

CALIFORNIA COASTAL COMMISSION

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W 6a**STAFF RECOMMENDATION ON****RE-EVALUATION OF CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-047-90
Staff:	MPD-SF
Original File Date:	8/29/1990
Original Commission Action:	5/7/1991
Original Findings Adopted:	8/13/1991
Commission Meeting:	11/2/2011

FEDERAL AGENCY: **Department of the Navy (Navy)**

PROJECT
LOCATION:

Broadway Complex site – a 4-block (8 sub-block/parcel) area surrounded by Harbor Drive, Broadway St., and Pacific Highway, San Diego (Exhibits 1-2)

PROJECT
DESCRIPTION:

Redevelopment of the Broadway Complex – replacement of existing Navy offices and parking lots with an up to 3,250,000 square-foot mixed-use office, hotel, and retail development that includes Navy office space (Exhibits 2 (1990) and 5 (Current))

SUBSTANTIVE
FILE DOCUMENTS:

See page 34.

Staff Recommendation: **Finding** of substantially different coastal effects than were previously described, and **Objection**, based on a finding that the project is no longer consistent to the maximum extent practicable with the California Coastal Management Program (CCMP). Motion is on page 14.

List of Exhibits

- Exhibit 1 – General Project Location
- Exhibit 2 - Project Location
- Exhibit 3 - Navy 1990 Pedestrian Pathways
- Exhibit 4 - Aerial Photo and Layout, existing Broadway Complex
- Exhibit 5 - Current Proposal

- Exhibit 6 - CCC 1991 Findings, CD-047-90
- Exhibit 7 - Letter, CCC Staff to Navy, 10/25/06
- Exhibit 8 - Navy Response 2/23/07
- Exhibit 9 - Letter, CCC staff comments to Navy on Draft EA and Navy Responses, 11/3/08
- Exhibit 10 - Letter, Briggs Law Corporation, Requesting "bifurcated" hearings, 10/10-11
- Exhibit 11 - Letter, Navy to CCC, Requesting Postponement of Hearing, 10/17/11
- Exhibit 12 - Navy Letter to CCC, received 10/19/11

EXECUTIVE SUMMARY

On May 7, 1991, the Commission concurred with a consistency determination submitted by the Navy for the redevelopment of the Broadway Complex site located in downtown San Diego's waterfront at the foot of Broadway St. The U.S. Congress had passed legislation in 1987 enabling this joint venture, intended to allow private development on Navy land with the Navy retaining title to the land and receiving one million sq. ft. of office space at no cost to the Navy (or the taxpayer), and allowing the Navy to enter into a long term lease for the project. The existing Navy Broadway Complex, built between 1921 and 1944, is unattractive, bulky, completely inaccessible to the public, and overly dedicated to parking lots. Current Navy development on the approximately 16 acre site is 864,866 sq. ft. of offices, warehouses, and associated development.

The original proposal for the redevelopment of the site pursuant to the Congressional action in 1987 was for up to 3.25 million sq. ft. of office, hotel, museum, and retail uses, and would have included up to one million sq. ft. of Navy administrative space, a 1.9 acre public park at the foot of Broadway, and a 55,000 sq. ft. museum. In its 1991 decision the Commission found the project:

... consistent with existing and approved development on the downtown waterfront and with ongoing planning efforts for the waterfront.

... consistent with the view protection policy (Section 30251) of the CCMP.

... as a whole, because it includes provisions for improved coastal access and recreation, ... consistent with the Priority Use policies (Sections 30221, 30222, 30223, and 30255) of the CCMP

... will not generate traffic in a manner that interferes with public access to the coast. Even though the project is not designed to provide all the parking necessary to support the development, it does include mitigation in the form of a transportation demand management program, and thus avoids parking impacts to public access. Therefore, the proposed project's parking impacts will be consistent with the intensity of use and access policies of the CCMP.

At the time of the Commission's review, a specific developer had not been selected, and a specific design had not been agreed-upon. The consistency determination simply stated that whatever development would eventually occur would have to be consistent with the overall development plan and urban design guidelines included in the consistency determination. The Commission also found:

Any proposed deviation from the plan or guidelines will require the Navy to submit a new coastal consistency determination or its developer to obtain a coastal development permit.

The project was not constructed, and it was not until November 2006 that the Navy entered into a lease agreement with a specific developer to build the project, Manchester Pacific Gateway LLC, a Delaware limited liability company ("Manchester"). Unlike coastal development permits the Commission reviews, actions taken under the federal consistency provisions do not have expiration dates. When Manchester was selected in 2006, Commission staff urged that it apply for a coastal development permit ("CDP"), due to the extensive private components of the work being proposed. While the developer did submit a coastal development permit application for the project on December 27, 2006 (CDP application No. 6-06-155), the developer later withdrew the application (on June 27, 2007) and decided to litigate the question of whether such permit was required. That litigation is currently on appeal before the Ninth Circuit Court of Appeals.

In the interim, although the Commission has no permit matter before it, the changes that have occurred in the intervening 20 years, and changes made to the project, form another basis for Commission review of the project, based on the "reopener" clause provided in the federal consistency regulations. This regulation addresses projects which have not begun (which is the situation here), and it provides for supplemental coordination and reevaluation of past federal consistency actions, as follows:

15 CFR § 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource. [Emphasis added]

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

The Navy and the Commission staff have corresponded over the question of whether changed circumstances and a modified project render the pending proposal no longer consistent to the maximum extent practicable with the CCMP (Exhibits 7-9). The Navy believes the project remains consistent to the maximum extent practicable with the CCMP and has declined to submit a supplemental consistency determination. The staff believes both that significant changes in the project have occurred, and, further, that significant changes in the character of the San Diego waterfront have occurred over the past 20 years. Both of these changes lead to the conclusion that the pending proposal will have substantially different coastal effects than those originally described. Moreover, staff believes those new and different effects warrant a finding that the project is too intense for the site, in particular the buildings fronting on the bay and Harbor Drive, which are multi-story and proposed right to the edge of the property line, and that the overall balance and location of public facilities and amenities have diminished in value, such that the project is no longer consistent to the maximum extent practicable with the enforceable policies of the CCMP (i.e., with Chapter 3 of the Coastal Act).

The Commission's determination regarding changed circumstances is based both on changes to the physical development proposed at the site, and changes in the surrounding area that have occurred over the past 20 years. One change is that the 55,000 sq. ft. museum that was originally proposed on Block 2A, a waterfront location, has been relocated to a non-waterfront block; in addition, the square footage of the museum has been reduced in size from 55,000 sq.ft. to 40,000 sq. ft. The development now proposed for Block 2A is no longer predominantly visitor-serving, but rather commercial use, which is not a priority use under the Coastal Act. More importantly, when combined with the changes that have occurred in the surrounding area, the project's effects are substantially different that originally considered by the Commission.

The present form of downtown development not only changes how the Broadway Complex project will affect coastal access, but also provides new information that alters the significance of some of those effects, and thereby changes how and what uses should be prioritized along the waterfront, and how visual quality should be protected. The Broadway Complex was designed at a time when there was very little residential development downtown, far fewer highrises, and an expectation that most future development would be office, retail, and industrial. The actual buildout of downtown in the intervening years has been substantially different, with a much greater emphasis on residential development.

Policies in the 2007 Downtown Community Plan (which has not yet been reviewed and approved by the Commission) call for ensuring that development along the shoreline is low in scale and intensity, with increasing stepped building envelopes further inland. The proposed project, which includes two 10+ story buildings on Blocks 2A and 3A built to the edge of the property line along Harbor Dr., does not reflect this scale and intensity.

Moreover, the past 20 years have seen a significantly increasing public awareness of the value of waterfront sites and their land/water connection, the need for a more human scale along the waterfront, and the need to maximize recreational opportunities, such as parks, biking and pedestrian travel corridors, and mass transit connections. These opportunities are seen as far more valuable than they were 20 years ago, when public expressions of concern were relatively rare over proposals for extremely tall buildings along the waterfront.

Changes to the adjacent waterfront lands under the jurisdiction of the Port of San Diego underscore these changes and affect the value of the public amenities included in the Broadway Complex. The Port was previously expected to add a 2.5 acre public park on the north side of Broadway, which was intended to complement the 1.5 acre open space on the Navy Broadway site, and which, taken together, were seen as a significant public benefit and transition from the bayfront to the bay entrance to downtown San Diego. While it is the Commission's expectation that the Port will find additional waterfront acreage, the loss of this significant public benefit accruing from the two complementary parks on either side of the foot of Broadway results in a significant reduction in the value of the Broadway Complex's contribution towards this park.

After adoption of the North Embarcadero Visionary Plan (NEVP), as a Port Master Plan (PMP) Amendment, the Port determined that construction of the destination park at the foot of Broadway was infeasible or undesirable. Therefore, as partial mitigation for this park, the Commission recently approved a coastal development permit in which the Port of San Diego agreed to provide a 150 ft. setback from Harbor Drive on the "Lane Field" site, which is located on the inland side of Harbor Drive, on the north side of Broadway. The Broadway Complex would only provide a 17 ft. setback on two of the four waterfront blocks.

In assessing these changes to the area, combined with the changes made to the project, the proposed Broadway Complex is no longer consistent to the maximum extent practicable with the requirements of the Coastal Act's view protection policy (Section 30251) that:

- (a) the scenic qualities of coastal areas are being protected; and
- (b) new development be visually compatible with the character of the surrounding areas.

The project's balance of priority and non-priority uses, and public and non-public spaces, is no longer consistent with the requirements of Sections 30222 and 30255 that give priority for use of suitable sites to visitor-serving and other high-priority uses, and the requirements of the public access and recreation policies (Sections 30210 and 30213), which provide for maximizing public access and giving priority to low-cost visitor serving facilities. Additional concerns over the adequacy of the available information concerning traffic effects and geologic hazards call into question the project's consistency with the traffic, parking, and hazards policies (Sections 30250 and 30252-30254) of the Coastal Act.

The staff is therefore recommending that the Commission:

- (1) make a formal finding that it is reasonably foreseeable that: (a) the proposed project will affect coastal uses and resources in a manner substantially different from the effects originally described, and that (b) those effects will render the project inconsistent with the CCMP; and
- (2) object to the project, as currently constituted and applied in the current situation.

The staff is also providing follow-up recommendations as to how the project could be modified to bring it into conformity (to the maximum extent practicable) with the Chapter 3 policies, which should occur in the context of a submittal by the Navy as a supplemental consistency determination, as described in 15 CFR § 930.46. Such modifications, at a minimum, should address:

- (1) the possibility of, and the effect of, substantially increased setbacks and public space along Harbor Drive similar to the 150 ft. setback required north of Broadway within in the context of hotel development at Lane Field;
- (2) a Lower Bayfront and Stepped Back Design for Blocks fronting on Harbor Drive including pedestrian-scale and activating uses oriented to the Bay;
- (3) returning the Museum to its originally-authorized location on Block 2A or along the waterfront;

(4) provision of public and quasi-public spaces throughout the development and along Harbor Drive connecting open space at Broadway with Seaport Village;

(5) use of “green building” standards and LEED Certification;

(6) contributions to funding for a public shuttle along the waterfront;

(7) provision of construction or funding for a hostel to serve the San Diego Bay area;

(8) commitment to phase development in a manner assuring timely completion of public amenities;

(9) conducting up-to-date traffic and parking studies, and a transportation demand management plan, including employee subsidies for alternate transit and support facilities for bicyclists;

(10) provide a mechanism for Commission review of seismic hazards studies and measures to be taken to address the hazards; and

(11) provide a mechanism for Commission review of any changes of hotel ownership to condominium hotels.

STAFF SUMMARY AND RECOMMENDATION

I. STAFF SUMMARY:

A. Project Description. The Navy submitted a consistency determination in August 1990 for the redevelopment of the Broadway Complex site located in downtown San Diego. The Navy was proposing to enter into a joint venture with a private developer for the redevelopment of the Broadway Complex site as a 3,250,000 square-foot mixed-use office, hotel, and retail development that would include Navy office space. The venture concept was enacted through federal legislation in 1987 which was intended to foster redevelopment of the Navy Broadway Complex site in a manner that would avoid costs to the taxpayer by allowing private development along with Navy office space on the site.

The complex was to be built according to standards outlined in a Development Agreement that the Navy and the City of San Diego entered into in 1992. This Agreement further established protocols to be used to design the proposal, including provisions for four buildings with heights of 400 ft., 350 ft., 250 ft., and 150 ft., to be designed in a manner incorporating City planning guidelines in effect at that time. The Agreement also committed the Navy to make available 1.9 acres of open space land at the

west end of Block 1 to the City at no cost. It further provided for review by the Centre City Development Corporation (CCDC), San Diego's downtown redevelopment agency, to determine whether the ultimate project was consistent with the Development Plan and Urban Design Guidelines.

Originally Proposed Project. The Commission's 1991 findings (Exhibit 6) further described the project as follows:

The proposed redevelopment project will be located on a four block site (Exhibit 2). The major elements of the proposed project are as follows:

- the development on Block 1 will include the construction of a 400-foot high, 650,000 square-foot office building;
- the development on Block 2 will include 1,000,000 square feet of new and existing office space, 300,000 square feet of above-grading parking, and a 55,000 square-foot museum. The tallest building on this site will be 350 feet high;
- the development on Block 3 will include the construction of a 250-foot high, 745,000 square-foot hotel;
- the development on Block 4 will include the construction of a 150 foot high, 475,000 square-foot hotel and 25,000 square feet of retail.

The project also included:

- 3,105 parking spaces,
- 1.9 acres of open space on Block 1;
- 2.1 acres of open space along streets and building setbacks and within galleries;
- a museum oriented to maritime history;
- opening up of vehicular access through the site on E, F, and G Streets;
- pedestrian corridors along E, F, and G Streets and on all streets surrounding the site, to improve access between the downtown core and the waterfront;
- continuous north-south pedestrian access through the property sites through the use of galleries, courts, plazas, and other public spaces;
- view corridors (views from downtown towards the Bay) along E, F, and G Streets (currently blocked by the existing Broadway Complex); and
- ground-level retail uses to encourage pedestrian use of the area.

Currently Proposed Project. Based on the Navy's most recent Environmental Assessment (EA, dated March, 2009), the project would include up to 3.25 million sq. ft. of above-grade development, which would include:

- Up to 1.65 million sq. ft. of office (administrative) space, of which 1 million sq. ft. are reserved for Navy use
- Up to 1.22 million sq. ft. of hotel uses, including support retail, restaurant, and entertainment uses
- Up to 25,000 sq. ft. of retail space
- Up to 55,000 sq. ft. of public attractions, such as a museum
- Up to 300,000 sq. ft. of above-ground parking

Maximum Building Heights (above existing grade) would be:

Block 1 - 400 ft., Block 2 - 350 ft., Block 3 – 250 ft., Block 4 - 150 ft.

Parking:

The proposed action would utilize the maximum parking standards defined by the Development Agreement as shown in Table 3.2-3, which is a total of 3,173 parking spaces. Based on the Centre City PDO minimum parking requirements, the land uses identified in the proposed action would require 3,033 spaces. Therefore, the current minimum parking requirement under the PDO, were it to apply, is 140 spaces fewer than the required number of spaces as determined from the rates in the Development Agreement. The Development Agreement rates, while different in some categories, generally provide a similar result as the Centre City PDO rates.

Public Park at Broadway/Harbor Dr. - A minimum of 1.9 acres of public open space

Public Rights-of-Way:

- E Street, F Street, and G Street would be extended through the site from Pacific Highway to North Harbor Drive to allow for continuous vehicular and pedestrian access.
- A 75-foot right-of way would be dedicated for E Street and F Street, of which approximately 35 feet would be dedicated to pedestrian walkways and landscaping.

- A 120-foot right-of-way would be dedicated for G Street to allow for a more open public promenade extending from downtown toward the G Street Mole.
- The Navy would offer the City an easement for the Navy-owned streets; the City would dedicate them as public streets; and the City would assume responsibility to operate, maintain, and repair the streets.
- No curb cuts would be allowed on Pacific Highway or North Harbor Drive.

Project Phasing

A phasing plan, including the timing and location of development on each block, would be developed in accordance with the needs of the Navy, its lessee, and market conditions. It is assumed that new Navy administrative space would need to be constructed (presumably on Block 2), and Navy staff relocated to the new building(s), prior to demolition of the existing Navy administrative buildings on Block 1.

Please note that while the above Navy EA description provides maximum square footage for specified uses, based on the most recent submittal by Manchester to the Commission staff (in plans July 2, 2007, and a cover letter dated Nov. 2, 2007), the following block-by-block square footages are provided, which may be less than these specified maxima. (Also, note that in its current iteration the four blocks (or parcels) are discussed as eight blocks/parcels, numbered 1A, 1B, 2A, 2B, 3A, 3B, 4A, and 4B. The numbers increase north to south (i.e., Blocks 1A and 1B are adjacent to Broadway), and the “A” blocks are those closest to the waterfront (i.e., adjacent to Harbor Dr.).

Area Summary – Program Distribution (July 2, 2007 v1)

Parcel	Office		Hotel		Retail F/S	Public	Total
	Office (SF)	Navy (SF)	Area (SF)	Room-Module	(SF)	Attractions (SF)	(SF)
	w/ retail		w/ retail				
1B	500,414	0	169,925	275	0	0	670,339
2A	296,535	0	0	0	0	0	296,535
2B	384,324	0	555,826	943	0	0	940,150
3A	0	0	915,070	193	16,000	0	211,070
3B	0	351,000	0	0	0	0	351,000
4A	0	0	260,820	164	9,000	6,280	276,100
4B	114,520	0	0	0	0	33,720	148,240
Total	1,295,793	351,000	1,181,641	1,575	25,000	40,000	2,893,434

B. Project History. The existing Navy Broadway Complex contains 864,886 sq. ft. of Navy offices, warehouses, and other uses. It was constructed between 1921 and 1944, and the buildings are old, in need of major upgrade, and generally considered unattractive, particularly for a waterfront site. The site is currently fenced (with chain link fencing), inaccessible to the public, and well over half the land (approx. 15.5 acres) is covered with parking lots.

On August 29, 1990, the Navy submitted a consistency determination for the redevelopment of the site to the above-described joint venture project. On May 7, 1991, the Commission concurred with the Navy's consistency determination; the Commission's findings are attached as Exhibit 6. Because the Navy had not yet selected a developer for the venture, the project described in the consistency determination was somewhat conceptual. It described the extent of development on each of the blocks in the complex, including maximum heights, maximum square footage, open space requirements, and provisions for visitor-serving facilities and parking spaces, as described in the previous section above.

The Commission noted that while specific project plans were not proposed at that time, the development was to be guided by the City's general design guidelines, the Centre City segment of the City's Local Coastal Program, the Centre City Community Plan, and Centre City (Marine and Columbia segment) Redevelopment Plans.

The Commission concluded in 1991 that the then-proposed project, to the extent it was described:

(a) was consistent with existing and approved development on the downtown waterfront and with ongoing planning efforts for the waterfront;

(b) was consistent with the view protection policy of the Coastal Act (Section 30251);

(c) despite the commercial nature of much of the development, provided sufficient priority uses to allow it to be found consistent with Coastal Act policies providing protection for priority uses (Sections 30221, 30222, 30223, and 30255) and was consistent with the public access and recreation policies of the Coastal Act;

(d) provided adequate parking and was consistent with the traffic and parking policies of the Coastal Act (Sections 30250, 30252, and 30254), and would not generate traffic in a manner that interferes with public access to the coast; and

(e) included mitigation in the form of a transportation demand management program, and thus avoids parking impacts to public access. Therefore, the proposed project's parking impacts will be consistent with the intensity of use and access policies of the Coastal Act.

While the standard of review was, and remains, consistency with Chapter 3 of the Coastal Act (to the maximum extent practicable), the Commission also found that the project was consistent with then-existing and approved local coastal plans for development on the downtown waterfront as well.

After the Commission acted, the Navy and the City of San Diego entered into a Development Agreement, dated November 2, 1992, which further established protocols for implementing the proposal. This agreement incorporated and memorialized the above design guidelines and community plans, and spelled out Navy and City roles.

Implementation of the Development Agreement was delayed due to adverse market conditions in the San Diego real estate market. As provided in the Development Agreement, a lease between the Navy and one or more lessees was initially required by January 1, 2002; however, this date was extended twice, with the last deadline being January 1, 2007.

In November 2006, the Navy entered into an agreement with a developer (Manchester). Under the Development Agreement, the lessee is bound to follow the provisions of the Development Agreement through its lease agreement with the Navy.

The Navy prepared an Environmental Impact Statement for the project in 1990. In 2006, the Navy prepared a supplemental "NEPA" document, an Environmental Assessment. Litigation under NEPA ensued after it was finalized, primarily over the lack of public comment and Navy response to the NEPA document, and after additional public meetings and comments, the Navy prepared a Final Environmental Assessment, dated March 2009.

Because over 15 years had elapsed since the Commission's original 1991 review, and because the Commission staff believed the large commitment of public land to private, non-federal elements necessitated a coastal development permit from the Commission, the Commission staff sent letters to both the Navy and the developer indicating that: (1) supplemental federal consistency review was needed due to "changed circumstances" for the Navy portion of the project; and (2) a coastal development permit application was needed from the private developer for the remainder of the project. The developer initially submitted a CDP application; however, after receiving a request for additional information, the developer withdrew the application and filed a court action contending that no CDP was needed.

The developer (Manchester), sued the Commission in federal district court seeking a declaration that the Commission does not have permit or consistency review authority over the proposed development. The District Court found that a coastal development permit was not required and Manchester dismissed the other claims, so the Commission's

consistency review authority was never addressed. The Commission has appealed this decision on permit jurisdiction to the Ninth Circuit Court of Appeals. This litigation is still pending (*Manchester Pacific Gateway, LLC v. California Coastal Commission et al.*, U.S. Court of Appeals, 9th Circuit, Case No. 08-56559 (Dist. Court Southern District Case No. 07-CV-01099-JM-RBB)).

C. Relationship between City/Navy Development Agreement, Centre City Urban Design Guidelines, and Commission's 1991 federal consistency action. The "Agreement between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines (City of San Diego's LCP, Centre City segment, 1983) for the Redevelopment of the Navy Broadway Complex" was recorded on November 2, 1992. The Commission was not party to the agreement, and the plan and guidelines were not in final form at the time of Commission action. The final paragraph in the Commission's findings (Exhibit 6, p. 24) explained the relationship between those documents and the Commission's action as follows:

Procedures. By its coastal consistency determination, its environmental impact statement and record of decision, the Navy has committed to redevelop the Navy Broadway Complex in a manner consistent with the development plan and urban design guidelines which are included in the consistency determination. The Navy's developer will be required to submit all plans and specifications to the Navy for approval and review to assure compliance with the plan and guidelines. The development plan and urban design guidelines are consistent with the Urban Design Program, Centre City San Diego. That program is part of the Centre City LUP and has been utilized by the Commission in other project approvals to ensure appropriate development within the Centre City. These findings are premised on the assumption that construction of the Navy's project will follow the plans and guidelines. The agreement for development between the City of San Diego and the Navy will also incorporate the requirement that development be consistent with the plans and guidelines. Therefore, no further Commission action is required for the redevelopment to proceed as presented in the consistency determination. Any proposed deviation from the plan or guidelines will require the Navy to submit a new coastal consistency determination or its developer to obtain a coastal development permit.

II. STAFF RECOMMENDATION:

- A. Motion.** The staff recommends that the Commission act on this matter by means of the following motion:

Motion. I move that the Commission (1) **find** that it is reasonably foreseeable that (a) the proposed project will affect coastal uses and resources in a manner substantially different from what was originally described in the Navy's 1990 consistency determination, and that (b) as a result of those effects the project is no longer consistent to the maximum extent practicable with the enforceable policies of the Commission's California Coastal Management Program; and (2) **object** to the Navy's consistency determination (CD-47-90) for the foregoing reasons.

The staff recommends a **yes** vote. A majority vote in the affirmative will result in the adoption of the following resolution:

B. Resolution. The Commission hereby **finds** that the proposed project will affect coastal uses and resources in a manner substantially different from what was originally described in the Navy's 1990 consistency determination and that, as a result of those effects, the project is no longer consistent to the maximum extent practicable with the enforceable policies of the Commission's California Coastal Management Program; and **objects** to the consistency determination made by the Navy for the proposed project on the basis of those findings.

III. APPLICABLE LEGAL AUTHORITIES.

A. Standard of Review. The federal Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1451-1464, requires that federal agency activities affecting coastal resources be "carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." *Id.* at § 1456(c)(1)(A).

B. Supplemental Coordination. The "Supplemental Coordination" ("Reopener") provisions of the federal consistency regulations provide:

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the

proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects¹ are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

C. Consistency Standard. The implementing regulations for the CZMA ("federal consistency regulations"), at 15 C.F.R. § 930.32(a)(1), define the phrase "consistent to the maximum extent practicable" to mean:

... fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

This standard allows a federal activity that is not fully consistent with California's Coastal Management Program ("CCMP") to proceed if full compliance with the CCMP would be "prohibited by existing law." In its initial consistency determination, and in more recent

¹ The preamble to the federal consistency regulations (Federal Register, December 8, 2000, p. 77130) explains: *The "substantial" language in sections 930.46 and 930.66 refer to supplemental coordination for proposed activities. The intent in these sections was to address situations where coastal effects have substantially changed, not to define the scope of effects to trigger initial State agency review.*

The proposed definition includes cumulative and secondary effects as part of indirect effects via the following language: "indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable." The definition goes on to State that "Indirect effects resulting from incremental impact of the federal action when added to other past, present and reasonably foreseeable actions, regardless of what person(s) undertake such actions." This language is consistent with the Council on Environmental Quality's definition of cumulative effects. 40 CFR section 1508.7.

correspondence over changed circumstances, the Navy has not argued that full consistency is prohibited by existing law or provided any documentation to support a maximum extent practicable argument. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency. Since the Navy has raised no issue of practicability, as so defined, the standard before the Commission is full consistency with the enforceable policies of the CCMP, which are the policies of Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-30265.5).

D. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP. Section 930.43(a) of the federal consistency regulations (15 CFR § 930.43(a)) requires that, upon initial review of a consistency determination, if a state agency objects based on a finding that the proposed activity is inconsistent with the CCMP, it must identify measures, if they exist, that would bring the project into conformance with the CCMP. The section states that:

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations).

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

As described in Section IV of this report below, the proposed project is no longer consistent to the maximum extent practicable with the CCMP. Although this is not the initial review stage, and the federal consistency regulations applicable at this stage do not impose the same requirement (stating instead that the state agency's notification "**may** recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program" (15 C.F.R. § 930.46(b) (emphasis added))), the Commission offers guidance, at the end of its findings, regarding measures that would bring the project into compliance with the CCMP to the maximum extent practicable. The Commission finds that it would be possible to modify the project to bring it into compliance with the CCMP to the maximum extent practicable if the changes listed in Section V of this report (see pages 33-34) were made.

IV. Findings and Declarations on Changed Circumstances:

A. Previous Commission and Navy Correspondence on Changed Circumstances. On October 25, 2006, the Commission staff wrote a letter to the Navy explaining the changed project and circumstances that have occurred since the Commission's 1991 concurrence with the Navy's consistency determination. The letter (Exhibit 7) stated:

Our primary reasons for asserting that the project has changed and that circumstances have changed include: (1) changes in development patterns and intensification of uses and traffic in the downtown shoreline area have occurred since 1991 which may adversely affect the scenic amenities of the waterfront and coastal access opportunities; (2) a significant change to the project consisting of replacing traditional hotel(s) with condominium ownership hotel(s); and (3) modifications to the physical development as shown on the attachment.

