2016). Moreover, as required under the California Environmental Quality Act, a Notice of Determination was posted publically with the County Clerk on December 14, 2017 (see Attachment D). No additional noticing requirements exist. Yet, three months later and within days of when the current tenant of the existing facility is vacating, CCC staff institutes an unauthorized process and an illegal appeal of CDP No. 2016-91, potentially leaving the existing facility vacant and boarded up unless a Court intervenes.

**V. The Merits of the CDP are Not at Issue in the “Dispute Resolution” Hearing and the CCC Should Not and Cannot Consider them During the Hearing**

The CCC staff report includes several pages about the merits of CDP No. 2016-91 and incorrectly alleges that it is not in conformance with the PMP and the Coastal Act. If the CCC chooses to hold the “dispute resolution” hearing despite the fact it has no authority or jurisdiction to do so, the sole issue before the CCC is whether CDP No. 2016-91 is appealable – not the merits of the permit. Not whether the proposed dock and dine facility is located within a correct land use category, which would not be subject to an appeal, but rather a different means of legal review. This is not a substantial issue hearing pursuant to Coastal Act Section 30603, which again, would be a hearing held in excess of the CCC’s authority because the CDP was legally issued as a non-appealable CDP. The CCC cannot and should not rely on the merits of the permit – its public access components, its water coverage, whether an amendment to the PMP is required, or the value of the development. In any event, CDP No. 2016-91 is consistent with the PMP and Coastal Act.



**VI. The “Dispute Resolution” Hearing and Outcome is Not Binding on the District and the Court is the Final Arbitrator of Statutory Interpretation**

As stated in the District’s February 6<sup>th</sup> Letter and as discussed further in this letter, the Court is the appropriate branch of government to decide the scope of Section 30715 of the Coastal Act. It already has done so in the Restaurant Lawsuit. Accordingly, any decision by the CCC would not only be *ultra vires* and void, it would not be binding on the District or limit the District’s authority to issue non-appealable CDPs for restaurants. If CCC staff wants a determination whether restaurants are appealable under Section 30715, it is required to take the correct legal channels to do so.

The District appreciates the opportunity to submit comments and respectfully requests that the CCC does not hold the “dispute resolution” hearing as it is in excess of the CCC’s authority, and if it does, CCC upholds the fact that Section 30715 of the Coastal Act does not include restaurants, as supported by the February 6<sup>th</sup> Letter, this letter and Brigantine’s letter.

Sincerely,



Rebecca S. Harrington

**ATTACHMENTS:**

- A: February 6, 2017 District Letter with Attachments (in a separate email(s) due to size)
- B: 14 California Code of Regulations (CCR) Section 13569
- C: Parties’ Briefs in the Restaurant Lawsuit
- D: Stamped Copy of the Notice of Determination
- E: Final MND (hardcopy for inclusion in the record and CCC consideration)

cc (via email):

Robin Mayer, Attorney, California Coastal Commission  
Randa Coniglio, District President/Chief Executive Officer  
Thomas A. Russell, District General Counsel  
T. Scott Edwards, District Vice President/Chief Operating Officer  
Shaun Sumner, District Assistant V.P., Operations  
Wileen Manaois, District Principal, Development Services  
Mike Morton, Jr., Brigantine & Miguel's, President/CEO  
Steven H. Kaufmann, Richards, Watson & Gershon, Partner



**SAN DIEGO UNIFIED PORT DISTRICT**  
**OFFICE OF THE GENERAL COUNSEL**

February 6, 2017

**VIA EMAIL (W/O ATTACHMENTS) AND IN-PERSON DELIVERY**

California Coastal Commission  
San Diego Area  
ATTN: Deborah N. Lee  
Melody Lasiter  
7575 Metropolitan Drive, Ste 103  
San Diego, CA 92108

RE: February 2, 2017 Executive Director Determination on Appealability for the  
Portside Pier Project (CDP Application No. 2016-91)

The San Diego Unified Port District (District) is in receipt of the February 2, 2017 letter from California Coastal Commission (Coastal Commission) staff entitled "EXECUTIVE DIRECTOR'S DETERMINATION ON APPEALABILITY," Coastal Development Permit Application No. 2016-92, 1360 North Harbor Drive, San Diego, CA 92101 (February 2, 2017 Letter). The February 2, 2017 Letter asserts that the proposed redevelopment of the existing Anthony's restaurant establishments by The Brigantine, Inc., as the applicant and project proponent (Project), is subject to appeal. As explained in detail herein, the Coastal Act designates the District as the permitting authority for restaurants and this Project is not among the category of projects subject to appeal under the Coastal Act.<sup>1</sup>

As you are aware, like Anthony's, the Project involves three restaurants, a coffee and gelato shop, a dedicated public viewing deck, and a dock and dine facility.<sup>2</sup> As you also are aware through the numerous notices given to the Coastal Commission, the Board of Port Commissioners (District Board) approved a Mitigated Negative Declaration (MND) and authorized issuance of a non-appealable Coastal Development Permit (CDP) for the

---

<sup>1</sup> The Coastal Act is codified in California Public Resource Code Section 30000 et seq.

<sup>2</sup> Anthony's includes three restaurants, a walk-up coffee kiosk and a dock.

Project on December 13, 2016. (See Attachment A (District staff report, which includes the Draft Non-Appealable CDP), District Board Resolution 2016-205 and District staff's presentation to the District Board.<sup>3</sup>)

The February 2, 2017 Letter claims that the proposed Project required an "appealable" CDP because restaurants and dock and dine facilities are appealable under Coastal Act Section 30715. This assertion is contrary to (1) the plain language of Section 30715, (2) the District's CDP Regulations, which were approved by the Coastal Commission, (3) the certified Port Master Plan (PMP), (4) past practices as demonstrated by previously issued CDPs for other restaurants in the District, and (5) a recent court ruling in a case involving both the District and the Coastal Commission.

Coastal Commission staff also insists that the District must issue a notice of final action for the non-appealable CDP. Yet, as also discussed, below, no such notice is required. In any event, Coastal Commission staff had notice prior to the District Board's approval of the Project and thereafter as well.

The establishment of a 10-day appealable period by Coastal Commission staff, institution of an unauthorized dispute resolution process, and the hearing of an appeal of a non-appealable CDP for the Project would each be an action in excess of the authority and jurisdiction granted to the Coastal Commission. Additionally, it may constitute interference with contract and a taking of property rights. Accordingly, the District requests that the Coastal Commission ceases initiation of the appeal period or any process to bring an appeal to the Coastal Commission.

#### **I. Restaurants and Dock and Dine Facilities are Non-Appealable Developments**

As stated in the responses to comments to Coastal Commission staff's comment letter on the Draft MND and as discussed in more detail below, the proposed Project is a non-appealable category of development as set forth in by Coastal Act Section 30715, as well as the District's Coastal Act regulations, which were approved by the Coastal Commission. (See Attachment B, Response to Comments and Errata). The certified PMP also supports the fact that restaurants and dock and dine facilities whether or not they are accessory uses, are non-appealable developments. Additionally, the interpretation is supported by the California Superior Court ruling in *San Diegans for*

---

<sup>3</sup> The staff report and draft resolutions can also be found online at:  
<https://portofsandiego.legistar.com/LegislationDetail.aspx?ID=2902778&GUID=83CE8ADF-7957-4114-989D-C6B79DDC1B50>



*Open Government v. California Coastal Commission; San Diego Unified Port District*, Case. No. 37-2013-00057492-CU-TT-CTL (2013) (Restaurant Lawsuit) where the Court found that a restaurant was not an appealable development (see Attachment C.)

**A. Restaurants and Accessory Dock and Dine facilities Are Not Appealable Developments Under Coastal Act Section 30715 and the District's Coastal Act Regulations**

Section 30715 of the Coastal Act specifies the categories of development that may be appealed to the Coastal Commission. Section 30715(a)(4) states that: "Offices and residential buildings not principally devoted to the administration of activities within the port; hotels, motels and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities" may be appealable to the Coastal Commission.

Neither restaurants nor eating establishments are listed as appealable in Section 30715 of the Coastal Act. A restaurant is not a "shopping facility." Coastal Commission staff's interpretation would expand appellate jurisdiction well beyond the plain language and intent of Section 30715(a)(4). Specifically, the Legislature used plain terms to describe "office and residential buildings," "hotels," "motels" and it knew how to use a plain term to describe a "restaurant." However, the Legislature did not do so, leaving restaurants as "non-appealable" developments.

A dock and dine facility is also not considered a "recreational small craft marina related facilities."<sup>4</sup> The certified PMP includes distinct land uses for "recreational small craft marina[s]," which do not include dock and dine facilities. Rather, the PMP includes "Pleasure Craft Marinas" and "Recreational Boat Berthing" uses that allow for longer-term berthing and storage of small recreational crafts, as well as boat rentals, charter and sales, fueling docks, etc. (PMP, p. 20.) In contrast, a dock and dine facility is allowable under the "Commercial Recreation" land use designation in the PMP. (PMP, p. 19.) Dock and dine facilities are not related to marinas, may be used by more than recreational small crafts, and unlike recreational marinas or associated facilities, dock and dine facilities are intended to be used for a short period of time while patrons visit restaurant establishments. (PMP, p. 19 (describing dock and dine facilities as "public boat docks located in proximity to a restaurant . . . where boaters may tie up and

---

<sup>4</sup> Coastal Commission staff did not assert in its MND comment letter to the District that the dock and dine facility was an appealable development.

disembark for a short period of time to dine . . . .).) In other words, dock and dine facilities are akin to short-term parking lots for boats.

The dock and dine facility is an accessory use to the restaurant establishment and does not change the nature of the restaurant from non-appealable to appealable. This is consistent with the Coastal Commission's position when it certified the San Diego Convention Center expansion Port Master Plan Amendment (PMPA) where the inclusion of retail shops did not convert San Diego Convention Center expansion from a non-appealable development to an appealable development. (PMP, pp. 68-71, 72 (accessory retail uses did not convert the San Diego Convention Center expansion into an appealable development).)

**B. The Superior Court, in Litigation Where Both the District and Coastal Commission Were Parties, Clarified that Restaurants are Not Appealable Development**

The decision in the Restaurant Lawsuit, challenging a Coastal Commission-issued CDP for the redevelopment of a restaurant by Sunroad, supports the interpretation that restaurants are non-appealable developments. There, Sunroad proposed the redevelopment of a site with a restaurant that was historically developed with a restaurant. The District issued a Coastal Act exclusion/exemption for it but failed to issue the noticed required by Section 30717 of the Coastal Act, which is required for appealable developments and starts the 10-working-day appeal period for exclusions/exemptions. The exemption/exclusion was appealed and after finding a substantial issue, the Coastal Commission conducted a de novo hearing and issued a CDP for the restaurant.

That CDP was subsequently challenged in the Restaurant Lawsuit filed by San Diegans for Open Government, Case. No. 37-2013-00057492-CU-TT-CTL (2013). In response to allegations by the petitioner and the Coastal Commission that a "restaurant" was "appealable" under Section 30715(a)(4) because a restaurant was a type of "shopping facility, and akin to other appealable development," the Court squarely ruled that a restaurant was NOT an "appealable" category of development under the Coastal Act. (Attachment C, p. 3.) Specifically, in response to petitioner's argument that a PMPA was required for the Sunroad restaurant to add it to the appealable project list, the court unambiguously found that "the [p]roject was not an 'appealable' development" and pursuant to Section 30711 of the Coastal Act, the Legislature could have required all projects be listed in a port master plan "but instead expressly stated that only . . . 'proposed projects listed as appealable in Section 30715 be included.'" These were two key grounds for denying petitioner's cause of action.

Additionally, several Coastal Commission Commissioners during the de novo hearing on the Sunroad restaurant rejected the interpretation that restaurants were appealable “shopping facility” developments:

- “[S]hopping facilities not principally devoted to the sale of commercial goods utilized for water oriented purposes is not a restaurant. A restaurant is a restaurant.” (see Attachment B, Appendix II p. 002705 [p. 63 of transcript] (excepts from the hearing transcript of the Sunroad Coastal Commission hearing).)
- I “would have a hard time calling [a restaurant] a shopping facility” and that an “attempt to stretch that definition of a shopping facility is a little too broad for where we should be.” (*Id.* at pp. 002717 – 002718 [pp. 75-76 of the transcript].)
- Staff’s interpretation that a restaurant is an appealable development is “a shortcutting the rules on Section 7015” and such a staff policy of doing so should be reviewed by the California Coastal Commission. (*Id.* at 002720 [p. 78 of the transcript].)

**C. The PMP, certified by the Coastal Commission, does not Characterize Standalone Restaurants or Dock and Dine Facilities as Appealable**

The District has excluded/exempted eight restaurants and issued non-appealable CDPs for at least two restaurants: the Chart House and the Fish Market, both of which were standalone restaurants like the Project. (See Attachment B, Appendix III.) Importantly, Anthony’s, the existing restaurant proposed for redevelopment by the Project, is not identified as “appealable” in the Port Master Plan. (See PMP, pg. 69.) Some restaurants have been listed as appealable in the PMP or issued an appealable CDP. However, the sole basis for the appealable characterization of such restaurants was the fact that they were a part of a larger appealable category development – like, The Wharf – Point Loma Marina LLC or The Ferry Landing Expansion. This is consistent with the District’s and Coastal Commission’s interpretation that accessory uses take on the appealable or non-appealable category of the primary use (see Section I.A of this letter.) Additionally, the Imperial Beach PMPA, certified nearly 20 years ago in 1997, included unidentified commercial uses on the pier, which could have been considered appealable developments and the District took a liberal approach and identified it as appealable. Subsequently, the court’s decision in the Restaurant Lawsuit clarified that restaurants are not appealable development. The doctrine of *res judicata*

prevents the Commission from re-litigating that issue. *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.

Currently, there are eleven (11) existing dock and dine facilities associated with restaurants within the District located at the Kona Kai Marina, Bali Hai Restaurant, Sun Harbor Marina, Sunroad Resort Marina, Marriott Marquis San Diego, Joe's Crab Shack, Chula Vista Marina, Loews Coronado Bay Resort, Seaforth Boat Rentals, Coronado Ferry Landing, and Pier 32 Marina. Additionally, a dock for restaurant patrons was located at the Anthony's facility. None of them are listed or described as appealable development in the certified PMP (compare PMP, pp. 85 and 113 (Recreational Marina and Marina development listed as appealable). That is because they are non-appealable developments.

Section 7.d(3) of the District's CDP Regulations, approved by the Coastal Commission, state that "non-appealable" developments are those that are not classified as "emergency", "excluded" or "appealable" by the regulations. Appealable categories of development mirror the development categories of Section 30715 of the Coastal Act. While the District has unique "exclusions" in its CDP Regulations, those are inapplicable here because Coastal Act exclusion was not issued for the Project.

## **II. Section 30717 of the Coastal Act is Not Implicated Because the District Approved a Non-Appealable CDP**

Section 30717 of the Coastal Act only applies to "appealable developments" and states that:

[P]rior to commencement of any appealable development, the governing body of a port shall notify the commission and other interested persons, organizations, and governmental agencies of the approval of a proposed appealable development and indicate how it is consistent with the appropriate port master plan and this division. An approval of the appealable development by the port governing body pursuant to a certified port master plan shall become effective after the 10th working day after notification of its approval, unless an appeal is filed with the commission within that time.

For the reasons set forth in this letter and in the record, the Project is not appealable and hence, Section 30717 of the Coastal Act was never triggered.

Additionally, Section 11i. of the District's CDP Regulations specifically states that: "Notice of the action of the Board on a proposed appealable development shall be mailed to the applicant...[and] the Coastal Commission...not later than five (5) working days following the decision of the Board." Since District staff determined that the Project is a non-appealable development and the Board approved a Non-Appealable CDP, the District is not required to send a Notice of Board Action to the Coastal Commission. For non-appealable developments, under the District's CDP Regulations (Section 10f), the District is only required to forward Draft and Final California Environmental Quality Act (CEQA) documents to the Coastal Commission, which, as explained in Section III of this letter, it did for this Project.

**III. Coastal Commission Staff was Given Advance Notice of the District Board Actions and District Staff Confirmed the District Board's Approval of a Non-Appealable CDP on January 10, 2017**

As the District has provided plentiful notice to Coastal Commission staff about the District Board's action on the subject non-appealable CDP, as detailed, below:

- On December 1, 2016, prior to the December 13, 2016 District Board meeting, District staff emailed Coastal Commission staff its CEQA and Coastal Determination for the Project, for which District staff determined the Project to be a "Non-Appealable development" and that "A Non-Appealable Coastal Development Permit (CDP) must be obtained...." (See Attachment D)
- In Coastal Commission staff's August 31, 2016 comment letter on the Project's Draft MND (Comment D-6), staff "respectively request notice of any future action taken on the subject project, including the final environmental document and final action on a CDP." In response to this comment, District staff stated that "CCC staff have been added to the notification list for the final MND and the final action on the CDP." (See Attachment B, Response to Comment D-6.) On December 2, 2016, more than 10 days prior to the Board's action on the CDP, District staff emailed and mailed Coastal staff a "Notice of Board of Port Commissioners Meeting to Consider Adoption of Portside Pier Restaurant Redevelopment Project Final Mitigated Negative Declaration." (See Attachment E.) That notice, in compliance with the CEQA contained:
  - Written responses to Coastal's comment letter on the Draft MND;



- A CD of the Final MND and an internet link to the same;
  - The date, time, and location of the District Board meeting for consideration of adoption of the Final MND; and
  - A statement that at that same District Board meeting, "The Board will also consider authorizing issuance of a non-appealable Coastal Development Permit."
- After the District Board's action on the Non-Appealable CDP, District staff, in an email reply to Coastal Commission staff dated January 10, 2017, confirmed that the District Board approved the issuance of the CDP for the Project on December 13, 2016. (See Attachment F.) As referenced in District staff's email, the District is only required to send a "Notice of Board Action" to the Coastal Commission for appealable developments.

As District staff has conveyed to Coastal Commission staff in conversations on January 12, January 18, and January 20, 2017, District staff would like to maintain consistency in its CEQA and Coastal Act processing of projects. In Coastal Commission staff's email of January 13, 2017, it asserted that District staff has been providing Coastal Commission staff with Notices of Board Action on non-appealable developments (see Attachment G). This is unfounded, not required and cannot be relied upon under the law. District staff has reviewed its most recent practices in the past two years and has confirmed that it has not been providing such notices to Coastal Commission staff for non-appealable developments. Section 30717 of the Coastal Act and Section 11i. of the District's CDP Regulations do not require notice for non-appealable developments (see Section II of this letter for more discussion). In its January 13 email, Coastal Commission staff provided an example of a Notice of Board Action on a Non-Appealable CDP that District staff mailed to Coastal Commission staff in June 2013 (see Attachment G). This was almost four years ago and District staff has ceased preparing such notices as they are not required. Just because District staff used a practice not legally required in the past, does not mean it is required to continue to do so or do so now. Importantly, District staff has been emailing all CEQA/Coastal Determinations to Coastal Commission staff, as it did here. District staff has only been emailing CEQA/Coastal Determinations to Coastal Commission staff after a Board meeting if the Project involves a CEQA Exemption or a Coastal Exclusion.

The second example Coastal Commission staff provided in its January 13 email was a CEQA/Coastal Determination for Amendments to the Port Code relating to certain parking lots and meters. In this example, because it involved a CEQA

Exemption, the CEQA/Coastal Determination was provided to Coastal staff after the Board meeting, and a Notice of Exemption was filed with the County Clerk, to allow for the 35-day statute of limitations to begin on any challenges to the CEQA Exemption. Nonetheless, this was not legally required.

In the case of a project, such as here, which District staff determined to be a non-appealable development and prepared a MND pursuant to CEQA, District staff would have only provided the CEQA/Coastal Determination to Coastal staff prior to, and not after, the Board meeting. In addition, a CEQA/Coastal Determination should not be confused with a Notice of Board Action on a Coastal Development Permit; they are two separate documents and are provided at different times in the process.

#### **IV. Establishing a 10-Day Appeal Period and Taking Jurisdiction of the CDP Are Illegal Actions**

##### **A. The Coastal Commission Is Not Authorized to Proclaim and Notice a 10-Day Appeal Period**

Please take note that the Coastal Commission is not authorized under the Coastal Act to “announce and notice the beginning of the 10-working day appeal period” as threatened in the last paragraph on page two of the February 2, 2017 Letter. Section 30717 of the Coastal Act vests the District with that authority where an appealable development is at issue, which as discussed at length in this letter has not occurred here. Any such notice by the Coastal Commission – whether or not for an appealable development – would not be within the Coastal Commission’s statutory jurisdiction and would not trigger the statutory effect. The Coastal Commission is not authorized to assume authority vested in the District.

Additionally, Coastal Commission staff failed to cite to any regulatory authority for the alleged “dispute resolution” process it is claiming to institute. It appears that none exist for ports. Hence, using a sham process to get the issue before the Coastal Commission would likewise be in excess of the Coastal Commission’s jurisdiction and would infringe on the due process rights of the District and others affected by such an ad hoc procedure.

##### **B. The Coastal Commission is Not Authorized to Hear an Appeal of a Non-Appealable CDP**

As discussed at length in Section I of this letter, restaurants and dock and dine facilities are non-appealable developments. Hence, the Coastal Commission does not have jurisdiction to even consider an appeal, let alone find a substantial issue and hold

Deborah N. Lee  
Melody Lasiter  
February 6, 2017  
Page 10 of 11

a de novo hearing on the CDP. Such actions would be made in excess of the Coastal Commission's authority and jurisdiction.

**C. Interference with Prospective and Existing Contracts and Regulatory Takings Claims May Arise**

The District and Anthony's are currently operating under an existing lease that requires Anthony's to vacate the premises, which includes removing all furniture, fixtures and certain other items. Pursuant to the lease, Anthony's has until May 1, 2017 to finalize these actions and any delay as a result of a Coastal Commission appeal would interfere with the District's contractual rights to have the premises completely vacated by May 1<sup>st</sup>. Additionally, the District and the applicant have been negotiating a lease for several months with the intent that the lease be finalized and approved by the District Board in the next couple of months. Any delay in the approval and execution of such a lease would interfere with the District's and the applicant's prospective contractual rights.

Moreover, because the premises is to be vacated by May 1, 2017, if not sooner, any regulatory action by the Coastal Commission that would temporarily or permanently foreclose demolition on the site and/or deprive a use of the premises would constitute a regulatory taking.

**D. Coastal Commission Staff was Given Notice on January 10, 2017, 23 Days Prior to the District's Receipt of Its February 2, 2017 Letter and Any Appeal Would be Untimely**

Additionally, while not required for non-appealable development, Coastal Commission was given notice on January 10, 2017, sixteen (16) working days from the date the District received Coastal Commission staff's February 2, 2017 Letter. Even if an appeal were legally available (it is not), any appeal by the Coastal Commission would be untimely. Section 30717 of the Coastal Act sets forth a 10-working-day appeal period, which here, expired on January 25, 2017.

Please contact me with any questions or to discuss the issue.

Sincerely,



Rebecca S. Harrington  
Deputy General Counsel  
San Diego Unified Port District



Deborah N. Lee  
Melody Lasiter  
February 6, 2017  
Page 11 of 11

ATTACHMENTS:

- A: District Staff Report, District Board Resolution, District Staff Presentation
- B: Coastal Commission Staff's Comments on the MND; District Responses to Comments and Supporting Appendices to District Responses
- C: Superior Court Minute Order - *San Diegans for Open Government v. California Coastal Commission*; *San Diego Unified Port District*, Case. No. 37-2013-00057492-CU-TT-CTL (2013)
- D: Categorical Determination for the Project, Sent to Coastal Commission staff on December 1, 2016
- E: Correspondence and Transmittal for the of Final MND to the Coastal Commission
- F: Notice to Coastal Commission staff of District Board Approval
- G: Correspondence from Coastal Commission staff to District staff

cc: Randa Coniglio, District President/Chief Executive Officer  
Thomas A. Russell, District General Counsel  
T. Scott Edwards, District Vice President/Chief Operating Officer  
Shaun Sumner, District Assistant V.P., Operations  
Wileen Manaois, District Principal, Development Services

# **ATTACHMENT A**



## Legislation Text

---

File #: 2016-0550, Version: 1

---

**DATE:** December 13, 2016

**SUBJECT:**

**PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT AT 1360 NORTH HARBOR DRIVE IN THE CITY OF SAN DIEGO:**

- A) CONDUCT PUBLIC HEARING AND ADOPT RESOLUTION ADOPTING THE FINAL MITIGATED NEGATIVE DECLARATION FOR THE PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM, ADOPTING FINDINGS THAT THE REVISED MITIGATION MEASURES ARE EQUIVALENT OR MORE EFFECTIVE THAN THE DRAFT MITIGATION MEASURES, AND DIRECTING FILING OF THE NOTICE OF DETERMINATION**
- B) ADOPT RESOLUTION FINDING THE PROJECT TO BE IN CONFORMANCE WITH BPC POLICY NO. 735 TO MAKE AVAILABLE DISTRICT ENVIRONMENTAL MITIGATION PROPERTY TO THE BRIGANTINE, INC. FOR THE PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT**
- C) ADOPT RESOLUTION GRANTING CONCEPT APPROVAL TO THE BRIGANTINE, INC. FOR THE PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT**
- D) ADOPT RESOLUTION AUTHORIZING ISSUANCE OF A NON-APPEALABLE COASTAL DEVELOPMENT PERMIT**

### **EXECUTIVE SUMMARY:**

At the May 12, 2015 Board meeting, staff was directed to issue a Request for Proposals (RFP) for the redevelopment and operation of 1360 North Harbor Drive. This site is currently leased to Anthony's Fish Grotto of La Mesa (Anthony's), which has a 52-year lease with the District that expires on January 31, 2017. In May 2015, staff issued the RFP, and received six proposals, one of which was from The Brigantine, Inc. (The Brigantine). At its November 17, 2015 meeting, the Board selected and authorized negotiations with The Brigantine for the redevelopment and operation of 1360 North Harbor Drive. In February 2016, The Brigantine submitted an application for their proposed Portside Pier Restaurant Redevelopment Project (Project). Similar to the existing facility, the Project proposes four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop), a second-floor public viewing deck, and an expanded dock and dine facility. Staff subsequently commenced the environmental review process for the Project and, on a parallel track, began negotiations with The Brigantine on a new lease.

Pursuant to the California Environmental Quality Act (CEQA), a Draft Initial Study and Mitigated Negative Declaration (collectively, MND) were prepared for the Project and circulated for a 30-day public review period (August 2 to August 31, 2016). The District received comment letters from five public agencies, and staff determined that these comments did not raise any significant environmental issues not already addressed and analyzed in the Draft MND. The comment letters

and responses to all written comments received on the Draft MND are included in the Final MND. In addition, based on the comments received, the Final MND includes minor clarifications to the Project and mitigation measures, and revisions to several of the figures. The additional information contained in the District's responses to comments clarifies and further substantiates the conclusions contained in the Draft MND. Revisions and clarifications have been made to certain mitigation measures and new mitigation measures have been added in accordance with CEQA Guidelines Section 15074.1. Neither of the revised mitigation measures would result in significant impacts to the environment. The altered mitigation measures are equivalent or more effective than the mitigation measures in the Draft MND. The MND finds that the Project, with the incorporation of mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP), would not result in significant adverse impacts to the environment. The Final MND and MMRP have been prepared in accordance with CEQA, the State CEQA Guidelines, and the District's *Guidelines for Compliance with CEQA*. Copies of the Final MND and MMRP have been provided to the Board.

Additionally, the Project requires concept approval pursuant to BPC Policy No. 357 and a finding of conformance with BPC Policy No. 735 to allow for the mitigation of the Project's open water coverage impacts using District environmental mitigation property. Finally, pursuant to the District's Coastal Development Permit (CDP) Regulations and the California Coastal Act, the Project requires the issuance of a non-appealable CDP. Staff has determined that the Project is consistent with the District's certified Port Master Plan.

#### **RECOMMENDATION:**

Portside Pier Restaurant Redevelopment Project:

- A. Conduct public hearing and adopt resolution adopting the Final Mitigated Negative Declaration for the "Portside Pier Restaurant Redevelopment Project," adopting the Mitigation Monitoring and Reporting Program, adopting findings that the revised Mitigation Measures are equivalent or more effective than the draft Mitigation Measures, and directing filing of the Notice of Determination
- B. Adopt resolution finding the Project to be in conformance with BPC Policy No. 735 to make available District environmental mitigation property to The Brigantine, Inc. for the Portside Pier Restaurant Redevelopment Project
- C. Adopt resolution granting concept approval to The Brigantine, Inc. for the Portside Pier Restaurant Redevelopment Project
- D. Adopt resolution authorizing issuance of a non-appealable Coastal Development Permit

#### **FISCAL IMPACT:**

These proposed Board actions will have no direct fiscal impact to the District's FY16/17 approved budget. In accordance with BPC Policy No. 106, Cost Recovery User Fee Policy, The Brigantine has been subject to cost recovery fees for Project review and CEQA and Coastal processing.

#### **COMPASS STRATEGIC GOALS:**

The Project would enable a new tenant, The Brigantine, to redevelop an aging structure and restaurant facility with a new structure and modern restaurant facility that include enhanced public access amenities.

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

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

### **Background**

At the May 12, 2015 Board meeting, staff was directed to issue an RFP for the redevelopment and operation of 1360 North Harbor Drive. This site is currently leased to Anthony's, which has a 52-year lease with the District that commenced in 1965 and expires on January 31, 2017. In May 2015, staff issued the RFP, and received six proposals, one of which was from The Brigantine.

At the November 17, 2015 Board meeting, the Board selected and authorized negotiations with The Brigantine for the redevelopment and operation of 1360 North Harbor Drive. In February 2016, The Brigantine, as the Project applicant, submitted an application for their Portside Pier Restaurant Redevelopment Project. The Project proposes four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop), a second-floor public viewing deck, and an expanded dock and dine facility.

Staff subsequently commenced the environmental review process for the Project and, on a parallel track, began negotiations with The Brigantine on a new lease.

### **Proposed Project**

The Project is the redevelopment of the existing waterfront restaurant site located at 1360 North Harbor Drive and currently occupied by Anthony's Fish Grotto, Fishette, Anthony's Star of the Sea Room, and a coffee kiosk. The project area covers approximately 45,174 square feet (SF) of land and water area, which includes approximately 37,107 SF of water area and approximately 8,067 SF of land area (Attachment A). The existing one-story, approximately 24,855-square-foot restaurant structure would be demolished and replaced with a new two-story, approximately 34,069-square-foot restaurant structure. Like Anthony's, the Brigantine would redevelop the project site with four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop) that would provide up to 1,000 restaurant seats for diners. The Brigantine on the Bay, Miguel's Cocina, and Ketch Grill & Taps have been identified as the restaurant operators. Graphics depicting the proposed Project are contained in Exhibits 2 through 9 of Attachment B (Draft CDP) to this Agenda Sheet.

The redevelopment also includes a proposed second-floor, approximately 3,711-square-foot dedicated public viewing deck with tables and benches for up to 108 visitors.

This area would be separate from the restaurant areas and accessible directly from the North Embarcadero Promenade via elevator and stairs. Additionally, an approximately 1,913-square-foot perimeter walkway around the bottom floor of the building would be open to the public to provide views of the bay. Clear signage would be provided directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway (see Exhibit 2 of Attachment B). For security reasons, the public areas would be open at all times during the hours of operation of the restaurants. The portion of the North Embarcadero Promenade located in front of the restaurant site would be improved consistent with the North Embarcadero Visionary Plan (NEVP) Phase 1 and

recent improvements to the south. This includes new pavers, street furniture, and wayfinding signage. No changes are proposed to the current configuration of the promenade and it would be open at all times.

The Project would also include an approximately 3,370-square-foot expanded dock and dine facility capable of docking up to 12 vessels (see Exhibit 6 of Attachment B). The Project would construct a new building built on a new platform supported by new pilings and a new dock, entirely replacing the existing building, pilings, platform, and dock (see Exhibit 4 of Attachment B). The overall building height would increase from 27 feet to approximately 34 feet above mean sea level, a net increase of 7 feet. The Project would result in a net increase of: approximately 9,214 SF of building floor area, 4,480 SF of total water coverage, 1,094 SF of first-floor public access area, 3,711 SF of second-floor public deck area, and 2,805 SF in public dock area.

Demolition and construction of the Project would involve in-water work for the removal of the existing platform and supporting piles and the installation of a new platform and supporting piles. The majority of demolition work would be from barges on the water. Project demolition and construction would take approximately 11 to 16 months, and most of the work would be accomplished from the waterside using a barge and from a staging area on the North Embarcadero Promenade, temporarily displacing the promenade and parking, which would be restored to existing configurations upon completion of construction. Approximately 55 parking spaces would be temporarily closed and pedestrian traffic would be rerouted from the North Embarcadero Promenade in front of the Project site through the closed parking area, separated by K-Rail and other physical barriers from North Harbor Drive for the duration of construction (see Exhibit 7 of Attachment B).

#### Mitigated Negative Declaration

In February 2016, District staff initiated the environmental review process for the Project pursuant to CEQA. The District, as lead agency under CEQA, prepared a Draft MND for the Project entitled "Portside Pier Restaurant Redevelopment Project" (UPD #MND-2016-91). The Draft MND, which included, without limitation, an Initial Study and technical reports, was released for a 30-day public review period that began on August 2, 2016 and ended on August 31, 2016. Upon conclusion of the public review period, five comment letters were received on the Draft MND from five public agencies: San Diego County Regional Airport Authority, County of San Diego Department of Environmental Health, California Coastal Commission, City of San Diego Planning Department, and California Office of Planning and Research (State Clearinghouse).

The comment letters discussed issues related to: biological resources, coastal access and land use consistency, hazards, and parking.

As required by the District's *Guidelines for Compliance with CEQA*, staff prepared written responses to each of the comment letters received on the Draft MND during the public review period. Staff determined that the comments submitted did not raise any significant environmental issues not already included in the Draft MND, and hence, the Draft MND did not need to be recirculated. In response to comments received during the public review period, the Final MND includes minor clarifications to the Project and mitigation measures, shown in strikeout/underlined text, and revisions to several of the figures. The additional information contained in the District's responses to comments clarifies and further substantiates the conclusions contained in the Draft MND.

The revisions do not amount to a substantial revision under CEQA (CEQA Guidelines Section

15073.5) because they do not show any new significant environmental impacts or any substantial increase in the severity of environmental impacts. Revisions and clarifications have been made to certain mitigation measures and new mitigation measures have been added in accordance with CEQA Guidelines Section 15074.1. The changes made include clarifications and identification of payment for credits to the District, revising mitigation measure BIO-4. The revised mitigation measure BIO-4 would continue to achieve reduction in the level of impact to below significance and would, therefore, be equivalent to the mitigation measure BIO-4 as stated in the Draft MND. In response to comments, mitigation measure TRA-2 was also revised to identify additional parking management strategies to be employed and a revised list of suitable parking lots. Mitigation measure TRA-2 was also revised to include an option for the applicant to demonstrate through a parking study that the number of dedicated valet parking spaces secured could be reduced. Mitigation measure TRA-2 would be equivalent or more effective as that stated in the Draft MND because the level of impact would be reduced to below significance with implementation of the mitigation measure as revised. Neither of the revised mitigation measures would result in significant impacts to the environment. The altered mitigation measures are equivalent or more effective than the mitigation measures in the Draft MND and accordingly, staff recommends that the Board adopt findings pursuant to CEQA Guidelines Section 15074.1. Therefore, recirculation is not required. Copies of the comment letters and staff responses to the comments are provided as Attachment D to the Final MND. The Final MND is available for review in the Office of the District Clerk, was distributed to the Board for its consideration via a Board Memo dated December 7, 2016, and was also made available to the Board in the Commissioners' Office.

The MND finds that the Project would have no potentially significant adverse impacts to Aesthetics, Agriculture and Forestry, Air Quality, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, and Utilities and Service Systems. The MND also finds that, with incorporation of mitigation measures identified in the MMRP, potentially significant adverse impacts to biological resources, hazards and hazardous materials, and transportation/traffic would be reduced to less than significant. As concluded by the MND, construction of the project would result in various potentially significant environmental impacts. All impacts can be mitigated to below a level of significance with implementation of the mitigation measures included in the Final MND. The MMRP, which has been prepared in accordance with CEQA Guidelines Section 15047(a), identifies the environmental issue area, all mitigation measures, timing and the party responsible for carrying out the mitigation measures, and procedure for documenting the mitigation implementation. The MMRP is included as Exhibit 10 to Attachment B of this Agenda Sheet. The MMRP is also provided as Attachment C to the Final MND. Compliance with all the mitigation measures included in the Final MND will be required as a special provision of the CDP for the Project.

The Final MND has been prepared in accordance with CEQA and the CEQA Guidelines. Pursuant to CEQA Guidelines Section 15074, prior to approving the Project, the District shall: (1) consider the proposed MND together with any comments received during the public review process; (2) adopt the proposed MND only if it finds on the basis of the whole record before it that there is no substantial evidence that the Project will have a significant effect on the environment and that the MND reflects the lead agency's independent judgment and analysis; and (3) adopt a program for reporting on or monitoring the changes which it has either required in the Project or made a condition of approval to mitigate or avoid significant environmental effects. Additionally, pursuant to CEQA Guidelines Section 15074.1, the District shall adopt written findings that the revised and new mitigation measures added

to the Final MND after public circulation are equivalent or more effective in mitigating and avoiding potential significant effects and that those revised and new mitigation measures will not cause any potentially significant effects on the environment.

#### BPC Policy No. 735

BPC Policy No. 735 establishes requirements for the allocation of environmental mitigation property within District tidelands. The policy states that District tidelands suitable for mitigation shall be retained for District-funded capital development and major maintenance projects. However, the policy allows for consideration of District mitigation property to be made available to specified, non-District projects that demonstrate exceptional public benefits.

An evaluation team comprised of staff from the Planning & Green Port and Real Estate Development departments reviewed and evaluated the Project and believes it demonstrates exceptional public benefits through improved public access and recreational opportunities, including the use of a proposed public perimeter walkway, public docking structure, and second story public viewing deck. The Project includes additional public dock space and public walkway for general use, resulting in a slight increase in over water coverage from existing conditions. The increased over water coverage that would result from the proposed Project would be 4,480 SF, of which more than 100% or 4,718 SF results from the additional area dedicated to the public dock and the public perimeter walkway on the ground floor. The Project applicant intends to use District shading credits to mitigate any potential environmental impact that an addition of over water coverage may have. Additionally, as a condition of using these credits, the Project applicant would pay fair market value for the credits based on the market value of similar open water coverage credits. As the proposed Project design will require an approximately 4,480-square-foot area of mitigation, and as the total shading ledger available bay-wide is currently 218,709 SF, the Project would have a minimal impact on the total ledger available and would not affect the District's ability to mitigate for its own major maintenance or capital improvement projects moving forward. The Project meets the administrative requirements of the policy, as detailed below.

- The Project applicant has made a good faith effort to minimize the need for mitigation property by reducing impacts through Project design. The proposed Project design will replace 23,850 SF of overwater structure with 28,330 SF, a net increase of 4,480 SF of overwater structure all accessible to the public. The Project includes a total of 5,734 SF dedicated to increased public access directly over the water including the public dock and the public perimeter walkway, which account for 4,718 SF of that area. The Project also includes a 3,711-square-foot public viewing deck on the second story.
- The Project applicant has made a good faith effort to self-mitigate within the limits of the leasehold by incorporating sustainable design and planning ideas into the overall site layout.

For the reasons detailed above, staff recommends the Board find the Project to be in conformance with BPC Policy No. 735 to allow for the Project applicant to mitigate for impacts to open water coverage using District environmental mitigation property within District tidelands.

#### Concept Approval

Pursuant to BPC Policy No. 357, plans for new tenant development must be presented to the Board for approval if the project is estimated to cost more than \$500,000.

The proposed Project involves redevelopment of the project site, including demolition of all existing



structures and redevelopment with all new construction, estimated to cost \$13 million. The new construction will occupy the same location as the existing facility, with an expanded footprint that will include enhanced public access amenities.

The Brigantine would redevelop the location with four eating establishments (three restaurants and a coffee and gelato shop). In addition, the Project will include improved public access facilities including a ground floor public walkway around the perimeter of the deck, an expanded public dock and dine dock capable of docking up to 12 vessels, and a public viewing deck with tables and benches for up to 108 visitors on the second story. Staff recommends concept approval of the Project.

#### Coastal Development Permit

The Project site is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan. The Port Master Plan land and water use designations within the limits of the Project are Commercial Recreation and Ship Anchorage. The Project is the redevelopment of an existing waterfront restaurant facility use and is consistent with the existing certified land and water use designations; therefore, the Project conforms to the certified Port Master Plan.

The Project constitutes “development” under Section 30106 of the California Coastal Act as it will involve the demolition and construction of a structure. Accordingly, a Coastal Act authorization from the District is required. Pursuant to the District’s CDP Regulations, the Project has been determined to be a “non-appealable” development because it is not considered an “excluded,” “emergency,” or “appealable” development. Therefore, the Project requires authorization of a non-appealable CDP.

Additionally, pursuant to the California Coastal Act, the proposed development is considered “non-appealable”. Chapter 8 of the Coastal Act regulates port development within the California coastal zone. Section 30715 of Chapter 8 specifies the sole categories of development that may be appealed to the Coastal Commission.

Neither restaurants nor eating establishments are listed as appealable in Section 30715. Section 30715(a)(4) includes the following as appealable categories of development: “Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities.” Neither restaurant nor eating establishments are listed as an appealable category of development under this subsection or 30715 of the California Coastal Act.

Moreover, the existing restaurant was not listed as an appealable development in the Port Master Plan, and other restaurants listed in the Port Master Plan as appealable were part of larger appealable categories of development. Therefore, the proposed development is a “non-appealable” category of development.

The Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The Project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein since the Project will modernize an existing restaurant facility and will provide enhanced public access amenities, including an expanded dock and dine dock, second-floor dedicated public viewing deck, and public perimeter walkway around the bottom floor of the restaurant building. A copy of the

draft CDP is provided as Attachment B to this Agenda Sheet. Special conditions are incorporated into the CDP to ensure the Project's conformance with the Final MND's MMRP and related District requirements.

#### Next Steps

If the Board adopts the Final MND and MMRP and makes the necessary findings, finds the Project in conformance with BPC Policy No. 735, grants concept approval, and authorizes issuance of a non-appealable CDP, The Brigantine will need to obtain other approvals before commencing construction, including Board approval of a new lease to The Brigantine, Inc. (anticipated to be considered in early 2017), Regional Water Quality Control Board certification, and a U.S. Army Corps of Engineers permit.

#### **General Counsel's Comments:**

The General Counsel's Office has reviewed the agenda sheet and attachments hereto and as presented to it, approves them as to form and legality.

#### **Environmental Review:**

The proposed Board action completes the CEQA process for the Project.

In addition, the Proposed Board actions comply with Section 87 of the Port Act, which allows for visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

#### **Equal Opportunity Program:**

Not applicable.

#### **PREPARED BY:**

Wileen C. Manaois  
Principal, Development Services  
Real Estate Development

Tim Barrett  
Senior Environmental Specialist  
Planning & Green Port

#### **Attachment(s):**

Attachment A: Project Location Map  
Attachment B: Draft Coastal Development Permit



Project Boundary





**SAN DIEGO UNIFIED PORT DISTRICT**

Real Estate Development Department

Development Services

P.O. BOX 120488

SAN DIEGO, CA 92112-0488

(619) 686-6291

**COASTAL DEVELOPMENT PERMIT**

**Applicant:** The Brigantine, Inc.  
7889 Ostrow Street  
San Diego, CA 92111

**Project:** Portside Pier Restaurant Redevelopment Project

**Location:** 1360 North Harbor Drive, San Diego, CA 92101

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a [ ] Emergency [X] Non-Appealable [ ] Appealable Coastal Development Permit.

**Date of Board Action:** December 13, 2016

**Board of Port Commissioners Resolution Number:** 2016 - XXX

**Date of Permit:** X

**Application Number:** 2016-91

**Permit Number:** CDP-2016-XX

The project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein and the District's Coastal Development Permit Regulations.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

**DEVELOPMENT**

The Project Applicant, The Brigantine, Inc. (referred to herein as "Permittee"), proposes to construct and operate four eating establishments/restaurants, a second-floor public viewing deck, and an expanded dock and dine facility (collectively, "Project") at 1360 North Harbor Drive in San Diego (see Exhibits 1 through 7, incorporated herein by reference).

The project area covers approximately 45,174 square feet of land and water area, which includes approximately 37,107 square feet of water area and approximately 8,067 square feet of land area. The existing one-story, approximately 24,855-square-foot restaurant structure will be demolished and replaced with a new two-story, approximately 34,069-square-foot restaurant structure. The Brigantine proposes to redevelop the project site with four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop) that will provide up to 1,000 restaurant seats for diners.

The redevelopment also includes a proposed approximately 3,711-square-foot dedicated public viewing deck with tables and benches for up to 108 visitors on the second story. This area will be separate from the restaurant areas and accessible from the North Embarcadero Promenade through the restaurant located at the southeast area via stairs and an elevator directly from the Promenade. The public viewing deck will not be used for private functions and will be open to the public during restaurant business hours. The ground floor of the restaurant will include a perimeter walkway approximately 45 inches wide for the public and shall enable public access along the waterside edge of the facility and provide views of the bay. The public viewing area and perimeter walkway shall be open to the public at all times during operating hours of the restaurant. Clear signage will be provided directing the public from the North Embarcadero Promenade to the public viewing deck and ground floor perimeter public walkway. For security reasons, the public areas will be open at all times during the hours of operation of the restaurants. The restaurant areas will also include open deck areas on the ground and second floors, where food and drink service is available to guests. The indoor and outdoor restaurant areas (excluding the public viewing area and perimeter walkway) will be available for private parties, wedding receptions, and other special events featuring music. Amplified music shall comply with the City of San Diego Noise Ordinance or a Port ordinance, if adopted in the future.

The portion of the North Embarcadero Promenade located in front of the restaurant site will be improved consistent with the North Embarcadero Visionary Plan (NEVP) Phase 1 and recent improvements to the south. This includes new pavers, street furniture, and wayfinding signage. No changes are proposed to the current configuration of the promenade and it will be open at all times.

Backlit illuminated signage will be mounted on both the waterside- and promenade-facing frontages of the building and will consist of light-emitting diode (LED) lighting behind acrylic letters and logos to create an illuminated effect. The signs will display the

names and/or logos for the restaurant tenants, and for Portside Pier. The illuminated signs range in size from 12 to 43 feet in length and from 3 feet 2 inches to 12 feet 11 inches in height. In addition, eight color LED panels will be installed along the North Embarcadero Promenade and along the upper deck on the waterside-facing frontage of the building to display upcoming events, menu specials, and other notifications. The LED panels will be computer operated with automatic dimming to adjust from day to night illumination. The "baskets" of the building, constructed with glass panels, will also be illuminated at night with interior LED lighting. The glass panels of the baskets will be constructed of laminated frit glass with an anticipated 65 percent light transmission and an aluminum support system. In addition, blue LED light tube strips will be included on the promenade-facing frontage of the building. On the outdoor bar of The Brigantine's second floor, an internally illuminated sculptural centerpiece will be installed. Levels of lighting spill will be comparable to that from existing lighted facilities along the North Embarcadero Promenade, not exceeding 9.2 footcandles at the edge of the North Embarcadero Promenade or 6.3 footcandles at the edge of the first floor bayside deck, and be limited to the specifications provided in the photometric plan dated July 26, 2016, attached hereto as Exhibit 8 and incorporated herein by reference. All exterior signage and lighting and baskets shall be developed in substantial conformance with the specifications provided in the Preliminary Signage Plan dated November 28, 2016, attached hereto as Exhibit 9 and incorporated herein by reference. Any deviations from the Preliminary Signage Plan shall be approved by the District and in no event shall the signage exceed the size shown in the Preliminary Signage Plan or result in exceedance of the footcandles described above in this CDP.

The Project will construct a new building built on a new platform supported by new pilings and a new dock, entirely replacing and demolishing the existing building, pilings, platform, and dock. The Project will also include an expanded public dock and dine facility. The existing boat dock area will be increased from 565 square feet to 3,370 square feet and will allow for 4–12 vessels to dock, depending on vessel sizes. The building footprint will be larger than the footprint of the existing building, and the expansion of the two stories and decks on both levels will nearly double the total square footage of restaurant space and deck area. The overall building height will increase by up to 7 feet over the height of the existing structure, from approximately 27 to approximately 34 feet above mean sea level.

Demolition and construction of the proposed project will involve in-water work for the removal of the existing platform and supporting piles and the installation of a new platform and supporting piles. The majority of demolition work will be from barges on the water. Project demolition and construction will take approximately 11 to 16 months, and most of the work will be accomplished from the waterside using a barge and from a staging area on the North Embarcadero Promenade, temporarily displacing a portion of the promenade and parking, which will be restored to existing configurations upon completion of construction. Approximately 55 parking spaces will be temporarily closed and pedestrian traffic will be rerouted from the North Embarcadero Promenade in front of the Project site through the closed parking area, separated by K-Rail and other physical barriers from North Harbor Drive for the duration of construction.



In order to adapt to rising sea levels, the project will use materials to withstand sea level rise impacts and design components such that they can be retrofitted or adapted prior to high tides and waves reaching the base of the structure as a consequence of sea level rise, in the event sea level rises above the floor level of the proposed structure.

Table 1 below provides a summary comparison of the proposed project components with those of the existing facility. As shown, the project will cover approximately 28,330 square feet of water. The building footprint will be approximately 34,069 square feet, two stories with decks on both levels and the building height will be approximately 34-feet above mean sea level. In addition, the boat dock area will be approximately 3,370 square feet and allow for 4–12 vessels to dock, depending on vessel sizes.

<b>Table 1: Existing and Proposed Project Features Comparison</b>			
Project Component	Existing	Proposed	Change
Building Floor Area <sup>1</sup>	24,855 square feet	34,069 square feet	9,214 square feet
Building Gross Water Coverage	23,285 square feet	24,960 square feet	1,675 square feet
Public Dock Area* <sup>2</sup>	565 square feet <sup>1</sup>	3,370 square feet	2,805 square feet
First Floor Public Access Area*	819 square feet	1,913 square feet	1,094 square feet
Total Water Coverage*	23,850 square feet	28,330 square feet	4,480 square feet
Total Land Coverage (Promenade Improvement Area)	8,067 square feet	8,067 square feet	0 square feet
Restaurant Seats	536	1,000	464
Boat Slips	2	12	10
Public Viewing Deck Seats	0	108	108
Second Floor Public Deck <sup>1</sup>	0 square feet	3,711 square feet	3,711 square feet
Building Height	27 feet	34 feet	7 feet
Employees (daily)	60	90	30
On-site Parking	0	0	0
Visitors per day (estimated average)	1,100	2,220	1,120
*Indicates over-water components			
<sup>1</sup> The change in floor area and public deck area from the Draft MND to the Final MND was achieved by rearranging the layout of the building and expanding the kitchen and deck into previously unutilized space. The overall building footprint and water coverage did not change.			
<sup>2</sup> The existing boat dock was destroyed by storm and wave activity in January 2016 and has not been replaced because of the prospective redevelopment.			

## A. Demolition

Demolition will involve the complete removal of:

- The existing 24,855-square-foot building
- The existing 23,285-square-foot platform
- The existing 66 pre-stressed 16-inch diameter concrete support piles
- The remnants of the existing 565-square-foot dock

Demolition work will be completed entirely from two barges. One barge will hold a crane and other demolition equipment and the other used to haul the debris to the Tenth Avenue Marine Terminal for unloading and transport to a recycling center or landfill. Demolition hours will be from 7:00 A.M. to 7:00 P.M. Monday through Saturday for up to four months. During the demolition timeframe, removal of existing piles will take approximately two to three weeks. A daily peak of approximately 12 workers will work from the barges during the demolition phase. Construction workers for the demolition phase will park remotely at the demolition contractor's facilities and travel to the project site by boat from the Tenth Avenue Marine Terminal. Exhibit 4 shows the location of existing piles to be removed. The piles located along the Embarcadero Promenade in front of the restaurant site will remain.

## **B. Construction**

The proposed project will involve construction of the following:

- No more than 53 new pre-stressed up to 24-inch diameter concrete piles (13 fewer than currently exist. Exhibit 4 shows the location of proposed new piles.)
- A new approximately 24,960-square-foot platform over the water
- A new approximately 34,069-square-foot restaurant building with the following features:
  - a restaurant on the north side
  - a restaurant on the south side
  - a fast-casual brew pub
  - gelato & coffee
- A new approximately 3,711-square-foot second floor public viewing deck
- An approximately 1,913-square-foot public access perimeter walkway around the waterside edge of the ground floor
- A new dock and dine approximately 3,370-square-foot dock

The existing utility connections at the project site will be used and may require in-kind replacement due to disrepair.

Project construction will take approximately one year and the work accomplished from the waterside using a barge and from the landside using a staging area in the parking area and promenade adjacent to the proposed restaurant facility. Construction of the new platform and restaurant building will be from 7:00 A.M. to 7:00 P.M. Monday through Saturday, except for City Holidays, in compliance with San Diego Municipal Code Section 59.5.0404. The staging area will temporarily displace existing sidewalk and parking in front of the project site along the North Embarcadero Promenade (approximately 55 spaces). During construction a K-Rail or similar safety barrier will be erected to provide continued pedestrian access along the waterfront around the construction area (Exhibit 7). A peak daily total of approximately 130 construction workers will be needed during project construction. Construction workers will park remotely in existing public parking lots and walk or be shuttled to the project site. Work trucks and materials will be staged along the North Embarcadero Promenade within a fenced and signed construction area that will be closed to the public. Piles will be driven



first (1–2 months) followed by construction of the platform deck/surface (1–2 months) and once complete, the construction of the building upon the deck and the dock will commence (6–8 months).

Upon completion of construction of the restaurant building, all areas not within the project's proposed lease boundary will be restored to existing configurations, specifically promenade and parking. This consists of repaving the promenade areas disrupted by construction activities, and resurfacing and restriping the parking areas disrupted by construction activities.

### **C. Operation**

The project will result in a total of 1,000 seats for restaurant patronage and a gelato and coffee bar, as well as a dedicated public viewing deck. All parking and promenade amenities will be restored to the existing dimensions and configuration, although with aesthetic treatments intended to be consistent with the public improvements included in the NEVP Phase 1. As with the existing restaurants, no dedicated parking will be provided. Metered public parking is available along the North Embarcadero Promenade, and a number of public parking lots are available within walking distance of the project site. The dock and dine will have a controlled access to protect boats/boaters property and will accommodate up to 12 vessels at a time. The public viewing deck will be available at all times the restaurants are open, and accessible via stairs through the south end restaurant and elevator directly from the promenade that will be clearly signed from the promenade. Occupancy of the viewing deck will be available for up to 108 people with seating and tables provided. Upon completion, the proposed project will generate approximately 250 permanent jobs.

### **STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the Project as approved by the District and the Development, as described above and the Project described in the Final Mitigated Negative Declaration (UPD #MND-2016-91; SCH 2016081007, Clerk Document No. XXXXX), dated November 2016, and adopted by Resolution No. 2016-xxx on December 13, 2016, for the Project.
2. Permittee shall notify the District of any changes in the Project and herein described. Notification shall be in writing and be delivered promptly to the District. District approval of the project change may be required prior to implementation of any multi-
3. Permittee and the Project shall meet all applicable codes, statutes, ordinances and regulations, and Permittee shall obtain all necessary permits from local, regional, state, and federal agencies.
4. Permittee shall conform to, and this permit is subject to, the permit rules and regulations of the District, including, but not limited to, the District's Coastal Development Permit Regulations.

5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Real Estate Development Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. The Permittee and contractor shall perform all best management practices (BMPs) during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to Pacific Ocean, to the maximum extent practicable.
10. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2013-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109226, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region (Municipal Permit). The Municipal Permit prohibits any activities that could degrade stormwater quality.

The Permittee shall ensure that post-construction / operational use of this Project site complies with the Municipal Permit and District direction related to permitted activities including the requirements found in the District's Jurisdictional Runoff Management Program (JRMP). The JRMP is available on the District website: <https://www.portofsandiego.org/environment/clean-water.html> or by contacting the Planning and Green Port Department, (619) 686-6254.

11. This project may be subject to the District post-construction BMP requirements. If so, approval of the project by the District is necessarily conditioned upon submission by the Permittee of a project specific Stormwater Quality Management Plan (SWQMP) that meets District requirements and is compliant with the District BMP Design Manual (JRMP Appendix D). The Permittee shall implement all post-construction structural and non-structural BMPs throughout the life of the project.

The implementation and maintenance of the post-construction BMPs constitute regulatory obligations for the Permittee, and failure to comply with the Municipal Permit, the JRMP, or the District approved SWQMP, including the specific BMPs contained therein, may be considered a violation of the permit and a violation of District Code.

12. In the discretion of the District, prior to commencement of construction, Permittee may be required to require that their contractor(s) furnish security, naming the District as a dual obligee, in the form of a performance bond and a payment bond, each in an amount deemed appropriate by the District to guarantee payment of the subcontractors, completion of the approved work under this permit, and compliance with the conditions and limitations upon which such permit is granted. Prior to commencement of construction, Permittee may also be required by the District to furnish security in the form of a payment bond in an amount deemed appropriate by the District to guarantee payment to the contractor(s) for work performed under this permit.
13. By accepting this permit, Permittee acknowledges and agrees (a) that the project site may be subject to environmental conditions and hazards; (b) to assume the risks to the Permittee of injury and damage from such conditions in connection with the implementation of the project; (c) to unconditionally waive any claim of damage or liability against the District, its Board of Port Commissioners, officers, agents and employees ("District" for purposes of this condition) for injury or damage from such conditions to persons performing the work for which this permit is issued; (d) to defend, indemnify and hold harmless, and require that Permittee's contractor(s) engaged to perform the work on the project defend, indemnify and hold harmless, the District from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the performance of the work by Permittee's contractor(s) for which this permit is issued, with the exception of any claim, action, damages, liability or costs arising or resulting from the project caused by the gross negligence or willful misconduct of the District; (e) to defend, indemnify and hold harmless the District from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the District's approval of the project, the granting of this permit, and the District's adoption of the Final Mitigated Negative Declaration; and (f) that Permittee will require Permittee's contractors to name the District as an additional insured on all policies of insurance, now in existence or to be obtained by them, for the work conducted pursuant to this permit.
14. Permittee acknowledges and agrees that: (a) it is the sole and exclusive responsibility of Permittee, and not the District, to ensure that all persons and/or entities who provide any labor, services and/or equipment in connection with the project, shall comply with the requirements of California's prevailing wage laws (the "PWL"), to the extent such laws are applicable; and (b) it is the sole and exclusive responsibility of Permittee, and not the District, to determine whether the project is subject to the PWL by obtaining a determination by means that do not involve the District. If the project is determined to be subject to the PWL, Permittee shall comply with all applicable provisions of the PWL, and shall take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment

and/or materials in connection with the project shall likewise comply with all applicable provisions of the PWL.

Permittee further acknowledges and agrees that Permittee's failure to comply with all applicable provisions of the PWL, and/or their failure to take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with the project comply with all applicable provisions of the PWL, shall render Permittee, and not the District, liable for all remedies (inclusive of all applicable fines and penalties), afforded by law as a consequence of such non-compliance. Permittee expressly agrees to defend, indemnify and hold harmless the District, from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the PWL (collectively "PWL Claim") made against or incurred by the District in any capacity (including, without limitation, as a real party in interest), except for any PWL Claim arising out of the sole negligence or willful misconduct of the District.

15. The conditions of this permit are independent of, and in addition to, the obligations of the Permittee under any existing lease(s), Tidelands Use and Occupancy Permit(s), or other contractual agreement(s) with the District, and are binding upon Permittee and its agents, representatives, successors and permitted assigns.

#### **SHORT TERM CONSTRUCTION MEASURES**

1. To minimize noise during construction, the Permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize nuisance effects from lights or glare during construction, the Permittee will require the construction contractor to shield and direct night lighting away from adjacent areas.
3. All construction equipment shall be maintained in peak condition to reduce operational emissions.
4. Diesel equipment shall use low-sulfur diesel fuel.
5. Electric equipment shall be used to the maximum extent feasible during construction.
6. The Permittee shall require the construction contractor to provide construction employees with transit and ride share information.

7. The Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to hazardous materials, workers shall be provided with adequate protective gear.
8. The Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
9. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 2009-0009-DWQ (NPDES General Permit No. CAS000002), and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "Construction General Permit"), as adopted, amended, and/or modified. Construction activity subject to the Construction General Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor are responsible for submitting to the District a SWPPP that is compliant with the Construction General Permit and District required minimum BMPs. The District requires the use of District SWPPP templates. Once approved, the SWPPP document shall be maintained on the construction site at all times and made available for review by the District or other regulatory agencies.

The Permittee and/or contractor is responsible for ensuring that the SWPPP document is maintained on the site, implemented, and amended as required throughout construction. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations shall be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean shall be reported immediately to the District Planning and Green Port Department, in order to address any regulatory permit requirements regarding spill notifications.

A project's total disturbed soil area (DSA) shall not exceed 5 acres during the rainy season (October 1 - April 30) and 17 acres during the non-rainy season (May 1 - September 30). The District may temporarily increase these limits if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution.

### **SPECIAL PROVISIONS**

1. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements, as described in the "Portside Pier Restaurant

Redevelopment Project” Final Mitigated Negative Declaration (UPD #MND-2016-91; SCH 2016081007, Clerk Document No. XXXXX), dated November 2016, and adopted by Resolution No. 2016-xxx on December 13, 2016, attached hereto as Exhibit 10 and incorporated herein by reference.

2. Permittee shall implement all resurfacing, paving, and striping necessary to return promenade and parking amenities affected during construction activities to conditions suitable for public use.
3. Permittee shall implement the following Sustainability features:
  - (1) Building
    - a. High-efficiency, clear, non-reflective Low E glass;
    - b. Light-colored roofing materials will be used to reduce heat buildup in the building and reduce the heat island effect;
    - c. Photovoltaics located on the bay-facing side of the rooftop;
    - d. It is anticipated that the proposed project will exceed the minimum energy efficiency standards dictated by the California Title 24 Building Code requirements;
    - e. Ducts within the proposed building will be sealed during construction and cleaned out during commissioning to promote indoor air quality by minimizing dust and mold accumulation;
    - f. Hardscape, roofing, and deck materials will include light-colored paving to reduce heat island effect;
    - g. Water fixtures, including toilets, sinks, and kitchen equipment within the proposed building, will be low-flow and will reduce water use.
  - (2) Materials & Resources
    - a. Adhesives, sealants, and paints will conform to the guidelines for low- and no-volatile organic compound (VOC) products;
    - b. Carpets will conform to the product requirements for the Carpet and Rug Institute Green Label program;
    - c. During demolition, materials will be separated and recycled. During construction, solid waste will be recycled;
    - d. Use of reclaimed wood for exterior façade elements;
    - e. The proposed project will use recycled materials and materials that are produced in the Southern California area for construction.



(3) Mechanical Systems

- a. A variable-flow primary chilled-water loop will be incorporated in the proposed building, which will reduce cooling energy use;
- b. Larger mechanical and plumbing equipment, such as pumps, air handlers, exhaust fans, and kitchen hoods, will use variable-speed drives, which reduce energy use to the minimum amount required to satisfy the immediate demand.

(4) Lighting

- a. The proposed project will implement a lighting design that includes the following features:
  - Incorporation of automatic lighting management controls to save energy;
  - Use of a daylight-harvesting system that senses the amount of incoming daylight and reduces the electrical lighting accordingly;
  - Installation of occupancy sensors in offices and restrooms to turn off lights in unoccupied spaces;
  - Individual light-dimming controls throughout;
  - Use of LED lighting for signage and illuminated features;
  - Use of high-efficiency, shielded lighting for all nighttime lighting fixtures.

(5) Landscape and Water Quality

- a. Landscape design will specify low-water-use plants and drip irrigation to reduce water usage;
- b. Landscape design will be designed to minimize irrigation and runoff, and to promote surface infiltration where appropriate;
- c. Plants that are tolerant of saturated soil conditions will be used where landscaped area retain or detain storm water;
- d. Landscape irrigation control will be employed to allow for shutoff after a rain event to prevent irrigation after precipitation.

Exhibits:

1. Project Location Map
2. Ground Floor Plan
3. Second Floor Plan
4. Existing and Proposed Piles
5. Proposed Renderings
  - a. Perspective from Southwest (Water)
  - b. Perspective from Southeast (Elevated)
  - c. Perspective from Northeast Promenade (Nighttime)
6. Dock and Dine Layout
7. Project Construction Area

8. Photometric Plan
9. Preliminary Signage Plan
10. Mitigation, Monitoring, and Reporting Program (MMRP) for the Portside Pier Restaurant Redevelopment Project

If you have any questions on this permit, please contact the Real Estate Development Department-Development Services of the San Diego Unified Port District at (619) 686-6291.

RANDA CONIGLIO  
President/Chief Executive Officer

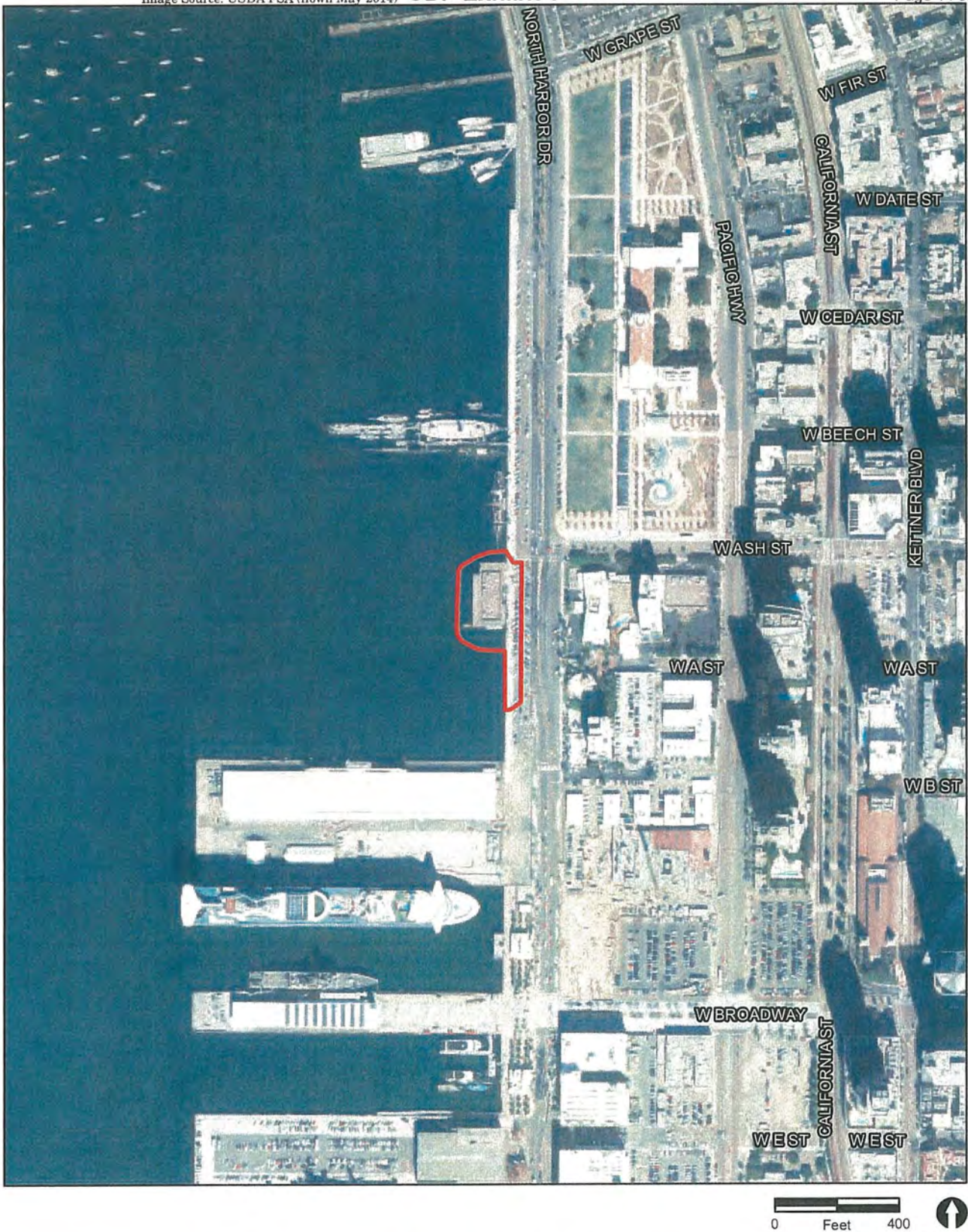
By: \_\_\_\_\_  
Wileen C. Manaois  
Principal, Development Services  
Real Estate Development Department

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee  
Mike Morton Jr.  
President & CEO, The Brigantine, Inc.

\_\_\_\_\_  
Date






 Project Boundary

FIGURE 2  
Project Vicinity



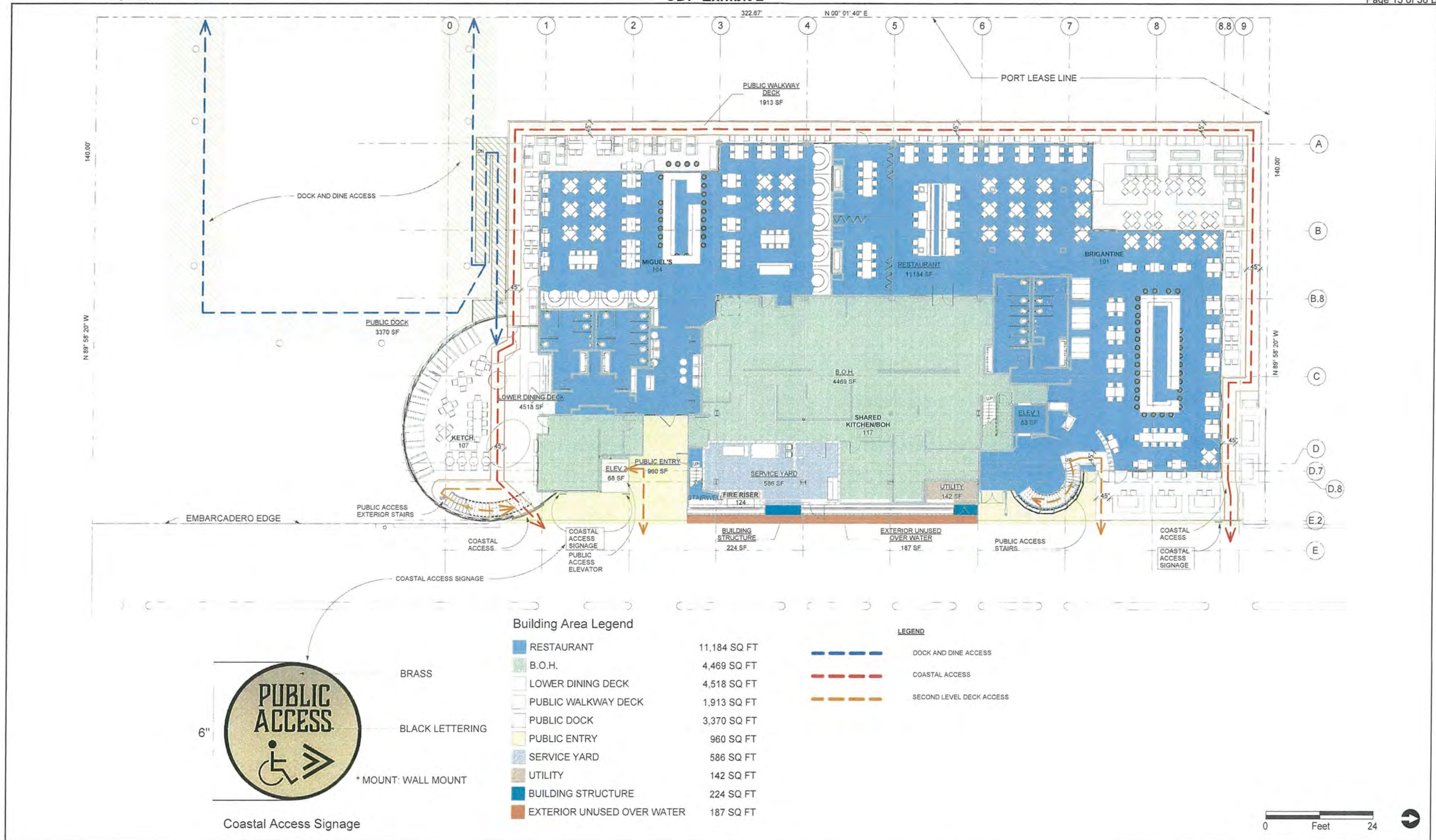


FIGURE 4a  
Portside Pier Floor Plans (Ground Floor)  
Revised Version



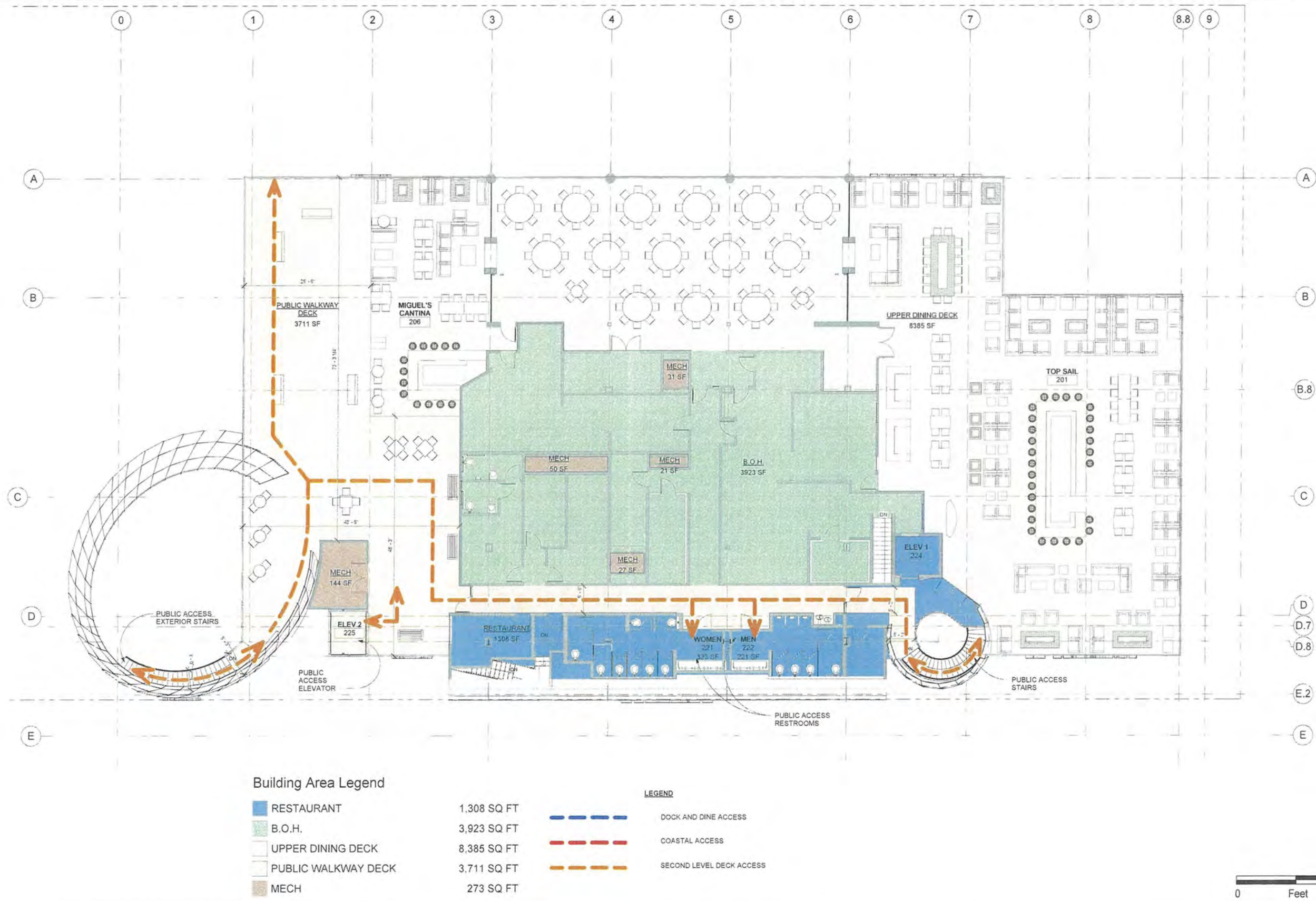
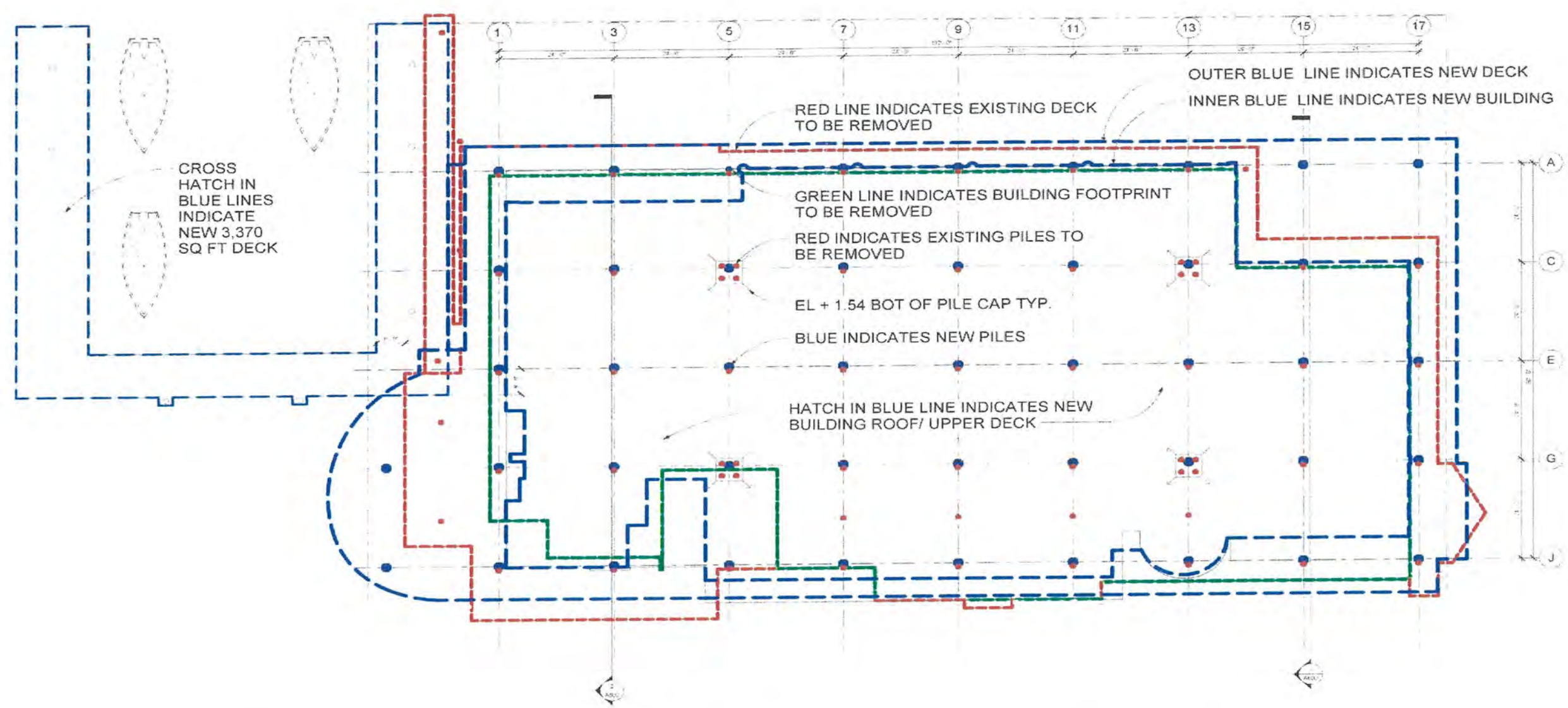


FIGURE 4b  
Portside Pier Floor Plans (Second Floor)  
Revised Version



Design  
Development

PORTSIDE PIER



- LEGEND**
- NEW 24" OCTAGON PILES
  - EXISTING 16" PILES TO BE REMOVED
  - EXISTING EMBARCADERO PILES TO REMAIN

**PILE COUNT**

EXISTING PILE COUNT	=	60	NEW PILE COUNT	=	45
EXISTING AT DOCK	=	6	NEW PILES AT NEW SLIP	=	8
EXISTING ALONG EMBARCADERO (TO REMAIN)	=	21			

BATTERED PILE



No.	Issued	Revisions	Date

ARCHITECT OF RECORD

PROJECT # 21511.00	DRAWN BY MV
DATE ISSUED 12/01/16	CHECKED BY MV
DRAWING NUMBER DWG OF	DRAWING A200

ALL CIVIL, DESIGN, ARRANGEMENTS AND PLANS INDICATED OR REFERENCED BY THE DRAWING ARE OWNED BY AND THE PROPERTY OF TUCKER SADLER ARCHITECTS, INC. AND WHEN CREATED, FURTHER DEVELOPMENT OR USE IN CONNECTION WITH THE SPECIFICATIONS OR PROJECTS OF SUCH CIVILS, DESIGN, ARRANGEMENTS OR PLANS SHALL BE USED BY OR DISCLOSED TO ANY PERSON, FIRM OR CORPORATION FOR ANY PURPOSE, WITHOUT THE WRITTEN PERMISSION OF TUCKER SADLER ARCHITECTS, INC. IT IS THE POLICY OF TUCKER SADLER ARCHITECTS, INC. TO NOT REPRODUCE, REPRODUCE OR USE THE PROJECTS OF SUCH CIVILS, DESIGN, ARRANGEMENTS OR PLANS WITHOUT THE WRITTEN PERMISSION OF TUCKER SADLER ARCHITECTS, INC.



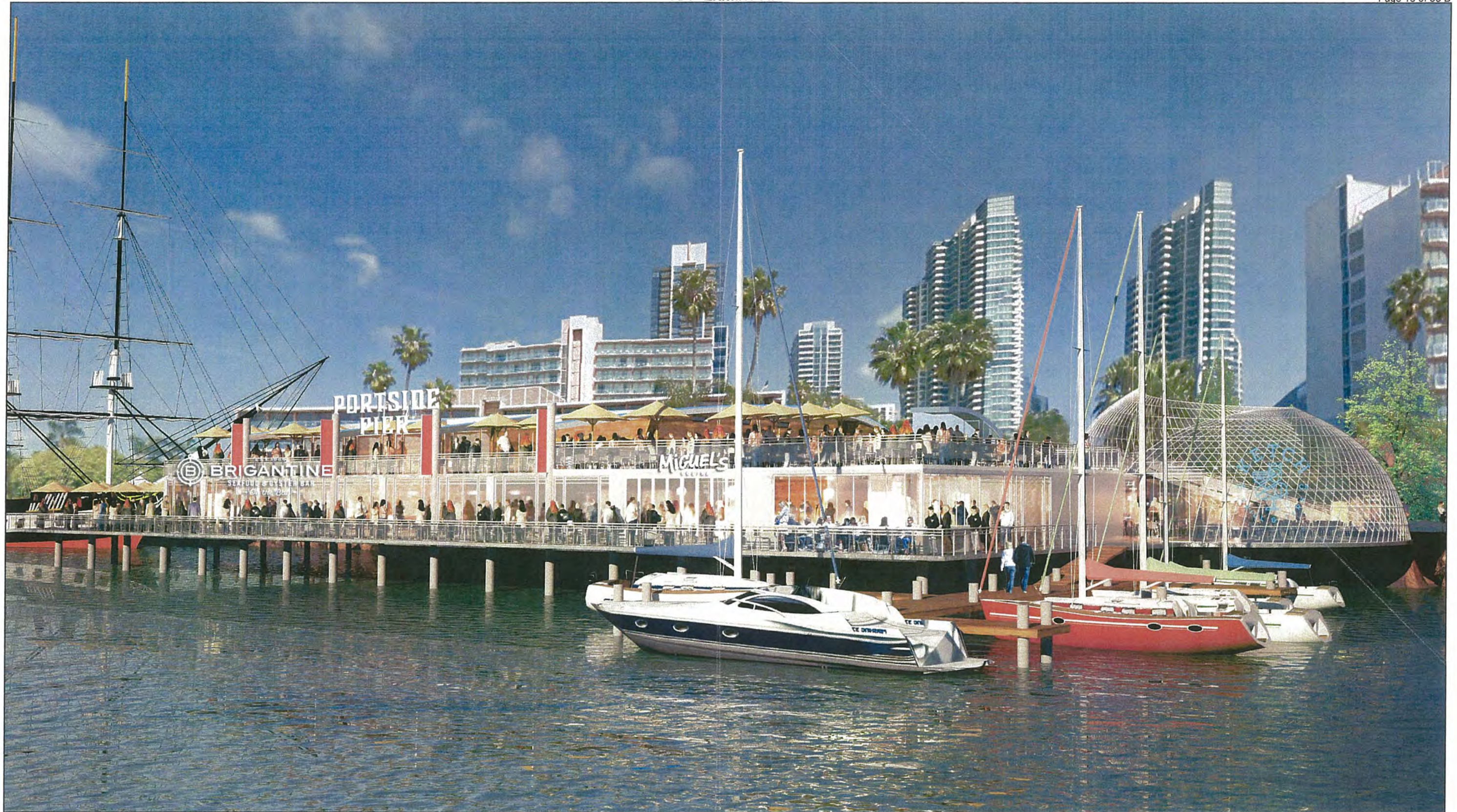












Image source: SANDAG (flown November 2014), Plan Data source: Tucker Sadler (6/2016)

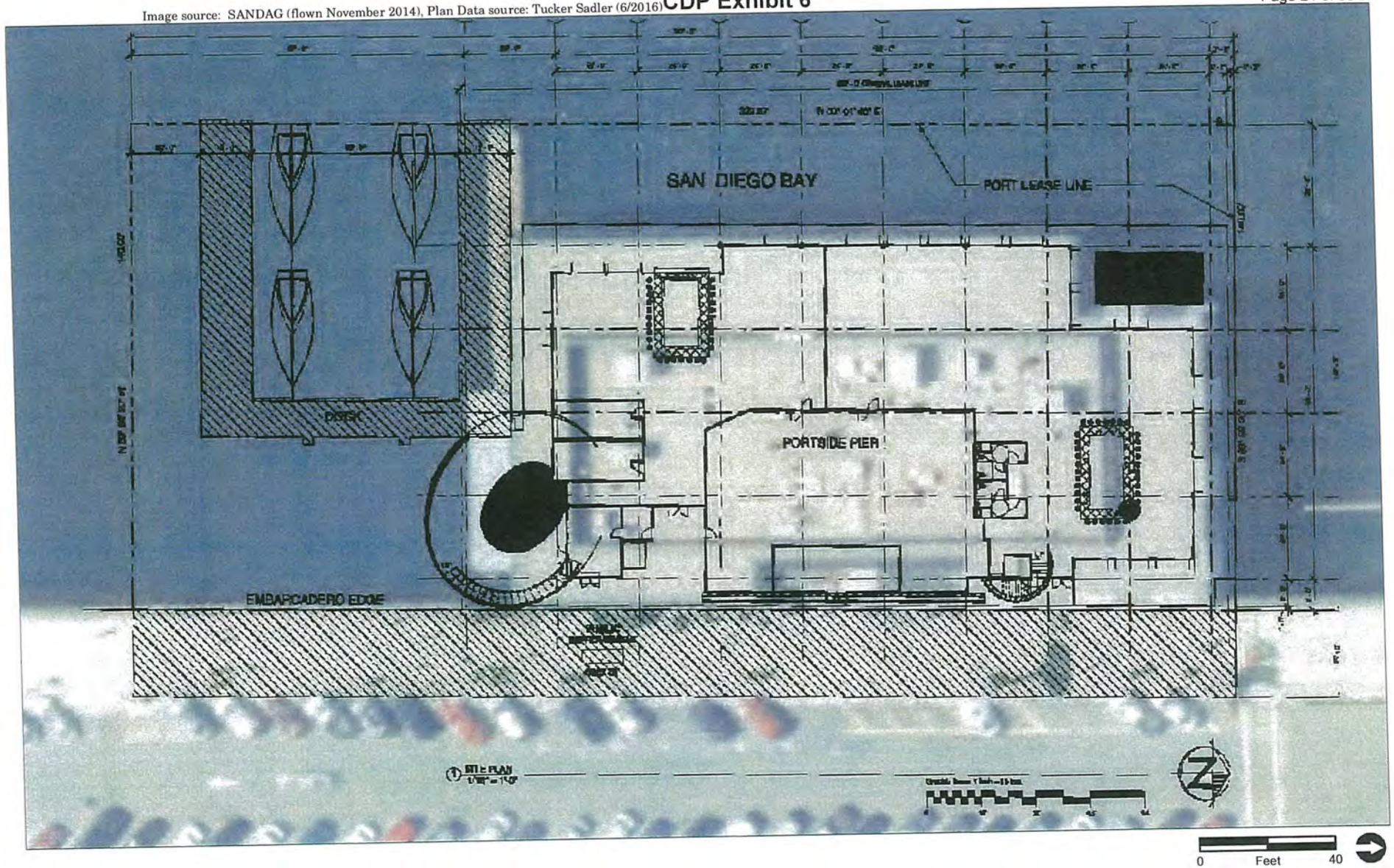


FIGURE 7

Dock and Dine Layout



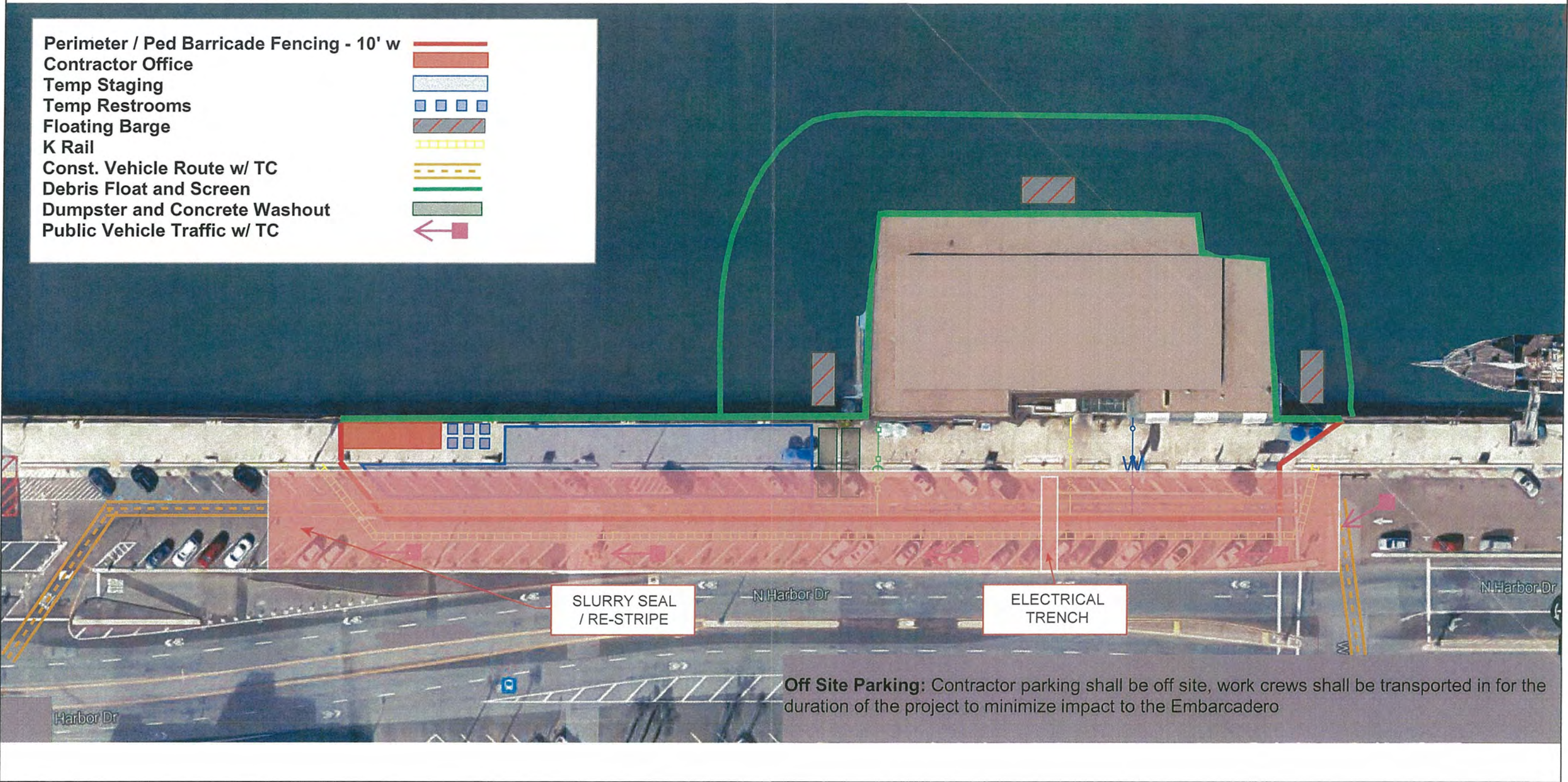


FIGURE 8  
Project Construction Area





TUCKER  
SADLER

1820 FIFTH AVENUE, SUITE 200  
SAN DIEGO, CALIFORNIA 92101  
619.236.1820 • 619.236.1822 FAX

NOT FOR  
CONSTRUCTION

Design  
Development

ROBISON  
ENGINEERING, INC.

18401 40TH AVE. W. SUITE 302  
TREMONT, WISCONSIN 53091  
262.664.8343 • 262.664.8344 FAX

PORTSIDE PIER

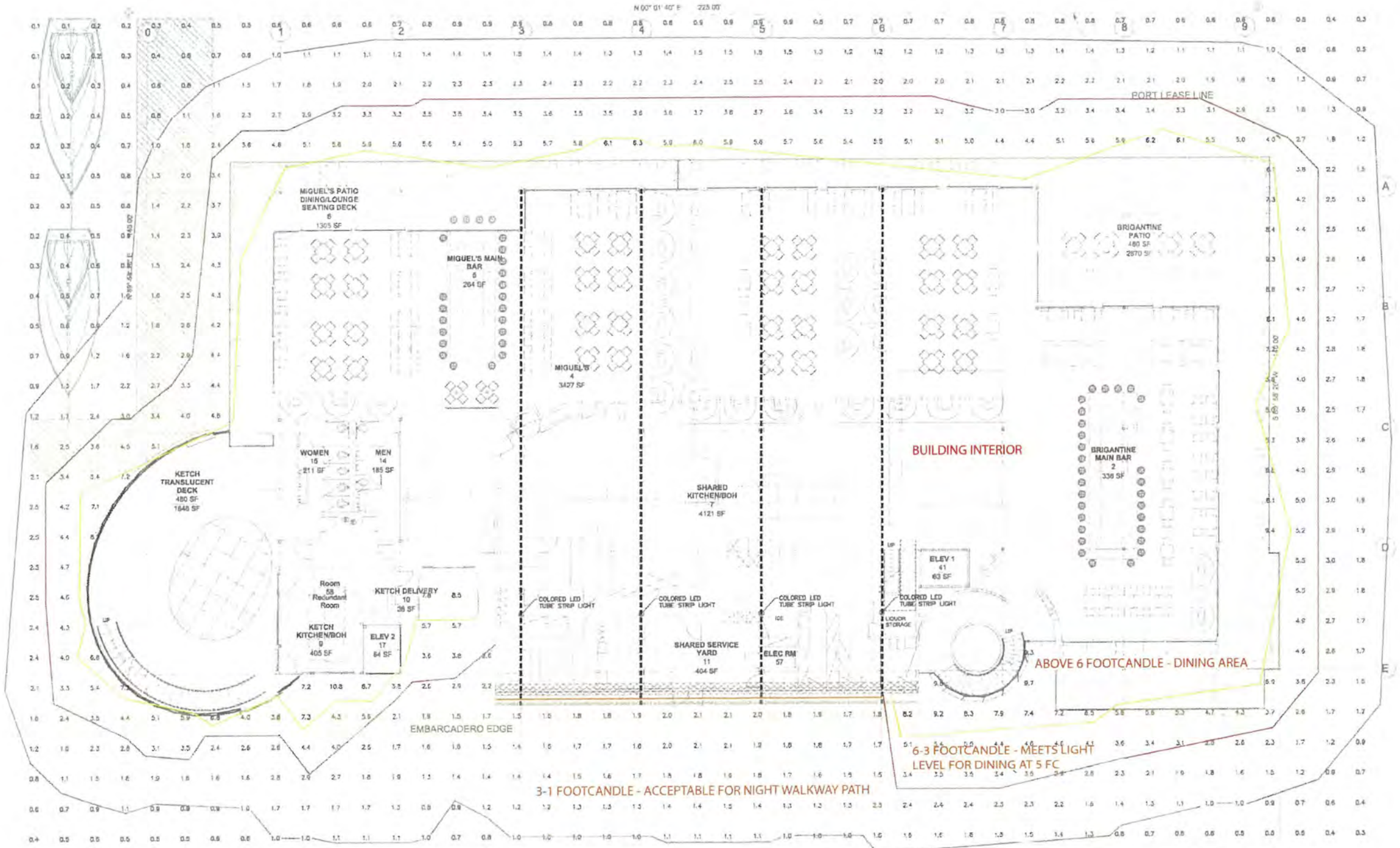
PROGRESS SET

No.	Issued / Revisions	Date

ENGINEER OF RECORD:



PROJECT #  
21511.00  
DRAWN BY:  
MAR  
DATE ISSUED:  
07/26/16  
CHECKED BY:  
PSR  
DRAWING  
NUMBER  
DWG  
OF  
E100



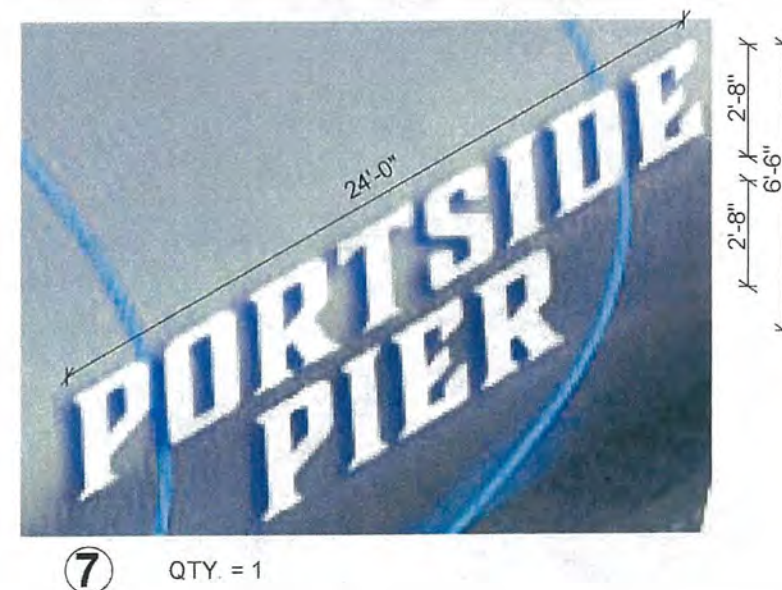
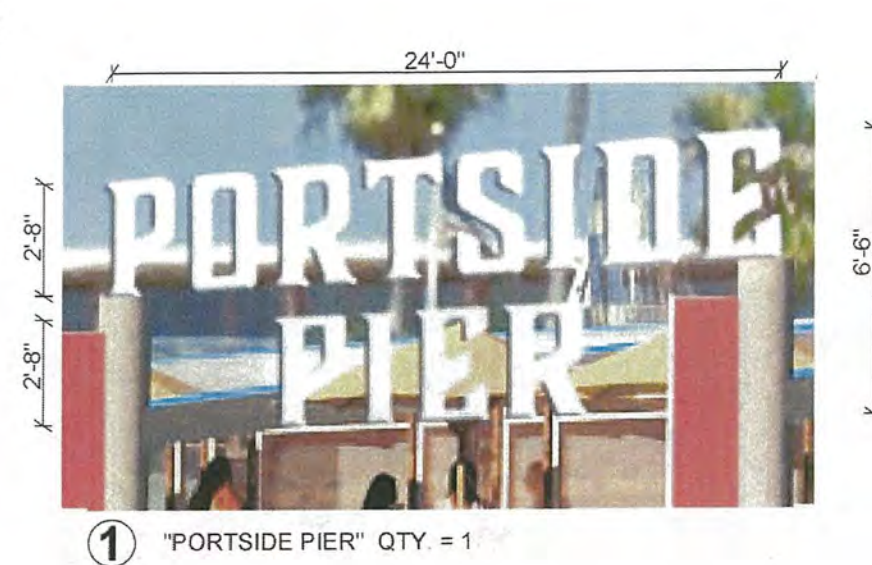
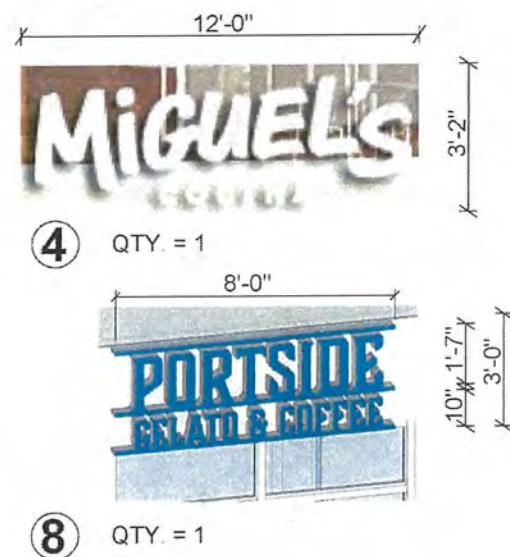
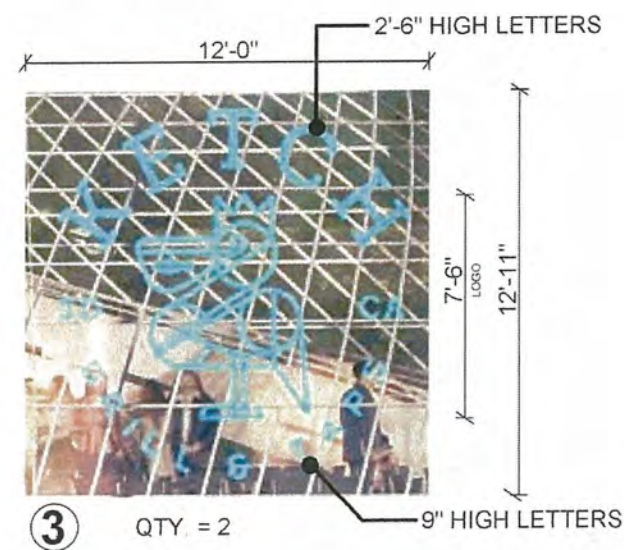
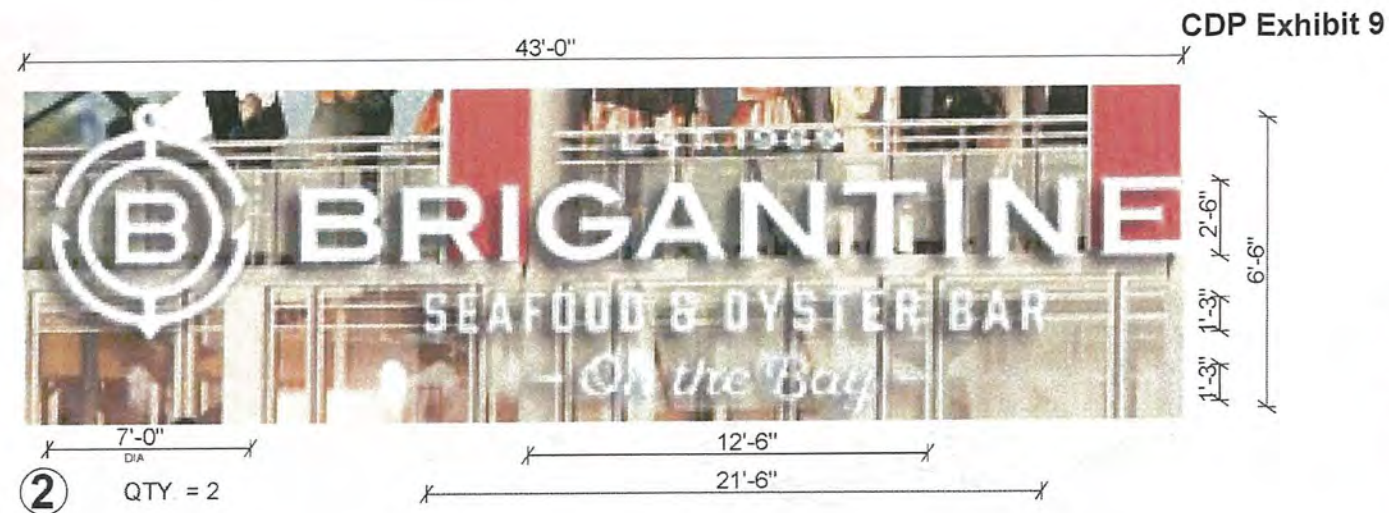
NOTE: STUDY DOES NOT INCLUDE OTHER ADDITIONAL STREET AND SITE LIGHTING SURROUNDING BUILDING

THIS DRAWING IS INTENDED TO ILLUSTRATE ANTICIPATED ILLUMINATION FOOTCANDLES ON THE GROUND FROM INTERIOR AND BUILDING MOUNTED LIGHT SOURCES.

EXTERIOR PHOTOMETRIC  
SCALE: 1/8" = 1'-0"



ALL IDEAS, DESIGNS, ARRANGEMENTS, AND DIMENSIONS INDICATED ON THESE DRAWINGS ARE THE PROPERTY OF TUCKER SADLER & ASSOCIATES. NO PART OF THESE DRAWINGS SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF TUCKER SADLER & ASSOCIATES. REPRODUCTION OF THESE DRAWINGS FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF TUCKER SADLER & ASSOCIATES IS PROHIBITED.



**SIGNAGE KEY :**

**4 2 5 7**

**SIGNAGE TYPE :** FRONT LIT CHANNEL LETTERS

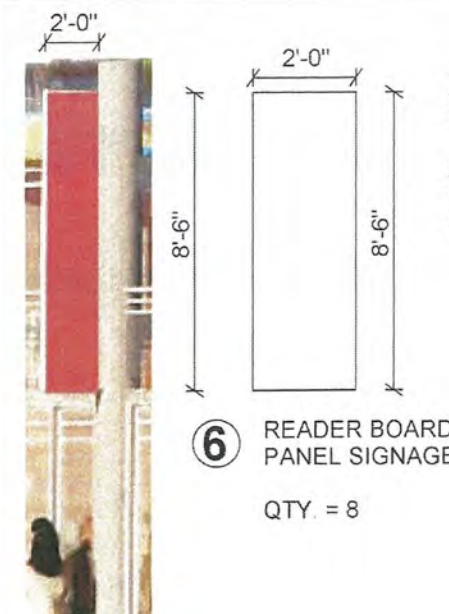
**SIGNAGE LIGHTING :** LED BEHIND ACRYLIC FACE

**MATERIALS :** 1. PRE-FINISHED ALUMINIUM RETURN  
2. ALUMINIUM BACKS  
3. ACRYLIC TRANSLUCENT FACE  
3. ALL U.L. LISTED

**1 3**

**SIGNAGE TYPE :** FRONT/BACK LIT CHANNEL LETTERS/LOGO

**SIGNAGE LIGHTING :** LED BEHIND ACRYLIC FACE



**TYPE :** FULL COLOR LED DISPLAY BANNER SIGNS

**MATERIALS :** POLYCARBONATE FACE AUTOMATIC DIMMING U.L. LISTED

PORTSIDE PIER  
PRELIMINARY SIGNAGE

No.	Issued / Revisions	Date

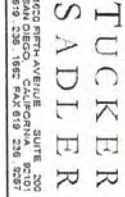
ARCHITECT OF RECORD

PROJECT # 21511.00	DRAWN BY: BA
DATE ISSUED: 11/28/16	CHECKED BY: DM, GM
DRAWING NUMBER DWG OF	DRAWING EXHIBIT A





SEE EXHIBIT  
'A' FOR  
SIGNAGE  
REFERENCE



PORTSIDE PIER  
PRELIMINARY SIGNAGE

[illegible]

ARCHITECT OF RECORD

PROJECT # 21511.00	DRAWN BY BA
DATE ISSUED 11/28/16	CHECKED BY DM, GM
DRAWING NUMBER DMC OF	DRAWING EXHIBIT C



## **I. MITIGATION MONITORING AND REPORTING PROGRAM**

### **A. Purpose**

This Mitigation Monitoring and Reporting Program (MMRP) was prepared for the proposed Portside Pier Restaurant Redevelopment Project (project) to comply with Section 15097 of the California Environmental Quality Act (CEQA) and Public Resources Code Section 21081.6. Public Resources Code Section 21081.6 requires the Lead Agency for each project subject to CEQA to adopt a reporting or monitoring program for changes made to the project or conditions of approval adopted in order to mitigate or avoid significant effects on the environment. The Lead Agency must also monitor performance of the mitigation measure included in any environmental document to ensure that implementation takes place. The Lead Agency is responsible for review of all monitoring reports, enforcement actions, and document disposition. The Lead Agency will rely on information provided by a monitor as accurate and up to date and will field check mitigation measure status as required.

The purpose of the MMRP is to ensure that the mitigation measures, required by the Mitigated Negative Declaration (MND), are properly implemented. As the Lead Agency for the project under CEQA, the San Diego Unified Port District (District) will monitor the mitigation measures for construction and operation of the project. The District may modify how it will implement a mitigation measure, as long as the alternative means of implementing the mitigation still achieves the same or greater impact reduction. An effective reporting system shall be established prior to any monitoring efforts. Copies of the measures shall be distributed to the participants of the mitigation monitoring measures adopted.

### **B. Mitigation Monitoring Checklist**

The Mitigation Monitoring Checklist (Table MMRP-1) provides a mechanism for monitoring the mitigation measures in compliance with the MND. The Mitigation Monitoring Checklist is organized by categories of environmental impacts (e.g., Biological Resources, Hazards and Hazardous Materials, and Transportation/Traffic (Parking)). Potential impacts identified in the MND are summarized for each impact area and the required mitigation measures are listed. The checklist identifies the implementation schedule, who is responsible for implementing the measure, and required monitoring and reporting frequency, and who is responsible for verification of implementation. A description of these items is provided below.

#### **Mitigation Measure.**

The specific mitigation measure language as described in the MND is listed in this category.

#### **Monitoring Requirement**

Specific requirements are provided for use by District staff to ensure that measures are appropriately implemented.

#### **Responsible Party for Mitigation Implementation**

This column explains who will ensure that the mitigation measures are properly implemented. The District shall be responsible for either monitoring each measure, or delegating an agency or party, at their discretion.

**Completion Requirement**

The mitigation measures required for the project will be implemented at various times as construction proceeds and during operation. Some measures must be implemented before or during construction activities, while others must be implemented upon completion and during operation.

**Agency Responsible for Verification**

This column describes who will be ultimately responsible for ensuring that each mitigation measure is monitoring and who will coordinate the final reporting program.

<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>Biological Resources</b>				
<b>BIO-1:</b> If pile removal and driving occur between April 1 and September 15, the contractor shall deploy a turbidity curtain around the pile removal and driving areas to restrict the surface visible turbidity plume to the area of removal and driving. It shall consist of a hanging weighted curtain with a surface float line and shall extend from the surface to 15 feet down into the water column. This measure is intended to minimize the area of the bay in which visibility of prey is obstructed. The applicant shall ensure that this measure is implemented for the duration of the pile-removal or pile-driving activity.	Construction	Applicant	During pile driving	Port District
<b>BIO-2:</b> Should vibratory pile-removal or impact hammer pile-driving activities be conducted between April 1 and September 15, a qualified biological monitor shall be retained by the contractor at its expense to conduct California least tern monitoring during the tern breeding season within 500 feet of construction activities. The monitor shall be empowered to delay work commencement and shall do so if terns are actively foraging (e.g., searching and diving) within the work area. Should adverse impacts to terns occur (e.g., agitation or startling during foraging activities), the biological monitor shall be empowered to delay or halt construction and shall do so until least terns have left the project area.	Construction	Applicant	During pile driving within the California least tern breeding season  District shall maintain monitoring reports in project files	Port District

<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>BIO-3:</b> A biological observer or observers shall monitor pile removal, if using a vibratory hammer, and pile driving, if using a vibratory or impact hammer, with the authority to stop work if a green sea turtle or marine mammal approaches or enters the shutdown zones (500 meters for vibratory removal or driving and 317 meters [117 meters plus a 200-meter buffer] for impact driving). The additional buffer is required because a marine mammal or green sea turtle spends much of its time underwater. A buffer gives the observer time to observe the animal before it dives, and allows them to stop construction before it enters the shutdown zone. Prior to the start of pile-removal or pile-driving activities, the biological observers shall monitor the shutdown zones for at least 15 minutes to ensure that green sea turtles and marine mammals are not present. If a green sea turtle or marine mammal approaches or enters the shutdown zone during the pile-removal or driving activities, the biological observer(s) shall notify the construction contractor to stop the activity. The pile-removal or pile-driving activities shall be stopped and delayed until either the biological observer(s) visually confirm that the animal has left the shutdown zone of its own volition, or 15 minutes have passed without re-detection of the animal. If the on-site biological observer(s) determine that	Construction	Applicant	During pile driving  District shall maintain monitoring reports in project files	Port District



**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>weather conditions or visibility prevent the visual detection of green sea turtles or marine mammals in the shutdown zones, such as heavy fog, low lighting, or sea state, in-water construction activities with the potential to result in Level A Harassment (injury) or Level B Harassment (disturbance) shall not be conducted until conditions change. The following shutdown zones, and buffers, will avoid the potential for impacts.</p> <p>For Demolition (assuming vibratory pile removal):</p> <ul style="list-style-type: none"> <li>A shutdown zone consisting of the area within 500 meters of work would be required to avoid potential injury and behavioral effects to green sea turtles, managed fish, and marine mammals.</li> </ul> <p>For Construction (assuming impact pile driving):</p> <ul style="list-style-type: none"> <li>A shutdown zone consisting of the area within the 160-decibel (dB) root mean square (rms) isopleth (117 meters from source), plus a buffer of 200 meters, would be required to avoid the potential for Level A and B Harassment of green sea turtles, managed fish, and marine mammals (317 meters total).</li> </ul>				

<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>Additional requirements:</p> <ul style="list-style-type: none"> <li>Prior to the start of any pile-driving activities, the construction contractor shall implement a soft-start procedure to provide additional protection to green sea turtles, marine mammals, and fish. Soft start provides a warning and/or gives individuals a chance to leave the area prior to the hammer operating at full power. The soft-start procedure would require contractors to activate the impact hammer with an initial set of three strikes at 40 percent or less energy, separated by three 30-second waiting periods.</li> <li>If at any point pile driving stops for greater than one hour, then the soft start procedure must be conducted prior to the start of further pile driving activities.</li> <li>Observers will observe for 30 minutes after construction has ended.</li> <li>Construction activities requiring observers will commence 45 minutes after sunrise, and 45 minutes before sunset to provide the observers with enough visibility to observe marine species in the project area.</li> <li>Biological monitoring shall be conducted by qualified observers. The observers shall be trained in green sea turtle and marine mammal identification and behaviors, and would have no other construction-related tasks. The</li> </ul>				

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>observers shall determine the best vantage point practicable to monitor and implement shut-down/notification procedures, when applicable, by notifying the construction superintendent and/or hammer operator.</p> <ul style="list-style-type: none"> <li>During all observation periods, observers shall use binoculars and the naked eye to scan continuously for green sea turtles and marine mammals. As part of the monitoring process, the observers shall collect sightings data and behavioral responses to pile-removal and pile-driving from green sea turtles and marine mammals observed within 500 feet of the proposed project site of activity and shutdown zones during the period of construction. The observer shall complete a sighting form (paper or electronic) for each pile-driving day (see Attachment B of Appendix 3). The observer shall submit the completed forms to NMFS and the District within 60 days of the completion of the monitoring with a summary of observations.</li> </ul>				



<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>BIO-4:</b> Prior to the commencement of construction activities that would result in increased water coverage, an amount equating to the loss of open water associated with the proposed project shall be offset by deducting an amount from the District's shading credit program established pursuant to Board Policy 735. Additionally, the project applicant shall implement design modifications, such as incorporating translucent areas over the water. The deduction to the District's shading credits shall be equivalent to that of the proposed project's final increase in shading (i.e., less any reductions achieved by design modifications) to the satisfaction of NMFS and USACE. Applicant shall pay to the District fair market value, as determined by a District study of similar credits, for the shading credits.	Pre-Construction	Applicant	Prior to demolition and construction activities	Port District
<b>Hazards and Hazardous Materials</b>				
<b>HAZ-1:</b> Airport Land Use Commission (ALUC) formal review and determination on the proposed project shall be obtained prior to initiation of project construction.	Pre-Construction	Applicant and District	Prior to initiation of construction	Port District

<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>Transportation/Traffic (Parking)</b>				
<b>TRA-1</b> To reduce the impacts associated with temporary loss in parking during construction of the proposed project, the applicant and/or construction contractor will implement the following: <ul style="list-style-type: none"> <li>• Prior to construction, the applicant or construction contractor will obtain written agreement from the Wyndham Hotel, or other parking facility with sufficient space, to guarantee parking for construction personnel through the duration of construction of the proposed project.</li> <li>• During initial site preparation, the construction contractor will post signage at the temporarily displaced parking spaces to direct visitors to nearby available parking.</li> </ul>	Pre-Construction and Construction	Applicant	Prior to construction and during construction	Port District
<b>TRA-2:</b> The applicant will implement the following parking management strategies to mitigate the projected parking deficiency: <ul style="list-style-type: none"> <li>• Coordination - On-going daily coordination between the proposed project and parking lot operators, such as ACE parking, to identify which surrounding lots have available parking at different times of the day.</li> <li>• Wayfinding Signage - Provide changeable signage to direct patrons to the parking facilities (as identified by ACE on a weekly basis) that</li> </ul>	Prior to Operation and Ongoing	Applicant	Prior to and during operation	Port District

<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>have parking availability.</p> <ul style="list-style-type: none"> <li>• Transportation Network Companies – Coordination with companies (such as Lyft, Uber, etc.) to encourage patrons to utilize this mode of transportation as an alternative to driving their personal vehicle.</li> <li>• Valet Parking – Secure 979 parking spaces (Secured Parking) at one or more parking lots and provide a valet service in order to avoid overflow in the immediate surrounding parking areas. Prior to Certificate of Occupancy, the applicant will enter into a contract or agreement with a parking operator or equivalent entity securing the Secured Parking and provide the agreement to the District. The agreement shall be updated on an annual basis with proof of said agreement being submitted to the District on an annual basis. Alternatively, the applicant may submit evidence to District that it has acquired the Secured Parking at an off-site location for the valet parking operation.</li> </ul> <p>After the first year of operation or anytime thereafter, the applicant may submit a parking study (Parking Study) to the District for its review and approval. The Parking Study shall include, at a minimum, the number of Secured Parking used for its valet operations on a monthly basis, broken down into morning,</p>				



**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>afternoon and evening timeframes, for the previous year. Based on the District's review of the study, the number of Secured Parking may be reduced for a maximum period of two years. The reduction in Secured Parking shall not be less than the highest monthly use of the Secured Parking in the previous year and the reduction may be granted in the District's sole and absolute discretion. Prior to the elapse of the two-year period, a new Parking Study may be submitted to the District for its review and approval based on the same requirement stated herein. If a new Parking Study is not submitted to the District or during the District's review of the new Parking Study (if said review overlaps with the two-year period), the applicant shall secure 979 parking spaces with a parking operator or equivalent entity through an agreement that shall be submitted to the District.</p> <ul style="list-style-type: none"> <li>• Water Taxi – Applicant shall coordinate with a water taxi company to encourage patrons to utilize water taxis as an alternative to driving their personal vehicle.</li> <li>• Bike Racks – Provide bike racks on the project site or adjacent thereto on the promenade to encourage employees/patrons to bike to the proposed project.</li> </ul>				



<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<ul style="list-style-type: none"> <li>• Bike Share Stations – Coordinate with companies like DECOBIKE to ensure a bike share station is maintained within walking distance (approximate 1,000 feet) to the proposed project.</li> <li>• Public Transit – On the applicant's website, promote and encourage employees and patrons to utilize alternative modes of transportation as an alternative to driving their personal vehicle.</li> <li>• Public Transit Subsidies for Employees – Provide reimbursement or subsidies for public transportation costs for all employees.</li> <li>• Port of San Diego (formerly Big Bay) Shuttle – Participate in the District's on-going shuttle program.</li> <li>• Employee Off-Site Parking – Designate an off-site parking lot for employees and provide shuttle service between the off-site facility and the proposed project, such as: <ul style="list-style-type: none"> <li>○ Portman Hotel: (+400 stalls)</li> <li>○ 610 West Ash Street: (+410 stalls)</li> <li>○ 410 West Ash Street (+510 stalls)</li> <li>○ 1230 Columbia Street (+228 stalls)</li> </ul> </li> </ul>				

## **RESOLUTION 2016-205**

### **RESOLUTION AUTHORIZING ISSUANCE OF NON- APPEALABLE COASTAL DEVELOPMENT PERMIT FOR THE PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, at the May 12, 2015 Board of Port Commissioners (Board) meeting, staff was directed to issue a Request for Proposal (RFP) for the redevelopment and operation of 1360 North Harbor Drive (Project Site), which is currently leased to Anthony's Fish Grotto of La Mesa (Anthony's) under a lease that expires on January 31, 2017; and

**WHEREAS**, Anthony's currently operates four eating establishments/restaurants (three restaurants and a coffee kiosk) at the Project Site and a 565-square-foot dock once was located at the site; and

**WHEREAS**, at the November 17, 2015 Board meeting, the Board selected and authorized negotiations with The Brigantine for the development and operation of the Project Site; and

**WHEREAS**, The Brigantine, Inc., as the project proponent/applicant, proposes to redevelop the Project Site with the Portside Pier Restaurant Redevelopment Project (Project), which, like the existing facility, consists of four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop), as well as a second-floor public viewing deck, and an expanded dock and dine facility; and

**WHEREAS**, the Project area encompasses approximately 45,174 square feet of land and water area, which includes approximately 37,107 square feet of water area and approximately 8,067 square feet of land area; and

**WHEREAS**, the Project generally consist of, without limitation, (1) demolition of the existing 24,855-square-foot restaurant structure, piles and platform; (2) construction of new piles, platform and structure, (3) redevelopment of the Project Site with four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop) that would provide up to 1,000 restaurant seats for diners, an approximate 3,711-square-foot dedicated public viewing deck with tables and benches for up to 108 public

visitors on the second floor, an approximate 1,913-square-foot perimeter public walkway around the bottom floor of the building to provide views of the bay (access to these public areas, would be provided during restaurant business hours), and an approximate 3,370-square-foot expanded dock and dine facility capable of docking up to 12 vessels; (4) clear signage directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway; (5) improvements to the portion of the North Embarcadero Promenade located in front of the Project Site with new pavers, street furniture, and wayfinding signage; and (6) LED light signage and elements; and

**WHEREAS**, the overall building height of the Project would increase from 27 feet to approximately 34 feet above mean sea level, a net increase of 7 feet and the Project would result in a net increase of approximately 9,214 square feet of building floor area, 4,480 square feet of total water coverage, 1,094 square feet of first-floor public access area, 3,711 sf of second-floor public deck area, and 2,805 square feet in public dock area; and

**WHEREAS**, the Project is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan (PMP) and the PMP land and water use designations within the limits of the Project are Commercial Recreation and Ship Anchorage; and

**WHEREAS**, the Project is the redevelopment of an existing waterfront restaurant facility use and is consistent with the existing certified land and water use designations, which allow for restaurant uses and dock and dine facilities and therefore, the Project conforms to the certified PMP; and

**WHEREAS**, the Project is located between the sea (as defined in the California Coastal Act) and the first inland continuous public road paralleling the sea and is fully consistent with California Public Resources Code Section 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein since the Project with mitigation measures, which are incorporated into the proposed Coastal Development Permit, will have no impact on public access, public recreation, public facilities, or related issues; and

**WHEREAS**, the Project constitutes "development" under Section 30106 of the California Coastal Act as it will involve the demolition and construction of a structure and accordingly requires a Coastal Development Permit; and

**WHEREAS**, pursuant to the District's Coastal Development Permit Regulations, the Project has been determined to be a "non-appealable" development because it is not considered an "excluded," "emergency," or "appealable" development; and

**WHEREAS**, pursuant to the California Coastal Act, the proposed development is considered "non-appealable" because it is not the type of

“appealable” development listed in Section 30715 of Chapter 8 of the California Coastal Act, which specifies the sole categories of development that may be appealed to the Coastal Commission; and

**WHEREAS**, the “non-appealable” category of development is supported by the record, including, without limitation, the responses to comments to the Draft MND, the plain language of Section 30715, and the certified PMP, which does not identify the existing restaurant as an appealable development and other restaurants listed in the PMP as appealable were part of larger appealable categories of development, and the characteristics of the Project; and

**WHEREAS**, the Project requires a non-appealable Coastal Development Permit and an application has been prepared for a non-appealable Coastal Development Permit to implement the Project; and

**WHEREAS**, the Board finds that said application and attachments contain correct and accurate statements of fact; and

**WHEREAS**, the Board has concluded that the Project conforms to the certified Port Master Plan; and

**WHEREAS**, the Board considered the non-appealable Coastal Development Permit at the December 13, 2016 Board meeting; and

**WHEREAS**, in accordance with the California Environmental Quality Act (CEQA) statutes and guidelines, the Project was analyzed in the Mitigated Negative Declaration (MND) entitled “Portside Pier Restaurant Redevelopment Project” (UPD #MND-2016-91 and SCH #2016081007) and pursuant to Resolution No. 2016-202, on December 13, 2016, the Board adopted the MND and a Mitigation, Monitoring Reporting Program and made certain findings as particularly stated in said Resolution.

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

1. The Board finds the facts recited above are true and further finds that this Board has jurisdiction to consider, approve and adopt the subject of this Resolution.

2. In general, the Project consists of (1) demolition of the existing 24,855-square-foot restaurant structure, piles and platform; (2) construction of new piles, platform and structure, (3) redevelopment of the Project site with four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop) that would provide up to 1,000 restaurant seats for diners, an approximate 3,711-square-foot dedicated public viewing deck with tables and benches for up to 108 public visitors on the second floor, an approximate 1,913-

square-foot perimeter public walkway around the bottom floor of the building to provide views of the bay (access to these public areas, would be provided during restaurant business hours), and an approximate 3,370-square-foot expanded dock and dine facility capable of docking up to 12 vessels; (4) clear signage directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway; (5) improvements to the portion of the North Embarcadero Promenade located in front of the Project Site with new pavers, street furniture, and wayfinding signage; and (6) LED light signage and elements. The Brigantine, Inc. shall maintain the improvements and the public areas, including, without limitation, the public viewing deck, the perimeter walkway and the dock and dine.

3. The Project is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan (PMP) and the PMP land and water use designations within the limits of the Project are Commercial Recreation and Ship Anchorage. The Project is the redevelopment of an existing waterfront restaurant facility use and is consistent with the existing certified land and water use designations, which allow for restaurant uses and dock and dine facilities and therefore, the Project conforms to the certified PMP.

4. The Project is located between the sea (as defined in the California Coastal Act) and the first inland continuous public road paralleling the sea and is fully consistent with California Public Resources Code Sections 30715.5, 30718, 30604(c), and 30210-30224, and the Coastal Act public access and recreation policies referenced therein since the Project with mitigation measures, which are incorporated into the proposed Coastal Development Permit, will have no impact on public access, public recreation, public facilities, or related issues.

5. The Project constitutes "development" under Section 30106 of the California Coastal Act as it will involve the demolition and construction of a structure and accordingly requires a Coastal Development Permit. In accordance with the District's Coastal Development Permit Regulations, the Project is "Non-Appealable" because it does not qualify as an "Excluded," "Appealable," or "Emergency" development. Furthermore, pursuant to the California Coastal Act, the proposed development is considered "non-appealable" because it is not the type of "appealable" development listed in Section 30715 of Chapter 8 of the California Coastal Act, which specifies the sole categories of development that may be appealed to the Coastal Commission within the District's jurisdiction. The non-appealable category of development is supported by the record, including, without limitation, the responses to comments to the Draft MND, the plain language of Section 30715, and the certified PMP, which does not identify the existing restaurant as an appealable development and other restaurants listed in the PMP as appealable were part of larger appealable categories of development, and the characteristics of the Project.

6. Based on the entire record available to the Board and the findings set forth in this Resolution, the Executive Director or her designated representative is hereby authorized and directed to issue a Non-Appealable Coastal Development Permit for the "Portside Pier Restaurant Redevelopment Project." Said Non-Appealable Coastal Development Permit shall require compliance with all the conditions set forth in the Non-Appealable Coastal Development Permit; provided, however, as a condition of this approval, The Brigantine, Inc. shall indemnify and hold the District harmless against all third-party legal challenges, claims, lawsuits, proceedings, and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District, related to the District's approval of this Non-Appealable Coastal Development Permit. Said indemnity and hold harmless condition is independent of any agreements by and between The Brigantine, Inc. and the District.

APPROVED AS TO FORM AND LEGALITY:

Deputy

GENERAL COUNSEL

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 13<sup>th</sup> day of December, 2016, by the following vote:

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

NAYS: None.

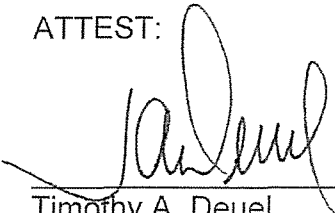
EXCUSED: Nelson

ABSENT: None.

ABSTAIN: None.

  
Marshall Merrifield, Chair  
Board of Port Commissioners


ATTEST:

  
Timothy A. Deuel  
District Clerk

(seal)



Agenda No. 21  
File No. 2016-0550



## PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT

December 13, 2016

Wileen Manaois, Principal, Development Services - Real Estate Development

## Portside Pier Restaurant Redevelopment Project

2

### Agenda Item A

- ☐ Conduct Public Hearing
- ☐ Adopt Resolution adopting the Final Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, and Findings, and directing filing of the Notice of Determination

### Agenda Item B

- ☐ Adopt Resolution finding the Project to be in conformance with BPC Policy No. 735 to make available District environmental mitigation property to The Brigantine, Inc.

### Agenda Item C

- ☐ Adopt Resolution granting Concept Approval to The Brigantine, Inc.

