

File

FRIDAY, ITEM 17C

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project: Appeal No. A-6-PSD-09-43 (San Diego Unified Port District, San Diego)
Date and time of communication: August 7, 2009 at 10:45 am
Location of communication: Menlo Park, CA
Type of communication: Teleconference
Persons in attendance: Susan McCabe, Anne Blemker
Person receiving communication: Steve Blank

Detailed substantive description of the content of communication:

The applicants agents said that the Port of San Diego will not oppose staff's recommendation of Substantial Issue, but would focus their efforts on working with staff to resolve their concerns at the De Novo stage..

Date: August 7, 2009

Signature of Commissioner: *Signature on file*

Ex Parte Communication

5

Intentionally
Blank



F17c

3165 Pacific Highway, San Diego, CA 92101
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619.686.6200 • www.portofsandiego.org

VIA HAND DELIVERY

August 7, 2009

RECEIVED
AUG 10 2009
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Honorable Chair Neely and Commissioners
California Coastal Commission, c/o San Diego Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RE: Substantial Issue Hearing on Appeal of Coastal Development Permit No. CDP-2009-02 for the Development of North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project, San Diego, California (Reference Appeal No. A-6-PSD-09-43)

Dear Honorable Chair and Commissioners:

The San Diego Unified Port District (Port) and Centre City Development Corporation (CCDC), on behalf of the City of San Diego Redevelopment Agency, as joint applicants, respectfully submit this letter to reaffirm the importance and significance of the North Embarcadero Visionary Plan Phase 1 Coastal Access Features Project (Project) to the City of San Diego, the region and California. While neither the Port nor CCDC intend to appear at the substantial issue hearing on August 14, 2009, we urge the Commission to determine that no substantial issue exists with respect to the grounds on which the appeals have been filed. As discussed in greater detail in Attachment 1, the Project is consistent with both the certified PMP and the public access policies of Chapter 3 of the Coastal Act. In the event the California Coastal Commission finds substantial issue, Port and CCDC staffs remain committed to working cooperatively with California Coastal Commission staff to reach a mutually beneficial resolution in an efficient manner.

The Project is important to the residents of the region and California because it will enhance enjoyment of the San Diego waterfront by replacing largely unimproved asphalt along the water's edge with an enlarged, cost-free public open space, adding a 105-foot wide esplanade, public plazas, gardens, shade pavilions, walk-up café, restrooms, and roadway improvements. The North Embarcadero Visionary Plan (NEVP) has been an exceptional multi-agency effort, spanning more than a decade, to create a beautiful public space adjacent to the Bayfront. The Port and CCDC believe this is the right time to move this Project forward particularly in today's economic climate. This Project creates jobs and provides incentives for adjacent economic development. It creates a focal point and linkage between the City and the Bay, and will plant the seed for future phases of public access improvements along the Embarcadero.

The NEVP was created through an extensive public outreach process. After adoption of the Master Environmental Impact Report and the Port Master Plan Amendment the public outreach continued as the schematic design evolved. The NEVP's original concepts evolved from 2003 to 2005 through a series of 63 public and stakeholder meetings. Numerous public design workshops and meetings have continued to take place in recent years as the Project

moved from concept to implementation, with continued community and stakeholder support. As such, the Project's evolution has not taken place "behind closed doors"; rather it has occurred in a succession of public meetings with significant public attendance and participation. No public project of such a magnitude can realistically expect to achieve complete support by everyone.

There is urgency to implementing the improvements to coastal access encompassed by the project. The funding for the Project is provided with an advance of funds to the Port from the City's Redevelopment Agency administered by CCDC. Those funds will be paid back as other Port projects generate sufficient revenues to do so. In light of the current State economic situation, funding of public projects may become less viable due to the State's intent to take Redevelopment Agency monies to balance California's budget. The delay of a public improvement project in the coastal zone has state-wide implications to agencies that are prioritizing projects. Coastal access improvement projects such as this will be jeopardized if their entitlements are at risk. Coastal access improvement projects that are not shovel ready are at risk of missing the opportunity for stimulus funding sources. In addition, as all capital improvement funds are short at all levels of government, coastal access improvement projects will not likely meet funding criteria when compared to other projects which are necessary to ensure public safety, environmental/energy sustainability, and transportation infrastructure repair and replacement.

The Project enhances free coastal access for the public and has been designed through a decade long public process. Any further delays will jeopardize the Project's funding. The demise of the Project would be a blow to the people of San Diego and California who would benefit from the free public improvements that enhance coastal access. Thank you for your time and consideration of this matter. Please call John Helmer, Director of Land Use Planning, for the Port at (619) 686-6468 should you have any questions regarding this letter or the Project. We look forward to speaking with you soon.

Sincerely,



Linda Scott
Project Engineer, Engineering
San Diego Unified Port District

Signature on file

Gary Bosse
Assistant Vice President, Public Works
Centre City Development Corporation

Attachment 1: Discussion of Substantial Issue

Cc: Commissioner Wan, Commissioner Burke, Commissioner Blank,
Commissioner Kruer, Commissioner Shallenberger, Commissioner Kram,
Commissioner Mirkarimi, Commissioner Achadjian, Commissioner Clark,

Attachment 1: DISCUSSION OF SUBSTANTIAL ISSUE

The July 30, 2009 California Coastal Commission staff report was prepared in response to seven appeals of the Board of Port Commissioners' July 7, 2009 action authorizing the issuance of Coastal Development Permit No. CDP-2009-02 (CDP) for the North Embarcadero Visionary Plan (NEVP) Phase 1 Coastal Access Features Project (Project).

The Port respectfully disagrees with the recommendation to find substantial issue on any of the grounds listed in the California Coastal Commission staff report. For the reasons discussed below and as set forth in the Port's Notice of Board Action to the California Coastal Commission dated July 9, 2009 and incorporated fully by this reference, the Project is consistent with both the certified Port Master Plan (PMP) and the public access policies of Chapter 3 of the Coastal Act.

While the staff report rejects several claims raised in the appeals, it recommends a finding of Substantial Issue on seven issues. Each of the seven issues is summarized below followed by the Port and CCDC's response as to why each does not raise a substantial issue.

- 1. Changing the plaza configuration from oval to rectangular at the foot of Broadway is consistent with the Port Master Plan and will achieve a comparable level and quality of public open space.**

Coastal Commission Staff Report Issue: Staff indicates that changing the plaza configuration from oval to rectangular at the foot of Broadway will not achieve a comparable level and quality of public open space.

Port/CCDC Response: The level and quality of public open space is maintained through the proposed configuration at more than four acres of open space. The PMP Precise Plan map for the Centre City Embarcadero Planning Area does indicate an oval shaped Park/Plaza land use designation at the foot of Broadway. This oval extends over the water adjacent to the Broadway Pier and extends into both the Lane Field parcel and the Navy Broadway Complex parcel. It is noted that the Navy Broadway property is not within the jurisdiction of the Port. This figure also indicates a curved Harbor Drive extending into those two properties. The NEVP was intended as a vision to guide future development and was not ever intended to prescribe exactly how future buildout of the area would occur. This intent is carried into the certified PMP which states, "The Visionary Plan proposes to revitalize San Diego's downtown waterfront through a concept for public improvements and by guiding development to optimize property values, public access opportunities and priority waterfront and water-dependent uses." An oval shaped park is not mentioned in the PMP text nor was extending the oval over the water analyzed in the NEVP Master EIR. The PMP also recognizes the diagrammatic nature of all PMP precise plan maps by stating, "The figures contained herein are for illustrative purposes only and are subject to change." Therefore, it is clear that the oval shape of the park is not prescribed in the PMP.

Furthermore, through an extensive public process, the oval design once referred to in the NEVP as the 'Broadway Landing' evolved into the 'Broadway Hall'. The Broadway Hall is designed to be available for large public events for which portions of North Harbor Drive and West Broadway roadways would be closed to accommodate large gatherings of people. As part of a series of 63 public and stakeholder outreach meetings held from 2003 to 2004 to vet many of the original NEVP concepts as they moved from concept toward implementation, the Broadway Hall will achieve the same goal as was envisioned for the Broadway Landing and maintain a comparable quality and quantity of public open space. The Port and CCDC Board ultimately agreed that the issues presented by an oval park and curved roadway could be reconciled through a rectangular design while increasing setbacks on the adjacent private properties, by endorsing the Schematic Design at a public meeting in November 2005.

2. The Project does not alter the Port Master Plan (PMP) designations and analysis of the balancing of quality and quantity of park/open space area for the NEVP as a whole has been done through an extensive public process.

Coastal Commission Staff Report Issue: Staff indicates that the PMP has not been revised to designate and allocate the additional sidewalk setbacks and plaza areas nearby, which result from the change in the plaza configuration from oval to rectangular, and that an analysis of the balancing of quality and quantity of any other compensatory park/open space area for the NEVP as a whole should be done through that PMPA process.

Port/CCDC Response: The uses proposed are consistent with the land use designations currently shown on illustrations within the PMP and described in the text. Analysis of the balancing of public open space was a key component of the extensive public process through which the oval and Broadway Landing feature evolved into a rectangle and Broadway Hall feature.

The suggestion that the amount of park/plaza is inconsistent with the PMP is not substantiated because the certified PMP text provides no description as to the shape or size of the park plaza configuration adjacent to Broadway Pier. The graphic representation in the PMP is an illustrative depiction of land uses. Furthermore, the "park/plaza" land use designation specifically allows for "scenic roads" (see p. 27 of the PMP), a category in which the reconstructed Harbor Drive will squarely fit. Because the Project uses are consistent and allowed within the uses as depicted in the existing PMP, no change to the graphic is warranted.

