

CALIFORNIA COASTAL COMMISSION

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W 15a

Addendum

April 13, 2010

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 15a**, Coastal Commission Permit Application
**#A-6-PSD-09-43 (San Diego Port District NEVP Phase I Access
Improvements)**, for the Commission Meeting of April 14, 2010.

Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 3, the first complete paragraph shall be revised as follows:

Development of a new park will require environmental analysis, public outreach, discretionary approvals, including, as noted, a Port Master Plan Amendment. Funding must also be identified and obtained. Thus, a particular site and design has not been determined at this point. However, the Park Plan does establish very specific, mandatory parameters for the size, nature, and function of the park; the potential locations which must be analyzed; and milestones and deadlines for review and construction of the project. For example, the alternative Waterfront Destination Park must be a minimum of 2.5 acres in size, to replace the approximate size of the oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point. At least half (50%) of the park must be on the waterfront—that is, bayward of Harbor Drive.

2. On Page 3, the last three paragraphs on the page, which continue onto Page 4, shall be revised as follows:

Special Conditions also require implementation of a Parking Management & Transit Opportunity Plan to address the impact the removal of 146 waterside parking spaces will have. The Port has suggested that the demand for all 146 parking spaces can be absorbed in existing parking lots in the vicinity of the North Embarcadero area. Staff has been concerned that ~~However~~, the 146 parking spaces proposed to be removed are short-term, inexpensive metered, prime waterfront

parking, while the replacement parking expected to fulfill the demand for access to the project site would be located in surrounding lots further away from the water, mostly in lots with all-day pricing, which may not be available in the long term as development around the Port continues.

In response to these concerns, the Port has identified an excess of spaces not currently in demand in the Lane Field parking lot located immediately across the street from the Broadway Pier, which can be reserved for short-term public access parking. However, when the approved hotel project on Lane Field commences construction, these replacement spaces will be lost. Therefore, Special Condition #4 requires that if any of the replacement spaces cannot be maintained on Lane Field, that the Port must either return to the Commission with a revised plan for replacement parking, or implement a Circulator Shuttle program.

The North Embarcadero Circulator Shuttle is a proposal the Port has been exploring for several years to help move visitors and residents around the North Embarcadero region. The Shuttle should be developed in coordination with the approved Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties. The Circulator Shuttle will be analyzed in the upcoming North Embarcadero Environmental Impact Report and Port Master Plan Amendment. Requiring that all of the parking be replaced at the nearby Lane Field, or that a shuttle system be implemented, will ensure that visitors and residents will continue to have easy, affordable access to the waterfront.

~~Therefore, the Parking Management & Transit Opportunity Plan requires that the parking be removed in phases to retain the maximum number of on-street parking spaces in the vicinity for as long as possible. While the plan requires all parking removed to be replaced prior to or concurrent with the removal of the parking spaces, the phased approach also allows time for a required Circulator Shuttle to be implemented. Most significantly, the plan prohibits the removal of more than 50% of the existing parking spaces proposed to be removed until a Circulator Shuttle has begun operations.~~

~~The North Embarcadero Circulator Shuttle is a proposal the Port has been exploring for several years to help move visitors and residents around the North Embarcadero region. Given that the proposed project would remove 146 prime waterfront parking spaces, it is important that the Shuttle program begin operations before all of these spaces are lost, to avoid significant impacts to public access and recreation on the Embarcadero. The Shuttle must be developed in coordination with the approved Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties.~~

3. On Page 4, the motion shall be corrected as follows:

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. ~~A-6-PSD-08-4~~ A-6-PSD-09-43 pursuant to the staff recommendation.*

4. On Page 7, Special Condition #4 shall be revised as follows:

4. Revised Final Parking Management & Transit Opportunity Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide, for review and written approval of the Executive Director, a revised, final parking management and transit opportunity plan that includes the following elements:

a. Parking Removal Phasing Plan

The final Parking Management Plan shall include a parking removal phasing plan that indicates the location of the approximately 146 parking spaces to be removed as part of Phases IA and IB. The plan shall detail how the parking spaces shall be removed in phases to retain the maximum number of on-street parking spaces in the project vicinity as long as possible to minimize impacts to public access, and to allow time for the Circulator Shuttle (see below) to begin operation. No removal of public parking shall occur until replacement parking is ~~identified~~ provided pursuant to subsection (b) below, ~~and no more than 50% of the existing public parking may be removed until operation of the Circulator Shuttle is instituted.~~

b. Replacement Parking

The final Parking Management Plan shall identify the location of replacement parking spaces at the Lane Field parking lot for ~~a minimum of 50%~~ all of the proposed parking spaces to be permanently removed from the project site (i.e., approximately ~~73~~ 146 spaces). The Plan shall document and include the following provisions: [...]

- The replacement spaces are excess spaces not currently in demand;
- The replacement spaces are within 10 minutes walking distance;
- The replacement spaces shall be available at least until the Circulator Shuttle is operating;
- Limitations and restrictions associated with the replacement spaces shall be identified, specifically, any potential fee structure and any time limitations placed on the parking;

- The replacement spaces shall be available and priced for short-term parking, rather than all-day use;
- The replacement spaces shall be secured prior to or concurrent with the removal of the parking spaces, and;
- Signage directing the public to ~~nearby parking opportunities~~ the Lane Field parking lot shall be provided at the project site.

c. Circulator Shuttle

Because the replacement parking spaces at Lane Field would be lost when development of Lane Field commences, the final Parking Management Plan shall include a plan for implementation of the commitment to either implement a Circulator Shuttle prior to the loss of any the remaining 50% of the replacement parking spaces, or provide alternative replacement parking through an amendment to this permit. Implementation of a Circulator Shuttle will require an amendment to this permit. The amendment must include the following information: The Plan shall address the following:

- ~~1. Retention of at least 50% of the parking spaces until the Circulator Shuttle has begun operation;~~
 21. Identification of the shuttle route along Harbor Drive within the North Embarcadero to be developed in coordination with the Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties;
 - ~~32.~~22. Identification of the hours and months of operation to include, at a minimum, summer months daily from June 1 through August 31, between 10 am and 9 pm.
 43. Fee structure which must be equal to or less than the cost of existing transit options between the airport and the Amtrak station;
 54. A timetable for implementation of the Circulator Shuttle.
5. On Page 9, the first paragraph of Special Condition #5 shall be revised as follows:

5. Final Revised Landscape Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final landscape plans. Said plans shall demonstrate that all landscaping on the site shall be drought-tolerant (or irrigated via reclaimed water) and (1) native or (2) non-invasive plant species. Except as noted below, no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council (CAL-IPC) Inventory Database, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No

plant species listed as ‘noxious weed’ by the State of California or the U.S. Federal Government shall be utilized within the property. Mexican Fan Palms and Canary Island Date Palms shall be removed from the proposed plant palette, ~~and only male Canary Island Palms shall be permitted.~~

6. On Page 21, the first paragraph shall be revised as follows:

Development of a new park will require environmental analysis, public outreach, discretionary approvals, including, as noted, a Port Master Plan Amendment. Funding must also be identified and obtained. Thus, a particular site and design has not yet been determined. However, the Park Plan does establish very specific, mandatory parameters for the size, nature, and function of the park, potential locations which must be analyzed, and milestones for review and construction of the project. Specifically, the alternative Waterfront Destination Park must be a minimum of 2.5 acres in size, to replace the approximate size of the oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point. The oval park was a waterside park, so at least half (50%) of the replacement park must be on the waterfront—that is, bayward of Harbor Drive.

7. On Page 22, the second complete paragraph shall be revised as follows:

The Plan includes a specific, aggressive timetable for the EIR and PMPA for the Park that requires that the PMPA be brought to the Commission for review no later than two years after Commission action on the subject public access improvements permit. Furthermore, actual construction of the park must be completed within ~~one~~ two years of Commission approval of the PMPA. Port staff have expressed concerns that a two year timeframe for implementation of the park may be overly optimistic given the various permitting and construction bidding requirements. However, the Commission feels it is important that development of the park be prioritized and expedited as much as possible, to ensure the open space mitigation is provided promptly, and a short implementation time frame should facilitate this. The Port does have the option of returning to the Commission for an amendment to extend the deadlines. It is the Commission’s expectation that the PMPA process will give the Port, the public, and the Commission the opportunity to evaluate various possibilities for creating a new destination park in the context of a plan-level, comprehensive review of open space along the North Embarcadero, while still ensuring that mitigation for the impacts of the proposed project is provided in a timely manner.

8. On Page 22, the last two complete paragraphs on the bottom of the page shall be revised as follows:

Therefore, the revised Parking Management & Transit Opportunity Plan requires that the parking be removed in phases to retain the maximum number of on-street parking spaces in the vicinity for as long as possible. While the plan requires all parking removed to be replaced prior to or concurrent with the removal of the parking spaces, the phased approach also allows time for a required Circulator Shuttle to be implemented. ~~Most significantly, the plan prohibits the removal of more than 50% of the existing parking spaces proposed to be removed until a Circulator Shuttle has begun operations.~~

To address the Commission's concerns that removing 146 of the most accessible spaces along the waterfront will have an adverse impact on public access, the Port has identified 146 spaces not currently in demand in the Lane Field parking lot, immediately across the street from Broadway Pier, that can be specifically designated for short-term public access parking. The North Embarcadero Parking Management Plan identified an excess of spaces in this lot and other surrounding nearby lots, which thus should be able to accommodate the demand for waterfront parking. However, when the approved hotel project on Lane Field commences construction, the replacement spaces will be lost. Therefore, Special Condition #4 also requires that if any of the replacement spaces cannot be maintained on Lane Field, that the Port must return to the Commission with either a revised plan for replacement parking, or a plan for implementation of a Circulator Shuttle, and either option shall be reviewed as amendment to this permit.

The North Embarcadero Circulator Shuttle is a proposal the Port has been exploring for several years to help move visitors and residences around the North Embarcadero region. The Shuttle must be developed in coordination with the approved Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties. ~~Requiring the shuttle to be implemented before more than 50% of the 146 prime spaces are removed~~ Requiring that all of the parking be replaced at the nearby Lane Field, or that a shuttle system be implemented, will ensure that visitors and residences will continue to have easy, affordable access to the waterfront.

9. On Page 23, the last paragraph shall be corrected as follows:

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(e) (g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition #7, requiring reimbursement of any costs and attorneys fees the Commission incurs “in connection with the defense of any action brought by a party other than the Applicant/Permittee ... challenging the approval or issuance of this permit.”

10. On Page 25, the last two paragraphs under Sensitive Biological Resources shall be revised as follows:

The Port's draft landscape plan includes two species of palm trees noted by the California Invasive Plant Council (Cal-IPC) as potentially invasive—the Mexican fan palm and Canary Island palm. The Commission's ecologist has reviewed the draft plant list for the project and determined that to ensure no invasive plants are spread as a result of the proposed project, Mexican fan palms and Canary Island Date palms should be prohibited to prevent the spread of this invasive species; however, given the project's urban environment, if only male Canary Island palms are planted, they should not present a problem. There are many other species of attractive palms that grow in San Diego, which can be substituted for the proposed invasive species.

Thus, Special Condition #5 prohibits the use of invasive plant species ~~except for male-only Canary Island Palms~~, and requires the removal of Mexican fan palms and Canary Island Date palms from the proposed plant palette. Therefore, as conditioned, the project can be found consistent with the natural resource protection policies of the certified PMP.

11. At the end of the staff report, the ATTACHMENT A “**WATERFRONT DESTINATION PARK PLAN**” shall be revised as follows:

On Page 1, the following paragraph shall be revised as follows:

Alternative Park Framework and Composition

The alternative Waterfront Destination Park shall be a minimum of 2.5 acres in size, to replace the approximate size of oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point. At least half (50%) of the 2.5 acre The Park must also include a be on the waterfront component, that is, bayward of Harbor Drive. The Park can have a mix of hardscape and landscape, but it must contain some lawn or turf space appropriate and available for passive recreation such as sitting and picnicking.

12. On Page 3 of Attachment A, the first paragraph shall be revised as follows:

Timeframes and Funding Sources

An analysis of timeframes for construction, estimation of park construction costs, and identifying and securing funding sources for the alternative Waterfront Destination Park could either be done through the EIR, or a separate stand-alone document, but in either case, construction schedules and an identified funding source must be included in the PMPA. ~~The construction schedule must provide~~

~~that completion of the park will occur within one (1) year of Commission approval of the PMPA. An outline of the required milestones for review of the Plan and construction of the park is provided below. Deadlines for individual aspects of the project may vary, but in total, the Port must submit a PMPA to the Commission within two years of Commission approval of the subject permit, and construction of the park must be completed within two years of certification of the PMPA by the Commission.~~

13. On Page 3 of Attachment A, the Timing of TASK 2 shall be corrected as follows:

TASK 2 is due no later than ~~two~~ three (3) months after COMPLETION OF TASK 1.

14. On Page 4 of Attachment A, the following language shall be inserted above the section titled Force Majeure Delays:

Completion of the Waterfront Destination Park Milestones

Completion of the park shall occur within two (2) years of Commission approval of the PMPA. At the completion of each of the following Tasks, Port staff will submit a written status report to Commission staff summarizing the progress made up to that point, and a proposed schedule for completion of the remaining tasks:

Park Task 1: Amend the Joint Powers Authority (JPA) Agreement.

Park Task 2: Procure Park Designer.

Park Task 3: Complete Public Outreach and design; Obtain Permits to Construct Park.

Park Task 4: Complete Public Advertising and Bidding; Award Contract to Build the Park.

Park Task 5: Complete Park Construction.

15. On Page 4 of Attachment A, the following revisions and additions shall be made to the section titled Failure to Meet Milestones:

Failure to Meet Milestones

Should the Port fail to meet any of the above milestones, subject to any extensions as described above, then the Port will promptly notify the Executive Director of the Coastal Commission of such failure. Within thirty (30) days of missing any milestone, the Port may request an extension of time from the Executive Director

of the Coastal Commission, and if the extension is granted, may complete the remaining task(s) within the time granted. If an extension is not granted, the Port agrees to submit an amendment to this permit for a revised PMPA and/or park construction timeline.

