CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

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Clean Water Act Section 401 Water Quality Certification
and Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials

PROJECT: **Portside Pier Restaurant Redevelopment**
Certification Number R9-2016-0174
WDID: 9000003079

Reg. Meas. ID: 408046
Place ID: 826835
Party ID: 558419
Person ID: 558420
Party ID: 281794
Person ID: 102127

APPLICANT: **Brigantine Inc.**
7889 Ostrow Street
San Diego, CA 92111

Port of San Diego
3165 Pacific Highway
San Diego, CA 92101

ACTION:

☐ Order for Low Impact Certification	☐ Order for Denial of Certification
☑ Order for Technically-conditioned Certification	☐ Enrollment in Isolated Waters Order No. 2004-004-DWQ
☑ Enrollment in SWRCB GWDR Order No. 2003-017-DWQ	

PROJECT DESCRIPTION

An application dated July 18, 2016 was submitted by Brigantine, Inc. and the Port of San Diego (hereinafter Applicant), for Water Quality Certification pursuant to section 401 of the Clean Water Act (United States Code (USC) Title 33, section 1341) for the proposed Portside Pier Restaurant Redevelopment Project (Project). The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) deemed the application to be complete on September 21, 2016. The Applicant proposes to discharge dredged or fill material to waters of the United States and/or State associated with construction activity at the Project site. The Applicant has also applied for a Clean Water Act section 404 permit from the United States Army Corps of Engineers for the Project (USACE File No. SPL-2016-00559-RRS).

The Project is located within the City of San Diego, San Diego County, California at 1360 North Harbor Drive. The Project center reading is located at latitude 32°43' 10.63"N and longitude 117°10' 24.99" W. The Applicant has paid all required application fees for this Certification in the amount of $3,173.00 and is also responsible for payment of any required annual active

discharge fee and post discharge monitoring fee[1]. On September 27, 2016 the San Diego Water Board provided public notice of the Project application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the San Diego Water Board's web site and providing a period of twenty-one days for public review and comment. No comments were received.

The Applicant proposes to demolish and redevelop an existing restaurant into a complex of three restaurants, a coffee and gelato stand, dedicated public viewing deck, and expansion of dock and dine opportunities. The existing building, pilings, platform and dock will be demolished by the Port of San Diego. A new building will be built on a new platform supported by new pilings and a new dock. The construction will be completed by Brigantine, Inc. The proposed building will be two stories with an overall height increase of 7 feet. The dock would increase in size from 565 square feet to 3370 square feet. The total proposed overwater coverage will be 28,330 square feet, an increase of 4,480 square feet from existing conditions.

Project construction will permanently impact through direct fill 0.004 acre (179 square feet) of open waters of the United States and/or State. Project construction will permanently impact through shading 0.103 (235 linear feet) acres of open waters of the United States and/or State. The impacts from the direct fill completely overlap with the impacts from shading. The direct fill of 0.004 acre is from the addition of 57 24-inch concrete piles which is the equivalent of 179 sq feet. The existing concrete piles that will be removed total 136 square feet equaling to 0.003 acre. The total change in permanent fill for this project is 0.001 acres equaling 43 square feet. Applicant reports that the Project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impacts to aquatic resources considering all potential practicable alternatives, such as the potential for alternate available locations, designs, reductions in size, configuration or density.

The Applicant reports that compensatory mitigation for the permanent loss of 0.001 acre of jurisdictional waters will be achieved through the re-establishment of 0.003 acre of waters of the United States and/or State. The applicant reports that compensatory mitigation for the permanent shading of 0.103 acres of jurisdictional waters will be achieved through the rehabilitation of waters of the United States and/or State. All waters of the United States and/or State receiving temporary discharges of fill material will be restored upon removal of the fill. Mitigation for discharges of fill material to waters of the United States and/or State will be acquired from the Port of San Diego's mitigation ledger for the re-establishment of 0.003 acre of waters of the United States. The specific location of the re-establishment that will be acquired from the Port of San Diego mitigation ledger (Attachment 5) is the removal of fill associated with the B Street Pier South Fender System Upgrade (B Street) that was completed in 2012 and is located in the Lindbergh hydrologic sub-area (HSA 908.21) at a minimum compensation ratio of 3:1 (area mitigated:area impacted). Additionally, mitigation for impacts from shading to waters of the United States and/or State will be acquired from the Port of San Diego's general mitigation ledger (Attachment 5) for removal of over water structures at a minimum compensation ratio of 1:1 (area mitigated:area impacted).

[1] Additional information regarding fees can be found electronically on the State Water Resources Control Board web site at the following location: http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/dredgefillcalculator.xlsx

Additional Project details are provided in Attachments 1 through 5 of this Certification.

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Attachments:

1. **Definitions**
2. **Project Location Maps**
3. **Project Site Plans**
4. **CEQA Mitigation Monitoring and Reporting Program**
5. **Mitigation Ledger**

I. STANDARD CONDITIONS

Pursuant to section 3860 of title 23 of the California Code of Regulations, the following three standard conditions apply to all water quality certification actions:

A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and chapter 28, article 6 (commencing with title 23, section 3867), of the California Code of Regulations.

B. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to California Code of Regulations title 23, section 3855 subdivision (b), and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

C. This Certification action is conditioned upon total payment of any fee required under title 23, chapter 28 (commencing with section 3830) of California Code of Regulations and owed by the applicant.

II. GENERAL CONDITIONS

A. **Term of Certification**. This Certification shall expire upon a) the expiration or retraction of the Clean Water Act section 404 (33 USC Title 33, section1344) permit issued by the U.S. Army Corps of Engineers for this Project, or b) five (5) years from the date of issuance of this Certification, whichever occurs first.

B. **Duty to Comply.** The Applicant must comply with all conditions and requirements of this Certification. Any Certification noncompliance constitutes a violation of the Water Code and is grounds for enforcement action or Certification termination, revocation and reissuance, or modification.

C. **General Waste Discharge Requirements**. The requirements of this Certification are enforceable through Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material that have Received State Water Quality Certification* (Water Quality Order No. 2003-0017-DWQ). This provision shall apply irrespective of whether a) the federal permit for which the Certification was obtained is subsequently retracted or is expired, or b) the Certification is expired. Water Quality Order No. 2003-0017-DWQ is accessible at:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf.

D. **Project Conformance with Application.** All water quality protection measures and BMPs described in the application and supplemental information for water quality certification are incorporated by reference into this Certification as if fully stated herein.

Notwithstanding any more specific conditions in this Certification, the Applicant shall construct, implement and comply with all water quality protection measures and BMPs described in the application and supplemental information. The conditions within this Certification shall supersede conflicting provisions within the application and supplemental information submitted as part of this Certification action.

E. **Project Conformance with Water Quality Control Plans or Policies**. Notwithstanding any more specific conditions in this Certification, the Project shall be constructed in a manner consistent with the Basin Plan and any other applicable water quality control plans or policies adopted or approved pursuant to the Porter Cologne Water Quality Act (Division 7, commencing with Water Code Section 13000) or section 303 of the Clean Water Act (33 USC section 1313). The Basin Plan is accessible at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/index.shtml

The receiving water limitations set forth below for San Diego Bay waters within are based on applicable water quality standards contained in the Basin Plan, other water quality control plans and policies and federal regulations and are a required part of this Certification. Project activities shall not cause or contribute to exceedances of these receiving water limitations in San Diego Bay. Compliance with these limitations shall be determined from samples collected at the points of compliance described in the Monitoring Requirements in section VI of this Certification.

1. **Visual**. Floating particulates and grease and oil shall not be visible.

2. **Color**. Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

3. **Hydrogen Ion Concentration**. The pH shall not be changed at any time more than 0.2 units from that which occurs naturally.

4. **Hydrogen Ion Concentration**. The pH shall not be depressed below 7.0 nor raised above 9.0.