Based on review of the administrative record for the NEVP PMP Amendment, it is clear that the District in consultation with Commission staff, believed that this plaza area would be subject to additional coastal consistency review, environmental review and refinement. The Coastal Consistency Analysis submitted with the PMP Amendment to the Commission dated June 21, 2000 stated the following:

"Although the aesthetics of a curved bayward alignment of Broadway Landing as part of the proposed overall lower Broadway Plaza are apparent, neither the dPMPA nor the Draft MEIR states a functional reason why Broadway Landing must be structurally extended on a piling-supported terrace over San Diego Bay to accomplish its public access and recreational purposes. In concept, at least, the

intersection of reconfigured North Harbor Drive and Broadway could be further adjusted within Port jurisdiction to achieve the same overall size of the public plaza, while avoiding placement of the proposed fill.”

Port staff considers that the setback conditions provided in the Coastal Commission's January 2009 approval of the Coastal Development Permit (CDP) for Lane Field are enforceable protection. That approval substantially increased the Lane Field building setbacks and the amount of plaza space along both Harbor Drive and West Broadway from the setbacks and plazas described in the PMP. Additionally, that approval essentially precluded an oval shaped plaza from being implemented. Any changes to the CDP would require an approval of an amendment from the Coastal Commission. In the event the Lane Field project and permit are superseded, a new CDP would be necessary and requirements for the special setbacks would be mandated to adhere to the uniform control plan agreed to by those parties developing along the West Broadway corridor.

3. The park/plaza and road revisions contain all of the components of Figure 5.3 of the NEVP, which is incorporated by reference into the PMP, and is consistent with PMP.

Coastal Commission Staff Report Issue: Staff indicates that the park/plaza and road revisions are inconsistent with Figure 5.3 of the NEVP, which is incorporated by reference into the PMP, for example the promenade is 29 feet wide not 25 feet wide, the bike path is not separated from the promenade, there is a new water quality feature.

Port/CCDC Response: All of the components of the cross section shown in Figure 5.3 of the NEVP are included in the cross section for the proposed project. Figure 5.3 of the NEVP cannot be interpreted as prescriptive as the PMP and NEVP describe the Esplanade as a minimum of 100 feet wide, while the cross section shows a width of 123 feet. Because the Project cross section is consistent with the PMP text, and because Figure 5.3 is illustrative and conceptual, the proposed 105 foot-wide Esplanade conforms to the certified PMP. We disagree with the staff report conclusion that the parenthetical reference to NEVP Figure 5.3 constitutes incorporation by reference into the PMP. Subsequently Port staff does not agree with this staff report comment and can find no substantiation in either the Coastal Act or the Coastal Commission Regulations that provides for a document or illustration to be “incorporated by reference” into a PMP and therefore become the standard of review for projects.

The Figure 5.3 referenced is described in the NEVP as a 'typical' and conceptual cross section from an undefined point along the envisioned approximately 1.5 mile long esplanade and roadway along North Harbor Drive from the Navy Pier to Laurel Street. The cross section is typical, not prescriptive, and it could not be prescriptive because the actual width of the esplanade and right-of-way varies at different sections of the esplanade and right-of-way, such as where structures would exist, where access to piers is necessary, etc. The NEVP is not a prescriptive plan; rather a concept plan as stated on page 1 of the NEVP: “The purpose of the Plan is to establish a concept for public improvements, and strategies to finance them, befitting the setting and regional significance of the area, and to guide private development in



a way that optimizes property values and reinforces the public realm.” Port staff agrees with Coastal staff comments that consistency with the NEVP is not at issue.

The promenade in the project area currently enables mixed pedestrian and bicycle use. An expanded promenade would improve those conditions and the mixed use would maintain the vibrancy associated with the waterfront.

4. The loss of existing public parking is addressed in the Parking Management Plan which includes measures for the loss that can be implemented prior to or concurrent with the loss.

Coastal Commission Staff Report Issue: Staff indicates that the vast majority of existing public parking would be removed for which the Parking Management Plan does not include requirements that mitigation measures for the loss be implemented prior to or concurrent with the loss.

Port/CCDC Response: The Parking Management Plan is intended to be reviewed annually based on existing – not projected – parking supply and demand. Specific measures can and will be implemented as parking is lost. The Parking Management Plan is designed such that the specific measures could be chosen based on the prevailing conditions (enabling response to more than one project being underway), rather than a project specific condition. For example, the Parking Management Plan addresses the fact that the existing parking at the Lane Field site will be displaced during construction and that 300 additional public parking spaces would be made available upon project completion. Specific measures can be selected from the Parking Management Plan to address the loss of parking from the Project at the time of the loss occurring, consistent with this comment.

5. The Parking Management Plan does not rely on parking on the Navy Pier for the Project.

Coastal Commission Staff Report Issue: Staff indicates that the Parking Management Plan relies on parking on the Navy Pier, which is inconsistent with PMP text identifying the pier as interim parking for Midway museum visitors and that the pier will be converted into a 5.7 acre park.

Port/CCDC Response: The Parking Management Plan does not, as suggested, rely on the Navy Pier for parking associated with the Proposed Project. The Parking Management Plan includes an inventory of existing spaces within the North Embarcadero area, in which the Navy Pier is situated and is part of the existing parking inventory. The Parking Management Plan provides a host of measures available to manage parking supply and demand within the North Embarcadero area over time, providing analysis of the entire area as conditions change, rather than a static project by project analysis. This includes consideration of any change in the amount of parking at the Navy Pier. The Parking Management Plan would be incomplete and a far less useful tool for the Port to manage parking on the North Embarcadero if it ignored existing inventory such as the parking on Navy Pier or if it ignored the changing dynamic of parking inventory and location throughout the North Embarcadero area.

- 6. The location of a proposed restroom does not block the designated view corridor on the future C Street and was cited and designed considering a minor encroachment into the view corridor on the future C Street.**

Coastal Commission Staff Report Issue: Staff indicates that the location of a proposed restroom is in a designated view corridor on C Street, which the PMP indicates is supposed "to enhance the physical and visual access to the Bay".

Port/CCDC Response: The Port evaluated the placement of the restrooms in the context of the view corridor, assessing the small encroachment and the unique public art design of the restrooms. These factors combined with the fact that the encroachment is small and that the view corridor is not blocked as a result, support the Port's conclusion that the encroachment is not inconsistent with the PMP. The existence of landscaping and the restroom extending adjacent and into the view corridor generates a framing effect for the view. Ensuring there is nothing in a view corridor inhibits the quality of the view by eliminating components that draw attention to the intended view. Furthermore, neither the PMP nor the NEVP prohibits features within view corridors, in fact the NEVP states "Public view corridors are straight, largely unobstructed shafts of space with clear views to the bay or a focal element of public right-of-way, as viewed at ground level". The 80-foot wide view corridor remains largely unobstructed as a result of the design proposed with the restrooms encroaching minimally with a 12-foot tall structure approximately five feet into the view corridor. Furthermore, the uniquely artistic restrooms have been designed by world-class artist Pae White and, as such, should be credited as public art enhancing views toward San Diego Bay and being a focal element of the public right-of-way.

Port staff continues to acknowledge that the proposed restroom encroaches into the future C Street view corridor and that that encroachment does not block views. Port staff continues to clarify that no other structures are in a view corridor. Views beyond the boundaries of the view corridors would be from development east of North Harbor Drive or from within the Project area. The Project provides for existing structures currently located on the water's edge to be relocated eastward away from the water's edge, to enhance views both along the waterfront and from within the project area.

- 7. The approved CDP is consistent with the resource protection provisions within the PMP.**

Coastal Commission Staff Report Issue: Staff indicates that the approved CDP does not include a landscape plan provision that prohibits use of non-invasive species, which is potentially inconsistent with the resource protection provisions within the PMP that require the preservation and enhancement of natural resources.

Port/CCDC Response: The landscaping plan takes into account the context of the existing Bayfront, including the existing landscaping. Existing landscaping within the San Diego waterfront and downtown includes the same species as proposed and that context is considered consistent with Commission comments laid out in relation to issue #6 above. These are species found throughout Southern California and San Diego. The Port does not consider the NEVP's landscape plans in this urban environment far removed from any wild or natural areas to be inconsistent with natural resource preservation goals. Those goals are intended to ensure existing

natural habitats and wild land areas within the tidelands are preserved and protected. The urban environment where the project is located is not in the vicinity of any such areas and, through proper care and maintenance, will adequately contain the proposed species.

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JUL 30 2009

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

July 27, 2009

California Coastal Commission Members
San Diego District
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108

Re. San Diego Port District North Embarcadero Development Plan

Dear Commission Members:

I write you on behalf of the many citizens of San Diego who prize San Diego Bay and oppose the Port District's attempt to deny the public the many view and use benefits provided by the Master Plan. The Port is endeavoring to do this by issuing itself a use permit that drastically deviates from the Master Plan in the significant respects identified by your Ms. Diana Lilly in her July 2nd. letter to the Port District.

I and other bay lovers urge you to find that a full public hearing on this issue is warranted in San Diego so that the public's priceless rights may not be jeopardized.

Sincerely,

Signature on file

Robert Simmons, Professor of Law, USD, (ret), former Chief Trial Counsel for San Diego Sierra Club
7622 Lake Adlon Dr., San Diego, CA 92119; 619-464-0325; rls@sandiego.edu

cc. Ms. Diana Lilly

LETTERS OF OPPOSITION

15

File

Diana Lilly

From: iantrowbridge [chris70@cox.net]
Sent: Saturday, August 08, 2009 6:56 AM
To: Diana Lilly
Cc: Diane Coombs; Don Wood
Subject: Re: Appeal No. A-6-PSD-09-43 (San Diego Unified Port District, San Diego).

Dear Ms Lilly:

Please forward the attached UT Editorial to the Coastal Commissions ASAP and I want it included in the public record along with the attachment UT story on the NEVP

Sincerely,

Ian Trowbridge

8/10/2009

16

UNION-TRIBUNE EDITORIAL

Park switcheroo

Commission could reinstate waterfront gem

2:00 a.m. August 8, 2009

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AUG 10 2009

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

A 79,000-square-foot park can't just disappear, can it? Well, it can if the San Diego Unified Port District is in control of the renderings.