Failure to either meet the above milestones or to obtain an extension of time to meet such milestones will constitute a Coastal Act violation and may result in formal enforcement action. This formal action could include recordation of a notice of violation on the Port's property, a civil lawsuit, the issuance of a cease and desist and/or restoration order, and/or imposition of monetary penalties, including daily penalties of up to \$15,000 per day under section 30820(b) and other applicable penalties pursuant to chapter 9 of the Coastal Act.

From: Rita Babaran
Sent: Tuesday, April 13, 2010 9:57 AM
To: Steven Kram (); Adi Liberman (pm); April Vargas (); Bonnie Neely (); Dan Secord (); Khatchik Achadjian (); Mary Shallenberger (); Pat Kruer (); Sara Wan (); Sharon Wright (); Steve Blank (); William Burke; Clark Parker; Connie Stewart; Esther Sanchez; Jim Wickett; Mark Stone; Mary Shallenberger; Meg Caldwell; Pam O'Connor; Richard Bloom; Ross Mirkarimi; Sarah Glade Gurney
Cc: Peter Douglas
Subject: Indemnity Special Condition

Commissioners,

Please find below a link to the June 15, 2007 Commission hearing where Commission Staff Counsel Louise Warren presented information about adopting indemnity special conditions.

The presentation is item 14. The discussion begins about 2 minutes into the item and lasts for about 10 minutes. I ask that you watch this before the hearing on Wednesday, April 14. Thank you.

<http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2007-06-15>

Best,

Hope Schmeltzer

//

VIA HAND-DELIVERY AND EMAIL

April 11, 2010

Ms. Diana Lilly, Coastal Planner
California Coastal Commission, San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RE: Proposed Modifications to Special Conditions of NEVP Phase 1 Coastal
Development Permit (Wed15a, Appeal No. A-6-PS-09-43)

Dear Ms. Lilly:

As you are aware, at the February 11, 2010 California Coastal Commission ("Commission") meeting the Commission voted to continue consideration of the North Embarcadero Visionary Plan (NEVP) Phase 1 Coastal Access Features Project ("Project") Coastal Development Permit ("Permit") to allow additional time for us to work out the Special Conditions with Commission staff prior to the April 2010 hearing. We appreciate the on-going dialogue we have had with you over the past two months and the opportunity to work with you on the Special Conditions. As co-Applicants, the San Diego Unified Port District ("Port"), Centre City Development Corporation (CCDC), and the City of San Diego ("City"), can generally agree to most of the Special Conditions outlined in the Commission staff report, dated April 1, 2010. However, there are three main issues with which we are concerned.

As we discussed during our conference call on Monday, April 6, 2010, we are concerned about Special Condition #s 1, 4, and 7 as they are currently stated. We would like an opportunity to explain our objections to you in the hope of coming to an agreement on modifying Special Condition #s 1 and 4, and removing Special Condition #7 prior to the hearing. On behalf of the Port, CCDC, and the City, we have a strong objection to Special Condition #7. We believe this Special Condition represents poor public policy by allowing an unknown and open-ended financial risk to public agencies and local governments, and would threaten the ability to implement future coastal improvement projects.

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SAN DIEGO COAST DISTRICT

Special Condition #1: Implementation of a "Waterfront Destination Park Plan"

We agree to most of the terms outlined in Commission staff's proposed "Waterfront Destination Park Plan;" however, we have an issue with the extremely short timeframe to complete construction of Commission staff's Waterfront Destination Park ("Destination Park"). As Special Condition #1 currently states: "The construction schedule must provide that completion of the park will occur within one (1) year of Commission approval of the Port Master Plan Amendment (PMPA)."

Commission staff's proposed timeframe for constructing the Destination Park does not provide sufficient time for such processes as park design, public participation, approvals, and funding identification. During our conference call, Commission staff asked that we provide a breakdown of how long it would take to complete construction of the Destination Park. The timeline estimation attached as Exhibit 1 ("Timeline for Completion of Waterfront Destination Park") provides a more realistic estimate of the time required to implement the Destination Park, starting from the point of an approved North Embarcadero PMPA.

As shown in Exhibit 1, several milestones must be accomplished to complete the Destination Park. These milestones include amending the Joint Powers Authority (JPA) Agreement (approximately six months), procuring a park designer (approximately six months), completing outreach, design, and permitting (approximately 1 ½ years), and accomplishing public advertising, bidding, and awarding the contract to build the park (approximately four months). We estimate that it would take approximately 1 ½ years alone for actual construction of the park.

As public agencies, we do not have the ability to run these projects on a dual track. We typically have to wait for approvals of the current task before proceeding to the next step. We may, however, be able to compress the schedule by overlapping the Amended JPA Agreement task with the Design Consultant Selection Process, or if we are able to realign another portion of Harbor Drive to make way for a potential park area as these milestones are being completed. However, these may only shorten the process by approximately three (3) to nine (9) months.

Based upon the schedule described above, approximately five (5) years from the approval of the PMPA is the soonest we could commit to delivering the Destination Park proposed by Commission staff. It is important to note that this schedule would be possible given that no Force Majeure Delays outlined in the Waterfront Destination Park Plan occur that would delay completion of the Destination Park.

Therefore, we propose the following amendment to the Waterfront Destination Park Plan for your consideration, with deleted text shown ~~struck-out~~ and text additions shown underlined:

Proposed Modifications to Attachment A, “Waterfront Destination Park Plan,” *Timeframes and Funding Sources* (page 3 of Attachment A, last sentence)

“The construction schedule must provide that completion of the park will occur within ~~one (1)-year~~ five (5) years of Commission approval of the PMPA.”

We also modified pages 3, 4, and 5 of Attachment A to include a list of milestones and proposed timelines to complete each task, similar to the “EIR and PMPA Milestones” portion of the Waterfront Destination Park Plan. Please refer to the attached Exhibit 2 entitled “Co-Applicants Proposed Modifications to Attachment A.”

Special Condition #4: Revised Final Parking Management & Transit Opportunity Plan

The Project will displace 146 parking spaces to relocate Harbor Drive to the east and create the 105-foot wide bayfront esplanade. In Commission staff’s March 17, 2010 letter to the Port, Commission staff requested: “Please let me know where in the NEVP Parking Management Plan documents are there adequate parking spaces in the surrounding vicinity to absorb 146 parking spaces.” Pages 8 and 9 of our response letter, dated March 29, 2010, provide that information. These pages are attached to this letter as Exhibit 3 (“Parking Discussion Excerpts from March 29, 2010 Letter from Port to Commission”).

We understand your desire to “ensure that visitors and residents will continue to have easy, affordable access to the waterfront” (Commission staff report, page 22), but believe it can be accomplished without immediate implementation of a shuttle system. During our conference call, we explained our inability to implement the Circulator Shuttle concurrent with the loss of 50% of these spaces. In response, Commission staff said that we could propose some “direct mitigation” for the loss of the 146 parking spaces resulting from implementation of the Project improvements. And if we could find replacement parking at Lane Field, then that would begin to address the loss of those spaces.

We have identified replacement parking on the Lane Field property that is consistent with all the terms outlined in Special Condition #4, Subsection (b) *Replacement Parking* (pages 7 and 8 of Commission staff report). These parking

spaces will be available and priced as short-term metered parking, located within 5 to 10 minutes walking distance of the waterfront. We will provide signage directing the public to this additional parking opportunity. When Lane Field is under construction for the Commission-approved Lane Field Hotel development, we will secure other replacement spaces prior to or concurrent with the removal of the Lane Field parking spaces. We understand that the replacement spaces will be available at least until the Circulator Shuttle is operating. Therefore, we agree to comply with the requirements of Special Condition #4, Subsection (b).

We have proposed edits, however, to Subsections (a) and (c) of Special Condition #4 for your consideration. Our proposed text additions are shown underlined:

Proposed Modifications to Special Condition #4, Subsection (a) *Parking Removal Phasing Plan* (page 4 of Commission staff report, last sentence)

"No removal of public parking shall occur until replacement parking is identified pursuant to subsection (b) below, and no more than 50% of the existing public parking or all of the required replacement parking may be removed until operation of the Circulator Shuttle is instituted."

Proposed Modifications to Special Condition #4, Subsection (c) *Circulator Shuttle, Item 1* (page 8 of Commission Staff Report)

1) "Retention of at least 50% of the existing or all replacement parking spaces until the Circulator Shuttle has begun operation."

We are committed to implementing a Circulator Shuttle that is coordinated with the Lane Field shuttle; however, we did not expect that Commission staff would require implementation of the shuttle as a condition of this permit. The proposed shuttle system has not yet been analyzed in conformance with the California Environmental Quality Act, and is not incorporated in our certified Port Master Plan. As we agreed with Commission staff last year, the proposed shuttle will be analyzed as part of the North Embarcadero Environmental Impact Report (EIR) and Port Master Plan Amendment. In addition, a funding source has not yet been identified and secured at this time because several approvals are required prior to implementation of the Circulator Shuttle.

Special Condition #7: Liability for Costs and Attorneys Fees

We cannot agree to Special Condition #7. Our Port Attorney has and will continue to discuss Special Condition #7 with the Commission's legal counsel. The Port will

respond to this matter under a separate letter provided to Commission staff very soon.

Conclusion

Thank you again for the opportunity to discuss our proposed edits to the Special Conditions. We are encouraged that we have been able to work out many complicated issues with you over the past two months, and look forward to speaking with you about these proposed condition modifications during our conference call on Monday, April 12.

Sincerely,

Signature on file

Darlene Nicandro
Manager, Land Use Planning
San Diego Unified Port District

Attachments:

- Exhibit 1: Timeline for Completion of Waterfront Destination Park
- Exhibit 2: Co-Applicants Proposed Modifications to Attachment A
- Exhibit 3: Parking Discussion Excerpts from March 29, 2010 Letter from Port to Commission

cc: Sherilyn Sarb, Coastal Commission
Deborah Lee, Coastal Commission
Charles Wurster, Port
Irene McCormack, Port
Leslie FitzGerald, Port
Shaun Sumner, Port
Gary Bosse, CCDC
Susan McCabe
Steve Kaufmann

EXHIBIT 1: TIMELINE FOR COMPLETION OF WATERFRONT DESTINATION PARK

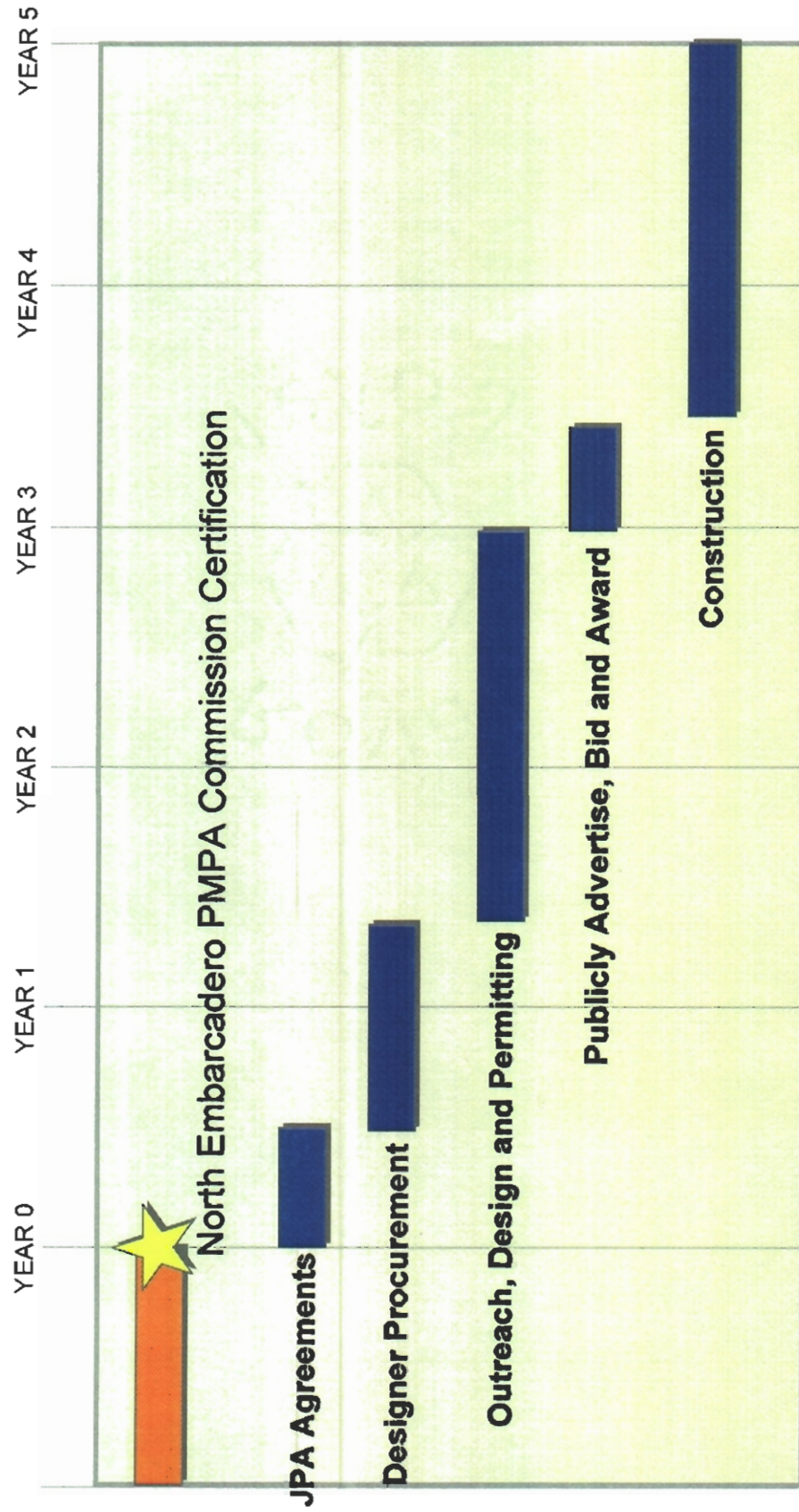


EXHIBIT 2: CO-APPLICANTS PROPOSED MODIFICATIONS TO ATTACHMENT A
(Pages 3 – 5)

Timeframes and Funding Sources

An analysis of timeframes for construction, estimation of park construction costs, and identifying and securing funding sources for the alternative Waterfront Destination Park could either be done through the EIR, or a separate stand-alone document, but in either case, construction schedules and an identified funding source must be included in the PMPA. ~~The construction schedule must provide that completion of the park will occur within one (1) year of Commission approval of the PMPA.~~

EIR and PMPA Milestones

The PMPA and environmental review processes can be lengthy and controversial. However, the following milestones establish a timeline for the preparing the PMPA for Coastal Commission consideration. Any of these milestones may be completed earlier than the scheduled due dates and all are subject to adjustment only as described below.