5. **Turbidity**. If natural turbidity is between 0 to 50 nephelometric turbidity units (NTUs), the maximum increase from dredge activities must not exceed 20 percent of the measured natural turbidity. If natural turbidity is between 51 to 100 NTUs, the maximum increase from dredge activities must not exceed 10 NTUs. If natural turbidity is greater than 100 NTUs, the maximum increase from dredge activities must not exceed 10% above natural background levels.

6. **Dissolved Oxygen**. The dissolved oxygen concentration shall not at any time be depressed more than 10 percent from that which occurs naturally.

F. **Project Modification**. The Applicant must submit any changes to the Project, including Project operation, which would have a significant or material effect on the findings, conclusions, or conditions of this Certification, to the San Diego Water Board for prior

review and written approval. If the San Diego Water Board is not notified of a significant change to the Project, it will be considered a violation of this Certification.

G. **Certification Distribution Posting**. During Project construction, the Applicant must maintain a copy of this Certification at the Project site. This Certification must be available at all times to site personnel and agencies. A copy of this Certification shall also be provided to any contractor or subcontractor performing construction work, and the copy shall remain in their possession at the Project site.

H. **Inspection and Entry**. The Applicant must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents as may be required under law, to:

1. Enter upon the Project or Compensatory Mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Certification;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Certification;

3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Certification; and

4. Sample or monitor, at reasonable times, for the purposes of assuring Certification compliance, or as otherwise authorized by the Clean Water Act or Water Code, any substances or parameters at any location.

I. **Enforcement Notification**. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.

J. **Certification Actions**. This Certification may be modified, revoked and reissued, or terminated for cause including but not limited to the following:

1. Violation of any term or condition of this Certification;

2. Monitoring results indicate that continued Project activities could violate water quality objectives or impair the beneficial uses of the San Diego Bay or its tributaries;

3. Obtaining this Certification by misrepresentation or failure to disclose fully all relevant facts;

4. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; and

5. Incorporation of any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

The filing of a request by the Applicant for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Certification condition.

K. **Duty to Provide Information**. The Applicant shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Certification or to determine compliance with this Certification.

L. **Property Rights**. This Certification does not convey any property rights of any sort, or any exclusive privilege.

M. **Petitions**. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with the California Code of Regulations, title 23, sections 3867 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

III. CONSTRUCTION BEST MANAGEMENT PRACTICES

A. **Approvals to Commence Construction**. The Applicant shall not commence Project construction until all necessary federal, State, and local approvals are obtained.

B. **Personnel Education.** Prior to the start of the Project, and annually thereafter, the Applicant must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response measures, and BMP implementation and maintenance measures.

C. **Spill Containment Materials.** The Applicant must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.

D. **General Construction Storm Water Permit.** Prior to start of Project construction, the Applicant must, as applicable, obtain coverage under, and comply with, the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the *General Permit for Storm Water Discharges Associated with*

Construction and Land Disturbance Activity, (General Construction Storm Water Permit) and any reissuance. If Project construction activities do not require coverage under the General Construction Storm Water Permit, the Applicant must develop and implement a runoff management plan (or equivalent construction BMP plan) to prevent the discharge of sediment and other pollutants during construction activities.

E. **Waste Management.** The Applicant must properly manage, store, treat, and dispose of wastes in accordance with applicable federal, state, and local laws and regulations. Waste management shall be implemented to avoid or minimize exposure of wastes to precipitation or storm water runoff. The storage, handling, treatment, or disposal of waste shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050. Upon Project completion, all Project generated debris, building materials, excess material, waste, and trash shall be removed from the Project site(s) for disposal at an authorized landfill or other disposal site in compliance with federal, state and local laws and regulations.

F. **Waste Management**. Except for a discharge permitted under this Certification, the dumping, deposition, or discharge of trash, rubbish, unset cement or asphalt, concrete, grout, damaged concrete or asphalt, concrete or asphalt spoils, wash water, organic or earthen material, steel, sawdust or other construction debris waste from Project activities directly into waters of the United States and or State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited.

G. **Downstream Erosion.** Discharges of concentrated flow during construction or after Project completion must not cause downstream erosion or damage to properties or stream habitat.

H. **Construction Equipment**. All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. All equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment.

I. **Process Water.** Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or State or placed in locations that may be subjected to storm water runoff flows. ~~Pollutants discharged to areas within a stream diversion must be removed at the end of each work day or sooner if rain is predicted.~~

J. **Surface Water Diversion.** All surface waters, including ponded waters, must be diverted away from areas of active grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. Diversion activities must not result in the degradation of beneficial uses or exceedance of the receiving water quality objectives. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel

which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.

K. **Re-vegetation and Stabilization.** All areas that have 14 or more days of inactivity must be stabilized within 14 days of the last activity. The Applicant shall implement and maintain BMPs to prevent erosion of the rough graded areas. After completion of grading, all areas must be re-vegetated with native species appropriate for the area. The re-vegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be accessed at http://www.cal-ipc.org/ip/inventory/.

L. **Hazardous Materials.** Except as authorized by this Certification, substances hazardous to aquatic life including, but not limited to, petroleum products, unused cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous materials.

IV. LIMITS OF DISTURBANCE, DREDGE VOLUME LIMIT, SILT CURTAIN DEPLOYMENT, SEDIMENT DREDGING, PLACEMENT OF DREDGED MATERIALS

a. **Vegetation Removal.** Removal of vegetation must occur by hand, mechanically, or through application of United States Environmental Protection Agency (USEPA) approved herbicides deployed using applicable BMPs to minimize adverse effects to beneficial uses of waters of the United States and/or State. Discharges related to the application of aquatic pesticides within waters of the United States must be done in compliance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, the *Statewide General National Pollution Discharge Elimination System Permit for the Discharge of Aquatic Weed Control in Waters of the United States,* and any subsequent reissuance as applicable.

b. **Limits of Disturbance.** The Applicant shall clearly define the limits of Project disturbance to waters of the United States and/or State using highly visible markers such as flag markers, construction fencing, or silt barriers prior to commencement of Project construction activities within those areas.

c. **Silt Curtain Deployment**. The Applicant shall deploy and maintain a continuous length of silt curtain, fully surrounding active discharge activities, including pile driving, in conformance with the following requirements:

   i. The silt curtains must restrict the surface visible turbidity plume or surface debris to the area of construction and dredging and must control and contain the migration of re-suspended sediments or debris at the water surface and at depth;

ii. The bottom of the silt curtains must be weighted with ballast weights or rods affixed to the base of the fabric to resist the natural buoyancy of the silt curtain fabric and lessen its tendency to move in response to currents. Where feasible and applicable, the floating silt curtains must be anchored and deployed from the surface of the water to just above the substrate;

iii. The silt curtain must be monitored for damage, dislocation or gaps and must be immediately repaired where it is no longer continuous or where it has loosened; and

iv. The silt curtain must not be removed until the visible turbidity plume has dissipated and/or surface debris is skimmed and removed.

d. **On-site Qualified Biologist.** The Applicant shall designate an on-site qualified biologist to monitor Project construction activities within or adjacent to waters of the United States and/or State to ensure compliance with the Certification requirements. The biologist shall be given the authority to stop all work on-site if a violation of this Certification occurs or has the potential to occur. Records and field notes of the biologist's activities shall be kept on-site and made available for review upon request by the San Diego Water Board.

e. **Protection of Eelgrass Beds at the Project Site.** A pre-construction eelgrass survey must be completed in accordance with the requirements of the California Eelgrass Mitigation Policy (CEMP; National Marine Fisheries Service 2014) by a qualified biologist, prior to initiation of construction activities at the site. The Applicant shall also comply with the following requirements:

i. Prior to construction, the boundaries of the eelgrass beds within the Applicant's facility must be staked with ridged PVC markers or self-centering buoys visible at all tide heights. The PVC markers or self-centering buoys must be protected, replaced, and maintained as needed to ensure that they remain in place and properly stake the boundaries of the eelgrass beds.