For years, the Port Master Plan for transforming San Diego's downtown waterfront into a spectacular esplanade for tourists and county residents alike has featured a large oval park at the foot of Broadway. But in the port's latest version of the first phase of the \$228 million North Embarcadero Visionary Plan, which will be considered by the state Coastal Commission next week, the park is nowhere to be found. In its place, plans show a 16,000-square-foot hardscape plaza seemingly conceived primarily to serve as the driveway for the port's new cruise ship terminal at Broadway and North Harbor Drive rather than as a signature element of a revitalized waterfront.

Activists and Coastal Commission staff spotted the change and brought it to the attention of the commission.

The port insists that the ostensible bait-and-switch was no such thing. The expansive oval park was just an illustration, never meant to be considered a formally designed part of the master plan. Perhaps. But the fact is those who have followed the proposals

M

for the Embarcadero have always assumed it was part of the plan.

The port says it will work with Coastal Commission staff to address concerns, but insists that the big oval park is not going to happen. We are not wedded to every detail of the original park. Perhaps a suitable compromise can be reached, so long as it involves significant new parkland and broad unobstructed access to the bay.

If it can't, the Coastal Commission should order the port to amend its master plan - amend it to include the long-depicted oval park.

In the Union-Tribune on Page B6



AUG 10 2009

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Oval park isn't part of waterfront plan

Port District's big switch dismays Coastal Commission staff

By Helen Gao

UNION-TRIBUNE STAFF WRITER

2:00 a.m. August 5, 2009

A smaller plaza is now proposed for the area where Broadway meets Harbor Drive. -
NELVIN CEPEDA / Union-Tribune

Existing and planned waterfront promenade.

San Diego port officials sketched out a large, oval public park to beautify the downtown waterfront in the area's master plan years ago.

But the latest proposal shows a smaller, "hardscape" plaza that would double as the driveway to a cruise-ship terminal at Broadway and North Harbor Drive.

This switch did not go unnoticed by the California Coastal Commission, a powerful agency that regulates development along the state's coastline, with an eye toward protecting the environment and public access.

The commission staff, in reviewing the first phase of a \$228 million makeover planned for the North Embarcadero, also has concerns about potential parking issues and obstructed views.

"As you start to take them as a whole, you suddenly realize what is supposed to be a park area isn't going to be a park anymore," said Diana Lilly, a Coastal Commission planner. "Suddenly, we are getting a lot less open space than people would have anticipated looking at the plan."

The commission staff estimates that the oval park shown in earlier plans would have been 79,200 square feet, whereas the substitute plaza is about 16,000 square feet.

On Aug. 14, the commission will consider concerns raised by its staff members about the development permit for the first phase of the waterfront makeover.

The project would realign Harbor Drive to create a 105-foot-wide esplanade, with seagull-themed restrooms and shade pavilions for ticket kiosks, an information building and a cafe. Groves of jacarandas and rows of date palms would add color and greenery.

Six local residents and a grass-roots group that has been fighting waterfront development are challenging the project. Two members of the 12-member Coastal Commission have signed appeals, supporting concerns of agency staffers.

“The plaza is just an intersection for the semis that will turn in to the pier to service the cruise-ship industry,” said Scott Andrews, a public tidelands activist who filed an appeal with the Coastal Commission. “The public knows the difference between a park and a plaza.”

The commission's staff agrees with the activists that the port has used a piecemeal approach to North Embarcadero development, without properly taking into account how adjacent projects – such as the construction of the cruise-ship terminal and proposed hotels – affect the waterfront overall.

John Helmer, the port's director of land-use planning, said the oval park shown in the master plan was not meant to be taken literally.

“That oval was an illustration. It was not a designed or engineered project,” Helmer said.

If built as originally envisioned, the park would have extended into Broadway Pier, where the port is now building a \$21 million cruise-ship terminal, and stretched out over the water.

It also would have infringed on adjacent redevelopment projects for the Navy's administration complex and the former Lane Field ballpark, now a parking lot. The Lane Field project includes a 2-acre public plaza, and the Navy Broadway project also is expected to add a few acres of park space.

Helmer said that given what is included in those two projects, plus a new waterfront park the port is planning at the former Harbor Seafood Mart site by Seaport Village, the public will have plenty of grounds to enjoy.

Helmer contended that the port has taken an integrated approach to planning the waterfront. When the port amended its master plan in 2001, its environmental review included future development of Lane Field, the Navy Broadway Complex and other properties, he noted.

Long-term plans also call for parkland to be added to the County Administration Center and for Navy Pier next to the USS Midway Museum to be converted into parkland.

Andrews, the tidelands activist, questions whether those park plans will come to fruition. He worries that all the changes and development along Harbor Drive, including the groves of trees, will block views.

His concern is shared by Coastal Commission staffers, who want the port to conduct a "view analysis." Of particular concern are plans for an artist-designed restroom building, which would jut 5 feet into a view line the commission wants to preserve.

"While the encroachment is minor, it remains to be seen how even the most artistic restroom enhances views to the bay," commission staffers wrote in a report.

Another problem the staff has with the project is that it would eliminate 170 parking spaces to accommodate commercial loading zones. Only 24 to 58 of the lost spaces would be replaced.

Helmer said the port has developed a comprehensive parking-management plan that includes a bayfront shuttle service. The port also is looking at providing parking structures in the area.

If the Coastal Commission decides that the appeals have merit, the agency can require the port to change its project or amend its master plan. A master-plan amendment can take months, because both the port and the Coastal Commission would have to hold new public hearings.

Rather than fight the appeals, the port plans to work with the commission staff to sort out differences.

"There may be some changes made to the plan," Helmer said, adding that one change that will not be made is restoration of the large oval park.

Helen Gao: (619) 718-5181;

Showing 22 of 22 Comments

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_cd45cd71 _6 hours ago _So, here is the PORT'S LOGIC: We have a Port

Master Plan that is the controlling document for all Port redevelopment projects.

But please don't take it seriously because what we put in there isn't true, it's



_byebyebush _2 hours ago _Especially in the winter, tourists arrive yearning for sun, palm trees, and the Mediterranean version of tropicality, not a winter-warmed clutter of concrete lots and high rises. If the planners keep emphasizing the ability to bring tourists here but keep eroding the things that make them want to come, the end point is fairly obvious. ___3 people liked this

comment.

0.

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_Durdy_Hairy _56 minutes ago _No problem, we'll just keep the eyesore that is the B St pier where the trucks move past the inbound passenger area and then out with cabs and buses, just feet from disembarked passengers, while the activists keep their sight lines. San Pedro and Long Beach would love to get ships loading here back up there. The present situation is a security, safety and logistics

nightmare. ___

LikeReport
ReplyMore _

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_Supervisor _1 hour ago _"“That oval was an illustration. It was not a

designed or engineered project.” Helmer said. "

Ineptitude By The Sea. San Diego has managed to assemble an All Star team, from the top down when it comes to idiocy. Our leaders set a fine example for others to follow. They have proven beyond a doubt that they cannot be outdone when it comes to making poor decisions, pathetic excuses, and representing exactly the opposite of taxpayers wishes.

If this were anywhere but San Diego, it would be hilarious, however it is not funny at all, & only SD would allow this to happen time & time again, to the point SD has become an international magnet, attracting criminal talent from around the world, who stroll in looking for an easy piece of pie, & most succeed , feast till they're full, and away they go leaving the tab on the table for taxpayers to divy up.

Nothing to see here folks. slide your payment under the door & please move along. ___3 people liked this comment.

LikeReport
ReplyMore _

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_davidwayneosedah _2 hours ago _It is sad to see these public lands

turned into commercial ventures for ever. Wasn't more park space approved?__2

people liked this comment.

LikeReport
ReplyMore _

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_sdsince53 _1 hour ago _The downtown waterfront died about 150 years

ago. ___1 person liked this comment.

LikeReport
ReplyMore _

_sdnative1 _2 hours ago _Put the cruise ships at the 10th Ave Marine

Terminal where they belong.

Then build the Chargers stadium over 10-15 acres of the site.____

LikeReport

ReplyMore _

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_sdsince53 _1 hour ago _10th Av is a freight terminal.____1 person liked this

comment.

LikeReport

ReplyMore _

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_Weembles _1 hour ago _Have you ever seen the people who go on

cruises? The cranes would come in handy.____1 person liked this comment.

LikeReport

ReplyMore _

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_JurisDoctor _1 hour ago _Typical bait and switch...sound familiar?__

LikeReport

ReplyMore _

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_LaPlayaHeritage _39 minutes ago _The fix for the Port, CCDC, and the City of San Diego is easy. Just update the Port's Master Plan (PMP) for the North Embarcadero Area. The Government Agencies never incorporated the required mitigation measures mentioned in CCDC's and the City of San Diego's approval of the Navy Broadway Complex EIR including the missing 1,542 required parking spaces.

We agree with the California Coastal Commission that an update to the Port's Master Plan (PMP) is required since the many development projects that have been approved over the last two years including Lane Field North, Lane Field South, the B Street Peir Cruise Ship Terminal, the Broadway Cruise Ship Terminal, the increase in the amount of cruise ship coming into San Diego Bay, Rucco park, the Old Police Headquarters, the deletion of the parking lots for the Navy Broadway Complex at Lane Field - G Street Mole and were the Rucco park is planned, the deletion of the planned 10 continuous acre park at the foot of Broadway, and the deletion of the planned public park space on the Broadway Pier. ___

LikeReport
ReplyMore _

_masimons _31 minutes ago _Update ?

Sounds more like a rewrite.

And what they're doing on Navy Broadway Complex is hardly settled. ___

LikeReport
ReplyMore _

_bayparkdude _14 minutes ago _Thank you Coastal Commision for caring

27

about what San Diego looks like for citizens and visitors. SD Planning Dept, what

is it that you do again? How big is your budget?__

LikeReport
ReplyMore _

__meanJean _9 minutes ago _Hmmm, is "hardscape" just another word

for "concrete?" And the oval was just an "illustration??" More like an

illusion....Now you see the park, poof! now you don't! Shady scammers.__

LikeReport
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__Spiceytuna _9 minutes ago _Waterfront park plan evaporates

San Diego port officials sketched out a large, oval public park to beautify the downtown waterfront in the area's master plan years ago, but the latest proposal shows a smaller, "hardscape" plaza that would double as the driveway to a cruise-ship terminal. The California Coastal Commission *noticed*.