The Port commenced the PMPA process in the fall of 2009 and selected an environmental consultant on January 5, 2010. The final scope of the PMPA and accompanying environmental document will be determined through the public outreach described in Task 1 below.

EIR/PMPA TASK 1: Commence and Complete Public Outreach to Define PMPA.

At a minimum, the Port will commence and complete public outreach to establish the parameters of the PMPA and to develop alternatives to study during environmental review. The Port will consult with Coastal Commission staff regarding the scope of public outreach. Additional public outreach otherwise required by the PMPA and environmental review processes will be conducted in accordance with Port policy and practices, the Coastal Act, and California state law.

EIR/PMPA TASK 1 is due no later than four (4) months after COMMISSION ACTION ON THE SUBJECT COASTAL DEVELOPMENT PERMIT.

EIR/PMPA TASK 2: Authorize Consultant Team to Prepare Environmental Document for PMPA. Following completion of Task 1, the Port will refine the PMPA scope and content based on the outcome of the public outreach, and authorize its selected consultant to prepare a draft EIR for the PMPA.

EIR/PMPA TASK 2 is due no later than two (3) months after COMPLETION OF TASK 1.

EIR/PMPA TASK 3: Finalize Environmental Document and PMPA and Conduct Port Public Hearing, and Transmit PMPA to Coastal Commission.

These processes will be conducted in accordance with Port policy and practices, the Coastal Act, and California state law, and include response to comments and public hearings by the Board of Port Commissioners. If the PMPA and environmental document are approved by the Board of Port Commissioners, then they will be transmitted as soon as practicable thereafter to the Coastal Commission for review and certification.

EIR/PMPA TASK 3 is due no later than two (2) years after COMMISSION ACTION ON THE SUBJECT COASTAL DEVELOPMENT PERMIT.

At the completion of each EIR/PMPA Task, Port staff will submit a written status report to Commission staff summarizing the progress made up to that point, and a proposed schedule for completion of the remaining tasks.

Completion of the Waterfront Destination Park Milestones

Completion of the park shall occur within five (5) years of Commission approval of the PMPA.

The following milestones establish a timeline for completion of the park. Any of these milestones may be completed earlier than the scheduled due dates and all are subject to adjustment only as described below.

PARK TASK 1: Amend the Joint Powers Authority (JPA) Agreement.

PARK TASK 1 is due no later than six (6) months after COMMISSION APPROVAL OF THE PMPA.

PARK TASK 2: Procure Park Designer.

PARK TASK 2 is due no later than six (6) months after COMPLETION OF TASK 1.

PARK TASK 3: Complete Public Outreach and Design; Obtain Permits to Construct Park.

PARK TASK 3 is due no later than one and a half (1 ½) years after COMPLETION OF TASK 2.

PARK TASK 4: Complete Public Advertising and Bidding; Award Contract to Build the Park.

PARK TASK 4 is due no later than four (4) months after COMPLETION OF TASK 3.

PARK TASK 5: Complete Park Construction.

PARK TASK 5 is due no later than one and a half (1 ½) years after COMPLETION OF TASK 4.

At the completion of each Park Task, Port staff will submit a written status report to Commission staff summarizing the progress made up to that point, and a proposed schedule for completion of the remaining tasks.

Force Majeure Delays

Recognizing the delays inherent in the PMPA, ~~and~~ environmental review, and construction processes, the milestone schedules will be extended one day for each day that a delay is caused by:

- (i) litigation by a third party not affiliated with or under the direction of the Port that prevents the Port from meeting any of the deadlines expressed or implied within the milestone schedules; and
- (ii) riots; natural disasters and other acts of God, including, without limitation, fires, earthquakes, floods, unusually severe weather conditions, and hurricanes; labor strikes; delays caused by governmental agencies other than the Port; acts of terrorism; and war on United States soil. These events will only extend the schedules if they result in a delay to the Port's ability to process the EIR/PMPA or construct the park despite the Port's diligent and commercially reasonable best efforts to proceed with the EIR/PMPA and park construction.

Failure to Meet Milestones

Should the Port fail to meet any of the above milestones, subject to any extensions as described above, then the Port will promptly notify the Executive Director of the Coastal Commission of such failure. Within thirty (30) days of missing any milestone, the Port may request an extension of time from the Executive Director of the Coastal Commission, and if the extension is granted, may complete the remaining task(s) within the time granted. If an extension is not granted, the Port agrees to submit an amendment to this permit for a revised EIR/PMPA and/or park construction timeline.

California Coastal Commission Comment	Co-Applicant Response
<p>Parking Management Plan The public access plans refers to the loss of 130 public parking spaces. It was our understanding, based on information previously submitted, that 170 spaces would be lost, to be replaced with 24 parallel parking spaces, with the possibility of increasing those spaces to a total of 58 diagonal parking spaces at an unspecified future date. Thus, 146 spaces need to be replaced.</p>	<ul style="list-style-type: none"> We also believe that public access in the immediate vicinity of the pier is a high priority; however, protecting the public's safety <u>during cruise ship operations</u> is paramount and that priority is established by Planning Goal IX on page 9 of the certified Port Master Plan
<p>The proposed Project would result in the loss of approximately 146 spaces.</p>	<p>The proposed Project would result in the loss of approximately 146 spaces.</p>
<p>One of the best things about San Diego's waterfront currently is its accessibility, because there is parking along the Embarcadero. Parking may not be the best possible use for valuable waterfront space; hence the NEVP improvements can be considered appropriate. However, parking spaces lost should be replaced prior to or concurrent with their removal.</p>	<p>We have already added a Permit condition to address parking displacement. See revised Special Condition #6, which was provided to Commission staff on 3/4/10.</p>
<p>We cannot accept the proposed plan for replacing the lost parking at this time. The plan states "prior to or concurrent with the loss of these public parking spaces, the Port will implement the following three measures," but one of the measures is a shuttle program proposed to begin operation as late as 3+ years from now. This would not provide adequate mitigation.</p>	<p>The District will not rely on the shuttle program at this time to address the displacement of 146 parking spaces.</p>
<p>Please let me know where the NEVP Parking Management Plan documents there are adequate public parking spaces in the surrounding vicinity to absorb 146 parking spaces. What are the "other parking lots that the Port may designate if these lots are unavailable?" We are assuming that the graphic submitted with the different radii drawn on</p>	<ul style="list-style-type: none"> The NEVP Parking Management Plan and three individual studies conducted by Walker, Ace Parking, and Five Star Parking all confirm that the existing parking supply in the NEVP study area could absorb the 146 parking spaces today. The NEVP Parking Management Plan documents

California Coastal Commission Comment	Co-Applicant Response
<p>it relate to available parking in the area, but the graphic doesn't show those lots. Please clarify.</p>	<p>where there are adequate public parking spaces in the surrounding vicinity to absorb 146 spaces. See Exhibit C: Excerpts from the NEVP Parking Management Plan. The Parking Management Plan states: "In summary, the existing parking supply in the NEVP study area is shown to be nearing the desired capacity of 85% daily occupancy needed to serve the area ..." (page A-6). In addition, refer to Table A-4 which demonstrates that the maximum occupancy in the Cruise Ship Terminal area is 73%, based on a supply of 2,275 parking spaces and a demand of 1,664. If 146 spaces are removed from the supply, then recalculate the ratio, and that leaves 78% occupied ... this is almost ten percent less than the "desired capacity."</p> <ul style="list-style-type: none"> • Five Star is currently performing an occupancy study for the District that states the provision of any additional parking spaces is unnecessary given current and projected parking demand and occupancy rates. • There is a substantial amount of public parking spaces available just off Tidelands on Pacific Highway, which if counted would drive occupancy rates down even further. • See the attached graphics entitled "Exhibit D: Public Parking Spaces within Project Vicinity" and "Exhibit E: Lane Field – Parking during Construction" that show all parking within the immediate vicinity, and parking available within three blocks of Lane Field that can accommodate parking over the entire term of Lane Field's construction.
<p>Graphics <u>NEVP 1 - C Street Corridor</u> The graphic included shows a view corridor, but it doesn't define what the view corridor is. Is it building to building? Sidewalk to sidewalk? Curb to curb? An actual definition,</p>	<ul style="list-style-type: none"> • We propose the following Permit condition language (which was derived from the Hilton San Diego Bayfront Hotel Coastal Development Permit condition): "Within the 80-foot wide C Street right-of-way, Permittee shall maintain a minimum 40-foot wide clear zone with

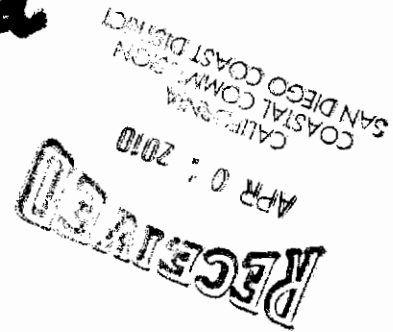
Marti E Kranzberg

W152

Click here to go
to the staff report itself.

April 7, 2010

Diana Lilly
CALIFORNIA COASTAL COMMISSION SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
619-767-2370 fax 619-767-2384



Please share with California Coastal Commissioners

How does the California Coastal Commission intend to enforce promises and agreements made by the Port of San Diego?

Dear Ms. Lilly:

As a member of the Community, I truly appreciate the recommendations you and your staff have made responding to the Port's request to no longer honor the Community Vision that was the original North Embarcadero Visionary Plan. My concern is the Port and their tenant/partner/developers have a solid "bait and switch" history of waterfront redevelopment.

The Staff's recommendation to the Coastal Commission regarding proceeding with redeveloping San Diego's Embarcadero is still unclear in stating what new public space must be provided in a timely manner, while allowing the Port to move forward with the "Phase 1" esplanade construction.

With the addition of "Phase 1C" it appears that the Port is merely required to agree to conduct an EIR, and then they can go ahead with their altered plans, that are distinctly different from what was outlined in the approved Port Master Plan that was adopted in March, 2001.

Does the Port actually have to make any changes in their current set of plans in order to go ahead, to do what they have determined needs to be done, in order to "pencil out"?

I am concerned that staff recommendations merely allow the Port to move ahead while disregarding your recommendations, and they need only state that they will conduct an EIR to look into mitigation options.

The Community was PROMISED two new major public "points of interest" and "parks" on the North Embarcadero, not merely "landscaping;" we were promised "gathering places" and "access to the Bay" and a "Navy Pier Park." According to the NEVP element of the existing Port Master Plan, these two new public spaces would serve as "pearls" on the new necklace of parks and public plazas along the North Embarcadero. The Port is now proposing to eliminate both of those public "pearls," and instead just provide us with a necklace-string in the form of the new, landscaped esplanade, ticket booth and restroom.

1625 Hotel Circle So. Ste. C106 San Diego, CA 92108
email: marti.k@cox.net tel: 619.296.3434 cell: 619.316.9839

Letters of Objection₃

Marti E Kranzberg

...enforce promises and agreements Page 2

Certainly it is the JOB of the California Coastal Commission to enforce its 2001 mandate for the construction of the Navy Pier Park now and to see this Vision through.

Please ensure that the Commissioners carefully examine these issues:

- Navy Pier Park was already specified in the NEVP and should not be considered as mitigation for park space that has been eliminated at the foot of Broadway
- How is it that landscaping of sidewalks can be considered as part of total Park space?
- How is it possible to allow public access of this, now PERMANENT Cruise Ship Terminal with current, post-9/11 maritime security? If significant access is prevented, how is it mitigated? And when pondering that thought, please review public access to the bay along the South Embarcadero!
- **Require** the Port to obtain a Performance Bond before the CDP is approved that will guarantee the building and turn-over of a significant open space destination waterfront park on the North Embarcadero within a specific period of time. This can be implemented via "steps" as long there are specific performance requirements that obligate the Port to meet the Commission's clear deadlines, and clear sanctions that will be taken by the Commission against the Port for failing to do so.

I recently celebrated Passover, and a major theme of the holiday, which leads into the historical discourse, is the query: "Why is this night different from all other nights?" I hope you will take this question to heart as the California Coastal Commission "moves forward" with whatever it is the Port thinks is the "right" thing to do. Why would anyone with a memory, or ability to rationally assess the history of the Port's planning processes and development of the waterfront, expect that the Port would live up to its "plans" and "agreements?"

"Why is this Agreement with the Port different from all other Agreements?"

Thank you for your efforts to put some substance and integrity into this Agreement.

Warm regards,

Signature on file

Marti E Kranzberg

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email: marti.k@cox.net tel: 619.296.3434 cell: 619.316.9839

4

Judith A. Swink
2289 Caminito Pasada 106
San Diego CA 92107

April 4, 2010

Chair & Commissioners
California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive Ste. 103
San Diego CA 92108

RE: W15-A - Appeal of San Diego Unified Port District / North Embarcadero Visionary Plan
Amendment

I thank you for this opportunity to once again express my opposition to the SIDUPD project as it has been proposed, and support for the Appeal before you. I served as an observer for Citizens Coordinate for Century 3 at many of the NEVP Alliance and NEVP JPA meetings over the past decade.