### Agenda Item D

- ☐ Adopt Resolution Authorizing Issuance of a Non-Appealable Coastal Development Permit



## Project Location

3



## Existing Conditions

4



## Background

5

- **May 12, 2015:** BPC directs issuance of RFP for redevelopment and operation of 1360 North Harbor Drive
- **November 17, 2015:** BPC selects and authorizes negotiations with The Brigantine, Inc.
- **February 2016:** The Brigantine submits application for Portside Pier Restaurant Redevelopment Project  
  
Staff commences environmental review process and begins negotiations on a new lease

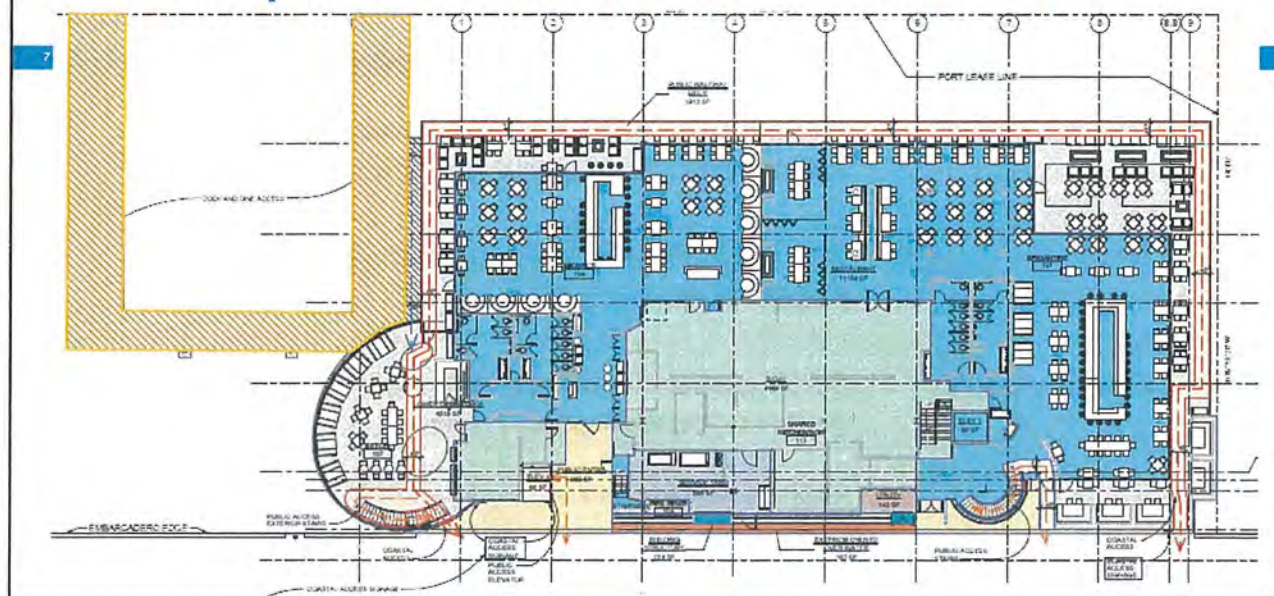
## Proposed Portside Pier Project

6

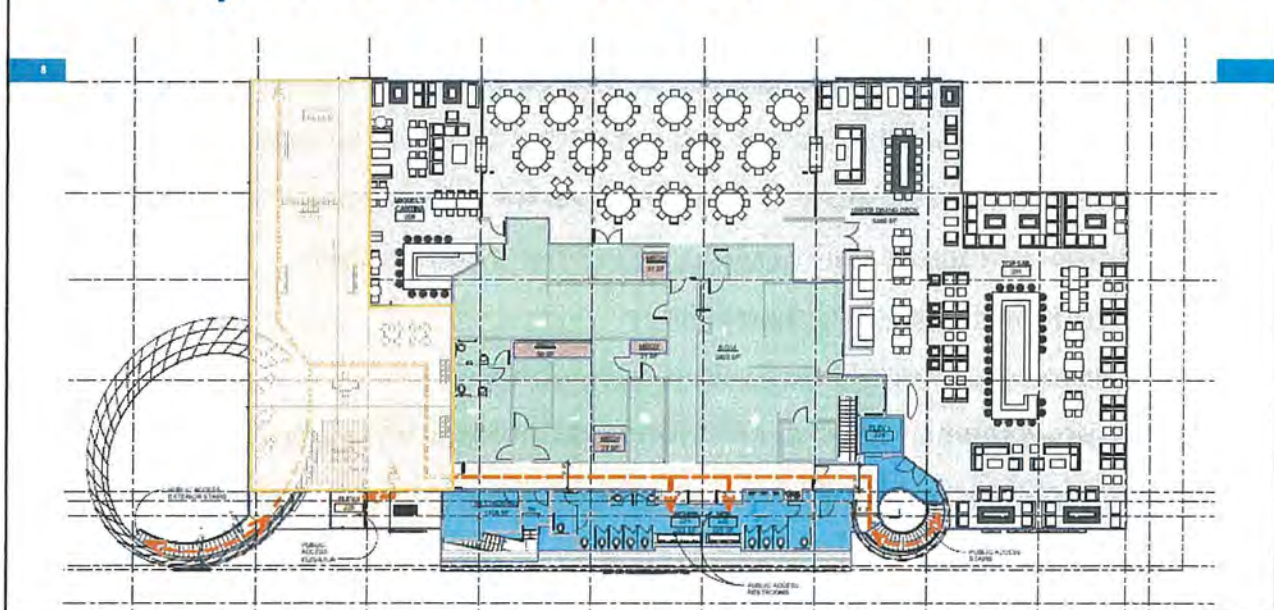
- Demolition/construction of piles, platform, and restaurants
- New two-story, approx. 34,069 SF restaurant structure
- Three restaurants and gelato and coffee walk-in shop
- Expanded dock and dine facility
- Second-floor dedicated public viewing deck
- Improvements to portion of North Embarcadero Promenade
- Demolition and construction will take approx. 11 to 16 months



## Proposed First Floor – Floor Plan



## Proposed Second Floor – Floor Plan





## Portside Pier Project



## Portside Pier Project





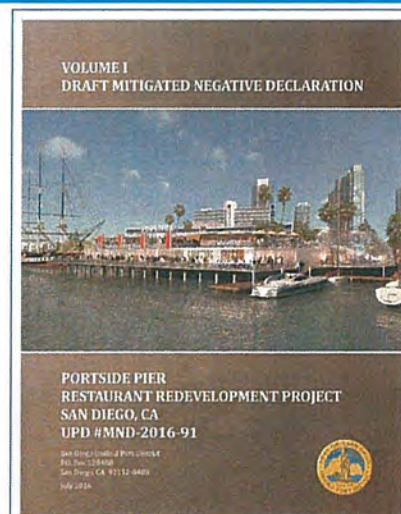
## Portside Pier Project



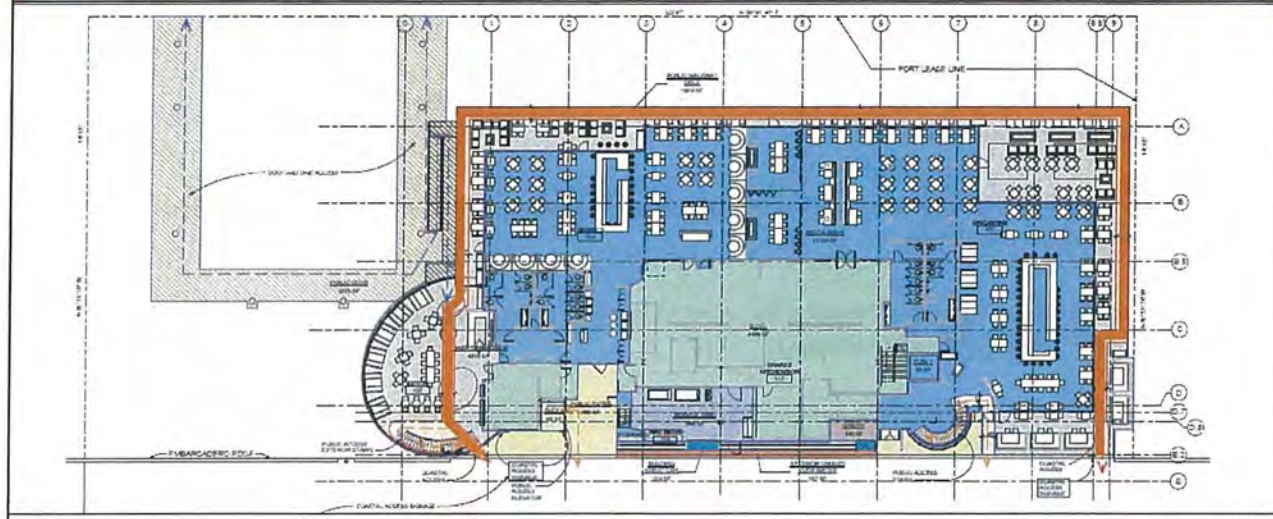
## Environmental Review

12

- Draft Mitigated Negative Declaration (MND) prepared for the Project
- 30-Day Public Review: August 2 - 31, 2016
- Five comment letters received on Draft MND
- Comments did not raise any significant environmental issues not already included in Draft MND



## Proposed Ground Floor Public Perimeter Walkway



## MND Findings and MMRP

- Environmental impacts reduced to less than significant with incorporation of mitigation measures related to:

**Biological Resources**

**Hazards and Hazardous Materials**

**Traffic and Transportation (Parking)**

- MND Finding: Project will have no potentially significant adverse impacts to the environment with incorporation of mitigation measures
- Mitigation Monitoring and Reporting Program (MMRP) prepared



## Final MND and Findings

15

- Comment letters and District responses included in Final MND
- Final MND includes clarifications and revisions to the Project and mitigation measures
- Revisions do not amount to substantial revision under CEQA Guidelines Section 15073.5
- Altered mitigation measures are equivalent or more effective than Draft MND mitigation measures
- Staff recommends Board adopt Findings pursuant to CEQA Guidelines Section 15074.1

## BPC Policy No. 735 - Environmental Mitigation Policy

16

- Project demonstrates exceptional public benefits through improved public access and recreational opportunities
- The Brigantine will pay fair market value for District shading credits to mitigate for water coverage impacts
- The Brigantine has made good faith effort to minimize need for mitigation property and to self-mitigate within the leasehold limits
- Project meets the requirements of BPC Policy No. 735



## Concept Approval

17

- ☐ BPC Policy No. 357 requires Board approval of new tenant development exceeding \$500,000
- ☐ Estimated Project construction cost: \$13 Million
- ☐ Project would redevelop aging structure with new structure and modern restaurant facility
- ☐ Project includes enhanced public access amenities
- ☐ Staff recommends Board grant Concept Approval

## Coastal Development Permit

18

- ☐ Conforms to Port Master Plan; a PMPA is not required
- ☐ Non-Appealable category of development
- ☐ Project requires issuance of non-appealable CDP
- ☐ These findings enable Board to authorize issuance of a non-appealable CDP
- ☐ CDP Special Conditions

## Next Steps

19

- The Brigantine to obtain other approvals, such as:
  - ▣ Board approval of a new lease to The Brigantine, Inc.
  - ▣ RWQCB certification
  - ▣ ACOE permit
  - ▣ Building permit
- Construction anticipated to begin in Spring 2017  
(pending receipt of above approvals)

## STAFF RECOMMENDATION

### Portside Pier Restaurant Redevelopment Project

20

#### Agenda Item A

- Conduct Public Hearing
- Adopt Resolution adopting the Final Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, and Findings, and directing filing of the Notice of Determination

#### Agenda Item B

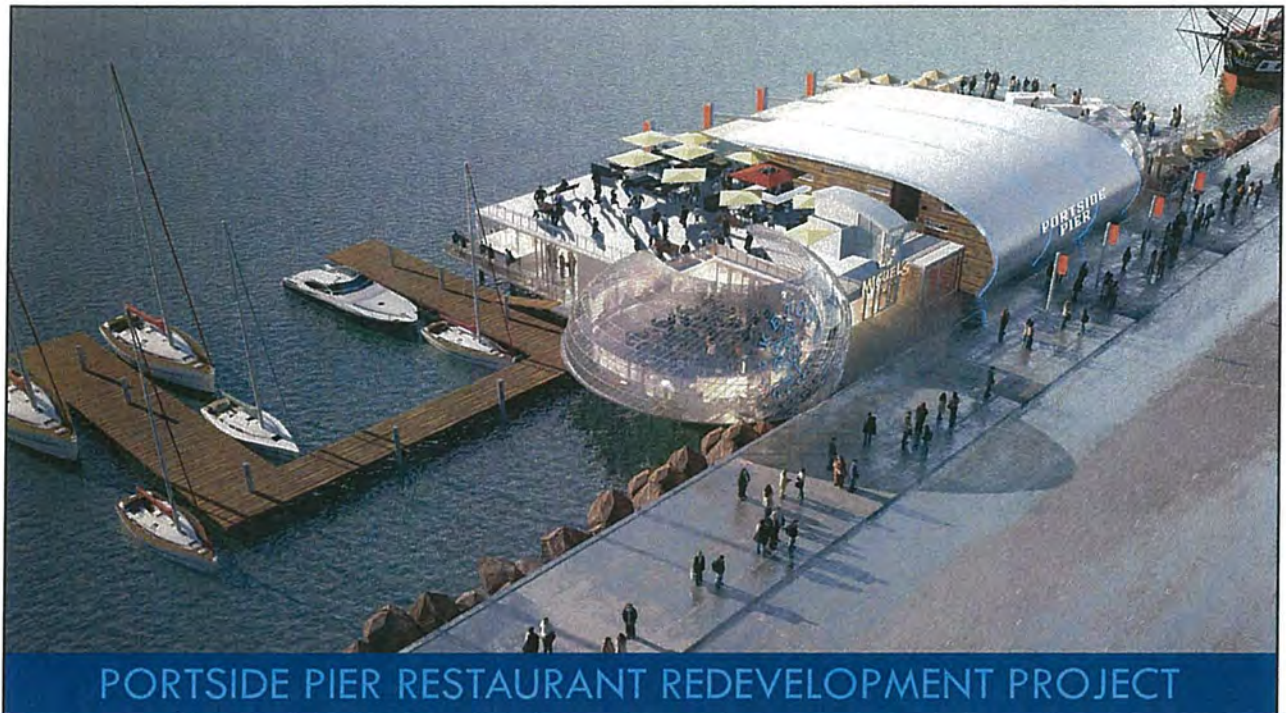
- Adopt Resolution finding the Project to be in conformance with BPC Policy No. 735 to make available District environmental mitigation property to The Brigantine, Inc.

#### Agenda Item C

- Adopt Resolution granting Concept Approval to The Brigantine, Inc.

#### Agenda Item D

- Adopt Resolution Authorizing Issuance of a Non-Appealable Coastal Development Permit



# **ATTACHMENT B**

**LETTER D: CALIFORNIA COASTAL COMMISSION**

**Commenter: Melody Lasiter, Coastal Program Analyst**

**Date: August 31, 2016**

**CALIFORNIA COASTAL COMMISSION**

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



August 31, 2016

Submitted electronically on August 31, 2016.  
Hard copy to follow.

Wileen Manaois  
San Diego Unified Port District  
Real Estate Development  
3165 Pacific Hwy  
San Diego, CA 92101

Subject: Staff Comments on the Portside Pier Restaurant Redevelopment Project and  
Associated Mitigated Negative Declaration

Dear Ms. Manaois:

Thank you for the opportunity to review and provide comment on the above-referenced project and the environmental document, which was received on August 2, 2016. The proposed project is located at 1360 North Harbor Drive and includes demolition of the existing 23,285 sq. ft. Anthony's Grotto Restaurant building, 23,285 sq. ft. building platform, 66 concrete piles and remnants of the 565 sq. ft. dock, and the installation of 53 new concrete piles and construction of a new platform 37,225 sq. ft. restaurant building, 28,330 sq. ft. platform, and 3,370 sq. ft. dock. Preliminary comments were provided to Port staff and the project proponent during an initial meeting on the subject project on May 4, 2016.

D-1

**Port Master Plan Update**

The Port is currently conducting a Port Master Plan (PMP) Update that *will serve as a long-term guide to carry the Port through the next 50 years*,<sup>1</sup> and include opportunities for public input throughout the process. Ideally, the PMP Update should be completed prior to moving forward with this project, or any other major project, to ensure that the proposed project and associated lease for that same 50 year term is aligned with the vision and policies contained in the comprehensive PMP Update. In addition to this proposal, there are also a number of other significant leasehold redevelopments under consideration for the North Embarcadero and, for optimum planning outcomes, it would be beneficial for all such actions to be deferred until the PMP Update is completed which is projected occur in the next two –three year time period.

D-2

**Project is Appealable and a PMPA is Required**

Of primary concern to Commission staff is the assertion that a future Coastal Development Permit (CDP) necessary for demolition of the existing restaurant and construction of an entirely new restaurant complex and associated pier would not be

D-3  
↓

<sup>1</sup> <https://www.portofsandiego.org/integrated-planning.html>



## **RESPONSE TO LETTER D**

### **California Coastal Commission**

**Commenter: Melody Lasiter, Coastal Program Analyst**

**Date: August 31, 2016**

All documents referenced in Attachment D (Comments Received and District Responses), are available for public review in the SDUPD Office of the District Clerk, 3165 Pacific Highway, San Diego, CA 92101.

**Response to Comment D-1:** This is an introductory comment summarizing the project and identifying that preliminary comments were provided to the District and Applicant on May 4, 2016.

**Response to Comment D-2:** Only consistency with adopted land use plans must be considered under CEQA (See CEQA Guidelines 15125(d); Chaparral Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134, 1145 fn. 7) and hence, the proposed project's consistency with the Port Master Plan (PMP) Update (PMPU), which is ongoing and not yet approved by the District or certified by the California Coastal Commission is not required under CEQA.

Moreover, there is no requirement in the California Coastal Act (Coastal Act), the Port Act, or otherwise that the Port update its PMP on a regular basis. Rather, the PMPU is a voluntary initiative. In fact, once a PMP has been certified by the California Coastal Commission (like the District's PMP), coastal permitting authority shall be granted to the corresponding port. (Coastal Act Section 30715.) The Coastal Act does not – unlike other planning laws – place any prohibitions on amending the certified PMP to a certain number a year or require regular updating of the plan. (See e.g., California Government Code Sections 65358, which limits the number of general plan amendments to 4 per year and 65302, which requires certain elements of a general plan be regularly updated.) In 1981, the District's PMP was certified by the California Coastal Commission. The PMP includes the project site, which is designated as commercial recreation. Commercial recreation allows for restaurant uses. Accordingly, a restaurant complex currently exists on the project site. The project proposes to redevelop the project site with a similar restaurant complex in accordance with the commercial recreation land use designation.

Pending the PMPU, the Board adopted Board of Port Commissioners Policy 752, which provides that when a PMP Amendment is not required, the development proposal may advance as part of the normal project review process. This is the case here, where the same non-appealable use is being proposed consistent with the commercial recreation use designation and language of the PMP. Moreover, the policy states that proposed projects that require a PMP amendment will be evaluated against the guiding principles and guidelines resulting from the initial phases of the Integrated Planning process, along with all current applicable and legal regulations and procedures. Nowhere does the Policy require development cease pending the PMPU.

**(response continued on following page)**

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-2 (continuation from previous page):** Stopping redevelopment or development on the grounds that the District is processing the PMPU would also constitute an unlawful development moratorium. (See e.g., California Government Code Section 65858.) In order to impose such a moratorium, the District would need to find and identify a specific significant, quantifiable, direct and unavoidable impact upon the public health or safety that would result from continued development approvals. (Id.; Hoffman Street LLC v. City of West Hollywood (2009) 179 Cal.App.4th 754.) Redevelopment that replaces an existing use with the same use, such as what is included in the proposed project, has not been identified to result in impacts to public health or safety. The Board of Port Commissioners has been clear that it has not and is not contemplating imposing such a development moratorium. Moreover, the Coastal Commission cannot impose such moratoriums where, like here, a PMP has been certified because such certification divests the Coastal Commission of coastal land use authority. Therefore, there is no legal basis to stop development, like the proposed project or otherwise, while the PMPU is proceeding nor has there been a desire expressed by the District or its Board.

**Response to Comment D-3:** Pursuant to the Coastal Act, the District's Coastal Act regulations and past practice, the proposed project is considered "non-appealable". Chapter 8 of the Coastal Act regulates port development within the California coastal zone. Section 30715 of Chapter 8 specifies the sole categories of development that may be appealed to the Coastal Commission. Neither restaurants nor eating establishments are listed as appealable in Section 30715.

The commenter quotes to Coastal Commission staff report on the Sunroad restaurant project (Appeal No. A-6-PSD-13-005) (Sunroad Project) for the proposition that a "restaurant" is per se "appealable." The Sunroad Project was the redevelopment of a site with a restaurant that was historically developed with a restaurant, but was not existing at the time of redevelopment. Unlike here, where a non-appealable Coastal Development Permit is proposed, the Port issued a Coastal Act exclusion/exemption for the Sunroad Project but failed to issue the notice required by Section 30717 of the Coastal Act, which starts the 10-working-day appeal period for exclusions/exemptions. The exemption/exclusion was appealed and after finding a substantial issue, the Coastal Commission conducted a de novo hearing and issued a CDP for the Sunroad Project. That situation was factually distinguishable as an exclusion/exemption was issued. Here, a non-appealable CDP is proposed.

In addition, the commenter's letter relies on its interpretation that Section 30715(a)(4) of the Coastal Act includes restaurants. That section includes the following as appealable categories of development: "Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities."

**(response continued on following page)**

Portside Pier Restaurant Project  
August 31, 2016  
Page 2

appealable to the California Coastal Commission (CCC) nor require a PMP Amendment (PMPA). The only explanation is given on Page 60 of the Draft Initial Study:

*The project site also lies within the boundary of the Coastal Zone and is subject to the requirements of the California Coastal Act (Coastal Act). The District would issue a non-appealable CDP for the proposed project consistent with the PMP as certified by the California Coastal Commission. The proposed development type is not listed as 'appealable' per Chapter 8 Ports (§30715)3 of the California Coastal Act. As such the proposed project is subject to a non-appealable CDP, and a PMP amendment is not required to add the proposed project to the project list. [emphasis added]*

Project is Appealable

Commission staff has historically provided direction to the Port that restaurants fall under the category of "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes" and are therefore appealable under Section 30715(a)(4) of the Coastal Act. Most recently, the finding that restaurants are appealable developments was discussed in detail as part of the Commission's appeal of the Sunroad project (Appeal No. A-6-PSD-13-005) in 2013. The Commission found that restaurants are in fact appealable developments under the Coastal Act. The full text from the staff report dated August 29, 2013 can be viewed in its entirety on the CCC website;<sup>2</sup> however, the findings important to the subject project are reiterated in italics below for the benefit of the Port and the public:

*Restaurants Are Appealable Development*

*[...]*

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

<sup>2</sup> <http://documents.coastal.ca.gov/reports/2013/9/W21a-9-2013.pdf>

D-3

**Response to Comment D-3 (continuation from previous page):** The California Coastal Commission-issued CDP for the Sunroad Project was subsequently challenged in a lawsuit filed by San Diegans for Open Government, Case. No. 37-2013-00057492-CU-TT-CTL (2013) (San Diegans for Open Government Lawsuit). In response to allegations by the petitioner and the California Coastal Commission that a “restaurant” was “appealable” under Section 30715(a)(4) because a restaurant was a type of “shopping facility, and akin to other appealable development,” the Court squarely ruled that a restaurant was not considered an “appealable” category development under the Coastal Act. (See Appendix I to these responses to comments, Sunroad Project Superior Court Decision to this document, p. 3; Decision, p. 3). This Court decision was subsequent to the California Coastal Commission staff’s interpretation that restaurants are appealable developments and sheds light on Section 30715. In addition to the Court’s ruling, for the reasons below, restaurants are non-appealable development under the Coastal Act.

Several Commissioners of the California Coastal Commission during the de novo hearing on the Sunroad Project also opposed this interpretation:

- “[S]hopping facilities not principally devoted to the sale of commercial goods utilized for water oriented purposes is not a restaurant. A restaurant is a restaurant.” (See Appendix II, California Coastal Commission Sunroad Project Hearing Transcript Excerpts, 11 AR 2705.)
- I “would have a hard time calling [a restaurant] a shopping facility” and that an “attempt to stretch that definition of a shopping facility is a little too broad for where we should be.” (See Appendix II, California Coastal Commission Sunroad Project Hearing Transcript Excerpts, 11 AR 2717-2718.)
- Staff’s interpretation that a restaurant is an appealable development is “shortcutting the rules on Section 7015” and such a staff policy of doing so should be reviewed by the California Coastal Commission. (See Appendix II, California Coastal Commission Sunroad Project Hearing Transcript Excerpts, 11 AR 2720-2721.)

Additionally, by reasonable interpretation, a restaurant is not a “shopping facility” and does not involve the “sale of commercial goods.” The commenter’s interpretation would expand appellate jurisdiction well beyond the plain language and intent of Section 30715(a)(4). Specifically, the Legislature used plain terms to describe “office and residential buildings,” “hotels,” “motels,” and it knew how to use a plain term to describe a “restaurant.” However, the Legislature did not do so, leaving restaurants as “non-appealable” developments.

The commenter also mentions other restaurants that the certified PMP has considered appealable. However, the Port has excluded/exempted eight restaurants and issued non-appealable CDPs for at least two restaurants: the Chart House and the Fish Market, both of which were standalone restaurants like that proposed by the project. (See Appendix III, District Restaurant Approvals, 2 AR 427-455, 3 AR 624-648, 2 AR 418-426.) While it is correct that some restaurants have been listed as appealable in the PMP or issued an appealable CDP that is only because they were a part of a larger appealable category development – like, The Wharf – Point Loma Marina LLC or The Ferry Landing Expansion. The Grape Street Pier and restaurant is identified in the PMP certified Port Master Plan as appealable because the development of the curvilinear Grape Street Pier, upon which the restaurant would be constructed, involves the demolition of a (former) commercial fishing support facility. **(response continued on following page)**

Portside Pier Restaurant Project  
August 31, 2016  
Page 3

*Section 30009 of the Coastal Act provides that the Coastal Act "shall be liberally construed to accomplish its purposes and objectives." In interpreting section 30009, courts have found that "[w]hen a provision of the Coastal Act is at issue, [they] are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations." (McAllister v. California Coastal Commission (2008) 169 Cal.App.4th 912, 928.) In consideration of the foregoing legal framework, section 30715(a)(4) of the Coastal Act necessarily includes restaurants as an appealable development for the following reasons.*

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

*Second, a restaurant is a type of "shopping facility" and to conclude otherwise would lead to absurd results... "Shopping facility" is not defined in the Merriam-Webster Dictionary. "Shopping center," however, is defined in the Merriam-Webster Dictionary. Facility is defined as "something (as a hospital) that is built, installed, or established to serve a particular purpose." <sup>3</sup> "Center" is defined as "a facility providing a place for a particular activity or service <a day-care center>."*

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

D-3



**Response to Comment D-3 (continuation from previous page):** Accordingly, it was categorized as “appealable” consistent with Section §30715(a)(4) of the Coastal Act, which includes “commercial fishing facilities” as “appealable” developments and Section 30109 of the Coastal Act, which includes demolition within the definition of “development” as established in the coastal consistency analysis for PMPA 27. Additionally, Imperial Beach PMP Amendment, certified nearly 20 years ago in 1997, also included unidentified commercial uses on the pier as part of that development, which could have been considered appealable developments. Nonetheless, these approvals preceded the San Diegans for Open Government Lawsuit, which clarified the issue. Moreover, Anthony’s, which includes three restaurants and a walk-up coffee kiosk is not identified as “appealable” in the PMP. (See PMP, pg. 72-73.)

Only “appealable” developments must be described with sufficient detail to ensure consistency with the policies of Chapter 3 of the California Coastal Act. (Coastal Act Section 30711(a)(4).) Because a restaurant or groups of restaurants are non-appealable they would not need to be listed in the PMP.

While the District concurs that certain non-appealable projects are identified in the PMP on the “Project Lists,” there is no requirement to include any projects that are non-appealable on the list. The fact that some non-appealable projects are listed does not enact some requirement that all non-appealable projects be listed. (Coastal Act Section 30711(a)(4).)

The District disagrees with the assertion that characterization of the project is factually incorrect. As described in the Draft MND, the proposed project is a group of restaurants consisting of up to four dining opportunities (three restaurants and one walk in gelato establishment), which directly replaces the existing group of restaurants (three restaurants and a coffee kiosk). Either way, a grouping of restaurants is not considered appealable under Section 30715.

Portside Pier Restaurant Project  
August 31, 2016  
Page 4

*(emphasis added)*<sup>4</sup> Given the synonymous nature of “center” and “facility,” the definition of “shopping center” shall be used to establish that a restaurant is necessarily included as an appealable development under section 30715(a)(4) of the Coastal Act. Merriam-Webster defines “shopping center” as “a group of retail stores and service establishments usually with ample parking facilities and usually designed to serve a community or neighborhood.” *(emphasis added)*<sup>5</sup> Several dictionary sources define “restaurant” as a place or establishment where people from the public pay to sit and eat meals that are served to them.<sup>6,7,8,9,10</sup> Clearly, to interpret “shopping facility” as not necessarily including restaurants as an appealable development given the definition of the “shopping center,” which is synonymous to “shopping facility” and includes service establishments like restaurants, would lead to an absurd result inconsistent with the enlarged meaning of the term “shopping facility.” This plain reading of the term “shopping facility” further bolsters the Commission’s precedent of treating restaurants as appealable development and supports the purpose of section 30715, noted above, which is to retain appellate jurisdiction over development that is not a principally related to water-oriented and port-related operations.

D-3

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

In addition, the Port has identified some components of larger projects as non-appealable (i.e., vista points and Broadway Pier infrastructure improvements within the North Embarcadero Redevelopment Project) within the projects lists included in the PMP; however, in no instance is a restaurant listed as non-appealable when a part of a larger project. In any case, it is factually incorrect to characterize the proposed project as simply a restaurant when it is a complex of eating establishments, of which one does not even contain chairs, and a dock.

#### Port Master Plan Amendment Required

The subject development is located in the Civic Zone of Planning District 3 of the PMP. The current text and project list in the PMP pertaining to the Civic Zone does not identify redevelopment of the site. While the MND acknowledges that the proposed project will need to be added to the project list, it denies that a PMPA would be required to do so

D-4

<sup>4</sup> <http://www.merriam-webster.com/dictionary/center>.

<sup>5</sup> <http://www.merriam-webster.com/dictionary/shopping%20center>.

<sup>6</sup> <http://www.thefreedictionary.com/restaurant>

<sup>7</sup> <http://oxforddictionaries.com/definition/english/restaurant>

<sup>8</sup> <http://www.answers.com/topic/restaurant>

<sup>9</sup> <http://dictionary.reference.com/browse/restaurant>

<sup>10</sup> <http://en.wikipedia.org/wiki/Restaurant>

**Response to Comment D-4:** The MND does not acknowledge that the proposed project needs to be listed in the PMP. Rather, it is expressly stated that the project is non-appealable and thus, is not required to be added to the project list (IS page 60). The MND does not state that adding the project to the list would not require a PMP amendment. To clarify in response to this comment, page 60 of the Initial Study/MND has been revised as follows:

"The proposed development type is not listed as 'appealable' per Chapter 8 Ports (Section 30715) of the California Coastal Act. As such the proposed project is subject to a non-appealable CDP, and a PMP amendment is not required because non-appealable projects do not need to be added to the proposed project to the project list. Additionally, the proposed project is consistent with the land use designation and PMP text."

Please also see Response to Comment D-3, which addresses the Coastal Act requirement that only "appealable" projects need to be on the project list and because this is a non-appealable project that is consistent with the identified land use, a PMPA is not required.

Portside Pier Restaurant Project  
August 31, 2016  
Page 5

stating "...a PMP amendment is not required to add the proposed project to the project list". However, any modification to the certified PMP, including the addition of a proposed project to the project list, requires a PMPA approved by the CCC. Therefore, a PMPA is required to add the proposed project to the project list with sufficient details and specificity before a CDP can be issued.

D-4

In summary, the project description should be modified to reflect the appealable status of the project and a PMPA will be needed to incorporate the proposed project into the PMP, including addition of the proposed restaurant complex and dock to the Project List for the Centre City Embarcadero Planning District.

D-5

Finally, we respectfully request notice of any future action taken on the subject project, including the final environmental document and final action on a CDP.

D-6

## Water Coverage

MND Table ES-1, Existing and Proposed Project Features Comparison, shows the Building Gross Water Coverage increasing by 1,675 sq. ft. Mitigation Measure Bio-4 identifies the proposed mitigation for the increase in water coverage:

*Prior to the commencement of construction activities, the loss of 4,480 square feet of open water associated with the proposed project shall be offset by implementing design modifications, such as incorporating translucent areas, to reduce shading and by deducting an amount from the District's shading credit program established pursuant to Board Policy 735 equivalent to that of the proposed project's final shading total (i.e., less any reductions achieved by design modifications) to the satisfaction of NMFS and USACE.*

D-7

One of the primary impacts of increased open water coverage is reduced foraging habitat for birds. While translucent areas may be appropriate to offset shading impacts, they do not mitigate the obstruction of foraging opportunities and are not an appropriate form of mitigation for open water coverage.

In addition, Board Policy 735 allows for land, water area, natural or constructed habitat to be used as credit for open water coverage mitigation. However, because a restaurant is not a coastal dependent use, the only appropriate mitigation for an increase in overwater coverage is to decrease an equal amount of overwater coverage by removing an existing structure that currently covers the bay. Commission staff recommends that this project be redesigned to avoid an increase or even reduce the open water coverage of the existing development; however, if the project proponent insists on increasing open water coverage, the MND should clearly identify and describe where an existing overwater structure would be removed in order to offset that increase.

**Response to Comment D-5:** Please see responses D-2 through D-4. An appealable CDP and a PMPA are not required for the proposed project.

**Response to Comment D-6:** California Coastal Commission staff have been added to the notification list for the final MND and the final action on the CDP.

**Response to Comment D-7:** Attachment A, Initial Study, of the Draft MND (Initial Study page 22) and Appendix 3, Biological Technical Report, of the Initial Study clearly identify results of field observations. The water surrounding the proposed project site ranges from approximately 19 to 25 feet deep, and the site does not support suitable habitat for animal residence or foraging. Nonetheless, impacts are identified for increased turbidity during construction that would further reduce the limited foraging opportunities due to the proposed project's proximity to California least tern nesting sites at the San Diego International Airport. No significant adverse impacts are identified as a result of the expanded use and water coverage at the proposed project site as the increase in bay coverage represents less than 1/1,000 of 1 percent of the Bay (see page 23 of the Initial Study).

Mitigation Measure BIO-4 requires a 1:1 deduction of shading mitigation credits for the project's final shading/water coverage total to ensure impacts are less than significant. This approach is consistent with past mitigation by the District; for example, the BAE Systems Pier 4 Replacement Project Environmental Impact Report included Mitigation Measure BIO-7, which required the same mitigation ratio for bay coverage impacts. Credits will be deducted prior to any increase in water coverage resulting from the proposed project. As such, the mitigation measure BIO-4 has been revised as follows:

**"BIO-4:** Prior to the commencement of construction activities that would result in increased water coverage, the loss of 4,480 square feet of an amount equating to the loss of open water associated with the proposed project shall be offset by implementing design modifications, such as incorporating translucent areas, to reduce shading and by deducting an amount from the District's shading credit program established pursuant to Board Policy 735. Additionally, the project applicant shall implement design modifications, such as incorporating translucent areas over the water. The deduction to the District's shading credits shall be equivalent to that of the proposed project's final increase in shading total (i.e., less any reductions achieved by design modifications) to the satisfaction of NMFS and USACE. Applicant shall pay to the District fair market value, as determined by a District study of similar credits, for the shading credits."

Board Policy 735 and the Coastal Act do not constrain the use of mitigation "credits" to only costal dependent uses. Section 4 of the policy allows for consideration of District mitigation property to be made available to specified, non-District projects that demonstrate exceptional public benefits.

**(response continued on following page)**

Page Intentionally Left Blank – Continuation of Response



**Response to Comment D-7 (continuation from previous page):** An evaluation team comprised of staff from the Planning & Green Port and Real Estate Development departments reviewed and evaluated the proposed project and believes it demonstrates exceptional public benefits through improved public access and recreational opportunities, including the use of a proposed public perimeter walkway, public docking structure, and second-story public viewing deck. The proposed project includes additional public dock space and public walkway for general use, resulting in a slight increase in over water coverage from existing conditions. Indeed the increased over water coverage that would result from the proposed project would be 4,480 square feet, of which 100 percent results from the additional area dedicated to the public dock and the public perimeter walkway (a total increase of 4,915 square feet). The proposed project applicant intends to use District shading credits to mitigate any potential environmental impact that an addition of over water coverage may have. As the proposed project design would require approximately 4,480 square feet area of mitigation, and as the total shade ledger available bay-wide is currently 218,709 square feet, the proposed project would have a minimal impact on the total ledger available and would likely not affect the District's ability to mitigate for its own major maintenance or capital improvement projects moving forward. The proposed project meets the administrative requirements of the policy, as detailed below.

- The proposed project applicant has made a good faith effort to minimize the need for mitigation property by reducing impacts through proposed project design. The proposed project design will replace 23,850 square feet of overwater structure with 28,330 square feet, a net increase of 4,480 square feet of overwater structure, which is all accessible to the public. The proposed project includes an increase of 4,915 square feet dedicated to increased public access directly over the water in the form of the public dock and the public perimeter walkway.
- The proposed project applicant has made a good faith effort to self-mitigate within the limits of the leasehold by incorporating sustainable design and planning ideas into the overall site layout.

The District and the proposed project are consistent with this policy as mitigation credits will be deducted for all increase in water coverage associated with the exceptional public benefits associated with the public access improvements of the proposed project and the credits will be exercised at the time of project approval.

Portside Pier Restaurant Project  
August 31, 2016  
Page 6

Parking

Commission staff is concerned that the MND and its Appendix 8 Transportation Impact Analysis does not seriously consider the effect that the proposed project will have on the already impacted area in regards to parking and in turn, the impact on access to the bay and waterfront. In addition, the MND incorrectly defines and calculates the parking problem, need, and mitigation requirements. More specific comments on parking are provided below:

D-8

- MND Transportation/Traffic (Parking) Section, Existing Conditions, describes the available public transportation in detail; however, it does not include any description of available parking in the project area. The Port has released numerous studies recently documenting the lack of parking in the North Embarcadero area and the subject environmental document should include a detailed discussion of the findings from those parking studies in order to adequately assess the potential impacts of an expansion of the existing restaurant use in this area.

D-9

- Mitigation Measure TRA-2 requires parking management strategies be implemented to mitigate the projected parking deficiency. These strategies include coordination with ACE parking and transportation companies such as Uber and Lyft, wayfinding signage, valet parking, water taxi, bike racks and share stations, website promotion of public transportation, participation in the Big Bay shuttle, and employee off-site parking. Given the deficit of parking in the area, the project proponent is encourage to expand on these mitigation measures to maximize use of alternative transportation and provide employee public transportation subsidies, secure bicycle racks and showers for employees that choose to commute by bike, and promotional offerings to patrons that use alternative transportation.

D-10

Appendix 8: Portside Pier Transportation Impact Analysis comments:

- Table 8.2 displays the maximum number of parking spaces required for the project, based on the net increase of square footage between the existing site and the proposed project. While the Tidelines Parking Guidelines do allow this calculation for projects that “involve expansions or modifications of existing uses,” the subject project is not an expansion or modification of an existing use, as the existing site will be completely demolished and an entirely new development with multiple restaurants will be constructed in its place. Thus, the parking space calculation should be revised based solely on the new development that is proposed.

D-11

Additionally, the Parking Rate Adjustments in Table 8.1 include a parking space credit/reduction for Dedicated Water Transportation Service due to the inclusion of ten boat slips as a project feature. However, the Tidelines Parking Guidelines state that this adjustment is to apply to uses that are “... adjacent to or provide a

D-12

**Response to Comment D-8:** The Draft MND includes a technical analysis of the parking conditions in the area and impacts from the proposed project using the existing conditions as the baseline consistent with the requirements of CEQA Guideline Section 15125(a). Responses to specific concerns regarding the parking analysis are provided below.

**Response to Comment D-9:** A discussion of the North Embarcadero Focused Parking Study findings is included in Section ES.5 and 8.0 of the Traffic Impact Study. There are numerous public parking options in the vicinity of the proposed project site including metered parking, street parking, and paid public parking lots. There are 71 spaces of off-street metered parking available at the parking lot located between North Harbor Drive and the promenade in front of the proposed project site and 13 along the east side of North Harbor Drive. There are 54 two-hour meter and 14 free two-hour parking spaces catty-cornered from the project. Limited amounts of free street parking are available along Ash Street opposite the proposed project site and within 0.5 mile of the proposed project site along Grape Street and portions of North Pacific Highway. There are over one thousand spaces in public parking lots including the parking lots located at the Portman Hotel, 610 West Ash Street, 410 West Ash Street, and 1230 Columbia Street also within 0.5 mile of the proposed project site.

**Response to Comment D-10:** In response to this comment, mitigation measure TRA-2 has been revised to include public transportation subsidies for employees. Bicycle racks, as requested in this comment, are already included in Mitigation Measure TRA-2. On-site showers are not included due to space constraints on the site and promotional offerings for patrons using alternative transportation is not included due to comparable measures included in the revised mitigation measure TRA-2 for transit subsidies, contribution to the Big Bay shuttle transit services, and coordination with bike share services.

Mitigation Measure TRA-2 has been revised as follows (additions in underline, deletions in ~~strikeout~~):

“TRA-2: The applicant will implement the following parking management strategies to mitigate the projected parking deficiency:

- Coordination – Ongoing daily coordination between the proposed project and parking lot operators, such as ACE parking, to identify which surrounding lots have available parking at different times of the day.
- Wayfinding Signage – Provide changeable signage to direct patrons to the parking facilities (as identified by ACE on a weekly basis) that have parking availability.
- Transportation Network Companies – Coordination with companies (such as Lyft, Uber, etc.) to encourage patrons to utilize this mode of transportation as an alternative to driving their personal vehicle.

(response continued on following page)

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-10 (continuation from previous page):**

- Valet Parking – Secure 9749 parking spaces (Secured Parking) at one or more parking lots and provide a valet service in order to avoid overflow in the immediate surrounding parking areas. Prior to Certificate of Occupancy, the applicant will enter into a contract or agreement with a parking operator or equivalent entity securing the Secured Parking and provide the agreement to the District. The agreement shall be updated on an annual basis with proof of said agreement being submitted to the District on an annual basis. Alternatively, the applicant may submit evidence to the District that it has acquired the Secured Parking at an off-site location for the valet parking operation.

After the first year of operation or anytime thereafter, the applicant may submit a parking study (Parking Study) to the District for its review and approval. The Parking Study shall include, at a minimum, the number of Secured Parking used for its valet operations on a monthly basis, broken down into morning, afternoon, and evening timeframes, for the previous year. Based on the District's review of the study, the number of Secured Parking may be reduced for a maximum period of two years. The reduction in Secured Parking shall not be less than the highest monthly use of the Secured Parking in the previous year and the reduction may be granted in the District's sole and absolute discretion. Prior to the elapse of the two-year period, a new Parking Study may be submitted to the District for its review and approval based on the same requirement stated herein. If a new Parking Study is not submitted to the District or during the District's review of the new Parking Study (if said review overlaps with the two-year period), the applicant shall secure 979 parking spaces with a parking operator or equivalent entity through an agreement that shall be submitted to the District.

- Water Taxi – Applicant shall coordinate ~~Coordination~~ with a water taxi company to encourage patrons to utilize water taxis as an alternative to driving their personal vehicle.
- Bike Racks – Provide bike racks on the project site or adjacent thereto on the promenade to encourage employees/patrons to bike to the proposed project.
- Bike Share Stations – Coordinate with companies like DECOBIKE to ensure a bike share station is maintained within walking distance (approximate 1,000 feet) to the proposed project.
- Public Transit – On the applicant's website, promote and encourage employees and patrons to utilize alternative modes of transportation as an alternative to driving their personal vehicle.
- Public Transit Subsidies for Employees – Provide reimbursement or subsidies for public transportation costs for all employees.
- Big Bay Shuttle – Participate in the District's ongoing shuttle program.

**(response continued on following page)**

Page Intentionally Left Blank – Continuation of Response



**Response to Comment D-10 (continuation from previous page):**

- Employee Off-Site Parking – Designate an off-site parking lot for employees and provide shuttle service between the off-site facility and the proposed project, such as:
  - ~~Wyndham Hotel: (+400 stalls)~~
  - Portman Hotel: (+400 stalls)
  - ~~Navy Pier Lot: (+350 stalls)~~
  - 610 West Ash Street: (+410 stalls)
  - 410 West Ash Street (+510 stalls)
  - 1230 Columbia Street (+228 stalls)”

**Response to Comment D-11:** The project is an expansion or modification of an existing use. There appears to be confusion in the comment regarding the structure versus use. While the existing structure would be demolished and a new one constructed as described in the Draft MND, the existing use – restaurant (currently three restaurants and a coffee kiosk) would be modified or expanded (three restaurants and a gelato walk-in). Thus, the proposed project is not a new use and Table 8.2 is accurate as presented in the Draft MND and Appendix 8, Traffic Impact Analysis, of the Initial Study. The proposed project would be considered an increase in square footage. It is important to note that when the baseline counts were conducted, the restaurant uses were still operational and, therefore, included in the existing demand. Ignoring the baseline conditions – the physical environment as it existed at the time the environmental analysis commenced (here, the three restaurants and a coffee kiosk) - would result in exacerbating the impact, an overestimation of demand and potentially mitigation measures that would not be roughly proportional to the impact, which would be illegal. (*Dolan v. City of Tigard*, 512 U.S. 374 (1994); see also CEQA Guidelines §15125(a).).

**Response to Comment D-12:** The “Dedicated Water Transportation Service” credit would be attributed to both the proximity of the dock-and-dine facility suitable for use by boat owners and water taxis (as further prescribed in mitigation measure TRA-2) and the adjacent Coronado – Broadway Ferry landing located at the Broadway Pier which is less than a quarter-mile away from the proposed project. This is consistent with the District’s parking guidelines, which allows the adjustment for facilities that “are adjacent to or provide a dedicated water taxi or ferry service that operates in a manner which would offer an alternative to using an automobile to reach the site.” *Tidelands Parking Guidelines*, 2001, Table 2 footnote 8. While mitigation measure TRA-2 does not require the applicant to provide a water taxi service, it does require the applicant to coordinate with a water taxi company and encourage its use.

*dedicated water taxi or ferry service that operates in a manner which would offer an alternative to using an automobile to reach the site."* While the proposed boat slips would allow guests with private boats to dock and dine, this parking rate adjustment is not appropriate unless the project includes implementation of a dedicated water taxi or ferry service to and from the restaurant. If the applicant proposes to use this adjustment, it should be clear in the MND that a water taxi or ferry service is proposed as part of the project and that a portion of the 10 boat slips will be dedicated for water taxi/ferry service use and not available for the docking of private boats. Alternatively, the Port could adjust and justify any proposed parking credit, such as deducting one parking space requirement for each boat slip proposed.

D-12

In accordance with comments above, Commission staff has recalculated the parking requirements below, based on the entire square footage of the new building without the adjustment for the Dedicated Water Transportation Service:

Restaurant<sup>11</sup>: 37,225 k.sq.ft. x 9.3 = 346.19 spaces

Proximity to Public Waterfront Amenities for Public Access: 346.19 spaces x 0.25 increase = 86.55 space increase

Proximity to Transit: 346.19 spaces x 0.12 reduction = 41.54 space reduction

Total Required: 346.19 spaces + 86.55 spaces - 41.54 spaces = 391 spaces

The 391 required spaces is significantly more parking than the original 84 required spaces calculated in the MND; and, as such, the analysis and mitigation discussions in the MND should be revised accordingly.

D-13

- The Transportation Impact Analysis states that ACE estimates that over 1,000 stalls sit empty at its parking garages every day, and has committed to providing those spaces for this project. However, the data provided for the estimates in the Port's North Embarcadero Focused Parking Study were also provided by ACE and show a significant deficit. This discrepancy must be addressed. It should also be clear that the parking spaces that are reserved for restaurant employees and patrons are available during both peak and non-peak times. All deficiencies in parking availability should also be addressed.

D-14

In addition, a discrepancy exists between the availability of specific lots included in the MND and the North Embarcadero Focused Parking Study. Specifically, the MND suggests the following lots could be used as mitigation for lack of employee parking and also could be used to calculate available parking for the project, while the North Embarcadero Parking Study finds that these lots will not be fully available at the time the project is constructed:

D-15

<sup>11</sup> Dock not included. Guidelines state that the area should include the gross area of the building footprint so restaurant and public deck account for total gross area (33,577 sq.ft. + 3,648 sq.ft. = 37,225 sq. ft.).

**Response to Comment D-13:** The commenter's recalculations presented do not account for the existing facility which is currently driving parking demand and thus as presented in the Draft MND, it is only the delta or increase of the proposed project over the existing facility that drives new or additional demand for parking. As explained in the prior responses (11 and 12), the following calculations shown in Table 8.1 and 8.2 are consistent with the Tidelands Parking Guidelines. However, revisions to the Draft MND or Appendix 8, Traffic Impact Analysis, of the Initial Study due to restaurant square footage changes: The building floor area increased from 33,577 square feet in the Draft MND to 34,069 square feet in the Final MND; therefore, the net increase has changed from 8,722 square feet to 9,214 square feet. This is due to an increase in the kitchen floor area to better meet health and safety standards. The increase in kitchen floor area was achieved through rearranging the layout of the building and expanding the kitchen into previously unutilized space. The overall building footprint and water coverage did not change. The following calculations present the updated parking, which has also been adjusted in the Final MND and the Traffic Impact Analysis. The Traffic Impact Analysis' trip generation calculation and greenhouse gas emissions calculations were also updated to account for the increase in floor area. The increase did not result in a change in the conclusions of the analyses for traffic or greenhouse gas emissions.

Existing Restaurant: 24,855 sq. ft.

Proposed Restaurant: 34,069 sq. ft.

Increase (delta) in square footage: 9,214 sq. ft.

Parking Spaces Required Based on ULI Shared Parking Rates (Unadjusted):  $9.214 \text{ ksf} \times 9.3 = 85.69$   
~ **86 parking spaces**

Parking Spaces Required Based on ULI Shared Parking Rates (Adjusted):  $9.214 \text{ ksf} \times 9.6 = 88.45$  ~  
**88 parking spaces** (3% increase)

Parking Rate per Table 1 of the Tidelands Parking Guidelines: 9.3 parking spaces per KSF

Adjustments for Proximity to Transit per Table 2 of the Tidelands Parking Guidelines: The proposed project is located within 0.25 mile of Santa Fe Depot: -12% reduction =  $9.3 \text{ spaces} \times 0.12 = -1.1$  parking space reduction

Adjustments for Proximity to Public Waterfront Amenities for Public Access per Table 2 of the Tidelands Parking Guidelines: The proposed project is located along the waterfront and has direct access to the Embarcadero Promenade: 25% increase =  $9.3 \text{ spaces} \times 0.25 = +2.3$  parking space increase

Dedicated Water Transportation Service: The proximity of the dock-and-dine facility suitable for use by boat owners and water taxis and the adjacent Coronado – Broadway Ferry landing located at the Broadway Pier which is less than one quarter-mile away from the proposed project: -10% reduction =  $9.3 \text{ spaces} \times 0.10 = -0.9$  parking space reduction

Total Parking Adjustment Percentages:  $100\% - 12\% + 25\% - 10\% = 103\%$  or 3% increase

Total Parking Adjustment Rate:  $9.3 - 1.1 + 2.3 - 0.9 = 9.6$  parking spaces per KSF. Therefore, parking calculations are correct as presented in the Draft MND. However, Mitigation Measure TRA-2 has been revised to require the applicant to secure off-site parking for its valet operations and employees.

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-14:** The parking lots identified in the Portside Pier project Traffic Impact Study as having parking availability for patrons is specifically based on ACE's letter of commitment and are different from those included in the North Embarcadero Focused Parking Study. Please refer to Section 8.2 of the Traffic Impact Study.

Nonetheless, to ensure the required parking is secured prior to occupancy of the restaurant, the valet parking requirement included in TRA-2, has been revised, as detailed in response to comment D-10, to state:

- "Valet Parking – Secure 9749 parking spaces (Secured Parking) at one or more parking lots and provide a valet service in order to avoid overflow in the immediate surrounding parking areas. Prior to Certificate of Occupancy, the applicant will enter into a contract or agreement with a parking operator or equivalent entity securing the Secured Parking and provide the agreement to the District. The agreement shall be updated on an annual basis with proof of said agreement being submitted to the District on an annual basis. Alternatively, the applicant may submit evidence to the District that it has acquired the Secured Parking at an off-site location for the valet parking operation.

After the first year of operation or anytime thereafter, the applicant may submit a parking study (Parking Study) to the District for its review and approval. The Parking Study shall include, at a minimum, the number of Secured Parking used for its valet operations on a monthly basis, broken down into morning, afternoon, and evening timeframes, for the previous year. Based on the District's review of the study, the number of Secured Parking may be reduced for a maximum period of two years. The reduction in Secured Parking shall not be less than the highest monthly use of the Secured Parking in the previous year and the reduction may be granted in the District's sole and absolute discretion. Prior to the elapse of the two-year period, a new Parking Study may be submitted to the District for its review and approval based on the same requirement stated herein. If a new Parking Study is not submitted to the District or during the District's review of the new Parking Study (if said review overlaps with the two-year period), the applicant shall secure 979 parking spaces with a parking operator or equivalent entity through an agreement that shall be submitted to the District."

**Response to Comment D-15:** In response to this comment, the Traffic Impact Study and analysis in the MND have been revised to remove the Wyndham and Navy Pier lots from the long-term parking supply. The analysis in the Draft MND is not reliant on any one specific parking lot having available spaces; rather, the abundance of parking options that exist and the commitment to parking options and reduction strategies described in mitigation measure TRA-2 would ensure adequate parking for the proposed project. The revisions to remove the Wyndham Hotel and Navy Pier parking lots from Section P. Transportation/Traffic (Parking) of the Initial Study, mitigation measure TRA-2, and to Appendix 8 Traffic Impact Analysis of the Initial Study do not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because they do not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. Therefore, recirculation is not required.

Portside Pier Restaurant Project  
August 31, 2016  
Page 8

- Wyndham Hotel: North Embarcadero Focused Parking Study states that these spaces are only available during low parking demand at the hotel.
- Navy Pier: North Embarcadero Focused Parking Study includes the elimination of most of the parking on Navy Pier in the near-term.

Again, this discrepancy should be addressed. Neither the Wyndham Hotel nor Navy Pier should be relied upon in the calculation of available parking for the subject project.

D-15

### Public Access – Operation

The proposed restaurant complex will be located on public land. As such, it is essential that public access is clearly provided at the site. While we appreciate the inclusion of a free public viewing deck, we continue to be concerned that maintaining the entrance of the public deck through the interior of the restaurant building and requiring the public to enter the restaurant to access the public deck, instead of providing a direct entrance from the public promenade, will be a deterrent for public use and discourage use of the deck. As recommended at our May 4, 2016 meeting with Port staff and the project proponent, the project should be redesigned so that the entrance to the public deck is accessible from the public promenade to provide maximum access to the public.

D-16

In addition, at our May 4, 2016 meeting, the subject project was presented with a continuous public walkway around the perimeter of the ground floor. It is unclear if the feature has since been removed, as the floor plans in Figure 4a of the MND instead shows seating around the perimeter of the ground floor. The inclusion of a continuous walkway design around the perimeter of the building platform is necessary to increase coastal access at the site and recapture public views. Any public space should also be separate from private areas so that the public feels welcomed and not as if they are intruding in the private restaurant space.

D-17

The project proponent is also encouraged to maximize public access to the public deck and walkway by allowing public access from dusk until dawn and during hours of operation. Please include in the MND the hours the public will be able to access the deck, as well as the hours of operation for the five eating establishments included in the project.

D-18

Finally, the MND states that signage will be used to direct the public to the public viewing deck. Please provide additional information on public access signage in the MND, including the placement of signs and if signs will also be used to direct the public to the ground floor perimeter walkway.

D-19

**Response to Comment D-16:** In response to this comment the applicant has agreed to further improve public access provisions that include an elevator providing access directly from the promenade level to the public viewing deck at the south end and cleared perimeter walkway (see revised Figures 4a, 4b, 5b, and 5d). These provisions would result in an approximately 492-square-foot increase to the building but would not result in changes to the building, footprint, height or seating capacity, and will be reflected in the proposed non-appealable CDP. The provisions further improve public access to the bayfront, which would be increased by the proposed project compared to existing conditions due to the inclusion of a public viewing deck and perimeter walkway. As discussed in Section J., Land Use and Planning, of the Draft IS/MND, the District determined that the proposed project would have no impact on land use, including coastal access, as the existing conditions provide far less direct coastal access and the proposed project would include a perimeter walkway and public viewing deck. Thereby, these revisions serve to further amplify the beneficial impacts to coastal access of the proposed project and would not alter the conclusions in the MND.

The revised information serves to clarify or amplify the information already presented in the Draft MND in response to comments and does not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because it does not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. Therefore, recirculation is not required.

**Response to Comment D-17:** Figure 4a has been revised to show a continuous public walkway around the perimeter of the ground floor, consistent with Figure 6 of the Draft MND, which was the intent of the proposed project. Draft MND Figure 6 was removed from the final document because Figures 4a and 4b were updated to include the coastal access routes. Therefore, Figures 4a and 4b have also been updated to include public access routes, the new elevator, revisions to the second level public viewing deck, and locations of public access signage. Clarifying language has been added to Section II., Project Description, of the Final MND has been added as follows (additions in underline):

“Additionally, a perimeter walkway around the bottom floor of the building would be open to the public to provide views of the bay. Clear signage would be provided directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway (see Figure 4a).”

Additionally, this project revision will be reflected in the proposed non-appealable CDP. This project revision does not require recirculation of the Draft MND as it does not constitute a substantial revision to the MND. The project proposed a continuous public walkway around the perimeter of the ground floor, as shown on the Draft MND Figure 6, and this is just a clarification as Figure 4a in the Draft MND inaccurately depicted restaurant seating at the edge of this walkway. Figure 4a has been revised to include the coastal access on the ground floor and Figure 4b has also been updated to include the second-floor public access. Together the revised Figures 4a and 4b replace Figure 6, which has been eliminated in the Final MND.



Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-18:** For safety and security reasons, the public viewing deck and perimeter walkway would not remain open from dusk until dawn. However, the public viewing deck and walkway would remain open during business hours of the restaurant, which would generally be between 6:00 a.m. and 10:00 p.m.

**Response to Comment D-19:** The floor plans have been revised and provided in the Final MND figures to include locations of the wayfinding signage, and example signage that would direct the public to the viewing deck and perimeter walkway. The Coastal Access Plan has been incorporated into revised Figures 4a and 4b, to show the increased public coastal access and signage, in the Final MND, and these changes will be reflected in the proposed non-appealable CDP. The revised information serves to clarify or amplify the information already presented in the Draft MND in response to comments and does not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because it does not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. Therefore, recirculation is not required.

Portside Pier Restaurant Project  
August 31, 2016  
Page 9

**Public Access – Construction**

In addition, the proposed project construction and demolition schedule includes work on Saturdays and during summer months. This is a high traffic, visitor-oriented area with key access components. How is the construction schedule designed to accommodate the public?

D-20

**Lighting**

The project description of the MND describes the lighting associated with the project, which includes:

- Backlit illuminated signage on the waterside- and promenade-facing frontages of the building to display the names and/or logos for Miguel's Cocina, Ketch Grill & Taps, Brigantine Seafood and Oyster Bar, Portside Gelato & Coffee, and Portside Pier. Signs would range in size from 12 to 43 feet in length and from 3 feet, 2 inches to 12 feet, 11 inches in height. Five signs would face the promenade and five would face the water.
- LED panels along the North Embarcadero Promenade and along the upper deck on the waterside-facing frontage of the building to display upcoming events, menu specials, and other notifications.
- LED illuminated "baskets" surrounding the building. It appears that there are two baskets.
- LED light tube strips on the promenade-facing frontage of the building.
- An internally-illuminated sculptural centerpiece on the outdoor bar of The Brigantine's second floor, for artistic purposes.

D-21

Historically, the Commission has been concerned that this type of lighting and signage may adversely impact scenic resources and viewsheds to and along the bay, add to general visual clutter, and be out of character with the surrounding development. In the case of the proposed development, it appears that these concerns are substantiated. The large amount and size of individual signs and lights on the single two-story building will be overwhelming visually, especially as the signage will be advertisement seen from both land and water. Collectively, the building will emit an amount of light that is likely to distract from views of the bay. Finally, the signage and lighting would far exceed that associated with the current building and of neighboring buildings and would not be in character with the surrounding development.

**Sea Level Rise**

The project has analyzed sea level rise for the structure over a 50 year period, and states

D-22

**Response to Comment D-20:** The MND describes construction and demolition activities under Section II, Project Description. The construction schedule is currently anticipated to occur over approximately six months, including summer months.

The construction plans include, as shown in Figure 8 of the Draft MND, accommodating clear and safe public access along the promenade. During construction, the portion of the promenade that travels through the proposed project site would not be accessible to the public, and pedestrians would be rerouted through the proposed project site between the K-Rail and perimeter/pedestrian barricade fencing, as indicated in Figure 8, Project Construction Area. Therefore, pedestrians could still walk along the North Embarcadero Promenade and through the proposed project site during construction, and all existing access conditions would be reinstated upon completion, resulting in no impact to public access during construction.

**Response to Comment D-21:** As stated in the Draft MND, the illuminated signage and sculptural pieces are not anticipated to light the greater surrounding area. An illumination of public waterfront areas furthers the District's goal of activating the waterfront as it would attract more users along the North Embarcadero Promenade after dark. The proposed illumination allows for safe nighttime walking through the proposed project site. Also, the intent of the signs and lighting is not to create visual clutter or detract from the building's architecture, which is intended to be distinctive and instantly recognizable itself regardless of the signage. The lighting is not considered a detraction of views of the bay and would not be out of character with the surrounding development. Indeed many promotional materials depicting the bay at night highlight the existing lighting around the bay and the reflections thereof as a signature feature of nighttime bay views. Additionally, the Draft MND expresses the worst case scenario (e.g., it describes the most signage and highest lighting contemplated for the proposed project).

While the District does not consider the proposed lighting to be overwhelming, in response to this comment, a photometric assessment (included as Appendix IV, Portside Pier Photometrics, to the responses to comments) has been developed to quantify the proposed project's brightness and area of lighting in context and comparison with other facilities within the surrounding area. The photometric graphic shows the amount of light (in foot-candles) at locations immediately adjacent and surrounding the proposed project site. As shown in Appendix IV, the lighting resulting from the proposed Portside Pier site would be consistent with the nearby Hornblower/Visitor Information Center lighting. As noted in the photometric graphic, the brightest lighting is actually resulting from the dining areas and not the illuminated signage or LED strips. The North Embarcadero Promenade immediately outside of the proposed project would be illuminated by the proposed project at night to between one and three 1 and 3 footcandles, which is acceptable for nighttime walking, with the exception of select areas located just outside of the open-air dining areas, which would reach to between 3 and 6 footcandles (note that lighting above 6 footcandles is acceptable for dining). Thus, the proposed project would not impact the nighttime views or visitor experience along the North Embarcadero Promenade as it would not be overwhelming with respect to the surrounding area. Additionally, the District will reflect in the project description of the CDP that the lighting used will not exceed 9.2 footcandles at the edge of the North Embarcadero Promenade or 6.3 footcandles at the edge of the first-floor bayside deck, and be limited to the specifications provided in the photometric plan. The text in the Final MND project description on page 5 has been revised to include the following text:

"Levels of lighting spill would be comparable to that from existing lighted facilities along the North Embarcadero Promenade, not exceeding 9.2 footcandles at the edge of the North Embarcadero Promenade or 6.3 footcandles at the edge of the first floor bayside deck, and be limited to the specifications provided in the photometric plan (see Appendix IV of Attachment D)."

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-22:** A 50-year project lifespan represents a worst-case scenario in terms of sea level rise because it represents the longest length of the proposed lease term, which will include a requirement for the removal of the facility at the end of the lease period at the District's discretion. This life span is reasonable as the existing restaurant building at the proposed project site is currently 51 years old (constructed in 1965), and will be demolished at the end of its lease term, which is January 31, 2017. Moreover, any new tenant or lease would be required to undergo a separate CEQA review once the existing lease has expired. The proposed project is not anticipated to be in operation 75 years following its opening, as this comment suggests. Regardless, sea level rise estimates for a 75-year lifespan are discussed in the following paragraph.

The base elevation of the proposed project's structure would be approximately 120 inches (10 feet) above the Mean Lower Low Water (MLLW) at the site. The highest high tide recorded for the San Diego Bay is 93.5 inches (7.79 feet) above the MLLW. As discussed in the MND, using the linear interpolation method in Appendix B of the CCC's Adopted Sea Level Rise Guidance, the sea level rise at year 2068 (a 50-year project lifespan) would range to between 9.3 and 39.1 inches. At the lower end of this range, the structure would not be affected; however, the sea level would be approximately 12.6 inches (1.05 feet) above the base level of the structure at the higher end of the range. However, the proposed project structure is anticipated to be able to withstand extreme high tides and wind and wave action. Additionally, the proposed project is designed to use materials to withstand sea level rise impacts and can be retrofitted prior to high tides and waves reaching the base of the structure. This will be included in the CDP to allow the District to ensure that the appropriate design or adaptive management techniques are implemented as proposed by the Applicant. Therefore, impacts would be less than significant (Initial Study page 57).

Under a 75-year lifespan of the proposed project, using the same linear interpolation method, the sea level would rise between 15.32 and 60.12 inches by the year 2093. Therefore, at year 2093, the structure would not be affected at the lower end of this range, but the sea level would be approximately 33.62 inches (2.8 feet) above the base level of the structure under the higher end of this range. Once again, the proposed design and materials—such as constructing the deck and ground-floor windows and doors of the structure to be water tight—would avoid inundation under the worst-case sea level rise scenario at year 2093. Therefore, while the proposed project is not anticipated to be in operation longer than its 50-year lease term, if it were to operate 75 years following construction, it is still anticipated to have a less than significant impact associated with sea level rise.

Furthermore, to clarify the determination of less than significant impacts; even if the proposed project were inundated, it would not result in the significant loss, injury, or death as the instances where inundation could potentially occur would be for relatively short periods during the peak of high tide and recede as the tides ebbs, the times of which are accurately predicted. Therefore, impacts would be less than significant. This revised information serves to clarify or strengthen the information already presented in the Draft MND in response to comments and does not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because it does not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. **(response continued on following page)**

## Letter D

Portside Pier Restaurant Project  
August 31, 2016  
Page 10

*"The project life is expected to be 30 to 50 years based on the proposed project lease with the District and the life expectancy of materials in the marine environment."* The life of the structure should not be tied to the lease of the project as its length is based on legal and not physical circumstances. It is also unclear what evidence there is for the life expectancy of materials in the marine environment. The current building was constructed in 1965, over 65 years ago and is still in operation and considered safe. The project should instead be analyzed based on a 75 year life as recommended in the Commission's Adopted Sea Level Rise Guidance<sup>12</sup>. In addition, any adaptive management strategies should be considered prior to the development of the project, and the development of adaptive strategies should not be deferred to 2058 as the MND suggests.

D-22

### Alternatives Analysis

Finally, the MND fails to discuss alternatives to the proposed project. Considering the noted parking deficits and the large increase in open water coverage, the Port should analyze and discuss a reduced-project alternative, at least, in the final environmental document.

D-23

Thank you again for the opportunity to provide review and comment on the proposed project. If you have any questions or require further clarification, please do not hesitate to contact me at the above office.

D-24

Sincerely,



Melody Lasiter  
Coastal Program Analyst

Cc (copies sent via e-mail):  
Sherilyn Sarb (CCC)  
Deborah Lee (CCC)  
Kanani Brown (CCC)

---

<sup>12</sup> <http://www.coastal.ca.gov/climate/slrguidance.html>.



**Response to Comment D-22 (continuation from previous page):** Adaptive management is a prudent and effective tool for addressing potential eventualities in the future that are predicted with uncertainty and ranges of possible outcomes such as sea level rise. The adaptive management policy development considered and as disclosed in the Draft MND would be applicable for any renewal or redevelopment of the project beyond 2058 and would not be applicable to the proposed project as they are yet to be developed. The inclusion in the Draft MND is intended to disclose the District's awareness of the long-term issue.

**Response to Comment D-23:** All impacts have been reduced below a level of significance and, therefore, an EIR and identification of project alternatives to reduce impacts is not required (CEQA Guidelines §15063 and, §15070-15075).

**Response to Comment D-24:** This is a closing comment. No response is necessary.

## **APPENDIX I**

### **Sunroad Project Superior Court Decision**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL

MINUTE ORDER

DATE: 08/15/2016

TIME: 09:00:00 AM

DEPT: C-71

**RECEIVED**

JUDICIAL OFFICER PRESIDING: Gregory W Pollack

CLERK: Terry Ray

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: L. Wilks

AUG 18 2016

SAN DIEGO UNIFIED PORT DISTRICT  
GENERAL COUNSEL

CASE NO: **37-2014-00009407-CU-TT-CTL** CASE INIT.DATE: 04/02/2014

CASE TITLE: **San Diego Navy Broadway Complex Coalition vs. San Diego Unified Port District**  
[E-FILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

---

**EVENT TYPE:** Hearing on Petition

**MOVING PARTY:** San Diego Navy Broadway Complex Coalition

**CAUSAL DOCUMENT/DATE FILED:** Brief - Other RE: Petition for Writ of Mandate, 05/06/2016

---

**APPEARANCES**

Cory J Briggs, counsel, present for Petitioner(s).

Steven H Kaufmann, counsel, present for Defendant, Real Party In Interest (Rpil), Interested Party, Appellant(s).

Michael M Hogan, counsel, present for Respondent(s).

---

The Court orally advises the parties of its tentative ruling, after which oral argument is conducted. Upon completion of oral argument, the court makes the below ruling:

**RULING AFTER ORAL ARGUMENT:** The Court rules on petitioner San Diego Navy Broadway Complex Coalition's (Petitioner) petition for writ of mandate as follows:

The Court's ruling will serve as the Court's Statement of Decision pursuant to California Rules of Court, rule 3.1590.

Petitioner is represented by Cory J. Briggs of the Briggs Law Corporation.

Respondent San Diego Unified Port District (Port District) is represented by Michael J. Hogan of Hogan Law APC. Real Parties in Interest Sunroad Enterprises and Sunroad Marina Partners, L.P. (collectively RPIs) are represented by Steven H. Kaufman of Richards, Watson & Gershon APC.

As a preliminary matter, the Port District and RPIs' requests for judicial notice are granted. In addition, the Port District and RPIs' objection to new arguments and evidence in Petitioner's reply brief is sustained.

Petitioner challenges the Port District's decision, on March 4, 2014, to certify a Revised Environmental

Impact Report (REIR) and re-approve the Port Master Plan Amendment (PMPA). (Administrative Record (AR) 9, 98.) "[T]he Project involves the construction of a 117,000-square-foot, 175-room hotel with related facilities, amenities, and improvements, as well as an amendment of the Port Master Plan to change the applicable land-use designation to increase the number of hotels that may be developed in the area from one to three." (Port District's Notice of Lodgment (PDNOL), Exh. 7 (Verified Petition for Writ of Mandate under the California Environmental Quality Act and Other Laws (Petition).)

The Court has reviewed the record in light of the parties' briefs, oral arguments and the applicable law and concludes the petition for writ of mandate should be denied for the reasons stated below.

*Standard of Review.* Petitioner's claim regarding piecemeal environmental review is subject to the failure to proceed in the manner required by law standard while its other claims are subject to the substantial evidence test.

*Failure to Exhaust Administrative Remedies.* "In administrative mandamus actions brought under section 1094.5 of the Code of Civil Procedure, appellate review is limited to issues in the record at the administrative level. 'It is fundamental that the review of administrative proceedings provided by section 1094.5 of the Code of Civil Procedure is confined to the *issues* appearing in the record of that body as made out by the parties to the proceedings, though additional *evidence*, in a proper case, may be received. [Citation.] It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or 'skeleton' showing in the hearing and thereafter obtain an unlimited trial de novo, on expanded issues, in the reviewing court.'" (*City of Walnut Creek v. Cty. of Contra Costa* (1980) 101 Cal. App. 3d 1012, 1019 (hereafter *City of Walnut Creek*)). Here, Petitioner cites to an email and letter it sent to the Port District and points to the fact that it specifically stated that the Project would result in "more piecemeal planning" and that the Project did not adequately address the issue of cumulative impacts. (AR 7952-7953.) However, as in *City of Walnut Creek*, the Court finds that such references constitute nothing more than a skeleton showing especially in light of the fact that there appeared to be some confusion amongst the parties with regard to what the Petitioner is seeking to remedy by the filing of this action. Thus, the Court concludes that Petitioner did not exhaust its administrative remedies before pursuing this action.

*Res Judicata.* Preliminarily, the Court notes that the Hon. Ronald S. Prager (Judge Prager) had the jurisdiction to hear the Port District's Motion to Discharge Peremptory Writ of Mandate pursuant to Public Resources Code section 21168.9.

"The doctrine of res judicata bars a party and persons in privity with that party from relitigating a claim following a final judgment on the merits of the claim. The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceedings." (*Roberson v. City of Rialto* (2014) 226 Ca1.App.4th 1499, 1510.)

Here, Petitioner takes issue with the RPIs contention that elements 1 and 2 have been met in this case.

As to the first element, the RPIs point out that Petitioner is making the identical claim asserted by Unite Here Local 30 et al. in their writ of mandate i.e., that the EIR did not analyze the multiple hotels proposed by the PMPA. This reading of Petitioner's view of the case is not unreasonable given the fact that it specifically argued that "the three hotels are one project under CEQA and should have been subjected to a single, comprehensive environmental review" in its Opening Brief. (Petitioner's Opening Brief, p. 8,

II. 12-13; See also PDNOL, Exh. 7, ¶6.)

However, Petitioner took a different tact after the Port District and RPIs argued that Petitioner's claims were subject to res judicata. In its reply, it argued that this element has not been met since the Petition attacks the REIR and not the EIR which was the subject of the Unite Here Local Petition. However, both the Port District and RPIs noted that the REIR was addressed by Judge Prager in the prior proceeding. It is undisputed that the Court granted the Port District's motion to discharge the writ in the prior action. He specifically found that the REIR "fully complies with the requirements of the California Environmental Quality Act" and that the REIR "fully satisfies the requirements of the Writ." The petitioners in the prior action could have, but did not, oppose or appeal this determination. Thus, the Court concludes that the first element has been met.

As to the second element, California Rules of Court, rule 8.803 subd. (22) states that a judgment includes "any judgment or order that may be appealed." Here, as noted above, the petitioners in the prior action could have, but did not, appeal Judge Prager's Order Granting Respondent's Motion to Discharge Peremptory Writ of Mandate. Thus, the Court concludes that the second element has been met.

As to the third element, the Court notes that Petitioner did not specifically address this issue since in any of its briefs. Furthermore, courts have held that where, as here, parties are asserting public interest claims against the same project concerning enforcement of CEQA, they are in privity for res judicata purposes. (*Roberson v. City of Rialto* (2014) 226 Cal.App.4th 1499, 1513; *Silverado Modjeska Recreation & Parks Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 298-299.) Thus, the third element has been met.

*Piecemealing.* In Petitioner's Opening Brief, it argued that the Port District's review of the impact of only one hotel "has the effect of piecemealing or segmenting the three-hotel project into three separate but smaller projects, despite the fact the three hotels were approved by the PMPA." (Petitioner's Opening Brief, p. 8, II. 13-15.) Both the Port District and RPIs correctly pointed out that Chapter 9.0 of the REIR addressed both the 175-room hotel and other hotels and ancillary facilities allowed under the PMPA. (AR 2948; See also AR 3002-3003, 3034-3039.)

Furthermore, as noted above, the Court has sustained the Port District and RPIs' objection the new argument and evidence in the reply brief. Thus, it is not necessary to address Petitioner's said arguments and evidence.

As a result, Petitioner's contention that the Port District engaged in piecemealing fails.

*Violation of Integrated Master Plan.* Petitioner's contention that the Port District violated a comprehensive Integrated Master Plan (IMP) also fails since the Port District and RPIs pointed out that said IMP has not been completed or adopted by the Port District. Only adopted plans must be considered under CEQA Guidelines section 15125 subd. (d) is one that has been adopted. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145 fn. 7.) The Court also notes that Petitioner failed to address the Port District and RPIs' arguments in its reply brief. Thus, it is assumed that Petitioner concedes on this issue.

*Cumulative Impacts.* A CEQA "baseline" serves as a comparison point in determining whether any adverse environmental impact from the proposed project will be significant. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447.) In Petitioner's Opening Brief, it

again argued that the Port District failed to adequately analyze and mitigate the cumulative environmental impacts of the Project by only examining "one of the three hotels approved by the PMPA." (Petitioner's Opening Brief, p. 9, ll. 16-17.) For the reasons set forth above, substantial evidence in the record shows that this issue was thoroughly addressed in the REIR.

Furthermore, as noted above, the Court has sustained the Port District and RPIs' objection the new argument and evidence in the reply brief. Thus, it is not necessary to address Petitioner's said arguments and evidence.

Finally, the Port District and RPIs pointed out that Petitioner's opening brief failed to discuss the evidence supporting the agency's analysis. In *Citizens For A Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 112-113, the court stated that "an appellant must set forth in its brief all the material evidence on the point, not merely its own evidence. [Citation.] A failure to do so is deemed a concession that the evidence supports the findings. [Citation.] The reason for this is that "if the appellants fail to present us with all the relevant evidence, then the appellants cannot carry their burden of showing the evidence was insufficient to support the agency's decision because support for that decision may lie in the evidence the appellants ignore." [Citation.] This failure to present all relevant evidence on the point 'is fatal.'"

In sum, substantial evidence in the record exists to support the Port District's actions as to this issue.

**IT IS SO ORDERED.**



---

Judge Gregory W Pollack

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**


Central  
330 West Broadway  
San Diego, CA 92101

**SHORT TITLE:** San Diego Navy Broadway Complex Coalition vs. San Diego Unified Port District [E-FILE]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2014-00009407-CU-TT-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 08/16/2016.

Clerk of the Court, by:   
T. Ray, Deputy

SUNROAD ENTERPRISES  
COOLEY LLP  
4401 EASTGATE MALL  
SAN DIEGO, CA 92121

SUNROAD MARINA PARTNERS LP  
COOLEY LLP  
4401 EASTGATE MALL  
SAN DIEGO, CA 92121

STEVEN H KAUFMANN  
355 S GRAND # 40TH FLOOR  
LOS ANGELES, CA 90071

✓ THOMAS A RUSSELL  
P.O.BOX 120488  
SAN DIEGO, CA 92112

CORY J BRIGGS  
BRIGGS LAW CORPORATION  
99 EAST C STREET, SUITE 111  
UPLAND, CA 91786

MICHAEL M HOGAN  
225 BROADWAY STE 1900  
SAN DIEGO, CA 92101

☐ Additional names and address attached.



## **APPENDIX II**

### **California Coastal Commission Sunroad Project Hearing Transcript Excerpts**

In the Matter of:  
CALIFORNIA COASTAL COMMISSION

---

TRANSCRIPT OF PROCEEDINGS

*June 12, 2013*

---

ORIGINAL

Dianne Jones & Associates

Reporting and Videography

P.O. Box 1736  
Pacific Palisades, California 90272  
310.472.9882

002642

2  
3  
4 CALIFORNIA COASTAL COMMISSION  
5

6 JUNE 12, 2013  
7

8 CITY OF LONG BEACH  
9 CITY COUNCIL CHAMBERS  
10 333 WEST OCEAN BOULEVARD  
11 LONG BEACH, CALIFORNIA 90802  
12

13  
14 TRANSCRIPT OF PROCEEDINGS

15 ITEM 17(A)

16 APPEAL NO. A-6-PSD-13-005  
17 SUNROAD ENTERPRISES, SAN DIEGO  
18  
19  
20  
21  
22  
23  
24  
25

1 MR. KAUFMANN: Thank you.

2 COMMISSIONER BOCHCO: -- so -- so the same  
3 issue is -- is in front of all of us, which is if  
4 there is no notice that an exemption has been  
5 denied, then nobody knows what's going on. So I --  
6 I understand or I have heard at least some talk that  
7 this may be being worked on between the Port and  
8 staff that we are going to fix that little glitch so  
9 we know what exemptions have been applied for and  
10 granted.

11 MS. SARB: Yes, we'll work on that  
12 procedural issue. I -- I mean, I -- I do want to  
13 acknowledge, though, that the project now as it's  
14 been revised has not had a local hearing.

15 COMMISSIONER BOCHCO: I understand that.  
16 But it is a restaurant and it is basically the same  
17 restaurant, just given more public access. I think  
18 it's an improvement over what was noticed in 2008,  
19 so that -- for that reason alone I feel comfortable  
20 in seconding this motion. Thank you very much.

21 CHAIR SHALLENBERGER: Commissioner  
22 Mitchell.

23 COMMISSIONER MITCHELL: I agree with the  
24 comments of Commissioner Brennan and Commissioner  
25 Bochco. I'll be supporting the motion. But I

1 wanted to take the kind of 30,000 foot view of this  
2 and where I had concern in sort of having this  
3 conversation. I was struck by the argument that  
4 30715 does not specifically list restaurants as an  
5 appealable project, and that there is some dispute  
6 between staff and the attorney and the applicant's  
7 attorney as to whether or not that's the case, I  
8 mean, I'm not a lawyer, but I play one on TV, and I  
9 don't see anywhere in here, I don't -- I mean, I  
10 agree completely, shopping facilities not  
11 principally devoted to the sale of commercial goods  
12 utilized for water-oriented purposes is not a  
13 restaurant. A restaurant is a restaurant.

14 And if this is a policy that has been in  
15 place for the last 25 years as staff says, then I  
16 think it's something that this Commission should  
17 review, because maybe, I mean, I'm not necessarily  
18 making the argument that restaurants shouldn't be  
19 appealable, but that's something that -- that's a  
20 decision we need to make or go back to the  
21 legislature to have this code section revised.

22 I just don't -- I don't think it applies to  
23 this. So I, you know, as far as this particular,  
24 you know, item, I'm just struck by the broader  
25 policy of this. And that we're hearing this and I

1 don't -- I don't believe we should be.

2 CHAIR SHALLENBERGER: Commissioner  
3 Sanchez.

4 COMMISSIONER SANCHEZ: Thank you, Madam  
5 Chair. This is actually for me, this is a little  
6 more difficult. Because on the one hand, and  
7 Mr. Briggs said it very eloquently, there has been a  
8 pattern and practice by the Port in excluding the  
9 public. Not only in hearings, in the process which  
10 we all hope there will be at least a process.  
11 Whether or not, you know, whoever gets, whether or  
12 not the outcome is -- is something that is  
13 desirable. That there always be a process. If that  
14 is what ensures fairness, pattern and practice of  
15 not having a process, of going forward in an  
16 administrative capacity, most of what happened  
17 happened administratively. And that's the problem.

18 The public is excluded, what ends up  
19 happening is that public spaces are becoming  
20 privatized in San Diego. This has been a battle by  
21 the public. And so this -- this for me hits the  
22 very heart of the Coastal Act. Public access.

23 If you don't have the process, you will  
24 never have the resulting public areas, public --  
25 public viewing access to -- to the coast. That is

1 here of -- of support of the project, and especially  
2 the work that the development -- developer has done  
3 with our Coastal Commission staff to make it a much  
4 superior project, but -- but there's just -- there's  
5 a piece lacking of the public not having much of a  
6 word on this. And I know that we can't solve that  
7 today, but hopefully we will be able to help solve  
8 it in the future.

9 CHAIR SHALLENBERGER: Commissioner  
10 McClure.

11 COMMISSIONER MCCLURE: Thank you. I -- I  
12 am in support of this amendment and the current  
13 motion that's on the floor, and I would just like to  
14 weigh in on one of my bigger issues. Well, I have  
15 probably two big issues, and one is the issue of the  
16 definition of a shopping facility.

17 I -- I tried to figure out how you would  
18 make restaurant a shopping facility, and I did find  
19 in the American Heritage Dictionary that shopping  
20 facility is defined as a group of stores and often  
21 restaurants and other businesses using a common  
22 parking lot. So we might be able to stretch it a  
23 little bit, but it seems that this isn't really with  
24 other stores and businesses, so I would have a hard  
25 time calling it a shopping facility. And I think



1 that the Coastal Act, the 30715 I think the  
2 legislature was very, very clear when they  
3 identified what was appealable and what was not.  
4 And I think for us to attempt to stretch that  
5 definition of a shopping facility is a little too  
6 broad for where we should be.

7           And the other issue that I have with this  
8 is that the hearing, the public hearing process, and  
9 I think I have it straight that if I have a project  
10 that I, in my life as a board of supervisor, if I  
11 have a project that's appeal -- that is approved and  
12 then it's appealed and there are some changes made  
13 in that appeal in that process, that rectified a  
14 portion of that project that has been appealed, it  
15 does not trigger a public hearing. It doesn't  
16 bounce back to a public hearing process.

17           Once the project is appealed, then you have  
18 the -- you have the capacity to try to solve the  
19 appeal and keep the project going forward. So I'm  
20 questioning, I understand the frustration of the  
21 Port, and possibly the Port needs to get a public  
22 relations person and figure out a better way to  
23 communicate with the citizens of San Diego, but as  
24 far as the rules, I think that they were probably  
25 followed. Thank you.

1 CHAIR SHALLENBERGER: Commissioner Vargas.

2 COMMISSIONER VARGAS: Thank you. I don't  
3 want to be redundant. It sounds like a lot of  
4 people have made the same points, but I do want to  
5 kind of just speak to two things in particular.  
6 First, I definitely sympathize with the last speaker  
7 during public comment. I think it's Mr. Briggs,  
8 about the lack of public participation in the  
9 process. I don't think it's fair to say that there  
10 was no public participation, but it certainly seems  
11 that because of the way that the current plan is  
12 written, you know, things got fast tracked without a  
13 great deal of public participation, especially  
14 towards the -- toward the end, and that seems to be  
15 not very fair, although it doesn't seem to have  
16 factored into our staff's recommendation to move  
17 this forward.

18 It sounds like a lot of the Commissioners  
19 have kind of voiced the same concern and think that  
20 something should be done about it. I -- I would  
21 think that the appropriate thing to do would maybe  
22 be to review the Port's Port Master Plan and see if  
23 there are opportunities to put -- enhance the  
24 safeguards for increased public participation so  
25 that this type of thing doesn't happen again.

1           And it -- you know, it seems like a  
2    shortcutting of the -- of public participation is  
3    happening, and likewise, there seems to be kind of a  
4    shortcutting of the rules on the Section 30715. I'm  
5    really confused on it. And it's -- how does a  
6    restaurant qualify as a shopping facility? And it  
7    seems like we're kind of creating some shortcut or  
8    bridge to kind of hyperextend into things that, you  
9    know, we want to definitely take look at if -- and  
10   maybe I'm completely wrong, and I'm wondering is  
11   this language of shopping facility, is it used in  
12   other sections of law and intended also that where  
13   they also included in, you know, restaurants into  
14   that section of law? Is there precedent for this?  
15   I -- I have never heard of this before, and I'm just  
16   wondering, you know, we probably should review our  
17   own staff policy in terms of using, lumping  
18   restaurants into this as an appealable item, because  
19   it, you know, if that's something we want to do,  
20   then the appropriate process for me would be to go  
21   to the legislature and have them add restaurants in  
22   there, if that's something collectively that the  
23   Commission wanted to do, but it seems like it's at  
24   best vague, and at worst not appropriate to use it  
25   as an appealable item.

1           Staff, if you want to please comment on any  
2 of what I said, I'd appreciate that.

3           MS. SARB: I would just like to mention  
4 that this -- this issue of whether or not  
5 restaurants are appealable has not been before the  
6 Commission before. We have always interpreted  
7 restaurants to be appealable. This is the first  
8 project where it has become an issue.

9           One of the things that is unique about a  
10 Port Master Plan is that the new development must be  
11 contained in the plan, so any development that is  
12 proposed on port tidelands, it has to be on the  
13 project list and has to be contained in the plan.  
14 So the Act requires or provides for review by the  
15 Commission under Chapter 3, either as a Port Master  
16 Plan amendment or as a project on appeal.

17           So in this particular case, this project  
18 should have been reviewed under Chapter 3 the  
19 Commission in one of those cases, and this again  
20 from our standpoint restaurants have always been  
21 appealable developments, we've seen them in Port  
22 Master Plan amendments more typically than as  
23 stand-alone permits. But with this particular  
24 action, the Port did circumvent the coastal  
25 development permit process, and issued the

1 exemption. So it hasn't been reviewed under Chapter  
2 3 at all.

3 COMMISSIONER VARGAS: That's kind of my  
4 point is that, I mean, those are two kind of --  
5 we're playing double gotcha, basically, that Port  
6 seems to have kind of tried to go through this  
7 through the exemption, and hoping that we wouldn't  
8 be able to appeal it. And we seem to be trying to  
9 create a wrong -- with another wrong by appealing it  
10 on a vagary of Section 30715.

11 Whatever it is, it is. But I'm just saying  
12 maybe in the future we can try and work to correct  
13 both of these issues by -- by reviewing the Port's  
14 Master Plan again and making sure that any type of  
15 short circuiting of the process doesn't happen  
16 anymore -- of the public participation process  
17 doesn't happen anymore, and that on Section 30715,  
18 we come to a better understanding as a Commission as  
19 to what we want or not want to be able to use it  
20 for.

21 DR. LESTER: Commissioner Vargas, I think  
22 both of the suggestions, to look more carefully at  
23 30715 and ask those questions is right, and also to  
24 work with the Port on the process for the future,  
25 because we don't want to have to be revisiting this

## **APPENDIX III**

### **District Restaurant Approvals**

566937 L



SAN DIEGO UNIFIED PORT DISTRICT  
DOCUMENT NO. 14392  
DEC 14 1981  
OFFICE OF THE CLERK

Coastal Project No. N81-3-76

PORT OF SAN DIEGO  
AND LINDBERGH FIELD AIR TERMINAL

(714) 291-3800 • P.O. Box 488, San Diego 92112

COASTAL DEVELOPMENT PERMIT

Applicant: Mr. Patrick E. Goddard  
Executive Vice-President  
Chart House Enterprises, Inc.  
7432 La Jolla Blvd.  
La Jolla, CA 92037  
Agent: Joseph Lancor  
Project Architect  
853 Camino Del Mar  
Del Mar, CA 92014

Project: CHE, Inc. - San Diego Rowing Club Restoration

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and amended on December 2, 1980, Resolution No. 80-343, in accordance with the provisions for the issuance of an ☒ Emergency ☐ Non-appealable ☐ Appealable Development Permit.

Date of ☒ Board or ☐ Port Director action: November 10, 1981

Board of Port Commissioners Res. No.: 81-367

Date of Permit:

Coastal Project No.: N81-3-76

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

DEVELOPMENT

The San Diego Rowing Club was vacated several years ago. Since that time, the structure has gradually deteriorated as a result of the elements, vandalism, etc. Chart House Enterprises, Inc. plans to restore the structure, which is listed on the National Registry of Historic Places, for use as a dinner restaurant.

The project site includes a land area of approximately 0.55 acres and a water area of about 0.68 acres. The project consists of a restaurant with 200 seats and 75 bar seats, approximately 57 parking spaces, landscaping, removal of a connecting causeway, construction of a new 250 ft. long sheet pile bulkhead, and placement of about 275 ft. of revetment for shoreline erosion control.

CHE, Inc.  
Chart House Enterprises



COASTAL DEVELOPMENT PERMIT

TERMS AND CONDITIONS:

1. Restoration of the structure shall be in compliance with the State of California Historical Building Code, the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," and applicable portions of the Secretary of the Interior's "Standards for Historic Preservation Projects."
2. Restoration shall substantially conform to the structure's circa 1905-1908 configuration and design as reflected in the drawings on file in the Office of the District Clerk as Document No. 14127, except that the rowing shell dock shall be reconstructed on the easterly side of the structure.
3. Project Implementation shall include the concurrent development of the remainder of the workboat basin, including dredging, construction of a new sheet pile bulkhead, placement of revetment, and the securing of all necessary permits.

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within 2 years following final approval of the project by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to the Property Engineering Section of the San Diego Unified Port District.

If you have any questions on this permit, please contact the staff of the Property Engineering Section of the San Diego Unified Port District.

DON L. NAY, PORT DIRECTOR

By: Emily Hedges Kelley  
EMILY HEDGES KELLEY

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the Property Engineering Section of the San Diego Unified Port District.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

[Signature]  
Signature of Permittee

12-11-81  
Date

14392

REFERENCE  
COPY

Re Coastal Development Permit -  
Chart House Enterprises, Inc.,  
San Diego Rowing Club Restoration

14392

RESOLUTION 81-367

WHEREAS, the Board of Port Commissioners (Board) on August 28, 1981, approved in concept the "CHART HOUSE ENTERPRISES, INC. - SAN DIEGO ROWING CLUB RESTORATION" (Project) located on tidelands in the City of San Diego; and

WHEREAS, the San Diego Unified Port District (District) is the trustee of said tidelands; and

WHEREAS, the Project consists of restoration of the structure for use as a dinner restaurant with 200 seats and 75 bar seats, approximately 57 parking spaces, landscaping, removal of a connecting causeway, construction of a new 250 ft. long sheet pile bulkhead, and placement of about 275 ft. of revetment for shoreline erosion control; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for the construction of said Project; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

WHEREAS, the Board has adopted the Negative Declaration, "CHART HOUSE RESTAURANT - San Diego Embarcadero" (UPD #80220-23), NOW THEREFORE,

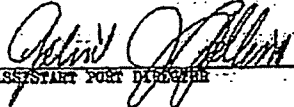
BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

81-367

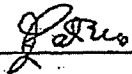
That the Board further finds that this proposed project which is  
entitled "CHARTHOUSE ENTERPRISES, INC. - SAN DIEGO ROWING CLUB  
RESTORATION" is consistent with and conforms to the coastal  
development concept for the Centre City/Embarcadero area of the Port  
Master Plan, and as such is a Non-appealable development which conforms  
to the District's certified Master Plan. Accordingly, the Port Director  
or his authorized representative is hereby authorized and directed to  
issue a Coastal Development Permit for said San Diego Rowing Club  
restoration project.

ADOPTED this 10th day of November, 1981.

Presented by: DON L. HAY, Port Director

  
ASSISTANT PORT DIRECTOR

Approved: JOSEPH D. PATELLO, Port Attorney

  
\_\_\_\_\_

San Diego Unified Port District  
Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified  
Port District on November 10, 1981, by the following vote:

Commissioners	Yeas	Nays	Excused	Absent	Abstained
Ben Cohen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Phil Creaser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. George James	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Rick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Daniel N. Spurck	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Louie M. Wolfshelmer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

Paul Creaser  
Chairman of the Board of Port Commissioners

CHRISTINE M. STEIN  
Clerk of the San Diego Unified Port District

By Sally Lombardo  
Deputy Clerk

(SEAL)

Resolution Number 81-367  
or  
Ordinance Number \_\_\_\_\_  
Adopted November 10, 1981



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3900 • P.O. Box 488, San Diego, California 92112

SAN DIEGO, UNIFIED PORT DISTRICT

Document No. 22125

COASTAL DEVELOPMENT PERMIT

Filed APR 29 1988

Office of the Clerk

Applicant: Mr. Robert S. Wilson  
Duckett-Wilson Development Company  
345 South Figueroa Street, Suite 302  
Los Angeles, CA 90071

Agent:

Project: Fish Market Restaurant

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of an ☐ Emergency ☒ Non-appealable ☐ Appealable Development Permit.

Date of ☒ Board or ☐ Port Director action: February 16, 1988

Board of Port Commissioners Resolution No. 88-57

Date of Permit: April 26, 1988

Coastal Project No. N87-3-385

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

## DEVELOPMENT

The proposed project consists of the demolition of the existing one-story, 225-seat, 10,500 sq. ft. "Tom Lai's" restaurant on the "C" Street Mole and its replacement with a new two-story, 516-seat, 16,300 sq. ft. "Fish Market" restaurant, which will include a retail seafood counter. A portion of the restaurant will be constructed on a new 180 ft. long, 30 ft. wide marginal wharf. The new wharf will replace a deteriorated, 20 ft. wide wooden wharf, which has been demolished. The new restaurant will feature shiplap siding and a mansard copper roof, with a bayside deck and small upstairs viewing balconies.



Coastal Project No.: N87-3-385

### COASTAL DEVELOPMENT PERMIT

#### TERMS AND CONDITIONS:

N/A

#### STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within 2 years following final approval of the project by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to the Property Engineering Section of the San Diego Unified Port District.

If you have any questions on this permit, please contact the staff of the Property Engineering Section of the San Diego Unified Port District.

DON L. NAY, PORT DIRECTOR

By:

JOHN P. PEARSON

~~Directions to Permittee: Permittee is to execute below and return one copy of this permit to the Property Engineering Section of the San Diego Unified Port District.~~ BOTH COPIES

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Signature of Permittee

Date

REFERENCE  
COPY  
22125

Re Coastal Development Permit -

FISH MARKET RESTAURANT - "G" Street  
Mole, San Diego

RESOLUTION 88-57

WHEREAS, the Board of Port Commissioners (Board) on June 30, 1987, granted conceptual approval for the Development of the Fish Market Restaurant (Project) located on tidelands in the City of San Diego; and

WHEREAS, on September 1, 1987, the Board granted conceptual approval of a revised plan for said Project in order for the Fish Market Restaurant to obtain a permit from the Army Corps of Engineers; and

WHEREAS, on February 16, 1988, the Board of the San Diego Unified Port District (District) granted a lease to Fish Market Restaurants, a general partnership, for the operation of a restaurant, cocktail lounge and fish market sales; and

WHEREAS, the San Diego Unified Port District is trustee of said tidelands; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for said Project; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

WHEREAS, the Board has adopted a Negative Declaration entitled "FISH MARKET RESTAURANT, 'G Street Mole'" (UPD NO. 83356-89), NOW,  
THEREFORE,

000425



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

1. The Project, in general, consists of the demolition of the existing one-story Tom Lai's Restaurant located on the G Street Mole in the City of San Diego, and its replacement with a new two-story Fish Market Restaurant building of approximately 16,300 square feet, with a seating capacity not to exceed Five Hundred Sixteen (516); the Project includes an interior retail seafood counter and new 180 foot long marginal wharf, said wharf will extend out 30 foot bayward from the G Street Mole and will replace a portion of a demolished 20 foot wide wharf. Said Project is located in Planning District 3 of the Port Master Plan, the Precise Plan for which provides for land use as "COMMERCIAL: Commercial Recreation".

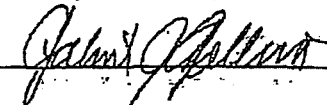
2. The proposed land use for the Project is consistent with the use and development concept for the Centre City Embarcadero area as provided in said Port Master Plan and, as such, is a Non-Appealable Development which conforms to the certified Port Master Plan.

3. The proposed Project which is entitled "THE FISH MARKET - "G" STREET MOLE" is consistent with and conforms to the Port Master Plan and, accordingly, the Port Director or his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project.

ADOPTED this 16th day of February, 1988.


Presented By: DON L. NAY, Port Director

By



Approved:

JOSEPH D. PATELLO, Port Attorney



SW  
2/16/88

DATE: November 8, 1993

AGENDA SHEET

NO. 

SUBJECT: RJTA, Inc. dba Pacific Coral Reef Restaurant Conceptual  
Approval for a New District Tenant and New Improvements

FACTUAL BACKGROUND:

Action Requested: Grant conceptual approval for San Diego Seafood Market Restaurant, Inc. as a new tenant and for proposed new improvements.

RJTA, Inc. dba Pacific Coral Reef Restaurant leased approximately 11,129 square feet of building area for its restaurant operations at the Harbor Seafood Mart. The restaurant closed earlier this year. The lease, which has been terminated due to RJTA's default, is summarized on the attached LEASE INFORMATION SUMMARY.

Upon default in repayment of its loan, RJTA's lender, First International Bank, appointed a receiver to conduct the sale of RJTA's assets including the lease, liquor license, and assorted furniture, fixtures and equipment (FF&E). Because of several lease defaults, including nonpayment of rent, the District proceeded with an unlawful detainer action against RJTA and took possession of the premises in August 1993. After the District's reentry, RJTA filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code.

RJTA has submitted a proposal to reinstate the lease and assign it to San Diego Seafood Market Restaurant, Inc. (SDSM). SDSM is a newly formed California corporation owned by investors Frank M. Parker (50%) and Shalee L. Lissman (50%).

RJTA and SDSM are requesting conceptual approval of SDSM as a new tenant and for proposed modifications to the leased premises. If conceptual approval is granted, RJTA and SDSM will request a court order approving the proposed transaction prior to returning the matter to the Board for a decision, which would include adoption of an ordinance and a lease agreement. The conceptual approval sought here is not a final decision, does not give RJTA, SDSM, or any other party any rights, and is not a promise by the Board that it will ultimately reinstate the lease or otherwise consent to the proposed transaction.

Representatives of RJTA and SDSM will make a presentation to the Board regarding this proposal.

Conceptual approval of SDSM as a new District tenant is not subject to CEQA as amended. The proposed remodeling project is Categorical Exempt under CEQA, Section 15301, Existing Facilities: "Class 1 consists of reconstruction, repair, maintenance, or minor alteration

ACTION TAKEN: 1. Conceptual approval granted, as conditioned in staff report herein.

SUBJECT: RJTA, Inc. dba Pacific Coral Reef Restaurant--  
Conceptual Approval for a New District Tenant  
and New Improvements

PAGE 2

25

FACTUAL BACKGROUND: (continued)

of existing public or private structures, facilities, mechanical equipment, and topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to: (a) Interior or exterior alterations . . . ."

ANALYSIS:

RJTA and SDSM are requesting conceptual approval of SDSM as a District tenant and for modifications to the leased premises. These requests are as follows:

Proposed New Tenant Qualifications:

SDSM is owned by investors Frank M. Parker (50%) and Shirley Lasman (50%). Mr. Parker retired in 1960 from active duty in the Navy as a Rear Admiral. Since retirement, he has been active in real estate investment. Mrs. Lasman is an experienced investor in real estate and other businesses.

Although the corporate stock is owned by Mr. Parker and Mrs. Lasman, an operating team will control and manage the restaurant operation. The operating team includes Anthony Burich, Peter A. Macaluso and William J. . . . 75 years of experience in the food service industry. These individuals have experience operating restaurants in areas including Manhattan of La Jolla, Paparazzi, . . . .

SDSM appears to have the financial resources and necessary experience to operate a Class B restaurant. If granted conceptual approval, SDSM has agreed to the following conditions for District consent to the lease and subsequent lease assignment: (these conditions will cure RJTA's known lease deficiencies):

1. All delinquent rent must be paid. Rent is due for the period commencing from the date of the present. The amount of rent due to the District is \$60,000. The District has collected a security deposit as partial payment of \$35,000 due. The minimum rent of \$0.00 will be due to accrue as this matter progresses.
2. SDSM must pay the \$35,000 lease security deposit.
3. SDSM must pay a sum of \$144,225 for new improvements to satisfy the requirement of the lease.

SUBJECT: RJTA, Inc. dba Pacific Coral Reef Restaurant--  
Conceptual Approval for a New District Tenant  
and New Improvements

PAGE 3

25

ANALYSIS: (continued)

4. SDSM must pay its share of assessment with the other Harbor Seafood Market tenants for the maintenance and operation of the joint-use facilities as required by the lease.
5. A personal guaranty for performance of the lease obligations must be provided by Frank M. Parker and Shirley Lasman.
6. Reimbursement must be made to the District in the amount of \$3,100 covering the District's attorney's fees and costs for the unapproved lease.

Proposed Modifications to the Premises:

Prior to the receipt of taking possession of RJTA's assets, RJTA removed from the premises. Although most of these items were simply delivered to the premises and not purchased, the result of this action is that substantial work is required to bring the property back to operating condition.

SDSM is proposing an American/Italian style seafood restaurant. Several modifications to the property are proposed to renovate and restart the property under the new concept. The proposed modifications include installation of several aquaria on the west elevation, and relocation of the bar. The seafood/deli area will receive new wood lighting and live lobster and crab tank. At the exterior, SDSM proposes new signage, planters, and color accent lighting. The estimated cost for this project is \$187,000.

The proposed signage has been reviewed and are generally acceptable. The proposed signage is not in conformance with the District's signage criteria established by the District in 1992. If the signage is granted, SDSM will be directed to redesign the signage in accordance with current District criteria in its work.

PORT DIRECTION

1. Grant approval for San Diego Seafood Market Restaurant, 1000 Harbor Drive, San Diego, CA 92101.
2. Grant approval for new improvements as conditioned at

LEASE INFORMATION SUMMARY

Tenant:: RJTA, Inc. dba Pacific Coral Reef Restaurant

Location:: Harbor Seafood Mart building located at  
575-585 Harbor Lane, San Diego.

Area:: Approximately 11,129 square feet of building area  
plus joint use of truck loading dock, truck parking  
area, and fish unloading pier.

Use:: Seafood restaurant of 150 to 200 seats, nautical  
theme gift shop, delicatessen serving primarily  
seafood, and retail fish market.

Term:: 4/1/90 - 3/31/95 (5 years)

At the District's sole discretion, the lease can be  
renewed for two additional five-year periods and one  
one-year, three-month period (4/1/95-3/31/00,  
4/1/00-3/31/05 and 4/1/05-6/30/06) with the District  
having the right to terminate the lease on six  
months' notice. If the lease is not renewed or is  
subsequently terminated by the District, the  
District must reimburse RJTA for its unamortized  
investment by payment of the following applicable

<u>Termination Date</u>	<u>Amount of Payment to RJTA</u>
4/1/95 - 3/31/96	\$825,000
4/1/96 - 3/31/97	\$750,000
4/1/97 - 3/31/98	\$675,000
4/1/98 - 3/31/99	\$600,000
4/1/99 - 3/31/00	\$525,000
4/1/00 - 3/31/01	\$450,000
4/1/01 - 3/31/02	\$375,000
4/1/02 - 3/31/03	\$300,000
4/1/03 - 3/31/04	\$225,000
4/1/04 - 3/31/05	\$150,000
4/1/05 - 6/30/06	\$ 75,000

**Rent:****Minimum Rent:**

1st &amp; 3rd year - \$40,000/yr. vs. percentage rents

2nd, 4th &amp; 5th year - \$80,000/yr. vs. percentage rents

Food and retail fish sales	3/1/92 - 3/31/95	6%
If five-year option exercised	4/1/95 - 2/28/97	6%
	3/1/97 - 3/31/00	7%

Alcoholic and nonalcoholic beverages sales	3/1/92 - 3/31/95	8%
If five-year option exercised	4/1/95 - 2/28/97	8%
	3/1/97 - 3/31/00	9%

Gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind		10%
---	--	-----

Vending machine commissions	25%
(5% if tenant-owned)	

All other income	10%
------------------	-----

**Next Rent Review:**

4/1/95 (provided that District elects to exercise its right to renew the lease for the five-year period of 4/1/95-3/31/00)

**Tenant Investment:**

Minimum of \$1,200,000 in new improvements.

**Construction Completion:**

2/29/92

**District Maintenance Obligations:**

Land (except for three-foot zone encompassing each building installed by tenant), exterior walls (except glass windows and doors), and main sewer and water lines outside perimeter walls of building.

**Improvement Summary:**

1st floor retail space in Harbor Seafood Mart building, truck loading and parking area, and fish market.





San Diego Unified Port District  
AGENDA SHEET

20

DATE: April 7, 1995

Page 1 of 4

SUBJECT: CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE BAY'S RESTAURANT REMODEL PROJECT AND CONSENT TO SUBLEASE TO ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB RESTAURANT

**PORT DIRECTOR'S RECOMMENDATION:**

If parking shortfall is acceptable:

1. Grant conceptual approval for proposed subleasehold improvements.
2. Adopt resolution consenting to the sublease.

**EXECUTIVE SUMMARY:**

Holiday Inn is requesting District consent to the proposed sublease with Elephant and Castle, Inc. for operation of a restaurant and pub, which will replace the Home Port Restaurant and Shell's Lounge. Interior changes include remodeling of the restaurant and lounge in a Tudor/Victorian style, characterized by dark wood finishes and authentic English antiques. Exterior changes include a patio area covered by three sail-like marquee canopies, new exterior signage, and modification of the Ash Street driveway. The project cost is estimated at \$1 million. The proposed project will increase Holiday Inn's parking shortfall by 24 spaces.

**FACTUAL BACKGROUND:**

**Proposed Sublease:**

H-I Joint Venture dba Holiday Inn on the Bay has a lease covering 6.11 acres of land on the southeast corner of Harbor Drive and Ash Street. The lease, which expires in 2029, is summarized on the attached LEASE INFORMATION SUMMARY.

Holiday Inn is requesting District consent to its proposed sublease with Elephant and Castle, Inc. dba The Elephant and Castle Pub Restaurant for a first-class, casual-

**ACTION TAKEN: 04/18/95 -- Board granted general conceptual approval for the proposed restaurant remodel and consented to the sublease -- Resolution 95-128.**

20

**SUBJECT: CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE BAY'S RESTAURANT REMODEL PROJECT AND CONSENT TO SUBLEASE TO ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB RESTAURANT**

theme, full-service restaurant. The proposed sublease, covering 6,500 square feet of interior space plus a 2,602-square-foot patio area, is for a new restaurant, which will replace The Home Port Restaurant and Shell's Lounge located in the northwest corner of the ground floor of the main Holiday Inn tower. The restaurant will have 220 interior seats and 104 patio seats and will feature a localized menu, as well as authentic English food. The proposed sublease, which is for a 20-year term, including options, is summarized on the attached PROPOSED SUBLEASE INFORMATION SUMMARY.

**Proposed Remodeling Project:**

Holiday Inn has submitted plans for interior and exterior restaurant improvements for the area to be subleased to Elephant and Castle. The interior will be remodeled in a Tudor/Victorian style, incorporating elements of a typical English pub, including dark wood, brick walls, wood ceiling beams, pressed metal ceiling panels, and antique furnishings. A new kitchen, bar, seating areas, and rest rooms will be included within the restaurant area. A billiards area will also be created. The common wall separating the restaurant and the hotel reservation entry hall will be partially opened to provide an improved atmosphere for both areas and enhanced views of San Diego Bay.

Exterior improvements include a dining area featuring three sail-like marquee canopies at the front of the restaurant. Enhanced hardscape, a low-height decorative wall, and ornamental ironwork will accentuate the marquee structures. A new 125-square-foot foyer will be constructed for entry into the restaurant. The entry will include support columns on both sides of the double doors, a half-circle "Elephant and Castle" clerestory window, and an overhead sign. An "English-style," red telephone booth will be situated near the front entry. The rerouting of the hotel driveway will require the reconstruction of the Ash Street driveway curb cut and the removal or relocation of three palm trees.

The increased seating of the remodeled facilities will create an additional parking demand of 24 spaces. At the November 20, 1990 meeting, the Board conceptually approved plans for a slightly smaller restaurant in the same location at Holiday Inn; however, that project was not constructed. At that time, the Board was advised that the then existing 495-space parking shortfall would increase to a 528-space parking shortfall if the restaurant expansion and other improvements were approved. Because the hotel had operated for many years with little evidence of a parking problem, the Board approved the increase in restaurant seats.

20

**SUBJECT: CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE  
REMODEL PROJECT AND CONSENT TO SUBLEASE TO  
ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB  
RESTAURANT**

The estimated cost of the project is \$1 million. A representative of Holiday Inn will make a presentation to the Board describing the proposed project.

**Environmental Review:**

Staff has reviewed the potential environmental consequences of the proposed remodeling project and the proposed sublease and determined that the project is categorically exempt under CEQA, Section 15301: Existing Facilities "Class 1 consists of the operation . . . of existing public or private structures, facilities . . . involving negligible or no expansion of use beyond that previously existing . . ." and, further, that tenancy provisions have no effect on the environment as per State CEQA Guidelines Section 15061.

**ANALYSIS:**

The proposed sublease and remodeling project will convert the existing coffee-shop-style restaurant and existing lounge into a first-class, casual-theme restaurant and pub. The interior and exterior furnishings, fixtures, and design features will enhance the Holiday Inn. The restaurant patio area will create a unique attraction for the large number of pedestrians that frequent this portion of the Embarcadero area and will add to the festive ambience of the area.

Elephant and Castle, Inc. is a U.S. subsidiary of Elephant and Castle Group, Inc. Elephant and Castle operates 16 restaurants in the United States and Canada and appears qualified to operate the proposed restaurant. The parent corporation is a British Columbia, Canada corporation, which is traded on the NASDAQ and Pacific Stock Exchanges. The parent corporation appears to have adequate financial resources and is guaranteeing the sublease.

As a result of the proposed remodel project, the restaurant seating capacity will increase from 252 seats to 324 seats (72-seat increase), including the 104 patio seats that will be used on a seasonal basis only. Based on the District's current criteria of one parking space per three restaurant seats, the 72-seat increase may create a seasonal demand for an additional 24 parking spaces. Using the District's current parking criteria, the indicated shortfall of on-site parking at Holiday Inn will increase from 537 to 561 parking spaces.

20

Agenda Sheet  
Page 4 of 4

**SUBJECT: CONCEPT APPROVAL FOR H-I JOINT VENTURE DBA HOLIDAY INN ON THE BAY'S RESTAURANT REMODEL PROJECT AND CONSENT TO SUBLEASE TO ELEPHANT AND CASTLE, INC. DBA THE ELEPHANT AND CASTLE PUB RESTAURANT**

Despite the parking shortfall indicated by the District's standard parking criteria, Holiday Inn's parking facilities are oftentimes underutilized. This may be explained by the fact that there is a charge for on-site parking and, as a result, many employees use public transportation or park off site. In addition, there are a substantial number of public parking spaces available in the vicinity of Holiday Inn.

Ace Parking, which manages the Holiday Inn parking facilities, recently completed an occupancy analysis of Holiday Inn's parking facilities. According to Ace, Holiday Inn's average monthly parking facility occupancy was 79.9% during 1994.

It has been the District's longstanding practice to utilize its parking criteria as a guideline for estimating the parking demand which may be created by certain types of uses. The District, however, reviews each proposed project on a case by case basis, and there are many tenancies whose projects have been approved with less than the number of parking spaces indicated by the District's parking criteria. For instance, the recent redevelopment of the Shelter Cove Marina requires 191 parking spaces under the District's criteria; however, only three spaces are provided on site. This development was allowed because Shelter Cove is adjacent to a large public parking lot. Recently, the Board has directed that the District's parking criteria be reviewed which may result in the Board adopting different requirements.

Under the terms of the master lease, the District will receive 3% from food sales; 5% from on-sale beverage sales; and 5% from gift, novelty, and souvenir sales. These are the District's current standard percentages.

000436

LEASE INFORMATION SUMMARY

**Tenant:** H-I Joint Venture dba Holiday Inn on the Bay  
**Location:** 1355 North Harbor Drive  
**Area:** 266,056 sq. ft. - land  
**Use:** Hotel/motel, restaurant, cocktail lounge, specialty shops, parking structure, and related hotel purposes.  
**Term:** 9/1/77 - 10/14/29 (52 years, 1 1/2 months)  
**Rent:** A minimum of \$700,000 per year or the cumulative total of the percentage rents below, whichever sum is greater:

Rental of guest rooms (including the gross income from in-room movies and similar forms of in-room entertainment) and rental of conference and banquet rooms (including related accommodation sales and services provided to conference and banquet room users).	6% through 9/30/96, then 7%
On-sale beverages, barber and beauty shop operations, gifts, novelties, souvenirs, clothing sold from other than the specialty shop building located on Harbor Drive in front of the south hotel tower, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind.	5%
Food, off-sale beverages and clothing sold from the specialty shop building located on Harbor Drive in front of the south hotel tower.	3%
Vending or service machine commissions	25% (5% if Lessee owns machines)
Telephone	6%

Rent: (Continuation)

Parking fees, office space rentals and 10%  
other activities and businesses allowed  
under this Lease and not otherwise provided for.

Next Rent  
Review:

9/1/97

Improvement  
Summary:

601 hotel guest rooms; 6,200 square feet banquet facilities;  
252 restaurant and lounge seats inside the hotel; free-standing  
restaurant with 275 seats; 14,468 square feet convention center and  
meeting rooms; 261-car parking garage; and 139 surface parking  
spaces.

**PROPOSED SUBLEASE INFORMATION SUMMARY**

**Tenant:** H-I Joint Venture dba Holiday Inn on the Bay

**Subtenant:** Elephant and Castle, Inc. dba The Elephant and Castle Pub Restaurant

**Guarantor:** Elephant and Castle Group, Inc. (Parent Corporation)

**Location:** 1355 North Harbor Drive, ground floor of northwest corner of main hotel tower.

**Area:** 6,500 Sq. Ft. - Building; 2,602 Sq. Ft. - Patio Area; 288 Sq. Ft. - Office; and five reserved parking spaces. There will be 220 interior seats and 104 patio seats.

**Use:** First-class, casual-theme, full-service restaurant.

**Term:** 3/1/1995 - 3/1/2015 (20 years, 1 day, including two five-year options)

**Rent:** Minimum Rent

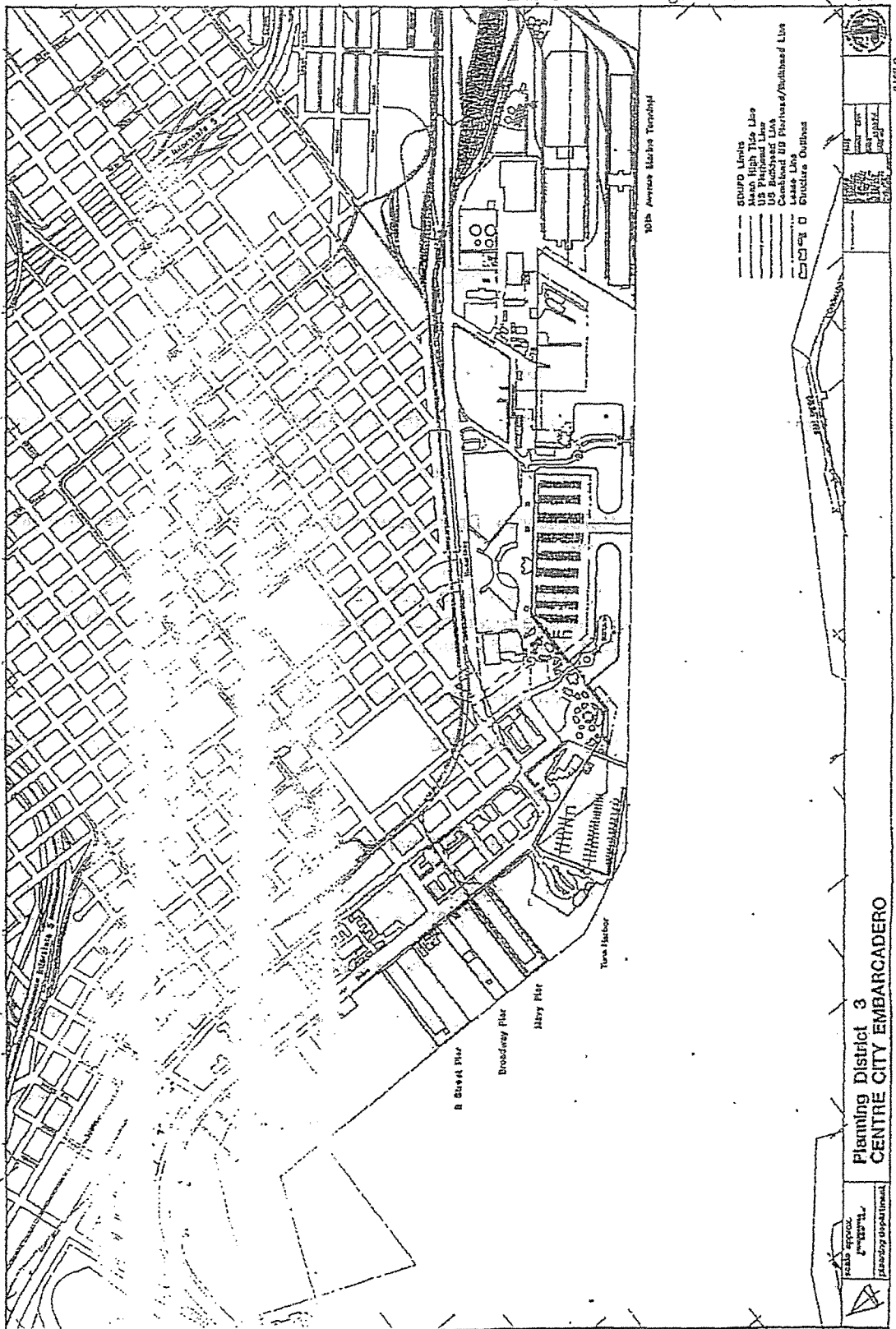
Years 1-2:	\$60,000 per year (\$9.23 psfY - restaurant area)
Years 3-10:	\$72,997 per year (\$11.23 psfY - restaurant area)
Years 11-15:	\$92,087 per year (\$14.17 psfY - restaurant area)
Years 16-20:	\$112,036 per year (\$17.24 psfY - restaurant area)

Minimum rent is versus 6% of gross sales.

In addition, \$3,300 per month (subject to annual CPI adjustments) for subtenant's share of utilities.

In the event the rent under the master lease increases for the sublease premises, the sublease rent automatically increases by the same amount. However, Tenant will receive a partial offset through reduction of the utilities payment.





**San Diego Unified Port District  
AGENDA SHEET****DATE:** November 6, 1998

Page 1 of 3

**SUBJECT:** ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA  
RESTAURANT RENOVATION**EXECUTIVE SUMMARY:**

Anthony's Fish Grotto of La Mesa (Anthony's) operates the Star of the Sea Restaurant at 1360 North Harbor Drive in San Diego. Anthony's proposes to renovate the interior and exterior of the 3,353-square-foot Star of the Sea which is part of a 16,580-square-foot building that also includes Anthony's Fish Grotto Restaurant. The project's cost is approximately \$350,000 and requires Board approval. Staff has reviewed the plans for the proposed remodeling prepared by Anthony's design consultant, D.C. Roberts Design Associates. Staff is recommending approval of the project. A representative of Anthony's will be available to make a presentation to the Board.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Recommend Board review and grant conceptual approval of the proposed remodeling project for Anthony's Star of the Sea Restaurant.

**FACTUAL BACKGROUND:**

Anthony's proposes to remodel the Star of the Sea to give the restaurant a new, distinctive identity separate from Anthony's Fish Grotto Restaurant. Anthony's submitted final drawings in August 1998 and materials boards to the District in October 1998 for review of the proposed renovations. The proposed renovations are cosmetic in nature and contain no significant structural improvements. The new exterior design features stretched canvas on a metal frame over the existing roof. The exterior shingles will be replaced with stucco and limestone panels. Anthony's is also proposing a new exterior sign and menu board. The contemporary exterior design reflects the new elegant interior design. Anthony's proposes to remodel the interior bar/lounge and dining room. The bar/lounge will

**ACTION TAKEN:** 11/17/98 - Conceptual approval granted of proposed remodeling project.

**SUBJECT: ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA  
RESTAURANT RENOVATION**

be relocated to the promenade side of the building behind new glass windows and entrance doors.

Anthony's proposed remodeling will increase the number of seats in the Star of the Sea by five, from 124 to 129 seats (not a significant increase). The installation of a backflow preventer valve required by the City will result in the loss of one parking space.

Anthony's two restaurants are located in the area of the North Embarcadero Alliance Visionary Plan. When implemented, the Plan's proposed expansive esplanade would reduce parking along Harbor Drive in front of Anthony's. Also, a portion of Lane Field is currently leased to Anthony's, providing employee parking under a one-year Tidelands Use and Occupancy Permit. If Lane Field is developed, Anthony's will have to locate replacement parking.

**Environmental Review:**

The Port Master Plan land use designation for Planning District 3 is "COMMERCIAL-Commercial Recreation." The proposed project, which consists of interior and exterior remodeling, is in conformance with this land use designation as defined in Section III of the Port Master Plan.

This project is consistent with Public Resources Code Sections 30604(c) and 30210 through 30224, and the Coastal Act Public Access and Recreational Policies referenced therein.

The project is an excluded development under the District Coastal Development Permit Regulations, Section 8.a. Existing Facilities.

This project was found to be Categorically Exempt under CEQA Section a. Existing Facilities (SG 15301) (Class 1): "Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing, included but not limited to: (3) Interior and exterior alterations . . .; (5) Minor exterior and interior alterations to incorporate architectural changes; and (7) Existing facilities used to provide electric power, natural gas, sewerage, or other public utility service."

**SUBJECT: ANTHONY'S FISH GROTTO OF LA MESA - STAR OF THE SEA  
RESTAURANT RENOVATION**

**Treasurer's Certificate:**

Not required.

**Fiscal Impact:**

The project does not have a cost to the District. Revenues to the District may be enhanced as a result of the project.

**ANALYSIS:**

Anthony's is a valued, long-term tenant. The project will be Anthony's first renovation during its lease term aimed at enhancing its business in this location. The success of Anthony's business should be enhanced by this project. When implemented, the future infrastructure improvements in the North Embarcadero should accelerate the timeline for additional redevelopment in the area. This should have a positive impact on Anthony's business. Staff supports Anthony's request for approval of its plans to remodel the Star of the Sea Restaurant.

LEASE INFORMATION SUMMARY

Tenant: Anthony's Fish Grotto of La Mesa

Location: 1360 North Harbor Drive

Area: 31,500 sq. ft. - water

Use: Restaurant, bar, gift shop, and catering.

Term: 2/1/65 - 1/31/17 (52 years, including options)

Rent:

Food 3%

Beverages, gifts, novelties,  
souvenirs, cigars, cigarettes,  
etc. 5%

Vending machine  
commissions 25%  
(5% of gross  
if machines  
tenant-owned)

Other income 10%

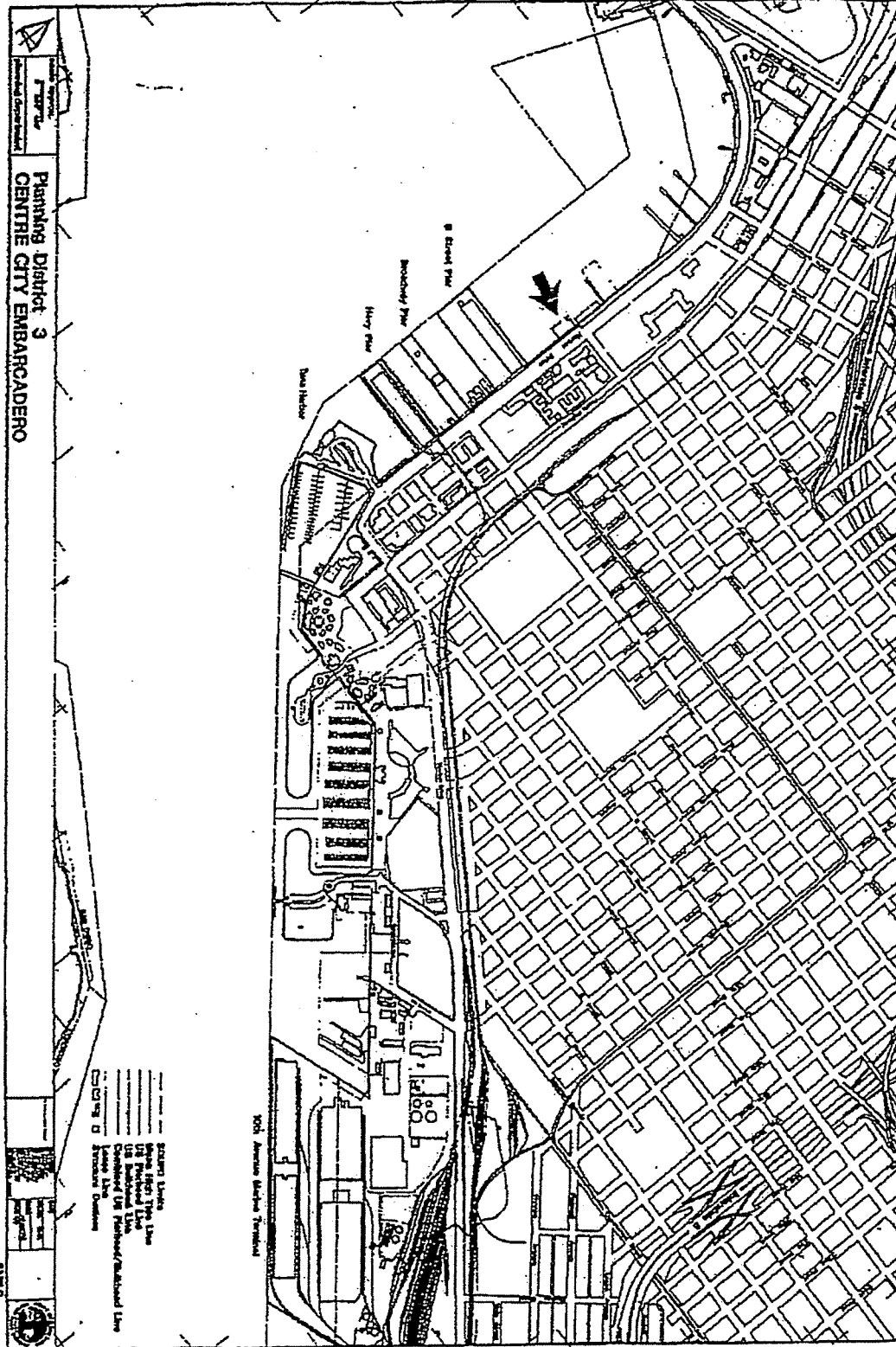
Annual minimum rental \$181,000

Option and  
Rent Review

Period: 2/1/1995 - 1/31/2000 (5 years)

Improvement  
Summary:

357 restaurant seats (220 seats - Fish Grotto; 45 seats - Fishette; 92  
seats - Star of the Sea)



**SAN DIEGO UNIFIED PORT DISTRICT**

**DATE:** March 18, 2003

**SUBJECT: ADOPT RESOLUTION GRANTING CONCEPT APPROVAL FOR SUN HARBOR MARINA REDEVELOPMENT TO INCLUDE ADJACENT PROPERTY AND AUTHORIZE NEGOTIATION OF OPTION AGREEMENT FOR 40-YEAR LEASE**

**EXECUTIVE SUMMARY:**

Sun Harbor Marina (Sun Harbor), located at 5104 North Harbor Drive, has been a District tenant since 1983. Sun Harbor operates a marina, support services for both the marina and adjacent sportfishing tenants, and subleases to Pizza Nova restaurant and four marine service tenants. Sun Harbor has submitted concept plans to redevelop its existing improvements and build an additional 4,000 square feet on the existing Sun Harbor site plus the immediately adjacent 19,775 square foot property (the former Tarantino site). Capital investment for the project is projected to be approximately \$3.9 Million which justifies a 40-year lease term under BPC Policy 355.

