

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

May 13, 2016

Certified Mail – Return Receipt Requested
Article Number: 7011 0470 0002 8952 7823

Mr. Uri Feldman
Sunroad Harbor Island, Inc.
4445 Eastgate Mall
Suite 400
San Diego, CA 92121

In reply/refer to:
807947:mporter

Subject: Amendment No. 1 to Clean Water Act Section 401 Water Quality Certification No. R9-2014-0093 for the 880 Harbor Island Drive Project


Mr. Feldman:

Enclosed find Amendment No. 1 (Certification Amendment) to Clean Water Act Section 401 Water Quality Certification No. R9-2014-0093 (Certification) issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) in response to an amendment request submitted by Sunroad Harbor Island, Inc. for the 880 Harbor Island Drive Project (Project). The Certification Amendment shows changes in underline/strikeout format to indicate added and removed language. A complete copy of the Certification has also been enclosed for your reference.

Failure to comply with the Certification Amendment may subject Sunroad Harbor Island, Inc. to enforcement actions by the San Diego Water Board including administrative enforcement orders requiring Sunroad Harbor Island, Inc. to cease and desist from violations or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and/or referral to the District Attorney for criminal prosecution.

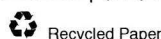
In the subject line of any response, please include reference number 807947:mporter. For questions or comments, please contact Mike Porter by telephone at (619) 521-3967 or by email at mike.porter@waterboards.ca.gov.

Respectfully,


for *James G. Smith, AEO*
DAVID W. GIBSON
Executive Officer

HENRY ABARBANEL, PH.D. | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108 | (619) 516-1900 | www.waterboards.ca.gov/sandiego



Enclosure:

Clean Water Act Section 401 Water Quality Certification No. R9-2014-0093 for the 880 Harbor Island Drive Project

DWG:jgs:dtb:esb:mgp

CC:

U.S. Army Corps of Engineers, Regulatory Branch
San Diego Field Office
Mr. Robert Smith
Robert.R.Smith@usace.army.mil

U.S. EPA, OWOW, Region 9
R9-WTR8-Mailbox@epa.gov

State Water Resources Control Board
Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

Ms. Cynthia L. Eldred, Esq.
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Tech Staff Info & Use	
Certification No.	R9-2014-0093
Party ID	547813
File No.	R9-2014-0093
WDID	9 000002743
Regulatory ID	397481
Place ID	807947
Person ID	547814

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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**Amendment No. 1 to Clean Water Act Section 401
Water Quality Certification No. R9-2014-0093**

**PROJECT: 880 Harbor Island Drive
Certification Number R9-2014-0093**

**APPLICANT: Sunroad Harbor Island, Inc.
4445 Eastgate Mall
Suite 400
San Diego, CA 92121**

Reg. Meas. ID: 397481 Place ID: 807947 Party ID: 547813 Person ID: 547804 WDID: 9000002743

On December 3, 2014, Clean Water Act Section 401 Water Quality Certification No. R9-2014-0093 (Certification) was issued to Sunroad Harbor Island, Inc. (Applicant) for the 880 Harbor Island Drive Project (Project).

By letter dated February 29, 2016, Ms. Andrea Contreras Rosati, on behalf of the Applicant, requested the Certification be amended to allow for dredging of San Diego Bay bottom next to 880 Harbor Island Drive to accommodate the planned mooring of a restaurant/banquet barge.

Based on the Applicant's request, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) is amending the Certification to allow project dredging to accommodate the depth of a floating restaurant/banquet barge. Except as modified or superseded by the Certification modifications set forth below, all of the findings, provisions and other requirements of Certification No. R9-2014-0093 remain in full force and effect. The following changes are made to the Certification and are shown in underline/strikeout format to indicate added and removed language:

Page 1, PROJECT DESCRIPTION is modified as follows:

The Applicant proposes the reconstruction of a restaurant and banquet venue facility at a location where the former Reuben E. Lee vessel restaurant was previously moored on the eastern tip of Harbor Island in San Diego Bay. The reconstructed facilities will include a single story building on land, venue space on a 6,250 square foot floating steel hull barge in San Diego Bay, two gangways totaling 1,060 square feet to provide access to the floating venue space, and 1,702 square feet of public walkway cantilevered over the bay water surface.

The San Diego Bay water surface area previously shaded by the Reuben E. Lee and associated gangways totaled 11,190 square feet and the water surface area shaded by the proposed replacement barge (floating venue space) and associated gangways totals 7,310 square feet. The proposed reconstruction will

decrease the extent of over-water shade during high tide by approximately 3,880 square feet and thereby increase the amount of open bay waters available for foraging birds and increase the area of un-shaded bay bottom available to benthic communities. The proposed reconstruction will require the dredging of 1100 yards³ within a 46 feet by 132 feet foot area to accommodate the deeper draft of the replacement barge. Silt curtains and sediment control measures will be implemented throughout the Project site. Existing armor stone currently located along the shoreline will remain in place to avoid the loss of invertebrate fauna and other associated biological assemblages within the intertidal habitat. The Project does not propose direct impacts to San Diego Bay from fill material. Dredging activities could potentially lead to impacts on Eelgrass beds. Silt curtains and turbidity monitoring data collection will be used to facilitate management of dredging activities to minimize turbidity associated impacts to Eelgrass. A presumption of impacts is assumed by the Applicant that any Eelgrass beds in the dredge footprint will be removed by the Project and that shading from the replacement barge will over time preclude any recolonization of Eelgrass in the dredged area. Based on that that presumption, the Applicant intends to provide compensatory mitigation to offset the presumed permanent loss of 0.14 acres of Eelgrass beds in compliance with California Eelgrass Mitigation Policy (CEMP) requirements through construction of a minimum of 0.19 acre of Eelgrass beds at an off-site location in San Diego Bay.