I understand that the possibilities are pretty limited because of the earlier approval by the Commission to the Port for the Broadway Pier cruise ship terminal. I wish there were a legal way to revoke that. However, at the very least, the Coastal Commission needs to enforce the public right to access especially when it has been promised then taken away by public agencies and to ensure that the Port District make a legally-enforceable commitment to specific conditions for the NEVP/Broadway & Harbor Drive "park" actually equivalent to the now-lost park at the foot of Broadway, to ensure some preservation of the wonderful view corridor down Broadway to San Diego Bay and public access to the Bay front in this area. These view corridors keep shrinking as piece by piece changes are brought forward by the Port District.

I can testify that the change of use for Broadway Pier, approved by the Commission independently of consideration of its possible impacts on the Commission-approved NEVP, was never clearly articulated to the public during Port-conducted public meetings prior bringing the Broadway Pier re-designation as cruise ship terminal forward for Commission approval.

The public was informed that the B Street Cruise Ship Terminal was to be redeveloped and that the Broadway Pier would be necessary as *temporary* docking for cruise ships but that it would still become the promised public access pier per the PMP and NEVP. Too few of us realized that, by the time the project was submitted to the Coastal Commission, the temporary use had morphed to a full-on cruise ship terminal. There was absolutely no discussion of any change of the size and shape of the promised park at the foot of Broadway, across which a narrowed, slower Harbor Drive would pass, or suggestion that the Broadway Pier (which we understand is not within the NEVP but is an integral part of the park at the foot of Broadway) would not become the Bay public access described in the NEVP.

Receiver

APR 06 2010

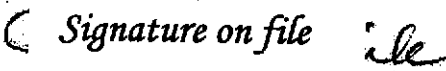
California Coastal Commission
San Diego Coast District

We were then informed that the public would still have access when there wasn't a cruise ship using the pier. But, when you add up the time before, during and after a cruise ship is docked, public access to the pier – and even across the new “driveway” now requested – would be severely limited and will increase as the number of cruise ships stopping here increase, something that I would heartily support if it were not to come at the expense of public access. More cruise ships means more time public access is cut off across the foot of Broadway. I hope that the conditions proposed by Regional Staff will resolve this in the public's favor if the appeal is denied.

At some point, we must stop squeezing everything into a few short blocks of the North Embarcadero. The existing cruise-day traffic at the B Street terminal is already a major traffic back-up on weekends, a time when non-cruise ship visitors are most likely to visit the South Embarcadero and the Maritime Museum & tour boats. To now lose the beautiful park promised in the NEVP, and have the Port argue that 16,000 sq ft is equivalent to the one approved in the NEVP, is the worst sort of “public theft” from the public.

It's hard not to believe that the entire scenario leading to this final stage of the Port's cruise business planning isn't also the final stage of a long-term plan of misdirection and I would hope that Commissioners would take an action here that includes contractual obligations rather than assurances of future “benefits to the public” in mitigation. As one local blogger points out, there still is no off-pier parking for the Midway, a condition of approval of the PMP amendment that allowed the Midway to be permanently docked in an already congested area with limited parking. At some point, the Navy Pier is supposed to become a “public park” and not a public parking lot. I hope that, this time, the Commission will ensure that is completed, given the frequent bait & switch actions of the SD Port Commission.

Sincerely,

 *Signature on file*

Judith A. Swink



Diana Lilly

From: Christine Gaunt [cmgauntess@thegauntess.com]
Sent: Tuesday, April 06, 2010 8:39 PM
To: Diana Lilly
Subject: Compare the same number of passengers in Seattle and San Diego

Dear Ms. Lilly:

I organized a trip for the landscape architect for the San Diego Waterfront to see how Seattle had handled the same number of yearly passengers. The space consumption varies radically from what the Port of San Diego is suggesting and I continue to lament that they believe this commercial/industrial use of the central waterfront is in the best interest of San Diegans. Virtually no other cities land 1 million passengers at the central waterfront. I realize that these numbers are dropping quickly due to violence in Mexico so this is even more of a deterrent to rapping the central waterfront. In Seattle the cruise ships land at former military piers with acres of parking and tagging area and the central waterfront is reserved for 1 smaller ship and the multi use Bell Harbor Conference Center. It is expertly managed with cruise ship priority, by a private firm that also books the convention events. This would represent a huge step forward for the central waterfront of San Diego if this model were used. Additional convention space on non-cruise days and the removal of the huge industrial infrastructure to launch up to 4 ships on Harbor Drive. I hope that finally this model will be considered in the planning to serve both uses. The mega ships need to go to an industrial pier where 25 taxis and 10 shuttle buses can park and not pretend that Harbor Drive will double as a pedestrian promenade. What kind of nonsense is that??? Thanks for your vigilance on this most important project for San Diego.

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BLC File(s): 1434.07

2 April 2010

Peter M. Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Item 15-a on Agenda for April 14, 2010--Appeal no. A-6-PSD-09-43
(San Diego Unified Port District)

Dear Mr. Douglas:

On behalf of the San Diego Navy Broadway Complex Coalition, I am writing to express my client's opposition to issuance of the coastal development permit that is the subject of the above-referenced appeal. As explained below, my client's opposition is not unconditional. There are several conditions that, if added to the conditions set forth in the April 1, 2010 staff report and recommendation, would satisfy my client that the outcome long promised for San Diego's waterfront will be delivered by the Port of San Diego.

Before explaining the incurable procedural defects and articulating the additional conditions offered as a compromise on the outcome--the conditions would not correct the procedural defects surrounding the permit--let me provide some context for why my client so strongly opposes what the Port is asking the Commission to do with the proposed permit.

BACKGROUND

The North Embarcadero Alliance Visionary Plan ("NEVP") was completed by the Port in December 1998, after years of workshops and input from numerous public agencies, coastal advocates, and other stakeholders. As its name suggests, the NEVP spells out an ambitious vision for the North Embarcadero region of the San Diego waterfront. The introductory paragraph of the NEVP explains that the endeavor's purpose was "to assure that the North Embarcadero becomes the '*showcase* of the San Diego waterfront and a *place of urban grandeur*.'" (NEVP, p. 5 (emphasis added).)

The key element of the NEVP's vision for the waterfront is the "expansive bayfront esplanade punctuated by two 'activity centers', referred to as County Terrace and Broadway Landing." (NEVP, p. 39.) It is a

continuous public open space spine along the San Diego Bay. *

* * The Esplanade, and the 25-foot wide promenade along its



western edge, . . . strings together a necklace of parks and plazas. Collectively, the series of plazas and parks form a “front porch” for the city, creating an active *public* precinct on the water’s edge.

(NEVP, pp. 39-41 (emphasis added).) The Esplanade’s north and south “anchors”--County Terrace and Broadway Landing--are “the most unique and valuable asset of the North Embarcadero.” (NEVP, p. 41.)

The permit being considered by the Commission concerns Broadway Landing, which the NEVP intends to be “one of San Diego’s most important *civic* spaces, commanding a prominent position at the foot of Broadway,” and more specifically as “an *expansive public space* that reaches from the grand oval-shaped landscaped park on the Bayfront Esplanade out over the water.” (NEVP, p. 45 (emphasis added).) Broadway Landing is designed to accommodate “large *public* gatherings . . . next to the water.” (NEVP, p. 45 (emphasis added).) And while the NEVP is non-committal as to whether the B Street Pier would provide home-port or port-of-call services to cruise ships, both scenarios contemplate a very limited cruise-ship role for Broadway Pier--consistently describing it as providing “[p]ublic access and *extra* cruise ship berthing.” (NEVP, figs. 3.5 and 3.6 (emphasis added).)

The NEVP is much more than aspiration in print, however. It explicitly establishes “broad policies, statements of guiding principles or directions, for North Embarcadero” to “address the goals and issues of the area.” (NEVP, p. 10.) Consider two key policies for Broadway Landing:

Policy PA-6: Establish Broadway Pier as a *civic* pier with a park and fountain.

Policy PA-8: Create an “oval park” at the foot of Broadway, approximately *two city blocks in size*, with landscaped public open space and a centerpiece fountain or other landmark (monument, statue, sculpture) for *daily recreational uses or large public gatherings*.

(NEVP, p. 12 (emphasis added).) In contrast, the only policy in the NEVP that even mentions cruise ships or cruise-related activities is Policy PA-5, which focuses exclusively on B Street Pier. (NEVP, p. 12.)

The NEVP also recognizes the need to complete its various public improvements right away. Indeed, Policy FI-2 requires “Implement[ation of] the public improvements in the *near-term*. These include improvements to North Harbor Drive, the *Bayfront Esplanade, Broadway Pier*, and Pacific Highway.” (NEVP, p. 14 (emphasis added).)

Additionally, the NEVP contemplated that it would become a legally enforceable planning document. Consider its two policies on the subject of implementation:

Policy IM-1: Implement the Visionary Plan through a series of steps, *including* endorsing the Plan (by Alliance Steering Committee), preparing and agreeing on a Memorandum of Understanding (MOU), endorsing the Visionary Plan and MOU (by Alliance member agencies), *revising Member agencies' plans and policies* and preparing environmental analyses, and *processing plans and policies*, environmental analyses, and local coastal plan amendments.

Policy IM-2: Establish a mechanism for *assuring that each Alliance member complies* with the Visionary Plan.

(NEVP, p. 15 (emphasis added).) Taking its lead from the NEVP, the Port made the document legally binding when it amended its Port Master Plan ("PMP") to provide thus:

The Alliance developed a Visionary Plan in 1998 to guide the redevelopment of the contiguous properties. The *specific recommendations* of the Visionary Plan that pertain to Port District land and water areas *within the Planning District 3 Precise Plan area [i.e., North Embarcadero] are incorporated into the Master Plan. All other recommendations* of the Visionary Plan *guide development within Planning District 3.*

(PMP 2009, p. 58 (emphasis added).) Significantly, the Commission approved this language in the PMP several years ago.

Unfortunately, the NEVP's and the PMP's combined vision for Broadway Landing and Broadway Pier was effectively erased from the pages when in 2007 the Port issued itself a non-appealable coastal development permit for the construction of a cruise-ship terminal on Broadway Pier, in direct conflict with the PMP. The Commission effectively (and unlawfully) blessed the Port's illegal permit by allowing a *post hoc* amendment to the PMP without any environmental review of the amendment.

As if the illegal 2007 permit were not enough to kill the NEVP's vision for Broadway Landing, last year the Port issued itself the permit now before the Commission on appeal. While the 2007 permit illegally changed the design, use, and public access for Broadway Pier, the pending permit will destroy what remains for Broadway Landing--one of the "most unique and valuable asset[s] of the North Embarcadero." (NEVP, p. 41.) The two permits represent a one-two knockout punch for Broadway Landing and North Embarcadero, described by many as the crown jewel in the "necklace of parks and plazas" that form San Diego's "front porch." (NEVP, p. 41.)

ILLEGAL PROCEDURE

The proposed permit should be denied because the proper procedures have not been followed. To start, the Port (and the Commission) have not complied with the California Environmental Quality Act ("CEQA"). The permit would facilitate an increase in the use of



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Broadway Pier by allowing for more trucks and other service vehicles to reach the increased number of cruise ships that will be berthing at the Pier. For instance, a few years ago Carnival Corporation provided a multi-million-dollar loan to the Port to finance the new "homeport" facility on the Pier. Obviously the intensity of the Pier's use--and all the environmental impacts associated with cruise ships--will increase because of the additional ships berthed at the Pier. At the same time, the public's access to the Pier will be reduced dramatically because of all the service vehicles entering the Pier and the additional cruise-ship activities on the Pier facilitated by those vehicles, not to mention the pre-berthing Pier closures for security purposes. Neither the additional environmental impacts nor the loss of public space has been analyzed in an environmental document.

Issuing the proposed permit based on the conditions suggested by staff on April 1 would not avoid the CEQA violations. The permit will effectively eliminate the remaining public space at Broadway Landing. Staff's suggested conditions require nothing more than a process for *identifying* comparable public space, but there is no condition *ensuring* that the public space will be provided. No condition requires that the Port complete or even begin construction of the public space that is being lost at Broadway Landing, and certainly no condition requires that there be adequate funding to replace the lost space. Basically, the public is losing the Port's legal commitment to building a large, high-quality public space and in return--even with staff's suggested conditions--is getting nothing more than a promise to look for a replacement. That is not adequate mitigation under CEQA because there is no legally binding obligation on the Port to deliver something comparable to what it promised. A plan on paper is not public space on the waterfront.

Apart from the CEQA violations, issuance of the proposed permit would violate the California Coastal Act. This appeal was accepted by the Commission because it raises a "substantial issue . . . as to conformity with the certified port master plan" under Public Resources Code Section 30625(b)(3).¹ On appeal, the Commission's task is to determine whether "the proposed development is in conformity with the certified local coastal program." PUB. RES. CODE § 30604(b), § 30715.5; CAL. CODE OF REGS., tit. 14, § 13119. Because the proposed development lies between the nearest public road and the sea, the Commission must also follow the Act's public-access policies. PUB. RES. CODE § 30604(c); CAL. CODE OF REGS., tit. 14, § 13119.

As the Commission knows, the PMP is the controlling planning document. Whatever one might argue about Broadway Pier, the PMP, which explicitly incorporates the NEVP's recommendations for Broadway Landing, still requires "an *expansive public space* that reaches from the *grand oval-shaped landscaped park* on the Bayfront Esplanade out over the water," a place designed to accommodate "*large public gatherings* . . . next to the water." (NEVP, p. 45 (emphasis added).) The Commission has not been presented with a PMP amendment. Until the PMP is amended to eliminate what remains of Broadway Landing, it is illegal for the Commission to approve a permit effectively eliminating what precious public space remains.

¹ Accordingly, the Commission must follow Sections 13057-13096 of its regulations. CAL. CODE OF REGS., tit. 14, § 13115(b).



To summarize this section, the Commission may not lawfully issue the proposed permit because CEQA has been violated (no analysis of additional impacts and loss of public space, inadequate mitigation for loss of public space) and because the proposed development is inconsistent with the NEVP recommendations that the PMP has incorporated by reference.