A representative of Sun Harbor is available to make a presentation of the proposed project.

**RECOMMENDATION:**

Adopt Resolution granting concept approval for Sun Harbor Marina redevelopment to include adjacent property and authorize negotiation of Option Agreement for 40-year lease.

**FISCAL IMPACT:**

The fiscal impact to the District cannot be projected at this point, but the proposed 40-year Lease will include fair market rental for the leased premises. The fiscal impact will be known when Board approval is sought for the Lease.

**DISCUSSION:**

Sun Harbor has a lease with the District covering 45,000 square feet of land and 138,707 square feet of water area at 5104 North Harbor Drive. The existing three (3) year lease expires the earlier of March 31, 2004 or six (6) months following Coastal Commission certification of the Port Master Plan Amendment for the America's Cup.

**ACTION TAKEN: 03/18/03 – Reso. 2003-57**



## **AGENDA ITEM 10**

**Page 2 of 4**

Harbor Shelter Island Area, and is summarized on the attached LEASE INFORMATION SUMMARY. The requested concept approval includes development of the 19,775 square foot adjacent site formerly occupied by Tarantino's Restaurant. Tarantino's Restaurant improvements were removed in the late 1990's and the now-paved lot is periodically leased for parking to nearby tenants.

Starting in early 1997, a master planning process developed recommendations for long-range improvement and redevelopment for the Shelter Island/America's Cup Harbor area. A preferred concept was adopted by the BPC in December of 1998. This preferred conceptual plan was refined into the current concept with an Environmental Impact Report (EIR) for the plan certified by the BPC on May 21, 2002. The final plan recommendations will be submitted to the California Coastal Commission as an amendment to the Port Master Plan within the next several months.

Sun Harbor has been applying for redevelopment plan approval since July, 1997 and has spent more than \$140,000 preparing redevelopment concepts to meet various District concerns. Because of past delays in redevelopment consideration, Board approval of Sun Harbor's current 3-year lease included agreement that Sun Harbor would be allowed a reasonable time after the Master Plan Amendment certification to submit a redevelopment proposal and negotiate a new lease in advance of the District issuing an RFP for the property.

One of the delays in Sun Harbor's redevelopment of its current site is due to the Master Plan's reconfiguration of the parking area immediately in front of the Sun Harbor property, and Sun Harbor's dependence on street parking in order to meet the District's parking criteria. SDUPD is working with the City of San Diego to arrive at a mutually agreeable plan for that area. Sun Harbor's current redevelopment proposal, because it includes the adjacent 19,775 square foot site, includes sufficient on-site parking to accommodate the proposed redevelopment. Sun Harbor's plan design leaves room for seamless, further redevelopment of the parcels once the Master Plan-related parking/density issues are resolved.

Sun Harbor's current application would replace the existing marina docks with a new docking system including an ADA-accessible gangway, relocate and rebuild the landside improvements, and add approximately 4,000 square feet of building area for marina support and office. Public art is being incorporated into the plan in accordance with BPC 609. Project planning will include compliance with the District's Standard Urban Storm Water Mitigation Plan program. Board decisions made with respect to guest docks will be incorporated into the lease agreement. The public promenade across the leased property is included in the redevelopment design, in accordance with the Master Plan.

Sun Harbor's proposed redevelopment is estimated to cost \$3.9 million, and since it anticipates replacing all of its existing buildings and new construction of additional space, qualifies pursuant to BPC 355 for a new 40-year lease. If the Board grants concept approval for Sun Harbor's proposed development, a six-month Option Agreement for a 40-year lease will be negotiated. In a future meeting the Board will be requested to grant the Option Agreement. During the option period, Sun Harbor will prepare final working drawings, obtain building permits and secure financing as conditions precedent to exercising the option and obtaining a 40-year lease.

**Environmental Review:**

**Exempt under CEQA.**

It has been determined that this project is Categorical Exempt pursuant to State Guidelines Section 15300.4 and Resolution 97-191, b. Replacement or Reconstruction (SG § 15302) (Class 2) and c. New Construction or Conversion of Small Structures (SG § 15303) (Class 3)

**COASTAL ASSESSMENT:**

The Port Master Plan Land use designation for this area (Planning District 1 -Precise Plan Figure 4) is "COMMERCIAL - Commercial Recreation / Commercial Boat Berthing." This proposed project, which consists of redevelopment of a marina, restaurant, marine storage and office, is in conformance with this land use designation, as defined in Section III of the Port Master Plan, in that the proposed uses are specifically permitted (Page 24,25,26)."

This project is located between the sea (as defined by the Coastal Act) and the first continuous public road paralleling the sea. This project is consistent with Public Resources Code Sections 30604(c), and 30210-30224, and the relevant Coastal Act public access and recreation policies referenced therein.

It was determined that this project is an Excluded Development under the District Coastal Development Permit Regulations, Section 8.a.; Existing Facilities, 8(b), Replacement or Reconstruction, Section 8.c, New Construction or Conversion of Small Structures.

---

**AGENDA ITEM 10**

**Page 4 of 4**

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:** Paul Fanfara  
Assistant Director, Real Estate

Christine Richards  
Asset Manager, Real Estate

**SAN DIEGO UNIFIED PORT DISTRICT**

**AGENDA ITEM 32**

**DATE:** September 5, 2006

**SUBJECT: SAN DIEGO MARRIOTT HOTEL AND MARINA**

- A) RESOLUTION CONSENTING TO SUBLEASE TO ROY'S RESTAURANT AT THE SAN DIEGO MARRIOTT HOTEL AND MARINA**
- B) RESOLUTION GRANTING CONCEPT APPROVAL FOR ROY'S RESTAURANT**

**EXECUTIVE SUMMARY:**

Pacific Gateway, Ltd., is the District's lessee of the San Diego Marriott Hotel and Marina. Pacific Gateway requests permission to enter into a twenty-year sublease with Roy's Calione, LP dba Roy's to replace the former Yacht Club Restaurant. The sublease will be guaranteed by Roy's Holding Inc., which is an affiliate of Outback Steakhouse, Inc.

Pacific Gateway is also requesting concept approval for remodeling its former Yacht Club Restaurant for occupancy by Roy's restaurant.

**RECOMMENDATION:**

- A) Resolution consenting to long-term sublease from Pacific Gateway, Ltd., dba San Diego Marriott Hotel and Marina, to Roy's Calione, LP dba Roy's restaurant.
- B) Resolution granting concept approval for remodeling former Yacht Club Restaurant for occupancy by Roy's restaurant.

**FISCAL IMPACT:**

The District receives percentage rents (3% of food and 5% of beverages). Although increased food and beverage sales are anticipated as a result of the new Roy's concept, the fiscal impact is unknown.

**DISCUSSION:**

Pacific Gateway, Ltd., (Gateway) has a lease covering the San Diego Marriott and Marina (Marriott) located at 333 West Harbor Drive. The lease is summarized on the attached LEASE INFORMATION SUMMARY. Gateway is requesting consent to

**ACTION TAKEN: 09/05/06 - Resolution 2006-145 and 2006-146**

000450

sublease the former Yacht Club Restaurant to Roy's Calione, LP dba Roy's. See attached SUBLEASE INFORMATION SUMMARY.

Roy's will replace the Yacht Club Restaurant, which faces the Marriott Marina on the South Embarcadero promenade with Roy's restaurant. The remodeling project requires Board approval since there will be changes to the silhouette including the installation of an exterior retractable canvas cover patio, and new subtenant monument signage on Harbor Drive. The estimated project cost is approximately \$1,975,000. Under separate contract, Marriott will upgrade the 2<sup>nd</sup> Floor restrooms with new finishes and an ADA compliant layout at an estimated cost of \$100,000.

The Marriott management has decided to replace the existing Yacht Club Restaurant, which has been in need of an updated theme and new finishes, with a totally new restaurant concept. The stand-alone theme restaurant building with banqueting facilities above faces the Marriott Marina on the South Embarcadero Promenade. The new restaurant concept, Roy's, is a very successful "Hawaiian Fusion" cuisine theme. Chef Roy Yamaguchi, winner of a prestigious James Beard best chef award, opened his first restaurant in Honolulu in 1988; there are now 33 Roy's restaurants worldwide.

Roy's is noted for its outstanding design concepts: subtle lighting, bold design concepts and fine finishes. The main dining room will be remodeled to include a glass enclosed wine "cellar" and a large exhibition kitchen open to the dining room. The existing kitchen will be converted to a large bar area, and the present elevator and stair shaft will be opened up to the bar and dining room. A third of the 2<sup>nd</sup> Floor area, now Marriott banquet space, will be remodeled to function, with the use of moveable partitions, as from one to four private dining rooms for Roy's customers. The remaining two-thirds of the area will remain Marriott's banquet area. An exterior dining/bar deck will open off of Roy's private dining areas. Roy's is remodeling the exterior patio to include a retractable shade cover, an exterior bar and a fire pit. The retractable patio cover can be opened or closed as diners prefer.

The patio cover will be a trademark Roy's purple color which will also be the background color on all of Roy's signage. The exterior signage package includes two monument signs on Harbor Drive that are necessary to identify and locate the waterfront restaurant blocked by the hotel buildings from the view of passersby.

The remodeled Roy's restaurant will have approximately 300 restaurant seats, inside and out. This is a 50 seat increase over the capacity of the existing Yacht Club Restaurant, but Marriott will still have a surplus of 514 parking spaces per the Board approved Tidelands Parking Guidelines.

**Port Attorney's Comments:**

Not applicable.

## **AGENDA ITEM 32**

**Page 3 of 3**

### **Environmental Review:**

This project has been found to be **Categorically Exempt** according to CEQA under the following section:

15301, Existing Facilities: "Class 1 consists of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing."

### **Coastal Assessment:**

The Port Master Plan Land use designation for this area (Planning District 3 - Precise Plan Figure 11) is "COMMERCIAL - Commercial Recreation." This project is consistent with that land use designation.

This project is located between the sea (as defined by the Coastal Act) and the first continuous public road paralleling the sea. This project is consistent with Public Resources Code Sections 30604(c), and 30210-30224, and the relevant Coastal Act public access and recreation policies referenced therein.

This project is an **Excluded Development** under the District Coastal Development Permit Regulations, Section 8.a., Existing Facilities: "The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographic features, involving negligible or no expansion of use beyond that previously existing."

### **Equal Opportunity Program:**

Not applicable.

**PREPARED BY:** Patti D. Phillips  
Senior Asset Manager, Real Estate

Clinton E. Klsner  
Architect, Real Estate

**LEASE INFORMATION SUMMARY**

Tenant: Pacific Gateway, Ltd., dba San Diego Marriott Hotel & Marina

Location: 333 West Harbor Drive

Area: 781,527 sq. ft. Land; 826,936 sq. ft. Water; 174,921 sq. ft. Navigation Easement

Use: Hotel, marina, restaurants, cocktail lounges and retail shops.

Term: 12/01/95 - 11/30/2061 (66 Years)

Rent: Annual minimum of \$3,800,000 per year versus the following percentage rents:

<u>Rent Category</u>	<u>Percentage Rates</u>
Guest rooms	6%
On-sale beverages, barber and beauty shop, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, etc.	5%
Food and off-sale beverages	3%
Boat berth rentals, dock lockers, boat launch and retrieval	20%
Boat rentals - less than 20 ft. in length	10%
Boat charters - more than 20 ft.	6%
Vending or service machine commissions	25% (5% if Lessee owns machines)
Other	10%

Next Rent  
Review: 12/01/2006

Improvement  
Summary: 1,362 hotel rooms, 1,164 restaurant and lounge seats inside the hotel, 453 boat slips in marina, 1,839 parking spaces including 700 parking spaces in Convention Center parking garage.



**SUBLEASE INFORMATION SUMMARY**

Tenant: Pacific Gateway, LTD, dba San Diego Marriott Hotel & Marina.

Subtenant Roy's Calione, LP, dba Roy's.

Location: 333 West Harbor Drive.

Area: 7,486 sq. ft. restaurant building.

Use: Restaurant and cocktail lounge, including serving of alcoholic beverages.

Term: 10 years plus two (2) five-year options

Rent: Minimum rent plus 4% of gross sales in excess of breakpoint for applicable year at Roy's Restaurant.

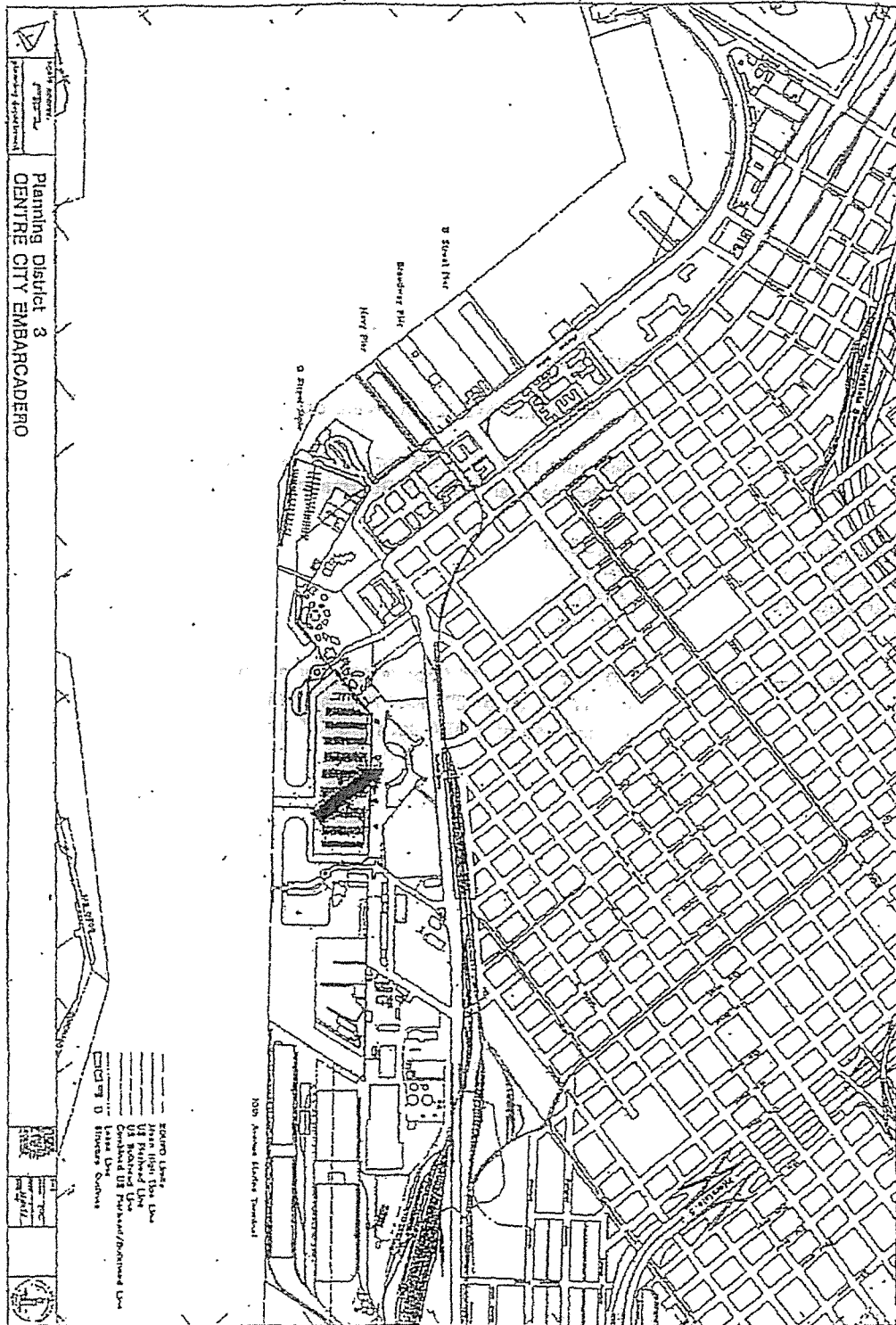
Years 1 through 5 \$8,333/mo

Years 6 through 10 \$9,168/mo.

Years 11 through 15 \$10,083/mo.

Years 16 through 20 \$11,091/mo.

Improvement Summary: 10,877 sq. ft. 1<sup>st</sup> floor restaurant building, use of 4,257 sq. ft. of 2<sup>nd</sup> floor restaurant building, and limited use of 2,494 sq. ft. of 3<sup>rd</sup> floor restaurant building.



**SAN DIEGO UNIFIED PORT DISTRICT**

**AGENDA ITEM 28AB**

**DATE:** September 1, 2009

**SUBJECT:** SHELTER ISLAND, INC. DBA BALI HAI

A) RESOLUTION GRANTING CONCEPT APPROVAL TO SHELTER ISLAND, INC. DBA BALI HAI FOR PROPOSED RESTAURANT RENOVATION

B) ORDINANCE GRANTING AN OPTION AGREEMENT WITH SHELTER ISLAND, INC. DBA BALI HAI FOR A NEW 30-YEAR LEASE, WITH A 10-YEAR OPTION

**EXECUTIVE SUMMARY:**

Shelter Island, Inc. operates two restaurants on District Tideland, the Bali Hai on Shelter Island and Tom Ham's Lighthouse on Harbor Island. Shelter Island, Inc. dba Bali Hai (Bali Hai) has submitted a proposal for a \$3,800,000 renovation of the Bali Hai restaurant. The redevelopment involves the following: complete renovation and remodel of the interior of the restaurant and banquet area, a new 500 square foot deck off of the upper dining room, a new façade facing the parking lot, a new roof, awnings and pergola surrounding the structure, construction of a new permanent pavilion and upgraded landscaping and hardscaping.

Subject to the Board's approval, an 18-month option has been negotiated with Bali Hai for a new lease. In accordance with BPC Policy No. 355, Bali Hai's \$3,800,000 investment will qualify for a 30-year lease term with a 10-year option to extend conditioned on performance factors. The new lease will include the applicable percentage rental rates approved by the Board on December 7, 2004. Minimum annual rent (MAR) under the new lease for the initial 10-year rental period will be as follows: \$300,000 adjusted to \$150,000 during a 12-month construction period, \$225,000 during a 12-month stabilization period, and \$270,000 during an additional 12-month stabilization period. A mid-term CPI adjustment will be required in year five.

**RECOMMENDATION:**

Adopt Resolution granting concept approval to Shelter Island, Inc. for proposed restaurant renovation; additionally, adopt Ordinance granting an Option Agreement with Shelter Island, Inc. for a new 30-year lease, with a 10-year option.

**FISCAL IMPACT:**

If approved, the Board action will result in an option payment of \$500. This proposed Board action will not result in further fiscal impact unless the option is exercised. However, if and when the option is exercised and the project has stabilized in year four, the MAR the District receives will increase from \$163,500 to \$300,000 - an increase of

ACTION TAKEN: 09-01-2009 - Resolution 2009-177 and Ordinance 2578

000624

\$136,500 per year. Bali Hai's *projected* percentage rent payments to the District are approximately \$312,000 per year by year four, exceeding the minimum annual rent.

**COMPASS STRATEGIC GOALS:**

The redevelopment of the Bali Hai will strengthen the District's financial performance and modernize an older development on District Tidelands.

This agenda item supports the following strategic goals:

- ☒ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☒ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☒ Ensure a safe and secure environment for people, property and cargo.
- ☒ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☒ Develop a high-performing organization through alignment of people, process and systems.
- ☒ Strengthen the Port's financial performance.
- ☐ Not applicable.

**DISCUSSION:**

**Background**

Bali Hai has a lease covering approximately 33,531 square feet of land and 35,180 square feet of water located at 2230 Shelter Island Drive on the northeast end of Shelter Island. A restaurant of approximately 17,600 square feet, a pavilion of approximately 2,350 square feet and a fixed pier and floating dock available for use by restaurant customers currently occupy the leasehold. The Bali Hai's 25-year lease with the District will expire in August 2015. The terms of the lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

**Proposed Project**

The Bali Hai has proposed a comprehensive renovation and upgrade of the existing facilities into a trendy, modern venue with a Polynesian flavor. The project includes a major rejuvenation of the exterior of the restaurant, enhanced landscaping and outdoor event area as well as a stylish floor to ceiling remodel of the interior. The renovation will be completed in two phases. Phase one of the remodel, which was administratively approved and successfully completed in July 2009, included the construction of a contemporary 2,350 square foot detached pavilion to replace the marquee tent. Phase two involves a complete renovation of the existing facilities. The existing amenities will be significantly upgraded and modernized throughout the leasehold. New components

include an outdoor deck and access to the terrace for better indoor/outdoor connections, and a private dining room. The total renovation, including both phases, is estimated to cost approximately \$3,800,000. Renderings showing the proposed renovation are attached as EXHIBIT A.

**Site Work Improvements:** The proposed exterior renovations include the modification of the garden to add greater flexibility for use as a gathering area as well as the construction of new hard surface paving and pathways. Existing healthy trees and most plant specimens will be retained using new, low water use strategies.

**Exterior Improvements:** The proposed exterior building improvements include the shielding of large expanses of glass around the building perimeter with cantilevered wood louvered awnings and trellised pergola, and construction of a new 500 square foot deck off the upper dining room. The materials and construction details for these components will be consistent with those used on the new pavilion. The new deck will seat approximately 36 dining guests. The façade facing the parking lot will incorporate a wooden screen comprising a public art installation and new, illuminated signage. This screen element will be designed by a local artist and submitted in compliance with BPC Policy No. 609.

**Interior Improvements:** The proposed interior renovation includes the complete demolition of all interior improvements on both floors. The new first floor interior will be a reconfigured banquet and function area. The new bar will be longer and relocated to accommodate a pair of doors to the exterior terrace and the grand stairway to the second floor will be opened up to improve the visual connection between the levels.

The second floor will be reconfigured with a new bar lounge in the location of the existing private function room. The existing circular bar at the center of the dining room will be removed and a new, signature bar will be positioned to optimize views towards the bay. A set of doors will lead out to the new exterior dining deck. Finally, a new private dining room with a seating capacity of 16 guests will be located on the east side of the restaurant next to the stairway.

The proposed renovation includes the replacement of essentially all floor, wall and ceiling materials and finishes, as well as the HVAC, lighting and sprinkler systems. New porcelain tile is proposed at the front entry and bar/lounge areas, new bamboo composite flooring in the high-traffic areas and new carpet in the dining areas. The wood post and beam structure will be sandblasted to reveal its natural state and a new furnishing, fixture and equipment package will complete the remodel.

#### Proposed Project Team

Shelter Island, Inc. will develop this project. In addition to their restaurant leasehold on Shelter Island, Shelter Island, Inc. operates Tom Ham's Lighthouse restaurant on

Harbor Island. Shelter Island, Inc. is considered a tenant in good standing by the District.

Local architectural firm Graham Downes Architecture has been contracted to assist in the design of the new restaurant. Graham Downes has been involved in several local projects including JRDN, Nine-Ten, Chive, Laurel, Pasquale and Sunroad's 880 Harbor restaurant on Harbor Island.

**Proposed Operator**

Shelter Island, Inc. will also operate the renovated Bali Hai restaurant. Shelter Island, Inc.'s two restaurants, Bali Hai and Tom Ham's Lighthouse, recently received awards at the San Diego Chapter of the California Restaurant Association's 25<sup>th</sup> Annual Gold Medallion Awards Banquet. The Bali Hai received the "People's Choice Award" and Tom Ham's Lighthouse was voted "Best Sunday Brunch."

**Proposed Option Agreement**

The proposed option agreement is for an 18-month period. During the option period, Shelter Island, Inc. must submit for District approval the following:

- Working drawings
- Project financing
- Development permits including Coastal Development Permits, if applicable
- Performance bond
- Construction contract
- Equal Opportunity Employment Program

The proposed option terms are summarized on the attached PROPOSED OPTION INFORMATION SUMMARY.

**Proposed Lease Agreement**

**Term:** Bali Hai's \$3,800,000 investment in the restaurant renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per BPC Policy No. 355. Exercise of the option to extend shall be dependant upon Bali Hai maintaining its status as a tenant in good standing which is defined in the lease as requiring the following to be true for the five-year period preceding the option exercise:

- Premises maintained in good condition
- Rent paid promptly
- All provisions of lease complied with
- Gross revenue maximized
- Financial records accurately maintained and accessible to District

- Compliance with the District's policies on public accommodation and non-discriminatory employment and contracting

**Minimum Annual Rent:** The MAR for the 12-month construction period will be \$150,000, followed by a 12-month stabilization period rent of \$225,000 and an additional 12-month stabilization period rent of \$270,000. The MAR will then increase to \$300,000, which is equal to 100% of the stabilized rent generated by the restaurant based on the proforma submitted by Bali Hai. Since the Bali Hai's annual rental payments have rarely exceeded MAR under its existing lease, staff has determined that it would be prudent to set the MAR at 100% of the projected stabilized percentage rent for the initial 10-year rental period under the new lease. Bali Hai will pay the higher of the minimum rents or the District's standard percentage rental rates, which are projected to exceed these minimum rents after stabilization. The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

**Port Attorney's Comments:**

The Port Attorney has reviewed and approved the requested document for form and legality.

**Environmental/Coastal Review:**

The proposed project to renovate and remodel the existing Bali Hai restaurant leasehold is Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15301 (Existing Facilities) and Section 15304 (Minor Alterations to Land). The Bali Hai proposed improvements involve the remodeling of the interior and renovation of the existing exterior building structure with no substantial expansion of use beyond that previously existing.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:** Tony Gordon  
Senior Asset Manager, Real Estate



**SAN DIEGO UNIFIED PORT DISTRICT**

**AGENDA ITEM 26**

**DATE:** June 8, 2010

**SUBJECT:** POINT LOMA SEAFOODS

- A) RESOLUTION GRANTING CONCEPT APPROVAL TO MRS. KELLY'S, INC., DBA POINT LOMA SEAFOODS FOR PROPOSED RESTAURANT RENOVATION
- B) ORDINANCE GRANTING AN OPTION AGREEMENT WITH MRS. KELLY'S, INC., DBA POINT LOMA SEAFOODS FOR A NEW 30-YEAR LEASE, WITH A 10-YEAR OPTION TO EXTEND

**EXECUTIVE SUMMARY:**

Mrs. Kelly's, Inc., dba Point Loma Seafoods (PLS) operates a restaurant on District Tidelands located at 2805 Emerson Street in America's Cup Harbor. PLS has proposed a \$2,700,000 redevelopment of the restaurant including demolition of the existing structure, construction of a new Monterey/Cannery style building, new outdoor dining area with fire pit and seating wall, new contemporary interior retail space and kitchen, and second story viewing terrace.

Subject to the Board's approval, an 18-month option has been negotiated with PLS for a new lease. In accordance with the Administrative Practices of BPC Policy No. 355, PLS' \$2,700,000 investment will qualify for a 30-year lease term with a 10-year option to extend, conditioned upon performance factors. The new lease will include Board-approved percentage rental rates and the new minimum annual rent (MAR) will increase from \$127,125 to \$153,274.

**RECOMMENDATION:**

- A) Adopt a Resolution granting concept approval to Mrs. Kelly's, Inc., for a proposed restaurant renovation;
- B) Adopt an Ordinance granting an Option Agreement with Mrs. Kelly's, Inc., for a new 30-year lease, with a 10-year option to extend.

**FISCAL IMPACT:**

If approved, the Board action will result in an option payment of \$500. During the option period, PLS will continue to pay improvement rent and the greater of percentage rent or MAR. When PLS enters into a new lease with the District, the MAR the District receives will increase from \$127,125 to \$153,274. It is anticipated that by year three after the stabilization periods, the percentage rents will exceed \$200,000 annually. During the option period and under the new lease the rent will be as follows:

ACTION TAKEN: 06-08-2010 - Resolution 2010-95 and Ordinance 2612

000629

Option Period:	Minimum annual rent:
Option Rent (> percentage rent or MAR)	\$127,125
Option Improvement Rent	\$58,725
Lease:	
Construction minimum rent (50%):	\$76,637
Stabilization minimum rent Year 1 (75%):	\$114,995
Stabilization minimum rent Year 2 (85%):	\$130,283
Full minimum rent Year 3 (100%)	\$153,274

**COMPASS STRATEGIC GOALS:**

The redevelopment of the PLS leasehold will strengthen the District's financial performance and modernize an older development on District Tidelands.

This agenda item supports the following strategic goals:

- ☐ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☐ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☐ Ensure a safe and secure environment for people, property and cargo.
- ☒ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☐ Develop a high-performing organization through alignment of people, process and systems.
- ☒ Strengthen the Port's financial performance.
- ☐ Not applicable.

**DISCUSSION:****Background**

Mrs. Kelly's, Inc., has a lease covering approximately 11,882 square feet of land located at 2805 Emerson Street in America's Cup Harbor. An existing restaurant of approximately 7,904 square feet occupies the leasehold. PLS is currently on a holdover to their original lease, which expired on April 30, 2009, and is paying improvement rent to the District which will continue through the option period until the new lease has been executed. The terms of the lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Proposed Operator

Mrs. Kelly's, Inc. is a multi-generational family-owned and operated business, comprised of the Jack and Beverly Christianson Family Trust (50%), and the John and Theresa Christianson Family Trust (50%). Since the early 1960's, PLS has been a tenant in good standing with the District and a community icon in San Diego.

Proposed Option Agreement

The proposed option agreement is for an 18-month period. During the option period, PLS is required to satisfy the conditions below:

- Schematic Plans (30% complete progress plans) – October 1, 2010
- Design Development Plans (60% complete progress plans) – February 1, 2011
- Working drawings (90% complete progress plans) – June 1, 2011
- Project financing or Equity Commitment (Letter of Commitment from bank or evidence of sufficient personal equity/cash) – August 1, 2011
- Development permits including Coastal Development Permits, if applicable – November 1, 2011
- Performance bond – November 1, 2011
- Construction contract – November 1, 2011
- Equal Opportunity Employment Program – November 1, 2011

The proposed option terms are summarized on the attached PROPOSED OPTION INFORMATION SUMMARY.

Proposed Project

PLS has proposed a new modern Monterey Cannery style stucco building with river-rock and heavy timber accents, a second story viewing terrace, a new outdoor dining area with seating wall and fire pit, enhanced landscaped planters, new hardscape to the existing building perimeter and parking lot, sustainable features and low-irrigation water systems. A lighthouse tower with a public art component will be added to the entry facade. The project proposes to preserve and enhance its connection to the pedestrian promenade reinforcing this destination point and the public's overall experience to the waterfront, and will compliment the new sportfishing redevelopments in America's Cup Harbor. A rendering is attached showing the proposed renovation.

As part of the redevelopment, PLS will be improving and incorporating all the outdoor public seating areas and the adjacent parking lot into their new leased area. Based upon the District's parking guidelines, 47 parking spaces are needed. However, because of the past history of intense parking usage at PLS, the new leasehold parcel will include 60 spaces. During the construction period PLS intends to operate out of a temporary satellite location using temporary trailers on the adjacent Kettenburg leasehold. This operation will provide continued employment for the

existing staff and food sales to the community. The project is estimated to cost approximately \$2,700,000.

**Proposed Lease Agreement**

**Term:** PLS' \$2,700,000 investment in the restaurant renovation qualifies for a 40-year (30-year with a 10-year option to extend) lease term per BPC Policy No. 355. Exercise of the option to extend is contingent upon PLS maintaining its status as a tenant in good standing, which is defined in the lease as requiring the following to be true for the five-year period preceding the option exercise:

- Premises maintained in good condition
- Rent paid promptly
- All provisions of lease complied with
- Gross revenue maximized
- Financial records accurately maintained and accessible to District
- Compliance with the District's policies on public accommodation and non-discriminatory employment and contracting

**Minimum Annual Rent:** PLS has historically averaged over \$200,000 annually in rent revenue paid to the District. PLS will pay the higher of MAR or the District's standard percentage rental rates, which are projected to exceed MAR after the stabilization period. The new MAR of \$153,274 is equal to 75% of the average of the last three years percentage rent paid to the District. Stabilization Year's one and two are minimum rents and PLS will pay the greater of percentage or minimum rent. It is anticipated that sales will return to current levels and exceed the MAR by Year 3. The lease terms of the existing and proposed lease are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

Staff is recommending approval of the option agreement and the project.

**Port Attorney's Comments:**

The Port Attorney has reviewed and approved the requested document for form and legality.

**Environmental/Coastal Review:**

The proposed project to renovate the existing PLS restaurant leasehold is a replacement in-kind of the existing building structure with limited expansion of no change in use or capacity and therefore Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15301 (Existing Facilities) and Section 15304 (Minor Alterations to Land) and Categorically Excluded under Sections 8.b (1) and (2) of the District's Coastal Development Permit Regulations.

San Diego Unified Port District Board Meeting - June 8, 2010

**Equal Opportunity Program:**

**Not applicable.**

**PREPARED BY: Kristine A. Zortman**  
**Senior Asset Manager, Real Estate**

**EXISTING AND PROPOSED LEASE INFORMATION SUMMARY, MRS. KELLY'S, INC.**

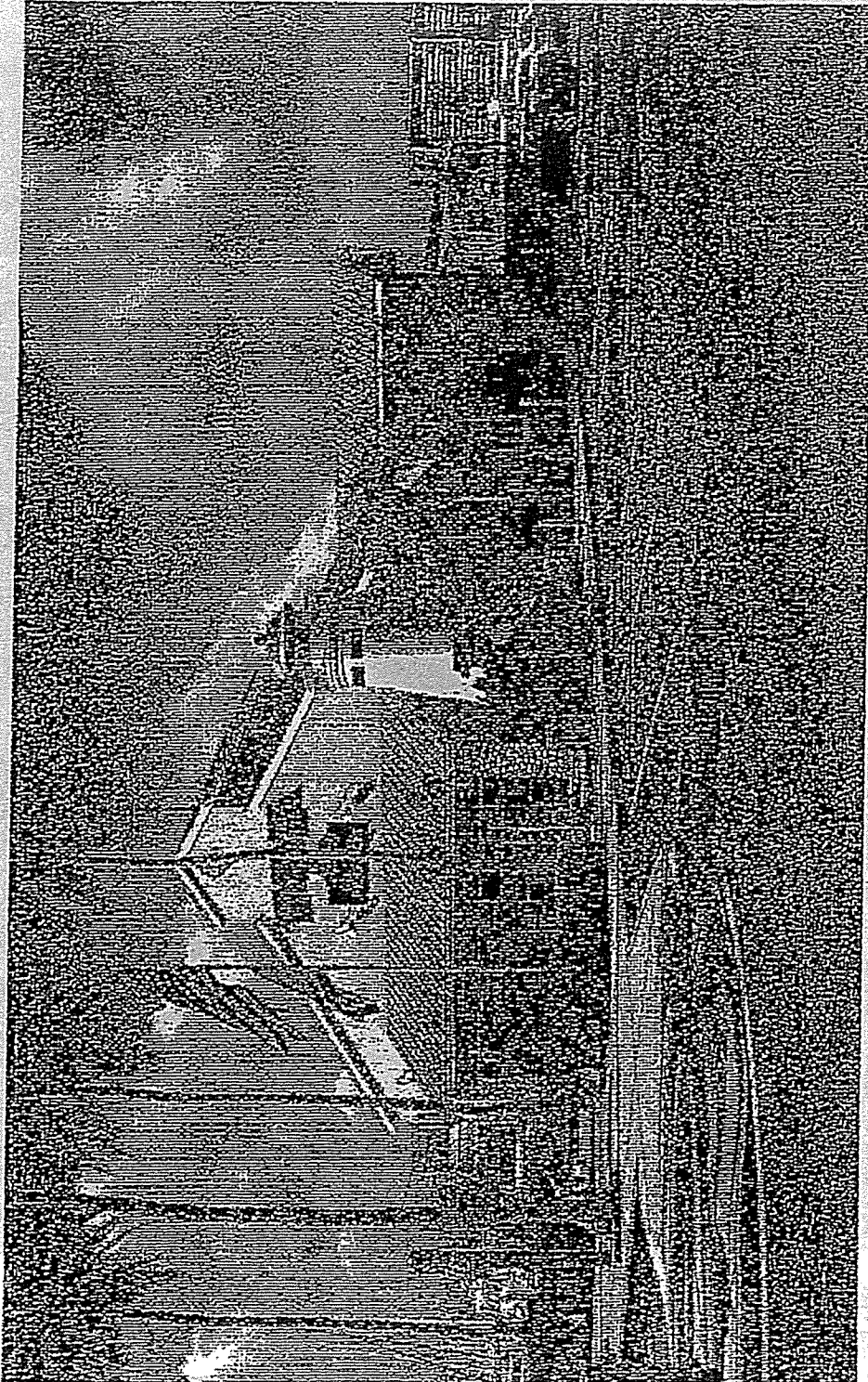
	<b>EXISTING</b>	<b>PROPOSED</b>
<b>Lessee:</b>	Mrs. Kelly's, Inc.	Same
<b>Location:</b>	2805 Emerson Street	Same
<b>Area:</b>	11,882 sq. ft. – land	37,013 sq. ft. – land (increased to include parking)
<b>Use:</b>	Limited service restaurant; sale of beer and wine, retail fish sales, wholesale fish activities which include cleaning, smoking, filleting, icing, processing and exchanging fish; and sale of gifts and souvenirs; and telecommunications equipment	Same with the addition of public parking for customers and employees.
<b>Term:</b>	30 Years – 5/1/79-4/30/09	Forty years as follows: 30 Years plus 10 Year Option to Extend (Option for additional lease term extension based upon tenant in good standing)
<b>Minimum Annual Rent:</b>	Minimum annual rent of \$127,125	Minimum annual rent: \$153,274 Construction rent (50%): \$ 76,637 Stabilization rent Year 1 (75%): \$114,995 Stabilization rent Year 2 (85%) \$130,283 Minimum rent Years 3-5: \$153,274
<b>Percentage Rental Rates:</b>	Food 3% Beverages on premises 5% Beverages off premises 3% Gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals 5% Groceries 3% Vending machine merchandise 5% Vending machine commissions 25% Other Income 10%	Same as existing with the following additional items: Fish exchanging operations, including can exchange, fish icing, fish smoking, and fillet services 3% Telecommunications 50% Unauthorized use 20%

	EXISTING	PROPOSED
<b>Flat Rent:</b>	Wholesale fish activities at \$261/mo	See Fish Exchanging percentage rent above
<b>Rent Reviews:</b>	Rent reviews every five years.	Rent reviews every ten years.
<b>CPI Adjustments:</b>	Not applicable	CPI adjustments every five years for non-rent review years
<b>Construction Period:</b>		One year from commencement.
<b>Current Improvements:</b>	7,904 square foot building	8,704 square foot building
<b>Proposed Project:</b>		<p><b>Minimum Investment - \$2.7 million</b></p> <p>Demolition to existing foundation, new modern restaurant facility, incorporating an outdoor seating area with fire pit, second story viewing terrace with overflow seating, a lighthouse element proposed for public art, sustainable building materials, including dual glazed glass windows, recycled concrete materials, water efficient irrigation systems, and other energy efficient efforts. Business operations are proposed to continue through the construction process on adjacent leasehold. Leases will incorporate public plaza areas, public parking, and trash enclosures and storage/cleanouts.</p>
<b>Public Art:</b>		Board Policy 609 - 1% of total project cost
<b>Security Deposit:</b>		Waiving in lieu of construction guaranty and fund control
<b>Lease Guaranty:</b>		Jack and John Christianson for a period of five years



**PROPOSED OPTION AGREEMENT SUMMARY**

<b>Project:</b>	<b>Minimum Investment - \$2.5 million</b> Demolition to existing foundation, new modern restaurant facility, incorporating an outdoor seating area with fire pit, second story viewing terrace with overflow seating, a lighthouse element proposed for public art, sustainable building materials, including dual glazed glass windows, recycled concrete materials, water efficient irrigation systems, and other energy efficient efforts. Business operations are proposed to continue through the construction process in trailers onsite. Leases will incorporate public plaza areas, public parking, and trash enclosures and storage/cleanouts.
<b>Term:</b>	Eighteen months
<b>Option Fee:</b>	\$500
<b>Option Rent:</b>	Minimum annual rent of \$127,125 (plus improvement rent)
<b>Conditions Precedent to Exercise of Option:</b>	Schematic plans, preliminary plans, and working drawings approved by District; Project financing, development permits and performance bond/fund control; Post the lease security deposit; Provide Equal Employment Opportunity Program; Enter into construction contract;
<b>Guaranty:</b>	Jack and John Christianson





Attachment to Agenda Sheet No. 26

**SAN DIEGO UNIFIED PORT DISTRICT**  
San Diego, Ca.

000638



3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120468, San Diego, CA 92112-0468  
619.686.6200 • www.portofsandiego.org

## PROJECT REVIEW AND APPROVAL

**DATE:** January 23, 2013

**TENANT:** Shelter Island, Inc. dba Tom Ham's Lighthouse

**PROJECT TITLE:** Restaurant Renovation and Site Improvements  
(WORKING DRAWINGS)

**COST ESTIMATE:** \$3,500,000

**PROJECT LOCATION:** 2150 Harbor Island Drive, San Diego, California 92101

**PROJECT NUMBER:** 005-001-3034

**PLANNING DISTRICT:** Planning District 2, (Lindberg Field/Harbor Island)  
Precise Plan Figure 9, Subarea 22

The above project is hereby granted a **CONDITIONAL APPROVAL** as noted in this **PROJECT REVIEW AND APPROVAL** memo, with **CONDITIONS OF APPROVAL** as indicated below and further set forth in this memo (Tenant signature required on last page of approval letter).

Project Cost:	Approving Authority:	Initials:	Signature/Date:
<input checked="" type="checkbox"/> All projects	Darwin Vasquez Architect, RE	DV	<i>[Signature]</i> 1/23/13
<input checked="" type="checkbox"/> Under \$100,000	Jenner Smith Asset Manager, RE	JS	<i>[Signature]</i> 1/23/13
<input checked="" type="checkbox"/> \$100,000 to \$250,000	Anthony Gordon Area Manager, RE	AG	<i>[Signature]</i> 1/23/13
<input checked="" type="checkbox"/> \$250,000 to \$500,000	Karen Weymann Director, RE	KJW	<i>[Signature]</i> 1/23/13
<input checked="" type="checkbox"/> Over \$500,000, or as indicated below	BOARD APPROVAL REQUIRED		Approved on August 14, 2012 (Resolution No. 2012-119)

Conditions of Approval:	
<input checked="" type="checkbox"/> Project Specific Conditions	<input type="checkbox"/> Waterside Conditions
<input checked="" type="checkbox"/> Standard Conditions	<input checked="" type="checkbox"/> Traffic Control Conditions
<input checked="" type="checkbox"/> Storm water Conditions	<input type="checkbox"/> Clean up Conditions
<input type="checkbox"/> Signage Conditions	<input type="checkbox"/> Hot Work Conditions
<input checked="" type="checkbox"/> Utilities Conditions	<input type="checkbox"/> UDT
<input type="checkbox"/> Environmental Conditions	<input type="checkbox"/> Other

REAL ESTATE AGREEMENTS related to project approval:

- ☒ LEASE CONFORMANCE—project complies with existing lease terms
- ☐ LEASE or TUOP negotiations pending
- ☐ SUBLEASE approval needed
- ☐ EASEMENT
- ☐ RIGHT OF ENTRY

PROJECT DESCRIPTION

Ms. Susan Baumann, President of Shelter Island, Inc. dba Tom Ham's Lighthouse, has submitted for approval the accompanying working drawings and attached correspondence of the proposed Tom Ham's Lighthouse Restaurant Renovation. The site is located at 2150 Harbor Island Drive, San Diego, California on the westerly side of Harbor Island.

The Board granted concept approval of the Tom Ham's Lighthouse Restaurant Renovation (Project No. 005-001-2876, Resolution No. 2012-119 on August 14, 2012, and the Restaurant Renovation and Site Improvement working drawings are in substantial conformance with the Board approved concept.

The project consists of a comprehensive renovation and upgrade of the existing facilities into a contemporary venue within the existing building footprint. The project includes a major renovation, which will reposition the restaurant as a dining destination by adding outdoor dining, outdoor cocktail area, and new bar and cocktail lounge taking full advantage of the panoramic views of San Diego Bay and the skyline. The existing amenities will be significantly upgraded and modernized throughout the leasehold. New components include an outdoor deck dining area, relocation of the bar and lounge area and addition of a new public shoreline promenade. All interior surfaces in the public areas will be updated including the restrooms. Working drawings are prepared by Graham-Downes Architecture.

The project will cost approximately \$3.5 Million.

Scope of work will include demolition, renovation of existing structure and site improvements:

MAJOR PROJECT COMPONENTS

**Second Level - Interior:**

- Demolish existing bar and construct new L-shaped bar and cocktail lounge at the northern end of the dining room.
- New decorative window panels along the front of the building. The design of the windows has been modified from the concept drawings.
- The area of existing bar will be converted into a keg room.
- Updated ceiling and refinished exposed beams.
- Upgraded windows all throughout the dining area.
- New built-in banquet/ booth seatings.

- New floor finish.
- New doors with panic hardware.

**Second Level – Exterior:**

- A new terrace dining will be constructed to replace the existing tile roof. The proposed deck will be approximately 14' wide by 100' long (1,400 sq. ft.) with new clear glass railing enclosure.
- New exterior stair to dining terrace. The stair location was shifted from the concept drawing to the north end of the dining terrace so it will obstruct less views from the restaurant interiors at both levels.
- New access doors to deck.
- New accessible ramp.

**First Level – Interior:**

- Reconfigured banquet and function area with leveled flooring.
- New ceilings and lighting in banquet rooms.
- Remodeled service bar and service station.
- New ADA access ramp.
- Upgrades to the main stair.
- Upgraded windows throughout the banquet room.
- New storage space underneath the new stair.
- New main door.

**First Level – Exterior:**

- Replace existing wood rails with glass railings on steel posts.
- New exterior stair to main floor.
- Existing deck will be recoated with a slip resistant and durable traffic coating.
- Demolish existing wood trellis, wood posts and concrete pads at the deck area.
- Demolish existing stair.
- New roof eaves along South and West side of the building.

**Site Improvements:**

- Addition of an outdoor landscape garden plaza to accommodate special gatherings and a wedding venue.
- Update the building appearance at the point of arrival.
- Construction of two (2) new lookout areas with bench seating.

- Reconfigured parking lot and new right-of-way improvements including new driveways, accessible sidewalk and new landscaping.
- Remove portions of the existing wood trellis in front of the building to create space for the new exterior stair.
- New 8 foot wide shoreline public promenade along the perimeter of the leasehold.
- Open up wall to courtyard in front of the lighthouse.
- Relocate the historic fog bell currently situated in the parking lot, to the entrance for display.
- Existing anchor will stay in its current location.
- New paving and landscape. Low water usage plants will be added to the new appearance of the renovated restaurant.

#### PARKING ANALYSIS

Construction of the promenade reduces the parking on the leasehold from 200 stalls to approximately 192 stalls. Since the District's parking guidelines require 0.25 spaces (Restaurant - Harbor Island) per restaurant seat (e.g. 444 seats x .25 = 111 spaces), the proposed parking exceeds current District guidelines, ensuring an adequate reserve of public parking on the west end of Harbor Island. Therefore, the 111 spaces required are sufficiently covered by the spaces available (192). Parking lot and drive entrances will be reconfigured to allow for a shoreline public promenade around the end of the island. Passenger drop-off and parking space currently located at entrance will also be reconfigured to allow the landscape area in front.

	Existing	Proposed
Parking Spaces	200	192
Restaurant Seating Capacity	368	444
Building Square Footage	21,360 sq. ft.	22,832 sq. ft.

#### SHORELINE PUBLIC PROMENADE

A new eight (8) foot wide shoreline public promenade will be constructed along the perimeter of the leasehold. It will include a west facing lookout with bench seating area for public to enjoy. The shoreline promenade will be connected to the existing Harbor Island public promenade that goes around Harbor Island. The renovation project will also include two (2) public lookout points located on the west end of the leasehold and on the south eastern corner of the leasehold adjacent to the new Plaza Garden Court.



**LANDSCAPING**

Landscaping improvements in the parking areas includes removal of two (2) shade trees and will be replaced with approximately seven (7) shade trees. A portion of the existing parking lot located at the southeastern corner of the leasehold will be converted into a landscape garden plaza to accommodate special events and weddings.

**SIGNAGE**

No signage has been submitted in this proposal.

**WATERSIDE**

Not applicable

**UTILITIES**

Submitted site plan, architectural, civil, mechanical, plumbing and electrical engineering drawings and designs for construction shall be subject to City of San Diego's Building department's permit review process. Some existing utilities will be relocated as necessary. A utility relocation plan must be submitted to the District for review.

**INTER DEPARTMENTAL REVIEW**

A Stormwater Pollution Prevention Plan (SWPPP) is required for this project and the SWPPP has been approved by ELUM. An approved Standard Urban Stormwater Mitigation Plan (SUSMP) is required for this project before start of any site work activities (If Applicable). Please coordinate with Allison Vosskuhler, Senior Environmental Specialist, at (619) 686-6434.

**PUBLIC ART**

Tom Ham's Lighthouse must comply with the Port Public Art Program (BPC Policy No. 608) TENANT PERCENT FOR ART requirement. The District is in receipt of a Tom Ham's Lighthouse public art proposal.

**ENGINEERING**

All right-of-way improvements and accessibility features must comply with the District's standards. The new accessible sidewalk ramps need to match the existing Port District improvements. All existing utilities in that area shall be taken into consideration for the new location of the driveway and must be protected in place or relocated as necessary.

**ENVIRONMENTAL AND LAND USE MANAGEMENT**

District Environmental and Land Use Management Department has reviewed the project and determined that this project is exempt under CEQA and excluded under the Coastal Act. (See CEQA and Coastal Review sections below.)

Categorical Exemptions

- a. Existing facilities (SG § 15301) (Class 1): Includes operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:
  - (3) Interior and exterior remodeling or alterations, involving negligible or no expansion of use beyond that previously existing, including, but not limited to, marine terminal facilities, and marine-oriented commercial, industrial, and public and commercial recreational facilities, including buildings, piers, wharves, marine ways; railroads; airport facilities, runways, taxiways, aprons, and ancillary structures to those facilities; or mechanical systems and equipment.
- d. Minor Alterations to Land: (SG § 15304) (Class 4): Includes minor alterations in the condition of land, water and/or vegetation not involving removal of mature, scenic trees, including but not limited to:
  - (5) New gardening or landscaping. (97191-X-5474)

COASTAL ASSESSMENT

Port Master Plan Reference:

The project is located in Planning District 2, Harbor Island/Lindbergh Field, which is delineated on Precise Plan Map Figure 9. The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation. The project conforms to the certified Port Master Plan because the project proposes interior and exterior alterations of an existing commercial structure consistent with the certified land use designation.

CATEGORICAL DETERMINATION

The above project proposes renovations to an existing commercial structure with an increase of approximately 1,500 square feet, which is less than the increase described below. This project is consistent with the existing certified land use designation and is Categorically Excluded under Sections 8.a (5) and (12) and 8.d (2) of the District's *Coastal Development Permit Regulations*, as follows:

Excluded Developments

- 8a. Existing facilities:  
The operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:
  - (5) Additions to existing structures, provided the addition will not result in an increase of more than 50 percent of the floor area, or 2,500 square feet, whichever is less; or additions to existing structures of not more than

10,000 square feet of floor area. If the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the Port Master Plan, and where the area in which the project is located is not environmentally sensitive.

(12) Interior and exterior remodeling of airport facilities, marine terminal facilities, existing marine-oriented industrial structures, and commercial or recreational facilities;

d. Minor Alterations to Land: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of mature, scenic trees, including but not limited to:

(2) New gardening or landscaping; (C12-2-640)

The District is approving the proposed project subject to the following conditions, as noted on page 1 of this Project Review and:

**PROJECT SPECIFIC CONDITIONS:**

1. The tenant must acquire proper permits and approval from the District prior to initiating any construction activities on the site.
2. Tom Ham's Lighthouse shall install standard San Diego "Coastal Access" signs in clear view along the promenades at the entrances into the leasehold from Harbor Island Drive.
3. An approved Standard Urban Stormwater Mitigation Plan (SUSMP) is required for this project before start of any site work activities (if Applicable).
4. Final cost estimate and construction schedule shall be submitted for District review.
5. Tom Ham's Lighthouse is encouraged to incorporate as many energy and resource conscious measures as possible in the design and operation of this facility.
6. A Right-of-Entry Permit must be obtained for any construction or related activities (staging, etc.) within the District Tidelands. Please contact Jenner Smith, Senior Asset Manager (619) 686-6289 for coordination of the permit.
7. It is Tom Ham's Lighthouse responsibility to ensure structural integrity and durability of the proposed deck. The building remodel shall be engineered by a licensed structural / civil engineer.
8. Fire Department access must be reviewed and approved by the City of San Diego's Fire Marshall.
9. Construction staging areas and temporary facilities will need to be defined and submitted to the District for approval.

10. The proposed Plaza Garden Court shall be accessible to the public when events are not occurring and will include a bench seating area near the south eastern corner of the leasehold.
11. Tenant to complete the Tenant Percent for Art program (BPC No. 608) for this project.
12. This project qualifies the Tenant for a new thirty (30) year lease with one ten (10) year option.

**STANDARD CONDITIONS:**

1. All applicable permits must be obtained (including, but not limited to, all applicable City of San Diego permits and approvals, Army Corps of Engineers (ACOE) and Regional Water Quality Control Board (RWQCB) permits and all applicable code regulations and conditions of approval must be met. All final outside agency inspection approvals must be available for District inspection when the project is completed.
2. Notify the District's Project Architect if a District Construction Inspector is needed a minimum of 72 hours prior to commencement of work on the project. The District Construction Inspector assists the tenant in complying with District conditions of approval pertaining to construction and also assists with coordinating access to the District's utilities and services. The District Construction Inspector does not review or sign-off for building code compliance; this is the City of San Diego Building Inspection Department's responsibility.
3. Tom Ham's Lighthouse and/or their contractor must provide the District with a copy of any application made to any governmental regulatory agency for development or construction permits or license within 5 days of making said application and a copy of the permit, license or other authorization issued by any governmental regulatory agency within 10 days of its receipt.
4. Tom Ham's Lighthouse is responsible for compliance with the Americans with Disabilities Act (ADA) which became effective January 26, 1992.
5. All materials and debris generated by the project must be disposed of off District tidelands and in accordance with federal, state, and local ordinances.
6. Tom Ham's Lighthouse and/or their contractor must provide the District with a copy of the approved set of working drawings and a copy of the City of San Diego Building Permit within 10 days of its receipt.
7. District improvements, including right-of-way improvements such as sidewalks, curb, gutters, landscaping damaged as a result of this project, shall be repaired or replaced to the satisfaction of the District.
8. As-built drawings must be submitted to the District within 60 days of the project's completion.
9. Any new outdoor dining areas shall be submitted as a comprehensive proposal, complete with barriers that comply with the requirements of the Alcoholic Beverages Commission.

10. This working drawings approval letter is not intended and does not operate to modify or amend Tom Ham's Lighthouse existing obligations to the District under the terms of its lease with the District. In the event of a conflict or material inconsistency between the terms of this approval and the terms of the lease, the terms of the lease shall control.

**STORMWATER CONDITIONS:**

1. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit), as adopted, amended, and/or modified. The Municipal Permit prohibits any activities that could degrade stormwater quality.

Post-construction / operational use of this project site must comply with the Municipal Permit and District direction related to permitted activities, including the requirements found in the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: [www.portofsandiego.org/sandiego\\_environment/jurmp.asp](http://www.portofsandiego.org/sandiego_environment/jurmp.asp) or by contacting the District Environmental and Land Use Management Department at (619) 686-6254.

2. This project requires the development and implementation of a District Storm Water Pollution Prevention Plan (SWPPP) for projects that are less than one acre. The District SWPPP must describe the implementation and maintenance of the Storm Water Pollution Prevention Best Management Practices (BMPs) used to prevent unauthorized discharges to the stormwater conveyance system from construction activities.
3. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations must be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean must be reported immediately to the District Environmental and Land Use Management Department (619) 686-6254, in order to address any regulatory permit requirements regarding spill notifications.

**TRAFFIC CONTROL CONDITIONS:**

1. Implementation of traffic control plans must conform with the latest edition of the Caltrans Traffic Manual and submitted to the City of San Diego for approval.
2. It is the responsibility of the tenant and his Contractor when performing work on or adjacent to a highway or street to install and maintain adequate traffic safety devices for the traveling public as well as the workers.

**UTILITIES CONDITIONS:**

1. All underground electrical except low voltage, i.e., 24 volts or less, as in sprinkler controllers and cable TV, shall be encased in three inches of 2,500 psi minimum strength

concrete all around. All underground high voltage encasement must include yellow plastic warning tape running the length of the run.

2. All ground transformers, junction boxes, mechanical equipment, trash enclosures and other aboveground equipment must be sufficiently landscaped, screened with earth berms, shrubbery, small trees, or heavy ground cover or similar screening methods to lessen visual impacts.
3. Any proposed and probable utility outages shall be coordinated with the District's Construction Inspector at (619) 725-6059.
4. Specialized mechanical and electrical equipment is not reviewed by the District. The applicant is responsible for providing an installation that conforms to the manufacturer's printed instructions, and which meets all applicable safety and environmental standards. Design adequate enclosures to fully conceal the equipment from view.
5. Tenant is responsible for notification, approval and coordination of the agencies responsible for the various utilities and public facilities that may be affected by this project.
6. All temporary facilities shall be removed within 60 days after the substantial completion of construction.
7. The contractor must contact Underground Service Alert at 800-422-4133 at least two working days before digging.
8. Utility company markings painted on sidewalks and streets to prevent underground lines from being dug up during construction must be removed within 30 days after work is completed.

Tenant: Please have an authorized representative sign in the area below accepting the conditions set forth in this approval letter. Please return a signed copy of this letter to the District no later than February 7, 2013. If a signed copy of this letter is not returned by February 7, 2013, this Conditional Approval will be null and void.

I hereby accept the Conditions of Approval as set forth in this PROJECT REVIEW AND APPROVAL letter:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Distribution List:**

- ☒ Ken Silbragon, Inspector
- ☒ A. Vosskuhler, ELUM
- ☒ J. Smith, Senior Asset Manager, Real Estate

SDUPD Docs No. 561445

## II. PROJECT PLANS



A-6-PSD-89-352



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3900 • P.O. Box 488, San Diego, California 92112

To: Mr. Peter Douglas  
EXECUTIVE DIRECTOR  
CALIFORNIA COASTAL COMMISSION  
631 HOWARD STREET  
SAN FRANCISCO, CA 94105

Date: November 21, 1989

TIME RECEIVED 9:38  
men

RECEIVED  
NOV 22 1989  
CALIFORNIA  
COASTAL COMMISSION

## NOTICE OF BOARD ACTION on a Coastal Development Permit for

Project: Kona Kona Club REDEVELOPMENT

Coastal Project No.: A89-1-268

By Resolution No. 89-357, dated November 21, 1989, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below.

- ☒ This development has been approved as submitted.
- ☐ This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this Notice.

The following noted [X] item applies to this finding.

- ☐ This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Port Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- ☒ This action is APPEALABLE under Section 30715 of the California Coastal Act of 1976. This Notice will be sent within five (5) days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this Notice. Prospective appellants should contact the Coastal Commission for more information.

DON L. NAY, PORT DIRECTOR

By:

John P. Pearson

ASSOCIATE PROJECT ANALYST

UPD Form No. 741 (Revised 10/88)

001214

Re Coastal Development Permit - ]  
 ]  
 KONA KAI CLUB REDEVELOPMENT . . . ]  
 ]

---

RESOLUTION 89-357

WHEREAS, the San Diego Unified Port District (District) and Kona Kai Resort Associates, a California General Partnership, are parties to a lease, as amended, for the operation of a hotel and related facilities located on Shelter Island Drive, San Diego; and

WHEREAS, the Board of Port Commissioners (Board) on March 7, 1989, granted conceptual approval for Kona Kai Resort Associates to redevelop said hotel and related facilities (Project) located on tidelands in the City of San Diego; and

WHEREAS, the San Diego Unified Port District is trustee of said tidelands; and

WHEREAS, an application has been prepared for a Coastal Development Permit to provide for the construction of said Project; and

WHEREAS, the Board held a noticed public hearing on the Coastal Development Permit on November 21, 1989; and

WHEREAS, the Board finds that said application and attachments thereto contain correct and accurate statements of fact; and

WHEREAS, the Board has concluded that said Project conforms to the Port Master Plan; and

WHEREAS, the Board has certified the Environmental Impact Report entitled "KONA KAI CLUB REDEVELOPMENT, Shelter Island" (UPD No. 83356-EIR-178), NOW,  
 THEREFORE,

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

That the Board further finds:

1. The Project consists of the demolition of the existing Kona Kai Club facilities and redevelopment into a 318-room hotel with club facilities. Located within three major structures, said Project will include two restaurants, banquet and meeting room space, commercial shops, a health club, recreational facilities, and a 900-space subterranean parking garage. The 41' height limit will be strictly observed. A sheet pile bulkhead and waterfront promenade will be installed along the shoreline.

2. The Project is located in Planning District 1 of the Port Master Plan, the Precise Plan for which provides for use as "COMMERCIAL - Commercial Recreation." The proposed use for the Project is consistent with the use and development concept for the Shelter Island/La Playa area as provided in said Port Master Plan.

3. The proposed Project which is entitled "KONA KAI CLUB REDEVELOPMENT" is consistent with and conforms to the Port Master Plan and, accordingly, the Port Director or his authorized representative is hereby authorized and directed to issue a Coastal Development Permit for said Project. Said Permit shall require conformance and compliance with the mitigation measures in the resolution which certified the Environmental Impact Report for said Project.

ADOPTED this 21st day of November, 1989.

Presented By: DON L. NAY, Port Director

By *James J. Bellum*

Approved:

JOSEPH D. PATELLO, Port Attorney

*J. Patello*

San Diego Unified Port District

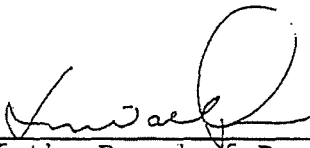
Office of the Clerk

CERTIFICATION OF VOTE

Passed and adopted by the Board of Port Commissioners of the San Diego Unified Port District on November 21, 1989, by the following vote:

Commissioners	Yeas	Nays	Excused	Absent	Abstained
Raymond W. Burk	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
W. Daniel Larsen	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Robert Penner	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Milford W. Portwood	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Delton C. Reopelle	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
William B. Rick	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>X</u>
Louis M. Wolfsheimer	<u>      </u>	<u>      </u>	<u>X</u>	<u>      </u>	<u>      </u>

AUTHENTICATED BY:

  
\_\_\_\_\_  
Chairman of the Board of Port Commissioners

CHRISTINE M. STEIN  
Clerk of the San Diego Unified Port District

By: Mary Sue Rasmussen  
Deputy Clerk

(Seal)

Resolution Number: 89-357  
or  
Ordinance Number:         
Adopted: 11/21/89

001217

6-PSD-97-186



## Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 488, San Diego, California 92112-0488

### COASTAL DEVELOPMENT PERMIT

Applicant: Arthur Engle  
Port Coronado Associates / Ferry Landing Associates  
P.O. Box 13308  
San Diego, CA 92170-3308

Agent: George Palermo, General Manager  
Ferry Landing Associates, LLC  
1511 Marine Way  
Coronado, CA 92118

Project: THE FERRY LANDING EXPANSION

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Development Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-243, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a ☐ Emergency ☐ Non-appealable ☒ Appealable Coastal Development Permit.

Date of Board Action: October 21, 1997

BPC Resolution No. 97-248

Date of Permit: November 18, 1997

Application No. 97018-62-42

Permit No. CDP-97-3

The project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Section 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District, and subject to the terms, conditions, and provisions hereinafter stated:

001218

Document No.

36851

Filed

DEC 18 1997

SD UNIFIED PORT DISTRICT Clerk's Office

**DEVELOPMENT**

Construction of two restaurants with a total of approximately 18,500 square feet of gross floor area, extension of the bicycle path along the waterfront, approximately 6,500 square feet of offices, parking for approximately 255 vehicles, rip-rap and revetment shoreline protection, and landscaping. The project is further described in the Environmental Assessment for the Ferry Landing Expansion dated July 20, 1995, and in current plans on file with the San Diego Unified Port District.

**STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the project as approved by the San Diego Unified Port District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the San Diego Unified Port District.
5. Permittee shall commence development within two years following the date of permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
6. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. This permit shall not be valid until two copies of the permit have been returned to the Planning and Environmental Management Department of the San Diego Unified Port District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations and provisions of the permit.

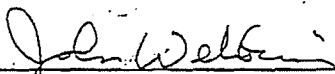
**SPECIAL PROVISIONS**

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm, (b) keep construction equipment as far as possible from sensitive receptors, and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.

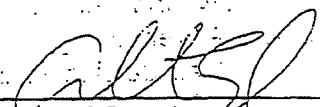
2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting.
3. To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from residences.
4. To minimize noise from normal operations, the permittee will relocate the access/egress driveway west of A Street (extended).
5. To minimize noise, a sound attenuation wall will be constructed at the property line on the south and east side of the project site. The height of the wall will be no higher than 8 feet, however it may be less than 8 feet if agreed to, in writing, by the abutting property owner.
6. The permittee will arrange for pick-up of trash dumpsters between 7:00 am and 7:00 pm.

If you have any questions concerning this permit, please contact the Planning and Environmental Management Department of the San Diego Unified Port District.

LAWRENCE M. KILLEEN, Executive Director

By:   
JOHN J. WEHRING, Senior Environmental  
Planner

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

  
Signature of Permittee

11/20/97  
Date



DRAFT

COASTAL DEVELOPMENT PERMIT  
AMENDMENT

Applicant: Arthur Engle  
Port Coronado Associates / Ferry Landing Associates  
P.O. Box 13308  
San Diego, CA 92170-3308

Agent: George Palermo, General Manager  
Ferry Landing Associates, LLC  
1511 Marine Way  
Coronado, CA 92118

Project: THE FERRY LANDING EXPANSION

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California coastal Act of 1976 and the Coastal Development Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-243, and on February 14, 1980, Resolution No. 84-62, in accordance with the provisions for the issuance of a [ ] Emergency [ ] Non-appealable [X] Appealable Coastal Development Permit.

Date of Board Action:	October 21, 1997	Amendment:	<del>xxxxx</del> 2008
BPC Resolution No.	97-248	Amendment:	2008- <del>xx</del>
Date of Permit:	November 18, 1997	Amendment:	<del>xxxxxx</del> 2008
Application No.	97018-62-42	Amendment:	2008 013-62-154
Permit No.	CDP-97-3		

The project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Section 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This amendment is limited to the modifications described below and set forth in material on file with the San Diego Unified Port District (District). All remaining terms, conditions, limitations and provisions of CDP-97-3 unless noted as deleted in this amendment are to remain in effect.

### DEVELOPMENT- Amendment

Insert – The applicant has completed one single story restaurant of approximately 11,700 square feet, the extension of the bicycle path along the waterfront, approximately 6,500 square feet of two story office space, a paved parking lot for 269 vehicles, the relocation of the access/egress driveway west of A Street (extended), a sound attenuation wall on the south and east side of the project site, revetment shoreline protection, and landscape improvements for most of the 3.9 acre site. The applicant proposes to construct the second single story restaurant of approximately 11,500 square feet, pavement approaches to the restaurant entry/service areas and adjacent landscape improvements to complete development of the entire site. The project is further described in the Environmental Assessment for Arthur's Prime Steak House (Second Restaurant), dated April 15, 2008, and in plans attached to this permit amendment.

### STANDARD PROVISIONS - Amendment

1. Insert - Permittee shall adhere strictly to the plans for the second restaurant project as approved by the San Diego Unified Port District, attached and made a part of this permit amendment.
5. Insert – Permittee shall commence the second restaurant development within two (2) years following the date of permit amendment issuance by the District.
8. Insert - This permit amendment shall not be valid until two copies of the permit amendment have been returned to the Land Use Planning Department of the San Diego Unified Port District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, condition, limitations and provisions of the permit amendment.

### Insert - SHORT TERM CONSTRUCTION MEASURES

1. Insert - To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to occur weekdays from 7:00 am to 7:00 pm as much as practical; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. Insert - To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting of work areas.
3. Insert - To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.

4. Insert - All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Insert - Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Insert - Access points onto local paved roads shall be kept clean and swept as necessary, if visible soil material is carried onto adjacent public paved roads, using a water sweeper.
7. Insert - Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Insert - Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. Insert - All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Insert - Diesel equipment shall use low-sulfur diesel fuel.
11. Insert - Electric equipment shall be used to the maximum extent feasible during construction.
12. Insert - Construction employees shall be provided with transit and ride share information.
13. Insert - Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Insert - Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Insert - All Port of San Diego tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Pennit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate StormSewer 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 Pennit). This pennit was recently adopted in January of

2007, and replaces the previous pennit Order No 2001-01. All jurisdictions are required to be in full compliance with Order R9-2007-0001 by January 24, 2008. The Municipal Pennit prohibits any activities that could degrade stomnwater quality.

Post-constaiction / operational use of this project site must comply with the Municipal Pennit and District direction related to pemnitted 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/sandiegoenvironment/susmp.asp> or by contacting the Environmental Services Department, (619) 686-6254.

16. Insert - This project is subject to the Port Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, 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) that meets District requirements. Project approval requires full implementation of all USMP structural and non-structural BMPs throughout the life of the project.

Insert - The Port is currently modifying its development and redevelopment processes that will include modifications to the Port SUSMP, greater reliance of low impact design techniques and the incorporation of a Hydro-modification plan. These changes are being made to meet the requirements of the newly adopted Municipal Permit. During this transition period and until the updated Port SUSMP is final, the project USMP is to be designed to follow the County of San Diego's Draft Model SUSMP as revised November 6, 2007, and the Municipal Permit. A link to these interim guidance documents can be found on the District website

<http://www.portofsandiego.org/sandiegoenvironment/susmp.asp>

Insert - The implementation and maintenance of the USMP BMPs constitute regulatory obligations for the leasee, and failure to comply with the Municipal Permit, the JURMP, or the Port approved USMP, including the specific BMPs contained therein, may be considered a default under the lease.

17. Insert - Any previously unidentified historic resources discovered during project construction will be afforded full protection by the permittee and contractor until qualified personnel can assess their importance.

#### SPECIAL PROVISIONS - Amendment

1. Delete - To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm, (b) keep construction equipment as far as possible from sensitive receptors, and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.

2. Delete - To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular wetting.
3. Delete - To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from residences.
6. Delete - The permittee will arrange for pick-up of trash dumpsters between 7:00 am and 7:00 pm.
1. Insert - The permittee will arrange for pick-up of trash dumpsters between 8:00 am and 5:00 pm.
2. Insert - The permittee will require operators to use and regularly maintain after-burners or carbon filters on exhaust venting to reduce odorous emissions from food establishments.
3. Insert - To reduce natural gas, electrical energy and water consumption; the permittee's architect and contractor will design and construct the building structures for efficient energy use. Energy and water saving devices will be installed as part of the proposed project.
6. Insert - Trash compactors will be fully enclosed behind sound proof material.
7. Insert - Air conditioning units will be out-of-sight from adjacent residential dwellings with a solid wall buffer to prevent noise impacts.

If you have any questions concerning this permit amendment, please contact the Land Use Planning Department of the San Diego Unified Port District.

BRUCE B. HOLLINGSWORTH, Executive Director

By: \_\_\_\_\_  
JOHN W. HELMER, Acting Director  
Land Use Planning Department

I have read and understand the terms, conditions, limitations, and provisions of the permit and this amendment, and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

001225



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 120488, San Diego, California 92112-0488

[www.portofsandiego.org](http://www.portofsandiego.org)

November 15, 2001

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

**RECEIVED**

NOV 19 2001

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

## NOTICE OF BOARD ACTION on a Coastal Development Permit for

Project: JIMSAIR RESTAURANT/OFFICE REMODEL  
2904 Pacific Highway, San Diego, CA 92101

### PROJECT DESCRIPTION

The proposed project consists of an approximately 13,200 square foot, three-story addition to the Jimsair restaurant and corporate office. The project also proposes to realign the current parking lots in front of the Jimsair Building on Pacific Highway to accommodate the addition. The restaurant facility would incorporate a separate sewer system with a grease interceptor system, as well as enlarge the dining area and expand the existing kitchen and restrooms. The corporate office addition would provide additional lobby space, offices, conference rooms, restrooms, flight planning rooms and employee facilities. Upgrades would be made to the entire Jimsair facility for compliance with the Americans with Disabilities Act (ADA), including the installation of an elevator, accessible restrooms and shower facilities, and wider hallways and doors.

### PROJECT LOCATION

The project is located at 2904 Pacific Highway, San Diego, CA 92101.

### CONSISTENCY WITH CERTIFIED PORT MASTER PLAN AND CALIFORNIA COASTAL ACT

The project is located in Planning District 2, Lindbergh Field/Harbor Island on property designated as Airport Related Commercial. The proposed project is the expansion of an existing aviation company's restaurant and office. Aviation service leasing and restaurants are both allowable uses under the Airport Related Commercial land use designation. Therefore, the project conforms with the planned use designation, and is thus consistent with the certified Port Master Plan.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The project is consistent with the Chapter 3 policies of the Coastal Act as follows:

### ARTICLE 2-PUBLIC ACCESS

The project is consistent with Sections 30210, 30211, 30212, 30212.5, and 30214. This site

001226

operates within Lindbergh Field and is not adjacent to coastal resources. The nearest recreational amenity south of the site is the public promenade along North Harbor Dr. and Harbor Dr., which will not be impacted by this proposed project. The proposed project: will not affect access to recreational opportunities; will not interfere with the public's right of access to the sea because it is not adjacent to the sea; does constitute "new development", however, adequate access exists nearby (Pacific Highway) so no public access route is required; parking facilities are distributed throughout the site (north and south parking lot) to the extent feasible; and the expansion of Jimsair would not affect or limit public access to coastal resources.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222.5, and 30224. The proposed project operates within Lindbergh Field and therefore would not impact: coastal areas suited for water-oriented recreational activities; oceanfront land suitable for recreational use; upland area to support coastal recreational uses; and recreational boating use of coastal waters.

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The proposed project operates within Lindbergh Field and therefore would not involve: marine resources; water bodies; Jimsair does involve crude oil, gas, petroleum products, and hazardous materials, however, protection against spillage is enforced through a Hazardous Materials Business Plan, Stormwater Pollution Prevention Plan, as well as adherence to OSHA and CalOSHA regulations. The proposed project does not involve: diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project operates within Lindbergh Field and therefore the project: is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. The proposed project: will be located in close proximity to existing developed areas; will not impact scenic coastal areas because it is not located adjacent to coastal resources; will improve the visual quality of the area with its design; will not impact public access to the coast since it is not adjacent to the coast; and provides adequate parking facilities. Jimsair currently provides a bus stop and is located near a trolley stop. The proposed project: is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not significantly increase energy consumption and vehicle miles traveled. The proposed project is not: a visitor destination point for recreational uses; public works facility; associated with a sewage treatment plant; nor is it a coastal-dependent development.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not

involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### BOARD ACTION

By Resolution No. 2001-256 dated November 13, 2001, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- [ ] This development has been approved as submitted.
- [X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. Two speakers were present at hearing on November 13, 2001. One via speaker phone, Noel Nuedeck, emphasized that the project must comply with Title 24, as well as Americans with Disabilities (ADA) requirements. The second speaker, Jack Monger, supported the project.

DENNIS P. BOUEY  
Executive Director

By: 

WILLIAM B. CHOPYK  
Manager, Planning Services

Enclosure(s): Attachment A  
Jimsair Restaurant/Office Remodel Final Negative Declaration

cc: Howard Bass, Jimsair Applicant  
Dan Wilkens, SDUPD  
Ralph Hicks, SDUPD  
Bryan Enarson, Airport Properties  
Chris Murphy, Airport Properties  
John Lorman, Procopio Cory Hargreaves & Savitch



## ATTACHMENT A

### STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall perform all work in accordance with applicable federal, state, and local regulations.
5. Permittee shall conform to the permit rules and regulations of the District.
6. Permittee shall commence development within two (2) years following the date of permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. The permittee shall be responsible for the cleanup and proper disposal of any debris deposited on any city street, public right-of-way or public/private properties.
10. Permittee shall minimize the release of major urban area runoff pollutants such as sediment, nutrients, oxygen-demanding substances, road salts, heavy metals, petroleum hydrocarbons, pathogenic bacteria, and viruses.

### SHORT TERM CONSTRUCTION MEASURES

001229

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.

3. To minimize nuisance effects from lights or glare during construction, the contractor will use sodium vapor lights, and will shield and direct night lighting away from boat docking areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be covered.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be swept twice per day if visible soil material is carried onto adjacent public paved roads using a water sweeper (once during the day and once at the end of the day):
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Project proponent shall prevent trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Project proponent shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented.
14. Project proponent shall require all employees that are exposed to noise levels in excess of OSHA hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Permittee shall implement appropriate erosion and sediment control practices during the construction stage in order to reduce sediment loadings to surface waters.

## **ENVIROMENTAL PROVISIONS**

**001230**

1. Permittee shall promptly inform the District of its discovery of any debris, solid waste, hazardous waste, or any other material, including soils or groundwater, extracted or removed in connection with actions undertaken on the premises during the course of this project.
2. Permittee shall minimize the release of major urban area runoff pollutants such

as sediment, nutrients, oxygen-demanding substances, road salts, heavy metals, petroleum hydrocarbons, pathogenic bacteria, and viruses.

3. The permittee shall be responsible for the cleanup and proper disposal of any debris deposited on any city street, public right-of-way or public/private properties.
4. Prior to construction, permittee shall prepare and implement a Stormwater Pollution Prevention Plan including Best Management Practices. Best Management Practices shall be applied to prevent stormwater run-off from entering storm drains and the San Diego Bay.

#### SPECIAL PROVISIONS

1. Permittee shall comply with all conditions in the Conditional Project Approval Letter issued by the Port District.
2. Permittee shall comply with all Title 24/Americans with Disabilities Act (ADA) requirements.
3. A transit easement for the Metropolitan Transit Development Board (MTDB) shall be included in the revised Jimsair lease.



# Port of San Diego

and Lindbergh Field Air Terminal

(619) 686-6200 • P.O. Box 120488, San Diego, California 92112-0488

[www.portofsandiego.org](http://www.portofsandiego.org)

March 28, 2002

**RECEIVED**

APR 02 2002

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Brian Manning  
Loews Coronado Bay Resort  
4000 Coronado Bay Road  
Coronado CA 92118

## NOTICE OF BOARD ACTION on a Coastal Development Permit for

Applicant: Brian Manning, Loews Coronado Bay Resort, (619) 424-4000  
Project: Loews Coronado Bay Resort Spa Expansion  
Location: 4000 Coronado Bay Road, Coronado CA 92118

### PROJECT DESCRIPTION

The proposed project consists of the spa conversion/expansion located at the Loews Coronado Bay Resort Spa Expansion at 4000 Coronado Bay Road in Coronado. The proposed project consists of an 8,680-square-foot conversion and expansion of the existing 3,967-square-foot fitness center to a new spa facility. The proposed spa conversion and expansion would increase the size of the spa facility to 10,197 square feet of building area, with an additional 2,450-square-foot outdoor patio area, for a total spa area of 12,647 square feet. The spa facility expansion will replace the easternmost two of the existing five tennis courts. The existing spa area will be reconfigured and remodeled, and the spa conversion and expansion will include: a main reception area, lounge, juice bar, hair/nail salon, a 300-square-foot retail area, aerobics and weight rooms, two new jacuzzis, and 10 indoor treatment rooms. The new outdoor patio will contain four outdoor massage cabanas and a Watsu massage pool. The new spa expansion wing will have an exterior covered walkway with new hardscape and a decorative entry trellis. The existing pool deck area above the spa facility will be extended over the spa expansion area and will include a new architectural trellis, perimeter hedge, and railing. The project appearance will match that of the existing hotel, with the proposed height of the expanded spa facility at 11 feet. The spa conversion and expansion will take about 10 months to complete.

001232

EXHIBIT NO. 6
APPLICATION NO.
<b>A-6-PSD-02-063</b>
Notice of Board Action
Page 1 of 4
California Coastal Commission

CONSISTENCY WITH CERTIFIED PORT MASTER PLAN

The project site is located in Planning District 8, Silver Strand South, on property classified in the Port Master Plan as Commercial Recreation. The proposed project is the conversion and expansion of an existing spa facility, which is an ancillary hotel use. Hotels and ancillary uses are allowable under the Commercial Recreation land use designation. Therefore, the proposed project conforms to the certified Port Master Plan.

CONSISTENCY WITH CALIFORNIA COASTAL ACT

The project is consistent with the Chapter 3 policies of the Coastal Act, as follows:

ARTICLE 2—PUBLIC ACCESS. The project is consistent with Sections 30210, 30211, 30212, 30212.5, and 30214. The Port Master Plan does not designate any areas on or near the Loews site for public access since the entire isle is part of a tenant leasehold. Furthermore, the proposed project will result in the replacement of two of the five existing tennis courts with the spa expansion, and it is anticipated that the three remaining tennis courts will be sufficient in meeting existing and future demand of the hotel. The proposed project: will not interfere with the public's right of access to the sea; parking facilities on the project site are distributed throughout several sites (to the extent feasible for a hotel facility); and public access to the existing hotel facility would not be affected or limited.

ARTICLE 3—RECREATION. The proposed project is consistent with Sections 30220, 30221, 30222.5, and 30224. The proposed project is located within an existing hotel facility, and therefore would not impact: coastal areas suited for water-oriented recreational activities, oceanfront land suitable for recreational use; upland area to support coastal recreational uses; and recreational boating use of coastal waters.

ARTICLE 4—MARINE ENVIRONMENT. The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The proposed project will be located within an existing hotel facility, and therefore does not involve: any marine resources; any water bodies; use of crude oil, gas, petroleum products, or hazardous substances; diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline-altering construction; alterations of rivers and streams; and Bolsa Chica wetlands.

ARTICLE 5—LAND RESOURCES. The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project will be located within an existing hotel facility, and therefore, the project: will not be located in or adjacent to any environmentally sensitive habitat areas; would not involve any prime agricultural land; will not involve productive soils and timberlands; and would not involve archaeological or paleontological resources.

ARTICLE 6—DEVELOPMENT. The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. Consistent with Section 30250, the new commercial development will be located within an existing developed area. Consistent with Section 30251, the height of the spa expansion will match that of the existing hotel at 11 feet. Consistent with Section 30252, the proposed project will provide adequate parking facilities as the Loews' parking supply of 644 spaces exceeds the hotel's parking requirement of 534 spaces by 110 spaces, or 21 percent. Consistent with Section 30253, the proposed project: will not contribute significantly to erosion or geologic instability; will not negatively impact air quality; and will not increase energy consumption or vehicle miles traveled. Consistent with Sections 30254 and 30254.4, the proposed project does not involve public works facilities and does not involve the development of a sewage treatment plant. Consistent with Section 30255, the proposed project does not preclude any coastal-dependent development.

ARTICLE 7—INDUSTRIAL DEVELOPMENT. The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project: does not involve a coastal-dependent industrial facility or use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### BOARD ACTION

By Resolution No. 2002-73, dated March 26, 2002, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- ☒ This development has been approved as submitted.
- ☐ This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- ☐ This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- ☒ This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

Mr. Brian Manning  
Page 4  
March 28, 2002

BRUCE B. HOLLINGSWORTH  
Executive Director

By: Bill Chopyk  
WILLIAM B. CHOPYK  
Manager, Planning Services

cc: Sherilyn Sarb, CA Coastal Commission  
David Watson, Gray Cary Ware & Freidenrich  
Steve Kawashima, Hotel Organizing Project

001235

FINAL



**SAN DIEGO UNIFIED PORT DISTRICT**

Land Use Planning Department  
P.O. BOX 120488  
SAN DIEGO, CA 92112-0488  
(619) 686-6283  
Fax: (619) 686-6508

**RECEIVED**

DEC 09 2004

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**LETTER OF TRANSMITTAL**

**Hand Delivered**

Date: December 7, 2004

To: California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Attention: Ms. Sherilyn Sarb, District Manager

Subject: HILTON SAN DIEGO CONVENTION CENTER HOTEL  
Harbor Drive and Eighth Avenue in South Embarcadero; San Diego, California

<input checked="" type="checkbox"/> For Your Review	<input type="checkbox"/> For Your Comment
<input type="checkbox"/> For Your Approval	<input type="checkbox"/> For Your Records
<input type="checkbox"/> Per Your Request	

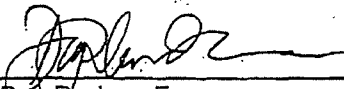
**DESCRIPTION:**

Attached for your review is a Notice of Board Action on an appealable Coastal Development Permit for the subject project.

If you have any comments or questions, please call me at (619) 686-6473. Thank you.

**SAN DIEGO UNIFIED PORT DISTRICT  
LAND USE PLANNING DEPARTMENT**

**RECEIVED BY:**

  
By: Darlene Ereneo  
Assistant Planner

\_\_\_\_\_  
CALIFORNIA COASTAL COMMISSION

DATE: \_\_\_\_\_

001236





Unified Port  
of San Diego

3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • www.portofsandiego.org

December 7, 2004

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

**RECEIVED**

DEC 09 2004

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**NOTICE OF BOARD ACTION  
on a Coastal Development Permit for**

Project: **HILTON SAN DIEGO CONVENTION CENTER HOTEL**  
Harbor Drive and Eighth Avenue in South Embarcadero; San Diego, California

**PROJECT DESCRIPTION**

The Hilton San Diego Convention Center Hotel leasehold is located at intersection of Harbor Drive and Eighth Avenue in Planning District 3, Centre City Embarcadero, which is delineated on the certified Port Master Plan Precise Plan Map Figure 11. The proposed project area is situated in the city of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified Port Master Plan. Hilton San Diego Convention Center, LLC (HSDCC, also referred to herein as "Permittee") proposes to develop a hotel and supporting facilities (including restaurant, retail, meeting space, ballroom, health club, spa, and swimming pool), public art, street improvements to facilitate traffic to and from the hotel, and a new public park/plaza and promenade along the waterfront. The proposed Hilton Convention Center Hotel (Hotel) is intended to satisfy the demand for hotel rooms to serve the San Diego Convention Center and hospitality needs of downtown San Diego.

The 10.22-acre site for the proposed Hotel is located across from the San Diego Convention Center, at the intersection of Harbor Drive and Eighth Avenue. The proposed project will include the following features:

- 1,000 to 1,200-room, maximum 500-foot high Hotel tower, including retail shops, restaurants, and meeting and ballroom space;
- Recreation facilities for Hotel guests, including health club and outdoor swimming pool;
- Direct access from the Hotel to the new public park/plaza;
- A new 4.3-acre public park/plaza and promenade along the waterfront, including landscape, hardscape, lighting, fountains, public restroom facilities;
- Public art;
- Street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel

Permittee proposes to develop a new water taxi dock located adjacent to the east side of the existing mole pier to serve Hotel guests and the general public. Development of the new water taxi dock was permitted to the District in the Coastal Development Permit for the Sediment Remediation and Aquatic Enhancement at Former Campbell Shipyard Project (Application No. 2004 011-36-142, dated August 31, 2004, SDUPD Document No. 47805). Development of the new water taxi dock will be assigned to

Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

Portions of the Hotel Design Development Plans (dated November 15, 2004), which highlight the proposed project's conformance with the certified Port Master Plan, are included as Attachment B of the Notice of Board Action. A full copy of the Design Development Plans may be accessed by contacting the District Land Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

The proposed project was evaluated in the South Embarcadero Redevelopment Program 2 and Port Master Plan Amendment Program Environmental Impact Report (EIR). The Final EIR for the South Embarcadero Redevelopment Program 2 and Port Master Plan Amendment, identified as UPD #83356-EIR-435 and SCH #1997051014, was certified by the Board on April 17, 2001, per Resolution 2001-71. The current proposed project has been compared to the Board-certified Final EIR and the adopted Findings of Fact and Statement of Overriding Considerations. The project description is in substantial compliance with the environmental impact information contained in the referenced documents.

Pursuant to CEQA Guidelines Section 15164(a), the District finds that none of the conditions described in Sections 15162 and 15163 call for preparation of a subsequent EIR or supplement to an EIR. An Addendum dated November 2004 was prepared to address minor technical changes in the proposed project. The EIR and Addendum are filed with the Office of the District Clerk as Document No. 42492 and Document No. 48049, respectively. No further environmental review is required.

#### PROJECT LOCATION

The project is located at Harbor Drive and Eighth Avenue in South Embarcadero in San Diego, California.

#### CONSISTENCY WITH CERTIFIED PORT MASTER PLAN AND CALIFORNIA COASTAL ACT

The project site is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11. The proposed project is listed as Project 16 of the Table 11 Project List in the Port Master Plan as "Convention Center Hotel Complex and Marina." The Port Master Plan classifications of the land area within the limits of the proposed project are Commercial Recreation, Park/Plaza, Promenade, Comfort Station, Specialized Berthing, Recreational Boat Berthing, Ship Navigation Corridor, and Vista Area. The proposed project will result in the development of a hotel and supporting facilities, and a new public park/plaza along the waterfront. The proposed uses for the project area conform to the certified Port Master Plan and facilitate the certified use designations. Mitigation Monitoring and Reporting Program requirements will be followed pursuant to the mitigation measures outlined in the Final EIR.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The proposed project is consistent with the Chapter 3 policies of the Coastal Act as follows:

#### ARTICLE 2-PUBLIC ACCESS

The proposed project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214.

The proposed project is located at the intersection of Harbor Drive and Eighth Avenue, and is adjacent to coastal resources. The nearest existing recreational amenity, located north of the site, is the Embarcadero Marina Park South, which will not be impacted by this proposed project. The proposed project will: enhance access to recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing a new 4.3-acre public park and recreational boating access at a new water taxi dock that will be available for general public use\*; constitute "new development", but will enhance public access from the nearest public roadway to the shoreline and along the coast by providing new shoreline promenade along the waterfront and pedestrian access along two major points, Eighth Avenue and the extension of the Embarcadero promenade, and resulting in street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel; and will enhance public access to coastal resources. Public parking will be available in the new 2000-car public parking facility developed by the District at the intersection of Harbor Drive and Eighth Avenue. At least 899 or the 2000 maximum parking spaces shall be provided for Hotel guest use. The remaining parking spaces shall be designated for general public use.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222, 30222.5, 30223, and 30224. The proposed project will not adversely impact coastal areas suited for water-oriented recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; recreational boating use of coastal waters. The proposed project will enhance oceanfront land suitable for recreational use by providing a new 4.3 waterfront park and promenade and may provide for a new water taxi dock available for Hotel guests and the general public.\*

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The proposed project does not involve: diking or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands. The proposed project will involve the filling of open coastal waters with a water taxi dock adjacent to the existing mole pier.\* Analysis of increased water coverage as a result of possibly developing the water taxi dock was analyzed in the Coastal Development Permit for the Sediment Remediation and Aquatic Enhancement at Former Campbell Shipyard Project (Application No. 2004 011-36-142, dated August 31, 2004, SDUPD Document No. 47805). The proposed project will be subject to the Standard Urban Stormwater Mitigation Plan requirements of the Municipal Stormwater Permit (NPDES Permit No. CAS0108758). SUSMP requirements are meant to incorporate Best Management Practices in the design phase of new development projects.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and

---

\*Development of the new water taxi dock will be assigned to Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

30255. The proposed project will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses via new pedestrian-oriented retail and restaurant areas with outdoor seating to activate the promenade; will enhance scenic and visual qualities of coastal areas by respecting the Eighth Avenue view corridor in accordance with the South Embarcadero Urban Design and Signage Guidelines, as amended and providing 4.3 acres of new waterfront park/plaza area to maintain public views to the Bay from Harbor Drive; will be designed to protect views to and along the ocean and scenic coastal areas in accordance with the South Embarcadero Urban Design and Signage Guidelines, as amended; will enhance public access to the coast by providing pedestrian access along two major corridors, Eighth Avenue and a minimum 35-foot wide promenade along the water's edge in accordance with the South Embarcadero Urban Design and Signage Guidelines, as amended, and providing new bicycle racks and striped pedicab holding areas to facilitate public recreational waterfront access opportunities in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program. The proposed project is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not increase energy consumption and vehicle miles traveled, but such potential impacts have been addressed in the Final EIR; is a coastal dependent development. The proposed project is not: a special community or neighborhood, which because of their unique characteristics, are popular visitor destination points for recreational uses; public works facility; nor associated with a sewage treatment plant.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### BOARD ACTION

By Resolution adopted on November 30, 2004, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- ☐ This development has been approved as submitted.
- ☒ This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- ☐ This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- ☒ This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. One

speaker was present at the public hearing on November 30, 2004. April Boling of the San Diego Convention Center Corporation was the only speaker present at the public hearing. Ms. Bowling expressed her support for the Hotel development and told the Board that the hotel will play a "pivotal role in the success of the Convention Center," which attracts 70 conventions per year, draws 1 million visitors and pumps \$1 billion in the economy.. She contends that there is "absolutely a need for the hotel." Ms. Boling also stated that without this hotel, the Convention Center is unable to realize its full potential. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved the proposed project at the November 30, 2004 hearing.

BRUCE B. HOLLINGSWORTH  
President/CEO

By: 

DARLENE D. ERENEA  
Assistant Planner, Land Use Planning

Enclosure(s): Attachment A: Draft Coastal Development Permit Conditions  
Attachment B: Exhibit A to the Draft Coastal Development Permit

001241

## ATTACHMENT A

**Project:** Hilton San Diego Convention Center Hotel

**Location:** Harbor Drive and Eighth Avenue in South Embarcadero; San Diego, California

### **DEVELOPMENT**

Hilton San Diego Convention Center, LLC (HSDCC, also referred to herein as "Permittee") proposes to develop a hotel and supporting facilities (including restaurant, retail, meeting space, ballroom, health club, spa, and swimming pool), public art, street improvements to facilitate traffic to and from the hotel; and a new public park/plaza and promenade along the waterfront. The proposed Hilton Convention Center Hotel (Hotel) is intended to satisfy the demand for hotel rooms to serve the San Diego Convention Center and hospitality needs of downtown San Diego.

The 10.22-acre site for the proposed Hotel is located across from the San Diego Convention Center, at the intersection of Harbor Drive and Eighth Avenue. The proposed project will include the following features:

- A 1,000- to 1,200-room, maximum 500-foot high Hotel tower, including retail shops, restaurants, and meeting and ballroom space;
- Recreation facilities for Hotel guests, including health club and outdoor swimming pool;
- Direct access from the Hotel to the new public park/plaza;
- A new 4.3-acre public park/plaza and promenade along the waterfront, including landscape, hardscape, lighting, fountains, public restroom facilities;
- Public art;
- Street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel

Permittee proposes to develop a new water taxi dock located adjacent to the east side of the existing mole pier to serve Hotel guests and the general public. Development of the new water taxi dock was permitted to the District in the Coastal Development Permit for the Sediment Remediation and Aquatic Enhancement at Former Campbell Shipyard Project (Application No. 2004-011-36-142, dated August 31, 2004, SDUPD Document No. 47805). Development of the new water taxi dock will be assigned to Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

Portions of the Hotel Design Development Plans (dated November 15, 2004), which highlight the proposed project's conformance with the certified Port Master Plan, are attached as Exhibit A of the Coastal Development Permit. A full copy of the Design Development Plans may be accessed by contacting the District Land Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

### **STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the conceptual development plans and comply with the conditions of approval for the project, as approved by the Board of Port Commissioners on

January 28, 2003. Schematic designs were submitted to the District on August 30, 2004. Design Development Plans were submitted to the District on November 15, 2004.

2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. This project is subject to the Standard Urban Stormwater Mitigation Plan (SUSMP) requirements of the Municipal Stormwater Permit (NPDES Permit No. CAS0108758). SUSMP requirements are meant to incorporate Best Management Practices (BMPs) in the design phase of new development and significant redevelopment projects. The SUSMP process requires the development and submission of an engineering study that details the incorporation of permanent BMPs, including structural devices designed to capture and/or treat a specified volume or rate of stormwater runoff before it enters the stormwater conveyance system. The SUSMP must contain all the information required by the latest version of the "Port SUSMP Document" available from the District or at the District website at [http://www.portofsandiego.org/sandiego\\_environment/storm-water.asp](http://www.portofsandiego.org/sandiego_environment/storm-water.asp). The SUSMP must be signed by a registered civil engineer in the State of California who has experience or access to experience in the design and implementation of effective urban runoff pollution prevention strategies.

In accordance with Section 10.05.A.3 of the District Code, project approval requires submission of a project specific SUSMP that meets District requirements. Project approval requires full implementation of all SUSMP structural and non-structural BMPs. The continued implementation and maintenance of the SUSMP BMPs constitute regulatory obligations for the leaseholder, and failure to comply with the Municipal Permit or the District-approved SUSMP, including the specific BMPs contained therein, may be considered a default under the lease.

6. Permittee shall be responsible for compliance with Americans with Disabilities Act and Title 24 specifications.
7. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
8. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
9. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
10. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.

#### SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, Permittee will require the construction contractor to (a) restrict normal construction activities to weekdays from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am. In order to mitigate potential traffic and noise conflicts during construction, Permittee shall notify the San Diego Convention Center (SDCC) of their construction activities and conduct meetings with SDCC and Dole Fresh Fruit Company.
2. To minimize fugitive air emissions during construction, the Permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper (once during the day and once at the end of the day).
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
14. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000002, and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "General



Construction Storm Water Permit"), as adopted, amended, and/or modified. The District is responsible for submitting the Notice of Intent to comply with the General Construction Storm Water Permit. The Permittee and/or contractor must comply with the General Construction Storm Water Permit and District direction related to permitted activities. Construction activity subject to the General Construction Storm Water Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor must prepare and submit the SWPPP for review and approval by the District prior to site work.

#### SPECIAL PROVISIONS

1. Permittee shall comply with all applicable FEIR mitigation measures contained in the Final Environmental Impact Report (FEIR) for the South Embarcadero Redevelopment Program 2 and Port Master Plan Amendment certified by the Board of Port Commissioners on April 17, 2001, per Resolution 2003-71. Refer to Exhibit 2 of the Option Agreement between the District and Permittee for appropriate obligations required to be completed by the Permittee, as adopted by the Board of Port Commissioners on August 6, 2002, per Ordinance 2193. Mitigation measures are briefly outlined below. Permittee shall refer to the FEIR and Exhibit 2 of the Option Agreement for specific details regarding each mitigation measure.

##### a) Land Use

- The lights on the waterfront promenade shall be shielded or directed away from the Bay so as not to interfere with the pilot navigation of cargo vessels into Berths 10-1 and 10-2.
- Permittee shall adhere to the conceptual and schematic designs approved by the District, which confirm that Permittee has complied with a hotel design that includes a maximum of 1,200 rooms, and that the tower and ancillary structures are less than 500 feet in height.

##### b) Traffic

- A proportional share contribution shall be paid to comply with those traffic measures outlined in the FEIR by either the Permittee or the District. The Permittee shall pay for the cost of improvements to Eighth Avenue required for the Hotel.
- Permittee shall confirm that the roadway configuration includes the median, truck lane, and access elements outlined in the FEIR.
- Permittee shall complete, to the satisfaction of the District Executive Director, a Construction Coordination Plan that addresses traffic management with SDCC during Hotel construction. The plan shall be consistent with the plan outline provided in the FEIR.
  - i. *Traffic Management*: Construction traffic shall be managed to (1) avoid disruption of traffic on Eighth Avenue and Convention Way, (2) avoid conflicts with truck traffic for SDCC events and (3) avoid conflicts with general traffic during SDCC, District, and Ballpark events.
  - ii. *Existing Convention Way and Eighth Avenue*: Travel lanes shall not be blocked for construction purposes unless absolutely essential for the project and, in those circumstances, shall be done in a manner that minimizes the impact on SDCC and District operations.
  - iii. *Deliveries of Construction Materials and Equipment*: Shall be scheduled to avoid conflicts with truck traffic for SDCC events and general traffic

- during SDCC, District, or Ballpark events.
- Permittee shall complete, to the satisfaction of the District Executive Director, an Event Coordination Plan that addresses traffic management with SDCC during Hotel operations. The plan shall be consistent with the plan outline provided in the FEIR.
- The one-way roadway under the existing Harbor Drive bridge from the south side to the north side would be for District and 10<sup>th</sup> Avenue Marine Terminal users. Hotel traffic, service vehicles, etc. should not have access to the under-bridge roadway. The District may provide Permittee with written approval to allow Hotel service vehicles access to the under-bridge roadway at a later time.

c) Parking

- At least 899 of the 2000 maximum parking spaces in the District parking structure shall be available for Hotel guest use to ensure the appropriate mix of parking is available for hotel guests and the general public.

d) Urban Design

- Permittee shall adhere to the conceptual and schematic designs approved by the District, which confirm that the Permittee has complied with those urban design measures outlined in the FEIR and are briefly described as follows:
  - i. The Hotel structures shall avoid "walling off" the waterfront visual and public access from Harbor Drive and the Park Boulevard view corridor.
  - ii. The Hotel design shall provide pedestrian access along two major points, Eighth Avenue and the extension of the Embarcadero Promenade, in conformance with the South Embarcadero Urban Design + Signage Guidelines, as amended. Hotel development shall provide landscaped setbacks or street-front retail along these access ways. Improve the Eighth Avenue "gateway" by providing a 20-foot-wide pedestrian walkway, with 12-foot planting strips between the Eighth Avenue right-of-way and the pedestrian walkway and a 12-foot-wide planting setback between the walkway and Hotel development. Include pedestrian-oriented uses compatible with the commercial recreation land use, such as retail shops or restaurants, with outdoor seating in order to activate the promenade. Project components shall meet the 20-foot building height for buildings on the promenade, stepping back to 50 feet in the development area. Create a pedestrian-scaled public environment.
  - iii. Provide a landscaping plan that is consistent with the South Embarcadero Planting Guidelines, as amended.
  - iv. Create 4.3 acres of new park/plaza area to the north of the Park Boulevard view corridor extension, along the waterfront between the Fifth Avenue Landing site and the Hilton Hotel. The design of the park shall be consistent with the South Embarcadero Urban Design + Signage Guidelines, as amended, and shall include public access linkages, unobstructed view corridors, and a variety of interactive elements (i.e. fountain, public art, etc.). The park shall have a single uniform design that is consistent with the adjacent leaseholds.
  - v. Provide public restroom facilities in proximity to the public pier and park/plaza adequate to service the needs of the public.

e) Water Quality

- Permittee shall prepare a SWPPP in accordance with NPDES permit requirements and the Port's Stormwater Management and Discharge Control Ordinance, as outlined in the FEIR.

- No discharges of any material or waste, including potable water, wash water, dust, soil, trash and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations must be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean must be reported immediately to the Recreation and Environmental Services Department, in order to address any regulatory permit requirements regarding spill notifications. BMPs must be implemented by the Permittee to control the potential release of any materials or wastes being handled or stored on-site which could enter the stormwater conveyance system due to wind or stormwater runoff.
- Hazardous or potentially hazardous materials (i.e., cement, lubricants, solvents, fuels, other refined petroleum hydrocarbon products, wash water, raw sewage) that are used or generated during the construction of the Hotel shall be handled, stored, used, and disposed of in accordance with NPDES permitting requirements and applicable federal, state, and local laws and regulations. BMPs include preparation and implementation of a hazardous substance spill prevention/contingency plan (including material safety data sheets); providing adequate worker training and education; minimizing the volume of hazardous or potentially hazardous materials stored at the site at any one time; providing secured storage areas for compatible materials, with adequate spill containment; labeling containers; and keeping records, manifests, and other tracking information up to date.
- Permittee shall provide, to the satisfaction of the District, an integrated Pest Management Program. This program shall be consistent with the District's own Integrated Pest Management Program.

f) Air Quality

- Permittee shall minimize equipment exhaust emissions by reasonably available measures, as outlined in the FEIR.
- Permittee shall complete, to the satisfaction of the District Executive Director, a Construction Coordination Plan that addresses construction dirt and dust with the Hotel during construction, as outlined in the FEIR.
- Enhanced dust control measures shall be used and the total disturbance area shall be maintained at less than 9 acres in size, as outlined in the FEIR.
- Site remediation procedures shall comply with all applicable rules and regulations of appropriate regulatory agencies, and remediation contractors shall obtain any necessary permits.

g) Noise

- Permittee shall complete, to the satisfaction of the District Executive Director, a Construction Coordination Plan that addresses construction noise with SDCC during construction, as outlined in the FEIR.

h) Public Services and Utilities: Solid Waste

- *Demolition and Construction Waste Reduction:* Permittee shall incorporate a demolition and construction waste management plan into construction contract documents. The prime contractor and subcontractors shall be made aware of the provisions in the solid waste management plan during the bidding process and at construction progress meetings. Source separation of construction materials such as wood, aggregate, dry wall, glass, cardboard, and certain plastics reduces contamination, thereby making recycling much more cost effective.
- *Recycled-Content Products:* The architect and specifying engineers shall

incorporate recycled-content products into the project specifications, where applicable and feasible. Recycled-content products should be specified in order to "close the loop" between recycling, manufacturing, and the construction industry.

- *Facility Operation Waste Reduction:* Source reduction, source separation, and recycling mitigation measures should focus on these materials. Source reduction measures should include the onsite recycling of green waste into mulch and onsite reuse of the product, employee training programs, or other programs designed to prevent the generation of waste. Source separation measures should include separation of reusable and recyclable materials such as paper, glass, and green waste, thereby enabling recyclable material collection facilities to process and market the materials to remanufacturers. Provisions need to be made during the design, budgeting, and construction of the project for recycling containers and space allocation.
- *Waste Management Plan:* The City of San Diego Environmental Services Department proposes that a waste management plan should document those components outlined in the FEIR.

i) Seismic/Geologic Hazards

- *High Groundwater:* Permittee shall retain a licensed geotechnical engineer, who shall prepare a comprehensive geotechnical evaluation, including development-specific subsurface exploration and laboratory testing, shall be conducted prior to design and issuance of a grading permit for the project as required by the City of San Diego. The purpose of subsurface evaluation shall be to (1) further evaluate the subsurface conditions in the area of the proposed structures; (2) provide specific data on potential geologic and geotechnical hazards; and (3) provide information pertaining to the engineering characteristics of earth materials at the project site, including development-specific subsurface exploration and laboratory testing. The geotechnical engineer shall use the data from the evaluation to prepare recommendations for grading/earthwork, surface and subsurface drainage, temporary and/or permanent dewatering, foundations, pavement structural sections, and other pertinent geotechnical design considerations shall be formulated. The specific recommendations for the proposed project, which shall be included in the final grading plans.
- *Strong Ground Motion and Surface Rupture:* Site-specific geotechnical studies shall be prepared by a licensed geotechnical engineer as required by the City of San Diego Building Department, to support structural design and obtain a building permit. The evaluation shall include fault evaluations for each human-occupancy structure (a structure intended for 2,000 or more human occupancy hours per year) that reasonably demonstrates the absence of active faults below the structure shall occur. Such an evaluation shall include analysis of subsurface data relative to faulting obtained during the design phase of the project. The potential for relatively strong seismic ground motions shall be considered in the design of proposed improvements. Specifically, the proposed project shall be designed in accordance with the recommendations in the geotechnical evaluation as well as all applicable requirements for UBC Seismic Zone 4.
- *Liquefaction and Seismically Induced Settlement:* Permittee shall perform a comprehensive geotechnical evaluation, prepared by a licensed geotechnical engineer prior to design and construction of any structures, which shall include site-specific subsurface exploration and laboratory testing; (1) incorporate in the

final plans for the proposed project all site-specific recommendations identified in the evaluation; (2) design and construct all structures to be reinforced and supported using ground modification or deep foundation piles; and (3) incorporate remedial grading or surcharging and monitoring by means of settlement monuments to mitigate for seismically induced settlement impacts.

- *Corrosive Soils:* Permittee shall perform a site-specific soils evaluation during the design phase of the proposed project, prepared by a licensed geotechnical engineer, and incorporate all site-specific recommendations identified in the evaluation in the design of all structures for the project, and protect all structural steel reinforcement in proposed structures from the corrosive effects of the marine environment in which the site is located.
  - *Subsidence:* Permittee shall retain a licensed geotechnical engineer, who shall perform an evaluation of the effect of dewatering on nearby structures, during the design phase and prior to the commencement of construction activity on the project site.
2. No pile-driving in the sediment remediation cap is permitted.
  3. The new water taxi dock shall be available for hotel guests and the general public.\*
  4. The water taxi dock shall be set back a distance sufficient to preserve the continued use of the Tenth Avenue Marine Terminal Berths 1 and 2 for commercial cargoes.\*
  5. Permittee shall provide airport shuttle service to and from the San Diego International Airport for Hotel guests and the general public.
  6. At no time shall public access to the waterfront promenade be fenced, screened, or blocked off by any structure.
  7. The Hotel restaurant areas shall provide outdoor seating to activate the promenade.
  8. Access to the Hotel restaurant and retail areas shall open outward to the promenade.
  9. The Hotel outdoor snack bar shall provide an opening on the promenade to promote pedestrian access along the waterfront.
  10. In order to promote pedestrian activities along the waterfront, seasonal vending carts shall operate in the park and/or outside the first 26 feet of promenade adjacent to the water's edge (so not to obstruct pedestrian access along the waterfront).
  11. The park will be developed and open to the general public prior to or concurrent with occupancy of the Hotel.
  12. At minimum, the public/park areas of Permittee's lease area shall be open and available for public use between the hours of 6:00 am and 10:00 pm, seven days a week, unless

---

\*Development of the new water taxi dock will be assigned to Permittee in accordance with applicable terms and conditions contained in said Coastal Development Permit and will be contingent upon Permittee exercising its rights granted by the Option Agreement between the District and Permittee in regards to the waterside lease area and obtaining other necessary regulatory approvals.

Permittee is directed in writing by the District's Executive Director, in his sole and absolute discretion, to maintain a different schedule.

13. Permittee will provide appropriate public access directional and informational signs to demark public pedestrian access to the waterfront in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program and the South Embarcadero Urban Design + Signage Guidelines, as amended.
14. Permittee will incorporate educational displays into the design of public accessways as participation in the educational signage program in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program and the South Embarcadero Urban Design + Signage Guidelines, as amended.
15. Permittee will provide new bicycle racks and striped pedicab holding areas to facilitate public recreational waterfront access opportunities in accordance with the South Embarcadero Redevelopment Program 2 Public Access Program.
16. The raised planter located between the south side of the hotel and adjacent to the waterfront promenade shall be developed at a maximum 32 inches high, including plant material.
17. The guardrail along the waterfront promenade shall be transparent in design, in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended.
18. Within the 120 feet wide view corridor centered on the row of Park Boulevard, Permittee shall maintain a minimum 60 feet wide clear zone (centered within the view corridor) with landscape planting on either side, in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended.
19. Permittee shall define the edges of the Park Boulevard view corridor as a formal corridor by plant materials accompanied by landscape furnishings (i.e. lighting, benches, etc.) in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended. The plant palette will utilize a mixture of tall vertical trees (i.e. Palms), with canopy trees of varying heights, shrubs, and flowering ground covers that will express a clear sense of linear room leading to the bayfront. Evergreens should be used to the extent feasible in order to maintain a year-round foliage and color.
20. Permittee shall use paving materials of high quality and expressive of the corridor as a design element unto itself in accordance with the South Embarcadero Urban Design + Signage Guidelines, as amended. Opportunities to link with the Ballpark district and the future waterfront development should be considered in determining the appropriate palette. The quality and intensity of materials (treatment) may in fact vary as the corridor interfaces with different land use conditions.
21. Permittee shall use lighting and furnishings that are pedestrian-scaled and conform to the recommendations embodied within the South Embarcadero Urban Design + Signage Guidelines, as amended. The lighting element shall be legible and help define the view corridor.

Draft

ATTACHMENT B



Unified Port  
of San Diego

# Hilton San Diego Convention Center Hotel

---

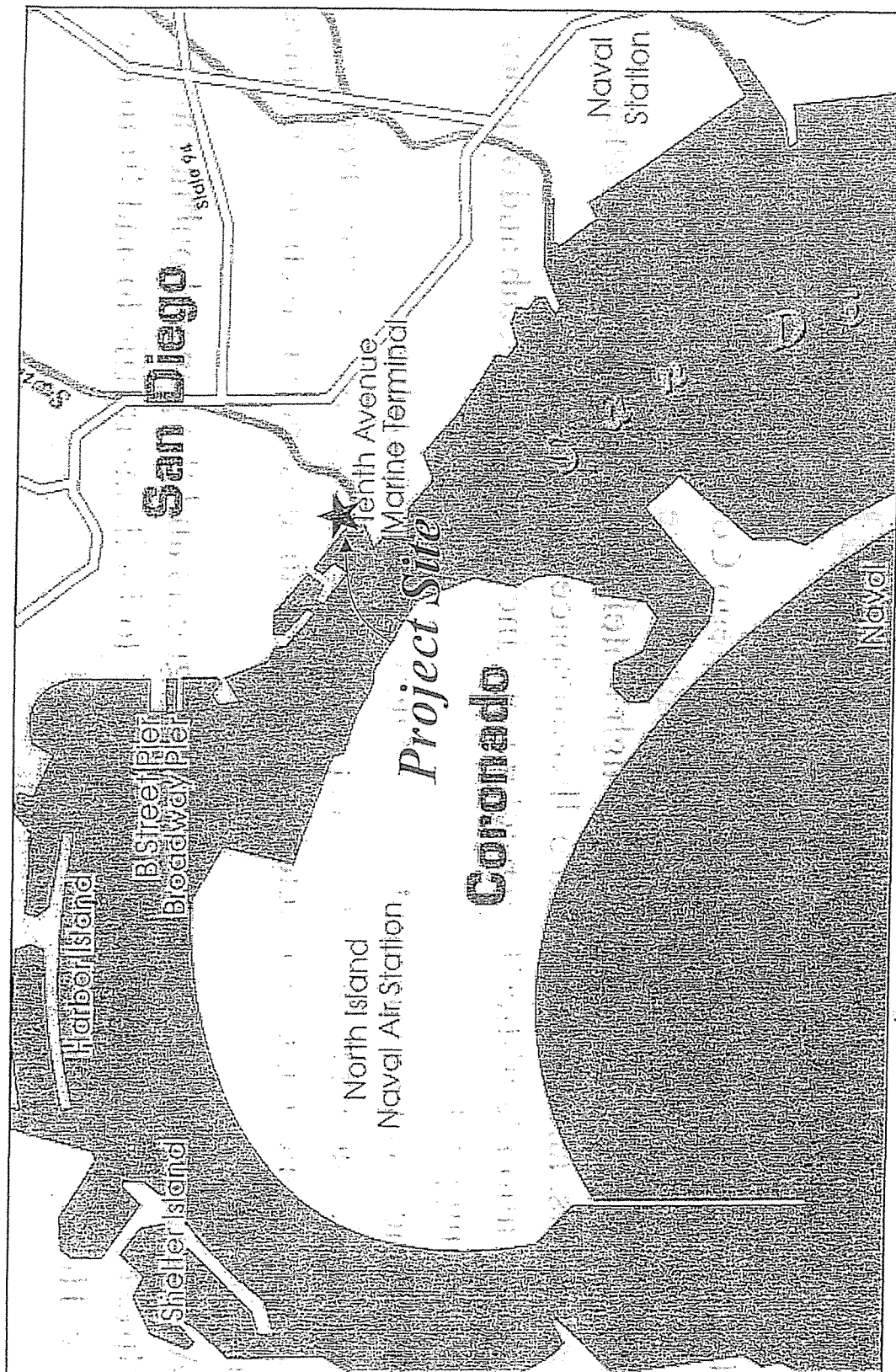
Exhibit A  
to the Coastal Development Permit

*November 2004*

001251

Draft

# Hilton Hotel Location





# Draft

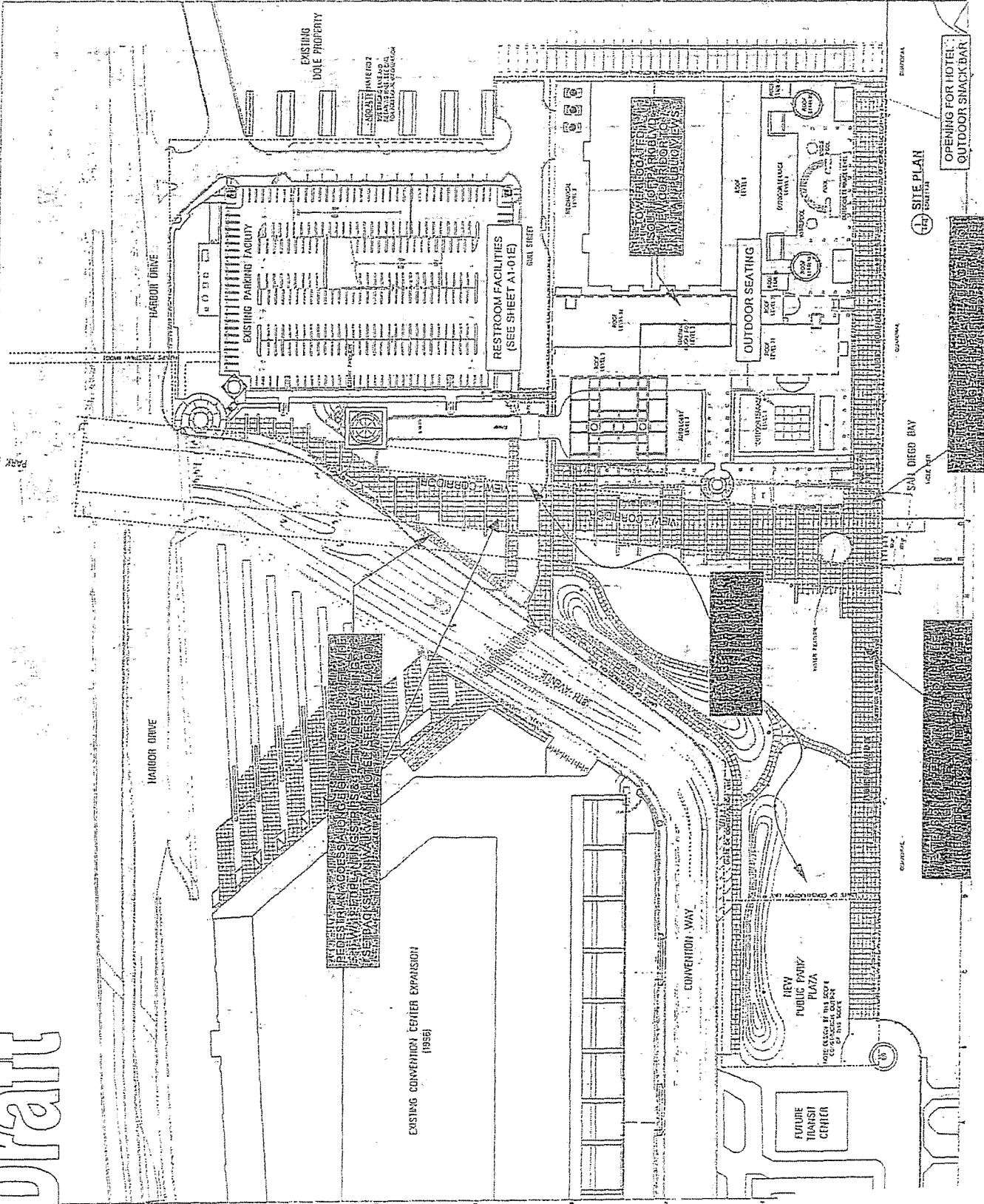
## Project Elements

- Located directly across from the San Diego Convention Center at the intersection of Harbor Drive and Eighth Avenue
- 1,190-room, 32-story, 385-foot high Hotel tower, including retail shops, restaurants, and meeting and ballroom space
- Recreation facilities for Hotel guests, including health club and outdoor swimming pool;
- Direct access from the Hotel to the new public park/plaza;
- A new 4.3-acre public park/plaza and promenade along the waterfront, including landscape, hardscape, lighting, fountains, public restroom facilities;
- Public art;
- A new water taxi dock to serve Hotel guests and the general public; and,
- Street improvements to Eighth Avenue to facilitate traffic to and from the new Hotel

001253

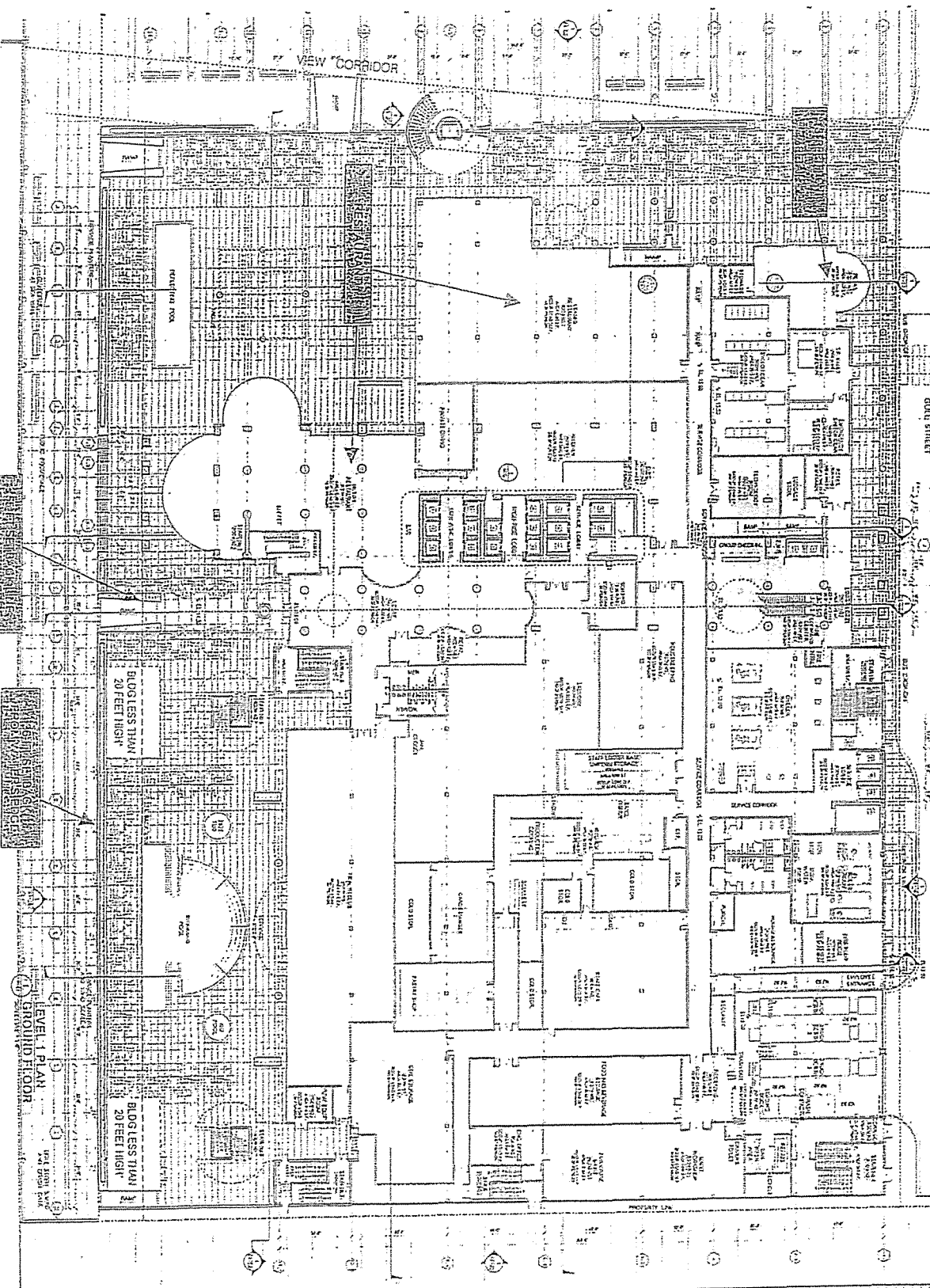
Draft

<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>10/1/58</td> <td>PRELIMINARY</td> </tr> <tr> <td>2</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>3</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>4</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>5</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>6</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>7</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>8</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>9</td> <td>10/1/58</td> <td>REVISED</td> </tr> <tr> <td>10</td> <td>10/1/58</td> <td>REVISED</td> </tr> </table>		NO.	DATE	DESCRIPTION	1	10/1/58	PRELIMINARY	2	10/1/58	REVISED	3	10/1/58	REVISED	4	10/1/58	REVISED	5	10/1/58	REVISED	6	10/1/58	REVISED	7	10/1/58	REVISED	8	10/1/58	REVISED	9	10/1/58	REVISED	10	10/1/58	REVISED	<p>HILTON SAN DIEGO CONVENTION CENTER HOTEL</p>	<p>JOHN FORBES &amp; ASSOCIATES ARCHITECTS 1000 AVENUE OF THE STARS SUNNYVALE, CALIF. 94086 JOHN FORBES, ARCHT. JOHN FORBES, ARCHT. JOHN FORBES, ARCHT.</p>	<p>ARCHITECTURAL SITE PLAN</p>	<p>A0-10</p>
NO.	DATE	DESCRIPTION																																				
1	10/1/58	PRELIMINARY																																				
2	10/1/58	REVISED																																				
3	10/1/58	REVISED																																				
4	10/1/58	REVISED																																				
5	10/1/58	REVISED																																				
6	10/1/58	REVISED																																				
7	10/1/58	REVISED																																				
8	10/1/58	REVISED																																				
9	10/1/58	REVISED																																				
10	10/1/58	REVISED																																				



001254

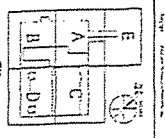
Draft



001255

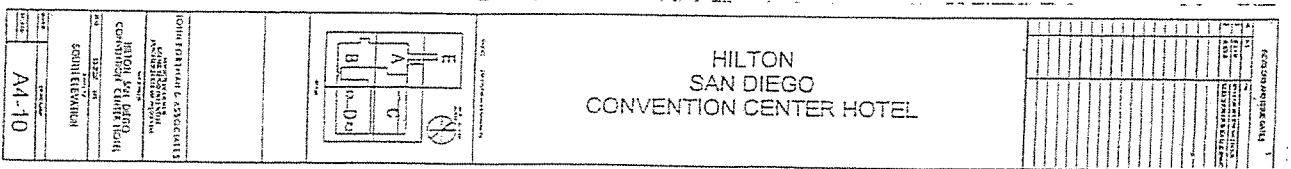
REFER TO SHEET A4-10

HILTON  
SAN DIEGO  
CONVENTION CENTER HOTEL



JOHN ROSEMAN & ASSOCIATES ARCHITECTS 1000 K STREET, N.W. WASHINGTON, D.C. 20004	
HILTON SAN DIEGO CONVENTION CENTER HOTEL	
LEVEL 1 PLAN GROUND FLOOR	
A1-01	

001256





6-PSD-06-298

3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • www.portofsandiego.org

October 16, 2006

RECEIVED  
OCT 23 2006

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**NOTICE OF BOARD ACTION  
on a Coastal Development Permit for**

Project: Shelter Pointe Hotel Expansion Project  
1551 Shelter Island Drive, San Diego, California

**PROJECT LOCATION**

The Shelter Pointe Hotel Expansion project is located at 1551 Shelter Island Drive in Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan map Figure 4 (Page 52 of the PMP). The project site is located on the southwestern tip of Shelter Island and is adjacent to the Kona Kai Marina to the north, Shelter Island Drive to the south, the Harbor Police Station to the west and the Island Palms Hotel leasehold to the east. The project location is shown in the attached Figures 1 and 2.

**PROJECT DESCRIPTION**

The proposed project area is situated in the city of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Atlas-Kona Kai, LLC (referred to herein as "Permittee") proposes to redevelop the existing Shelter Pointe Hotel leasehold with the following: (1) relocation and renovation of an existing restaurant, (2) expansion and upgrades of conference-meeting space, (3) construction of a new pool, (4) construction of two new guest wings, (5) construction of a new parking garage with attached housekeeping and marina facilities, and (6) construction and enhancement of new promenade (Figure 3). The project area is approximately 9.85 acres. The proposed construction would occur over a period of about 12 months. The upgrade and renovation of the existing hotel will be in the second phase.

**1. Restaurant/Conference Meeting Space**

The interior ground floor footprint of the current hotel facility would be redeveloped and upgraded, including an 18,733 square foot expansion to accommodate a new hotel lobby and restaurant location. The hotel restaurant, AJ's Waterside Grille, would be relocated to the new location. The new restaurant location would accommodate 120 guest seats. The existing restaurant space would be converted into a banquet room, adding approximately 4,000 square feet of meeting space.

After room layout reorganization and renovations to existing rooms, the hotel would have an additional 8,000 square feet of conference space for a total of 21,500 square feet of meeting space, including approximately eight rooms larger than 1,000 square feet.

## 2. Pool/Guest Wings

The current hotel building layout includes five separate buildings covering a total of 62,937 square feet. Four of these buildings are smaller, detached complexes, collectively covering approximately 10,554 square feet. The large primary structure is approximately 52,383 square feet. The footprints of these structures would not be affected by the proposed project.

A new swimming pool is proposed to be constructed east of the existing pool located south of the main hotel building and north of the detached guest room buildings.

Two new three-story "guest wings" are proposed to be built to the north of the existing hotel on the western portion of the existing surface parking lot north of the existing hotel. The maximum height of the new guest wings would be 41 feet above mean lower low water (MLLW), or 26 feet above grade. Together, the total number of new rooms in these guest wings would be 158, bringing the post-project facility guest room total to 287. The southeast guest wing would be built on a footprint of approximately 14,834 and the northeast guest wing would be built on a footprint of approximately 15,719 square feet, for a total of 30,553 square feet. The post-expansion hotel coverage is expected to have a footprint of approximately 112,223 square feet.

The guest wings would connect to the northern portion of the lobby and to the southeast corner of the proposed parking structure. A 45-foot view corridor and public access point would separate the two guest wings, and another 45-foot view corridor and public access point would separate the eastern most guest wing and the parking structure. Architectural features of the guest wing would be designed to be consistent with elements of the existing hotel.

## 3. Parking Structure/Parking Lots

The proposed project would not affect the 130 existing parking spaces in the south surface lot currently serving the hotel's detached south complexes and a portion of the primary structure. After encroachment from construction of the guest wings, and re-striping for maximum efficiency, parking provided by the north surface lot would be reduced from 380 to 184 spaces. To fulfill parking obligations, a new parking structure at the northern end of the project site would be constructed, containing 230 spaces, which would provide 34 additional spaces to the property. The height of the parking structure would be 39 feet above MLLW, or 25 feet above grade. The structure would include a subsurface basement level and three above-grade levels on a footprint of approximately 21,717 square feet.

The project also proposes to demolish the existing 3,142-square-foot marina building and 518-square-foot associated structure. The marina building would be rebuilt as an approximately 2,681 square foot attachment to the parking structure. Additional housekeeping facilities, totaling approximately 2,614 square feet, would also be constructed as part of the parking structure. The proposed project would increase the footprint of the demolished structures by 1,635 square feet.