Since the Coastal Commission's previous action in 1991, there have been numerous changes in the City's downtown core and waterfront. Petco Park has been developed; the Convention Center has been expanded; the second tower of the Hyatt Regency has been constructed and the U.S.S. Midway now sits permanently berthed across from the Navy Broadway Complex. All of these singular developments, along with the steady growth of the downtown area, have resulted in significant physical changes to the landscape and particularly the City's waterfront character. The Broadway Complex's redevelopment needs to be reassessed in the context of the current character and profile of the downtown. The argument has been made by the prospective lessee that the Broadway Complex has been accounted for and recognized in subsequent planning efforts by both the City and Port of San Diego; and, as such, the Broadway Complex has been repeatedly reassessed and endorsed by respective discretionary bodies. However, this assertion, along with repeated statements that the Broadway Complex and subsequent developments conform with adopted land use plans fails to recognize that multiple variations of a development may be found consistent with such plans but, nonetheless, may have dramatic differences in their urban character and resulting visual impacts. In addition, based on the City's recent CEQA analysis for the project, dated 10/19/06, it should be noted that the March 2000 North Embarcadero Visionary Plan EIR did not consider the Broadway Complex in its cumulative analysis for Urban Design/Visual Quality. Therefore, the Commission staff believes that the Broadway Complex needs to be re-evaluated to determine its consistency with the visual resource policies of the Coastal Act in the context of the current physical character of San Diego's bayfront.

In addition to the changes in the visual character of the City's downtown area, the changes in development intensity and resulting impacts to traffic circulation, parking demand and public parking reservoirs warrant reassessment. Once again, in its original action, the Commission relied on conformity with the land use plans and

implementation of the City's Transportation Action Plan's ("TAP") identified circulation improvements to assure coastal access would be protected. However, the adopted findings on the Broadway Complex noted "the Commission is concerned about the effect of significant deviations from the expectations of the TAP on the City's transportation system, and thus on public access to the coast." Given the intervening developments previously cited, a reassessment of the Broadway Complex proposal in light of current circulation patterns and public mobility in the downtown area is warranted. In particular, it should be noted that the recently adopted Downtown Community Plan/Centre City Planned District Ordinance EIR (2/06) found that impacts from their implementation on parking and the downtown street system were significant and unmitigable. Such findings reinforce the need to reassess the possible impacts of the Broadway Complex redevelopment on coastal access. In addition, the Commission staff has been increasingly concerned about the diminishing supply of public parking reservoirs, coupled with the lack of alternate transit development, to support public access opportunities. Commitments have been made in multiple Port Master Plan amendments but there is little evidence of a waterfront shuttle system being developed to either transport the public from perimeter parking lots to downtown/waterfront locations or to facilitate their movement along the bay.

The Navy responded to this letter on February 23, 2007 (Exhibit 8), stating:

We appreciate your concern that the project may require supplemental consistency review and a coastal development permit. However, the Navy stands firm in its determination that effects to coastal uses or resources from the Broadway project have not substantially changed since the Commission's 7 May 1991 concurrence, and thus a supplemental consistency determination per 15 CFR 930.46 should not be required.

This Navy letter continues on to maintain that:

- (a) the project remains consistent with downtown plans and urban design guidelines;
- (b) recent growth in the area has increased the scale and bulk of the visual character of the area, "...making the Broadway project more consistent with the visual policies of the CCMP";
- (c) the number of traffic trips would be 30% lower than previously assumed for the project, based on the Downtown Community Plan EIR;
- (d) "The substantial reduction in trips and the implementation of the agreed-upon traffic improvements are expected to be sufficient to mitigate potential traffic impacts in today's conditions";

(e) the “significant and unmitigable impacts” cited by Commission staff as having been described in the Downtown Community Plan EIR occur only outside the coastal zone and occur during weekday peaks, and not recreational peak periods;

(f) “Anticipating parking might be an issue, the developers proposal plans to provide more parking than is required under the Center City Draft Planning Development Overlay ... and the creation of public parking where currently none exists again will only serve to improve public access to the waterfront”; and

(g) during evening, weekend and holiday periods commercial office parking will be made available to visitors, which “... will ultimately enhance parking opportunities for public access during peak visitor times.”

The Navy letter concludes:

The preamble to the Coastal Zone Management Act (CZMA) regulations provides specifically that “the intent of this section is not to give the State agency a second bite at the consistency apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the state (FR, Dec. 8, 2000, p. 77143).” The Broadway project contains no substantial project changes or foreseeable coastal effects not reviewed previously, and an additional coastal consistency review would be a contravention of federal coastal zone management regulations. We strongly believe that the proposed Broadway project actually provides a greater number of beneficial enhancements not originally provided under CD-47-90, such as additional traffic infrastructure improvements, moving the originally proposed 300,000 square feet of aboveground parking to underground parking, and adding another 1.4 acres of open space to the project.

Further communications between the Commission staff’s and the Navy concerning changed circumstances can be found in the Commission staff’s letter on the Navy’s 2008 Draft Environment Assessment (EA), and the Navy’s responses in the Final EA (Exhibit 9).

B. Commission Findings on Changed Circumstances

1. Public Access/Recreation, Land Use Priority/View Protection. The public access and recreation, priority of land use, and view protection policies of the Coastal Act provide:

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 30213 *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

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 30222 *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30223 *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Section 30255 *Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.*

Section 30251 *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. ...*

The Commission's determination regarding changed circumstances is based both on changes to the physical development proposed at the site, and changes in the surrounding area that have occurred over the past 20 years. One substantial change to the project that changes the project's effects with respect to the above policies is the relocation of, and reduction in size of, the 55,000 sq. ft. museum that was originally proposed on Block 2A, a waterfront location. The museum was part of the package of visitor-serving uses that the Commission relied upon in determining the proposed mix of priority and non-priority uses was consistent with Coastal Act land use policies applicable to this waterfront property. This previously-proposed stand alone museum on Block 2A has been relocated to Blocks 4A and 4B, and incorporated into the lower floors of two hotel structures, and is no longer a stand-alone

structure. This change has been made even more significant given the fact that the popular Midway museum had been installed on the waterfront, directly across the street (Pacific Hwy.) from Block 2A, which would make Block 2A an even more appropriate site for a visitor-serving use that might complement and increase the attractiveness and value to the public for both visitor-serving uses. Also, the square footage of the museum has been reduced in size from 55,000 sq.ft. to 40,000 sq. ft., which further decreases its value as a visitor facility.

Also, whereas waterfront facing Block 2A was previously to be dedicated to visitor-serving facilities, a priority use under the Coastal Act and a more appropriate use for the four waterfront blocks than commercial use, under the current proposal, this block is being predominantly dedicated to commercial use (a 13-story, 296,535 sq. ft., office building use), which is not a priority use under the Coastal Act.

Other design and location modifications compared to the 1991 proposal include:

- The current Master Plan includes 3 hotel towers and 3 office towers instead of 2 hotels and 2 office towers;
- All of the proposed parking is underground, whereas the previous plan identified specific blocks that would include above ground parking structures which were calculated as part of the maximum allowable square footage;
- The Navy office building has been relocated from Block 2B to Block 3B;
- The structures on the 4 inland Blocks were defined as 4 distinct towers with specific heights and development was to step down toward the Bay. The development on the bayfront blocks now include a 13 story office tower, a 10 story hotel and a 9 story hotel. Previously all uses on the bayfront blocks were recreational and visitor-serving and lower scale.
- The 1991 proposal contemplated public pedestrian access along Broadway and through the complex along E, F, and G Streets and along Harbor Drive. The 1991 proposal contemplated semi-public pedestrian access through the center of the project from north to south (see Exhibit 3). The focus on public pedestrian access was waterfront oriented. In contrast, Manchester's current design reduces public pedestrian access along Harbor Drive, refocuses it to the interior of the complex and is not waterfront oriented.

More importantly, when combined with the changes that have occurred in the surrounding area, the project's effects are significantly different that originally considered by the Commission.

The present form of downtown development not only changes how the Broadway Complex project will affect coastal access, but also provides new information that alters the significance of some of those effects, and thereby changes how and what uses should be prioritized along the waterfront, and how visual quality should be protected.

The Broadway Complex is located in the Marina District in the Centre City Community Plan. The March 2006 Downtown Community Plan EIR describes the Marina neighborhood as:

... the most complete residential neighborhood of all of downtown's neighborhoods. It is anticipated that it would not change substantially as a result of the proposed Community Plan. However, the Navy Broadway Complex along Marina's waterfront could experience some redevelopment.

The Broadway Complex was designed at a time when there was very little residential development downtown, far fewer highrises, and an expectation that most future development would be office, retail, and industrial. The actual buildout of downtown in the intervening years has been substantially different, with a much greater emphasis on residential development. According to the Centre City Development Corporation, which regulates downtown development for the City of San Diego, as of April 2011, in the last 10 years alone, 13,255 residential units have been constructed downtown. Most of these projects are located outside of the Coastal Zone, and thus, were not specifically reviewed for conformance with the policies of the Coastal Act, but they are within easy access of the waterfront, and can affect coastal resources and planning decisions made in the Coastal Zone. The residential population creates a greater demand for downtown parks, open space, retail, and a pedestrian-scale orientation than would have been required for the office-oriented neighborhood expected to develop in 1991. As a result, development that does not accommodate that demand, or worse yet *increases* that demand, will put additional strain on the existing resources and thereby have an effect on the resources substantially different from the effects described in the 1991 consistency determination.

Policies in the 2007 Downtown Community Plan (which has not yet been reviewed and approved by the Commission) call for ensuring that development along the shoreline is low in scale and intensity, with increasing stepped building envelopes further inland. (Policy 5.5-P-3). The proposed project, which includes two 10+ story buildings on Blocks 2A and 3A built to the edge of the property line along Harbor Dr., does not reflect this scale and intensity.

Moreover, the past 20 years have seen a significantly increasing public awareness of the value of waterfront sites and their land/water connection, the need for a more human scale along the waterfront, and the need to maximize recreational opportunities, such as parks, biking and pedestrian travel corridors, and mass transit connections. These opportunities are seen as far more valuable than they were 20 years ago, when public expressions of concern were relatively rare over proposals for extremely tall buildings along the waterfront. Visually, the downtown environment almost constitutes a quite different city scale and context than the one in which the project was originally authorized. As noted above, unlike office buildings, residential and hotel uses tend to congregate along the waterfront, and these

stresses on visual quality were not considered or accounted for in the original consistency determination. This constitutes both new circumstances and new information relevant to the proposed project's impact on visitor-serving uses and existing visitor-serving resources.

In addition to a distinctly different development pattern for the downtown as a whole, as described further below, several developments in particular have changed the impacts that the Broadway Complex will have on coastal resources.

North Embarcadero Visionary Plan (NEVP)

The North Embarcadero Visionary Plan Port Master Plan (PMP) Amendment 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 North Embarcadero Visionary Plan (NEVP) was intended to cover planning of the entire North Embarcadero region, including the blocks to the north of the Broadway Complex, and the waterfront area west of the Broadway Complex. The Broadway Complex was intended to be consistent with the North Embarcadero Visionary Plan—this goal was included in the Navy's lease with the developer. The North Embarcadero Visionary Plan PMP Amendment was approved by the Commission in 2001.

After adoption of the NEVP, the Port determined that construction of the destination park at the foot of Broadway was infeasible or undesirable. Therefore, as partial mitigation for this park, the Commission recently approved a coastal development permit in which the Port of San Diego agreed to provide a 150 ft. setback from Harbor Drive on the "Lane Field" site, which is located on the inland side of Harbor Drive, on the north side of Broadway (CCDC & San Diego Unified Port District, Appeal No. A-6-PSD-11-006, Phase I of the North Embarcadero Visionary Plan (NEVP). The purpose of this setback is to provide visual relief from high-rise development along the waterfront, and public open space to provide the public access and recreational amenities that will no longer be provided at the foot of Broadway. This development setback on Harbor Drive is expected to be extended north to the property at 1220 Pacific Highway.

In addition to provision of the enhanced open space setback at Lane Field, in its action on the appeal, the Commission required the Port to identify an additional 1.25 acres of waterfront land to replace the waterfront open space/park area that will no longer be provided at the foot of Broadway. Potential locations identified for the replacement waterfront open space include an expansion of the existing waterfront grassy area on Harbor Drive across from the Navy Broadway Complex. The required analysis of this area for park use includes an evaluation of closing Harbor Drive in front of the Navy Broadway Complex to automobile circulation (except for emergency or shuttle access). Thus, there have been significant changes to the pattern of development along Harbor Drive and the open space requirements

for the North Embarcadero in terms of location and size as a result of the Commission's action on the NEVP Phase I appeal. Such changes result in different impacts to the uses and resources in the area resulting from the previously-approved development.

As such, the proposed project is not consistent with revisions to the North Embarcadero waterfront approved by the Commission. The middle two waterfront blocks (Blocks 2A and 3A) would have multi-story buildings built to the edge of the property line with virtually no setback (aside from a 17 ft. sidewalk) from Harbor Dr.; Block 4A would have a 25 ft. setback from Harbor Dr. Aside from the 1.9 acre park previously and still proposed on Block 1A, the public open space for the project is provided in the interior of the complex, which relegates the site's bay connection to a relatively minor consideration. Such design may be appropriate for a more inland complex, but not a bayfront site that needs to take advantage of the opportunity to increase public use and enjoyment of the bayfront.

The Commission also notes that the parking lots surrounding the County of San Diego Administration Building, located on Harbor Drive north of Ash Street, have been approved for conversion into parks, which will further establish a pattern of providing significant public open space along Harbor Drive, with development set back from the street.

The previously proposed 2.5 acre public park on the north side of Broadway was intended to complement the 1.9 acre open space on the Navy Broadway site, and which, taken together, were seen as a significant public benefit and transition from the bayfront to the bay entrance to downtown San Diego. It is the Commission's expectation that the Port will find additional waterfront park acreage along the North Embarcadero and likely in close proximity to the Broadway Complex site. However, the loss of the significant public benefit accruing from the two complementary parks on either side of the foot of Broadway and adjacent to the site, and the uncertainty as to where the waterfront park acreage will be replaced, results in a significant question as to the appropriate location of the proposed public open space on the Broadway Complex site.

As proposed there is 1.9 ac. reserved for park/open space on Block 1A. With the potential changes discussed below to Navy Pier and Broadway Pier, the installation of the Midway Museum and potential changes to auto/pedestrian circulation on Harbor Drive, all in the area immediately bayward of the subject parcels, it is not possible to conclude the proposed size and location of public open space associated with the 20-year old plan is adequate and consistent with the Coastal Act. Clearly the impact of the proposed development on the revised North Embarcadero waterfront will be different than what was considered by the Commission when the Navy Broadway Complex project was reviewed 20 years ago.

The Commission notes that the NEVP anticipates substantial public improvements to the area around the Navy Broadway Complex site, including significant changes that have already occurred or will occur to the B Street Cruise Ship Terminal, Broadway Pier and Navy Pier

(discussed in greater detail below). Changes to the area around the Navy Broadway Complex include construction of a new cruise ship terminal on Broadway Pier to serve the changing number of cruise ships visiting San Diego and to serve as the interim terminal while the terminal at B Street is renovated. This has had a two-fold effect; the building on Broadway Pier itself reduced available views over the water and the amount of public waterfront open space, and it has brought an increase in tourists to the waterfront.

In fact, so many changes have occurred to the area since adoption of the NEVP 10 years ago, that the Port is currently preparing an EIR for an updated NEVP Port Master Plan Amendment that includes a comprehensive review of current conditions and changes to the area, to allow for smart planning for the region in the years to come. Under consideration is reducing the number of lanes on Harbor Drive, closing portions of North and West Harbor Drive, narrowing portions of North Harbor Drive and making it one-way for vehicular traffic, providing additional open space on the waterfront side of Harbor Drive, identifying new opportunities to enhance pedestrian-oriented circulation along the North Embarcadero waterfront, incorporating a new youth hostel, and identifying additional areas of waterfront open space to off-set the loss of the waterfront park at the foot of Broadway.

Midway Museum

The permanent installation of the Midway Museum at the foot of F Street has removed one of the view corridors from downtown to the bay, which were seen as a significant public benefit of the redeveloped Broadway Complex (compared to the existing Broadway Complex, which has no view corridors). Like the change to the museum discussed above, this elimination reduces the overall public/private uses and benefits balance that the Commission relied on in authorizing the project 20 years ago.

The Midway Aircraft Carrier Museum is docked on the south side of Navy Pier, bayward of Harbor Drive opposite F Street and Blocks 2A and 3A of the Broadway Complex. The Midway is approximately 1,000 feet long and 50 feet tall from the waterline to the flight deck. Above the flight deck, the control tower area is approximately 190 feet tall, as measured from the waterline. Including the mooring platforms on the north side of the ship, the width of the Midway extends approximately 260 feet south of the existing Navy Pier.

The Midway is located directly across from the planned extension of F Street, which the Centre City Community Plan designates as a view corridor to be implemented when the Broadway Complex is redeveloped. At the time the Broadway Complex was authorized, it was assumed that F Street would be a view corridor; however, the Midway now precludes continuous views to the Bay down this street.

The Commission approved the Midway knowing the impact it would have on views from F Street, but also acknowledged “the North Embarcadero area is, unfortunately, one of the few areas downtown where there is a strong visual connection to the waterfront, and each new

development that blocks off another significant portion of the public's view has an adverse impact." The aircraft carrier is a significant new addition to the viewscape of the waterfront that was not considered at the time the consistency determination for the Broadway Complex was approved. The Midway's individual impact was determined to be acceptable, but in light of the cumulative impact of the development that has occurred in this critical area, the impacts of Broadway Complex development should be reevaluated. View corridors, setbacks, and stepbacks should be reconsidered in light of the absence of the expected view corridor on F Street and the presence of the Midway Museum as a visitor-serving destination.

When the Commission approved the Midway, it was with the understanding that Navy Pier would be converted to a park when the pier was relinquished by the Navy to address the visual impact of the Midway on public views toward the Bay. At such time, the parking on the pier was to be relocated inland. The Commission action anticipated relocation of the parking would likely occur in conjunction with redevelopment of the Navy Broadway Complex. Since that time, Navy Pier has been relinquished by the Navy but no actions have been taken toward converting Navy Pier to a park. In addition, the demand for and relocation of the public parking for the Midway has not been taken into consideration in the proposed project. As indicated above, conversion of Navy Pier to a park is being considered as part of the pending PMPA by the Port. The redevelopment of the Broadway Complex site should be responsive to the changes to open space and public access in the surrounding area that will result from such changes that will occur in the area under the PMP review process.

Further changes and planning efforts at the San Diego's downtown core and waterfront that have occurred since the Coastal Commission's previous action in 1991 include: the development of Petco Park, expansion of the Convention Center, construction of the second tower of the Hyatt Regency, and proposals to redevelop the Old Police Station (south of the Broadway Complex) as a public market. All these projects and planning efforts, taken together, have resulted in significant physical changes to the landscape and particularly the City's waterfront character, leading to the inevitable conclusion that the Navy Broadway Complex project will affect coastal uses and resources in a manner substantially different from what was originally described in the Navy's 1990 consistency determination, and warranting a reassessment of the Broadway Complex's redevelopment within the context of the current character and profile of the downtown.

In assessing these changes to the area, combined with the changes made to the project, the Commission concludes that the proposed Broadway Complex is no longer consistent to the maximum extent practicable with the requirements of the Coastal Act's view protection policy (Section 30251) that: (a) the scenic qualities of coastal areas are being protected; and (b) new development be visually compatible with the character of the surrounding areas. The Commission also concludes that the project's balance of priority and non-priority uses, and public and non-public spaces, is no longer consistent with the requirements of Sections 30222 and 30255 that give priority for use of suitable sites to visitor-serving and other high-

priority uses, and the requirements of the public access and recreation policies (Sections 30210 and 30213), which provide for maximizing public access and giving priority to low-cost visitor serving facilities.

Concerning this last Coastal Act requirement, the Commission further notes that in the intervening 20 years since the Commission reviewed this project, Commission planning and regulatory decisions on proposals for high-cost hotels in many areas of the California coastal zone have included significant contributions to programs for construction of low- and moderate- cost visitor serving uses (such as hostels), to address the Coastal Act priority afforded to low and moderate cost visitor facilities. No such measures for providing low- and moderate-cost opportunities are included for the proposed hotels.

While there may be other project resolutions that would comply with the Coastal Act, as allowed under the applicable regulations the Commission is identifying measures that could bring the project into compliance with the applicable policies. These potential modifications are listed in Section IV of this report, on page 33-34 below.

Finally, the Commission has several additional concerns over the adequacy of the available information concerning traffic effects and geologic hazards. These two issues are described in greater detail below.

2. Traffic. The Coastal Act policies related to traffic (Sections 30250, 30252, and 30254) provide:

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. ...

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, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30254. ... Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Population increases, the expansion of the Convention Center, the new ballpark, the homeporting of the Midway aircraft carrier, and the overall upsurge in downtown development have all impacted the availability of physical and visual public access to the shoreline. As demand for access and recreational resources increases, a particular street level of service, or view blockage, or amount of non-visitor-serving uses that might have been considered acceptable in 1991, might now be assessed very differently. At least 60 high-rise buildings have been constructed in downtown San Diego since 1995. Some of these projects were anticipated in 1991, but most were not. As a result, the environment in which the Broadway Complex would operate is substantially different than the one in which it was originally reviewed.

The approval of the Midway project could have impacts on the character of development at the subject site in several ways. The certified Port Master Plan contains the following language:

Parking for visitors to the Midway and its museum will be provided, on an interim basis, at the Navy Pier, pursuant to the museum's lease with the United States Navy. When and if the Navy determines that its use of the Navy Pier is no longer necessary, the Port will accept the proposal by the San Diego Aircraft Carrier Museum to convert the Navy Pier into a "public park" use, thereby allowing the pier to be converted into a memorial park complementing the Midway and its museum, while affording additional public open space and bay vistas. Vehicle parking for museum visitors will then be shifted to nearby offsite locations. However, since the Navy Pier's future is uncertain and will be determined by decisions of the federal government, the conversion of a pier to a 5.7-acre memorial park is a specific planning goal of the Port, and environmental analysis for the park conversion will be conducted prior to the Navy relinquishing ownership and/or control of the Navy Pier such that construction of the park can occur as soon as feasible thereafter. The park conversion will be subject to all appropriate laws at the time the Navy Pier park is proposed.

It had previously been represented to Commission staff that the Navy maintained a lease of or within the existing building on the Pier such that the Navy could not be said to have relinquished "ownership and/or control of the Navy Pier." However, the Port District has now acknowledged that they have control over the Navy Pier. In its approval of inclusion of the Midway aircraft carrier in the Port Master Plan, the Commission found that "removal of

the existing buildings on Navy Pier would allow for opening up the proposed view corridor along E Street in the future when the Broadway Complex area is redeveloped, to replace the one along F Street which would be blocked by the Midway” and that “[r]elocation of the parking can occur at any time independent of actions by the Navy *or as part of redevelopment of the Navy Broadway Complex*” (emphasis added). Although approval of the Midway was not contingent upon a particular redevelopment scenario at Navy Broadway Complex, the Commission clearly found that the presence of the Midway would have impacts on coastal resources that should be taken into consideration when Navy Broadway Complex was redeveloped.

In addition, as stated above, the Midway attendance has been substantially higher than originally anticipated. In its first year of operation, the museum doubled attendance projections, with an annual attendance of 879,281.² This is a changed circumstance that could not have been addressed in the North Embarcadero Visionary Plan EIR or at the time of Commission action on CD 47-90 for the Broadway Complex. As a result, the impacts to public access from the proposed Broadway Complex should be reevaluated in light of the unanticipated traffic being generated at the adjacent museum.

The traffic assumptions the Commission relied on in its original review of the Broadway Complex were based on the data and projections in the May 1985 Centre City Transportation Action Plan (“TAP”), used to evaluate the impacts of the Broadway Complex (see pages 18-24 of Exhibit 6). The TAP identified circulation improvements to assure coastal access would be protected. However, the adopted findings on the Broadway Complex noted “the Commission is concerned about the effect of significant deviations from the expectations of the TAP on the City’s transportation system, and thus on public access to the coast.” Given the intervening developments previously cited, the pending proposal will have significantly different coastal effects than those originally described, and a reassessment of whether the Broadway Complex proposal would be consistent with the above-cited policies in light of current circulation patterns and public mobility in the downtown area is warranted. In particular, it should be noted that the recently adopted Downtown Community Plan/Centre City Planned District Ordinance EIR (2/06) found that impacts from their implementation on parking and the downtown street system were significant and unmitigable. Such findings reinforce the need to reassess the possible impacts of the Broadway Complex redevelopment on coastal access. In addition, the Commission staff has been increasingly concerned about the diminishing supply of public parking reservoirs, coupled with the lack of alternate transit development, to support public access opportunities. Commitments have been made in multiple Port Master Plan amendments but there is little evidence of a waterfront shuttle system being developed to either transport the public from perimeter parking lots to downtown/waterfront locations or to facilitate their movement along the bay.

² San Diego Midway Museum website as of 6/13/08;

<http://www.midway.org/site/pp.asp?c=eeIGLLOrGpF&b=3039019>

In its responses to Commission staff comments on its Draft EA on the lack of an up-to- date traffic analysis, the Navy stated in the final EA that:

1. A recent traffic analysis (for Downtown Community Plan EIR) estimates a 30% reduction in Broadway complex-generated trips since 1991 estimates.
2. Cumulative Downtown traffic impacts would occur primarily outside the coastal zone, and primarily affects rush hour peaks rather than recreational traffic peaks.
3. The developers would provide more parking than needed, which would improve public access to the waterfront.

However, the Commission notes that the Navy's traffic analysis on which it relies in these responses is based on the traffic analysis prepared for the Downtown Community Plan (CCDC 2005b) and a CCDC Downtown Near Term Traffic Assessment (March 1, 2007). These studies are 4-6 years old, and may not be up to date. The Commission therefore continues to believe that an updated traffic and parking study assessing the proposed project and current and reasonably foreseeable future projects in the area is required. This study should identify the standards being used to determine parking requirements, analyze the expected short-term, long-term and cumulative impacts on traffic and coastal access opportunities resulting from the project, analyze alternatives that would reduce or eliminate identified impacts and identify any feasible mitigation measures. An assessment of current levels of service and intersection analyses for critical access roads and segments needs to be provided, along with a comparison to previously adopted buildout projections for the downtown area. In addition, the potential changes to Harbor Drive and Pacific Highway as a result of the NEVP Phase I and future phase improvements, and as contained in the pending PMPA for the North Embarcadero, should be taken into consideration in any redevelopment proposal for the Navy Broadway Complex site.

The Commission is also concerned over how recent planning trends emphasizing public transit will be incorporated into the project. The Commission notes that commitments have been made in multiple Port Master Plan amendments to develop a waterfront shuttle system, in coordination with the City of San Diego, to either transport the public from perimeter parking lots to downtown/waterfront locations or to facilitate their movement along the bay. However, to this date, implementation of such as system has not occurred. The Commission finds that the intensity of development being contemplated in the subject proposal, and its potential impacts on the public's ability to access this bayfront area, cannot be supported unless alternative forms of transit and non-automobile circulation are implemented in conjunction with the project. Thus, a detailed analysis of how public transit and non-automobile circulation opportunities are being provided and promoted in the subject development is required.

Without more recent traffic studies than those relied upon on the Navy's most recent evaluation (dated 2005 and 2007), the Commission concludes that all the above traffic-related and planning-related factors result in significantly different coastal effects than those originally described, necessitating a supplemental consistency determination that take those factors into consideration before the Commission can agree that the currently-proposed Broadway Complex would be consistent to the maximum extent practicable with the traffic- and parking-related policies of the Coastal Act (i.e., Sections 30250, 30252, and 30254).

3. Geologic Hazards. The geologic hazards policy (Section 30253(a) and (b)) of the Coastal Act provides:

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

...

The Commission's 1991 Findings did not analyze geologic hazards. Since that original decision, new geologic faults have been discovered in the area (the Coronado fault). In its EA comment letter, the Commission staff noted that state and federal agencies have published studies identifying numerous active fault strands associated with the Silver Strand and Coronado faults in the vicinity of the Coronado Bridge, and that the Coronado fault "has a north-south trend immediately south of the Naval Broadway Complex site and trends directly toward the site (and believed to be a portion of the Rose Canyon Fault Zone)".