Modify III. STORM WATER BEST MANAGEMENT PRACTICES Page 7, GENERAL CONDITIONS is as follows:

The title is changed to III. STORM WATER CONSTRUCTION AND POST CONSTRUCTION BEST MANAGEMENT PRACTICES and the following general conditions are added:

- D. The total volume of sediment designated for upland disposal shall not exceed 2000 cubic yards.
- E. The Applicant shall deploy and maintain a continuous length of silt curtains, installed and maintained fully surrounding the active dredge area and the dredge barge/bucket area.
- F. Dredged sediments must be loaded into material barges with watertight compartments and water collection systems to prevent return water from re-entering San Diego Bay.
- G. Prior to discharge to the sanitary sewer system, the dredge sediment decant water must meet the City of San Diego's requirements for discharge of wastewater to the sanitary sewer system. The discharge must comply with any limits on pollutant concentrations, discharge times and flow rates required by the City of San Diego. If the decanted water does not meet City of San Diego's requirements for discharge of

- wastewater to the sanitary sewer, it must be removed by a licensed waste hauler for treatment and disposal at an authorized site.
- H. The on-shore dredged sediment truck loading area must be designed as a no-discharge facility to prevent dredge water from flowing back into San Diego Bay. The design must also prevent storm water run-on or run-off from adjacent areas from entering the offloading area.
- I. Dewatered dredged sediments for upland landfill disposal, classified as nonhazardous, must be transported for disposal at a landfill permitted for accepting this material. Alternative disposal of dredge materials at non-permitted disposal facilities is not authorized by this Certification.
- J. 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 Certification requirements. The biologist shall be granted the authority to stop 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.
- K. Turbidity must be monitored in nephelometric turbidity units (NTU). If natural turbidity is between 0 to 50 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 the turbidity increase exceeds 10 NTUs when turbidity is high or exceeds 20% when turbidity is between 0-50 NTUs, the Applicant shall report the noncompliance. The Applicant must take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

**Pages 7-8, PROJECT IMPACTS AND COMPENSATORY MITIGATION
CONDITION IV. is modified as follows:**

- ~~B. **Eelgrass.** A pre-construction Eelgrass survey must be completed in accordance with the requirements of the Southern California Eelgrass Mitigation Policy (SCEMP) 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 SCEMP, which defines the mitigation ratio and other requirements to achieve mitigation for significant Eelgrass impacts. If required following the post-construction survey, the SCEMP defined mitigation must be developed; 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.~~

- B. **Eelgrass Impacts.** Impacts to any existing Eelgrass beds within the dredge footprint must be no more than 46 feet x 132 feet (6,072 feet² or 0.14 acre).
- C. **Eelgrass Mitigation.** Compensatory mitigation to offset presumed permanent impacts to existing and growth-precluded Eelgrass beds (due to permanent barge shading) shall be achieved at the CEMP minimum compensation ratio of 1.38:1 (area mitigated:area impacted) through construction of a minimum of 0.19 acre of Eelgrass beds in San Diego Bay.
- D. **Compensatory Mitigation Plan.** Within 90 days of Amendment issuance, the Applicant must submit an Eelgrass Mitigation Plan to achieve a no net loss in Eelgrass function in accordance with the CEMP. The Mitigation Plan shall be subject to the approval of the San Diego Water Board, U.S. Army Corps of Engineers, and National Marine Fisheries Service. The Applicant must fully and completely implement the approved Mitigation Plan; any deviations from, or revisions to, the Mitigation Plan must be pre-approved by the San Diego Water Board.
- E. **Compensatory Mitigation Plan Implementation.** Mitigation must commence within 135 days following the initiation of in-water construction resulting in potential impact to Eelgrass habitat, such that mitigation commences within the same Eelgrass growing season as impacts occur.
- F. **Performance Standard.** Compensatory mitigation required under this Certification shall be considered achieved once it has met the ecological success performance standards contained in the Mitigation Plan to the satisfaction of the San Diego Water Board.

Notification: 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 Amendment. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

Sunroad Harbor Island, Inc.
880 Harbor Island Drive
Certification No. R9-2014-0093

December 3, 2014
Amended on May 13, 2016

http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Amendment No. 1 to Certification No. R9-2014-0093 issued on May 13, 2016.



James W. Smith AEO

for

DAVID W. GIBSON
Executive Officer
San Diego Water Board

13 May 2016

Date