## 4. Landscaping & Enhanced Promenade

Incorporation of existing hotel architectural styling (e.g. cupolas and gables not to exceed 41 feet above MLLW) and enhanced landscaping are proposed to add visual appeal to the finished project. Ornamental non-invasive landscaping, including palm trees, flowering trees, and tropical flowering plants, would be placed around the perimeter of the parking structure and the new guest wings consistent with existing vegetation. Figure 4 depicts where vegetation would be planted. Also, dilapidated areas of the project site would be replaced with

upgraded structures and amenities.

The promenade adjacent to the project area would be paved with decorative patterns, widened to at least ten feet in width, and enhanced with additional landscaping, signage, bench seating, and public art (see Figure 2 and Attachment B Shelter Pointe Hotel Expansion Pedestrian Public Access Program). Two 45-foot corridors between the new guest wings and between the eastern guest wing and the parking garage will provide view and public access to the Shelter Island Drive and San Diego Bay.

Portions of the Hotel Design Development Plans, which highlight the proposed project's conformance with the certified Port Master Plan, are included as Attachment C of the Notice of Board Action. A full copy of the Design Development Plans may be accessed by contacting the District's Land Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

Pursuant to CEQA Guidelines Section 21604.5, the District evaluated the proposed project in the Shelter Pointe Hotel Expansion Mitigated Negative Declaration (MND). The Final MND found that the overall project with the incorporation of a Mitigation Measures and Monitoring Program will have no substantially adverse effects to earth, water, air quality, biological resources, hazards, and noise, nor would the project otherwise have potentially significant adverse impacts to land use, population and housing, geology, transportation and circulation, energy and mineral resources, public services, utilities and service systems, aesthetics, cultural resources, or recreation. Mitigation Monitoring and Reporting Program requirements will be followed pursuant to the mitigation measures outlined in the Final MND.

The Final MND for the Shelter Pointe Hotel Expansion, identified as UPD #83356-MND-683 and SCH: #2006071037, was certified by the Board on October 10, 2006, per Resolution 2006-165. The Final MND has been filed with the Office of the District Clerk as Document No. 51132. No further environmental review is required.

#### **CONSISTENCY WITH CERTIFIED PORT MASTER PLAN & CALIFORNIA COASTAL ACT**

The project site is located in the Bay Corridor Planning Subarea of Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of PMP). The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation. The Commercial Recreation category includes hotels, restaurants, convention center, recreational vehicle parks, specialty shopping, pleasure craft marinas, and sport fishing. The proposed project includes expanding hotel services, banquet room and meeting space, restaurant services, parking, public art, promenade and landscape improvements, which are allowed under the certified use designation, therefore the proposed project is consistent with the Commercial Recreation designation and the certified Port Master Plan.

The proposed project is not listed on Table 7, which is the Project List for Planning District 1. However, the policy surrounding the Project Lists (Page 49 of the PMP) is that the Project List is meant to be a listing of known proposed projects in sufficient detail to judge the plan's consistency with the Coastal Act. The project list is not intended to be an exclusive listing, rather it describes major projects or smaller projects that are well defined at the time of the writing of the PMP. Some future projects, not listed at this time but consistent with the land use classification grouping indicated in the Plan maps and identified in the Plan narrative, are anticipated to be added, just as some



projects will need to be modified to respond to future changing environmental, financial and other conditions. Therefore while the PMP does not list this specific project on the Project List, it does state in the narrative that the major emphasis of the development program for Planning District 1 is directed toward the renovation of obsolete structures, improvement in the quality of landscape, and enhancement of visual and physical access to the bayfront (Page 50 of the PMP). The proposed project does renovate obsolete structures, improves the quality of landscape, and enhances visual and physical access to the bayfront by enhancing the promenade. Therefore, the project is consistent with the PMP's vision for this District.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The proposed project is consistent with the Chapter 3 policies of the Coastal Act as follows:

#### ARTICLE 2-PUBLIC ACCESS

The proposed project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214. The project is located adjacent to coastal resources. The nearest existing recreational amenities, located south of the site, include a park areas, boat launching ramp and a fishing pier along Shelter Island Drive. These amenities will not be impacted by this proposed project. The proposed project will: enhance access to recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing an enhanced public pedestrian promenade, public access points and signage, pedestrian seating and environmental interpretative signage (see Attachment B - Shelter Pointe Hotel Expansion Pedestrian Public Access Program). Access to the pedestrian promenade may be obstructed during the construction phase of the project, however access will be temporarily redirected around the project site via a detour for users of the walkway. The detour area required would be limited to only that which is necessary to circumvent the area under construction. Further, a detour would only be implemented when needed to ensure safety of pedestrians. The temporary redirection of pedestrian access through the project site is necessary for safety considerations and would be dismantled as soon as the construction site clears. Public parking off Shelter Island Drive will not be affected by the proposed project, and the Final MND found that on-site parking is consistent with the Port's Parking Guidelines.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222, 30222.5, 30223, and 30224. The proposed project will not adversely impact: coastal areas suited for water-oriented recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; recreational boating use of coastal waters. The proposed project will enhance oceanfront land suitable for recreational use by providing an enhanced promenade that can be accessed by both hotel guests and the general public.

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The project does not involve: diking or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands. The proposed project will be subject to the Standard Urban Stormwater Mitigation Plan requirements of the Municipal Stormwater Permit. SUSMP requirements are meant to incorporate Best Management Practices in the design phase of new development projects. The project will also require Storm Water Pollution Prevention Program (SWPPP), and prior to the



issuance of a building permit, a professional dewatering contractor shall prepare a site-specific dewatering system if it is determined one is needed for construction of the parking garage.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. The proposed project: will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses via new pedestrian-oriented hotel and restaurant areas; signage and bench seating to activate the promenade; will enhance scenic and visual qualities of coastal areas by respecting the Shelter Island Development Guidelines (pg. 57 of the certified PMP) for low-profile building silhouettes that maintain an inviting pedestrian scale. As defined in the PMP, "low profile" means the height of all buildings in the proposed project is limited to 41 feet above mean lower low water (MLLW) (approximately 26 feet above ground level). The maximum height of the new guest wings would be 41 feet above MLLW, or 26 feet above grade. Public views and access to the Yacht Basin from Shelter Island Drive will be protected by two 45-foot public access points between the new guest wings and the between the eastern guest wing and parking garage (see attached Pedestrian Public Access Program). These points will be clearly designated with public coastal access signage. The new promenade along the water's edge will be a minimum of 10 feet to allow pedestrian passing to occur without obstruction.

The proposed project is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, nor require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not increase energy consumption and vehicle miles traveled. The proposed project is not a special community or neighborhood, which because of their unique characteristics, are popular visitor destination points for recreational uses; public works facility; nor associated with a sewage treatment plant. Therefore the proposed project is consistent with the Coastal Act.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### BOARD ACTION

By Resolution adopted on November 30, 2004, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

[ ] This development has been approved as submitted.

[X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. There were not any speakers present at the public hearing on October 10, 2006. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved the proposed project at the October 10, 2006 hearing.

BRUCE B. HOLLINGSWORTH  
President/CEO

By: C.D. Magnus  
C.D. Magnus  
Assistant Redevelopment Planner,  
Land Use Planning

Enclosure(s): Figure 1 – Project Location in Vicinity of Big Bay  
Figure 2 – Project Location Map  
Figure 3 – Drawings of Newly Enhanced Promenade  
Attachment A: Draft Coastal Development Permit Conditions  
Attachment B: Shelter Pointe Hotel Expansion Pedestrian Public Access Program  
Attachment C: Hotel Development Plans



3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • www.portofsandiego.org

**ATTACHMENT A**  
**COASTAL DEVELOPMENT PERMIT**

**Applicant:** Willis E. "Bill" Short II, President, Atlas-Kona Kai, LLC  
500 Hotel Circle North  
San Diego, CA 92108

**Project:** Shelter Pointe Hotel Expansion Project

**Location:** 1551 Shelter Island Drive, San Diego, California

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 31, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a ☐ Emergency ☐ Non-appealable ☒ Appealable Coastal Development Permit.

**Date of Board Action:** October 10, 2006

**Board of Port Commissioners Resolution Number:** 2006-165

**Date of Permit:** October 24, 2006

**Application Number:** 2006-07-42-144

**Permit Number:** CDP-2006-07

The proposed project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

**DEVELOPMENT**

The proposed project area is situated in the City of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Atlas-Kona Kai, LLC (referred to herein as "Permittee") proposes to redevelop the existing Shelter Pointe Hotel leasehold with the following: (1) relocation and renovation of an existing restaurant, (2) expansion and upgrades of conference/meeting space, (3) construction of a new pool, (4) construction of two new guest wings, (5) construction of a new parking garage with attached housekeeping and marina facilities, and (6) construction and enhancement of new promenade

(Figures 5). The project area is approximately 9.85 acres. The proposed construction would occur over a period of about 12 months. The renovation of the existing hotel is not included in the original 12 months.

1. Restaurant/Conference Meeting Space

The interior ground floor footprint of the current hotel facility would be redeveloped and upgraded, including an 18,733 square foot expansion to accommodate a new hotel lobby and restaurant location. The hotel restaurant, AJ's Waterside Grille, would be relocated to the new location. The new restaurant location would accommodate 120 guest seats. The existing restaurant space would be converted into a banquet room, adding approximately 4,000 square feet of meeting space.

After room layout reorganization and renovations to existing rooms, the hotel would have an additional 8,000 square feet of conference space for a total of 21,500 square feet of meeting space, including approximately eight rooms larger than 1,000 square feet.

2. Pool/Guest Wings

The current hotel building layout includes five separate buildings covering a total of 62,937 square feet. Four of these buildings are smaller, detached complexes, collectively covering approximately 10,554 square feet. The large primary structure is approximately 52,383 square feet. The footprints of these structures would not be affected by the proposed project.

A new swimming pool is proposed to be constructed east of the existing pool located south of the main hotel building and north of the detached guest room buildings.

Two new three-story "guest wings" are proposed to be built to the north of the existing hotel on the western portion of the existing surface parking lot north of the existing hotel. The maximum height of the new guest wings would be 41 feet above mean lower low water (MLLW), or 26 feet above grade. Together, the total number of new rooms in these guest wings would be 158, bringing the post-project facility guest room total to 287. The southeast guest wing would be built on a footprint of approximately 14,834 and the northeast guest wing would be built on a footprint of approximately 15,719 square feet, for a total of 30,553 square feet. The post-expansion hotel coverage is expected to have a footprint of approximately 112,223 square feet.

The guest wings would connect to the northern portion of the lobby and to the southeast corner of the proposed parking structure. A 45-foot view corridor and public access point would separate the two guest wings, and another 45-foot view corridor and public access point would separate the eastern most guest wing and the parking structure. Architectural features of the guest wing would be designed to be consistent with elements of the existing hotel.

3. Parking Structure/Parking Lots

The proposed project would not affect the 130 existing parking spaces in the south surface lot currently serving the hotel's detached south complexes and a portion of the primary structure. After encroachment from construction of the guest wings, and re-striping for maximum efficiency, parking provided by the north surface lot would be reduced from 380 to 184 spaces. To fulfill parking obligations, a new parking structure at

the northern end of the project site would be constructed, containing 230 spaces, which would provide 34 additional spaces to the property. The height of the parking structure would be 39 feet above MLLW, or 25 feet above grade. The structure would include a subsurface basement level and three above-grade levels on a footprint of approximately 21,717 square feet.

The project also proposes to demolish the existing 3,142-square-foot marina building and 518-square-foot associated structure. The marina building would be rebuilt as an approximately 2,681 square foot attachment to the parking structure. Additional housekeeping facilities, totaling approximately 2,614 square feet, would also be constructed as part of the parking structure. The proposed project would increase the footprint of the demolished structures by 1,635 square feet.

4. Landscaping & Enhanced Promenade

Incorporation of existing hotel architectural styling (e.g. cupolas and gables, not to exceed 41 feet above MLLW) and enhanced landscaping are proposed to add visual appeal to the finished project. Ornamental non-invasive landscaping, including palm trees, flowering trees, and tropical flowering plants, would be placed around the perimeter of the parking structure and the new guest wings consistent with existing vegetation. Figure 4 depicts where vegetation would be planted. Also, dilapidated areas of the project site would be replaced with upgraded structures and amenities.

The promenade adjacent to the project area would be paved with decorative patterns, widened to at least ten feet in width, and enhanced with additional landscaping, signage, bench seating, and public art (see Figure 2 and Attachment B - Shelter Pointe Hotel Expansion Pedestrian Public Access Program). Two 45-foot corridors between the new guest wings and between the eastern guest wing and the parking garage will provide view and public access to the Shelter Island Drive and San Diego Bay.

**STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.

8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.
10. If Standard Urban Stormwater Mitigation Planning (SUSMP) requirements apply, project proponent must submit an Urban Stormwater Mitigation Plan (USMP) to the Port describing how the project will meet SUSMP requirements, prior to final construction plan approval.

#### **SHORT TERM CONSTRUCTION MEASURES**

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm as much as practical; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Diesel equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.

13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. This project is subject to the Regional Water Quality Control Order No. 2001-01, (NPDES Permit No. CAS0108758), Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Municipal Storm Water Permit), as adopted, amended, and/or modified. This permit applies to construction activities that result in the disturbance of land area including clearing, grading, excavation, removal and replacement of soil or surface pavement, an reconstruction of existing facilities. The construction activity herein requires development and implementation of Port Storm Water Pollution Prevention Plan (Port SWPPP). The Port SWPPP must describe the implementation and maintenance of the storm water pollution prevention Best Management Practices (BMPs) used to control discharges to the storm water conveyance system from construction activities. Construction activities include temporary and/or related activities, such as staging areas, equipment and material storage sites, waste management areas, temporary plant sites, and borrow pit operations, which may be outside the construction limits. The tenant must prepare and submit a Port SWPPP for review and approval by the District prior to work. The Port SWPPP template is available on the Port's website at [http://www.portofsandiego.org/sandiego\\_environment](http://www.portofsandiego.org/sandiego_environment) (NOTE: This Project is NOT subject to State Water Resources Control Board Order No. 99-08-DWQ, (NPDES General Permit No. CAS000002) Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Storm Water Permit).

#### **SPECIAL PROVISIONS**

1. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements (attached as Exhibit C) as described in the "Shelter Pointe Hotel Expansion Project" Final Mitigated Negative Declaration (SCH #2006071037; UPD #83356-MND-683; Clerk Document No. 51132), dated October 2006, and adopted by Resolution No. 2006-163.
2. Permittee shall install standard San Diego "Coastal (Bay) Public Access" signs in clear view at the pass-thru openings for public access to and from the project site.
3. Permittee shall install Environmental Interpretative Signage along the promenade to educate the public about the environmental resources surrounding the area.
4. The new promenade within the limits of the project site shall be a minimum of ten feet in width in all locations and shall be clearly delineated for public use. The promenade shall include decorative patterns, which will be enhanced with landscaping, public art, seating and signage. The promenade shall connect to the promenade of the adjacent parcel to the west.

and will wrap back around to the public right-of-way to the east creating a continuous pedestrian experience.

5. Permittee shall ensure that all public access points and the promenade area shall remain unobstructed. At no time shall public access to the waterfront promenade be fenced, screened, or blocked off by any structure.
6. Permittee shall protect and keep free of obstructions the 45-foot view corridors and public access separating the two new guest wings and between the northern guest wing and the parking garage to allow view and public access to the Shelter Island Drive and San Diego Bay.
7. Public access improvements (i.e. promenade, public art, signage, seating, etc.) shall be completed & open to the public at the time of project completion.
8. Permittee shall only enhance the project site with vegetation that is non-invasive to the project area.
9. Permittee shall leave the promenade open during construction but lateral access may be redirected as required. Access to the pedestrian path may be temporarily redirected around the project site via a temporary detour for users of the walkway during project construction. The detour area required would be limited to only that which is necessary to circumvent the area under construction and must be clearly delineated with signs. Further, a detour shall only be implemented when needed to ensure safety of pedestrians. Any detour would redirect pedestrians back to the promenade once the construction site is cleared.
10. The height of all buildings in the proposed project is limited to 41 feet above mean lower low water (approximately 26 feet above ground level).

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District at (619) 686-6283.

BRUCE B. HOLLINGSWORTH  
Executive Director

By: \_\_\_\_\_  
RALPH T. HICKS  
Director, Land Use Planning

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee  
C. Willis E. Short II, Atlas Kona-Kai, LLC

\_\_\_\_\_  
Date

001268



**ATTACHMENT B**

**SHELTER POINTE HOTEL EXPANSION**

**PUBLIC ACCESS PROGRAM**

**SAN DIEGO UNIFIED PORT DISTRICT  
LAND USE AND PLANNING DEPARTMENT  
3165 PACIFIC HIGHWAY  
SAN DIEGO, CALIFORNIA 92101-1128  
(619) 686-6583**

**October 16, 2006**

**001269**

- Contents:**
1. Shelter Pointe Hotel Expansion Public Access Program
  2. Shelter Pointe Hotel Expansion Public Access Map

## **1. Shelter Pointe Hotel Expansion Public Access Program**

### **Project Location**

The Shelter Pointe Hotel Expansion project is located at 1551 Shelter Island Drive in Subarea 13 of Planning District 1 in the certified Port Master Plan (PMP). The Applicant and Port Tenant for this project is Atlas-Kona Kai, LLC. The project site is located on the southwestern tip of Shelter Island and is adjacent to the Kona Kai Marina to the north, the Harbor Police Station to the west, Shelter Island Drive to the south, and the Island Palms Hotel Site to the east.

### **Public Access Program Components**

The purpose of the Shelter Pointe Hotel Expansion Public Access Program is to define and implement the proposed pedestrian-based system by providing extensive public access through and around the project location. It complies with the policies of the PMP by providing physical access points along and to the water and by enhancing the existing pedestrian promenade.

### **Enhanced Promenade**

The existing public pedestrian promenade that connects the project site with the adjacent properties to the east and the west currently consists of 750 linear feet of disconnected pathway that varies between eight and fourteen feet in width.

The new project proposes to leave the 470 linear feet of the promenade adjacent to the existing hotel building intact as is today. The remaining 280 linear feet of the existing promenade located adjacent to the existing hotel building will be enhanced by decorative pavement, non-invasive landscaping, environmental signage, bench seating and public art. This area will then connect to an additional 780 linear feet of new promenade that will be constructed to match the newly enhanced promenade. This new promenade area will border the newly constructed meeting space, guest wings and parking garage that are proposed.

All newly enhanced promenade areas will be a minimum of ten-feet wide, ensuring that these promenade areas will easily accommodate two-way pedestrian passing. The new promenade areas will directly connect to the existing promenade walkway to the west, which wraps around the backside of the existing hotel building. It will also directly connect to the newly enhanced promenade that is being constructed on the Island Palms Hotel property adjacent to the property to the east. This will make for a continuous pedestrian experience where the public can enjoy access to the water all along the Yacht Basin and through to San Diego Bay.

### **Public Access Points & Signage**

A coastal public access signage program will be incorporated along the north side of Shelter Island Drive to allow pedestrians to know where access points are available from the street. Access points will be clearly designated with an appropriately sized sign, which will be provided and maintained by the Applicant. The design of these signs will coordinate with the overall motif of the area and will clearly indicate public coastal access is available for the general public at the designated points.

Access for the general public will be provided as shown on the attached Public Access Map. There will be two public access points where the new buildings are being constructed: 1) a 45-foot corridor between the two new guest wings, and 2) a 45-foot corridor between the eastern guest wing and the parking garage. These accessways will create visual and physical linkages from Shelter Island Drive through the project site to the promenade and Yacht Basin beyond. The access point that currently is to the west of the existing hotel building will not be reduced in size or functional capacity by the new project.

#### **Pedestrian Seating**

The proposed project shall provide twelve bench seats along the promenade as shown on the attached exhibit. The seating will be designed and placed so as to provide a view of the Shelter Island Yacht Basin and the vessels berthed within the Kona Kai Marina. The seating will be designed to be as maintenance free as possible with any necessary maintenance provided by the project Applicant. The design shall coordinate with the surrounding motif and will be clearly designated for public use.

#### **Environmental Interpretative Signage**

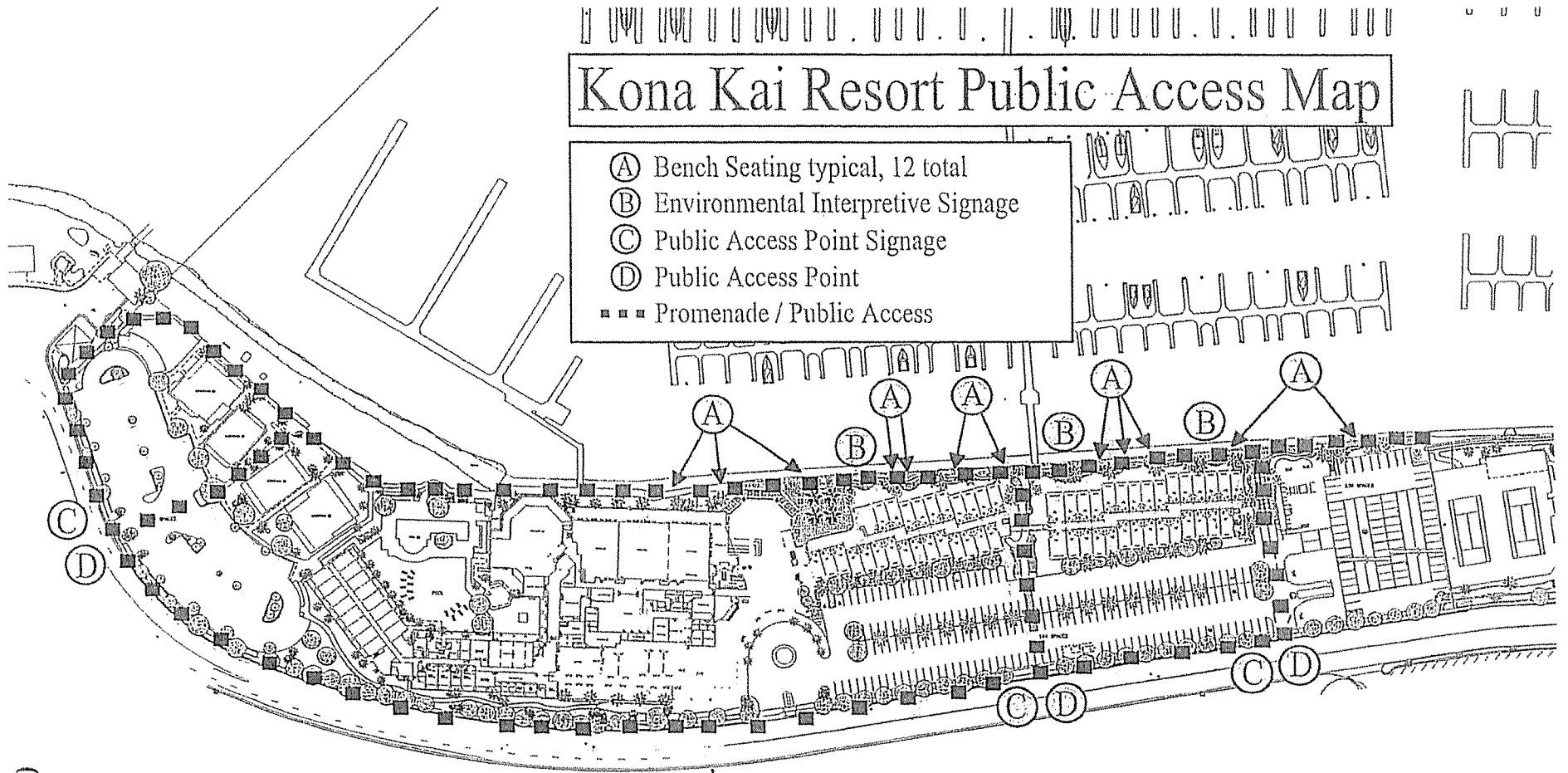
Three environmental interpretative signs will be provided along the promenade as indicated on the attached exhibit. This signage will be designed and maintained by the Applicant. The design will coordinate with the elements of the surrounding area, and attention will be paid to the marine wildlife in the area with special emphasis on the intertidal zone. Once the Public Art Committee reviews and approves the Applicant's proposal, works of public art will also augment the environmental interpretative signage program.

## **2. Shelter Pointe Hotel Expansion Public Access Map**

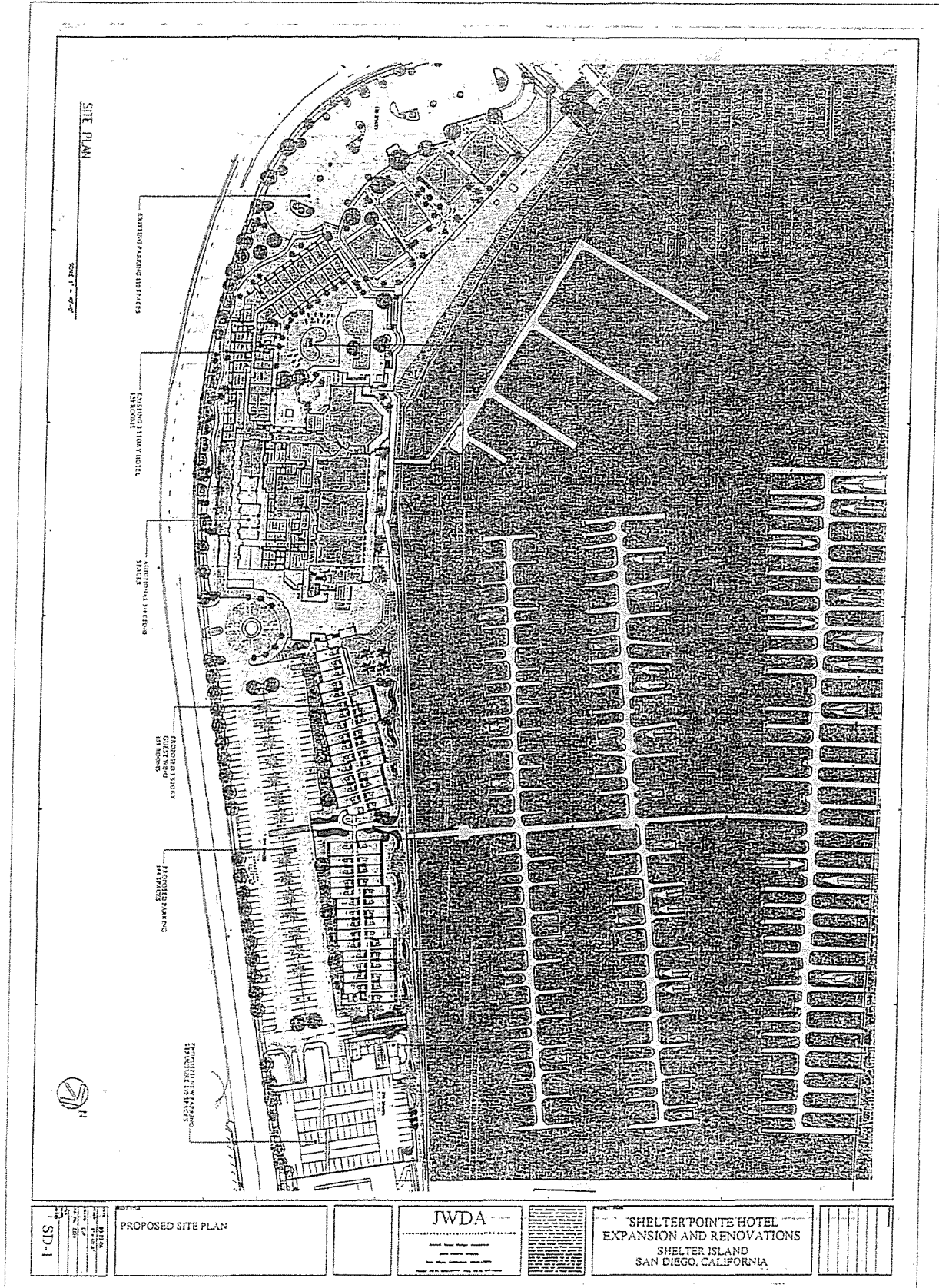
(See attached)

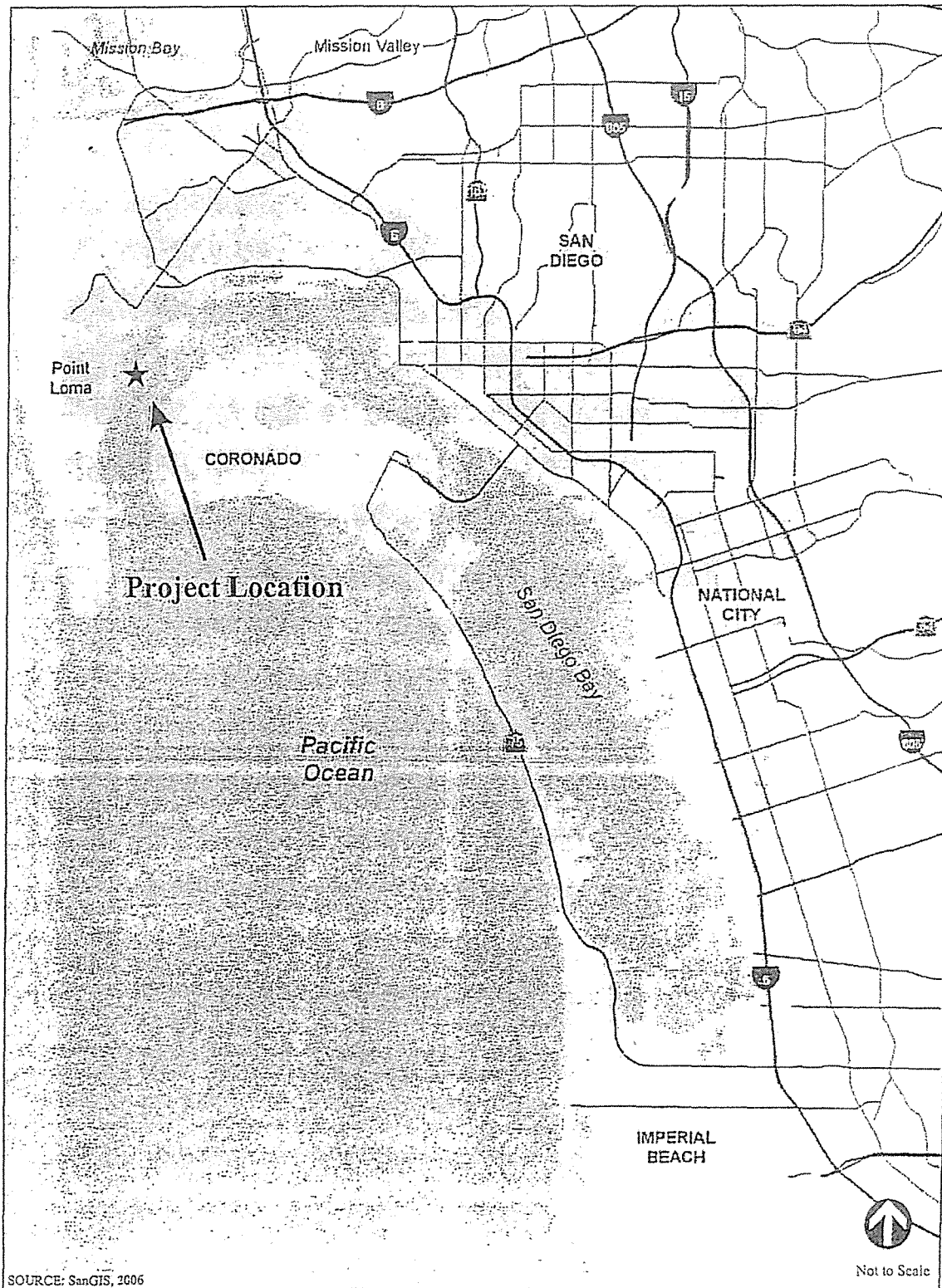
# Kona Kai Resort Public Access Map

- Ⓐ Bench Seating typical, 12 total
- Ⓑ Environmental Interpretive Signage
- Ⓒ Public Access Point Signage
- Ⓓ Public Access Point
- ■ ■ Promenade / Public Access



001272

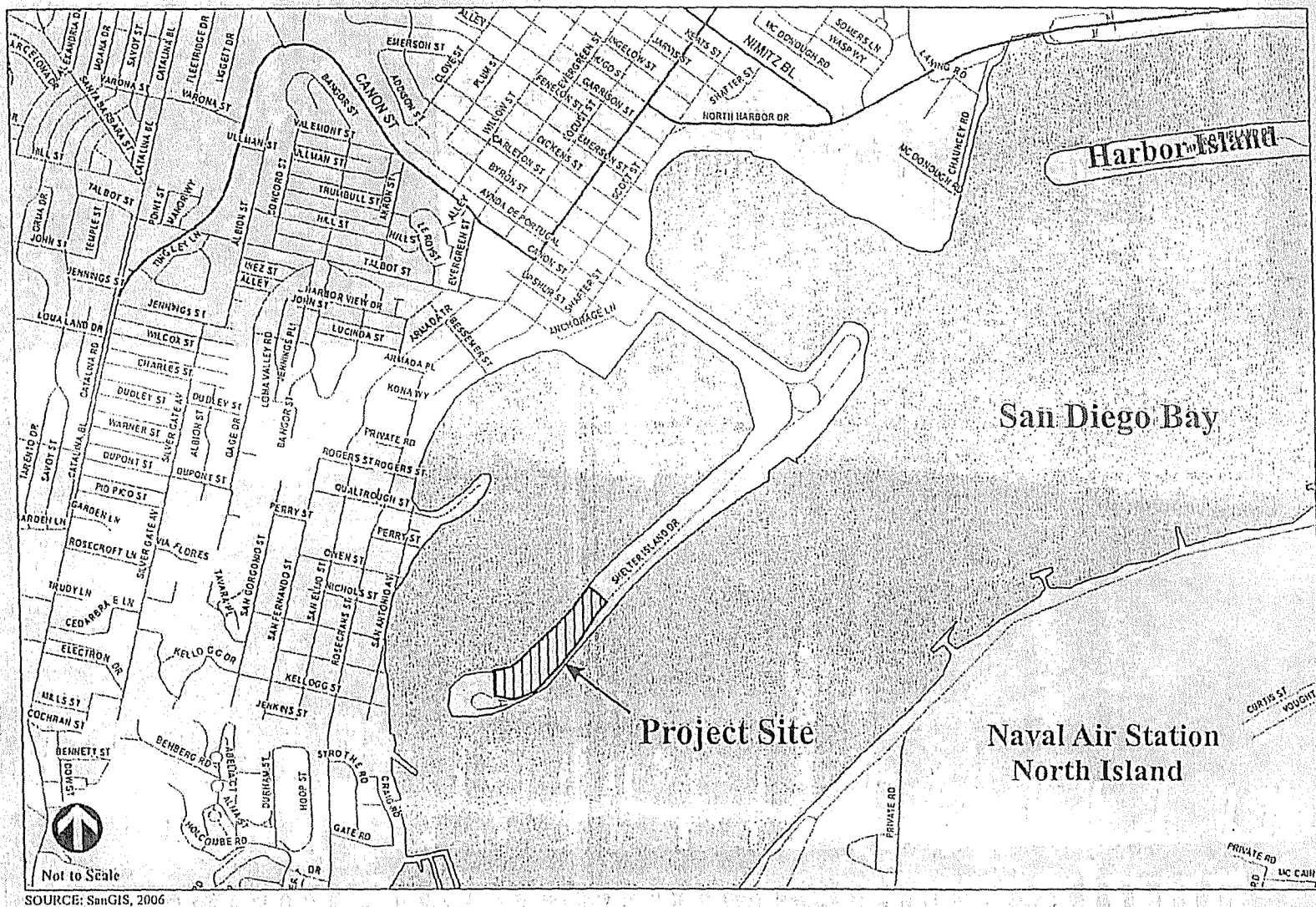




VICINITY MAP

FIGURE 1

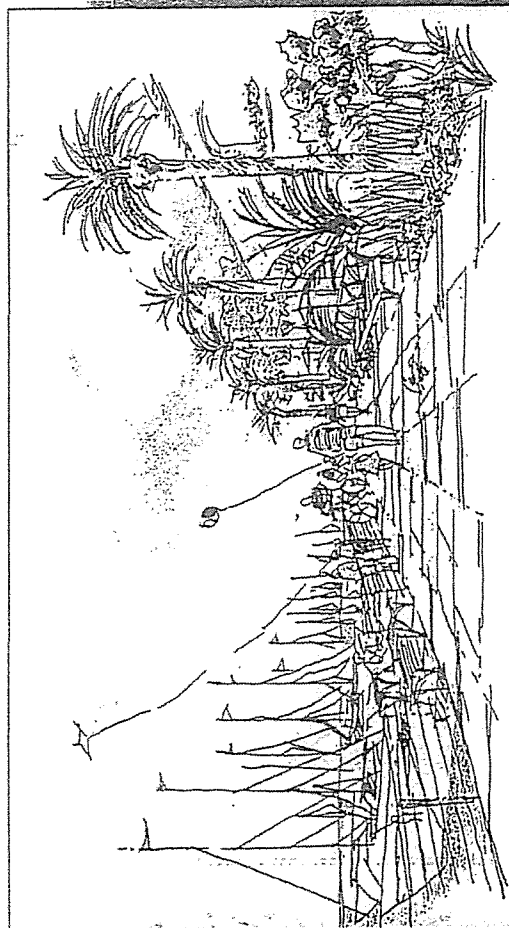
001274



LOCATION MAP

FIGURE 2





# FIGURE 3





6-PSD-06-300

3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • www.portofsandiego.org

October 16, 2006

Ms. Sherilyn Sarb, District Manager  
California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

**NOTICE OF BOARD ACTION  
on a Coastal Development Permit for**

Project: Island Palms West Hotel Project  
1901 Shelter Island Drive, San Diego, California

**PROJECT LOCATION**

The Island Palms West Hotel project is located at 1901 Shelter Island Drive in Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of the PMP). The project site is surrounded by the Kona Kai Marina to the north, which includes 518 vessel slips constructed to the pierhead line, the Best Western Island Palms Hotel Building to the east, the Shelter Pointe Hotel to the west, Shelter Island Drive and a public park and pedestrian walkway to the south (see Figure 1 for Project location in the vicinity of the Big Bay).

**PROJECT DESCRIPTION**

The proposed project area is situated in the City of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Bartell Hotels (referred to herein as "Permittee") proposes to redevelop the existing Island Palms West Hotel leasehold with the following: (1) demolition of the existing two-story Voyager Restaurant, (2) construction of a new three-level (41-feet above the mean lower low water (MLLW)), 25,600 square foot hotel building, (3) construction of a restroom accessible from the existing pool area, (4) conversion of three existing two-level townhouse units in the Island Palms building into six standard guestrooms, and (5) conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. The project area is approximately 3.42 acres.

001277

**1. Existing Island Palms Building**

The existing Island Palms guestroom building currently contains 78 guestrooms: 73 standard guestrooms and five two-level townhouse units. The project proposes the following changes to this structure:

RECEIVED

OCT 23 2006

- Conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. A new elevator system will also be installed near the lobby area;
- Conversion of three existing standard guestrooms into administrative offices, restrooms, and other hotel support facilities;
- Conversion of three existing two-level townhouse units into six standard guestrooms;
- Conversion of two existing two-level townhouse units into two standard guestrooms and a 1,330 square foot dining area;
- Conversion of an existing standard guestroom into a new exercise room;
- Construction of a restroom accessible from the existing pool area;

## 2. New Hotel Building

The project proposes demolition of the existing two-story Voyager Restaurant and construction of a new three-level, 25,600 square foot hotel building. The new hotel will contain 48 standard guestrooms and 2,000 square feet of marina services, including an office, storage, laundry and bathroom facilities. Marina trash and recycling will be located within the hotel service yard/loading area located between the hotel and garage.

The finished grade in front of the hotel will be lowered by approximately four feet to allow easy access into the existing parking garage and to keep the roof ridge line below the height limit of 41 feet above Mean lower low water (MLLW). The public pedestrian walkway will remain at the current level of approximately 10.5 feet above MLLW. The ground floor level will be 11 feet above MLLW. The Project (the remodeled existing building plus the new hotel) will result in a total of 125 guestrooms.

## 3. Parking Structure/Parking Lots

The project does not propose any subterranean parking, and the existing 48 parking space garage will not be demolished. The existing garage will be reconfigured to eliminate the ramp to the west and to add accessible spaces. This will result in a net change of zero parking spaces within the structure. A total of 27 new surface parking spaces will be added to the existing 48 surface spaces. The net result is a total of 119 on-site parking spaces.

## 4. Public Access and View Corridors

The existing segment of pedestrian public walkway between the Kona Kai Marina and the existing Voyager Restaurant currently consists of a 5-foot wide concrete slab. The new project proposes to demolish the Voyager Restaurant and build a new hotel building that will be placed such that the area between the Kona Kai Marina and the new building will be approximately 18-feet wide. This area will be enhanced with a 190 feet of 8-foot wide meandering pedestrian walkway and 10 feet of non-invasive landscaped areas (see Figure 2 for drawings of the enhanced public pedestrian walkway area). The enhanced public walkway will also include public bench seating, public access signage, and may also include public art (dependent on what the Public Art Committee decides).

The proposed project includes the removal of 12 trees on the site, including king trees and Mexican fan palms. However, the removal of these trees is temporary as they will be replanted or replaced in kind upon completion of construction. All landscaping added, replanted or replaced will be non-invasive to the existing vegetation in the project area.

The segment of existing public pedestrian walkway between the Kona Kai Marina and the existing hotel building is approximately 5-foot wide and 440-foot long and will remain as is. Also, the segment of walkway between the Kona Kai Marina and the existing parking garage is approximately 5-foot wide and 150-foot long and will remain as is. There are three public access points that provide view corridors from Shelter Island Drive to the Kona Kai Marina and the Yacht Basin beyond:

- Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide
- Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide
- Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide

Public access from Shelter Island Drive to the public pedestrian walkway will be provided at each of these three locations and will be clearly delineated by an appropriate Coastal Bay Public Access Signage Program (See Attachment B – Island Palms West Hotel Pedestrian Public Access Program).

Portions of the Hotel Design Development Plans, which highlight the proposed project's conformance with the certified Port Master Plan, are included as Attachment C of the Notice of Board Action. A full copy of the Design Development Plans may be accessed by contacting the District's Land-Use Planning Department. Permittee shall provide to the District an additional copy of the final development plans for forwarding to the California Coastal Commission.

Pursuant to CEQA Guidelines Section 21604.5, the District evaluated the proposed project in the Island Palms West Hotel Project Mitigated Negative Declaration (MND). The Final MND found that the overall project with the incorporation of the Mitigation Monitoring and Reporting Program would have no significant adverse impacts to air quality, hazards and hazardous materials, hydrology/water quality, and noise, nor would the project otherwise have potentially significant adverse impacts to aesthetics, agricultural resources, biological resources, cultural resources, geology/soils, land use and planning, mineral resources, population and housing, or utilities/service systems. Mitigation Monitoring and Reporting Program requirements will be followed pursuant to the mitigation measures outlined in the Final MND.

The Final MND for the Island Palms West Hotel Project, identified as UPD #83356-MND-682 and SCH #2006061166, was certified by the Board on October 10, 2006, per Resolution 2006-166. The Final MND has been filed with the Office of the District Clerk as Document No. 51133. No further environmental review is required.

#### **CONSISTENCY WITH CERTIFIED PORT MASTER PLAN & CALIFORNIA COASTAL ACT**

The project site is located in the Bay Corridor Planning Subarea of Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of the PMP). The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation. The Commercial Recreation category includes hotels; restaurants; convention center; recreational vehicle parks; specialty shopping; pleasure craft marinas; and sport fishing. The proposed project includes expanding hotel services and the associated parking, public art, and landscape improvements, which are allowed under the certified use

designation; therefore, the proposed project is consistent with the Commercial Recreation designation and the certified Port Master Plan.

The proposed project is not listed on Table 7, which is the Project List for Planning District 1. However, the policy surrounding the Project Lists (Page 49 of the PMP) is that the Project List is meant to be a listing of known proposed projects in sufficient detail to judge the plan's consistency with the Coastal Act. The project list is not intended to be an exclusive listing, rather it describes major projects or smaller projects that are well defined at the time of the writing of the PMP. Some future projects, not listed at the time of the writing of the PMP, but consistent with the land use classification grouping indicated in the Plan maps and identified in the Plan narrative, were anticipated to be added, just as some projects will need to be modified to respond to future changing environmental, financial and other conditions. Therefore, while the PMP does not list this specific project on the Project List, it does state in the narrative that the major emphasis of the development program for Planning District 1 is directed toward the renovation of obsolete structures, improvement in the quality of landscape, and enhancement of visual and physical access to the bayfront (Page 50 of the PMP). The proposed project does renovate obsolete structures, improves the quality of landscape, and enhances visual and physical access to the bayfront by enhancing the public pedestrian walkway and access points. Therefore, the project is consistent with the PMP's vision for this District.

The proposed project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein based upon the findings and conditions contained in this notice, the permit, and the resolution authorizing the issuance of the permit.

The proposed project is consistent with the Chapter 3 policies of the Coastal Act as follows:

#### ARTICLE 2-PUBLIC ACCESS

The proposed project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214. The project is located adjacent to coastal resources. The nearest existing recreational amenities, located south of the site, includes a park area, boat launching ramp and a fishing pier along Shelter Island Drive. These amenities will not be impacted by this proposed project. The proposed project will enhance access to recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing a new area of enhanced public pedestrian walkway. This section of the walkway will be at least 8-feet wide and 190-feet long in the new area and will easily accommodate two-way pedestrian passing. The project also has three public access points from Shelter Island Drive to the Yacht Basin that will be clearly designated by a coastal (bay) public access signage program from Shelter Island Drive through to the yacht basin. Pedestrian bench seating will also be provided (see Attachment B - Island Palms West Hotel Project Pedestrian Public Access Program). Access to the pedestrian walkway may be obstructed during the construction phase of the project, however access will be temporarily redirected around the project site via a detour for users of the walkway. The detour area required would be limited to only that which is necessary to circumvent the area under construction. Further, a detour would only be implemented when needed to ensure the safety of pedestrians. The temporary redirection of pedestrian access through the project site is necessary for safety considerations and would be dismantled as soon as the construction site clears. Existing public parking off Shelter Island Drive will not be affected by the proposed project, and the Final MND found on-site parking sufficient for the proposed project.

#### ARTICLE 3-RECREATION

The proposed project is consistent with Sections 30220, 30221, 30222, 30222.5, 30223, and 30224. The proposed project will not adversely impact coastal areas suited for water-oriented recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; recreational boating use of coastal waters. The proposed project will enhance oceanfront land suitable for recreational use by providing an enhanced 190-foot pedestrian public walkway area that can be accessed by both hotel guests and the general public. Public access signs will be placed along the walkway to clearly display that the walkway is open to the public.

#### ARTICLE 4-MARINE ENVIRONMENT

The proposed project is consistent with Sections 30230, 30231, 30232, 30233, 30234, 30234.5, 30235, 30236, and 30237. The project does not involve diking or dredging of open coastal waters, wetlands, estuaries, and lakes; commercial fishing and recreational boating facilities; any fishing activities in the area; any natural shoreline altering construction; alterations of rivers and streams; or Bolsa Chica wetlands. The proposed project will be subject to the Standard Urban Stormwater Mitigation Plan requirements of the Municipal Stormwater Permit. SUSMP requirements are meant to incorporate Best Management Practices in the design phase of new development projects. The project will also require Storm Water Pollution Prevention Program (SWPPP) during construction. The project is not anticipated to encounter groundwater during construction; however, if groundwater is encountered, a mitigation measure has been added to the Final MND's Mitigation Monitoring and Reporting Program to ensure that impacts caused by groundwater dewatering remain below a level of significance.

#### ARTICLE 5-LAND RESOURCES

The proposed project is consistent with Sections 30240, 30241, 30241.5, 30242, 30243, and 30244. The proposed project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or paleontological resources.

#### ARTICLE 6-DEVELOPMENT

The proposed project is consistent with Sections 30250, 30251, 30252, 30253, 30254, 30254.5, and 30255. The proposed project will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses via the new pedestrian-oriented areas with bench seating, signage, and public art to activate the both the existing segments of the pedestrian public walkway and the newly widened and enhanced public walkway area. The project will enhance scenic and visual qualities of coastal areas by respecting the Shelter Island Development Guidelines (pg. 57 of the certified PMP) for low-profile building silhouettes that maintain an inviting pedestrian scale. As defined in the PMP, "low profile" means that the height of all buildings in the proposed project is limited to 41 feet above mean lower low water (MLLW) (approximately 26 feet above ground level). The maximum height of the new guest wings would be 41 feet above mean lower low water (MLLW), or 26 feet above grade.

Public access to the Yacht Basin from Shelter Island Drive will be protected by three public access points on the project site: 1) Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide, 2) Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide, and 3) Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide. Public access from Shelter Island Drive to the public pedestrian walkway is provided at each of these

three locations and will be clearly delineated by a public coastal (bay) access signage program (See Attachment B – Island Palms West Hotel Pedestrian Public Access Program). The new public walkway area along the water's edge will be a minimum of 8 feet to allow two-way pedestrian passing to occur in this area without obstruction. The new walkway shall connect to the existing walkway areas to the east and the west creating a 780-foot continuous pedestrian experience along the project site.

The proposed project is not located in areas of high geologic, flood, and fire hazard; will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area nor will require improvements that would substantially alter natural landforms along bluffs and cliffs; will not result in significant air quality impacts; will not increase energy consumption and vehicle miles traveled. The proposed project is not a special community or neighborhood, which because of their unique characteristics, are popular visitor destination points for recreational uses; public works facility; nor associated with a sewage treatment plant, and therefore is consistent with the Coastal Act.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The proposed project is consistent with Sections 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The proposed project does not involve a coastal-dependent industrial facility or the use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemical facilities, thermal electric generating plants, or oil production and transport.

#### **BOARD ACTION**

By Resolution adopted on October 10, 2006, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- ☐ This development has been approved as submitted.
- ☒ This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

- ☐ This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.
- ☒ This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence by interested parties was received on this Coastal Development Permit. There were not any speakers present at the public hearing on October 10, 2006. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved

the proposed project at the October 10, 2006 hearing.

BRUCE B. HOLLINGSWORTH  
President/CEO

By: C. D. Magnus  
C.D. Magnus  
Assistant Redevelopment Planner,  
Land Use Planning

Enclosure(s): Attachment A: Draft Coastal Development Permit Conditions  
Attachment B: Island Palms West Pedestrian Public Access Program  
Attachment C: Hotel Development Plans  
Figure 1 – Project Location Map  
Figure 2 – Drawings of Newly Enhanced Pedestrian Public Walkway

**ATTACHMENT A**  
**COASTAL DEVELOPMENT PERMIT**

**Applicant:** Richard Bartell  
Bartell Hotels  
4875 N. Harbor Drive, 5<sup>th</sup> Floor  
San Diego, CA 92106

**Project:** Island Palms West Hotel Project

**Location:** 1901 Shelter Island Drive, San Diego, California

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a ☐ Emergency ☐ Non-appealable ☒ Appealable Coastal Development Permit.

**Date of Board Action:** October 10, 2006

**Board of Port Commissioners Resolution Number:** 2006-168

**Date of Permit:** October 24, 2006

**Application Number:** 2006 08-42-144

**Permit Number:** CDP-2006-06

The proposed project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

**DEVELOPMENT**

The proposed project area is situated in the city of San Diego on Coastal Zone State tidelands administered by the San Diego Unified Port District under a certified PMP. Bartell Hotels (referred to herein as "Permittee") proposes to redevelop the existing Island Palms Hotel leasehold with the following: (1) demolition of the existing two-story Voyager Restaurant, (2)



construction of a new three-level (41-feet above the mean lower low water (MLLW)), 25,600 square foot hotel building; (3) construction of a restroom accessible from the existing pool area, (4) conversion of three existing two-level townhouse units in the Island Palms building into six standard guestrooms, and (5) conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. The project area is approximately 3.42 acres.

#### 1. Existing Island Palms Building

The existing Island Palms guestroom building currently contains 78 guestrooms: 73 standard guestrooms and five two-level townhouse units. The project proposes the following changes to this structure:

- Conversion of the existing front patio area into a new 1,560 square foot, two-story main lobby including a lounge, host and pantry areas. A new elevator system will also be installed near the lobby area;
- Conversion of three existing standard guestrooms into administrative offices, restrooms, and other hotel support facilities;
- Conversion of three existing two-level townhouse units into six standard guestrooms;
- Conversion of two existing two-level townhouse units into two standard guestrooms and a 1,330 square foot dining area;
- Conversion of an existing standard guestroom into a new exercise room;
- Construction of a restroom accessible from the existing pool area;

#### 2. New Hotel Building

The project proposes demolition of the existing two-story Voyager Restaurant and construction of a new three-level, 25,600 square foot hotel building. The new hotel will contain 48 standard guestrooms and 2,000 square feet of marina services, including an office, storage, laundry and bathroom facilities. Marina trash and recycling will be located within the hotel service yard/loading area located between the hotel and garage.

The finished grade in front of the hotel will be lowered by approximately four feet to allow easy access into the existing parking garage and to keep the roof ridge line below the height limit of 41 feet above Mean lower low water (MLLW). The public pedestrian walkway will remain at the current level of approximately 10.5 feet above MLLW. The ground floor level will be 11 feet above MLLW. The Project (the remodeled existing building plus the new hotel) will result in a total of 125 guestrooms.

#### 3. Parking Structure/Parking Lots

The project does not propose any subterranean parking, and the existing 48 parking space garage will not be demolished. The existing garage will be reconfigured to eliminate the ramp to the west and to add accessible spaces. This will result in a net change of zero parking spaces within the structure. A total of 27 new surface parking spaces will be added to the existing 48 surface spaces. The net result is a total of 119 on-site parking spaces.

#### 4. Public Access and View Corridors

The existing segment of pedestrian public walkway between the Kona Kai Marina and the existing Voyager Restaurant currently consists of a 5-foot wide concrete slab. The new project proposes to demolish the Voyager Restaurant and build a new hotel

building that will be placed such that the area between the Kona Kai Marina and the new building will be approximately 18-feet wide. This area will be enhanced with a 190 feet of 8-foot wide meandering pedestrian public walkway and 10 feet of non-invasive landscaped areas (see Figure 2 for drawings of the enhanced public pedestrian walkway area). The enhanced public walkway will also include public bench seating, public access signage, and may also include public art (depending on what the Public Art Committee decides).

The proposed project includes the removal of 12 trees on the site, including king trees and Mexican fan palms. However, the removal of these trees is temporary as they will be replanted or replaced in kind upon completion of construction. All landscaping added, replanted or replaced will be non-invasive to the existing vegetation in the project area.

The segment of existing public pedestrian walkway between the Kona Kai Marina and the existing hotel building is approximately 5-feet wide and 440-feet long and will remain as is. Also, the segment of walkway between the Kona Kai Marina and the existing parking garage is approximately 5-feet wide and 150-feet long and will remain as is.

There are three public access points that provide view corridors from Shelter Island Drive to the Kona Kai Marina and the Yacht Basin beyond:

- a. Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide
- b. Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide
- c. Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide

Public access from Shelter Island Drive to the public pedestrian walkway will be provided at each of these three locations and will be clearly delineated by an appropriate Coastal (Bay) Public Access Signage Program (See Attachment B – Island Palms West Hotel Pedestrian Public Access Program).

#### STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.

7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.

8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the permittee has signed a statement agreeing that the permittee will abide by the terms, conditions, limitations, and provisions of the permit.

9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.

10. If Standard Urban Stormwater Mitigation Planning (SUSMP) requirements apply, project proponent must submit an Urban Stormwater Mitigation Plan (USMP) to the Port describing how the project will meet SUSMP requirements, prior to final construction plan approval.

#### SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm as much as practical; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.

2. To minimize fugitive air emissions during construction, the permittee will require the construction contractor to keep fugitive dust down by regular watering.

3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.

4. All trucks hauling loose material during project construction, either on-site or off-site, shall be adequately protected.

5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.

6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper.

7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.

8. Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.

9. All construction equipment shall be maintained in peak condition to reduce operational emissions.

10. Diesel equipment shall use low-sulfur diesel fuel.

11. Electric equipment shall be used to the maximum extent feasible during construction.

12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. This project is subject to the Regional Water Quality Control Order No. 2001-01, (NPDES Permit No. CAS0108758), Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Municipal Storm Water Permit), as adopted, amended, and/or modified. This permit applies to construction activities that result in the disturbance of land area including clearing, grading, excavation, removal and replacement of soil or surface pavement, an reconstruction of existing facilities. The construction activity herein requires development and implementation of Port Storm Water Pollution Prevention Plan (Port SWPPP). The Port SWPPP must describe the implementation and maintenance of the storm water pollution prevention Best Management Practices (BMPs) used to control discharges to the storm water conveyance system from construction activities. Construction activities include temporary and/or related activities, such as staging areas, equipment and material storage sites, waste management areas, temporary plant sites, and borrow pit operations, which may be outside the construction limits. The tenant must prepare and submit a Port SWPPP for review and approval by the District prior to work. The Port SWPPP template is available on the Port's website at [http://www.portofsandiego.org/sandiego\\_environment](http://www.portofsandiego.org/sandiego_environment) (NOTE: This Project is NOT subject to State Water Resources Control Board Order No. 99-08-DWQ, (NPDES General Permit No. CAS000002) Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Storm Water Permit)).

#### SPECIAL PROVISIONS

1. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements as described in the "Island Palms West Hotel Project" Final Mitigated Negative Declaration (SCH #2006061166; UPD #83356-MND-682; Clerk Document No. 51133), dated October 2006, and adopted by Resolution No. 2006-166.
2. Permittee shall install standard San Diego "Coastal (Bay) Public Access" signs in clear view at the pass-thru openings for public access to and from the project site from Shelter Island Drive and through to the yacht basin.
3. The new pedestrian public walkway area shall be a minimum of eight feet in width, 190-feet long and shall be clearly delineated for public use. The public walkway shall be enhanced with landscaping, bench seating, public access signage and potentially public art (depending on what is approved by the Public Art Committee). The new walkway shall connect to the existing walkway areas to the east and the west creating a 780-foot

continuous pedestrian experience along the project site.

4. Permittee shall ensure that all public access points and the pedestrian public walkway area shall remain unobstructed to allow view and public access to Shelter Island Drive and San Diego Bay. At no time shall public access to the waterfront public walkway be fenced, screened, or blocked off by any structure.
5. Permittee shall leave the pedestrian public walkway open during construction but lateral access may be redirected as required. Access to the walkway may be temporarily redirected around the project site via a temporary detour for users of the walkway during project construction. The detour area required would be limited to only that which is necessary to avoid the area under construction and must be clearly delineated with signs. Further, a detour shall only be implemented when needed to ensure the safety of pedestrians. Any detour would redirect pedestrians back to the designated public walkway once the construction site is cleared.
6. Public access improvements (i.e. new enhanced pedestrian public walkway area, public access signage, bench seating, etc.) shall be completed and open to the public at the time of project completion.
7. Permittee shall only enhance the project site with vegetation that is non-invasive to the existing vegetation in the project area.
8. The height of all buildings in the proposed project is limited to 41 feet above mean lower low water (approximately 26 feet above ground level).

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District at (619) 686-6283.

BRUCE B. HOLLINGSWORTH  
Executive Director

By: \_\_\_\_\_  
RALPH T. HICKS  
Director, Land Use Planning

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee  
*Richard Bartell, Bartell Hotels*

\_\_\_\_\_  
Date

Attachment B

**ISLAND PALMS WEST HOTEL  
EXPANSION**

**PEDESTRIAN PUBLIC ACCESS  
PROGRAM**

SAN DIEGO UNIFIED PORT DISTRICT  
LAND USE AND PLANNING DEPARTMENT  
3165 PACIFIC HIGHWAY  
SAN DIEGO, CALIFORNIA 92101-1128  
(619) 686-6583

October 16, 2006

001290

**Contents: 1. Island Palms West Hotel Pedestrian Public Access Program**  
**2. Island Palms West Hotel Pedestrian Public Access Map**

**1. Island Palms West Hotel Pedestrian Public Access Program**

**Project Location**

The Island Palms West Hotel Project is located at 1901 Shelter Island Drive in Subarea 13 of Planning District 1, Shelter Island/La Playa, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The Permittee and Port Tenant for this project is Bartell Hotels. The project site is delineated on Precise Plan Map Figure 4 (Page 52 of the PMP). The project site is surrounded by the Kona Kai Marina to the north, which includes 518 vessel slips constructed to the pierhead line, the Best Western Island Palms Hotel Building to the east, the Shelter Pointe Hotel to the west, Shelter Island Drive and a public park and pedestrian walkway to the south (see Figure 1 for Project location in the vicinity of the Big Bay).

**Pedestrian Public Access Program Components**

The purpose of the Island Palms Hotel Public Access Program is to define and implement the proposed pedestrian-based system by providing extensive public access through and around the project location. This Program complies with the policies of the PMP by providing physical access points along and to the water and by enhancing the existing pedestrian public walkway.

**Enhanced Pedestrian Public Walkway**

The existing segment of pedestrian public walkway between the Kona Kai Marina and the existing Voyager Restaurant currently consists of a 5-foot wide concrete slab. The new project proposes to demolish the Voyager Restaurant and build a new hotel building that will be placed such that the area between the Kona Kai Marina and the new building will be approximately 18-feet wide. This area will be enhanced with 190 feet of 8-foot wide meandering pedestrian walkway and 10 feet of non-invasive landscaped areas (see Figure 2 for drawings of the enhanced public pedestrian walkway area). The enhanced public walkway will also include public bench seating, public access signage, and may also include public art (dependent on the decisions of the Public Art Committee).

The new public walkway area will be 8-feet wide to ensure that two-way pedestrian passing can be easily accommodated along the expanse of this segment, which will be approximately 190-feet long. The new public walkway area will directly connect to the existing 440-foot walkway to the east in front of the existing Island Palms Hotel building. It will also directly connect to the existing 150-foot walkway area in front of the existing parking garage to the west. This will make for 780 linear feet of continuous pedestrian experience where the public can enjoy access to the water all along the Yacht Basin. All landscaping that is added, replanted or replaced will be non-invasive to the existing vegetation in the project area.

The segment of existing public pedestrian walkway between the Kona Kai Marina and the existing hotel building is approximately 5-feet wide and 440-feet long and will remain as is. Also, the segment of walkway between the Kona Kai Marina and the existing parking garage is

approximately 5-feet wide and 150-feet long and will remain as is.

#### *Public Access Points & Signage*

There are three public access points that provide view corridors from Shelter Island Drive to the Kona Kai Marina and the Yacht Basin beyond:

- Public Access Point 1 between the garage and the new hotel is approximately 37 feet 4 inches wide
- Public Access Point 2 between the new hotel and the existing hotel is approximately 39 feet 11 inches wide
- Public Access Point 3 between the existing hotel and the property line is approximately 72 feet 9 inches wide

Public access from Shelter Island Drive to the public pedestrian walkway will be provided at each of these three locations and will be clearly delineated by an appropriate Coastal Bay Public Access Signage Program. Access for the general public will be provided as shown on the attached Public Access Map. These access points will create visual and physical linkages from Shelter Island Drive through the project site to the public walkway and Yacht Basin beyond.

A coastal public access signage program will be incorporated along the north side of Shelter Island Drive to allow pedestrians to know where access points are available from the Street. Access points will be clearly designated with an appropriately sized sign, which will be provided and maintained by the Permittee. The design of these signs will coordinate with the overall motif of the area and will clearly indicate public coastal (bay) access is available for the general public at the designated points.

#### *Pedestrian Seating*

The proposed project shall provide 3 bench seats along the pedestrian public walkway as shown on the attached Public Access Map. The seating will be designed and placed so as to provide a view of the Shelter Island Yacht Basin and the vessels berthed within the Kona Kai Marina. The seating will be designed to be as maintenance free as possible with any necessary maintenance provided by the Permittee. The design shall coordinate with the surrounding motif and will be clearly designated for public use.

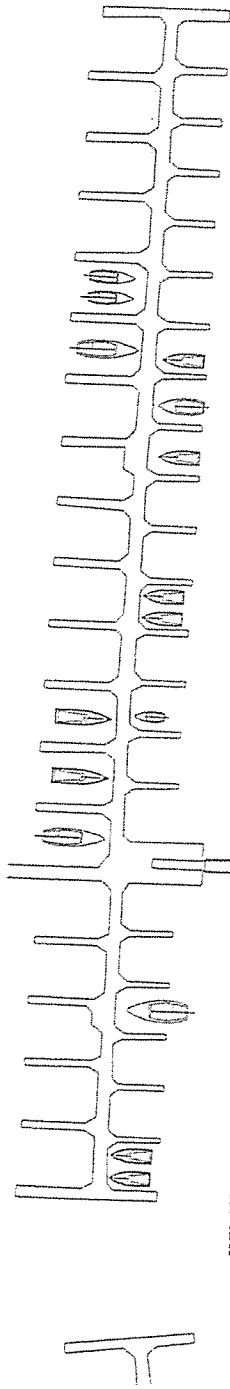
#### *Public Art*

Once the Public Art Committee reviews and approves the Applicant's project, works of public art will also augment the proposed public access improvements somewhere on the project site. The public art may be placed along the pedestrian public walkway or will be located somewhere else on the project site.

## **2. Island Palms West Hotel Public Access Map**

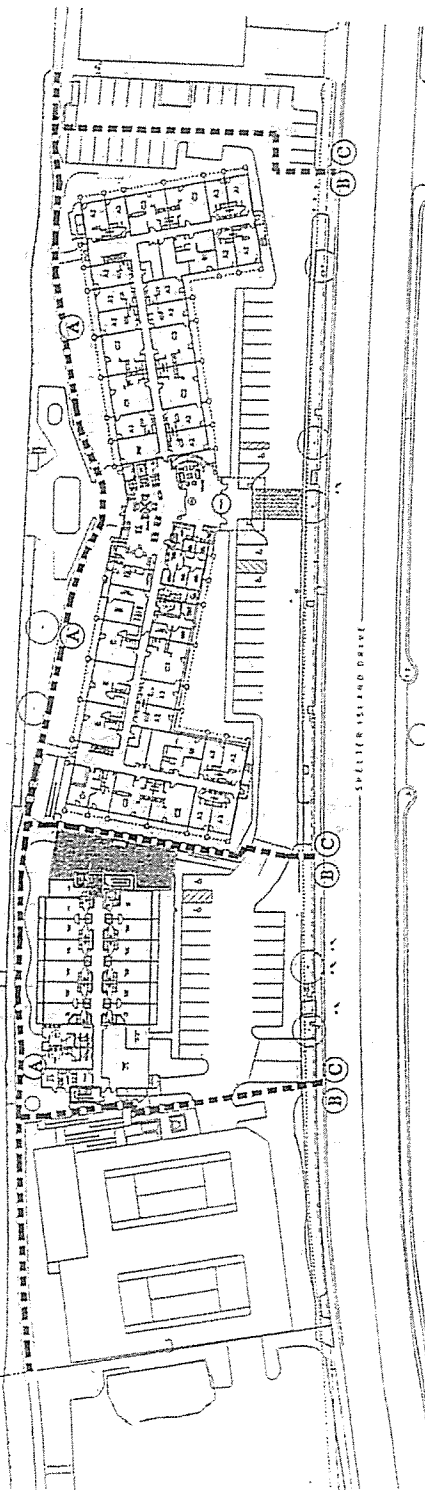
(See attached)





HILTON GARDEN INN SHELTER ISLAND PUBLIC ACCESS MAP

- (A) BEACH BEATING TYPICAL
- (B) PUBLIC ACCESS POINT SCULPTURE
- (C) PUBLIC ACCESS POINT
- PROMENADE / PUBLIC ACCESS



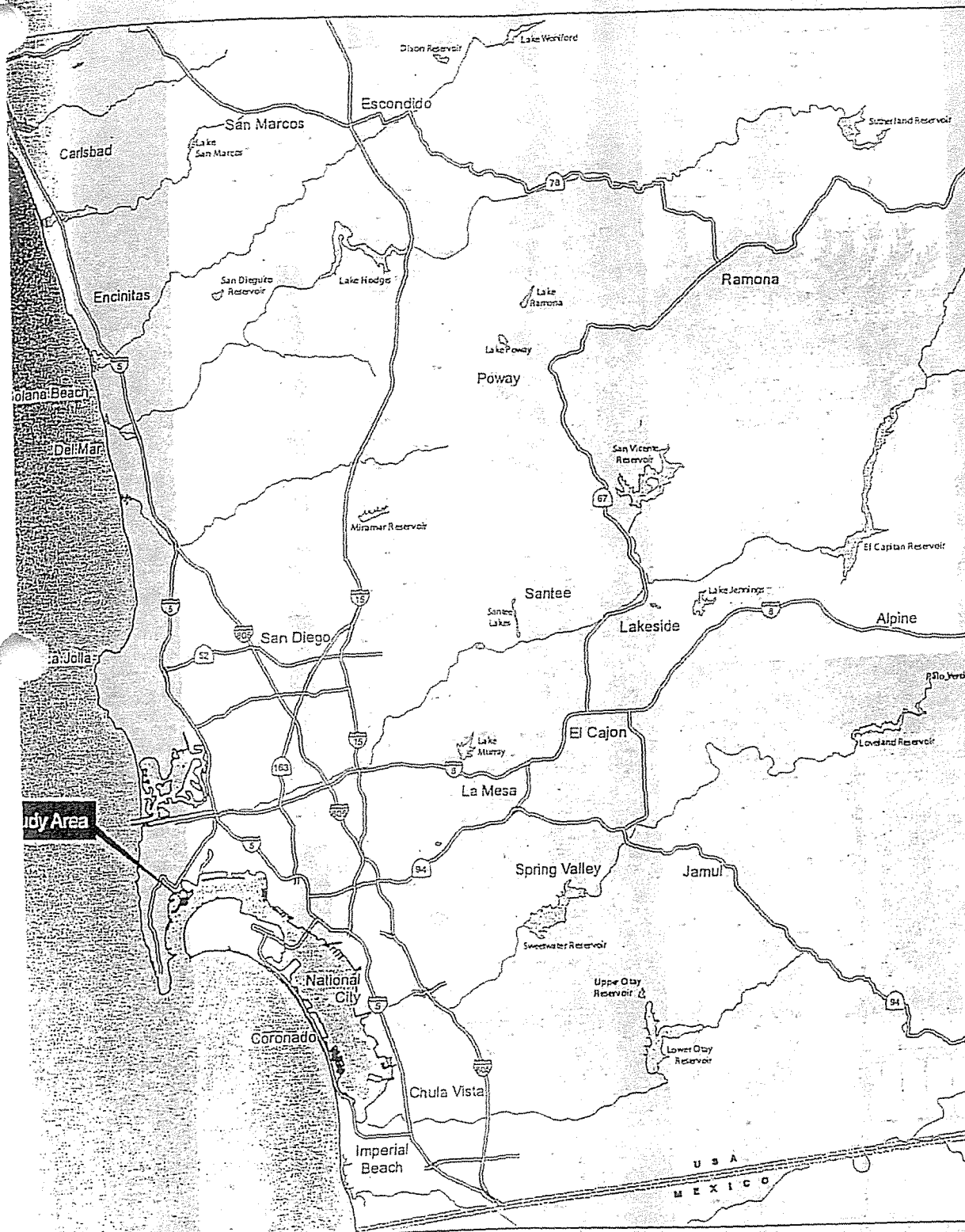
SHELTER ISLAND DRIVE

HILTON GARDEN INN SHELTER ISLAND  
SAN DIEGO, CALIFORNIA

10/18/2006  
PUBLIC ACCESS MAP  
NTA

JWDA





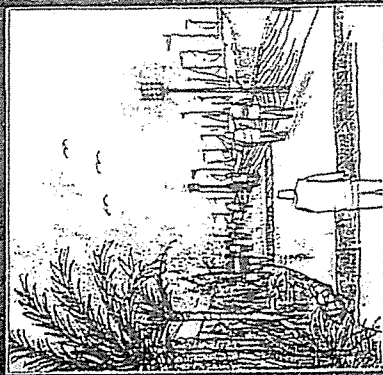
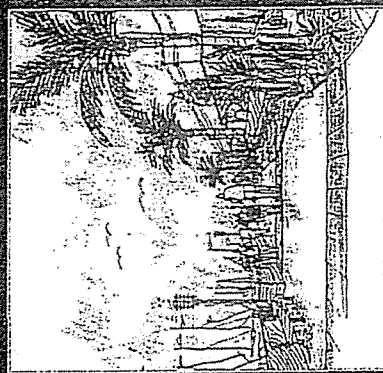
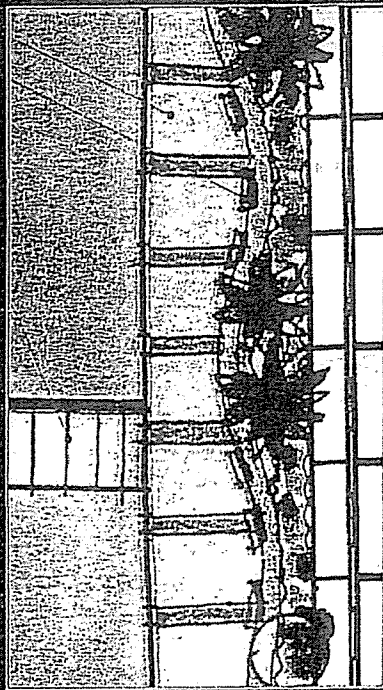
ANDAG 2008

1 inch equals 5 miles  
 0 1.25 2.5 5 Miles

Figure 1  
 Regional Map

001295

# Promenade and View Corridors



Spot Perspectives

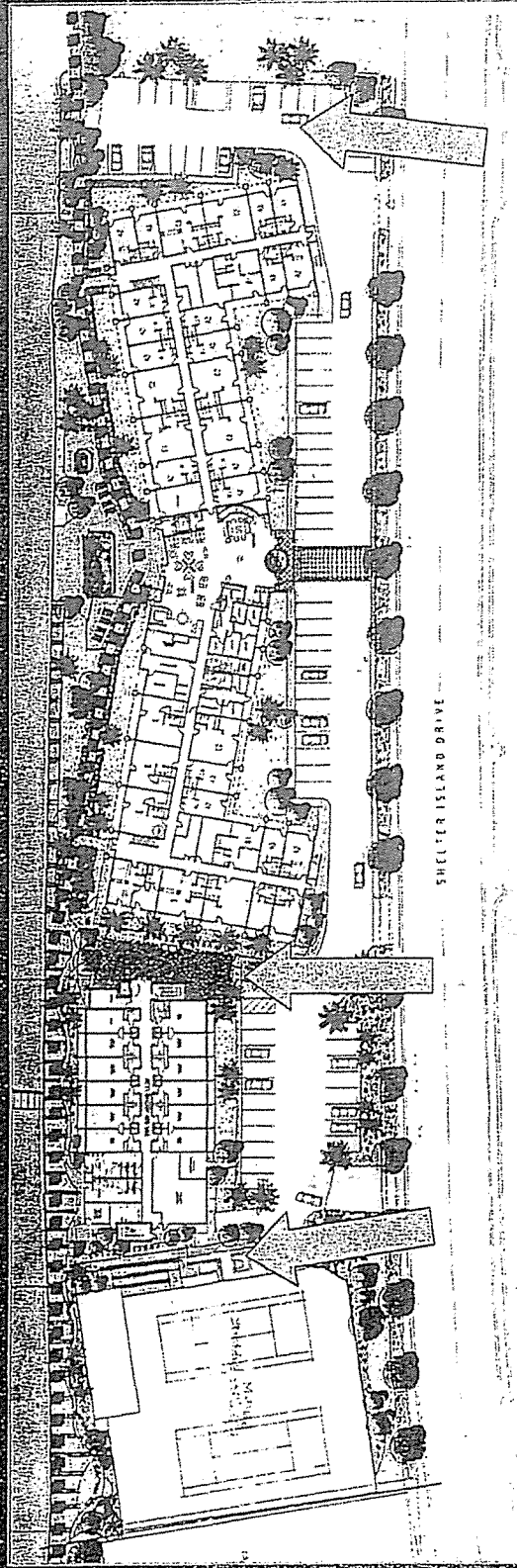


Figure 2



3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • www.portofsandiego.org

**NOTICE OF BOARD ACTION  
On An Appealable Coastal Development Permit**

**Project:** North Embarcadero Visionary Plan, Lane Field North and South  
Development Project

**Location:** North of Broadway Street between Pacific Highway and Harbor  
Drive, San Diego, California

**Date:** January 15, 2008

**RECEIVED**  
JAN 16 2008

**PROJECT LOCATION**

The Lane Field Development Project (Project) site is located at the intersection of Harbor Drive and Broadway Street in Planning District 3, Centre City Embarcadero, of the certified Port Master Plan (PMP) in the City of San Diego, San Diego County, California. The Project site is delineated on Precise Plan Map Figure 11. The Project site is adjacent to the United States Navy (Navy) property located at 1220 Pacific Highway to the north and bounded by Pacific Highway to the east, Broadway Street to the south, and Harbor Drive to the west. The Project is situated in the city of San Diego on Coastal Zone State Tidelands administered by the San Diego Unified Port District under a certified PMP.

**PROJECT DESCRIPTION**

The North Embarcadero Alliance Visionary Plan Master Environmental Impact Report (NEVP-MEIR) analyzed the infrastructure improvements outlined in the NEVP along with four subsequent projects including the Lane Field Development. Lane Field Developers San Diego, LLC (referred to herein as ("Permittee")) proposes to redevelop the Project site as follows:

**1. Existing Surface Parking**

The approximately 5.7 acre Lane Field site is currently occupied by a 880-space surface parking lot operated by Five Star Parking. Temporary structures are also located on the leasehold including an information booth, ticket sales booth, a shed, and an ATM. All existing facilities will be removed/demolished prior to or as part of construction of the Project. Site infrastructure will remain or will be relocated as necessary. An existing monument to the former Lane Field baseball stadium located on the site will be relocated within the Project boundaries.

## 2. Parking Structure

A subterranean parking structure containing approximately 1,330 spaces will be constructed as part of the Project. The parking structure will be two-levels constructed across the majority of the Project site below grade and beneath the proposed structures and plaza. Primary access to the parking structure will be from the Project driveway at the prolongation of C Street off Pacific Highway with additional access off Pacific Highway.

The Project will provide all parking on-site with an additional 300 public parking spaces beyond peak demand projected for the hotel and retail operations. The parking structure will be operated by Permittee or its designee as a combined self-park and valet facility serving hotel guests, retail patrons, and waterfront visitors. Parking fees will be set at market rates. Additionally, parking garage capacity could expand to 1,552 spaces through an all-valet configuration to allow the Permittee to accommodate additional parking demand during special events if the need should arise.

## 3. Lane Field North

Lane Field North, the parcel north of the prolongation of "C" Street between Pacific Highway and Harbor Drive, will include a hotel, retail, and public parking. At approximately 17 stories, the hotel on Lane Field North will be approximately 205-feet tall and will include approximately 275 guest rooms, a health club/spa of approximately 15,000 square feet, pools, ballrooms, and meeting rooms.

A three-story podium building surrounding the hotel will include approximately 30,000 square feet of visitor serving retail. The rooftop of the podium building will include a publicly-accessible terrace activated by outdoor dining and special event areas offering views of San Diego Bay and Coronado. The rooftop will be accessible to the public and hotel guests via glass-faced elevator located at the street level on Harbor Drive and from escalators and elevators located within the hotel lobby. Public art will also be incorporated into areas of the site to which the public has access.

A portion of the subterranean parking facility described above will be located on two levels below Lane Field North and will serve hotel guests, retail patrons, and other waterfront visitors.

## 4. Lane Field South

001298

Lane Field South, the parcel immediately south of Lane Field North, includes the prolongation of "C" Street and the area between Pacific Highway and Harbor Drive south to Broadway. The site will include a hotel, retail, and public parking.

At approximately 22 stories, the hotel on Lane Field South will be approximately 275-feet tall and will include approximately 525 guest rooms, a health club/spa of approximately 15,000 square feet, pools, ballrooms, and meeting rooms.

A three-story podium building surrounding the hotel will include approximately 50,000 square feet of visitor serving retail. The rooftop of the podium building will include a publicly-accessible terrace activated by outdoor dining and special event areas offering views of San Diego Bay and Coronado. The rooftop will be accessible to the public and hotel guests via glass-faced elevator located at the street level on Harbor Drive and from escalators and elevators located within the hotel lobby. Public art will also be incorporated into areas of the site to which the public has access, which, in addition to the areas described above, include the prolongation of "C" Street and the Broadway Plaza.

A portion of the subterranean parking facility described above will be located on two levels below Lane Field South and will serve hotel guests, retail patrons, and other waterfront visitors.

#### 5. Public Access and View Corridors

The Project includes the prolongation of "C" Street as a view corridor and private drive. The location is approximately 10 feet to the north of the location described in the North Embarcadero Visionary Plan schematic design. This alignment allows for better coordination of the site development plan; corresponds to the site planning efforts on an adjacent parcel to the east across Pacific Highway (being developed by the Irvine Company), facilitates ingress and egress to the site, and enhances the view corridor. The prolongation of "C" Street has never been and is not intended to be a dedicated public street or undedicated tidelands street, but rather a private drive serving as the main point of entry to the parking garage and hotels, and facilitating vehicular and pedestrian circulation throughout the Project.

Plaza areas will be open to the public along the prolongation of "C" Street, at a park/plaza located along Broadway, and on the rooftops of the podium buildings surrounding the hotels. These public areas will be activated by restaurants, retail, and public art, and will offer views of San Diego Bay and Coronado. The plazas and public areas in combination with the set backs and step backs applied to structures establish the view corridors along Broadway and the prolongation of "C" Street. Street trees and landscaping along Broadway have been coordinated with and are consistent with the NEVP JPA requirements, the members of which include the District, City of San Diego, and Center City Development Corporation.

#### 6. Construction

001299



The underground parking structure will require dewatering during construction only and excavation of approximately 115,000 cubic yards of material. The excavated material will be exported off-site and disposed of or used for beach sand replenishment if determined suitable. The estimated duration of construction is approximately 36 months. To the extent possible, construction staging for equipment, materials as well as vehicular parking will occur primarily onsite. Construction employee parking will be accommodated both onsite and offsite at a location which will be chosen based on its proximity to the Project site and to public transportation. The Permittee will provide and implement a construction parking management plan.

#### ARTICLE 1-CONSISTENCY WITH CERTIFIED PORT MASTER PLAN & CALIFORNIA COASTAL ACT

The Project site is located within the Civic Zone subarea of Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 12 of the Port Master Plan (PMP). The PMP recognizes that the development of Lane Field is the most important component of the Civic Zone. While the PMP refers to Lane Field as the entire area bounded by Pacific Highway, Broadway, Harbor Drive and Ash Street, the Project includes only the Lane Field North and South sites and does not include at this time the Navy Facilities Engineering Command site, also known as 1220 Pacific Highway. The PMP states that a 600 to 800 room hotel is the primary use of this site with an array of other development options intended to retain flexibility. The PMP Precise Plan land use map designates the Lane Field site as Commercial Recreation with a strip of Park/Plaza designation along Harbor Drive. The Permittee has prepared the Lane Field Public Access Program to ensure that public access requirements of the PMP and the Coastal Act are incorporated into the Project. The Lane Field Public Access Program defines the pedestrian access integrated throughout the site and identifies management of the public access. The areas governed by the Lane Field Public Access Program include the ground level, the rooftop of the podium buildings surrounding the hotels, and the vertical circulation elements.

The attached Table A Development Intensity at Lane Field and Entitlements describes the Project in terms of various development standards and compares them to those development standards described in the PMP and the NEVP MEIR. As indicated in this table, the Lane Field Project either conforms to or is less intensive than the existing PMP entitlement maximums and the Lane Field Subsequent Project analyzed in the NEVP MEIR in terms of building height, Floor Area Ratios (FARs), setbacks, stepbacks, parking and total number of hotel rooms. Staff has analyzed the Project and has determined that it is consistent with the PMP text and land use designation.

The Project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The Project is not

001300



considered "Excluded" under the District's Coastal Development Permit Regulations (Regulations). In accordance with the Regulations, the Project is "Appealable" because it does not qualify as a "Non-Appealable" or "Emergency" development. Appealable Coastal Development Permits (CDP) can be appealed to the California Coastal Commission within 10 working days of the Coastal Commission's receipt of the CDP.

Copies of the Categorical Determination, CDP application, and draft CDP have been provided to the Board. Special conditions will be incorporated into the CDP (Attachment A) to ensure Project conformance with the NEVP MEIR mitigation requirements as set out in the Initial Study.

#### ARTICLE 2-PUBLIC ACCESS

The Project is consistent with Sections 30210, 30211, 30212, 30212.5, 30213, and 30214. The Project is located adjacent to coastal resources. The closest existing coastal access and recreational amenities consist of the promenade along the downtown waterfront on the west side of Harbor Drive, which is adjacent to the Project. In addition to the promenade, piers open to the public, public restaurants, the USS Midway Aircraft Carrier Museum, and long and short term watercraft experiences (cruises and tours) are available to the public along the promenade in the vicinity of the Project. These existing amenities will not be adversely impacted by the Project and may benefit from the increased number of waterfront visitors which will be drawn to the Project.

The Project will enhance access and recreational opportunities for the general public consistent with public safety needs and the public's right of access to the sea by providing a park/plaza areas and sidewalks that are all connected at street level throughout the Project as well as publicly-accessible terraces activated by outdoor dining and special event areas offering views of San Diego Bay and Coronado accessible via two glass-faced elevators located at the street level public plazas (see Attachment B Lane Field Public Access Program).

Public pedestrian access will be provided along the "C" Street prolongation, creating an additional pedestrian linkage between the waterfront to the west and transit areas to the east including the nearby Santa Fe Depot (Amtrak, Coaster, and Trolley station). The public pedestrian sidewalk through the center of the Project will be between 17 feet and 34 feet on the north side of the street and between 12 feet and 22 feet on the south side of the street. The broadest areas will be at the west and east ends of the prolongation of "C" Street, along which visitor-serving retail will be located. Seating opportunities may be provided in the broadest portions, particularly on the north side where sunlight will be greatest. The sidewalks narrow on both sides of the prolongation of "C" Street at the approximate midpoint around a loop wherein vehicles will

001301

circulate. Additionally, the center of the vehicular loop will feature a prominent public art waterscape reflecting the waterfront character of the Project.

A public sidewalk and park/plaza area will extend the length of the Project adjacent to Broadway that will expand from 55 feet at the eastern end to 110 feet at the western end. The park/plaza will provide informal public seating, landscaped islands intended to be engaged by the public, and may include a water feature. Sidewalks will be provided along the Project adjacent to Harbor Drive and Pacific Highway to facilitate north-south pedestrian movement connecting the prolongation of "C" Street with public plaza areas on Broadway Street to the south and the future "B" Street to the north. The sidewalk along the Project adjacent to Pacific Highway will be approximately 12 feet wide. The sidewalk along the Project adjacent to Harbor Drive will be approximately 25 feet wide. Adjacent to the Harbor Drive sidewalk will be glass-faced elevators for public access to the rooftop terraces that occupy the west end of the podium structures surrounding the hotels. Both terraces will provide public views of San Diego Bay and Coronado, and will be activated by outdoor dining and special event areas available to the public. Public access to the rooftop terraces will be provided consistent with the hours of operation of the hotel and retail facilities, currently anticipated to be from 6 am through 2 am.

Public access to the existing sidewalks along the Project adjacent to Pacific Highway, Broadway Street, and Harbor Drive will be temporarily unavailable during construction. Detours will be signed and provided as necessary to ensure the safety of pedestrians. The detour will be removed as soon as construction clears and the sidewalks, including the enhancements to public access described above, are re-opened.

The existing 880 public parking spaces would be displaced by the Project. In accordance with the NEVP MEIR, 300 public parking spaces in addition to the parking spaces required to satisfy peak demand for the Project, will be provided onsite. Parking will be managed as a combined valet and self park facility with the flexibility to be operated as an all-valet facility as demand dictates. Management of the facility shall ensure that no less than 300 spaces are available to the public at all times. During construction, no public parking will be available onsite to replace the displaced surface parking, but public parking serving the North Embarcadero area will be provided in accordance with the NEVP Parking Management Plan(s) implemented consistent with the requirements of the NEVP MEIR. Construction parking will be provided both on-site and off-site on a property to be chosen based on its proximity to the Project site and to public transportation. Attachment C Lane Field Parking Management Plan details the Permittee's planned management of parking during construction and operation of the Project.

#### ARTICLE 3-RECREATION

001302



The Project is consistent with Section 30220, 30221, 30222, 3022.5, 30223, and 30224. The Project will not adversely impact coastal areas suited for water-orientated recreational activities; oceanfront land suitable for coastal dependent aquaculture; upland areas necessary to support coastal recreational uses; or recreational boating use of coastal waters. The Project will enhance oceanfront land suitable for recreational use by providing new hotels, retail, and restaurant amenities for visitors as well as enhanced public plazas, sidewalks, and rooftop terraces with views of San Diego Bay and Coronado. The Project is a subsequent project described in the NEVP and intended to improve the recreational waterfront experience of the Bay for visitors. Revenues from the Project will also help fund the NEVP public improvements, including broadening the promenade along Harbor Drive, realigning Harbor Drive, and improving water quality during flood events. Public access signage will be strategically placed within the Project to clearly identify plazas, sidewalks, lobbies, elevators, and rooftop terraces open to the public.

#### ARTICLE 4-MARINE ENVIRONMENT

The Project is consistent with Section 30230, 30231, 30232, 30233, 30234, 30234.5, 30225, 30236, and 30237. The Project does not involve diking or dredging of open coastal waters; wetlands, estuaries, or lakes; commercial fishing or recreational boating facilities; any fishing activities; any natural shoreline altering construction; alterations of rivers or streams; or Bolsa Chica wetlands. The Project will be subject to the Standard Urban Stormwater Mitigation Plan (SUSMP) requirements of the Municipal Stormwater Permit. SUSMP requirements are meant to incorporate Best Management Practices including Low Impact Development features in the design phase of new development projects. The Project will also require implementation of a Storm Water Pollution Prevention Program (SWPPP) during construction. Construction of the Project will encounter groundwater during construction and require dewatering activities in accordance with mitigation measures, which stipulate that discharge shall meet the effluent limits specified by the RWQCB (order No. 90-31) and Federal National Pollution Discharge Elimination System (NPDES) requirement.

#### ARTICLE 5-LAND RESOURCES

The Project is consistent with Section 30240, 30241, 30241.5, 30242, 30243, and 30244. The Project is not located in or adjacent to any environmentally sensitive habitat areas; does not involve any prime agricultural land; does not involve productive soils and timberlands; and does not involve archaeological or Paleontological resources.

#### ARTICLE 6-DEVELOPMENT

001303

The Project is consistent with Section 30250, 30251, 30252, 30253, 30254, 30254.5, and 30254. The Project will be located in close proximity to existing developed areas; does not involve hazardous industrial development; will facilitate visitor-serving uses by providing new hotel rooms, visitor-serving retail, restaurants, and pedestrian orientated plazas, sidewalks, public art, public seating, public elevators, and public rooftop terraces with views of San Diego Bay and Coronado. The Project will enhance the destination experience of the San Diego waterfront providing more appealing views than currently exist and facilitating enhanced view experiences of existing areas consistent with the setback and step back requirements presented in the certified PMP (page 75) as outlined in the attached Table "A." The south hotel tower will be approximately 275 feet tall and the north hotel tower will be approximately 205 feet tall. Both towers will be orientated east-to-west to enhance views of San Diego Bay and Coronado and to enhance the Broadway and prolongation of "C" Street view corridors.

Public access will be provided through the Project along the prolongation of "C" Street, plazas and sidewalks along Broadway, sidewalks along Harbor Drive and Pacific Highway, the lobby of the south hotel tower, and on rooftop terraces on the third floor of the podium buildings surrounding the hotels, as well as vertically via elevators from Harbor Drive to the podium building rooftops. Public pedestrian access along the prolongation of "C" Street and widened access along Broadway Street will enhance public access to San Diego Bay particularly from public transit stations (Santa Fe train and trolley station) by providing a more direct and inviting route westward than currently exists. The rooftop terraces will increase visual public access by providing public areas that afford elevated views across San Diego Bay accessed directly via public elevators from public areas at street level. Retail and restaurant uses of the Project will activate the public areas permeating the Project, thereby enhancing the appeal and use of the area by the public without encumbering public access.

The site is not located within a State designated Alquist-Priolo Earthquake Fault Zone but is within the City of San Diego Downtown Special Fault Zone. Geocon Incorporated prepared a Geotechnical and Geologic Fault Report in May 2007 because the site is adjacent to a City of San Diego Downtown Special Fault Zone. The geophysical survey included supplemental cone penetration test (CPT) soundings. The results of the geophysical survey and associated CPT data indicate that faulting is not evident at the site indicating that no active or potentially active faults transect the site. Hydraulic fills and Bay Deposits present are considered unsuitable for the support of the structures and will be required to be removed where they cannot be recompacted to meet structural engineering standards. The recommendations contained in the Geotechnical and Geologic Fault Report must be followed during site preparation activities. The geotechnical recommendations include specific measures for dewatering, pile driving,



excavation slopes, shoring, trenching, concrete, drainage, and construction and post construction consideration.

Implementation of the Project will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area nor will require improvements that would substantially alter natural landforms along bluffs and cliffs; and will not result in significant air quality impacts. The Project has been designed with features such as 'fuel cell cogeneration' that will minimize energy consumption consistent with the intent of the California Legislature Assembly Bill 32 (see Attachment D Lane Field Sustainability Initiatives Global Warming Assessment). The Project is located in close proximity to regional and local rail stations as well as nearby water transit, cruise ship berths and the San Diego International Airport and has been designed with features such as an airport shuttle system to minimize vehicle miles traveled.

The Project is not located in a special community or neighborhood; which because of its unique characteristics, is a popular visitor destination point for recreational uses; public works facility; nor associated with a sewage treatment plant.

#### ARTICLE 7-INDUSTRIAL DEVELOPMENT

The Project is consistent with Section 30260, 30261, 30262, 30263, 30264, 30265, and 30265.5. The Project does not involve a coastal-dependent use of existing or new tanker facilities; is not considered oil or gas development; does not involve refineries or petrochemicals facilities; thermal electric generating plants, or oil production and transport.

#### BOARD ACTION

By Resolution 2008-15 adopted on January 8, 2008, the Board of Port Commissioners (Board) found that the subject development conforms to the certified Port master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit as noted [X] below:

- [ ] This development had been approved as submitted.
- [X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this Notice.

The following noted [X] item applies to this finding:

- [ ] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.

001305

- [X] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above stated date to the California Coastal Commission. Appeals must be filed with Commission within ten (10) working days of receipt by the California Coastal Commission of this notice. Prospective appellants should contact the California Coastal Commission for more information.

Two (2) correspondences by interested parties were received on this Coastal Development Permit (see Attachment E). There were **twenty-six (26)** speakers present at the public hearing on January 8, 2008. Audio of the Board meeting is available by contacting the Office of the District Clerk. The Board approved the Project at the January 8, 2008 hearing.

BRUCE B. HOLLINGSWORTH  
Executive Director

By:   
RALPH T. HICKS  
Director, Land Use Planning

Enclosure(s): Attachment A: Appealable Coastal Development Permit Conditions  
Attachment B: Lane Field Public Access Program  
Attachment C: Lane Field Parking Management Plan  
Attachment D: Lane Field Sustainability Initiatives Global Warming  
Assessment  
Attachment E: Correspondence on Appealable Coastal Development  
Permit  
Figure 1: Project Location Map  
Table A: Development Intensity at Lane Field and Entitlements

001306

ATTACHEMENT A  
[DRAFT] COASTAL DEVELOPMENT PERMIT

Applicant: Lane Field San Diego Developers, LLC  
655 West Broadway Street, Suite 1450  
San Diego, California 92101

Project: North Embarcadero Visionary Plan Lane Field Development Project

Location: North of Broadway Street between Pacific Highway and Harbor  
Drive

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a [ ] Emergency [ ] Non-appealable [X] Appealable Coastal Development Permit.

Date of Board Action: January 08, 2008

Board of Port Commissioners Resolution Number: 2008-xxx

Date of Permit: January 23, 2008

Application Number: 2007-07-49-144

Permit Number: CDP-2008-01

The proposed project is located between the first inland continuous public road paralleling the sea (as defined in the California Coastal Act) and the second inland continuous public road paralleling the sea. The project is fully consistent with Public Resource Code Sections 30604(c), 30210-30224, and the California Coastal Act public access and recreation policies referenced therein.

This permit is limited to the development below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

DEVELOPMENT

The proposed project is situated in the city of San Diego on Coastal Zone State Tidelands administered by the San Diego Unified Port District under a certified

001307



PMP. Lane Field Developers San Diego, LLC (referred to herein as ("Permittee") proposes to redevelop the Lane Field leasehold with the following: (1) demolition/removal of existing temporary structures and existing surface parking, (2) construction of a two-level subterranean project and public parking garage containing approximately 1,330-spaces, (3) creation of a public pedestrian landscaped park/plaza along the Broadway Street frontage in front of retail stores and restaurants as well as public terraces at the fifth floor ("Podium Level"), (4) construction of an approximately 205-foot tall hotel with approximately 275 rooms and approximately 30,000 square feet of retail/restaurant tower on the northerly portion of the leasehold (Lane Field North), and (5) construction of an approximately 275-foot tall hotel with approximately 525 rooms and approximately 50,000 square feet of retail/restaurant on the southerly portion of the leasehold (Lane Field South). The project area is approximately 5.7 acres.

#### 1. Existing Surface Parking

The approximately 5.7 acre Lane Field leasehold is currently a 880-space surface parking lot operated by Five Star Parking. Temporary structures are also located on the leasehold including an information booth, ticket sales booth, a shed, and an ATM. All existing facilities will be removed/demolished. Necessary infrastructure components will remain or be relocated as necessary. An existing monument for the former Lane Field will be relocated within the project boundaries.

#### 2. Parking Structure

A subterranean parking structure containing approximately 1,330 spaces will be constructed as part of the proposed project. The parking structure will be two-levels constructed across the majority of the leasehold below grade and beneath the proposed structures and plaza. Access to the parking structure will be from the project driveway at the prolongation of C Street off Pacific Highway with additional access directly off Pacific Highway at the northern extremity of the leasehold.

The proposed project will be self-parked with an additional 300 public parking spaces not dedicated to hotel operations or to the retail. The parking structure will be operated by Permittee or its designee as a combined self-park and valet facility with the ability to be operated entirely as a valet facility dependant on management's assessment of needs but in such a manner that the additional 300 parking spaces will remain available to the public. Parking fees will be set at market rates. Additionally, parking garage capacity could expand to 1,552 spaces by utilizing additional valet parking to allow the operator to accommodate peak parking demand during special events if the need should arise.



### 3. Lane Field North

On the parcel north of the prolongation of "C" Street, between Pacific Highway and Harbor Drive, the proposed Lane Field North hotel will include a hotel lobby, approximately 275 guest rooms and suites, approximately 30,000 square feet of retail and restaurants, a health club and spa of approximately 15,000 square feet, and ballrooms and meeting rooms. Retail and restaurant areas will be located at the ground to third floor elevations along the western, southern, and eastern frontage of Lane Field North. Additional amenities will include a Podium Level event terrace with dining and refreshment facilities at the west end of the structure, to which public access will be provided by a glass-faced elevator from the sidewalk and by both escalators and elevators from the hotel lobby. Offering views toward the San Diego Bay, the terrace deck will feature outdoor dining and event areas. Public art will also be incorporated into the public spaces on the site. A rooftop lounge and event terrace will also be available for public access using express elevators available from within the hotel lobby. The proposed Lane Field North hotel will be approximately 17 stories with an approximate height of 205 feet.

### 4. Lane Field South

The proposed Lane Field South hotel will include approximately 525 guest rooms and suites, approximately 50,000 square feet of retail uses, including street level restaurants and shopping, ballrooms, meetings rooms, and pools. Retail and restaurant areas will be located at ground to third floor elevations along the western, southern, northern and eastern frontage of Lane Field South. Additional amenities will include a Podium Level event terrace with dining and refreshment facilities at the west end of the structure, to which public access will be provided by an elevator from the sidewalk and by both escalators and elevators from the hotel lobby. The terrace deck will feature outdoor dining, event areas, and provide views of the Bay and Broadway. Public art will also be incorporated into the public spaces on the site. The proposed Lane Field South hotel will be approximately 22 stories, with a height of approximately 275 feet.

### 5. Public Access and View Corridors

The proposed project includes the prolongation of "C" Street approximately 10 feet to the north of its original location as a designated view corridor described in the North Embarcadero Visionary Plan schematic design. The purpose of this adjustment is to allow better alignment and coordination of the site development plan with site planning efforts on an adjacent parcel to the east (being developed by the Irvine Company), to facilitate ingress and egress to the site, and to enhance the view corridor. "C" Street is proposed to be a private drive facilitating

access through the proposed project, but historically has never been and is not intended to be a dedicated public street or undedicated tidelands street.

The proposed project will provide public access into the site and parking facilities at the prolongation of "C" Street off Pacific Highway as well as public pedestrian access through the development from Pacific Highway to Harbor Drive and the waterfront. Plaza areas will also be open to the public along the prolongation of "C" Street, the Broadway Street frontage of the project and on the third floor terraces of each of the proposed hotels. These public areas will be activated by restaurant and retail facilities as well as seating and public art provisions in addition to the beneficial near waterfront location of the site. The plazas and public areas in combination with the set backs and step backs applied to structures maintains the public view corridors along Broadway and C Street. Street trees and landscaping along Broadway Street have been coordinated with and are consistent with NEVP JPA requirements, the members of which include the District, City of San Diego, and Center City Development Corporation.

#### 6. Construction

The underground parking structure will require dewatering during construction only and excavation of approximately 115,000 cubic yards of material. The excavated material will be exported off-site and disposed of or used for beach sand replenishment if determined suitable. The estimated duration of construction is approximately 36 months. To the extent possible, construction staging for equipment, materials as well as vehicular parking will occur primarily onsite. Construction employee parking will be accommodated both onsite and offsite at a location which will be chosen based on its proximity to the proposed project site and to public transportation. As part of the Lane Field development, the Permittee will provide a construction parking management plan.

#### STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the project as approved by the District.
2. Permittee shall notify the District of any changes in the project.
3. Permittee shall meet all the local code requirements and ordinances and obtain all necessary permits from local, state, and federal agencies.
4. Permittee shall conform to the permit rules and regulations of the District.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.

001310

6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Land Use Planning Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. All best management practices must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum extent practicable.
10. All Port of San Diego 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). This permit was recently adopted in January of 2007 and replaces the previous permit Order No 2001-01. All jurisdictions are required to be in full compliance with Order R9-2007-0001 by January 24, 2008. 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/susmp.asp](http://www.portofsandiego.org/sandiego_environment/susmp.asp) or by contacting the Environmental Services Department, (619) 686-6254.
11. This project is subject to the Port Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, 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) that meets District requirements. Project approval requires full implementation of all USMP structural and non-structural BMPs throughout the life of the project.

The Port is currently modifying its development and redevelopment processes

001311



that will include modifications to the Port SUSMP, greater reliance of low impact design techniques and the incorporation of a Hydromodification plan. These changes are being made to meet the requirements of the newly adopted Municipal Permit. During this transition period and until the updated Port SUSMP is final, the project USMP is to be designed to follow the County of San Diego's Draft Model SUSMP as revised November 6, 2007, and the Municipal Permit. A link to these interim guidance documents can be found on the District website

[http://www.portofsandiego.org/sandiego\\_environment/susmp.asp](http://www.portofsandiego.org/sandiego_environment/susmp.asp)

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 Port approved USMP, including the specific BMPs contained therein, may be considered a default under the lease.

#### SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the Permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the Permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the contractor will shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during project construction, either on-site or off-site shall be adequately protected.
5. Suspend all ground-disturbing activities when wind speeds (as instantaneous gusts) exceed 25 mph at a portable weather station on the project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary if visible soil material is carried onto adjacent public paved roads using a water sweeper.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 5 minutes during construction once they arrive on the construction site.

001312

9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. Construction employees shall be provided with transit and ride share information.
13. Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to acidic or caustic soils, workers shall be provided with adequate protective gear.
14. Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000002, and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "General Construction Storm Water Permit"), as adopted, amended, and/or modified. The District is responsible for submitting the Notice of Intent to comply with the General Construction Storm Water Permit. The Permittee and/or contractor must comply with the General Construction Storm Water Permit and District direction related to permitted activities. Construction activity subject to the General Construction Storm Water Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor must prepare and submit the SWPPP for review and approval by the District prior to site work.

#### SPECIAL PROVISIONS

1. Following construction, the applicant shall implement the "Lane Field Public Access Program" throughout operation of the project to the satisfaction of the District.

001313



2. The applicant shall maintain no less than 300 parking spaces available to the public within its managed parking facility throughout project operation, consistent with the North Embarcadero Visionary Plan Parking Management requirements.
3. The applicant shall implement the "Lane Field Construction Parking Management Plan" throughout project construction to the satisfaction of the District.
4. Prior to development, a subsurface remediation plan shall be developed and implemented. Such plan shall be consistent with the requirements of "Short Term Construction Measures" Item 13 above.
5. A subsurface mitigation plan shall be implemented during site excavation by a qualified archaeologist/paleontologist who meets the City's standards for an archaeological principal investigator. The plan shall include a detailed review of Sanborn fire insurance maps, directory search, and if warranted, limited testing of where the project archaeologist deems necessary for cultural materials recovery within the area impacted. The archaeologist/paleontologist shall conduct on-site observation during the site excavation process. All cultural material recovered and associated records shall be delivered to the curator of an appropriate San Diego County institution that meets the standards of the State Historical Resource Commission's *Guidelines for the Curation of Archaeological Collections* dated May 7, 1993.
6. A complete site contamination report in conformance with federal, State, and local regulations shall be completed for the project. The report shall include an existing conditions survey, detailed project description, and specific measures proposed to preclude upset conditions (accidents) from occurring. If hazardous materials are identified, a risk assessment and remediation efforts shall be conducted in conformance with federal, State, and local regulations.
7. A site-specific soil/groundwater assessment shall be performed by a qualified geologist/hydrologist in conformance with federal, State, and local regulations prior to soil disturbance in all areas where soil or water contamination sources are suspected of containing hazardous materials storage systems. Such an assessment shall include collecting and analyzing soil and/or groundwater samples. The presence of soils or groundwater contamination shall be remediated, if necessary, according to applicable federal, State, and local regulations prior to development of the site.

8. The proposed project will be designed and constructed so that permanent dewatering is not required. Dewatering activity will be limited to the construction period as may be necessary. The North Embarcadero Visionary Plan Master Environmental Impact Report (certified in March 2000) (Master EIR) recommends that dewatering shall occur to lower the groundwater table to a minimum of 2 feet below the bottom of all removals and excavations.
9. Dewatering discharge shall meet the effluent limits specified by the RWQCB (order No. 90-31) and Federal National Pollution Discharge Elimination System (NPDES) requirement. Order No. 90-31 includes a prohibition of the discharge of dewatering effluent to San Diego Bay for new permanent dewatering operations. If the effluent is discharged to the City of San Diego sewer system, then the discharge shall meet the discharge requirements of the City.
10. In the event that dewatering effluent is discharged to surface waters, groundwater quality data will be required in advance, and possibly, a treatment system will be needed to meet federal, State, and local regulations.
11. If necessary, to identify locations of Underground Storage Tanks (USTs), a site-specific informational review and geophysical survey shall be conducted.
12. A contingency plan for UST removal and remediation shall be prepared. Such plan shall address contractor procedures in the event that an unknown UST is encountered during site redevelopment.
13. Permits to operate or close tanks must be obtained by the tank owner or operator in conformance with federal, State, and local regulations.
14. Soil/groundwater testing shall be performed prior to soil disturbance in conformance with federal, State, and local regulations, and subject to the approval of the jurisdictional agency (i.e., City of San Diego or Port District). Such an assessment shall include collecting and analyzing soil and/or groundwater samples. Soil or groundwater contamination shall be remediated according to applicable federal, State, and local regulations prior to development of the site. Implementation of BMPs to control erosion during construction shall be required regardless of whether or not the soil / groundwater is contaminated.
15. All earthwork activities shall be governed by the provisions of the NPDES general permit, which includes the preparation and

- implementation of a SWPPP and BMPs to control runoff and sedimentation during construction and post construction.
16. Additional assessment of soil and/or groundwater shall be performed prior to soil disturbance in conformance with federal, State and local regulations.
  17. Remediation shall be conducted according to applicable federal, State and local regulations prior to development of the site.
  18. Transportation Demand Management (TDM) measurements, including Regional Air Quality Strategy (RAQS) mandated trip/Vehicle Miles Traveled (VMT) reduction and land use measures, shall be implemented for high-occupancy events at the hotels. Project related traffic is less than previously incorporated into the RAQS, which concludes that as long as forecast levels of growth and associated traffic are not exceeded, the RAQS contains enough mitigation of such growth to allow regional air quality standards to be met.
  19. Alternative transit opportunities shall be provided by the Permittee for guests and employees, which may include but are not limited to a shuttle service to San Diego International Airport and the provision of bike racks.
  20. Permittee shall comply with all applicable public access requirements including participation in a bayside shuttle system upon District implementation of that system.
  21. Energy conservation measures will be implemented throughout project operation such that a 20 percent reduction compared to satisfying current Title 24 requirements is achieved. Measures from the applicants "Lane Field Sustainability Initiatives Global Warming Assessment" may be used and include but are not limited to: use of recycled water for landscaping; heat reclamation from central air conditioning; use of fuel cell technology for power cogeneration; and noticing of laundry reuse to guests.
  22. Permittee shall investigate the suitability of excavated material for use as sand replenishment on a beach subject to approval by the US Army Corps of Engineers. Beaches within the District shall have first priority for selection. If material is deemed suitable for depositing on a District beach then such an action shall occur. If the material is deemed unsuitable for any District beach but suitable for another beach within San Diego County then that action shall occur. If the material is deemed unsuitable for use as beach replenishment for any beach within San



Diego County then the material shall be disposed of or recycled in accordance with applicable local, state, and federal regulations.

23. The project design shall comply with Title 24 of the California Code of Regulations, which includes establishing permissible horizontal sound transmission through shared walls, as well as vertical transmission of impulsive noise through floor/ceiling assemblies. In addition, the use of upgraded interior finishing and heavy window glass are standards required by Title 24. Compliance with these regulations meets the required 45 dBA CNEL interior levels even if the 65 dBA exterior levels are not met. Documentation of compliance shall be provided when building plans are filed.
24. If windows face the tracks along Pacific Highway, use of heavily upgraded glazing and/or heavy drapes is recommended to reduce hotel sleep interference from peak train noise levels.
25. An interior noise study shall be conducted for hotels at the time building plans are developed and measures required to ensure a 45 dB interior level for transient occupancy rooms shall be implemented. Documentation of compliance shall be when building plans are filed.
26. All construction activities shall comply with the City of San Diego's Noise Ordinance, which limits the allowable hours and establishes performance standards for construction activities.
27. Use pre-drilled piles or vibratory drivers if subsurface conditions can accommodate such methods.
28. Perform all pile driving activities on weekdays between 9:00 am and 5:00 pm.
29. Pile driving shall extend past the loose and unconsolidated bay deposits to a depth within the Bay Point Formation that is suitable for the support of proposed piles.
30. All structures shall be designed in accordance with the recommendation of the geotechnical evaluation, and with all applicable requirements of the Uniform Building Code (UBC) for Seismic Zone 4. Project specific design recommendations to limit structural damage or maintain function during an earthquake shall include foundation design parameters and specifications for deep foundations.

31. It is expected that large structures will be founded on some type of deep foundation system, which may consist of driven or cast-in place piles embedded into the underlying Bay Point Formation.
32. All structures shall be reinforced and supported using ground modification (e.g., dynamic compaction) or deep foundation piles.
33. Remedial grading or surcharging and monitoring by means of settlement monuments shall be incorporated into construction within the project area.
34. To assess and offset impacts associated with hydrostatic uplift, an evaluation of potential hydrostatic uplift activities during the time of geotechnical plan review regarding the design and construction of below-grade basement levels shall occur.
35. The project applicant shall prepare a waste management plan in consultation with the City of San Diego Environmental Services Department (ESD) which shall also approve the plan. The waste management plan shall include the following elements:
  - The type and quantity of solid waste expected to enter the waste stream.
  - Source separation techniques to be used and the location of on-site storage for separated materials as required by Municipal Code Section 101 2001.
  - The method of transport and destination of separated waste and/or construction debris not re-used on site.
  - A "buy-recycled" program for the project.
  - An impact analysis spreadsheet completed by an ESD analyst. A copy of the waste management plan shall be submitted to ESD and the Port District. With respect to construction/demolition debris, the amount of this material being deposited in the landfill should be reduced by implementing any or all of the following mitigation techniques:
    - Onsite re-use of demolition material in the construction of the development activities
    - Separating construction debris for recycling-reuse by others

If you have any questions on this permit, please contact the Land Use Planning Department of the San Diego Unified Port District at (619) 686-6283.

BRUCE B. HOLLINGSWORTH  
Executive Director

001318



Unified Port  
of San Diego

3165 Pacific Highway, San Diego, CA 92101  
P.O. Box 120488, San Diego, CA 92112-0488  
619.686.6200 • [www.portofsandiego.org](http://www.portofsandiego.org)

By: \_\_\_\_\_  
RALPH T. HICKS  
Director, Land Use Planning

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

DRAFT

001319

TABLE 19: Project List (cont'd)

	SUBAREA	DEVELOPER	APPEALABLE	FISCAL YEAR
27. FERRY TERMINAL (H-12): Construct ferry terminal with second story restaurant/retail totaling up to 10,000 to 25,000 square feet of building area; building height is limited to 25 feet (30 feet with architectural or mechanical features).	74	T	Y	Phase IV

OTAY DISTRICT

- |  |    |   |   |           |
|--|----|---|---|-----------|
| 28. RECREATIONAL VEHICLE PARK (O-3A, O-3B): Construct replacement recreational vehicle park with minimum 237 spaces, along with supporting ancillary uses with building heights limited to 25 feet (30 feet with architectural or mechanical features).  | 76 | T | Y | Phase I   |
| 29. OTAY DISTRICT ROADWAY AND INFRASTRUCTURE IMPROVEMENTS: Reconfiguration of existing and construction of new interior roadways (Street B), as well as necessary utility improvements and pedestrian/bicycle connections to support planned projects.   | 76 | P | Y | Phase III |
| 30. OTAY DISTRICT WETLAND AND UPLAND HABITAT MITIGATION (OP-2A, OP-2B): Creation, restoration, and enhancement of identified wetland and upland habitat areas, as well as the establishment of buffers; replacement of existing concrete Telegraph Canyon Creek channel with wider, naturally vegetated channel. | 76 | P | N | Phase III |
| 31. SOUTH PARK (OP-1A, OP-1B): Development of 24-acre park in Otay District, including associated public amenities, promenades, and parking areas as detailed in Planning District text.   | 76 | P | N | Phase III |

P- Port District    T- Tenant    N- No    Y- Yes

Phase I refers to the time period of approximately 1-7 years after PMPA certification  
Phase II refers to the time period of approximately 4-10 years after PMPA certification  
Phase III refers to the time period of approximately 11-17 years after PMPA certification  
Phase IV refers to the time period of approximately 18-24 years after PMPA certification

beach, Pier Plaza, and the Pier. The District and City of Imperial Beach will perform a cooperative peak parking demand and supply monitoring study for five years following the completion of Pier Plaza redevelopment, and will annually meet to confer with the California Coastal Commission to review its findings and recommendations.

In the event that additional parking demand from projects implemented as a result of the Port Master Plan is identified by the monitoring program, the Port will provide appropriate mitigation for it.

TABLE 24: PROJECT LIST

IMPERIAL BEACH OCEANFRONT:  
PLANNING DISTRICT

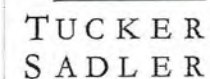
	DEVELOPER	APPEALABLE	APPROXIMATE FISCAL YEAR
1. BEACH SAND REPLENISHMENT: supplement sand supply as opportunity and feasibility permit	Various	N	Various
2. PIER PLAZA: demolish structures; construct restrooms and concession buildings, stage, tot lot, lighting, landscaping, irrigation, shoreline protection, enhanced paving, park furniture, street ending improvements on Elm and Elder Avenue	P	N	1997-98
3. PIER SADDLE: expand pier deck area with placement of pilings	P	N	1999-2000
4. RESTAURANT: construct <u>restaurant</u> and ancillary commercial uses on expanded pier platform when market demands	T	Y	2000-2005
5. PUBLIC SAFETY BUILDING: construct building for lifeguard and other public services; install erosion protection, parking, beach access, landscaping, irrigation system	P	N	2000-01
6. DUNES PARK EXPANSION: demolish structures; construct public restrooms, install paving, landscaping, park furniture, irrigation system, erosion protection	P	N	1998
7. ENHANCE 11 STREET ENDS: demolish and reconstruct; automobile travel and parking space, curb and gutter, drainage, shoreline protection, enhanced paving, lighting, fencing, landscape irrigation	P	N	1997-2002
8. ENHANCE STREET END, PALM AVE: demolish structures, construct curb and gutter, public restroom, shoreline protection, sidewalk, enhanced paving, lighting, fencing, drainage, landscape and irrigation	P	N	1999-2000
9. AUTOMOBILE PARKING FACILITIES: renovate lot with parking structure and irrigation	T	N	1999-2000

P- Port District    T- Tenant    N- No    Y- Yes

## **APPENDIX IV**

### **Portside Pier Photometrics**





NOT FOR  
CONSTRUCTION

## Design Development

**ROBISON**  
ENGINEERING, INC.  
[940] 40TH AVE., SUITE 302  
LYNNWOOD, WA 98036  
206.364.3343 • FAX 206.364.0088

PORTSIDE PIER

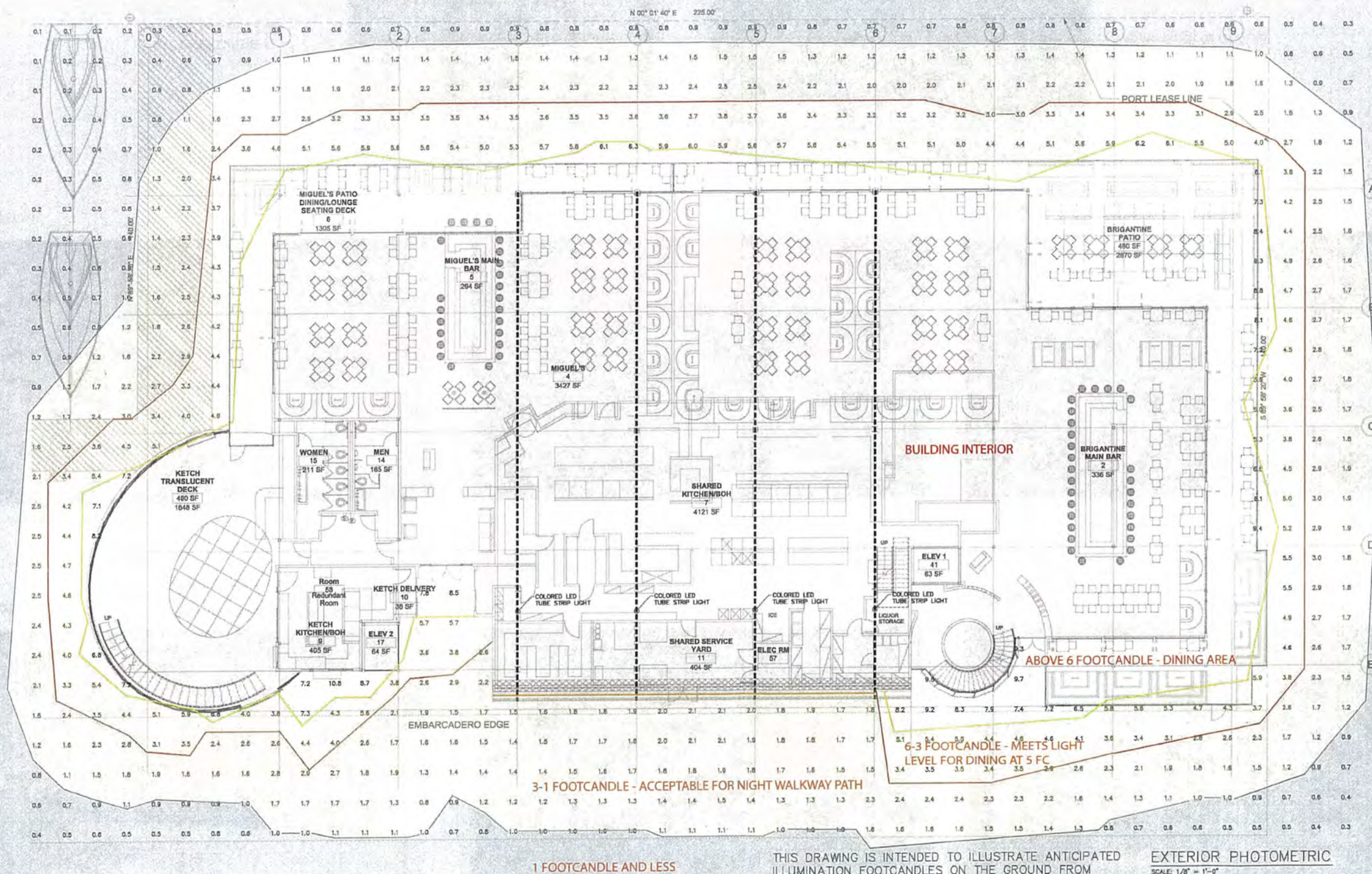
## PROGRESS SET

[illegible]

ENGINEER OF RECORD:



DRAWING  
NUMBER  
DWG  
OF

DRAWING  
E100

NOTE: STUDY DOES NOT INCLUDE OTHER ADDITIONAL STREET AND SITE LIGHTING SURROUNDING BUILDING

THIS DRAWING IS INTENDED TO ILLUSTRATE ANTICIPATED ILLUMINATION FOOTCANDLES ON THE GROUND FROM INTERIOR AND BUILDING MOUNTED LIGHT SOURCES.

EXTERIOR PHOTOMETRIC  
SCALE: 1/8" = 1'-0"

ALL IDEAS, DESIGNS, ARRANGEMENTS AND PLANS INDICATED OR REPRESENTED BY THE DRAWING ARE OWNED BY AND THE PROPERTY OF TUCKER EADLER & ASSOCIATES, AIA ARCHITECTS AND PLANNING CONSULTANTS, AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY ANY PERSON, FIRM OR CORPORATION FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF TUCKER EADLER & ASSOCIATES. FILING THESE DRAWINGS OR REPRODUCING THEM IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF TUCKER EADLER & ASSOCIATES IS PROHIBITED. NO PART OF THESE DRAWINGS OR REPRODUCTIONS THEREOF SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF TUCKER EADLER & ASSOCIATES.

Copyright 2016, BENTON ENGINEERING, INC.  
 10000 Highway 21, Suite 200, Houston, Texas 77055-1000  
 281-461-1111 | www.benton-engineering.com



ALL IDEAS, DESIGNS, ARRANGEMENTS AND PLANS INDICATED OR REPRESENTED BY THE DRAWING ARE OWNED BY AND THE PROPERTY OF TUCKER SADLER & ASSOCIATES, AIA ARCHITECTS AND PLANNING CONSULTANTS, AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY OR DISCLOSED TO ANY PERSON, FIRM OR CORPORATION FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF TUCKER SADLER & ASSOCIATES. FILING THESE DRAWINGS OR SPECIFICATIONS WITH ANY PUBLIC AGENCY IS NOT PUBLICATION OF SAME AND NO COPYING, REPRODUCTION OR USE THEREOF IS PERMISSIBLE WITHOUT THE WRITTEN CONSENT OF TUCKER SADLER & ASSOCIATES.



PHOTO 1 EXISTING BUILDING APPROX. SAME HEIGHT (14 FOOT FLOOR TO FLOOR) AS PORTSIDE PIER



**PHOTO 2**

**① INDICATES FOOTCANDLE BRIGHTNESS MEASURED 3 FEET ABOVE SIDEWALK**

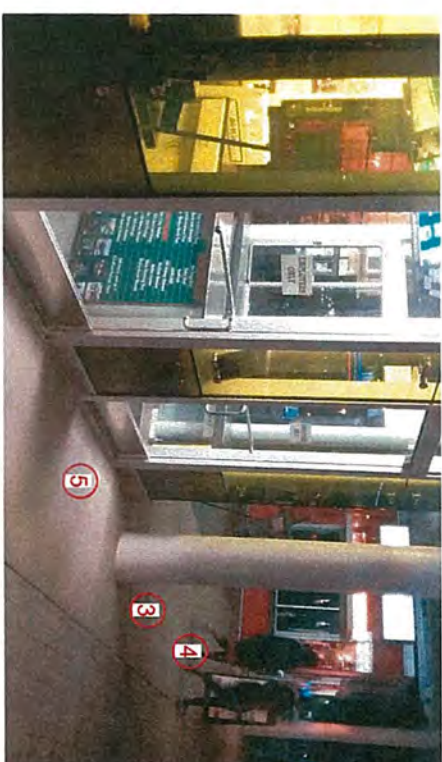


PHOTO 3



PHOTO 4



PHOTO 5



PHOTO 6



**HORNBLLOWER /  
VISITOR INFO CTR**

INDICATES  
PHOTO  
LOCATION

PORTSIDE PIER SITE

PORTSIDE PIER

[illegible]

ARCHITECT OF RECORD:

PROJECT # 21511.00	DRAWN BY: MV
DATE ISSUED: 10/19/16	CHECKED BY: DM, GM
DRAWING NUMBER DWG	DRAWING OF .E101



**ERRATA TO**  
**VOLUME I FINAL MITIGATED NEGATIVE DECLARATION**  
**PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT**  
**SAN DIEGO, CA (UPD #MND-2016-91; SCH #2016081007)**

The attached replaces Appendix I, Sunroad Project Superior Court Decision, of Appendices to Attachment D: Comments Received and District Responses. A different Superior Court Decision was previously inadvertently attached.

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/12/2014

TIME: 10:50:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2013-00057492-CU-TT-CTL** CASE INIT.DATE: 07/15/2013

CASE TITLE: **San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION**  
[E-File]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

---

**EVENT TYPE:** Motion Hearing (Civil)

---

**APPEARANCES**

The Court, having taken the above-entitled matter under submission on 05/08/14 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on plaintiffs/petitioners San Diegans for Open Government (SDOG) and San Diego Navy Broadway Complex Coalition's (SDNBCC) (sometimes collectively Petitioners) petition for writ of mandate as follows:

The Court's tentative ruling will serve as the Court's Statement of Decision pursuant to California Rules of Court, rule 3.1590.

Petitioners are represented by Cory J. Briggs and Mekaela M. Gladden of the Briggs Law Corporation.

Respondent California Coastal Commission (Commission) is represented by Baine P. Kerr of the Office of the Attorney General. Respondent San Diego Unified Port District (Port District) is represented by Michael M. Hogan of Hogan Law APC. The Real Parties in Interest Sunroad Enterprises and Sunroad Harbor Island, Inc. (sometimes collectively RPIs) are represented by Steven H. Kaufman of Richards, Watson & Gershon, APC.

The Court has reviewed the record in light of the parties' briefs and the applicable law and concludes the petition for writ of mandate should be denied for the reasons stated below.

*Standard of Review.* Public Resources Code section 30801 provides for judicial review of Commission decisions by way of a petition for writ of administrative mandamus under Code of Civil Procedure section

1094.5. In reviewing a Commission decision, the trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the agency abused its discretion. (*Ross v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 921 (hereafter *Ross*)). Abuse of discretion is established if the Commission has not proceeded in the manner required by law, the decision is not supported by the findings or the findings are not supported by the evidence. (*Ibid.*) The Commission's findings and actions are presumed to be supported by substantial evidence. (*Ibid.*) A person challenging the Commission's decision bears the burden of showing that substantial evidence does not support the Commission's findings. (*Ibid.*)

When reviewing the Commission's decision, the court examines the whole record and considers all relevant evidence, including that which detracts from the decision. (*Ross, supra*, 199 Cal.App.4th at p. 921.) Although this task involves some weighing to fairly estimate the worth of the evidence, this limited weighing does not constitute independent review where the court substitutes its findings and inferences for those of the Commission. (*Id.* at p. 922.) Rather, the Commission weighs the preponderance of conflicting evidence, and the court may reverse its decision only if, based on the evidence before it, a reasonable person could not have reached the same conclusion the Commission reached. (*Ibid.*; accord *Ocean Harbor House v. Cal. Coastal Com.* (2008) 163 Cal.App.4th 215, 227 (hereafter *Ocean Harbor House*)). Substantial evidence upon which the Commission may base its decision includes opinion evidence of experts, oral presentations at the public hearing, photographic evidence, and written materials of staff. (*Whaler's Village Club v. Cal. Coastal Com.* (1985) 173 Cal.App.3d 240, 261 (hereafter *Whaler's Village Club*); *Coastal Southwest Dev. Corp. v. Cal. Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 532, 536 (hereafter *Coastal Southwest Dev. Corp.*)).

The ultimate task of statutory interpretation is for the judiciary, but the Commission's interpretation of the statutes and regulations under which it operates is entitled to "great weight," given the Commission's special familiarity with the regulatory and legal issues. (*Ross, supra*, 199 Cal.App.4th at p. 938; *Reddell v. Cal. Coastal Com.* (2009) 180 Cal.App.4th 956, 965-966; but see *Burke v. Cal. Coastal Com.* (2008) 168 Cal.App.4th 1098, 1106.)

As a preliminary matter, the Court notes that there is no dispute as to Petitioners' standing. Thus, it was not necessary for Petitioners' to provide extra record evidence i.e., declarations, to establish that they had standing to pursue the claims asserted here.

Also, Petitioners did not address the Port District's exhaustion argument in its opposition brief. Thus, the Court assumes that they do not contest this issue.

The first issue is whether the Commission violated the Coastal Act.

One, Public Resources Code section 30625 (section 30625) provides, in pertinent part: "any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed...The commission may approve, modify, or deny such proposed development..." Thus, the Commission has the authority to hear an appeal of development the Port District authorized pursuant to a claim of exemption, and may modify and approve such development on appeal.

Petitioners' contend that by issuing the permit, the Commission instituted a "de facto" amendment of the Plan. In this case, the Commission did not purport to amend the Plan or change any land use designation within it. It modified and approved the project, as section 30625 authorized. Port master plans are required to "include" proposed projects, and ports must certify that approved projects

"conform" to port master plans, but no provision of the Coastal Act states that the Commission may only approve development included in a project list when exercising its appellate jurisdiction over a claim of exemption. (See Pub. Res. Code, §§30711, 30715, 30715.5, 30112.)