COMPROMISE CONDITIONS OF APPROVAL

While my client cannot condone the Port's (or the Commission's) reliance on illegal procedures for the proposed permit and development, in the spirit of compromise my client wishes to put forward several additional conditions of approval that, if adopted and followed, would *guarantee* that the public receives amenities comparable to those that are being eliminated under the permit. The conditions refine staff's Special Condition 1 calling for a Waterfront Destination Park Plan.

When considering these conditions, please keep in mind that my client and the public generally have very little reason to trust anything the Port says--even when embodied in legal documents approved by the Commission. For instance, the Port has repeatedly lied to the Commission and the public about its intentions for North Embarcadero, has admitted in the press to changing its mind about Broadway Landing without amending the NEVP or the PMP, and even tried to claim that the oval park/plaza was just a "concept" that was never put on paper.² The Port has also failed to make good on its promises for other development on waterfront. Perhaps the most glaring example is that there still is no public park on Navy Pier, promised in the PMP once the Navy transferred the Pier to the Port (PMP, p. 64),³ and instead the Pier continues to be used for parking by the Midway Museum. Recently, moreover, the Port acknowledged that there will never be enough money to finance the measures required to mitigate the Museum's parking impacts and provide off-pier parking. Now the Port is asking for a permit to make it easier for service vehicles to reach a cruise-ship terminal that was never contemplated by the NEVP, on a pier that was touted as providing "*expansive public space* that reaches from the *grand oval-shaped landscaped park* on the Bayfront Esplanade out over the water" and designed to accommodate "large *public* gatherings . . . next to the water." (NEVP, p. 45 (emphasis added).) With such a duplicitous, incompetent track record at the Port, the Commission can surely understand why my client and the public in general deserve a guarantee rather than another empty promise.⁴

² That comment was made despite the existence of the *Precise Plan* (Figure 11) in the PMP, which clearly shows the oval park/plaza at the foot of Broadway Pier.

³ The transfer took place in 2003. The Navy stopped using the building on Navy Pier in 2007.

⁴ Following the Commission's hearing last February, my client and I met on numerous occasions with representatives of the Port in order to reach a reasonable compromise. Within a few weeks, my client presented the Port with three alternatives in writing. Significantly, the Port's proposal to the Commission's staff on March 4, 2010, made no mention of my client's alternatives, even though they were presented to the Port more than a week before March 4. Making matters worse, my client and I were not apprised of the Port's March 4 submission until March 26; that is to say, the Port *knowingly* wasted more than three weeks talking to my client and me about one set of proposals while keeping us in the dark and talking to the Commission's staff about an entirely different set of proposals. The Port's desire to "pacify" my client by seeking its input after the last hearing but then doing nothing with that input is further evidence of bad faith on the part of the Port.



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The additional conditions proposed by my client for the Waterfront Destination Park Plan (Special Condition 1 by staff) are on Attachment 1 to this letter. They are intended to fill what was surely an unintended gap in staff's good-faith attempt to reach a compromise that will allow the proposed development to go forward while simultaneously protecting the public's access and space at Broadway Landing. In brief, staff's conditions suggest but do not *ensure* that the Port builds public amenities at or near Broadway Landing comparable to those *promised* in the NEVP and the PMP for Broadway Landing.

In closing, my client and I want to commend the Commission for encouraging the Port to rethink the proposed development and permit and to compliment the Commission's staff for the many hours of hard work it has put into trying to protect public access and space on San Diego's waterfront.⁵ The path taken by the Port has been illegal and unethical, but there is a compromise that can achieve an acceptable outcome. By imposing my client's additional conditions, the Commission will be ensuring--once and for all--that such an outcome is achieved.

Thank you for your consideration of and dedication to a just resolution of these important issues.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

Attachment

cc: Diana Lilly

⁵ My client strongly supports the condition in the Waterfront Destination Park Plan that requires the Port to replace the public-pier component of the three Grape Street piers if the forthcoming PMP amendment removes the curvilinear public pier or public boat dock at Grape Street. The Port must not be allowed to eliminate public amenities without making specific, binding commitments to replace those amenities. My client's additional conditions are intended to serve a similar purpose with respect to the public amenities that the Port is destroying at Broadway Landing.



B

ATTACHMENT 1
ADDITIONAL CONDITIONS OF APPROVAL
CALIFORNIA COASTAL COMMISSION APPEAL NO. A-6-PSD-09-43

Additional Condition 1: PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Port shall obtain a performance bond for completion of the alternative Waterfront Destination Park that is approved as part of Task 3 within the time permitted under Additional Condition 2 (below). The bond shall be in an amount that is equal to the estimated costs of completing the construction of Broadway Landing as currently described in the North Embarcadero Visionary Alliance Plan and the existing Port Master Plan. The amount of the bond shall be approved by the Executive Director of the Commission prior to the bond's issuance. The Port shall provide the Executive Director with any and all estimates and other documentation that the Executive Director deems necessary to determine that the estimated costs are correct. The Executive Director's approval of the bond amount shall not be unreasonably withheld.

Additional Condition 2: Except to the extent of a force majeure, the construction of the alternative Waterfront Destination Park that is approved as part of Task 3 shall be completed not more than one year after the Commission's approval of the Port Master Plan amendment containing the Port's approved alternative Waterfront Destination Park.

Additional Condition 3: The Port shall give the alternative Waterfront Destination Park that is approved as part of Task 3 funding priority over all other projects included in the Port's Capital Improvement Program. To the extent that such priority cannot be given over one or more projects as a matter of law or without causing the Port to commit a material breach of a contract executed prior to issuance of this coastal development permit, the Port shall give funding of the approved alternative Waterfront Destination Park priority over all other projects. The Port's Capital Improvement Program shall be amended to give this priority to the approved alternative Waterfront Destination Park not more than 60 days after the Executive Director has approved the amount of the bond described in Additional Condition 1 (above). The amount budgeted in the Port's Capital Improvement Program for the approved alternative Waterfront Destination Park shall be no less than the amount of the bond.

Additional Condition 4: The alternative Waterfront Destination Park that is approved as part of Task 3 shall be designated as part of the California Coastal Walk, and dedicated thereto in perpetuity, as a public park. Not more than 30 days after commencement of construction of the approved alternative Waterfront Destination Park, the Port shall execute and cause to be recorded any and all documents that the Executive Director of the Commission deems necessary or appropriate to establish such designation and dedication.

Additional Condition 5: The Port shall complete construction of the public park identified for Navy Pier in the existing Port Master Plan, and shall ensure that all mitigation measures and coastal development permit requirements for the Midway Museum are fulfilled, no later than 24 months after completion of the alternative Waterfront Destination Park that is approved as part of Task 3. In addition, the Port shall give the public park funding priority over all other projects included in the Port's Capital Improvement Program other than the approved alternative Waterfront Destination Park. To the extent that such priority cannot be given over one or more projects as a matter of law or without causing the Port to commit a material breach of a contract executed prior to issuance of this coastal development permit, the Port shall give funding of the public park priority over all other projects other than the approved alternative Waterfront Destination Park. The Port's Capital Improvement Program shall be amended to give this priority to the public park not more than 60 days after the Executive Director has approved the amount of the bond described in Additional Condition 1 (above). The amount budgeted in the Port's Capital Improvement Program for the public park shall be approved by the Executive Director of the Commission prior to the amendment of the Capital Improvement Program. The Port shall provide the Executive Director with any and all estimates and other documentation that the Executive Director deems necessary to determine that the amount budgeted is a reasonable estimate of the costs to complete the public park's construction. The Executive Director's approval of the amount shall not be unreasonably withheld.

Additional Condition 6: None of the alternative Waterfront Destination Parks considered for approval as part of Task 3 may be a park or similar use that has already been approved by the Port or that is currently being considered as a park or similar use by the Port or any other public agency. Each alternative considered for approval must be located within the North Embarcadero region (Planning District 3 in the existing Port Master Plan).

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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W15a

Staff: D. Lilly-SD
Staff Report: April 1, 2010
Hearing Date: April 14-16, 2010

STAFF REPORT AND RECOMMENDATION ON APPEAL
DE NOVO

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 eastward from the B Street Pier to south of the Broadway Pier. 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 restripe to provide an additional turn lane to the Grape Street and North Harbor Drive intersection. The project will result in a net reduction of 146 existing public parking spaces.

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

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

STAFF NOTES:

At its August 14, 2009 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

On February 11, 2010, the Commission postponed action on the project to allow additional time for Port and Commission staff to review how additional park area might be secured to make up for the proposed removal of the oval-shaped park/plaza in the existing certified Port Master Plan.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the de novo permit with special conditions. The primary issues raised by the subject development are the project's inconsistencies with the requirements of the certified Port Master Plan (PMP) that expansive public access and recreation amenities be developed along North Harbor Drive, particularly at the foot of Broadway. The proposed project involves public access improvements, but the nature and usefulness of the proposed improvements are both substantially different and not equivalent to those called for in the certified PMP.

The North Embarcadero Visionary Plan PMP Amendment was approved in 2001 and outlines a program of public access improvements along Harbor Drive including developing a wide esplanade alongside the shoreline, landscaping and streetscaping improvements, passive green spaces, and narrowing and curving Harbor Drive to accommodate a major park or plaza at the foot of Broadway.

The proposed project eliminates both the curve in Harbor Drive and the oval-shaped park/plaza next to the Broadway Pier. Instead, Broadway would terminate at a rectangular plaza/pier entrance, with the esplanade continuing on both sides. The plaza will also function as a driveway to the recently approved auxiliary cruise ship terminal. 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. The project would also construct a restroom that encroaches into the view corridor at C Street.

However, since the proposed project is a public access project which will improve pedestrian access and visual quality along the waterfront, Commission and Port staff have been discussing ways in which additional public open space could be provided in the North Embarcadero area to replace the planned oval park in approximate 1) size; 2) function; and 3) prominence (i.e., a destination and focal point for the waterfront), while still allowing construction of at least part of the proposed public access project to proceed. Because the proposed project will result in a different development than shown in the certified PMP, a Port Master Plan Amendment must still be obtained. However, if the Commission can be assured through special conditions placed on this permit that the future PMPA will address all of the relevant issues in a comprehensive manner, including development of a new park, and that the environmental review, the PMPA, and construction of the park will be undertaken in a timely manner, in this particular case, the subject project could be allowed to proceed.

Therefore, staff is recommending several special conditions to address these issues. Special Condition #1 requires compliance with a "Waterfront Destination Park Plan" (see Attachment A). This detailed plan has been developed by Commission staff to ensure, to the greatest extent feasible, that a new park replacing the oval park/plaza shown in the certified PMP will be designed and constructed. Essentially, the Park Plan reframes the proposed Phase I permit as a two part permit—Part 1 consisting of the proposed public access improvements on Harbor Drive and West Broadway, and Part 2, development and

construction of an alternative destination park, with both parts given equal importance and commitment.

Development of a new park will require environmental analysis, public outreach, discretionary approvals, including, as noted, a Port Master Plan Amendment. Funding must also be identified and obtained. Thus, a particular site and design has not been determined at this point. However, the Park Plan does establish very specific, mandatory parameters for the size, nature, and function of the park; the potential locations which must be analyzed; and milestones and deadlines for review and construction of the project. For example, the alternative Waterfront Destination Park must be a minimum of 2.5 acres in size, to replace the approximate size of the oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point.

The PMPA for the Park must include clarifying and/or revising the land use category “Park/Plaza” to differentiate between grassy “park” and hardscape “plaza,” converting Navy Pier into a park, and implementing an Embarcadero circulator shuttle.

The Plan requires that the EIR and PMPA for the Park be brought to the Commission for review no later than two years after Commission action on the subject public access improvements permit.

Special Conditions also require implementation of a Parking Management & Transit Opportunity Plan to address the impact the removal of 146 waterside parking spaces will have. The Port has suggested that the demand for all 146 parking spaces can be absorbed in existing parking lots in the vicinity of the North Embarcadero area. However, the 146 parking spaces proposed to be removed are short-term, inexpensive metered, prime waterfront parking, while the replacement parking expected to fulfill the demand for access to the project site would be located in surrounding lots further away from the water, mostly in lots with all-day pricing, which may not be available in the long term as development around the Port continues.

Therefore, the Parking Management & Transit Opportunity Plan requires that the parking be removed in phases to retain the maximum number of on-street parking spaces in the vicinity for as long as possible. While the plan requires all parking removed to be replaced prior to or concurrent with the removal of the parking spaces, the phased approach also allows time for a required Circulator Shuttle to be implemented. Most significantly, the plan prohibits the removal of more than 50% of the existing parking spaces proposed to be removed until a Circulator Shuttle has begun operations.

The North Embarcadero Circulator Shuttle is a proposal the Port has been exploring for several years to help move visitors and residents around the North Embarcadero region. Given that the proposed project would remove 146 prime waterfront parking spaces, it is important that the Shuttle program begin operations before all of these spaces are lost, to avoid significant impacts to public access and recreation on the Embarcadero. The

Shuttle must be developed in coordination with the approved Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties.

Other conditions require a revised public access program that ensures pedestrian access will be protected and promoted alongside Broadway Pier, even when cruise ships are docked, and prohibit the encroachment of any structures into the C Street view corridor. Special conditions also prohibit the use of invasive plants for the proposed landscape improvements.

Standard of Review: Certified Port Master Plan; public access and recreation policies of the Coastal Act

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. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-PSD-08-4 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Port Master Plan. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following special conditions:

1. Waterfront Destination Park Plan. The applicant shall comply with all requirements contained in the “Waterfront Destination Park Plan” dated April 1, 2010, attached to this staff report as Attachment A.

Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final site, building, and elevation plans for the permitted development that have been approved by the Port of San Diego. Said plans shall be revised as follows:

The restroom located across from C Street shall be moved or redesigned such that no portion of the structure is located within the 40-foot wide clear zone in the C Street right-of-way.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Public Access Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide, for review and written approval of the Executive Director, a revised public access program, in substantial conformance with the Draft Public Access Program dated March 4, 2010 (attached as Exhibit #5), but with the following revisions:

a. On Page 4, the following revisions shall be made to the second paragraph, which describes public access on the proposed Harbor Drive Esplanade:

This Project facilitates north-south pedestrian and bicycle circulation. A sidewalk and recreational path borders the west side of North Harbor Drive, while an approximately 30-foot wide promenade along the water’s edge runs the length of

the Project. The promenade ~~is wide enough to~~ shall accommodate many types of users, including pedestrians, joggers, runners, and recreational bicyclists. Additional north-south circulation is available through the formal gardens and shade pavilions.

- b. On Page 5, the following revisions shall be made to the last sentence, which describes the new fence and gates proposed to be constructed at the front of the Broadway Pier:

The gates ~~are anticipated to~~ shall be open from sunrise to sunset. ~~f~~For public safety and for security purposes immediately prior to and during a cruise ship visit, access to the pier is limited to passengers and operational personnel. Public access signage shall be provided at the front of Broadway Pier that clearly identifies these hours of operation. No revisions shall be made to the operating hours without an amendment to this coastal development permit, unless the Executive Director determines no amendment is legally required.

- c. On Page 6, the following revisions shall be made to the paragraph titled C Street Corridor:

2.4 C Street Corridor

C Street physically and visually connects Santa Fe Depot (Amtrak, Coaster and Trolley services) to the Bay, serving visitors, tourists, residents and local employees. The Lane Field Public Access Program provides a link for the public between Pacific Highway and Harbor Drive. The Project will not place any structures in the extension of the 40-foot wide C Street view corridor established in the Lane Field Coastal Development Permit.

- d. On Page 6, the following revisions shall be made to the last paragraph:

Early in the morning of a cruise ship arrival, during passenger disembarkation, is a period of two to three hours of heavy vehicular traffic. Trucks bringing provisions for the ship and buses, taxis and other vehicles picking up passengers will be entering and exiting the Pier. Bollards at the eastern edge of Broadway Plaza will be removed to allow vehicles to cross the plaza east-west onto Broadway Pier. To maximize public safety during periods of heavy vehicular traffic, removable bollards and rope will guide pedestrians to two north-south crossing locations at Broadway Plaza: (1) the promenade along the water and (2) the sidewalk along the bayward side of Harbor Drive. As in any managed intersection, security personnel will alternately stop vehicles and pedestrians as needed to maximize east-west and north-south circulation and limit congestion, as shown in Figure 2. As the day progresses, vehicular traffic onto and off the Pier is more sporadic and public transit through the plaza can be more free-flowing, with continued management by security personnel to assure pedestrian safety.

e. On Page 8, the following shall be added to the last paragraph before 4.0 Parking Management Plan:

The Executive Director shall be notified of any changes to security measures that affect public access that the Port is mandated by law to implement immediately. Any permanent security revisions that affect public access shall require an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

f. On Pages 8 and 9, the Section titled **4.0 Parking Management Plan** shall be removed. The Parking Management Plan shall be developed as a separate document (see Special Condition #4, below).

g. On Page 9, Section **5.0 Comprehensive Signage Program** shall be renumbered to 4.0.

The permittee shall undertake development in accordance with the approved Public Access Program. Any proposed changes to the approved Program shall be reported to the Executive Director. No changes to the Program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Revised Final Parking Management & Transit Opportunity Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide, for review and written approval of the Executive Director, a revised, final parking management and transit opportunity plan that includes the following elements:

a. Parking Removal Phasing Plan

The final Parking Management Plan shall include a parking removal phasing plan that indicates the location of the approximately 146 parking spaces to be removed as part of Phases IA and IB. The plan shall detail how the parking spaces shall be removed in phases to retain the maximum number of on-street parking spaces in the project vicinity as long as possible to minimize impacts to public access, and to allow time for the Circulator Shuttle (see below) to begin operation. No removal of public parking shall occur until replacement parking is identified pursuant to subsection (b) below, and no more than 50% of the existing public parking may be removed until operation of the Circulator Shuttle is instituted.

b. Replacement Parking

The final Parking Management Plan shall identify the location of replacement parking spaces for a minimum of 50% of the proposed parking spaces to be permanently removed from the project site (i.e., approximately 73 spaces). The Plan shall document and include the following provisions:

- The replacement spaces are excess spaces not currently in demand;
- The replacement spaces are within 10 minutes walking distance;
- The replacement spaces shall be available at least until the Circulator Shuttle is operating;
- Limitations and restrictions associated with the replacement spaces shall be identified, specifically, any potential fee structure and any time limitations placed on the parking;
- The replacement spaces shall be available and priced for short-term parking, rather than all-day use;
- The replacement spaces shall be secured prior to or concurrent with the removal of the parking spaces, and;
- Signage directing the public to nearby parking opportunities shall be provided at the project site.

c. Circulator Shuttle

The final Parking Management Plan shall include a plan for implementation of the Circulator Shuttle prior to the loss of the remaining 50% of the parking spaces. The Plan shall address the following:

- 1) Retention of at least 50% of the parking spaces until the Circulator Shuttle has begun operation;
- 2) Identification of the shuttle route along Harbor Drive within the North Embarcadero to be developed in coordination with the Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties;
- 3) Identification of the hours and months of operation to include, at a minimum, summer months daily from June 1 through August 31, between 10 am and 9 pm.
- 4) Fee structure which must be equal to or less than the cost of existing transit options between the airport and the Amtrak station;
- 5) A timetable for implementation of the Circulator Shuttle.

d. Wayfinding Signage

The final Parking Management Plan shall include a signage program that includes a multifaceted wayfinding signage element addressing pedestrians, vehicles, and bike paths. The signs will be designed to maximize public access within the Project limits and to establish a common design theme along the North Embarcadero. The Plan shall identify the location and message of the signage and shall require the signage to be installed prior to or concurrent with the loss of any public parking spaces.

e. Transportation Hubs

The final Parking Management Plan shall include one of the three transportation hubs that are recommended to make it easier for the public to move about the North Embarcadero. The recommended hub within the Project limits is near Broadway Plaza. The transportation hub shall include a consistent set of facilities, services, and signage including an Embarcadero circulator shuttle stop, bike racks, transportation information displays, pedicab access, passenger and commercial loading and unloading zones, and clearly marked pedestrian paths. Plans for the hub facilities shall be included in the Plan, and the facilities shall be installed prior to or concurrent with the loss of any public parking spaces.

The permittee shall undertake development in accordance with the approved final Parking Management Plan. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Final Revised Landscape Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final landscape plans. Said plans shall demonstrate that all landscaping on the site shall be drought-tolerant (or irrigated via reclaimed water) and (1) native or (2) non-invasive plant species. Except as noted below, no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council (CAL-IPC) Inventory Database, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Mexican Fan Palms shall be removed from the proposed plant palette, and only male Canary Island Palms shall be permitted.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Compliance with the San Diego Unified Port District Conditions of Approval. All conditions of approval of San Diego Unified Port District July 7, 2009 decisions (CDP-2009-32/33-142) for the proposed project as shown in Exhibit #4 are hereby incorporated as special conditions of the subject permit unless specifically modified by any special conditions set forth herein. For purposes of condition compliance, the Port District shall be responsible for reviewing and determining compliance with the special conditions referenced above, except for those specifically modified by any special condition set forth herein. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Port District shall notify the Executive Director when all of the conditions have been

met. Any proposed changes shall be limited to immaterial or minor changes which do not have the potential for adverse impacts, either individually or cumulatively, on coastal resources or public access to and along the shoreline. All proposed changes shall be reported to the Executive Director for review and written approval. Changes that are not immaterial or that alter the physical aspect of the project (e.g. building height, building footprint, esplanade width, parking or public access) shall require an amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

7. Liability for Costs and Attorneys Fees. The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. **Project Description.** On July 7, 2009, the Port approved a coastal development permit for the North Embarcadero Visionary Plan (NEVP) Phase 1 Coastal Access Features. The project would realign North Harbor Drive roughly 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 (see. Exhibit #4, Approved Port CDP, "Exhibit A" attachments). 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 consist of a 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, approximately 80 feet long, 70 feet wide, and 18 feet high, would be constructed on the eastern portion of the Esplanade, under which replacement ticket kiosks, an approximately 672 sq.ft., 16-foot high Information building, and an approximately 315 sq.ft., 16-foot high walk-up café would be constructed. The replacement ticket kiosks would be located in a new 12-foot high, approximately 253 sq.ft. building.

An approximately 720 sq.ft., 12-foot high 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.

In order to create commercial loading and unloading zones for the recently approved Broadway Pier cruise ship terminal, the project would eliminate 170 existing public parking spaces along Harbor Drive, to be replaced with 24 parallel parking spaces, with the possibility of increasing those spaces to a total of 58 diagonal parking spaces at an unspecified future date.

The size of the plaza at the foot of Broadway would be approximately 16,000 sq.ft., in line with the esplanade that would continue on both sides. Removable bollards would be located on the north and south sides of the plaza to prevent pedestrians from entering the plaza when cruise ships are docked at the Broadway Pier and cruise ship related traffic is accessing the pier. The bollards would be removed when cruise ships are not at dock, to allow pedestrians to cross the plaza/driveway. The Port has not provided an estimate of how many days the pier (and thus the plaza crossing) would be closed due to cruise ships, but the District has stated that in 2006, Broadway Pier was closed for a total 58 days for cruise ships, military vessels and educational/research vessels. Cruise ship traffic in San Diego has increased significantly in the last decade, and Broadway Pier is likely to be used more frequently as an auxiliary terminal in the coming years.

The standard of review for the project is consistency with the certified Port Master Plan (PMP), and, for the portions of the project located between the sea and first public roadway (Harbor Drive), the public access and recreation policies of the Coastal Act.

2. Planning History. The North Embarcadero Visionary Plan (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.

Although the proposed project is identified as the "North Embarcadero Visionary Plan" (NEVP) Phase 1 Coastal Access Features project, the NEVP itself is not the standard of review for the coastal development permit. The NEVP was not submitted to nor certified by the Coastal Commission as part of the PMP. Rather, at the Commission meeting of March 14, 2001, the Commission approved the San Diego Unified Port District Port Master Plan (PMP) Amendment #27 (the NEVP PMPA) 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. 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. Public Access/Recreation/Visitor-Serving Use Priority. The following Coastal Access policies are relevant and applicable:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

[...]

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....

The following PMP policies are relevant and applicable:

IV. THE PORT DISTRICT, IN RECOGNITION OF THE POSSIBILITY THAT ITS ACTION MAY INADVERTENTLY TEND TO SUBSIDIZE OR ENHANCE CERTAIN OTHER ACTIVITIES, WILL EMPHASIZE THE GENERAL WELFARE OF STATEWIDE CONSIDERATIONS OVER MORE LOCAL ONES AND PUBLIC BENEFITS OVER PRIVATE ONES.

- Develop the multiple purpose use of the tidelands for the benefits of all the people while giving due consideration to the unique problems presented by the area, including several separate cities and unincorporated populated areas, and the facts and circumstances related to the development of tideland and port facilities.
- Foster and encourage the development of commerce, navigation, fisheries and recreation by the expenditure of public moneys for the preservation of lands in their natural state, the reclamation of tidelands, the construction of facilities, and the promotion of its use.
- Encourage non-exclusory uses on tidelands.

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.

VII. THE PORT DISTRICT WILL REMAIN SENSITIVE TO THE NEEDS, AND COOPERATE WITH ADJACENT COMMUNITIES AND OTHER APPROPRIATE GOVERNMENTAL AGENCIES IN BAY AND TIDELAND DEVELOPMENT.

- The Port District will at all times attempt to relate tidelands to the uplands.
- The Port District will cooperate, when appropriate, with other local governmental agencies in comprehensive studies of existing financing methods and sources which relate to the physical development of the tidelands and adjacent uplands.

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.

Page 17 of the PMP states:

Maximum access to the shoreline is encouraged except where security or public safety factors would negate.

Page 38 of the PMP states:

Circulation and Navigation System

...The provision of adequate access to and circulation within the San Diego Bay area is a key element in the success of economic activities, of the viability of public services and amenities, and the preservation of the area's environmental setting. The various modes of transport must be coordinated not only to the various land and water uses they support, but to each other to avoid incompatibilities, congestion, hazardous movements and unnecessary expenditures.

Proposed Coastal Development Permit

The proposed project involves the construction of a variety of public access improvements along the North Embarcadero shoreline, including widening the existing sidewalks along Harbor Drive and West Broadway, adding landscaping, constructing water quality improvements, building new ticket kiosks and restrooms, and narrowing a small portion of Harbor Drive to create a more pedestrian-oriented environment.

Viewed in isolation, the proposed project is an enhancement to existing public access opportunities and is largely unobjectionable. Improving the pedestrian experience and water quality along Harbor Drive is a laudable goal, and a widened esplanade, with the landscape and hardscape features and street furniture proposed, would be an asset to the Embarcadero.

The proposed improvements would potentially have some negative impacts on public access and recreation, however, because the project would eliminate the vast majority of the existing street and off-street public parking spaces. The coastal development permit approved by the Port 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 (see link to North Embarcadero Visionary Plan Parking Management Plan, 6/29/09 at www.coastal.ca.gov, April 2010 Meeting Agenda, A-6-PSD-09-43, Exhibit #10)

The plan indicates that the existing parking supply in the NEVP study area could absorb the 146 parking spaces at this time. However, the plan does not address the fact that the parking being removed is short-term, inexpensive metered, prime waterfront parking, and the replacement parking in surrounding lots is further away, mostly lots with all-day pricing, and may not be available in the long term as development around the Port continues.

In addition, as proposed, the new restroom would encroach into the designated view corridor on C Street (see discussion below, under 4. Visual Quality).

Each of these impacts are potentially significant, and as such, special conditions have been placed on the permit to mitigate or avoid impacts to coastal resources. These impacts and conditions are discussed in greater detail, below.