- hey UT, how about we pick up the spell check standard (especially on today's top story). Ever since the purchase of the UT the news quality and content has dropped substantially__

LikeReport
ReplyMore _

__Syntropic _4 minutes ago _Changes is right! What a change from the

visionary plan for a welcoming public gathering spot at the end of Broadway. A small park for small minds? Where is the visionary planning and cooperation for a more livable City? The decisions made now effect a permanent change to our City's entry from the waterfront. There should be a desire to have flexibility and incorporate the technology and drive that San Diego needs to meet the challenges of the future. With climate change, this all might be moot in a few years. Just in case it is not moot, a welcoming park at the foot of Broadway would be a nice

change. __

LikeReport
ReplyMore _

_lonefoosballer _1 minute ago _A "hardscape" plaza. Sounds beautiful.

The city needs to get more involved here. The Coastal Commission is not local, and generally, not helpful.

The public wants access to the waterfront, some parks and running and biking paths that won't get us killed. The paths are rarely mentioned, but should become a priority. As a former downtown resident, I can tell you the running and biking paths are pathetic. Totally disjointed and dangerous.

SD should go look at Chicago's waterfront, or NY's east or west side. Frankly, I'd rather see paths than parks. Parks downtown tend to be homeless hotels. __

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No park in the loading zone

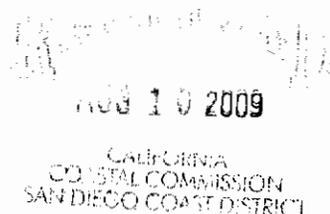
The fight between green space and industry continues at the base of Broadway Pier

By Eric Wolff

Supposedly, the concrete tiles used at a groundbreaking ceremony Tuesday morning for a new cruise-ship terminal were from a weak mix, designed to be easy to break. Since the Broadway Pier on San Diego's Downtown waterfront hangs over San Diego Bay, no actual ground could be broken for the terminal. So demolishing some cement tiles must have seemed like a nice symbolic way to launch construction. On the count of three, members of the Port of San Diego's Board of Commissioners and a couple of other luminaries brought their sledge hammers down on the specially prepared tiles. And with a mighty bonk! the hammers bounced off their targets, leaving the tiles unharmed. Nothing in San Diego, it seems, gets done on the first try.

The second, third and fourth hits were more successful. The tiles were broken, applause was heard and the new terminal will be built. Cruise ships will continue to dock at the nearby B Street pier most of the time, but when there's a third ship in port, it will dock at the Broadway Pier at the new terminal building and the pier will be closed. However, when there's no ship there, the pier will become a city-block-sized open space available to the public.

The terminal building was a battleground for two years. Now the battle has shifted to the near end of Broadway Pier, where Broadway meets Harbor Drive. What had once been slated to be a park is now expected to be a loading area for trucks servicing the ships. And some citizens, along with two members of the California Coastal Commission, want their park back.



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The park is shown only on a map in the Port Master Plan, a legally binding document approved in 1998 that describes much of the future development for land owned by the Port of San Diego. An oval-shaped park was intended to be a grassy area for public gatherings and recreation. It protruded into Harbor Drive to slow the speed of traffic, and it had a driveway to allow trucks to access the ships on the pier.

But when the plan was written, there was no intention of building a cruise-ship terminal. The advent of that building forced the port to reconsider the park. With the terminal building there, Ron Powell, a spokesperson for the Port, said, the oval park "was not practical. It wouldn't work."

Powell said the 18-wheeler trucks that would need to reach the ships for re-supply wouldn't be able to get through the driveway. He said a plan to have the park extend over the water on an overhang was too expensive; having an oval park protrude into Harbor Drive would cause traffic snarls. As a result, after numerous public meetings, the Port and the Centre City Development Corporation, which handles Downtown redevelopment on the city's behalf, both approved a new configuration for the base of Broadway Pier in 2005.

The new vision eliminates the park. It converts the dedicated bike lane into a shared bike and pedestrian area. It extends a sidewalk embarcadero and other parts of the plaza to make up for the lost open space, and there will be a loading area for trucks where a park would have been. Last month, the Port Commission unanimously approved a final coastal permit for the base of the pier with the revised plan, with construction anticipated for the fall.

Bonk!

State Coastal Commissioners Mary Shallenberger and Sara Wan, joined by five local citizens and the Navy Broadway Complex Coalition, a group working to defeat plans to redevelop the Navy Broadway Complex, have appealed the permit to the Coastal Commission. The matter will be taken up at the commission's August meeting. If commissioners at that meeting decide the appeal has merit, there will



be a second hearing at which the permit can be changed or revoked.

Wan told *CityBeat* that she entered the appeal at the request of Coastal Commission staff, and as such won't know much about the issue until the meeting. But for Ian Trowbridge, a 2010 City Council candidate and one of the appellants, the new plan destroys a grand vision for the base of Broadway.

"It's the crown jewel of the whole North Embarcadero plan," Trowbridge said, "the grand ceremonial Broadway entrance opening up on the landing park, which is big enough for lots of public activities, then going into the open pier of Broadway with the views of the water."

The North Embarcadero Visionary Plan to which Trowbridge refers is a years-in-the-making proposal to beautify the waterfront from Laurel Street south to Seaport Village. Unlike the master plan, it is non-binding, but all of the agencies involved with the waterfront signed off on it. Both sides in any debate about the waterfront will cite the North Embarcadero plan's goals as the reason for doing whatever they're doing.

Powell believes the appeal probably won't succeed. He said the picture in the Master Plan "was for illustrative purposes only" and does not appear in the text (which is correct).

Steve Cushman, chairman of the Port Commission, is also pretty certain the Port has behaved appropriately.

"Whatever we do in San Diego, it seems fraught with challenges," Cushman told *CityBeat*. "In these recessionary times, it's a shame we can't break ground in September to provide those jobs to San Diego."

Mike Stepner, a longtime urban planner and currently a professor of architecture and urban planning at the New School of Architecture and Design, thinks the pier will provide plenty of open space.

"It appeared that if they follow up on it, it will resolve many of the conflicts," he said. "The question is whether they follow up."

Former Port Commissioner Laurie Black attended the groundbreaking. She told CityBeat she thinks the elimination of the park was necessary, but she's concerned about the big picture.

"That building," Black said, gesturing toward the scaffolding in place for the new terminal, "was a compromise. But what they need to understand is how this fits into everything else. We have to look at everything along the waterfront. We should be able to walk along the waterfront all the way around the airport and down."

For Black, "they" are Trowbridge and the other appellants. She believes they need to understand how the new cruise-ship terminal changed things. But she shares their concerns about the damage to the North Embarcadero Visionary Plan.

"We have to stop piecemealing the plan," Black said.

That term, "piecemealing," was practically a buzzword among those trying to defend the oval park. It's repeated several times in the report prepared by Coastal Commission staff for the August meeting. They worry that a series of projects that demanded changes to the vision—Lane Field, the Navy Broadway Complex, the airport expansion—all cause irrevocable harm to the vision. _

"It's when you approve various projects bit by bit," said Diana Lilly, a Coastal Commission planner, "and each project changes slightly, so, years later, you have a different project than what was anticipated." ___ *Write to* ericw@sdcitybeat.com *and* editor@sdcitybeat.com

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8 PUBLIC RIGHTS TO BAY ACCESS AND PARKS

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO, CENTRAL DIVISION

11 PUBLIC RIGHTS TO BAY ACCESS AND
12 PARKS, a California Nonprofit Entity,

13 *Petitioner.*

14 v.

15 SAN DIEGO UNIFIED PORT DISTRICT, a
16 public entity; and DOES ONE through
17 TWENTY-FIVE, inclusive,

18 *Respondent.*

19 NORTH EMBARCADERO VISIONARY
20 PLAN JOINT POWERS AUTHORITY, a public
21 entity of unknown creation, authority or
22 legitimacy; REDEVELOPMENT AGENCY OF
23 THE CITY OF SAN DIEGO, a public entity;
24 CITY OF SAN DIEGO, a public entity;
25 CENTRE CITY DEVELOPMENT
26 CORPORATION, a quasi public entity, acting as
27 a purported nonprofit entity, of unknown
28 creation, authority or legitimacy; LANKFORD
LANE FIELD, LLC, a registered California
Limited Liability Company; THE IRVINE
COMPANY, LLC, a registered California
Limited Liability Company; UNITED STATES
NAVY, an agency or department of the United
States Government; MANCHESTER PACIFIC
GATEWAY, LLC, a registered California
Limited Liability Company; BOSA
DEVELOPMENT CALIFORNIA, INC., a
registered California Corporation; and DOES
TWENTY-SIX through FIVE HUNDRED,
inclusive,

Real Parties in Interest.

) Case No.: 37-2009-00095664-CU-WM-CTL

) VERIFIED PETITION
) FOR WRIT OF MANDATE

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1 Petitioner, Public Rights to Bay Access and Parks, alleges as follows:

2 I.

3 INTRODUCTION

4 1. This action involves a challenge brought by Public Rights to Bay Access and
5 Parks ("Petitioner") to set aside and rescind the approvals, resolutions and/or decisions of the
6 San Diego Unified Port District ("Port") made on July 7, 2009 to approve the North
7 Embarcadero Visionary Plan Phase I Coastal Access Features Project ("Phase I Project"),
8 including but not limited to its approval of a Local Coastal Development Permit or Local
9 Coastal Plan (hereafter, "Coastal Permit"), and making a determination and certification under
10 the California Environmental Quality Act ("CEQA") that "no further or additional
11 environmental review was required" ("CEQA Decision")(collectively, "Phase I Project
12 Approvals") based on a prior Master Environmental Impact Report ("MEIR") prepared in 2000
13 for the North Embarcadero Visionary Plan ("NEVP").