The Navy responded that its 2008 EA analyzed these conditions and contained a "Geocon 2006" study, which included additional studies. The Navy concluded that:

After review of all of the information, including the seismic reflection data, it was concluded that there were no signs of faulting at the site. Prior to any development onsite, however, the lessee would be required to coordinate with CCDC and the City to ensure that all regulatory requirements regarding geologic issues have been met and that the development plan considers all geologic issues onsite.

The Navy also stated:

In addition, Dr. Susan Hough, the Scientist in Charge of the ... USGS southern California Office, has opined that the EA "presents a thorough and up-to-date summary of known geological hazards to which the Broadway Complex is potentially exposed ... and will be subject to the same strict building codes and other statues [sic] as any other project in California.

In reviewing this information, the Commission's staff geologist notes:

On 1 May 2003 the State Geologist issued a revised Alquist-Priolo Earthquake Fault Zone Map for the Point Loma Quadrangle that identified several recently discovered active faults in San Diego Bay and vicinity. One of these, the extension of the Coronado Fault beneath the Bay, is almost directly in line with the proposed development. The developers prudently undertook seismic reflection and Cone Penetrometer Test studies to identify any possible extension of active faulting at the site. The 30 June 2006 Terra Physics report, in which seismic reflection data are reported, interpreted the data to represent "reflections caused by seismic velocity/material density changes interpreted as stratigraphic changes" with "possible faults interrupting the interpreted reflections." The report identifies two possible north-trending anticlines lying between some of these possible faults, and recommends that these features be further investigated by CPT testing or drilling to characterize the subsurface structures causing them. Some additional CPT testing was performed along two of the three seismic lines. These data, along with other geotechnical analysis, were included in the 12 July 2006 Geocon report. This report interpreted the CPT data to show "the presence of unbroken marker beds across the site." Although a cross section showing these beds is referred to, no such cross section was provided in Staff's review copy. The Geocon report goes on to conclude that the "anomalies" reported by Terra Physics may be "due to lateral variations in seismic-wave propagation velocity from buried utilities, foundations, soil properties, etc. not accounted for in the geophysical model" and that "no active or potentially active faults transect the site." Staff's review of these data indicate the possibility that there are, indeed stratigraphic discontinuities in the CPT data and that, in any case, the CPT spacing did not test all of the anomalies observe in the seismic reflection data. Further, no continuous core borings were performed to test the structures observed in the seismic reflection data. Finally, the seismic reflection data provides compelling evidence of faulting, warranting further investigation and age-dating. It is the opinion of the Commission's staff geologist that the presence of active faults at the site cannot be ruled out at this time.

The Commission finds that, without more recent seismic studies and the more detailed information described in the above discussion, and a process assuring the Commission the opportunity to review them, there is a significant possibility of different coastal effects than

those originally described, and the Commission is unable to conclude that the project would be consistent to the maximum extent practicable with the geologic hazards policy (Section 30253) of the Coastal Act.

V. Alternative Measures That Could Bring the Project Into Compliance with the CCMP

As described in Section III of this report above, the proposed project is no longer consistent to the maximum extent practicable with the CCMP. Pursuant to Section 930.46(b) of the federal regulations implementing the CZMA, the Commission may identify measures, if they exist, that would bring the project into compliance with the CCMP to the maximum extent practicable. The Commission finds that it would be possible to modify the project to bring it into compliance with the CCMP to the maximum extent practicable if, at a minimum, the following changes are addressed.

All these changes warrant serious reconsideration of the location, bulk, scale and orientation of the Broadway Complex structures and their effect on public views, public access and recreational use and open space along this segment of the North Embarcadero. Project revisions need to be evaluated in terms of the current and projected future development in the surrounding area and along the waterfront.

1. **Increased Public Space Along Harbor Dr.** Modify the buildings along Harbor Drive (Blocks 1A -4A) to provide a far greater setback/public area between the buildings and Harbor Drive, and one that provides continuity with and is functionally and spatially related to the 150 ft. setback being provided along Harbor Drive north of Broadway in the most recent Commission approval of the North Embarcadero Visionary Plan (NEVP) Phase I Improvements.
2. **Lower Bayfront and Stepped Back Design from Blocks 1A - 4A.** Decrease the heights of the buildings on Blocks 1A - 4A and redesign the structures to provide a stepped back design away from Harbor Dr. Structures along Harbor Dr. should be lower scale, and include highly-active, pedestrian spaces with a strong orientation toward the Bay similar to Seaport Village to the south.
3. **Museum Relocation.** Relocate the museum from Block 4B back to the originally-authorized location on Block 2A or along the waterfront.
4. **Public Space.** Include a series of public and quasi-public spaces throughout the development and along Harbor Drive, linking open space at the foot of Broadway with Seaport Village.
5. **Green Building Standards.** Commit to implementing “green building” standards and achieving LEED Silver Certification.

6. **Public Transit Improvements.** Commit to provide funding for a public shuttle along the waterfront that would be a meaningful extension of the shuttle being proposed in association with Lane Field, which is intended to assist in completion of the downtown regional transit program.
7. **Low-Cost Visitor Accommodations.** Commit to building or providing a mitigation payment for construction of a hostel to serve the San Diego Bay area.
8. **Phasing.** Rather than basing the phasing of the project on Navy/lessee and market conditions, as described in Section 2.2.2 of the Navy's EA (and summarized on page 10 of this report), the project's phasing shall be revised to include consideration of Coastal Act priorities, meaning that it will provide for timely construction of priority uses and public amenities (museum/visitor-serving facilities, signage) within similar time frames as non-priority (e.g., commercial office) uses.
9. **Traffic/Parking Studies.** Prior to any construction, up-to-date traffic and parking studies shall be provided to determine whether adequate provisions for public transit, circulation improvements and parking are being included. In addition, the development should include a transportation demand management plan, including employee subsidies for alternate transit and support facilities for employees who choose to bike to work.
10. **Seismic Analysis.** Provide a mechanism for Commission review of seismic hazards and measures to be taken to address the hazards and information needs discussed on pages 31-32 of this report, prior to commencement of any construction.
11. **Conversion to Condominium Hotel Ownership.** Any future changes to the project involving conversion of hotel ownership to condominium hotels would need to be subject to Commission review as a changed circumstance.

VI. SUBSTANTIVE FILE DOCUMENTS:

1. Navy Consistency Determination and Adopted Commission Findings, CD-047-90, adopted October 9, 1991.
2. Navy Final Environmental Assessment For Implementation of the Development Agreement for the Navy Broadway Complex, Dept. of the Navy, March 2009
3. Appeal No. A-6-PSD-11-006, Phase I of the North Embarcadero Visionary Plan (NEVP) ((Center City Development Corp. & San Diego Unified Port District)
4. Appeal No. A-6-PSD-08-04/ A-6-PSD-08-101, San Diego Unified Port District, Lane Field

5. Appeal No. A-6-PSD-11-006, San Diego Unified Port District, Realignment of Harbor Drive
6. (CDP Application No. 6-06-155, submitted, December 27, 2006 by Manchester Pacific Development, withdrawn, June 27, 2007
7. Navy/Manchester Lease N6247307RP07P24, Dept. of the Navy/Manchester Pacific LLC, signed Nov. 22, 2006
8. San Diego Unified Port District Port Master Plan Amendment No. 27 (North Embarcadero), Midway Aircraft Carrier
9. Consistency Certification No. CC-48-88, Caltrans, Hatton Canyon Bypass

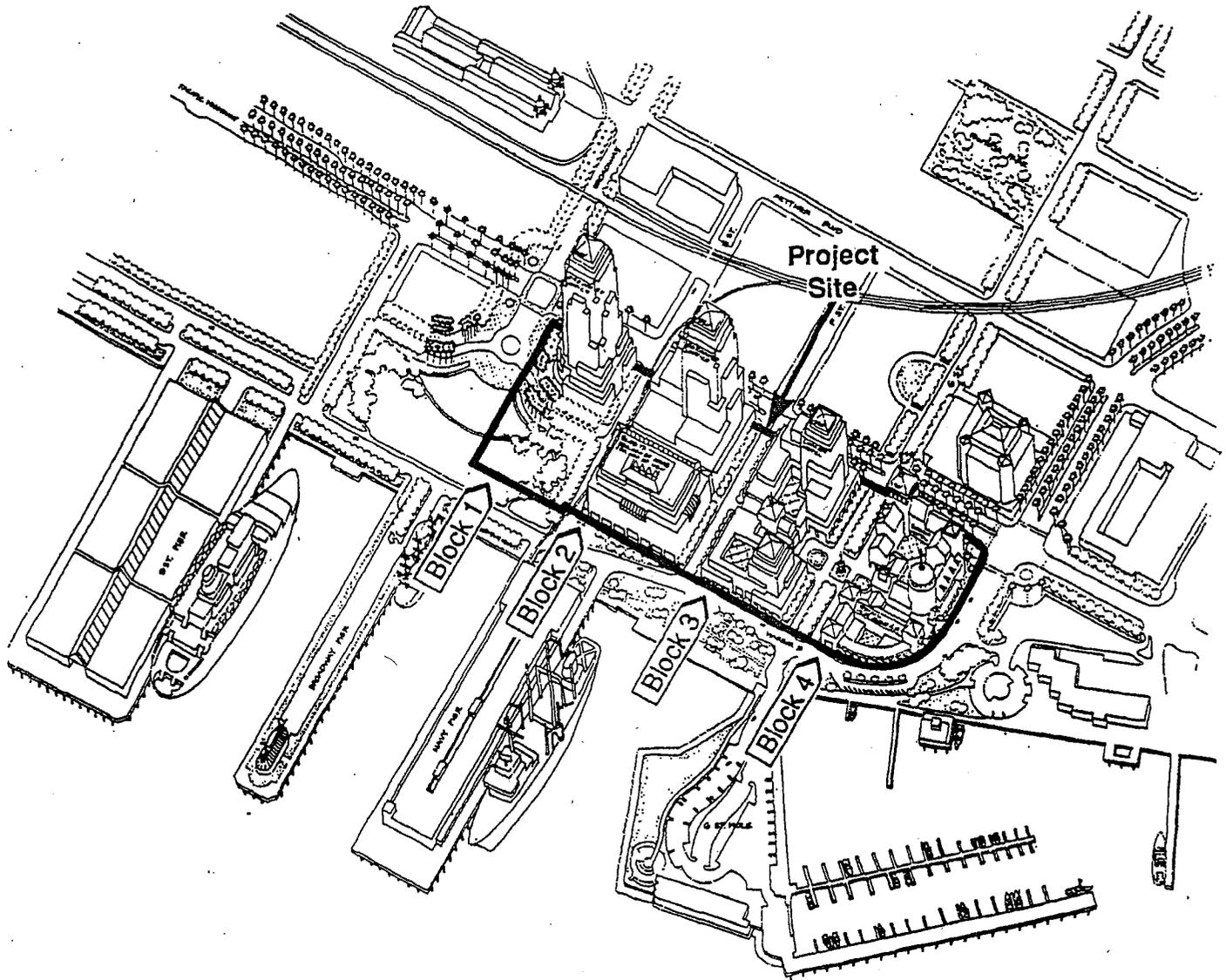


Source: U.S. Navy 2002b



**Figure 1-1
Vicinity Map**

EXHIBIT 1
 CD-047-90
 2011 Review



PROGRAM

Block Number	Land Use	Gross Square Footage	Parking	Max. Height (Feet)
1	Commercial Office Open Space (1.9 acres)	650,000	650 below-grade	400
2	Navy Office: - Bldg. 12 - New Museum	331,000 669,000 55,000	430 below-grade 800 above-grade	350
3	Above-Grade Parking Hotel	300,000 745,000	750 below-grade	250
4	Hotel Retail	475,000 25,000	375 100 below-grade	150
Total		3,250,000	3,105	

Site Density = 5.45 Gross FAR

Project Illustrative
Navy Broadway Complex Project

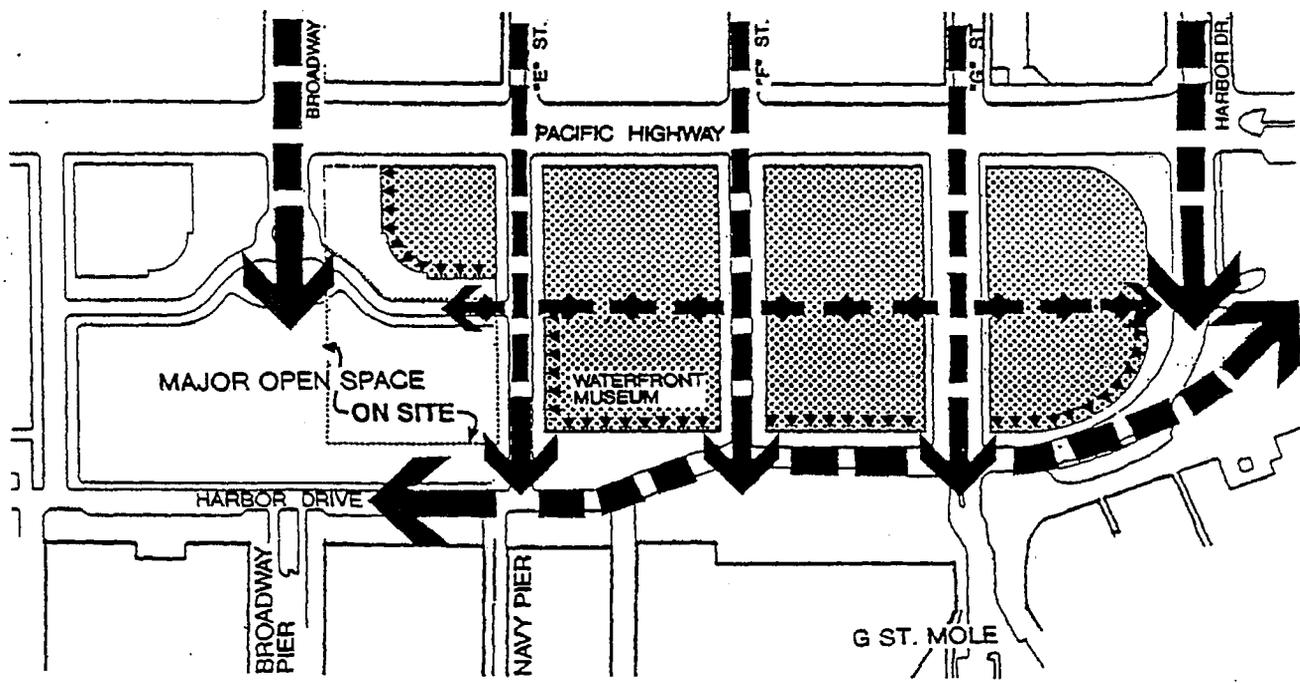
6640001 7/90



NORTH

Figure 2-1

EXHIBIT 2
CD-047-90
1990 Proposal



Legend

- ▼▼▼▼ PUBLIC-ORIENTED GROUND LEVEL USE
- ←←←← PUBLIC PEDESTRIAN ACCESS
- ←- - - SEMI-PUBLIC PEDESTRIAN ACCESS

6640001 7/90



NORTH

Figure 4-2

Public Access After Development
Navy Broadway Complex Project

EXHIBIT 3
CD-047-90
1990 Proposal



Source: GOOGLE Earth 2005.

**Figure 2-2
Project Blocks**





EXHIBIT 5
CD-047-90
2007 - Current
Proposal
p. 1



EXHIBIT 5
CD-047-90
2007 - Current
Proposal p. 2



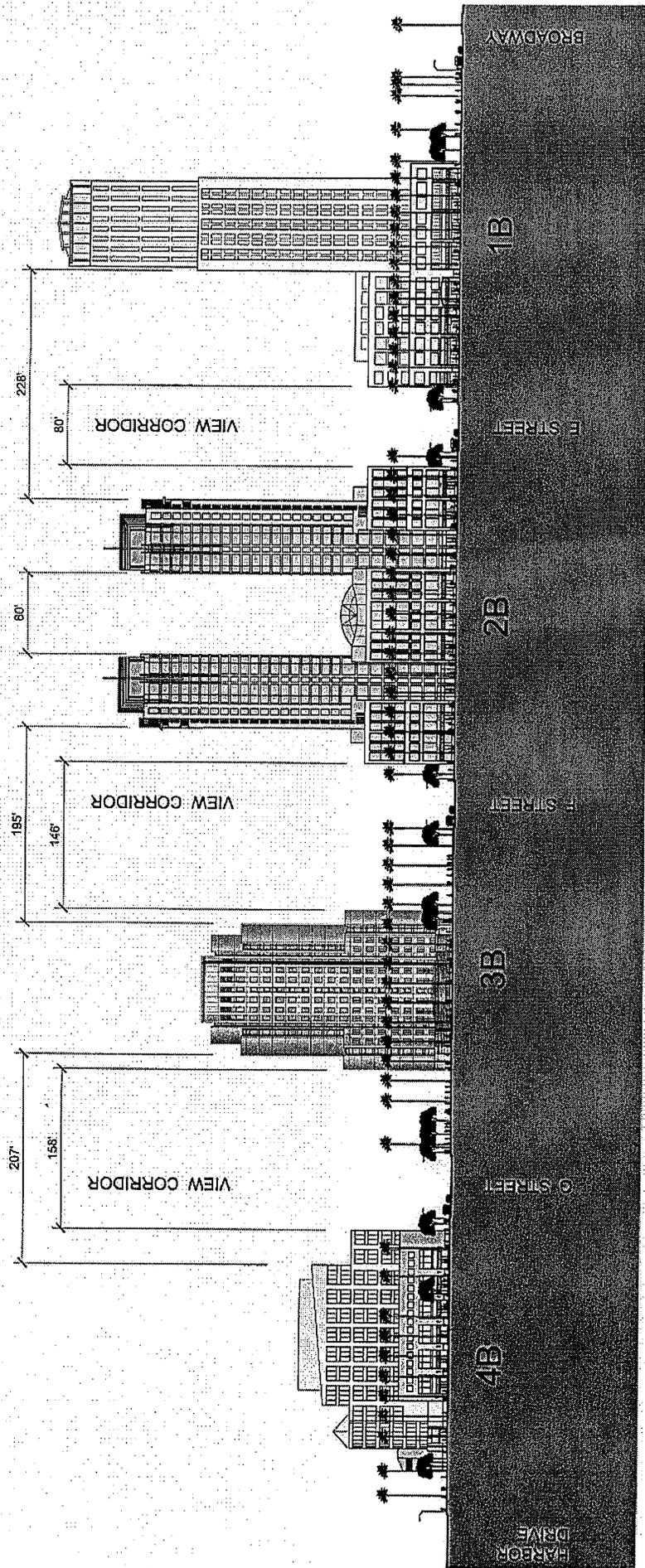
EXHIBIT 5
CD-047-90
2007 - Current
Proposal p. 5



EXHIBIT 5
CD-047-90
2007 - Current
Proposal p. 6



EXHIBIT 5
CD-047-90
2007 - Current
Proposal p. 7



Pacific Gateway
LLC

EXHIBIT 5
CD-047-90
2007 -
Current
Proposal p. 8

See Disc. C4
05.d017.000

Design Highway Elevations

Master Plan Submittal and Individual Building & Sites
 Blocks 2 and 3: Concept - Schematics Submittal

Scale: 1/8"=1'-0"
 July 2, 2007



Gensler

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
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ADOPTED FINDINGSON CONSISTENCY DETERMINATION

Consistency Determination No. CD-47-90
 Staff: JRR-SF
 45th Day: Extended
 Date of Review: May 7, 1991
 Commission Meeting: August 13, 1991
 Findings Adopted: October 9, 1991

FEDERAL AGENCY: U.S. Navy

DEVELOPMENT

LOCATION: Navy Broadway Complex in downtown San Diego, bounded by Broadway on the north, Harbor Drive on the west and south, and Pacific Highway on the east (Exhibits 1 and 2)

DEVELOPMENT

DESCRIPTION: Construction of two highrise office buildings, two hotels, parking structures, and open space (Exhibit 3)

PREVAILING

COMMISSIONERS: Giacomini, Howard, MacElvaine, Malcolm, McInnis, Doo, Neely, Wright

SUBSTANTIVE FILE DOCUMENTS:

1. Final and Draft Environmental Impact Statement for the Navy Broadway Complex, April 1990.
2. City Centre Segment of the City of San Diego's Local Coastal Program, certified on January 13, 1988:
 - A. Centre City Transportation Action Program, May, 1985;
 - B. Centre City Community Plan, May, 1976;
 - C. Marina Redevelopment Plan, December, 1976 as amended;
 - D. Columbia Redevelopment Plan, December, 1976 as amended; and
 - E. Urban Design Program, Centre City, San Diego, October 1983.
3. San Diego Unified Port District Master Plan, January, 1980.
4. Transportation Study for the Navy Broadway Complex Project, Korve Engineering, Inc., February, 1990.

EXHIBIT 6
CD-047-90
CCC 1991 Findings

5. California Coastal Commission v. Granite Rock Company, 107 S.Ct. 1419 [1987].
6. Cityscape, 1990 Annual Development Update, Centre City Development Corporation.
7. Mitigation Monitoring Program for the Navy Broadway Complex, City of San Diego, October, 1990.

EXECUTIVE SUMMARY

On May 7, 1991, the Commission concurred with a consistency determination by the U.S. Navy for redevelopment of the Broadway Complex site located in downtown San Diego. The Navy is proposing to enter into a joint venture with a private developer for the redevelopment of the Broadway Complex site as a 3,250,000 square-foot mixed-use office, hotel, and retail development that will include Navy office space.

The Navy's proposal raises the issue of the project's impact to visual resources of the coastal zone. The bulk and height of the proposed highrise, including 4 buildings with heights of 400 ft., 350 ft., 250 ft., and 150 ft., will be consistent with existing and approved development on the downtown waterfront and with ongoing planning efforts for the waterfront. The California Coastal Management Program (CCMP) contains a policy, Section 30251 of the Coastal Act, that protects visual resources of the coastal zone. The Commission concludes that the proposed highrise buildings will be consistent with the Visual Protection policy of the CCMP.

The Navy's proposal also raises the issue of the development of waterfront areas with non-priority uses. The proposed project includes commercial office uses, which are not priority uses for waterfront sites. Several sections of the CCMP, Sections 30221, 30222, 30223, and 30255 of the Coastal Act, identify priority uses for waterfront areas. Although office use is not a high priority use, the development, as a whole, provides for improve coastal access and recreation and thus is consistent with the Priority Use policies of the CCMP.

The Navy's proposal also raises the issue of the impact of the project's intensity of use on public access to the shoreline. Because of its high intensity, the project will generate traffic and parking impacts that could interfere with vehicular access to the downtown San Diego waterfront if not adequately mitigated. Several policies of the CCMP, Sections 30250, 30252, and 30254 of the Coastal Act, provide for management of transportation to protect access and recreation. The intensity of use, however, is consistent with the LCP policies for traffic. Therefore, the project will not generate traffic in a manner that interferes with public access to the coast. Even though the project is not designed to provide all the parking necessary to support the development, it does include mitigation in the form of a transportation demand management program, and thus avoids parking impacts to public access. Therefore, the proposed project's parking impacts will be consistent with the intensity of use and access policies of the CCMP.

STAFF SUMMARY AND RECOMMENDATION:

I. Staff Summary:

A. Project Description. The Navy is proposing to enter into a joint venture with a private developer for the redevelopment of the Broadway Complex site located in downtown San Diego, bounded by Broadway on the north, Harbor Drive on the west and south, and Pacific Highway on the east (Exhibits 2 and 3). As part of this joint venture, the Navy will enter into a long-term lease of the site with the private developer. The developer will then redevelop the site as a 3,250,000 square-foot mixed-use office, hotel, and retail development that will include Navy office space. The joint venture will allow the Navy to have the site redeveloped at no cost to the federal government.

The proposed redevelopment project will be located on a four block site (Exhibit 3). The major elements of the proposed project are as follows:

- the development on Block 1 will include the construction of a 400-foot high, 650,000-square-foot office building;
- the development on Block 2 will include 1,000,000 square feet of new and existing office space, 300,000 square feet of above-grading parking, and a 55,000 square-foot museum. The tallest building on this site will be 350 feet high;
- the development on Block 3 will include the construction of a 250-foot high, 745,000-square-foot hotel;
- the development on Block 4 will include the construction of a 150-foot high, 475,000-square-foot hotel and 25,000 square feet of retail.

In total, the project includes the construction of 3,105 parking spaces. Finally, according to the Navy the project is designed to maximize community objectives and provide for a number of beneficial uses. Such uses are described below:

- 1.9 acres of open space on Block 1;
- 2.1 acres of open space will be provided along streets and building setbacks and within galleries;
- a museum oriented to maritime history;
- vehicular access through the site will be opened on E, F, and G Streets;
- pedestrian corridors will be developed along E, F, and G Streets and will be upgraded on all streets surrounding the site so that access between the downtown core and the waterfront will be improved;

- continuous north-south pedestrian access through the property sites through the use of galleries, courts, plazas, and other public spaces;
- view corridors along E, F, and G Streets will be opened to the waterfront;
- ground-level retail will be provided to encourage pedestrian use of the area.

B. Status of Local Coastal Program. The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) or the Port Master Plan (PMP) of the affected area. If the LCP or the PMP has been certified by the Commission and incorporated into the CCMP, it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP or the PMP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. Both the City of San Diego LCP and the San Diego Unified Port District PMP have been incorporated into the CCMP.

C. Federal Agency's Consistency Determination. The U.S. Navy has determined that the project is consistent to the maximum extent practicable with the California Coastal Management Program.

II. Commission Action.

Concurrence. The Commission hereby concurs with the consistency determination made by the U.S. Navy for the proposed project, finding that the project is consistent to the maximum extent practicable with the California Coastal Management Program.

III. Staff Recommendation:

The Commission staff recommends that the Commission adopt the following findings in support of its decision.

IV. Findings and Declarations:

The Commission finds and declares as follows:

A. Visual Resources. The proposed project is located on the downtown San Diego waterfront and could affect the area's visual resources. These resources are protected by Section 30251 of the Coastal Act. This section provides, in part, that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The visual resources of the area are a mix of an urban downtown, a working port, and San Diego Bay. The project site is located along the San Diego Bay waterfront, at its confluence with the downtown corridor.

The Commission's visual analysis will focus on three components of the visual resources in this area, the first being the protection and provision of view corridors from inland areas, the second being enhancement of visually degraded areas, and the third being the compatibility of this development with the scale and bulk of the existing and planned character of development within the waterfront area.

As described above, Section 30251 of the Coastal Act provides for the protection of views to and along the coast and the enhancement of visually degraded areas. In its analysis of visual impacts, the Navy concludes that the proposed Broadway Complex will protect and enhance views to and along the coast. In its consistency determination, the Navy states that:

The project is designed to protect and improve views to and along the bay. By opening E, F, and G, Streets through the project site, it would substantially increase the number of views to the bay from inland points. These views are currently obstructed by fences, equipment, and buildings. Also, these streets would provide wide (75 to 120 foot) corridors for views to the bay along the Broadway frontage, the project would include a 75-foot setback for buildings, opening a wide view corridor.

Views along the waterfront would be protected, because the project does not encroach into the Harbor Drive/Bayfront Promenade corridor.

The tall buildings elements are designed to minimize view obstructions from inland points. The buildings would be tallest on the inland half of each block, stepping down toward the waterfront. Slender towers that recede in profile toward the top are encouraged to allow broad views between towers. (Consistency Determination, p. 36)

The Commission agrees that proposed project will enhance views to the coast, because as described by the Navy, the project includes opening of E, F, and G Streets through the project site. These streets will provide visual corridors to the bay that currently do not exist. In addition, the Navy is proposing to design the buildings consistent with the City's general design guidelines for downtown development. Although the Navy has not submitted any architectural designs for the project, it has developed urban design guidelines that are consistent with the City's design guidelines. The Commission also agrees with the Navy's assertion that the proposed project will improve views along the shoreline of the bay, because the existing buildings are large, bulky, and boxy and are considered by many to be not visually attractive. Finally, the Commission agrees with the Navy's conclusion that the project will not block

existing views to and along the Bay, because the foot print of the new development will be no larger than the existing multi-story development, which already blocks views. Therefore, the Commission finds that the project will not disrupt views to and along the coast.