ii. Any silt curtains must be kept a minimum of 30 feet away from staked eelgrass beds in order to prevent damage to eelgrass beds from curtain drag or movement.

iii. During project construction and regardless of the timing of the dredging or in-Bay placement of fill, the eelgrass beds must be protected with silt curtains deployed in a manner to protect eelgrass from excessive dredge or fill generated turbidity or sediment deposition.

f. **Sound Impacts**. For the purpose of protecting sensitive fish species, bird species, eastern Pacific green sea turtles, and marine mammals, the Applicant shall monitor sound pressure levels during pile driving to verify the distance from the pile driving activity at which the 180 decibel root mean squared (dB rms)

sound level threshold for marine life injury is not exceeded. Once the distance is determined, the Biological Monitor shall halt pile driving activities should marine mammals or turtles approach pile driving closer than the 180 dB rms buffer distance. Pile driving shall be initiated with a soft start methodology by initiating three rounds of noise from vibratory hammers for fifteen seconds at reduced energy followed by a 30-second waiting period before commencing with full use of equipment or using an initial three sets of three low energy strikes followed by a 30-second waiting period to initiate impact driving before ramping up to full hammer energy as described in the certified Final Mitigated Negative Declaration.

g. **Beneficial Use Protection**. The Applicant must take all necessary measures to protect the beneficial uses of the waters of San Diego Bay. This Certification requires compliance with all applicable requirements of the Basin Plan. If at any time, an unauthorized discharge to surface waters (including rivers or streams) occurs or monitoring indicates that the Project is violating, or threatens to violate, water quality objectives, the associated Project activities shall cease immediately and the San Diego Water Board shall be notified in accordance with Notification Requirement VII.A of this Certification. Associated Project activities may not resume without approval from the San Diego Water Board.

V. POST-CONSTRUCTION BEST MANAGEMENT PRACTICES

A. **Post-Construction Discharges.** The Applicant shall not allow post-construction discharges from the Project site to cause or contribute to on-site or off-site erosion or damage to properties or stream habitats.

B. **Storm Drain Inlets.** All storm drain inlet structures within the Project boundaries must be stamped or stenciled (or equivalent) with appropriate language prohibiting non-storm water discharges.

C. **Post-Construction BMP Design.** The Project must be designed to comply with the requirements for priority development projects in Section E.3 of the Regional MS4 Permit Order No. R9-2013-0001, National Pollutant Discharge Elimination Systems Permit and Waste Discharge Requirements for Discharges of Urban Runoff from the MS4s Draining the Watersheds within the San Diego Region (Regional MS4 Permit) as well as the most current BMP Design Manual for the San Diego Unified Port District. Where conflict exists between the referenced documents the most stringent requirements shall apply.

D. **Post-Construction BMP Maintenance.** The post construction BMPs must be designed, constructed, and maintained in accordance with the most recent California Storm Water Quality Association (CASQA)[2] guidance. The Applicant shall:

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[2] California Storm Water Quality Association (*California Storm Water BMP Handbook, New Development and Redevelopment 2003)*, available on-line at: http://www.cabmphandbooks.org/ [Accessed on January 15, 2012]

1. No less than two times per year, assess the performance of the BMPs to ensure protection of the receiving waters and identify any necessary corrective measures;

2. Perform inspections of BMPs, at the beginning of the wet season no later than October 1 and the end of the wet season no later than April 1, for standing water, slope stability, sediment accumulation, trash and debris, and presence of burrows;

3. Regularly perform preventative maintenance of BMPs, including removal of accumulated trash and debris, as needed to ensure proper functioning of the BMPs;

4. Identify and promptly repair damage to BMPs; and

5. Maintain a log documenting all BMP inspections and maintenance activities. The log shall be made available to the San Diego Water Board upon request.

VI. PROJECT IMPACTS AND COMPENSATORY MITIGATION

A. **Project Impact Avoidance and Minimization**. The Project must avoid and minimize adverse impacts to waters of the United States and/or State to the maximum extent practicable.

B. **Project Impacts and Compensatory Mitigation.** Unavoidable Project impacts to San Diego Bay within the Pueblo San Diego Watershed must not exceed the type and magnitude of impacts described in the table below. At a minimum, compensatory mitigation required to offset unavoidable temporary and permanent Project impacts to waters of the United States and/or State must be achieved as described in the table below:

	Impacts (acres)	Impacts (linear ft.)	Mitigation for Impacts (acres)	Mitigation Ratio (area mitigated :area impacted)	Mitigation for Impacts (linear ft.)	Mitigation Ratio (linear feet mitigated :linear feet impacted)
Permanent Impacts						
Ocean	0.001[1]	235 linear feet	0.003 Re-establishment[2]	3:1	N/A	N/A
Ocean	0.103[3]		0.103[4] rehabilitation	1:1	N/A	N/A

1. The project will permanently impact through direct fill of 0.004 acre of new piles and will reduce fill by 0.003 with removal of existing piles.
2. Re-establishment will be provided through the Port of San Diego's ledger for removal of fill. The specific removal of fill from the ledger that will be used to offset fill impacts from the Project is the removal that occurred in 2012 as part of the B Street Project.

3. The project will permanently impact 0.103 acres of open water through shading.
4. Rehabilitation will be provided by acquiring 0.103 acres of shading credit available through the Port of San Diego's general ledger for the removal of over the water structures.

C. **Eelgrass.** A pre-construction eelgrass survey must be completed in accordance with the requirements of the California Eelgrass Mitigation Policy (CEMP; National Marine Fisheries Service 2014) by a qualified biologist, prior to initiation of construction activities at the site. This survey must include both aerial and density characterization of the beds. If eelgrass is found during the pre-construction survey, a post-construction survey must be performed by a qualified biologist within 30 days following project completion to quantify any unanticipated losses to eelgrass habitat. Impacts must then be determined from a comparison of pre- and post-construction survey results. Impacts to eelgrass, if any, must be mitigated through conformance with the CEMP, which defines the mitigation ratio and other requirements to achieve mitigation for significant eelgrass impacts. If required following the post-construction survey, the CEMP defined mitigation must be developed; submitted and approved by the San Diego Water Board, U.S. Army Corps of Engineers, and National Marine Fisheries Service; and implemented to offset losses to eelgrass.

D. **Temporary Project Impact Areas.** The Applicant must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge of pollutants to waters of the United States and/or State. Restoration must include grading of disturbed areas to pre-project contours and re-vegetation with native species. The Applicant must implement all necessary BMPs to control erosion and runoff from areas associated with the Project.

E. **Mitigation Credit Ledger.** Prior to the start of construction, the applicant must provide documentation to the San Diego Water Board verifying the deduction of the 0.103 acre of shading credit and 0.003 acre of fill credit from the Port of San Diego Ledger.

VII. MONITORING AND REPORTING REQUIREMENTS

A. **Representative Monitoring**. Samples and measurements taken for the purpose of monitoring under this Certification shall be representative of the monitored activity.

B. **Monitoring Reports**. Monitoring results shall be reported to the San Diego Water Board at the intervals specified in section VII. of this Certification.

C. **Monitoring and Reporting Revisions**. The San Diego Water Board may make revisions to the monitoring program at any time during the term of this Certification and may reduce or increase the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.

D. **Records of Monitoring Information.** Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

E. **Receiving Water Visual Observation Monitoring.** The Applicant must conduct visual observation monitoring of the Project activities in San Diego Bay prior to, during, and after each period of project construction. The visual observation monitoring documentation must be included in the Receiving Water and Visual Observation Monitoring Report(s).

1. **Parameters.** The following parameters shall be visually monitored immediately outside of the construction area:

   i. No floating particulates, suspended materials, grease, or oil; and

   ii. No significant discoloration of the water surface.