However, the more fundamental objections to the proposed project are twofold. First, the proposed development is distinctly different than the public access recreation

improvements planned for and approved in the existing certified Port Master Plan. Second, the proposed improvements are significantly smaller and lower quality—less useful and meaningful to the public—than those adopted in the approved Port Master Plan.

Inconsistencies with the Certified Port Master Plan

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. The PMP designates this area “Park/Plaza.”

The text of the plan describes the area in general terms as follows:

The esplanade expands into plazas at Beach and Ash Streets, B Street Pier, and Broadway Pier. These plazas will be designed to provide open space, sitting and strolling areas for tourist and nearby workers, and to increase the sense of destination for Embarcadero visitors.

Thus, under the certified Plan, these areas could be developed as turf or hardscape plazas, but in either case, the space is to be available for passive recreation. The size of the proposed park/plazas are not specified in the PMP; however, Port staff have attempted to estimate how large the open space at Broadway Pier might be based on the diagram in the PMP. It is not an easy calculation, as the precise plan is not meant to be exactly to scale. In addition, construction of the park (and the accompanying relocation of Harbor Drive) would have required the use of a portion of Lane Field and the Navy Broadway Complex. The Navy Broadway Complex is not within the Port's jurisdiction, and the Commission has certified construction of a hotel project at Lane Field which would have to be revised were a park to be constructed as shown in the certified Plan.

Nevertheless, the graphic depiction of the park, the text of the PMP, and the guidance of the NEVP, all clearly point to the expectation and requirement that a large, destination, waterfront park be constructed at the foot of Broadway. The Port has prepared an estimation of the total size of the park/plaza as graphically depicted in the existing PMP (see Exhibit #8). Not including the portion of the oval shown potentially extending out over the water (the Commission did not approve any construction that would have required the park to be extended out over the bay), the total size of the park would be approximately 104,950 sq.ft., or 2.5 acres.

The most obvious and significant difference between the proposed project and the certified plan is the elimination of the curve in Harbor Drive at the intersection of West Broadway, and redesign of the oval-shaped park/plaza to an approximately 16,000 sq.ft. rectangular-shaped plaza that must also function as a driveway to the approved new cruise ship terminal on Broadway Pier (see. Exhibit #4, Approved Port CDP, "Exhibit D" attachment).

There are other more minor differences between the project and the certified PMP. The proposed project involves construction of a promenade that is 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).

Once a policy, figure, or project is inserted into the PMP, it is no longer guidance, but the standard of review. The configuration of the proposed esplanade is different than the one in Figure 5.3. For example, the proposed promenade is 29, not 25 feet wide; instead of a dedicated bike path adjacent to Harbor Drive, there is a new water quality feature, and other small adjustments have been made to the design of the esplanade including changing a 10-foot wide designated bike path to a 29-foot wide multi-use promenade.

Impacts to Public Access and Recreation

While the Port has acknowledged that the proposed improvements are not identical to those described in the certified Port Master Plan, the Port has taken the position that the proposed project provides equal or superior public benefits.

The Commission cannot evaluate development by its "equivalency" with the standard of review. Equivalency is very subjective, and unlike the NEVP, the Port Master Plan is *not* a guidance document; the plans, policies and standards contained within it are to be followed closely and specifically. If and when circumstances change, the appropriate response is to evaluate the necessary Plan revisions for consistency with the Coastal Act and amend the PMP 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.

Even if such an "equivalency" analysis should be undertaken here, the comparison of the size and function of the proposed project to the certified PMP shows that they are not equivalent. As noted above, accurately assessing and comparing the size of the open space under the various potential development scenarios is difficult and requires some estimation. However, in any case, looking at the square footage provides only a quantitative comparison and does not acknowledge the changes in the quality of public recreational and open space being provided. The Port Master Plan as currently certified provides for a large, destination park/plaza area at the foot of Broadway which will not be provided with the proposed esplanade improvements which are the subject of this

appeal, and the additional plaza/open space setbacks approved as part of the Lane Field hotel development plan.

Specifically, the Port contends that in lieu of the large park/plaza at Broadway, the “Broadway Hall” concept will connect downtown to the bay. Specifically, “[w]ith the park and plaza spaces that will be created on the Navy Broadway Complex and the Lane Field sites, this will form a dramatic space that creates a Gateway to the Bay and the waterfront...” This space would be enhanced with “broad walks with special paving, large areas of planting, five rows of Medjool Date Palms spaced widely to frame the Hall, and a lighting design that creates a special identity.”

Harbor Drive, as proposed by the Port, “will become a pedestrian friendly street with comfortable walks, trees, plantings and lighting that creates a pedestrian emphasis on the waterfront. The drive will be convertible to have parking when appropriate and to have four moving lanes when appropriate, and to be closed for events and special uses.”

It is important to keep in mind that while the widened, landscaped esplanade proposed alongside Harbor Drive is expected to be a pleasant improvement, there is already an approximately 28-foot sidewalk and ample public access, including parking, along this stretch of Harbor Drive. In contrast, the subject project would eliminate a planned large, destination park and bayfront open space suitable for passive recreation, gatherings and events—something that is not currently available along this stretch of the embarcadero. In fact, at this time, there is no broad public open space along any point of San Diego’s embarcadero shoreline that links downtown to the bay. The existing North and South Embarcadero parks are physically and visually blocked from Harbor Drive by hotels and the convention center.

The majority of the various esplanade improvements proposed in this project, including the widened promenade, water quality improvements, landscaping, etc. are consistent with the certified PMP, and the Commission fully supports implementation of these improvements on Harbor Drive—just not at the foot of Broadway. Similarly, the widened sidewalks and landscaping proposed along West Broadway would be a valuable improvement to the existing access; however, they would not add any new access, and are improvements that might be expected to occur at whatever point the area was redeveloped. They are not a substitution for useable open space. The area referred to as “Broadway Hall” would be a plaza and sidewalk located between a hotel development and a wide, major boulevard, not passive recreational open space or a destination point.

Harbor Drive is already “closed for events or special uses” occasionally, for events such as the Big Bay Parade. Port policy explicitly prioritizes the use of Harbor Drive for cruise ship traffic over special events (BPC Policy No. 455, Adopted December 2008). This Policy states that “[I]n order to ensure that the primary function of the District’s cruise ship facilities is protected and to ensure public safety and a secure environment on and near the cruise ship facilities when cruise ships are in port...scheduled cruise ship calls and related activities shall have priority use.”

Under any development scenario, it is unlikely that Harbor Drive will ever be frequently closed for events, and thus, cannot be expected to truly function as a public gathering space. In contrast, the park/plaza shown in the certified PMP would have created a permanent open area not dependent on the possibility of closing Harbor Drive when no cruise ships are in port.

To be clear, the existing certified PMP does not in any way preclude improvements that support and enhance the existing and approved cruise ship terminals. The cruise ship industry is a coastal-dependent, tourist-oriented, high-priority use under the Coastal Act. The Commission approved construction of the auxiliary terminal on Broadway Pier as a de minimis PMP, with the explicit assurance of the Port District that construction of the terminal would not prevent implementation of the certified PMP in its current form. Just as the Broadway Pier terminal was approved with specific provisions that public access and recreational facilities be available on the pier when cruise ships are not at port, the Commission believes it is possible to achieve a balance of public recreational uses and commercial recreation, tourist-oriented uses along the North Embarcadero.

The proposed project would eliminate almost all of the existing public parking spaces within the project boundaries, and the large open space park expected to be developed at the foot of Broadway. In order for that to be an acceptable impact to public access, the Commission must be assured that the public is getting something significant and meaningful in return. The fragmented arrangement of widened sidewalks and street setbacks simply do not achieve a comparable level or quality of public open space when compared to a large, continuous open destination park shown in the certified PMP.

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 Broadway plaza and setbacks bear little resemblance to this guidance vision in scope or value. Thus, the project is both inconsistent with the content of the certified PMP, and would result in the removal from the plan of an approximately 2.5 acres destination public waterfront park, adversely impact public access and recreation, inconsistent with the Coastal Act .

The Commission recognizes that circumstances change, and plans and projects evolve over time. Rather than incrementally altering individual projects, the Port Master Plan Amendment process is designed to allow revisions and amendments to the plan to occur in a broader context with public and Commission input. As noted above, in the case of the subject project, the proposed public esplanade, water quality improvements, and landscape features would improve the pedestrian experience and visual quality of the area compared to the existing development. The Commission is generally disinclined to discourage public improvements to access and recreation, and appreciates that timing and funding constraints could impact the Port's ability to do any improvements in the area if the first Phase of the NEVP improvements are seriously delayed.

However, in order for the Commission to be able to find the proposed public access improvements consistent with the public access and recreation policies of the Coastal Act, there must be first an assurance that an equal amount and quality of public access and recreational space will be created on the North Embarcadero waterfront to make up for the loss of the oval park. Second, the integrity of the PMP must be preserved, and the changes proposed to the PMP through this project must be reviewed and approved as a PMP Amendment.

Therefore, Special Condition #1 requires implementation of a “Waterfront Destination Park Plan” (see Attachment A). This detailed plan has been designed to ensure, to the greatest extent feasible, that a new park replacing the oval park/plaza shown in the certified plan will be identified, planned and constructed. Essentially, the Park Plan reframes the proposed Phase I permit as a two part permit—Part 1 consisting of the proposed public access improvements on Harbor Drive and West Broadway, and Part 2, development and construction of an alternative destination park, with both parts given equal importance and commitment.

As currently proposed, the Port District has roughly divided the North Embarcadero Phase 1 improvements into two parts—Phase 1A includes the improvements on West Broadway, and Phase 1B consists of the improvements on Harbor Drive. The Waterfront Destination Park Plan creates a “Phase 1C” component to the improvements, which consists of identifying, evaluating, and constructing an alternative park site to replace the oval-shaped park/plaza shown in the certified PMPA. The Park Plan identifies and describes in detail the specific requirements that the alternative Waterfront Destination Park must meet, the components of the associated EIR and the PMPA, and establishes milestones which the San Diego Unified Port District must meet during the environmental review and approval process, to ensure a Waterfront Destination Park will be constructed in a timely manner.

Development of a new park will require environmental analysis, public outreach, discretionary approvals, including, as noted, a Port Master Plan Amendment. Funding must also be identified and obtained. Thus, a particular site and design has not yet been determined. However, the Park Plan does establish very specific, mandatory parameters for the size, nature, and function of the park, potential locations which must be analyzed, and milestones for review and construction of the project. Specifically, the alternative Waterfront Destination Park must be a minimum of 2.5 acres in size, to replace the approximate size of the oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point.

Because the Port Master Plan Amendment will be the primary means by which Phase IC of the NEVP Public Access Improvements permit will be implemented, the Park Plan requires specific elements be included in the EIR analysis and the PMPA. The EIR for the PMPA must analyze, at a minimum the following:

- Identifying potential locations for a proposed alternative Waterfront Destination Park including, at a minimum:
 - The esplanade near Navy Pier, in the area between the Navy Broadway Complex and the waterfront, including an evaluation of closing Harbor Drive (except for emergency or shuttle access) in this location to all but non-auto circulation;
 - The esplanade across from or near the County Administration Building;
 - On the Lane Field hotel site (potential non-waterfront component)

The analysis must include a qualitative (i.e. type of public experience) and quantitative (i.e. accounting of public open space) evaluation of the ability to provide an alternative Waterfront Destination Park in each location that meets the above-stated criteria.

Other elements to be analyzed in the EIR and incorporated into the PMPA must include:

- Revisions to existing Figure 11 to remove the oval park/plaza at the foot of Broadway and incorporate the replacement Waterfront Destination Park;
- Replacing parking removed by development of the alternative Waterfront Destination Park;
- Clarifying and/or revising the land use category “Park/Plaza” to differentiate between grassy “park” and hardscape “plaza;”
- Reducing automobile circulation in the Embarcadero area;
- Identifying opportunities to enhance pedestrian-oriented circulation along the waterfront, including along North Harbor Drive
- Converting Navy Pier into a park;
- Defining future uses of the Grape Street piers*; and
- Implementing the Embarcadero circulator shuttle.

*The existing PMP states that the three existing piers at Grape Street will be removed and replaced with a 30,000 sq.ft. curvilinear public pier with a 12,000 sq.ft. public boat dock

designated as Park/Plaza. If the PMPA includes removal of the curvilinear public pier and/or public boat dock from the PMP, the public pier component must be replaced within the North Embarcadero and the EIR shall include an analysis of the impact to public access and recreation, and replacement of the pier with a substitute public pier.

Other elements and specific projects may be considered as a result of future public outreach, and direction received from the Board of Port Commissioners.

The Plan includes a specific, aggressive timetable for the EIR and PMPA for the Park that requires that the PMPA be brought to the Commission for review no later than two years after Commission action on the subject public access improvements permit. Furthermore, actual construction of the park must be complete within one year of Commission approval of the PMPA. It is the Commission's expectation that the PMPA process will give the Port, the public, and the Commission the opportunity to evaluate various possibilities for creating a new destination park in the context of a plan-level, comprehensive review of open space along the North Embarcadero, while still ensuring that mitigation for the impacts of the proposed project is provided in a timely manner.

Special Condition #4 requires development and implementation of a revised final Parking Management & Transit Opportunity Plan. As noted previously, the 146 parking spaces proposed to be removed are short-term, inexpensive metered, prime waterfront parking, while the replacement parking expected to fulfill the demand for access to the project site would be located in surrounding lots further away from the water, mostly in lots with all-day pricing, which may not be available in the long term as development around the Port continues.

Therefore, the revised Parking Management & Transit Opportunity Plan requires that the parking be removed in phases to retain the maximum number of on-street parking spaces in the vicinity for as long as possible. While the plan requires all parking removed to be replaced prior to or concurrent with the removal of the parking spaces, the phased approach also allows time for a required Circulator Shuttle to be implemented. Most significantly, the plan prohibits the removal of more than 50% of the existing parking spaces proposed to be removed until a Circulator Shuttle has begun operations.