To be consistent with Section 30251 the Commission must also find that the project is visually compatible with the character of the surrounding area. In order to analyze the project's consistency with this issue, the Commission must first define the surrounding area. In this case, there is some controversy over establishing this definition. As described below, the Commission believes that the surrounding areas include the waterfront at the foot of Broadway, together with that portion of the downtown corridor along Broadway in proximity to the waterfront.

The Navy argues (Exhibit 10) that the waterfront is the area between the quaywall and the Harbor Drive right-of-way. The Commission disagrees with the Navy's position because several sections of the LCP refer to the "waterfront" as the area between the shoreline and Pacific Highway (Community Plan, pp. 13-14, 42, and 104). On page 13 of the Community Plan, there is a map that shows the tidelands area as that area between the shoreline and Pacific Highway. The text on page 14, which describes these tidelands, uses "tidelands" and "waterfront" as synonyms. In a separate section, the Community Plan (page 42) describes the waterfront as the area "from the water's edge inland to the center line of Pacific Highway." In another section, the Community Plan (page 104) describes waterfront as "generally west of Pacific Highway." Although the Broadway Complex is located on the waterfront, the area between the shoreline and Pacific Highway, it is also located along the downtown corridor along Broadway. Thus, the Commission believes that the Broadway Complex is located on the waterfront at its confluence with the downtown, and this area can be distinguished from the remainder of the waterfront.

Next, the Commission must establish the character of this area. Even though most of this downtown waterfront, except for the Broadway Complex site, is undeveloped, there are planned and approved developments that establish a high rise character for this area. The character of this area is also established by policies of the LCP. The Navy provided some analysis of this issue in its consistency determination:

The height of the tallest tower (up to 400 feet on the inland side of Block 1) is consistent with surrounding planned development. The Santa Fe property, Great America Plaza, and the Hyatt Regency are examples of planned developments near the project that include taller towers. The reduction of building heights on the Navy Broadway Complex site toward the waterfront, as well as toward Seaport Village to the south, respects the importance of diminishing visual intensity closer to the water.
(Consistency Determination, p. 37.)

The highest buildings immediately east of the Santa Fe railroad tracts and south of Broadway are approximately 250 feet and 325 feet high. (Cityscape, pp. 8-11). An approximate 420 foot building is proposed for this area, but has not yet been constructed. (Cityscape, p. 8.) Additionally, there are two buildings north of Broadway that are approximately 465 feet and 500 feet high, respectively. (Cityscape, p. 8.) Finally, the Santa Fe development, which is adjacent to Broadway Complex, could be as high as 410 feet. That project was approved by the Commission when it certified the implementing ordinances of the LCP. The existing and approved development in the area, especially the Santa Fe project, establish a highrise character for this downtown waterfront.

The Commission recognizes that existing and approved development in the area is not the only factor that establishes the visual character of the downtown waterfront. This character is also controlled by existing land use plans for the area. These plans contain policies that restrict height and scale of new development. In describing the characteristic of new development on the waterfront, the San Diego Centre City Community Plan, which is part of the existing LCP, states that:

The tidelands is [sic] expected to have a low-profile; improvements should be spaciouly sited. However, nodes of vertical development are expected to occur as a contrast to development along the waterfront and the central area.
(Community Plan, p. 14.)

This LCP policy cited above provides the Commission with general guidelines for determining the future visual character of the downtown waterfront. The guidance for low-profile spaciouly sited development on the waterfront reflects the existing character of the area. The Commission, however, recognizes that this policy provides for "nodes of vertical development." Navy argues that its project will be such a "node of vertical development." The Commission agrees with this conclusion, and recognizes that the downtown waterfront is the likely area for "vertical nodes."

Additional guidance for analyzing the character of the surrounding area is provided for in other parts of the LCP. The Community Plan divides the Centre City area into several sub-areas. The Broadway Complex site is located in two different sub-areas (Exhibit 5). The Navy and private office buildings are located in the Columbia sub-area and the two hotels are located in the Marina sub-area. Not only are these sub-areas discussed in the Community Plan, but City has produced redevelopment plans for both of these areas. The redevelopment plans are also part of the implementing ordinances for the Centre City segment of the San Diego LCP.

The Navy argues (Exhibit 10) that the Marina and Columbia Redevelopment Plans, which its development will be consistent with, should be also used to establish the character of this area. The Commission recognizes that the Marina and Columbia Redevelopment Plans have some control over development in this area and could be used to help establish its character. The Columbia redevelopment plan does not have any height limits for development in its

area. Any building in that sub-area could be constructed as high as the FAA height limit of 500 feet. Although the Marina sub-area does have height limits, there are exceptions to those limits that could allow a building to be as high as the 500-foot FAA limit. The Commission agrees that for the downtown waterfront, where the highrise character has already been established, that these redevelopment plans should be used to define the highrise character. However, for the rest of the waterfront these redevelopment plans must be read in conjunction with the Community Plan. As described above, that plan has policy that maintain the low-scale character of the waterfront. That plan clearly recognizes the waterfront as a special area that needs to be treated differently than the rest of the city. The Community Plan is the Land Use Plan (LUP) portion of Centre City LCP. When the Commission approved the implementing ordinances, which included the Marina and Columbia Redevelopment Plans, it found that they were consistent with the LUP. Thus, they were intended to implement, not transgress, the LUP.

The Commission finds that the proposed Broadway Complex is a highrise development that is consistent with planned and approved character for the downtown waterfront. The project includes the construction of buildings totalling 3.25 million GSF on a 13 acre site. The maximum heights of the buildings on this site will be as follows: 400-foot high private office building on block 1; 350-foot high Naval office building on block 2; 250-foot high hotel on block 3; 150-foot high hotel on block 4 (Exhibit 3). If constructed, these buildings will not be higher than other development in this area, such as the approved Santa Fe project. Thus, the project meets the Coastal Act requirement for maintaining the character of this area.

In conclusion, the proposed Broadway Complex will improve views to and along the coast, improve the visual resources at the site, and is compatible with the character of the downtown waterfront. Therefore, the Commission finds that the proposed project is consistent with the visual resource policy of the CCMP.

B. Priority Uses. The proposed project is located on the waterfront of San Diego Bay. The Coastal Act establishes priority uses for shoreline properties. Section 30221 of the Coastal Act provides that:

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 30222 of the Coastal Act provides that:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 of the Coastal Act provides that:

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

Section 30255 of the Coastal Act provides that:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

The Navy states in its consistency determination that this property is not oceanfront land because the Broadway Complex site does not directly front San Diego Bay. The Commission disagrees with this conclusion. The language in Section 30222 is "oceanfront land" and not property. Since property boundaries are artificial divisions of land, they do not affect the recreational potential of the area. Thus, just because a property does not include the mean high tide (MHT) line does not necessarily mean that it is not oceanfront. The Broadway Complex site is located below the historic MHT line and it is separated from the shoreline of the bay by a road and there is no development between the site and the shoreline. Therefore, the Commission finds that the property is close enough to the shoreline to be classified as oceanfront. This conclusion is supported by the LCP, which defines the waterfront as the area "from water's edge inland to the center line of Pacific Highway." (Community Plan, p. 42).

The above-cited Coastal Act policies provide the Commission with authority to review land-use decisions and to establish priorities for land uses on the shoreline. In its consistency determination, the Navy asserts that the Commission has no authority to review federal land-use decisions. The Navy states that:

The policies set out in California's coastal management program can be divided into two categories; those which are concerned with environmental regulation of the coast and those which establish land use planning criteria. There is no question that the Navy's consistency determination must address the project's consistency with environmental policies. However, to the extent that the State's land use planning policies would dictate land uses on Federal property, it does not appear to be appropriate to review the land use planning aspects of this property for consistency for two reasons. First, those policies are limited in their application to the land in the coastal zone (and the Navy Broadway Complex is not within the coastal zone). Second, even if the site was within the

coastal zone, the basic land use planning decisions underlying the redevelopment of the Navy Broadway Complex has already been made by Congress. The Property Clause of the Constitution provides that "Congress shall have Power to make all needful Rules and Regulations respecting ... Property belonging to the United States." (U.S. Const. Art. IV, Section 3 Clause 2.) When Congress enacts legislation respecting such property pursuant to the Property Clause, such legislation necessarily overrides conflicting State laws under the Supremacy Clause. It is clear that nothing in the Coastal Zone Management Act was intended to change basic Federal/state jurisdictional prerogatives (16 USC 1456[e][1]).

The Commission strongly disagrees with the Navy's conclusion regarding the Commission's authority to evaluate land-use decisions affecting federal land. There is nothing in the CZMA that differentiates between the states' authority over land use decisions and states' authority over environmental regulations. Sections 307(c)(1) and (2) of the CZMA, as amended, provides that:

Each Federal agency activity within or outside the coastal zone that affects land or water uses or natural resources of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. (16 USC 1456[c][1].)

The regulations implementing the CZMA define federal activities as follows:

The term "Federal activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. (emphasis added.) (15 CFR Section 930.31[a].)

Additionally, a federal development project is defined as:

A Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources (emphasis added).

It is clear from the citations above, that any federal function that affects the California's coastal zone must be conducted in manner consistent to the maximum extent practicable with the CCMP. There is no basis in the CZMA or its implementing regulations that would allow the Navy to conclude that a decision to change the use of federal land is not a federal agency function. In fact, activities affecting the utilization of land are clearly something envisioned as reviewable by the States, under the CZMA and its regulations. Therefore, if a federal land-use decision affects the coastal zone, it must be conducted in a manner consistent to the maximum extent practicable with the

CCMP. (15 CFR Section 930.39[c].) In this case, as described below, the Navy's land use decisions for this property will directly affect the coastal zone because the project will allow for non-priority use on the shoreline of San Diego Bay, thus placing additional burdens on the remainder of the shoreline for the development of priority uses. In adopting the law that authorizes development of the Broadway Complex site, Congress did not override the authority provided to states under the CZMA to review land use decisions. If it had intended such a result, it would have so indicated. The law's silence on that issue must be construed to mean that Congress intended that the proposed project will be subject to all the relevant policies of the CCMP.

In addition to the CZMA basis for reviewing federal land-use decisions, the Commission does not agree that the two reasons (cited above) stated in the Navy's consistency determination support a conclusion that the Commission need not apply the land-use policies of the CCMP to its project. First, the Navy argues that land-use policies of the CCMP apply only to land in the coastal zone and not to federal land. Thus, the Navy implies that because the Broadway Complex site is federally owned, the land-use policies of the CZMA do not apply. The Commission disagrees with this argument for two reasons. First, as described above, there is no basis in the CZMA or its implementing regulations that indicate that land-use policies of a state's certified coastal management program do not apply to federal land. Any federal agency function that affects the state's coastal zone must be conducted in a manner consistent to the maximum extent practicable with its management program.

Second, the Commission believes that this property may not remain excluded from the coastal zone. The CZMA excludes from its definition of the coastal zone "lands the use of which is by law subject solely to the discretion (emphasis added) of or which is held in trust by the Federal Government, its officers or agents." (15 USC 1453[1].) For two reasons, the Commission believes that the property does not meet this test for exclusion from the coastal zone. As part of the Broadway Complex project, the Navy is proposing to lease the property to a private developer. That developer will have discretion over the design and construction of the proposed project and leasing and operation of the commercial offices and hotels. Second, the legislation authorizing the redevelopment of the Broadway Complex site (Exhibit 4), P.L. 99-661, allows for non-federal involvement in formulating plans and terms for developing the site. Specifically, that law provides that:

The Secretary [of the Navy] shall provide that any real property leased under this section shall be developed in accordance with detailed plans and terms of development which have been duly formulated by the Secretary and the San Diego community through the San Diego Association of Governments' Broadway Complex Coordinating Group. (P.L. 99-661[c][1].)

The Commission believes that legislation allowing for the redevelopment of the Broadway Complex allows local community to have some discretion over the use of that site. Thus, the use of the Broadway Complex site is not subject

solely to the discretion of the Navy because the lease holder and the local community will have some discretion over this property. Therefore, once the property is leased, it will not be excluded from the coastal zone.

An additional basis for concluding that the property might not be excluded from the coastal zone comes from the Public Trust Doctrine. As described below, if the property is developed as proposed, it may revert back to the State of California. The Broadway Complex site is filled tidelands that were granted to the Navy for military purposes. The States Lands Commission staff has asserted that the title to the Broadway complex site may revert back to the State of California if the land is not used for its granted purposes. If the land reverts back to the State, then it will no longer be federally excluded land.

The second basis that the Navy uses to conclude that the land-use policies of the CCMP do not apply to the Broadway Complex is because the basic land-use decisions for the site have been made by Congress. However, the legislation authorizing redevelopment of the Broadway Complex site does not establish any land uses for the site. Nowhere in that legislation does it state that the property shall be developed with commercial offices and hotels. The legislation merely provides the Secretary of the Navy with the option of entering into a long-term lease for the development of the project site. (P.L. 99-661 Section [a].) Therefore, the Commission disagrees with the conclusion that the basic land-use planning decision for this property was made by Congress.

Since there is no basis for the Navy to conclude that the land-use policies of the CCMP do not apply to the project site and the project is located on oceanfront lands of San Diego Bay, the Commission must evaluate the project consistency with the priority of use policies of the CCMP. The Coastal Act establishes priorities for use of shoreline areas. These priorities include coastal-dependent industry and developments, coastal-related developments, agriculture, and recreational and visitor-serving uses. The Navy is proposing to engage in a joint venture with a private developer to construct a mixed use development. The types of uses proposed in this project include Navy offices, commercial offices, hotels, retail uses, public open space, and a museum. As described below, all of these uses, except the commercial offices, are priority uses under the Coastal Act.

The importance of the priority use question for the Broadway Complex site is emphasized by the fact that the site may have a Public Trust easement attached to it. The Broadway Complex site is located seaward of the historic MHT line for San Diego Bay. Upon its admission into the Union, California received title to all tidelands and submerged lands within its boundaries. Those lands are to be held in trust for the public. Filled tidelands may also have Public Trust easements attached to the land that protect the public rights primarily for navigation, commerce, and fishing. In recent years, the courts have expanded Public Trust protections to include water-related recreation and conservation (Marks v. Whitney [1971] 6 Cal.3d 251, 259).

In its comments to the draft EIS, the State Lands Commission staff stated that the property may be subject to the Public Trust Doctrine (Exhibit 7). Specifically, the State Lands Commission staff stated that:

The State of California has claimed a potential reversionary interest by virtue of the Public Trust Doctrine in the filled tidelands comprising the Broadway Complex.

The State Lands Commission staff believes that the title to the Broadway Complex site may revert back to the State of California if the land is not used for its granted purpose, military uses.

The Navy disagrees with the State Lands Commission staff's conclusion. In its consistency determination, the Navy states that:

(1) The restrictions of the tidelands trust were removed by action of the California Legislature in 1929; (2) the deeds from the City of San Diego to the United States contain no language of reversion and, therefore, do not limit the Navy's use of the property; and (3) since the proposed commercial development of the Navy Broadway Complex is to be undertaken solely for the purpose of providing the means whereby the Navy will obtain office space, the entire development is consistent with the deed restrictions the State claims exist.

The Navy has initiated litigation against the State Lands Commission to resolve this Public Trust issue. Since the Commission is not the primary agency responsible for implementing the Public Trust Doctrine, it will not argue the Public Trust status of the subject site, but notes that the State Lands Commission staff's has concluded that the site may be encumbered with a Public Trust easement.

Since the Coastal Act is in part a legislative exercise of the Public Trust Doctrine, the Commission is concerned about this issue. The Commission believes that the Public Trust issue associated with this project emphasizes the Coastal Act requirement for preserving the site for priority uses. Thus, the Commission believes that the Coastal Act sections cited above identify priority uses that are consistent with the Public Trust Doctrine. However, it is not necessary to resolve the Public Trust issue to apply those policies, because those sections apply regardless of the status of the property with respect to the public trust.

The primary purpose of the proposed project is to construct Naval offices. The Commission believes that the Naval offices will be a coastal-related development. Section 30101.3 of the Coastal Act defines coastal-related development as "any use that is dependent on a coastal-dependent development or use." The proposed project will provide a centralized administrative facility for the Naval installations in the San Diego area.

The Naval installations in the area include Naval Station, Naval Amphibious Base, Naval Submarine Base, Naval Oceans Service Center, and the Naval Air Station, to name a few (Exhibit 1). Those facilities conduct several coastal-dependent operations including berthing facilities, repair operations, drydocks, marine research, and ship operations. The proposed Naval offices will provide for administrative support to those coastal-dependent uses and will not be necessary if those Naval facilities were not located in the area. Therefore, the Commission finds that the Naval offices are dependent on coastal-dependent uses, and thus is a coastal-related development. However, there is some indication that the Navy offices will not be used exclusively for Navy purposes. In a meeting on December 5, 1990, between Navy personnel and Commission staff, the Navy indicated that portions of the Navy offices may be leased for private use. The Navy stated that its current anticipated minimum requirement for this project is to provide sufficient space for accommodation of administrative personnel presently utilizing the Broadway Complex. Any additional space in the Navy's office building could be used for private uses.

The proposed Broadway Complex site also includes the construction of two hotel developments. Since hotels provide overnight accommodations for out-of-town visitors, the Commission finds that hotels are visitor-serving uses. The proposed project also contains several other visitor-serving uses including retail uses, a museum, and open space. Retail uses are considered by many to be recreational uses, because those uses will provide the public with an opportunity to enjoy the coastal atmosphere. In addition, it is also clear that the museum and the open space will be used by people enjoying the coastal area, and thus they are also visitor-serving uses. Therefore, the Commission finds that the proposed hotels, retail uses, museum, and open space are all visitor serving uses, and thus high priority uses pursuant to 30222 of the Coastal Act.

Finally, the development includes the construction of a commercial office building. It is clear that the purpose of this building is not to enhance visitor-serving uses. In addition, Navy concludes that "commercial office use is not considered a coastal-related (except to the extent that maritime businesses occupy it) or visitor-serving uses." (Consistency Determination, p. 42.) Since the Navy has not made a commitment to devote the commercial offices to maritime businesses, the Commission finds the building will not be a coastal-related use.

Despite the fact that the proposed project contains non-priority uses, the overall project will benefit public use of the shoreline. The Commission notes that the proposed project will redevelop a site that the public is currently prevented from using. The existing Navy facility is currently closed to all public access, including pedestrian and vehicular access through the site.

The redevelopment of the Broadway Complex site will significantly improve public access and recreational resources of the site. As described above, the redevelopment will include public access amenities such as retail shops,

museum, open space, and overnight facilities. In addition, the redevelopment of this site will be based on urban design guidelines that the Navy has developed. These guidelines include architectural standards, street-level design, building form and scale, site access, parking treatment, and landscape considerations. The street level design measures will improve visitor use of the area, because they include a 75 foot setback along Broadway allowing for 25 foot sidewalks and seven to ten foot setbacks along Pacific Highway allowing for 20 foot sidewalks. In addition, the project will open up E, F, and G Streets to pedestrian and vehicular access. These streets are currently closed through the Navy site. E and F Street will have a 75-foot right-of-way allowing for a 35 foot pedestrian uses and landscaping. G Street will have a 120 foot right-of-way with 60 feet for pedestrian uses. In addition, street level design elements will include set back of taller building elements and continuous north-south access through the property site through the use of galleries, courts, plazas, and other public spaces. Other design guidelines will control architectural form and landscaping in order to enhance the pedestrian scale of the ground level of this development.

Thus, even though the project includes non-priority commercial office space, the redevelopment of the site will considerably improve public access and recreational uses of the area. Therefore, the Commission finds that these access improvements overshadow the impacts from the construction of non-priority uses and the Commission finds the the project to be consistent with the priority use policies of the CCMP.

C. Intensity of Development/Public Access. The Navy is proposing to engage in a joint venture with a private developer to construct a high intensity mixed-use development on the shoreline of downtown San Diego. The level of intensity proposed for this project may have an adverse effect on access to the shoreline of San Diego Bay unless appropriate mitigation measures are undertaken. Several Coastal Act policies are designed to protect coastal access from the impacts of this type of development. Section 30250 of the Coastal Act provides, in part, that:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30252 of the Coastal Act provides, in part, that:

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, ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings

Section 30254 provides, in part, that:

Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

The downtown San Diego shoreline is a popular visitor destination. There are specialty shops, restaurants, and public open space that attract people to the area. In addition, there is a shoreline walkway that allow people to enjoy the area's coastal resources. The LCP describes the downtown shoreline as:

a place where people will come to escape the hurried bustle of the city proper and enter an unhurried and relaxed atmosphere. Dining, shopping, sightseeing, and strolling along the harbor's edge are the dominant people activities which give the Embarcadero life. (Community Plan, p. 42.)

The visitor serving value of the waterfront is supported and protected by both the City's LCP and the San Diego Unified Port District's Port Master Plan. Since the visitors to this area generally drive private automobiles to reach the waterfront, the Commission is concerned about traffic and parking impacts on their ability to reach the shoreline.

In order to protect public access to urban shorelines, like the downtown San Diego waterfront, the Commission must consider the relationship between transportation and public access. Section 30252 of the Coastal Act recognizes that congested roads, parking deficits and crowded (or unavailable) public transit systems, can interfere with public access to the shoreline in urban areas. In evaluating highrise urban shoreline development, the Commission must find that the development maintains public access by: providing for adequate parking; maintaining traffic volume at a level below road capacity during peak recreation period; or where it does not, that planned improvements will be implemented to provide additional capacity; and do so in a manner protective of coastal resources; assuring non-priority development (such as office development) does not use remaining capacity where traffic capacity is limited, unless there is no need to reserve limited capacity for priority uses such as public access, recreation, or coastal dependent industry; and assures that public transit needs of development are adequately served.

As described above, the Navy is proposing to construct a 3.25 million square-foot development on the shoreline of San Diego Bay. This development includes the construction of two office buildings and two hotels, and will generate substantial additional traffic in the project area. Currently, the project site is developed with two large and 14 smaller Naval administrative office and warehouse facilities containing approximately one million square feet of gross floor area (Draft EIS, p. 4-1). The Navy employs approximately

2,122 people at the existing facility (Draft EIS, p. 4-137). The new facilities at the Broadway Complex will be three times the existing size and will employ approximately 10,821 people (Draft EIS, p. 4-136). Additionally, the project includes construction of 1,500 hotel rooms, 25,000 square feet of retail uses, and 55,000 square feet of museum, which will draw a considerable number of visitors to the area (no specific number of visitors per day is available). In conclusion it is clear that the Navy's project will significantly increase the intensity of use and traffic in this area.

In order for the Commission to find that this project is consistent with Sections 30250, 30252 and 30254 of the Coastal Act, it must conclude that the level of intensity proposed by the project will not adversely affect coastal access. In its consistency determination, the Navy argues that the project is consistent with Section 30250. The Navy states that:

The project site is located within an existing, fully urbanized area in downtown San Diego. The planning of the project has recognized the ability of the City services and infrastructure to accommodate the project. The EIS contains substantial discussion of the capacity of transportation, services, and utilities to support the development of the project and identifies appropriate mitigation. All effects of the project relate to services and utilities are either not significant or can be adequately addressed with mitigation. All transportation impacts associated with the project are adequately addressed with mitigation (see Sections 4.2 and 7.2 of the EIS). Consequently, the downtown San Diego area can accommodate the project, which is consistent with this coastal policy.

In evaluating the capacity of the area to accommodate the proposed Broadway Complex development, the Commission will seek guidance from the Centre City Segment of San Diego's LCP, which includes the Navy's property. Such guidance is particularly important to rely on in this particular case for a number of reasons. Although the project is on federal land, the development of high intensity office and visitor serving uses on this property could have considerable effect on downtown San Diego's coastal zone. The mere fact that the development will be on federal land does not obviate the need to address the planning and environmental issues presented by the project; to do otherwise will be contrary to the intent of the CZMA and will undermine regional and LCP planning. The fact that the majority of the development proposed on the site is private, not Navy, development, only underscores this need to treat it similarly to development of comparable intensity on private lands. Further, the LCP is the only planning document that contains a regional transportation plan capable of providing a planning content within which to judge traffic and parking issues, as these are clearly regional issues. Because the City of San Diego's LCP has been incorporated into the CCMP, it can provide guidance to the Commission in interpreting the project's consistency with Sections 30250, 30252 and 30254 in light of local circumstances.

The LCP for the Centre City segment of San Diego contains a transportation action plan (TAP), which evaluates existing and future transportation needs for the downtown area. Specifically, the TAP describes existing transportation needs for the Centre City area, including, freeway, freeway ramp, roadway and intersection capacity, parking needs, and transit demand. Additionally, the report includes a discussion of three different future land-use scenarios. The Level 1 land-use scenario predicts a mid-range expectation of growth in Centre City because it adds to existing conditions only those projects under construction or having received some form of governmental approval. The Level 2 scenario describes a "highly optimistic" expectation of growth in the Centre City that emphasizes office and hotel development. The Level 3 scenario shows the maximum degree of residential development, and provides a less "optimistic" view of employment growth than the Level 2 scenario. Based on these land-use scenarios, the TAP develops a transportation management scheme that will provide and maintain a system that ensures adequate access to, and mobility within, Centre City by all transportation modes.

The Commission must review the project's cumulative impacts on access, pursuant to Section 30250 of the Coastal Act. The existing (since 1980) and the planned projects in the Centre City area similar to the Broadway Complex project will also affect traffic management, and thus, could affect public access. A total of 8,200 hotel rooms, 10.3 million square feet of office space, and 1.5 million square feet of retail space have either been constructed or plan to be constructed. (Cityscape, p. 1.) The Commission believes that the project could have a cumulative effect on the transportation facilities of Centre City. As described above, the TAP for downtown San Diego describes the current traffic situation, and predicts the future capacity problems based on three different land-use scenarios. The TAP states that "[m]any of the key freeway ramps ... are currently operating close to or at capacity during the peak period" (TAP, p. i). In addition, the TAP states that many of the major roadways providing access in and out of Centre City are operating at traffic volumes that are on average about 60 percent of capacity (TAP, p. ii). The TAP also provides an analysis of future transportation system deficiencies based on the three different development levels. Generally, the TAP predicts that travel activity associated with Centre City will increase by about 45 percent for level 1 growth, 100 percent for level 2 growth, and 80 percent for level 3 growth (TAP, p. iv). Generally, the plan predicts that traffic congestion will increase on freeways, freeway ramps, and on streets within the Centre City core area west of Sixth Avenue (TAP, p. v). This increase in traffic will have an adverse effect on public access to San Diego Bay. The TAP recognizes this problem. It states that:

under the Level 2 development scenario, several shoreline access problems would arise for both auto and pedestrian circulation (TAP, pp. V-30-31).

In order to ensure adequate access to and mobility within the Centre City area, the TAP includes a program to manage transportation to minimize congestion. This program includes provisions for improving roadways and

intersections, focusing traffic into defined corridors, improving public transit, providing for pedestrian and bicycle movement, encouraging use of transit and ridesharing, and managing parking. The recommendations of the TAP also provide for improving access to and along the waterfront area. The TAP describes the access improvements as follows:

Roadway improvements, including the upgrading of Imperial Avenue and Seventh Avenue, the extension of Front/First to Harbor, and the widening of South Harbor Drive, offer significantly improved access to the southern waterfront from all directions, particularly to the Convention Center. These roadway improvements tend to spread traffic loads more evenly by offering alternative access routes. They also offer greater flexibility in overall waterfront design. For example, the additional capacity provided by the Front/First extension, and by adding lanes to Market and G Streets, allows a variety of options to be considered in the future regarding the potential re-alignment of Harbor Drive in the vicinity of Seaport Village, to allow future consolidation of waterfront uses in that area.