2. **Field Documentation.** All visual observations shall be recorded throughout Project construction activities. In addition to the requirements listed in section VI.D., monitoring field logs shall include observations of water quality conditions including sheen, color, odor, floating particulates, and surface visible turbidity plume. Logs shall also include observations of sensitive biological resources and weather conditions, such as wind speed/direction and cloud cover.

   If photo documentation is used in support of visual observations of water quality conditions, it should be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/401c/401PhotoDocRB9V713.pdf. In addition, photo documentation should include Global Positioning System (GPS) coordinates for each of the photo points referenced; and,

3. **Response Actions.** If the condition of the silt curtain is observed to be damaged, has become dislocated, or has gaps where a visible turbidity plume is forming outside of the silt curtain at the Project Site, a response action shall be taken immediately to correct the situation. Response actions may include, but are not limited to, work stoppage until silt curtain repair is completed, implementation of operational modifications, and/or implementation of additional BMPs (e.g., a second silt curtain). Response actions, if needed, shall be documented in the monitoring field log.

F. **Receiving Water Quality Monitoring**. The Applicant shall conduct receiving water monitoring during construction activities at the Project Site to verify that applicable water quality standards for pH, dissolved oxygen and turbidity are not violated outside of the construction areas. The monitoring plan shall contain the following elements:

1. **Monitoring Stations**. During each monitoring event, water quality parameters including turbidity, dissolved oxygen, and pH shall be measured at four stations at the Project Site. Monitored water quality measurements shall be compared to "ambient" San Diego Bay reference measurements outside the construction area. Three stations shall be compliance stations and one station shall be a reference station. Monitoring station positions shall be located using a Global Position System (GPS) accurate to within ±3 meters. Station descriptions are as follows:

   i. ***Compliance Stations***. Three monitoring stations at the Project Site shall be located evenly along an arc located 200 feet from the edge of the construction area to capture all tidal and current conditions. Two of the compliance stations shall be located nearshore on the northward and southward sides along the 200-foot compliance arc, approximately the same distance from shore. One additional offshore compliance stations shall be located off-shore from the Project Site along the 200-foot compliance arc. The locations shall be adjusted in the field to better target a visible turbidity plume, if a visible plume is observed; and

   ii. **Reference *Station***. One reference station shall be located more than 1 mile from the construction activity in the direction of the head of San Diego Bay and beyond the influence of construction activities. Natural turbidity, dissolved oxygen, and pH shall be determined through measurements at the reference station. A reference station shall be monitored during every event, because the turbidity water quality objective is based on an acceptably small increase in the vicinity of the construction activity relative to ambient reference levels. The location of the reference station shall remain the same for all monitoring events;

2. **Water Quality Measurements**. Monitored water quality measurements for turbidity, dissolved oxygen, and pH at the Compliance Stations shall be compared to Reference Station measurements outside the construction area. Water quality measurements shall be collected from a depth of 10 feet below the water surface at each of the stations. Monitoring depths shall be determined using a depth finder with an accuracy of ±0.5 feet. Water quality shall be monitored using instrumentation capable of measuring dissolved oxygen (DO), pH, and turbidity (in nephelometric turbidity units (NTU's));

3. **Monitoring Frequency**. Water quality monitoring at the Compliance and Reference Stations shall be conducted on a weekly basis after pile driving activities have been underway for at least 1 hour. After the commencement of dredging, beach construction, or in-Bay sediment placement activities, water quality monitoring at the Compliance and Reference Stations shall be conducted twice weekly after dredging activities have been underway for at least 2 hours. Monitoring frequency will increase to daily if an exceedance of the Receiving Water Limitations described in section II.E of this Certification is observed. Daily water column monitoring may return to once or twice weekly monitoring after 3 consecutive days without an exceedance is observed;

4. **Sample Integrity**. The integrity of each water sample collected shall be maintained from the time of collection to the point of data reporting. Proper record keeping and chain of custody (COC) procedures shall be implemented to allow samples to be traced from collection to final disposition. After collection of water samples, documentation on various logs and forms shall be required to adequately identify and catalog sample information; and

5. **Compliance Criteria**. Receiving Water Limitations are provided in section II.E of this Certification. The point of compliance with these receiving water limitations shall be located 200 feet from the edge of the construction area. The construction area is defined as the area(s) occupied by the dredging barge(s), the sediment barge(s), pile driving equipment, silt curtains, beach construction, in-Bay sediment placement, and other associated work activities.

G. **Response Actions to Monitoring Results**. In the event that visual observations or water quality monitoring described in Section VI.E and VI.F of this Certification indicate an exceedance of an applicable Receiving Water Limitation described in Section II.E of this Certification, the Applicant shall implement the additional or enhanced operational or engineering BMPs described below:

1. Evaluate the concurrent measurements at background and compliance monitoring stations and supporting visual evidence to determine whether the exceedance is caused by construction activities or by other ambient conditions in San Diego Bay (e.g., wind waves, boat wakes, barge/ship traffic, and storm inflow).

2. Immediately re-take measurements at background and compliance stations.

3. If the exceedance is confirmed, immediately notify the dredge contractor to immediately modify operations or implement additional BMPs to mitigate the exceedance. Operational modifications may include, but are not limited to the following modifications implemented individually or in combination:

   i. Adjust the sequence and/or speed of dredging and disposal operations;

   ii. Reposition dredge operations in such a way as to ensure future exceedances do not occur;

   iii. Fix, maintain, and/or upgrade floating silt curtains; and

   iv. Modify, either on a temporary or permanent basis, dredge equipment (such as the dredging bucket size or type).

4. Re-evaluate field measurements at all relevant stations 30 minutes later, after additional BMPs or operational modifications are implemented.

5. If the receiving water limitation exceedance continues to persist, even with additional BMPs, determine and implement more aggressive BMPs or operational modifications that resolve the exceedance or stop work to further assess the source

of the exceedance, identify effective mitigation measures, and allow the water column to recover.

H. **Geographic Information System Data.** The Applicant must submit Geographic Information System (GIS) shape files of the Project impact sites within 30 days of the start of project construction and GIS shape files of the Project mitigation sites within 30 days of mitigation installation. All impact and mitigation site shape files must be polygons. Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points. GIS metadata must also be submitted.

I. **Annual Project Progress Reports.** The Applicant must submit annual Project progress reports describing status of BMP implementation, and compliance with all requirements of this Certification to the San Diego Water Board prior to **March 1** of each year following the issuance of this Certification, until the Project has reached completion. The Annual Project Progress Reports must contain compensatory mitigation monitoring information sufficient to demonstrate how the compensatory mitigation project is progressing towards accomplishing its objectives and meeting its performance standards. Annual Project Progress Reports must be submitted even if Project construction has not begun. The monitoring period for each Annual Project Progress Report shall be January 1st through December 31st of each year. Annual Project Progress Reports must include, at a minimum, the following:

   a. The names, qualifications, and affiliations of the persons contributing to the report;

   b. The status, progress, and anticipated schedule for completion of Project construction activities including the installation and operational status of best management practices project features for erosion and storm water quality treatment;

   c. A description of Project construction delays encountered or anticipated that may affect the schedule for construction completion; and

   d. A description of each incident of noncompliance during the annual monitoring period and its cause, the period of the noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

   e. The pre- and post- construction eelgrass surveys, as applicable, required under section VI.C of this Certification, including a description of any additional actions that will be taken by the Applicant to mitigate for impact to eelgrass habitat beyond what is expected.