The North Embarcadero Circulator Shuttle is a proposal the Port has been exploring for several years to help move visitors and residences around the North Embarcadero region. The Shuttle must be developed in coordination with the approved Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties. Requiring the shuttle to be implemented before more than 50% of the 146 prime spaces are removed will ensure that visitors and residences will continue to have easy, affordable access to the waterfront.

Special Condition #3 requires several revisions to the Port's draft public access plan to ensure pedestrian access along and around Broadway Pier is maintained when cruise ships are docked. There are security requirements associated with cruise ships that will

restrict public access to Broadway Pier itself shortly before and during cruise ship docking, but continuous (controlled) pedestrian access along the Harbor Drive esplanade must be maintained. Permanent (non-emergency) changes to security requirements that affect public access require an amendment to this permit, unless the Executive Director determines that no permit is necessary. The Port District has indicated that it is mandated under Federal law to implement security requirements immediately; however, these changes must still be submitted to the Executive Director for review, and an after-the-fact amendment to this permit may be deemed necessary.

As noted above, there are other minor differences between the project and the certified PMP, including revisions to the promenade. Most of these changes are inconsequential improvements to the design of the esplanade. One particular revision which could adversely impact public access is the decision to change the 10-foot wide designated bike path to a 29-foot wide combined bicycle/pedestrian walkway.

Port staff have indicated that local bicycle organizations have expressed a preference for Pacific Highway as the primary, designated north-south bikeway in the Embarcadero. The Commission agrees with the intent of the revised plan to still accommodate bicycles on the Esplanade, but in other areas, it has seen significant conflicts between bicycles and pedestrians on shared-use paths. Proposals to prohibit certain types of uses on public walkways can adversely impact public access and recreation. Therefore, Special Condition #3 also confirms that both bicyclists and pedestrians shall share use of the promenade. Any proposed change to the mix of allowed users on the promenade would require an amendment to this permit.

Special Condition #6 requires that the applicant comply with all of the conditions in the coastal development permit originally approved by the Port District. Because the majority of these conditions are related to detailed construction requirements typically enforced by the Port District, the condition requires the Port District to confirm that all of conditions of the previous Port permit not otherwise revised through this coastal development permit have been complied with. Any revisions must be reported to the Executive Director for review and written approval. Revisions that alter the physical aspect of the project (e.g. building height, building footprint, esplanade width, parking or public access) will require a new coastal development permit or amendment to this permit, unless the Executive Director determines that the revision is immaterial and is consistent with the intent of this permit, and that no amendment is legally required.

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition #7, requiring reimbursement of any costs and attorneys fees the Commission incurs “in connection with the defense of any action brought by a party other than the Applicant/Permittee ... challenging the approval or issuance of this permit.”

Summary

The proposed project involves public access improvements, but the improved sidewalks and paths, additional landscaping, street furniture, and lighting cannot substitute for the major park or plaza that the PMP shows at the foot of Broadway. The nature and usefulness of the proposed improvements are both substantially different and not equivalent to those called for in the certified PMP. As proposed, the project does not provide the quality passive recreational space required by the PMP, nor does it provide any alternate open space that might make up for the loss of the signature park at Broadway.

As conditioned, implementation of the Waterfront Destination Park Plan will allow the proposed public access improvements to proceed while ensuring that a high-quality public open space will be provided on the waterfront, as anticipated and required by the certified Port Master Plan. The Parking Management and Transit Opportunity Plan will ensure that the impacts to public access from the loss of prime waterfront parking will be mitigated through implementation of a shuttle system. Thus, the project can be found consistent with the public access and recreation policies of the certified PMP.

4. Visual Quality. Relevant PMP policies include the following:

- Views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.

The proposed project includes construction of a restroom that would visually encroach into the proposed extension of C Street.

The Commission is concerned about continuing incremental encroachments into views of San Diego Bay from upland streets and corridors from recently approved and/or proposed development. Specifically, the auxiliary cruise ship terminal approved at Broadway Pier will eliminate existing bay views, and the Port District has recently proposed installing 12-foot high shore-power equipment boxes across the length of the B Street Pier (excepting at the existing driveways). Unlike the South Embarcadero, where views of the bayfront are entirely blocked by development, views of the water and the bayfront environment are still available on the North Embarcadero. Each project that proposes to block bay views must be carefully scrutinized in the context of preserving, not interfering with these precious remaining vistas. As proposed, the project does not enhance view corridors or preserve panoramas, as required by the certified PMP.

The Port has indicated that the restroom could be revised to eliminate the encroachment into the view corridor. Therefore, Special Condition #2 requires that the restroom be relocated or redesigned such that no portion of the structure encroaches into the view corridor. Therefore, as conditioned, the project can be found consistent with the visual protection policies of the certified PMP.

5. Sensitive Biological Resources. Relevant PMP policies include the following:

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

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.

The subject site is entirely developed and there are no sensitive biological resources located on the site. However, the site is adjacent to San Diego Bay, and the Commission has typically required that invasive plant species be avoided adjacent to waterbodies.

The Port's draft landscape plan includes two species of palm trees noted by the California Invasive Plant Council (Cal-IPC) as potentially invasive—the Mexican fan palm and Canary Island palm. The Commission's ecologist has reviewed the draft plant list for the project and determined that Mexican fan palms should be prohibited to prevent the spread of this invasive species; however, given the project's urban environment, if only male Canary Island palms are planted, they should not present a problem.

Thus, Special Condition #5 prohibits the use of invasive plant species except for male-only Canary Island Palms, and requires the removal of Mexican fan palms from the proposed plant palette. Therefore, as conditioned, the project can be found consistent with the natural resource protection policies of the certified PMP.

5. Local Coastal Planning. As described above, the proposed project has been designed and conditioned to avoid impacts on public access, public recreation, and visual quality consistent with the certified PMP. Changes to improve public access and recreation shall be addressed through a comprehensive planning effort that analyzes the impact of such a decision on the entire North Embarcadero. Therefore, the Commission finds that approval of the project, as conditioned, will not prejudice the ability of the San Diego Unified Port District to continue to implement its certified Port Master Plan.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures include implementation of an alternative waterfront destination park plan, a transit opportunity plan that includes a public shuttle, a public access plan, and removal of the encroachment into the C Street view corridor. These conditions will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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

WATERFRONT DESTINATION PARK PLAN

CDP #A-6-PSD-09-43 NEVP Public Access Improvements Phase I

April 1, 2010

Purpose and Intent

The purpose of this plan is to describe and define the “Phase IC” portion of the NEVP Public Access Improvement Phase I Improvements (CDP #A-6-PSD-09-043).

Phase 1 consists of the proposal by the Port of San Diego to construct a variety of public street and pedestrian improvements along Harbor Drive and West Broadway Street. The improvements include realigning North Harbor Drive eastward from the B Street Pier to south of the Broadway Pier; construction of a 105-foot wide pedestrian and bicyclist esplanade; a public plaza at the foot of West Broadway; gardens; shade pavilions; ticket kiosks; an information building; walk-up café; a restroom; and median improvements on West Broadway between North Harbor Drive and Pacific Highway. Phase 1 also includes restriping to provide an additional turn lane to the Grape Street and North Harbor Drive intersection. The project will result in a net reduction of 146 existing public parking spaces. The Port District has roughly divided Phase I into two parts—Phase 1A includes the improvements on West Broadway, and Phase 1B consists of the improvements on Harbor Drive

Phase 1C of the permit, addressed in this Plan, consists of identification and evaluation of an alternative park site, and implementation of a plan to develop a Waterfront Destination Park as an alternative to, and replacement of, the oval-shaped park/plaza shown on Figure 11 of the certified Port Master Plan (PMPA) adopted by the Coastal Commission March 14, 2001. This Plan identifies the requirements of the Waterfront Destination Park, the components of the associated EIR and the PMPA, and establishes milestones which the San Diego Unified Port District, must meet during the environmental review and approval process, to ensure the Waterfront Destination Park will be constructed in a timely manner.

Alternative Park Framework and Composition

The alternative Waterfront Destination Park shall be a minimum of 2.5 acres in size, to replace the approximate size of oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point. The Park must also include a waterfront component. The Park can have a mix of hardscape and landscape, but it must contain some lawn or turf space appropriate and available for passive recreation such as sitting and picnicking.

Port Master Plan Amendment and Environmental Impact Report Content

The Port Master Plan Amendment will be the primary means by which Phase IC of the NEVP Public Access Improvements permit shall be implemented. The EIR for the PMPA will analyze, at a minimum the following:

- Identifying potential locations for a proposed alternative Waterfront Destination Park including, at a minimum:
 - The esplanade near Navy Pier, in the area between the Navy Broadway Complex and the waterfront, including an evaluation of closing Harbor Drive (except for emergency or shuttle access) in this location to all but non-auto circulation;
 - The esplanade across from or near the County Administration Building;
 - On the Lane Field hotel site (potential non-waterfront component)

The analysis shall include a qualitative (i.e. type of public experience) and quantitative (i.e. accounting of public open space) evaluation of the ability to provide an alternative Waterfront Destination Park in each location that meets the above-stated criteria. The EIR shall identify a preferred alternative.

Other elements to be analyzed in the EIR and incorporated into the PMPA shall include:

- Revisions to existing Figure 11 to remove the oval park/plaza at the foot of Broadway and incorporate the replacement Waterfront Destination Park;
- Replacing parking removed by development of the alternative Waterfront Destination Park;
- Clarifying and/or revising the land use category “Park/Plaza” to differentiate between grassy “park” and hardscape “plaza;”
- A comprehensive evaluation of parks, plazas or other public open space in the North Embarcadero area, including an evaluation of the size and functionality of existing and planned spaces;
- Reducing automobile circulation in the Embarcadero area;
- Identifying opportunities to enhance pedestrian-oriented circulation along the waterfront, including along North Harbor Drive
- Converting Navy Pier into a park;
- Defining future uses of the Grape Street piers*; and
- Implementing the Embarcadero circulator shuttle.

*The existing PMP states that the three existing piers at Grape Street will be removed and replaced with a 30,000 sq.ft. curvilinear public pier with a 12,000 sq.ft. public boat dock designated as Park/Plaza. If the PMPA includes removal of the curvilinear public pier and/or public boat dock from the PMP, the public pier component must be replaced within the North Embarcadero and the EIR shall include an analysis of the impact to public access and recreation, and replacement of the pier with a substitute public pier.

Other programmatic elements and specific projects may be considered as a result of future public outreach, Coastal Commission staff recommendations, and direction received from the Board of Port Commissioners.

Timeframes and Funding Sources

An analysis of timeframes for construction, estimation of park construction costs, and identifying and securing funding sources for the alternative Waterfront Destination Park could either be done through the EIR, or a separate stand-alone document, but in either case, construction schedules and an identified funding source must be included in the PMPA. The construction schedule must provide that completion of the park will occur within one (1) year of Commission approval of the PMPA.

EIR and PMPA Milestones

The PMPA and environmental review processes can be lengthy and controversial. However, the following milestones establish a timeline for the preparing the PMPA for Coastal Commission consideration. Any of these milestones may be completed earlier than the scheduled due dates and all are subject to adjustment only as described below.

The Port commenced the PMPA process in the fall of 2009 and selected an environmental consultant on January 5, 2010. The final scope of the PMPA and accompanying environmental document will be determined through the public outreach described in Task 1 below.

TASK 1: Commence and Complete Public Outreach to Define PMPA. At a minimum, the Port will commence and complete public outreach to establish the parameters of the PMPA and to develop alternatives to study during environmental review. The Port will consult with Coastal Commission staff regarding the scope of public outreach. Additional public outreach otherwise required by the PMPA and environmental review processes will be conducted in accordance with Port policy and practices, the Coastal Act, and California state law.

TASK 1 is due no later than four (4) months after COMMISSION ACTION ON THE SUBJECT COASTAL DEVELOPMENT PERMIT.

TASK 2: Authorize Consultant Team to Prepare Environmental Document for PMPA. Following completion of Task 1, the Port will refine the PMPA scope and content based on the outcome of the public outreach, and authorize its selected consultant to prepare a draft EIR for the PMPA.

TASK 2 is due no later than two (3) months after COMPLETION OF TASK 1.

TASK 3: Finalize Environmental Document and PMPA and Conduct Port Public Hearing, and Transmit PMPA to Coastal Commission.

These processes will be conducted in accordance with Port policy and practices, the Coastal Act, and California state law, and include response to comments and public hearings by the Board of Port Commissioners. If the PMPA and environmental document are approved by the Board of Port Commissioners, then they will be transmitted as soon as practicable thereafter to the Coastal Commission for review and certification.

TASK 3 is due no later than two (2) years after COMMISSION ACTION ON THE SUBJECT COASTAL DEVELOPMENT PERMIT.

At the completion of each Task, Port staff will submit a written status report to Commission staff summarizing the progress made up to that point, and a proposed schedule for completion of the remaining tasks.

Force Majeure Delays

Recognizing the delays inherent in the PMPA and environmental review processes, the milestone schedule will be extended one day for each day that a delay is caused by:

- (i) litigation by a third party not affiliated with or under the direction of the Port that prevents the Port from meeting any of the deadlines expressed or implied within the milestone schedule; and
- (ii) riots; natural disasters and other acts of God, including, without limitation, fires, earthquakes, floods, unusually severe weather conditions, and hurricanes; labor strikes; delays caused by governmental agencies other than the Port; acts of terrorism; and war on United States soil. These events will only extend the schedule if they result in a delay to the Port's ability to process the PMPA despite the Port's diligent and commercially reasonable best efforts to proceed with the PMPA.

Failure to Meet Milestones

Should the Port fail to meet any of the above milestones, subject to any extensions as described above, then the Port will promptly notify the Executive Director of the Coastal Commission of such failure. Within thirty (30) days of missing any milestone, the Port may request an extension of time from the Executive Director of the Coastal Commission, and if the extension is granted, may complete the remaining task(s) within the time granted. If an extension is not granted, the Port agrees to submit an amendment to this permit for a revised PMPA timeline.