The recommended pedestrian and bicycle network offers significant improvements for access to the waterfront by these modes. The extension of First Avenue to Harbor Drive, along with improved pedestrian facilities will give pedestrians good access between the south shoreline and the business/retail core to the north. Pedestrian routes throughout Centre City are identified and will be appropriately signed, including key access routes along the waterfront (North and Harbor Drive) and to the shore (Ash, Broadway, Market, Pacific, Kettner, First, Fifth). Widened and/or specially surfaced and illuminated sidewalks will also provide for access to the shoreline, as will the recommended bicycle routes

Multimodal shoreline access will thus be available for commuters, shoppers and tourists alike. Transit access to the shoreline will also be improved in the future, particularly with the Bayside trolley line which will provide both regional transit access to waterfront uses as well as offering local transit service along the waterfront. A Gaslamp trolley service would also provide for local transit access connecting the waterfront with other areas of Centre City such as the retail and financial districts (TAP, pp. V-31-32.)

All of the transportation improvements described in the TAP are based on projected growth scenarios for downtown San Diego. The largest growth scenario envisions significant increase in office and hotel construction. The TAP describes this projection as follows:

this projection would more than double the amount of existing office space, adding nearly 9,000,000 GSF [gross square feet] during the next 20 years. Hotel rooms would more than triple by adding 10,000 rooms to the present inventory in Centre City. Retail space would increase by the 200,000 planned for the Santa Fe properties and residential uses would be increased by 1,250 dwelling units ... (TAP, p. II-9.)

The TAP also includes specific block by block estimates for growth for each land-use scenario. Even though the TAP has no direct jurisdiction over development on federal land, the plan provides estimates for development for the Broadway Complex. The Level 2 land-use scenario has the highest expectations for office and visitor serving developments. Based on the Level 2 scenario, the City estimates that the Broadway Complex will be developed with approximately 1.6 million square feet of new office space and assumes that the development of that site will not include visitor-serving uses, which have less of a traffic impact. The TAP also assumes that there is 1.6 million square feet of existing development on the Navy site that will remain. In reality, however, there is only one million square feet of existing development. Despite this discrepancy, the transportation requirements of the TAP is based on 1.6 million square feet of existing and a total of approximately 3.2 square feet of development of the site. The Navy's proposal is to develop the site with approximately 3.25 square feet of development, which includes 300,000 square feet of parking spaces, which do not generate traffic. Therefore, the amount of development proposed by the Navy is consistent with the projections of the TAP. In addition, the TAP assumes that all of the existing and new development will be office space, which has a high trip generation to square-foot ratio. However, approximately 600,000 square feet of existing development is used for warehouses and 1.22 million square feet of new development will be used for hotels. Both hotels and warehouses generate less traffic than offices. Therefore, not only is the amount of development consist with that estimated in the TAP, the type of development assumed with the TAP will have greater traffic impacts than the proposed project.

The Commission recognizes that the TAP does not establish land uses for specific sites and its expectations for future growth are not meant to impose development limits. However, the Commission is concerned about the effect of significant deviations from the expectations of the TAP on the City's transportation system, and thus on public access to the coast. Substantial deviations from the land-use scenarios may create traffic problems significantly worse than anticipated by the TAP, and, in the absence of mitigation or regional planning measures to address these impacts, the TAP will be undermined and thus the traffic management measures described in the TAP may become obsolete or ineffective.

Without implementation of any of the transportation improvements proposed in the TAP, the construction of the proposed Broadway Complex will increase traffic congestion in the downtown San Diego area and along the coast. The

transportation study for the Navy Broadway Complex identifies the traffic impacts of the proposed development. That study stated that 14 roadway segments in the downtown San Diego area will exceed the maximum desired daily volumes. The affected segments are listed as follows:

- Ash Street east of Columbia;
- Ash Street east of Front;
- Ash Street east of Second;
- Broadway east of Dettner;
- Broadway east of Fifth;
- Eleventh Avenue south of I-5;
- First Street south of Ash Street;
- Grape Street east of Kettner;
- Harbor Drive south of Laurel;
- Harbor Drive south of Hawthorn;
- Pacific Highway south of Broadway;
- Pacific Highway south of Grape;
- Pacific Highway south of Laurel;
- Tenth Avenue south of I-5.

Of the 14 roadway segments that will exceed their capacity, 12 segments will exceed the capacity with or without any new development on the Navy Broadway Complex site. Thus, traffic impacts causing capacity exceedances on two of the road segments, Pacific Highway south of Broadway and First Avenue south of Ash, will be caused by the Broadway Complex project (Korve Engineering, p. ii). Under longterm projections, some of the Freeway interchanges and ramps will also have traffic problems. The most heavily congested interchange will be the ramps connecting the City Centre to State Route 94. Those ramps will be operating at approximately 90 percent of capacity. The southbound off-ramps from State Route 163 and southbound I-5 to Front/Second Streets will also be congested. It is predicted that these ramps will be operating at approximately 80 percent of capacity (Korve Engineering, p. ii). Finally, several intersections in the vicinity of the Broadway Complex will be affected by the project (Exhibit 9). The intersections at Grape Street and Pacific Highway and at Broadway and Front Street will be operating at a level of service E, which means that the intersection will subject to traffic problems. The intersection at Broadway/Pacific Highway will be operating at level of service F, which indicates that the traffic at the intersection will be operating in excess of its capacity.

Even though the project will result in some long term traffic impacts, the Navy concludes in its consistency determination that the project will not affect public access to the coast. The Navy's EIS states that some of the traffic impacts will be mitigated by the construction of improvements such as traffic signals and left turn lanes and by the implementation of transportation demand management (TDM) program. These improvements will be constructed by the City of San Diego in conjunction with the Broadway Complex development. In addition, the Navy indicates that several of the project's traffic impacts will be mitigated by the implementation of the City's planned improvements described in its TAP. These planned improvements include restriping and reconfiguration of Grape Street, Front Street, and First to provide several four-lane sections and widening of Pacific Highway.

In addition both the City and Caltrans have planned a number of roadway improvements to generally reduce traffic congestion in the downtown area. Finally, the TAP calls for improvements to the area's public transit system. These improvements will reduce traffic by encouraging use of public transit as opposed to private automobiles. According to the Navy, all of transportation improvements proposed in conjunction with this project and in conjunction with the TAP will eliminate any traffic impacts from this development. In its certification of the Centre City LCP segment, the Commission found that:

the Commission's concern relates to the adverse circulation impacts of development both inside and outside the coastal zone. Such development may result in significant adverse impacts to access to and, more specifically, within the coastal zone. The cumulative impacts of development need to be assessed and mitigation measures which will provide reasonable assurances that coastal access and the resulting coastal recreational opportunities will not be significantly degraded through time

The Commission found that the LCP was consistent with the access policies of the Coastal Act, because it included a TAP, which manages traffic to protect public access. Since the proposed Broadway Complex project will be constructed in manner that is consistent with amount of development projected in the TAP, it will not adversely affect public access to the coast. The Commission finds that the project is consistent with Section 30250 because the area is able to accommodate the level of traffic intensity proposed.

In evaluating the effect of the proposed Broadway Complex development on the local transportation system, the Commission concludes that the area can accommodate the proposed Broadway Complex project. The ability of the public to utilize the shoreline of downtown San Diego could also be adversely affected by the project's impact on parking. Although the Navy's development does not supply enough parking to meet its demand, the Navy proposes mitigation that could significantly reduce this impact.

The TAP indicates that the parking supply in the downtown area is nearing its capacity:

For the Central Area, the average occupancy is 81 percent for on-street spaces and 77 percent for off-street spaces. For Centre City as a whole, average occupancy is 76 percent and 69 percent, respectively. The available occupancy data were collected throughout the day. Thus the peak occupancy may be higher than these figures. The analysis indicates that while there is probably some current spare parking capacity in Centre City, generally, the parking supply is close to being fully utilized, particularly in the Central Area. (TAP, pp. I-35-36.)

In addition, the TAP indicates that the projected increased growth in the downtown area will increase the demands for parking spaces. Specifically, the TAP describes the future parking demand as follows:

Based upon the projected growth in auto travel to Centre City, [Exhibit 8] summarizes the estimated parking space needs for each of the three land use scenarios. An estimated 11,200 additional spaces would necessary for Level 1, almost 27,000 additional spaces for Level 2, and just over 20,000 additional spaces for Level 3. Note that these estimates assume that 10 percent of the existing supply is generally unoccupied and available for future usage. All of these additional spaces will need to be provided off-street. (TAP, pp. III-18.)

Thus, it is clear that the parking supply in the Centre City area is at or near capacity and that future development must provide for adequate parking to meet the increased demand. As Section 30252 states, there is a clear relationship between public access and parking. This relationship that is particularly significant in developed portions of southern California, because, without the ability to park, shoreline access becomes unavailable to the public. Thus, that section requires that development maintain and enhance public access by providing adequate parking facilities. If new development does not provide for adequate parking facilities, the employees and other visitors will utilize on-street and other parking areas. Since these public areas are also utilized by people enjoying coastal resources, the new parking demand will compete with demand necessary for public access. In the City of San Diego, where parking facilities are close to reaching their capacity, it is crucial that new development provide for adequate parking or reduce the need for parking, otherwise the project could significantly affect public access.

The proposed Broadway Complex includes the construction of 2,875 parking spaces (Korve Engineering, p. 42) (this number does not include the designation of 230 spaces for storage of Naval fleet vehicles). This parking supply will provide one parking space per 1,000 square feet of office space, .75 parking space per hotel room, and four parking spaces per 1,000 square feet of retail development (Korve Engineering, p. 39). However, the parking facilities proposed by the Navy do not meet the demand created by the development. According to the Navy's transportation study, the project will create a demand for 5,650 parking spaces. Thus, the demand for parking is nearly twice the supply. The Navy argues that this deficit is not significant, because the parking needs will be met through a combination of on-site parking, public transit, shared parking, other modes, and on-site TDM measures. The TDM program includes increasing use of public transit, car pooling, and sharing parking through a mix of land uses. According to the Navy's transportation study, the proposed project will accommodate 80 percent of the parking demand without the TDM (Korve Engineering, p. 41). Fifty percent of the parking demand will be met by on-site parking facilities and the remaining 30 percent will be met by a combination of shared parking, transit, and other modes. The Navy claims that the TDM measures will meet the remaining demand of 20 percent.

The Commission appreciates the Navy's efforts to provide reduce the number of single occupancy vehicles in order to meeting the parking needs of the Broadway Complex. The Commission strongly encourages the use of any measures that will reduce the demand for parking and realizes that in order to reduce parking demand, the Navy must limit the amount of parking available. As described above, the Navy's TDM program includes a combination of public transit, ridesharing, and shared use of parking facilities. The EIS for this project describes some of the measures that may be included in the Navy's TDM. These measures include the following: on site transit amenities, transit pass sale and information area, coordination of a ride share matching system, preferential carpool and/or vanpool parking, on site bike lockers, and development of pedestrian corridors to transit stops/stations.

The exact nature of the TDM program has not yet been developed by the Navy. However, the Navy argues that Commission review of the final TDM program is unnecessary, because the TDM must meet the City's requirements and is subject to monitoring by the City. The Navy argues that the commitments that it has made in the consistency determination and EIS require it to meet the goals of the TDM, and the City's monitoring will be used to assure that these goals have been met. The Navy's commitment to fully implement the TDM will eliminate the parking deficit. Therefore, the project will provide for adequate parking in manner that prevents the project from affecting parking available for public access, and thus the project is consistent with the access policies of the CCMP.

In conclusion, the Commission finds that the traffic generated by the project will not affect access to the shoreline. In addition, the Commission finds that the parking and mitigation provided by the Navy as part of this project will adequately meet the parking demands of the project, and thus not interfere with public access. Therefore, the Commission finds that the project is consistent with the access policies of the CCMP.

D. Procedures. By its coastal consistency determination, its environmental impact statement and record of decision, the Navy has committed to redevelop the Navy Broadway Complex in a manner consistent with the development plan and urban design guidelines which are included in the consistency determination. The Navy's developer will be required to submit all plans and specifications to the Navy for approval and review to assure compliance with the plan and guidelines. The development plan and urban design guidelines are consistent with the Urban Design Program, Centre City San Diego. That program is a part of the Centre City LUP and has been utilized by the Commission in other project approvals to ensure appropriate development within the Centre City. These findings are premised on the assumption that construction of the Navy's project will follow the plans and guidelines. The agreement for development between the City of San Diego and the Navy will also incorporate the requirement that development be consistent with the plans and guidelines. Therefore, no further Commission action is required for the redevelopment to proceed as presented in the consistency determination. Any proposed deviation from the plan or guidelines will require the Navy to submit a new coastal consistency determination or its developer to obtain a coastal development permit.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



October 25, 2006

Rear Admiral Len Hering
Commander Navy Region Southwest
937 North Harbor Drive
San Diego, CA 92132-0058

Re: CD-47-90, Navy Broadway Complex

Dear Rear Admiral Hering:

On May 7, 1991, the Commission concurred with a consistency determination from the U.S. Navy for redevelopment of the Broadway Complex site located in downtown San Diego. The Navy proposed to enter into a joint venture with a private developer for the redevelopment of the Broadway Complex site as a 3,250,000 square-foot mixed-use office, hotel, and retail development that was to include Navy office space. The complex was to consist of 4 buildings with heights of 400 ft., 350 ft., 250 ft., and 150 ft., and was intended to be designed consistent with City planning guidelines in effect at that time. The Agreement also committed the Navy to make available 1.9 acres of open space land at the west end of Block 1 to the City at no cost.

After the Commission acted, the Navy entered into a Development Agreement, dated November 2, 1992, which spelled out Navy and City roles. It further specified guidelines under which the project was to be designed, and provided for review by the Centre City Development Corporation (CCDC), San Diego's downtown redevelopment agency, to determine whether the ultimate project was consistent with the Development Plan and Urban Design Guidelines.

In its 1991 action, the Commission found the project to be consistent with then-existing and approved local coastal plans for development on the downtown waterfront. The project was dormant for many years but recently became activated; the Navy selected a private developer and new project is being reviewed at the local level (CCDC). We have been informed that while the project has been revised (Attachment 1 to this letter, taken from CCDC's website, depicts the changes and compares them to the original design), CCDC will shortly rule on the question of whether the current version of the project is consistent with the Development Agreement signed by the City and the Navy in the early 1990's. Regardless of any CCDC ruling on that question, separate questions are raised as to whether the project remains

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CCC ltr. to Navy
2006

consistent with the California Coastal Management Program (CCMP), and whether the non-Navy portion of the project requires a coastal development permit.

Under the federal consistency regulations, when a federal agency project has not commenced, the Navy has an obligation to provide a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. The Coastal Zone Management Act (15 CFR part 930) regulations provide:

§930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if: (1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or (2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource. [Emphasis added]

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies. [Emphasis added]

This letter is to inform the Navy (and by copy, to the selected developer) that the Coastal Commission staff believes that project modifications have occurred between 1991 and the current version of the project. In addition, new development patterns and intensification of uses have occurred in downtown San Diego since 1991. Both of these changes fall within the trigger for a supplemental federal consistency review and constitute impacts to coastal use or resources substantially different than originally described. As such, the Commission staff believes that both a consistency determination from the Navy and a coastal development permit application to the Commission from the developer are required.

Our primary reasons for asserting that the project has changed and that circumstances have changed include: (1) changes in development patterns and intensification of uses and traffic in the downtown shoreline area have occurred since 1991 which may adversely affect the scenic amenities of the waterfront and coastal access opportunities; (2) a significant change to the project consisting of replacing traditional hotel(s) with condominium ownership hotel(s); and (3) modifications to the physical development as shown on the attachment.

Since the Coastal Commission's previous action in 1991, there have been numerous changes in the City's downtown core and waterfront. Petco Park has been developed; the Convention Center has been expanded; the second tower of the Hyatt Regency has been constructed and

the U.S.S. Midway now sits permanently berthed across from the Navy Broadway Complex. All of these singular developments, along with the steady growth of the downtown area, have resulted in significant physical changes to the landscape and particularly the City's waterfront character. The Broadway Complex's redevelopment needs to be reassessed in the context of the current character and profile of the downtown. The argument has been made by the prospective lessee that the Broadway Complex has been accounted for and recognized in subsequent planning efforts by both the City and Port of San Diego; and, as such, the Broadway Complex has been repeatedly reassessed and endorsed by respective discretionary bodies. However, this assertion, along with repeated statements that the Broadway Complex and subsequent developments conform with adopted land use plans fails to recognize that multiple variations of a development may be found consistent with such plans but, nonetheless, may have dramatic differences in their urban character and resulting visual impacts. In addition, based on the City's recent CEQA analysis for the project, dated 10/19/06, it should be noted that the March 2000 North Embarcadero Visionary Plan EIR did not consider the Broadway Complex in its cumulative analysis for Urban Design/Visual Quality. Therefore, the Commission staff believes that the Broadway Complex needs to be re-evaluated to determine its consistency with the visual resource policies of the Coastal Act in the context of the current physical character of San Diego's bayfront.

In addition to the changes in the visual character of the City's downtown area, the changes in development intensity and resulting impacts to traffic circulation, parking demand and public parking reservoirs warrant reassessment. Once again, in its original action, the Commission relied on conformity with the land use plans and implementation of the City's Transportation Action Plan's ("TAP") identified circulation improvements to assure coastal access would be protected. However, the adopted findings on the Broadway Complex noted "the Commission is concerned about the effect of significant deviations from the expectations of the TAP on the City's transportation system, and thus on public access to the coast." Given the intervening developments previously cited, a reassessment of the Broadway Complex proposal in light of current circulation patterns and public mobility in the downtown area is warranted. In particular, it should be noted that the recently adopted Downtown Community Plan/Centre City Planned District Ordinance EIR (2/06) found that impacts from their implementation on parking and the downtown street system were significant and unmitigable. Such findings reinforce the need to reassess the possible impacts of the Broadway Complex redevelopment on coastal access. In addition, the Commission staff has been increasingly concerned about the diminishing supply of public parking reservoirs, coupled with the lack of alternate transit development, to support public access opportunities. Commitments have been made in multiple Port Master Plan amendments but there is little evidence of a waterfront shuttle system being developed to either transport the public from perimeter parking lots to downtown/waterfront locations or to facilitate their movement along the bay.

In 1991, the Commission found that the project's hotel component, providing visitor-serving uses, was critical to its ability to approve such an intensive use, much of which consisted of non-priority uses under the Coastal Act, next to the shoreline. The Commission found:

The Navy's proposal also raises the issue of the development of waterfront areas with non-priority uses. The proposed project includes commercial office uses, which are not

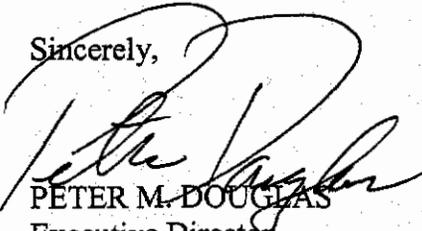
priority uses for waterfront sites. Several sections of the CCMP, Sections 30221, 30222, 30223, and 30255 of the Coastal Act, identify priority uses for waterfront areas. Although office use is not a high priority use, the development, as a whole, provides for improved coastal access and recreation and thus is consistent with the Priority Use policies of the CCMP.

Because condominium hotels are sold as individual units to private individuals, the units cannot be assured to be visitor-serving and, in fact, may become quasi-residential units, which is a lower priority use under the policies of the Coastal Act (Sections 30221, 30222, 30223, and 30255). In addition, the units are likely to be less affordable, in conflict with Section 30213, which provides priority to developments providing lower cost visitor and recreation opportunities. Thus, changing the hotel units to condominium ownership has the potential to alter the balance of visitor-serving uses to non-visitor serving uses, a change which the Commission will need to review as a changed circumstance and determine whether the project remains consistent with the public access and recreation policies of the Coastal Act. Attached (Attachment 2) are the relevant pages from the Commission's 1991 findings which discuss how the original project was able to be found consistent with those policies.

Finally, we believe the non-Navy portions of the project, which constitute the majority of the entire project, require a coastal development permit. When the Commission conducted its 1990-1991 review, the Commission found while a permit might not be needed if the project remained the same, that: "[a]ny proposed deviation..." would trigger the need for a new consistency determination from the Navy and/or a coastal development permit from the developer.

If you have any questions, please contact Mark Delaplaine, Federal Consistency Supervisor, at (415) 904-5289.

Sincerely,



PETER M. DOUGLAS
Executive Director

Attachments (2)

- 1) CCDC Website page comparing 1991 to current development
- 2) CCC findings, CD-47-90, pp. 8-15

cc: San Diego Area Office
CCDC
Doug Manchester
OCRM

Original Proposal

(4.6.06)

Floor Area 2.8 msf

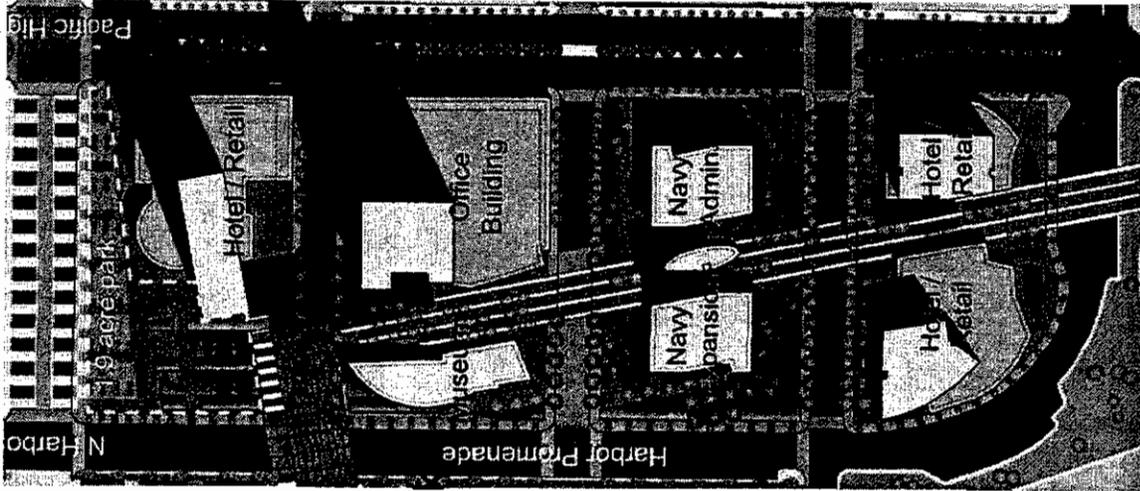
Open Space 5.5 ac

Museum – Icon

Parking under 1.9 ac Park
– No

3 Towers on Pacific Hwy

Passage 80' wide
consistent – no bridges



Current Proposal

(5.19.06)

Floor Area 3.2 msf

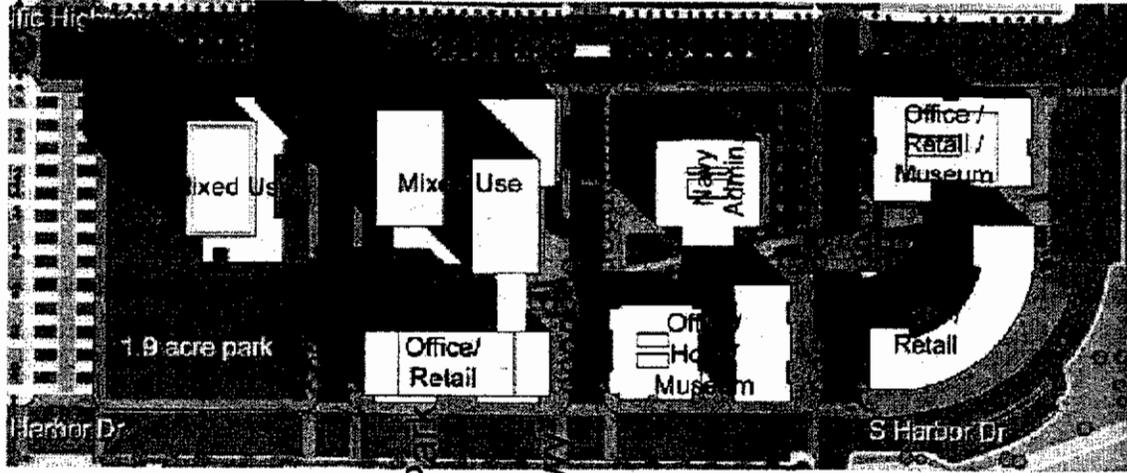
Open Space 4.4 ac

Museum Shell

Parking under 1.9 ac Park
– Yes

4 Towers on Pacific Hwy

Passage 60' wide –
random – bridges



area. Any building in that sub-area could be constructed as high as the FAA height limit of 500 feet. Although the Marina sub-area does have height limits, there are exceptions to those limits that could allow a building to be as high as the 500-foot FAA limit. The Commission agrees that for the downtown waterfront, where the highrise character has already been established, that these redevelopment plans should be used to define the highrise character. However, for the rest of the waterfront these redevelopment plans must be read in conjunction with the Community Plan. As described above, that plan has policy that maintain the low-scale character of the waterfront. That plan clearly recognizes the waterfront as a special area that needs to be treated differently than the rest of the city. The Community Plan is the Land Use Plan (LUP) portion of Centre City LCP. When the Commission approved the implementing ordinances, which included the Marina and Columbia Redevelopment Plans, it found that they were consistent with the LUP. Thus, they were intended to implement, not transgress, the LUP.

The Commission finds that the proposed Broadway Complex is a highrise development that is consistent with planned and approved character for the downtown waterfront. The project includes the construction of buildings totalling 3.25 million GSF on a 13 acre site. The maximum heights of the buildings on this site will be as follows: 400-foot high private office building on block 1; 350-foot high Naval office building on block 2; 250-foot high hotel on block 3; 150-foot high hotel on block 4 (Exhibit 3). If constructed, these buildings will not be higher than other development in this area, such as the approved Santa Fe project. Thus, the project meets the Coastal Act requirement for maintaining the character of this area.

In conclusion, the proposed Broadway Complex will improve views to and along the coast, improve the visual resources at the site, and is compatible with the character of the downtown waterfront. Therefore, the Commission finds that the proposed project is consistent with the visual resource policy of the CCMP.

B. Priority Uses. The proposed project is located on the waterfront of San Diego Bay. The Coastal Act establishes priority uses for shoreline properties. Section 30221 of the Coastal Act provides that:

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 30222 of the Coastal Act provides that:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 of the Coastal Act provides that:

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

Section 30255 of the Coastal Act provides that:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

The Navy states in its consistency determination that this property is not oceanfront land because the Broadway Complex site does not directly front San Diego Bay. The Commission disagrees with this conclusion. The language in Section 30222 is "oceanfront land" and not property. Since property boundaries are artificial divisions of land, they do not affect the recreational potential of the area. Thus, just because a property does not include the mean high tide (MHT) line does not necessarily mean that it is not oceanfront. The Broadway Complex site is located below the historic MHT line and it is separated from the shoreline of the bay by a road and there is no development between the site and the shoreline. Therefore, the Commission finds that the property is close enough to the shoreline to be classified as oceanfront. This conclusion is supported by the LCP, which defines the waterfront as the area "from water's edge inland to the center line of Pacific Highway." (Community Plan, p. 42).

The above-cited Coastal Act policies provide the Commission with authority to review land-use decisions and to establish priorities for land uses on the shoreline. In its consistency determination, the Navy asserts that the Commission has no authority to review federal land-use decisions. The Navy states that:

The policies set out in California's coastal management program can be divided into two categories; those which are concerned with environmental regulation of the coast and those which establish land use planning criteria. There is no question that the Navy's consistency determination must address the project's consistency with environmental policies. However, to the extent that the State's land use planning policies would dictate land uses on Federal property, it does not appear to be appropriate to review the land use planning aspects of this property for consistency for two reasons. First, those policies are limited in their application to the land in the coastal zone (and the Navy Broadway Complex is not within the coastal zone). Second, even if the site was within the

coastal zone, the basic land use planning decisions underlying the redevelopment of the Navy Broadway Complex has already been made by Congress. The Property Clause of the Constitution provides that "Congress shall have Power to make all needful Rules and Regulations respecting ... Property belonging to the United States." (U.S. Const. Art. IV, Section 3 Clause 2.) When Congress enacts legislation respecting such property pursuant to the Property Clause, such legislation necessarily overrides conflicting State laws under the Supremacy Clause. It is clear that nothing in the Coastal Zone Management Act was intended to change basic Federal/state jurisdictional prerogatives (16 USC 1456[e][1]).