14 2. Based on current existing and baseline conditions, the cumulative effects from a
15 number of other approved bayfront projects, differences from the original NEVP, and
16 variations from the approved Port Master Plan ("PMP"), there are new, different, and
17 additional potential significant adverse effects to the environment and there are impermissible
18 inconsistencies with the NEVP and/or PMP arising from the Phase I Project Approvals. Recent
19 specific, varied, and detailed projects have been added, changed and/or come to fruition along
20 relevant portions of the initial year 2000 NEVP, such that public access, parking, views, and
21 parks are being eliminated, reduced and overall impacted on direct, indirect and/or cumulative
22 scales.

23 3. By approving the Phase I Project Approvals, the Port has improperly applied
24 state environmental protection laws, coastal zone protection laws, and the Port's own adopted
25 master plan, which were enacted to ensure development uniformity, compatibility, and to
26 ensure that public assets and resources are protected and not adversely impacted.

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1 Approvals and adopted the resolution(s), ordinance(s), and/or findings, making it otherwise
2 responsible for all conduct which is the subject of this litigation.

3 7. Real Parties in Interest NORTH EMBARCADERO VISIONARY PLAN JOINT
4 POWERS AUTHORITY ("NEVP JPA"), a public entity of unknown creation, authority or
5 legitimacy; REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO ("Agency"), a
6 public entity; CITY OF SAN DIEGO ("City"), a public entity; Port; and CENTRE CITY
7 DEVELOPMENT CORPORATION ("CCDC"), a quasi public entity, acting as a purported
8 nonprofit entity, of unknown creation, authority or legitimacy, and DOES TWENTY-SIX
9 through FIVE HUNDRED are all purportedly ultimate decisionmaking "partners" in
10 development of the NEVP. All of the above parties have purportedly arranged, aligned, and/or
11 have granted all direction and most every decisionmaking authority into the NEVP JPA, but the
12 Agency, City, and CCDC are named individually herein just in case they conveniently claim
13 the NEVP JPA does not have any such relative independent authority, or they are otherwise
14 necessary to resolution and enforcement of this suit. These NEVP JPA, Agency, City, CCDC
15 and DOE real parties in interest are hereafter referred to as "Other Government Real Parties."

16 8. Real Parties in Interest LANKFORD LANE FIELD, LLC, a registered
17 California Limited Liability Company; THE IRVINE COMPANY, LLC, a registered
18 California Limited Liability Company; UNITED STATES NAVY, an agency or department of
19 the United States Government; MANCHESTER PACIFIC GATEWAY, LLC, a registered
20 California Limited Liability Company; BOSA DEVELOPMENT CALIFORNIA, INC., a
21 registered California Corporation, and DOES TWENTY-SIX through FIVE HUNDRED are
22 each alleged and believed to be "partners" or "participants" in the design and/or development
23 of some or all of the Phase I Project or Phase I Project Approvals, or stand to contribute or
24 benefit financially from said project, and therefore said additional real parties in interest are
25 persons, entities or parties whose rights and entitlements stand to potentially adversely be
26 affected by this litigation such that they may be entitled or required to have a right to appear
27 and object. While Petitioner believes these contributing landowners are tangentially related to
28 the Phase I Project, they are not indispensable to either the defense or enforcement of this

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1 action nor are they so differently or greatly financially vested in the Phase I Project as
2 compared with many other ordinary local landowners, taxpayers and others who might be
3 subjected to build or pay in association with the Phase I Project. Nonetheless, based on the
4 history of tactics, legal strategies, and antics of the Port and Other Government Real Parties in
5 opposing and defending legitimate public interest lawsuits, such as this, seeking dismissals
6 based on legal technicalities of failing to name a potential real party in interest, Petitioner
7 names the parties found in one or more Port, NEVP JPA and/or CCDC staff reports that state or
8 infer these above non-government real parties "coordinated the design" and "the public
9 improvements [are] to be constructed by these private development projects." These named
10 DOE and real parties in interest are hereafter referred to as "Private Developer Real Parties."

11 9. Should any named real party in interest desire or believe that it need not appear or
12 present argument regarding potential rights, duties, and interests contained or framed by this
13 lawsuit, then such real party may not need to appear, respond, and/or defend this suit, and may
14 be entitled to a dismissal, assuming there is agreement and stipulation by Respondent and other
15 principal Government Real Parties that such real party is dispensable, need not appear in this
16 action, with an understanding it would otherwise be bound by any ruling, affect, or order of the
17 Court.

18 10. Petitioner has made a good faith effort to determine the correct names of the
19 Government Real Parties and Private Developer Real Parties as named and contained herein,
20 but, based on the extremely short statute of limitations and time to prepare and file this action,
21 Petitioner is currently unaware of any other primary proponents, applicants, developers, and/or
22 landholders who stand to be directly affected by this litigation, but Petitioner will amend this
23 complaint at a later time to the extent that such entities, divisions, partners, mergers, parent
24 companies and other business derivatives were overlooked but need to be named, corrected, or
25 renamed, and Petitioner will do so within a reasonable time that such other persons or entities
26 become known, consistent with the laws of this State for adding DOE respondents or real
27 parties in interest. Petitioner alleges that, all times relevant herein mentioned, each of the real
28 parties and respondents DOE defendant were the agent(s) and/or employee(s) of each of the

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1 remaining respondents or real parties and were at all times acting within the purpose and scope
2 of such agency and/or relationship.

3 11. This lawsuit has been commenced within the time limits imposed for actions
4 under the California Code of Civil Procedure and California Public Resources Code, as
5 possibly made further applicable to the Port by its codes or ordinances or by the general laws of
6 this State.

7 12. Venue and jurisdiction in this Court are proper pursuant to the California Code
8 of Civil Procedure for a matter relating to subject property located within, and an
9 administrative action decided within, the Court's jurisdiction.

10 13. Petitioner, by and through itself and its members, state agencies, residents,
11 citizen groups and citizens living, residing or operating within the vicinity of the Phase I
12 Project, city and greater area of the San Diego, have made oral and written comments, and have
13 been present, participated in the public hearings or have otherwise raised the legal deficiencies
14 asserted in this petition for writ of mandate.

15 14. Petitioner has performed all conditions precedent to filing this action by
16 complying with all requirements of the California Public Resources Code, including the giving
17 of prior written notice to Respondent prior to filing this action, and have no other remedy other
18 than to bring this action. All other requests of Respondent, having been previously made,
19 would be futile.

20 III.

21 **FIRST CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

22 **Violation of the California Environmental Quality Act**

23 **(Cal. Public Resources Code § 21000 et seq.; 14 Cal. Code Regs. § 15000 et seq.)**

24 15. Petitioner hereby realleges and incorporates by reference ¶¶ 1-14 above as
25 though fully set forth herein.

26 16. Respondent's action in processing, circulating, adopting, and/or certifying a
27 purported Initial Study/Addendum to the NEVP MEIR, and determining "no further
28 environmental review is required," along with adoption of a mitigation and monitoring
reporting program for the July 7, 2009 Phase I Project and Phase I Project Approvals,

1 constitutes a prejudicial abuse of discretion in that Respondent failed to proceed in a manner
2 required by law, it did not adopt requisite findings, and/or its decisions and findings are not
3 supported by substantial evidence.

4 17. Information and evidence in the record, as well as in the final approvals and
5 findings (or lack of legally adequate or honest disclosures and/or findings) made by
6 Respondent, indicate the procedural and substantive deficiencies of CEQA, including adverse
7 impacts to views, traffic and parking impacts, public safety seismic and geologic hazards, net
8 losses of usable parks, and cumulative losses of public access and rights in the same views and
9 parks, parking and traffic and seismic /geologic public safety hazards which have not been
10 sufficiently analyzed or mitigated. Detailed reasons and explanations of these legal defects
11 under CEQA are set forth in written and verbal comments made to Respondent prior to the
12 close of the July 7, 2009 public hearing, including, those matters raised in the letters of the
13 California Coastal Commission dated April 2, 2009 and July 2, 2009 (attached hereto
14 respectively as Exhibit 1 and Exhibit 2 and incorporated herein by such references), and the
15 March 22, 2009 written comments of the Broadway Complex Coalition (the title page and table
16 of contents indicating the same was timely submitted for consideration and review by
17 Respondent is attached hereto as Exhibit 3, the entirety of which is incorporated herein by such
18 reference). Additional examples of direct, indirect and cumulative adverse impacts arising and
19 needing to be addressed in the Phase I Project Approvals include but are not limited to: the
20 NEVP, as part of the public tidelands, is virtually unrecognizable from the open public access
21 called for in the PMP; eliminating public access facilities included redacting a PMP-designated
22 10-acre waterfront public tideland park, a public Bay front pier, and promised green grass park
23 and picnic areas along the blue Bay's Esplanade; the Port unlawfully attempting and approving
24 replacement of the public park and pier with two new cruise ship terminals, and on the last
25 North Embarcadero parcel, a six-story cruise ship industry parking garage that will cause a
26 substantial complete walling-off of San Diego Bay under Port trusteeship. Recently developed
27 and massed high-rise development along Harbor Drive also cumulatively adds to such adverse
28 impacts; filling the Esplanade with tree groves, multiple tree rows, and structures does not
preserve, protect or enhance view corridors – rather they diminish, impact and substantially
eliminate them; and the Port has eliminated additional major North Embarcadero

1 public tideland facilities, including a public Embarcadero park (Broadway Landing Park) and
2 public access on San Diego Bay pier (Broadway Pier). These impacts have recently occurred
3 and result in cumulative losses of access, parking, public usable coastal open spaces and public
4 tidelands, and increased traffic and public safety seismic/geological impacts.

5 18. By approving the Project and not complying with CEQA, the Port has failed to
6 proceed in a manner required by law and/or the decision(s) and findings relating to Port's
7 purported CEQA compliance are not supported by the substantial evidence. With regards to
8 the above, and by its approvals and actions taken under CEQA, the Port has misapplied the
9 concepts and legal requirements for analysis and mitigation of potential adverse impacts
10 pertaining to: application of a master EIR, further impacts not anticipated in a master EIR,
11 outdated use of a master EIR, analysis of impacts not based on correct baseline or existing
12 conditions, analysis of impacts not considering or analyzing cumulative impacts, analysis of
13 impacts not correctly considering new and additional impacts, and attempting or purporting to
14 make an addendum or update to a MEIR but at the same time adopting a finding "no further
15 environmental review is required."

