

**CALENDAR ITEM
C73**

A 78
S 39

10/14/14
PRC 8876.1
K. Foster

CONSENT TO ENCUMBRANCING OF LEASE PREMISES

LESSEE:

San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

SUBLESSEE:

Sunroad Harbour Island

AREA, LAND TYPE, AND LOCATION:

0.30 acre, more or less, of sovereign land in San Diego Bay, adjacent to Harbor Island, city of San Diego, San Diego County.

AUTHORIZED USE:

Renovation, use, and maintenance of a barge to be used as a floating restaurant and event facility.

LEASE TERM:

40 years, beginning June 28, 2010.

CONSIDERATION:

A minimum of \$12,009 per year against a percentage of Lessee's gross income from revenues generated by the sublease on the Lease Premises in excess of the minimum annual rental, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the Lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Lessee: Combined single limit liability insurance coverage in the amount of not less than \$1,000,000. Applicant may satisfy all or part of the insurance requirements through maintenance of a staff-approved self-insurance program as outlined in the Lease.

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Sublessee: Combined single limit Commercial General Liability insurance coverage in the amount of no less than \$2,000,000 with a general aggregate coverage of \$4,000,000; Liquor Liability insurance coverage in the amount of no less than \$2,000,000.

OTHER PERTINENT INFORMATION:

1. The San Diego Unified Port District (Port) owns and manages the sovereign land adjoining the lease premises as Trustee, pursuant to Chapter 67, Statutes of 1962, 1st Extraordinary Session, as amended.
2. On June 28, 2010, the Commission authorized the issuance of Lease No. PRC 8876.1, a General Lease – Commercial Use to the Port for a 40-year term ending June 27, 2050, and also authorized a sublessee, Sunroad Harbor Island (Sublessee). The Lease Premises as shown on Exhibit A is utilized for a floating barge structure and appurtenant improvements, including gangways, moorings, and protective pilings that will serve as part of a restaurant to be developed on the upland property adjacent to the Lease Premises.
2. The Sublessee has initiated an encumbrance with Bank of America in an amount not to exceed \$11,000,000, for financing to develop a restaurant on the Sublessee's leasehold estate with the Port. The Sublessee's leasehold estate with the Port includes a lease with the Port for the upland restaurant site and in-water areas within legislatively granted sovereign lands under Port jurisdiction. The barge, which will be utilized for the floating restaurant and event facility, straddles both the Port's and Commission's jurisdiction.
3. On August 12, 2014, Board of Port Commissioners adopted Resolution No. 2014-161 attached as Exhibit B, consenting to the encumbrancing of the Sublessee's leasehold estate with the Port. Staff recommends that the Commission authorize staff to consent to the encumbrancing of the Lease Premises by the Sublessee in accordance with Port Resolution 2014-161.
4. The staff recommends that the Commission find that the subject encumbrancing agreement does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

CALENDAR ITEM NO. **C73** (CONT'D)

EXHIBITS:

- A. Site and Location Map
- B. Port Resolution

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject encumbrancing agreement is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

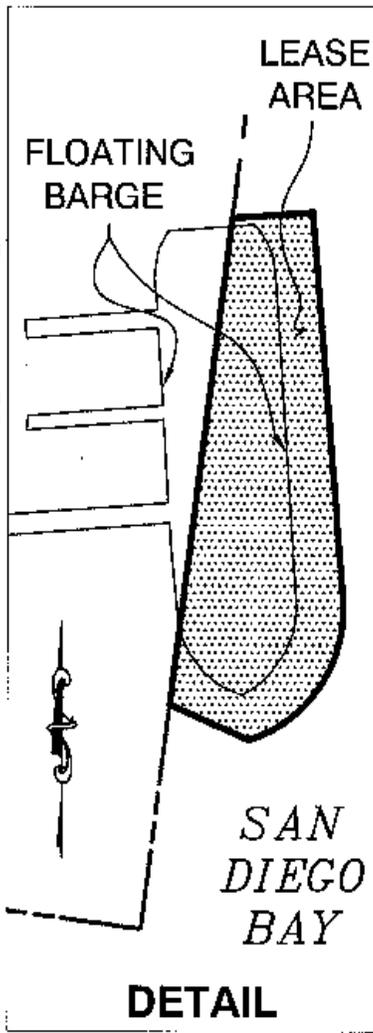
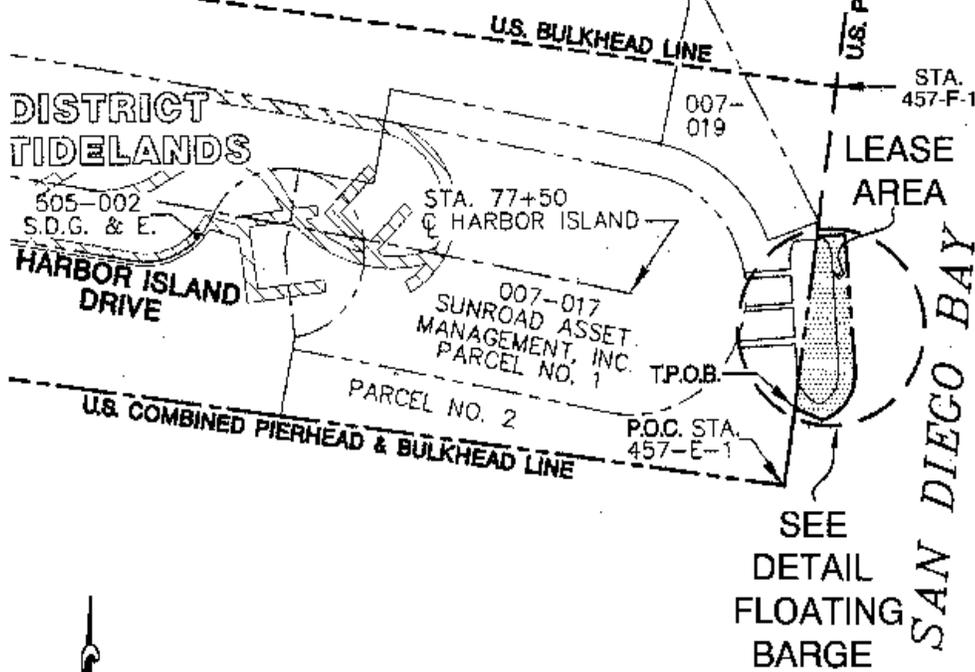
Authorize Commission staff to consent to the encumbrancing of the Lease Premises as shown on Exhibit A, attached (for reference purposes only) subject to Lease No. PRC 8876.1, a General Lease – Commercial Use to the San Diego Unified Port District, by Sunroad Harbor Island as the sublessee under the Lease, in accordance with Port Resolution 2014-161, as shown in Exhibit B, attached.