J. **Final Project Completion Report.** The Applicant must submit a Final Project Completion Report to the San Diego Water Board **within 30 days of completion of the Project.** The final report must include the following information:

1. Date of construction initiation;

2. Date of construction completion;

3. Photo documentation of implemented post-construction BMPs and all areas of permanent and temporary impacts, prior to and after project construction. Photo documentation must be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/401c/401PhotoDocRB9V713.pdf. In addition, photo documentation must include Global Positioning System (GPS) coordinates for each of the photo points referenced; and

K. **Reporting Authority.** The submittal of information required under this Certification, or in response to a suspected violation of any condition of this Certification, is required pursuant to Water Code section 13267 and 13383. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit information pursuant to Water Code sections 13268 or 13385.

L. **Electronic Document Submittal.** The Applicant must submit all reports and information required under this Certification in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to:

California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification No. R9-2016-0174:826835:ngergans
2375 Northside Drive, Suite 100
San Diego, California 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF), and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Certification No. R9-2016-0174:826835:ngergans.

M. **Document Signatory Requirements**. All applications, reports, or information submitted to the San Diego Water Board must be signed as follows:

1. For a corporation, by a responsible corporate officer of at least the level of vice president.

2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.

3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.

4. A duly authorized representative may sign applications, reports, or information if:

   a. The authorization is made in writing by a person described above.

   b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.

   c. The written authorization is submitted to the San Diego Water Board Executive Officer.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

N. **Document Certification Requirements**. All applications, reports, or information submitted to the San Diego Water Board must be certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

VIII. NOTIFICATION REQUIREMENTS

A. **Twenty Four Hour Non-Compliance Reporting.** The Applicant shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the San Diego Water Board within **24 hours** from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The San Diego Water Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

B. **Hazardous Substance Discharge**. Except as provided in Water Code section 13271(b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of San Diego, in accordance with

California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of the Water Code unless the Applicant is in violation of a Basin Plan prohibition.

C. **Oil or Petroleum Product Discharge.** Except as provided in Water Code section 13272(b), any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition.

D. **Anticipated Noncompliance**. The Applicant shall give advance notice to the San Diego Water Board of any planned changes in the Project or the Compensatory Mitigation project which may result in noncompliance with Certification conditions or requirements.

E. **Commencement of Construction Notification.** The Applicant must notify the San Diego Water Board in writing at least 5 days prior to the start of initial Project construction ground disturbance

F. **Transfers.** This Certification is not transferable in its entirety or in part to any person or organization except after notice to the San Diego Water Board in accordance with the following terms:

1. **Transfer of Property Ownership:** The Applicant must notify the San Diego Water Board of any change in ownership of the Project area. Notification of change in ownership must include, but not be limited to, a statement that the Applicant has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the San Diego Water Board **within 10 days of the transfer of ownership.**

2. **Transfer of Mitigation Responsibility:** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Certification must include a signed statement from an authorized representative of the new party

(transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**

3. **Transfer of Post-Construction BMP Maintenance Responsibility:** The Applicant assumes responsibility for the inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to another entity. At the time maintenance responsibility for post-construction BMPs is legally transferred the Applicant must submit to the San Diego Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications. The Applicant must provide such notification to the San Diego Water Board within **10 days** of the transfer of BMP maintenance responsibility.

Upon properly noticed transfers of responsibility, the transferee assumes responsibility for compliance with this Certification and references in this Certification to the Applicant will be interpreted to refer to the transferee as appropriate. Transfer of responsibility does not necessarily relieve the Applicant of responsibility for compliance with this Certification in the event that a transferee fails to comply.

IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

A. The San Diego Unified Port District is the Lead Agency under the California Environmental Quality Act (CEQA) (Public Resources Code section 21000, et seq.) section 21067, and CEQA Guidelines (California Code of Regulations, title 14, section 15000 et seq.) section 15367, and has filed a Notice of Determination dated December 13, 2016 for the Mitigated Negative Declaration (MND) titled Final Mitigated Negative Declaration Portside Pier Restaurant Redevelopment Project San Diego, CA (State Clearing House Number 2016051007). The Lead Agency has determined the Project will have a significant effect on the environment and mitigation measures were made a condition of the Project.

B. The San Diego Water Board is a Responsible Agency under CEQA (Public Resources Code section 21069; CEQA Guidelines section 15381). The San Diego Water Board has considered the Lead Agency's FEIR and finds that the Project as proposed will have a significant effect on resources within the San Diego Water Board's purview.

C. The San Diego Water Board has required mitigation measures as a condition of this Certification to avoid or reduce the environmental effects of the Project to resources within the Board's purview to a less than significant level.

D. The Lead Agency has adopted a mitigation monitoring and reporting program pursuant to Public Resources Code section 21081.6 and CEQA Guidelines section 15097 to ensure that mitigation measures and revisions to the Project identified in the FEIR are implemented. The Mitigation Monitoring and Reporting Program (MMRP) is included

and incorporated by reference in Attachment 4 to this Certification. The Applicant shall implement the Lead Agency's MMRP described in the FEIR, as it pertains to resources within the San Diego Water Board's purview. The San Diego Water Board has imposed additional MMRP requirements as specified in sections VI and VII of this Certification.

E. As a Responsible Agency under CEQA, the San Diego Water Board will file a Notice of Determination in accordance with CEQA Guidelines section 15096 subdivision (i).

X. SAN DIEGO WATER BOARD CONTACT PERSON

Staff Name, Nicole Gergans
Telephone: 503-419-8770
Email: nicole.gergans@waterboards.ca.gov

XI. WATER QUALITY CERTIFICATION

I hereby certify that the proposed discharge from the **Portside Pier Restaurant Redevelopment Project** (Certification No. R9-2016-0174) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue individual waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited to, and all proposed mitigation being completed in strict compliance with, the applicants' Project description and/or the description in this Certification, and (b) compliance with all applicable requirements of the Basin Plan.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Certification No. R9-2016-0174 issued on October 13, 2017.

David W. [illegible]
DAVID W. GIBSON
Executive Officer
San Diego Water Board

13 Oct. 2017
Date

ATTACHMENT 1
DEFINITIONS

Activity - when used in reference to a permit means any action, undertaking, or project including, but not limited to, construction, operation, maintenance, repair, modification, and restoration which may result in any discharge to waters of the state.

Buffer - means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

California Rapid Assessment Method (CRAM) - is a wetland assessment method intended to provide a rapid, scientifically-defensible and repeatable assessment methodology to monitor status and trends in the conditions of wetlands for applications throughout the state. It can also be used to assess the performance of compensatory mitigation projects and restoration projects. CRAM provides an assessment of overall ecological condition in terms of four attributes: landscape context and buffer, hydrology, physical structure and biotic structure. CRAM also includes an assessment of key stressors that may be affecting wetland condition and a "field to PC" data management tool (eCRAM) to ensure consistency and quality of data produced with the method.

Compensatory Mitigation Project - means compensatory mitigation implemented by the Applicant as a requirement of this Certification (i.e., applicant -responsible mitigation), or by a mitigation bank or an in-lieu fee program.

Discharge of dredged material – means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States and/or State.

Discharge of fill material – means the addition of fill material into waters of the United States and/or State.

Dredged material – means material that is excavated or dredged from waters of the United States and/or State.

Ecological Success Performance Standards – means observable or measurable physical (including hydrological), chemical, and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Enhancement – means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment – means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist. Creation results in a gain in aquatic resource area.

Fill material – means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body.

Isolated wetland – means a wetland with no surface water connection to other aquatic resources.

Mitigation Bank – means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing mitigation for impacts authorized by this Certification.

Preservation - means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/ historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/ historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Start of Project Construction - For the purpose of this Certification, "start of Project construction" means to engage in a program of on-site construction, including site clearing, grading, dredging, landfilling, changing equipment, substituting equipment, or even moving the location of equipment specifically designed for a stationary source in preparation for the fabrication, erection or installation of the building components of the stationary source within waters of the United States and/or State.