16 19. A peremptory writ of mandamus is requested to be issued by this Court ordering
17 the Port to rescind its herein challenged July 7, 2009 final approvals, and remand the matter to
18 the Port for preparation of an EIR, and reconsider the project consistent with requirements of
19 CEQA, and as otherwise may be ordered by this Court.

20 IV.

21 **SECOND CAUSE OF ACTION – PETITION FOR WRIT OF MANDATE**

22 **Violation and Inconsistency of the Project with the Port Master Plan,
23 NEVP, and Prior California Coastal Act Permit (or Certified Program)**

24 20. Petitioner hereby realleges and incorporates by reference ¶¶ 1-19 above, as
25 though fully set forth herein.

26 21. A general plan and the Port Master Plan, as amended, is a comprehensive, long-
27 term plan for the physical development by a local agency of any land within or outside its
28 boundaries that, in its judgment, bears a relationship to its planning. A general plan and the

1 PMP sit atop the hierarchy of government law regulating land uses and development. As such, a
2 general plan governs any further development, such that any development must be consistent
3 with a general plan and the PMP.

4 22. The Port has enacted by legislation, including a comprehensive PMP,
5 development plans, and standards which are designed to specifically govern development in the
6 Phase I Project area.

7 23. Respondent's approval of the Phase I Project is not consistent with important
8 purposes, policies, and/or plan elements and features contained in its operative PMP relating to
9 the development of parks, protections of views, and other open usable public spaces, including
10 those matters raised in the letters of the California Coastal Commission dated April 2, 2009 and
11 July 2, 2009 (attached hereto respectively as Exhibit 1 and Exhibit 2 and incorporated herein by
12 such references), and the March 22, 2009 written comments of the Broadway Complex
13 Coalition (the title page and table of contents indicating the same was timely submitted for
14 consideration and review by Respondent is attached hereto as Exhibit 3, the entirety of which is
15 incorporated herein by such reference). Additional examples and page references to alleged
16 PMP inconsistencies include but are not limited to: PMP Page 59 - "The plan proposes two
17 major parks and plazas at the County Building and the foot of Broadway, and includes
18 recreational piers and associated public facilities...." The Port NEVP eliminates said major park
19 and recreational pier without offset mitigation; PMP Page 61 - Figure 11 shows 10-acre
20 Broadway Landing Park fanning out at the end of Broadway Street into the Lane Field and Navy
21 Broadway parcels. The Figure 11 schematic also clearly shows the first two thirds of Broadway
22 Pier also designated as "Park/Plaza"; PMP Page 63 - "The esplanade expands into plazas at...
23 Broadway Pier. These plazas will be designated to provide open space, sitting and strolling
24 areas for tourists and nearby workers, and to increase the sense of destination for Embarcadero
25 visitors." This Port NEVP eliminates this public open space access with new Port Cruise Ship
26 Terminal #2 and the new Port Cruise Ship Terminal #1 approved at Lane Field; PMP Page 63 -
27 "Passive green spaces (parks) are proposed between the plazas on the esplanade, providing
28 recreational opportunities and places for people to relax, play, and enjoy Bay views"; PMP Page

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1 63 - "The wharf side remains clear of objects or furnishings that would block Bay views. A
2 delicate string of lights, a planting area with tall palms, and a 10 foot wide bike path border the
3 landward side of the promenade"; and PMP Page 64 - "Broadway Pier will continue to provide
4 recreational space on its plaza and viewing platform, as well as accommodating commercial
5 shipping and miscellaneous vessel berthing, including day cruisers."

6 24. By approving the Phase I Project, Respondent creates results which are directly,
7 indirectly, and cumulatively inconsistent with the current PMP and prior NEVP adopted and
8 incorporated into the PMP in the year 2000, the Port has failed to proceed in a manner required
9 by law and/or the decision and findings relating to consistency with the PMP and NEVP are not
10 supported by the substantial evidence or as a matter of law. A peremptory writ of mandamus
11 should issue compelling the Port to revoke its July 7, 2009 approvals and the matter should be
12 remanded to the Port to reconsider its Phase I Project Approvals in light of the findings, decision
13 and judgment rendered by this Court.

14 V.

15 **THIRD CAUSE OF ACTION – PETITION FOR WRIT OF MANDATE**

16 **Violation and Misapplication of the California Coastal Act, and**
17 **Adopted / Certified Local Coastal Program and Coastal Development Permit**

18 25. Petitioner hereby realleges and incorporates by reference ¶¶ 1-24 above, as
19 though fully set forth herein.

20 26. The California Coastal Act requires that when there is a conflict between the
21 Act's policies and standards, the conflict must be resolved in a manner most protective of
22 significant coastal resources.

23 27. As set forth in Paragraph 17 above, the prior approved local coastal program or
24 local coastal permit that encompassed and was approved for the 2000 the NEVP and/or PMP
25 did not contain the changes, additions, deletions, and alterations now being promoted, imposed,
26 and approved by the Port in its Phase I Project.

27 28. It is alleged herein that there will be direct, indirect and cumulative losses of
28 public access, views and parks which constitute one or more violations of access, views and

1 meaningfully available usable public open spaces as required by the legal protections and
2 policies set forth in the California Coastal Act.

3 29. The Port has unlawfully, incorrectly and without evidentiary support decided
4 that the Phase I Project is consistent with a prior issued local coastal program or permit, such
5 that much of the legal basis for approving and granting itself a July 7, 2009 Coastal
6 Development Permit (CDP) should be set aside.

7 30. By issuing and granting a coastal development permit for the Phase I Project,
8 the Port has failed to proceed in a manner required by law and/or the decision(s) and findings
9 relating to Port's grant of the CDP are not supported by the substantial evidence. A
10 peremptory writ of mandamus is requested to be issued by this Court ordering the Port to
11 rescind its July 7, 2009 final approvals and the matter should be remanded to the Port to
12 reconsider its final approvals consistent with allegations and arguments made by Petitioner, as
13 proven at trial, and as otherwise ordered by the Court after trial.

14 VI.

15 PRAYER FOR RELIEF

16 WHEREFORE, Petitioner respectfully prays for judgment as follows:

17 1. That this Court find that by making the final approvals Respondent has not
18 proceeded in a manner required by law, has not adopted requisite findings, and/or its decisions
19 are not supported by the substantial evidence;

20 2. That this Court issue a peremptory writ of mandate declaring that the decision(s)
21 rendered by Respondent on July 7, 2009, and any additional resolutions, permits, and/or plans
22 of Respondent relating to, or dependent upon, the same are null and void and of no force and
23 effect;

24 3. That this Court order Respondent to vacate and set aside each of the decisions
25 for the Phase I Project made on or about July 7, 2009, including any and all resolutions,
26 administrative approvals, permits, and quasi-judicial decisions of Respondent with respect
27 thereto;

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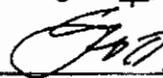
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VII.

VERIFICATION

I, SCOTT ANDREWS, as an authorized representative of the nonprofit organization PUBLIC RIGHTS TO BAY ACCESS AND PARKS, hereby verify this *VERIFIED PETITION FOR WRIT OF MANDATE* pursuant to California Code of Civil Procedure Section 446. The facts herein alleged are true of my own knowledge, except as to the matters which are based on information and belief, which I believe to be true. I declare under the penalty of perjury under the laws of California that the above foregoing is true and correct and that this verification was executed on the below stated date in San Diego County, California.

Dated: August 7, 2009

By:  *Signature on file* 5
SCOTT ANDREWS on behalf of
PUBLIC RIGHTS TO BAY ACCESS AND PARKS

46

Diana Lilly

Subject: FW: Downtown Bay "Park"

-----Original Message-----

From: Allegra Keeney [mailto:akeeney1@gmail.com]
Sent: Wednesday, August 05, 2009 1:30 PM
To: Deborah Lee
Subject: Downtown Bay "Park"

District Manager Lee

Please do not let developers ruin our city or continue to destroy what remaining trust it left in our city council members. We voted for and approved this PARK on the bay and I am concerned that what we are getting is concrete, buildings and "fancy" bathrooms.

I live downtown and I see so much potential here it is amazing! But I think that the city is slowly being paved over and the views and access to the bay are being blocked off by developers.

We need a park, open space, benches, water fountains, flower beds, walking paths and grass!

Please fight to make sure that we get what we were promised. What doesn't make sense to me is this... make the bay prettier and property values and land values in Downtown skyrocket, that would be good for developers, the navy, the city, and homeowners. More money could be made off of property taxes land could be sold for more money. All you need is to invest in this narrow strip of land along the bay. So why aren't we doing it?

Please let me know what is going on with the issue

Thank you

Allegra Keeney
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CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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Fr 17c

Filed: July 10, 2009
49th Day: August 28, 2009
Staff: D.Lilly-SD
Staff Report: July 30, 2009
Hearing Date: August 12-14, 2009

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: San Diego Unified Port District

DECISION: Approval with Conditions

APPEAL NO.: A-6-PSD-09-43

APPLICANT: San Diego Unified Port District

PROJECT DESCRIPTION: Realign North Harbor Drive from the B Street Pier to south of the Broadway Pier eastward, construct 105 foot wide esplanade; public plaza at the foot of West Broadway; gardens; shade pavilions; ticket kiosks; information building; walk-up café; restroom; median improvements on West Broadway between North Harbor Drive and Pacific Highway; and restriping to provide an additional turn lane to the Grape Street and North Harbor Drive intersection.