The Commission strongly disagrees with the Navy's conclusion regarding the Commission's authority to evaluate land-use decisions affecting federal land. There is nothing in the CZMA that differentiates between the states' authority over land use decisions and states' authority over environmental regulations. Sections 307(c)(1) and (2) of the CZMA, as amended, provides that:

Each Federal agency activity within or outside the coastal zone that affects land or water uses or natural resources of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. (16 USC 1456[c][1].)

The regulations implementing the CZMA define federal activities as follows:

The term "Federal activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. (emphasis added.) (15 CFR Section 930.31[a].)

Additionally, a federal development project is defined as:

A Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources (emphasis added).

It is clear from the citations above, that any federal function that affects the California's coastal zone must be conducted in manner consistent to the maximum extent practicable with the CCMP. There is no basis in the CZMA or its implementing regulations that would allow the Navy to conclude that a decision to change the use of federal land is not a federal agency function. In fact, activities affecting the utilization of land are clearly something envisioned as reviewable by the States, under the CZMA and its regulations. Therefore, if a federal land-use decision affects the coastal zone, it must be conducted in a manner consistent to the maximum extent practicable with the

CCMP. (15 CFR Section 930.39[c].) In this case, as described below, the Navy's land use decisions for this property will directly affect the coastal zone because the project will allow for non-priority use on the shoreline of San Diego Bay, thus placing additional burdens on the remainder of the shoreline for the development of priority uses. In adopting the law that authorizes development of the Broadway Complex site, Congress did not override the authority provided to states under the CZMA to review land use decisions. If it had intended such a result, it would have so indicated. The law's silence on that issue must be construed to mean that Congress intended that the proposed project will be subject to all the relevant policies of the CCMP.

In addition to the CZMA basis for reviewing federal land-use decisions, the Commission does not agree that the two reasons (cited above) stated in the Navy's consistency determination support a conclusion that the Commission need not apply the land-use policies of the CCMP to its project. First, the Navy argues that land-use policies of the CCMP apply only to land in the coastal zone and not to federal land. Thus, the Navy implies that because the Broadway Complex site is federally owned, the land-use policies of the CZMA do not apply. The Commission disagrees with this argument for two reasons. First, as described above, there is no basis in the CZMA or its implementing regulations that indicate that land-use policies of a state's certified coastal management program do not apply to federal land. Any federal agency function that affects the state's coastal zone must be conducted in a manner consistent to the maximum extent practicable with its management program.

Second, the Commission believes that this property may not remain excluded from the coastal zone. The CZMA excludes from its definition of the coastal zone "lands the use of which is by law subject solely to the discretion (emphasis added) of or which is held in trust by the Federal Government, its officers or agents." (15 USC 1453[1].) For two reasons, the Commission believes that the property does not meet this test for exclusion from the coastal zone. As part of the Broadway Complex project, the Navy is proposing to lease the property to a private developer. That developer will have discretion over the design and construction of the proposed project and leasing and operation of the commercial offices and hotels. Second, the legislation authorizing the redevelopment of the Broadway Complex site (Exhibit 4), P.L. 99-661, allows for non-federal involvement in formulating plans and terms for developing the site. Specifically, that law provides that:

The Secretary [of the Navy] shall provide that any real property leased under this section shall be developed in accordance with detailed plans and terms of development which have been duly formulated by the Secretary and the San Diego community through the San Diego Association of Governments' Broadway Complex Coordinating Group. (P.L. 99-661[c][1].)

The Commission believes that legislation allowing for the redevelopment of the Broadway Complex allows local community to have some discretion over the use of that site. Thus, the use of the Broadway Complex site is not subject

solely to the discretion of the Navy because the lease holder and the local community will have some discretion over this property. Therefore, once the property is leased, it will not be excluded from the coastal zone.

An additional basis for concluding that the property might not be excluded from the coastal zone comes from the Public Trust Doctrine. As described below, if the property is developed as proposed, it may revert back to the State of California. The Broadway Complex site is filled tidelands that were granted to the Navy for military purposes. The States Lands Commission staff has asserted that the title to the Broadway complex site may revert back to the State of California if the land is not used for its granted purposes. If the land reverts back to the State, then it will no longer be federally excluded land.

The second basis that the Navy uses to conclude that the land-use policies of the CCMP do not apply to the Broadway Complex is because the basic land-use decisions for the site have been made by Congress. However, the legislation authorizing redevelopment of the Broadway Complex site does not establish any land uses for the site. Nowhere in that legislation does it state that the property shall be developed with commercial offices and hotels. The legislation merely provides the Secretary of the Navy with the option of entering into a long-term lease for the development of the project site. (P.L. 99-661 Section [a].) Therefore, the Commission disagrees with the conclusion that the basic land-use planning decision for this property was made by Congress.

Since there is no basis for the Navy to conclude that the land-use policies of the CCMP do not apply to the project site and the project is located on oceanfront lands of San Diego Bay, the Commission must evaluate the project consistency with the priority of use policies of the CCMP. The Coastal Act establishes priorities for use of shoreline areas. These priorities include coastal-dependent industry and developments, coastal-related developments, agriculture, and recreational and visitor-serving uses. The Navy is proposing to engage in a joint venture with a private developer to construct a mixed use development. The types of uses proposed in this project include Navy offices, commercial offices, hotels, retail uses, public open space, and a museum. As described below, all of these uses, except the commercial offices, are priority uses under the Coastal Act.

The importance of the priority use question for the Broadway Complex site is emphasized by the fact that the site may have a Public Trust easement attached to it. The Broadway Complex site is located seaward of the historic MHT line for San Diego Bay. Upon its admission into the Union, California received title to all tidelands and submerged lands within its boundaries. Those lands are to be held in trust for the public. Filled tidelands may also have Public Trust easements attached to the land that protect the public rights primarily for navigation, commerce, and fishing. In recent years, the courts have expanded Public Trust protections to include water-related recreation and conservation (Marks v. Whitney [1971] 6 Cal.3d 251, 259).

In its comments to the draft EIS, the State Lands Commission staff stated that the property may be subject to the Public Trust Doctrine (Exhibit 7). Specifically, the State Lands Commission staff stated that:

The State of California has claimed a potential reversionary interest by virtue of the Public Trust Doctrine in the filled tidelands comprising the Broadway Complex.

The State Lands Commission staff believes that the title to the Broadway Complex site may revert back to the State of California if the land is not used for its granted purpose, military uses.

The Navy disagrees with the State Lands Commission staff's conclusion. In its consistency determination, the Navy states that:

(1) The restrictions of the tidelands trust were removed by action of the California Legislature in 1929; (2) the deeds from the City of San Diego to the United States contain no language of reversion and, therefore, do not limit the Navy's use of the property; and (3) since the proposed commercial development of the Navy Broadway Complex is to be undertaken solely for the purpose of providing the means whereby the Navy will obtain office space, the entire development is consistent with the deed restrictions the State claims exist.

The Navy has initiated litigation against the State Lands Commission to resolve this Public Trust issue. Since the Commission is not the primary agency responsible for implementing the Public Trust Doctrine, it will not argue the Public Trust status of the subject site, but notes that the State Lands Commission staff's has concluded that the site may be encumbered with a Public Trust easement.

Since the Coastal Act is in part a legislative exercise of the Public Trust Doctrine, the Commission is concerned about this issue. The Commission believes that the Public Trust issue associated with this project emphasizes the Coastal Act requirement for preserving the site for priority uses. Thus, the Commission believes that the Coastal Act sections cited above identify priority uses that are consistent with the Public Trust Doctrine. However, it is not necessary to resolve the Public Trust issue to apply those policies, because those sections apply regardless of the status of the property with respect to the public trust.

The primary purpose of the proposed project is to construct Naval offices. The Commission believes that the Naval offices will be a coastal-related development. Section 30101.3 of the Coastal Act defines coastal-related development as "any use that is dependent on a coastal-dependent development or use." The proposed project will provide a centralized administrative facility for the Naval installations in the San Diego area.

The Naval installations in the area include Naval Station, Naval Amphibious Base, Naval Submarine Base, Naval Oceans Service Center, and the Naval Air Station, to name a few (Exhibit 1). Those facilities conduct several coastal-dependent operations including berthing facilities, repair operations, drydocks, marine research, and ship operations. The proposed Naval offices will provide for administrative support to those coastal-dependent uses and will not be necessary if those Naval facilities were not located in the area. Therefore, the Commission finds that the Naval offices are dependent on coastal-dependent uses, and thus is a coastal-related development. However, there is some indication that the Navy offices will not be used exclusively for Navy purposes. In a meeting on December 5, 1990, between Navy personnel and Commission staff, the Navy indicated that portions of the Navy offices may be leased for private use. The Navy stated that its current anticipated minimum requirement for this project is to provide sufficient space for accommodation of administrative personnel presently utilizing the Broadway Complex. Any additional space in the Navy's office building could be used for private uses.

The proposed Broadway Complex site also includes the construction of two hotel developments. Since hotels provide overnight accommodations for out-of-town visitors, the Commission finds that hotels are visitor-serving uses. The proposed project also contains several other visitor-serving uses including retail uses, a museum, and open space. Retail uses are considered by many to be recreational uses, because those uses will provide the public with an opportunity to enjoy the coastal atmosphere. In addition, it is also clear that the museum and the open space will be used by people enjoying the coastal area, and thus they are also visitor-serving uses. Therefore, the Commission finds that the proposed hotels, retail uses, museum, and open space are all visitor serving uses, and thus high priority uses pursuant to 30222 of the Coastal Act.

Finally, the development includes the construction of a commercial office building. It is clear that the purpose of this building is not to enhance visitor-serving uses. In addition, Navy concludes that "commercial office use is not considered a coastal-related (except to the extent that maritime businesses occupy it) or visitor-serving uses." (Consistency Determination, p. 42.) Since the Navy has not made a commitment to devote the commercial offices to maritime businesses, the Commission finds the building will not be a coastal-related use.

Despite the fact that the proposed project contains non-priority uses, the overall project will benefit public use of the shoreline. The Commission notes that the proposed project will redevelop a site that the public is currently prevented from using. The existing Navy facility is currently closed to all public access, including pedestrian and vehicular access through the site.

The redevelopment of the Broadway Complex site will significantly improve public access and recreational resources of the site. As described above, the redevelopment will include public access amenities such as retail shops,

museum, open space, and overnight facilities. In addition, the redevelopment of this site will be based on urban design guidelines that the Navy has developed. These guidelines include architectural standards, street-level design, building form and scale, site access, parking treatment, and landscape considerations. The street level design measures will improve visitor use of the area, because they include a 75 foot setback along Broadway allowing for 25 foot sidewalks and seven to ten foot setbacks along Pacific Highway allowing for 20 foot sidewalks. In addition, the project will open up E, F, and G Streets to pedestrian and vehicular access. These streets are currently closed through the Navy site. E and F Street will have a 75-foot right-of-way allowing for a 35 foot pedestrian uses and landscaping. G Street will have a 120 foot right-of-way with 60 feet for pedestrian uses. In addition, street level design elements will include set back of taller building elements and continuous north-south access through the property site through the use of galleries, courts, plazas, and other public spaces. Other design guidelines will control architectural form and landscaping in order to enhance the pedestrian scale of the ground level of this development.

Thus, even though the project includes non-priority commercial office space, the redevelopment of the site will considerably improve public access and recreational uses of the area. Therefore, the Commission finds that these access improvements overshadow the impacts from the construction of non-priority uses and the Commission finds the the project to be consistent with the priority use policies of the CCMP.

C. Intensity of Development/Public Access. The Navy is proposing to engage in a joint venture with a private developer to construct a high intensity mixed-use development on the shoreline of downtown San Diego. The level of intensity proposed for this project may have an adverse effect on access to the shoreline of San Diego Bay unless appropriate mitigation measures are undertaken. Several Coastal Act policies are designed to protect coastal access from the impacts of this type of development. Section 30250 of the Coastal Act provides, in part, that:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30252 of the Coastal Act provides, in part, that:

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, ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings



DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 N. HARBOR DRIVE
SAN DIEGO, CA 92132-0058

IN REPLY REFER TO:
5800
Ser 00/058
23 Feb 07

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

RE: CD-47-90, Navy Broadway Complex

Dear Mr. Douglas:

The Navy has received your 25 October 2006 letter regarding the consistency of the Navy Broadway Complex Redevelopment project (CD-47-90) with the California Coastal Management Program (CCMP). We appreciate your concern that the project may require supplemental consistency review and a coastal development permit. However, the Navy stands firm in its determination that effects to coastal uses or resources from the Broadway project have not substantially changed since the Commission's 7 May 1991 concurrence, and thus a supplemental consistency determination per 15 CFR 930.46 should not be required.

The Navy respectfully disagrees with the three reasons provided by your staff to support the contention that supplemental review is required for the Broadway project.

The Navy does not agree that changes mentioned in your letter to the downtown area, including changes in development patterns and intensification of uses and traffic in the downtown shoreline area that have occurred since 1991, constitute a significant new circumstance relevant to the Broadway Complex. The Broadway project is consistent with the visual policies of Downtown Plans and Urban Design Guidelines. These plans and policies are developed to ensure the quality of the visual character and profile of the downtown area. Conformance with the plans and guidelines address visual impacts to and along the coast regardless of what variation of development is selected. Further, the recent growth of the downtown area mentioned in your letter has had the effect of increasing the scale and bulk of the existing visual character of the waterfront area, making the Broadway project more consistent with the visual policies of the CCMP.

**EXHIBIT 8
CD-047-90
Navy ltr. to CCC 2007**

For instance, the second tower of the Hyatt Regency mentioned in your letter is over 440 ft tall, which is almost twice the height of any of the planned Broadway buildings.

The recent traffic analysis completed for the Downtown Community Plan Environmental Impact Report (EIR) estimated that the number of trips associated with the Broadway Complex will be 30% less than what was originally assumed under CD-47-90. In addition, the EIR assumed that the Broadway Complex would be fully built out as approved under CD-47-90. The actual project however proposes a lower density (less office space) than what was approved under CD-47-90, and therefore the actual number of average daily trips (ADTs) associated with the current proposed project will be even less than what was estimated in the EIR. The substantial reduction in trips and the implementation of the agreed-upon traffic improvements are expected to be sufficient to mitigate potential traffic impacts in today's conditions.

The significant and unmitigable impacts to traffic for the combined projects in the Downtown Community Plan EIR occur only to intersections and interstate ramps that are outside of the coastal zone, and these impacts are not within the immediate vicinity of the project. In addition, the highest level of future Broadway project-related traffic occurs at the peak hours during the week with a distinct inbound pattern in the morning and an outbound direction in the afternoon. The majority of waterfront access travel would occur on the weekends, which would not be affected by weekday peak-hour traffic related to the project. On weekdays, travel to the waterfront has been observed to be the heaviest from midday into the evening to take advantage of attractive weather and local restaurants. While some of this travel may coincide with the afternoon peak hour, the travel to the waterfront (inbound) would be in the opposite direction of the peak afternoon (outbound) traffic. Consequently, a change in weekday peak-hour conditions would not constitute a substantial change in the ability of the public to reach the waterfront.

Anticipating parking might be an issue, the developers proposal plans to provide more parking than is required under the Centre City Draft Planning Development Overlay (PDO) (January 2006). The opening of roads that currently are closed, the creation of improvements required by the Development Agreement and North Embarcadero Visionary Plan, and the creation of public parking where currently none exists again will only serve to improve public access to the waterfront.

As the Commission may remember from the Navy's 1991 CCD submittal, during evening, weekend and holiday periods, when parking demand by employees at the Broadway Complex is diminished and demand for parking by waterfront visitors is increased, a portion of the parking facilities designated for commercial office would be available for waterfront visitors. This will provide visitor-serving parking spaces where none previously existed and would help improve the current parking conditions for waterfront visitors. Here again, the project will help improve the distribution of public parking facilities serving the Central Bay front area of San Diego, and will ultimately enhance parking opportunities for public access during peak visitor times.

The Navy disputes that replacing traditional hotel(s) with condominium ownership hotel(s) results in a substantial change to the proposed activity's effects under 15 CFR 930.46. In 1991, the Commission determined that the Broadway Complex redevelopment was consistent with the enforceable policies of the California Coastal Act (CCA) because "even though the project includes non-priority commercial office space, the redevelopment of the site will considerably improve public access and recreational uses of the area" and the "access improvements overshadow the impacts from construction of non-priority uses." Construction and operation of condominium ownership hotels will not result in a use significantly different from construction and operation of traditional hotels. A condo-hotel operates in a manner substantially similar to a regular hotel, providing overnight facilities to visitors. Of particular note, these condo-hotel(s) must be operated as a hotel to stay in compliance with the lease, the development agreement, and Public Law 99-661, as well as City of San Diego zoning requirements. As such, replacing traditional hotels with condominium ownership hotels does not constitute a substantial change to the proposed activity's effects on coastal uses or resources. In fact, the creation of hotels, including rooms, restaurants and hotel-related retail operations, will substantially improve recreational uses and opportunities on the waterfront over existing conditions.

Finally, the proposed physical development of the Broadway Complex provided as an attachment to your letter and to which you object is an inaccurate plan, and thus the concerns expressed in your letter are unfounded. The attachment you sent compares the developer's March 2006 submittal to developer's June 2006 submittal to the CCDC.

Neither of the figures in your attachment reflects the plan approved by the Commission or the current plan. The Navy maintains that no substantial changes have been made to the project proposed in the original Broadway Complex Redevelopment CD-47-90, and the minor changes that have been made to the project will not result in substantially different effects to coastal uses or resources.

The preamble to the Coastal Zone Management Act (CZMA) regulations provides specifically that "the intent of this section is not to give the State agency a second bite at the consistency apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the state (FR, Dec.8, 2000, p. 77143)." The Broadway project contains no substantial project changes or foreseeable coastal effects not reviewed previously, and an additional coastal consistency review would be a contravention of federal coastal zone management regulations. We strongly believe that the proposed Broadway project actually provides a greater number of beneficial enhancements not originally provided under CD-47-90, such as additional traffic infrastructure improvements, moving the originally proposed 300,000 square feet of aboveground parking to underground parking, and adding another 1.4 acres of open space to the project.

The Navy appreciates the excellent working relationship we have with you and your staff and our continued dialogue concerning the Broadway Complex. We would be glad to further discuss the concerns raised in your letter with your staff. It is our hope that after these discussions you will agree that a supplemental CCD is not required for the Broadway project. Please do not hesitate to contact my point of contact, Karen Ringel, Director of Real Estate at (619) 524-3747 or Karen.ringel@navy.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. R. Hering', written over a printed name.

L. R. HERING
Rear Admiral, U.S. Navy
Commander,
Navy Region Southwest

CALIFORNIA COASTAL COMMISSION

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(619) 757-3370



November 3, 2008

Mr. Gene Beale
Environmental Project Manager
Naval Facilities Engineering Command Southwest
1220 Pacific Highway
San Diego, CA 92132

Re: Navy Broadway Complex Draft Environmental Assessment – September 2008

Dear Mr. Beale:

Thank you for the opportunity to comment on the Draft Environmental Assessment for Implementation of the Development Agreement for the Navy Broadway Complex dated September 2008. The document, on page 3.1-19, concludes the 1991 Coastal Consistency Determination (CD) remains in effect and suggests that determination has been reached through coordination with the California Coastal Commission. Commission staff disagrees with that conclusion. As indicated in our October 25, 2006 letter (attached to the draft EA), Commission staff believes that project modifications have occurred between 1991 and the current version of the project, and new development patterns and intensification of uses have occurred in downtown San Diego since 1991, such that supplemental federal consistency review is required. We have not changed that position based on the Navy's February 2007 response. In addition, we continue to assert a coastal development permit (CDP) is required for the non-Navy portion of the development. While the EA indicates the Federal District Court decision in April 2008 determined the Navy's lessee is not required to obtain a CDP, that court decision has been appealed and is not final at this time.

In addition, because the parameters of the Development Agreement (DA) are so broad and cite maximum heights, area, etc. of different uses and structures, there is a full range of development intensity and scale that could occur on the property and meet the standards of the Development Agreement. However, determining that a particular development falls within the extremely broad requirements of the DA is not the same thing as determining that the development does not today have an environmental impact.

Inherent in the issuance of most development permits is the expectation that construction will commence in a timely fashion. Despite the best efforts of environmental and planning documents to foresee and evaluate the impacts a project will have on the environment, as time passes, changed circumstances often require a reevaluation of the impact and appropriateness of any particular project. Changed circumstances can include a variety of things, including:

Comment L18-a

As stated in the letter from the Navy to the CCC dated 23 February 2007 (see Appendix F to the EA), the Navy stands firm in its determination that effects to coastal uses or resources from implementation of the Development Agreement have not substantially changed since the CCC's May 1991 concurrence. The proposed action as analyzed in the EA (implementation of the 1992 Development Agreement) does not differ from the project that was analyzed and received a coastal consistency determination (CD) in 1991. The Navy would continue to work with the lessee, the City, CCDC, and the CCC to ensure that all legal requirements are addressed.

The CD issued by the CCC was for the same project that is the subject of this EA, which includes development parameters (including heights, building setbacks, public access improvements, landscaping, etc.). Any development proposal must not exceed the maximum limitations set forth in the Development Agreement; therefore any "full range of development intensity and scale" would be equal to or less than that defined in the Development Agreement and reviewed by the CCC. It is the task of CCDC to review all specific development proposals to ensure their consistency with the terms and requirements of the Development Agreement.

L18-a

The Development Agreement acknowledged that a signing of a lease and implementation of the Development Agreement would not happen immediately upon signing. As such, the agreement was given a 10-year period before its expiration in 2002 (which was subsequently extended twice). Additionally, the provisions of the Development Agreement were established to reflect conformance with the City and CCDC's current policies, not just those that were applicable at the time. This provided flexibility in the Design Guidelines and mitigation measures adopted in the Mitigation Monitoring Report. The Development Agreement has been authorized since 1992 and was not pursued until this time largely because of the variable economic climate in the past. The Navy has entered into a lease with a private developer through a competitive process and is committed to the redevelopment of the site in today's conditions.

The EA contains a thorough analysis of implementation of the Development Agreement in current (2008) conditions. It analyzes current planning documents, policies, and standards pertinent to all of the issue areas referenced in this general comment, as described in more detail in responses to comments L18-b through L18-r.

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& Navy Responses

- the adoption of new planning and environmental regulations (new community plans, design requirements, revised public service standards, etc.);
- the listing of new biological species as threatened or endangered;
- unanticipated changes in the region (e.g. traffic, development patterns);
- unforeseen impacts from surrounding development that affect how the subject project relates to its location;
- the availability of new information or research on hazards such as geologic stability, global warming and sea-level rise.

In addition, with the passage of time, it may be possible, and necessary, to reevaluate the accuracy of the projections made in environmental documents, and progress made (or lack thereof) in implementation of various mitigation measures. We believe all of the above changed circumstances apply to the proposed development, and, as a result, the project will result in significant impacts to the environment which have not been adequately addressed or mitigated.

The draft EA fails to address these changed circumstances and adequately analyze their effect on the project and its impacts to public access, public views and coastal resources. Therefore, we will take this opportunity to again identify circumstances that have occurred in the downtown area that will result in significant adverse impacts that have not been fully analyzed and mitigated. These changes have the potential to affect the consistency of buildout of the Broadway Complex site with the National Environmental Policy Act (NEPA) and the policies of the Coastal Act.

LAND USE CONSISTENCY

Port Master Plan

Since the Development Agreement (DA) was approved in 1991, significant changes have occurred to the Port Master Plan certified by the Coastal Commission. Subsequent development surrounding the project site was approved with the specific direction of the Coastal Commission that development on the Navy Broadway Complex (NBC) be designed to address the impacts the NBC would have as a result of the changing environment around it.

Specifically, in March 2001, the Commission approved Port Master Plan Amendment #27 (PMPA) which addressed the North Embarcadero area north and west of the Broadway Complex site and included installation of the Midway Aircraft Carrier museum adjacent to Navy Pier located across Harbor Drive from the Broadway Complex. At the time of Commission review, the Commission raised significant concerns regarding compatibility of the museum with the visual resource and public access policies of the Coastal Act. The Midway is located immediately bayward of the F Street view corridor which, pursuant to the Development Agreement, must be retained as a prime view corridor across the subject site protecting public views to San Diego Bay. An additional concern was the impact to public views by the current use of Navy Pier. There is a Navy

Comment L18-a (cont.)

The role of the federal government is to determine whether the proposed action is consistent to the maximum extent practicable with the California Coastal Act (16 U.S.C. §§ 1451 et. seq.). The federal government does not obtain development permits from the CCC. Instead, under the Coastal Zone Management Act (CZMA), the federal government prepares a CD, which was completed in 1991. Any requirements related to the coastal development and state law permits are not applicable to the proposed action. In addition, the federal CZMA regulations require supplementation of an existing CCD only if the federal agency makes substantial changes in the proposed activity or if there are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on coastal uses or resources. 15 C.F.R. 930.46. In this case, the project has not changed, as the proposed action examines implementation of the Development Agreement, and circumstances relevant to the proposed action or its effect on coastal resources are not significantly changed; any potential effects on coastal resources from changes to the surrounding area have been examined in other planning documents, such as the Downtown Community Plan and NEAVP, or in determinations made by the CCC. The preamble to the CZMA regulations provides specifically that the "intent of this section is not to give the State agency a second bit at the consistency apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the State, 65 Fed. Reg. 771234, 77143, (Dec. 8, 2000).

L18-a
cont.

Comment L18-b

The presence of the Midway museum is discussed at several locations throughout the EA, most notably in Section 3.1 (Land Use and Applicable Plans). While the presence of the Midway museum does affect the visual environment of the waterfront, its presence is largely considered a unique scenic and visitor attraction that emphasizes the historical presence of the Navy in San Diego. Regardless of the presence of the Midway museum, the extension and dedication of public rights-of-way on E, F, and G streets through the project site (which does not currently permit public access), would be a benefit to public views and access. The Development Agreement does not include any limitations that implementation could not occur if a structure (such as the Midway museum, parking on the Navy Pier, or any other structure were located on the waterfront). It states that "A 75-foot wide right-of-way shall be maintained along E and F Streets to provide for this access and maximize inland views to the Bayfront."

The visual effects of the Midway museum were considered and analyzed by the CCC on June 28, 2001, in the San Diego Unified Port District Master Plan Amendment No. 27, North Embarcadero (PMPA). The CCC concluded that "the creation of a public park on the Navy Pier would improve the visual quality of the North Embarcadero area, thereby mitigating the adverse visual impacts of the carrier." Policy language was added to the Port Master Plan to ensure that the Port District undertake all necessary procedures within its control to allow construction of the park to proceed as quickly as feasible. As such, the Midway museum was approved as being consistent with the visual protection policies of the CCA. As stated in the PMPA, "removal of the existing buildings on the Navy Pier would allow for opening up the proposed view corridor along E Street in the future when the Broadway Complex area is redeveloped, to replace the one along F Street which would be blocked by the Midway." This language illustrates that the CCC contemplated a redeveloped Navy Broadway Complex when analyzing the Midway's affects to coastal resources. As agreed, the Navy has since relinquished the pier to the Port District for future use as a public park. Therefore, the proposed action was considered when the Midway museum was approved. Since an analysis of the visual impacts of the Midway and the proposed action have already been evaluated, no further analysis is necessary.

L18-b

structure and parking lot on the pier that blocks or otherwise adversely affects public views from Harbor Drive to the Bay.