Uplands - means non-wetland areas that lack any field-based indicators of wetlands or other aquatic conditions. Uplands are generally well-drained and occur above (i.e., up-slope) from nearby aquatic areas. Wetlands can, however, be entirely surrounded by uplands. For example, some natural seeps and constructed stock ponds lack aboveground hydrological connection to other aquatic areas. In the watershed context, uplands comprise the landscape matrix in which aquatic areas form. They are the primary sources of sediment, surface runoff, and associated chemicals that are deposited in aquatic areas or transported through them.

Water quality objectives and other appropriate requirements of state law – means the water quality objectives and beneficial uses as specified in the appropriate water quality control plan(s); the applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act; and any other appropriate requirement of state law.

Waters of the State - means any surface water or groundwater, including saline waters, within the boundaries of the State. [Water Code section13050, subd. (e)].

ATTACHMENT 2
PROJECT MAPS

1) **Figure 1 – Regional Map**
2) **Figure 2 – Vicinity Map**

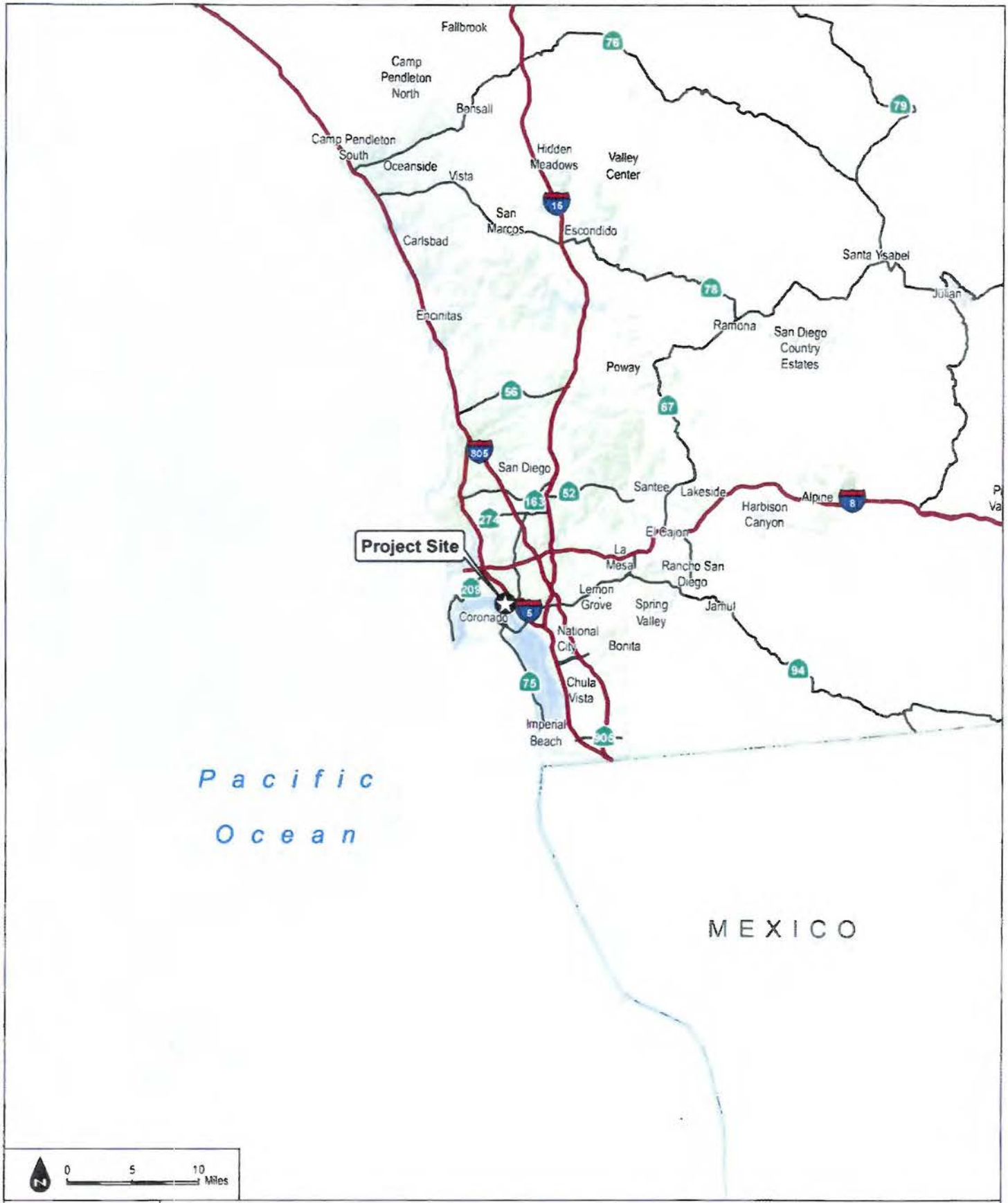


FIGURE 1
Regional Map

DUDEK

Portside Pier Restaurant Redevelopment Project

SOURCE: USGS 7.5-Minute Series Quadrangle

DUDEK

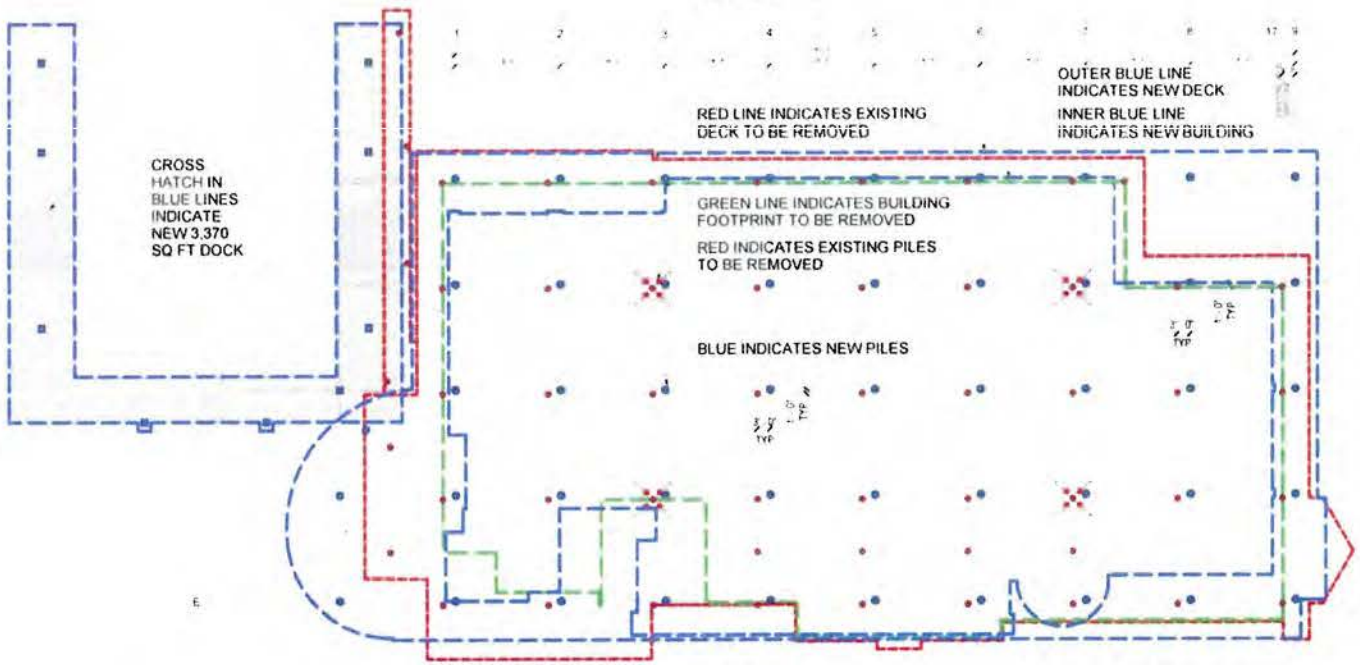
FIGURE 2
Vicinity Map

Portside Pier Restaurant Redevelopment Project

ATTACHMENT 3
PROJECT SITE PLANS

1) **CDP Exhibit 2**
2) **Figure 4 – Portside Pier Building Section**

CDP Exhibit 2



LEGEND

- NEW 24" OCTAGON PILES
- NEW 18" SQUARE PILES AT NEW DOCK
- EXISTING 16" OCTAGON PILES TO BE REMOVED
- 24" BATTERED PILES TO BE REMOVED