Petitioners' interpretation of the Coastal Act would negate the requirement in section 30621 that the Commission hold a "de novo" hearing once appellate review is exercised, because there cannot be a "de novo" hearing if only one course of action is possible. (See *Coronado Yacht Club v. Cal. Coastal Com.* (1993) 13 Cal.App.4th 860, 871-872 (hereafter *Coronado Yacht Club*).)

Petitioners' argument that the Commission lacks authority to approve development not listed in a port master plan conflicts with Public Resources Code section 30715, which provides that the Commission's permitting authority is delegated to the Port "over any new development contained in the certified plan...." Read together with section 30625, this provision demonstrates that the Commission has authority to approve development not listed in a port master plan when exercising appellate jurisdiction over a port's claim of exemption, and it was not required by law to deny the permit application.

In sum, the fundamental flaw in Petitioners' argument is that it ignores the very Coastal Act provision which expressly authorized the Commission to "approve" or "modify" the Project.

Two, the Project was not an "appealable development", but even assuming it was, the Commission had express authority in section 30625 to "approve" and "modify" the Project.

Three, the Commission had the jurisdiction to conditionally approve the Project based on retained Commission jurisdiction.

Petitioners read the words in the second sentence of Public Resources Code section 30715 subd. (a), "contained in the certified plan," to mean that every development proposed in a port must be listed in the Port Master Plan. At the same time, they ignored the first sentence, which states that until a port master plan is certified, permit jurisdiction remains with the Commission. Consequently, assuming Petitioners' interpretation was correct, development not listed in the plan would remain subject to the Commission's original permit jurisdiction. It would not be delegated to the Port District at all. As applied here, the Port District's exercise of jurisdiction in the first instance would be irrelevant. The Commission would retain jurisdiction to conditionally approve the Project. Importantly, however, Petitioners not only ignore the first sentence of section 30715 subd. (a), but wrongly interpret the second sentence. The quoted words, in context, mean simply that after certification, jurisdiction over developments in the port master plan or portion thereof that is certified is delegated to the ports, with appeal jurisdiction reserved to the Commission. (See *Coronado Yacht Club, supra*, 13 Cal.App.4th at p. 872.) Furthermore, nothing in the Coastal Act mandates that every proposed development in a port be the subject of a port master plan amendment. (See Pub. Res. Code, §30711.) In Public Resources Code section 30711, the Legislature could have stated that a port master plan must include all developments, including exempt, emergency, and nonappealable development, but instead expressly stated only that "[p]roposed projects listed as appealable in Section 30715" be included.

Four, substantial evidence supports the Commission's determination that the Project, as modified, complied with the Coastal Act.

The Commission found that the new landside restaurant development, as the Port approved, would block waterfront access that was currently available through the existing parking lot. (11 AR 2778.) The Commission required Sunroad to re-design the project to provide a continuous public path along the

shoreline between the restaurant and the water. (11 AR 2654-2655.) The Commission further required Sunroad to allow public access to the floating barge, and to provide appropriate signage directing the public to the barge. (11 AR 2799.) Commission staff testified that the project, as revised, would maintain and improve public access along the shoreline. (11 AR 2654-2655.) The Commission concurred. (11 AR 2797.)

The Commission also found that the modified development would not have any adverse impact on the visual quality of the area because the proposed barge would be a maximum 18 feet in height, compared to the previous barge, the 4-story Reuben E. Lee. Moreover, the public access improvements on the shoreline side of the restaurant would provide pedestrian access to views beyond the building. (11 AR 2801.) Visual depictions that the Commission considered show that the project would provide shoreline public access and enhanced views of the water. (11 AR 2562-2571; 2816-2818; 1 AR 11-12.) The Commission also found the proposed project includes expansive landscaping and "hardscape" that would make the area more inviting to the public. (11 AR 2801.)

Petitioners claim that additional public input would have resulted in further measures to enhance public access and protect scenic views, but failed to identify any further measures or cite any evidence in the record supporting their position. (*Ibid.*)

The Commission concluded the project as modified and conditioned was consistent with the Coastal Act based on ample evidence that public access and views would be protected and enhanced. The evidence showed the project's public path and deck area would be preferable to the currently-available public access to the end of the peninsula via a parking lot, and the new floating barge would be significantly lower in height and bulk than the Reuben E. Lee. The Commission was entitled to consider this evidence and infer from it that the project would enhance, not diminish, public access and scenic views. (*Whaler's Village Club, supra*, 173 Cal.App.3d at p. 261; *Coastal Southwest Development Corp., supra*.) Petitioners do not offer any evidence contrary to the Commission's findings, and cannot carry their burden to defeat the presumption that substantial evidence supported the Commission's decision. (*Ocean Harbor House Homeowners Assn., supra*, 163 Cal.App.4th at p. 227.)

The second issue is whether the Commission violated CEQA

Under CEQA, a state agency's regulatory program may be exempted from the requirements of preparing initial studies, negative declarations and environmental impact reports if the Secretary of the Resources Agency certifies the program. (Pub. Res. Code, §21080.5.) A certified regulatory program remains subject to other CEQA policies, including the obligations to identify a project's adverse environmental effects, to mitigate those effects through the adoption of feasible alternatives or mitigation measures, and to justify its actions based on specific economic, social or other conditions. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230.)

The secretary certified the Commission's coastal development permit program under section 21080.5. (Cal. Code Regs, tit. 14, §15251(c).) A Commission staff report "complies with the relevant substantive and procedural requirements applicable to a certified regulatory program" for CEQA purposes. (*Ross, supra*, 199 Cal.App.4th at p. 933; see Cal. Code Regs., tit. 14, §§13057 [requirements for staff report]; 13096 [requiring written conclusions by Commission as to consistency of permit applications with CEQA].) The report must include "a description of the proposed activity with alternatives to the activity..." (Pub. Res. Code, §21080.5(d)(3)(A).) The consideration of alternatives need not be exhaustive, but "it must reasonably reflect that due consideration was given" to project alternatives. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 136.)

Here, the Commission staff report described two projects: the project the Port District approved, and the project that the Commission ultimately approved. The report found that the Port District approved project would total 27,505 square feet, and would provide two public viewpoints on either side of the proposed restaurant. (11 AR 2760.) The report stated that the Project would eliminate public access to the shoreline and water views, and that the proposed overlook points would not preserve or enhance the level or quality of public access that existed on the site. (11 AR 2778-2779.) It also found that, as a result of the elimination of public access to the shore, the project would block existing views of the downtown skyline and bay. (11 AR 2780.) In addition, the report noted that the Port District's proposal did not include conditions requiring measures to prevent the spread of the invasive algae *Caulperla taxifolia*. (*Ibid.*) In contrast, as described above, the modified development proposed to the Commission would be approximately 22,850 square feet—a significant reduction—and would include measures to ensure public access to the coast and protect scenic views, coastal biology and water quality. (11 AR 2790.)

In addition, the Commission considered and rejected alternatives requiring that the project be moved further away from the shoreline or shrunk in size. (11 AR 2798.) The restaurant could not be shifted inland because of setback requirements related to a seismic fault, and shrinking the project further would have required eliminating basic components of the project. (*Ibid.*; 11 AR 2781 [describing 10-foot setback zone].) And, such changes would be unnecessary because the project had been re-designed to avoid all significant environmental impacts. (11 AR 2797-2803.) The record thus contains substantial evidence that the Commission considered a reasonable range of feasible alternatives, imposed feasible mitigation measures to reduce the project's environmental impact, and adopted the least environmentally-damaging alternative.

Contrary to petitioners' assertion, the staff report's findings that "feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects on the environment," and "there are no further feasible mitigation measures that would substantially lessen any significant adverse effects on the environment" (11 AR 2808-2809), were supported by substantial evidence and complied with CEQA. (See *Sierra Club v. Cal. Coastal Com.* (1993) 19 Cal.App.4th 547, 556; see also *Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201, 1222-1223.)

Finally, the "Put it Back" alternative would not have required a CDP at all. Under the "Replacement or Reconstruction" exemption in both Section 8.b subd. (1) of the Port District's certified CDP regulations (5 AR 953-954) and the CEQA Guidelines (Cal. Code Regs., tit., 14, §15302(b)), RPIs could have put back a "Reuben E. Lee" or another restaurant on a barge without a permit, new public access, or new sweeping public views. An alternative must "substantially lessen a significant adverse impact that the activity may have on the environment." (Pub. Res. Code, §21080.5(d)(2)(A).) Petitioners' alternative would not achieve this goal. Any viable restaurant sitting on a barge would block views of downtown San Diego, the Bay, the Bridge, and Coronado. (11 AR 2576, 2581, 2587.) Moreover, counsel's generalized objection, without further explanation, made at the close of the public hearing, was barred in any event barred by the exhaustion doctrine. (Pub. Res. Code, §21177; *CREED v. City of San Diego* (2011) 196 Cal.App.4th 515, 527; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197-1198.)

Based on the foregoing, the Court denies the writ. The Commission is directed to prepare the Judgment.

**IT IS SO ORDERED.**

*Ronald S. Prager*

---

Judge Ronald S. Prager

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**


Central  
330 West Broadway  
San Diego, CA 92101

**SHORT TITLE:** San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION [E-File]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2013-00057492-CU-TT-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 05/12/2014.

Clerk of the Court, by: , Deputy

MEKAELA M GLADDEN  
BRIGGS LAW CORPORATION  
814 MORENA BOULEVARD # 107  
SAN DIEGO, CA 92110

STEVEN H KAUFMANN  
RICHARDS/ WATSON/ GERSHON  
355 S. GRAND AVE, 40TH FLOOR  
LOS ANGELES, CA 90071

BAINE P KERR  
OFFICE OF THE ATTORNEY GENERAL  
300 SOUTH SPRING STREET # 1702  
LOS ANGELES, CA 90013

HAYLEY E PETERSON  
110 WEST A ST #1100  
SAN DIEGO, CA 92101

CORY J BRIGGS  
BRIGGS LAW CORPORATION  
99 EAST C STREET # 111  
UPLAND, CA 91786

MICHAEL M HOGAN  
HOGAN LAW APC  
225 BROADWAY STE 1900  
SAN DIEGO, CA 92101

☐ Additional names and address attached.



# **ATTACHMENT C**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/12/2014

TIME: 10:50:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2013-00057492-CU-TT-CTL CASE INIT.DATE: 07/15/2013

CASE TITLE: San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION  
[E-File]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

---

**EVENT TYPE:** Motion Hearing (Civil)

---

**APPEARANCES**

The Court, having taken the above-entitled matter under submission on 05/08/14 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on plaintiffs/petitioners San Diegans for Open Government (SDOG) and San Diego Navy Broadway Complex Coalition's (SDNBCC) (sometimes collectively Petitioners) petition for writ of mandate as follows:

The Court's tentative ruling will serve as the Court's Statement of Decision pursuant to California Rules of Court, rule 3.1590.

Petitioners are represented by Cory J. Briggs and Mekaela M. Gladden of the Briggs Law Corporation.

Respondent California Coastal Commission (Commission) is represented by Baine P. Kerr of the Office of the Attorney General. Respondent San Diego Unified Port District (Port District) is represented by Michael M. Hogan of Hogan Law APC. The Real Parties in Interest Sunroad Enterprises and Sunroad Harbor Island, Inc. (sometimes collectively RPIs) are represented by Steven H. Kaufman of Richards, Watson & Gershon, APC.

The Court has reviewed the record in light of the parties' briefs and the applicable law and concludes the petition for writ of mandate should be denied for the reasons stated below.

*Standard of Review.* Public Resources Code section 30801 provides for judicial review of Commission decisions by way of a petition for writ of administrative mandamus under Code of Civil Procedure section

1094.5. In reviewing a Commission decision, the trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the agency abused its discretion. (*Ross v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 921 (hereafter *Ross*)). Abuse of discretion is established if the Commission has not proceeded in the manner required by law, the decision is not supported by the findings or the findings are not supported by the evidence. (*Ibid.*) The Commission's findings and actions are presumed to be supported by substantial evidence. (*Ibid.*) A person challenging the Commission's decision bears the burden of showing that substantial evidence does not support the Commission's findings. (*Ibid.*)

When reviewing the Commission's decision, the court examines the whole record and considers all relevant evidence, including that which detracts from the decision. (*Ross, supra*, 199 Cal.App.4th at p. 921.) Although this task involves some weighing to fairly estimate the worth of the evidence, this limited weighing does not constitute independent review where the court substitutes its findings and inferences for those of the Commission. (*Id.* at p. 922.) Rather, the Commission weighs the preponderance of conflicting evidence, and the court may reverse its decision only if, based on the evidence before it, a reasonable person could not have reached the same conclusion the Commission reached. (*Ibid.*; accord *Ocean Harbor House v. Cal. Coastal Com.* (2008) 163 Cal.App.4th 215, 227 (hereafter *Ocean Harbor House*)). Substantial evidence upon which the Commission may base its decision includes opinion evidence of experts, oral presentations at the public hearing, photographic evidence, and written materials of staff. (*Whaler's Village Club v. Cal. Coastal Com.* (1985) 173 Cal.App.3d 240, 261 (hereafter *Whaler's Village Club*); *Coastal Southwest Dev. Corp. v. Cal. Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 532, 536 (hereafter *Coastal Southwest Dev. Corp.*)).

The ultimate task of statutory interpretation is for the judiciary, but the Commission's interpretation of the statutes and regulations under which it operates is entitled to "great weight," given the Commission's special familiarity with the regulatory and legal issues. (*Ross, supra*, 199 Cal.App.4th at p. 938; *Reddell v. Cal. Coastal Com.* (2009) 180 Cal.App.4th 956, 965-966; but see *Burke v. Cal. Coastal Com.* (2008) 168 Cal.App.4th 1098, 1106.)

As a preliminary matter, the Court notes that there is no dispute as to Petitioners' standing. Thus, it was not necessary for Petitioners' to provide extra record evidence i.e., declarations, to establish that they had standing to pursue the claims asserted here.

Also, Petitioners did not address the Port District's exhaustion argument in its opposition brief. Thus, the Court assumes that they do not contest this issue.

The first issue is whether the Commission violated the Coastal Act.

One, Public Resources Code section 30625 (section 30625) provides, in pertinent part: "any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed...The commission may approve, modify, or deny such proposed development..." Thus, the Commission has the authority to hear an appeal of development the Port District authorized pursuant to a claim of exemption, and may modify and approve such development on appeal.

Petitioners' contend that by issuing the permit, the Commission instituted a "de facto" amendment of the Plan. In this case, the Commission did not purport to amend the Plan or change any land use designation within it. It modified and approved the project, as section 30625 authorized. Port master plans are required to "include" proposed projects, and ports must certify that approved projects

"conform" to port master plans, but no provision of the Coastal Act states that the Commission may only approve development included in a project list when exercising its appellate jurisdiction over a claim of exemption. (See Pub. Res. Code, §§30711, 30715, 30715.5, 30112.)

Petitioners' interpretation of the Coastal Act would negate the requirement in section 30621 that the Commission hold a "de novo" hearing once appellate review is exercised, because there cannot be a "de novo" hearing if only one course of action is possible. (See *Coronado Yacht Club v. Cal. Coastal Com.* (1993) 13 Cal.App.4th 860, 871-872 (hereafter *Coronado Yacht Club*)).

Petitioners' argument that the Commission lacks authority to approve development not listed in a port master plan conflicts with Public Resources Code section 30715, which provides that the Commission's permitting authority is delegated to the Port "over any new development contained in the certified plan...." Read together with section 30625, this provision demonstrates that the Commission has authority to approve development not listed in a port master plan when exercising appellate jurisdiction over a port's claim of exemption, and it was not required by law to deny the permit application.

In sum, the fundamental flaw in Petitioners' argument is that it ignores the very Coastal Act provision which expressly authorized the Commission to "approve" or "modify" the Project.

Two, the Project was not an "appealable development", but even assuming it was, the Commission had express authority in section 30625 to "approve" and "modify" the Project.

Three, the Commission had the jurisdiction to conditionally approve the Project based on retained Commission jurisdiction.

Petitioners read the words in the second sentence of Public Resources Code section 30715 subd. (a), "contained in the certified plan," to mean that every development proposed in a port must be listed in the Port Master Plan. At the same time, they ignored the first sentence, which states that until a port master plan is certified, permit jurisdiction remains with the Commission. Consequently, assuming Petitioners' interpretation was correct, development not listed in the plan would remain subject to the Commission's original permit jurisdiction. It would not be delegated to the Port District at all. As applied here, the Port District's exercise of jurisdiction in the first instance would be irrelevant. The Commission would retain jurisdiction to conditionally approve the Project. Importantly, however, Petitioners not only ignore the first sentence of section 30715 subd. (a), but wrongly interpret the second sentence. The quoted words, in context, mean simply that after certification, jurisdiction over developments in the port master plan or portion thereof that is certified is delegated to the ports, with appeal jurisdiction reserved to the Commission. (See *Coronado Yacht Club, supra*, 13 Cal.App.4th at p. 872.) Furthermore, nothing in the Coastal Act mandates that every proposed development in a port be the subject of a port master plan amendment. (See Pub. Res. Code, §30711.) In Public Resources Code section 30711, the Legislature could have stated that a port master plan must include all developments, including exempt, emergency, and nonappealable development, but instead expressly stated only that "[p]roposed projects listed as appealable in Section 30715" be included.

Four, substantial evidence supports the Commission's determination that the Project, as modified, complied with the Coastal Act.

The Commission found that the new landside restaurant development, as the Port approved, would block waterfront access that was currently available through the existing parking lot. (11 AR 2778.) The Commission required Sunroad to re-design the project to provide a continuous public path along the

shoreline between the restaurant and the water. (11 AR 2654-2655.) The Commission further required Sunroad to allow public access to the floating barge, and to provide appropriate signage directing the public to the barge. (11 AR 2799.) Commission staff testified that the project, as revised, would maintain and improve public access along the shoreline. (11 AR 2654-2655.) The Commission concurred. (11 AR 2797.)

The Commission also found that the modified development would not have any adverse impact on the visual quality of the area because the proposed barge would be a maximum 18 feet in height, compared to the previous barge, the 4-story Reuben E. Lee. Moreover, the public access improvements on the shoreline side of the restaurant would provide pedestrian access to views beyond the building. (11 AR 2801.) Visual depictions that the Commission considered show that the project would provide shoreline public access and enhanced views of the water. (11 AR 2562-2571; 2816-2818; 1 AR 11-12.) The Commission also found the proposed project includes expansive landscaping and "hardscape" that would make the area more inviting to the public. (11 AR 2801.)

Petitioners claim that additional public input would have resulted in further measures to enhance public access and protect scenic views, but failed to identify any further measures or cite any evidence in the record supporting their position. (*Ibid.*)

The Commission concluded the project as modified and conditioned was consistent with the Coastal Act based on ample evidence that public access and views would be protected and enhanced. The evidence showed the project's public path and deck area would be preferable to the currently-available public access to the end of the peninsula via a parking lot, and the new floating barge would be significantly lower in height and bulk than the Reuben E. Lee. The Commission was entitled to consider this evidence and infer from it that the project would enhance, not diminish, public access and scenic views. (*Whaler's Village Club, supra*, 173 Cal.App.3d at p. 261; *Coastal Southwest Development Corp., supra*.) Petitioners do not offer any evidence contrary to the Commission's findings, and cannot carry their burden to defeat the presumption that substantial evidence supported the Commission's decision. (*Ocean Harbor House Homeowners Assn., supra*, 163 Cal.App.4th at p. 227.)

The second issue is whether the Commission violated CEQA

Under CEQA, a state agency's regulatory program may be exempted from the requirements of preparing initial studies, negative declarations and environmental impact reports if the Secretary of the Resources Agency certifies the program. (Pub. Res. Code, §21080.5.) A certified regulatory program remains subject to other CEQA policies, including the obligations to identify a project's adverse environmental effects, to mitigate those effects through the adoption of feasible alternatives or mitigation measures, and to justify its actions based on specific economic, social or other conditions. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230.)

The secretary certified the Commission's coastal development permit program under section 21080.5. (Cal. Code Regs, tit. 14, §15251(c).) A Commission staff report "complies with the relevant substantive and procedural requirements applicable to a certified regulatory program" for CEQA purposes. (*Ross, supra*, 199 Cal.App.4th at p. 933; see Cal. Code Regs., tit. 14, §§13057 [requirements for staff report]; 13096 [requiring written conclusions by Commission as to consistency of permit applications with CEQA].) The report must include "a description of the proposed activity with alternatives to the activity..." (Pub. Res. Code, §21080.5(d)(3)(A).) The consideration of alternatives need not be exhaustive, but "it must reasonably reflect that due consideration was given" to project alternatives. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 136.)

Here, the Commission staff report described two projects: the project the Port District approved, and the project that the Commission ultimately approved. The report found that the Port District approved project would total 27,505 square feet, and would provide two public viewpoints on either side of the proposed restaurant. (11 AR 2760.) The report stated that the Project would eliminate public access to the shoreline and water views, and that the proposed overlook points would not preserve or enhance the level or quality of public access that existed on the site. (11 AR 2778-2779.) It also found that, as a result of the elimination of public access to the shore, the project would block existing views of the downtown skyline and bay, (11 AR 2780.) In addition, the report noted that the Port District's proposal did not include conditions requiring measures to prevent the spread of the invasive algae *Caulperla taxifolia*. (*Ibid.*) In contrast, as described above, the modified development proposed to the Commission would be approximately 22,850 square feet—a significant reduction—and would include measures to ensure public access to the coast and protect scenic views, coastal biology and water quality. (11 AR 2790.)

In addition, the Commission considered and rejected alternatives requiring that the project be moved further away from the shoreline or shrunk in size. (11 AR 2798.) The restaurant could not be shifted inland because of setback requirements related to a seismic fault, and shrinking the project further would have required eliminating basic components of the project. (*Ibid.*; 11 AR 2781 [describing 10-foot setback zone].) And, such changes would be unnecessary because the project had been re-designed to avoid all significant environmental impacts. (11 AR 2797-2803.) The record thus contains substantial evidence that the Commission considered a reasonable range of feasible alternatives, imposed feasible mitigation measures to reduce the project's environmental impact, and adopted the least environmentally-damaging alternative.

Contrary to petitioners' assertion, the staff report's findings that "feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects on the environment," and "there are no further feasible mitigation measures that would substantially lessen any significant adverse effects on the environment" (11 AR 2808-2809), were supported by substantial evidence and complied with CEQA. (See *Sierra Club v. Cal. Coastal Com.* (1993) 19 Cal.App.4th 547, 556; see also *Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201, 1222-1223.)

Finally, the "Put it Back" alternative would not have required a CDP at all. Under the "Replacement or Reconstruction" exemption in both Section 8.b subd. (1) of the Port District's certified CDP regulations (5 AR 953-954) and the CEQA Guidelines (Cal. Code Regs., tit. 14, §15302(b)), RPIs could have put back a "Reuben E. Lee" or another restaurant on a barge without a permit, new public access, or new sweeping public views. An alternative must "substantially lessen a significant adverse impact that the activity may have on the environment." (Pub. Res. Code, §21080.5(d)(2)(A).) Petitioners' alternative would not achieve this goal. Any viable restaurant sitting on a barge would block views of downtown San Diego, the Bay, the Bridge, and Coronado. (11 AR 2576, 2581, 2587.) Moreover, counsel's generalized objection, without further explanation, made at the close of the public hearing, was barred in any event barred by the exhaustion doctrine. (Pub. Res. Code, §21177; *CREED v. City of San Diego* (2011) 196 Cal.App.4th 515, 527; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197-1198.)

Based on the foregoing, the Court denies the writ. The Commission is directed to prepare the Judgment.

**IT IS SO ORDERED.**

*Ronald S. Prager*

---

Judge Ronald S. Prager

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

Central  
330 West Broadway  
San Diego, CA 92101


**SHORT TITLE:** San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION [E-File]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**

**37-2013-00057492-CU-TT-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 05/12/2014.

Clerk of the Court, by: , Deputy

MEKAELA M GLADDEN  
BRIGGS LAW CORPORATION  
814 MORENA BOULEVARD # 107  
SAN DIEGO, CA 92110

STEVEN H KAUFMANN  
RICHARDS/ WATSON/ GERSHON  
355 S. GRAND. AVE, 40TH FLOOR  
LOS ANGELES, CA 90071

BAINE P KERR  
OFFICE OF THE ATTORNEY GENERAL  
300 SOUTH SPRING STREET # 1702  
LOS ANGELES, CA 90013

HAYLEY E PETERSON  
110 WEST A ST #1100  
SAN DIEGO, CA 92101

CORY J BRIGGS  
BRIGGS LAW CORPORATION  
99 EAST C STREET # 111  
UPLAND, CA 91786

MICHAEL M HOGAN  
HOGAN LAW APC  
225 BROADWAY STE 1900  
SAN DIEGO, CA 92101

☐ Additional names and address attached.



# **ATTACHMENT D**

**From:** [Juliette Orozco](#)  
**To:** "[Deborah.Lee@coastal.ca.gov](#)"; [Melody.Lasiter@coastal.ca.gov](#); "[Kanani.Brown@coastal.ca.gov](#)"  
**Cc:** [Leslev.Nishihira](#); [Wileen.Manaols](#)  
**Subject:** Categorical Determinations and Notice of Approval  
**Date:** Thursday, December 01, 2016 5:11:12 PM  
**Attachments:** [RE PortsidePier 12 1 2016.pdf](#)

---

Good Afternoon,

Attached please find one (1) Categorical Determination and Notice of Approval issued for the following projects:

- 2016-91 Portside Pier Restaurant and Redevelopment Project

Please let us know if you have any questions.

Thank you,



Juliette Orozco | Assistant Planner  
PORT OF SAN DIEGO  
3165 Pacific Highway Y San Diego, CA 92101  
O: 619.686.6237

Port administration offices are open Monday-Thursday and every other Friday from 8am-5pm.  
The information contained in this email and accompanying documents is considered public information and will be disclosed to the public upon request unless otherwise exempt from disclosure by the California Public Records Act (Cal. Gov. Code §§ 6250 et seq.).

## San Diego Unified Port District

### CEQA and COASTAL DETERMINATIONS

Project: Portside Pier Restaurant Redevelopment Project  
Location(s): 1360 North Harbor Drive, San Diego, CA 92101  
Parcel No.(s): 017-022  
Project No.: 2016-91  
Applicant: Michael Morton Jr., The Brigantine, Inc., 7889 Ostrow St., San Diego, CA 92111  
Date: December 1, 2016

#### Project Description

The proposed Portside Pier Redevelopment Project includes redevelopment of the existing waterfront restaurant site that has been occupied since 1965 by Anthony's Fish Grotto, Fishette, and Anthony's Star of the Sea Room in the City of San Diego. The existing one-story approximately 24,855 square foot (sf) restaurant structure that includes four eating establishments (three restaurants and a walk-up coffee kiosk) would be demolished and replaced with the same use. Specifically, it would be replaced with an approximately 34,069 sf new two-story restaurant structure to include four eating establishments (three restaurants and a gelato and coffee walk-in shop). At this time, a Brigantine on the Bay, a Miguel's Cocina, and a Ketch Grill and Taps have been identified as the restaurant operators. Additionally, the project includes a coffee and gelato shop and second floor public viewing deck. The project would construct a new building built on a new platform supported by new pilings and a new dock, entirely replacing the existing building, pilings, platform, and dock.

The proposed public viewing deck would include tables and benches for up to approximately 108 public visitors. This area would be separate from the restaurant areas and accessible directly from the North Embarcadero Promenade via elevator and stairs. Additionally, a perimeter walkway around the bottom floor of the building would be open to the public to provide views of the bay. Clear signage would be provided directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway. For security reasons, the public areas would be open at all times during the hours of operation of the restaurants. The North Embarcadero Promenade, which is a waterfront sidewalk for pedestrians and cyclists located in front of the project site, would be improved consistent with the North Embarcadero Visionary Plan Phase 1 and recent improvements to the south. This includes new pavers, street furniture, and wayfinding signage. No changes are proposed to the current configuration of the promenade. The promenade would be open at all times.

Illuminated signage would be located both on the waterside- and promenade-facing frontages of the building. The proposed project would also include an expanded dock and dine dock capable of docking up to 12 vessels. Finally, the proposed project would result in an increase of approximately 9,214 sf of building floor area, 1,675 sf of water coverage, along with new increased restaurant and public facilities and seating, as well as an increase of approximately 2,805 sf in public dock area.

Demolition and construction of the proposed project would involve in-water work for the removal of the existing platform and supporting piles and installation of a new platform and supporting piles. Project demolition and construction would take approximately 11 to 16 months, and most of the work would be accomplished from the waterside using a barge and from a staging area on the North Embarcadero Promenade, temporarily displacing the promenade and parking,

which would be restored to existing configurations upon completion of construction. Approximately 55 parking spaces would be temporarily closed and pedestrian traffic would be rerouted from the North Embarcadero Promenade in front of the project site through the closed parking area, separated by K-rail and other physical barriers from North Harbor Drive for the duration of construction.

The following categorical determinations are based on the project submittal and all project information known to the District as of the date of this determination.

### ***CEQA DETERMINATION***

The District, as lead agency under the California Environmental Quality Act (CEQA), prepared a Draft Mitigated Negative Declaration and Initial Study for the "Portside Pier Restaurant Redevelopment Project" (UPD #MND-2016-91). Based on the assessment presented in the Initial Study, the project would result in potentially significant impacts to biological resources, hazards and hazardous materials, and transportation/traffic (parking); potentially significant environmental impacts would be reduced to a level below significance through implementation of mitigation measures.

The proposed project complies with Section 87 of the Port Act, which allows for visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

### ***CALIFORNIA COASTAL ACT***

#### ***PORT MASTER PLAN***

The proposed project is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan. The Port Master Plan land and water use designations within the limits of the proposed project are Commercial Recreation and Ship Anchorage. The project conforms to the certified Port Master Plan because it is the redevelopment of an existing waterfront restaurant facility use and is consistent with the existing certified land and water use designations.

### ***CATEGORICAL DETERMINATION***

The proposed Portside Pier Redevelopment Project is determined to be a Non-Appealable development under Section 7.d.(3) of the District's Coastal Development Permit Regulations (Regulations):

Non-Appealable developments are those not classified in the Regulations in Section 7.d.(1) as "Excluded," in 7.d.(2) as "Emergency," or in 7.d.(4) as "Appealable."

Additionally, pursuant to the Coastal Act, the proposed development is considered "non-appealable". Chapter 8 of the Coastal Act regulates port development within the California coastal zone. Section 30715 of Chapter 8 specifies the sole categories of development that may be appealed to the Coastal Commission. Neither restaurants nor eating establishments are listed as appealable in Section 30715.

Section 30715(a)(4) includes the following as appealable categories of development: "Office and residential buildings not principally devoted to the administration of activities within the port;

hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities." A restaurant or eating establishment is not listed as an appealable category of development under this subsection or 30715 of the California Coastal Act. Moreover, the existing restaurant was not listed as an appealable development in the Port Master Plan and other restaurants listed in the Port Master Plan as appealable where part of larger appealable categories of development. Therefore, the proposed development is a non-appealable category of development.

A Non-Appealable Coastal Development Permit (CDP) must be obtained in accordance with the provisions of Sections 4 and 10 of the Regulations. Completion of environmental review pursuant to CEQA, as specified above, is required prior to issuance of a CDP.

RANDA CONIGLIO  
President/CEO

Determination by:

Juliette Orozco

Assistant Planner

Development Services – Real Estate Development

Signature: 

Date: 12/11/2016

Deputy General Counsel

Signature: 

Date: 12/11/2016

# **ATTACHMENT E**

**From:** Wileen Manaois  
**To:** "Lasiter, Melody@Coastal"  
**Subject:** Portside Pier Restaurant Redevelopment Project Final MND  
**Date:** Friday, December 02, 2016 10:02:00 AM  
**Attachments:** [Letter D.pdf](#)

---

Hi Melody,

Please see attached re: the Portside Pier Restaurant Redevelopment Project Final Mitigated Negative Declaration (MND), which will be considered for adoption by our Board of Port Commissioners on 12/13/16. A copy of Coastal's comment letter on the Draft MND and the District's responses can be accessed at: <https://dudek.sharefile.com/d-s7b11b5947ad4188b>. A link to the Final MND is available at: <https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning.html> (scroll down to Portside Pier Final MND Volume I). This information has also been mailed to you.

Thanks, Wileen

---

**From:** Lasiter, Melody@Coastal [mailto:Melody.Lasiter@coastal.ca.gov]  
**Sent:** Wednesday, August 31, 2016 5:01 PM  
**To:** Wileen Manaois  
**Cc:** Sarb, Sherilyn@Coastal; Brown, Kanani@Coastal; Lee, Deborah@Coastal  
**Subject:** Portside Pier Redevelopment Project Comments

Hi Wileen,

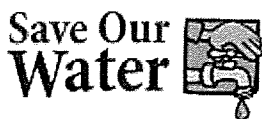
I hope you are doing well. Attached are our comments on UPD #MND-2016-91. I will also send a hard copy.

Best,  
**Melody Lasiter**  
Coastal Program Analyst

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402  
(619)767-2370  
<http://www.coastal.ca.gov/>



Every Californian should conserve water. Find out how at:



[SaveOurWater.com](http://SaveOurWater.com) · [Drought.CA.gov](http://Drought.CA.gov)



**SAN DIEGO UNIFIED PORT DISTRICT**  
Real Estate Development - Development Services  
P.O. BOX 120488, SAN DIEGO, CA 92112-0488  
Phone (619) 686-6291

**LETTER OF TRANSMITTAL**

**Via Certified Mail and Email (Melody.Lasiter@coastal.ca.gov)**

Date: December 1, 2016

To: Melody Lasiter  
Coastal Program Analyst  
CA Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Subject: **NOTICE OF BOARD OF PORT COMMISSIONERS MEETING TO CONSIDER  
ADOPTION OF PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT FINAL  
MITIGATED NEGATIVE DECLARATION**

☐ For Your Review  
☐ For Your Approval  
☐ Per Your Request

☐ For Your Comment  
☒ For Your Records

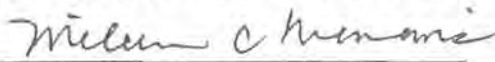
Thank you for your comments on the Portside Pier Restaurant Redevelopment Project Draft Mitigated Negative Declaration (UPD #MND-2016-91). The San Diego Unified Port District (District) has prepared written responses to your comment letter (see attached). Also enclosed is a CD copy of the Final Mitigated Negative Declaration, which is also available at:  
<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning.html>.

At the next Board of Port Commissioners (Board) meeting, District staff will request that the Board consider adoption of the subject Final Mitigated Negative Declaration. The Board will also consider authorizing issuance of a non-appealable Coastal Development Permit.

Date/Time: Tuesday, December 13, 2016 beginning at 1:00 p.m.  
Place: San Diego Unified Port District  
Port Administration Building Board Room  
3165 Pacific Highway, San Diego, CA 92101

If you have any questions, contact me at (619) 686-6282 or [wmanaois@portofsandiego.org](mailto:wmanaois@portofsandiego.org).

SAN DIEGO UNIFIED PORT DISTRICT

  
By: Wileen C. Manaois  
Principal, Development Services

Enclosures: Final MND Attachment D: Comments Received and District Responses (Letter D)  
CD of Portside Pier Restaurant Redevelopment Final Mitigated Negative Declaration



# **ATTACHMENT F**

**From:** Wileen Manaois  
**To:** "[Lasiter, Melody@Coastal](mailto:Lasiter.Melody@Coastal)"  
**Cc:** [Lee, Deborah@Coastal](mailto:Lee.Deborah@Coastal); [Brown, Kanani@Coastal](mailto:Brown.Kanani@Coastal); [Rebecca Harrington](mailto:Rebecca.Harrington); [Shaun Sumner](mailto:Shaun.Sumner)  
**Subject:** RE: Portside Pier  
**Date:** Tuesday, January 10, 2017 10:12:00 AM

---

Hi Melody,

Yes, our Board of Port Commissioners approved the issuance of the CDP for the Portside Pier Restaurant Redevelopment Project on Tuesday, 12/13/16. We typically only prepare Notices of Board Action for appealable projects (as required per our Port CDP Regulations), not for non-appealable projects such as this project, but I can prepare one for this project if you like.

Let me know.

Thanks, Wileen

---

**From:** Lasiter, Melody@Coastal [<mailto:Melody.Lasiter@coastal.ca.gov>]  
**Sent:** Tuesday, January 10, 2017 8:48 AM  
**To:** Wileen Manaois  
**Cc:** Schwing, Karl@Coastal; Lee, Deborah@Coastal; Brown, Kanani@Coastal  
**Subject:** Portside Pier

Hi Wileen,

I hope this email finds you well. I am checking in on the status of the Portside Pier project. Has your board approved a CDP for the project? If so, we would like to request a notice of final action.

Thank you in advance.

Best,

**Melody Lasiter**

Coastal Program Analyst

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402  
(619)767-2370  
<http://www.coastal.ca.gov/>



Every Californian should conserve water. Find out how at:



[SaveOurWater.com](http://SaveOurWater.com) · [Drought.CA.gov](http://Drought.CA.gov)

# **ATTACHMENT G**

**From:** [Lasiter\\_Melody@Coastal](mailto:Lasiter_Melody@Coastal)  
**To:** [Wileen Manaois](#)  
**Cc:** [Schwing\\_Karl@Coastal](mailto:Schwing_Karl@Coastal); [Lee\\_Deborah@Coastal](mailto:Lee_Deborah@Coastal); [Brown\\_Kanani@Coastal](mailto:Brown_Kanani@Coastal); [Rebecca Harrington](#); [Shaun Sumner](#); [Maver\\_Robin@Coastal](mailto:Maver_Robin@Coastal); [Lesley Nishihira](mailto:Lesley_Nishihira)  
**Subject:** RE: Portside Pier Notice  
**Date:** Friday, January 13, 2017 12:58:25 PM  
**Attachments:** [AR-M355U\\_20170112\\_162818.pdf](#)  
[2016-41 Amendments to Article 8, Sections 8.10, 8.14 and 8.21 of the Por....pdf](#)

---

Hi Wileen,

Thank you for speaking with me yesterday about Commission staff's request to receive notice of the Board's final action on the CDP for the Portside Pier project. During that discussion, you notified me that Port staff had decided not to prepare and send a notice because the Port does not send notices for non-appealable CDPs. Instead you offered to re-send the notice of categorical determination that was previously sent prior to the Board's final action or to send the CDP, once available (in approximately one week). This is contrary to your January 10, 2017 email which indicated that you would prepare and send us a notice on the Board's final action for this project.

After we spoke yesterday I reviewed our files and found many examples of notices that we have received of the Board's final action on Port projects, including notices for non-appealable CDPs. I have attached two examples: one is a CEQA and Coastal Determination that lists the date it was approved, and the second is similar to your existing notice for appealable items. We have also received notification of final Board actions by letter. Finally, I have pasted an email below from Lesley Nishihira stating that the Port would make a practice of sending notice of all CDP determinations. Thus, the assertion that the Port does not typically send notices of the Board's final action is incorrect when it has been a practice, albeit inconsistently, for years. Furthermore, in our comment letter dated August 31, 2016 on the Portside Pier project, we requested to receive notice of any final action on the subject project which includes the associated CDP.

Therefore, we again request notice of the Board's final action on the CDP for the Portside Pier project. Please refer to the Port's previous notices as examples; either format is acceptable. Please let me know that you have received this e-mail and when you anticipate sending the notice.

Best,

**Melody Lasiter**

Coastal Program Analyst

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402  
(619)767-2370  
<http://www.coastal.ca.gov/>



Every Californian should conserve water. Find out how at:





[SaveOurWater.com](http://SaveOurWater.com) · [Drought.CA.gov](http://Drought.CA.gov)

**From:** Lesley Nishihira [<mailto:lnishihi@portofsandiego.org>]  
**Sent:** Wednesday, June 26, 2013 7:22 PM  
**To:** Lilly, Diana@Coastal  
**Subject:** Categorical Determination for Non-Appealable CDP for the SIBY Travel Lift Project

Hi Diana,  
Attached is a categorical determination issued for the Shelter Island Boat Yard travel lift project. Note that the determination states that a non-appealable CDP is required (as well as preparation of a MND).

I thought that in addition to any determinations of exclusions that we issue, we should also make a practice of sending you notice of all CDP determinations as well. This may be slight overkill because some projects may not move forward once the tenant is advised of the process they must undertake. However, my thought was that providing you notice might be a good way to get your early feedback on a project and, more importantly, would give you an opportunity to advise us if you think the CDP regulations have been interpreted incorrectly.

We are establishing administrative procedures to ensure all projects are processed consistently, so please let me know if you prefer only to receive notices of the CDPs once the action to issue the permit has been taken (NOBAs). In the meantime, I will assume that all categorical determinations for either exclusions, emergencies, non-appealable CDPs or appealable CDPs should be sent your way.

And last question, will email suffice for determinations and NOBAs? Or should we send via certified mail?  
Thanks!  
Lesley

---

**From:** Lasiter, Melody@Coastal  
**Sent:** Tuesday, January 10, 2017 11:26 AM  
**To:** Wileen Manaois  
**Cc:** Schwing, Karl@Coastal; Lee, Deborah@Coastal; Brown, Kanani@Coastal; Rebecca Harrington; Shaun Sumner; Mayer, Robin@Coastal  
**Subject:** RE: Portside Pier

Hi Wileen,

Thank you for the update. In our comment letter to the Port, dated August 31, 2016, we expressed disagreement with the Port's assertion that the project was non-appealable. We also requested notice of any future action taken on the subject project, including the final environmental document and final action on a CDP. So, yes, please prepare and send the notice for the project.

Thank you,  
Melody

---

**From:** Wileen Manaois [<mailto:wmanaois@portofsandiego.org>]  
**Sent:** Tuesday, January 10, 2017 10:13 AM  
**To:** Lasiter, Melody@Coastal  
**Cc:** Lee, Deborah@Coastal; Brown, Kanani@Coastal; Rebecca Harrington; Shaun Sumner

**Subject:** RE: Portside Pier

Hi Melody,

Yes, our Board of Port Commissioners approved the issuance of the CDP for the Portside Pier Restaurant Redevelopment Project on Tuesday, 12/13/16. We typically only prepare Notices of Board Action for appealable projects (as required per our Port CDP Regulations), not for non-appealable projects such as this project, but I can prepare one for this project if you like.

Let me know.

Thanks, Wileen

---

**From:** Lasiter, Melody@Coastal [<mailto:Melody.Lasiter@coastal.ca.gov>]

**Sent:** Tuesday, January 10, 2017 8:48 AM

**To:** Wileen Manaois

**Cc:** Schwing, Karl@Coastal; Lee, Deborah@Coastal; Brown, Kanani@Coastal

**Subject:** Portside Pier

Hi Wileen,

I hope this email finds you well. I am checking in on the status of the Portside Pier project. Has your board approved a CDP for the project? If so, we would like to request a notice of final action.

Thank you in advance.

Best,

**Melody Lasiter**

Coastal Program Analyst

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402  
(619)767-2370  
<http://www.coastal.ca.gov/>



Every Californian should conserve water. Find out how at:



[SaveOurWater.com](http://SaveOurWater.com) · [Drought.CA.gov](http://Drought.CA.gov)



**SAN DIEGO UNIFIED PORT DISTRICT**  
**Environmental & Land Use Management**

P.O. BOX 120488  
SAN DIEGO, CA 92112-0488  
(619) 686-6283  
Fax: (619) 686-6508

**RECEIVED**

JUN 20 2013

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**NOTICE OF BOARD ACTION**  
**on a**

**Non-Appealable Coastal Development Permit**

**Date:** June 18, 2013

**Applicant:** Todd Roberts, Vice President  
Marine Group Boat Works  
997 G Street  
Chula Vista, CA 91910

**Project:** Marine Group Boat Works Building Relocation

**Location:** 997 G Street, Chula Vista, CA 91910

**DEVELOPMENT**

The Marine Group Boat Works Building Relocation project (Project) includes the relocation of an existing fabrication building and all associated improvements from the southwestern to the northeastern corner of the Marine Group Boat Works (MGBW) leasehold. Existing fencing and utilities, including stormwater and electrical facilities, will also be relocated, as necessary. Additionally, the existing MGBW leasehold will be modified as follows: the northern boundary of the leasehold will be set back approximately 50 feet from the existing fence line and the eastern boundary will be extended approximately 230 feet from the existing fence line eastward toward Marina Parkway. The Project will also require restriping in order to provide a total of 150 vehicle parking spaces within the limits of the new leasehold boundary.

The existing 27,145-square-foot fabrication building will be disassembled, and all below-ground improvements, including the foundation, slab, footings, and all surrounding paved surfaces, will be removed. The existing building site and surrounding paved area, which occupy a total of approximately 42,841 square feet (sf), will be graded and returned to its original condition after the improvements have been removed. Also, three existing above ground stormwater tanks, a greenbelt parkway, and a limited amount of asphalt will be removed from an approximately 12,918-square-foot area located in the southeastern portion of the existing leasehold. The Project will also

remove approximately 22,364 sf of existing pavement located in the northern portion of the existing leasehold, which will require relocation of three additional stormwater tanks. Finally, existing fencing along the southern, eastern, and northern boundaries of the leasehold will be removed, and new fencing will be installed that delineates the new leasehold boundary.

In order to relocate the existing building, approximately 27,145 sf of asphalt located in the northeast corner of the new MGBW lease boundary will be removed. The relocation area will be graded and recompact to allow for the installation of the building's footings and foundation. Finally, the disassembled building will be reconstructed in the northeastern corner of the new MGBW leasehold.

As described above, relocation of the existing fabrication building and all supporting utilities will require earthwork, including excavation, grading, and trenching. Trenching for utilities will be limited to a depth of approximately 4 feet. A total of approximately 72,904 sf of pavement and asphalt demolition will be required for the Project, and approximately 81,992 sf of grading will also be required. However, no new paving will be required. It is anticipated that the amount of excavated material will total approximately 186,000 sf. The majority of excavated material will be recycled on-site; however, if it cannot be recycled on-site, it will be recycled at an approved facility.

A Phase I Environmental Site Assessment (ESA) completed for the Project did not uncover any recognized environmental conditions associated with the Project site; the Phase I ESA determined that additional environmental assessment was not warranted at that time.

Also, a shade study completed for the Project revealed that no shading impacts to nearby vegetation or wildlife would occur. The shade study identified that the most extensive mid-winter shadows would only fall over relatively minor areas, including a very small portion off the northeast corner of the building and a portion of the previously paved, previously fence-enclosed strip north of the building. There would be shadows during a relatively brief period of days/weeks in winter, and no shadows in these areas during the prime growing season, so impacts to plantings there would be negligible. With no shadow approaching wetlands, water bird or Belding's savannah sparrow habitat, there would be no potential impacts from shadow on birds.

The Project has been designed in consideration of the sensitive wildlife species located in the vicinity of the existing MGBW facility. The following design features will be included as part of the Project to ensure that sensitive plant and animal species are not affected by the Project.

- Jackhammering and other similar construction methods necessary for removal of the building foundation will not occur between March 1st and September 15th, which represent the earliest and latest dates of the breeding season for the various sensitive species located in the vicinity of the Project. If the breeding season is determined by a Port District-approved biologist to have started after March 1st or ended prior to September 15th, construction will be permitted from



that time forth;

- As applicable, the Project will comply with noise limits identified in the City of Chula Vista's Noise Ordinance and the City of Chula Vista Multiple Species Conservation Program;
- All demolition and construction activities shall occur within the existing confines of the boatyard area and would be undertaken in a manner sensitive to the requirements of Section 7.5.2 (d.) of the City of Chula Vista MSCP Subarea Plan;
- Nixilite of similar material will be installed along the outer edges of the relocated building to deter raptor perching. At a minimum, the raptor deterrent will be inspected twice per year to determine if repairs are needed. The raptor deterrent will also be maintained throughout the life of the building;
- New fencing along the southern boundary of the leasehold will be an extension of the existing white vinyl fencing, and new fencing along the eastern and northern boundaries of the leasehold will incorporate green vinyl slats;
- Security measures along the new property fence will be limited to the use of an overhang, and no concertina wire, barbed wire, or similar materials will be used;
- New exterior lighting on the northern and eastern sides of the relocated building will be limited to downward-directed security lighting;
- No new lighting will be installed that spills over the property line and into the adjacent marsh land. All lighting will be shielded and directed away from the marsh land and sensitive habitats.
- All high-mast flood lighting located in the northeastern corner of the existing leasehold boundary will be removed;
- No new high-mast flood lighting extending above the new 8-foot-tall property fence will be installed in the northeastern corner of the revised lease boundary; and
- Any excavated materials proposed to be recycled on-site will be tested for contamination in accordance with guidelines of the latest edition of the Department of Environmental Health Site Assessment and Mitigation Manual, the U.S. Environmental Protection Agency SW-846 Manual, and applicable federal, state, and local regulatory agency requirements to ensure that excavated materials are suitable for reuse.

It is anticipated that construction of the Project will begin in late September 2013 and extend through January 2015, for a total construction period of approximately 16 months.

### **CONSISTENCY WITH CERTIFIED PORT MASTER PLAN**

The Project site is located in Planning District 6, Chula Vista Bayfront, which is delineated on Precise Plan Map Figure 19 of the Port Master Plan. The Port Master Plan land use designation within the limits of the Project is Commercial Recreation. The Port Master Plan states that the existing boatyard use may continue to operate until the site is redeveloped to a conforming Commercial Recreation use. As such, the MGBW facility is considered a legal non-conforming use in its current location. Therefore, the proposed project can be found consistent with the Port Master Plan.

## **CONSISTENCY WITH CALIFORNIA COASTAL ACT**

The Project is consistent with the Chapter 3 policies of the Coastal Act as follows:

### **ARTICLES 2 and 3-PUBLIC ACCESS and RECREATION:**

The Project is consistent with Sections 30210 through 30214, Sections 30220 through 30224, and Section 30604(c). The Project will not have an adverse impact on public access to the coast or nearby recreational facilities. The Project is located near coastal resources and will increase existing levels of public access to nearby existing recreational amenities, including Bayside Park, the waterfront promenade, and commercial recreation/restaurant uses consistent with public safety needs and the public's right of access to the sea.

### **ARTICLES 4 and 5-MARINE ENVIRONMENT and LAND RESOURCES:**

The Project is consistent with Sections 30230 through 30236, and Sections 30240 through 30244. The Project will not have an adverse impact on any agricultural land, timberlands, archeological/paleontological resources, or sensitive habitat and will not result in erosion or adverse impacts to water quality as adequate drainage controls and BMPs will be provided. The Project also includes design features that have been incorporated into the Coastal Development Permit to ensure that the Project protects biological resources. The Project does not include diking, filling, or dredging or any construction that would alter the natural shoreline.

### **ARTICLE 6-DEVELOPMENT:**

The Project is consistent with Sections 30250 through 30255. The Project will not be growth-inducing because it involves the relocation of an existing building within the site of a current boat repair facility. Because of the Project's location in an already developed setting, the Project does not impact or preclude any other coastal-dependent use. The site is able to accommodate growth with adequate public services and future development consistent with the certified plans and will not have significant adverse effects, either individually or cumulatively, on coastal resources. The development is located within an existing developed area and will be compatible with the character and scale of the surrounding area; it will protect and enhance visual and physical access to the San Diego Bay for the general public by removing an existing fabrication building and thereby providing increased park area and an enhanced visual link to the water from Bayside Park and the waterfront promenade. The Project will not have an adverse impact on public access to the coast or nearby recreational facilities. The Project involves the relocation of an existing building within an established coastal-dependent development not sited in a wetland.

### **ARTICLE 7-INDUSTRIAL DEVELOPMENT:**

The Project is consistent with Sections 30260 through 30265.5. The Project involves the relocated of an existing building within an established coastal-dependent industrial facility; however, no expansion of the facility is being proposed by the Project. The Project does not involve the use of existing or new tanker facilities; is not considered oil

or gas development; and does not involve refineries, petrochemical facilities, thermal electric generating plants, or oil production and transport.

**BOARD ACTION**

By Resolution No. 2013-97, dated June 11, 2013, the Board of Port Commissioners found that the subject development conforms to the certified Port Master Plan of the San Diego Unified Port District and APPROVED the issuance of a Coastal Development Permit (CDP) as noted [X] below:

[ ] This development has been approved as submitted.

[X] This development has been approved subject to the terms, conditions and provisions stated in Attachment A to this notice.

The following noted [X] item applies to this finding:

[X] This action is NOT APPEALABLE under Section 30715 of the California Coastal Act. The Executive Director will issue the permit to the applicant. No work shall be performed until receipt of the permit.

[ ] This action is APPEALABLE under Section 30715 of the California Coastal Act. This notice will be sent within five (5) working days of the above Resolution date to the California Coastal Commission. Appeals must be filed with the Commission within ten (10) working days of receipt by the Commission of this notice. Prospective appellants should contact the Coastal Commission for more information.

No correspondence or comments were received prior to and no public testimony was received at the public hearing for the subject permit. Audio recording of the Board meeting is available on the District's webpage at: <http://www.portofsandiego.org/read-board-agendas.html> or by contacting the Office of the District Clerk at (619) 686-6206. The Board of Port Commissioners unanimously approved the issuance of the CDP at the June 11, 2013, hearing.

WAYNE DARBEAU  
Chief Executive Officer/President

By:   
Lesley Nishihira, Manager  
Environmental and Land Use Management

Attachment: Draft Coastal Development Permit

## **San Diego Unified Port District**

### **CEQA and COASTAL DETERMINATIONS**

Project: Amendments to Article 8, Sections 8.10, 8.14 and 8.21 of the San Diego Unified Port District Code to Modify Rates, Hours and Days of Operation for Tidelands Public Parking Meters at Embarcadero Marina Park North and Embarcadero Marina Park South and Implement Flexible Parking Rates for the B Street Pier Parking Facility and Garages

Location(s): Embarcadero Marina Park North and Embarcadero Marina Park South, San Diego, CA 92101; Convention Center Parking Facility, Convention Center Hotel (Hilton) Parking Facility, and B Street Pier Parking Facility, San Diego, CA 92101

Parcel No.(s): Various

Project No.: 2016-41

Applicant: Kristine Love, Parking Department Manager, San Diego Unified Port District, 3165 Pacific Highway, San Diego, CA 92101

Date Approved: April 14, 2016

#### Project Description

The proposed project involves amendments to Article 8, Sections 8.10 and 8.14 the San Diego Unified Port District Code (Port Code) to modify the rates, hours, and days of operation for parking meters in Embarcadero Marina Park North (EMPN) and Embarcadero Marina Park South (EMPS); and amendments to Article 8, Section 8.21 of the Port Code to amend the existing market-based parking rates to allow for new flexible rate ranges at the following District parking lot and garages: B Street Pier Public Parking Lot, Convention Center Parking Garage (underground at the Convention Center), and the Convention Center (adjacent to Hilton) Parking Garage to set market-based and reasonable parking rate ranges.

The project is proposed to be in place by mid-May in order to address potential parking shortages and increase public access in the peak summer months.

#### Meter Parking Program

Demand for parking on the North and South Embarcadero has increased greatly over the past several years due to the opening of the Headquarters, Broadway Landing and San Diego County Waterfront Park, as well as reductions in parking supply due to development in the area. Parking meters on tidelands are property assets subject to review and periodic adjustment similar to other property assets managed by the District (see Port Act Section 36). As a result, in May 2015 the Board authorized the Executive Director to set market-based parking rates and to modify rates, hours and days of operation for 520 Smart Meters along the Embarcadero. The installation of 520 Smart Meters were successful in increasing turnover, thereby improving public access along the Embarcadero. Due to the positive results after one year of the installation of the 520 Smart Meters, the District is proposing to amend Article 8, Sections 8.10 and 8.14 of the Port Code to modify the rates, hours and days of operation for the approximately 180 parking meters at EMPN and EMPS to match the existing Embarcadero's rates, hours and days of operation.

Currently there are 520 District-owned metered spaces on the North Embarcadero, Tuna Harbor and Ruocco Park areas and 180 in EMPN and EMPS. These spaces provide convenient public access to San Diego Bay, nearby District tenants and amenities. The amendment to Article 8,

Section 8.10 of the Port Code would set a new rate range of \$1.00 to \$2.50 per hour for the 180 Smart Meters located in EMPN and EMPS to match the existing 520 Smart Meters along the North Embarcadero, in Tuna Harbor, and adjacent to Ruocco Park.

The proposed Port Code amendment would provide the Executive Director of the District the authority to approve adjustments, based on the above-described demand factors collected by the Smart Meters, as long as the rate does not to exceed a \$1.00 increase or decrease at any one time. The public and stakeholders would be notified of the maximum rate schedule no less than seven (7) calendar days before the change becomes effective via the District's website, a practice consistent with how comparable cities make administrative adjustments to their parking rates, such as the City of San Diego.

Parking meter rates would be subject to change based on demand, with high demand periods including the entire summer season (May through September), weekends and holidays throughout the year, and low demand periods including the balance of the year. With the installation of Smart Meters on all meters subject to this rate range, the District would have access to real-time occupancy data that would be used to make recommendations on rate changes throughout the year. Smart Meters would be installed in all 180 parking meters and based on the data collected from the Smart Meters, rates would be adjusted to meet demand with a target utilization rate of approximately 85%. Utilization rate refers to the amount of time that vehicles occupy a parking meter space during the allowed hours of operation of the parking meter. Therefore, when demand is low (anticipated to be at approximately 70% occupancy or below), the meter rates would be adjusted downward to no less than \$1.00 per hour unless there is a special event occurring, in which case meters would be set at the maximum rate of \$2.50 per hour.

Conversely, when demand is high (anticipated to be at approximately 85% occupancy or above), the meter rates would be adjusted upward to a maximum of \$2.50 per hour. Such adjustments could occur on a daily, weekly, or monthly basis. For example, if the morning hours are shown to be a low demand period, it is anticipated that rates at the meters would be set at around \$1.00 - \$1.50, but during busy evening hours or weekends, the rates would be adjusted upwards to \$2.00-\$2.50. The minimum rate of \$1.00 is a 43% decrease over the current hourly rate of \$1.75 and the maximum rate of \$2.50 is a 43% increase over the current \$1.75 hourly rate at the meters. However, because the daily rates may fluctuate depending on demand, the percentage increase or decrease of the minimum or maximum rates does not reflect a flat statistical increase or decrease of daily rates. Additionally, as discussed below, the range of rates is consistent with other cities in the Coastal Zone.

The amendment to Article 8, Section 8.14 would modify the time and operation of parking meters from 8:00 a.m. to 6:00 p.m. to 10:00 a.m. to 8:00 p.m., seven days per week, for parking meters located in EMPN and EMPS.

To better manage these public parking spaces, increase turnover, and respond to District tenants and stakeholders regarding a perceived lack of parking, the proposed project involves amendments to Port Code Sections 8.10 and 8.14 to include EMPN and EMPS meters in the set range of rates from \$1.00 to \$2.50 per hour, enforcement hours from 10:00 a.m. to 8:00 p.m. and enforcement seven days per week to include Sundays, adopted by the Board in May 2015 pursuant to District Ordinance No. 2816.

#### Parking Garage and Lot Program

The proposed project also includes amendment to Article 8, Section 8.21 of the Port Code to

amend the existing market-based parking rates to new flexible rate ranges at the tidelands public parking at the Convention Center Parking Facility, Convention Center Hotel (Hilton) Parking Facility, and B Street Pier Parking Facility to set market-based and reasonable parking rate ranges. The Director of the District would continue to have the ability to change rates up to the Board-approved maximum rate at each respective location as approved by the Board in May 2015 and as outlined in Article 8, Code Section 8.21. The rates and time limits at the meters would accomplish a higher turnover enabling more of the public to park on the waterfront, but longer term (i.e., more than 3 hours) parking would be provided in the garages or B Street at flexible rates that are closer to market rates in the area. Lower rates during certain times or days could also be established for the public depending on demand. Additionally, like the meters, during periods of high demand or special events, hourly rates in the garages could be adjusted upward to encourage parking turnover. A shuttle service would be provided to enable garage patrons to get to and from the lot/garages and the Embarcadero if and when any agreements are entered into for remote parking at the subject lot/garages. As detailed below, a number of Big Bay Shuttle stops are also within walking distance of the lot/garages.

The Big Bay Shuttle, which operates in accordance with the conditions of approval for the North Embarcadero Visionary Plan (NEVP) Phase 1 project, runs on a loop approximately every 20 minutes from Sheraton Harbor Island to the Hilton between Memorial Day and Labor Day. Shuttle stops are as follows:

- Sheraton San Diego Hotel
- Maritime Museum
- Broadway/Navy Piers
- USS Midway (adjacent to Fish Market)
- Seaport Village/The Headquarters
- Manchester Grand Hyatt
- Marriott Marquis & Marina
- Hilton San Diego Bayfront (Gull Street, between Hilton and parking garage)

Furthermore, the following locations have Big Bay Shuttle information and sell tickets:

- Sheraton San Diego Hotel
- Flagship Cruises & Events
- Hornblower Cruises & Events
- Manchester Grand Hyatt
- Broadway Landing Information Center (aka NEVP Phase 1 Information Building)
- Maritime Museum
- Broadway/Navy Piers
- Marriott Marquis & Marina
- Hilton San Diego Bayfront

The Big Bay Shuttle would be available to the patrons of the parking lot/garages. In addition, signage is provided at each shuttle stop. The signage includes information on the shuttle stops, hours of operation, and ticket price (\$3 in 2016). Strollers and pets are allowed on the shuttle. Advertising for the shuttle also indicates that parking is available at the Convention Center Public Parking Garages underground at the Convention Center and adjacent to the Hilton.

## Analysis

As further discussed below, the project would:

- Improve coastal access;
- Not change the operational characteristics of the free parking in and near the area;
- Include rates, hours and days of enforcement and time limits for the parking meters that are consistent with other southern California cities in the Coastal Zone with meters;
- Be consistent with current parking management plans for the North Embarcadero area and applicable sections of the NEVP Phase 1 Coastal Development Permit (CDP);
- Not conflict with nor prejudice subsequent adopted parking management plans resulting from comprehensive parking studies conducted for the North Embarcadero area;
- Not prevent the District from preparing subsequent comprehensive parking studies and implementing recommendations from the same for the North Embarcadero area; and
- Not prevent the District from modifying, in the future, the parking operations described as part of this project to comply with the requirements of any future approved North Embarcadero parking management plans resulting from comprehensive parking studies conducted for the North Embarcadero area.

### Improved Coastal Access

Parking at EMPN and EMPS are extremely popular with patrons and visitors, resulting in lower turnover and impediments to public access. The smart meters, adjustment and flexibility in the meter rates, time-limits and days and hours of enforcement is intended to create turnover during high-demand periods and improve public access to the Bay by discouraging long-term occupation of metered parking spaces during these times. However, such longer-term parking (i.e., more than 3 hours) would be available at District and nearby parking lots and garages. As proposed, the Executive Director may set the parking lot and garage rates to allow for more affordable longer term parking. This would encourage patrons and tenant employees to park in the garages rather than the meters thereby improving public access to the Bay. Additionally, during special events or the high-demand summer months, the Executive Director could increase some or all the parking rates to increase turnover in the lot and garages and conversely, decrease rates during lower demand periods. As part of the lot and garage operations, a shuttle service is recommended, as described in Condition 4 on Attachment B, Recommended Non-Appealable CDP Conditions for the Parking Lot and Garage Program. The shuttle service would be in place and available to the garage patrons if and when any agreements are entered into for remote parking at the subject lot/garages.

Additionally, the project does not change the operational characteristics of the District-owned 1,478 free parking spaces from Spanish Landing/Harbor Island down to Grape Street. Additionally, no changes are proposed to the City-owned 159 free spaces within a 10-minute walk to the Embarcadero. The District-owned free parking is within a 10-minute walk to the Big Bay Shuttle stops. Conditions 2 and 3 (regarding signage) on Attachments B and C, recommended Non-Appealable CDP Conditions for the Parking Meter Program, are recommended to enable patrons to easily find shuttle stops and hours of operation, which would also improve public access from its current condition.

The District is aware that tenant development puts pressure on the existing parking supply in the Embarcadero area and therefore, Condition 11 on Attachments B and C is recommended to ensure new development provides its required parking.

Other permit conditions have been recommended, as identified below and shown on

Attachments B and C, to ensure that the project provides enhanced public access features.

Comparable Coastal Zone Meter Rates

As shown in the table below, the proposed rates, days and hours of enforcement and time limits are consistent with other southern California cities in the Coastal Zone with charge meters, and fall within the mid-range of the same.

<b>Location</b>	<b>Hours and Days of Enforcement</b>	<b>Maximum Time Limit</b>	<b>Range of Rates</b>	<b>Holiday Enforcement</b>
<b>Hermosa Beach</b>	10 am -12 am Monday - Sunday	Various	\$1.25	Yes
<b>Oceanside</b>	5 am – 6 pm Monday – Sunday	4 hours	\$1.50 - \$2.00	Yes
<b>Newport Beach (Corona del Mar)</b>	6 am -12 am Monday - Sunday	6 hours	\$1.50 - \$4.00*	Yes
<b>Laguna Beach</b>	8 am – 7 pm Monday - Sunday	3 hours	\$1.25 - \$2.25	Yes
<b>Port of San Diego (Proposed)**</b>	10 am – 8 pm Monday – Sunday	30 minutes - 3 hours	\$1.00 - \$2.50	No
<b>City of San Diego (Gaslamp)</b>	8 am – 6 pm 10 am – 8 pm Monday-Saturday	9 hours	\$0.50 - \$2.50	No
<b>Long Beach</b>	9 am – 9 pm Monday - Sunday	2 hours	\$0.75-\$3.00	Yes
<b>Del Mar</b>	9 am – 8 pm Monday - Sunday	4 hours	\$3.00 - \$3.50	Yes
<b>Santa Monica</b>	9 am – 6 pm Monday – Saturday	2 hours	Up to \$6.00	Yes

\*Depends on the season; during summer months May through September.

\*\* Proposed rates are for EMPN and EMPS areas.

While the proposed meter program is reasonable and is consistent with other coastal cities, Conditions 7, 8, 9, 10, and 12 on Attachments B and C are recommended to ensure that parking



quantities are not impacted, District review of the program is regularly accomplished, parameters are set for rate adjustments within the proposed range of \$1.00 to \$2.50, parking meters are reserved for the public, and any future substantial increases to the rates require a new permit or an amendment to this permit.

#### Parking Garage and Lot Program

As discussed in the project description, the project includes providing the Executive Director the flexibility to set parking rates in the District-owned lot and garages based on already approved parking rate parameters. This is intended to allow for longer-term parking (more than 3 hours) in the lot and garages at affordable and reasonable rates. A shuttle would be provided to enable garage patrons to get to and from the lot/garages and the Embarcadero if and when any agreements are entered into for remote parking at the subject lot/garages (see the recommended Condition 4 on Attachment B). It would also shift parking from the popular meters to less occupied lot and garages thereby freeing up parking spaces adjacent to the Bay. Staff is recommending Conditions 10, 13 and 14 on Attachment B to ensure that adequate parking spaces are made available to the public in the lot and garages, and the parking operators comply with any approved-permit.

#### Free Parking Near the Embarcadero and Big Bay Shuttle Stops

The project does not change the operational characteristics of the District-owned 1,478 free parking spaces from Spanish Landing/Harbor Island down to Grape Street. Additionally, no changes are proposed to the City-owned 159 free spaces within walking distance to the Embarcadero. The District-owned free parking is within a 10-minute walk to the Big Bay Shuttle stops. However, to improve coastal access from these free parking opportunities, the draft Conditions 2 and 3 (regarding signage) on Attachments B and C are recommended.

#### Project Consistency with Current Parking Management Plans

The project would not conflict with the current parking management plans for the North Embarcadero area – the NEVP Parking Management Plan (dated June 29, 2009), and the NEVP Phase 1 Coastal Access Features Project Parking Management & Transit Opportunity Plan (PMTOP) (dated October 2011) – as follows:

##### *2009 NEVP Parking Management Plan*

The project would not conflict with this plan; in fact, the project would implement parking strategies and measures outlined in this plan to better manage the District's North Embarcadero public parking spaces, increase turnover, and respond to District tenants and stakeholders regarding a perceived lack of parking, as follows:

- Measure 4.1: Change Parking Rates to Shift Demand to Desired Locations, Time of Day, and Length of Stay – this measure recommends varying the price of parking depending on the type of user, season, special events, locations, and time of day and day of the week; and further recommends that parking prices be lower in areas that demand should be shifted towards.

The proposed parking meter rate range would enable the District to lower the price of metered parking when demand is low in certain areas, thereby shifting demand to those parking spaces; and increase the rate when demand is high in certain areas, thereby shifting demand to other parking areas. The proposed rate ranges would allow the District flexibility to increase or decrease meter rates quickly based on demand consistent with the parameters described above in the Project Description. Combined with the Smart Meters, the proposed rate range would enable the District to be more

responsive to fluctuating demand for these popular meters and to implement changes quickly. The proposed change in hours during peak demand times and days of enforcement for the parking meters would greatly increase turnover, thereby increasing public access in the Embarcadero.

The new rate ranges would allow for affordable parking on tidelands at or slightly below the market rates of nearby downtown lots and garages. The Executive Director would continue to have the ability to change rates up to the Board-approved maximum rate at each respective location. This would enable the District to set more affordable all-day parking rates in the subject parking lot and garages thereby encouraging tenant employees and longer-term visitors to park in the less occupied lot and garages and take a shuttle to and from the North Embarcadero. Additionally, during high demand times such as during a special event or the summer months, the Executive Director could increase rates to encourage a higher turnover at the lot and garages.

The entire program would alleviate some of the pressure from the waterfront parking areas, freeing up spaces for better public access. In addition, it would increase occupancy at the subject remote parking lot and garages on tidelands that would otherwise remain less occupied.

- Measure 2.1: Operate Circulator-Type Transportation Service – this measure recommends a transportation service that provides a means to move throughout the North Embarcadero area, and allows motorists to park in facilities not in the North Embarcadero area.

As mentioned above under Measure 4.1, the project would enable the District to set more affordable all-day parking rates in the parking lot and garages thereby encouraging tenant employees and longer-term visitors to park in the less occupied lots and garages and take a shuttle to and from the North Embarcadero. This would alleviate some of the pressure from the waterfront parking areas, freeing up spaces for better public access. In addition, it would increase occupancy at the subject parking lot and garages on tidelands that would otherwise remain less occupied.

- Measure 7.1: Reduce Parking Demand through Transportation Demand Management (TDM) Actions - this measure recommends reducing employee parking demand to free up spaces for visitors.

As mentioned in Measures 4.1 and 2.1 above, the flexibility in setting the parking rates for the District parking lot and garages would enable the District to set lower all-day rates depending on demand and potentially allow employees of North Embarcadero tenants to park at less popular parking garages. The tenant employees could then be shuttled to and from their destination, thereby reducing vacancies at the subject remote tidelands parking lot and garages and freeing up some of the waterfront parking spaces, which would enhance public access.

- Measure 4.2: Use Parking Payment Equipment that Allows for Variable Parking Pricing – this measure recommends using parking payment devices (e.g. meters, pay and display equipment) that allow for more payment options and changing pricing remotely.

The proposed parking meter rate range, and installation of 180 Smart Meters at EMPN and EMPS would enable the District to quickly and easily adjust the parking meter rate

up or down, based on demand, to as low as \$1.00 per hour to as high as \$2.50 per hour. With the installation of Smart Meters on all meters subject to this rate range, staff would have access to real-time occupancy data that would be used to make recommendations on rate changes throughout the year. When the data shows that occupancy is low (70% or lower), rates would be reduced to encourage more users to park at the meters. When occupancy is high (85% or higher), rates would be increased to encourage turnover of parking spaces and increase public access. Combined with the Smart Meters, the proposed rate range would enable the District to be more responsive to fluctuating demand for these popular meters and to implement changes in a reasonable matter.

*2011 NEVP Phase 1 Parking Management & Transit Opportunity Plan and NEVP Phase 1 CDP*  
In April 2011, the Coastal Commission approved the NEVP Phase 1 CDP (CDP A-6-PSD-11-006). As part of that CDP, the Coastal Commission approved the Parking Management & Transit Opportunity Plan (PMTOP), dated October 2011. The project would not conflict with the PMTOP; in fact, the parking requirements associated with the Phase 1A West Broadway and Phase 1B North Harbor Drive components of the NEVP Phase 1 project, which are outlined in the PMTOP, either have been met through completed construction or are being met during special events. The PMTOP identified measures for the District to implement to offset the removal of parking spaces along North Harbor Drive and associated with Phases 1A and 1B of the NEVP Phase 1 project.

The measures included:

- Provision of the Embarcadero Circulator Shuttle (aka the Big Bay Shuttle) (from Memorial Day to Labor Day) prior to permanent removal of the approximately 146 parking spaces to be removed as part of Phases 1A and 1B;
- Provision of wayfinding signage;
- Inclusion of a transportation hub (near the intersection of Broadway and North Harbor Drive); and
- Management of special events traffic and parking for Broadway Plaza (intersection of Broadway and North Harbor Drive) and Broadway Pier.

The District has been operating the Embarcadero Circulator Shuttle annually from Memorial Day to Labor Day since 2012, which was one year earlier than the anticipated shuttle schedule of Summer 2013 described in the NEVP Phase 1 CDP. The wayfinding signage and transportation hub were constructed as part of the NEVP Phase 1 project. The transportation hub consists of a combination of bicycle racks, signage, tour bus/shuttle stop, information building, and ticket kiosks for bay tour operators and ferry service to Coronado, all of which are provided near the intersection of Broadway and North Harbor Drive. Traffic control and parking for events occurring in and around Broadway Plaza and Broadway Pier are required to provide adequate off-site parking and/or shuttle access to the special event and may not rely exclusively on public shoreline parking to accommodate event parking demand. Therefore, all the measures have been satisfied.

In addition, the project would not relieve the District of any other parking-related obligations specified in the Coastal Commission-issued NEVP Phase 1 CDP, nor would the project prejudice any future parking modifications required by other previous approvals. Specifically, page 6 of Attachment A to the NEVP Phase 1 CDP, "Waterfront & Lane Field Destination Park Plan," requires the following parking-related elements to be analyzed in the Environmental Impact Report (EIR) and incorporated into the Port Master Plan Amendment (PMPA) for the Waterfront Park Plan:

- Replacing parking removed by development of the alternative Waterfront Destination Park
- Converting Navy Pier into a park

District staff has been working towards meeting these NEVP Phase 1 CDP requirements. However, neither of these items has been developed. District staff has retained a parking consultant to conduct a focused parking study for the North Embarcadero area. Part of the consultant's work effort would be to identify potential replacement parking associated with construction of an alternative Waterfront Destination Park, and a park on Navy Pier. District staff anticipates the study would be presented to the Board in April 2016 for its input.

#### Subsequently Adopted Parking Studies and Plans

The project would not conflict with nor prejudice subsequently adopted parking management plans resulting from comprehensive parking studies conducted for the North Embarcadero area. District staff has retained a parking consultant to conduct a focused parking study for the North Embarcadero area, which is anticipated to be completed and presented to the Board this summer. Recommendations may come out of this effort and the Board may consider adoption of a larger parking program for the area. Conditions 6 and 8 on Attachments B and C are proposed to ensure that it would not conflict with a later approved parking program.

Therefore, the project would not prevent the District from preparing subsequent comprehensive parking studies and implementing recommendations from the same for the North Embarcadero area. Furthermore, the project would not prevent the District from modifying, in the future, the parking operations described as part of this project to comply with the requirements of any future approved North Embarcadero parking management plans resulting from comprehensive parking studies conducted for the North Embarcadero area.

The following categorical determinations are based on the draft agenda sheet and all project information known to the District as of the date of this determination.

#### **CEQA DETERMINATION**

Based upon the above description, the project is determined to be Statutorily Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15273 (Rates, Tolls, Fares, and Charges) and/or Categorically Exempt pursuant to CEQA Guidelines Section 15301 (Existing Facilities) and Sections 2.h. and/or 3.a. of the District's *Guidelines for Compliance with CEQA* because it is amendments to the Port Code to modify rates, hours and days of operation for existing public parking meters and allow the District's Executive Director to amend existing market-based parking rates to allow for new flexible rate ranges at a District parking lot and garages, none of which would involve the expansion of use beyond that previously existing. Sections 2.h. and 3.a. of District's CEQA Guidelines are as follows:

- 2.h. Rates and Charges (SG § 15273): CEQA does not apply to rates or other charges established by the Port District for the purpose of meeting operational expenses, purchasing or leasing supplies, equipment, or materials; meeting financial reserve needs; obtaining funds for capital projects necessary to maintain service; or obtaining funds necessary to maintain intra-city transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed, setting forth with specificity the basis for the claim of exemption. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed, setting forth with specificity the basis for the claim of exemption.

AND/OR

- 3.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.

The Statutory Exemption listed above is appropriate for the proposed project because it would modify the rates, hours and days of operation for existing public parking meters at EMPN and EMPS, and would also allow the District's Executive Director to amend existing market-based parking rates to allow for new flexible rate ranges, for the following purposes:

1. The modifications to rates, hours and days of operation for the EMPN and EMPS public parking lot meters and allowing the District's Executive Director to amend existing market-based parking rates to allow for new flexible rate ranges, are based on other beach cities and are to meet operational expenses of the District.
2. The modifications to rates, hours and days of operation for the EMPN and EMPS public parking lot meters and allowing the District's Executive Director to amend existing market-based parking rates to allow for new flexible rate ranges, may increase parking revenue by approximately \$2,000,000 per year and are to meet financial reserve needs and requirements of the District.
3. The modifications to rates, hours and days of operation at the EMPN and EMPS public parking lot meters and allowing the District's Executive Director to amend existing market-based parking rates to allow for new flexible rate ranges, would be based on demand and market conditions and are not to obtain funds for capital projects for expansion of systems.

The existing facilities Categorical Exemption listed above is appropriate for the proposed project because the activity in question only addresses the operation of existing public parking and minor improvements such as the installation of new Smart Meters on the existing parking meters, and would involve a negligible expansion of use beyond that previously existing.

The proposed project complies with Section 87 of the Port Act, which allows for construction, reconstruction, repair, maintenance, and operation of public buildings public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

Pursuant to CEQA Guidelines Section 15062, a 35-day statute of limitations for this CEQA exemption shall apply from the date a Notice of Exemption is posted with the San Diego County Clerk, or a 180-day statute of limitations for this CEQA exemption shall apply if no Notice of Exemption is filed.

## **CALIFORNIA COASTAL ACT**

### **PORT MASTER PLAN**

The proposed project is located in Planning District 3, Centre City Embarcadero, which is delineated on Precise Plan Map Figure 11 of the certified Port Master Plan. The Port Master Plan land use designation within the limits of the proposed project is Commercial Recreation and Park/Plaza. The proposed project conforms to the certified Port Master Plan because it includes amendments to the Port Code to modify the rates, hours and days of operation for existing parking meters at EMPN and EMPS and would allow District's Executive Director to amend existing market-based parking rates to allow for new flexible rate ranges, consistent with the existing certified land use designations. Furthermore, parking, including paid parking, is an allowable use in all Port Master Plan land use designations. Thus, the project would not change the use of the site nor would it interrupt or expand the existing conforming use of the site.

### **CATEGORICAL DETERMINATION**

The above project is determined to be a Non-Appealable development under Section 7.d.(3) of the District's CDP Regulations (Regulations):

Non-Appealable developments are those not classified in the Regulations in Section 7.d.(1) as "Excluded," in 7.d.(2) as "Emergency," or in 7.d.(4) as "Appealable."

Pursuant to Coastal Act Section 30715 and Sections 7d(3) and (4) of the Regulations, parking, parking garages/ lots and rates/hours/time limits of operation and enforcement for the same are not listed as appealable developments, requiring an Appealable CDP. Moreover, while the need for the parking program adjustments is urgent with the coming of the high-demand summer months, they do not constitute an "Emergency" development. Consistent with the Coastal Act and Regulations, on July 6, 2015, two Non-Appealable CDPs were issued – one modify rates, hours and days of operation for parking meters in North Embarcadero, Tuna Harbor, and Ruocco Park and one to implement flexible parking rates, up to the existing maximum parking rate previously-approved by the Board (see Clerk Document Nos. 63900 and 63901, respectively). Consistent with past approvals for the establishment of other parking programs, the District has determined that two Non-Appealable CDPs for the project should be issued – one for the parking meter program and one for the parking garage and lot program. While the proposed project by itself would enhance public access to the Bay, the Non-Appealable CDPs include conditions that would further enhance public access.

As discussed at length in this Categorical Determination, the project would increase turnover in public parking spaces in a high-demand area, thereby improving public access. Additionally, it would provide more affordable public parking opportunities in less popular public parking garages and parking lots. The project would provide a shuttle to and from the parking lot and garages with more vacancy, further improving public access. Additional recommended conditions, shown on Attachments B and C and discussed above, would further increase public access to the waterfront. This project is consistent with the existing certified land use designations and as discussed in more detail in this Categorical Determination, the project is consistent with the policies of the California Coastal Act by providing a range of parking rates throughout the North and South Embarcadero and reducing overcrowding and overuse of parking areas of any single area.

Metered parking stalls and pay parking lots are the norm in the City of San Diego and the District, and the California Coastal Commission has recognized that pay parking generally does not violate the public access policies of the Coastal Act, particularly when the fee is used to upkeep District



services as is the intent here. Additionally, consistent with the Public Trust Doctrine, Section 36 of the Port Act specifically gives the Board the authority to "by ordinance fix the rate[s] . . . or other charges which are appropriate for the use of any of the facilities owned and constructed or services furnished or provided by the [D]istrict." Therefore, it is within the District's authority to set parking rates on tidelands.

The rates are comparable to the surrounding areas in the City of San Diego and the project ensures there are time limits for the longer stay of recreational users (3 hours at the meters and all-day at the garages). Therefore, it would not foreclose visitors from visiting the Bay for prolonged periods.

The proposed parking programs, including the changes to the rates, hours and days of operation, are reasonable when examining other coastal cities and are reasonable for an urban coastal jurisdiction; therefore, they would not have a significant adverse impact on public access and use of the public parking facilities.

The time limits and rates are being established to encourage turnover and prohibit long-term occupation of the parking spaces by tenant employees and others. Turnover generated by the time limits and rates may also allow more coastal visitors to use parking spaces (as opposed to tenant employees occupying the parking spaces all day.)

CDPs must be obtained in accordance with the provisions of Sections 4 and 10 of the Regulations. One CDP is proposed for the new rate range, modification to hours and days of operations, and the installation of Smart Meters; and a second CDP is proposed for the amendment of the existing market-based parking rates to allow for new flexible rate ranges at the B Street Pier Parking Facility, Convention Center Parking Facility, and the Convention Center Hotel (Hilton) Parking Facility.

RANDA CONIGLIO  
President/CEO

Determination by:

Dana Martinez  
Associate Planner  
Development Services – Real Estate Development

Signature: *Dana Martinez*  
Date: 4/14/16

Deputy General Counsel

Signature: *Rebecca S. [Signature]*  
Date: 4/14/2016

Attachments

- A. Tideland Parking Meter and Parking Lot and Garages Location Map
- B. Draft CDP Special Conditions for New Market-Based Parking Rates at Tidelands Public Parking Lot and Garages
- C. Draft CDP Special Conditions for Parking Meters in EMPN and EMPS – New Rate Range, Modification to Hours and Days of Operation, Purchase and Installation of Smart Meters and Sensors



Attachment A



Tideland Parking Meter Location Map





**Tideland Parking Lot and Garages Location Map**



## Attachment B

### *Draft CDP Special Conditions for Parking Meters at Embarcadero Marina Park North and Embarcadero Marina Park South – New Rate Range, Modification to Hours and Days of Operation, and Installation of Smart Meters*

1. Permittee shall comply with the Project Description under the above "DEVELOPMENT" section of this permit.
2. The identification and location of all free District parking areas shall be posted on the District's website.
3. Signage with information regarding the Big Bay Shuttle, including hours of operation and the nearest shuttle stop, shall be posted on the District's website and at the free District parking areas.
4. A new shuttle service shall be established to take garage patrons to the Embarcadero if and when any agreements are entered into for remote parking. The shuttle will be available to both the remote parking users and groups of the public. A number of Big Bay Shuttle stops are available within walking distance of the parking lot and garages. Signage informing parking lot and garages patrons of the location of the stops and schedule of the shuttle shall be provided at the parking lot and garages that are subject to this permit.
5. The District shall continue to implement the bayside shuttle system (aka the Big Bay Shuttle) in accordance with the conditions of approval for the North Embarcadero Visionary Plan (NEVP) Phase 1 project.
6. Implementation of this permit does not preclude the District from implementing any future parking program. In the event that any future parking program conflicts with this permit, the future parking program shall prevail and the inconsistent condition in this permit shall be voided or amended.
7. Parking rates may be reduced or eliminated at any time, without amending or revoking this permit.
8. All provisions of this permit may be subject to review by the District six months after going into effect, and yearly thereafter. At any time in the future, the Board of Port Commissioners may review this permit for the purposes of revocation to mitigate or alleviate impacts to adjacent land uses.
9. Parking quantities and locations will not be changed or affected by this permit.
10. Parking shall be reserved for the use of the general public and available on a first-come, first-served basis, with the exception of parking that was reserved prior to the date of this permit.

## Attachment C

### *Draft CDP Special Conditions for New Market-Based Parking Rates at Tidelands Public Parking Lot and Garages*

1. Permittee shall comply with the Project Description under the above "DEVELOPMENT" section of this permit.
2. The identification and location of all free District parking areas shall be posted on the District's website.
3. Signage with information regarding the Big Bay Shuttle, including hours of operation and the nearest shuttle stop, shall be posted on the District's website and at the free District parking areas.
4. In no circumstances shall rates at parking meters in the area covered under this permit exceed \$2.50 per hour.
5. The District shall continue to implement the bayside shuttle system (aka the Big Bay Shuttle) in accordance with the conditions of approval for the North Embarcadero Visionary Plan (NEVP) Phase 1 project.
6. Implementation of this permit does not preclude the District from implementing any future parking program. In the event that any future parking program conflicts with this permit, the future parking program shall prevail and the inconsistent condition in this permit shall be voided or amended.
7. Parking rates may be reduced or eliminated at any time, without amending or revoking this permit.
8. All provisions of this permit may be subject to review by the District six months after going into effect, and yearly thereafter. At any time in the future, the Board of Port Commissioners may review this permit for the purposes of revocation to mitigate or alleviate impacts to adjacent land uses.
9. Parking quantities and locations will not be changed or affected by this permit.
10. Parking shall be reserved for the use of the general public and available on a first-come, first-served basis, with the exception of parking that was reserved prior to the date of this permit.
11. As new development is proposed, the District will ensure that parking is addressed and is consistent with any approved parking generation rates and parking plan in place at the time that the new development is considered by the Board of Port Commissioners or District staff.

**ATTACHMENT B**  
**(14 CCR §13569)**

Search	Get a Document	Shepard's®	More	History	Alerts
--------	----------------	------------	------	---------	--------

## FOCUS™ Terms

[Advanced...](#)

## Get a Document

[View Tutorial](#)Service: **Get by LEXSTAT®**TOC: [Barclays Official California Code of Regulations > TITLE 14. NATURAL RESOURCES > DIVISION 5.5 CALIFORNIA COASTAL COMMISSION > CHAPTER 8. IMPLEMENTATION PLANS > SUBCHAPTER 2. LOCAL COASTAL PROGRAMS \(LCPS\) AND STATE UNIVERSITY OR COLLEGE LONG RANGE DEVELOPMENT PLANS \(LRDPS\) > ARTICLE 17. LOCAL COASTAL PROGRAM IMPLEMENTATION REGULATIONS > § 13569. Determination of Applicable Notice and Hearing Procedures](#)Citation: **14 CCR 13569**

14 CCR 13569

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Copyright (c) 2017 by Barclays Law Publishers

All rights reserved

\* This document is current through Register 2017, No. 6, February 10, 2017 \*

TITLE 14. NATURAL RESOURCES  
DIVISION 5.5 CALIFORNIA COASTAL COMMISSION  
CHAPTER 8. IMPLEMENTATION PLANS  
SUBCHAPTER 2. LOCAL COASTAL PROGRAMS (LCPS) AND STATE UNIVERSITY OR COLLEGE LONG  
RANGE DEVELOPMENT PLANS (LRDPS)  
ARTICLE 17. LOCAL COASTAL PROGRAM IMPLEMENTATION REGULATIONS

**Go to the California Administrative Code Archive Directory**

14 CCR 13569 (2017)

## § 13569. Determination of Applicable Notice and Hearing Procedures

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.

(b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;



(c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:

(d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.

AUTHORITY:

Note: Authority cited: [Sections 30333 and 30620, Public Resources Code](#). Reference: [Section 30600, Public Resources Code](#).

**NOTES:**

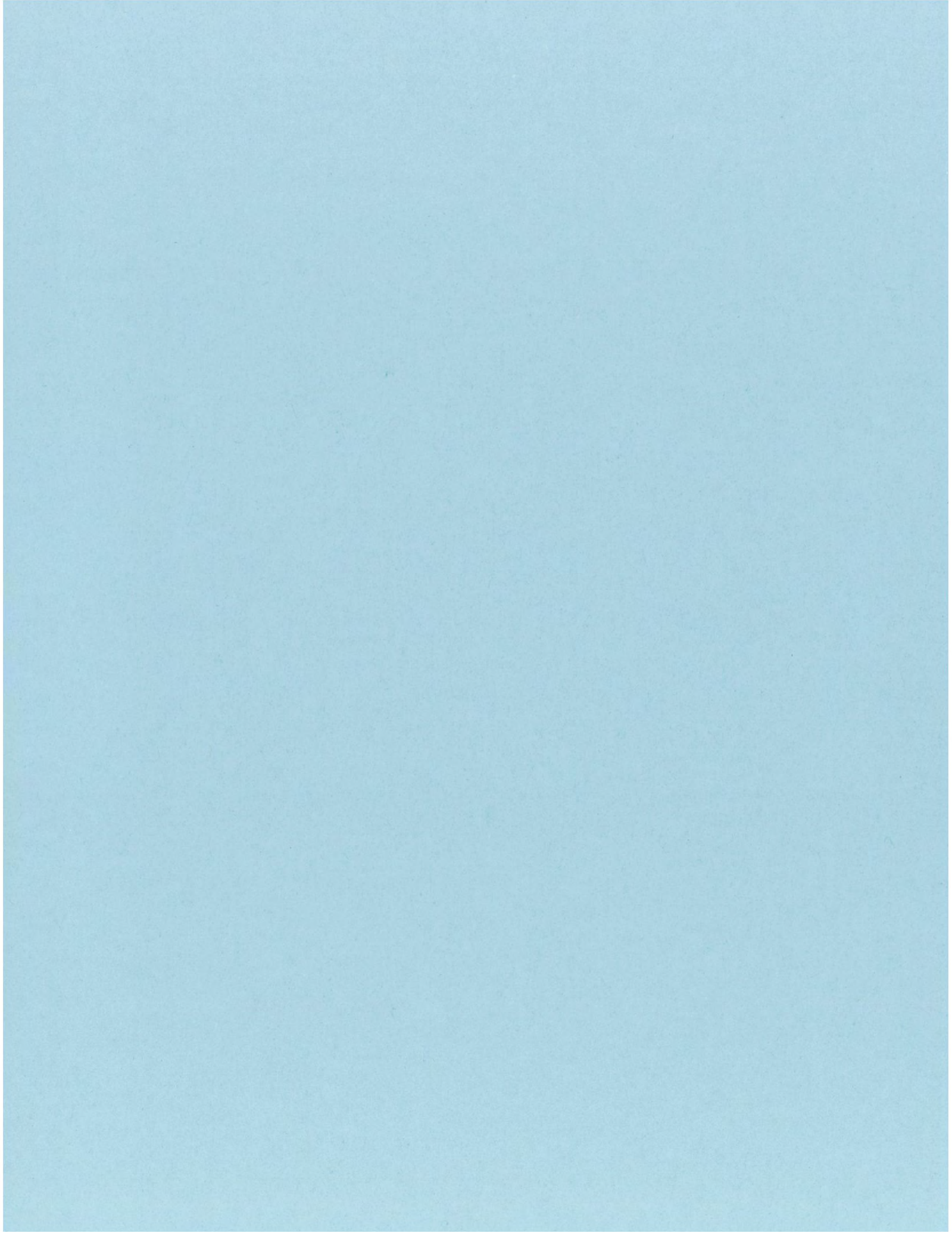
Service: **Get by LEXSTAT®**

TOC: [Barclays Official California Code of Regulations > TITLE 14. NATURAL RESOURCES > DIVISION 5.5 CALIFORNIA COASTAL COMMISSION > CHAPTER 8. IMPLEMENTATION PLANS > SUBCHAPTER 2. LOCAL COASTAL PROGRAMS \(LCPS\) AND STATE UNIVERSITY OR COLLEGE LONG RANGE DEVELOPMENT PLANS \(LRDPS\) > ARTICLE 17. LOCAL COASTAL PROGRAM IMPLEMENTATION REGULATIONS > § 13569. Determination of Applicable Notice and Hearing Procedures](#)

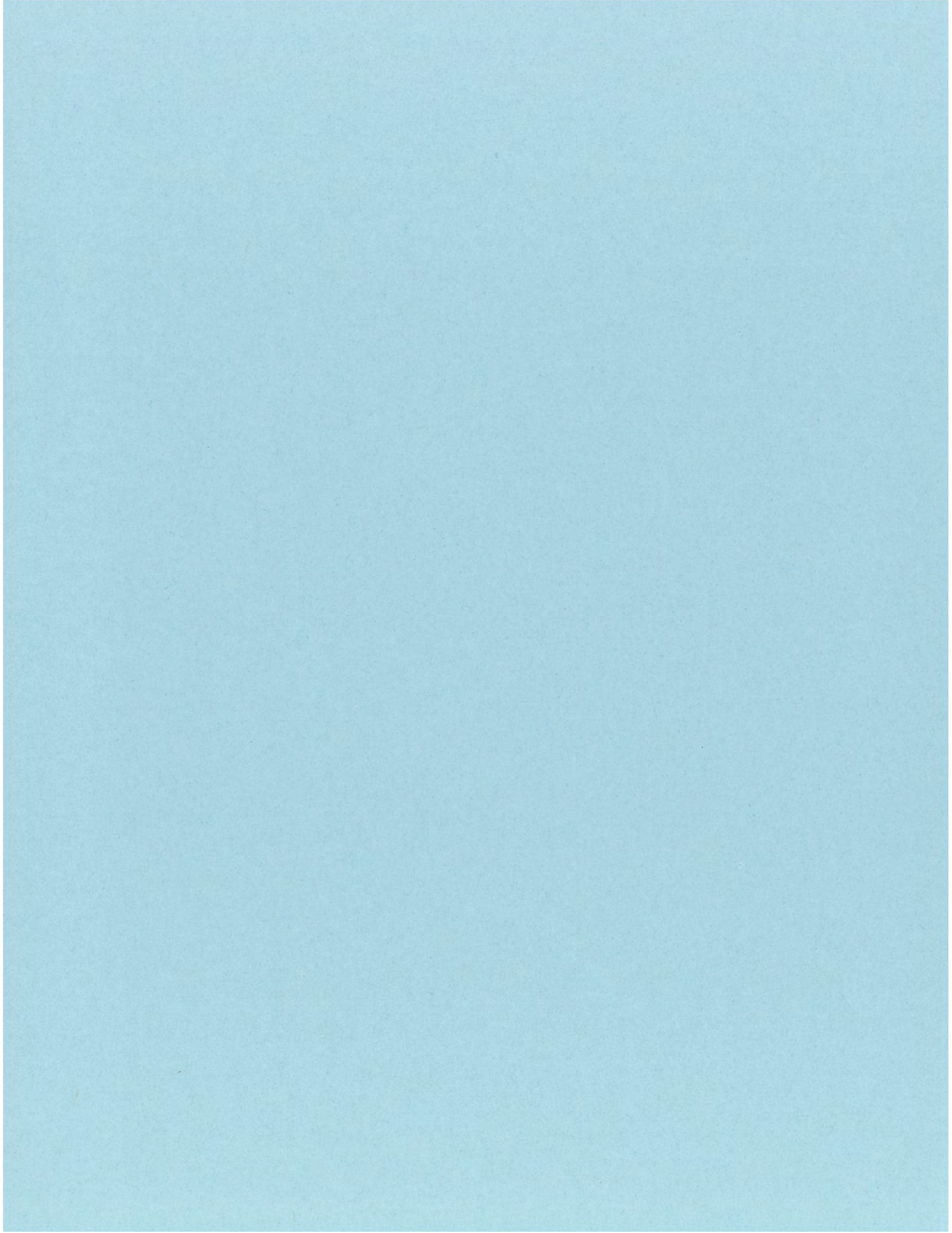
Citation: **14 CCR 13569**

View: Full

Date/Time: Thursday, March 2, 2017 - 1:00 PM EST









**ATTACHMENT C**  
**(Parties' Briefs – Restaurant Lawsuit)**

BRIGGS LAW CORPORATION [FILE: 1593.20]  
Cory J. Briggs (State Bar no. 176284)  
Mekaela M. Gladden (State Bar no. 253673)  
Anthony N. Kim (State Bar no. 283353)  
99 East "C" Street, Suite 111  
Upland, CA 91786  
Telephone: 909-949-7115

Attorneys for Plaintiffs and Petitioners San Diegans  
for Open Government and San Diego Navy  
Broadway Complex Coalition

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO--HALL OF JUSTICE

SAN DIEGANS FOR OPEN GOVERNMENT and  
SAN DIEGO NAVY BROADWAY COMPLEX  
COALITION  
vs.

CALIFORNIA COASTAL COMMISSION; SAN  
DIEGO UNIFIED PORT DISTRICT; and DOES 1  
through 100,

Defendants and Respondents;

SUNROAD ENTERPRISES; SUNROAD  
HARBOR ISLAND, INC.; and DOES 101 through  
1,000,

Defendants and Real Parties in Interest.

CASE NO. 37-2013-00057492-CU-TT-CTL

**PETITIONERS' OPENING BRIEF IN  
SUPPORT OF VERIFIED FIRST  
AMENDED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF UNDER THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT, THE  
CALIFORNIA COASTAL ACT, AND  
OTHER LAWS; DECLARATIONS OF  
DIANE B. COOMBS AND PEDRO  
QUIROZ, JR.**

Action Filed: July 15, 2013  
Department: 71 (Prager)

Hearing Date: April 22, 2014  
Hearing Time: 10:00 a.m.

Plaintiffs and Petitioners San Diegans for Open Government and San Diego Navy Broadway  
Complex Coalition respectfully submits this opening brief in support of its complaint and petition for  
writ of mandate.

**Table of Contents**

I.	Introduction. . . . .	1
II.	Procedural Background. . . . .	3
III.	Argument and Analysis. . . . .	5
A.	The Port of San Diego and Coastal Commission Violated the Coastal Act. . . . .	5
1.	Petitioners Have Standing to Maintain This Coastal Act Action. . . . .	5
2.	The Coastal Commission Had No Jurisdiction to Issue the Coastal Development Permit. . . . .	6
3.	The Project Is Inconsistent with the Coastal Act. . . . .	10
B.	The Coastal Commission Violated the California Environmental Quality Act. . . . .	11
1.	Petitioners Have Standing under the California Environmental Quality Act. . . . .	11
2.	No Alternatives Were Identified. . . . .	12
3.	There Is No Substantial Evidence In the Record to Support the Finding That There Are No Feasible Alternatives or That There Are No Further Feasible Alternatives. . . . .	14
IV.	Conclusion. . . . .	14

## Table of Authorities

### Judicial Authorities

<i>Bakersfield Citizens for Local Control v. City of Bakersfield</i> , 124 Cal. App. 4th 1184 (2004). . . .	10
<i>Bozung v. Local Agency Formation Commission</i> , 13 Cal. 3d 263 (1975).....	10
<i>Citizens Ass’n for Sensible Dev. of Bishop Area v. County of Inyo</i> ,	
172 Cal. App. 3d 151 (1985). . . . .	10
<i>Citizens of Goleta Valley v. Board of Supervisors</i> , 52 Cal. 3d 553 (1990). . . . .	11
<i>Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.</i> ,	
47 Cal. 3d 376 (1988). . . . .	12
<i>Save the Plastic Bag Coalition v. City of Manhattan Beach</i> , 52 Cal. 4th 155 (2011).....	11
<i>Security Nat. Guaranty, Inc. v. California Coastal Com’n</i> , 159 Cal. App. 4th 402 (2008). . . . .	5, 7
<i>Topanga Ass’n for a Scenic Community v. County of Los Angeles</i> ,	
11 Cal. 3d 506 (1974). . . . .	13
<i>Yamaha Corp. of America v. State Bd. of Equalization</i> , 19 Cal. 4th 1 (1998). . . . .	5

### Legislative Authorities

PUB. RES. CODE § 30004. . . . .	2, 6
PUB. RES. CODE § 30006. . . . .	2, 7, 9
PUB. RES. CODE § 30200. . . . .	9
PUB. RES. CODE § 30251. . . . .	9
PUB. RES. CODE § 30252. . . . .	9
PUB. RES. CODE § 30625. . . . .	6, 7
PUB. RES. CODE § 30711. . . . .	6
PUB. RES. CODE § 30715. . . . .	5
PUB. RES. CODE § 30715.5. . . . .	6, 7
PUB. RES. CODE § 30716. . . . .	6
PUB. RES. CODE § 30717. . . . .	7
PUB. RES. CODE § 30801. . . . .	5
PUB. RES. CODE § 30803. . . . .	5

Administrative Authorities

CAL. CODE OF REGS., tit. 14, § 15352. ....	11
--	----

1                                    **I. INTRODUCTION: TWO WRONGS DO NOT MAKE A RIGHT**

2            One does not cure a violation of the Coastal Act and by committing a different violation of the  
3 Coastal Act and by also violating the California Environmental Quality Act (“CEQA”). But that is what  
4 the Coastal Commission did here. The San Diego Unified Port District (“Port” or “Port of San Diego”)  
5 broke the law when it concluded that Sunroad’s restaurant-replacement project--building a new land--  
6 based restaurant on Harbor Island to replace the once-floating Reuben E. Lee restaurant moored  
7 adjacent to Harbor Island--was exempt from the Coastal Act. The Coastal Commission rightly  
8 interceded to protect the public by taking the Port’s exemption determination up on administrative  
9 appeal. But the Commission turned around and thoroughly botched it by issuing Sunroad a coastal  
10 development permit for a development that is not listed in the local Port Master Plan. As a result of this  
11 flawed process, the San Diego public was excluded in every meaningful sense from the process that  
12 resulted in issuance of the illegal permit.

13            The Coastal Commissioners readily acknowledged that, when it comes to public notice and  
14 participation, the Port’s reputation leaves much to be desired as the trustee of the state’s tidelands and  
15 that what happened before the project reached the Commissioners was *not* unusual for the Port.  
16 Commissioner Brennan warned that the Commission action is “not imprimatur to the Port to just keep  
17 casting a blind eye to what’s going on here, and what the Coastal Act is.” Admin. R. 11:2698,<sup>1</sup> lns. 15-  
18 17. Commissioner Sanchez pointed out that “there has been a pattern and practice by the Port in  
19 excluding the public.” *Id.*, 11:2706, lns. 7-9. She went on:

20                    The public is excluded, what ends up happening is that public spaces are  
21                    becoming privatized in San Diego. This has been a battle by the public.  
22                    And so this--this for me hits the very heart of the Coastal Act. Public  
23                    access.

24            *Id.*, 11:2706, lns. 18-22. Later she said:

25                    I don’t want this to be precedent and an okay for the Port to continue to  
26                    do this. And I want us to, you know, if we’re going to be--if we’re going  
27                    to be approving this, really speak in an unanimous way against this, the  
28                    way this happened. Against this kind of procedure and process by the  
                     Port. If staff had never heard about this, this project would have been  
                     built. And that’s it. We can’t let this happen again. We just can’t.

---

<sup>1</sup> References to the Administrative Record are identified by volume number and bates-number such that  
“Admin. R. 11:2698” refers to bates-numbered page 2698 in volume 11.

1 *Id.*, 11:2708, Ins. 10-18. Commissioner Kinsey noted that he was troubled by the Port Master Plan and  
2 the amendment-process exception and that it was clear to him that the “Port didn’t do anybody, the  
3 public most notably, any favors by exempting this project.” *Id.*, 11:2710, Ins. 1-5. He finished his  
4 comments by saying: “I also think that the Port ought to be, you know, ashamed of trying to take this  
5 project and move it along the way that they did in this instance.” *Id.*, 11:2711, Ins. 7-10. Commissioner  
6 Groom said: “. . . and I understand the convoluted nature of this, but I think it’s--it’s not right and I--and  
7 I feel very concerned about approving this because it has not gone before the public of the Port.” *Id.*,  
8 11:2716, Ins. 17-22. Commissioner Wicket commented that the Port needs to do a better job of public  
9 communication, that this has been a problem over the last several years and that the Port needs to  
10 improve their process. *Id.*, 11:2723, Ins. 14-23. Commission Chair Shallenberger chided her colleagues  
11 for balancing the Port’s wrongdoing against the delay that Real Party has suffered because of the Port’s  
12 screw-up because the public was left out of the balance of equities. *Id.*, 11:2724, Ins. 10-20.

13       The problem for Respondents and Real Party can be summarized in a nutshell: the Port’s illegal  
14 exemption determination and the Commission’s illegal issuance of a coastal development permit for  
15 a waterfront restaurant development that does not exist in the Port Master Plan violated the Coastal  
16 Act’s policy of maximizing public participation and violated CEQA’s policy of examining feasible  
17 alternatives. As a matter of black-letter CEQA law, the Commission had to consider at least one  
18 alternative to the proposed land-based restaurant for which the coastal development permit was issued;  
19 the reality is that it didn’t even consider another floating restaurant as an alternative. More  
20 fundamentally, however, the Commission was prohibited from issuing the permit because the land-  
21 based restaurant appeared nowhere in the Port Master Plan, and the Commission’s only legal  
22 jurisdiction once such a plan is adopted (by the Port) and subsequently certified as consistent with the  
23 Coastal Act (by the Commission) is for projects identified in that plan. The Commission acted in  
24 excess of its jurisdiction.

25       The Coastal Act’s regulatory structure relies heavily on the local enactment of coastal-  
26 development regulations that have received thorough public input. “To achieve maximum  
27 responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily  
28 on local government and local land use planning procedures and enforcement.” PUB. RES. CODE §

1 30004. “[T]he public has a right to fully participate in decisions affecting coastal planning,” and  
2 “planning and implementation of programs for coastal conservation and development should include  
3 the widest opportunity for public participation.” PUB. RES. CODE § 30006. By handling the restaurant-  
4 replacement project as they did, the Port and the Commission at best did nothing more than pay lip  
5 service to these legislative mandates.

6 For these reasons, as explained in detail below, the Court should grant the relief that Petitioners  
7 seek.

## 8 **II. PROCEDURAL BACKGROUND**

9 The project at issue in this lawsuit is the demolition of an existing 4-deck restaurant formerly  
10 known as the Reuben E. Lee located on a floating barge, relocation of the barge, reconstruction of  
11 4,8000-square-feet of event space on the barge, construction of a new land-based restaurant building,  
12 construction of deck space, and reconfiguration of a parking lot (“Project”). Admin. R. 11:2750. In  
13 2008, Sunroad submitted a proposal for the renovation of the former Reuben E. Lee. *Id.*, 1:3. In 2009,  
14 the Port issued a Categorical Determination for the removal of all four decks and for a replacement  
15 restaurant landside, exempting the activities from the Coastal Act. *Id.*, 1:22-23. Even though the  
16 Categorical Determination appears in the record, notice of it was not given to the Coastal Commission  
17 (or it least *proper* notice was not given). *Id.*, 11:2765 (explaining that the “Port did not send notice of  
18 this project[] to the Commission, and therefore, Commission staff did not have the opportunity to  
19 review this project at the time it was exempted”). The Port also determined that the Project was  
20 exempt from CEQA. *Id.*, 1:72-73. In 2012, the barge with the restaurant structure was towed to initiate  
21 demolition and reconstruction, but partially--some say mysteriously, others say conveniently--sank. *Id.*,  
22 11:2760.

23 The determination was appealed by Commissioner Esther Sanchez (Admin. R. 7:1494-1053),  
24 Commissioner Brian Brennan (Admin. R. 7:1504-1514), and UNITE HERE Local 30 (Admin. R.  
25 7:1515-1538). On May 31, 2013 Coastal Commission staff release their report and recommendation  
26 on the appeal. *Id.*, 8:1788. The recommendation was for the Coastal Commission to find a “Substantial  
27 Issue” (thereby giving the Commission jurisdiction over the Project’s entitlements) and approve a  
28 coastal development permit with conditions. *Id.* The staff believed that the appeal presented a



1 substantial issue because of *inconsistencies* with the Port Master Plan and the policies in Chapter 3 of  
2 the Coastal Act. *Id.* The staff knew that it was treading on thin legal ice, for its report acknowledged:  
3 “The absence of the project on the list of proposed development in the Harbor Island/Lindbergh Field  
4 Planning District in the Port Master Plan is also a serious concern.” *Id.*, 8:1789. During the appeal  
5 process, Commission staff and Sunroad made changes to the Project to improve public access above  
6 what was initially proposed when the Port made its determination. *Id.*, 8:1789-1790. Staff recognized  
7 that allowing a development to proceed that is not on the certified port master plan is unusual, but  
8 determined that in this case, approval would not “prejudice the ability of the San Diego Unified Port  
9 District to implement its certified Port Master Plan consistent with Chapter 3 of the Coastal Act.”<sup>2</sup> *Id.*,  
10 8:1790. Staff warned:

11           However, it should be clear that approval of this project in no way  
12           sanctions or endorses the manner in which the subject project was  
13           excluded from the [port master plan amendment] and coastal permit  
14           process. Future projects should be incorporated into the [port master  
15           plan] as mandated by the Coastal Act, and categorized as appealable or  
16           non-appealable developments per the standards of Section 30715.

17 *Id.*, 8:1791.

18           On June 10, 2013, Commission staff issued an Addendum to its earlier report (to make some  
19 corrections to it). Admin. R. 10:2352-2354. Various comment letters were received, including  
20 opposition from Petitioner San Diegans for Open Government’s behalf, primarily discussing the  
21 problems with the process and the public’s exclusion from it. *Id.*, 10:2537.

22           On June 12, 2013, the Commission held a public hearing on the appeals. Admin. R. 11:2557.  
23 Once the hearing began, none of the commissioners asked to have a hearing on the “substantial issue,”  
24 so they almost immediately began with the *de novo* hearing on the permit itself. *Id.*, 11:2653.  
25 Petitioners addressed the Commission through their attorney. *Id.*, 11:2687-2689. Among Petitioners’  
26 objections were the *de facto* (illegal) Port Master Plan amendment that the Commission’s issuance of  
27 a permit would represent and the lack of alternatives considered along the way. *Id.*, 11:2687. The  
28 central concern was over how the process resulted in little to no public participation--far less than what  
29 would have been required if the Port were required to amend its Port Master Plan to include a land-

---

<sup>2</sup> This exception for an approval that does not “prejudice” the ability to implement a certified port master plan does not appear in the Coastal Act.

1 based restaurant at a location described in the existing Plan as “vacant” and then take that amendment  
2 to the Commission for certification as consistent with the Coastal Act *Id.*, 11:267-2689. Despite  
3 Petitioner’s concerns and indeed the Commissioners’ own concerns, as recounted above, the  
4 Commission ultimately adopted staff’s recommendation with modification to one of the special  
5 conditions but made no findings. Long after that hearing, however, the Coastal Commission issued  
6 revised findings. *Id.*, 11:2750-2829.

7 Petitioners then filed this lawsuit.

### 8 **III. ARGUMENT & ANALYSIS**

9 Process and public participation matter a lot under the Coastal Act and CEQA. Because of the  
10 way that the Project’s coastal development permit was issued, the public was denied the opportunity  
11 to provide input on how the Project would fit in with the rest of the development contemplated under  
12 the Port Master Plan. If the Court agrees that the Coastal Commission did not have jurisdiction to issue  
13 the permit because the restaurant was not included in the Plan, then there is no need to address the other  
14 issues because on remand the public will get the opportunity it should have received in the first place.

#### 15 **A. The Port of San Diego and the Coastal Commission Violated the Coastal Act**

##### 16 **1. Petitioners Have Standing to Maintain This Coastal Act Action**

17 Under Public Resources Code Section 30801, any “aggrieved person” has the right to judicial  
18 review of any decision or action of the Coastal Commission by filing a petition for writ of mandate in  
19 accordance with Section 1094.5 of the Code of Civil Procedure, within 60 days after the decision or  
20 action has become final. An “aggrieved person” is “any person who, in person or through a  
21 representative, appeared at a public hearing of the commission . . . in connection with the decision or  
22 action appealed, or why, by other appropriate means prior to a hearing, informed the commission . . .  
23 of the nature of his concerns or who for good cause was unable to do either.” PUB. RES. CODE § 30801.  
24 Petitioners appeared at the Coastal Commission’s appeal hearing through their attorney. Admin. R.  
25 11:2687 (attorney Cory Briggs stating: “I’m here on behalf of the Coastal Environmental Rights  
26 Foundation, San Diegans for Open Government, and the San Diego Navy Broadway Complex  
27 Coalition.”). Under Public Resources Code Section 30803, “[a]ny person” may maintain an action for  
28 declaratory and equitable relief to restrain any violation of the Coastal Act.

1           Petitioners appeared at the hearing and are persons under the Coastal Act. Thus, they have  
2 standing to maintain their Coastal Act claim.

3                   **2.       The Coastal Commission Had No Jurisdiction to Issue the Coastal**  
4                   **Development Permit**

5           The Coastal Commission was without jurisdiction to issue the Project's coastal development  
6 permit, and the process that was used circumvented meaningful public review. The Commission is not  
7 entitled to deference on the issue of whether it had jurisdiction to issue the permit. "As the California  
8 Supreme Court has explained, '[a] court does not . . . defer to an agency's view when deciding whether  
9 a regulation lies within the scope of authority delegated by the legislature.'" *Security Nat. Guaranty,*  
10 *Inc. v. California Coastal Com'n*, 159 Cal. App. 4th 402, 414 (2008) (citing *Yamaha Corp. of America*  
11 *v. State Bd. of Equalization*, 19 Cal. 4th 1, 11, fn. 4 (1998)). If any of the opposing parties claims that  
12 the Commission had the discretion to issue the permit, such a claim should be rejected.

13           The Coastal Act delegates permitting authority for development within a port's geographical  
14 jurisdiction from the Commission to the port *when the development is contained in the port's certified*  
15 *master plan*. PUB. RES. CODE § 30715(a) ("After a port master plan or any portion thereof has been  
16 certified, the permit authority of the commission . . . shall no longer be exercised by the commission  
17 over any new development contained in the certified plan or any portion thereof and shall at that time  
18 be delegated to the appropriate port governing body. . . ."). Furthermore, "[n]o developments within  
19 the area covered by the certified port master plan shall be approved by the port governing body unless  
20 it finds that the proposed development conforms with such certified plan." *Id.*, § 30715.5. Together  
21 these two provisions prohibit the approval of any coastal development that does not appear in a certified  
22 port master plan, and when it does appear the permit is to be issued by the port's governing body and  
23 not by the Commission.

24           The Commission did not have the authority to make a *de facto* amendment to the Port Master  
25 Plan by issuing the Project's coastal development permit. Only the Port's governing body may amend  
26 the Port Master Plan; the Commission's role is limited to certifying that the Plan is consistent with the  
27 Coastal Act. PUB. RES. CODE § 30711 ("A port master plan that carries out the provisions of this  
28 chapter shall be prepared and adopted by each port governing body. . . ."); § 30716 ("A certified port

1 master plan may be amended by the port governing body, but an amendment shall not take effect until  
2 it has been certified by the commission.”). The amendment of a port master plan involves public notice  
3 and participation requirements, none of which were provided here.<sup>3</sup> *See id.*, § 30716(c) (publication  
4 and public-comment requirements). The process is consistent with the Legislature’s goals of the  
5 Coastal Act: “To achieve maximum responsiveness to *local* conditions, accountability, and public  
6 accessibility, it is necessary to rely heavily on *local* government and *local* land use planning procedures  
7 and enforcement.” PUB. RES. CODE § 30004 (emphasis). The Legislature also found and declared “that  
8 the public has a right to *fully* participate in decisions affecting coastal planning” and that “planning and  
9 implementation of programs for coastal conservation and development should include the *widest*  
10 *opportunity* for public participation.” PUB. RES. CODE § 30006 (emphasis added). While the Coastal  
11 Commission has jurisdiction to certify an amendment to the Port Master Plan, it did not have the  
12 authority to amend the Plan. The Legislature was so serious about ensuring that the Commission did  
13 not impose its will on local planning and thereby exclude the local public from having the largest  
14 possible say in how their local ports are developed that it explicitly barred the Commission from making  
15 even minor changes to proposed port master plans when they are presented for certification. PUB. RES.  
16 CODE § 30714 (“The commission may not modify the plan as submitted as a condition of  
17 certification.”). Thus, the power to amend a port master plan lies first with the local port through a  
18 process that ensures ample public notice and opportunity for public participation.

19 Once a port master plan is certified and in place, the standard of review for permit decisions is  
20 the certified plan. *See* PUB. RES. CODE § 30715.5 (port master plan). In that connection, when a port’s  
21 governing body approves an appealable development, the governing body “shall notify the commission  
22 and other interested persons, organizations, and governmental agencies of the approval of a proposed  
23 appealable development and indicate how it is consistent with the appropriate port master plan and [the  
24 Coastal Act].” *Id.* § 30717. With respect to appeals to the commission after certification of the port  
25 master plan, the Coastal Commission must first consider whether a substantial issue exists as to  
26 conformity with the certified port master plan. *Id.*, § 30625(b)(3).

---

28 <sup>3</sup> Port Master Plans are also reviewed by other responsible agencies. *See* PUB. RES. CODE § 30415  
(providing for State Lands Commission comment on port master plans).

1 Here the Port Master Plan designates the east end of east Harbor Island, where the Project is to  
2 be located, as “vacant.” Admin. R. 5:1042 (Port Master Plan); 11:2651, Ins. 18-21 (Commission staff  
3 noting the absence of the project on the list of proposed development in the Harbor Island-Lindbergh  
4 Field Planning District in the Port Master Plan); 11:2773-2774 (Commission findings of inconsistencies  
5 with the Port Master Plan goals and policies). Accordingly, neither the Port nor the Commission had  
6 the authority to issue a coastal development permit (or even waive the requirement for such a permit).<sup>4</sup>

7 A similar issue was addressed in *Security National Guaranty, supra*. In that case, the petitioner  
8 asserted that the Coastal Commission had no authority under the Coastal Act to designate property as  
9 environmentally sensitive habitat in the course of a permit appeal, and the appellate court agreed.  
10 *Security National Guaranty, supra*, 159 Cal. App. 4th at 418-419. In reaching that conclusion, the  
11 appellate court acknowledged that the Coastal Act requires local governments to prepare local coastal  
12 programs. *Id.* at 420. The local government then submits the local coastal program to the Coastal  
13 Commission for approval. *Id.* Once the local coastal program is certified, development review  
14 authority is delegated to the local government and the local government has discretion of what portions  
15 of the program to implement or not. *Id.* at 421. After reviewing the framework, the appellate court  
16 reasoned that the Coastal Commission was without jurisdiction to change the content of the city’s local  
17 coastal program because the action exceeded the limitation on its jurisdiction in permit appeals, the  
18 Legislature decreed that local coastal programs may be amended “by the appropriate *local* government,”  
19 and the Commission’s designation contradicted the terms of the certified *local* coastal program. *Id.* at  
20 422-423 (emphasis added). Even though this case involves a port master plan by a port and not a local  
21 coastal program by a city, the purpose of the local regulatory schemes is the same and there is no reason  
22 to treat them differently. Most importantly, like a local coastal program and as noted above, a port  
23 master plan may only be amended by the local port’s governing board. PUB. RES. CODE § 30716 (“A  
24

---

25 <sup>4</sup> While the Port did not have authority to issue a coastal development permit--because the Project site  
26 showed it as “vacant” and not as a restaurant--the appeal of the Port’s exemption determination was  
27 proper. The Coastal Act provides that “any appealable action on a coastal development permit or claim  
28 of exemption for any development by a local government or port governing body may be appealed to  
the commission by an applicant, any aggrieved person, or any two members of the commission.” PUB.  
RES. CODE § 30625. The Coastal Commission appropriately determined “a substantial issue” exists  
with respect to conformity of the Port’s certified Port Master Plan. *See* Admin. R. 11:2653, Ins. 5-16  
(no objection to substantial issue recommendation).

1 certified port master plan may be amended by the port governing body, but an amendment shall not take  
2 effect until it has been certified by the commission.”). In the same way that designating habitat as  
3 environmentally sensitive in a permit appeal exceeds the Commission’s jurisdiction, issuing a permit  
4 in an exemption appeal to allow a restaurant on a site that the port master plan designates as “vacant”  
5 exceeds the Commission’s jurisdiction; to allow otherwise is to allow a *de facto* port master plan  
6 amendment. As the Coastal Commission does not have the legal authority to amend the Port Master  
7 Plan, it cannot do so even on an appeal.

8         Petitioners’ position that a Port Master Plan Amendment was required before a coastal  
9 development permit could be issued by either the Port or the Coastal Commission is consistent with the  
10 Commission’s own statements and practices. For example, Chief Council Ralph Faust and Deputy  
11 Chief Council Dorothy Dickey explained the process in a memorandum to (former and now late)  
12 Executive Director Peter Douglas. Admin. R. 9:2156-2160. They wrote: “The standard of review for  
13 permit decisions after the Commission has certified a local coastal program or port master plan is the  
14 certified program or plan.” *Id.*, 9:2159. They continued: “The Commission’s actions on appeals are  
15 also governed by the certified program or plan.” *Id.* Consistent with this approach, when the Port  
16 issued a coastal development permit for the new cruise ship terminal on Broadway Pier, the  
17 Commission opined that all development projects had to be identified in the Port Master Plan. *See id.*,  
18 9:2143 (explaining that Port issued coastal development permit for Broadway Pier cruise ship terminal);  
19 2145-55 (explaining that all future development must be in Port Master Plan). Thus, an amendment  
20 of the Port Master Plan was required. *Id.*

21         Even Coastal Commission staff acknowledged that a Port Master Plan Amendment should have  
22 been done. Consider the following:

23                 The issue related to the need for a Port Master Plan amendment, we--we  
24                 don’t disagree that *a Port Master Plan amendment would have been*  
25                 *the proper way to handle this project. And that would have afforded*  
                    *the local hearing that was the concern by the last speaker* [referring to  
                    Petitioners’ attorney at the hearing].

26 Admin. R. 11:2690, Ins. 21-25, 2691, ln. 1 (emphasis added). Instead, staff indicated that they were  
27 “balancing the equities of the process that this applicant had undergone prior to this time.” *Id.*, 11:2691,  
28 Ins. 6-7. The Coastal Act provides for the public’s right to participate. *See PUB. RES. CODE § 30006*

1 (“The Legislature further finds and declares that the public has a right to fully participate in decisions  
2 affecting coastal planning. . .”). As Commission Chair Shallenberger pointed out, public participation  
3 was never part of the balancing equation. *Id.*, 11:2724, lns. 10-20.

4 Altogether, the Coastal Commission did not have the ability to issue a permit for a project that  
5 was not identified in the Port Master Plan. An amendment was required before either the Port or the  
6 Coastal Commission could issue such a permit.

### 7 3. The Project Is Inconsistent with the Coastal Act

8 Even if a permit could have been issued without an amendment of the Port Master Plan, the  
9 Project is inconsistent with the Coastal Act. The policies of Chapter 3 of the Act constitute the  
10 standards by which the permissibility of proposed developments are determined. PUB. RES. CODE §  
11 30200(a). Due to conflicts with these policies, the Project’s coastal development permit should not  
12 have been issued--not by the Port or by the Commission.

13 The Project is inconsistent with the Act’s public-access policies. It provides that the “location  
14 and amount of new development should maintain and enhance public access to the coast. . . .” PUB.  
15 RES. CODE § 30252. Similarly, “scenic and visual qualities of coastal areas shall be considered and  
16 protected as a resource of public importance.” PUB. RES. CODE § 30251. While the Coastal  
17 Commission imposed conditions to ensure that public access would be better than what it would have  
18 been under the Port’s exemption, the new land-based restaurant still does not maintain or enhance  
19 public access to the coast or the scenic and visual qualities.

20 As noted by Commission staff, “[c]urrently *the public can walk all along the shoreline* in this  
21 location.” Admin. R. 11:2650, lns. 16-17 (emphasis added). “People can and do walk up to and along  
22 the waterfront in this location, albeit through an existing parking lot, at the location of the proposed new  
23 landside restaurant.” *Id.*, 11:2778. “People can and do walk and jog through the parking lot to get to  
24 the end of the peninsula.” *Id.* “This access and viewpoint would be eliminated by the proposed  
25 project.” *Id.* In addition, “the availability of public views of the waterfront from around and near the  
26 new restaurant would also be significantly different as a result of the siting of the new restaurant on  
27 land.” *Id.*, 11:2780. The Commission determined that the coastal resources potentially impacted by  
28 the decision “including *blockage of public access and views* along the shoreline, water quality, and



1 marine resources, *are significant*.” *Id.*, 11:2782 (emphasis added). Petitioners acknowledge that a  
2 number of revisions to the Project were required by the Commission in order to improve these impacts,  
3 including the addition of a public walkway on decks along the shoreline side of the restaurant. *Id.*,  
4 11:2797-2799. However, these are improvements to the Project as approved by the Port *without public*  
5 *input* and by the Coastal Commission *without public input*.<sup>5</sup> The Project does not maintain and  
6 enhance public access compared to the existing situation. There is no substantial evidence in the record  
7 to demonstrate that the impacts were reduced to a level of insignificance. While the Commission found  
8 that no further mitigation measures were feasible, there is no substantial evidence in the record to  
9 support this conclusion. Admin. R. 11:2808-2809 (Commission finding).

10 Had the public been provided the opportunity to be involved through a Port Master Plan  
11 amendment process, the public could have provided input on how best to provide public access and to  
12 protect public views. Thus, while Petitioners appreciate that the Coastal Commission made *some*  
13 progress in terms of public access and public views above what the Port would have required, it is  
14 extremely arrogant to think that it did the best that could be done without giving the local community  
15 the opportunity to weigh in on the proposal first.

16 **B. The Coastal Commission Violated the California Environmental Quality Act**

17 **1. Petitioners Have Standing under the California Environmental Quality Act**

18 Cases brought pursuant to CEQA have a liberal standing requirement. *See Bozung v. Local*  
19 *Agency Formation Commission*, 13 Cal. 3d 263, 272 (1975) (explaining that “strict rules of standing  
20 that might be appropriate in other contexts have no application where broad and long-term  
21 [environmental] effects are involved”); *Bakersfield Citizens for Local Control v. City of Bakersfield*,  
22 124 Cal. App. 4th 1184, 1198 (2004) (noting “CEQA’s liberal standing requirement”). Until recently,

23 To have standing to apply for a writ of mandate a private citizen must be  
24 a “party beneficially interested.” \* \* \* . . . [W]here a public right is  
25 involved, and the object of the writ of mandate is to procure enforcement  
26 of a public duty, the plaintiff is not required to have any legal or special  
27 interest in the result; it is sufficient that as a citizen he is interested in  
28 having the public duty enforced. [Citation omitted.] Accordingly, in a  
writ of mandate against a municipal entity based on alleged violations of  
CEQA, a property owner, taxpayer, or elector who establishes a  
geographical nexus with the site of the challenged project has standing.

---

<sup>5</sup> The totality of the changes were made by the Commission after its public hearing had closed.

1 *Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo*, 172 Cal. App. 3d 151, 158 (1985).

2 Therefore, until recently, Petitioner had to demonstrate nothing more than (i) an interest in the  
3 enforcement of the public duty, (ii) an organizational purpose related to the upholding of CEQA, and  
4 (iii) a member with a geographical nexus to the project.

5 Standing in CEQA cases was relaxed even further by the Supreme Court. No longer must  
6 CEQA petitioners allege a beneficial interest in the case. Instead, a CEQA petitioner is entitled to rely  
7 on the exception to the beneficial-interest requirement “meant to give citizens an opportunity to ensure  
8 the enforcement of public rights and duties.” *Save the Plastic Bag Coalition v. City of Manhattan*  
9 *Beach*, 52 Cal. 4th 155, 167 (2011).

10 Petitioners easily satisfy the standing requirement. Petitioners are non-profit organizations.  
11 Petition ¶ 1; Quiroz Decl., ¶ 1. Petitioner San Diegans for Open Government was formed, among other  
12 reasons, to ensure that public officials govern transparently and responsibly, give the public a  
13 meaningful opportunity to participate in the decision-making process, and are held accountable for their  
14 decisions. Quiroz Decl., ¶ 2. Petitioner San Diego Navy Broadway Complex Coalition has been  
15 particularly active on the San Diego waterfront. Coombs Decl., ¶ 4. Petitioners each have at least one  
16 member who resides in or near the City of San Diego. Quiroz Decl., ¶ 1; Coombs Decl., ¶ 1.  
17 Altogether, Petitioners have standing to maintain this CEQA action.<sup>6</sup>

## 18 **2. No Alternatives Were Identified**

19 The Coastal Commission violated CEQA by not considering alternatives.<sup>7</sup> Despite operating  
20 under a certified regulatory program, the substitute environmental document is required to state either:

21 (A) Alternatives to the activity and mitigation measures to avoid or  
22 reduce any significant or potentially significant effects that the project  
might have on the environment, or

23 (B) A statement that the agency's review of the project showed that the  
24 project would not have any significant or potentially significant effects  
25 on the environment and therefore no alternatives or mitigation measures  
are proposed to avoid or reduce any significant effects on the

---

26 <sup>6</sup> Petitioners do not believe that they have to meet a separate standing requirement for CEQA because  
27 the Coastal Commission has a certified regulatory program, meaning that its CEQA procedures are  
28 covered as part of the Coastal Act review process. Petitioners brief the issue only in an abundance of  
caution.

<sup>7</sup> The issue of alternatives was raised. See Admin. R. 11:2687, lns. 21-24.

1 environment. This statement shall be supported by a checklist or other  
2 documentation to show the possible effects that the agency examined in  
reaching this conclusion.

3 CAL. CODE OF REGS., tit. 14, § 15352(a)(2). The discussion of alternatives is central to CEQA. In fact,  
4 the Supreme Court has said that “[t]he core of an EIR is the mitigation and alternatives sections.”  
5 *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 56 (1990). The Supreme Court has  
6 also explained that both mitigation measures and alternatives have to be discussed even if project  
7 impacts are mitigated to a level of insignificance. *See Laurel Heights Improvement Ass’n v. Regents*  
8 *of the Univ. of Cal.*, 47 Cal. 3d 376, 401 (1988) (finding that CEQA requires the discussion of both  
9 alternatives and mitigation measures and such approach is consistent with CEQA’s purpose of  
10 providing responsible officials with adequate information).