PROJECT LOCATION: North Harbor Drive, from the B Street Pier to south of Broadway Pier; Grape Street and North Harbor Drive intersection, San Diego (San Diego County)

APPELLANTS: Commissioner Sara Wan and Commissioner Mary Shallenberger; Katheryn Rhodes & Conrad Hartsell; Ian Trowbridge; Catherine M. O'Leary Carey & John M. Carey; Scott Andrews; Navy Broadway Complex Coalition.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

The primary issues raised by the subject development relate to the project's consistency with the public access and recreational facilities required for the North Embarcadero region in the Port Master Plan. The PMP text, exhibits, and policies set forth a development plan that includes a large public park at the foot of Broadway. The proposed project would reduce the size of this park, inconsistent with the PMP and the public access and recreation policies of the plan. The project would remove most of the

existing parking within the project area, and inappropriately relies on a reservoir of parking on Navy Pier, which the PMP requires to be analyzed for conversion to parkland. In addition, the proposed new structures associated with project may be inconsistent with the view protection policies of the PMP, and lack of a prohibition on invasive plant species may be inconsistent with the biological resources protection policies of the PMP.

The standard of review for the appeal is the certified Port Master Plan.

SUBSTANTIVE FILE DOCUMENTS: Appeal by Commissioners Wan and Shallenberger filed 7/23/09; Appeal by Katheryn Rhodes & Conrad Hartsell filed 7/13/09; Appeal by Ian Trowbridge filed 7/13/09; Appeal by Catherine M. O'Leary Carey & John M. Carey filed 7/20/09; Appeal by Scott Andrews filed 7/23/09; Appeal by Navy Broadway Complex Coalition filed 7/23/09; Port Draft Coastal Development Permit 2009-02; Certified San Diego Unified Port District Port Master Plan.

I. Appellants Contend That: The amended project, as approved by the Port, represents piecemealing, and is inconsistent with the certified PMP with respect to the protection of public access, recreation, biological resources, and visual quality.

The appellants have raised other concerns in their submitted appeals, including inconsistency with CEQA procedures and impacts related to the development of the Navy Broadway Complex that is not part of this development. Issues of impacts associated with the development of the Navy Broadway Complex do not raise consistency concerns with the Port Master Plan as it pertains to this project and are thus not relevant to this appeal. The Commission's standard of review when determining whether an appeal raises a Substantial Issue is whether the project, as approved, is consistent with the relevant certified PMP. The Commission does not review the adequacy of the Port's compliance with CEQA. This staff report therefore does not address the concerns raised by the appellants that relate to the adequacy of the Port's compliance with CEQA.

II. Local Government Action. The coastal development permit was approved by the Board of Port Commissioners on July 8, 2009. The permit contains special conditions addressing water quality and conservation, pedestrian access across the proposed plaza, parking signage, noise, and other measures.

III. Appeal Procedures. After certification of a Port Master Plan (PMP), the Coastal Act provides for limited appeals to the Coastal Commission of certain port governing body's actions on coastal development permit applications. The types of appealable projects are outlined in Section 30715 of the Coastal Act.

After the port governing body has taken final action on an appealable project, it must send a notice of that approval to the Commission. Cal. Pub. Res. Code § 30717; 14 C.C.R. § 13641. This notice must indicate how the approved project is “consistent with the certified port master plan and the California Coastal Act.” 14 C.C.R. § 13641(a); Cal. Pub. Res. Code § 30717. Upon proper receipt of a valid notice of appealable development, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30717; 14 C.C.R. § 13641(b). If an appeal is filed during the appeal period, the effectiveness of the port governing body’s approval of the CDP is suspended until the Commission takes final action on the appeal. 14 C.C.R. § 13641(c). The Commission will process the appeal in the same manner that it processes appeals from local government actions approving CDPs. *Id.*

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission may proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends “no substantial issue,” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Port Master Plan and the Chapter 3 policies of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-PSD-09-043 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-6-PSD-09-043* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The North Embarcadero Visionary Plan (NEVP) Phase 1 Coastal Access Features project would realign North Harbor Drive generally from the B Street Pier to south of the Broadway Pier, eastward of its present location, and transition to existing alignments at Ash Street and F Street (Ref. Exhibit #3). The realigned road would enable construction of an approximately 105 foot wide Esplanade starting at the south side of B Street Pier to the south of Broadway Pier. The esplanade would include a continuous bayfront promenade for pedestrians and bicyclists, a storm water treatment system, a running/walking path, improved landscaping and structural architecture, and a public plaza at the foot of West Broadway flanked by formal gardens. Two open shade pavilions would be constructed on the eastern portion of the Esplanade, under which replacement ticket kiosks, an Information building, and a walk-up café building would be erected. A restroom would be constructed on the eastern portion of the Esplanade, along the southern edge of the future C Street alignment. The project would also provide median and storm water improvements along West Broadway between North Harbor Drive and Pacific Highway. In addition, re-striping to provide an additional turn lane to the Grape Street and North Harbor Drive intersection would be undertaken.

The standard of review for the project is consistency with the certified Port Master Plan (PMP).

2. Permit History. Although the project is identified as the "North Embarcadero Visionary Plan" (NEVP) Phase 1 Coastal Access Features project, the NEVP is not the standard of review for the coastal development permit. The NEVP is a conceptual-level, illustrative planning document resulting from a coordinated planning effort by the North Embarcadero Alliance, a planning body made up of officials from the Port District, City of San Diego, County of San Diego, Centre City Development Corporation, and U.S. Navy. The Alliance developed the Visionary Plan in 1998 to guide the development of the North Embarcadero area.

However, the NEVP itself was not submitted to nor certified by the Coastal Commission as part of the PMP. At the Commission meeting of March 14, 2001, the Commission approved the San Diego Unified Port District Port Master Plan (PMP) Amendment #27 creating a new "North Embarcadero Overlay District" within the existing Waterfront district. The amendment incorporated many of the goals and projects identified in the Visionary Plan for the North Embarcadero including the redevelopment of Lane Field; the narrowing of Harbor Drive from four lanes to three between Grape Street and Pacific Highway; the extension of B and C Streets between Pacific Highway and North Harbor Drive; construction of a new 25-foot wide pedestrian esplanade along the water's edge at Harbor Drive; the replacement of three existing industrial piers with one new public pier at Grape Street; construction of a small commercial recreation facility on the new Grape Street Pier; construction of a restaurant on the bayfront inland of the Grape Street Pier; modernization of the cruise ship terminal at the B Street Pier; and docking the U.S.S. Midway Aircraft Carrier for use as a museum on the south side of Navy Pier. However, only the PMP itself, including the text of the PMP, the exhibits, the project list, and those portions of the NEVP specifically referenced in the PMP are the standard of review for coastal development permits issued by the Port District.

3. Inconsistency with the Certified Port Master Plan. While the proposed project, which consists of public access and visitor-serving amenities, has many positive features, there are several significant inconsistencies with the following Port Master Plan goals and policies:

VI. THE PORT DISTRICT WILL INTEGRATE THE TIDELANDS INTO A FUNCTIONAL REGIONAL TRANSPORTATION NETWORK

- Encouraging development of improved major rail, water and air systems linking the San Diego region with the rest of the nation.
- Improved automobile linkages, parking programs and facilities, so as to minimize the use of waterfront for parking purposes
- Providing pedestrian linkages

- Encouraging development of non-automobile linkage systems to bridge the gap between pedestrian and major mass systems.

VIII. THE PORT DISTRICT WILL ENHANCE AND MAINTAIN THE BAY AND TIDELANDS AS AN ATTRACTIVE PHYSICAL AND BIOLOGICAL ENTITY.

- Establish guidelines and standards facilitating the retention and development of an aesthetically pleasing tideland environment free of noxious odors, excessive noise, and hazards to the health and welfare of the people of California.
- Views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.

IX. THE PORT DISTRICT WILL INSURE PHYSICAL ACCESS TO THE BAY EXCEPT AS NECESSARY TO PROVIDE FOR THE SAFETY AND SECURITY, OR TO AVOID INTERFERENCE WITH WATERFRONT ACTIVITIES.

- Provide "windows to the water" at frequent and convenient locations around the entire periphery of the bay with public right-of-way, automobile parking and other appropriate facilities.
- Provide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.

XI. THE PORT DISTRICT WILL PROTECT, PRESERVE, AND ENHANCE NATURAL RESOURCES, INCLUDING NATURAL PLANT AND ANIMAL LIFE IN THE BAY AS A DESIRABLE AMENITY, AN ECOLOGICAL NECESSITY, AND A VALUABLE AND USABLE RESOURCE.

- Keep apprised of the growing body of knowledge on ecological balance and interrelationships.
- Administer the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust.

A. Public Access & Recreation. The appellants contend that approval of the project represents piecemealing, and that the proposed project will have adverse impacts on public access, circulation, and public recreation.

The PMP is fairly general about how and where the public improvements along Harbor Drive are to be designed and located, with several significant exceptions: the plan specifically requires plazas at Beech and Ash Streets, B Street Pier, and Broadway Piers;

states that Harbor Drive will be narrowed to three lanes; parks must be located between the plazas on the esplanade; the promenade must be a continuous 25-foot wide paved area adjacent to the water's edge; and, the wharf side is to remain clear of objects or furnishings that would block Bay views. Figure 11 of the PMP (ref. Exhibit #1) graphically demonstrates Harbor Drive curving at West Broadway Street to accommodate an oval-shaped park at the foot of Broadway Pier. Port staff have estimated that this park would be approximately 79,200 sq.ft. in size, (including some amount of area that would be necessary to allow access to the pier from Harbor Drive), with another 24,300 sq.ft. potentially needing to be located in a new over-water structure. The text also includes by reference Figure 5.3 (Section of Bayfront Esplanade) of the North Embarcadero Visionary Plan, which is a cross-section of the esplanade and identifies the design, minimum width and location of the specific public access features along the North Embarcadero (ref. Exhibit #2).

However, the approved project would eliminate the curve in Harbor Drive at the intersection of West Broadway, and redesign the oval-shaped park/plaza shown on the PMP Precise Plan to a smaller rectangular-shaped plaza that must also function as a driveway to the approved new cruise ship terminal on Broadway Pier. In its place, an approximately 16,000 sq.ft. rectangular plaza/pier entrance is proposed, with the esplanade continuing on both sides.