During review of the PMPA, the Navy was asked to relinquish use of the pier to the museum with the ultimate goal of converting the pier to parkland to mitigate the impact of the museum on public views toward the Bay. At that time, the Navy indicated they had no plans to relinquish the pier; therefore, the Port District indicated it was beyond their control to place any restrictions on Navy property toward eventual relocation of the parking from the pier and conversion to a park. The Commission approved the PMPA with language that states:

The Port Master Plan may allow for the docking of the aircraft carrier Midway on the south side of Navy Pier to operate as a museum. Interim parking for the Midway may be located on Navy Pier; however, the ultimate goal for the area in the Port Master Plan is to relocate any parking on the Pier to inland of Harbor Drive and convert the Pier into a public memorial park associated with the Midway museum. Relocation of the parking and conversion of the park should occur as part of the Navy's plan to vacate its use of Navy Pier prior to or concurrent with the redevelopment of the Navy Broadway Complex.

In addition, as a condition of the Midway's Port-issued CDP, the museum is required to set aside funds to secure upland parking for the Midway, thereby allowing the parking to be removed and converted to a memorial park, in the event the Navy relinquishes the pier. With these requirements, the Commission was given the assurance, to the extent possible with the parties that were participating at the time, that future mitigation for the impacts of the Midway would be provided prior to or concurrent with redevelopment of the Broadway Complex.

Because no plan for development of the Broadway Complex site had materialized pursuant to the 1991 CD, the Commission believed the process for redevelopment of the Broadway Complex site in the future could and should take into consideration these requirements and changed circumstances related to the presence of the Midway. If the Midway had been located at Navy Pier in 1991, we believe its presence would have clearly been taken into consideration in the location and design of structures and view corridors across the Broadway Complex site.

No modifications have been made to the scale and location of structures or view corridors contemplated through the Development Agreement and shown on the recent Manchester development plan as a result of the Midway's presence, and the certified Port Master Plan states such a reevaluation should occur; however, modifications have been made that will actually increase the project's impacts on the visual quality of the area. The contemplated museum on the Broadway Complex site that was originally designed to be lower in scale and located immediately inland of the Midway, has been relocated away from the water and replaced by what is shown as an office building in the most recent plan received by Commission staff. This change to project design may not only impact visual quality, but raises potential conflicts with several of the public access and

The land use plan for the Navy Broadway Complex steps down from north to south, with maximum height limitations south of F Street at 250 feet, and development stepping down to the San Diego Bay. Views from F Street east of Pacific Highway are currently obstructed by perimeter fencing and a large surface parking lot. The opening of F Street would still create a visual corridor from downtown to the Bay, regardless of the uses along the north of F Street and the presence of the Midway museum.

Regarding parking, the proposed action would provide for a substantial amount of public parking at the Navy Broadway Complex (3,173 spaces), and every effort would be made to provide two levels of this parking below-grade. This would meet the parking demands of the project while maintaining visual quality. Implementation of the proposed action would not preclude the museum from providing their parking mitigation prior to or concurrent with redevelopment of the Navy Broadway Complex, as construction would likely occur over several years (through 2020).

The proposed action analyzed in the EA is implementation of the Development Agreement and not a particular development plan. All plans prepared by the lessee would go through consistency determination with CCDC to ensure that the elements of the Development Agreement, which would not have adverse affects to views, are being met. The existing conditions on the site completely prohibit access to the waterfront from E, F, and G streets, which entirely conflicts with public access. Their extension would improve public access and circulation, regardless of where and how the buildings are distributed on the blocks. In addition, the proposed action would include a 1.9-acre open space area at the foot of Broadway and North Harbor Drive with views to the waterfront between the Broadway and Midway piers.

L18-b
cont.

recreation policies of the Coastal Act, in particular Section 30222 which prioritizes use of oceanfront land for visitor-serving commercial over private residential or office use.

The EA indicates the Navy has now relinquished Navy Pier; therefore, it appears the opportunity now exists for redevelopment of the site to evaluate public views of the Bay, as they exist today, when considering design, location, scale and orientation of development immediately inland of the Midway and along Harbor Drive, a major coastal access route. Such reconsideration of project design in light of these changed circumstances has not been addressed in the EA and must be addressed through additional environmental review that evaluates the development in light of the current visual setting.

North Embarcadero Visionary Plan

Since the Commission action on the Consistency Determination, the North Embarcadero Visionary Plan (NEVP) has been developed as a joint effort by the City of San Diego, the Navy, the Port and CCDC. The Development Agreement between the City and the Navy that addresses redevelopment of the NBC was amended in 2001 to acknowledge the changes to the standard of review incorporated through the NEVP. Some portions of the NEVP were incorporated into the Port Master Plan and the Centre City LCP, but the bulk of it was not. Thus, the redevelopment of the NBC is now going to be constructed according to standards never reviewed or adopted by the Coastal Commission.

The NEVP anticipates substantial public improvements to the area north of the Navy Broadway Complex site. In addition, significant changes to the Cruise ship terminal and Broadway pier are proposed north of the site. The number of cruise ships has increased and their presence on the water is a significant change from the more open space character of the area than was present in 1991. The location, bulk, scale and orientation of the Broadway Complex structures and their effect on public views, public access and recreational use and open space along this segment of the North Embarcadero need to be evaluated in terms of the current and projected development in the area.

TRANSPORTATION AND CIRCULATION

San Diego's downtown region has changed dramatically since the project was approved in 1991. To give some perspective on the extent of these changes, over 60 high-rise buildings have been constructed in downtown San Diego since 1995. Some of these projects were anticipated in 1991, but most were not. As a result, the environment in which the Broadway Complex would operate is substantially different than the one in which it was originally reviewed.

Of course, each of the new developments that have occurred since the Broadway Complex consistency determination was made, has undergone environmental review that presumably took into account impacts from previously approved (but not yet constructed) projects. For example, anticipated traffic data from the Navy Broadway Complex development was factored into traffic calculations for subsequent nearby developments,

L18-b
cont.

Comment L18-c

The NEAVP, which was prepared in 1998, considered the proposed action as an entitled project. Navy was part of the 5-agency "Alliance" that developed the NEAVP, which also included CCDC, the City of San Diego, the County of San Diego, and the San Diego Unified Port District. This Alliance considered the long-term needs for public space and redevelopment of the underutilized downtown waterfront. The CCC considered the Development Agreement, a component of the NEAVP, therefore the lack of review of the remaining portions of the NEAVP has no material affect on the review of the Development Agreement.

L18-c

The proposed action would include 1.9 acres of open space at the foot of Broadway that would connect with the larger open space that is planned along the Embarcadero. The 1.9 acres of open space would be public, and the City would have administrative responsibility for the 1.9-acre area. This open space would be a part of the larger public open space (12 acres) that will be part of the NEAVP. The proposed action would also include the extensions of E, F, and G streets which would provide for views to the bay, as well as vehicle and pedestrian circulation.

The increase in the frequency of cruise ship activity at the Broadway Pier does not permanently affect the views from downtown to the waterfront. The proposed action would create views to the waterfront, whatever the uses that are on the waterfront (that are outside of the control of the proposed action) may be. It would be a visual improvement to the underutilized fenced-off 15.45-acre area that currently exists. The Urban Design Guidelines would ensure a high-quality visual environment is developed at the project site.

Comment L18-d

L18-d

This comment letter references an earlier letter submitted by the CCC to the Navy dated 25 October 2006, where the CCC correctly refers to the federal consistency regulations for the criteria for determining if a Supplemental CD is needed. As stated in that letter, the two criteria are stated as (1) the federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or (2) there are significant new circumstances or information relevant to the proposed activity and the proposed activity's affect on any coastal use or resource.

such as the North Embarcadero redevelopment projects, and the Seaport Village redevelopment.

However, even though projects approved subsequent to the NBC have, on the surface, taken into account impacts such as traffic generation rates, the *significance* of these impacts are different in 2008 than they were in 1991. As discussed in detail below, population increases, the new ballpark, the homeporting of the Midway aircraft carrier, and the overall upsurge in downtown development have all impacted the availability of physical and visual public access to the shoreline, and the demand for access and recreational resources has also increased.

In addition, subsequent EIRs do not, and could not reasonably, re-examine every assumption that previous environmental studies relied on. This is particularly relevant to the NBC, because the findings the Commission made regarding the intensity of development and public access policies of the Coastal Act relied heavily upon the data and projections in the May 1985 Centre City Transportation Action Plan (TAP), used to evaluate the impacts of the NBC.

The 1985 TAP describes transportation needs for the Centre City area including freeway, freeway ramp, roadway and intersection capacity, parking needs, and transit demand. All of the transportation improvements described in the TAP were based on projected growth scenarios for downtown San Diego. In its findings on the consistency determination, the Commission stated “the Commission is concerned about the effect of significant deviations from the expectations of the TAP on the City’s transportation system, and thus on public access to the coast. Substantial deviations from the land-use scenarios may create traffic problems significantly worse than anticipated by the TAP...”

In fact, a review of the TAP finds that current development in San Diego today differs significantly from any of the projected scenarios in TAP, with significant implications for public access, intensity of use, and public recreational needs. The TAP’s land use analysis relied on three alternative future development levels for use in evaluation of future transportation requirements:

- Level 1 – Existing Plus committed Projects
- Level 2 – Optimum Employment Land Use
- Level 3 – Optimum Residential Lane Use

The three scenarios contain projections for land use, traffic, employment, population, and parking, and recommendations for measures that must occur if impacts to circulation were to be offset. As described in the TAP, the Level 1 scenario “relates to a mid-range projection primarily based upon known and committed projects...Level 2 comprised optimistic assumptions regarding employment growth in Centre City. Level 3 assumed less employment growth and comprised a maximum residential growth scenario.” The Level 2 and 3 scenarios projections were for a 20 year period, until 2005.

However, development downtown and along the waterfront did not occur as anticipated in any of the three scenarios. The below table, adapted from the land use projections in

Land uses (including land use type and intensity) that have been set by the Development Agreement have not changed since the CCCs review in 1991. While there may be new development that has occurred in the downtown area, the new development does not constitute significant new circumstances or substantial changes to coastal effects, and the impact of new developments has been accounted for in their own project specific environmental reviews. Access to coastal resources adjacent to the Navy Broadway Complex would be improved as compared to those conditions with the Development Agreement was signed, as well as compared to current conditions.

Using current trip generation rates for the downtown area, which take into account higher usage of mass transit, high density of land use, greater walkability, limited parking, and escalating fees for parking, the proposed action would generate 9,601 less daily trips now than originally estimated in the 1992 Development Agreement. 39,731 daily trips were assumed when traffic improvements were identified in the Development Agreement, which used 1990 trip generation rates. Using the current trip generation rates, the number of trips generated by the proposed action would be 30,130, which is 25 percent lower than the total number of trips projected to be generated by the project when the Development Agreement was signed, while the project is still planned to develop according to its originally approved land uses and implement the measures required in the 1992 EIR/EIS and Mitigation Monitoring Report.

Although the proposed action would be generating less trips than originally anticipated, the proposed action would still implement the measures identified in the Development Agreement. The following project features are identified in the EA and outline several key circulation improvements that would be a part of the proposed action:

- E, F, and G Streets would be extended to allow for continuous vehicular and pedestrian access between Pacific Highway and North Harbor Drive;
- G Street would provide enhanced access between the Marina neighborhood and the G Street Mole (Tuna Harbor);
- Pacific Highway would be widened and improved along the frontage adjacent to the Navy Broadway Complex;
- A Long-Term Travel Demand Management (TDM) Program would be implemented;
- A traffic signal would be provided at Pacific Highway and E Street, and at Pacific Highway and G Street;
- G Street would be aligned through the project site to connect with the current G Street alignment to the east and west and a continuous center turn lane would be provided through the site;
- A four-way stop-controlled intersection would be provided at North Harbor Drive and G Street;
- Enhanced sidewalks would be provided on Broadway;
- Class II bike facilities would be provided along Pacific Highway; and
- Shared path bike facilities would be provided along North Harbor Drive

The parking requirements for the Navy Broadway Complex were set through the approval of the 1992 Development Agreement. Since the time the Development Agreement was established, the City has adopted parking space requirements for developments through the Centre City Planned District Ordinance (PDO). The PDO also identifies rates that were established by the Port District for uses under their jurisdiction in the NEVP. However, the PDO would not apply “where lands are subject to the jurisdiction of other agencies and organizations, including the United States Government, State of California, San Diego Unified Port District, or County of San Diego, any superseding authority of those agencies shall apply (PDO section 151.0301).” Further, while the parking rates set by the Development Agreement, which were agreed to by the Navy, the City, and CCDC, supersede those set by the PDO, the comparisons that have been made in the EA show that the parking rates set in the Development Agreement produce similar results to those used for new developments in Centre City.

Section 3.2 of the EA (Traffic and Circulation) acknowledges that changes have occurred in the area surrounding the Navy Broadway Complex, since the time when the 1992 EIS/EIR was certified. However, the land uses defined in the Development have not changed since the original approvals in 1992. The changes that have occurred in the area surrounding the project were all evaluated in their

L1B-d
cont.

the TAP, indicates that far more tourist and residential uses have occurred than expected. In addition, more civic and educational uses have occurred, and less office, retail, and industrial uses have occurred than projected in the TAP.

Adapted from TAP TABLE 12. SUMMARY OF LAND USE PROJECTIONS

CATEGORY	April 1984 Conditions	Level 1	Level 2	Level 3	Current Conditions (2006)*
Office GSF	7,733,900	11,218,655	18,258,190	16,058,190	9,400,000
Hotel Rooms	2,674	6,798	12,698	7,698	8,800
Retail GSF	3,536,800	4,810,800	5,010,800	4,849,800	2,600,000
Government and Cultural/Institutional GSF	3,423,900	4,221,900	4,221,900	4,221,900	5,000,000 (combined w/education)
Industrial GSF	4,501,400	4,501,400	5,007,400	5,007,400	77 acres (GSF not available)
Educational (Students)	10,301	10,301	12,301	12,301	(combined w/gov't)
Residential Dwelling Units	4,153	6,203	7,453	9,153	14,600
Other	2,176,900	3,016,900	3,166,900	3,166,900	2,200,000
TOTALS	21,713,000	27,769,655	34,521,835	32,160,835	

GSF – gross square feet

*Source: CCDC Downtown Community Plan Final EIR March 2006

The implication of these changes on coastal resources are significant. Residential and tourist uses have substantially different traffic generation rates, circulation patterns, and transit needs than office, industrial, and retail uses. Office buildings tend to be concentrated in the downtown center; residential and hotel development tend to be near the shoreline. Areas that were low traffic-generating industrial expanses have instead been developed with high-rise condominiums and hotels. As a result, the impacts that the NBC will place on the City's circulation system are likely to be quite different than those estimated in 1991 for a completely different downtown development scenario.

Perhaps as a result of the unforeseen land use development patterns, current freeway traffic levels for the two major transportation routes to the downtown area, Interstate 5 and State Route 163, are far above the levels projected in the TAP:

Adapted from TAP Figure 14 FREEWAY MAINLINE AND ON-RAMP FORECAST DAILY TRAFFIC VOLUMES

INTERSTATE 5	Projected Level 1	Projected Level 2	Projected Level 3	Actual (2006)*

own studies and environmental assessments. These other studies have assumed that the Navy Broadway Complex would build out as originally evaluated in 1992 EIS/EIR.

Since the Development Agreement, transit conditions including rail and light rail have improved downtown. North County Transit District is now operating passenger rail service from the Santa Fe Depot (one block from the site) to Oceanside. In addition, Metropolitan Transit System (MTS) has begun two new Light Rail Transit routes serving the site (Orange line and Green line). Both are within one block of the site. Since 1992, downtown trip generation rates have been reduced to reflect increased transit access to the downtown.

Additionally, the NEAVP identifies a narrowing of Harbor Drive to a one lane/one-way street (Broadway to Laurel). The intent is to maximize vehicular use of Pacific Coast Highway as a Primary Arterial and to minimize traffic along the waterfront. The secondary effect of narrowing Harbor Drive would also promote a pedestrian friendly environment and access to the waterfront from the project site.

The traffic analysis within the EA (Section 3.2) utilized data from the Downtown Community Plan EIR (CCDC 2006), which included a transportation, circulation and access study. The traffic study was based on data from San Diego County's regional counsel of government and regional transportation authority that incorporated SANDAG's regional model of approved traffic generation rates. The level of service for the existing analysis and future improvements were also taken from this study. The Downtown Community Plan traffic study was a comprehensive effort that included all downtown communities from the Convention Center Planning District north to Little Italy Planning District. The Downtown Community Plan identified all future road and intersection improvements within these districts for build out of the downtown San Diego area with all intersections identified to operate at acceptable levels of service with implementation of mitigation measures.

Additionally, the proposed action is consistent with the circulation elements and transportation policies of the local planning agencies, i.e., the City of San Diego, SANDAG, and the Port District. The Downtown Community Plan EIR included a comprehensive, cumulative traffic impact analysis for all new development projected for downtown San Diego, which included redevelopment of the Navy Broadway Complex and all projects identified in Table 4-1 of the EA.

L1B-d
cont.

California 75 south to J St.	141,000	147,000	146,000	173,000
Sixth Avenue to First Ave.	149,000	166,000	164,000	215,000
Hawthorn Street to India/Sassafras Strs.	159,000	164,000	180,000	212,000

STATE ROUTE 163	Projected Level 1	Projected Level 2	Projected Level 3	Actual (2006) *
10th Ave, North of Ash St.	14,800	18,300	17,700	21,200
Junction at I-5**	111,000	128,000	125,000	107,000
**I-5 no longer feeds into SR 163 at this location				

*Source: Caltrans, Traffic Operations Program - Traffic and Vehicle Data Systems [2006] from <http://traffic-counts.dot.ca.gov>

With current traffic counts so much higher than anticipated, the additional loads on the circulation system from the addition of the NBC will be far more significant than originally estimated.

Other basic assumptions built into the TAP have proved inaccurate. At the time the TAP was developed, the downtown population was 6,250. The development scenarios in the TAP assumed population growth up to a maximum of 13,750. According to the Centre City Downtown Community Plan Final EIR (March 2006), the current downtown population is 27,500 or twice the anticipated maximum.

Other assumptions in the TAP include the assumption that “[v]ery little growth activity is projected to occur in the eastern part of Centre City in any of the three development levels.” In actuality, there has been a tremendous amount of growth in the eastern part of Centre City with the success of the Gaslamp District and the creation of the downtown ballpark, none of which was accounted for in the TAP.

As a result of the changed circumstances in the development pattern of downtown, the mitigation measures proposed in the TAP necessary to ensure public access and circulation to the coast is maintained, would likely have been inadequate, even if they had all been implemented. Nevertheless, it is important to note that many of the mitigation measures it assumed would be implemented by now to offset the impacts of the NBC have not occurred, and may never occur.

The TAP recommendations identified numerous upgrades and improvements as necessary to maintain access to Centre City activity centers and to maintain transportation system performance. The list includes items such as street widening, changing the direction of traffic flow, re-striping streets, removing on-street parking, adding signals and stop lights, adding freeway auxiliary lanes, new signage, new transit routes, new pedestrian routes, and establishing a funded transportation demand reduction office. The timeframe for implementation of these improvements was through 2005.

L18-d
 cont.

The status of every mitigation measure contemplated in the TAP has not been addressed in the EA and should be reviewed in a subsequent EIS. Some of these measures have been completed, such as removing parking on both sides of Broadway between Harbor Drive and Pacific Highway, connecting First Street to Harbor Drive, and extending the trolley to Mission Valley. Many others have not, such as widening Harbor Drive and Laurel Street, adding signage for the financial district and waterfront traffic via Kettner/India and Pacific Highway, establishing preferred peripheral parking zones, and extending the trolley to Point Loma and Oceanside/Escondido. As a result, the impacts that were considered mitigated or mitigable in 1991 can no longer be assumed to be so. As an example, the TAP's assessment of the amount of parking that would be required under the various scenarios, has not manifested:

Adapted from TAP TABLE 17 PROJECT CENTRE CITY PARKING NEEDS

Scenario	Total Spaces Required
Existing	40,150
Level 1	62,500
Level 2	93,550
Level 3	80,650
Actual Spaces*	56,880

*Source: CCDC Downtown Community Plan Final EIR March 2006

The evaluation of the public access and circulation impacts of the NBC were contingent upon the accuracy of and implementation of the TAP; however, 17 years later, it is clear that the impacts of the NBC have not and cannot be alleviated in the same manner anticipated in the original approval.

As the Commission noted in its approval of the consistency determination, the improvements recommended in the TAP are directly related to the provision of adequate shoreline access. The TAP specifically states:

One of the purposes of the current study was the consideration of shoreline access within the overall context of Centre City. The earlier analyses identified that, under the Level 2 development scenario, several shoreline access problems would arise for both auto and pedestrian circulation. High growth in vehicle traffic were forecast [for] North Harbor Drive, as well as increased use of Harbor Drive as an entry route into Centre City from the south... The recommendations of the Centre City Transportation Action Program address these problems directly, and together serve to significantly improve multi-modal access to/from and along the waterfront area.

As previously discussed, the actual population and traffic counts for Centre City significantly exceed the Level 2 and Level 3 projections. Even if all of the mitigation measures recommended in the TAP had been implemented, it is likely that the development NBC will result in significant impacts to public access and circulation not previously identified or addressed, because the pattern and intensity of development

L1B-d
cont.

downtown is so strikingly different than that anticipated at the time the consistency determination was approved.

It may well be that some improvements in downtown circulation patterns have occurred in the 23 years since the TAP was written and the 17 years since the NBC consistency determination was approved. The unanticipated residential densification downtown could enhance circulation if pedestrian facilities and public transit were concurrently improved. The City of San Diego has undoubtedly considered and implemented some circulation improvements not envisioned in the TAP. However, because the NBC has never been reviewed in the context of the current downtown environment, it is impossible to say precisely how extensively the development would impact public access and circulation, only that the impacts will not be the same as anticipated, and they will not be mitigated as expected. Therefore, updated traffic and circulation studies based on current conditions are required to accurately analyze the environmental impact of the project.

RESIDENTIAL DEVELOPMENT: PRIORITY USES AND VISUAL QUALITY

The present form of downtown development not only changes how the NBC project will impact coastal access, but also changes how and what uses should be prioritized along the waterfront, and how visual quality must be protected.

The NBC is located in the Marina District in the Centre City Community Plan. The Downtown Community Plan EIR dated 2007 describes the Marina neighborhood as “the most complete residential neighborhood of all of downtown’s neighborhoods. It is anticipated that it would not change substantially as a result of the proposed Community Plan. However, the Navy Broadway Complex along Marina’s waterfront could experience some redevelopment.” The NBC was designed at a time when there was very little residential downtown, far fewer high-rises, and an expectation that most future development would be office, retail, and industrial. The residential population creates a greater demand for downtown parks, open space, retail, and a pedestrian-scale orientation than would have been required for the office-oriented neighborhood expected to develop in 1991.

Policies in the 2007 Downtown Community Plan (which has not yet been reviewed and approved by the Commission) call for ensuring that development along the shoreline is low in scale and intensity, and increasing in stepped building envelopes further inland. (Policy 5.5-P-3). The NBC complex does not reflect these goals. As currently proposed, the Broadway Complex has not been adequately integrated into the surrounding cityscape and adjacent shoreline. The buildings are sited around the perimeter of the site, arranged generally “facing” the middle of the site toward increasingly narrow public walkways. The shoreline side of the site in particular, is a wall of tall, continuous development without breaks or passageways or attractions to draw in visitors from the shoreline. No apparent effort has been made in the design to acknowledge the presence of the Midway Aircraft Carrier Museum at the terminus of F Street. As discussed in greater detail below, the Midway represents a substantial structure on the west side of Harbor Drive,

L18-d
cont.

L18-e

L18-f

Comment L18-e

Section 6.5 of the Downtown Community Plan states the following: “With the exception of development on Port-controlled sites (Seaport Village and Old Police Headquarters) and the Navy Broadway Complex, Marina is not expecting to accommodate significant growth” (CCDC 2006a). The proposed action is clearly anticipated and considered as part of the redevelopment and buildout of downtown. Residential uses are not a permitted land use on the site, and are not a part of the Development Agreement, as the commenter infers. Rather, the proposed action would in fact provide needed public services and park space to the surrounding residential community. The proposed action is implementation of the Development Agreement and not a particular development plan. All plans prepared by the lessee would be reviewed by the CCDC to ensure consistency with the elements of the Development Agreement.

Comment L18-f

The CCC considered the Development Agreement, a component of the Downtown Community Plan, therefore the lack of review of the remaining portions of the NEAVP has no material effect on the review of the Development Agreement. Specific design proposals are not the subject of the EA. Please refer to the requirements of the Urban Design Guidelines which state the following:

- Block 1: 400 feet
- Block 2: 350 feet, with development generally stepping down to the Bay
- Block 3: 250 feet, with development generally stepping down to the Bay
- Block 4: 150 feet, with development generally stepping down to the Bay

In addition, Table 3.3-1 of the EA outlines all visual polices for downtown planning documents, including the Downtown Community Plan (which dates 2006 as opposed to 2007 as referenced by the commenter), and the proposed action’s consistency with those policies. Please see response to comment L18-b for a discussion regarding the Midway museum.

and redevelopment on the east side should be scaled back in order to avoid a tunnel-like feel on Harbor Drive.

In addition, the Port District has committed to construction of a park on Navy Pier. A park in this location creates an excellent opportunity for siting a public park on the Broadway Complex that connects to the waterfront. There is an open space area proposed on the corner of Harbor Drive and Broadway, but it does not align with Navy Pier, and there is no indication that it has been designed to coordinate or compliment the Navy Pier park. At the least, the park design should demonstrate that measures have been taken to ensure that pedestrian access to the park will be convenient and attractive. Harbor Drive and Broadway are wide, major roads. There should be assurances that traffic calming measures, streetscape design, street islands, etc. will be integrated into the design to ensure that the proposed park is more than an amenity for commercial tenants at the Broadway Complex.

In addition, it is worth noting that the brief EIR description quoted above of the NBC site as one that “could experience some redevelopment” rather than a description of the actual massive development proposed, demonstrates how speculative the NBC redevelopment was considered by 2007. The offhand reference also demonstrates how even an EIR for a community-wide plan update does not perform an updated analysis of the impact that previously approved development will have on the project or surrounding area. It is incumbent upon the Navy to ensure that the 17 year old assumptions and conclusions in the environmental document are still accurate, and this cannot be done without a reevaluation of the project using current data.

Visually, the downtown environment almost constitutes a different city than the one in which the NBC was originally approved. As noted above, unlike office buildings, residential and hotel uses tend to congregate along the waterfront, and these stresses on visual quality were not considered or accounted for in the original consistency determination. In addition to a distinctly different development pattern for downtown as a whole, there are several developments in particular that alter the impacts that the NBC will have on coastal resources.

INDIVIDUAL PROJECTS IMPACTS: VISUAL QUALITY AND TRAFFIC

Midway Museum

The Midway Aircraft Carrier Museum is docked on the south side of Navy Pier, bayward of Harbor Drive opposite F Street and Blocks 2A and 3A of the NBC. The Midway is approximately 1,000 feet long and 50 feet tall from the waterline to the flight deck. Above the flight deck, the control tower area is approximately 190 feet tall, as measured from the waterline. Including the mooring platforms on the north side of the ship, the width of the Midway extends approximately 260 feet south of the existing Navy Pier.

The Midway is located directly across from the planned extension of F Street, which the Centre City Community Plan designates as a view corridor to be implemented when the

L18-f
cont.

Comment L18-g

L18-g

The proposed action includes a 1.9-acre public open space area immediately southeast of the Broadway Pier, which is an optimal location for unobstructed views and accessibility to the waterfront. The City would assume administrative responsibility for this public open space area. This open space would be a part of the larger public open space (12 acres) that will be part of the NEAVP. The City would be responsible for the design and maintenance of the 1.9 acre open space area.

Comment L18-h

L18-h

Section 6.5 of the Downtown Community Plan states the following: “With the exception of development on Port-controlled sites (Seaport Village and Old Police Headquarters) and the Navy Broadway Complex, Marina is not expecting to accommodate significant growth” (CCDC 2006a). The proposed action is anticipated and considered as part of the redevelopment and buildout of downtown. The purpose of the CCDC review is to ensure that any development proposals are consistent with the Development Agreement. The EA includes a thorough analysis of the potential environmental impacts that could result from implementation of the proposed action in current (2009) conditions (see Section 3.3).