11 Here, the Commission neither identified alternatives nor showed that the Project would not have  
12 any significant effects on the environment. *See, e.g.*, Admin. R. 11:2650, lns. 9-11 (Commission staff  
13 explaining that the “project as exempted by the Port would have significant public access, recreation  
14 and visual impacts”). Instead, the Commission said that CEQA was complied with “because either 1)  
15 feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any  
16 significant adverse effects of the development on the environment, or 2) there are no further feasible  
17 mitigation measures or alternatives that would substantially lessen any significant adverse impacts of  
18 the development on the environment.” *Id.*, 11:2783 & 2808-2809; *cf. id.*, 9:2148 (finding for Broadway  
19 Pier *de minimis* Port Master Plan Amendment).

20 It is apparent that the Coastal Commission was attempting to salvage a wayward project and  
21 skipped steps that would have been taken if the project was processed properly from the start.  
22 Altogether, the Coastal Commission violated CEQA by not identifying any alternatives to Project that  
23 would avoid or reduce any significant or potentially significant effects that the Project might have on  
24 the environment.

25  
26 [This space is intentionally blank.]  
27  
28

1           **3.       There Is No Substantial Evidence In the Record to Support the Finding**  
2                       **There Are No Feasible Alternatives or that There Are No Further Feasible**  
3                       **Alternatives**

4           There is no substantial evidence in the record to support the finding that there are no feasible  
5 alternatives or no further feasible alternatives. The Supreme Court made that plain more than 30 years  
6 ago:

7                       [I]mplicit in section 1094.5 is a requirement that *the agency which*  
8                       *renders the challenged decision must set forth findings to bridge the*  
9                       *analytic gap between the raw evidence and ultimate decision or order.*  
10                      If the Legislature had desired otherwise, it could have declared as a  
11                      possible basis for issuing mandamus the absence of substantial evidence  
12                      to support the administrative agency's action. By focusing, instead, upon  
13                      the relationships between evidence and findings and between findings  
14                      and ultimate action, the Legislature sought to direct the reviewing court's  
15                      attention to the analytic route the administrative agency traveled from  
16                      evidence to action. In so doing, we believe that the Legislature must  
17                      have contemplated that the agency would reveal this route. *Reference,*  
18                      *in section 1094.5, to the reviewing court's duty to compare the*  
19                      *evidence and ultimate decision to 'the findings' (emphasis added) we*  
20                      *believe leaves no room for the conclusion that the Legislature would*  
21                      *have been content to have a reviewing court speculate as to the*  
22                      *administrative agency's basis for decision.*

23           *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 514 (1974) (emphasis  
24 added). Here, the Coastal Commission found:

25                      As conditioned, there are no feasible alternatives or feasible mitigation  
26                      measures available which would substantially lessen any significant  
27                      adverse impact which the activity may have on the environment.  
28                      Therefore, the Commission finds that the proposed project is the least  
environmentally-feasible alternative and is consistent with the  
requirements of the Coastal Act to conform to CEQA.

Admin. R. 11:2809. However, since the Coastal Commission did not actually consider any alternatives,  
there could not possibly be any evidence on which to base this finding. In the Commission's haste to  
find a way to approve the Project, not only did public participation go by the wayside, but so did a  
critical component of CEQA review (even under certified regulatory programs).

IV. CONCLUSION

For all of the foregoing reasons, Petitioners respectfully requests that the Court grant the  
petition for writ of mandate and complaint for declaratory and equitable relief.

1 Date: February 3, 2014.

Respectfully submitted,

2 BRIGGS LAW CORPORATION

3  
4 By:

Mekaela M. Gladden

5 Attorneys for Petitioners San Diegans for Open  
6 Government and San Diego Navy Broadway Complex  
7 Coalition  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Petitioners' Opening Brief in Support of Verified First Amended Petition for Writ of Mandate  
and Complaint for Declaratory and Injunctive Relief Under the California Environmental Quality  
Act, and Other Laws

Declaration of Diane B. Coombs

1                                   **DECLARATION OF DIANE B. COOMBS**

2                   I, Diane B. Coombs, am over the age of eighteen and if called as a witness in this  
3 proceeding will testify as follows:

4           1.     I am a resident of the City of San Diego, California, and have been a resident  
5 continuously since 1955.

6           2.     The San Diego Navy Broadway Complex Coalition ("SDNBCC") was organized in  
7 February 2006 and became a corporation in December 2006.

8           3.     I became a member of SDNBCC in February 2006 and have remained a member  
9 continuously ever since (*i.e.*, pre- and post-incorporation).

10          4.     I became a member of SDNBCC because of its efforts to protect the environment in  
11 downtown San Diego and especially the downtown area adjacent to San Diego Bay. At the time, I was  
12 concerned about the potential environmental impacts of development on the San Diego waterfront, and  
13 I continue to be concerned about such impacts today, which is why I am opposed to the Project that is  
14 the subject of this proceeding.

15          5.     In my years working on waterfront issues in San Diego, the obstacles to public  
16 participation presented by the way the Port of San Diego conducts business has been highly frustrating.  
17 Even somebody as active in these issues as myself has frequently been in the dark about what is  
18 happening because of the lack of public notice, hearings, and adequate public comment. While I  
19 appreciate that most of the Coastal Commissioners recognized this problem, approving the coastal  
20 development permit at a meeting in Long Beach did not alleviate the problems with lack of public  
21 involvement in the process.

22          6.     I have engaged in and continue to engage in recreational activities in on the San Diego  
23 waterfront in the downtown and Harbor Island area. For example, I like to stroll along the boardwalk  
24 and enjoy the scenery when doing so. I am concerned that development on the waterfront will impede  
25 my access and destroy many beautiful views that I currently enjoy.

26          7.     I agree with SDNBCC's efforts to ensure that the San Diego Unified Port District and  
27 California Coastal Commission fully comply with the laws designed to protect the environment, protect  
28



1 public health and safety, and promote informed decision-making by government agencies and informed,  
2 meaningful public participation in the decision-making process.

3 I declare under the laws of California that the foregoing is true and correct and that this  
4 declaration is being executed in the City of San Diego, California.

5  
6 Date: January 31, 2014.


  
Diane B. Coombs

Petitioners' Opening Brief in Support of Verified First Amended Petition for Writ of Mandate  
and Complaint for Declaratory and Injunctive Relief Under the California Environmental Quality  
Act, and Other Laws

Pedro Quiroz Jr.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

San Diego, California.

  
Pedro Quifoz, Jr.

## PROOF OF SERVICE

1. My name is Alison Greenlee. I am over the age of eighteen. I am employed in the State of California, County of San Diego.
2. My ☒ business \_\_\_\_\_ residence address is Briggs Law Corporation, 814 Mornea Blvd, Suite 107  
San Diego, CA, 92110.
3. On February 3, 2014, I served \_\_\_\_\_ an original copy ☒ a true and correct copy of the following documents: Petitioners' Opening Brief in Support of Verified First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief Under the California Environmental Quality Act, and Other Laws; Declarations of Diane B. Coombs and Pedro Quiroz Jr.
4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

\_\_\_\_\_ *by personal service.* I personally delivered the documents to the person(s) at the address(es) indicated on the list.

☒ *by U.S. mail.* I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

\_\_\_\_\_ deposited the envelope/package with the U.S. Postal Service

☒ placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of San Diego, California.

\_\_\_\_\_ *by overnight delivery.* I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

\_\_\_\_\_ *by facsimile transmission.* Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

\_\_\_\_\_ *by e-mail delivery.* Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws \_\_\_\_\_ of the United States ☒ of the State of California that the foregoing is true and correct.

Date: February 3, 2014

Signature: \_\_\_\_\_

SERVICE LIST

*San Diegans for Open Government v. California Coastal Commission, et al.*  
San Diego County Superior Court Case No.: 37-2013-00057492-CU-TT-CTL

---

Baine P. Kerr  
Deputy Attorney General  
California Department of Justice  
300 S. Spring Street, Suite 1702  
Los Angeles, CA 90013

Attorney for Defendant and Respondent  
California Coastal Commission

Thomas R. Russell  
Rebecca Harrington  
Office of the Port Attorney  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488

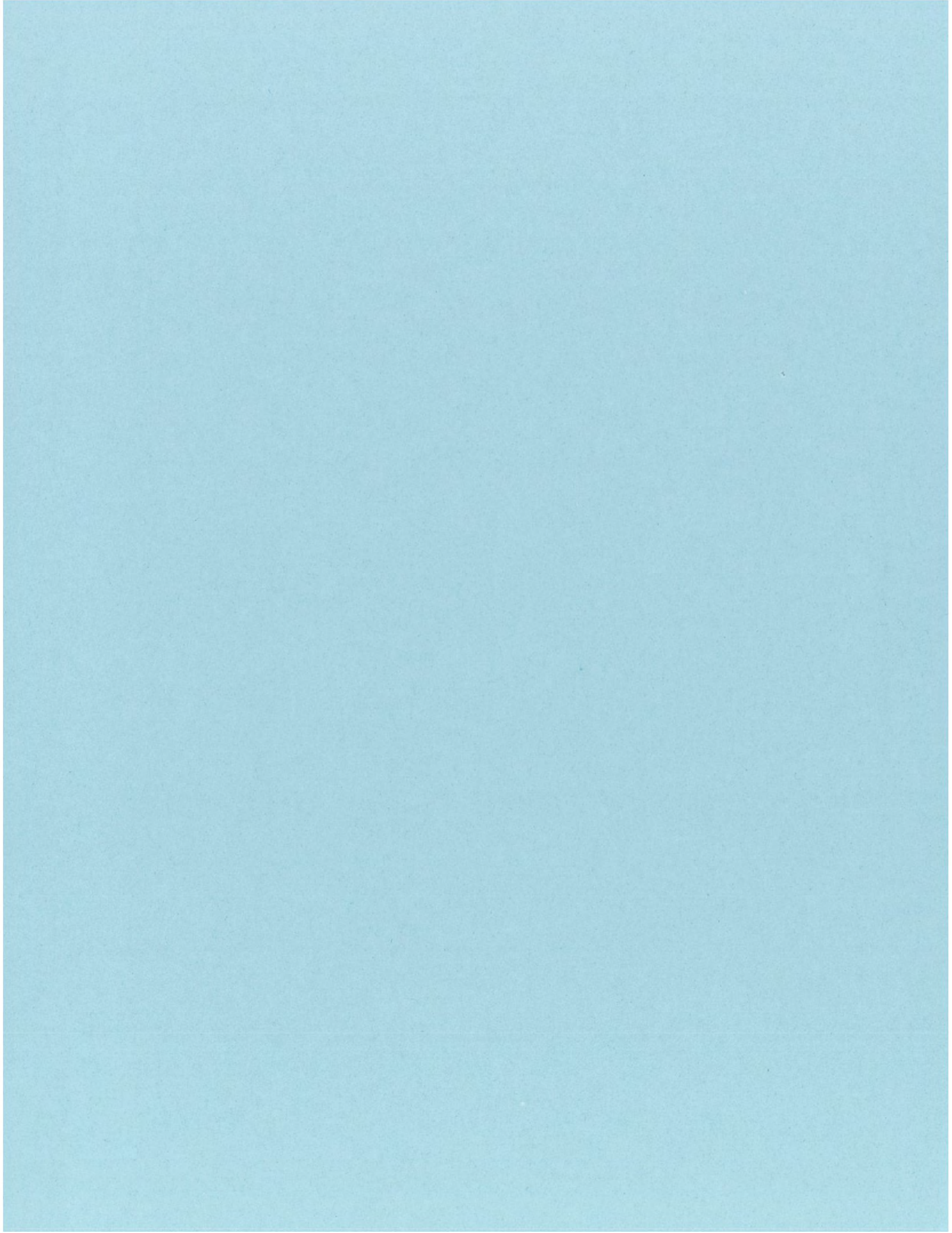
Attorney for Defendant and Respondent  
San Diego Unified Port District

Mike Hogan  
Hogan Law APC  
225 Broadway, Suite 1900  
San Diego CA 92101

Attorney for Defendant and Respondent  
San Diego Unified Port District

Steven H. Kaufmann  
Richards, Watson & Gershon  
355 S. Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071-3101

Attorney for Defendant and Real Parties  
in Interest Sunroad Enterprises and  
Sunroad Harbor Island



RICHARDS, WATSON & GERSHON  
A Professional Corporation  
STEVEN H. KAUFMANN (Bar No. 61686)  
skaufmann@rwglaw.com  
GINETTA L. GIOVINCO (Bar No. 227140)  
ggiovinco@rwglaw.com  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071-3101  
Telephone: 213.626.8484  
Facsimile: 213.626.0078

Attorneys for Defendants and Real Parties in Interest  
SUNROAD ENTERPRISES AND SUNROAD  
HARBOR ISLAND, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, HALL OF JUSTICE**

SAN DIEGANS FOR OPEN  
GOVERNMENT and SAN DIEGO NAVY  
BROADWAY COMPLEX COALITION,

Plaintiffs and Petitioners,

v.

CALIFORNIA COASTAL COMMISSION;  
SAN DIEGO UNIFIED PORT DISTRICT;  
and DOES 1 through 100,

Defendants and Respondents;

SUNROAD ENTERPRISES; SUNROAD  
HARBOR ISLAND, INC.; and DOES 101  
through 1,000.

Defendants and Real Parties in Interest.

Case No. 37-2013-00057492-CU-TT-CTL

**MEMORANDUM OF POINTS AND  
AUTHORITIES OF SUNROAD  
ENTERPRISES AND SUNROAD  
HARBOR ISLAND, INC., IN  
OPPOSITION TO PETITION FOR  
WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Assigned to: Honorable Ronald S. Prager

Hearing Date: April 22, 2014  
Time: 10:00 a.m.  
Dept.: 71

Action Filed: July 15, 2013



## TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	I. INTRODUCTION .....	1
4	II. PROCEDURAL AND FACTUAL BACKGROUND .....	2
5	A. The Port’s Exemption Determination .....	2
6	B. The Commission’s Conditional Approval on Appeal .....	4
7	III. THE COMMISSION HAD JURISDICTION TO CONDITIONALLY APPROVE THE RESTAURANT REPLACEMENT PROJECT .....	5
8	A. Conditional Approval Based on Appeal from the Exemption Determination .....	5
9	B. Conditional Approval Based on Appeal of an “Appealable Development.” .....	7
10	C. Conditional Approval Based on Retained Commission Jurisdiction .....	9
11	D. The Commission’s Decision to “Approve” and “Modify” the Project on Appeal is Supported by Substantial Evidence in the Record.....	11
12	E. Petitioners and the Public Had Ample Opportunity to Provide Input.....	14
13	IV. THE COMMISSION COMPLIED WITH CEQA .....	14
14	V. CONCLUSION .....	15
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## TABLE OF AUTHORITIES

### Page(s)

### Cases

<i>Bolsa Chica Land Trust v. California Coastal Com.</i> (1999) 71 Cal.App.4 <sup>th</sup> 493 .....	9, 13
<i>Citizens for Responsible Equitable Environmental Dev.</i> .....	15
<i>Coalition for Student Action v. City of Fullerton</i> (1984) 153 Cal.App.3d 1194 .....	14, 15
<i>Coronado Yacht Club v. California Coastal Com.</i> (1993) 13 Cal.App.4 <sup>th</sup> 860 .....	10
<i>Dept. of Corrections &amp; Rehab v. St. Personnel Bd.</i> (2013) 215 Cal.App.4 <sup>th</sup> 1101 .....	9
<i>Ross v. California Coastal Com.</i> (2011) 199 Cal.App.3d 900 .....	14
<i>Security National Guaranty v. California Coastal Com. (“SNG”)</i> (2008) 159 Cal.App.4 <sup>th</sup> 402 .....	13

### Statutes

California Environmental Quality Act, Section 21000 .....	1
Public Resources Code, Section 15302(b) .....	15
Public Resources Code, Section 21080.5(a).....	14
Public Resources Code, Section 21080.5(d)(2)(A) .....	15
Public Resources Code, Section 21177 .....	15
Public Resources Code, Section 30000 .....	1
Public Resources Code, Section 30240(a).....	13
Public Resources Code, Section 30625 .....	passim
Public Resources Code, Section 30700 .....	6
Public Resources Code, Section 30711 .....	10, 11
Public Resources Code, Section 30715 .....	passim
Public Resources Code, Section 30715(a)(4).....	8
Public Resources Code, Section 30717 .....	6
Public Resources Code, Section 70715(a).....	9

**TABLE OF AUTHORITIES (cont.)**

**Page(s)**

Title 14, California Code of Regulations, Section 13096(b).....	4
Title 14, California Code of Regulations, Section 15251(c).....	14

1 **I. INTRODUCTION**

2 In June 2008, the San Diego Unified Port District ("Port") granted Sunroad  
3 Enterprises and Sunroad Harbor Island, Inc., ("Sunroad") an exemption from the  
4 requirement of obtaining a coastal development permit ("CDP") for Sunroad's proposed  
5 Reuben E. Lee restaurant replacement project ("Project"). The approved Project proposed  
6 to replace the defunct Reuben E. Lee Sternwheeler restaurant at the east end of Harbor  
7 Island with a single-story restaurant on land and a floating barge as outdoor event space. It  
8 included new public walkways along the marina and bay sides of the restaurant. The Port  
9 then approved Sunroad's request for a lease extension for a new term of 40 years.

10 Four and half years after the Port's determination, the exemption was appealed to the  
11 Coastal Commission ("Commission"). Rather than contest the appeals, Sunroad worked  
12 with Commission staff and redesigned its Project to extend the new public walkways  
13 proposed to include the area bayward of the restaurant and provide public access on the  
14 event barge when it is open to the public for business. The result -- a high-priority visitor-  
15 serving use, continuous public access at the east end of Harbor Island, and sweeping public  
16 views of the Bay, downtown San Diego skyline, Coronado Bay Bridge, and Coronado. On  
17 June 12, 2013, the Commission approved the Project after a noticed public hearing during  
18 its regular meeting, finding that, as modified and conditioned, the Project is consistent with  
19 the Port Master Plan and applicable policies of the Coastal Act.

20 Petitioners then filed this frivolous lawsuit, contending the Commission (1) violated  
21 the Coastal Act (Pub. Res. Code, § 30000, *et seq.*)<sup>1</sup> by not denying the Project and requiring  
22 a Port Master Plan amendment; and (2) violated CEQA (§ 21000, *et seq.*) by not  
23 considering alternatives. We demonstrate below that the Commission had jurisdiction to  
24 consider the Project, on appeal from the exemption determination, and under Section 30625  
25 of the Coastal Act, it had the express authority to then "approve, modify, or deny" the  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Unless otherwise stated, all section references are to the Public Resources Code.

1 Project. The Commission also considered and then required alternatives to the Project. The  
2 amended writ petition has no merit and, accordingly, all relief sought should be denied.

3 **II. PROCEDURAL AND FACTUAL BACKGROUND**

4 Sunroad's Port leasehold is located at the eastern end of Harbor Island, east of the  
5 Harbor Island Drive cul-de-sac, in Planning District 2 of the Port's Port Master Plan  
6 (Harbor Island). (5 AR 1042-1047.) The leasehold includes both land and water areas,  
7 designated in the Port Master Plan as "Commercial Recreation" ("CR"). (5 AR 1045.)  
8 Restaurants are a permitted use within the "CR" land use designation. (5 AR 1009.)

9 The Port Master Plan explains: "The eastern end of the peninsula is anchored by  
10 restaurants, which are uniquely sited on the water's edge." (5 AR 1043.) It notes that the  
11 eastern portion of Harbor Island is generally vacant except for the marina leasehold and  
12 restaurants at the eastern end of the peninsula. (5 AR 1042-1043.) The two restaurants  
13 referenced relied on both the land and water side portions of the leasehold to be viable. The  
14 existing Island Prime restaurant is located on the land-side portion of the leasehold and one-  
15 third of that restaurant cantilevers over the water. (11 AR 2562.) Until April 2012, the  
16 water-side portion of the leasehold included a replica sternwheeler, the former Reuben E.  
17 Lee, a four-story, 68 foot high restaurant constructed on a floating barge structure. The  
18 land-side portion of the restaurant included a waiting and reception area, signage and  
19 gangways to board the barge, and parking areas. (*Id.*) The former Reuben E. Lee closed in  
20 2003 (11 AR 2666), and thereafter sat, blocking views and other sights from the east end of  
21 Harbor Island. (11 AR 2575-2576, 2596.)

22 **A. The Port's Exemption Determination.**

23 On November 13 and December 11, 2007, following public hearings, the Port Board  
24 gave direction to its staff to proceed with a replacement restaurant for the Reuben E. Lee  
25 and Sunroad's request for a long-term extension of its existing lease. (8 AR 1956-1965.)  
26 Sunroad then applied to the Port to develop a \$9 million restaurant replacement project  
27 ("Project"). The Project proposed to demolish and remove all four decks of the Reuben E.  
28 Lee, to refurbish the barge deck with a galley, restrooms, and food and beverage service

1 areas to accommodate business and social events, and to construct a single-story  
2 replacement restaurant, lounge and banquet facility on the adjacent landside. (1 AR 22, 28-  
3 50, 204-211.) By reducing the height and mass of the former restaurant, the Project  
4 proposed to open up for the first time in 40 years public views of the downtown San Diego  
5 skyline, San Diego Bay, the Coronado Bay Bridge, and Coronado. The Project also  
6 proposed significant new public access – a walkway to connect with the existing  
7 promenade along Harbor Island Drive and extend along the bay and marina sides of the  
8 restaurant. (7 AR 1717.)

9 On June 10, 2008, following another public hearing, the Port Board determined the  
10 Project to be an “excluded development,” exempt from the requirement of obtaining a CDP.  
11 (8 AR 1934-1937; 9 AR 2177.91.) The Port concluded that the Project “is the replacement  
12 of a commercial structure on the same site as the structure replaced, with a new structure of  
13 substantially the same size, purpose and capacity, and, therefore, the Project is an excluded  
14 development,” as provided in Section 8.b (“Replacement or Reconstruction”) of the Port’s  
15 certified CDP Regulations” (5 AR 953-954, 9 AR 2177.103-105). It also adopted an  
16 ordinance granting Sunroad an option for a new 40-year lease. (9 AR 2177.98-100.)

17 On February 24, 2009, the Port’s staff further issued a CEQA “Categorical  
18 Determination of Proposed Coastal Development” for the Project, again citing the  
19 “Replacement or Reconstruction” exemption. (9 AR 2177.48-.77.)

20 On March 22, 2012, the Port approved minor project changes, reducing the size of  
21 the restaurant, reducing the barge by almost one-half, and relocating the barge within the  
22 Pierline to be completely within the Port’s jurisdiction. (8 AR 2177.16-2177.27.)

23 In April 2012, the former Reuben E. Lee was sold to R. E. Staite Engineering and  
24 towed to Staite’s shipyard across the Bay, where, eight months later, it partially sank. (9  
25 AR 2177.34, 11 AR 2760.)

26 On August 1, 2012, Sunroad exercised its lease option. (9 AR 2177.17.) Sunroad  
27 then commenced initial construction activities. (6 AR 1195, 1198.)

28 ///

**B. The Commission's Conditional Approval on Appeal.**

Despite the passage of four and a half years from the grant of exemption, on February 6, 2013, UNITE HERE Local 30 and two Coastal Commissioners appealed the Port's June 10, 2008 exemption determination. (7 AR 1494-1518.) On February 12, 2013, the Commission's staff report recommended that the appeals present a "substantial issue," and a public hearing before the Commission was noticed for March 7, 2013. (7 AR 1698-1787.) The staff report argued, *inter alia*, that the "Replacement or Reconstruction" exemption did not apply because the restaurant portion of the Project would be located on land, not the same site as the former Reuben E. Lee. (7 AR 1699, 1705-1707.)

Sunroad initially contested the staff recommendation (9 AR 21177.28-21177.105), but then agreed to postpone the hearing (7 AR 1785-1787, 10 AR 2446, 2552). Working with Commission staff, Sunroad redesigned the restaurant to add a six-foot wide public walkway bayward of the structure, slightly below the level of the proposed restaurant deck to provide views from both levels and accessible from the public walkways and viewing areas on each side of the restaurant. (3 AR 650-686 (revised plans and renderings).)

On May 31, 2013, the Commission's staff issued its staff report on the appeal, recommending approval with conditions. (8 AR 1788-1846.) On June 12, 2013, following a noticed public hearing (11 AR 2557), the Commission first found the appeals to present a "substantial issue" and then voted unanimously to approve the modified Project with conditions, including Special Condition #13, by which Sunroad further agreed "that public access to the barge shall be allowed whenever the barge is open for business, except when otherwise reserved for private events, and shall include signage as so stated posted at the entry to the barge." (11 AR 2638 (vote), 2643-2749 (transcript), 2789 (Condition #13).)

On September 11, 2013, as required by its regulations (Tit. 14 Cal. Code Regs., §13096(b)), the Commission adopted revised findings to support its decision, with changes to the May 2013 staff report relating only to Special Condition #13. (11 AR 2750- 2820 (revised findings), 2829-2836 (vote and transcript).)

///



**III. THE COMMISSION HAD JURISDICTION TO CONDITIONALLY APPROVE THE RESTAURANT REPLACEMENT PROJECT.**

Petitioners’ primary argument is that the Commission lacked jurisdiction to approve a CDP for the restaurant project. (Petr. Brief, pp. 6-10.) Petitioners acknowledge the Commission had jurisdiction to consider the appeal of the Port’s exemption determination. (*Id.* at p. 8, fn. 4.) They argue, however, that the Commission should first have denied the Project and sent it back to the Port to prepare a Port Master Plan amendment (“PMPA”) to add the restaurant to the list of “appealable” projects in the Plan, then submit the PMPA to the Commission for review and certification, after which the Port would then process a CDP for the Project, which then would be appealable to the Commission to make the same decision challenged in this case, using the same standard of review. (*Id.*, p. 10, lines 4-6.) No amount of convoluted reasoning is necessary to demonstrate that the Commission had jurisdiction to act on the appeal and properly exercised it when it approved the Project, as modified, subject to conditions. A Port Master Plan amendment was not required.

There were three ways in which the Commission had jurisdiction to conditionally approve the Project. The first – and consensus basis for appeal -- is an appeal from the Port’s exemption determination. The second is an appeal based on the Commission’s alternative conclusion that the Project constitutes an “appealable development,” as defined in Coastal Act section 30715. The third follows from Petitioners’ erroneous interpretation of Section 30715 – the Commission would have retained, original jurisdiction to act on the Project. The Court need only address the first basis for appeal to dispose of Petitioners’ jurisdictional issue. Nonetheless, we address all three below.

**A. Conditional Approval Based on Appeal from the Exemption Determination.**

Petitioners agree that an appeal is permissible from a port exemption determination, as here. They fail, however, to mention or discuss the dispositive provision in the Coastal Act, Section 30625, which authorizes the Commission in exercising its appeal jurisdiction to “approve, modify, or deny” the development.

Chapter 8 of the Coastal Act, commencing with Section 30700, governs “Ports.”

1 Section 30717 deals with appeals of port decisions, and provides, in pertinent part:

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

5 Section 30625 of the Act, in turn, governs appeals from local government actions  
6 and states, in relevant part:

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

12 Petitioners cite the first sentence of Section 30625, but omit the italicized portion.

13 The first sentence provides two independent bases for an appeal, as noted – an appeal from  
14 a port exemption determination *or* an appeal of a port decision on an appealable

15 development. Here, the Commission utilized both as the bases for accepting the appeal.

16 The second sentence of Section 30625 provides that once the Commission accepts the

17 appeal, it "may approve, modify, or deny" the development. Sections 30717 and 30625,

18 therefore, conferred on the Commission jurisdiction to "approve" or "modify" the proposed

19 restaurant replacement project here. The Commission properly exercised its discretion by

20 approving the Project, subject to conditions.

21 As discussed *infra* (at pp. 7-8), the Port and Sunroad disagreed with the Commission

22 that a restaurant constitutes an "appealable development" under Section 30715. The

23 Commission, Port and Sunroad, however, *all* agreed that an exemption determination is the

24 proper subject of an appeal and, by itself, suffices to demonstrate that the Commission had

25 jurisdiction to conditionally approve the Project here. (*See e.g.*, 11 AR 2768.)

26 In its Revised Findings, the Commission explained:

27 "Section 30625(a) of the Coastal Act provides that an action on a claim of exemption  
28 for any development by a port governing body may be appealed. Section 30625(a)  
also states that the Commission 'may approve, modify or deny such proposed  
development . . .'. In the context of an appeal of the Port's action to exclude  
development, the Commission may approve such a determination, deny it or modify  
it, including a modification where the Commission determines that the development  
is not excluded and requires a permit and then approving a conditional permit to  
mitigation for impacts associated with the proposed development. In this case, . . .  
the Commission modifies the Port's exclusion determination by issuing a permit for  
the proposed development." (11 AR 2790-2791; *see also* 11 AR 2758 (same).)

1 Thus, the fundamental flaw in Petitioners' argument is that it ignores the very  
2 Coastal Act provision which expressly authorized the Commission to "approve" or  
3 "modify" the Project. Petitioners' argument, therefore, is meritless. The Court need not go  
4 further in the analysis.

5 **B. Conditional Approval Based on Appeal of an "Appealable Development."**

6 In addition to appealing the Port's exemption determination, the Commission found  
7 as an alternative basis for appeal jurisdiction that the restaurant project constitutes an  
8 "appealable development." (11 AR 2767-2771.) The Port and Sunroad disagreed because  
9 Section 30715 of the Coastal Act does not support the conclusion that the Project  
10 constitutes as an appealable development. (9 AR 2177.39-42, 10 AR 2516-2517, 2530-  
11 2533, 2672-74.) But, even assuming the Project was separately appealable on that basis,  
12 Section 30625 still provided the Commission with the authority to "approve, modify, or  
13 deny" the development, which, again, was properly exercised here. There is no provision in  
14 the Coastal Act that required the Commission to deny the Project and send it back to the  
15 Port for a port master plan amendment and then the convoluted review and hearing process  
16 that follows from Petitioners' argument.

17 In any event, Section 30715 of the Act specifically identifies the limited category of  
18 developments that remain "appealable" following certification of a port master plan. A  
19 "restaurant" is not one of the appealable developments identified. Section 30715 designates  
20 the following developments as appealable:

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

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

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

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

(5) Oil refineries

(6) Petrochemical production plants.” (Italics added.)

The Commission concluded that restaurants are appealable under Section 30715(a)(4) as “shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes.” (11 AR 2767-2771.) This language, however, does not encompass restaurants. It specifically pertains to retail facilities that are not principally devoted to the sale of commercial goods utilized for water-oriented purposes. In other words – ordinary shopping facilities that do not sell goods for water-oriented purposes are appealable; if they do, they are not appealable. By any reasonable interpretation, a stand-alone restaurant is not a “shopping facility” and does not involve “the sale of commercial goods.” The Commission’s interpretation would expand appellate jurisdiction well beyond the plain language and intent underlying Section 30715(a)(4), and for that reason the Port opposed the interpretation as well. In Section 30715(a)(4), the Legislature used plain terms to describe “office and residential buildings,” “hotels” and “motels.” It knew how to use a plain term to describe “restaurants,” but did not include restaurants, a clear and proper public trust use, as an appealable development.<sup>2</sup>

<sup>2</sup> The staff report inaccurately cited 19 projects, stating that the vast majority of the restaurant projects and all recent ones are listed in the Port Master Plan as appealable. The record demonstrates that 18 of the 19 are not. The Port itself exempted eight restaurants just like the one at issue (2 AR 427-455, 3 AR 624-648), and it approved two CDPs which treated the restaurants proposed there as non-appealable. (2 AR 418-426.) Another eight Commission permits simply included restaurants as part of substantial associated uses that are obviously appealable, such as hotels, an office building, or shopping facility with multiple stores. (6 AR 1214-1319.) Only one project offered support for the Commission’s conclusion, an old Imperial Beach Port Master Plan amendment for a stand-alone restaurant, although it included an unidentified commercial uses on a pier the details of which were included in the administrative record. (7 AR 1607.) While courts generally consider and respect an agency’s interpretation of a statute within its administrative jurisdiction, the Court here is not bound by the Commission’s incorrect interpretation of an unambiguous statute, Section 30715(a)(4), and where the record fails to carry the indicia of reliability that normally requires deference. (*Dept. of Corrections & Rehab v. St. Personnel Bd.* (2013) 215 Cal.App.4<sup>th</sup> 1101, 1108; *Bolsa Chica Land Trust v. California Coastal Com.* (1999) 71 Cal.App.4<sup>th</sup> 493, 507.)

The restaurant project here was not an “appealable development” in any case or required to be on the project list in the Port Master Plan, but even assuming it was, the Commission had express authority in Section 30625 to “approve” and “modify” the Project.

**C. Conditional Approval Based on Retained Commission Jurisdiction.**

Ignoring Section 30625, Petitioners argue, citing Coastal Act sections 30715(a) and 30715.5, that all development proposed in the Port must be listed in the Port Master Plan, and because the restaurant was not specifically listed in the plan, the Commission could not approve it.<sup>3</sup> They argue that both provisions, taken together, prohibit approval of any development that does not appear in the certified plan, and when development does appear in the plan, a CDP may be issued only by the port’s governing body, not the Commission. (Petr. Brief, p. 6.) Petitioners’ argument, albeit erroneous, supports the Commission’s exercise of jurisdiction here.

Section 70715(a) provides in relevant part:

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

///

<sup>3</sup> There is nothing magical about the “project list” in this and other port master plans. Often a project is only referenced in the planning document by brief description, leaving the site-specific considerations to be reviewed first by the Port when considering an application for permit and then by the Commission if an appeal is filed. For example, there are 10 projects listed at the end of Planning District 2 (Harbor Island). (5 AR 1047.) To illustrate the brevity of each project noted, the first project listed, HOTEL COMPLEX: up to 500 rooms, restaurant, cocktail lounge, meeting and conference space; parking; landscape,” is the most detailed description of the projects provided on the “project list.” (*Id.*) The whole point of including an “appealable development” in the project list is to ensure that it is reviewed for consistency with the Chapter 3 policies of the Coastal Act, the same review standard that, as noted in its decision (11 AR 2808), the Commission applied here.

1 Petitioners read the words in the second sentence, "contained in the certified plan,"  
2 to mean that *every* development proposed in a port must be listed in the Port Master Plan.  
3 At the same time, they ignore the first sentence, which states that until a port master plan is  
4 certified, permit jurisdiction remains with the Commission. Consequently, assuming  
5 Petitioners' interpretation was correct (and it is not), development not listed in the plan (*i.e.*,  
6 in their view, not certified) would remain subject to the Commission's *original* permit  
7 jurisdiction. It would not be delegated to the Port at all. Applied here, the Port's exercise  
8 of jurisdiction in the first instance would be irrelevant. The Commission would retain  
9 jurisdiction to conditionally approve the restaurant project.

10 Importantly, however, Petitioners not only ignore the first sentence of Section  
11 30715(a), but wrongly interpret the second sentence. The quoted words, in context, mean  
12 simply that after certification, jurisdiction over developments in the port master plan or  
13 portion thereof that is certified is delegated to the ports, with appeal jurisdiction reserved to  
14 the Commission. As explained by the Court of Appeal in *Coronado Yacht Club v.*  
15 *California Coastal Com.* (1993) 13 Cal.App.4<sup>th</sup> 860, 872:

16 "[U]nder the Act, local governments and port districts prepare local coastal programs  
17 (LCP) and port master plans (PMP) for review and certification by the Commission.  
18 *Once an LCP or PMP is certified by the Commission, permit responsibility transfers*  
19 *from the Commission to . . . port district.* The Commission retains appellate  
jurisdiction over defined areas of the coastal zone covered by the certified LCP's or  
PMP's to ensure consistent application of Act policies on a statewide basis." (Italics  
added; citations omitted.)

20 Nothing in the Coastal Act mandates that every proposed development in a port be  
21 the subject of a port master plan amendment. Section 30711, another provision which  
22 Petitioners ignore, sets forth exactly what is required in a port master plan, including, as  
23 relevant here:

- 24 • "The proposed uses of land and water areas, where known" (§ 30711(a)(1);
- 25 • "Proposed projects listed as appealable in Section 30715 in sufficient detail to  
26 be able to determine their consistency with the policies of Chapter 3  
(commencing with Section 30200) of" the Act (§ 30711(a)(4)); and
- 27 • "[i]nformation in sufficient detail to allow the commission to determine its  
28 adequacy and conformity with the application policies of the" Act  
(§ 30711(a)(6)).

There are four types of developments that may be proposed in the Port here: “excluded” (or exempt) developments, “emergency developments,” “non-appealable” developments, and “appealable” developments, as set forth in Section 30715. (See Port’s CDP Regulations. 5 AR 952-966.) In Section 30711, the Legislature could have stated that a port master plan must include *all* developments, *including exempt, emergency, and non-appealable development*, but instead expressly stated only that “[p]roposed projects listed as appealable in Section 30715” be included. Any other interpretation of the Section would lead to absurdities, such as the opposite result, discussed above, of the one argued by Petitioners – Commission retained jurisdiction. Moreover, if Petitioners were correct, every development, including the most minor developments that indisputably are either “excluded,” “emergency,” or “non-appealable,” would have to be included first included in a port master plan. Minor developments, which often need to move quickly, would thus be subject to the port master plan amendment certification process, and then a further port determination, mired in a lengthy process that could take well in excess of a year. Nothing in the Port chapter of the Coastal Act reflects that the Legislature intended such a result.<sup>4</sup>

**D. The Commission’s Decision to “Approve” and “Modify” the Project on Appeal is Supported by Substantial Evidence in the Record.**

Exercising its jurisdiction to “approve” and “modify” the Project, as provided in Section 30625 of the Act, the Commission found “the development as conditioned will be in conformity with the policies of the certified Port Master Plan and Chapter 3 policies of the Coastal Act.” (11 AR 2783.) The finding is supported by substantial evidence.

<sup>4</sup> Petitioners’ further reference to Section 30715.5 is also misplaced. The provision states that the standard of review for the port governing body is conformity with the certified plan. Clearly, however, the Commission has authority on appeal to act on a project exempted by a port or an appealable development listed in Section 30715, and when it does, under Section 30625, it “may approve, modify, or deny such proposed development.” The standard of review for the Commission is conformity with the certified plan (§ 30625(b)(3)) and, if the project is an appealable development, the review standard additionally is conformity with policies in Chapter 3 of the Coastal Act. (§ 30711(a)(4); 5 AR 992.) Section 30715.5 is irrelevant to the issue of whether the Commission properly exercised its jurisdiction over the restaurant project.



The record demonstrates that the Project is consistent with the “CR” land use designation. The Port Master Plan also acknowledges that “[t]he eastern end of the peninsula is anchored by restaurants, which are uniquely sited on the water’s edge” (5 AR 1043), a statement which describes the former restaurant *and* will continue to accurately describe the Project conditionally approved after it is constructed.

The Port Master Plan’s planning goals include the following: “The Port District will insure physical access to the Bay. . .”, “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 public access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water,” and “views should be enhanced through view corridors, the preservation of panoramas, [and] accentuation of vistas. . . .” (5 AR 1000.) The Chapter 3 policies of the Coastal Act further provide that the “location and amount of new development *should* maintain and enhance public access to the coast . . . .” (§ 30252) and the “scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance” (§ 30251).

Petitioners argue the Project is inconsistent with the Port Master Plan and Coastal Act but do nothing more than cite from the “substantial issue” portion of the Commission’s findings on whether to accept the appeal. They ignore the Commission’s findings on the merits which detail why the Project, as modified and conditioned, is consistent with the Port Master Plan and Coastal Act. (11 AR 2797-2801.) For example, they note the statement in the “substantial issue” discussion that the public currently can walk all along the shoreline in the location of the Project. (Petr’s Brief, pp. 10-11; 11 AR 2778-2882.) But, they ignore the findings on the merits which discuss the substantial modifications made to the Project:

“ . . . [T]he public access improvements proposed on the shoreline side of the restaurant will provide formalized pedestrian access to the views beyond the building, which when combined with the smaller structure on the barge, should improve views overall for pedestrians. There will also be two new formalized public viewing areas on both sides of the property new structure. New lighting, landscaping, and pedestrian walkways on the inland side of the restaurant should also provide a pleasant visual environment. Compared with the original project approved by the Port, the current proposal creates a wider opening between the

1 existing Island Prime restaurant and the proposed new restaurant and shifts the angle  
2 of the proposed south restaurant wall further to the north to open views in this area.  
3 The proposed project also includes more expansive hardscape between the existing  
4 and new restaurants to make the area more inviting to the public.” (11 AR 2801.)

5 The record includes substantial evidence – revised plans, color renderings, and other  
6 details (3 AR 650-661, 663-686) – which readily supports the Commission’s finding that,  
7 as modified and conditioned, the Project is consistent with the Port Master Plan and Coastal  
8 Act policies. Absolutely no evidence was produced to the contrary.

9 Petitioners erroneously assert that the Port Master Plan “designates the east end of  
10 east Harbor Island where the Project is to be located, as vacant.” (Petr. Brief, p. 8, lines 1-  
11 2.) First, the Plan does not “designate” the Sunroad leasehold as “vacant.” The leasehold’s  
12 land use designation is “CR,” which permits a restaurant use. (5 AR 1009, 1045.) The Plan  
13 also characterizes the *status* of the east end of Harbor Island as vacant, except for the  
14 marina leasehold and the restaurants which “anchor” the eastern end of the peninsula. (5  
15 AR 1042-1043.) Beyond that, a site’s status as “vacant” has no land use policy  
16 significance. Indeed, including this Project on the list of “appealable developments” would  
17 not change that; the east end of Harbor Island would still be “vacant,” except for the marina  
18 leasehold and the restaurants uniquely sited at the water’s edge.

19 *Security National Guaranty v. California Coastal Com.* (“SNG”) (2008) 159  
20 Cal.App.4<sup>th</sup> 402, does not help Petitioners. There, the Commission declared property to be  
21 an environmentally sensitive habitat area (“ESHA”) and denied a permit on appeal despite  
22 the local coastal program (“LCP”) which stated there was no ESHA on the property. The  
23 Court held the Commission could not “amend” the LCP to designate ESHA in the context  
24 of a permit appeal. (*Id.* at 422-423.) The Coastal Act strictly limits uses in ESHA, a  
25 coastal resource. (§ 30240(a); *Bolsa Chica Land Trust, supra*, 71 Cal.App.4<sup>th</sup> at 506-507.)  
26 The status of property in the Port as “vacant” or “undeveloped” does not, by itself,  
27 implicate any Coastal Act or Port Master Plan resource policy. It is merely a typical status  
28 of property the future development of which is to be guided by the policies of the Port  
Master Plan and, if an “appealable development,” by the policies of the Coastal Act.

**E. Petitioners and the Public Had Ample Opportunity to Provide Input.**

Petitioners further assert that if there had been a Port Master Plan amendment process, the public could have provided input on how best to provide public access and protect public views. (Petr. Brief, p. 11.) This is an empty argument. Once the appeals were filed and the initial “substantial issue” staff report was issued, Petitioners and the public had five months to provide written input or oral testimony on these issues. Once the final staff report was issued noting the substantial project changes made to the Project, neither public nor Petitioners raised any issue at all.<sup>5</sup> The appeal process provided the very opportunity that Petitioners complain was absent here. This further argument is meritless.

**IV. THE COMMISSION COMPLIED WITH CEQA**

Lastly, Petitioners erroneously claim the Commission violated CEQA by not considering alternatives. (Petr. Brief, pp. 12-14.) This, too, is frivolous.

Under CEQA and the CEQA Guidelines, the Commission is exempt from the requirement of preparing initial studies, negative declarations and EIRs. (§ 21080.5(a); Tit. 14 Cal. Code Regs., § 15251(c).) Its findings are the “functional equivalent” of an EIR for purposes of CEQA. (*Ross v. California Coastal Com.* (2011) 199 Cal.App.3d 900, 931.)

The Commission clearly considered and adopted alternatives to the Project. First, as it noted, Sunroad made “substantial revisions to the proposed project to provide public access along the shoreline,” including “a public deck/path around the east (water side) of the project, between the proposed new restaurant structure and the barge, allowing “the public continuous access to and along the shoreline, as well as access to views of the water and the downtown skyline.” (11 AR 2753.) Further, the Commission imposed Special

---

<sup>5</sup> In a footnote (fn. 11), Petitioners erroneously state the Commission made “the totality of the changes . . . after its public hearing had closed.” (Italics added.) The only change made after the close of the public hearing was to Special Condition #13, dealing with public access to the event barge. Petitioners also assert the record lacks substantial evidence to show that impacts were reduced to a level of insignificance or that no further mitigation measures were feasible. (Petr. Brief, p. 11.) These issues were not raised before the Commission and thus are barred by the exhaustion doctrine. (§ 21177; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197-1198.)

1 Condition #13 to ensure public access to and on the event barge. (11 AR 2753, 2789.) It  
2 found that "there are no feasible alternatives or mitigation measures available which would  
3 substantially lessen any significant adverse impact which the activity may have on the  
4 environment." (11 AR 2809.) That finding is supported by substantial evidence.

5 At the close of the public hearing, Petitioners' counsel stated only:

6 "Let me also say that there's no evidence in the record that there is no alternative to  
7 what they're proposing, namely putting another barge that is a restaurant out there.  
8 Obviously they did it before, they could do it again. There's nothing in the record to  
indicate they couldn't do it, and that is the Commission's burden and the developer's  
burden." (11 AR 2687-88.)

9 The "Put it Back" alternative was absurd. It would not have required a CDP at all.  
10 Under the "Replacement or Reconstruction" exemption in *both* Section 8.b(1) of the Port's  
11 certified CDP regulations (5 AR 953-954) *and* the CEQA Guidelines (Tit. 14 Cal. Code  
12 Regs., § 15302(b)), Sunroad could have put back a "Reuben E. Lee" or another restaurant  
13 on a barge without a permit, new public access, or new sweeping public views. An  
14 alternative must "substantially lessen a significant adverse impact that the activity may have  
15 on the environment." (§ 21080.5(d)(2)(A).) Petitioners' "alternative" would do just the  
16 opposite. Any viable restaurant sitting on a barge would block views of downtown San  
17 Diego, the Bay, the Bridge, and Coronado. (11 AR 2576, 2581, 2587.) Moreover,  
18 counsel's generalized objection, without further explanation, made at the close of the public  
19 hearing, was barred in any event barred by the exhaustion doctrine. (§ 21177; *Citizens for*  
20 *Responsible Equitable Environmental Dev. v. City of San Diego* (2011) 196 Cal.App.4<sup>th</sup>  
21 515, 527; *Coalition for Student Action, supra*, 153 Cal.App.3d at 1197-1198.)

22 **VI. CONCLUSION**

23 Accordingly, for all the foregoing reasons, Sunroad respectfully requests the Court  
24 deny the writ petition and all relief sought by Petitioners.

25 Dated: March 3, 2014

RICHARDS, WATSON & GERSHON  
A Professional Corporation

26 By:

27 STEVEN H. KAUFMANN  
Attorneys for Defendants and Real Parties in  
28 Interest SUNROAD ENTERPRISES AND  
SUNROAD HARBOR ISLAND, INC.

**PROOF OF SERVICE**

I, Marcella Sanchez, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On March 3, 2014, I served the within document(s) described as:

**MEMORANDUM OF POINTS AND AUTHORITIES OF SUNROAD ENTERPRISES AND  
SUNROAD HARBOR ISLAND, INC., IN OPPOSITION TO PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

on the interested parties in this action as stated below:

Cory J. Briggs  
Mekaela M. Gladden  
Anthony N. Kim  
BRIGGS LAW CORPORATION  
99 East "C" Street, Suite 111  
Upland, California 91786  
[Cory@briggslawcorp.com](mailto:Cory@briggslawcorp.com)  
[mekaela@briggslawcorp.com](mailto:mekaela@briggslawcorp.com)  
[anthonyv@briggslawcorp.com](mailto:anthonyv@briggslawcorp.com)

Attorneys for Petitioners

Michael Hogan  
Hogan Law, APC  
225 Broadway Street, Suite 1900  
San Diego, California 92101  
[mhogan@hgdllaw.com](mailto:mhogan@hgdllaw.com)

Attorneys for Respondent San Diego  
Unified Port District

Baine P. Kerr  
Deputy Attorney General  
California Department of Justice  
300 S. Spring Street, Suite 1702  
Los Angeles, CA 90013  
[Baine.kerr@doj.ca.gov](mailto:Baine.kerr@doj.ca.gov)  
213-620-2210

Attorneys for Respondent California Coastal  
Commission

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ (BY E-MAIL) By transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth above.

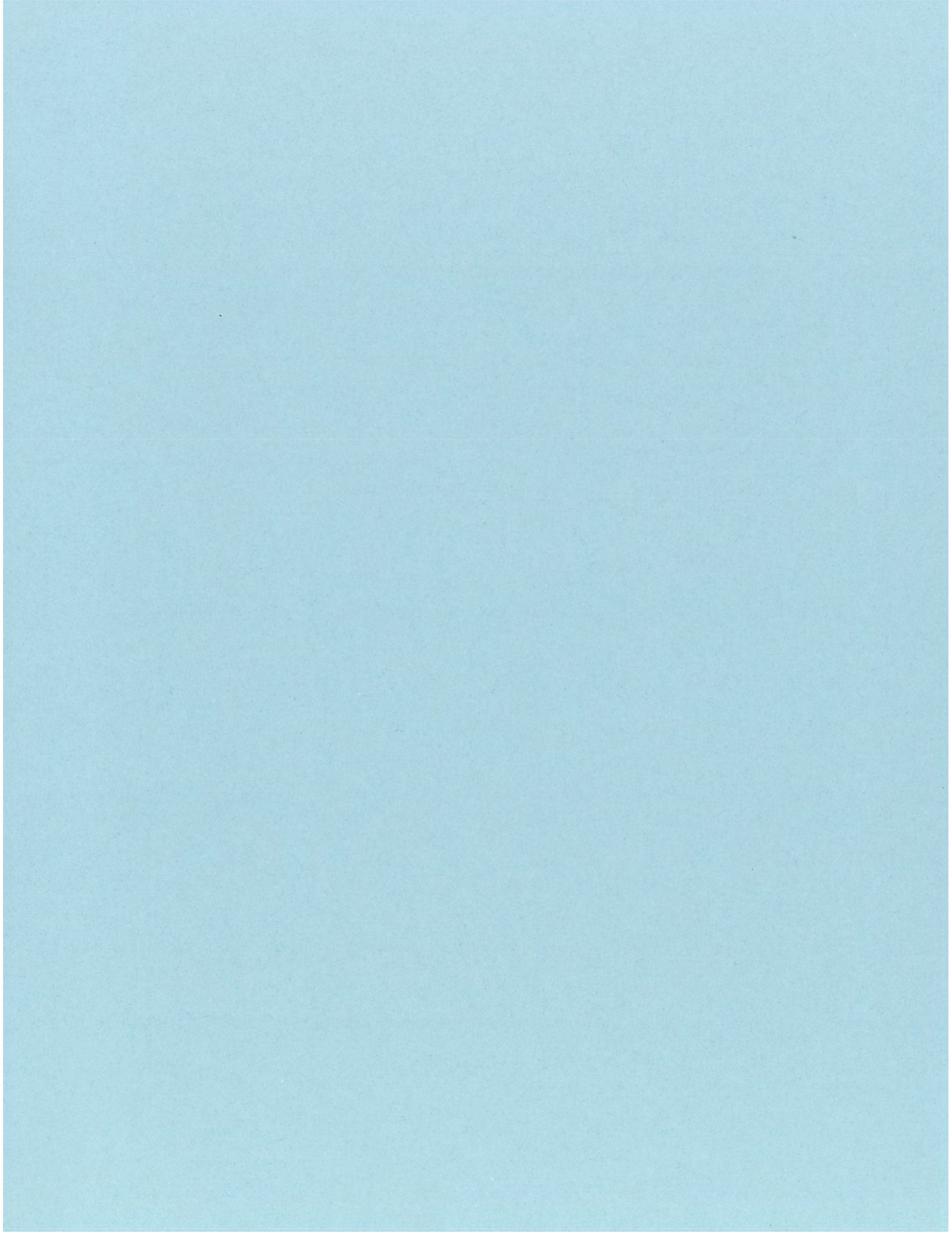
1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed on March 3, 2014, at Los Angeles, California.

4 Marcella Sanchez  
(Type or print name)

Marcella Sanchez  
(Signature)







1 THOMAS R. RUSSELL (SBN 108607)  
2 REBECCA HARRINGTON (SBN 245167)  
3 OFFICE OF THE PORT ATTORNEY  
4 SAN DIEGO UNIFIED PORT DISTRICT  
5 P.O. Box 120488  
6 San Diego, CA 92112-0488  
7 Tel: (619) 686-6422  
8 Fax: (619) 686-6444

**EXEMPT FROM FEES  
[GOV. CODE § 6103]**

6 MICHAEL M. HOGAN (SBN 95051)  
7 HOGAN LAW APC  
8 225 Broadway, Suite 1900  
9 San Diego, CA 92101  
10 Tel: (619) 687-0282  
11 Email: mhogan@hoganlawapc.com

12 Attorneys for Defendant and Respondent  
13 SAN DIEGO UNIFIED PORT DISTRICT

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

16 SAN DIEGANS FOR OPEN GOVERNMENT and )  
17 SAN DIEGO NAVY BROADWAY COMPLEX )  
18 COALITION,

19 Plaintiffs and Petitioners,

20 v.

21 CALIFORNIA COASTAL COMMISSION; SAN )  
22 DIEGO UNIFIED PORT DISTRICT; and DOES 1 )  
23 through 100,

24 Defendants and Respondents.

25 **SUNROAD ENTERPRISES; SUNROAD**  
26 **HARBOR ISLAND, INC.; and DOES 101 through**  
27 **1,000,**

28 Defendants and Real Parties in  
Interest.

Case No. 37-2013-00057492-CU-  
TT-CTL

**RESPONDENT SAN DIEGO  
UNIFIED PORT DISTRICT'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
AMENDED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF, ETC.**

Judge: Hon. Ronald S. Prager

Date: April 22, 2014  
Time: 10:00 a.m.  
Dept.: C-71

Respondent San Diego Unified Port District respectfully invites the Court's attention to the following brief in opposition to the amended petition for writ of mandate filed by petitioners San Diegans for Open Government and San Diego Navy Broadway Complex Coalition.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF CONTENTS

INTRODUCTION .....	1
STATEMENT OF FACTS .....	1
I.    PETITIONERS' CLAIMS AGAINST THE PORT DISTRICT ARE BARRED BY THE EXHAUSTION DOCTRINE BECAUSE ITS DECISION CONCERNING THE PROJECT WAS NOT A FINAL ADMINISTRATIVE ACTION .....	2
II.   THE PETITION SHOULD BE DENIED BECAUSE THE COASTAL COMMISSION HAD JURISDICTION OVER THE PROJECT .....	5
A.   The Coastal Commission Had Jurisdiction To Approve, Modify Or Deny The Project Pursuant To Public Resources Code Section 30625 .....	5
B.   The Port Master Plan Did Not Need To Be Amended Because It Already Designated The Project Site For Restaurant Use .....	6
C.   The Court Does Not Need Address The Question Whether A Restaurant Is An Appealable Or A Non-Appealable Development Under The Coastal Act .....	9
III.  THE PETITION SHOULD BE DENIED BECAUSE THE COASTAL COMMISSION'S FINDING THAT THE PROJECT IS CONSISTENT WITH THE COASTAL ACT IS SUPPORTED BY SUBSTANTIAL EVIDENCE .....	10
IV.  THE PETITION SHOULD BE DENIED BECAUSE THE COASTAL COMMISSION COMPLIED WITH CEQA .....	12
A.   The Coastal Commission Considered Feasible Alternatives To The Project .....	12
B.   The Coastal Commission's Findings Regarding Alternatives Are Supported by Substantial Evidence .....	14
CONCLUSION .....	15

## TABLE OF AUTHORITIES

### Cases

<i>California Native Plant Society v. City of Santa Cruz</i> (2009) 177 Cal.App.4th 957 .....	14
<i>Citizens for Responsible Equitable Environmental Development v. City of San Diego</i> (2011) 196 Cal.App.4th 515 .....	11, 15
<i>Coastal Southwest Development Corp. v. California Coastal Zone Conservation Comm.</i> (1976) 55 Cal.App.3d 525 .....	11
<i>Coronado Yacht Club v. California Coastal Comm.</i> (1993) 13 Cal.App.4th 860 .....	5
<i>Defend the Bay v. City of Irvine</i> (2004) 119 Cal.App.4th 1261 .....	11
<i>Kaczorowski v. Mendocino County Bd. Of Supervisors</i> (2001) 88 Cal.App.4th 564 .....	3
<i>Laurel Heights Improvement Assn. v. Regents of the University of California</i> (1988) 47 Cal.3d 376 .....	11
<i>Mansell v. Board of Administration</i> (1994) 30 Cal.App.4th 539 .....	4
<i>McAllister v. County of Monterey</i> (2007) 147 Cal.App.4th 253 .....	2, 3, 4
<i>Mount Shasta Bioregional Ecology Center v. County of Siskiyou</i> (2012) 210 Cal.App.4th 184 .....	14
<i>Ross v. California Coastal Comm.</i> (2011) 199 Cal.App.4th 900 .....	11, 13
<i>Security National Guaranty, Inc. v. California Coastal Comm.</i> (2008) 159 Cal.App.4th 402 .....	3, 6, 7, 8
<i>Sequoyah Hills Homeowners Assn. v. City of Oakland</i> (1994) 23 Cal.App.4th 704 .....	8
<i>South County Citizens for Smart Growth v. County of Nevada</i> (2013) 221 Cal.App.4th 316 .....	13
<i>Tracy First v. City of Tracy</i> (2009) 177 Cal.App.4th 912 .....	11, 14

### Statutes

California Code of Regulations, Title 14	
Section 15252 .....	13

1 Public Resources Code

2	Section 21080.5 .....	13
3	Section 30625 .....	3, 5, 6, 10
4	Section 30711 .....	6, 9
5	Section 30715 .....	6, 9, 10

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2

6

## 19

20

25

27

1 Coastal Act ("Coastal Act") and the California Environmental Quality Act ("CEQA") and found  
2 the Project qualified for an exclusion from the Coastal Act's permitting requirements and an  
3 exemption from CEQA review because the Project would have substantially the same purpose  
4 and capacity as the existing restaurant and the Project site was designated for restaurant use  
5 in the Port Master Plan. (1 AR 6-7, 22-51.)

6 The Port District's decision was appealed to the Coastal Commission, which determined  
7 the appeal raised a substantial issue. (7 AR 1494, 1504, 1515; 11 AR 2641, 2653.) The  
8 Coastal Commission thus undertook de novo review of Sunroad's application and prepared  
9 a detailed report analyzing the Project's potential environmental effects and recommending  
10 modifications to the Project which would reduce or avoid any significant impacts and would  
11 ensure consistency with the public access, public recreation and public view policies of the  
12 Coastal Act. (8 AR 1788-1846.) Sunroad agreed to the modifications and, after considering  
13 the staff report and public testimony at the de novo hearing, the Coastal Commission  
14 unanimously voted to approve a CDP for the modified project on June 12, 2013. (11 AR 2642-  
15 2749.) On September 11, 2013, the Coastal Commission adopted revised findings in support  
16 of its decision. (11 AR 2750-2820.)

17 I.

18 **PETITIONERS' CLAIMS AGAINST THE PORT DISTRICT ARE BARRED BY THE**  
19 **EXHAUSTION DOCTRINE BECAUSE ITS DECISION CONCERNING**  
20 **THE PROJECT WAS NOT A FINAL ADMINISTRATIVE ACTION.**

21 The doctrine of exhaustion of administrative remedies provides that only a final  
22 administrative decision is subject to judicial review. The Port District's decision concerning the  
23 Project was appealed to the Coastal Commission, which considered the matter de novo and  
24 approved a CDP for the Project. The Coastal Commission's action superceded the decision  
25 of the Port District and became the final administrative action on the Project. As a result, the  
26 Port District's decision was an intermediate decision which is not subject to judicial review.

27 A party must exhaust its administrative remedies before seeking relief in the courts.  
28 (*McAllister v. County of Monterey* (2007) 142 Cal.App.4th 253, 274-275.) Under the

1 exhaustion doctrine, a petitioner must obtain a final decision on the merits at the highest  
2 available administrative level before seeking judicial review. (*Id.* at p. 284-285.) Even where  
3 questions concerning the agency's jurisdiction are presented, the exhaustion doctrine bars  
4 judicial review until there is a final administrative decision. (*Id.* at p. 276; *Security National*  
5 *Guaranty, Inc. v. California Coastal Comm.* (2008) 159 Cal.App.4th 402, 415.)

6 Where the decision of a local agency is appealable to the Coastal Commission, the  
7 Coastal Commission must hear the appeal unless it determines that no "substantial issue"  
8 exists. (Pub. Res. Code § 30625(b)(2).) If it determines a substantial issue exists, the Coastal  
9 Commission reviews the permit application de novo: "in effect, the Commission hears the  
10 application as if no local governmental unit was previously involved, deciding for itself whether  
11 the proposed project satisfies legal standards and requirements." (*Kaczorowski v. Mendocino*  
12 *County Bd. Of Supervisors* (2001) 88 Cal.App.4th 564, 569.) The Coastal Commission's  
13 decision "takes the place of and completely nullifies" the local agency's determination. (*Ibid.*)

14 This principle was applied in circumstances nearly identical to those here in *McAllister*  
15 *v. County of Monterey, supra*, 142 Cal.App.4th 253, where the petitioner opposed the county's  
16 issuance of a coastal development permit for a residential project. At the same time he  
17 appealed the county's decision to the Coastal Commission, the petitioner filed a petition for  
18 writ of mandate in the Superior Court alleging the county failed to comply with CEQA. (*Id.* at  
19 pp. 265-266.) As here, the Coastal Commission found the appeal raised a substantial issue,  
20 considered the permit application de novo, and granted the permit with conditions after the  
21 applicant agreed to modify the project. (*Id.* at p. 267.)

22 The Court of Appeal upheld the trial court's denial of the petition for writ of mandate on  
23 the ground that, among other things, the county's decision was superceded by the Coastal  
24 Commission appeal:

25 With the Coastal Commission's decision to accept the administrative appeal,  
26 the County's CEQA determinations were converted into intermediate  
27 decisions, lacking in finality. "When, in the course of hearing that appeal, the  
28 Commission found a 'substantial issue,' it then heard the entire permit  
application de novo. The scope of that hearing decisively affects the status  
of the [County] and the Commission: 'A hearing de novo literally means a  
new hearing, or a hearing the second time. [Citation.] Such a hearing



1 contemplates an entire trial of the controversial matter in the same manner  
2 in which the same was originally heard. It is in no sense a review of the  
3 hearing previously held, but is a complete trial of the controversy, the same  
4 as if no previous hearing had ever been held . . . . The decision therein . . .  
5 takes the place and completely nullifies the former determination of the  
6 matter." (*Kaczorowski v. Mendocino County Bd. Of Supervisors, supra*, 88  
7 Cal.App.4th at p. 569, quoting *Collier & Wallis, Ltd. v. Astor* (1937) 9 Cal.2d  
8 202, 205 [70 P.2d 171].) "Once the Commission conducted its de novo  
9 examination, there was no longer a decision by the [County] to review."  
10 (*ibid.*)

11 (*Id.* at p. 294.) Since the Coastal Commission's decision was the final step in the  
12 administrative proceedings, the court held the county's decision was merely an intermediate  
13 determination and was not a proper subject for judicial review. (*Id.* at p. 296.)

14 Petitioners admit the facts which establish that the Port District's decision was not the  
15 final administrative decision on the Project. The Port District initially determined the Project  
16 was exempt from the Coastal Act's permit requirements and CEQA review. (Petitioners'  
17 Opening Brief ["POB"], p. 3; see also 1 AR 19-20.) The Port District's decision was appealed  
18 to the Coastal Commission, which found a substantial issue existed. (POB, pp. 3, 8 fn. 4; see  
19 also 7 AR 1494, 1505, 1515; 11 AR 2653.) The Coastal Commission heard the matter de  
20 novo and approved issuance of a CDP, with conditions, after Sunroad agreed to modify the  
21 Project. (POB, p. 4; see also 11 AR 2642-2749, 2750-2809.)

22 There is no dispute that the Port District's decision concerning the Project was  
23 superceded by the Coastal Commission's action. As a result of the Coastal Commission  
24 appeal, the Port District's decision is merely an intermediate determination which is not subject  
25 to judicial review.<sup>2</sup> Therefore, Petitioners' claims against the Port District are barred by the  
26 exhaustion doctrine.

27 ///

---

28 <sup>2</sup> Petitioners implicitly admit the Port District's decision concerning the Project is  
not a proper subject for judicial review. Only one subheading in Petitioners' opening brief  
claims the Port District violated the Coastal Act (POB, p. 5, l. 15), and Petitioners do not  
provide any argument or authorities to support it or any other claim against the Port District.  
This omission provides a separate basis for dismissing Petitioners' claims against the Port  
District because claims not supported by argument or authorities are deemed abandoned.  
(*McAllister v. County of Monterey, supra*, 142 Cal.App.4th at pp. 278-279; *Mansell v. Board  
of Administration* (1994) 30 Cal.App.4th 539, 545-546.)

1 II.

2 THE PETITION SHOULD BE DENIED BECAUSE THE COASTAL COMMISSION  
3 HAD JURISDICTION OVER THE PROJECT.

4 Petitioners contend the Coastal Commission did not have jurisdiction to issue the CDP  
5 because the Project was not identified in the Port Master Plan. (POB, pp. 6-10.) Petitioners  
6 are wrong for three reasons. First, Public Resources Code section 30625(a) expressly  
7 authorized the Coastal Commission to approve, modify or deny the Project in resolving the  
8 appeal of the Port District's exemption determination. Second, the Port Master Plan already  
9 identified the Project site for restaurant use. Third, the Coastal Act did not require the Project  
10 to be any more specifically identified in the Port Master Plan.

11 A. The Coastal Commission Had Jurisdiction To Approve, Modify Or Deny  
12 The Project Pursuant To Public Resources Code Section 30625.

13 The Coastal Commission's determination to issue a CDP for the Project was not a de  
14 facto amendment of the Port Master Plan which it lacked jurisdiction to approve. To the  
15 contrary, the Coastal Commission's action was expressly authorized by section 30625(a) of  
16 the Coastal Act, which provides, in pertinent part, that "any appealable action on a . . . claim  
17 of exemption for any development by a . . . port governing body may be appealed to the  
18 commission . . . . The commission may approve, modify, or deny such proposed development  
19 . . . ." (Pub. Res. Code § 30625(a).) Once it determined a substantial issue existed, the  
20 Coastal Commission had jurisdiction to hear the appeal and to take the action authorized in  
21 section 30625(a). (*Coronado Yacht Club v. California Coastal Comm.* (1993) 13 Cal.App.4th  
22 860, 872-873.)

23 Petitioners acknowledge the Port District's exemption determination was appealed to  
24 the Coastal Commission and "the Coastal Commission appropriately determined 'a substantial  
25 issue' exists." (POB, p. 8, ll. 25-28.) They also acknowledge that section 30625 authorizes  
26 an appeal of an exemption determination. (POB, p. 8, ll. 26-28.) However, Petitioners ignore  
27 the language in section 30625(a) which expressly authorizes the Coastal Commission "to  
28 approve, modify, or deny" a proposed development in the course of such an appeal.

1 The Coastal Commission's reliance on section 30625(a) was no secret. In both the  
2 staff report (8 AR 1795-1796) and the revised findings adopted in support of its action, the  
3 Coastal Commission specifically identified section 30625(a) as the source of its authority to  
4 approve a CDP for the Project:

5 Section 30625(a) of the Coastal Act provides that an action on a claim of  
6 exemption for any development by a port governing body may be appealed.  
7 Section 30625(a) also states that the Commission "may approve, modify or  
8 deny such proposed development . . . ." In the context of an appeal of the  
9 Port's action to exclude development, the Commission may approve such a  
10 determination, deny it or modify it, including a modification where the  
Commission determines that the development is not excluded and requires  
a permit and then approving a conditional permit to mitigate for impacts  
associated with the proposed development. In this case, as discussed  
further below, the Commission modifies the Port's exclusion determination  
by issuing a permit for the proposed development.

11 (11 AR 2790-2791.)

12 Section 30625(a) clearly empowered the Coastal Commission to approve a CDP for  
13 the Project. Petitioners' silence with respect to section 30625(a) implicitly confirms the Coastal  
14 Commission had jurisdiction to take such action. Accordingly, Petitioners' claim regarding lack  
15 of jurisdiction should be denied.

16 **B. The Port Master Plan Did Not Need To Be Amended Because It Already**  
17 **Designated The Project Site For Restaurant Use.**

18 Petitioners' claim that the Coastal Commission had no jurisdiction over the Project is  
19 based on their assumption that a Port Master Plan amendment was needed to specifically call  
20 out the Project. This assumption is erroneous because the Port Master Plan already identified  
21 the Project site for restaurant use.

22 Section 30711(a) of the Coastal Act requires the Port Master Plan to include, among  
23 other things, "[t]he proposed **uses** of land and water areas, where known" and "[p]roposed  
24 projects listed as appealable in Section 30715." [Emphasis added.] (Pub. Res. Code §  
25 30711(a)(1), (4).)<sup>3</sup> The case relied on by Petitioners, *Security National Guaranty, Inc. v.*  
26 *California Coastal Comm.*, *supra*, 159 Cal.App.4th 402, makes clear that land use plans

---

27 <sup>3</sup> The requirement in section 30715 to include projects listed as "appealable" in  
28 the Port Master Plan is discussed below in section II.C.

1 required under the Coastal Act need not be up-to-date in all respects nor updated every time  
2 a local agency receives a permit application:

3 To the extent that the Commission appears to argue that its ESHA  
4 designation is somehow justified because the Sand City [Local Coastal Plan]  
5 was outdated, that argument was answered by the California Supreme Court  
6 in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.  
7 In that case, the court held that in approving a development project a local  
8 government was not required to demonstrate that "the conclusions in the  
9 LCP still 'relate to current conditions.'" (*Id.* at p. 574.) The court explained  
10 that requiring "a reexamination of basic land-use policy with every permit  
11 application would impose an unnecessary and wasteful burden on local  
12 governments." (*Ibid.*)

13 (*Id.* at p. 422, n. 10.)

14 The linchpin of Petitioners' claim is their assertion that "the Port Master Plan designates  
15 the east end of east Harbor Island, where the Project is to be located, as 'vacant.'" (POB, p.  
16 8, ll. 1-2 and p. 9, ll.2-6.) Petitioners selected the word "vacant" from an introductory sentence  
17 in the Harbor Island Precise Plan which provides, in full, as follows: "The east end of the  
18 Harbor Island peninsula is vacant and thus offers development potential uncomplicated by the  
19 presence of structures or lease interest." (5 AR 1042.) This sentence is obviously outdated  
20 and did not accurately reflect the existing development and leaseholds on East Harbor Island  
21 at the time Sunroad applied for permission to implement the Project.<sup>4</sup>

22 The existing development on East Harbor Island is accurately described on the next  
23 page of the Port Master Plan, which Petitioners conveniently neglect to mention. With respect  
24 to the east end of Harbor Island, where the Project site is located, the Port Master Plan  
25 described the existing uses as follows:

26 A marina of approximately 550 slips is located adjacent to the hotel and  
27 occupies most of the basin. The eastern end of the peninsula is anchored  
28 by restaurants, which are uniquely sited on the water's edge.

(5 AR 1043.) The restaurants referred to in the Port Master Plan are the Reuben E. Lee,  
located on the waterside portion of Sunroad's leasehold, and Island Prime, located landside

---

<sup>4</sup> The statement that the east end of Harbor Island was "uncomplicated by the  
presence of structures or lease interest" did not reflect Sunroad's existing lease of the site on  
which the two restaurants are located. (1 AR 4.)

1 and adjacent to the Project site. (1 AR 4 ["The site is improved with two restaurants, the Island  
2 Prime and the REL, as well as parking areas and landscaping"].)

3 The Port Master Plan also identified restaurants as an allowable use on the Project site.  
4 The Precise Plan for East Harbor Island designated the site for "Commercial Recreation" uses.  
5 (5 AR 1045; see also 1 AR 22-23.) The Commercial Recreation designation specifically  
6 included restaurants. (5 AR 1009 ["The Commercial Recreation category includes hotels,  
7 restaurants . . . ."].)

8 Petitioners may attempt to rehabilitate the "no jurisdiction" claim in their reply papers  
9 by objecting to the inconsistency between the Port Master Plan's outdated reference to the  
10 east end of Harbor Island as "vacant" and its accurate identification of the two restaurants at  
11 the water's edge in that area. However, land use plans like the Port Master Plan need not be  
12 up-to-date in every respect (*Security National Guaranty, Inc. v. California Coastal Comm.*,  
13 *supra*, 159 Cal.App.4th at p. 422, n. 10) nor internally consistent in every detail (*Sequoyah*  
14 *Hills Homeowners Assn. v. City of Oakland* (1994) 23 Cal.App.4th 704, 717-718.)

15 Petitioners also may argue the Project should be listed in the Port Master Plan because  
16 it represents new development on the Project site. This argument would fail, however,  
17 because the Project proposes *redevelopment* of the Project site for the same use already  
18 designated and described in the Port Master Plan. (1 AR 3-13; 5 AR 1043, 1045.) The  
19 Project would replace the existing Reuben E. Lee restaurant with a restaurant of substantially  
20 the same size, capacity and purpose, reducing the barge from four stories to one story and  
21 moving most of the restaurant facilities to a new building on the adjacent land. (1 AR 3-13,  
22 27, 32.) An amendment to the Port Master Plan to identify the new landside portion of the  
23 Project is unnecessary because the Port Master Plan already provided for two restaurants on  
24 the water's edge at the east end of Harbor Island. (5 AR 1043.)

25 Petitioners' claim that the Coastal Commission lacked jurisdiction to approve the CDP  
26 is contrary to the law and the facts. The Coastal Act requires the Port Master Plan to identify  
27 the proposed uses of land and water areas and does not require an amendment to the Port  
28 Master Plan for every development proposal. Contrary to Petitioners' claim, the Port Master

1 Plan already identifies restaurants as an allowable use on the Project site and indicates that  
2 two restaurants are located there. The redevelopment of one of those restaurants did not  
3 require an amendment to the Port Master Plan.

4 **C. The Court Does Not Need Address The Question Whether A Restaurant Is**  
5 **An Appealable Or A Non-Appealable Development Under The Coastal Act**

6 Petitioners seek to bolster their claim that the Coastal Commission lacked jurisdiction  
7 to approve the CDP by asserting that "Coastal Commission staff acknowledged that a Port  
8 Master Plan Amendment should have been done." (POB, p. 9, ll. 21-26.) However, the staff's  
9 opinion about whether a stand-alone restaurant should be listed in the Port Master Plan does  
10 not constitute legal authority for Petitioners' claim that the Coastal Commission did not have  
11 jurisdiction to approve a CDP for the Project.

12 Section 30711(a) of the Coastal Act identifies what information must be included in the  
13 Port Master Plan. Among other things, the Port Master Plan must include "[p]roposed projects  
14 listed as appealable in Section 30715." (Pub. Res. Code § 30711(a)(4).) Section 30715 does  
15 not require the Port Master Plan to include non-appealable projects.

16 Section 30715(a) of the Coastal Act identify the categories of projects which are  
17 appealable. (Pub. Res. Code § 30715(a)(1)-(6).) Restaurants are *not* identified as appealable  
18 projects in section 30715(a). For this reason, the Port District has long determined that stand-  
19 alone restaurants are non-appealable projects which are not required to be included in the  
20 Port Master Plan. (10 AR 2382-2385.)

21 Coastal Commission staff disagree and consider restaurants to be "shopping facilities,"  
22 a type of appealable project identified in section 30715(a), subdivision (4). (8 AR 1803-1808.)  
23 However, section 30715(a)(4) refers to "shopping facilities not principally devoted to the sale  
24 of commercial goods utilized for water-oriented purposes." As the Port District has informed  
25 Coastal Commission staff, the plain meaning of the statutory language does not support their  
26 interpretation (10 AR 2384).

27 The staff's interpretation also was rejected by several members of the Coastal  
28 Commission at the de novo hearing on the Project. Commissioner Mitchell emphasized that

1 "shopping facilities not principally devoted to the sale of commercial goods utilized for water-  
2 oriented purposes is not a restaurant. A restaurant is a restaurant." (11 AR 2705.)  
3 Commissioner McClure stated she "would have a hard time calling [a restaurant] a shopping  
4 facility" and that an "attempt to stretch that definition of a shopping facility is a little too broad  
5 for where we should be." (11 AR 2717-2718.) Commissioner Vargas considered staff's  
6 interpretation "a shortcutting of the rules on the Section 7015" and recommended the Coastal  
7 Commission "review our own staff policy in terms of using, lumping restaurants into this as an  
8 appealable item." (11 AR 2720-2721.) Thereafter, Coastal Commission staff informed the  
9 Port District that they "recognize there is significant disagreement on this point and would  
10 recommend further communication to try and reach an understanding as to interpretation of  
11 Section 30715 in future decisions." (11 AR 2822.)

12 Petitioners' reliance on the Coastal Commission staff's opinion is misplaced. The Court  
13 need not address the question whether a stand-alone restaurant is an appealable or non-  
14 appealable development which must be listed in the Port Master Plan because section  
15 30625(a) of the Coastal Act expressly authorized the Coastal Commission to approve, modify  
16 or deny a CDP for the Project. Since the Coastal Commission had jurisdiction to approve the  
17 CDP under section 30625(a), the petition for writ of mandate should be denied.

### 18 III.

#### 19 THE PETITION SHOULD BE DENIED BECAUSE THE COASTAL COMMISSION'S 20 FINDING THAT THE PROJECT IS CONSISTENT WITH THE COASTAL ACT 21 IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

22 Petitioners claim the Project is inconsistent with the public access policies of the  
23 Coastal Act. (POB, p. 10.) This claim fails because substantial evidence in the record  
24 supports the Coastal Commission's determination that the Project is consistent with the  
25 Coastal Act's public access policies. Petitioners' failure to discuss the evidence favorable to  
26 the Coastal Commission's finding is fatal to their claim.

27 Petitioners acknowledge their Coastal Act consistency claim is subject to the substantial  
28 evidence test. (POB, p. 11, ll. 6-9.) Under the substantial evidence test, an agency's decision

1 is presumed correct and the petitioner bears the burden of proving there is no substantial  
2 evidence which supports it. (*Ross v. California Coastal Comm.* (2011) 199 Cal.App.4th 900,  
3 921.) The court must uphold an agency's decision if there is any substantial evidence in the  
4 record to support it. (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.)  
5 All reasonable doubts must be resolved in favor of the agency's decision. (*Laurel Heights*  
6 *Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 393.)

7 In a substantial evidence challenge, the petitioner must lay out all of the evidence on  
8 a point, not merely its own evidence. (*Citizens for Responsible Equitable Environmental*  
9 *Development* [*'CREED'*] *v. City of San Diego* (2011) 196 Cal.App.4th 515, 529.) The petitioner  
10 must discuss the evidence supporting the agency's position and show why it is lacking. (*Tracy*  
11 *First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934.) A failure to do so is deemed a  
12 concession that the evidence supports the agency's finding and is fatal to the petitioner's  
13 claim. (*CREED v. City of San Diego, supra*, 196 Cal.App.4th at p. 529.)

14 In their opening brief, Petitioners only cite evidence which is favorable to their claim.  
15 (POB, pp. 10-11.) They neither discuss the substantial evidence in the record which supports  
16 the Coastal Commission's consistency determination nor attempt to show why it is lacking.  
17 Petitioners' failure to do so is fatal to their claim that the Coastal Commission's consistency  
18 finding is not supported by substantial evidence.

19 There is substantial evidence in the record showing the Project is consistent with the  
20 Coastal Act's public access policies. For example, the Project is consistent with the Port  
21 Master Plan's designation of the site for "Commercial Recreation" because it will continue the  
22 existing use of the site for a restaurant, thereby promoting public access and public recreation  
23 at the waterfront. (1 AR 22-23; 5 AR 1009.)

24 In addition, the reports and testimony of Coastal Commission staff constitute substantial  
25 evidence. (*CREED v. City of San Diego, supra*, 196 Cal.App.4th at pp. 529-530; *Coastal*  
26 *Southwest Development Corp. v. California Coastal Zone Conservation Comm.* (1976) 55  
27 Cal.App.3d 525, 535-536.) The staff report contains extensive discussion of the facts which  
28 establish the Project is consistent with the Coastal Act policies for "Public Access/Recreation/



1 Visitor-Serving Priority" (8 AR 1833-1836), "Visual Quality" (8 AR 1836-1837), "Biology/Water  
2 Quality" (8 AR 1837-1838) and "Shoreline and Geologic Hazards" (8 AR 1838-1842). Coastal  
3 Commission staff also testified at the de novo hearing about the modifications to the Project  
4 that would promote the public access, public view and public recreation policies of the Coastal  
5 Act, including a six-foot wide public walkway along the shoreline, a continuous public pathway  
6 for joggers and other pedestrians in front of the restaurant, a minimum of ten parking spaces  
7 specifically designated for public parking, and public access to the barge for unobstructed  
8 views of the bay and downtown skyline. (11 AR 2653-2657.) Petitioners do not even mention  
9 this evidence in their opening brief.

10 Rather than discussing the substantial evidence which supports the Coastal  
11 Commission's findings, Petitioners complain that the public was not given an opportunity to  
12 provide input on the Project. (POB, p. 11, ll. 4-15.) This complaint is flatly contrary to the  
13 evidence, which shows the Port District held four public hearings concerning the Project (1 AR  
14 375-377, 389-391, 403-405, 409-411) and the Coastal Commission thoroughly reconsidered  
15 the matter in the de novo proceedings (8 AR 1788-1844 [staff report]; 11 AR 2642-2749  
16 [public hearing]). Petitioners' decision to withhold their objections until the final hearing does  
17 not mean the public was denied a reasonable opportunity to comment on the Project.

18 The Coastal Commission's finding that the Project is consistent with the Coastal Act's  
19 policies is supported by substantial evidence in the record. Petitioners' failure to discuss this  
20 evidence and show why it is lacking is a concession that the evidence supports the Coastal  
21 Commission's finding. Accordingly, the petition for writ of mandate should be denied.

#### 22 IV.

#### 23 THE PETITION SHOULD BE DENIED BECAUSE

#### 24 THE COASTAL COMMISSION COMPLIED WITH CEQA.

#### 25 A. The Coastal Commission Considered Feasible Alternatives To The Project.

26 Petitioners claim the Coastal Commission violated CEQA by not considering any  
27 alternatives to the Project that would avoid or reduce its significant environmental effects.  
28 (POB, pp. 12-13.) This claim fails because Petitioners failed to discuss the substantial

1 evidence in the record which shows the Coastal Commission carefully considered alternatives  
2 to the Project as originally proposed.

3       The Coastal Commission is exempt from CEQA's requirements to prepare an initial  
4 study, negative declaration or EIR because it adopted a certified regulatory program pursuant  
5 to Public Resources Code section 21080.5. (*Ross v. California Coastal Comm.*, *supra*, 199  
6 Cal.App.4th at pp. 930-931.) Under its certified regulatory program, the Coastal Commission  
7 staff report serves as the functional equivalent of an EIR. (*Ibid.*) This substitute environmental  
8 document must include a description of the project and either project alternatives and  
9 mitigation measures to avoid or reduce any significant environmental impacts or a statement  
10 that the project will not have any significant impacts and therefore no alternatives or mitigation  
11 measures are required. (14 Cal. Code Reg. § 15252(a)(1), (2).)

12       A modified version of a project, proposed by staff to address the environmental effects  
13 of the original proposal, is a proper alternative under CEQA. (See *South County Citizens for*  
14 *Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 323.) This principle was  
15 applied in *Ross v. California Coastal Comm.*, *supra*, 199 Cal.App.4th 900, where a city  
16 proposed an amendment to a local coastal program that would allow a beachfront lot to be  
17 subdivided for development. Coastal staff analyzed alternative configurations of the lots and  
18 wider view corridors than initially proposed by the city, as well as development footprints and  
19 view corridors proposed by the city in response to coastal staff's concerns. (*Id.* at pp. 942-  
20 943.) The Court of Appeal determined that the Coastal Commission's consideration of  
21 alternatives was sufficient. (*Id.* at p. 943.)

22       As in *Ross*, the record here shows the Coastal Commission carefully considered  
23 alternatives to the Project as originally proposed. The Coastal Commission staff report  
24 considered alternatives to the Project to address its potential impacts on public access and  
25 recreation, including modifications that added a public walkway along the shoreside of the  
26 Project and a continuous pathway in front of the restaurant, preparation of a public access  
27 program, public access to the barge when not in use for restaurant purposes, the reservation  
28 of at least ten spaces for public parking, and participation in the Port District's bayside shuttle

1 system. (8 AR 1833-1836.) Alternative configurations of the Project and wider view corridors  
2 also were analyzed to reduce impacts on public views. (8 AR 1836-1837.) The staff report  
3 also considered alternatives to the Project as originally proposed to reduce or avoid impacts  
4 related to biology, water quality, shoreline and geologic hazards. (8 AR 1837-1842.)

5 An alternatives analysis will be deemed sufficient where the petitioner fails to identify  
6 any feasible alternative which the agency should have considered but did not. (*Mount Shasta*  
7 *Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 199.) Although  
8 their attorney asserted at the de novo hearing that the Coastal Commission should have  
9 considered "putting another barge that is a restaurant out there" (11 AR 2687), Petitioners did  
10 not mention that alternative in their opening brief, presumably because it would not reduce or  
11 avoid any potential significant impacts of the Project as required by CEQA.

12 A challenge to the adequacy of an agency's alternatives analysis is subject to the  
13 substantial evidence test. (*California Native Plant Society v. City of Santa Cruz* (2009) 177  
14 Cal.App.4th 957, 987.) The petitioner has the burden of demonstrating that the analysis of  
15 alternatives is deficient. (*Ibid.*) To satisfy this burden, the petitioner must lay out the evidence  
16 favorable to the agency and show why it is lacking. (*Tracy First v. City of Tracy, supra*, 177  
17 Cal.App.4th at p. 934.) The failure to do so is a concession that the evidence supports the  
18 adequacy of the analysis. (*Ibid.*)

19 There is substantial evidence in the record showing the Coastal Commission  
20 adequately analyzed alternatives to the Project as originally proposed. Petitioners' failure to  
21 discuss this evidence and show why it is lacking is a concession the evidence supports the  
22 analysis and is fatal to their claim. Accordingly, Petitioners' CEQA claim should be denied.

23 **B. The Coastal Commission's Findings Regarding Alternatives Are Supported**  
24 **By Substantial Evidence.**

25 Finally, Petitioners claim there is no substantial evidence in the record to support the  
26 Coastal Commission's finding that there are no other feasible alternatives. (POB, p. 9.) This  
27 claim fails for the following two reasons.

28 First, the exhaustion doctrine requires a petitioner to raise during the administrative

1 proceedings the "exact issue" it wishes to raise in court. (*CREED v. City of San Diego, supra*,  
2 196 Cal.App.4th at p. 527.) Petitioners have not met their burden of proving they raised the  
3 exact issue alleged here in the administrative proceedings. Although the proposed findings  
4 were set forth in the staff report (8 AR 1796-1846), the record shows Petitioners did not raise  
5 any objection to the Coastal Commission's alternatives findings in either their written or oral  
6 testimony in the de novo proceedings. (See 10 AR 2537, 11 AR 2687-2689.) As a result,  
7 Petitioners' claim is barred by the exhaustion doctrine.


8 Second, a petitioner's failure to lay out the evidence favorable to the agency and show  
9 why it is lacking is a concession that the evidence supports the agency's findings. (*CREED*  
10 *v. City of San Diego, supra*, 196 Cal.App.4th at p. 529.) Substantial evidence in the record  
11 shows the Coastal Commission considered the feasibility of other alternatives, including  
12 relocating the proposed restaurant on the Project site and reducing the size of the restaurant.  
13 (8 AR 1834.) The Coastal Commission determined these alternatives were infeasible because  
14 "the subject site is unusually constrained due to the presence of an earthquake fault" and the  
15 applicant's analysis showed "it would be financially infeasible to reduce the size of the facility  
16 any more than it has been and still have a functional operation." (*Ibid.*) Petitioners' failure to  
17 discuss this evidence and show why it is lacking is a concession that the evidence supports  
18 the Coastal Commission's finding regarding the infeasibility of alternatives.

### 19 CONCLUSION

20 For the foregoing reasons, the Port District respectfully requests that the amended  
21 petition for writ of mandate be denied.

22 DATED: March 3, 2014

23 OFFICE OF THE PORT ATTORNEY  
24 HOGAN LAW APC

25 By:   
26 MICHAEL M. HOGAN  
27 Attorneys for Defendant and Respondent  
28 SAN DIEGO UNIFIED PORT DISTRICT

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action; my business address is 225 Broadway, Suite 1900, San Diego, California.

On March 3, 2014, I served the foregoing document(s) described as **Respondent San Diego Unified Port District's Memorandum of Points and Authorities in Opposition to Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, etc.**, on parties in this action as follows:

Cory J. Briggs  
Mekaela M. Gladden  
Anthony N. Kim  
Briggs Law Corporation  
99 East "C" Street, Suite 111  
Upland, CA 91786  
E-mail: [cory@briggslawcorp.com](mailto:cory@briggslawcorp.com)  
[mekaela@briggslawcorp.com](mailto:mekaela@briggslawcorp.com)  
*Attorneys for Plaintiffs and Petitioners*  
*San Diegans for Open Government and San*  
*Diego Navy Broadway Complex Coalition*

Kamala D. Harris  
Attorney General of California  
CHRISTINA BULL ARNDT  
Supervising Deputy Attorney General  
BAINE P. KERR  
Deputy Attorney General  
State Bar No. 265894  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 620-2210  
Fax: (213) 897-2801  
E-mail: [Baine.Kerr@doj.ca.gov](mailto:Baine.Kerr@doj.ca.gov)  
*Attorneys for Defendant and Respondent*  
*California Coastal Commission*

Thomas R. Russell  
Rebecca Harrington  
Office of the Port Attorney  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112  
E-mail: [trussell@portofsandiego.org](mailto:trussell@portofsandiego.org)  
[rharrington@portofsandiego.org](mailto:rharrington@portofsandiego.org)  
*Attorneys for Defendant and Respondent*  
*San Diego Unified Port District*

Steven H. Kaufmann  
Ginetta L. Giovinco  
Richards, Watson & Gershon  
355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071-3101  
E-mail: [skaufmann@rwglaw.com](mailto:skaufmann@rwglaw.com)  
[ggiovinco@rwglaw.com](mailto:ggiovinco@rwglaw.com)  
*Attorneys for Defendant and Real Party in*  
*Interest*  
*Sunroad Enterprises and Sunroad Harbor*  
*Island, Inc.*



☐ **(BY MAIL, STATE OR FEDERAL)** I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to that practice, the above-referenced document(s) would be deposited with the United States Postal Service, First Class, Postage Prepaid, in the ordinary course of business, on this date. The above-referenced document(s) were sealed and placed for collection and mailing with this office's First Class, Postage Prepaid Mail on this date, at my above address in accordance with ordinary office practice.

☐ **(BY FEDERAL EXPRESS OVERNIGHT DELIVERY)** I am "readily familiar" with the firm's practice of collection and processing packages for Federal Express. Under that practice, in the ordinary course of business, the package would be delivered to an authorized Federal Express courier in a designated envelope or package on that same day with fees thereon fully provided for, and delivered to the addressee the following morning.

☐ **(BY FACSIMILE TRANSMISSION)** I am "readily familiar" with the firm's practice of facsimile transmission of documents. Under that practice, in the ordinary course of business, the document would be transmitted to a facsimile machine maintained by the person on whom it is served at the machine telephone number as last given by that person on any document which he or she has filed in the case.

☒ **(BY E-MAIL TRANSMISSION)** I am "readily familiar" with the firm's practice of e-mail transmission of documents. Under that practice, in the ordinary course of business, I transmitted the documents by e-mail to the counsel for parties at the e-mail addresses listed above. The transmission was reported as sent without error.

☐ **(BY PERSONAL SERVICE)** I caused to be delivered such envelope(s) by hand to the office(s) of the addressee(s).

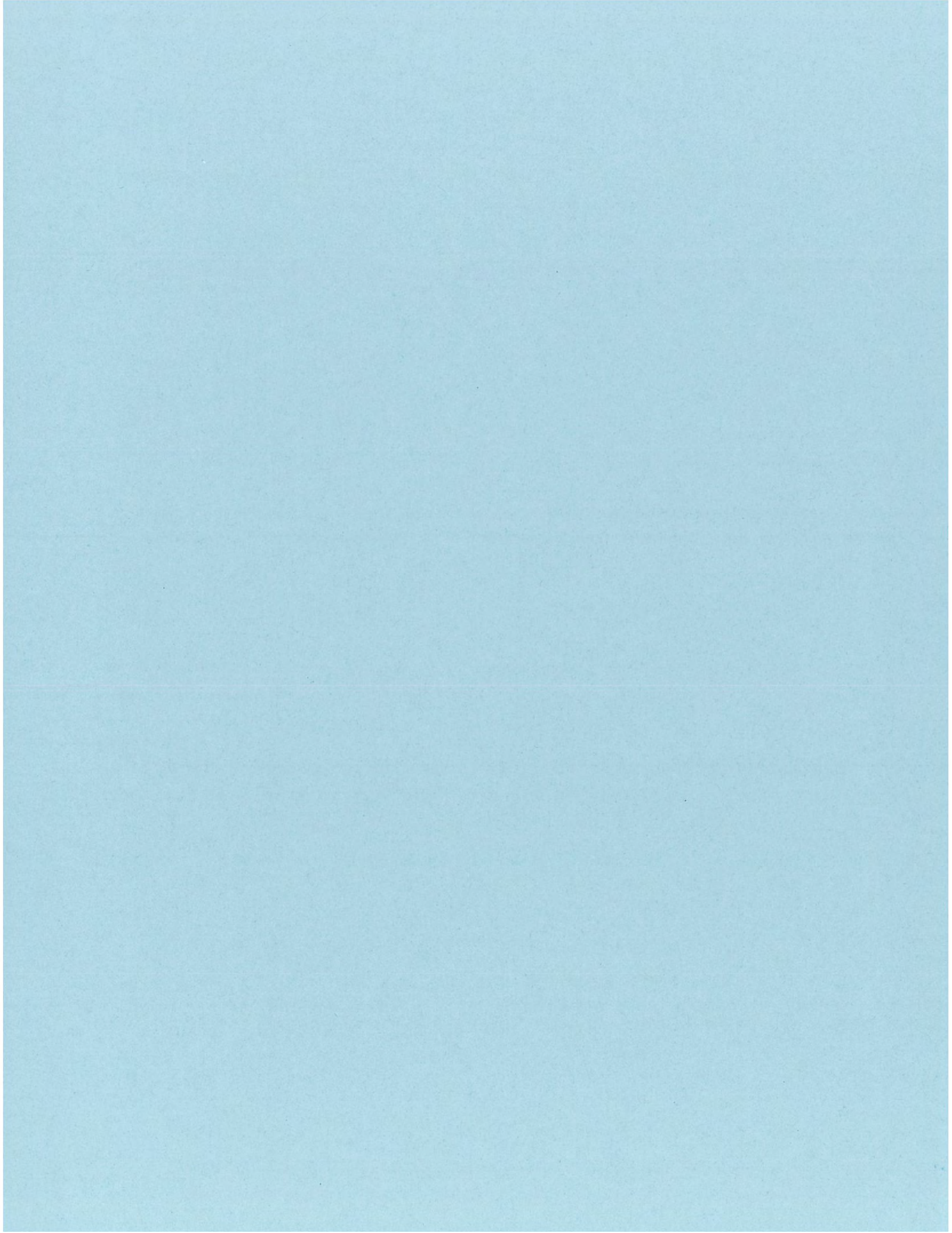
☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 3, 2014, at San Diego, California.

  
MICHAEL M. HOGAN





1 KAMALA D. HARRIS  
Attorney General of California  
2 CHRISTINA BULL ARNDT  
Supervising Deputy Attorney General  
3 BAINE P. KERR  
Deputy Attorney General  
4 State Bar No. 265894  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-2210  
6 Fax: (213) 897-2801  
E-mail: Baine.Kerr@doj.ca.gov  
7 Attorneys for Defendant and Respondent  
California Coastal Commission

*No Filing Fee Pursuant to  
Government Code section 6103*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
10 COUNTY OF SAN DIEGO  
11 CENTRAL DIVISION

12  
13 **SAN DIEGANS FOR OPEN  
GOVERNMENT and SAN DIEGO NAVY  
14 BROADWAY COMPLEX COALITION,**

15 Plaintiffs and Petitioners,

16 v.

17 **CALIFORNIA COASTAL COMMISSION;  
18 SAN DIEGO UNIFIED PORT DISTRICT;  
and DOES 1 THROUGH 100,**

19 Defendants and  
20 Respondents;

21 **SUNROAD ENTERPRISES; SUNROAD  
22 HARBOR ISLAND, INC.; and DOES 101  
through 1,000,**

23 Real Parties in Interest.

Case No. 37-2013-00057492-CU-TT-CTL

**RESPONDENT CALIFORNIA  
COASTAL COMMISSION'S  
MEMORANDUM IN OPPOSITION TO  
FIRST AMENDED PETITION FOR  
WRIT OF MANDATE**

Date: April 22, 2014  
Time: 10:00 a.m.  
Dept: C-71  
Judge: The Hon. Ronald S. Prager  
Trial Date: n/a (writ)  
Action Filed: July 15, 2013

24  
25 Respondent California Coastal Commission hereby opposes the first amended petition for  
26 writ of mandate filed by Petitioners San Diegans for Open Government and the Navy Broadway  
27 Complex Coalition.  
28



## TABLE OF CONTENTS

		Page
1	INTRODUCTION.....	1
2		
3	STATEMENT OF FACTS AND PROCEDURAL HISTORY.....	2
4	A.    Original project and port proceedings .....	2
5	B.    Commission proceedings.....	2
6		
7	ARGUMENT.....	4
8	I.    STANDARD OF REVIEW.....	4
9		
10	II.   THE COASTAL COMMISSION'S REGULATION OF COASTAL RESOURCES .....	5
11	III.  THE COMMISSION PROPERLY EXERCISED ITS AUTHORITY TO MODIFY AND APPROVE THE PROJECT .....	6
12		
13	A.    The Coastal Act Did Not Require Denial of the CDP .....	6
14	B.    The Commission Appropriately Exercised its Discretion to Approve the CDP .....	8
15	C.    The Commission Had Authority Over the Project Pursuant to Section 30715 .....	10
16		
17	IV.   SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S DETERMINATION THAT THE PROJECT, AS MODIFIED, COMPLIED WITH THE COASTAL ACT.....	11
18		
19	V.    ADEQUATE ALTERNATIVES WERE ANALYZED UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT .....	13
20		
21	VI.   THE COURT SHOULD DISREGARD THE DECLARATIONS ATTACHED TO PETITIONERS' OPENING BRIEF .....	15
22		
23	CONCLUSION.....	15

## TABLE OF AUTHORITIES

### Page

#### CASES

<i>Burke v. California Coastal Com.</i> (2008) 168 Cal.App.4th 1098 .....	5
<i>Citizens for Responsible Equitable Environmental Development v. City of Chula Vista</i> (2011) 196 Cal.App.4th 515 .....	13
<i>Citizens of Goleta Valley v. Board of Supervisors</i> (1990) 52 Cal.3d 553 .....	6, 9
<i>City of Dana Point v. California Coastal Com.</i> (2013) 217 Cap.App.4th 170 .....	8
<i>Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Commission</i> (1976) 55 Cal.App.3d 525 .....	5, 12
<i>Coronado Yacht Club v. California Coastal Com.</i> (1993) 13 Cal.App.4th 860 .....	8
<i>Gualala Festivals Committee v. California Coastal Com.</i> (2010) 183 Cal.App.4th 60 .....	10
<i>LT-WR, L.L.C. v. California Coastal Com.</i> (2007) 152 Cal.App.4th 770 .....	8
<i>McAllister v. California Coastal Commission</i> (2008) 169 Cal.App.4th 912 .....	6, 8
<i>Mira Development Corp. v. City of San Diego</i> (1988) 205 Cal.App.3d 1201 .....	15
<i>Mountain Lion Foundation v. Fish &amp; Game Commission</i> (1997) 16 Cal.4th 105 .....	13
<i>Ocean Harbor House v. California Coastal Commission</i> (2008) 163 Cal.App.4th 215 .....	5, 12
<i>Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles</i> (2012) 55 Cal.4th 783 .....	5
<i>Reddell v. California Coastal Commission</i> (2009) 180 Cal.App.4th 956 .....	5, 15

**TABLE OF AUTHORITIES**  
**(continued)**

	<b><u>Page</u></b>
<i>Ross v. California Coastal Commission</i> (2011) 199 Cal.App.4th 900 .....	4, 5, 6, 13
<i>Security National Guaranty v. California Coastal Commission</i> (2008) 159 Cal.App.4th 402 .....	7, 8
<i>Sierra Club v. California Coastal Com.</i> (1993) 19 Cal.App.4th 547 .....	15
<i>Sierra Club v. State Board of Forestry</i> (1994) 7 Cal.4th 1215 .....	13
<i>Whaler's Village Club v. California Coastal Commission</i> (1985) 173 Cal.App.3d 240 .....	5, 12
<b><u>STATUTES</u></b>	
Cal. Code Regs., tit. 14, § 13057 .....	13
Cal. Code Regs., tit. 14, § 13096, subd. (b) .....	4
Cal. Code Regs., tit. 14, § 15251, subd. (c) .....	13
Cal Coastal Act of 1976 .....	5
Code of Civ. Proc., § 1094.5, subd. (b) .....	6
Code of Civ. Proc § 1094.5 .....	4
Public Resources Code	
§ 21080.5 .....	13
§ 21080.5(a) .....	13
§ 21080.5(3) .....	13
§ 21080.5(d) .....	13
§ 30001.1 .....	5
§ 30001.5 .....	9
§ 30001.5(a) .....	5
§ 30009 .....	5, 11
§ 30112 .....	7
§ 30210 .....	6
§ 30801 .....	4
§ 30009 .....	5
§ 30251 .....	11
§ 30252 .....	11
§ 30265.5 .....	9

**TABLE OF AUTHORITIES**  
**(continued)**

	<b><u>Page</u></b>
§ 30519 .....	8
§ 30600 .....	10
§ 30621 .....	8
§ 30625 .....	<i>passim</i>
§ 30700 .....	6
§ 30711 .....	7
§ 30714 .....	7
§ 30715 .....	6, 8, 10
§ 30715.5 .....	7
§ 30715(a) .....	11
§ 30715(a)(2) .....	11
§ 30715(a)(3) .....	11
§ 30715(a)(4) .....	10, 11
§ 30716 .....	9

## INTRODUCTION

In this action, petitioners seek to invalidate a coastal development permit the Coastal Commission issued for a proposed restaurant and floating dock on Harbor Island. Disagreeing with the San Diego Unified Port District's decision to allow the development to proceed without a coastal development permit, the Commission held a de novo hearing on the project in June 2013. The Commission modified the project to require substantial revisions to provide public access along the shoreline and increase views of the water and downtown skyline. After public testimony and deliberation, it approved a coastal development permit for the project as modified.

Petitioners contend that the Commission lacked jurisdiction to approve the project because this specific development is not listed in the Port Master Plan ("Plan"). But the Coastal Act expressly allowed the Commission to deny, modify, or approve the development on appeal, regardless of whether it was listed in the Plan. And, as a result of the Commission's appeal of the Port's exemption, the project received a comparable level of public participation and scrutiny under the policies of the Coastal Act as would a Plan amendment approving the project. Sending the project back to the Port for a Plan amendment, rather than considering the merits of the permit application directly, would have generated needless and redundant administrative review and delay. Petitioners cannot show the Commission abused its discretion or proceeded unlawfully in modifying and approving the development.

Petitioners also claim the project did not conform to the Coastal Act or the California Environmental Quality Act ("CEQA"). Contrary to petitioners' argument, substantial evidence supported the Commission's determination that the project, as conditioned, met the Coastal Act's public access and view protection policies. And, the Commission complied with CEQA: substantial evidence shows the Commission considered the project the Port approved, as well as the proposed project as modified by the Commission, and approved the least environmentally-damaging feasible alternative. The Court should deny the first amended petition for writ of mandate in its entirety.

///

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

### A. Original Project and Port Proceedings

For 43 years, the “New Orleans style riverboat” Reuben E. Lee was moored offshore east Harbor Island. (7AR 1554.) Operated as a restaurant, it closed in 2004. (*Ibid.*) In 2008, developer Sunroad Harbor Island, Inc. (“Sunroad”) proposed to renovate the floating restaurant by shrinking its profile and moving it landward, and also proposed a new restaurant structure in an adjacent parking lot. (1AR 4-5; 11-12.) The Port found the project was exempt from the California Environmental Quality Act. (1AR 6-7; 19-20; 22-23; 24-25.) The Port found the project was categorically excluded from coastal development permitting requirements because it involved “replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.” (7AR 1777; see 5AR 953-954 [Port regulations defining excluded developments].)

The Port issued an option to lease for the project. (1AR 21.) Because the floating barge portion of the project overlay state tidelands, the State Lands Commission approved a lease with the Port for the project, and the Port in turn sublet the water parcel to Sunroad. (1AR 93-97; 601-608.) A series of plan changes were made,<sup>1</sup> and the Port issued a “Project Review and Approval” on March 22, 2012. (7AR 1773-1781.) The Plan, which governs development in the area, designates the project site for “commercial recreation,” but the project was not specifically listed in the Plan. (5AR at 1045, 1047.)

### B. Commission Proceedings

Commission staff became aware of the Port’s exemption determination in January 2013. (11AR 2760.) In February 2013, Commissioners Brennan and Sanchez appealed the Port’s exemption determination for the project to the Commission, as did UNITE HERE Local 30. (7AR 1494-1514; 1515-1696.) Petitioners did not file an appeal. On May 31, 2013, the Commission issued and distributed to the public a staff report describing the Port-approved project and recommending the Commission find a substantial issue with conformity with the Plan

<sup>1</sup> The Reuben E. Lee was towed to a shipyard for demolition and reconstruction activities in April 2012. (11AR 2760.) In December 2012, it took on water and partially sank. (*Ibid.*)

1 and the Chapter 3 policies of the Coastal Act. (8AR 1788-1846.) The staff report also described  
2 substantial revisions to made to the project by Sunroad, in consultation with Commission staff, to  
3 respond to the issues raised in the appeal, and recommended approval of a coastal development  
4 permit for the modified project. (8AR 1789-1790.)

5 The Commission considered the appeal at a June 12, 2013 hearing. (11AR 2557-2558.) It  
6 found the project was not excluded from coastal permit requirements under the Plan regulations  
7 because it involved the construction of a new restaurant structure on land as well as the  
8 replacement of the Reuben E. Lee with a floating barge. (11AR 2761-2766.) The Commission  
9 further found the appeal presented substantial issues as to conformity with the Plan and the  
10 Chapter Three policies of the Coastal Act; specifically, whether the project as approved by the  
11 Port adequately ensured coastal access, enhanced and maintained visual quality, and protected  
12 natural resources. (8AR 1796; 11AR 2653, 2778-2780, 2782.) After unanimously determining  
13 substantial issues were presented, the Commission conducted de novo review of the project.  
14 (11AR 2653.)

15 During the hearing, Commission staff described the revisions made to the project by  
16 Sunroad, in consultation with Commission staff, to enhance public access and views along the  
17 shoreline.<sup>2</sup> (11AR 2651, 2654-2657.) The revisions included the re-design and re-orientation of  
18 the landside restaurant to accommodate a new public deck and path along the waterfront between  
19 the restaurant and the barge. (11AR 2654.) The public walkway would allow continuous public  
20 shoreline access and access to views of the water and the downtown skyline, and would be open  
21 from dawn to dusk, reflecting the same operating hours as other Port parks and piers. (11AR  
22 2654-2655.) The Commission required the proposed project to provide a minimum of ten public  
23 parking spaces; the lot as originally proposed was restricted to restaurant customers. (11AR  
24 2655.) It also imposed three special conditions protecting biology and water quality, including

25 <sup>2</sup> Petitioners' assertion that the Commission made "[t]he totality of the changes" to the  
26 project after the public hearing had closed (Pet. Brief at 11, fn. 5) is false: the changes to the  
27 project were made by Sunroad in consultation with Commission staff prior to the public hearing,  
28 were described in detail in the Commission's staff report which was made available to the public  
in advance of the hearing, and were the subject of testimony and debate at the hearing. (See  
11AR 2651, 2654-2657, 2694-2699; 8AR 1788-1846.)

1 surveying and eradicating the invasive algae *Caulerpa taxifolia*. (11AR 2802.) The overall size  
2 of the project was reduced from the 25,600 square feet area that the Port approved to 22,850  
3 square feet. (11AR 2790.) In addition, the Commission required Sunroad to “acknowledge that  
4 public access to the barge shall be allowed whenever the barge is open for business, except when  
5 otherwise reserved for private events, and to provide appropriate signage that identifies and  
6 directs the public use of the barge.” (11AR 2799.) On staff’s recommendation, the Commission  
7 unanimously voted to approve a coastal development permit for the modified project.<sup>3</sup> (11AR  
8 2746-2747.)

## 9 ARGUMENT

### 10 I. STANDARD OF REVIEW

11 Public Resources Code section 30801<sup>4</sup> provides for judicial review of Commission  
12 decisions by way of a petition for writ of administrative mandamus under Code of Civil  
13 Procedure section 1094.5. In reviewing a Commission decision, the trial court determines  
14 whether (1) the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair  
15 hearing; and (3) the agency abused its discretion. (*Ross v. California Coastal Com.* (2011) 199  
16 Cal.App.4th 900, 921.) Abuse of discretion is established if the Commission has not proceeded in  
17 the manner required by law, the decision is not supported by the findings or the findings are not  
18 supported by the evidence. (*Ibid.*) The Commission’s findings and actions are presumed to be  
19 supported by substantial evidence. (*Ibid.*) A person challenging the Commission’s decision  
20 bears the burden of showing that substantial evidence does not support the Commission’s  
21 findings. (*Ibid.*)

22  
23 <sup>3</sup> Under the Commission’s rules, “[u]nless otherwise specified at the time of the vote, an  
24 action taken consistent with the staff recommendation shall be deemed to have been taken on the  
25 basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report as  
26 modified by staff at the hearing.” (Cal. Code Regs., tit. 14, § 13096, subd. (b).) Here, the  
27 Commission directed staff to modify a public access condition described in the original staff  
28 report, and revised findings were adopted at the Commission’s September 2013 hearing which  
reflect the decision taken. (11AR 2750-2836.) (See Cal. Code Regs., tit. 14, § 13096, subd. (b)  
[revised staff report may be prepared and adopted at subsequent hearing].)

<sup>4</sup> Unless otherwise indicated, subsequent statutory references are to the Public Resources  
Code.



1 When reviewing the Commission's decision, the court examines the whole record and  
2 considers all relevant evidence, including that which detracts from the decision. (*Ross v.*  
3 *California Coastal Com.*, *supra*, 199 Cal.App.4th at p. 921.) Although this task involves some  
4 weighing to fairly estimate the worth of the evidence, this limited weighing does not constitute  
5 independent review where the court substitutes its findings and inferences for those of the  
6 Commission. (*Id.* at p. 922.) Rather, the Commission weighs the preponderance of conflicting  
7 evidence, and the court may reverse its decision only if, based on the evidence before it, a  
8 reasonable person could not have reached the same conclusion the Commission reached. (*Ibid.*;  
9 accord, *Ocean Harbor House v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 227.)  
10 Substantial evidence upon which the Commission may base its decision includes opinion  
11 evidence of experts, oral presentations at the public hearing, photographic evidence, and written  
12 materials of staff. (*Whaler's Village Club v. California Coastal Com.* (1985) 173 Cal.App.3d  
13 240, 261; *Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55  
14 Cal.App.3d 525, 532, 536.)

15 The ultimate task of statutory interpretation is for the judiciary, but the Commission's  
16 interpretation of the statutes and regulations under which it operates is entitled to "great weight,"  
17 given the Commission's special familiarity with the regulatory and legal issues. (*Ross v.*  
18 *California Coastal Com.*, *supra*, 199 Cal.App.4th at p. 938; *Reddell v. California Coastal Com.*  
19 (2009) 180 Cal.App.4th 956, 965-966; but see *Burke v. California Coastal Com.* (2008) 168  
20 Cal.App.4th 1098, 1106 [no deference granted to agency's jurisdictional determination].)

## 21 22 **II. THE COASTAL COMMISSION'S REGULATION OF COASTAL RESOURCES**

23 The California Coastal Act of 1976 protects the ecological balance along California's 1,100  
24 mile coastline from the harsh impacts of unregulated development. (See § 30001.1) The Act is to  
25 be liberally construed to accomplish its purposes and objectives. (§ 30009; *Pacific Palisades*  
26 *Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793-794.) One of the  
27 legislative goals of the Act is to "[p]rotect, maintain, and, where feasible, enhance and restore the  
28 overall quality of the coastal zone environment and its natural and manmade resources."

1 (§ 30001.5, subd. (a).) To achieve this goal, the Act sets forth specific policies governing public  
2 access, recreation, the marine environment, land resources, and development along the coast. (§§  
3 30210–30265.5; see *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 922;  
4 *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571.)

5 The Coastal Act requires that certain ports, including the Port of San Diego, develop port  
6 master plans implementing the Coastal Act within their jurisdictions, which are submitted to the  
7 Commission for certification. (See § 30700 et seq.) Once the Commission certifies a port master  
8 plan, the port generally administers the Act’s permitting jurisdiction in the first instance, although  
9 the Act directs that the Commission may hear appeals from port approvals of certain categories of  
10 development or claims of exemption, and the Commission retains jurisdiction over development  
11 not contained in a port master plan. (§§ 30625, 30715.)

### 12 **III. THE COMMISSION PROPERLY EXERCISED ITS AUTHORITY TO MODIFY** 13 **AND APPROVE THE PROJECT**

14 Petitioners agree with the Commission’s finding that the project the Port approved  
15 presented a substantial issue of compliance with the Plan, and that the Commission correctly  
16 exercised appellate jurisdiction under section 30625. (Pet. Brief at pp. 1, 8, fn. 4.) They claim,  
17 however, that the Commission violated the Coastal Act in approving the permit, and should have  
18 denied it. (See Pet. Brief at pp. 6-11.) Thus, although petitioners purportedly make a  
19 jurisdictional claim, the appropriate standard of review for the Commission’s decision is abuse of  
20 discretion. (See Code Civ. Proc., § 1094.5, subd. (b) [“Abuse of discretion is established if the  
21 respondent has not proceeded in the manner required by law . . . .”].) And the Commission’s  
22 interpretation of relevant provisions of the Coastal Act should be accorded deference. (See *Ross*  
23 *v. California Coastal Com.*, *supra*, 199 Cal.App.4th at p. 922.) But, regardless of the standard of  
24 review applied, the law and the record in this case demonstrate that the Commission properly  
25 modified and approved the permit.

#### 26 **A. The Coastal Act Did Not Require Denial of the Coastal Development Permit.**

27 Section 30625 provides, in pertinent part: “any appealable action on a coastal development  
28 permit or claim of exemption for any development by a local government or port governing body

1 may be appealed . . . The commission may approve, modify, or deny such proposed development  
2 . . . .” Thus, the Commission has authority to hear an appeal of development the Port authorized  
3 pursuant to a claim of exemption, and may modify and approve such development on appeal.  
4 That is what happened here.

5 Despite this clear statutory language, petitioners argue that the Commission exceeded its  
6 authority in issuing a coastal development permit because the Plan does not list the project as an  
7 approved development. They contend that, by issuing the permit, the Commission instituted a  
8 “de facto” amendment of the Plan. (Pet. Brief at p. 8.) That contention is without merit.  
9 Petitioners are correct that the Port must amend the Plan, which requires public notice and a  
10 hearing. (See § 30714.) But the Commission did not purport to amend the Plan or change any  
11 land use designation within it. It modified and approved the project, as section 30625 authorized.  
12 Port master plans are required to “include” proposed projects, and ports must certify that  
13 approved projects “conform” to port master plans, but no provision of the Coastal Act states that  
14 the Commission may only approve development included in a project list when exercising its  
15 appellate jurisdiction over a claim of exemption. (See §§ 30711 [requiring projects be listed in  
16 Plan], 30715 [delegating permitting authority from Commission to Port for new development  
17 “contained in the certified plan”], 30715.5 [“port governing body” may not approve development  
18 unless it finds proposed development conforms to certified plan], 30112 [“port governing body”  
19 means . . . Board of Port Commissioners which has authority over . . . San Diego Unified Port  
20 District”].)

21 *Security National Guaranty*, which petitioners cite in support of their argument, is  
22 inapplicable. There, the court found that, when a local coastal program specified the property at  
23 issue did not contain any environmentally sensitive habitat area, the Commission lacked  
24 legislative authority to declare otherwise when exercising appellate permit jurisdiction. (*Security*  
25 *National Guaranty v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 414.) Here, by  
26 contrast, the Commission did not exercise legislative authority to alter a plan, it exercised quasi-  
27 adjudicatory authority to modify and approve a permit. (Cf. *id.* at pp. 420-421 [Commission  
28 could not exercise legislative power to amend local coastal program in context of administrative

1 appeal]; see *City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170, 188  
2 [Commission has appellate jurisdiction over claims of exemption]; *McAllister v. California*  
3 *Coastal Com.*, *supra*, 169 Cal.App.4th at p. 953 [“when the Commission considers an application  
4 for a coastal development permit, it is acting in an adjudicatory or quasi-judicial capacity and  
5 simply applies existing rules to a specific set of facts”].) Moreover, the provisions governing  
6 local coastal programs differ markedly from those governing port master plans, and are located in  
7 a separate chapter of the Coastal Act. (Compare § 30519 [delegating authority for development  
8 in “the area to which the local coastal program” applies] with § 30715 [delegating authority over  
9 new development “contained” in certified port master plan].) *Security National Guaranty* did not  
10 discuss the issue presented here, and “therefore provides no guidance on the issue of the  
11 Commission’s statutory authority.” (*Security National Guaranty*, *supra*, at pp. 423-424  
12 [distinguishing *LT-WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770].)

13       Petitioners’ interpretation of the Coastal Act would negate the requirement in section 30621  
14 that the Commission hold a “de novo” hearing once appellate review is exercised, because there  
15 cannot be a “de novo” hearing if only one course of action is possible. (See *Coronado Yacht*  
16 *Club v. California Coastal Com.* (1993) 13 Cal.App.4th 860, 871-872 [appeal to Commission of  
17 Port-approved coastal development permit required de novo hearing under section 30621  
18 “evaluating all aspects of the permit application as if no decision had previously been rendered”].)  
19 And, as discussed *infra*, petitioners’ argument that the Commission lacks authority to approve  
20 development not listed in a port master plan conflicts with section 30715, which provides that the  
21 Commission’s permitting authority is delegated to the Port “over any new development contained  
22 in the certified plan . . . .” Read together with section 30625, this provision demonstrates that the  
23 Commission has authority to approve development not listed in a port master plan when  
24 exercising appellate jurisdiction over a port’s claim of exemption, and it was not required by law  
25 to deny the permit application.

26       **B. The Commission Appropriately Exercised Its Discretion to Approve the CDP**

27       As petitioners point out, the Commission considered remanding the matter to the Port to be  
28 processed as a Plan amendment. And, on other occasions, the Commission has requested that the

1 Port prepare Plan amendments in connection with Port approval of coastal development. But, the  
2 purpose of such requests was to allow Commission review of Port-approved development. (See  
3 9AR 2143-2149.) Here, as Commission staff and several Commissioners noted, the Commission  
4 would apply the same standard of review applicable to the permit on appeal—the policies in  
5 Chapter Three of the Coastal Act—as it would considering a Plan amendment authorizing the  
6 project. (11AR 2807-2808.) Several Commissioners also noted that Port’s claim of exemption  
7 had been issued six years ago, and expressed concern about the lengthy review process. (11AR  
8 2695, 2698, 2700-2701.) Thus, once the Commission determined the project—as modified—met  
9 Coastal Act policies, it appropriately reasoned that it would be administratively efficient and  
10 equitable for the Commission to issue the CDP rather than require additional Port and  
11 Commission proceedings under the same legal standard of review. (11AR 2807-2808.) The  
12 Commission did not abuse its discretion in deciding to approve the project as modified, rather  
13 than deny it and remand the matter the Port. (See § 30001.5 [a goal of Coastal Act is the  
14 “orderly, balanced utilization of coastal zone resources taking into account the social and  
15 economic needs of the people of the state”].)

16 In addition, petitioners’ argument overlooks the fact that the Plan is updated periodically,  
17 and can be amended in the future to reflect this project or similar projects in the area. (§ 30716.)  
18 The Commission’s approval of the permit here did not diminish the Port’s ability to plan and  
19 implement development within its jurisdiction, nor did it detract from the public’s ability to  
20 participate in that planning. And, “[t]o require a reexamination of basic land-use policy with  
21 every permit application would impose an unnecessary and wasteful burden . . .” (*Citizens of*  
22 *Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at p. 574 [county’s analysis of feasible  
23 alternatives under CEQA appropriately relied on land use designations in local coastal program].)

24 Petitioners’ contention that the public was deprived of an opportunity to review and  
25 participate in the approval of the project is contradicted by the record. The Port approved the  
26 exemption from coastal permitting requirements at a public hearing held June 10, 2008. (1AR 16,  
27 21; 11AR 2702.) And, the Commission held a noticed, public hearing on the project in June 2013  
28 at which the applicant, petitioners’ counsel, and the counsel for UNITE HERE Local 30 testified.

1 (11AR 2643.) Petitioners do not claim any violation of the Bagley-Keene Act, or allege any  
2 procedural irregularity at the Commission hearing; they only cite general policies encouraging  
3 public participation in Commission decisions. (Pet. Brief at p. 7.) Those policies were satisfied  
4 in this case: in addition to the 2008 Port hearing and 2013 Commission hearing, the State Lands  
5 Commission also held a public hearing approving the lease of the state tidelands underlying a  
6 portion of the project. There was adequate opportunity for public participation.

7 **C. The Commission Had Authority Over the Project Pursuant to Section 30715**

8 In addition to the appellate authority provided in section 30625 over claims of exemption,  
9 section 30715, subdivision (a), authorized the Commission to issue the permit. That statute  
10 provides, in pertinent part: "After a port master plan or any portion thereof has been certified the  
11 permit authority of the commission provided in Chapter 7 (commencing with Section 30600)  
12 shall no longer be exercised by the commission over any new development contained in the  
13 certified plan or any portion thereof and shall at that time be delegated to the appropriate port  
14 governing body, except that approvals of the following categories of development by the port  
15 governing body may be appealed to the commission: . . . [¶] (4) . . . hotels, motels, and shopping  
16 facilities not principally devoted to the sale of commercial goods utilized for water-oriented  
17 purposes . . . ."

18 Thus, after a port master plan is certified, the Port exercises permit authority under the  
19 Coastal Act only over "new development contained in the plan." (§ 30715, subd. (a).) As noted,  
20 the restaurant was not listed as an approved development in the plan, and therefore was not  
21 "contained in the plan" within the meaning of the statute. (5AR 1047.) Accordingly, the  
22 Commission had permit authority over the project. (See *Gualala Festivals Committee v.*  
23 *California Coastal Com.* (2010) 183 Cal.App.4th 60, 69-70 [construing Coastal Act expansively  
24 to support Commission jurisdiction].)

25 Section 30715, subdivision (a)(4) defines "appealable development" as "shopping facilities  
26 not principally devoted to the sale of water-oriented commercial goods." Restaurants, which sell  
27 food to the public, are a type of shopping facility, and are akin to other appealable development.  
28 Considered as a whole, the statute excludes port-related and water-oriented development from

1 “appealable development.” (§ 30715, subds. (a)(2) [referring to “normal port activities”]; (a)(3)  
2 [excluding roads and highways “principally for internal circulation within port boundaries”].) A  
3 restaurant is not related to normal port activities or internal port operations. It is a visitor-serving  
4 use, like a hotel or motel, which is also appealable. Accordingly, this project—a restaurant—is  
5 an “appealable development” within the meaning of section 30715, subdivision (a)(4), and the  
6 Commission also had authority over the project pursuant to that statute. (See § 30009 [Coastal  
7 Act “shall be liberally construed to accomplish its purpose and objectives”].)

8  
9 **IV. SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION’S**  
10 **DETERMINATION THAT THE PROJECT, AS MODIFIED, COMPLIED WITH**  
11 **THE COASTAL ACT**

12 Petitioners argue the project is inconsistent with the Coastal Act. (Pet. Brief. at pp. 10-11.)  
13 Specifically, they contend it does not comply with the public access and view protection policies  
14 set forth in Chapter Three of the Coastal Act. (§§ 30251; 30252.) Substantial evidence supported  
15 the Commission’s finding that the project as revised met Coastal Act policies, and the Court  
16 should reject petitioners’ claims.

17 The Commission found that the new landside restaurant development, as the Port approved,  
18 would block waterfront access that was currently available through the existing parking lot.  
19 (11AR 2778.) The Commission required Sunroad to re-design the project to provide a continuous  
20 public path along the shoreline between the restaurant and the water. (11AR 2654-2655.) The  
21 Commission further required Sunroad to allow public access to the floating barge, and to provide  
22 appropriate signage directing the public to the barge. (11AR 2799.) Commission staff testified  
23 that the project, as revised, would maintain and improve public access along the shoreline.  
24 (11AR 2654-2655.) The Commission concurred. (11AR 2797.)

25 The Commission also found that the modified development would not have any adverse  
26 impact on the visual quality of the area because the proposed barge would be a maximum 18 feet  
27 in height, compared to the previous barge, the 4-story Reuben E. Lee. Moreover, the public  
28 access improvements on the shoreline side of the restaurant would provide pedestrian access to  
views beyond the building. (11AR 2801.) Visual depictions that the Commission considered

1 show that the project would provide shoreline public access and enhanced views of the water.  
2 (11AR 2562-2571; 2816-2818; 1AR 11-12 [showing smaller profile of floating barge as  
3 compared to Reuben E. Lee].) The Commission also found the proposed project includes  
4 expansive landscaping and “hardscape” that would make the area more inviting to the public.  
5 (11AR 2801.)

6 Petitioners quote from the Commission’s findings that public access and views would be  
7 negatively effected by the version of the project *that the Port approved*. (Pet. Brief at pp. 10-11.)  
8 They acknowledge that the Commission required a number of revisions to the project, but argue  
9 that the project does not maintain and enhance public access. (Pet. Brief at p. 11.) Petitioners  
10 claim that additional public input would have resulted in further measures to enhance public  
11 access and protect scenic views, but fail to identify any further measures or cite any evidence in  
12 the record supporting their position. (*Ibid.*)

13 The Commission concluded the project as modified and conditioned was consistent with the  
14 Coastal Act based on ample evidence that public access and views would be protected and  
15 enhanced. The evidence showed the project’s public path and deck area would be preferable to  
16 the currently-available public access to the end of the peninsula via a parking lot, and the new  
17 floating barge would be significantly lower in height and bulk than the Reuben E. Lee. The  
18 Commission was entitled to consider this evidence and infer from it that the project would  
19 enhance, not diminish, public access and scenic views. (*Whaler’s Village Club v. Cal. Coastal*  
20 *Com.*, *supra*, 173 Cal.App.3d at p. 261 [opinion evidence of experts in environmental planning is  
21 a permissible basis for decision]; *Coastal Southwest Development Corp. v. California Coastal*  
22 *Zone Conservation Com.*, *supra*, 55 Cal.App.3d at p. 525 [oral presentation of opinions of  
23 Commission staff, written material prepared by Commission staff, and photographic evidence  
24 presented constitutes substantial evidence].) Petitioners do not offer any evidence contrary to the  
25 Commission’s findings, and cannot carry their burden to defeat the presumption that substantial  
26 evidence supported the Commission’s decision. (*Ocean Harbor House Homeowners Assn. v.*  
27 *California Coastal Com.*, *supra*, 163 Cal.App.4th at p. 227.) Petitioners’ claim that the project is  
28 inconsistent with the Coastal Act is without merit and should be denied.



1  
2 **V. ADEQUATE ALTERNATIVES WERE ANALYZED UNDER THE CALIFORNIA**  
3 **ENVIRONMENTAL QUALITY ACT**

4 Finally, petitioners claim the Commission violated CEQA because no alternatives to the  
5 approved development were identified, and there is no substantial evidence in the record to  
6 support the Commission's finding that the proposed project was the least environmentally-  
7 feasible alternative. (Pet. Brief at pp. 11-14.) They are incorrect.<sup>5</sup>

8 Under CEQA, a state agency's regulatory program may be exempted from the requirements  
9 of preparing initial studies, negative declarations and environmental impact reports if the  
10 Secretary of the Resources Agency certifies the program. (§ 21080.5.) A certified regulatory  
11 program remains subject to other CEQA policies, including the obligations to identify a project's  
12 adverse environmental effects, to mitigate those effects through the adoption of feasible  
13 alternatives or mitigation measures, and to justify its actions based on specific economic, social or  
14 other conditions. (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1230.)

15 The secretary certified the Commission's coastal development permit program under  
16 section 21080.5. (Cal. Code Regs, tit. 14, § 15251, subd. (c).) A Commission staff report  
17 "complies with the relevant substantive and procedural requirements applicable to a certified  
18 regulatory program" for CEQA purposes. (*Ross v. California Coastal Com.*, *supra*, 199  
19 Cal.App.4th at p. 933; see Cal. Code Regs., tit. 14, §§ 13057 [requirements for staff report];  
20 13096 [requiring written conclusions by Commission as to consistency of permit applications  
21 with CEQA].) The report must include "a description of the proposed activity with alternatives to  
22 the activity . . . ." (§ 21080.5, subd. (d)(3)(A).) The consideration of alternatives need not be  
23 exhaustive, but "it must reasonably reflect that due consideration was given" to project  
24 alternatives. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 136.)

25 <sup>5</sup> Petitioners only made a generalized objection at the Commission hearing that alternatives  
26 were inadequately analyzed. (11AR 2687-2688.) "Generalized environmental comments at  
27 public hearings" are insufficient to exhaust administrative remedies. (*Citizens for Responsible*  
28 *Equitable Environmental Development v. City of Chula Vista* (2011) 196 Cal.App.4th 515, 527.)  
Accordingly, petitioners' CEQA argument is unexhausted, but the record nevertheless shows the  
Commission's action complied with CEQA.