PILE COUNT

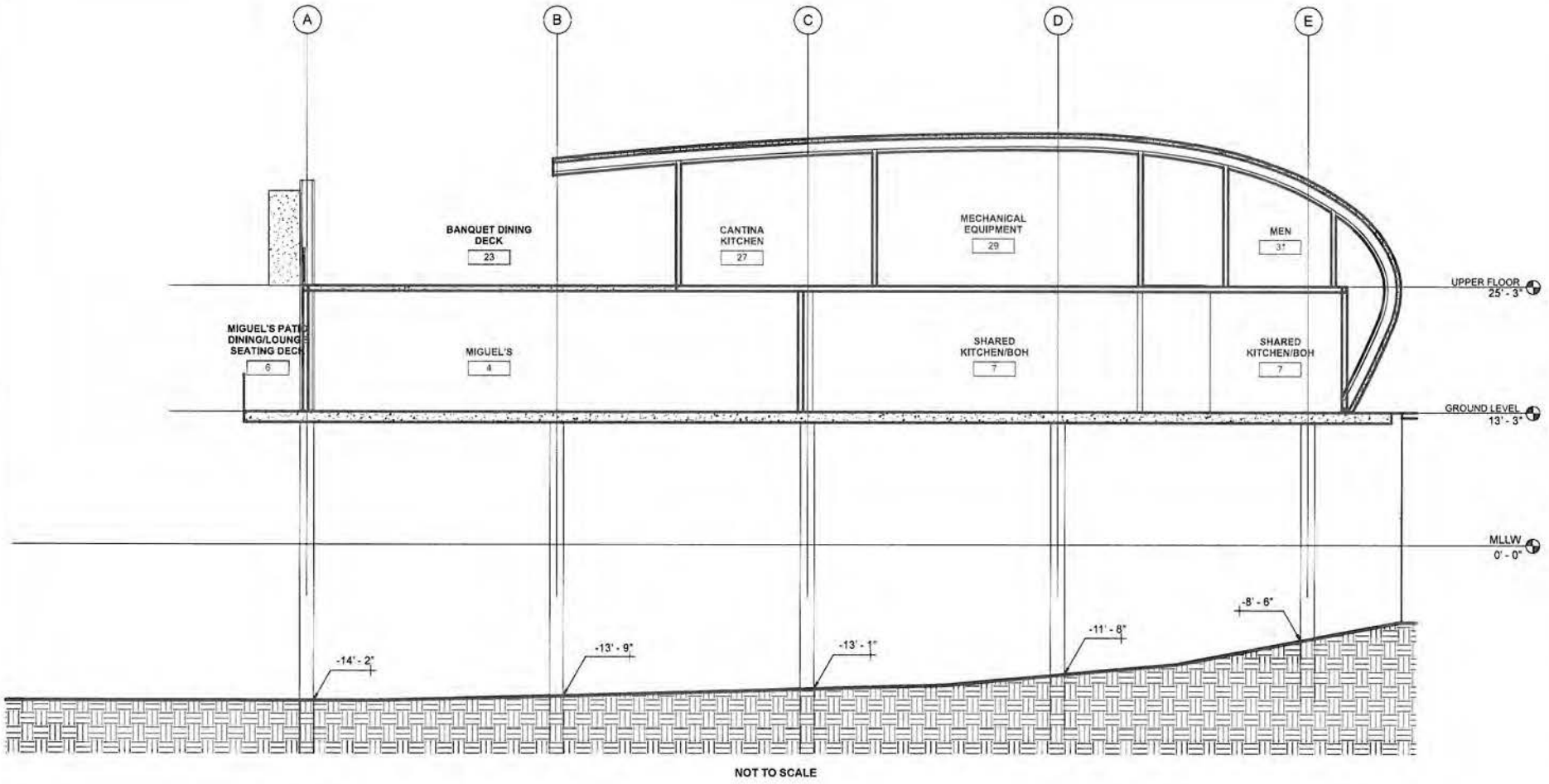
EXISTING PILE COUNT	= 63	NEW PILE COUNT	= 48
PILES AT EXISTING DOCK	= 6	NEW PILES AT NEW DOCK	= 9

TUCKER SADLER

PORTSIDE PIER

21511.00 | MV | 06/26/17 | DM DM

A200



NOT TO SCALE

DUDEK

SOURCE: TUCKER SADLER 2015

FIGURE 4
Portside Pier Building Section

Portside Pier Restaurant Redevelopment Project

ATTACHMENT 4
CEQA MITIGATION MONITORING AND REPORTING PROGRAM

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
Biological Resources			
BIO-1: 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.	Applicant/ contractor	During all in-water demolition and construction	Applicant shall deploy a turbidity curtain during pile driving.
BIO-2: 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.	Applicant/ contractor	During all in-water demolition and construction	Applicant shall have a biological monitor present when pile driving during the California least tern breeding season and shall implement the mitigation plan. District shall maintain survey reports in project files.
BIO-3: 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	Applicant/ contractor	During all in-water demolition and construction	Applicant shall have a biological monitor present during pile driving and shall implement the

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
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 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			mitigation plan. District shall maintain survey reports in project files.

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
be conducted until conditions change. The following shutdown zones, and buffers, will avoid the potential for impacts. For Demolition (assuming vibratory pile removal): • 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. For Construction (assuming impact pile driving): • 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). Additional requirements: • 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. • If at any point pile driving stops for greater than one hour, then the			

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
soft start procedure must be conducted prior to the start of further pile driving activities. • Observers will observe for 30 minutes after construction has ended. • 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. • 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 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. • 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 of			

	Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
	Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
	Attachment A). 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.			
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.	Applicant/ contractor	Prior to demolition and construction	Applicant shall conduct the required surveys and shall implement the mitigation plan, as appropriate. District shall maintain survey reports in project files.

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
Hazards and Hazardous Materials			
HAZ-1: Airport Land Use Commission (ALUC) formal review and determination on the proposed project shall be obtained prior to initiation of project construction.	Applicant/ District	Prior to initiation of construction	Applicant shall obtain ALUC approval.
Transportation/Traffic (Parking)			
TRA-1 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: • 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. • During initial site preparation, the construction contractor will post signage at the temporarily displaced parking spaces to direct visitors to nearby available parking.	Applicant/ contractor	Prior to construction	Applicant shall implement mitigation plan.
TRA-2: The applicant will implement the following parking management strategies to mitigate the projected parking deficiency: • 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. • Wayfinding Signage – Provide changeable signage to direct patrons to the parking facilities (as	Applicant/ contractor	Prior to operation	Applicant shall implement mitigation plan.

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
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. • Valet Parking – Secure 974~~9~~ 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. 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			

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
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 – ~~Coordination~~ Applicant shall coordinate 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			

Table MMRP-1 – Portside Pier Restaurant Redevelopment Project Mitigated Negative Declaration ~~Draft~~ Mitigation Monitoring and Reporting Program			
Mitigation Measure(s)	Responsible Party	Mitigation Timing	Monitoring and Reporting Procedures
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 on-going shuttle program. • 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: o ~~Wyndham Hotel: (+400 stalls)~~ o Portman Hotel: (+400 stalls) o ~~Navy Pier Lot: (+350 stalls)~~ o 610 West Ash Street: (+410 stalls) o 410 West Ash Street (+510 stalls) o 1230 Columbia Street (+228 stalls)			

Reporting and documentation of implementation of the above mitigation measures shall be performed in accordance with District Administrative Policy No. 750. The project mitigation measures will be made a specific condition of the applicant's CDP for the project issued pursuant to District Administrative Procedure No. 760.