It is indisputable that the revised park/plaza and road configuration is not the same as that referenced in the existing PMP. The Port argues the design in the certified PMP is infeasible, and that the loss of park/plaza area will be offset by approximately 124,500 sq.ft. of additional sidewalk setbacks on West Broadway and other plaza areas nearby, including a proposed park on the northwest corner of the Navy Broadway Complex/Manchester Pacific Gateway and with a plaza at the corner of Lane Field. Thus, the Port Board found that the redesigned rectangular plaza "maintains the same level of park/plaza land use area available to the public as that discussed in the PMP."

However, it is simply not possible to achieve a comparable level or quality of public open space in a fragmented arrangement of sidewalks and setbacks than would exist in a large, continuous open park. While the PMP does not contain any textual description of how the oval park was intended to operate, the NEVP does indeed offer guidance on what type of space was envisioned at the foot of Broadway:

It is a landscaped public open space, accommodating recreational activities on a daily basis or large public gatherings. The park includes a central plaza punctuated by a landmark element such as a fountain or sculpture, orienting visitors and drawing attention to this important public precinct.

Broadway Landing Park is approximately two city blocks in size, considerably larger than any of the parks in downtown. Because of its one-sided configuration, with buildings only to the east, the scale of the bay gives the space an expansive feeling larger than its actual size, much as in Baltimore's Inner Harbor or the

harbor in Barcelona. The parking located on the west side of Harbor Drive and is not divided by any streets....

On rare occasions, a drive at the western perimeter of the park could provide limited vehicular access to the Broadway Pier to serve visiting ships. (Pages 100-101, NEVP).

The proposed plaza and setbacks bear little resemblance to this guidance vision in scope or value.

In addition, the Port has not revised the PMP to designate the additional sidewalk setbacks and plaza areas nearby as "Park/Plaza" to ensure they are retained for such use. "Table 10 Precise Plan Land and Water Use Allocation" in the PMP indicates that there are approximately 51.9 acres of land designated "Park/Plaza" in Planning District 3, Centre City Embarcadero. No changes to this table have been proposed (as any such change would require a PMP Amendment), although it appears that the substantial reduction to the size of the proposed park would result in a decrease in this number. No analysis was done through the permit process that verifies the proposed project is consistent with the amount of Park/Plaza shown in the certified PMP.

Nor has there been analysis of the quality or quantity of any other compensatory park/open space area that might be planned for the North Embarcadero as a whole. This is the type of analysis and balancing of various planning goals that must occur through the Port Master Plan Amendment process and not through a CDP. The appellants contend that this project, when viewed in the context of recent approvals for Lane Field, located on the northwest corner of Broadway, across the street from the project site, and the Broadway Pier Cruise Ship Terminal, adjacent to the proposed project on Broadway Pier, represents a piecemealing development process that has resulted in the above described inconsistencies with the PMP. Each of these recently approved North Embarcadero area projects slightly altered the amount and quality of the public access and recreational features described in the PMP for the area around the foot of Broadway, without an analysis of the impact the changes would have on the quality of the recreational features included in the proposed project, particularly the park.

Unlike the NEVP, the Port Master Plan is *not* a guidance document; the policies and standards contained within it are to be followed closely and specifically. If and when circumstances change, the authorized procedure is to amend the PMP after evaluating any necessary Plan revisions for consistency with the Coastal Act, through a public hearing at both the local and state level. The integrity of the PMP and the planning process depends on the public and the Commission being able to rely on the policies and principles in the PMP being consistently and accurately implemented, including those represented graphically and by reference.

Port staff have acknowledged that there have been several changes in potential development patterns along the North Embarcadero that will require a comprehensive PMPA, but have determined these Phase I improvements can go forward without

prejudice to that future review. However, the PMP cannot simply be amended in practice through a CDP on a piecemeal, project-by-project basis, where the overall context of the impacts cannot be evaluated or mitigated to ensure consistency with the PMP.

In addition to the park/plaza and road revisions that are inconsistent with the PMP, the proposed project involves construction of a promenade that is significantly different than Figure 5.3 of the NEVP, which is incorporated by reference into the PMP (ref. Exhibit #2 of this staff report for Figure 5.3; compare to Exhibit C in the "Approved Port CDP," attached to Exhibit #4 of this staff report). For example, the promenade is 29, not 25 feet wide; instead of a dedicated bike path adjacent to Harbor Drive, there will be a shared pedestrian/bike promenade, there is a new water quality feature, and other small adjustments have been made to the design of the esplanade. As approved, the revised configuration for the access improvements may be acceptable, but it is not consistent with the PMP as certified.

The approved project includes removal of the vast majority of the existing street and off-street parking spaces which were addressed in the Master EIR (MEIR) and also in the addendum to the MEIR done for the Phase I NEVP Improvements. Specifically, in order to create commercial loading and unloading zones, the project would eliminate 170 existing public spaces, to be replaced with 24 parallel parking spaces, with the possibility of increasing to a total of 58 diagonal parking spaces in the future. New parking is not necessarily the best or most appropriate use of prime waterfront land, but when removing parking, providing alternative parking programs and facilities is necessary in order to maintain and promote public access to the coast.

The CDP incorporates a Parking Management Plan required in the Mitigation Monitoring and Reporting Program for the MEIR which identifies specific features to be implemented as part of the NEVP Phase I project. The condition of approval requires the Parking Management Plan to be completed prior to commencement of construction; however, there is no apparent requirement that the mitigation measures for loss of the existing parking be implemented prior to or concurrent with the parking loss associated with Phase I improvements. Thus, impacts to public access may result, inconsistent with the above cited PMP policies.

Perhaps more significantly, the Parking Management Plan approved as part of the NEVP Phase I project relies on the parking on Navy Pier as part of the existing supply to meet visitor parking demand in the North Embarcadero area. This is inconsistent with the text of the PMP that identifies the Navy Pier parking as parking for visitors to the Midway museum "on an interim basis". The PMP states, "when and if the Navy determines that its use of Navy Pier is no longer necessary, the Port will accept the proposal by the SDACM [San Diego Aircraft Carrier Museum] to convert Navy Pier into a "public park" use, thereby.....affording additional public open space and bay vistas. Vehicle parking for museum visitors will then be shifted to nearby offsite locations." The PMP identifies "conversion of the pier to a 5.7 acre memorial park is a specific planning goal of the Port, and environmental analysis for the park conversion will be conducted prior to the Navy

relinquishing ownership and/or control of the Navy Pier such that construction of the park can occur as soon as feasible thereafter.”

The Navy has relinquished Navy Pier to the Port. However, in the addendum to the MEIR for the NEVP Phase I, the Port disregarded this specific requirement of the PMP and did not include relocation of the parking and conversion of Navy Pier to a park as a component of the environmental analysis. Instead, the parking analysis relies on retention of parking on Navy Pier to meet visitor parking supply in this area, which is inconsistent with the PMP. Thus, the project has not been designed consistent with the planning goals in the certified PMP. As a result, the impact the project will have on public parking, circulation, and public access has not been fully analyzed, and the project is potentially inconsistent with the public access policies of the certified PMP and thus raises a substantial issue with regards to the appellants' contentions.

B. Visual Protection.

The project includes the construction of several new buildings bayward of Harbor Drive, and a significant number of new large trees, but no view analysis was done for the project to demonstrate that the proposed structures and landscaping were sited in such a way as to take into account the context of the existing bayfront, including the existing waterside structures, to ensure views are maintained and enhanced. Of particular concern is the proposed location of a new restroom building in the designated view corridor on C Street which the PMP indicates is supposed “to enhance the physical and visual access to the Bay.” The coastal development permit consistency analysis adopted by the Port states that “no adopted applicable document describes or infers that nothing should be located within the view corridors.” This is an unsupportable interpretation of PMP policies that require enhancing views through view corridors, and providing windows to the water. Therefore, on this issue, the appellants have raised a substantial issue.

C. Biological Resources.

The project includes the installation of many new landscaping features, including groves of jacaranda trees along Harbor Drive and rows of palms along West Broadway. In general, the addition of new trees has a positive impact on coastal resources, but new vegetation should be of the appropriate type and in the appropriate location. The approved CDP does not include a landscape plan condition that prohibits use of non-invasive species. Port staff declined to add such a condition, indicating that such a restriction “is not applicable in the urban waterfront environment where the landscaping proposed is akin to existing landscaping in the area.” The Port indicated that there is no policy in the certified PMP or the Coastal Act that requires such a restriction. The Commission disagrees and considers the potential use of invasive species in the urban environment to be potentially inconsistent with the resource protection provisions within the PMP that require the preservation and enhancement of natural resources, and keeping apprised of knowledge on ecological balance and interrelationships. Therefore, the Commission finds that a substantial issue exists with respect to the consistency of the project with the certified Port Master Plan.

4. Conclusion. In summary, the public access improvements approved by the Port are substantial and significantly different than the project described in the certified PMP. As a result, it is not clear if adequate and functional park/open space area, as identified in the PMP, will be provided. In addition, the parking management plan that the project relies on inappropriately includes parking on Navy Pier when this area should be reviewed and analyzed for use as a public park. Visual impacts from the project have not been fully analyzed, and there is a potential for impacts to natural resources from the use of invasive plant material. While many of the features and amenities provided by the project are beneficial, without review of the project in the context of an overall planning effort through a Port Master Plan Amendment, it is not clear if the access and visitor serving amenities are adequate. Therefore, the project raises a substantial issue regarding consistency with the Port Master Plan.

5. Substantial Issue Factors. As discussed above, there is inadequate factual and legal support for the Port's determination that the proposed development is consistent with the certified PMP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The objections to the project suggested by the appellants raise substantial issues of regional or statewide significance and the decision creates a poor precedent with respect to the proper interpretation of the Port's PMP, as the Port's determination of when development requires a Port Master Plan Amendment are not only incorrect interpretations of the PMP, but they could also set an adverse precedent elsewhere along the coast. In addition, the coastal resources affected by the decision are significant.

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[Click here to go to the exhibits.](#)