1 Here, the Commission staff report described two projects: the project the Port approved,  
2 and the project that the Commission ultimately approved. The report found that the Port-  
3 approved project would total 27,505 square feet, and would provide two public viewpoints on  
4 either side of the proposed restaurant. (11AR 2760.) The report stated that the Port-approved  
5 project would eliminate public access to the shoreline and water views, and that the proposed  
6 overlook points would not preserve or enhance the level or quality of public access that existed on  
7 the site. (11AR 2778-2779.) It also found that, as a result of the elimination of public access to  
8 the shore, the project would block existing views of the downtown skyline and bay. (11AR  
9 2780.) In addition, the report noted that the Port-approved proposal did not include conditions  
10 requiring measures to prevent the spread of the invasive algae *Caulperpa taxifolia*. (*Ibid.*) In  
11 contrast, as described above, the modified development proposed to the Commission would be  
12 approximately 22,850 square feet—a significant reduction—and would include measures to  
13 ensure public access to the coast and protect scenic views, coastal biology and water quality.  
14 (11AR 2790.)

15 In addition, the Commission considered and rejected alternatives requiring that the project  
16 be moved further away from the shoreline or shrunk in size. (11AR 2798.) The restaurant could  
17 not be shifted inland because of setback requirements related to a seismic fault, and shrinking the  
18 project further would have required eliminating basic components of the project. (*Ibid.*; 11AR  
19 2781 [describing 10-foot setback zone].) And, such changes would be unnecessary because the  
20 project had been re-designed to avoid all significant environmental impacts. (11AR 2797-2803.)  
21 The record thus contains substantial evidence that the Commission considered a reasonable range  
22 of feasible alternatives, imposed feasible mitigation measures to reduce the project's  
23 environmental impact, and adopted the least environmentally-damaging alternative.

24 Contrary to petitioners' assertion (Pet. Brief at p. 14), the staff report's findings that  
25 "feasible mitigation measures and/or alternatives have been incorporated to substantially lessen  
26 any significant adverse effects on the environment," and "there are no further feasible mitigation  
27 measures that would substantially lessen any significant adverse effects on the environment"  
28 (11AR 2808-2809), were supported by substantial evidence and complied with CEQA. (See

1 *Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 556 ["where reference to the  
2 administrative record informs the parties and reviewing courts of the theory upon which an  
3 agency has arrived at its ultimate finding and decision, it has long been recognized that the  
4 decision should be upheld if the agency 'in truth found those facts which as a matter of law are  
5 essential to sustain its ... [decision] ...' ..."]; see also *Mira Development Corp. v. City of San*  
6 *Diego* (1988) 205 Cal.App.3d 1201, 1222-1223 [failure to make findings harmless error where  
7 record showed basis of agency's decision].)

8  
9 **VI. THE COURT SHOULD DISREGARD THE DECLARATIONS ATTACHED TO  
PETITIONERS' OPENING BRIEF**

10 Petitioners attach declarations to their opening brief from two individuals who state they are  
11 members of the San Diego Navy Broadway Complex Coalition and San Diegans for Open  
12 Government. It appears these declarations were prepared and attached to show petitioners have  
13 standing to bring this action. The Commission does not challenge petitioners' standing. Because  
14 the declarations are not part of the administrative record, this Court should disregard them. (See  
15 *Reddell v. California Coastal Com.*, *supra*, 180 Cal.App.4th at p. 962 [judicial review of  
16 Commission decisions limited to administrative record].)

17 **CONCLUSION**

18 For the reasons stated herein, the Commission respectfully requests that the Court deny the  
19 first amended petition for writ of mandate and enter judgment in favor of the Commission.

20  
21 Dated: March 3, 2014

Respectfully Submitted,

22 KAMALA D. HARRIS  
Attorney General of California  
23 CHRISTINA BULL ARNDT  
Supervising Deputy Attorney General

24 

25 BAILE P. KERR  
26 Deputy Attorney General  
27 Attorneys for Respondent  
28 California Coastal Commission

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: **San Diegans for Open Government et al. v. California Coastal Com. et al.**

No.: **37-2013-00057492-CU-TT-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: *300 South Spring Street, Suite 1702, Los Angeles, CA 90013.*

On March 3, 2014, I served the attached **[RESPONDENT CALIFORNIA COASTAL COMMISSION'S MEMORANDUM IN OPPOSITION TO FIRST AMENDED PETITION FOR WRIT OF MANDATE]** by placing a true copy thereof enclosed in a sealed envelope with the **[Federal Express overnight courier service]**, addressed as follows:

Cory J. Briggs  
Attorney at Law  
Briggs Law Corporation  
99 East "C" Street, Suite 111  
Upland, CA 91786

McMurry, Esq.

Richards, Watson & Gershon - Los Angeles  
355 South Grand Avenue, 40th Floor  
Los Angeles, CA 90071-3101  
Attorney for Real Party In Interest

Plaintiffs and Petitioners

Michael M. Hogan  
Hogan Guiney Dick LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101  
Attorney for San Diego Unified Port District

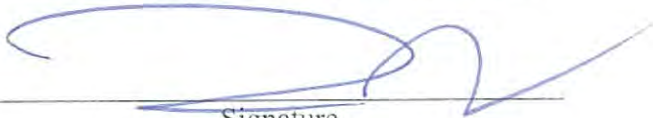
Rebecca Harrington  
San Diego Unified Port District  
Deputy Port Attorney  
P.O. Box 120488  
3165 Pacific Hwy  
San Diego, CA 92101

Attorney for San Diego Unified Port District

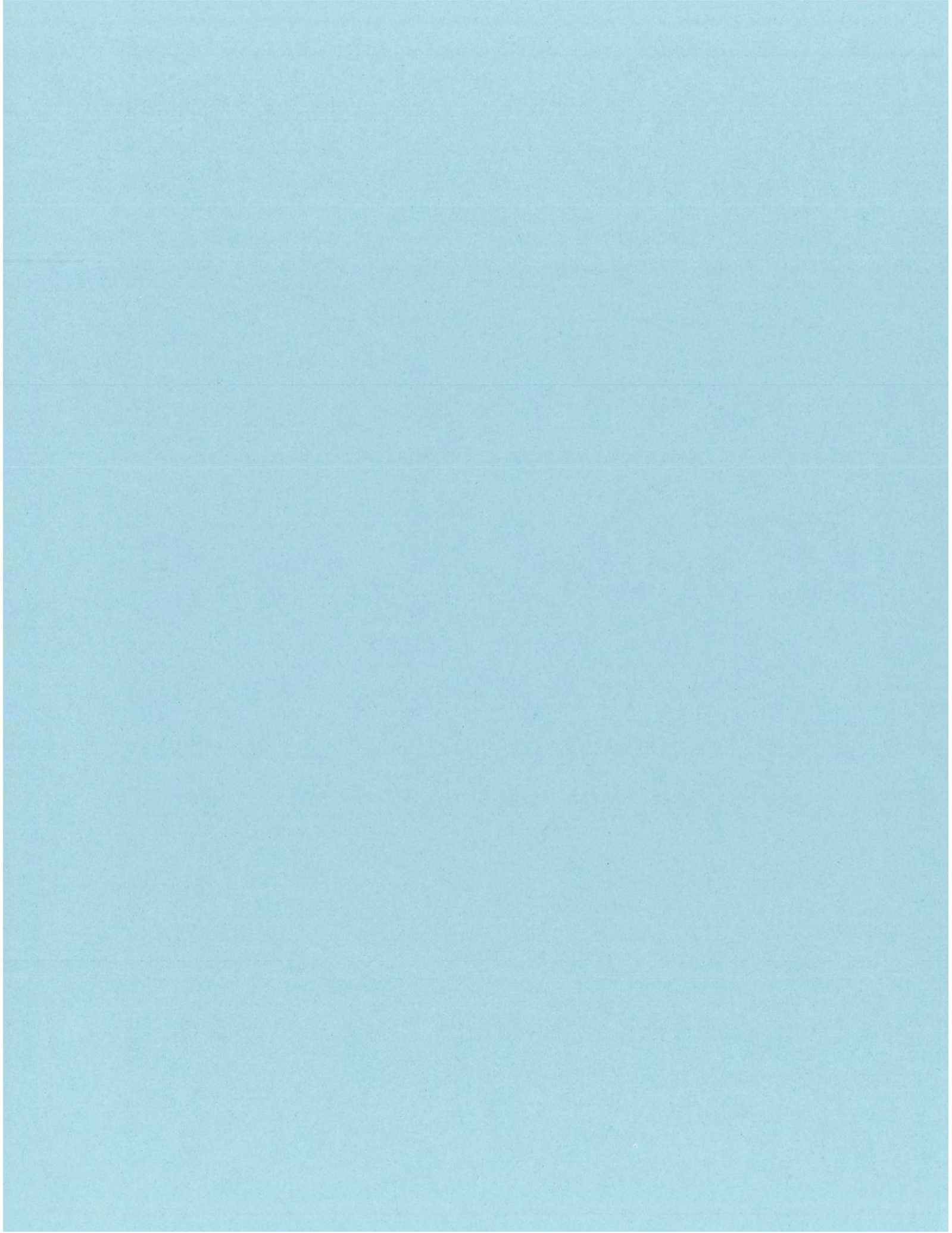
Steven H. Kaufmann, Esq. AND Robert

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 3, 2014, at Los Angeles, California.

Teresa De Paz  
Declarant



Signature



BRIGGS LAW CORPORATION [FILE: 1593.20]  
Cory J. Briggs (State Bar no. 176284)  
Mekaela M. Gladden (State Bar no. 253673)  
Anthony N. Kim (State Bar no. 283353)  
99 East "C" Street, Suite 111  
Upland, CA 91786  
Telephone: 909-949-7115

Attorneys for Plaintiffs and Petitioners San Diegans  
for Open Government and San Diego Navy  
Broadway Complex Coalition

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO--HALL OF JUSTICE

SAN DIEGANS FOR OPEN GOVERNMENT and  
SAN DIEGO NAVY BROADWAY COMPLEX  
COALITION  
vs.

CALIFORNIA COASTAL COMMISSION; SAN  
DIEGO UNIFIED PORT DISTRICT; and DOES 1  
through 100,

Defendants and Respondents;

SUNROAD ENTERPRISES; SUNROAD  
HARBOR ISLAND, INC.; and DOES 101 through  
1,000,

Defendants and Real Parties in Interest.

CASE NO. 37-2013-00057492-CU-TT-CTL

**PETITIONERS' CONSOLIDATED  
REPLY BRIEF IN SUPPORT OF  
VERIFIED FIRST AMENDED PETITION  
FOR WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF UNDER THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT, THE CALIFORNIA  
COASTAL ACT, AND OTHER LAWS**

Action Filed: July 15, 2013  
Department: 71 (Prager)

Hearing Date: April 22, 2014  
Hearing Time: 10:00 a.m.

Plaintiffs and Petitioners San Diegans for Open Government and San Diego Navy Broadway  
Complex Coalition respectfully submit this consolidated reply brief in support of their complaint and  
petition for writ of mandate.



**Table of Contents**

I.	Two Wrongs Still Do Not Make a Right. ....	1
II.	Argument and Analysis. ....	1
A.	The Port of San Diego and Coastal Commission Violated the Coastal Act. ....	2
1.	Petitioners Have Standing to Maintain This Coastal Act Action. ....	2
2.	The Port of San Diego. ....	2
3.	The Coastal Commission Had No Jurisdiction to Issue the Coastal Development Permit. ....	2
4.	The Project Is Inconsistent with the Coastal Act. ....	6
B.	The Coastal Commission Violated the California Environmental Quality Act. ....	7
1.	Petitioners Have Standing under the California Environmental Quality Act. ....	7
2.	Petitioners Adequately Exhausted on the Alternatives Issue. ....	7
3.	No Alternatives Were Clearly Identified. ....	8
4.	There Is No Substantial Evidence In the Record to Support the Finding That There Are No Feasible Alternatives or That There Are No Further Feasible Alternatives. ....	9
IV.	Conclusion. ....	10



**Table of Authorities**

**Judicial Authorities**

<i>Citizens of Goleta Valley v. Board of Supervisors</i> , 52 Cal. 3d 553 (1990). . . . .	10
<i>Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.</i> , 47 Cal. 3d 376 (1988). . . . .	8
<i>San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus</i> , 27 Cal. App. 4th 713 (1994). . . .	7
<i>Security Nat. Guaranty, Inc. v. California Coastal Com’n</i> , 159 Cal. App. 4th 402 (2008). . . . .	4
<i>Waste Management of Alameda County v. County of Alameda</i> , 79 Cal. App 4th 1223 (2000). . . .	7

**Legislative Authorities**

PUB. RES. CODE § 21082.2.. . . .	10
PUB. RES. CODE § 30004. . . . .	3, 4
PUB. RES. CODE § 30006. . . . .	5
PUB. RES. CODE § 30251. . . . .	6
PUB. RES. CODE § 30252. . . . .	5
PUB. RES. CODE § 30625. . . . .	2
PUB. RES. CODE § 30711. . . . .	2
PUB. RES. CODE § 30714. . . . .	3
PUB. RES. CODE § 30715. . . . .	3
PUB. RES. CODE § 30715.5.. . . .	3
PUB. RES. CODE § 30716. . . . .	2

**Administrative Authorities**

CAL. CODE OF REGS., tit. 14, § 15730. . . . .	8
---	---

1                                   **I. TWO WRONGS *STILL* DO NOT MAKE A RIGHT**

2           A state regulatory agency may not cure a local agency's violation of the Coastal Act by  
3 committing a different violation of the Act and by also violating CEQA. But that is what the Coastal  
4 Commission did here. The San Diego Unified Port District ("Port" or "Port of San Diego") broke the  
5 law when it concluded that Sunroad's restaurant-replacement project--building a new land-based  
6 restaurant on Harbor Island to replace the once-floating Reuben E. Lee restaurant moored adjacent to  
7 Harbor Island--was exempt from the Coastal Act. The Coastal Commission rightly interceded to protect  
8 the public by taking the Port's exemption determination up on administrative appeal. But the  
9 Commission turned around and thoroughly botched it by issuing Sunroad a coastal development permit  
10 for a development that is not listed in the local Port Master Plan. As a result of this flawed process, the  
11 San Diego public was excluded in every meaningful sense from the process that resulted in issuance  
12 of the illegal permit. The administrative inconvenience on one developer's project does not justify  
13 scrapping the Coastal Act's legislative scheme under which the Port has the exclusive power to craft  
14 and amend the Port Master Plan, subject only to the Coastal Commission's certification for consistency  
15 with the Act. Once the Plan is certified, the Port has original permitting jurisdiction consistent with the  
16 Plan or the Plan must be amended to allow for deviations. The Commission does not get to issue a  
17 permit for a project that is not in the Plan. And when it came to CEQA review, the Commission also  
18 appeared to have been accommodating the developer without requiring substantial evidence of  
19 infeasibility before rejecting reasonable alternatives.

20           For these reasons, as explained in detail below as well as in the opening brief, the Court should  
21 grant the relief that Petitioners seek.

22                                   **II. ARGUMENT & ANALYSIS**

23           Process and public participation matter a lot under the Coastal Act and CEQA. Because of the  
24 way that the Project's coastal development permit was issued, the public was denied the opportunity  
25 to provide input on how the Project would fit in with the rest of the development contemplated under  
26 the Port Master Plan. If the Court agrees that the Coastal Commission did not have jurisdiction to issue  
27 the permit because the restaurant was not included in the Plan, then there is no need to address the other  
28 issues because on remand the public will get the opportunity it should have received in the first place.

1           **A.     The Port of San Diego and the Coastal Commission Violated the Coastal Act**

2                   **1.     Petitioners Have Standing to Maintain This Coastal Act Action**

3           None of the parties dispute that Petitioners have standing to maintain the Coastal Act action.  
4           Therefore, this issue will not be addressed further.

5                   **2.     The Port of San Diego**

6           The Port argues that claims against it are barred by the exhaustion doctrine because its decision  
7           concerning the Project was not a final administrative action. Port Br., pp. 2-4. The Port was sued out  
8           of a concern that an adequate remedy could not be crafted without its participation. However,  
9           Petitioners largely agree that the Commission's actions superseded the Port's and that the Commission's  
10          actions are what are justiciable here. With none of the parties disputing that the Commission was the  
11          final regulatory actor, the claim against the Port will be dismissed prior to trial unless the Commission  
12          or Sunroad notifies Petitioners' counsel in writing that the Port should remain a party.

13                   **3.     The Coastal Commission Had No Jurisdiction to Issue the Coastal**  
14                   **Development Permit**

15          The Coastal Commission was without jurisdiction to issue the Project's coastal development  
16          permit, and the process that was used circumvented meaningful public review. Generally speaking, the  
17          Coastal Commission does have the authority to approve, modify, or deny a permit when exercising  
18          appellate review. *See* PUB. RES. CODE § 30625. However, the Commission did not have the authority  
19          to issue *this permit* after finding that there was a substantial issue as to the Project's conformity with  
20          the Port Master Plan. Put another way, while the Commission has the ability to approve, disapprove,  
21          or modify a permit generally, it did not have the authority on appeal to do what the Port itself did not  
22          have the ability to do because to interpret the Coastal Act in such a way would disrupt the legislative  
23          balance struck between a state agency and local agencies.

24          The actions of two agencies, with opportunities for public participation, are necessary for a Port  
25          Master Plan or any amendment to have effect. Only the Port's governing body may amend the Port  
26          Master Plan; the Commission's role is limited to certifying that the Plan is consistent with the Coastal  
27          Act. PUB. RES. CODE § 30711 ("A port master plan that carries out the provisions of this chapter shall  
28          be prepared and adopted by each port governing body. . ."); § 30716 ("A certified port master plan may  
                be amended by the port governing body, but an amendment shall not take effect until it has been

1 certified by the commission.”). The Legislature was so serious about ensuring that the Commission  
2 did not impose its will on local planning and thereby exclude the local public from having the largest  
3 possible say in how their local ports are developed that it explicitly barred the Commission from making  
4 even minor changes to proposed port master plans when they are presented for certification. PUB. RES.  
5 CODE § 30714 (“The commission may not modify the plan as submitted as a condition of  
6 certification.”). This scheme furthers legislative intent behind the Coastal Act. “To achieve maximum  
7 responsiveness to *local* conditions, accountability, and public accessibility, it is necessary to rely heavily  
8 on *local* government and *local* land use planning procedures and enforcement.” PUB. RES. CODE §  
9 30004 (emphasis added).

10 The Coastal Act delegates permitting authority for development within a port’s geographical  
11 jurisdiction from the Commission to the port *when the development is contained in the port’s certified*  
12 *master plan*. PUB. RES. CODE § 30715(a) (“After a port master plan or any portion thereof has been  
13 certified, the permit authority of the commission . . . shall no longer be exercised by the commission  
14 over any new development contained in the certified plan or any portion thereof and shall at that time  
15 be delegated to the appropriate port governing body. . . .”). Furthermore, “[n]o developments within  
16 the area covered by the certified port master plan shall be approved by the port governing body unless  
17 it finds that the proposed development conforms with such certified plan.” *Id.*, § 30715.5. Together  
18 these two provisions prohibit the approval of any coastal development that does not appear in a certified  
19 port master plan, and when it does appear the permit is to be issued by the port’s governing body and  
20 not by the Commission.

21 If the Coastal Commission is not constrained to the Port Master Plan that it certified, then it is  
22 unclear what good the Plan is. There is no dispute that in order for the Port to approve the permit, a Port  
23 Master Plan amendment would be required--and in fact that is what should have been done. The  
24 Coastal Commission report says: “Because there is no provision for a restaurant on the land at this site  
25 in the Port Master Plan, either in the text of the plan, or on the project list, construction of a new  
26 restaurant building on this site should have been accompanied by a Port Master Plan Amendment to add  
27 the restaurant to the Project List and incorporate the proposal into an integrated public access plan for  
28 Harbor Island.” Admin. R. 11:2773. If the Port needed to approve a Port Master Plan amendment in

1 order to approve the permit, then Commission had to do the same thing. Allowing the Commission to  
2 issue the permit in the first instance when the Project did not appear in the Port Master Plan is  
3 tantamount to allow a state agency acting all the way up in Long Beach to avoid “*local*” conditions,  
4 accountability, and public accessibility.” PUB. RES. CODE § 30004 (emphasis added).

5 The Coastal Commission attempts to distinguish this case from *Security National Guaranty v.*  
6 *California Coastal Commission*, 159 Cal. App. 4th 402 (2008), where the appellate court reasoned that  
7 the Commission was without jurisdiction to change the content of the city’s local coastal program on  
8 a permit appeal. The Commission argues that her it did not alter the Port Master Plan. CCC Br., p. 7,  
9 Ins. 25-27. Petitioners acknowledge that the Coastal Commission did not change the paperwork;  
10 practically speaking, however, the Commission altered how the plan works on the ground. Now, there  
11 will be a restaurant that is not in the Port Master Plan and has never been considered by members of the  
12 “local” San Diego public.

13 The Coastal Commission argues that it should be accorded deference in interpreting the Coastal  
14 Act. CCC Br., p. 6, Ins. 21-23. However, Petitioners’ position that a Port Master Plan Amendment was  
15 required before a coastal development permit could be issued by either the Port or the Coastal  
16 Commission is consistent with the Commission’s own statements and practices. For example, Chief  
17 Council Ralph Faust and Deputy Chief Council Dorothy Dickey explained the process in a  
18 memorandum to (former and now late) Executive Director Peter Douglas. Admin. R. 9:2156-2160.  
19 They wrote: “The standard of review for permit decisions after the Commission has certified a local  
20 coastal program or port master plan is the certified program or plan.” *Id.*, 9:2159. They continued:  
21 “The Commission’s actions on appeals are also governed by the certified program or plan.” *Id.*  
22 Consistent with this approach, when the Port issued a coastal development permit for the new cruise  
23 ship terminal on Broadway Pier, the Commission opined that all development projects had to be  
24 identified in the Port Master Plan. *See id.*, 9:2143 (explaining that Port issued coastal development  
25 permit for Broadway Pier cruise ship terminal); 2145-55 (explaining that all future development must  
26 be in Port Master Plan). Thus, an amendment of the Port Master Plan was required. *Id.*

27 Even Coastal Commission staff acknowledged that a Port Master Plan amendment should have  
28 been done in this case. Consider the following:

1 The issue related to the need for a Port Master Plan amendment, we--we  
2 don't disagree that *a Port Master Plan amendment would have been*  
3 *the proper way to handle this project. And that would have afforded*  
4 *the local hearing that was the concern by the last speaker* [referring to  
5 Petitioners' attorney at the hearing].

6 Admin. R. 11:2690, Ins. 21-25, 2691, ln. 1 (emphasis added). Instead, staff indicated that they were  
7 "balancing the equities of the process that this applicant had undergone prior to this time." *Id.*, 11:2691,  
8 Ins. 6-7. The Coastal Act provides for the public's right to participate. *See* PUB. RES. CODE § 30006  
9 ("The Legislature further finds and declares that the public has a right to fully participate in decisions  
10 affecting coastal planning. . ."). As Commission Chair Shallenberger pointed out, public participation  
11 was never part of the balancing equation. *Id.*, 11:2724, Ins. 10-20. Notably, the Commission has cited  
12 not a single legal authority that allows the agency to "balance the equities" as it did here.

13 While it is not surprising that Sunroad would claim that the public had adequate opportunities  
14 to participate, the Coastal Commission attorneys' argument that the public had an opportunity to  
15 participate in the Port's 2008 public meeting and the Commission's hearing, which was held more than  
16 100 miles from San Diego, is unfortunate in light of the reality that the Coastal Commissioners  
17 *themselves* recognized. CCC Br., p. 9, Ins. 24-28. The Commission's attorneys are ignoring that the  
18 Commissioners took turns blasting the process for excluding the public, as described in more detail in  
19 the introduction to Petitioners' opening brief. Coastal Commission Sanchez, for example, pointed out  
20 that "there has been a pattern and practice by the Port in excluding the public." Admin. R. 11:2706, Ins.  
21 7-9. By way of further example, Commissioner Groom expressed his concern that the Project had never  
22 really gone before the public of the Port. *Id.*, 11:2716, Ins. 17-22. As Commission Chair Shallenberger  
23 pointed out, the public was still being left out of the equation when it came to the Commission's final  
24 decision. *Id.*, 11:2724, Ins. 10-20. While the Commissioners were trying to do what they thought was  
25 fair for the developer in light of the mess left from the Port's process, no one was under the illusion that  
26 the "local" public had a genuine opportunity to participate in this process. The Commission attorneys'  
27 attempt to re-write the history lamented by the decision-makers themselves is simple non-sense.

28 Nor is there any legal support for the Coastal Commission's rationalization that a Port Master  
Plan amendment can be done in the future. Either the Port will be *forced* to change the Plan to  
accommodate what the Coastal Commission has allowed--*i.e.*, the local agency will have to adopt a

1 land-use plan imposed from above--or the Project will remain inconsistent with the Plan. The Port lost  
2 the ability to plan for this area in the first instance, and, more importantly from Petitioners' perspective,  
3 the "local" public lost the ability to meaningfully participate in the Port Master Plan amendment process  
4 for this area because the amendment was done *de facto* by a state agency at a meeting more than 100  
5 miles away.

6 Altogether, the Coastal Commission did not have the ability to issue a permit for a project that  
7 was not identified in the Port Master Plan. An amendment was required before either the Port or the  
8 Coastal Commission could issue such a permit.

9 **4. The Project Is Inconsistent with the Coastal Act**

10 Even if a permit could have been issued without an amendment of the Port Master Plan, the  
11 Project is inconsistent with the Coastal Act. The Coastal Act's public-access policies provide that the  
12 "location and amount of new development should maintain and enhance public access to the coast. .  
13 . ." PUB. RES. CODE § 30252. Similarly, "scenic and visual qualities of coastal areas shall be  
14 considered and protected as a resource of public importance." PUB. RES. CODE § 30251. While the  
15 Coastal Commission imposed conditions to ensure that public access would be better than what it would  
16 have been under the Port's exemption, the new land-based restaurant still does not maintain or enhance  
17 public access to the coast or the scenic and visual qualities.

18 The Coastal Commission argues that the Project as modified and conditioned was consistent  
19 with the Coastal Act and that Petitioners are quoting from the findings based on the version of the  
20 Project that the Port approved. Petitioners acknowledge that the Project with the conditions required  
21 by the Coastal Commission is better than what the Port approved, but the public-access issues are not  
22 completely resolved. The Commission points to the lower height of the floating barge compared to the  
23 height and bulk of the Reuben E. Lee. CCC Br., p. 12, ln. 17. This is not different than what the Port  
24 approved. CCC Br., p. 2, lns. 4-19. Yet the Commission still found that the Project as approved by the  
25 Port would have visual-quality issues. Admin. R. 11:2780 (recognizing that from some vantage points,  
26 water views would improve as a result of the demolition of the Reuben E. Lee, but from other vantage  
27 points such as adjacent sidewalks, parking areas, and the vehicle cul-de-sac, existing views of the  
28 skyline would be permanently blocked). The Project with the Commission's conditions has the same

1 issue. Some vantage points are maintained or improved, but some are permanently lost. Had the public  
2 been provided the opportunity to be involved through a Port Master Plan amendment process, the public  
3 could have provided input on how best to provide public access and to protect public views. Thus,  
4 while Petitioners appreciate that the Commission made *some* progress in terms of public access and  
5 public views above what the Port would have required, it is extremely arrogant to think that it did the  
6 best that could be done without giving the local community the opportunity to weigh in on the proposal  
7 first.

8 **B. The Coastal Commission Violated the California Environmental Quality Act**

9 **1. Petitioners Have Standing under the California Environmental Quality Act**

10 None of the parties disputes that Petitioners have standing. In fact, the Coastal Commission  
11 explicitly states that it does not challenge Petitioners' standing. CCC Br., p. 15 ln. 13. The  
12 Commission does, however, argue that the Court should disregard the declarations as they are not part  
13 of the administrative record. While Petitioners agree that the declarations should only be considered  
14 on the issue of standing, the declarations should not be disregarded because they are an appropriate  
15 method of establishing standing. *See Waste Management of Alameda County v. County of Alameda*,  
16 79 Cal. App. 4th 1223, 1232 (2000) (disapproved of on other grounds in *Save the Plastic Bag Coalition*  
17 *v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011) (indicating that plaintiff's standing must be  
18 established in some appropriate manner).

19 **2. Petitioners Adequately Exhausted on the Alternatives Issue**

20 As the Coastal Commission acknowledges, while a state agency's certified regulatory program  
21 may be exempt from many of the traditional CEQA requirements, the regulatory program remains  
22 subject to certain CEQA policies, including the obligation to mitigate adverse environmental impacts  
23 through the adoption of feasible alternatives or mitigation measures. CCC Br., p. 13, lns. 7-14. The  
24 responsibility to identify a reasonable range of alternatives lies with the agency, not Petitioners or  
25 anybody else. *See San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27 Cal. App. 4th  
26 713, 737 (1994) ("Contrary to the County's argument, appellants are not required to show there are  
27 reasonable alternatives."). Thus, Petitioners were not required to demonstrate that there are reasonable  
28 alternatives to exhaust on the issue of alternatives. What Petitioners did assert was sufficient.



1 Petitioners' attorney stated on their behalf:

2 Let me also say that there is no alternative to what they're proposing,  
3 namely putting another barge that is a restaurant out there. Obviously  
4 they did it before, they could do it again. There's nothing in the record  
to indicate they couldn't do it, and that is the Commission's burden and  
the developer's burden.

5 Admin. R. 11:2687, ln. 21-2688, ln. 3. This is the problem. The record is sparse when it comes to  
6 discussing alternatives generally and lacking when it comes to substantial evidence in the record to  
7 justify the infeasibility finding.

8 **3. No Alternatives Were Clearly Identified**

9 The majority of what opposing parties argue as being part of the alternatives analysis in fact  
10 constitutes mitigation measures. "Mitigation" includes:

11 (a) Avoiding the impact altogether by not taking a certain action or parts  
12 of an action.

13 (b) Minimizing impacts by limiting the degree or magnitude of the action  
and its implementation.

14 (c) Rectifying the impact by repairing, rehabilitating, or restoring the  
15 impacted environment.

16 (d) Reducing or eliminating the impact over time by preservation and  
maintenance operations during the life of the action.

17 (e) Compensating for the impact by replacing or providing substitute  
18 resources or environments.

19 CAL. CODE OF REGS., tit. 14, § 15730. Mitigation measures are to be made enforceable through the  
20 adoption of a reporting and monitoring program or through conditions of project approval. PUB. RES.  
21 CODE § 21081.6(a)(1). Both mitigation measures and alternatives have to be discussed even if project  
22 impacts are mitigated to a level of insignificance. *See Laurel Heights Improvement Ass'n v. Regents*  
23 *of the Univ. of Cal.*, 47 Cal. 3d 376, 401 (1988) (finding that CEQA requires the discussion of both  
24 alternatives and mitigation measures and such approach is consistent with CEQA's purpose of  
25 providing responsible officials with adequate information).

26 Sunroad argues that the Coastal Commission clearly considered and adopted alternatives to the  
27 Project, but then points to revisions and Special Conditions. Sunroad Br., p. 14, ln. 17-p. 15, ln. 1.  
28 However, the public-access features and other requirements through special conditions are mitigation  
measures, not alternatives. The Commission even describes these measures as mitigation measures.

1 Admin. R. 11:2809. The Commission was required to analyze both mitigation measures and  
2 alternatives; the imposition of mitigation measures is not a substitute for an alternatives analysis.

3 The Coastal Commission and the Port have the better argument. Although both agencies  
4 attempt to bolster their argument with examples of mitigation measures, they still make the better  
5 argument regarding alternatives. *See, e.g.,* CCC Br., p. 14, Ins. 4-14 (identifying negative impacts of  
6 project as approved by Port and conditions requiring measures by Coastal Commission). Although not  
7 described as “alternatives,” the Commission describes what could be considered four alternative  
8 scenarios: (1) the project as approved by the Port; (2) the project as approved by the Commission; (3)  
9 the restaurant shifted inland; and (4) a smaller project. As the Commission plausibly considered  
10 alternatives, the question becomes whether the rejection of alternatives is supported by the record.

11 4. **There Is No Substantial Evidence In the Record to Support the Finding**  
12 **There Are No Feasible Alternatives or that There Are No Further Feasible**  
**Alternatives**

13 There is no substantial evidence in the record to support the finding that there are no feasible  
14 alternatives or no further feasible alternatives. Before addressing what evidence supports the Coastal  
15 Commission’s finding, the lack of clarity with respect to whether the Project as approved by the  
16 Commission would avoid all significant environmental impacts under CEQA will be addressed.

17 The Commission argues that all significant environmental impacts are avoided. CCC Br., p. 14,  
18 Ins. 19-20. However, in the “Consistency with the California Environmental Quality Act (CEQA)”  
19 section of the report, the Commission found: “As conditioned, there are no feasible alternatives or  
20 feasible mitigation measures available which would substantially lessen any significant adverse impact  
21 which the activity may have on the environment.” Admin. R. 11:2809. The finding suggests that  
22 although the Commission may have felt comfortable about the revised Project’s consistency with the  
23 Coastal Act, potential environmental impacts were not reduced to a level of insignificance as  
24 contemplated under CEQA. For example, with respect to shoreline hazards, the Project has the  
25 potential for overtopping, fast-moving water and flooding during a tsunami and other storm events,  
26 which could potentially cause the release of toxic chemicals and reduce or eliminate the public  
27 improvements required to reduce impacts to public access, recreation and visual resources. Admin. R.  
28 11:2803-2805. Instead of making a consistency finding, the Commission indicated that “the applicant

1 has chosen to construct a structure in this location despite these risks” so “the applicant must assume  
2 the risks.” *Id.*, 11:2805. Obviously not all significant impacts have been avoided if Sunroad must  
3 assume the risk of them.

4 The Coastal Commission asserts that it considered and rejected an alternative that “shrinking  
5 the project further would have required eliminating basic components of the project.” CCC Br., p. 14,  
6 Ins. 16-19. The Commission indicated that the “structure could, of course, be reduced in size to avoid  
7 constructing any portion of the public accessway over the water.” Admin. R. 11:2798. However,  
8 “[a]ccording to the applicant’s analysis, it would be financially infeasible to reduce the size of the  
9 facility any more than it has been and still have a functional operation.” *Id.* This self-serving statement  
10 falls far short of the comparative evidence necessary to satisfy the substantial-evidence standard.<sup>1</sup> So  
11 not only did the Commission reach a conclusion contrary to what it is arguing now, but the record  
12 contains not a shred of substantial evidence to support the argument being made now.

13 Altogether, the record does not contain substantial evidence supporting a finding that there are  
14 no feasible alternatives to the Project.

### 15 III. CONCLUSION

16 For all of the foregoing reasons as well as those set forth in the opening brief, Petitioners  
17 respectfully request that the Court grant the petition for writ of mandate and complaint for declaratory  
18 and equitable relief.

---

19  
20 <sup>1</sup> “Substantial evidence” includes “facts, reasonable assumptions predicated upon facts, and expert  
21 opinion supported by facts;” it excludes “[a]rgument, speculation, unsubstantiated opinion or narrative,  
22 evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do  
23 not contribute to, or are not caused by, physical impacts on the environment.” See PUB. RES. CODE §  
24 21082.2(c). Findings of economic infeasibility require some sort of comparative data. In the leading  
25 case on the issue, the appellate court agreed that there was no substantial evidence in the record to  
26 support an economic-infeasibility finding where the record did not compare the alternatives in terms  
27 of costs, profit or losses or economic benefit to the public. *Citizens of Goleta Valley v. Board of*  
28 *Supervisors*, 197 Cal. App. 3d 1167, 1180 (1988). “The fact that an alternative may be more expensive  
or less profitable is not sufficient to show that the alternative is financially infeasible. What is required  
is evidence that the additional cost or lost profitability are sufficiently severe to render it impractical  
to proceed with the project.” *Id.* at 1181. At best, Petitioners have located a letter submitted on behalf  
of Sunroad that explains why Sunroad did not want to reduce the size. Admin. R. 10:2470-2471.  
Nothing in that letter provides facts demonstrating that the loss in profitability would be sufficiently  
severe to render it impractical to proceed with a smaller project. The closest the letter comes to  
providing facts, as opposed to conclusions, is that a reduction in the outdoor seating area size would  
“potentially” cause Sunroad to lose a row of 40 seats. *Id.*, 10:2471. There is no comparative data or  
explanation of how severe the economic impacts of losing some of the square footage would be.

1 Date: March 31, 2014.

Respectfully submitted,

2 BRIGGS LAW CORPORATION

3  
4 By:

\_\_\_\_\_  
Cory J. Briggs

5 Attorneys for Petitioners San Diegans for Open  
6 Government and San Diego Navy Broadway Complex  
7 Coalition  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE

1. My name is Alison Greenlee. I am over the age of eighteen. I am employed in the State of California, County of San Diego.
2. My ☒ business \_\_\_\_\_ residence address is Briggs Law Corporation, 814 Mornea Blvd, Suite 107  
San Diego, CA, 92110.
3. On April 1, 2014, I served \_\_\_\_\_ an original copy ☒ a true and correct copy of the following documents: Petitioners' Reply Brief in Support of Verified First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief Under the California Environmental Quality Act, The California Coastal Act, and Other Laws

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

\_\_\_\_\_ *by personal service.* I personally delivered the documents to the person(s) at the address(es) indicated on the list.

☒ *by U.S. mail.* I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

\_\_\_\_\_ deposited the envelope/package with the U.S. Postal Service

☒ placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of \_\_\_\_\_ San Diego, California.

\_\_\_\_\_ *by overnight delivery.* I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

\_\_\_\_\_ *by facsimile transmission.* Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

\_\_\_\_\_ *by e-mail delivery.* Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws \_\_\_\_\_ of the United States ☒ of the State of California that the foregoing is true and correct.

Date: April 1, 2014

Signature: \_\_\_\_\_

SERVICE LIST

*San Diegans for Open Government v. California Coastal Commission, et al.*  
San Diego County Superior Court Case No.: 37-2013-00057492-CU-TT-CTL

---

Baine P. Kerr  
Deputy Attorney General  
California Department of Justice  
300 S. Spring Street, Suite 1702  
Los Angeles, CA 90013

Attorney for Defendant and Respondent  
California Coastal Commission

Thomas R. Russell  
Rebecca Harrington  
Office of the Port Attorney  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488

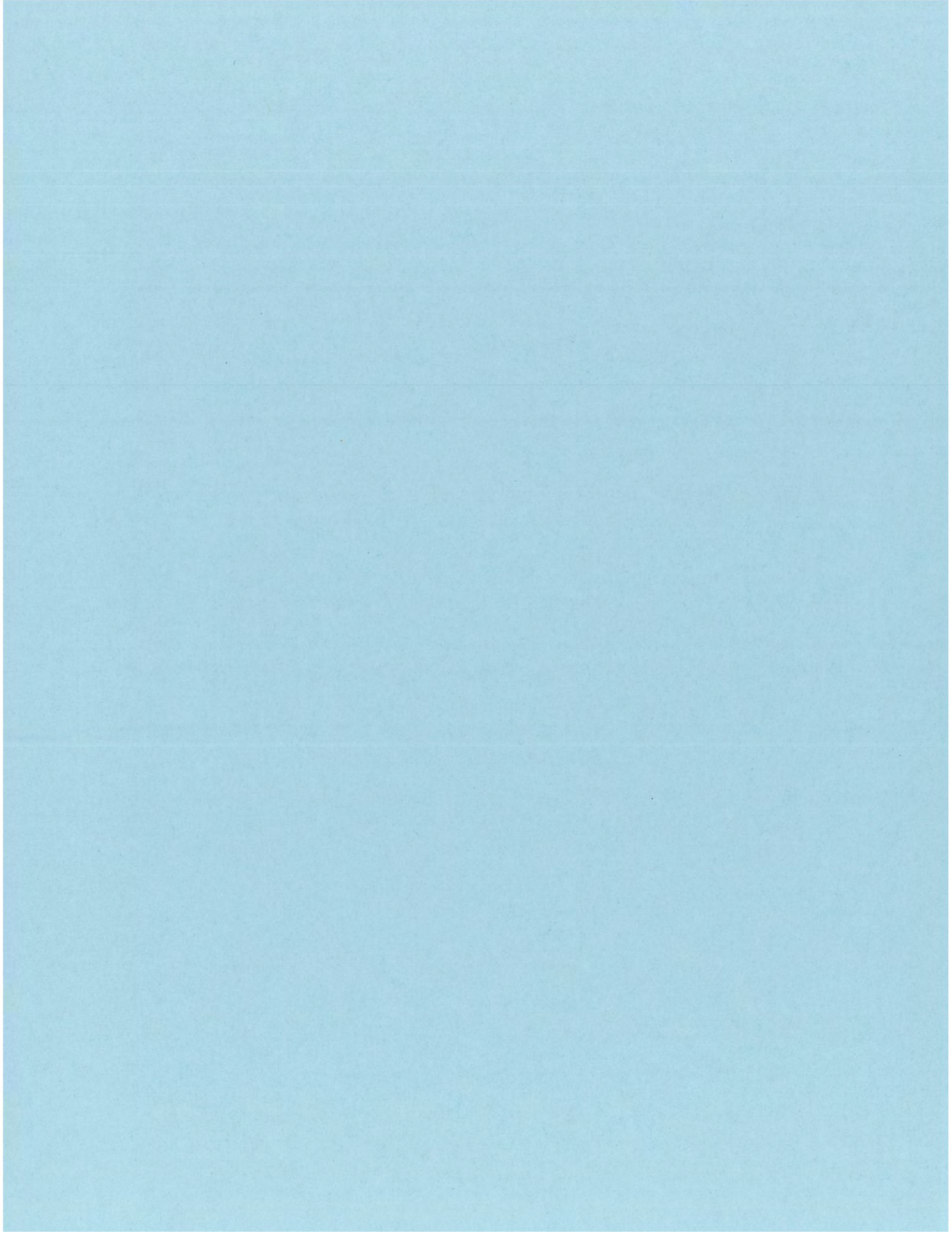
Attorney for Defendant and Respondent  
San Diego Unified Port District

Mike Hogan  
Hogan Law APC  
225 Broadway, Suite 1900  
San Diego CA 92101

Attorney for Defendant and Respondent  
San Diego Unified Port District

Steven H. Kaufmann  
Richards, Watson & Gershon  
355 S. Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071-3101

Attorney for Defendant and Real Parties  
in Interest Sunroad Enterprises and  
Sunroad Harbor Island



**ATTACHMENT D**  
**(Stamped Copy of the NOD)**



DEC 14 2016

160232

# Notice of Determination

BY [Signature] DEPUTY Appendix D

## To:

☒ Office of Planning and Research  
 U.S. Mail: Street Address:  
 P.O. Box 3044 1400 Tenth St., Rm 113  
 Sacramento, CA 95812-3044 Sacramento, CA 95814

☒ County Clerk  
 County of: San Diego (Records Division)  
 Address: 1600 Pacific Highway, Room 260  
 San Diego, CA 92101

## From:

Public Agency: San Diego Unified Port District  
 Address: 3165 Pacific Highway  
 San Diego, CA 92101  
 Contact: Wileen Manaois  
 Phone: 619.686.6282

Lead Agency (if different from above):

Address:

Contact:

Phone:

**SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.**

State Clearinghouse Number (if submitted to State Clearinghouse): 2016081007

Project Title: Portside Pier Restaurant Redevelopment Project

Project Applicant: The Brigantine, Inc., 7889 Ostrow St, San Diego, CA 92111, Phone 858.268.1030

Project Location (include county): 1360 North Harbor Drive, San Diego, CA 92101 (San Diego County)

## Project Description:

Demolition of an existing restaurant and supporting structure (including 66 piles) and redevelopment with a new, two-story restaurant and supporting structure (on 53 piles). The new facility would be approximately 34,069 square feet and include three distinct dining establishments, a coffee/gelato establishment, an expanded dock and dine for short-term boat berthing, and a public viewing deck with seats for 108. The Project would involve an approximately 9,214 square feet increase in building floor area and a 4,480 square feet increase in water coverage compared to existing. Restaurant seating would be increased by 464 seats. The replacement dock and dine would increase slips by 10.

This is to advise that the San Diego Unified Port District has approved the above  
 (☒ Lead Agency or ☐ Responsible Agency)

described project on 12.13.2016 and has made the following determinations regarding the above  
 (date)  
 described project.

1. The project [☐ will ☒ will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.  
☒ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☒ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☒ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ☒ was not] adopted for this project.
6. Findings [☒ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:

SDUPD Office of the District Clerk, 3165 Pacific Highway, San Diego, CA 92101 or www.portofsandiego.org

Signature (Public Agency): Wileen Manaois Title: Principal, Development Services

Date: 12/13/16

Date Received for filing at OPR:

**FILED IN THE OFFICE OF THE COUNTY CLERK**

**San Diego County on** DEC 14 2016

**Posted** DEC 14 2016 **Removed** JAN 18 2017

**Returned to agency on** JAN 18 2017

**Deputy** 

# RECEIVED

JAN 23 2017



State of California—Natural Resources Agency  
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
**2016 ENVIRONMENTAL FILING FEE CASH RECEIPT**

RECEIPT#  
SD2016 1234 *Planning & Green Port*  
STATE CLEARING HOUSE # (if applicable)  
2016081007

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY SAN DIEGO UNIFIED PORT DISTRICT			DATE 12/14/2016
COUNTY/STATE AGENCY OF FILING San Diego			DOCUMENT NUMBER *20160232*
PROJECT TITLE PORTSIDE PIER RESTAURANT REDEVELOPMENT PROJECT			
PROJECT APPLICANT NAME THE BRIGANTINE INC			PHONE NUMBER 858-268-1030
PROJECT APPLICANT ADDRESS 7889 OSTROW ST	CITY SAN DIEGO	STATE CA	ZIP CODE 92111

PROJECT APPLICANT (Check appropriate box):

☐ Local Public Agency    ☐ School District    ☐ Other Special District    ☐ State Agency    ☒ Private Entity

CHECK APPLICABLE FEES:

<input type="checkbox"/> Environmental Impact Report (EIR)	160232	\$3,070.00	\$	
<input checked="" type="checkbox"/> Mitigated/Negative Declaration (MND)(ND)		\$2,210.25	\$	\$2,210.25
<input type="checkbox"/> Application Fee Water Diversion (State Water Resources Control Board only)		\$850.00	\$	
<input type="checkbox"/> Projects Subject to Certified Regulatory Programs (CRP)		\$1,043.75	\$	
<input checked="" type="checkbox"/> County Administrative Fee		\$50.00	\$	\$50.00
<input type="checkbox"/> Project that is exempt from fees				
<input type="checkbox"/> Notice of Exemption (attach)				
<input type="checkbox"/> CDFW No Effect Determination (attach)				
<input type="checkbox"/> Other			\$	

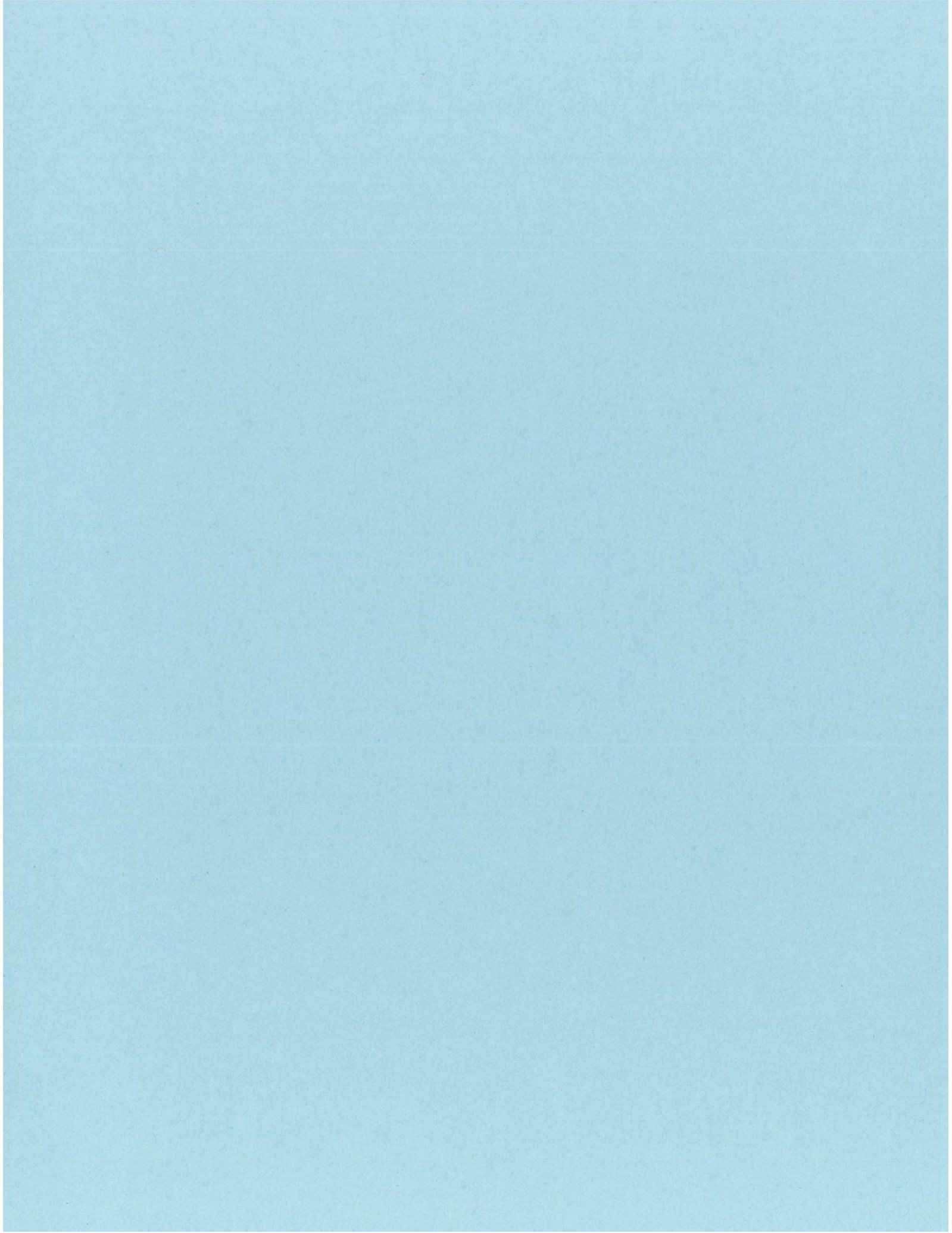
PAYMENT METHOD:

☐ Cash    ☐ Credit    ☒ Check    ☐ Other 44623    TOTAL RECEIVED \$ \$2,260.25

SIGNATURE  X	PRINTED NAME AND TITLE CARLOS B ARGANDONA Deputy
--------------------	---







## **ATTACHMENT E**

**(Final MND – Hardcopy for Inclusion in  
the Record and CCC Consideration)**

The Final Mitigated Negative Declaration (MND) for the Portside Pier Restaurant Redevelopment Project is available by request at the San Diego California Coastal Commission Office. At the time of publishing, the MND is also available online on the San Diego Unified Port Districts website at:

<https://www.portofsandiego.org/environment/environmental-downloads/land-use-planning>

EXHIBIT NO. 10

**6-17-0146-EDD**

Portside Pier MND



California Coastal Commission

**CALIFORNIA COASTAL COMMISSION**

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



# W28a

Staff: M. Lasiter-SD  
Staff Report: 2/23/17  
Hearing Date: 3/8/17

## **STAFF REPORT: DISPUTE RESOLUTION PERMIT APPEALABILITY**

**DISPUTE RESOLUTION NO.:** 6-17-0146-EDD

**LOCAL CDP NO.:** 2016-91

**LOCAL JURISDICTION:** San Diego Unified Port District

**APPLICANT:** Brigantine, Inc.

**SITE:** 1360 North Harbor Drive, Port District, San Diego,  
San Diego County

**DESCRIPTION:** Public hearing on coastal development permit appeal jurisdiction of a permit action by the San Diego Unified Port District approving the redevelopment and expansion of a restaurant complex and dock, including demolition of the existing 24,855 sq. ft., 27-ft. high building, 23,285 sq. ft. building platform, 66 concrete piles and remnants of a 565 sq. ft. dock, and the installation of 53 new concrete piles and construction of a new 40,805 sq. ft., 34-ft. high building, 24,960 sq. ft. platform, and 3,370 sq. ft. dock.

---

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission concur with the Executive Director's determination that the San Diego Unified Port District's ("Port") approval of a Coastal Development Permit ("CDP") for the subject development is appealable based on Section 30715 of the Coastal Act and Section 7d.(4)(d) of the Port's Coastal Development Permit Regulations.

The Port contends that the CDP approved by the Port Board on December 13, 2016 for the redevelopment and expansion of a restaurant complex and dock is not appealable to the Coastal Commission because the word "restaurant" is not explicitly listed as one of the appealable categories of development in Section 30715(a)(4) of the Coastal Act or

Section 7d.(4)(d) of the Port's Coastal Development Permit Regulations ("Permit Regulations"). However, the Port's conclusion is based on an extremely narrow interpretation of the provision that does not consider the context of Section 30715(a)(4) in the entirety of Section 30715. Considering the language of Section 30715 of the Coastal Act as a whole, and the nearly identical language in the Port's Permit Regulations, the categories of appealable development consist of development that has no water-oriented purpose consistent with typical port business activities. The intent of the statute and regulations is to distinguish those uses that are principal maritime uses requiring direct access to the water. A restaurant can be located anywhere. As such, Commission staff has historically provided direction to the Port that restaurants fall under the category of "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes" (emphasis added) and are therefore appealable developments. This is consistent with the Port's classification of restaurants as one of the uses associated with "Specialty Shopping" in the Port Master Plan ("PMP"), which is a subsection of the "Commercial Recreation" land use designation. In addition, as recently as June 2013, the Commission found that restaurants are appealable developments under the Coastal Act (A-6-PSD-13-005/Reuben E. Lee), and the subject determination is generally consistent with past CDP actions in the Port. Furthermore, there are eight restaurants that are identified as appealable developments in the PMP project lists; therefore, the subject determination is also consistent with the certified PMP. Finally, the project includes construction of an expanded dock which is considered a "recreational small craft marine-related facility", and therefore is an appealable development according to Section 7d.(4)(d) of the Port's Permit Regulations.

In addition to the subject dispute regarding the appealability of the project, Commission staff has several concerns with the subject project's consistency with the certified PMP and the Chapter 3 policies of the Coastal Act regarding public access, biological resources and visual resources. Although the project includes a public deck and perimeter accessway, it is unlikely that the public will be aware of these amenities as access to them is only available by entering through dedicated restaurant space or an elevator, instead of a direct connection from the public promenade, and public access signage is limited to signs that are difficult to see due to their small size (6 inch round sign with "PUBLIC ACCESS" printed on top 3 inches), placement, and color. The public deck also appears to share the upper deck area with a restaurant use; so it is unclear how the general public and restaurant patrons will share the space without clear protocols which were not established in the Port's action. In addition, the Port characterizes the expanded dock as a public amenity; however, use of the dock will be restricted to boaters dining at the facility which essentially privatizes the dock. Furthermore, parking was calculated based on the increase in area of the new building compared to the existing structure; however, the existing structure is being completely demolished and redeveloped with a significantly larger one that will almost double the area and seating of the existing. It is not appropriate to use the existing parking requirement as a baseline because the existing building is pre-coastal and no on- or off-site parking was required as part of the original development. Therefore, because the project consists of substantial redevelopment and expansion of the existing use, parking should be calculated based on the entire area of the new development.



The project will also increase water coverage which is typically permitted for coastal-dependent uses; however, only a portion of the increase in water coverage (2,805 sq. ft.) is associated with the expanded dock, and the remainder (1,675 sq. ft.) is associated with the expanded restaurant building. The Port has allowed for design modifications such as translucent areas, to be subtracted from the mitigation required for the increase in shading, which do not mitigate the reduction of foraging habitat for birds and is not an appropriate form of mitigation for increased open water coverage. Considering the noted parking deficits of the project and the surrounding vicinity, as well as the increases in building area (+ approx. 16,000 sq. ft.) and in open water coverage (+ approx. 4,500 sq. ft.), the Port should have considered a reduced-project alternative. Finally, the large number and size of signs and lights on the restaurant complex that will be visible from both land and water will distract from views of the bay and be incompatible with the character of the surrounding development, including the Star of India, a historic ship, and the San Diego Maritime Museum.

It is important to note that if a project is not identified in the certified PMP, as is the case here, the Commission typically has the opportunity to review a proposed project when the Port submits an application to amend the PMP to incorporate it into the PMP. In this case, there is no mention of the redevelopment or expansion of the leasehold in the text, figures, or project list of the certified PMP. Thus, the Commission never had the opportunity to review the project through the PMP amendment process which would have included a review of the development under the Chapter 3 policies of the Coastal Act, specifically the public access provisions, which is critical given the subject site's location over the water and along the downtown waterfront. Had the Port processed a PMP amendment, it would have been able to add the subject project to the Project List for the Centre City Embarcadero planning district, and change the water use designation in the PMP from "Ship Anchorage" to the appropriate land use designation "Commercial Recreation" to reflect the expanded building footprint, which would have ensured the project's consistency with the certified PMP. In addition, the project itself would have likely undergone changes to ensure the project's consistency with the Chapter 3 policies of the Coastal Act.

In order to ensure that the ability to review the project is not lost, Chair Bochco and Commissioner Shallenberger have timely appealed the project. The substantial issue (Appeal No. A-6-PSD-17-0003) hearing is scheduled to follow the subject dispute resolution hearing, should the Commission concur with the Executive Director's determination that the CDP approving the subject restaurant complex and dock is appealable to the Commission.

**Staff recommends that the Commission concur with the Executive Director's determination that the CDP approving the subject restaurant complex and dock is appealable to the Commission.** The appropriate motion and resolution to implement this recommendation begin on Page 3.

## TABLE OF CONTENTS

I.	STAFF RECOMMENDATION ON DISPUTE RESOLUTION.....	5
II.	FINDINGS AND DECLARATIONS .....	5
A.	DISPUTE RESOLUTION PROCEDURES.....	5
B.	DISPUTE SUMMARY .....	6
C.	CONCLUSION .....	15

## APPENDICES

### Appendix A – Substantive File Documents

## EXHIBITS

Exhibit 1 – Draft CDP issued for Portside Pier (includes project site plans and renderings)

Exhibit 2 – August 31, 2016 CCC Letter Commenting on Portside Pier Mitigated Negative Declaration

Exhibit 3 –December 2, 2016 Port Response to CCC Comment Letter

Exhibit 4 – February 2, 2017 CCC Dispute Resolution Letter

Exhibit 5 – February 6, 2017 Port Response to Dispute Resolution Letter

Exhibit 6 –Case No. 31-2013-00057492-CA-TT-CTL Minute Order

Exhibit 7 – February 9, 2017 Port Email

## **I. STAFF RECOMMENDATION ON DISPUTE RESOLUTION**

The Executive Director has determined that the Port's CDP for the subject restaurant complex and dock is appealable to the Commission, and recommends that the Commission concur. If the Commission concurs, then notice of this Commission determination will be expeditiously forwarded to the San Diego Unified Port District and the project proponent.

The Executive Director recommends a NO vote on the motion below. Following the Executive Director's recommended "no" vote will cause the motion to fail, resulting in: (1) the Commission concurring with the Executive Director's determination that the restaurant complex and dock that are the subject of Dispute Resolution No. 6-17-0146-EDD are appealable to the Coastal Commission; and (2) the adoption of the following resolution and findings. The affirmative vote of a majority of the Commissioners present is necessary to pass the motion.

**MOTION:** I move that the Commission reject the Executive Director's determination that the San Diego Unified Port District's approval of Coastal Development Permit Application No. 2016-91 is appealable to the Coastal Commission pursuant to Public Resources Code Section 30715, and I recommend a no vote.

**RESOLUTION:** The Commission, by adoption of the attached findings, determines, consistent with Section 13569 of Title 14 of the California Code of Regulations, that San Diego Unified Port District CDP No. 2016-91 is appealable to the Commission.

## **II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. DISPUTE RESOLUTION PROCEDURES**

Title 14, Section 13569 of the California Code of Regulations provides a resolution mechanism for disputes regarding CDP processing. CCR Section 13569 states:

*The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:*

*(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.*

*(b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;*

*(c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:*

*(d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.*

The Coastal Act was set up to give local governments with certified LCPs, including port governing bodies, primary permitting authority over projects in the Coastal Zone, but to allow the Commission oversight authority over specified projects through the appeal process. Thus, Commission regulations anticipate that there might be disagreements regarding the status of a particular project between staff and local entities. The administrative remedy provides a definitive, public and prompt process for resolving the issues.

## **B. DISPUTE SUMMARY**

The dispute for the Commission to consider is the following: *Is the subject development (restaurant facilities and associated dock) a type of development that is appealable to the Commission when it occurs in the Port's jurisdiction?*

On December 13, 2016, the San Diego Unified Port District approved what it described as a "non-appealable" CDP for the complete demolition of an existing pre-coastal restaurant complex, identified as Anthony's Fish Grotto, and the construction of new restaurant facilities and a dock (Exhibit 1), known as the Portside Pier project. The restaurant facilities would be located almost entirely on a platform over the San Diego Bay, with the remainder of the project constructed over public tidelands. The entire

project site is within the Port's jurisdiction. Specifically, the project consists of demolition of the existing 24,855 sq. ft., 27-ft. high building, 23,285 sq. ft. building platform, 66 concrete piles and remnants of a 565 sq. ft. dock; and the installation of 53 new concrete piles and construction of a 40,805 sq. ft., 34-ft. high restaurant building, 24,960 sq. ft. platform, and 3,370 sq. ft. dock for use by patrons of the restaurant complex. The approved building is designed to accommodate three restaurants and a gelato/coffee bar and would include a 3,711 sq. ft. public viewing deck located on a portion of the second floor and a 45-in. wide public walkway located around the perimeter of the first floor.

On May 4, 2016, the project proponent and Port met with Commission staff to provide an introduction to the Portside Pier project. At the meeting, Commission staff raised concerns with public access components of the project, the compatibility of the planned building with surrounding development, and the increase in building bulk/scale and open water coverage.

At an August 19, 2016 coordination meeting between Port and Commission staff, prior to the Port's approval of the CDP, Commission staff raised objections to the Port's determination that the CDP for the project would not be appealable to the Commission because it was a restaurant. Specifically, Commission staff provided direction to the Port that restaurants are appealable under Section 30715 of the Coastal Act and Section 7.d.(4) of the Port's Permit Regulations, because restaurants have no water-oriented purpose consistent with typical port business activities and therefore fall under the category of "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes." Commission staff again raised concerns with the project design, public access, increase in overwater coverage, and also raised concerns with the calculation of the parking required for the project and lack of parking requirements. In a comment letter on the draft Mitigated Negative Declaration ("MND") for the Portside Pier project, provided to the Port on August 31, 2016, Commission staff reiterated these concerns and requested a notice of final local action for the CDP be sent to Commission staff (Exhibit 2). Commission staff received a California Environmental Quality Act ("CEQA") and Coastal Determination notice for the subject project on December 1, 2016, which included the Port's determination that the project was non-appealable under the Coastal Act, and identified that a non-appealable CDP must be obtained by the applicant.

In the Port's response to the MND comment letter, included in the Final MND as Letter D and received by Commission staff on December 2, 2016, the Port indicated that it continued to believe that the project was non-appealable, but agreed to provide a notice of final local action, stating that "California Coastal Commission staff have been added to the notification list for the final MND and the final action on the CDP" (Exhibit 3). Although minor modifications to the project were made (and reflected in the Final MND) based on comments from Commission staff and other agencies, the changes were not significant enough to bring the project fully into conformance with the PMP or Chapter 3 of the Coastal Act, and Commission staff's concerns with the project remain.

Specifically, the main concern is the provision of adequate public access and the project's impacts on parking. Although the proposed development incorporates a public viewing deck and perimeter accessway, it is unlikely that the public will be aware of these public amenities as access to them is only available by entering through the restaurant(s), crossing an outdoor dining area or utilizing an elevator, instead of direct access from the public promenade. Additionally, public access signage is limited to three proposed signs that are difficult to see due to their small size (6 inch round sign with "PUBLIC ACCESS" printed on top 3 inches of sign), placement (wall-mounted on building), and color (black/bronze). The public deck also appears to share the upper deck area with a restaurant use; so it is unclear how the general public and restaurant patrons will share the space without clear protocols which were not established in the Port's action. Furthermore, the Port characterizes the expanded dock as a public amenity; however, use of the dock will be restricted to boaters dining at the facility which essentially privatizes the dock. Finally, parking was calculated based on the increase in area of the new building compared to the existing structure; however, the existing structure is being completely demolished and redeveloped with a significantly larger one that will almost double the area and seating (total restaurant seating is proposed to increase from 536 to 1,000 seats) of the existing. It is not appropriate to use the existing parking requirement as a baseline because the existing building is pre-coastal and no on- or off-site parking was required as part of the original development. Therefore, because the project consists of substantial redevelopment and expansion of the existing use, parking should be calculated based on the entire area of the new development.

The project will also increase water coverage by 4,480 sq. ft. which is typically permitted for coastal-dependent uses; however, only a portion of the increase in water coverage (2,805 sq. ft.) is associated with the expanded dock, and the remainder (1,675 sq. ft.) is associated with the expanded restaurant building. The Port has allowed for design modifications such as translucent areas, to be subtracted from the mitigation required for the increase in shading, which do not mitigate the reduction of foraging habitat for birds and is not an appropriate form of mitigation for increased open water coverage. Considering the noted parking deficits of the project and the surrounding vicinity, as well as the increases in building area (+ approx. 16,000 sq. ft.) and in open water coverage (+ approx. 4,500 sq. ft.), the Port should have considered a reduced-project alternative. Finally, the large number and size of signs and lights on the restaurant complex that will be visible from both land and water will distract from views of the bay and be incompatible with the character of surrounding development, including the Star of India, a historic ship, and the San Diego Maritime Museum.

It is important to note that if a project is not identified in the certified PMP, as is the case here, the Commission typically has the opportunity to review a proposed project when the Port submits an application to amend the PMP to incorporate it into the PMP. Section 30711(a)(5) of the Coastal Act requires a port master plan to include "proposed projects listed as appealable in Section 30715 in sufficient detail to be able to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division." Commission staff notified the Port in the MND comment letter that, because the project was appealable, a PMP amendment would be required prior to the approval of

a CDP; however, the Port maintained that a PMP amendment was not required because the project was not appealable to the Commission. Typically, appealable developments are more specifically described in the PMP and, as such, proposals are listed in the "Project List" for each geographic sub-area in the port. In this case, there is no mention of the redevelopment or expansion of the Anthony's Fish Grotto leasehold in the text, figures, or Project List of the certified PMP. Thus, the Commission never had the opportunity to review the project through the PMP amendment process which would have included a review of any development under the Chapter 3 policies of the Coastal Act, specifically the public access provisions, which is critical given the subject site's location over the water and along the downtown waterfront. Had the Port processed a PMP amendment, it would have been able to add the subject project to the Project List for the Centre City Embarcadero planning district, and change the water use designation in the PMP from "Ship Anchorage" to the appropriate land use designation "Commercial Recreation" to reflect the expanded building footprint, which would have ensured the project's consistency with the certified PMP. In addition, the project itself would have likely undergone changes to ensure the project's consistency with the Chapter 3 policies of the Coastal Act.

On December 13, 2016, the Board of Port Commissioners approved a non-appealable CDP for the project. Following the approval of the CDP, the Port repeatedly failed to send a notice of final local action despite several requests by Commission staff, beginning with an email on January 10, 2017 requesting an update on the status of the project and, if the project had been approved, a notice of the Port's final action. Port staff responded to that email the same day and agreed to send a notice. Subsequently, there were multiple communications (1/12/17 phone call; 1/18/17 phone call; 1/20/17 coordination meeting and 1/30/17 email) in which Commission staff inquired about the status of the final notice of local action and asked the Port to send the notice. Port staff repeatedly indicated that they would be responding; however, the Port did not provide the notice of final local action or any response on the question of appealability. Accordingly, on February 2, 2017 Commission staff notified the Port that a dispute resolution would be scheduled with the Commission to discuss the appealability of the project (Exhibit 4), and to submit a notice of final local action by February 6, 2017. Finally, on February 6, 2017, the Port provided a letter notifying the Commission of the Port's final action on the subject project and refuting the Commission's authority to appeal the project or pursue a dispute resolution (Exhibit 5). On February 7, 2017, Commission staff notified the Port that the 10-working day appeal period had commenced. In order to bring the matter to the full Commission for consideration, Chair Bochco and Commissioner Shallenberger have filed timely appeals. The substantial issue (Appeal No. A-6-PSD-17-0003) hearing is scheduled to follow the subject dispute resolution hearing, should the Commission concur with the Executive Director's determination that the CDP approving the subject restaurant complex and dock is appealable to the Commission.

Permit Appeal Authority

Coastal Act Section 30715(a) states:

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

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

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

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

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

*(5) Oil refineries.*

*(6) Petrochemical production plants.*

In addition, Section 7.d.(4) of the San Diego Unified Port District Coastal Development Permit Regulations state, in relevant part:

Appealable developments are: [...]

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



Section 30715(a) of the Coastal Act establishes that the permit authority of the Commission provided for in Chapter 7 (commencing with Section 30600) over any new development contained in a certified port master plan shall be delegated to the port governing body, except that approvals of categories of development not principally dedicated to port business activities by the port governing body may be appealed to the Commission. In addition, Section 7.d.(4) of the Port's Permit Regulations govern appealable developments and contains language almost identical to that of Section 30715 of the Coastal Act.

In this case, the Port disagrees with the Executive Director's determination the project is appealable to the Commission. Specifically, the Port argues that the assertion that restaurants are appealable is contrary to: (1) the plain language of Section 30715, and the Port's Permit Regulations, which were approved by the Coastal Commission, (2) past practices in the certified PMP and as demonstrated by previously issued CDPs for other restaurants in the Port, and (3) a recent court ruling in a case involving both the Port and the Commission. These arguments are addressed below.

1. The development IS an appealable development under Coastal Act Section 30715 and the Port's Permit Regulations

The intent of Section 30715 is to identify development that is not principally for normal port business activities, and to give appeal authority for such development. The Port argues that because the word "restaurant" is not explicitly listed in the identified sections of the Permit Regulations or Coastal Act, the development is not appealable to the Commission. However, Commission staff has historically provided direction to the Port that restaurants fall under the category of "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes" and are therefore appealable under Section 30715(a)(4) of the Coastal Act and Section 7.d.(4)(d) of the Port's Permit Regulations. The Port disagrees and argues that the Legislature used plain terms to describe "office and residential buildings", "hotels", and "motels" in Section 30715(a) and it knew how to use plain terms to describe "restaurants" but it did not.

The Port's interpretation of Section 30715(a)(4) of the Coastal Act and the nearly identical language in Section 7d.(4)(d) of the Port's Permit Regulations is an extremely narrow interpretation of the provision that does not consider the context of Section 30715(a)(4) in the entirety of Section 30715. Considering the language of Section 30715 of the Coastal Act as a whole, the categories of appealable development are development that has no water-oriented purpose consistent with typical port business activities. Subsection (a)(2) calls out waste water treatment facilities as appealable unless the facility processes waste incidental to normal port activities or by vessels (emphasis added). Subsection (a)(3) calls out roads as appealable if they are not principally for internal circulation within port boundaries (emphasis added). Subsection (a)(4) calls out office and residential buildings as appealable if they are not principally devoted to the administration of activities within the port (emphasis added). Subsection (a)(4) also calls

out shopping facilities as appealable if they are not principally devoted to the sale of commercial goods utilized for water-oriented purposes (emphasis added).

Thus, the exceptions to appealable development in the relevant subsections of Section 30715 of the Coastal Act apply only if the development is principally dedicated to normal port business activities. Key words, including “normal port activities,” “internal circulation within port boundaries,” “administration of activities within the port,” and “water-oriented purposes,” illustrate the underlying intent of Section 30715 – that the stated exceptions to appealable developments are those that are essentially port-related.

Restaurants serve the general public and are not principally devoted to port business activities. Restaurants are not dependent on waterfront locations. They can be located anywhere. Therefore, restaurants are appealable developments. The Portside Pier project includes complete demolition of all existing development onsite, and redevelopment and significant expansion of the site, which is partially located on public tidelands in order to accommodate three new restaurants and a gelato/coffee bar. The subject project includes restaurants; therefore, it is an appealable development.

The subject complex of restaurants is considered appealable under the category of “shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes” as described by Section 30715(a)(4). While the Coastal Act section does not explicitly identify “restaurants” as appealable, neither does it call out other commercial services or sales typically associated with a shopping facility (e.g., retail; supermarkets; entertainment venues such as movie theaters; services, such as hair and nail salons, cleaners, or print centers; gyms; gas stations, etc.). Thus, under the Port’s reasoning, most development dedicated to the sale of commercial goods and services would also not be appealable to the Commission. This interpretation is inconsistent with the meaning of the term “shopping facility,” which generally implies many types of commercial establishments, including restaurants. Further, there is no rationale to support that a restaurant is a shopping facility principally devoted to the sale of commercial goods utilized for water-oriented purposes. Therefore, because restaurants are a kind of shopping facility that sells commercial goods and services to the public, and they are not principally devoted to the sale of commercial goods utilized for water-oriented purposes, they are appealable under Section 30715(a)(4) of the Coastal Act. In any case, the subject development is not simply a “restaurant” as described by the Port; rather, it is a new facility that will be significantly larger than the existing use and will contain multiple restaurants, a coffee/gelato bar, a public deck and a dock.

Furthermore, the new and expanded dock for patrons of the restaurant complex is considered a “recreational small craft marine-related facility,” another category of appealable development in Section 7d.(4)(d) of the Port’s Permit Regulations. Therefore, the subject development is appealable.

2. The appealability of the development is consistent with the certified Port Master Plan and past CDPs issued in the Port

The Port argues that a restaurant cannot be considered under the category of a “Shopping Facility”; however, the certified PMP treats restaurants in a similar way. Specifically, the PMP categorizes restaurants under two “Commercial Recreation” land uses, “Hotels and Restaurants,” which obviously describes uses commonly associated with hotels and restaurants, and “Specialty Shopping,” which includes stores and restaurants that are not specifically associated with boating and marine services (those uses are categorized as “Marine Sales and Services”). The “Specialty Shopping” designation in the PMP clearly includes restaurants and shops that sell desserts and beverages as a specialty shopping use: “Specialty Shopping involves the planned assembly of stores, frequently operating within a unified building complex, designed to give patrons a varied selection of retail goods, personal services, and entertainment facilities. Activities typically found in specialty shopping areas include restaurants and the retail sale of ice cream, dessert items, beverages, and sandwiches.” Therefore, because the Port itself classifies restaurants as “specialty shopping”, the appealability of restaurants under the category of “shopping facilities” per Section 30715(a)(4) of the Coastal Act is consistent with the PMP categorization of restaurants as “Specialty Shopping”, especially because the subject development includes three separate restaurants and a coffee/gelato bar in a single building complex.

Currently, there are eight restaurants identified on the project lists for various planning districts in the certified PMP. While the majority of the listed restaurants are part of larger developments, one is a stand-alone restaurant, and in every case, each restaurant included in the PMP is categorized as an appealable development. Thus, the PMP also supports the determination that restaurants are appealable developments.

The Port asserts in its February 6, 2017 letter, “Some restaurants have been listed as appealable in the PMP or issued an appealable CDP. However, the sole basis for the appealable characterization of such restaurants was the fact that they were part of a larger appealable category of development.” The Port’s statement, however, is contrary to the PMP. Some components of larger appealable projects have been identified as non-appealable (i.e., vista points and Broadway Pier infrastructure improvements within the North Embarcadero Redevelopment Project) within the Project Lists included in the certified PMP; however, in no instance is a restaurant listed as non-appealable when a part of a larger project. In addition, the Port’s explanation does not account for the one stand-alone restaurant that is identified as appealable in the PMP.

In addition, over the last 25 years, the Commission has received notice of approximately ten CDPs issued by the Port for restaurant projects, including new restaurants associated with hotels (A-6-PSD-89-352/Kona Kai; A-6-PSD-02-48/Lowes Coronado Bay Resort; A-6-PSD-04-598/Convention Center Hilton; 6-PSD-06-298/Kona Kai; 6-PSD-06-300/Bartell Hotels; A-6-PSD-08-4/Lane Field), two new restaurant buildings at the existing Coronado Ferry Landing (6-PSD-97-186), and construction of a major addition

to an existing restaurant (6-PSD-02-002/Jimsair Restaurant). All of these projects were characterized by the Port as appealable.

Furthermore, as recently as June 2013, the Commission found that restaurants are appealable developments under the Coastal Act (A-6-PSD-13-005/Reuben E. Lee) in its appeal of a Port-issued exemption for the redevelopment of an existing restaurant.

As noted by the Port in its February 6, 2017 letter (Exhibit 5), two permits have been issued for restaurant-related developments that were not categorized as appealable. The first, Coastal Project No. 81-367 was approved in 1981 for redevelopment of the San Diego Rowing Club on the Embarcadero Marina South as a restaurant building. The file for this project suggests this project may have been processed atypically. The Port's Categorical Determination for the project states "Although use as a restaurant is not an appropriate use of the area designated in Precise Plan Figure 11, a condition for Master Plan certification specifically provided for restoration of the historic Rowing Club boathouse [as a restaurant]. Thus, the project is in compliance with the certified Port Master Plan." Thus, the permit was approved despite its inconsistency with the PMP, because of a specific clause in the PMP certification.

The second, Coastal Project No. N87-3-385, was approved in 1988 for demolition of an existing one-story restaurant on the G Street Mole and construction of a new 2-story restaurant, the Fish Market. Commission staff were unable to find any Commission file material regarding the project, and there is no evidence that the project was appealed.

Nevertheless, the vast majority of restaurant projects over the years have been identified in the project lists in the Port Master Plan, have been classified as appealable developments, and were issued appealable CDPs. Recategorizing restaurants as non-appealable developments would be inconsistent with the language and intent of the Coastal Act, the overall thrust of the PMP, and with long-standing Port and Commission precedent.

3. The Trial Court's holding did not determine the appealability of restaurants in the Port District

The Port incorrectly asserts that the trial court deciding the lawsuit filed by San Diegans for Open Government, Ca. No. 37-2013-00057492-CU-TT-CTL, ruled that restaurants are not an appealable category of development under the Coastal Act. In the ruling, the court primarily addressed the application of Coastal Act section 30625, which allows claims of exemption to be appealed to the Commission. Regarding appealability of the Reuben E. Lee project, the court stated:

...the Project was not an "appealable development", but even assuming it was, the Commission had express authority in section 30625 to "approve" and "modify" the Project.... the Commission had the jurisdiction to conditionally approve the Project based on retained Commission jurisdiction.

(Exhibit 6, p. 3) The “retained” jurisdiction stemmed from the Port’s treatment of the Reuben E. Lee project as exempted. The court does not discuss sec. 30715(a)(4) at all, nor does it state restaurants as a class are not appealable, as the Port has opined. Read in context, the trial court’s statement that “...the project was not an ‘appealable development’ ...” is at most an expression of an opinion on a point that was not at issue in the case (i.e. it is nonbinding dictum). Thus, this statement does not have any bearing on this matter that is currently before the Commission.

### **C. CONCLUSION**

Public Resources Code Section 30715 confers appellate jurisdiction to the Commission for development that is considered under the category of “shopping facility” and is not principally devoted to typical port business activities. In addition, Section 7d.(4)(d) of the Port’s Permit Regulations confers appellate jurisdiction to the Commission for development that is considered under the category of “recreational small craft marine-related facility.” Therefore, the Commission finds that, because CDP application No. 2016-91 seeks authorization for development of a restaurant complex and dock that include categories of appealable development, approval of that application is appealable to the Commission pursuant to Section 30715 of the Coastal Act and Section 7.d.(4) of the Port’s Permit Regulations.

## APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified San Diego Unified Port District Port Master Plan
- San Diego Unified Port District Coastal Development Permit Regulations
- Final Environmental Impact Report (EIR) for the Portside Pier Restaurant Redevelopment Project dated November 2016
- Draft CDP for Application No. 2016-91

**SAN DIEGO UNIFIED PORT DISTRICT**

Real Estate Development Department

Development Services

P.O. BOX 120488

SAN DIEGO, CA 92112-0488

(619) 686-6291

**COASTAL DEVELOPMENT PERMIT**

**Applicant:** The Brigantine, Inc.  
7889 Ostrow Street  
San Diego, CA 92111

**Project:** Portside Pier Restaurant Redevelopment Project

**Location:** 1360 North Harbor Drive, San Diego, CA 92101

You are hereby granted a Coastal Development Permit. This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a ☐ Emergency ☒ Non-Appealable ☐ Appealable Coastal Development Permit.

**Date of Board Action:** December 13, 2016

**Board of Port Commissioners Resolution Number:** 2016 - XXX

**Date of Permit:** ☒

**Application Number:** 2016-91

**Permit Number:** CDP-2016-XX

The project is located between the sea (as defined in the Coastal Act) and the first inland continuous public road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced therein and the District's Coastal Development Permit Regulations.

This permit is limited to the development described below and set forth in material on file with the San Diego Unified Port District (District), and subject to the terms, conditions, and provisions hereinafter stated:

EXHIBIT NO. 1

6-17-146-EDD

Port Approved Draft  
Portside Pier CDP

1 of 38

California Coastal Commission

## **DEVELOPMENT**

The Project Applicant, The Brigantine, Inc. (referred to herein as “Permittee”), proposes to construct and operate four eating establishments/restaurants, a second-floor public viewing deck, and an expanded dock and dine facility (collectively, “Project”) at 1360 North Harbor Drive in San Diego (see Exhibits 1 through 7, incorporated herein by reference).

The project area covers approximately 45,174 square feet of land and water area, which includes approximately 37,107 square feet of water area and approximately 8,067 square feet of land area. The existing one-story, approximately 24,855-square-foot restaurant structure will be demolished and replaced with a new two-story, approximately 34,069-square-foot restaurant structure. The Brigantine proposes to redevelop the project site with four eating establishments/restaurants (three restaurants and a gelato and coffee walk-in shop) that will provide up to 1,000 restaurant seats for diners.

The redevelopment also includes a proposed approximately 3,711-square-foot dedicated public viewing deck with tables and benches for up to 108 visitors on the second story. This area will be separate from the restaurant areas and accessible from the North Embarcadero Promenade through the restaurant located at the southeast area via stairs and an elevator directly from the Promenade. The public viewing deck will not be used for private functions and will be open to the public during restaurant business hours. The ground floor of the restaurant will include a perimeter walkway approximately 45 inches wide for the public and shall enable public access along the waterside edge of the facility and provide views of the bay. The public viewing area and perimeter walkway shall be open to the public at all times during operating hours of the restaurant. Clear signage will be provided directing the public from the North Embarcadero Promenade to the public viewing deck and ground floor perimeter public walkway. For security reasons, the public areas will be open at all times during the hours of operation of the restaurants. The restaurant areas will also include open deck areas on the ground and second floors, where food and drink service is available to guests. The indoor and outdoor restaurant areas (excluding the public viewing area and perimeter walkway) will be available for private parties, wedding receptions, and other special events featuring music. Amplified music shall comply with the City of San Diego Noise Ordinance or a Port ordinance, if adopted in the future.

The portion of the North Embarcadero Promenade located in front of the restaurant site will be improved consistent with the North Embarcadero Visionary Plan (NEVP) Phase 1 and recent improvements to the south. This includes new pavers, street furniture, and wayfinding signage. No changes are proposed to the current configuration of the promenade and it will be open at all times.

Backlit illuminated signage will be mounted on both the waterside- and promenade-facing frontages of the building and will consist of light-emitting diode (LED) lighting behind acrylic letters and logos to create an illuminated effect. The signs will display the



names and/or logos for the restaurant tenants, and for Portside Pier. The illuminated signs range in size from 12 to 43 feet in length and from 3 feet 2 inches to 12 feet 11 inches in height. In addition, eight color LED panels will be installed along the North Embarcadero Promenade and along the upper deck on the waterside-facing frontage of the building to display upcoming events, menu specials, and other notifications. The LED panels will be computer operated with automatic dimming to adjust from day to night illumination. The “baskets” of the building, constructed with glass panels, will also be illuminated at night with interior LED lighting. The glass panels of the baskets will be constructed of laminated frit glass with an anticipated 65 percent light transmission and an aluminum support system. In addition, blue LED light tube strips will be included on the promenade-facing frontage of the building. On the outdoor bar of The Brigantine’s second floor, an internally illuminated sculptural centerpiece will be installed. Levels of lighting spill will be comparable to that from existing lighted facilities along the North Embarcadero Promenade, not exceeding 9.2 footcandles at the edge of the North Embarcadero Promenade or 6.3 footcandles at the edge of the first floor bayside deck, and be limited to the specifications provided in the photometric plan dated July 26, 2016, attached hereto as Exhibit 8 and incorporated herein by reference. All exterior signage and lighting and baskets shall be developed in substantial conformance with the specifications provided in the Preliminary Signage Plan dated November 28, 2016, attached hereto as Exhibit 9 and incorporated herein by reference. Any deviations from the Preliminary Signage Plan shall be approved by the District and in no event shall the signage exceed the size shown in the Preliminary Signage Plan or result in exceedance of the footcandles described above in this CDP.

The Project will construct a new building built on a new platform supported by new pilings and a new dock, entirely replacing and demolishing the existing building, pilings, platform, and dock. The Project will also include an expanded public dock and dine facility. The existing boat dock area will be increased from 565 square feet to 3,370 square feet and will allow for 4–12 vessels to dock, depending on vessel sizes. The building footprint will be larger than the footprint of the existing building, and the expansion of the two stories and decks on both levels will nearly double the total square footage of restaurant space and deck area. The overall building height will increase by up to 7 feet over the height of the existing structure, from approximately 27 to approximately 34 feet above mean sea level.

Demolition and construction of the proposed project will involve in-water work for the removal of the existing platform and supporting piles and the installation of a new platform and supporting piles. The majority of demolition work will be from barges on the water. Project demolition and construction will take approximately 11 to 16 months, and most of the work will be accomplished from the waterside using a barge and from a staging area on the North Embarcadero Promenade, temporarily displacing a portion of the promenade and parking, which will be restored to existing configurations upon completion of construction. Approximately 55 parking spaces will be temporarily closed and pedestrian traffic will be rerouted from the North Embarcadero Promenade in front of the Project site through the closed parking area, separated by K-Rail and other physical barriers from North Harbor Drive for the duration of construction.

In order to adapt to rising sea levels, the project will use materials to withstand sea level rise impacts and design components such that they can be retrofitted or adapted prior to high tides and waves reaching the base of the structure as a consequence of sea level rise, in the event sea level rises above the floor level of the proposed structure.

Table 1 below provides a summary comparison of the proposed project components with those of the existing facility. As shown, the project will cover approximately 28,330 square feet of water. The building footprint will be approximately 34,069 square feet, two stories with decks on both levels and the building height will be approximately 34-feet above mean sea level. In addition, the boat dock area will be approximately 3,370 square feet and allow for 4–12 vessels to dock, depending on vessel sizes.

<b>Table 1: Existing and Proposed Project Features Comparison</b>			
Project Component	Existing	Proposed	Change
Building Floor Area <sup>1</sup>	24,855 square feet	34,069 square feet	9,214 square feet
Building Gross Water Coverage	23,285 square feet	24,960 square feet	1,675 square feet
Public Dock Area* <sup>2</sup>	565 square feet <sup>1</sup>	3,370 square feet	2,805 square feet
First Floor Public Access Area*	819 square feet	1,913 square feet	1,094 square feet
Total Water Coverage*	23,850 square feet	28,330 square feet	4,480 square feet
Total Land Coverage (Promenade Improvement Area)	8,067 square feet	8,067 square feet	0 square feet
Restaurant Seats	536	1,000	464
Boat Slips	2	12	10
Public Viewing Deck Seats	0	108	108
Second Floor Public Deck <sup>1</sup>	0 square feet	3,711 square feet	3,711 square feet
Building Height	27 feet	34 feet	7 feet
Employees (daily)	60	90	30
On-site Parking	0	0	0
Visitors per day (estimated average)	1,100	2,220	1,120
*Indicates over-water components			
<sup>1</sup> The change in floor area and public deck area from the Draft MND to the Final MND was achieved by rearranging the layout of the building and expanding the kitchen and deck into previously unutilized space. The overall building footprint and water coverage did not change.			
<sup>2</sup> The existing boat dock was destroyed by storm and wave activity in January 2016 and has not been replaced because of the prospective redevelopment.			

## A. Demolition

Demolition will involve the complete removal of:

- The existing 24,855-square-foot building
- The existing 23,285-square-foot platform
- The existing 66 pre-stressed 16-inch diameter concrete support piles
- The remnants of the existing 565-square-foot dock

Demolition work will be completed entirely from two barges. One barge will hold a crane and other demolition equipment and the other used to haul the debris to the Tenth Avenue Marine Terminal for unloading and transport to a recycling center or landfill. Demolition hours will be from 7:00 A.M. to 7:00 P.M. Monday through Saturday for up to four months. During the demolition timeframe, removal of existing piles will take approximately two to three weeks. A daily peak of approximately 12 workers will work from the barges during the demolition phase. Construction workers for the demolition phase will park remotely at the demolition contractor's facilities and travel to the project site by boat from the Tenth Avenue Marine Terminal. Exhibit 4 shows the location of existing piles to be removed. The piles located along the Embarcadero Promenade in front of the restaurant site will remain.

## **B. Construction**

The proposed project will involve construction of the following:

- No more than 53 new pre-stressed up to 24-inch diameter concrete piles (13 fewer than currently exist. Exhibit 4 shows the location of proposed new piles.)
- A new approximately 24,960-square-foot platform over the water
- A new approximately 34,069-square-foot restaurant building with the following features:
  - a restaurant on the north side
  - a restaurant on the south side
  - a fast-casual brew pub
  - gelato & coffee
- A new approximately 3,711-square-foot second floor public viewing deck
- An approximately 1,913-square-foot public access perimeter walkway around the waterside edge of the ground floor
- A new dock and dine approximately 3,370-square-foot dock

The existing utility connections at the project site will be used and may require in-kind replacement due to disrepair.

Project construction will take approximately one year and the work accomplished from the waterside using a barge and from the landside using a staging area in the parking area and promenade adjacent to the proposed restaurant facility. Construction of the new platform and restaurant building will be from 7:00 A.M. to 7:00 P.M. Monday through Saturday, except for City Holidays, in compliance with San Diego Municipal Code Section 59.5.0404. The staging area will temporarily displace existing sidewalk and parking in front of the project site along the North Embarcadero Promenade (approximately 55 spaces). During construction a K-Rail or similar safety barrier will be erected to provide continued pedestrian access along the waterfront around the construction area (Exhibit 7). A peak daily total of approximately 130 construction workers will be needed during project construction. Construction workers will park remotely in existing public parking lots and walk or be shuttled to the project site. Work trucks and materials will be staged along the North Embarcadero Promenade within a fenced and signed construction area that will be closed to the public. Piles will be driven

first (1–2 months) followed by construction of the platform deck/surface (1–2 months) and once complete, the construction of the building upon the deck and the dock will commence (6–8 months).

Upon completion of construction of the restaurant building, all areas not within the project's proposed lease boundary will be restored to existing configurations, specifically promenade and parking. This consists of repaving the promenade areas disrupted by construction activities, and resurfacing and restriping the parking areas disrupted by construction activities.

### **C. Operation**

The project will result in a total of 1,000 seats for restaurant patronage and a gelato and coffee bar, as well as a dedicated public viewing deck. All parking and promenade amenities will be restored to the existing dimensions and configuration, although with aesthetic treatments intended to be consistent with the public improvements included in the NEVP Phase 1. As with the existing restaurants, no dedicated parking will be provided. Metered public parking is available along the North Embarcadero Promenade, and a number of public parking lots are available within walking distance of the project site. The dock and dine will have a controlled access to protect boats/boaters property and will accommodate up to 12 vessels at a time. The public viewing deck will be available at all times the restaurants are open, and accessible via stairs through the south end restaurant and elevator directly from the promenade that will be clearly signed from the promenade. Occupancy of the viewing deck will be available for up to 108 people with seating and tables provided. Upon completion, the proposed project will generate approximately 250 permanent jobs.

### **STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the Project as approved by the District and the Development, as described above and the Project described in the Final Mitigated Negative Declaration (UPD #MND-2016-91; SCH 2016081007, Clerk Document No. XXXXX), dated November 2016, and adopted by Resolution No. 2016-xxx on December 13, 2016, for the Project.
2. Permittee shall notify the District of any changes in the Project and herein described. Notification shall be in writing and be delivered promptly to the District. District approval of the project change may be required prior to implementation of any multi-
3. Permittee and the Project shall meet all applicable codes, statutes, ordinances and regulations, and Permittee shall obtain all necessary permits from local, regional, state, and federal agencies.
4. Permittee shall conform to, and this permit is subject to, the permit rules and regulations of the District, including, but not limited to, the District's Coastal Development Permit Regulations.

5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Real Estate Development Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. The Permittee and contractor shall perform all best management practices (BMPs) during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to Pacific Ocean, to the maximum extent practicable.
10. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2013-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109226, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region (Municipal Permit). The Municipal Permit prohibits any activities that could degrade stormwater quality.

The Permittee shall ensure that post-construction / operational use of this Project site complies with the Municipal Permit and District direction related to permitted activities including the requirements found in the District's Jurisdictional Runoff Management Program (JRMP). The JRMP is available on the District website: <https://www.portofsandiego.org/environment/clean-water.html> or by contacting the Planning and Green Port Department, (619) 686-6254.

11. This project may be subject to the District post-construction BMP requirements. If so, approval of the project by the District is necessarily conditioned upon submission by the Permittee of a project specific Stormwater Quality Management Plan (SWQMP) that meets District requirements and is compliant with the District BMP Design Manual (JRMP Appendix D). The Permittee shall implement all post-construction structural and non-structural BMPs throughout the life of the project.

The implementation and maintenance of the post-construction BMPs constitute regulatory obligations for the Permittee, and failure to comply with the Municipal Permit, the JRMP, or the District approved SWQMP, including the specific BMPs contained therein, may be considered a violation of the permit and a violation of District Code.

12. In the discretion of the District, prior to commencement of construction, Permittee may be required to require that their contractor(s) furnish security, naming the District as a dual obligee, in the form of a performance bond and a payment bond, each in an amount deemed appropriate by the District to guarantee payment of the subcontractors, completion of the approved work under this permit, and compliance with the conditions and limitations upon which such permit is granted. Prior to commencement of construction, Permittee may also be required by the District to furnish security in the form of a payment bond in an amount deemed appropriate by the District to guarantee payment to the contractor(s) for work performed under this permit.
13. By accepting this permit, Permittee acknowledges and agrees (a) that the project site may be subject to environmental conditions and hazards; (b) to assume the risks to the Permittee of injury and damage from such conditions in connection with the implementation of the project; (c) to unconditionally waive any claim of damage or liability against the District, its Board of Port Commissioners, officers, agents and employees ("District" for purposes of this condition) for injury or damage from such conditions to persons performing the work for which this permit is issued; (d) to defend, indemnify and hold harmless, and require that Permittee's contractor(s) engaged to perform the work on the project defend, indemnify and hold harmless, the District from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the performance of the work by Permittee's contractor(s) for which this permit is issued, with the exception of any claim, action, damages, liability or costs arising or resulting from the project caused by the gross negligence or willful misconduct of the District; (e) to defend, indemnify and hold harmless the District from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the District's approval of the project, the granting of this permit, and the District's adoption of the Final Mitigated Negative Declaration; and (f) that Permittee will require Permittee's contractors to name the District as an additional insured on all policies of insurance, now in existence or to be obtained by them, for the work conducted pursuant to this permit.
14. Permittee acknowledges and agrees that: (a) it is the sole and exclusive responsibility of Permittee, and not the District, to ensure that all persons and/or entities who provide any labor, services and/or equipment in connection with the project, shall comply with the requirements of California's prevailing wage laws (the "PWL"), to the extent such laws are applicable; and (b) it is the sole and exclusive responsibility of Permittee, and not the District, to determine whether the project is subject to the PWL by obtaining a determination by means that do not involve the District. If the project is determined to be subject to the PWL, Permittee shall comply with all applicable provisions of the PWL, and shall take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment

and/or materials in connection with the project shall likewise comply with all applicable provisions of the PWL.

Permittee further acknowledges and agrees that Permittee's failure to comply with all applicable provisions of the PWL, and/or their failure to take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with the project comply with all applicable provisions of the PWL, shall render Permittee, and not the District, liable for all remedies (inclusive of all applicable fines and penalties), afforded by law as a consequence of such non-compliance. Permittee expressly agrees to defend, indemnify and hold harmless the District, from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the PWL (collectively "PWL Claim") made against or incurred by the District in any capacity (including, without limitation, as a real party in interest), except for any PWL Claim arising out of the sole negligence or willful misconduct of the District.

15. The conditions of this permit are independent of, and in addition to, the obligations of the Permittee under any existing lease(s), Tidelands Use and Occupancy Permit(s), or other contractual agreement(s) with the District, and are binding upon Permittee and its agents, representatives, successors and permitted assigns.

#### **SHORT TERM CONSTRUCTION MEASURES**

1. To minimize noise during construction, the Permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize nuisance effects from lights or glare during construction, the Permittee will require the construction contractor to shield and direct night lighting away from adjacent areas.
3. All construction equipment shall be maintained in peak condition to reduce operational emissions.
4. Diesel equipment shall use low-sulfur diesel fuel.
5. Electric equipment shall be used to the maximum extent feasible during construction.
6. The Permittee shall require the construction contractor to provide construction employees with transit and ride share information.

7. The Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to hazardous materials, workers shall be provided with adequate protective gear.
8. The Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
9. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. 2009-0009-DWQ (NPDES General Permit No. CAS000002), and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the "Construction General Permit"), as adopted, amended, and/or modified. Construction activity subject to the Construction General Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor are responsible for submitting to the District a SWPPP that is compliant with the Construction General Permit and District required minimum BMPs. The District requires the use of District SWPPP templates. Once approved, the SWPPP document shall be maintained on the construction site at all times and made available for review by the District or other regulatory agencies.

The Permittee and/or contractor is responsible for ensuring that the SWPPP document is maintained on the site, implemented, and amended as required throughout construction. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations shall be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean shall be reported immediately to the District Planning and Green Port Department, in order to address any regulatory permit requirements regarding spill notifications.

A project's total disturbed soil area (DSA) shall not exceed 5 acres during the rainy season (October 1 - April 30) and 17 acres during the non-rainy season (May 1 - September 30). The District may temporarily increase these limits if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution.

### **SPECIAL PROVISIONS**

1. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements, as described in the "Portside Pier Restaurant



Redevelopment Project” Final Mitigated Negative Declaration (UPD #MND-2016-91; SCH 2016081007, Clerk Document No. XXXXX), dated November 2016, and adopted by Resolution No. 2016-xxx on December 13, 2016, attached hereto as Exhibit 10 and incorporated herein by reference.

2. Permittee shall implement all resurfacing, paving, and striping necessary to return promenade and parking amenities affected during construction activities to conditions suitable for public use.
3. Permittee shall implement the following Sustainability features:
  - (1) Building
    - a. High-efficiency, clear, non-reflective Low E glass;
    - b. Light-colored roofing materials will be used to reduce heat buildup in the building and reduce the heat island effect;
    - c. Photovoltaics located on the bay-facing side of the rooftop;
    - d. It is anticipated that the proposed project will exceed the minimum energy efficiency standards dictated by the California Title 24 Building Code requirements;
    - e. Ducts within the proposed building will be sealed during construction and cleaned out during commissioning to promote indoor air quality by minimizing dust and mold accumulation;
    - f. Hardscape, roofing, and deck materials will include light-colored paving to reduce heat island effect;
    - g. Water fixtures, including toilets, sinks, and kitchen equipment within the proposed building, will be low-flow and will reduce water use.
  - (2) Materials & Resources
    - a. Adhesives, sealants, and paints will conform to the guidelines for low- and no-volatile organic compound (VOC) products;
    - b. Carpets will conform to the product requirements for the Carpet and Rug Institute Green Label program;
    - c. During demolition, materials will be separated and recycled. During construction, solid waste will be recycled;
    - d. Use of reclaimed wood for exterior façade elements;
    - e. The proposed project will use recycled materials and materials that are produced in the Southern California area for construction.

(3) Mechanical Systems

- a. A variable-flow primary chilled-water loop will be incorporated in the proposed building, which will reduce cooling energy use;
- b. Larger mechanical and plumbing equipment, such as pumps, air handlers, exhaust fans, and kitchen hoods, will use variable-speed drives, which reduce energy use to the minimum amount required to satisfy the immediate demand.

(4) Lighting

- a. The proposed project will implement a lighting design that includes the following features:
  - Incorporation of automatic lighting management controls to save energy;
  - Use of a daylight-harvesting system that senses the amount of incoming daylight and reduces the electrical lighting accordingly;
  - Installation of occupancy sensors in offices and restrooms to turn off lights in unoccupied spaces;
  - Individual light-dimming controls throughout;
  - Use of LED lighting for signage and illuminated features;
  - Use of high-efficiency, shielded lighting for all nighttime lighting fixtures.

(5) Landscape and Water Quality

- a. Landscape design will specify low-water-use plants and drip irrigation to reduce water usage;
- b. Landscape design will be designed to minimize irrigation and runoff, and to promote surface infiltration where appropriate;
- c. Plants that are tolerant of saturated soil conditions will be used where landscaped area retain or detain storm water;
- d. Landscape irrigation control will be employed to allow for shutoff after a rain event to prevent irrigation after precipitation.

Exhibits:

1. Project Location Map
2. Ground Floor Plan
3. Second Floor Plan
4. Existing and Proposed Piles
5. Proposed Renderings
  - a. Perspective from Southwest (Water)
  - b. Perspective from Southeast (Elevated)
  - c. Perspective from Northeast Promenade (Nighttime)
6. Dock and Dine Layout
7. Project Construction Area

8. Photometric Plan
9. Preliminary Signage Plan
10. Mitigation, Monitoring, and Reporting Program (MMRP) for the Portside Pier Restaurant Redevelopment Project

If you have any questions on this permit, please contact the Real Estate Development Department-Development Services of the San Diego Unified Port District at (619) 686-6291.

RANDA CONIGLIO  
President/Chief Executive Officer

By: \_\_\_\_\_  
Wileen C. Manaois  
Principal, Development Services  
Real Estate Development Department

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

\_\_\_\_\_  
Signature of Permittee  
Mike Morton Jr.  
President & CEO, The Brigantine, Inc.

\_\_\_\_\_  
Date



 Project Boundary

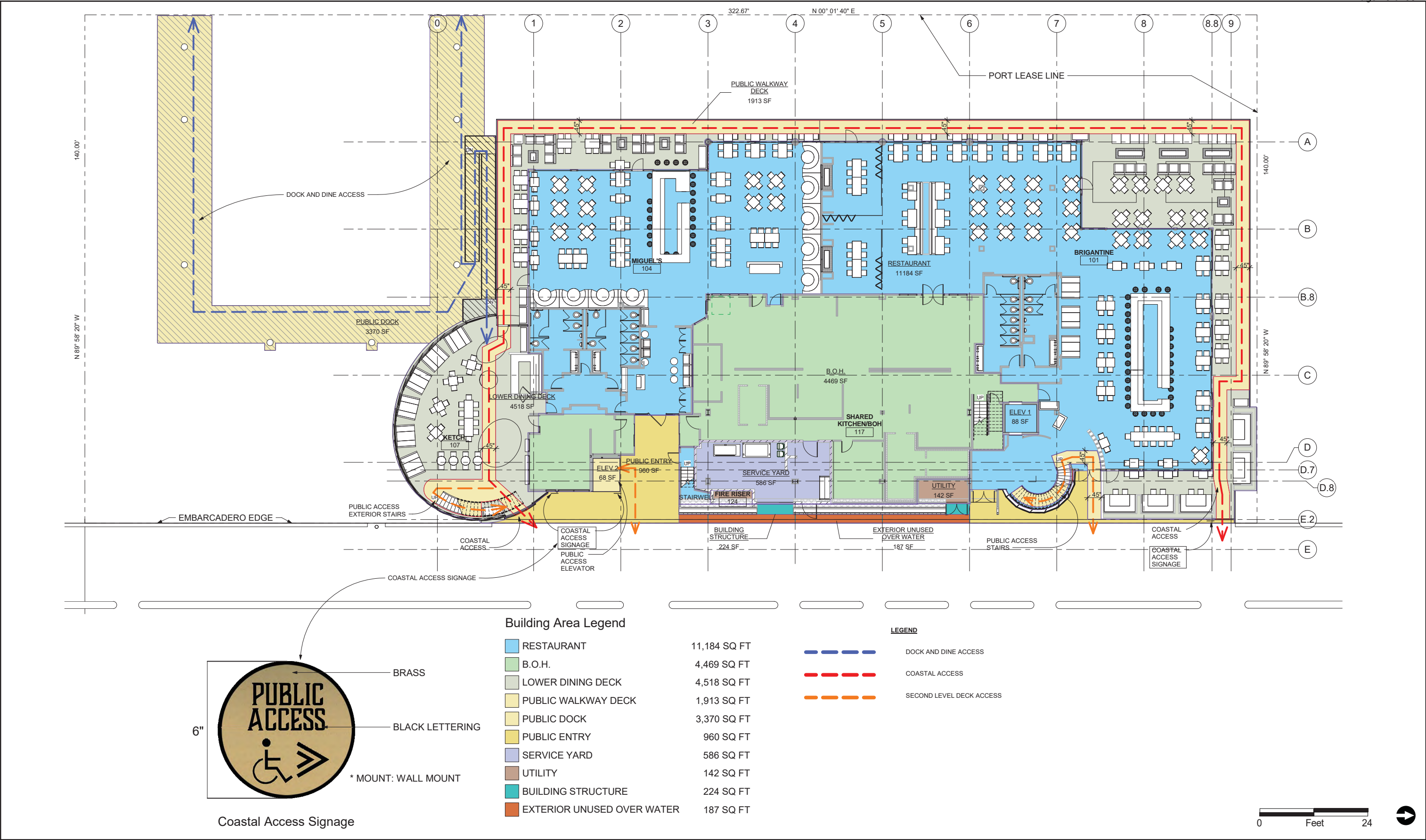
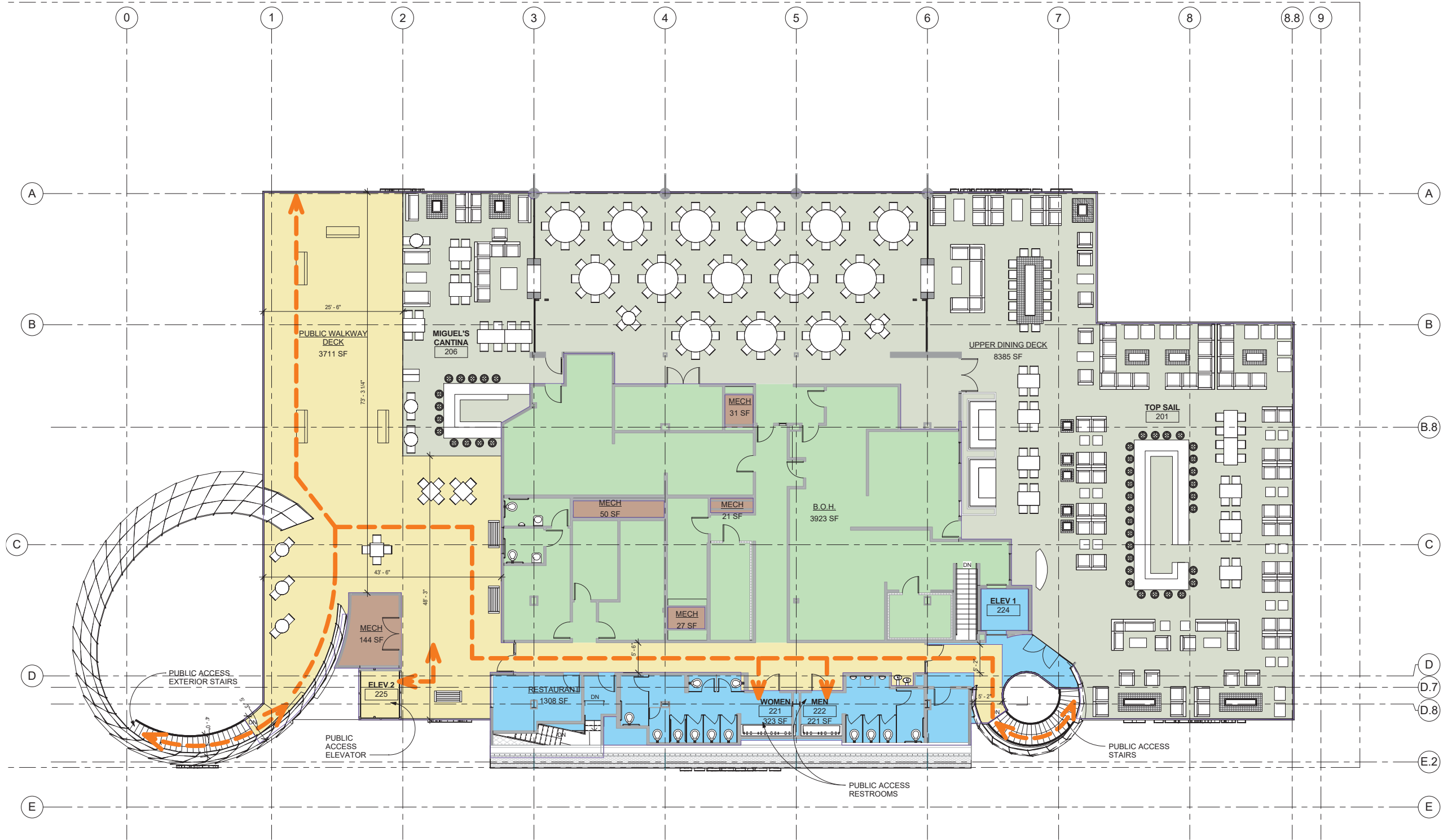


FIGURE 4a  
Portside Pier Floor Plans (Ground Floor)  
Revised Version





Building Area Legend

RESTAURANT	1,308 SQ FT
B.O.H.	3,923 SQ FT
UPPER DINING DECK	8,385 SQ FT
PUBLIC WALKWAY DECK	3,711 SQ FT
MECH	273 SQ FT

LEGEND

	DOCK AND DINE ACCESS
	COASTAL ACCESS
	SECOND LEVEL DECK ACCESS



FIGURE 4b  
Portside Pier Floor Plans (Second Floor)  
Revised Version





TUCKER  
SADLER  
1620 FIFTH AVENUE SUITE 200  
SAN DIEGO, CALIFORNIA 92101  
619.236.1662 FAX 619.236.9267

NOT FOR  
CONSTRUCTION

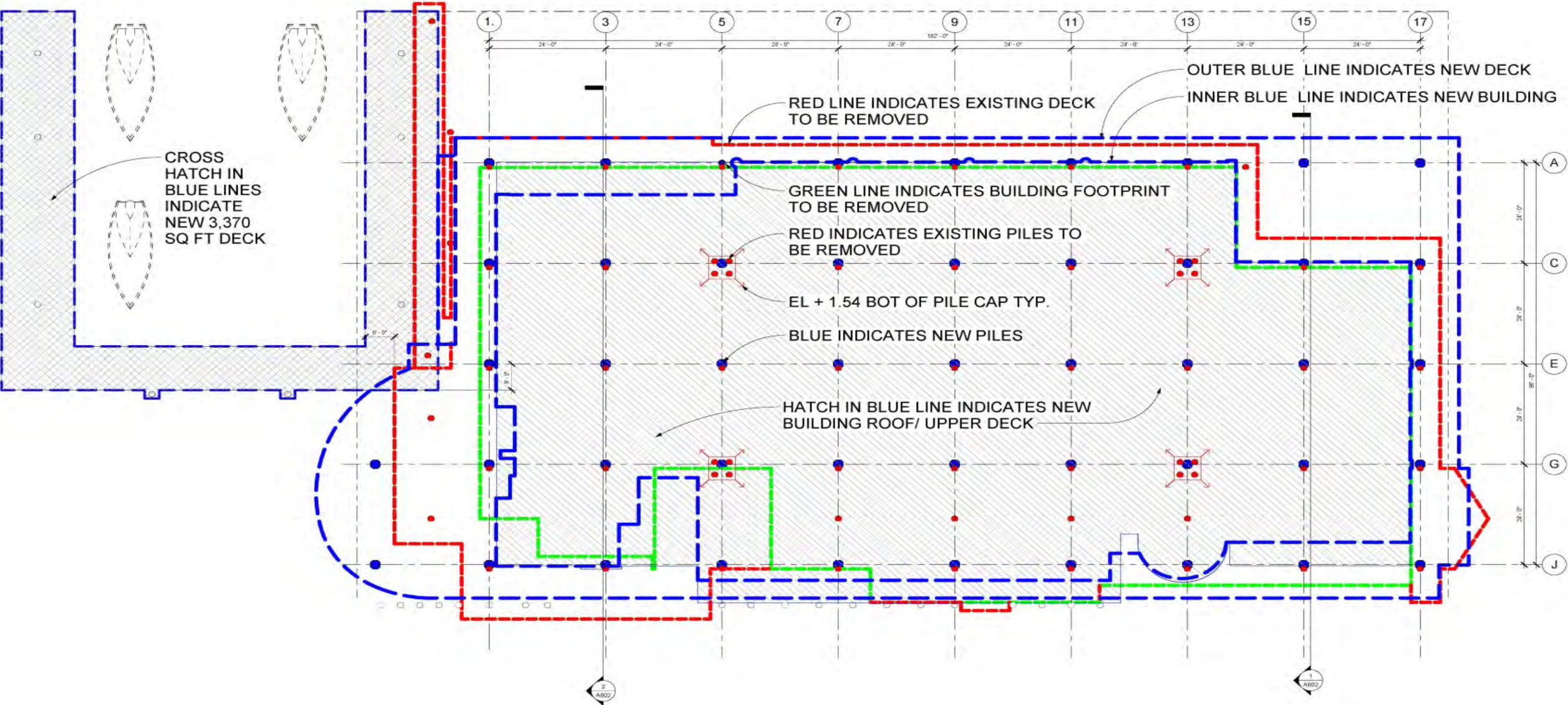
Design  
Development

PORTSIDE PIER

No.	Issued / Revisions	Date

ARCHITECT OF RECORD:

PROJECT # 21511.00	DRAWN BY: MV
DATE ISSUED: 12/01/16	CHECKED BY: MV
DRAWING NUMBER DWG OF	DRAWING A200



LEGEND

- NEW 24" OCTAGON PILES
- EXISTING 16" PILES TO BE REMOVED
- EXISTING EMBARCADERO PILES TO REMAIN

PILE COUNT

EXISTING PILE COUNT	=	60	NEW PILE COUNT	=	45
EXISTING AT DOCK	=	6	NEW PILES AT NEW SLIP	=	8
EXISTING ALONG EMBARCADERO (TO REMAIN)	=	21			



BATTERED PILE

1 SITE PLAN  
1" = 10'-0"



ALL IDEAS, DESIGNS, ARRANGEMENTS AND PLANS INDICATED OR REPRESENTED BY THE DRAWING ARE OWNED BY AND THE PROPERTY OF TUCKER SADLER ARCHITECTS, INC. AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY OR DISCLOSED TO ANY PERSON, FIRM OR CORPORATION FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF TUCKER SADLER ARCHITECTS, INC. FILING THESE DRAWINGS OR SPECIFICATIONS WITH ANY PUBLIC AGENCY IS NOT PUBLICATION OR USE THEREOF IS PERMISSIBLE WITHOUT THE WRITTEN CONSENT OF TUCKER SADLER ARCHITECTS, INC.





FIGURE 5a  
Architectural Renderings: Perspective from Southwest (Water)  
Revised Version





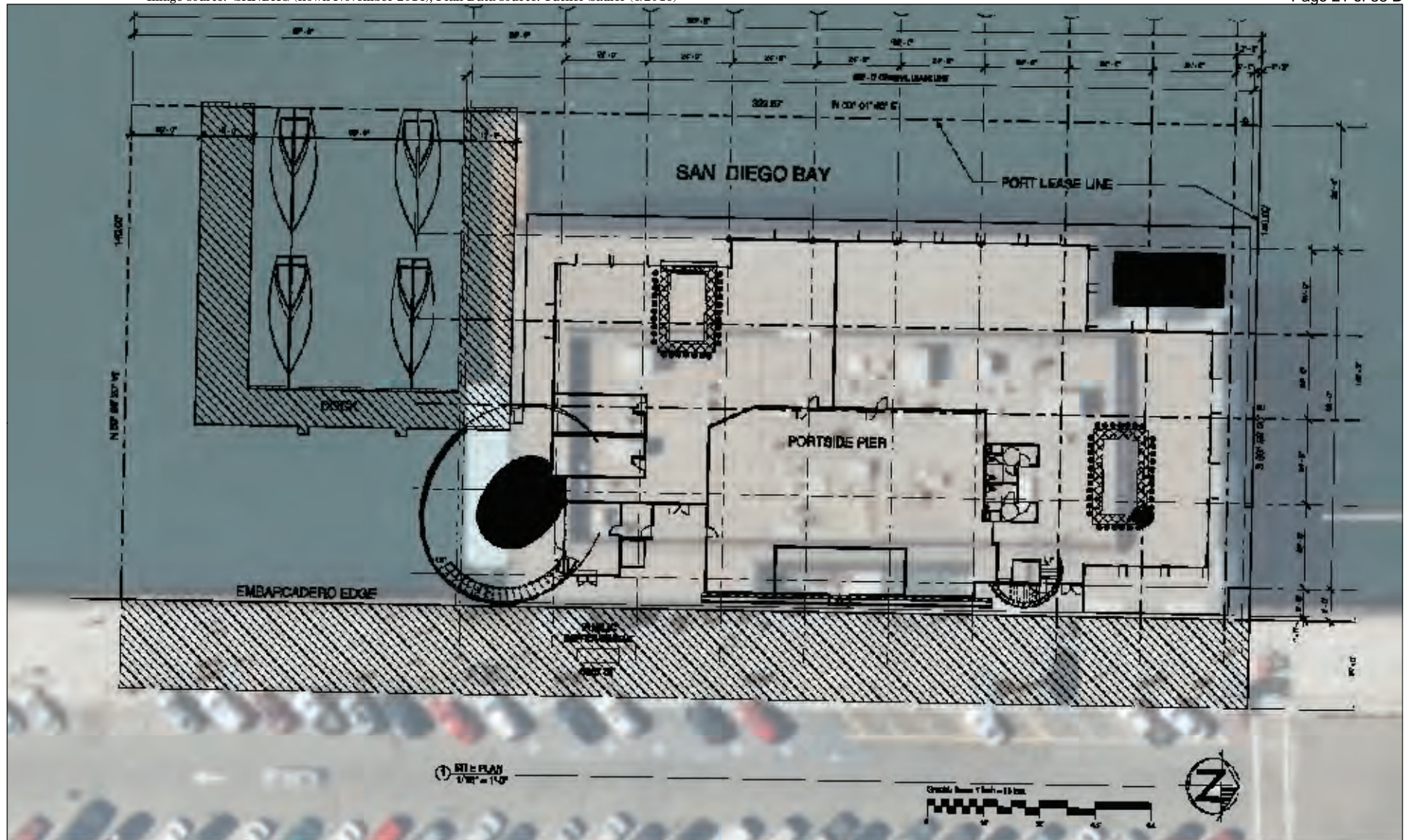
FIGURE 5b  
Architectural Renderings Perspective from Southeast (Elevated)  
Revised Version





FIGURE 5D  
Architectural Renderings: Perspective from Northeast Promenade (Nighttime)  
Revised Version





0 Feet 40

**FIGURE 7**  
Dock and Dine Layout



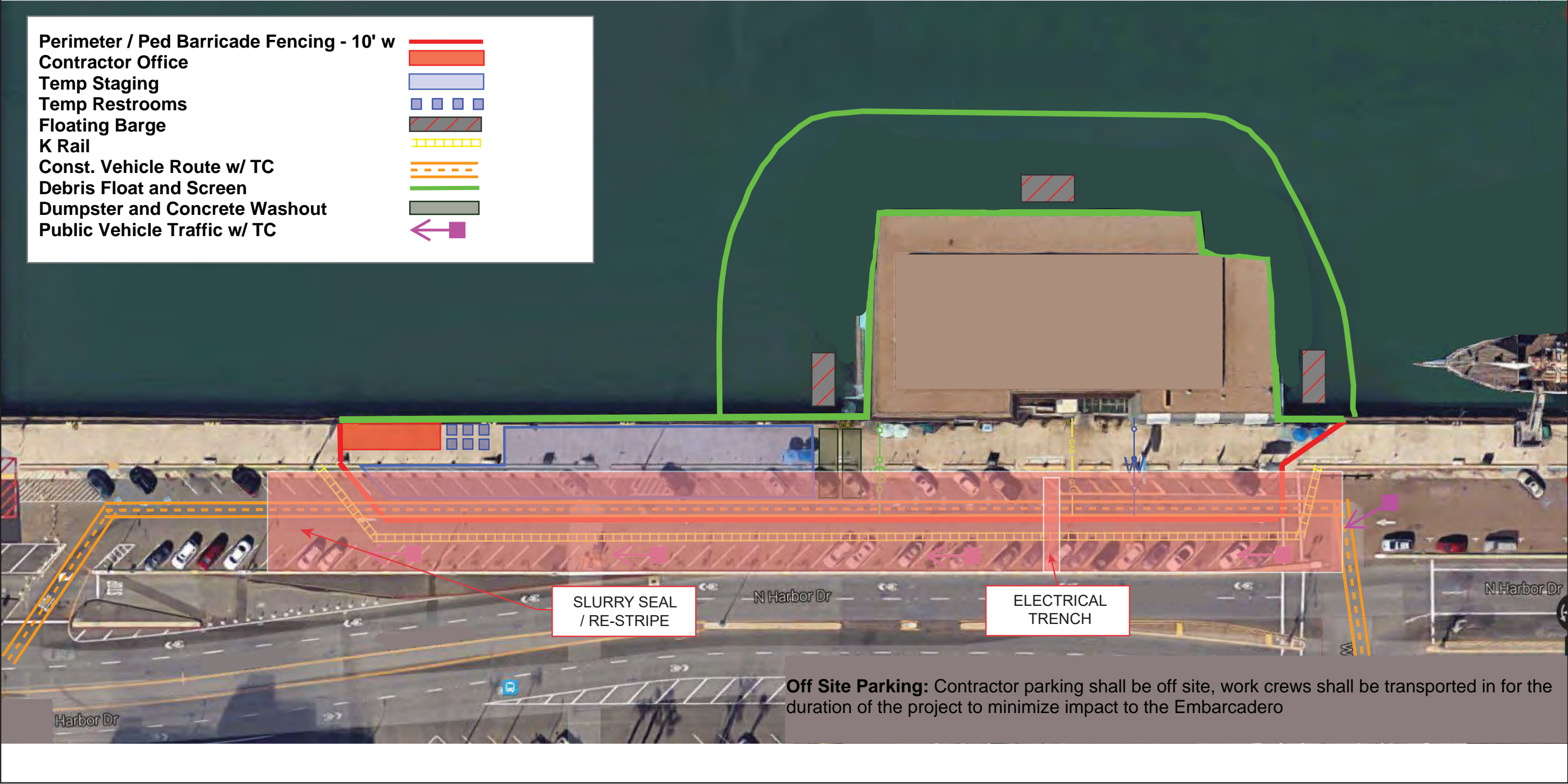


FIGURE 8  
Project Construction Area







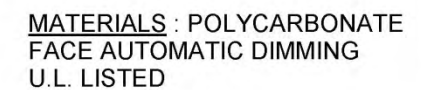


1620 FIFTH AVENUE SUITE 200  
SAN DIEGO, CALIFORNIA 92101  
619 . 236 . 1662 FAX 619 . 236 . 9267

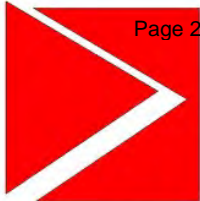
PORTSIDE PIER  
PRELIMINARY SIGNAGE[illegible]

ARCHITECT OF RECORD:

PROJECT # 21511.00	DRAWN BY: BA
DATE ISSUED: 11/28/16	CHECKED BY: DM,GM
DRAWING NUMBER  DWG  OF	DRAWING  <b>EXHIBIT</b> <b>A</b>







TUCKER  
SADLER

1620 FIFTH AVENUE SUITE 200  
SAN DIEGO, CALIFORNIA 92101  
619.236.1662 FAX 619.236.5267

PORTSIDE PIER  
EXTERNAL LIGHTING

No.	Issued / Revisions	Date

ARCHITECT OF RECORD:

PROJECT # 21511.00	DRAWN BY: BA
DATE ISSUED: 11/28/16	CHECKED BY: DM,GM
DRAWING NUMBER DWG OF	DRAWING EXHIBIT B

BACKLIT CHANNEL LETTER SIGNAGE FOR  
GENERAL ILLUMINATION, TYPICAL.

PROPOSED PHOTOVOLTAIC PANELS ALONG  
BACKSIDE ROOF PORTION



LIGHTING:  
BLUE LED TUBE LIGHT STRIPS  
COLORED  
STATIC - SINGLE COLOR

INTERIOR ILLUMINATED "BASKET"  
STATIC - GENERAL INTERIOR LED LIGHTING

BASKET 1:  
LAMINATED GLASS - 65% FRIT  
VISIBLE LIGHT TRANSMITTANCE GLAZED PANELS

INTERIOR ILLUMINATED LOWER LEVEL  
RESTAURANT

INTERIOR ILLUMINATED "BASKET"  
STATIC - GENERAL INTERIOR LED LIGHTING  
STAIRS & ELEVATORS

BASKET 2:  
LAMINATED GLASS - 65% FRIT  
VISIBLE LIGHT TRANSMITTANCE GLAZED PANELS

INTERNALLY ILLUMINATED  
SCULPTURAL CENTERPIECE FOR  
LOWER & UPPER LEVEL BAR AREAS

ALL IDEAS, CONCEPTS, ARRANGEMENTS AND PLANS INDICATED OR REPRESENTED BY THE DRAWING ARE OWNED BY AND THE PROPERTY OF TUCKER SADLER & ASSOCIATES. ANY ARCHITECTS AND PLANNERS CONSULTANTS AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH DRAWINGS, ARRANGEMENTS OR PLANS SHALL BE USED FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF TUCKER SADLER & ASSOCIATES. IT IS THE POLICY OF TUCKER SADLER & ASSOCIATES TO NOT BE RESPONSIBLE FOR THE CONSTRUCTION OF ANY PROJECTS BASED ON THESE DRAWINGS OR SPECIFICATIONS WITHOUT THE WRITTEN CONSENT OF TUCKER SADLER & ASSOCIATES.



ALL IDEAS, DESIGNS, ARRANGEMENTS AND PLANS INDICATED OR REPRESENTED BY THE DRAWING ARE OWNED BY AND THE PROPERTY OF TUCKER SADLER & ASSOCIATES. ALL ARCHITECTS AND PLANNING CONSULTANTS, AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE PROJECT. ANY REUSE OF ANY PART OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF TUCKER SADLER & ASSOCIATES IS PROHIBITED. ANY REUSE OF ANY PART OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF TUCKER SADLER & ASSOCIATES IS PROHIBITED.

CDP Exhibit 9



SEE EXHIBIT  
'A' FOR  
SIGNAGE  
REFERENCE



TUCKER  
SADLER

1620 FIFTH AVENUE SUITE 200  
SAN DIEGO, CALIFORNIA 92101  
619.236.1662 FAX 619.236.9267

PORTSIDE PIER  
PRELIMINARY SIGNAGE

No.	Issued / Revisions	Date

ARCHITECT OF RECORD:

PROJECT # 21511.00	DRAWN BY: BA
DATE ISSUED: 11/28/16	CHECKED BY: DM,GM
DRAWING NUMBER DWG OF	DRAWING EXHIBIT C



## **I. MITIGATION MONITORING AND REPORTING PROGRAM**

### **A. Purpose**

This Mitigation Monitoring and Reporting Program (MMRP) was prepared for the proposed Portside Pier Restaurant Redevelopment Project (project) to comply with Section 15097 of the California Environmental Quality Act (CEQA) and Public Resources Code Section 21081.6. Public Resources Code Section 21081.6 requires the Lead Agency for each project subject to CEQA to adopt a reporting or monitoring program for changes made to the project or conditions of approval adopted in order to mitigate or avoid significant effects on the environment. The Lead Agency must also monitor performance of the mitigation measure included in any environmental document to ensure that implementation takes place. The Lead Agency is responsible for review of all monitoring reports, enforcement actions, and document disposition. The Lead Agency will rely on information provided by a monitor as accurate and up to date and will field check mitigation measure status as required.

The purpose of the MMRP is to ensure that the mitigation measures, required by the Mitigated Negative Declaration (MND), are properly implemented. As the Lead Agency for the project under CEQA, the San Diego Unified Port District (District) will monitor the mitigation measures for construction and operation of the project. The District may modify how it will implement a mitigation measure, as long as the alternative means of implementing the mitigation still achieves the same or greater impact reduction. An effective reporting system shall be established prior to any monitoring efforts. Copies of the measures shall be distributed to the participants of the mitigation monitoring measures adopted.

### **B. Mitigation Monitoring Checklist**

The Mitigation Monitoring Checklist (Table MMRP-1) provides a mechanism for monitoring the mitigation measures in compliance with the MND. The Mitigation Monitoring Checklist is organized by categories of environmental impacts (e.g., Biological Resources, Hazards and Hazardous Materials, and Transportation/Traffic (Parking)). Potential impacts identified in the MND are summarized for each impact area and the required mitigation measures are listed. The checklist identifies the implementation schedule, who is responsible for implementing the measure, and required monitoring and reporting frequency, and who is responsible for verification of implementation. A description of these items is provided below.

#### **Mitigation Measure.**

The specific mitigation measure language as described in the MND is listed in this category.

#### **Monitoring Requirement**

Specific requirements are provided for use by District staff to ensure that measures are appropriately implemented.

#### **Responsible Party for Mitigation Implementation**

This column explains who will ensure that the mitigation measures are properly implemented. The District shall be responsible for either monitoring each measure, or delegating an agency or party, at their discretion.

**Completion Requirement**

The mitigation measures required for the project will be implemented at various times as construction proceeds and during operation. Some measures must be implemented before or during construction activities, while others must be implemented upon completion and during operation.

**Agency Responsible for Verification**

This column describes who will be ultimately responsible for ensuring that each mitigation measure is monitoring and who will coordinate the final reporting program.