NO SCALE

SITE

SUNROAD MARINA PARTNERS, L.P.

HARBOR ISLAND EAST BASIN



880 HARBOR ISLAND DRIVE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

PRC 8876.1

SAN DIEGO UNIFIED PORT
DISTRICT - 880 HARBOR
RESTAURANT
COMMERCIAL LEASE
SAN DIEGO COUNTY



JWP 05/14

RESOLUTION 2014-161

RESOLUTION CONSENTING TO ENCUMBRANCE OF SUNROAD HARBOR ISLAND, INC.'S LEASEHOLD ESTATE BY \$11 MILLION IN FAVOR OF BANK OF AMERICA, WITH CONDITIONS

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, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, Sunroad Harbor Island, Inc. (Sunroad) has a lease with the District at 880 Harbor Island Drive, which expires in 2042 and has a ten-year option to extend; and

WHEREAS, Sunroad's lease with the District covers approximately 145,979 square feet of land area and approximately 104,422 square feet of water area on East Harbor Island; and

WHEREAS, the leasehold includes the existing Island Prime/C-Level restaurant as well as a second restaurant, which is currently under construction; and

WHEREAS, the lease commenced August 1, 2012 and has a term of 30 years, which expires on July 31, 2042; and

WHEREAS, Sunroad's lease requires the District to approve initial financing provided by a lender, but after that they do not need the District's consent to refinance, within the first five years of the lease, so long as the loan meets certain criteria; and

WHEREAS, the criteria include: the loan amount not exceeding the initial financing, the loan amount not exceeding 75% of the total project cost and the lender meets requirements identified in the lease; and

WHEREAS, the loan is equal to 35% of the as-complete leasehold value of \$31,000,000, which complies with the maximum 75% loan-to-value ratio required under BPC Policy No. 355; and

WHEREAS, staff has reviewed all of the relevant information required by BPC Policy No. 355 and recommends that the District consent to the encumbrance with the following conditions:

1. The loan amount will not exceed \$11,000,000.
2. The loan term will not extend beyond the current lease expiration date of July 31, 2042.
3. All other terms, conditions, provisions and covenants of the lease shall remain and continue in full force and effect, and no further encumbrance of the lease or any part thereof shall be made without the prior written consent of the District in each instance, as provided in the lease.
4. It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents, such as the leasehold deed of trust or note secured thereby and is not agreeing to be a party to the leasehold deed of trust, note or other documents.
5. Nothing contained in the conditions of approval shall be construed to modify, amend or waive any provisions of the lease.
6. The District's consent to the encumbrance shall be null and void and of no further force and effect if Sunroad Harbor Island, Inc. does not obtain financing from Bank of America, as confirmed by receipt of final loan documents signed by both Sunroad Harbor Island, Inc. and Bank of America, within 90 days of District's consent.
7. Sunroad Harbor Island, Inc. acknowledges that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.
8. The District's consent to this encumbrance is conditioned upon the leasehold having no other loans in effect, as confirmed by receipt of a full re-conveyance recorded in the Office of the Recorder of San Diego County within 90 days of District's consent.

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

That the San Diego Unified Port District hereby consents to encumbrance of Sunroad Harbor Island, Inc.'s leasehold estate by \$11,000,000 in favor of Bank of America with the above stated conditions.

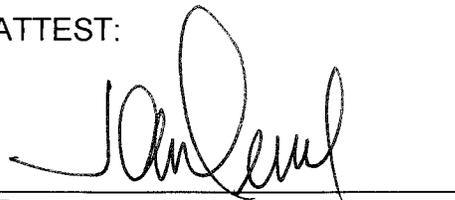
APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: ~~Assistant~~ Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12th day of August, 2014, by the following vote:

- AYES: Bonelli, Moore, Nelson, and Valderrama.
- NAYS: None.
- EXCUSED: Malcolm, Merrifield.
- ABSENT: None.
- ABSTAIN: Castellanos.


Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:

Timothy A. Deuel
District Clerk

(Seal)