VI. FINDINGS

The project, with the incorporation of mitigation measures and monitoring program, will have no significant impact on the environment with respect to Biological Resources, Hazards and Hazardous Materials, and Transportation/Traffic (Parking) nor would the project otherwise have potentially significant adverse impacts to Aesthetics, Agricultural and Forest Resources, Air Quality, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hydrology and Water Quality, Land Use and Planning, Mineral Resources and Energy, Noise, Population and Housing, Public Services, Recreation, and Utilities and Service Systems.

VII. DOCUMENTATION

The attached Initial Study (see Attachment A) and additional appendices to the Initial Study document the reasons in support of the above findings.

ATTACHMENT 5
MITIGATION LEDGER

District Shading Ledger (last updated 10/02/2017)

						In-Water Fill					
Project	Address	Date	Previous Size (sf)	New Size (sf)	Difference (sf)	Pile Removed	Pile Added	Net Pile Count	Pile Type Removed	Pile Type Added	Net Pile (SF)
Tom Ham's Lighthouse dock	2150 Harbor Island Dr, San Diego, CA 92101	2004	1,573	0	-1,573						
Kona Kai Marina dock replacement	1901 Shelter Island Dr, San Diego, CA 92106	2004	153,276	109,307	-43,969						
Varasano Dock Replacement	La Playa	2005	1,371	1,368	-3						
Driscoll's Wharf	4918 N Harbor Dr, San Diego, CA 92106	2007	744	535	-209						
Pepper Park Boat Launch Facility Improvements	3299 Tidelands Ave, National City, CA91950	2007	1,550	2,630	1,080						
Pt Loma Marina	4980 N Harbor Dr, San Diego, CA 92106	2008	0	23,958	23,958						
Silver Gate Yacht Club	2091 Shelter Island Dr, San Diego, CA 92106	2008	33,000	29,450	-3,550						
Water Transportation Center, 5th Ave Landing	600 Convention Way, San Diego, CA 92101	2008	13,533	16,954	3,421						
Eichenlaub Marine Facility Renovation	2608 Shelter Island Dr, San Diego	2008	3,248	2,978	-270						
Marina Cortez Dock Replacement	Harbor Island, San Diego, CA	2009	125,951	106,647	-19,304						
B Street Pier South Berth Fender System Upgrade	1140 North Harbor Dr, San Diego, CA 92101	2012	N/A	N/A	–	114	51	-63	188.78 SF: (88) creosote wooden 18" diameter rounded (155.76sf), (26) plastic 15.25" diameter were removed (33.02sf)	90.78 SF: (51) 16" square concrete piles	-98
Next Level Sailing Dock (PH 1)	1140 North Harbor Dr, San Diego, CA 92101	2012	1,346	0	-1,346						
Seaport Village Old Water Taxi Dock	849 W Harbor Dr, San Diego, CA 92101	2009 (2013?)	880		-880						
BAE Pier 4 Replacement Project & Pier 5 Demo	2205 Belt St, San Diego, CA 92113	2013	20,269	26,944	6,675						
Shelter Island Boatyard Crane Replacement and Pier Addition	2330 Shelter Island Dr, San Diego, CA 92106	2014 (?)	1,247	1,240	-7						
B Street Pier West End Fender System Upgrade	1140 North Harbor Dr, San Diego, CA 92101	2016	N/A	N/A	–	81	73	-8	99.6 SF: (51) 15" dia timber, (14) 15" dia plastic, (16) 15" dia hanging	74.75 SF: (28) 16" dia fiberglass, (45) 12" dia fiberglass	-25
Humphreys Half Moon Inn Marina Dock Replacement	2303 Shelter Island Dr, San Diego 92106	2016	26,650	25,891	-759						
Navy Pier (USS Midway) Fender and Pile Removal	Navy Pier, San Diego, CA 92101	2016	258	32	-226						
Shelter Island Boat Launch Facility Improvements	2210 Shelter Island Dr, San Diego 92106	Not Yet Built	56,730	35,747	-20,983						
B Street Pier Mooring Dolphin	1140 North Harbor Dr, San Diego, CA 92101	Not Yet Built	0	0	0						
Portside Pier	1360 N Harbor Dr, San Diego, CA 92101	Not Yet Built	23,850	28,330	4,480	87	56	-31	(66) 18" dia concrete (92.4sf), (21) along Embarcadero (TBD)	175.84 SF: (56) 24" dia concrete	TBD
* N/A indicates the removal and/or addition of structure is either balanced or negligible in regards to shading coverage											
* Red text indicates projects not complete - NET Shading calculations do not account for these projects at this time											
		NET Shading (sf)	613,344	373,212	-240,132	195	124	-71		NET Pile (sf)	-123

District Shading Ledger (last updated 10/02/2017)

In-Water Fill

Project	Address	Date	Previous Size (sf)	New Size (sf)	Difference (sf)	Pile Removed	Pile Added	Net Pile Count	Pile Type Removed	Pile Type Added	Net Pile (SF)
Coronado Boatyard		1993	4,219	0	-4,219						
Convair Lagoon (East) (100'x__)	Directly west of USCG bldg at 2710 N Harbor Dr, San Diego, CA 92101	1995	1,217	0	-1,217						
Convair Lagoon (Southwest) (82'x__)	Directly west of USCG bldg at 2710 N Harbor Dr, San Diego, CA 92101	1995	(combined with above)	0	--						
General Dynamics Launch Ramp	2798 Harbor Drive, San Diego, 92113	1995	4,808	0	-4,808						
Bay City Marine	1625 Cleveland Ave, National City, CA 91950	1996?	25,782	0	-25,782						
Campbell-Net Pier	In water directly off Hilton San Diego Bayfront, 1 Park Blvd, San Diego, CA 92101	2001	13,950	0	-13,950						
Campbell-Pier Zero	--	2001	6,156	0	-6,156						
Campbell-Pier One	--	2001	8,500	0	-8,500						
Campbell-Pier Three	--	2001	5,250	0	-5,250						
Campbell-Pier Four	--	2001	7,000	0	-7,000						
Campbell-Pier Five	--	2001	9,200	0	-9,200						
Campbell-Apron & Margin Pier	--	2001	17,250	0	-17,250						
Campbell-Pier 5 Margin	--	2001	1,088	0	-1,088						
Campbell-Dry 1	--	2001	8,960	0	-8,960						
Campbell-Dry 2	--	2001	14,080	0	-14,080						
Campbell-Dry 3	--	2001	14,080	0	-14,080						
Campbell-Dry 4	--	2001	32,696	0	-32,696						
Campbell-Dry 5	--	2001	32,696	0	-32,696						
Pehoe's Restaurant	1201 1st St, Coronado, CA 92118	2001	4,700	4,600	-100						
Harbor Police Dock and Transient Vessel Dock Replacement	1401 Shelter Island Dr, San Diego, CA 92106	2002	12,616	13,878	1,262						
Dinghy Dock, Anchorage Area A-3	Directly east of USCG bldg at 2710 N Harbor Dr, San Diego, CA 92101	2003	900	1,600	700						
Pepper Park Boat Launch	3299 Tidelands Ave, National City, CA91950	2003	1,050	1,550	500						
Chula Vista Boat Launch Facility (same project as Pepper Park?)		2003	1,450	1,800	350						
San Diego Yacht Club Safety Fingers	1011 Anchorage Ln, San Diego, CA 92106	2003	0	450	450						
Shelter Island Fishing Pier ADA Boat Dock	1776 Shelter Island Dr, San Diego, CA 92106	2003	800	1,400	600						