<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>Biological Resources</b>				
<b>BIO-1:</b> If pile removal and driving occur between April 1 and September 15, the contractor shall deploy a turbidity curtain around the pile removal and driving areas to restrict the surface visible turbidity plume to the area of removal and driving. It shall consist of a hanging weighted curtain with a surface float line and shall extend from the surface to 15 feet down into the water column. This measure is intended to minimize the area of the bay in which visibility of prey is obstructed. The applicant shall ensure that this measure is implemented for the duration of the pile-removal or pile-driving activity.	Construction	Applicant	During pile driving	Port District
<b>BIO-2:</b> Should vibratory pile-removal or impact hammer pile-driving activities be conducted between April 1 and September 15, a qualified biological monitor shall be retained by the contractor at its expense to conduct California least tern monitoring during the tern breeding season within 500 feet of construction activities. The monitor shall be empowered to delay work commencement and shall do so if terns are actively foraging (e.g., searching and diving) within the work area. Should adverse impacts to terns occur (e.g., agitation or startling during foraging activities), the biological monitor shall be empowered to delay or halt construction and shall do so until least terns have left the project area.	Construction	Applicant	During pile driving within the California least tern breeding season  District shall maintain monitoring reports in project files	Port District

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>BIO-3:</b> A biological observer or observers shall monitor pile removal, if using a vibratory hammer, and pile driving, if using a vibratory or impact hammer, with the authority to stop work if a green sea turtle or marine mammal approaches or enters the shutdown zones (500 meters for vibratory removal or driving and 317 meters [117 meters plus a 200-meter buffer] for impact driving). The additional buffer is required because a marine mammal or green sea turtle spends much of its time underwater. A buffer gives the observer time to observe the animal before it dives, and allows them to stop construction before it enters the shutdown zone. Prior to the start of pile-removal or pile-driving activities, the biological observers shall monitor the shutdown zones for at least 15 minutes to ensure that green sea turtles and marine mammals are not present. If a green sea turtle or marine mammal approaches or enters the shutdown zone during the pile-removal or driving activities, the biological observer(s) shall notify the construction contractor to stop the activity. The pile-removal or pile-driving activities shall be stopped and delayed until either the biological observer(s) visually confirm that the animal has left the shutdown zone of its own volition, or 15 minutes have passed without re-detection of the animal. If the on-site biological observer(s) determine that	Construction	Applicant	During pile driving  District shall maintain monitoring reports in project files	Port District

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>weather conditions or visibility prevent the visual detection of green sea turtles or marine mammals in the shutdown zones, such as heavy fog, low lighting, or sea state, in-water construction activities with the potential to result in Level A Harassment (injury) or Level B Harassment (disturbance) shall not be conducted until conditions change. The following shutdown zones, and buffers, will avoid the potential for impacts.</p> <p>For Demolition (assuming vibratory pile removal):</p> <ul style="list-style-type: none"> <li>• A shutdown zone consisting of the area within 500 meters of work would be required to avoid potential injury and behavioral effects to green sea turtles, managed fish, and marine mammals.</li> </ul> <p>For Construction (assuming impact pile driving):</p> <ul style="list-style-type: none"> <li>• A shutdown zone consisting of the area within the 160-decibel (dB) root mean square (rms) isopleth (117 meters from source), plus a buffer of 200 meters, would be required to avoid the potential for Level A and B Harassment of green sea turtles, managed fish, and marine mammals (317 meters total).</li> </ul>				

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>Additional requirements:</p> <ul style="list-style-type: none"> <li>Prior to the start of any pile-driving activities, the construction contractor shall implement a soft-start procedure to provide additional protection to green sea turtles, marine mammals, and fish. Soft start provides a warning and/or gives individuals a chance to leave the area prior to the hammer operating at full power. The soft-start procedure would require contractors to activate the impact hammer with an initial set of three strikes at 40 percent or less energy, separated by three 30-second waiting periods.</li> <li>If at any point pile driving stops for greater than one hour, then the soft start procedure must be conducted prior to the start of further pile driving activities.</li> <li>Observers will observe for 30 minutes after construction has ended.</li> <li>Construction activities requiring observers will commence 45 minutes after sunrise, and 45 minutes before sunset to provide the observers with enough visibility to observe marine species in the project area.</li> <li>Biological monitoring shall be conducted by qualified observers. The observers shall be trained in green sea turtle and marine mammal identification and behaviors, and would have no other construction-related tasks. The</li> </ul>				

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>observers shall determine the best vantage point practicable to monitor and implement shut-down/notification procedures, when applicable, by notifying the construction superintendent and/or hammer operator.</p> <ul style="list-style-type: none"> <li>During all observation periods, observers shall use binoculars and the naked eye to scan continuously for green sea turtles and marine mammals. As part of the monitoring process, the observers shall collect sightings data and behavioral responses to pile-removal and pile-driving from green sea turtles and marine mammals observed within 500 feet of the proposed project site of activity and shutdown zones during the period of construction. The observer shall complete a sighting form (paper or electronic) for each pile-driving day (see Attachment B of Appendix 3). The observer shall submit the completed forms to NMFS and the District within 60 days of the completion of the monitoring with a summary of observations.</li> </ul>				

<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>BIO-4:</b> Prior to the commencement of construction activities that would result in increased water coverage, an amount equating to the loss of open water associated with the proposed project shall be offset by deducting an amount from the District's shading credit program established pursuant to Board Policy 735. Additionally, the project applicant shall implement design modifications, such as incorporating translucent areas over the water. The deduction to the District's shading credits shall be equivalent to that of the proposed project's final increase in shading (i.e., less any reductions achieved by design modifications) to the satisfaction of NMFS and USACE. Applicant shall pay to the District fair market value, as determined by a District study of similar credits, for the shading credits.	Pre-Construction	Applicant	Prior to demolition and construction activities	Port District
<b>Hazards and Hazardous Materials</b>				
<b>HAZ-1:</b> Airport Land Use Commission (ALUC) formal review and determination on the proposed project shall be obtained prior to initiation of project construction.	Pre-Construction	Applicant and District	Prior to initiation of construction	Port District



<b>Table MMRP-1</b> <b>Portside Pier Restaurant Redevelopment Project</b> <b>Mitigated Negative Declaration Mitigation Monitoring and Reporting Program</b>				
Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<b>Transportation/Traffic (Parking)</b>				
<b>TRA-1</b> To reduce the impacts associated with temporary loss in parking during construction of the proposed project, the applicant and/or construction contractor will implement the following: <ul style="list-style-type: none"> <li>• Prior to construction, the applicant or construction contractor will obtain written agreement from the Wyndham Hotel, or other parking facility with sufficient space, to guarantee parking for construction personnel through the duration of construction of the proposed project.</li> <li>• During initial site preparation, the construction contractor will post signage at the temporarily displaced parking spaces to direct visitors to nearby available parking.</li> </ul>	Pre-Construction and Construction	Applicant	Prior to construction and during construction	Port District
<b>TRA-2:</b> The applicant will implement the following parking management strategies to mitigate the projected parking deficiency: <ul style="list-style-type: none"> <li>• Coordination - On-going daily coordination between the proposed project and parking lot operators, such as ACE parking, to identify which surrounding lots have available parking at different times of the day.</li> <li>• Wayfinding Signage - Provide changeable signage to direct patrons to the parking facilities (as identified by ACE on a weekly basis) that</li> </ul>	Prior to Operation and Ongoing	Applicant	Prior to and during operation	Port District

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>have parking availability.</p> <ul style="list-style-type: none"> <li>• Transportation Network Companies – Coordination with companies (such as Lyft, Uber, etc.) to encourage patrons to utilize this mode of transportation as an alternative to driving their personal vehicle.</li> <li>• Valet Parking – Secure 979 parking spaces (Secured Parking) at one or more parking lots and provide a valet service in order to avoid overflow in the immediate surrounding parking areas. Prior to Certificate of Occupancy, the applicant will enter into a contract or agreement with a parking operator or equivalent entity securing the Secured Parking and provide the agreement to the District. The agreement shall be updated on an annual basis with proof of said agreement being submitted to the District on an annual basis. Alternatively, the applicant may submit evidence to District that it has acquired the Secured Parking at an off-site location for the valet parking operation.</li> </ul> <p>After the first year of operation or anytime thereafter, the applicant may submit a parking study (Parking Study) to the District for its review and approval. The Parking Study shall include, at a minimum, the number of Secured Parking used for its valet operations on a monthly basis, broken down into morning,</p>				

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<p>afternoon and evening timeframes, for the previous year. Based on the District's review of the study, the number of Secured Parking may be reduced for a maximum period of two years. The reduction in Secured Parking shall not be less than the highest monthly use of the Secured Parking in the previous year and the reduction may be granted in the District's sole and absolute discretion. Prior to the elapse of the two-year period, a new Parking Study may be submitted to the District for its review and approval based on the same requirement stated herein. If a new Parking Study is not submitted to the District or during the District's review of the new Parking Study (if said review overlaps with the two-year period), the applicant shall secure 979 parking spaces with a parking operator or equivalent entity through an agreement that shall be submitted to the District.</p> <ul style="list-style-type: none"> <li>• Water Taxi – Applicant shall coordinate with a water taxi company to encourage patrons to utilize water taxis as an alternative to driving their personal vehicle.</li> <li>• Bike Racks – Provide bike racks on the project site or adjacent thereto on the promenade to encourage employees/patrons to bike to the proposed project.</li> </ul>				

**Table MMRP-1**  
**Portside Pier Restaurant Redevelopment Project**  
**Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

Mitigation Measure	Monitoring Requirement	Responsible for Mitigation Implementation	Completion Requirement	Agency Responsible for Verification
<ul style="list-style-type: none"> <li>• Bike Share Stations – Coordinate with companies like DECOBIKE to ensure a bike share station is maintained within walking distance (approximate 1,000 feet) to the proposed project.</li> <li>• Public Transit – On the applicant’s website, promote and encourage employees and patrons to utilize alternative modes of transportation as an alternative to driving their personal vehicle.</li> <li>• Public Transit Subsidies for Employees – Provide reimbursement or subsidies for public transportation costs for all employees.</li> <li>• Port of San Diego (formerly Big Bay) Shuttle – Participate in the District’s on-going shuttle program.</li> <li>• Employee Off-Site Parking – Designate an off-site parking lot for employees and provide shuttle service between the off-site facility and the proposed project, such as: <ul style="list-style-type: none"> <li>○ Portman Hotel: (+400 stalls)</li> <li>○ 610 West Ash Street: (+410 stalls)</li> <li>○ 410 West Ash Street (+510 stalls)</li> <li>○ 1230 Columbia Street (+228 stalls)</li> </ul> </li> </ul>				

**CALIFORNIA COASTAL COMMISSION**

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



August 31, 2016

Submitted electronically on August 31, 2016.  
Hard copy to follow.

Wileen Manaois  
San Diego Unified Port District  
Real Estate Development  
3165 Pacific Hwy  
San Diego, CA 92101

Subject: Staff Comments on the Portside Pier Restaurant Redevelopment Project and  
Associated Mitigated Negative Declaration

Dear Ms. Manaois:

Thank you for the opportunity to review and provide comment on the above-referenced project and the environmental document, which was received on August 2, 2016. The proposed project is located at 1360 North Harbor Drive and includes demolition of the existing 23,285 sq. ft. Anthony's Grotto Restaurant building, 23,285 sq. ft. building platform, 66 concrete piles and remnants of the 565 sq. ft. dock, and the installation of 53 new concrete piles and construction of a new platform 37,225 sq. ft. restaurant building, 28,330 sq. ft. platform, and 3,370 sq. ft. dock. Preliminary comments were provided to Port staff and the project proponent during an initial meeting on the subject project on May 4, 2016.

**Port Master Plan Update**

The Port is currently conducting a Port Master Plan (PMP) Update that *will serve as a long-term guide to carry the Port through the next 50 years*,<sup>1</sup> and include opportunities for public input throughout the process. Ideally, the PMP Update should be completed prior to moving forward with this project, or any other major project, to ensure that the proposed project and associated lease for that same 50 year term is aligned with the vision and policies contained in the comprehensive PMP Update. In addition to this proposal, there are also a number of other significant leasehold redevelopments under consideration for the North Embarcadero and, for optimum planning outcomes, it would be beneficial for all such actions to be deferred until the PMP Update is completed which is projected occur in the next two –three year time period.

**Project is Appealable and a PMPA is Required**

Of primary concern to Commission staff is the assertion that a future Coastal Development Permit (CDP) necessary for demolition of the existing restaurant and construction of an entirely new restaurant complex and associated pier would not be

<sup>1</sup> <https://www.portofsandiego.org/integrated-planning.html>

EXHIBIT NO. 2

6-17-146-EDD

8.31.16 CCC MND

Comment Letter

1 of 10

California Coastal Commission

appealable to the California Coastal Commission (CCC) nor require a PMP Amendment (PMPA). The only explanation is given on Page 60 of the Draft Initial Study:

*The project site also lies within the boundary of the Coastal Zone and is subject to the requirements of the California Coastal Act (Coastal Act). The District would issue a non-appealable CDP for the proposed project consistent with the PMP as certified by the California Coastal Commission. **The proposed development type is not listed as ‘appealable’ per Chapter 8 Ports (§30715)3 of the California Coastal Act. As such the proposed project is subject to a non-appealable CDP, and a PMP amendment is not required to add the proposed project to the project list.** [emphasis added]*

#### Project is Appealable

Commission staff has historically provided direction to the Port that restaurants fall under the category of “shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes” and are therefore appealable under Section 30715(a)(4) of the Coastal Act. Most recently, the finding that restaurants are appealable developments was discussed in detail as part of the Commission’s appeal of the Sunroad project (Appeal No. A-6-PSD-13-005) in 2013. The Commission found that restaurants are in fact appealable developments under the Coastal Act. The full text from the staff report dated August 29, 2013 can be viewed in its entirety on the CCC website;<sup>2</sup> however, the findings important to the subject project are reiterated in italics below for the benefit of the Port and the public:

#### *Restaurants Are Appealable Development*

*[...]*

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

---

<sup>2</sup> <http://documents.coastal.ca.gov/reports/2013/9/W21a-9-2013.pdf>

*Section 30009 of the Coastal Act provides that the Coastal Act “shall be liberally construed to accomplish its purposes and objectives.” In interpreting section 30009, courts have found that “[w]hen a provision of the Coastal Act is at issue, [they] are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations.” (McAllister v. California Coastal Commission (2008) 169 Cal.App.4th 912, 928.) In consideration of the foregoing legal framework, section 30715(a)(4) of the Coastal Act necessarily includes restaurants as an appealable development for the following reasons.*

*First, considering the language of section 30715 of the Coastal Act as a whole, the categories of appealable development relate to development that has no water-oriented purpose consistent with typical port-related operations. Subsection (a)(2) calls out waste-water treatment facilities as appealable unless the facility processes waste incidental to normal port activities or by vessels (emphasis added). Subsection (a)(3) calls out roads that are not principally for internal circulation within port boundaries (emphasis added). In other words, roads that are used for port-related operations like Quay Avenue in the City of National City, which solely provides a north-south route between port-related storage facilities. Subsection (a)(4) calls out office and residential buildings as appealable if they are not principally devoted to the administration of activities within the port (emphasis added). Subsection (a)(4) also calls out shopping facilities if they are not principally devoted to the sale of commercial goods utilized for water-oriented purposes (emphasis added).*

*Considering the foregoing, and by giving effect to the statutory section as a whole, the exceptions to appealable development in the relevant subsections of section 30715 of the Coastal Act only apply if there is a water-oriented purpose that is consistent with port-related operations. Key words like “normal port activities,” “internal circulation within port boundaries;” “administration of activities within the port,” and “water-oriented purposes” illustrate the underlying intent of section 30715 that the stated exceptions to appealable developments are those that have a principal interaction with water-oriented and port-related operations. Therefore, since restaurants serve the general public and not just port employees and cargo ship pilots on break as their ships are loaded, the consideration of related provisions in section 30715 of the Coastal Act that have exceptions concerning port-related operations lead to an interpretation that restaurants are appealable development because they are not principally devoted to water-oriented purposes consistent with typical port- related operations.*

*Second, a restaurant is a type of “shopping facility” and to conclude otherwise would lead to absurd results... “Shopping facility” is not defined in the Merriam-Webster Dictionary. “Shopping center,” however, is defined in the Merriam-Webster Dictionary. Facility is defined as “something (as a hospital) that is built, installed, or established to serve a particular purpose.”<sup>3</sup> “Center” is defined as “a facility providing a place for a particular activity or service <a day-care center>.”*

---

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

*(emphasis added)<sup>4</sup> Given the synonymous nature of “center” and “facility,” the definition of “shopping center” shall be used to establish that a restaurant is necessarily included as an appealable development under section 30715(a)(4) of the Coastal Act. Merriam-Webster defines “shopping center” as “a group of retail stores and service establishments usually with ample parking facilities and usually designed to serve a community or neighborhood.” (emphasis added)<sup>5</sup> Several dictionary sources define “restaurant” as a place or establishment where people from the public pay to sit and eat meals that are served to them.<sup>678910</sup> Clearly, to interpret “shopping facility” as not necessarily including restaurants as an appealable development given the definition of the “shopping center,” which is synonymous to “shopping facility” and includes service establishments like restaurants, would lead to an absurd result inconsistent with the enlarged meaning of the term “shopping facility.” This plain reading of the term “shopping facility” further bolsters the Commission’s precedent of treating restaurants as appealable development and supports the purpose of section 30715, noted above, which is to retain appellate jurisdiction over development that is not a principally related to water-oriented and port-related operations.*

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

In addition, the Port has identified some components of larger projects as non-appealable (i.e., vista points and Broadway Pier infrastructure improvements within the North Embarcadero Redevelopment Project) within the projects lists included in the PMP; however, in no instance is a restaurant listed as non-appealable when a part of a larger project. In any case, it is factually incorrect to characterize the proposed project as simply a restaurant when it is a complex of eating establishments, of which one does not even contain chairs, and a dock.

#### Port Master Plan Amendment Required

The subject development is located in the Civic Zone of Planning District 3 of the PMP. The current text and project list in the PMP pertaining to the Civic Zone does not identify redevelopment of the site. While the MND acknowledges that the proposed project will need to be added to the project list, it denies that a PMPA would be required to do so

---

<sup>4</sup> <http://www.merriam-webster.com/dictionary/center>.

<sup>5</sup> <http://www.merriam-webster.com/dictionary/shopping%20center>.

<sup>6</sup> <http://www.thefreedictionary.com/restaurant>

<sup>7</sup> <http://oxforddictionaries.com/definition/english/restaurant>

<sup>8</sup> <http://www.answers.com/topic/restaurant>

<sup>9</sup> <http://dictionary.reference.com/browse/restaurant>

<sup>10</sup> <http://en.wikipedia.org/wiki/Restaurant>



stating “...a PMP amendment is not required to add the proposed project to the project list”. However, any modification to the certified PMP, including the addition of a proposed project to the project list, requires a PMPA approved by the CCC. Therefore, a PMPA is required to add the proposed project to the project list with sufficient details and specificity before a CDP can be issued.

In summary, the project description should be modified to reflect the appealable status of the project and a PMPA will be needed to incorporate the proposed project into the PMP, including addition of the proposed restaurant complex and dock to the Project List for the Centre City Embarcadero Planning District.

Finally, we respectfully request notice of any future action taken on the subject project, including the final environmental document and final action on a CDP.

### **Water Coverage**

MND Table ES-1, Existing and Proposed Project Features Comparison, shows the Building Gross Water Coverage increasing by 1,675 sq. ft. Mitigation Measure Bio-4 identifies the proposed mitigation for the increase in water coverage:

*Prior to the commencement of construction activities, the loss of 4,480 square feet of open water associated with the proposed project shall be offset by implementing design modifications, such as incorporating translucent areas, to reduce shading and by deducting an amount from the District’s shading credit program established pursuant to Board Policy 735 equivalent to that of the proposed project’s final shading total (i.e., less any reductions achieved by design modifications) to the satisfaction of NMFS and USACE.*

One of the primary impacts of increased open water coverage is reduced foraging habitat for birds. While translucent areas may be appropriate to offset shading impacts, they do not mitigate the obstruction of foraging opportunities and are not an appropriate form of mitigation for open water coverage.

In addition, Board Policy 735 allows for land, water area, natural or constructed habitat to be used as credit for open water coverage mitigation. However, because a restaurant is not a coastal dependent use, the only appropriate mitigation for an increase in overwater coverage is to decrease an equal amount of overwater coverage by removing an existing structure that currently covers the bay. Commission staff recommends that this project be redesigned to avoid an increase or even reduce the open water coverage of the existing development; however, if the project proponent insists on increasing open water coverage, the MND should clearly identify and describe where an existing overwater structure would be removed in order to offset that increase.

## **Parking**

Commission staff is concerned that the MND and its Appendix 8 Transportation Impact Analysis does not seriously consider the effect that the proposed project will have on the already impacted area in regards to parking and in turn, the impact on access to the bay and waterfront. In addition, the MND incorrectly defines and calculates the parking problem, need, and mitigation requirements. More specific comments on parking are provided below:

- MND Transportation/Traffic (Parking) Section, Existing Conditions, describes the available public transportation in detail; however, it does not include any description of available parking in the project area. The Port has released numerous studies recently documenting the lack of parking in the North Embarcadero area and the subject environmental document should include a detailed discussion of the findings from those parking studies in order to adequately assess the potential impacts of an expansion of the existing restaurant use in this area.
- Mitigation Measure TRA-2 requires parking management strategies be implemented to mitigate the projected parking deficiency. These strategies include coordination with ACE parking and transportation companies such as Uber and Lyft, wayfinding signage, valet parking, water taxi, bike racks and share stations, website promotion of public transportation, participation in the Big Bay shuttle, and employee off-site parking. Given the deficit of parking in the area, the project proponent is encourage to expand on these mitigation measures to maximize use of alternative transportation and provide employee public transportation subsidies, secure bicycle racks and showers for employees that choose to commute by bike, and promotional offerings to patrons that use alternative transportation.

### Appendix 8: Portside Pier Transportation Impact Analysis comments:

- Table 8.2 displays the maximum number of parking spaces required for the project, based on the net increase of square footage between the existing site and the proposed project. While the Tidelines Parking Guidelines do allow this calculation for projects that “*involve expansions or modifications of existing uses,*” the subject project is not an expansion or modification of an existing use, as the existing site will be completely demolished and an entirely new development with multiple restaurants will be constructed in its place. Thus, the parking space calculation should be revised based solely on the new development that is proposed.

Additionally, the Parking Rate Adjustments in Table 8.1 include a parking space credit/reduction for Dedicated Water Transportation Service due to the inclusion of ten boat slips as a project feature. However, the Tidelines Parking Guidelines state that this adjustment is to apply to uses that are “...*adjacent to or provide a*

*dedicated water taxi or ferry service that operates in a manner which would offer an alternative to using an automobile to reach the site.”* While the proposed boat slips would allow guests with private boats to dock and dine, this parking rate adjustment is not appropriate unless the project includes implementation of a dedicated water taxi or ferry service to and from the restaurant. If the applicant proposes to use this adjustment, it should be clear in the MND that a water taxi or ferry service is proposed as part of the project and that a portion of the 10 boat slips will be dedicated for water taxi/ferry service use and not available for the docking of private boats. Alternatively, the Port could adjust and justify any proposed parking credit, such as deducting one parking space requirement for each boat slip proposed.

In accordance with comments above, Commission staff has recalculated the parking requirements below, based on the entire square footage of the new building without the adjustment for the Dedicated Water Transportation Service:

Restaurant<sup>11</sup>: 37,225 k.sq.ft. x 9.3 = 346.19 spaces

Proximity to Public Waterfront Amenities for Public Access: 346.19 spaces x 0.25 increase = 86.55 space increase

Proximity to Transit: 346.19 spaces x 0.12 reduction = 41.54 space reduction

Total Required: 346.19 spaces + 86.55 spaces – 41.54 spaces = 391 spaces

The 391 required spaces is significantly more parking than the original 84 required spaces calculated in the MND; and, as such, the analysis and mitigation discussions in the MND should be revised accordingly.

- The Transportation Impact Analysis states that ACE estimates that over 1,000 stalls sit empty at its parking garages every day, and has committed to providing those spaces for this project. However, the data provided for the estimates in the Port’s North Embarcadero Focused Parking Study were also provided by ACE and show a significant deficit. This discrepancy must be addressed. It should also be clear that the parking spaces that are reserved for restaurant employees and patrons are available during both peak and non-peak times. All deficiencies in parking availability should also be addressed.

In addition, a discrepancy exists between the availability of specific lots included in the MND and the North Embarcadero Focused Parking Study. Specifically, the MND suggests the following lots could be used as mitigation for lack of employee parking and also could be used to calculate available parking for the project, while the North Embarcadero Parking Study finds that these lots will not be fully available at the time the project is constructed:

---

<sup>11</sup> Dock not included. Guidelines state that the area should include the gross area of the building footprint so restaurant and public deck account for total gross area (33,577 sq.ft. + 3,648 sq.ft.=37,225 sq. ft.).

- Wyndham Hotel: North Embarcadero Focused Parking Study states that these spaces are only available during low parking demand at the hotel.
- Navy Pier: North Embarcadero Focused Parking Study includes the elimination of most of the parking on Navy Pier in the near-term.

Again, this discrepancy should be addressed. Neither the Wyndham Hotel nor Navy Pier should be relied upon in the calculation of available parking for the subject project.

### **Public Access – Operation**

The proposed restaurant complex will be located on public land. As such, it is essential that public access is clearly provided at the site. While we appreciate the inclusion of a free public viewing deck, we continue to be concerned that maintaining the entrance of the public deck through the interior of the restaurant building and requiring the public to enter the restaurant to access the public deck, instead of providing a direct entrance from the public promenade, will be a deterrent for public use and discourage use of the deck. As recommended at our May 4, 2016 meeting with Port staff and the project proponent, the project should be redesigned so that the entrance to the public deck is accessible from the public promenade to provide maximum access to the public.

In addition, at our May 4, 2016 meeting, the subject project was presented with a continuous public walkway around the perimeter of the ground floor. It is unclear if the feature has since been removed, as the floor plans in Figure 4a of the MND instead shows seating around the perimeter of the ground floor. The inclusion of a continuous walkway design around the perimeter of the building platform is necessary to increase coastal access at the site and recapture public views. Any public space should also be separate from private areas so that the public feels welcomed and not as if they are intruding in the private restaurant space.

The project proponent is also encouraged to maximize public access to the public deck and walkway by allowing public access from dusk until dawn and during hours of operation. Please include in the MND the hours the public will be able to access the deck, as well as the hours of operation for the five eating establishments included in the project.

Finally, the MND states that signage will be used to direct the public to the public viewing deck. Please provide additional information on public access signage in the MND, including the placement of signs and if signs will also be used to direct the public to the ground floor perimeter walkway.

### **Public Access – Construction**

In addition, the proposed project construction and demolition schedule includes work on Saturdays and during summer months. This is a high traffic, visitor-oriented area with key access components. How is the construction schedule designed to accommodate the public?

### **Lighting**

The project description of the MND describes the lighting associated with the project, which includes:

- Backlit illuminated signage on the waterside- and promenade-facing frontages of the building to display the names and/or logos for Miguel's Cocina, Ketch Grill & Taps, Brigantine Seafood and Oyster Bar, Portside Gelato & Coffee, and Portside Pier. Signs would range in size from 12 to 43 feet in length and from 3 feet, 2 inches to 12 feet, 11 inches in height. Five signs would face the promenade and five would face the water.
- LED panels along the North Embarcadero Promenade and along the upper deck on the waterside-facing frontage of the building to display upcoming events, menu specials, and other notifications.
- LED illuminated "baskets" surrounding the building. It appears that there are two baskets.
- LED light tube strips on the promenade-facing frontage of the building.
- An internally-illuminated sculptural centerpiece on the outdoor bar of The Brigantine's second floor, for artistic purposes.

Historically, the Commission has been concerned that this type of lighting and signage may adversely impact scenic resources and viewsheds to and along the bay, add to general visual clutter, and be out of character with the surrounding development. In the case of the proposed development, it appears that these concerns are substantiated. The large amount and size of individual signs and lights on the single two-story building will be overwhelming visually, especially as the signage will be advertisement seen from both land and water. Collectively, the building will emit an amount of light that is likely to distract from views of the bay. Finally, the signage and lighting would far exceed that associated with the current building and of neighboring buildings and would not be in character with the surrounding development.

### **Sea Level Rise**

The project has analyzed sea level rise for the structure over a 50 year period, and states

*“The project life is expected to be 30 to 50 years based on the proposed project lease with the District and the life expectancy of materials in the marine environment.”* The life of the structure should not be tied to the lease of the project as its length is based on legal and not physical circumstances. It is also unclear what evidence there is for the life expectancy of materials in the marine environment. The current building was constructed in 1965, over 65 years ago and is still in operation and considered safe. The project should instead be analyzed based on a 75 year life as recommended in the Commission’s Adopted Sea Level Rise Guidance<sup>12</sup>. In addition, any adaptive management strategies should be considered prior to the development of the project, and the development of adaptive strategies should not be deferred to 2058 as the MND suggests.

### **Alternatives Analysis**

Finally, the MND fails to discuss alternatives to the proposed project. Considering the noted parking deficits and the large increase in open water coverage, the Port should analyze and discuss a reduced-project alternative, at least, in the final environmental document.

Thank you again for the opportunity to provide review and comment on the proposed project. If you have any questions or require further clarification, please do not hesitate to contact me at the above office.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Lasiter".

Melody Lasiter  
Coastal Program Analyst

Cc (copies sent via e-mail):  
Sherilyn Sarb (CCC)  
Deborah Lee (CCC)  
Kanani Brown (CCC)

---

<sup>12</sup> <http://www.coastal.ca.gov/climate/slrguidance.html>.

**LETTER D: CALIFORNIA COASTAL COMMISSION**

**Commenter: Melody Lasiter, Coastal Program Analyst**

**Date: August 31, 2016**

EXHIBIT NO. 3

**6-17-146-EDD**

## CALIFORNIA COASTAL COMMISSION

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



August 31, 2016

Submitted electronically on August 31, 2016.  
Hard copy to follow.

Wileen Manaois  
San Diego Unified Port District  
Real Estate Development  
3165 Pacific Hwy  
San Diego, CA 92101

Subject: Staff Comments on the Portside Pier Restaurant Redevelopment Project and  
Associated Mitigated Negative Declaration

Dear Ms. Manaois:

Thank you for the opportunity to review and provide comment on the above-referenced project and the environmental document, which was received on August 2, 2016. The proposed project is located at 1360 North Harbor Drive and includes demolition of the existing 23,285 sq. ft. Anthony's Grotto Restaurant building, 23,285 sq. ft. building platform, 66 concrete piles and remnants of the 565 sq. ft. dock, and the installation of 53 new concrete piles and construction of a new platform 37,225 sq. ft. restaurant building, 28,330 sq. ft. platform, and 3,370 sq. ft. dock. Preliminary comments were provided to Port staff and the project proponent during an initial meeting on the subject project on May 4, 2016.

D-1

### **Port Master Plan Update**

The Port is currently conducting a Port Master Plan (PMP) Update that *will serve as a long-term guide to carry the Port through the next 50 years*,<sup>1</sup> and include opportunities for public input throughout the process. Ideally, the PMP Update should be completed prior to moving forward with this project, or any other major project, to ensure that the proposed project and associated lease for that same 50 year term is aligned with the vision and policies contained in the comprehensive PMP Update. In addition to this proposal, there are also a number of other significant leasehold redevelopments under consideration for the North Embarcadero and, for optimum planning outcomes, it would be beneficial for all such actions to be deferred until the PMP Update is completed which is projected occur in the next two –three year time period.

D-2

### **Project is Appealable and a PMPA is Required**

Of primary concern to Commission staff is the assertion that a future Coastal Development Permit (CDP) necessary for demolition of the existing restaurant and construction of an entirely new restaurant complex and associated pier would not be

D-3

<sup>1</sup> <https://www.portofsandiego.org/integrated-planning.html>



## **RESPONSE TO LETTER D**

### **California Coastal Commission**

**Commenter: Melody Lasiter, Coastal Program Analyst**

**Date: August 31, 2016**

All documents referenced in Attachment D (Comments Received and District Responses), are available for public review in the SDUPD Office of the District Clerk, 3165 Pacific Highway, San Diego, CA 92101.

**Response to Comment D-1:** This is an introductory comment summarizing the project and identifying that preliminary comments were provided to the District and Applicant on May 4, 2016.

**Response to Comment D-2:** Only consistency with adopted land use plans must be considered under CEQA (See CEQA Guidelines 15125(d); Chaparral Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134, 1145 fn. 7) and hence, the proposed project's consistency with the Port Master Plan (PMP) Update (PMPU), which is ongoing and not yet approved by the District or certified by the California Coastal Commission is not required under CEQA.

Moreover, there is no requirement in the California Coastal Act (Coastal Act), the Port Act, or otherwise that the Port update its PMP on a regular basis. Rather, the PMPU is a voluntary initiative. In fact, once a PMP has been certified by the California Coastal Commission (like the District's PMP), coastal permitting authority shall be granted to the corresponding port. (Coastal Act Section 30715.) The Coastal Act does not – unlike other planning laws – place any prohibitions on amending the certified PMP to a certain number a year or require regular updating of the plan. (See e.g., California Government Code Sections 65358, which limits the number of general plan amendments to 4 per year and 65302, which requires certain elements of a general plan be regularly updated.) In 1981, the District's PMP was certified by the California Coastal Commission. The PMP includes the project site, which is designated as commercial recreation. Commercial recreation allows for restaurant uses. Accordingly, a restaurant complex currently exists on the project site. The project proposes to redevelop the project site with a similar restaurant complex in accordance with the commercial recreation land use designation.

Pending the PMPU, the Board adopted Board of Port Commissioners Policy 752, which provides that when a PMP Amendment is not required, the development proposal may advance as part of the normal project review process. This is the case here, where the same non-appealable use is being proposed consistent with the commercial recreation use designation and language of the PMP. Moreover, the policy states that proposed projects that require a PMP amendment will be evaluated against the guiding principles and guidelines resulting from the initial phases of the Integrated Planning process, along with all current applicable and legal regulations and procedures. Nowhere does the Policy require development cease pending the PMPU.

**(response continued on following page)**

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-2 (continuation from previous page):** Stopping redevelopment or development on the grounds that the District is processing the PMPU would also constitute an unlawful development moratorium. (See e.g., California Government Code Section 65858.) In order to impose such a moratorium, the District would need to find and identify a specific significant, quantifiable, direct and unavoidable impact upon the public health or safety that would result from continued development approvals. (Id.; Hoffman Street LLC v. City of West Hollywood (2009) 179 Cal.App.4th 754.) Redevelopment that replaces an existing use with the same use, such as what is included in the proposed project, has not been identified to result in impacts to public health or safety. The Board of Port Commissioners has been clear that it has not and is not contemplating imposing such a development moratorium. Moreover, the Coastal Commission cannot impose such moratoriums where, like here, a PMP has been certified because such certification divests the Coastal Commission of coastal land use authority. Therefore, there is no legal basis to stop development, like the proposed project or otherwise, while the PMPU is proceeding nor has there been a desire expressed by the District or its Board.

**Response to Comment D-3:** Pursuant to the Coastal Act, the District's Coastal Act regulations and past practice, the proposed project is considered "non-appealable". Chapter 8 of the Coastal Act regulates port development within the California coastal zone. Section 30715 of Chapter 8 specifies the sole categories of development that may be appealed to the Coastal Commission. Neither restaurants nor eating establishments are listed as appealable in Section 30715.

The commenter quotes to Coastal Commission staff report on the Sunroad restaurant project (Appeal No. A-6-PSD-13-005) (Sunroad Project) for the proposition that a "restaurant" is per se "appealable." The Sunroad Project was the redevelopment of a site with a restaurant that was historically developed with a restaurant, but was not existing at the time of redevelopment. Unlike here, where a non-appealable Coastal Development Permit is proposed, the Port issued a Coastal Act exclusion/exemption for the Sunroad Project but failed to issue the notice required by Section 30717 of the Coastal Act, which starts the 10-working-day appeal period for exclusions/exemptions. The exemption/exclusion was appealed and after finding a substantial issue, the Coastal Commission conducted a de novo hearing and issued a CDP for the Sunroad Project. That situation was factually distinguishable as an exclusion/exemption was issued. Here, a non-appealable CDP is proposed.

In addition, the commenter's letter relies on its interpretation that Section 30715(a)(4) of the Coastal Act includes restaurants. That section includes the following as appealable categories of development: "Office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities."

**(response continued on following page)**

Portside Pier Restaurant Project  
August 31, 2016  
Page 2

appealable to the California Coastal Commission (CCC) nor require a PMP Amendment (PMPA). The only explanation is given on Page 60 of the Draft Initial Study:

*The project site also lies within the boundary of the Coastal Zone and is subject to the requirements of the California Coastal Act (Coastal Act). The District would issue a non-appealable CDP for the proposed project consistent with the PMP as certified by the California Coastal Commission. **The proposed development type is not listed as 'appealable' per Chapter 8 Ports (§30715)3 of the California Coastal Act. As such the proposed project is subject to a non-appealable CDP, and a PMP amendment is not required to add the proposed project to the project list.** [emphasis added]*

#### Project is Appealable

Commission staff has historically provided direction to the Port that restaurants fall under the category of “shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes” and are therefore appealable under Section 30715(a)(4) of the Coastal Act. Most recently, the finding that restaurants are appealable developments was discussed in detail as part of the Commission’s appeal of the Sunroad project (Appeal No. A-6-PSD-13-005) in 2013. The Commission found that restaurants are in fact appealable developments under the Coastal Act. The full text from the staff report dated August 29, 2013 can be viewed in its entirety on the CCC website;<sup>2</sup> however, the findings important to the subject project are reiterated in italics below for the benefit of the Port and the public:

#### *Restaurants Are Appealable Development*

[...]

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

<sup>2</sup> <http://documents.coastal.ca.gov/reports/2013/9/W21a-9-2013.pdf>

D-3

**Response to Comment D-3 (continuation from previous page):** The California Coastal Commission-issued CDP for the Sunroad Project was subsequently challenged in a lawsuit filed by San Diegans for Open Government, Case. No. 37-2013-00057492-CU-TT-CTL (2013) (San Diegans for Open Government Lawsuit). In response to allegations by the petitioner and the California Coastal Commission that a “restaurant” was “appealable” under Section 30715(a)(4) because a restaurant was a type of “shopping facility, and akin to other appealable development,” the Court squarely ruled that a restaurant was not considered an “appealable” category development under the Coastal Act. (See Appendix I to these responses to comments, Sunroad Project Superior Court Decision to this document, p. 3; Decision, p. 3). This Court decision was subsequent to the California Coastal Commission staff’s interpretation that restaurants are appealable developments and sheds light on Section 30715. In addition to the Court’s ruling, for the reasons below, restaurants are non-appealable development under the Coastal Act.

Several Commissioners of the California Coastal Commission during the de novo hearing on the Sunroad Project also opposed this interpretation:

- “[S]hopping facilities not principally devoted to the sale of commercial goods utilized for water oriented purposes is not a restaurant. A restaurant is a restaurant.” (See Appendix II, California Coastal Commission Sunroad Project Hearing Transcript Excerpts, 11 AR 2705.)
- I “would have a hard time calling [a restaurant] a shopping facility” and that an “attempt to stretch that definition of a shopping facility is a little too broad for where we should be.” (See Appendix II, California Coastal Commission Sunroad Project Hearing Transcript Excerpts, 11 AR 2717-2718.)
- Staff’s interpretation that a restaurant is an appealable development is “shortcutting the rules on Section 7015” and such a staff policy of doing so should be reviewed by the California Coastal Commission. (See Appendix II, California Coastal Commission Sunroad Project Hearing Transcript Excerpts, 11 AR 2720-2721.)

Additionally, by reasonable interpretation, a restaurant is not a “shopping facility” and does not involve the “sale of commercial goods.” The commenter’s interpretation would expand appellate jurisdiction well beyond the plain language and intent of Section 30715(a)(4). Specifically, the Legislature used plain terms to describe “office and residential buildings,” “hotels,” “motels,” and it knew how to use a plain term to describe a “restaurant.” However, the Legislature did not do so, leaving restaurants as “non-appealable” developments.

The commenter also mentions other restaurants that the certified PMP has considered appealable. However, the Port has excluded/exempted eight restaurants and issued non-appealable CDPs for at least two restaurants: the Chart House and the Fish Market, both of which were standalone restaurants like that proposed by the project. (See Appendix III, District Restaurant Approvals, 2 AR 427-455, 3 AR 624-648, 2 AR 418-426.) While it is correct that some restaurants have been listed as appealable in the PMP or issued an appealable CDP that is only because they were a part of a larger appealable category development – like, The Wharf – Point Loma Marina LLC or The Ferry Landing Expansion. The Grape Street Pier and restaurant is identified in the PMP certified Port Master Plan as appealable because the development of the curvilinear Grape Street Pier, upon which the restaurant would be constructed, involves the demolition of a (former) commercial fishing support facility. **(response continued on following page)**

Section 30009 of the Coastal Act provides that the Coastal Act “shall be liberally construed to accomplish its purposes and objectives.” In interpreting section 30009, courts have found that “[w]hen a provision of the Coastal Act is at issue, [they] are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations.” (McAllister v. California Coastal Commission (2008) 169 Cal.App.4th 912, 928.) In consideration of the foregoing legal framework, section 30715(a)(4) of the Coastal Act necessarily includes restaurants as an appealable development for the following reasons.

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

Second, a restaurant is a type of “shopping facility” and to conclude otherwise would lead to absurd results... “Shopping facility” is not defined in the Merriam-Webster Dictionary. “Shopping center,” however, is defined in the Merriam-Webster Dictionary. Facility is defined as “something (as a hospital) that is built, installed, or established to serve a particular purpose.”<sup>3</sup> “Center” is defined as “a facility providing a place for a particular activity or service <a day-care center>.”

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

D-3

**Response to Comment D-3 (continuation from previous page):** Accordingly, it was categorized as “appealable” consistent with Section §30715(a)(4) of the Coastal Act, which includes “commercial fishing facilities” as “appealable” developments and Section 30109 of the Coastal Act, which includes demolition within the definition of “development” as established in the coastal consistency analysis for PMPA 27. Additionally, Imperial Beach PMP Amendment, certified nearly 20 years ago in 1997, also included unidentified commercial uses on the pier as part of that development, which could have been considered appealable developments. Nonetheless, these approvals preceded the San Diegans for Open Government Lawsuit, which clarified the issue. Moreover, Anthony’s, which includes three restaurants and a walk-up coffee kiosk is not identified as “appealable” in the PMP. (See PMP, pg. 72-73.)

Only “appealable” developments must be described with sufficient detail to ensure consistency with the policies of Chapter 3 of the California Coastal Act. (Coastal Act Section 30711(a)(4).) Because a restaurant or groups of restaurants are non-appealable they would not need to be listed in the PMP.

While the District concurs that certain non-appealable projects are identified in the PMP on the “Project Lists,” there is no requirement to include any projects that are non-appealable on the list. The fact that some non-appealable projects are listed does not enact some requirement that all non-appealable projects be listed. (Coastal Act Section 30711(a)(4).)

The District disagrees with the assertion that characterization of the project is factually incorrect. As described in the Draft MND, the proposed project is a group of restaurants consisting of up to four dining opportunities (three restaurants and one walk in gelato establishment), which directly replaces the existing group of restaurants (three restaurants and a coffee kiosk). Either way, a grouping of restaurants is not considered appealable under Section 30715.

*(emphasis added)*<sup>4</sup> Given the synonymous nature of “center” and “facility,” the definition of “shopping center” shall be used to establish that a restaurant is necessarily included as an appealable development under section 30715(a)(4) of the Coastal Act. Merriam-Webster defines “shopping center” as “a group of retail stores and service establishments usually with ample parking facilities and usually designed to serve a community or neighborhood.” *(emphasis added)*<sup>5</sup> Several dictionary sources define “restaurant” as a place or establishment where people from the public pay to sit and eat meals that are served to them.<sup>6,7,8,9,10</sup> Clearly, to interpret “shopping facility” as not necessarily including restaurants as an appealable development given the definition of the “shopping center,” which is synonymous to “shopping facility” and includes service establishments like restaurants, would lead to an absurd result inconsistent with the enlarged meaning of the term “shopping facility.” This plain reading of the term “shopping facility” further bolsters the Commission’s precedent of treating restaurants as appealable development and supports the purpose of section 30715, noted above, which is to retain appellate jurisdiction over development that is not a principally related to water-oriented and port-related operations.

D-3

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

In addition, the Port has identified some components of larger projects as non-appealable (i.e., vista points and Broadway Pier infrastructure improvements within the North Embarcadero Redevelopment Project) within the projects lists included in the PMP; however, in no instance is a restaurant listed as non-appealable when a part of a larger project. In any case, it is factually incorrect to characterize the proposed project as simply a restaurant when it is a complex of eating establishments, of which one does not even contain chairs, and a dock.

## Port Master Plan Amendment Required

The subject development is located in the Civic Zone of Planning District 3 of the PMP. The current text and project list in the PMP pertaining to the Civic Zone does not identify redevelopment of the site. While the MND acknowledges that the proposed project will need to be added to the project list, it denies that a PMPA would be required to do so

D-4

<sup>4</sup> <http://www.merriam-webster.com/dictionary/center>.  
<sup>5</sup> <http://www.merriam-webster.com/dictionary/shopping%20center>.  
<sup>6</sup> <http://www.thefreedictionary.com/restaurant>  
<sup>7</sup> <http://oxforddictionaries.com/definition/english/restaurant>  
<sup>8</sup> <http://www.answers.com/topic/restaurant>  
<sup>9</sup> <http://dictionary.reference.com/browse/restaurant>  
<sup>10</sup> <http://en.wikipedia.org/wiki/Restaurant>



**Response to Comment D-4:** The MND does not acknowledge that the proposed project needs to be listed in the PMP. Rather, it is expressly stated that the project is non-appealable and thus, is not required to be added to the project list (IS page 60). The MND does not state that adding the project to the list would not require a PMP amendment. To clarify in response to this comment, page 60 of the Initial Study/MND has been revised as follows:

“The proposed development type is not listed as ‘appealable’ per Chapter 8 Ports (Section 30715) of the California Coastal Act. As such the proposed project is subject to a non-appealable CDP, and a PMP amendment is not required because non-appealable projects do not need to be added to the project list. Additionally, the proposed project is consistent with the land use designation and PMP text.”

Please also see Response to Comment D-3, which addresses the Coastal Act requirement that only “appealable” projects need to be on the project list and because this is a non-appealable project that is consistent with the identified land use, a PMPA is not required.

Portside Pier Restaurant Project  
August 31, 2016  
Page 5

stating "...a PMP amendment is not required to add the proposed project to the project list". However, any modification to the certified PMP, including the addition of a proposed project to the project list, requires a PMPA approved by the CCC. Therefore, a PMPA is required to add the proposed project to the project list with sufficient details and specificity before a CDP can be issued.

D-4

In summary, the project description should be modified to reflect the appealable status of the project and a PMPA will be needed to incorporate the proposed project into the PMP, including addition of the proposed restaurant complex and dock to the Project List for the Centre City Embarcadero Planning District.

D-5

Finally, we respectfully request notice of any future action taken on the subject project, including the final environmental document and final action on a CDP.

D-6

#### **Water Coverage**

MND Table ES-1, Existing and Proposed Project Features Comparison, shows the Building Gross Water Coverage increasing by 1,675 sq. ft. Mitigation Measure Bio-4 identifies the proposed mitigation for the increase in water coverage:

*Prior to the commencement of construction activities, the loss of 4,480 square feet of open water associated with the proposed project shall be offset by implementing design modifications, such as incorporating translucent areas, to reduce shading and by deducting an amount from the District's shading credit program established pursuant to Board Policy 735 equivalent to that of the proposed project's final shading total (i.e., less any reductions achieved by design modifications) to the satisfaction of NMFS and USACE.*

D-7

One of the primary impacts of increased open water coverage is reduced foraging habitat for birds. While translucent areas may be appropriate to offset shading impacts, they do not mitigate the obstruction of foraging opportunities and are not an appropriate form of mitigation for open water coverage.

In addition, Board Policy 735 allows for land, water area, natural or constructed habitat to be used as credit for open water coverage mitigation. However, because a restaurant is not a coastal dependent use, the only appropriate mitigation for an increase in overwater coverage is to decrease an equal amount of overwater coverage by removing an existing structure that currently covers the bay. Commission staff recommends that this project be redesigned to avoid an increase or even reduce the open water coverage of the existing development; however, if the project proponent insists on increasing open water coverage, the MND should clearly identify and describe where an existing overwater structure would be removed in order to offset that increase.

**Response to Comment D-5:** Please see responses D-2 through D-4. An appealable CDP and a PMPA are not required for the proposed project.

**Response to Comment D-6:** California Coastal Commission staff have been added to the notification list for the final MND and the final action on the CDP.

**Response to Comment D-7:** Attachment A, Initial Study, of the Draft MND (Initial Study page 22) and Appendix 3, Biological Technical Report, of the Initial Study clearly identify results of field observations. The water surrounding the proposed project site ranges from approximately 19 to 25 feet deep, and the site does not support suitable habitat for animal residence or foraging. Nonetheless, impacts are identified for increased turbidity during construction that would further reduce the limited foraging opportunities due to the proposed project's proximity to California least tern nesting sites at the San Diego International Airport. No significant adverse impacts are identified as a result of the expanded use and water coverage at the proposed project site as the increase in bay coverage represents less than 1/1,000 of 1 percent of the Bay (see page 23 of the Initial Study).

Mitigation Measure BIO-4 requires a 1:1 deduction of shading mitigation credits for the project's final shading/water coverage total to ensure impacts are less than significant. This approach is consistent with past mitigation by the District; for example, the BAE Systems Pier 4 Replacement Project Environmental Impact Report included Mitigation Measure BIO-7, which required the same mitigation ratio for bay coverage impacts. Credits will be deducted prior to any increase in water coverage resulting from the proposed project. As such, the mitigation measure BIO-4 has been revised as follows:

**"BIO-4:** Prior to the commencement of construction activities that would result in increased water coverage, the loss of 4,480 square feet of an amount equating to the loss of open water associated with the proposed project shall be offset by implementing design modifications, such as incorporating translucent areas, to reduce shading and by deducting an amount from the District's shading credit program established pursuant to Board Policy 735. Additionally, the project applicant shall implement design modifications, such as incorporating translucent areas over the water. The deduction to the District's shading credits shall be equivalent to that of the proposed project's final increase in shading total (i.e., less any reductions achieved by design modifications) to the satisfaction of NMFS and USACE. Applicant shall pay to the District fair market value, as determined by a District study of similar credits, for the shading credits."

Board Policy 735 and the Coastal Act do not constrain the use of mitigation "credits" to only costal dependent uses. Section 4 of the policy allows for consideration of District mitigation property to be made available to specified, non-District projects that demonstrate exceptional public benefits.

**(response continued on following page)**

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-7 (continuation from previous page):** An evaluation team comprised of staff from the Planning & Green Port and Real Estate Development departments reviewed and evaluated the proposed project and believes it demonstrates exceptional public benefits through improved public access and recreational opportunities, including the use of a proposed public perimeter walkway, public docking structure, and second-story public viewing deck. The proposed project includes additional public dock space and public walkway for general use, resulting in a slight increase in over water coverage from existing conditions. Indeed the increased over water coverage that would result from the proposed project would be 4,480 square feet, of which 100 percent results from the additional area dedicated to the public dock and the public perimeter walkway (a total increase of 4,915 square feet). The proposed project applicant intends to use District shading credits to mitigate any potential environmental impact that an addition of over water coverage may have. As the proposed project design would require approximately 4,480 square feet area of mitigation, and as the total shade ledger available bay-wide is currently 218,709 square feet, the proposed project would have a minimal impact on the total ledger available and would likely not affect the District's ability to mitigate for its own major maintenance or capital improvement projects moving forward. The proposed project meets the administrative requirements of the policy, as detailed below.

- The proposed project applicant has made a good faith effort to minimize the need for mitigation property by reducing impacts through proposed project design. The proposed project design will replace 23,850 square feet of overwater structure with 28,330 square feet, a net increase of 4,480 square feet of overwater structure, which is all accessible to the public. The proposed project includes an increase of 4,915 square feet dedicated to increased public access directly over the water in the form of the public dock and the public perimeter walkway.
- The proposed project applicant has made a good faith effort to self-mitigate within the limits of the leasehold by incorporating sustainable design and planning ideas into the overall site layout.

The District and the proposed project are consistent with this policy as mitigation credits will be deducted for all increase in water coverage associated with the exceptional public benefits associated with the public access improvements of the proposed project and the credits will be exercised at the time of project approval.

Portside Pier Restaurant Project  
August 31, 2016  
Page 6

**Parking**

Commission staff is concerned that the MND and its Appendix 8 Transportation Impact Analysis does not seriously consider the effect that the proposed project will have on the already impacted area in regards to parking and in turn, the impact on access to the bay and waterfront. In addition, the MND incorrectly defines and calculates the parking problem, need, and mitigation requirements. More specific comments on parking are provided below:

D-8

- MND Transportation/Traffic (Parking) Section, Existing Conditions, describes the available public transportation in detail; however, it does not include any description of available parking in the project area. The Port has released numerous studies recently documenting the lack of parking in the North Embarcadero area and the subject environmental document should include a detailed discussion of the findings from those parking studies in order to adequately assess the potential impacts of an expansion of the existing restaurant use in this area.

D-9

- Mitigation Measure TRA-2 requires parking management strategies be implemented to mitigate the projected parking deficiency. These strategies include coordination with ACE parking and transportation companies such as Uber and Lyft, wayfinding signage, valet parking, water taxi, bike racks and share stations, website promotion of public transportation, participation in the Big Bay shuttle, and employee off-site parking. Given the deficit of parking in the area, the project proponent is encourage to expand on these mitigation measures to maximize use of alternative transportation and provide employee public transportation subsidies, secure bicycle racks and showers for employees that choose to commute by bike, and promotional offerings to patrons that use alternative transportation.

D-10

Appendix 8: Portside Pier Transportation Impact Analysis comments:

- Table 8.2 displays the maximum number of parking spaces required for the project, based on the net increase of square footage between the existing site and the proposed project. While the Tidelines Parking Guidelines do allow this calculation for projects that “*involve expansions or modifications of existing uses,*” the subject project is not an expansion or modification of an existing use, as the existing site will be completely demolished and an entirely new development with multiple restaurants will be constructed in its place. Thus, the parking space calculation should be revised based solely on the new development that is proposed.

D-11

Additionally, the Parking Rate Adjustments in Table 8.1 include a parking space credit/reduction for Dedicated Water Transportation Service due to the inclusion of ten boat slips as a project feature. However, the Tidelines Parking Guidelines state that this adjustment is to apply to uses that are “*... adjacent to or provide a*

D-12

**Response to Comment D-8:** The Draft MND includes a technical analysis of the parking conditions in the area and impacts from the proposed project using the existing conditions as the baseline consistent with the requirements of CEQA Guideline Section 15125(a). Responses to specific concerns regarding the parking analysis are provided below.

**Response to Comment D-9:** A discussion of the North Embarcadero Focused Parking Study findings is included in Section ES.5 and 8.0 of the Traffic Impact Study. There are numerous public parking options in the vicinity of the proposed project site including metered parking, street parking, and paid public parking lots. There are 71 spaces of off-street metered parking available at the parking lot located between North Harbor Drive and the promenade in front of the proposed project site and 13 along the east side of North Harbor Drive. There are 54 two-hour meter and 14 free two-hour parking spaces catty-cornered from the project. Limited amounts of free street parking are available along Ash Street opposite the proposed project site and within 0.5 mile of the proposed project site along Grape Street and portions of North Pacific Highway. There are over one thousand spaces in public parking lots including the parking lots located at the Portman Hotel, 610 West Ash Street, 410 West Ash Street, and 1230 Columbia Street also within 0.5 mile of the proposed project site.

**Response to Comment D-10:** In response to this comment, mitigation measure TRA-2 has been revised to include public transportation subsidies for employees. Bicycle racks, as requested in this comment, are already included in Mitigation Measure TRA-2. On-site showers are not included due to space constraints on the site and promotional offerings for patrons using alternative transportation is not included due to comparable measures included in the revised mitigation measure TRA-2 for transit subsidies, contribution to the Big Bay shuttle transit services, and coordination with bike share services.

Mitigation Measure TRA-2 has been revised as follows (additions in underline, deletions in ~~strikeout~~):

“TRA-2: The applicant will implement the following parking management strategies to mitigate the projected parking deficiency:

- Coordination – Ongoing daily coordination between the proposed project and parking lot operators, such as ACE parking, to identify which surrounding lots have available parking at different times of the day.
- Wayfinding Signage – Provide changeable signage to direct patrons to the parking facilities (as identified by ACE on a weekly basis) that have parking availability.
- Transportation Network Companies – Coordination with companies (such as Lyft, Uber, etc.) to encourage patrons to utilize this mode of transportation as an alternative to driving their personal vehicle.

**(response continued on following page)**



Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-10 (continuation from previous page):**

- Valet Parking – Secure 9749 parking spaces (Secured Parking) at one or more parking lots and provide a valet service in order to avoid overflow in the immediate surrounding parking areas. Prior to Certificate of Occupancy, the applicant will enter into a contract or agreement with a parking operator or equivalent entity securing the Secured Parking and provide the agreement to the District. The agreement shall be updated on an annual basis with proof of said agreement being submitted to the District on an annual basis. Alternatively, the applicant may submit evidence to the District that it has acquired the Secured Parking at an off-site location for the valet parking operation.

After the first year of operation or anytime thereafter, the applicant may submit a parking study (Parking Study) to the District for its review and approval. The Parking Study shall include, at a minimum, the number of Secured Parking used for its valet operations on a monthly basis, broken down into morning, afternoon, and evening timeframes, for the previous year. Based on the District's review of the study, the number of Secured Parking may be reduced for a maximum period of two years. The reduction in Secured Parking shall not be less than the highest monthly use of the Secured Parking in the previous year and the reduction may be granted in the District's sole and absolute discretion. Prior to the elapse of the two-year period, a new Parking Study may be submitted to the District for its review and approval based on the same requirement stated herein. If a new Parking Study is not submitted to the District or during the District's review of the new Parking Study (if said review overlaps with the two-year period), the applicant shall secure 979 parking spaces with a parking operator or equivalent entity through an agreement that shall be submitted to the District.

- Water Taxi – Applicant shall coordinate ~~Coordination~~ with a water taxi company to encourage patrons to utilize water taxis as an alternative to driving their personal vehicle.
- Bike Racks – Provide bike racks on the project site or adjacent thereto on the promenade to encourage employees/patrons to bike to the proposed project.
- Bike Share Stations – Coordinate with companies like DECOBIKE to ensure a bike share station is maintained within walking distance (approximate 1,000 feet) to the proposed project.
- Public Transit – On the applicant's website, promote and encourage employees and patrons to utilize alternative modes of transportation as an alternative to driving their personal vehicle.
- Public Transit Subsidies for Employees – Provide reimbursement or subsidies for public transportation costs for all employees.
- Big Bay Shuttle – Participate in the District's ongoing shuttle program.

**(response continued on following page)**

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-10 (continuation from previous page):**

- Employee Off-Site Parking – Designate an off-site parking lot for employees and provide shuttle service between the off-site facility and the proposed project, such as:
  - ~~Wyndham Hotel: (+400 stalls)~~
  - Portman Hotel: (+400 stalls)
  - ~~Navy Pier Lot: (+350 stalls)~~
  - 610 West Ash Street: (+410 stalls)
  - 410 West Ash Street (+510 stalls)
  - 1230 Columbia Street (+228 stalls)”

**Response to Comment D-11:** The project is an expansion or modification of an existing use. There appears to be confusion in the comment regarding the structure versus use. While the existing structure would be demolished and a new one constructed as described in the Draft MND, the existing use – restaurant (currently three restaurants and a coffee kiosk) would be modified or expanded (three restaurants and a gelato walk-in). Thus, the proposed project is not a new use and Table 8.2 is accurate as presented in the Draft MND and Appendix 8, Traffic Impact Analysis, of the Initial Study. The proposed project would be considered an increase in square footage. It is important to note that when the baseline counts were conducted, the restaurant uses were still operational and, therefore, included in the existing demand. Ignoring the baseline conditions – the physical environment as it existed at the time the environmental analysis commenced (here, the three restaurants and a coffee kiosk) - would result in exacerbating the impact, an overestimation of demand and potentially mitigation measures that would not be roughly proportional to the impact, which would be illegal. (*Dolan v. City of Tigard*, 512 U.S. 374 (1994); see also CEQA Guidelines §15125(a).).

**Response to Comment D-12:** The “Dedicated Water Transportation Service” credit would be attributed to both the proximity of the dock-and-dine facility suitable for use by boat owners and water taxis (as further prescribed in mitigation measure TRA-2) and the adjacent Coronado – Broadway Ferry landing located at the Broadway Pier which is less than a quarter-mile away from the proposed project. This is consistent with the District’s parking guidelines, which allows the adjustment for facilities that “are adjacent to or provide a dedicated water taxi or ferry service that operates in a manner which would offer an alternative to using an automobile to reach the site.” Tidelands Parking Guidelines, 2001, Table 2 footnote 8. While mitigation measure TRA-2 does not require the applicant to provide a water taxi service, it does require the applicant to coordinate with a water taxi company and encourage its use.

*dedicated water taxi or ferry service that operates in a manner which would offer an alternative to using an automobile to reach the site.” While the proposed boat slips would allow guests with private boats to dock and dine, this parking rate adjustment is not appropriate unless the project includes implementation of a dedicated water taxi or ferry service to and from the restaurant. If the applicant proposes to use this adjustment, it should be clear in the MND that a water taxi or ferry service is proposed as part of the project and that a portion of the 10 boat slips will be dedicated for water taxi/ferry service use and not available for the docking of private boats. Alternatively, the Port could adjust and justify any proposed parking credit, such as deducting one parking space requirement for each boat slip proposed.*

D-12

In accordance with comments above, Commission staff has recalculated the parking requirements below, based on the entire square footage of the new building without the adjustment for the Dedicated Water Transportation Service:

Restaurant<sup>11</sup>: 37,225 k.sq.ft. x 9.3 = 346.19 spaces

Proximity to Public Waterfront Amenities for Public Access: 346.19 spaces x 0.25 increase = 86.55 space increase

Proximity to Transit: 346.19 spaces x 0.12 reduction = 41.54 space reduction

Total Required: 346.19 spaces + 86.55 spaces – 41.54 spaces = 391 spaces

The 391 required spaces is significantly more parking than the original 84 required spaces calculated in the MND; and, as such, the analysis and mitigation discussions in the MND should be revised accordingly.

D-13

- The Transportation Impact Analysis states that ACE estimates that over 1,000 stalls sit empty at its parking garages every day, and has committed to providing those spaces for this project. However, the data provided for the estimates in the Port’s North Embarcadero Focused Parking Study were also provided by ACE and show a significant deficit. This discrepancy must be addressed. It should also be clear that the parking spaces that are reserved for restaurant employees and patrons are available during both peak and non-peak times. All deficiencies in parking availability should also be addressed.

D-14

In addition, a discrepancy exists between the availability of specific lots included in the MND and the North Embarcadero Focused Parking Study. Specifically, the MND suggests the following lots could be used as mitigation for lack of employee parking and also could be used to calculate available parking for the project, while the North Embarcadero Parking Study finds that these lots will not be fully available at the time the project is constructed:

D-15

<sup>11</sup> Dock not included. Guidelines state that the area should include the gross area of the building footprint so restaurant and public deck account for total gross area (33,577 sq.ft. + 3,648 sq.ft.=37,225 sq. ft.).

**Response to Comment D-13:** The commenter's recalculations presented do not account for the existing facility which is currently driving parking demand and thus as presented in the Draft MND, it is only the delta or increase of the proposed project over the existing facility that drives new or additional demand for parking. As explained in the prior responses (11 and 12), the following calculations shown in Table 8.1 and 8.2 are consistent with the Tidelands Parking Guidelines. However, revisions to the Draft MND or Appendix 8, Traffic Impact Analysis, of the Initial Study due to restaurant square footage changes: The building floor area increased from 33,577 square feet in the Draft MND to 34,069 square feet in the Final MND; therefore, the net increase has changed from 8,722 square feet to 9,214 square feet. This is due to an increase in the kitchen floor area to better meet health and safety standards. The increase in kitchen floor area was achieved through rearranging the layout of the building and expanding the kitchen into previously unutilized space. The overall building footprint and water coverage did not change. The following calculations present the updated parking, which has also been adjusted in the Final MND and the Traffic Impact Analysis. The Traffic Impact Analysis' trip generation calculation and greenhouse gas emissions calculations were also updated to account for the increase in floor area. The increase did not result in a change in the conclusions of the analyses for traffic or greenhouse gas emissions.

Existing Restaurant: 24,855 sq. ft.

Proposed Restaurant: 34,069 sq. ft.

Increase (delta) in square footage: 9,214 sq. ft.

Parking Spaces Required Based on ULI Shared Parking Rates (Unadjusted):  $9.214 \text{ ksf} \times 9.3 = 85.69$   
~ **86 parking spaces**

Parking Spaces Required Based on ULI Shared Parking Rates (Adjusted):  $9.214 \text{ ksf} \times 9.6 = 88.45$  ~  
**88 parking spaces** (3% increase)

Parking Rate per Table 1 of the Tidelands Parking Guidelines: 9.3 parking spaces per KSF

Adjustments for Proximity to Transit per Table 2 of the Tidelands Parking Guidelines: The proposed project is located within 0.25 mile of Santa Fe Depot: -12% reduction =  $9.3 \text{ spaces} \times 0.12 = -1.1$  parking space reduction

Adjustments for Proximity to Public Waterfront Amenities for Public Access per Table 2 of the Tidelands Parking Guidelines: The proposed project is located along the waterfront and has direct access to the Embarcadero Promenade: 25% increase =  $9.3 \text{ spaces} \times 0.25 = +2.3$  parking space increase

Dedicated Water Transportation Service: The proximity of the dock-and-dine facility suitable for use by boat owners and water taxis and the adjacent Coronado – Broadway Ferry landing located at the Broadway Pier which is less than one quarter-mile away from the proposed project: -10% reduction =  $9.3 \text{ spaces} \times 0.10 = -0.9$  parking space reduction

Total Parking Adjustment Percentages:  $100\% - 12\% + 25\% - 10\% = 103\%$  or 3% increase

Total Parking Adjustment Rate:  $9.3 - 1.1 + 2.3 - 0.9 = 9.6$  parking spaces per KSF. Therefore, parking calculations are correct as presented in the Draft MND. However, Mitigation Measure TRA-2 has been revised to require the applicant to secure off-site parking for its valet operations and employees.

Page Intentionally Left Blank – Continuation of Response



**Response to Comment D-14:** The parking lots identified in the Portside Pier project Traffic Impact Study as having parking availability for patrons is specifically based on ACE's letter of commitment and are different from those included in the North Embarcadero Focused Parking Study. Please refer to Section 8.2 of the Traffic Impact Study.

Nonetheless, to ensure the required parking is secured prior to occupancy of the restaurant, the valet parking requirement included in TRA-2, has been revised, as detailed in response to comment D-10, to state:

- "Valet Parking – Secure 9749 parking spaces (Secured Parking) at one or more parking lots and provide a valet service in order to avoid overflow in the immediate surrounding parking areas. Prior to Certificate of Occupancy, the applicant will enter into a contract or agreement with a parking operator or equivalent entity securing the Secured Parking and provide the agreement to the District. The agreement shall be updated on an annual basis with proof of said agreement being submitted to the District on an annual basis. Alternatively, the applicant may submit evidence to the District that it has acquired the Secured Parking at an off-site location for the valet parking operation.

After the first year of operation or anytime thereafter, the applicant may submit a parking study (Parking Study) to the District for its review and approval. The Parking Study shall include, at a minimum, the number of Secured Parking used for its valet operations on a monthly basis, broken down into morning, afternoon, and evening timeframes, for the previous year. Based on the District's review of the study, the number of Secured Parking may be reduced for a maximum period of two years. The reduction in Secured Parking shall not be less than the highest monthly use of the Secured Parking in the previous year and the reduction may be granted in the District's sole and absolute discretion. Prior to the elapse of the two-year period, a new Parking Study may be submitted to the District for its review and approval based on the same requirement stated herein. If a new Parking Study is not submitted to the District or during the District's review of the new Parking Study (if said review overlaps with the two-year period), the applicant shall secure 979 parking spaces with a parking operator or equivalent entity through an agreement that shall be submitted to the District."

**Response to Comment D-15:** In response to this comment, the Traffic Impact Study and analysis in the MND have been revised to remove the Wyndham and Navy Pier lots from the long-term parking supply. The analysis in the Draft MND is not reliant on any one specific parking lot having available spaces; rather, the abundance of parking options that exist and the commitment to parking options and reduction strategies described in mitigation measure TRA-2 would ensure adequate parking for the proposed project. The revisions to remove the Wyndham Hotel and Navy Pier parking lots from Section P. Transportation/Traffic (Parking) of the Initial Study, mitigation measure TRA-2, and to Appendix 8 Traffic Impact Analysis of the Initial Study do not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because they do not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. Therefore, recirculation is not required.

Portside Pier Restaurant Project  
August 31, 2016  
Page 8

- Wyndham Hotel: North Embarcadero Focused Parking Study states that these spaces are only available during low parking demand at the hotel.
- Navy Pier: North Embarcadero Focused Parking Study includes the elimination of most of the parking on Navy Pier in the near-term.

Again, this discrepancy should be addressed. Neither the Wyndham Hotel nor Navy Pier should be relied upon in the calculation of available parking for the subject project.

D-15

### **Public Access – Operation**

The proposed restaurant complex will be located on public land. As such, it is essential that public access is clearly provided at the site. While we appreciate the inclusion of a free public viewing deck, we continue to be concerned that maintaining the entrance of the public deck through the interior of the restaurant building and requiring the public to enter the restaurant to access the public deck, instead of providing a direct entrance from the public promenade, will be a deterrent for public use and discourage use of the deck. As recommended at our May 4, 2016 meeting with Port staff and the project proponent, the project should be redesigned so that the entrance to the public deck is accessible from the public promenade to provide maximum access to the public.

D-16

In addition, at our May 4, 2016 meeting, the subject project was presented with a continuous public walkway around the perimeter of the ground floor. It is unclear if the feature has since been removed, as the floor plans in Figure 4a of the MND instead shows seating around the perimeter of the ground floor. The inclusion of a continuous walkway design around the perimeter of the building platform is necessary to increase coastal access at the site and recapture public views. Any public space should also be separate from private areas so that the public feels welcomed and not as if they are intruding in the private restaurant space.

D-17

The project proponent is also encouraged to maximize public access to the public deck and walkway by allowing public access from dusk until dawn and during hours of operation. Please include in the MND the hours the public will be able to access the deck, as well as the hours of operation for the five eating establishments included in the project.

D-18

Finally, the MND states that signage will be used to direct the public to the public viewing deck. Please provide additional information on public access signage in the MND, including the placement of signs and if signs will also be used to direct the public to the ground floor perimeter walkway.

D-19

**Response to Comment D-16:** In response to this comment the applicant has agreed to further improve public access provisions that include an elevator providing access directly from the promenade level to the public viewing deck at the south end and cleared perimeter walkway (see revised Figures 4a, 4b, 5b, and 5d). These provisions would result in an approximately 492-square-foot increase to the building but would not result in changes to the building, footprint, height or seating capacity, and will be reflected in the proposed non-appealable CDP. The provisions further improve public access to the bayfront, which would be increased by the proposed project compared to existing conditions due to the inclusion of a public viewing deck and perimeter walkway. As discussed in Section J., Land Use and Planning, of the Draft IS/MND, the District determined that the proposed project would have no impact on land use, including coastal access, as the existing conditions provide far less direct coastal access and the proposed project would include a perimeter walkway and public viewing deck. Thereby, these revisions serve to further amplify the beneficial impacts to coastal access of the proposed project and would not alter the conclusions in the MND.

The revised information serves to clarify or amplify the information already presented in the Draft MND in response to comments and does not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because it does not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. Therefore, recirculation is not required.

**Response to Comment D-17:** Figure 4a has been revised to show a continuous public walkway around the perimeter of the ground floor, consistent with Figure 6 of the Draft MND, which was the intent of the proposed project. Draft MND Figure 6 was removed from the final document because Figures 4a and 4b were updated to include the coastal access routes. Therefore, Figures 4a and 4b have also been updated to include public access routes, the new elevator, revisions to the second level public viewing deck, and locations of public access signage. Clarifying language has been added to Section II., Project Description, of the Final MND has been added as follows (additions in underline):

“Additionally, a perimeter walkway around the bottom floor of the building would be open to the public to provide views of the bay. Clear signage would be provided directing the public from the North Embarcadero Promenade to the public viewing deck and to the perimeter walkway (see Figure 4a).”

Additionally, this project revision will be reflected in the proposed non-appealable CDP. This project revision does not require recirculation of the Draft MND as it does not constitute a substantial revision to the MND. The project proposed a continuous public walkway around the perimeter of the ground floor, as shown on the Draft MND Figure 6, and this is just a clarification as Figure 4a in the Draft MND inaccurately depicted restaurant seating at the edge of this walkway. Figure 4a has been revised to include the coastal access on the ground floor and Figure 4b has also been updated to include the second-floor public access. Together the revised Figures 4a and 4b replace Figure 6, which has been eliminated in the Final MND.

Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-18:** For safety and security reasons, the public viewing deck and perimeter walkway would not remain open from dusk until dawn. However, the public viewing deck and walkway would remain open during business hours of the restaurant, which would generally be between 6:00 a.m. and 10:00 p.m.

**Response to Comment D-19:** The floor plans have been revised and provided in the Final MND figures to include locations of the wayfinding signage, and example signage that would direct the public to the viewing deck and perimeter walkway. The Coastal Access Plan has been incorporated into revised Figures 4a and 4b, to show the increased public coastal access and signage, in the Final MND, and these changes will be reflected in the proposed non-appealable CDP. The revised information serves to clarify or amplify the information already presented in the Draft MND in response to comments and does not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because it does not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. Therefore, recirculation is not required.

Portside Pier Restaurant Project  
August 31, 2016  
Page 9

**Public Access – Construction**

In addition, the proposed project construction and demolition schedule includes work on Saturdays and during summer months. This is a high traffic, visitor-oriented area with key access components. How is the construction schedule designed to accommodate the public?

D-20

**Lighting**

The project description of the MND describes the lighting associated with the project, which includes:

- Backlit illuminated signage on the waterside- and promenade-facing frontages of the building to display the names and/or logos for Miguel's Cocina, Ketch Grill & Taps, Brigantine Seafood and Oyster Bar, Portside Gelato & Coffee, and Portside Pier. Signs would range in size from 12 to 43 feet in length and from 3 feet, 2 inches to 12 feet, 11 inches in height. Five signs would face the promenade and five would face the water.
- LED panels along the North Embarcadero Promenade and along the upper deck on the waterside-facing frontage of the building to display upcoming events, menu specials, and other notifications.
- LED illuminated "baskets" surrounding the building. It appears that there are two baskets.
- LED light tube strips on the promenade-facing frontage of the building.
- An internally-illuminated sculptural centerpiece on the outdoor bar of The Brigantine's second floor, for artistic purposes.

D-21

Historically, the Commission has been concerned that this type of lighting and signage may adversely impact scenic resources and viewsheds to and along the bay, add to general visual clutter, and be out of character with the surrounding development. In the case of the proposed development, it appears that these concerns are substantiated. The large amount and size of individual signs and lights on the single two-story building will be overwhelming visually, especially as the signage will be advertisement seen from both land and water. Collectively, the building will emit an amount of light that is likely to distract from views of the bay. Finally, the signage and lighting would far exceed that associated with the current building and of neighboring buildings and would not be in character with the surrounding development.

**Sea Level Rise**

The project has analyzed sea level rise for the structure over a 50 year period, and states

D-22

**Response to Comment D-20:** The MND describes construction and demolition activities under Section II, Project Description. The construction schedule is currently anticipated to occur over approximately six months, including summer months.

The construction plans include, as shown in Figure 8 of the Draft MND, accommodating clear and safe public access along the promenade. During construction, the portion of the promenade that travels through the proposed project site would not be accessible to the public, and pedestrians would be rerouted through the proposed project site between the K-Rail and perimeter/pedestrian barricade fencing, as indicated in Figure 8, Project Construction Area. Therefore, pedestrians could still walk along the North Embarcadero Promenade and through the proposed project site during construction, and all existing access conditions would be reinstated upon completion, resulting in no impact to public access during construction.

**Response to Comment D-21:** As stated in the Draft MND, the illuminated signage and sculptural pieces are not anticipated to light the greater surrounding area. An illumination of public waterfront areas furthers the District's goal of activating the waterfront as it would attract more users along the North Embarcadero Promenade after dark. The proposed illumination allows for safe nighttime walking through the proposed project site. Also, the intent of the signs and lighting is not to create visual clutter or detract from the building's architecture, which is intended to be distinctive and instantly recognizable itself regardless of the signage. The lighting is not considered a detraction of views of the bay and would not be out of character with the surrounding development. Indeed many promotional materials depicting the bay at night highlight the existing lighting around the bay and the reflections thereof as a signature feature of nighttime bay views. Additionally, the Draft MND expresses the worst case scenario (e.g., it describes the most signage and highest lighting contemplated for the proposed project).

While the District does not consider the proposed lighting to be overwhelming, in response to this comment, a photometric assessment (included as Appendix IV, Portside Pier Photometrics, to the responses to comments) has been developed to quantify the proposed project's brightness and area of lighting in context and comparison with other facilities within the surrounding area. The photometric graphic shows the amount of light (in foot-candles) at locations immediately adjacent and surrounding the proposed project site. As shown in Appendix IV, the lighting resulting from the proposed Portside Pier site would be consistent with the nearby Hornblower/Visitor Information Center lighting. As noted in the photometric graphic, the brightest lighting is actually resulting from the dining areas and not the illuminated signage or LED strips. The North Embarcadero Promenade immediately outside of the proposed project would be illuminated by the proposed project at night to between one and three 1 and 3 footcandles, which is acceptable for nighttime walking, with the exception of select areas located just outside of the open-air dining areas, which would reach to between 3 and 6 footcandles (note that lighting above 6 footcandles is acceptable for dining). Thus, the proposed project would not impact the nighttime views or visitor experience along the North Embarcadero Promenade as it would not be overwhelming with respect to the surrounding area. Additionally, the District will reflect in the project description of the CDP that the lighting used will not exceed 9.2 footcandles at the edge of the North Embarcadero Promenade or 6.3 footcandles at the edge of the first-floor bayside deck, and be limited to the specifications provided in the photometric plan. The text in the Final MND project description on page 5 has been revised to include the following text:

"Levels of lighting spill would be comparable to that from existing lighted facilities along the North Embarcadero Promenade, not exceeding 9.2 footcandles at the edge of the North Embarcadero Promenade or 6.3 footcandles at the edge of the first floor bayside deck, and be limited to the specifications provided in the photometric plan (see Appendix IV of Attachment D)."



Page Intentionally Left Blank – Continuation of Response

**Response to Comment D-22:** A 50-year project lifespan represents a worst-case scenario in terms of sea level rise because it represents the longest length of the proposed lease term, which will include a requirement for the removal of the facility at the end of the lease period at the District's discretion. This life span is reasonable as the existing restaurant building at the proposed project site is currently 51 years old (constructed in 1965), and will be demolished at the end of its lease term, which is January 31, 2017. Moreover, any new tenant or lease would be required to undergo a separate CEQA review once the existing lease has expired. The proposed project is not anticipated to be in operation 75 years following its opening, as this comment suggests. Regardless, sea level rise estimates for a 75-year lifespan are discussed in the following paragraph.

The base elevation of the proposed project's structure would be approximately 120 inches (10 feet) above the Mean Lower Low Water (MLLW) at the site. The highest high tide recorded for the San Diego Bay is 93.5 inches (7.79 feet) above the MLLW. As discussed in the MND, using the linear interpolation method in Appendix B of the CCC's Adopted Sea Level Rise Guidance, the sea level rise at year 2068 (a 50-year project lifespan) would range to between 9.3 and 39.1 inches. At the lower end of this range, the structure would not be affected; however, the sea level would be approximately 12.6 inches (1.05 feet) above the base level of the structure at the higher end of the range. However, the proposed project structure is anticipated to be able to withstand extreme high tides and wind and wave action. Additionally, the proposed project is designed to use materials to withstand sea level rise impacts and can be retrofitted prior to high tides and waves reaching the base of the structure. This will be included in the CDP to allow the District to ensure that the appropriate design or adaptive management techniques are implemented as proposed by the Applicant. Therefore, impacts would be less than significant (Initial Study page 57).

Under a 75-year lifespan of the proposed project, using the same linear interpolation method, the sea level would rise between 15.32 and 60.12 inches by the year 2093. Therefore, at year 2093, the structure would not be affected at the lower end of this range, but the sea level would be approximately 33.62 inches (2.8 feet) above the base level of the structure under the higher end of this range. Once again, the proposed design and materials—such as constructing the deck and ground-floor windows and doors of the structure to be water tight—would avoid inundation under the worst-case sea level rise scenario at year 2093. Therefore, while the proposed project is not anticipated to be in operation longer than its 50-year lease term, if it were to operate 75 years following construction, it is still anticipated to have a less than significant impact associated with sea level rise.

Furthermore, to clarify the determination of less than significant impacts; even if the proposed project were inundated, it would not result in the significant loss, injury, or death as the instances where inundation could potentially occur would be for relatively short periods during the peak of high tide and recede as the tides ebbs, the times of which are accurately predicted. Therefore, impacts would be less than significant. This revised information serves to clarify or strengthen the information already presented in the Draft MND in response to comments and does not amount to a substantial revision under CEQA (CEQA Guidelines §15073.5) because it does not show any new significant environmental impacts, any substantial increase in the severity of environmental impacts, or any new mitigation measures. **(response continued on following page)**

Portside Pier Restaurant Project  
August 31, 2016  
Page 10

*"The project life is expected to be 30 to 50 years based on the proposed project lease with the District and the life expectancy of materials in the marine environment." The life of the structure should not be tied to the lease of the project as its length is based on legal and not physical circumstances. It is also unclear what evidence there is for the life expectancy of materials in the marine environment. The current building was constructed in 1965, over 65 years ago and is still in operation and considered safe. The project should instead be analyzed based on a 75 year life as recommended in the Commission's Adopted Sea Level Rise Guidance<sup>12</sup>. In addition, any adaptive management strategies should be considered prior to the development of the project, and the development of adaptive strategies should not be deferred to 2058 as the MND suggests.*

↑  
D-22

**Alternatives Analysis**

Finally, the MND fails to discuss alternatives to the proposed project. Considering the noted parking deficits and the large increase in open water coverage, the Port should analyze and discuss a reduced-project alternative, at least, in the final environmental document.

D-23

Thank you again for the opportunity to provide review and comment on the proposed project. If you have any questions or require further clarification, please do not hesitate to contact me at the above office.

D-24

Sincerely,



Melody Lasiter  
Coastal Program Analyst

Cc (copies sent via e-mail):  
Sherilyn Sarb (CCC)  
Deborah Lee (CCC)  
Kanani Brown (CCC)

---

<sup>12</sup> <http://www.coastal.ca.gov/climate/slrguidance.html>.

**Response to Comment D-22 (continuation from previous page):** Adaptive management is a prudent and effective tool for addressing potential eventualities in the future that are predicted with uncertainty and ranges of possible outcomes such as sea level rise. The adaptive management policy development considered and as disclosed in the Draft MND would be applicable for any renewal or redevelopment of the project beyond 2058 and would not be applicable to the proposed project as they are yet to be developed. The inclusion in the Draft MND is intended to disclose the District's awareness of the long-term issue.

**Response to Comment D-23:** All impacts have been reduced below a level of significance and, therefore, an EIR and identification of project alternatives to reduce impacts is not required (CEQA Guidelines §15063 and, §15070-15075).

**Response to Comment D-24:** This is a closing comment. No response is necessary.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4421

(619) 767-2370



February 2, 2017

Ms. Wileen Manaois  
San Diego Unified Port District  
Real Estate Development  
3165 Pacific Hwy  
San Diego, CA 92101

**Re: EXECUTIVE DIRECTOR'S DETERMINATION ON APPEALABILITY**

Coastal Development Permit Application No. 2016-91  
1360 North Harbor Drive, San Diego, CA 92101

Dear Ms. Manaois,

On December 13, 2016, the San Diego Unified Port District ("Port") approved Coastal Development Permit ("CDP") Application No. 2016-91 for the demolition of all existing development at 1360 North Harbor Drive, locally identified as Anthony's Restaurant, including a 24,855 sq.ft. building located on a platform over the San Diego Bay and occupied by two restaurants, an event facility and a coffee stand followed by the construction of a 40,805 sq.ft. complex of new restaurants, new platform, new pilings and a new dock called the Portside Pier project. The Port issued the CDP as a "non-appealable" development. As you are aware, Coastal staff objects to the determination by the Port that the project is not appealable to the Coastal Commission. Our office has also made multiple requests to Port staff for issuance of a final notice of local action on the subject project, as required by Section 30717 of the Coastal Act, which we believe is "appealable" so that an appeal period can be commenced.

Specifically, on August 31, 2016, *prior to the Port's approval of the CDP*, Coastal staff provided a comment letter on the draft Mitigated Negative Declaration ("MND") for the Portside Pier project that raised objections to the Port's determination that the CDP for the project would not be appealable to the Commission, and requested a notice of final local action for the CDP. In the Port's response, included in the Final MND as Letter D and received by Coastal staff on December 2, 2016, the Port indicated that it continued to believe that the project was non-appealable, but agreed to provide a notice, stating that "California Coastal Commission staff have been added to the notification list for the final MND and the final action on the CDP."

Based on the Port's response in the MND, all the subsequent exchanges noted herein between our offices and the fact that the Port approved the CDP as "non-appealable", it is our understanding that the Port disagrees with the Executive Director's determination that

EXHIBIT NO. 4

6-17-146-EDD

2.2.17 CCC Dispute  
Resolution Letter

1 of 3

California Coastal Commission

the project is appealable to the Coastal Commission. Therefore, we would like to address this dispute at the next Coastal Commission meeting, scheduled for March 8-10, 2017 in Ventura. Commission staff recommends that the Port postpone taking any further action on the subject CDP until the Commission resolves the appealability issue.

In addition, since the Port's approval of the CDP on December 13, 2016, the Port has failed to send a notice of final local action despite several requests by Coastal staff, beginning with an email on January 10, 2017 requesting an update on the status of the project and, if the project had been approved, a notice of the Port's final action. Port staff responded to that email the same day and agreed to send a notice. Since then, we have had multiple communications (1/12/17 phone call; 1/18/17 phone call; 1/20/17 coordination meeting and 1/30/17 email) in which Coastal staff has inquired about the status of the final notice of local action and has asked the Port to send the notice. Port staff has repeatedly indicated that it would be responding; however, the Port has yet to provide the notice of final local action or any response on the question of appealability.

Section 30715(a)(4) of the Coastal Act establishes that the permit authority of the Commission provided in Chapter 7 (commencing with Section 30600) over any new development contained in a certified port master plan shall be delegated to the port governing body, except that approvals of any of the following categories of development by the port governing body may be appealed to the Commission: office and residential buildings not principally devoted to the administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marine-related facilities. The Executive Director has determined that the Portside Pier project includes categories of development that are appealable, as described below, and therefore, the Port's approval of CDP No. 2016-91 is appealable to the Commission.

Commission staff has historically provided direction to the Port that restaurants fall under the category of "shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes" and are therefore appealable under Section 30715(a)(4) of the Coastal Act. Additionally, a restaurant facility, such as the subject project, is not considered to be "principally devoted to the sale of commercial goods utilized for water-oriented purposes." Furthermore, the new dock for the public, specifically patrons of the restaurant complex, is considered a "recreational small craft marina related facility" which is a category of appealable development. Finally, no mention of any redevelopment, a new or expanded restaurant facility or dock improvements are included in the text, figure or project list in the certified Port Master Plan for this site.

Please note that the Port has withheld the notice of final local action for over 33 working days since the Port's approval of the CDP and for over 15 working days since our January 10, 2017 email exchange. If the notice is not received by close of business, Monday, February 6, 2017, Coastal staff will announce and notice the beginning of the 10-working day appeal period. It is crucial that the appeal period required by Section

February 2, 2017

Page 3

30717 is initiated so that the Commission, other interested parties and the public have the opportunity to review the project and file an appeal, and that the applicant receive notice of the appeal period as well. As noted previously, Coastal staff will be soliciting an appeal from the Commission due to concerns regarding the project's consistency with the certified Port Master Plan and the Chapter 3 policies of the Coastal Act – specifically the protection of public access, marine resources and visual resources. As Commission regulations require (section 13112), an appeal, once filed, will stay the operation and effect of the CDP.

Thank you for your attention to these matters. If you have any questions, please contact Melody Lasiter or me at the number listed above.

Sincerely,

A handwritten signature in black ink that reads "Deborah N. Lee". The signature is fluid and cursive, with the first name being the most prominent.

Deborah N. Lee  
District Manager

CC (via email): Karl Schwing, California Coastal Commission  
Kanani Brown, California Coastal Commission  
Robin Mayer, California Coastal Commission  
Melody Lasiter, California Coastal Commission  
Mike Morton, Jr., The Brigantine, Inc.  
Lesley Nishihira, San Diego Unified Port District





**SAN DIEGO UNIFIED PORT DISTRICT**  
**OFFICE OF THE GENERAL COUNSEL**

February 6, 2017

**VIA EMAIL (W/O ATTACHMENTS) AND IN-PERSON DELIVERY**

California Coastal Commission  
San Diego Area  
ATTN: Deborah N. Lee  
Melody Lasiter  
7575 Metropolitan Drive, Ste 103  
San Diego, CA 92108

RE: February 2, 2017 Executive Director Determination on Appealability for the  
Portside Pier Project (CDP Application No. 2016-91)

The San Diego Unified Port District (District) is in receipt of the February 2, 2017 letter from California Coastal Commission (Coastal Commission) staff entitled "EXECUTIVE DIRECTOR'S DETERMINATION ON APPEALABILITY," Coastal Development Permit Application No. 2016-92, 1360 North Harbor Drive, San Diego, CA 92101 (February 2, 2017 Letter). The February 2, 2017 Letter asserts that the proposed redevelopment of the existing Anthony's restaurant establishments by The Brigantine, Inc., as the applicant and project proponent (Project), is subject to appeal. As explained in detail herein, the Coastal Act designates the District as the permitting authority for restaurants and this Project is not among the category of projects subject to appeal under the Coastal Act.<sup>1</sup>

As you are aware, like Anthony's, the Project involves three restaurants, a coffee and gelato shop, a dedicated public viewing deck, and a dock and dine facility.<sup>2</sup> As you also are aware through the numerous notices given to the Coastal Commission, the Board of Port Commissioners (District Board) approved a Mitigated Negative Declaration (MND) and authorized issuance of a non-appealable Coastal Development Permit (CDP) for the

<sup>1</sup> The Coastal Act is codified in California Public Resource Code Section 30000 et seq.

<sup>2</sup> Anthony's includes three restaurants, a walk-up coffee kiosk and a dock.



Project on December 13, 2016. (See Attachment A (District staff report, which includes the Draft Non-Appealable CDP), District Board Resolution 2016-205 and District staff's presentation to the District Board.<sup>3</sup>)

The February 2, 2017 Letter claims that the proposed Project required an "appealable" CDP because restaurants and dock and dine facilities are appealable under Coastal Act Section 30715. This assertion is contrary to (1) the plain language of Section 30715, (2) the District's CDP Regulations, which were approved by the Coastal Commission, (3) the certified Port Master Plan (PMP), (4) past practices as demonstrated by previously issued CDPs for other restaurants in the District, and (5) a recent court ruling in a case involving both the District and the Coastal Commission.

Coastal Commission staff also insists that the District must issue a notice of final action for the non-appealable CDP. Yet, as also discussed, below, no such notice is required. In any event, Coastal Commission staff had notice prior to the District Board's approval of the Project and thereafter as well.

The establishment of a 10-day appealable period by Coastal Commission staff, institution of an unauthorized dispute resolution process, and the hearing of an appeal of a non-appealable CDP for the Project would each be an action in excess of the authority and jurisdiction granted to the Coastal Commission. Additionally, it may constitute interference with contract and a taking of property rights. Accordingly, the District requests that the Coastal Commission ceases initiation of the appeal period or any process to bring an appeal to the Coastal Commission.

#### **I. Restaurants and Dock and Dine Facilities are Non-Appealable Developments**

As stated in the responses to comments to Coastal Commission staff's comment letter on the Draft MND and as discussed in more detail below, the proposed Project is a non-appealable category of development as set forth in by Coastal Act Section 30715, as well as the District's Coastal Act regulations, which were approved by the Coastal Commission. (See Attachment B, Response to Comments and Errata). The certified PMP also supports the fact that restaurants and dock and dine facilities whether or not they are accessory uses, are non-appealable developments. Additionally, the interpretation is supported by the California Superior Court ruling in *San Diegans for*

---

<sup>3</sup> The staff report and draft resolutions can also be found online at:  
<https://portofsandiego.legistar.com/LegislationDetail.aspx?ID=2902778&GUID=83CE8ADF-7957-4114-989D-C6B79DDC1B50>

*Open Government v. California Coastal Commission; San Diego Unified Port District*, Case. No. 37-2013-00057492-CU-TT-CTL (2013) (Restaurant Lawsuit) where the Court found that a restaurant was not an appealable development (see Attachment C.)

**A. Restaurants and Accessory Dock and Dine facilities Are Not Appealable Developments Under Coastal Act Section 30715 and the District's Coastal Act Regulations**

Section 30715 of the Coastal Act specifies the categories of development that may be appealed to the Coastal Commission. Section 30715(a)(4) states that: "Offices and residential buildings not principally devoted to the administration of activities within the port; hotels, motels and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities" may be appealable to the Coastal Commission.

Neither restaurants nor eating establishments are listed as appealable in Section 30715 of the Coastal Act. A restaurant is not a "shopping facility." Coastal Commission staff's interpretation would expand appellate jurisdiction well beyond the plain language and intent of Section 30715(a)(4). Specifically, the Legislature used plain terms to describe "office and residential buildings," "hotels," "motels" and it knew how to use a plain term to describe a "restaurant." However, the Legislature did not do so, leaving restaurants as "non-appealable" developments.

A dock and dine facility is also not considered a "recreational small craft marina related facilities."<sup>4</sup> The certified PMP includes distinct land uses for "recreational small craft marina[s]," which do not include dock and dine facilities. Rather, the PMP includes "Pleasure Craft Marinas" and "Recreational Boat Berthing" uses that allow for longer-term berthing and storage of small recreational crafts, as well as boat rentals, charter and sales, fueling docks, etc. (PMP, p. 20.) In contrast, a dock and dine facility is allowable under the "Commercial Recreation" land use designation in the PMP. (PMP, p. 19.) Dock and dine facilities are not related to marinas, may be used by more than recreational small crafts, and unlike recreational marinas or associated facilities, dock and dine facilities are intended to be used for a short period of time while patrons visit restaurant establishments. (PMP, p. 19 (describing dock and dine facilities as "public boat docks located in proximity to a restaurant . . . where boaters may tie up and

---

<sup>4</sup> Coastal Commission staff did not assert in its MND comment letter to the District that the dock and dine facility was an appealable development.

disembark for a short period of time to dine . . . .).) In other words, dock and dine facilities are akin to short-term parking lots for boats.

The dock and dine facility is an accessory use to the restaurant establishment and does not change the nature of the restaurant from non-appealable to appealable. This is consistent with the Coastal Commission's position when it certified the San Diego Convention Center expansion Port Master Plan Amendment (PMPA) where the inclusion of retail shops did not convert San Diego Convention Center expansion from a non-appealable development to an appealable development. (PMP, pp. 68-71, 72 (accessory retail uses did not convert the San Diego Convention Center expansion into an appealable development).)

**B. The Superior Court, in Litigation Where Both the District and Coastal Commission Were Parties, Clarified that Restaurants are Not Appealable Development**

The decision in the Restaurant Lawsuit, challenging a Coastal Commission-issued CDP for the redevelopment of a restaurant by Sunroad, supports the interpretation that restaurants are non-appealable developments. There, Sunroad proposed the redevelopment of a site with a restaurant that was historically developed with a restaurant. The District issued a Coastal Act exclusion/exemption for it but failed to issue the noticed required by Section 30717 of the Coastal Act, which is required for appealable developments and starts the 10-working-day appeal period for exclusions/exemptions. The exemption/exclusion was appealed and after finding a substantial issue, the Coastal Commission conducted a de novo hearing and issued a CDP for the restaurant.

That CDP was subsequently challenged in the Restaurant Lawsuit filed by San Diegans for Open Government, Case. No. 37-2013-00057492-CU-TT-CTL (2013). In response to allegations by the petitioner and the Coastal Commission that a "restaurant" was "appealable" under Section 30715(a)(4) because a restaurant was a type of "shopping facility, and akin to other appealable development," the Court squarely ruled that a restaurant was NOT an "appealable" category of development under the Coastal Act. (Attachment C, p. 3.) Specifically, in response to petitioner's argument that a PMPA was required for the Sunroad restaurant to add it to the appealable project list, the court unambiguously found that "the [p]roject was not an 'appealable' development" and pursuant to Section 30711 of the Coastal Act, the Legislature could have required all projects be listed in a port master plan "but instead expressly stated that only . . . 'proposed projects listed as appealable in Section 30715 be included.'" These were two key grounds for denying petitioner's cause of action.

Additionally, several Coastal Commission Commissioners during the de novo hearing on the Sunroad restaurant rejected the interpretation that restaurants were appealable “shopping facility” developments:

- “[S]hopping facilities not principally devoted to the sale of commercial goods utilized for water oriented purposes is not a restaurant. A restaurant is a restaurant.” (see Attachment B, Appendix II p. 002705 [p. 63 of transcript] (excepts from the hearing transcript of the Sunroad Coastal Commission hearing).)
- I “would have a hard time calling [a restaurant] a shopping facility” and that an “attempt to stretch that definition of a shopping facility is a little too broad for where we should be.” (*Id.* at pp. 002717 – 002718 [pp. 75-76 of the transcript].)
- Staff’s interpretation that a restaurant is an appealable development is “a shortcutting the rules on Section 7015” and such a staff policy of doing so should be reviewed by the California Coastal Commission. (*Id.* at 002720 [p. 78 of the transcript].)

**C. The PMP, certified by the Coastal Commission, does not Characterize Standalone Restaurants or Dock and Dine Facilities as Appealable**

The District has excluded/exempted eight restaurants and issued non-appealable CDPs for at least two restaurants: the Chart House and the Fish Market, both of which were standalone restaurants like the Project. (See Attachment B, Appendix III.) Importantly, Anthony’s, the existing restaurant proposed for redevelopment by the Project, is not identified as “appealable” in the Port Master Plan. (See PMP, pg. 69.) Some restaurants have been listed as appealable in the PMP or issued an appealable CDP. However, the sole basis for the appealable characterization of such restaurants was the fact that they were a part of a larger appealable category development – like, The Wharf – Point Loma Marina LLC or The Ferry Landing Expansion. This is consistent with the District’s and Coastal Commission’s interpretation that accessory uses take on the appealable or non-appealable category of the primary use (see Section I.A of this letter.) Additionally, the Imperial Beach PMPA, certified nearly 20 years ago in 1997, included unidentified commercial uses on the pier, which could have been considered appealable developments and the District took a liberal approach and identified it as appealable. Subsequently, the court’s decision in the Restaurant Lawsuit clarified that restaurants are not appealable development. The doctrine of *res judicata*



prevents the Commission from re-litigating that issue. *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.

Currently, there are eleven (11) existing dock and dine facilities associated with restaurants within the District located at the Kona Kai Marina, Bali Hai Restaurant, Sun Harbor Marina, Sunroad Resort Marina, Marriott Marquis San Diego, Joe's Crab Shack, Chula Vista Marina, Loews Coronado Bay Resort, Seaforth Boat Rentals, Coronado Ferry Landing, and Pier 32 Marina. Additionally, a dock for restaurant patrons was located at the Anthony's facility. None of them are listed or described as appealable development in the certified PMP (compare PMP, pp. 85 and 113 (Recreational Marina and Marina development listed as appealable). That is because they are non-appealable developments.

Section 7.d(3) of the District's CDP Regulations, approved by the Coastal Commission, state that "non-appealable" developments are those that are not classified as "emergency", "excluded" or "appealable" by the regulations. Appealable categories of development mirror the development categories of Section 30715 of the Coastal Act. While the District has unique "exclusions" in its CDP Regulations, those are inapplicable here because Coastal Act exclusion was not issued for the Project.

## **II. Section 30717 of the Coastal Act is Not Implicated Because the District Approved a Non-Appealable CDP**

Section 30717 of the Coastal Act only applies to "appealable developments" and states that:

[P]rior to commencement of any appealable development, the governing body of a port shall notify the commission and other interested persons, organizations, and governmental agencies of the approval of a proposed appealable development and indicate how it is consistent with the appropriate port master plan and this division. An approval of the appealable development by the port governing body pursuant to a certified port master plan shall become effective after the 10th working day after notification of its approval, unless an appeal is filed with the commission within that time.

For the reasons set forth in this letter and in the record, the Project is not appealable and hence, Section 30717 of the Coastal Act was never triggered.

Additionally, Section 11i. of the District's CDP Regulations specifically states that: "Notice of the action of the Board on a proposed appealable development shall be mailed to the applicant...[and] the Coastal Commission...not later than five (5) working days following the decision of the Board." Since District staff determined that the Project is a non-appealable development and the Board approved a Non-Appealable CDP, the District is not required to send a Notice of Board Action to the Coastal Commission. For non-appealable developments, under the District's CDP Regulations (Section 10f), the District is only required to forward Draft and Final California Environmental Quality Act (CEQA) documents to the Coastal Commission, which, as explained in Section III of this letter, it did for this Project.

**III. Coastal Commission Staff was Given Advance Notice of the District Board Actions and District Staff Confirmed the District Board's Approval of a Non-Appealable CDP on January 10, 2017**

As the District has provided plentiful notice to Coastal Commission staff about the District Board's action on the subject non-appealable CDP, as detailed, below:

- On December 1, 2016, prior to the December 13, 2016 District Board meeting, District staff emailed Coastal Commission staff its CEQA and Coastal Determination for the Project, for which District staff determined the Project to be a "Non-Appealable development" and that "A Non-Appealable Coastal Development Permit (CDP) must be obtained...." (See Attachment D)
- In Coastal Commission staff's August 31, 2016 comment letter on the Project's Draft MND (Comment D-6), staff "respectively request notice of any future action taken on the subject project, including the final environmental document and final action on a CDP." In response to this comment, District staff stated that "CCC staff have been added to the notification list for the final MND and the final action on the CDP." (See Attachment B, Response to Comment D-6.) On December 2, 2016, more than 10 days prior to the Board's action on the CDP, District staff emailed and mailed Coastal staff a "Notice of Board of Port Commissioners Meeting to Consider Adoption of Portside Pier Restaurant Redevelopment Project Final Mitigated Negative Declaration." (See Attachment E.) That notice, in compliance with the CEQA contained:
  - Written responses to Coastal's comment letter on the Draft MND;



- A CD of the Final MND and an internet link to the same;
  - The date, time, and location of the District Board meeting for consideration of adoption of the Final MND; and
  - A statement that at that same District Board meeting, "The Board will also consider authorizing issuance of a non-appealable Coastal Development Permit."
- After the District Board's action on the Non-Appealable CDP, District staff, in an email reply to Coastal Commission staff dated January 10, 2017, confirmed that the District Board approved the issuance of the CDP for the Project on December 13, 2016. (See Attachment F.) As referenced in District staff's email, the District is only required to send a "Notice of Board Action" to the Coastal Commission for appealable developments.

As District staff has conveyed to Coastal Commission staff in conversations on January 12, January 18, and January 20, 2017, District staff would like to maintain consistency in its CEQA and Coastal Act processing of projects. In Coastal Commission staff's email of January 13, 2017, it asserted that District staff has been providing Coastal Commission staff with Notices of Board Action on non-appealable developments (see Attachment G). This is unfounded, not required and cannot be relied upon under the law. District staff has reviewed its most recent practices in the past two years and has confirmed that it has not been providing such notices to Coastal Commission staff for non-appealable developments. Section 30717 of the Coastal Act and Section 11i. of the District's CDP Regulations do not require notice for non-appealable developments (see Section II of this letter for more discussion). In its January 13 email, Coastal Commission staff provided an example of a Notice of Board Action on a Non-Appealable CDP that District staff mailed to Coastal Commission staff in June 2013 (see Attachment G). This was almost four years ago and District staff has ceased preparing such notices as they are not required. Just because District staff used a practice not legally required in the past, does not mean it is required to continue to do so or do so now. Importantly, District staff has been emailing all CEQA/Coastal Determinations to Coastal Commission staff, as it did here. District staff has only been emailing CEQA/Coastal Determinations to Coastal Commission staff after a Board meeting if the Project involves a CEQA Exemption or a Coastal Exclusion.

The second example Coastal Commission staff provided in its January 13 email was a CEQA/Coastal Determination for Amendments to the Port Code relating to certain parking lots and meters. In this example, because it involved a CEQA

Exemption, the CEQA/Coastal Determination was provided to Coastal staff after the Board meeting, and a Notice of Exemption was filed with the County Clerk, to allow for the 35-day statute of limitations to begin on any challenges to the CEQA Exemption. Nonetheless, this was not legally required.

In the case of a project, such as here, which District staff determined to be a non-appealable development and prepared a MND pursuant to CEQA, District staff would have only provided the CEQA/Coastal Determination to Coastal staff prior to, and not after, the Board meeting. In addition, a CEQA/Coastal Determination should not be confused with a Notice of Board Action on a Coastal Development Permit; they are two separate documents and are provided at different times in the process.

#### **IV. Establishing a 10-Day Appeal Period and Taking Jurisdiction of the CDP Are Illegal Actions**

##### **A. The Coastal Commission Is Not Authorized to Proclaim and Notice a 10-Day Appeal Period**

Please take note that the Coastal Commission is not authorized under the Coastal Act to “announce and notice the beginning of the 10-working day appeal period” as threatened in the last paragraph on page two of the February 2, 2017 Letter. Section 30717 of the Coastal Act vests the District with that authority where an appealable development is at issue, which as discussed at length in this letter has not occurred here. Any such notice by the Coastal Commission – whether or not for an appealable development – would not be within the Coastal Commission’s statutory jurisdiction and would not trigger the statutory effect. The Coastal Commission is not authorized to assume authority vested in the District.

Additionally, Coastal Commission staff failed to cite to any regulatory authority for the alleged “dispute resolution” process it is claiming to institute. It appears that none exist for ports. Hence, using a sham process to get the issue before the Coastal Commission would likewise be in excess of the Coastal Commission’s jurisdiction and would infringe on the due process rights of the District and others affected by such an ad hoc procedure.

##### **B. The Coastal Commission is Not Authorized to Hear an Appeal of a Non-Appealable CDP**

As discussed at length in Section I of this letter, restaurants and dock and dine facilities are non-appealable developments. Hence, the Coastal Commission does not have jurisdiction to even consider an appeal, let alone find a substantial issue and hold

Deborah N. Lee  
Melody Lasiter  
February 6, 2017  
Page 10 of 11

a de novo hearing on the CDP. Such actions would be made in excess of the Coastal Commission's authority and jurisdiction.

**C. Interference with Prospective and Existing Contracts and Regulatory Takings Claims May Arise**

The District and Anthony's are currently operating under an existing lease that requires Anthony's to vacate the premises, which includes removing all furniture, fixtures and certain other items. Pursuant to the lease, Anthony's has until May 1, 2017 to finalize these actions and any delay as a result of a Coastal Commission appeal would interfere with the District's contractual rights to have the premises completely vacated by May 1<sup>st</sup>. Additionally, the District and the applicant have been negotiating a lease for several months with the intent that the lease be finalized and approved by the District Board in the next couple of months. Any delay in the approval and execution of such a lease would interfere with the District's and the applicant's prospective contractual rights.

Moreover, because the premises is to be vacated by May 1, 2017, if not sooner, any regulatory action by the Coastal Commission that would temporarily or permanently foreclose demolition on the site and/or deprive a use of the premises would constitute a regulatory taking.

**D. Coastal Commission Staff was Given Notice on January 10, 2017, 23 Days Prior to the District's Receipt of Its February 2, 2017 Letter and Any Appeal Would be Untimely**

Additionally, while not required for non-appealable development, Coastal Commission was given notice on January 10, 2017, sixteen (16) working days from the date the District received Coastal Commission staff's February 2, 2017 Letter. Even if an appeal were legally available (it is not), any appeal by the Coastal Commission would be untimely. Section 30717 of the Coastal Act sets forth a 10-working-day appeal period, which here, expired on January 25, 2017.

Please contact me with any questions or to discuss the issue.

Sincerely,



Rebecca S. Harrington  
Deputy General Counsel  
San Diego Unified Port District

Deborah N. Lee  
Melody Lasiter  
February 6, 2017  
Page 11 of 11

ATTACHMENTS:

- A: District Staff Report, District Board Resolution, District Staff Presentation
- B: Coastal Commission Staff's Comments on the MND; District Responses to Comments and Supporting Appendices to District Responses
- C: Superior Court Minute Order - *San Diegans for Open Government v. California Coastal Commission*; *San Diego Unified Port District*, Case. No. 37-2013-00057492-CU-TT-CTL (2013)
- D: Categorical Determination for the Project, Sent to Coastal Commission staff on December 1, 2016
- E: Correspondence and Transmittal for the of Final MND to the Coastal Commission
- F: Notice to Coastal Commission staff of District Board Approval
- G: Correspondence from Coastal Commission staff to District staff

cc: Randa Coniglio, District President/Chief Executive Officer  
Thomas A. Russell, District General Counsel  
T. Scott Edwards, District Vice President/Chief Operating Officer  
Shaun Sumner, District Assistant V.P., Operations  
Wileen Manaois, District Principal, Development Services

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/12/2014

TIME: 10:50:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2013-00057492-CU-TT-CTL** CASE INIT.DATE: 07/15/2013

CASE TITLE: **San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION**

[E-File]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

---

**EVENT TYPE:** Motion Hearing (Civil)

---

**APPEARANCES**

The Court, having taken the above-entitled matter under submission on 05/08/14 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on plaintiffs/petitioners San Diegans for Open Government (SDOG) and San Diego Navy Broadway Complex Coalition's (SDNBCC) (sometimes collectively Petitioners) petition for writ of mandate as follows:

The Court's tentative ruling will serve as the Court's Statement of Decision pursuant to California Rules of Court, rule 3.1590.

Petitioners are represented by Cory J. Briggs and Mekaela M. Gladden of the Briggs Law Corporation.

Respondent California Coastal Commission (Commission) is represented by Baine P. Kerr of the Office of the Attorney General. Respondent San Diego Unified Port District (Port District) is represented by Michael M. Hogan of Hogan Law APC. The Real Parties in Interest Sunroad Enterprises and Sunroad Harbor Island, Inc. (sometimes collectively RPIs) are represented by Steven H. Kaufman of Richards, Watson & Gershon, APC.

The Court has reviewed the record in light of the parties' briefs and the applicable law and concludes the petition for writ of mandate should be denied for the reasons stated below.

*Standard of Review.* Public Resources Code section 30801 provides for judicial review of Commission decisions by way of a petition for writ of administrative mandamus under Code of Civil Procedure section

---

DATE: 05/12/2014

MINUTE ORDER

DEPT: C-71

Page 1

Calendar

EXHIBIT NO. 6

6-17-146-EDD

Minute Order  
1 of 7

 California Coastal Commission

1094.5. In reviewing a Commission decision, the trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the agency abused its discretion. (*Ross v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 921 (hereafter *Ross*)). Abuse of discretion is established if the Commission has not proceeded in the manner required by law, the decision is not supported by the findings or the findings are not supported by the evidence. (*Ibid.*) The Commission's findings and actions are presumed to be supported by substantial evidence. (*Ibid.*) A person challenging the Commission's decision bears the burden of showing that substantial evidence does not support the Commission's findings. (*Ibid.*)

When reviewing the Commission's decision, the court examines the whole record and considers all relevant evidence, including that which detracts from the decision. (*Ross, supra*, 199 Cal.App.4th at p. 921.) Although this task involves some weighing to fairly estimate the worth of the evidence, this limited weighing does not constitute independent review where the court substitutes its findings and inferences for those of the Commission. (*Id.* at p. 922.) Rather, the Commission weighs the preponderance of conflicting evidence, and the court may reverse its decision only if, based on the evidence before it, a reasonable person could not have reached the same conclusion the Commission reached. (*Ibid.*; accord *Ocean Harbor House v. Cal. Coastal Com.* (2008) 163 Cal.App.4th 215, 227 (hereafter *Ocean Harbor House*)). Substantial evidence upon which the Commission may base its decision includes opinion evidence of experts, oral presentations at the public hearing, photographic evidence, and written materials of staff. (*Whaler's Village Club v. Cal. Coastal Com.* (1985) 173 Cal.App.3d 240, 261 (hereafter *Whaler's Village Club*); *Coastal Southwest Dev. Corp. v. Cal. Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 532, 536 (hereafter *Coastal Southwest Dev. Corp.*)).

The ultimate task of statutory interpretation is for the judiciary, but the Commission's interpretation of the statutes and regulations under which it operates is entitled to "great weight," given the Commission's special familiarity with the regulatory and legal issues. (*Ross, supra*, 199 Cal.App.4th at p. 938; *Reddell v. Cal. Coastal Com.* (2009) 180 Cal.App.4th 956, 965-966; but see *Burke v. Cal. Coastal Com.* (2008) 168 Cal.App.4th 1098, 1106.)

As a preliminary matter, the Court notes that there is no dispute as to Petitioners' standing. Thus, it was not necessary for Petitioners' to provide extra record evidence i.e., declarations, to establish that they had standing to pursue the claims asserted here.

Also, Petitioners did not address the Port District's exhaustion argument in its opposition brief. Thus, the Court assumes that they do not contest this issue.

The first issue is whether the Commission violated the Coastal Act.

One, Public Resources Code section 30625 (section 30625) provides, in pertinent part: "any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed...The commission may approve, modify, or deny such proposed development..." Thus, the Commission has the authority to hear an appeal of development the Port District authorized pursuant to a claim of exemption, and may modify and approve such development on appeal.

Petitioners' contend that by issuing the permit, the Commission instituted a "de facto" amendment of the Plan. In this case, the Commission did not purport to amend the Plan or change any land use designation within it. It modified and approved the project, as section 30625 authorized. Port master plans are required to "include" proposed projects, and ports must certify that approved projects



"conform" to port master plans, but no provision of the Coastal Act states that the Commission may only approve development included in a project list when exercising its appellate jurisdiction over a claim of exemption. (See Pub. Res. Code, §§30711, 30715, 30715.5, 30112.)

Petitioners' interpretation of the Coastal Act would negate the requirement in section 30621 that the Commission hold a "de novo" hearing once appellate review is exercised, because there cannot be a "de novo" hearing if only one course of action is possible. (See *Coronado Yacht Club v. Cal. Coastal Com.* (1993) 13 Cal.App.4th 860, 871-872 (hereafter *Coronado Yacht Club*).)

Petitioners' argument that the Commission lacks authority to approve development not listed in a port master plan conflicts with Public Resources Code section 30715, which provides that the Commission's permitting authority is delegated to the Port "over any new development contained in the certified plan...." Read together with section 30625, this provision demonstrates that the Commission has authority to approve development not listed in a port master plan when exercising appellate jurisdiction over a port's claim of exemption, and it was not required by law to deny the permit application.

In sum, the fundamental flaw in Petitioners' argument is that it ignores the very Coastal Act provision which expressly authorized the Commission to "approve" or "modify" the Project.

Two, the Project was not an "appealable development", but even assuming it was, the Commission had express authority in section 30625 to "approve" and "modify" the Project.

Three, the Commission had the jurisdiction to conditionally approve the Project based on retained Commission jurisdiction.

Petitioners read the words in the second sentence of Public Resources Code section 30715 subd. (a), "contained in the certified plan," to mean that every development proposed in a port must be listed in the Port Master Plan. At the same time, they ignored the first sentence, which states that until a port master plan is certified, permit jurisdiction remains with the Commission. Consequently, assuming Petitioners' interpretation was correct, development not listed in the plan would remain subject to the Commission's original permit jurisdiction. It would not be delegated to the Port District at all. As applied here, the Port District's exercise of jurisdiction in the first instance would be irrelevant. The Commission would retain jurisdiction to conditionally approve the Project. Importantly, however, Petitioners not only ignore the first sentence of section 30715 subd. (a), but wrongly interpret the second sentence. The quoted words, in context, mean simply that after certification, jurisdiction over developments in the port master plan or portion thereof that is certified is delegated to the ports, with appeal jurisdiction reserved to the Commission. (See *Coronado Yacht Club, supra*, 13 Cal.App.4th at p. 872.) Furthermore, nothing in the Coastal Act mandates that every proposed development in a port be the subject of a port master plan amendment. (See Pub. Res. Code, §30711.) In Public Resources Code section 30711, the Legislature could have stated that a port master plan must include all developments, including exempt, emergency, and nonappealable development, but instead expressly stated only that "[p]roposed projects listed as appealable in Section 30715" be included.

Four, substantial evidence supports the Commission's determination that the Project, as modified, complied with the Coastal Act.

The Commission found that the new landside restaurant development, as the Port approved, would block waterfront access that was currently available through the existing parking lot. (11 AR 2778.) The Commission required Sunroad to re-design the project to provide a continuous public path along the



shoreline between the restaurant and the water. (11 AR 2654-2655.) The Commission further required Sunroad to allow public access to the floating barge, and to provide appropriate signage directing the public to the barge. (11 AR 2799.) Commission staff testified that the project, as revised, would maintain and improve public access along the shoreline. (11 AR 2654-2655.) The Commission concurred. (11 AR 2797.)

The Commission also found that the modified development would not have any adverse impact on the visual quality of the area because the proposed barge would be a maximum 18 feet in height, compared to the previous barge, the 4-story Reuben E. Lee. Moreover, the public access improvements on the shoreline side of the restaurant would provide pedestrian access to views beyond the building. (11 AR 2801.) Visual depictions that the Commission considered show that the project would provide shoreline public access and enhanced views of the water. (11 AR 2562-2571; 2816-2818; 1 AR 11-12.) The Commission also found the proposed project includes expansive landscaping and "hardscape" that would make the area more inviting to the public. (11 AR 2801.)

Petitioners claim that additional public input would have resulted in further measures to enhance public access and protect scenic views, but failed to identify any further measures or cite any evidence in the record supporting their position. (*Ibid.*)

The Commission concluded the project as modified and conditioned was consistent with the Coastal Act based on ample evidence that public access and views would be protected and enhanced. The evidence showed the project's public path and deck area would be preferable to the currently-available public access to the end of the peninsula via a parking lot, and the new floating barge would be significantly lower in height and bulk than the Reuben E. Lee. The Commission was entitled to consider this evidence and infer from it that the project would enhance, not diminish, public access and scenic views. (*Whaler's Village Club, supra*, 173 Cal.App.3d at p. 261; *Coastal Southwest Development Corp., supra*.) Petitioners do not offer any evidence contrary to the Commission's findings, and cannot carry their burden to defeat the presumption that substantial evidence supported the Commission's decision. (*Ocean Harbor House Homeowners Assn., supra*, 163 Cal.App.4th at p. 227.)

The second issue is whether the Commission violated CEQA

Under CEQA, a state agency's regulatory program may be exempted from the requirements of preparing initial studies, negative declarations and environmental impact reports if the Secretary of the Resources Agency certifies the program. (Pub. Res. Code, §21080.5.) A certified regulatory program remains subject to other CEQA policies, including the obligations to identify a project's adverse environmental effects, to mitigate those effects through the adoption of feasible alternatives or mitigation measures, and to justify its actions based on specific economic, social or other conditions. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230.)

The secretary certified the Commission's coastal development permit program under section 21080.5. (Cal. Code Regs, tit. 14, §15251(c).) A Commission staff report "complies with the relevant substantive and procedural requirements applicable to a certified regulatory program" for CEQA purposes. (*Ross, supra*, 199 Cal.App.4th at p. 933; see Cal. Code Regs., tit. 14, §§13057 [requirements for staff report]; 13096 [requiring written conclusions by Commission as to consistency of permit applications with CEQA].) The report must include "a description of the proposed activity with alternatives to the activity..." (Pub. Res. Code, §21080.5(d)(3)(A).) The consideration of alternatives need not be exhaustive, but "it must reasonably reflect that due consideration was given" to project alternatives. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 136.)

Here, the Commission staff report described two projects: the project the Port District approved, and the project that the Commission ultimately approved. The report found that the Port District approved project would total 27,505 square feet, and would provide two public viewpoints on either side of the proposed restaurant. (11 AR 2760.) The report stated that the Project would eliminate public access to the shoreline and water views, and that the proposed overlook points would not preserve or enhance the level or quality of public access that existed on the site. (11 AR 2778-2779.) It also found that, as a result of the elimination of public access to the shore, the project would block existing views of the downtown skyline and bay, (11 AR 2780.) In addition, the report noted that the Port District's proposal did not include conditions requiring measures to prevent the spread of the invasive algae *Caulperla taxifolia*. (*Ibid.*) In contrast, as described above, the modified development proposed to the Commission would be approximately 22,850 square feet—a significant reduction—and would include measures to ensure public access to the coast and protect scenic views, coastal biology and water quality. (11 AR 2790.)

In addition, the Commission considered and rejected alternatives requiring that the project be moved further away from the shoreline or shrunk in size. (11 AR 2798.) The restaurant could not be shifted inland because of setback requirements related to a seismic fault, and shrinking the project further would have required eliminating basic components of the project. (*Ibid.*; 11 AR 2781 [describing 10-foot setback zone].) And, such changes would be unnecessary because the project had been re-designed to avoid all significant environmental impacts. (11 AR 2797-2803.) The record thus contains substantial evidence that the Commission considered a reasonable range of feasible alternatives, imposed feasible mitigation measures to reduce the project's environmental impact, and adopted the least environmentally-damaging alternative.

Contrary to petitioners' assertion, the staff report's findings that "feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects on the environment," and "there are no further feasible mitigation measures that would substantially lessen any significant adverse effects on the environment" (11 AR 2808-2809), were supported by substantial evidence and complied with CEQA. (See *Sierra Club v. Cal. Coastal Com.* (1993) 19 Cal.App.4th 547, 556; see also *Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201, 1222-1223.)

Finally, the "Put it Back" alternative would not have required a CDP at all. Under the "Replacement or Reconstruction" exemption in both Section 8.b subd. (1) of the Port District's certified CDP regulations (5 AR 953-954) and the CEQA Guidelines (Cal. Code Regs., tit., 14, §15302(b)), RPIs could have put back a "Reuben E. Lee" or another restaurant on a barge without a permit, new public access, or new sweeping public views. An alternative must "substantially lessen a significant adverse impact that the activity may have on the environment." (Pub. Res. Code, §21080.5(d)(2)(A).) Petitioners' alternative would not achieve this goal. Any viable restaurant sitting on a barge would block views of downtown San Diego, the Bay, the Bridge, and Coronado. (11 AR 2576, 2581, 2587.) Moreover, counsel's generalized objection, without further explanation, made at the close of the public hearing, was barred in any event barred by the exhaustion doctrine. (Pub. Res. Code, §21177; *CREED v. City of San Diego* (2011) 196 Cal.App.4th 515, 527; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197-1198.)

Based on the foregoing, the Court denies the writ. The Commission is directed to prepare the Judgment.

**IT IS SO ORDERED.**

*Ronald S. Prager*

---

Judge Ronald S. Prager

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

Central  
330 West Broadway  
San Diego, CA 92101

**SHORT TITLE:** San Diegans for Open Government vs CALIFORNIA COASTAL COMMISSION [E-File]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**

**37-2013-00057492-CU-TT-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 05/12/2014.

Clerk of the Court, by: , Deputy

MEKAELA M GLADDEN  
BRIGGS LAW CORPORATION  
814 MORENA BOULEVARD # 107  
SAN DIEGO, CA 92110

STEVEN H KAUFMANN  
RICHARDS/ WATSON/ GERSHON  
355 S. GRAND AVE, 40TH FLOOR  
LOS ANGELES, CA 90071

BAINE P KERR  
OFFICE OF THE ATTORNEY GENERAL  
300 SOUTH SPRING STREET # 1702  
LOS ANGELES, CA 90013

HAYLEY E PETERSON  
110 WEST A ST #1100  
SAN DIEGO, CA 92101

CORY J BRIGGS  
BRIGGS LAW CORPORATION  
99 EAST C STREET # 111  
UPLAND, CA 91786

MICHAEL M HOGAN  
HOGAN LAW APC  
225 BROADWAY STE 1900  
SAN DIEGO, CA 92101

☐ Additional names and address attached.

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

Page 1

**From:** [Wileen Manaois](#)  
**To:** [Lasiter\\_Melody@Coastal](#)  
**Cc:** [Lee, Deborah@Coastal](#); [Brown\\_Kanani@Coastal](#); [Shaun Sumner](#); [Scott Edwards](#); [Randa Coniglio](#); [Wendy Ong](#); [Tanya Castaneda](#); [Brianne Page](#); [Rebecca Harrington](#)  
**Subject:** February 2, 2017 Executive Director Determination on Appealability for the Portside Pier Project (CDP Application No. 2016-91)  
**Date:** Thursday, February 09, 2017 6:59:10 PM

---

Hi Melody,

Please include this email in any California Coastal Commission (Coastal Commission) staff report you will be presenting to the Coastal Commission related to the proposed Portside Pier development (San Diego Unified Port District (District) Coastal Development Permit (CDP) Application No. 2016-91).

Recent media reports reflect misstatements about the project's public access components, as well as other features. To clarify the issue, I'm providing the information below. However, this information was provided to Coastal Commission staff on December 2, 2016, as part of the Final Mitigated Negative Declaration (MND). Additionally, in a December 15, 2016 meeting between District and Coastal Commission staff, the District informed Coastal Commission staff that the Board of Port Commissioners had approved a non-appealable CDP for the project and briefly described the project changes that were made to address public access. District staff also informed Coastal Commission staff that a description of the project changes could be found in the responses to comments to the Final MND, which apparently Coastal Commission staff had not yet reviewed.

Note that the aesthetics and the community character of the project were analyzed in the MND. As stated on page 8 of the Initial Study, the project would be compatible with the existing development (Carnitas Snack Shack and associated pavilion, Lane Field hotel, as well as the County Waterfront Park) and proposed development in the area (the second tower of Lane Field). The District does not believe that comparing the proposed development to museums consisting of vessels, which can easily be moved, is appropriate, required or within Coastal Commission's purview. Additionally, in comparison to the dilapidated and outdated existing structure with limited public access, the proposed development is a substantial improvement. Importantly, Coastal Commission staff never submitted written comments stating that they opined that the development was out of character with the Maritime Museum.

If there are additional features that Coastal Commission staff wants to see incorporated into the project, the District is more than willing to discuss them with you.

#### **EXISTING RESTAURANT**

The existing restaurant facility, built decades ago in 1965, consists of three restaurants and a walk-up coffee kiosk. A dock with two boat slips was also part of the existing facility. There is a partial perimeter bayside walkway that does not circle the entire bayside of the premises and can only be accessed through the restaurants.

#### **PUBLIC ACCESS FEATURES OF THE PROPOSED DEVELOPMENT**

As originally proposed, the development included the following public features:

- A free dock and dine public docking facility (3,370 square feet with 12 boat slips)
- A second story public viewing deck (3,648 square feet) with up to 108 seats for the public's use. No private functions would occur on the deck.
- Access to the second story public viewing deck was proposed through the restaurant via elevator and stairs.

- Wayfinding signage to the public viewing deck.
- Coordination of off-site available parking with parking operators and wayfinding signage for available parking.
- Securing 974 off-site valet parking spaces.
- Designate off-site parking lots for employees.
- Bike racks on-site.
- Bike share stations within 1,000 feet of the project site.
- Promotion of public transportation on website.
- Participate in the Big Bay shuttle.
- Coordination with water taxi services.
- Improvements to the public promenade consistent with NEVP Phase 1. Improvements include pavers, street furniture and wayfinding signage and the promenade would be open at all times.

#### **REVISIONS TO THE PUBLIC ACCESS FEATURES INCORPORATED INTO THE CDP**

After circulation of the Draft MND, several public access features were added to the project or existing proposed public access features were improved. Those changes are described below and were incorporated into the CDP. These are in addition to the above described access features.

- The MND was clarified to state that a continuous public perimeter walkway, totaling 1,913 square feet, on the ground floor of the restaurant facility was proposed. Revised graphics were also included. This walkway will be accessible directly from the North Embarcadero Promenade on the north side. Additionally, there is accessibility through the Ketch Grill & Taps Restaurant on the south side. It will be open during business operations, which are generally from 6:00 a.m. to 10:00 p.m. Wayfinding signage would be provided directing pedestrians from the promenade to the public walkway.
- The second floor public viewing deck area was increased. Access to the second floor public viewing deck was modified to include access directly from the North Embarcadero Promenade by an elevator. The public will therefore have several ways they can get to the viewing deck: by dedicated elevator on the south side directly accessible from the Promenade (one does not have to enter the restaurant) and through the restaurant via stairs on the north side and on the south side. It will be open during business operations, which are generally from 6:00 a.m. to 10:00 p.m. Wayfinding signage would be provided directing pedestrians from the promenade to the public viewing deck.
- Prior to occupancy of the facility, the applicant is required to enter into a contract to secure the 979 valet parking spaces (an increase of 5 parking spaces) and proof of that agreement must be provided to the District. The agreement must be renewed annually. A decrease in the secured parking may occur for no more than two-year increments after a robust parking study is submitted to the District and the District approves the report, in its sole and absolute discretion. In no event, shall the secured parking be less than the highest number of parking spaces used during the previous year.

Bike racks must be located on the promenade.

- Applicant shall provide employees reimbursement or subsidies for public transportation.

#### **ADDITIONAL ADDED OR CLARIFIED PROJECT FEATURES**

In addition to the enhanced public access features described, the following mitigation measures or project features were added to address lighting, impacts to biological resources and sea-level rise.

- Levels of lighting spill will be comparable to that from existing lighted facilities along the Embarcadero, not exceeding 9.2 footcandles at the edge of the North Embarcadero Promenade or 6.3 footcandles at the edge of the first floor bayside deck. All lighting would be limited to the specifications provided in a photometric plan dated July 26, 2016 and the preliminary signage plan dated November 28, 2016.
- In order to adapt to sea-level rise, the project would use materials to withstand sea-level rise impacts and design components would be developed in such a way they would be retrofitted or adapted prior to high tides and waves reaching the base of the structure as a consequence of sea level rise, in the event sea level rises above the floor level of the proposed structure.

Biological resource mitigation measure BIO-4 was revised to clarify that the project applicant would incorporate design features to enhance the transparency of the over-water coverage areas and would be required to obtain overwater coverage credits from the District.

Please contact me if you have any questions or would like to discuss this project further.

Thanks, Wileen



**Wileen C. Manaois**  
**Principal, Development Services**  
**Real Estate Development**  
**PORT OF SAN DIEGO**  
3165 Pacific Highway Y San Diego, CA 92101  
**O:** 619.686.6282 **C:** 619.346-0858

Port administration offices are open Monday-Thursday and [every other Friday](#) from 8am-5pm.  
This email is public information and may be viewed by third parties upon request