Comment L18-i

L18-i

The EA includes a thorough analysis of the potential visual impacts that could result from implementation of the proposed action in current (2008) conditions (see Section 3.3). It considers all current views, viewers, policies, and plans.

Comment L18-j

L18-j

Please refer to response to comment L18-b for a discussion of the Midway museum.

NBC is redeveloped. At the time the Broadway Complex was approved, it was assumed that F Street would be a view corridor; however, the Midway now precludes continuous views to the Bay down this street. The Commission approved the Midway knowing the impact it would have on views from F Street, because it anticipated those impacts would be addressed when the Broadway Complex was redeveloped.

L18-j
cont.

In addition, the Midway attendance has been substantially higher than originally anticipated. In its first year of operation, the museum doubled attendance projections, with an annual attendance of 879,281.¹ This is a changed circumstance that could not have been addressed in the North Embarcadero Visionary Plan EIR or at the time of Commission action on CD 47-90 for the NBC. As a result, the impacts to public access from the proposed Broadway Complex should be reevaluated in light of the unanticipated traffic being generated at the adjacent museum.

L18-k

Comment L18-k

The museum attendance exceeding all expectations would suggest it adds unique and valued character to the San Diego Bay. The improved access associated with the extension of E, F, and G streets would only serve to improve circulation and visibility of the museum, in accordance with the CCCs enforceable policies.

Old Police Station

The Old Police Station across Harbor Drive on the south side of the proposed Broadway Complex has been approved to be renovated as a public market. Redevelopment of the adjacent portion of Seaport Village and has also been approved as part of Port Master Plan amendments since the DA was approved in 1991. The EA does not evaluate the proposed project in the context of the revised downtown environment in terms of location, bulk, scale and orientation of the proposed structures and the effect they will have on public views, public access and recreational use and open space along this segment of the South Embarcadero.

L18-l

Comment L18-l

The Old Police Headquarters and Park Project is included (as project number 15) in the cumulative analysis for the proposed action in Section 4.1.1 of the EA. The proposed action is evaluated in terms of this growth downtown.

Broadway Pier

The Port has approved construction of a large new terminal on Broadway Pier that was not contemplated when the DA or the NEYP was approved. The Coastal Commission has not reviewed or approved this project. The new terminal will alter views and the amount and location of public access available in this area adjacent to the Broadway Complex, and the Broadway Complex should be evaluated in light of these unanticipated constraints.

L18-m

Comment L18-m

Improvements to the Broadway Pier are part of the Port District's NEAVP. This project is considered in the cumulative analysis for the proposed action in Section 4.1.2 of the EA.

POTENTIAL FOR ACTIVE FAULTING

Studies undertaken by the California Department of Mines and Geology (now California Geological Survey) and the U.S. Geological Survey since 1991 have identified numerous active fault strands associated with the Silver Strand and Coronado faults in the vicinity of the Coronado Bridge. In addition, these studies have better constrained the location of the Coronado Fault. The fault has a north-south trend immediately south of the Naval Broadway Complex site and trends directly toward the site. This fault is believed to be a portion of the Rose Canyon Fault Zone, likely connecting with the Old Town Fault north of the NBC site.

L18-n

Comment L18-n

Section 3.6 of the EA contains an analysis of the geologic, seismicity, and soil conditions at this site. Primary documents referenced and summarized in this section include the GEOCON 2006 study. The GEOCON 2006 study was an onsite detailed geologic fault investigation, which provided information as to whether the Coronado Fault or any other unknown faults were present beneath the Navy Broadway Complex. This report included seismic reflection as well as additional data, such as cone penetrometer (CPT) information. After review of all of the information, including the seismic reflection data, it was concluded that there were no signs of faulting at the site. Prior to any development onsite, however, the lessee would be required to coordinate with CCDC and the City to ensure that all regulatory requirements regarding geologic issues have been met and that the development plan considers all geologic issues onsite.

In addition, Dr. Susan Hough, the Scientist in Charge of the United States Geological Survey's (USGS) southern California Office, has opined that the EA "presents a thorough and up-to-date summary of known geological hazards to which the Broadway Complex is potentially exposed...and will be subject to the same strict building codes and other state statutes as any other project in California." Please see comment letter L-4 for the full USGS opinion.

¹ San Diego Midway Museum website as of 6/13/08: <http://www.midway.museum.org/pressroom/pressroom/CLLDrGrF&h=303901f>

Although seismic reflection studies undertaken by Terra Physics in 2006 did identify anomalies consistent with fault offset of strata beneath the site, subsequent Cone Penetrometer Testing studies by Geocon were unable to confirm faulting. Given the positive identification of Holocene movement on the Coronado and Rose Canyon Fault Zones, and the location of the NBC directly between these faults and on the trend-line of the former, Commission staff feels that further study is necessary to document the onshore trend of the Coronado fault and the possible existence of active faulting at the NBC site.

The environmental review for development of the site should address the potential effects of such faulting on the location and design of the project. Detailed mitigation measures need to be developed establishing prudent setbacks from active faults and design criteria for structures given the results of these investigations.

ADDITIONAL CONCERNS

The Commission is aware of other concerns expressed by members of the public regarding water quality, seismic safety and adequate protection from terrorist acts in this post-9/11 era. The Commission shares those concerns. In order to ensure that all aspects of development of the Broadway Complex are fully reviewed and mitigated for their adverse effects on the coastal zone, the Commission urges the Navy to undertake supplemental environmental review in the form of a supplemental environmental impact statement (EIS). Such review is required in order for the project to go forward.

CONCLUSION

As detailed in the preceding discussion, Commission staff has determined that changed circumstances have occurred in the project area and associated with the proposed development that have the potential to affect the impact of the proposed redevelopment of the Broadway Complex on the environment. The proposed action is not consistent with the current land use plans for downtown and will have adverse environmental impacts to land use, visual quality, traffic, public access and recreation which have not been adequately analyzed or mitigated. The assumptions in the EA are based on significantly outdated data and circumstances which no longer apply to the project or the surrounding environment. The issues raised by these changed circumstances have not been adequately addressed in the draft EA and further environmental review through an EIS is warranted. In addition, subsequent Coastal Commission review is required through a revised consistency determination and coastal development permit.

L18-n
cont.

Comment L18-o

Based on current threat reporting there is no known specific threat targeting the current or proposed Navy Broadway Complex in San Diego. While an ultimate goal of virtually all military operations is to support the War on Terrorism, the Navy uses onsite would be limited to administrative functions that are not directly involved in ongoing combat missions and do not render the buildings as "critical facilities," which are facilities that must remain mission operational during periods of national crisis and/or if subjected to terrorist attack. ATFP standards, which are designed to minimize mass casualties related to terrorist events, would apply to all Navy-occupied buildings (with at least 25 percent occupied by DoD personnel). This would include restrictions on site planning such as standoff distances, unobstructed space, drive-up and drop-off areas, access roads, and parking; structural design; and electrical and mechanical design. ATFP minimum stand-off distances would be feasible on any of the blocks on the project site.

Please see response to comments L1-a through L1-e for a discussion regarding water quality.

Comment L18-p

The Navy has taken into consideration all of the CCCs comments and responded to them as indicated in response to comments L18-a through L18-o. The Navy stands firm in its position that the proposed action has not changed since 1992, and while the surrounding area has, the changes do constitute significant new circumstances or information relevant to the proposed action's affect on coastal uses or resources. Additionally, downtown planning documents have forecasted this growth and anticipated redevelopment of the Navy Broadway Complex. The EA presents a thorough analysis of implementation of the Development Agreement in current (2008) conditions, and has determined that with the implementation of mitigation measures identified in the Mitigation Monitoring Report and additional measures identified in the EA, would not have adverse environmental impacts.

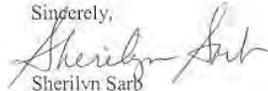
L18-o

L18-p

Draft EA – Navy Broadway Complex
November 3, 2008
Page 13

Thank you for your consideration of these comments. If you have any questions, please contact either Diana Lilly the coastal analyst for Centre City, Deborah Lee the District Manager of the San Diego office or myself at (619) 767-2370.

Sincerely,



Sherilyn Sarb
District Director
San Diego District

cc: Chris Pederson
Jamee Patterson
Deborah Lee
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BLC File(s): 1434.06

10 October 2011

Mary K. Shallenberger, Chair
California Coastal Commission
c/o Mark Delaplaine (via e-mail)

Re: Navy Broadway Complex Changed-Circumstances and
Consistency Hearing at November 2011 Meeting

Dear Chair Shallenberger:

On behalf of the San Diego Navy Broadway Complex Coalition, one of the leading community groups working to ensure that San Diego's waterfront planning fully benefits the public, I am writing to ask that the two questions currently planned to be presented to the Commission concerning the above-referenced matter next month be bifurcated and heard at separate hearings.

As I understand it, the Commission is going to consider whether there are changed circumstances concerning the Commission's concurrence with the Navy's 1991 consistency determination for the Navy Broadway Complex project; and, if so, whether the project remains consistent with the California Coastal Management Plan. My client would like for the first question alone to be heard at the November 2011 meeting. Both questions will require a substantial amount of work on *different* factual and legal issues. If the questions are heard at the same hearing, then the public and all the other stakeholders will have to assume that the Commission will answer the first question affirmatively and be prepared to testify on the second question. The second question is equally if not more time-consuming and resource-intensive than the first question, and requiring all participants--especially the volunteers in the public--to prepare for an issue that might not come up is inefficient and would pose a substantial burden on my client and, I suspect, on many other members of the public. Moreover, the second question is so important that it deserves its own hearing, with participants who are fully prepared to address its own unique factual and legal issues. At the same time, I can think of no injury that would befall anyone if the second question were to be postponed until the Commission's next meeting in the San Diego region.

Before closing, I want to make it very clear that my client believes that the first question should be answered affirmatively and that the second question should be answered negatively. That is to say, my client has little doubt that the project as currently proposed is not consistent with the CCMP given the many changes affecting downtown San Diego's waterfront since 1991. Were it not for the enormity of both questions, my client would not be asking for bifurcation. To ensure that both questions receive every participant's best contribution to the decision-making process, and that the Commission has the best possible information before it, my client asks that each question receive its own hearing at separate meetings.



Thank you in advance for your consideration.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs





DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 N. HARBOR DRIVE
SAN DIEGO, CA 92132-0058

IN REPLY REFER TO:

11011
Ser N01C/672
October 17, 2011

Mr. Mark Delaplaine
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: SECOND LETTER TO THE CALIFORNIA COASTAL COMMISSION
REGARDING REMOVAL FROM THE NOVEMBER 2011 AGENDA

Dear Mr. Delaplaine:

Thank you for your September 26, 2011 letter, which addressed the Navy's request to postpone the proposed agenda item pertaining to the Navy Broadway Complex Redevelopment project at your upcoming November California Coastal Commission public hearing.

It is the Navy's understanding that the agenda item will focus on the question of "reopening" federal consistency (pursuant to 15 CFR § 930.46) for the previously-concurred-with consistency determination for the Broadway Complex in San Diego (CD-47-90).

In your letter, you stated that you were unable to comply with the Navy's request due to commitments made to the Ninth Circuit Court of Appeals in *Manchester Pacific Gateway, LLC v. California Coastal Commission*.

It is the Navy's understanding that this commitment was related to the stay of the appellate proceedings. On October 11, 2011, the Court lifted the stay of appellate proceedings and stated that the "appeal is ready for calendaring".

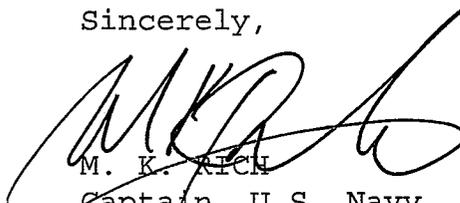
Because the circumstances supporting the Commission's decision not to comply with the Navy's request have changed, the Navy is renewing its request to be removed from the agenda. As you know, the Navy Broadway Complex is currently in litigation and the Navy will not be able to participate fully in a public hearing.

EXHIBIT 11
CD-047-90
Navy ltr. to CCC 2011

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The Navy therefore respectfully requests that the Commission remove the Navy from the November 2011 agenda and delay this matter until the Navy's litigation is fully resolved.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. K. Rich', written over the typed name.

M. K. RICH
Captain, U.S. Navy
Acting



DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 N. HARBOR DRIVE
SAN DIEGO, CA 92132-0058

IN REPLY REFER TO:

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California Coastal Commission
4545 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Commissioners:

SUBJECT: CD-47-90, NAVY BROADWAY COMPLEX

This correspondence addresses the California Coastal Commission (Commission) staff's question of whether the Commission's 9 October 1991, concurrence with the Navy's Coastal Consistency Determination (CD) for the Navy Broadway Complex Development Agreement Project (CD-47-90) is still valid. The Navy is providing this letter to document its position that a new Coastal Consistency Determination for the Navy Broadway Complex Development Agreement Project (the activity) is not warranted. The Navy stands firm in its determination that

a. there have been no substantial changes to the activity that are relevant to management program enforceable policies and

b. there are no significant new circumstances or information relevant to the activity and the activity's effect on any coastal use or resource (16 CFR §930.46). The standards for supplementation of a Consistency Determination pursuant to 16 CFR §930.46 have not been met.

The Department of Commerce made clear in the preamble to the Coastal Zone Management Act (CZMA) regulations that a finding of changed circumstances for a federal project is limited to certain prescribed situations, and the ability to make a finding of changed circumstances was not intended to give states multiple opportunities to review particular projects. The preamble section governing changed circumstances provides specifically that "the intent of this section is not to give the State agency a second bite at the apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the state" (65 FR. 77124, 77143 (8 December 2000)). As the activity contains no substantial project changes or foreseeable

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coastal effects not reviewed previously, an additional coastal consistency review for the activity is not required by the federal coastal zone management regulations. In addition, the Navy finds that the less-than substantial changes that have taken place with respect to the activity, and the less-than-significant changes that have taken place in the local context within which the activity would take place, are generally of a beneficial nature with respect to effects on coastal resources.

Background

The Navy Broadway Complex is an existing facility in downtown San Diego, California. The facility is the location of the Commander, Navy Region Southwest; the Naval Supply Center, San Diego; and several other Component Commands. Constructed primarily between 1921 and 1944, the complex consists of approximately 400,000 square feet (SF) of administrative office and 600,000 SF of warehouse uses on a 15.45-acre site near the San Diego Bay waterfront. It is bounded by Broadway on the North, Harbor Drive on the west and south, and Pacific Highway on the east, and is centrally located amidst the 17 other Navy installations in the San Diego region (Figure 1 - Vicinity Map).

In 1987, Congress endorsed, by enacting Public Law 99-661 §2732(b)(1)(A) (Pub. L. 99-661), a concept proposed cooperatively by Navy planners and community groups by which the Navy Broadway Complex would be redeveloped with one or more lessees who would redevelop the property in exchange for providing the Navy with administrative facilities at reduced or no cost to the taxpayer.

In October 1990, a Final Environmental Impact Statement (EIS) for the project was completed. In August 1990, the Navy prepared a Consistency Determination (CD) that evaluated the Development Agreement's consistency with the California Coastal Management program, fulfilling its federal agency responsibilities pursuant to the CZMA (Attachment 1). The Commission adopted findings concurring with the CD in October 1991 (Attachment 2). In July 1991, a Record of Decision was signed by the Navy. In addition, in 1991 the City of San Diego (City) completed an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act.

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In 1992, the Navy and the City of San Diego signed the "Agreement Between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines for the Redevelopment of the Navy Broadway Complex," (Development Agreement) to guide the planning and approval process for redevelopment of the Navy Broadway Complex. The City and the Navy reaffirmed the Development Agreement twice, ensuring that it remained in effect and applicable to any lease agreement the Navy might enter.

The Development Agreement includes Urban Design Guidelines and a Development Plan that defines the nature of development on the Navy Broadway Complex. The Urban Design Guidelines and the Development Plan are included as exhibits to Attachment 1 and appendices to Attachment 3 of this letter. The Urban Design Guidelines ensure a high-quality design consistent with the City's policies within the Centre City planning area. The Development Plan describes the program and "envelope" for redevelopment of the Navy Broadway Complex and represents the overall scope of development.

In November 2006, the Navy signed a lease with a development partner (hereafter referred to as the lessee). The lessee is bound to follow the Development Agreement through its lease agreement with the Navy.

In 2006, the City examined the lessee's plan submitted in conformance with the Development Agreement and established that it is the same as that reviewed in the 1990 EIS and 1991 EIR and that no subsequent or supplemental environmental review would be required (City and Centre City Development Corporation [CCDC] Consistency Determination 2006).

On 25 October 2006, the Commission staff provided a letter to the Navy (Attachment 5) suggesting that changes to the activity had occurred and that significant new circumstances existed that warranted a supplemental CD. On 23 February 2007, the Navy responded in writing to Commission staff (Attachment 6). In their letter, the Navy corrected inaccurate activity information and provided clarifying details. The Navy reiterated its position that no changes were made to the activity description, that there were no significant new circumstances or information relevant to the activity's effects

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on coastal resources, and that a supplemental CD was consequently not warranted.

An Environmental Assessment (EA) was prepared and finalized for redevelopment of the Navy Broadway Complex in accord with the Development Agreement in June 2006, in compliance with the National Environmental Policy Act (NEPA). A Finding of No Significant Impact (FONSI) for this action was signed on 22 November 2006. Litigation was filed in Federal District Court for the Southern District of California challenging the sufficiency of the Navy's NEPA compliance for this action. On 26 June 2008, the Court remanded the matter back to the Navy for compliance with NEPA public participation requirements.

In response to the Court's order, the Navy prepared a new Draft EA for implementing the Development Agreement for the Navy Broadway Complex. From 17 September 2008 through 2 November 2008, the Navy invited the public to review the new Draft EA and provide comments. The Navy held three public meetings: 27 September 2008; 29 September 2008; and 7 October 2008, that were advertised in advance in the media and on the activity website. As part of the public comment process, the Commission provided a letter detailing its concerns regarding the activity in November 2008, and the Navy considered and responded to the Commission staff's comments. All comments submitted with regard to the EA are addressed in Volume III of the 2009 Final EA (Attachment 3). The March 2009 Final EA supersedes the 2006 Final EA. In April 2009, a FONSI was signed (Attachment 4).

Following the completion of the 2009 Final EA and FONSI, the parties' to the litigation stipulated that Federal Defendants had satisfied the requirements of NEPA as it relates to notice and public participation and the Court dismissed Plaintiff's 2007 case as moot. Plaintiff filed a new case in January 2011 again challenging the sufficiency of the Navy's NEPA compliance for this action (but not challenging compliance with NEPA public participation requirements). This litigation is ongoing.

Applicable Federal Statute and Regulations

The CZMA (16 USC § 1451 et seq.), states the following:
"Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent

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practicable, consistent with approved state management programs." A federal activity is defined as any function, including the planning and/or construction of facilities that is performed on behalf of a federal agency in the exercise of its statutory responsibilities. The federal activity discussed herein is implementation of the Navy Broadway Complex Development Agreement Project, a development by a private entity based on a Development Agreement executed by the Navy and the City.

The federal consistency regulations (16 CFR §930.46(a)) that define the criteria for determining if a supplemental CD is needed provide as follows:

(1) the federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies, or

(2) there are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

Navy Position: the Navy has not made substantial changes in the activity that are relevant to management program enforceable policies (Criterion 1).

The Commission's 1991 findings were for the same activity, with the same development parameters (including heights, building setbacks, public access improvements, landscaping, etc.) and the same land uses (including land use type and intensity) as set by the Development Agreement. As demonstrated in Table 1, the activity is within the parameters defined by the Development Agreement, which has not substantially changed since the Commission's 1991 findings. The illustration of redevelopment (Figure 2 - Illustration) included in the current Development Agreement is the same as that used in the 1990 CD and the Commissions' 1991 Findings concurring with that CD.

Table 1. Summary of Development Agreement Parameters and Activity

Development Type	Development Plan and Urban Design Guidelines^a	Current Activity^a (Approved CCDC Master Plan 2007)
Recreation Areas	1.9 ^b acres	4.21 ^b acres
Office Total	1,650,000 SF ^c	1,646,800 SF ^c
	<i>Navy Administration</i>	<i>351,000 SF</i>
	<i>Commercial</i>	<i>1,295,800 SF</i>
Hotel	1,220,000 SF ^d	1,181,700 SF ^d
Retail	25,000 SF ^e	25,000 SF ^e
Museum	55,000 SF ^f	40,000 SF ^f
Above-Ground Parking	300,000 SF ^g	0 SF ^g
Total Development	3,250,000 SF (5.45 FAR) ^h	2,893,500 SF (4.85 FAR) ^h

^a SF includes above-ground and enclosed structures; excludes open space, streets, and below-ground parking. These numbers represent an estimate of the currently planned recreation area acreage; actual numbers can fluctuate within the maximum SF parameters of the Development Agreement through the implementation process.

^b While the Development Agreement provides for no less than 1.9 acres of recreation space, current planning puts the figure at approximately 4.21 acres, including the 1.9-acre open space area, and pedestrian facilities, setbacks, and gallerias.

^c The Development Agreement provides for up to 1,650,000 SF of office space, including 1,000,000 SF for Navy administration, which can be transferred to general office.

^d The Development Agreement provides for up to 1,220,000 SF of hotel, the lessee reserves the ability to build out to the full SF figure specified in the Development Agreement.

^e Retail SF excludes ground-level support retail integrated into private office and hotel uses.

^f The Development Agreement provides for up to 55,000 SF and not less than 40,000 SF of museum space, the lessee reserves the ability to build out to the full SF figure specified in the Development Agreement.

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^g Current plans underground the parking.

^h The Development Agreement provides for development of up to 3,250,000 SF, the Navy/lessee reserves the ability to build out to the full SF figure specified in the Development Agreement.

As per the original description of the activity, the tallest buildings will be located on the eastern area of the site closest to downtown San Diego, while shorter structures will step down to the waterfront. The tallest building will be up to 400 feet in height and the heights of other buildings range from 100 feet up to 350 feet, as described in 1991. The hotels will provide government rates consistent with presentations made in 1991. The activity includes buildings that will have a slender design to provide open view corridors, as described in 1991.

Pedestrian corridors and view corridors provided by the activity are unchanged since 1991 and will be developed along E, F, and G streets. Pedestrian access will be upgraded on all streets surrounding the site. Access between the downtown core and the waterfront will be improved. Access along the waterfront will also be improved with implementation of the activity as it includes providing a midblock pedestrian passage parallel to the bayfront. Ground-level retail will be provided to encourage pedestrian use of the area.

In addition to the 1.9-acre open space area at the corner of Broadway and North Harbor Drive, pedestrian and landscaped open space will be provided along streets, building setbacks, and within gallerias, as described in 1991. An additional acre of passive open space will be provided around the Navy building. The 300,000 SF of above ground parking described in 1991 is still allowed under the Development Agreement, but the parking has been changed to underground parking.

The activity provides a greater number of beneficial enhancements not originally provided under CD-47-90, such as increased recreation and public access opportunities (Figure 3 - Redevelopment Public Access and Recreation and Figure 4 - Rendering), additional traffic infrastructure improvements and increased parking spaces (from 3,105 to 3,173). The majority of the parking will be available to the public during evenings and weekends when recreation demand is highest, as originally

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proposed. These less than substantial changes are beneficial and have no adverse effects on relevant management program enforceable policies. As clearly shown, the activity has not substantially changed since the issuance of the Commission's 1991 findings approving the CD.

Navy Position: there are not significant new circumstances or information relevant to the activity and the activity's effect on any coastal use or resource (Criterion 2).

There are no new significant circumstances or information relevant to the activity or its effect on any coastal resource or use. The changes in the surrounding area do not impact the activity's effect on coastal uses or resources and thereby do not effect the existing CD that was approved by the Commission in 1991. New development has occurred downtown, but it has been studied and its impact considered by environmental reviews for each project, with the activity considered as a fully built project in each environmental document. Furthermore, the effects of new development projects on coastal resources have been accounted for in the reviews of those projects undertaken to obtain necessary approvals pursuant to the California Coastal Act.

The City's traffic generation methodology has been updated, including the trip generation rates. Using the 1991 trip generation rates, activity generated trips total 39,731. Using the current trip generation rates, activity generated trips total 30,130. Traffic projections in downtown using current requirements result in 25% fewer trips projected than projections undertaken in 1990 and used in the CD. The addition of the USS Midway Museum to the waterfront on the former Navy Pier replaces Navy ships that were docked periodically on the site and adds to the recreational opportunities already considered for the activity. The changes in waterfront views occasioned by the introduction of the Midway Museum to the waterfront were fully considered in the San Diego Unified Port District Port Master Plan Amendment certified by the Commission on 14 March 2001. Public access to the waterfront will be opened when existing streets E, F, and G are continued through the site, which is now fenced, gated, and guarded, effectively blocking access to the waterfront. Demolition of the Navy warehouse structures on-site and opening the views from E, F,

and G streets and Pacific Highway will enhance the views from the City to the waterfront.

Thus, there are no new significant circumstances or information relevant to the activity and the activity's effect on any coastal use or resource. The existing determination of consistency with the California Coastal Act (CD-47-90) remains valid.

Table 2 identifies the key circumstances in 1991 and current circumstances as well as a summary comparison of the effects on coastal resources of those circumstances.

Table 2. Circumstances and Coastal Effects Summary Table

1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
Public Access		
No on-site public access was available.	No on-site public access is available.	No significant change.
Public access to the waterfront will be improved with E, F, and G streets opened up through the site.	Public access to the waterfront will be improved with E, F, and G streets opened up through the site.	No significant change. The activity continues to include improvements to public access.
Public access provided by the bayfront promenade and Harbor Dr, with periodic access to Broadway Pier. No public access was available to/on Navy Pier.	Public access provided by the bayfront promenade and Harbor Dr, with periodic access to Broadway Pier. The former Navy Pier is now fully open to the public and the USS Midway Museum is open to the public adjacent to the Navy Pier.	No significant change. Public access along Harbor Dr and the Broadway Pier has not changed. With the increase in public access to the Navy Pier and the Bay via the Midway Museum viewing area, the activity-related public access circumstances have improved since 1991.
The activity will	The activity will	No significant change. As

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1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
improve public access conditions by improving pedestrian facilities along the east and north sides of Harbor Dr, pedestrian linkages through the property along E, F, and G streets as well as the provision of new open space .	improve public access conditions by improving pedestrian facilities along the east and north sides of Harbor Dr, pedestrian linkages through the property along E, F, and G streets as well as the provision of new open space .	found in 1991, the activity will improve public access conditions.

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1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
Views		
No public views were available through the site.	No public views are available through the site.	No significant change.
Demolition of the Navy warehouse structures on-site and the opening of views from E, F, and G streets will enhance the views from the City to the waterfront.	Demolition of the Navy warehouse structures on-site and the opening of views from E, F, and G streets will enhance the views from the City to the waterfront.	No significant change. As found in 1991 the activity will open up views along E, F, and G streets.
Navy Pier owned by the Navy and used to berth naval ships.	Navy Pier is now under the Port's jurisdiction and used as permanent berth for the USS Midway Museum.	No significant change. The Development Agreement does not include any limitations that implementation could not occur if a structure (such as the Midway museum, parking on the Navy Pier) were located on the waterfront. It states that "A 75-foot wide right-of-way shall be maintained along E and F Streets to provide for this access and maximize inland views to the Bayfront." This right-of way will be maintained. The change to the adjacent Navy Pier is not a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.
Traffic		
No on-site public	No on-site public	No significant change.

1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
circulation was available.	circulation is available.	
<p>The activity improves circulation via:</p> <ul style="list-style-type: none"> • Extending E, F, and G streets providing pedestrian access between Pacific Highway and North Harbor Dr; • Connecting the Marina neighborhood and the G St Mole by extending G St; • Widening and enhancing Pacific Highway along the property frontage; • Implementing a Long-Term Travel Demand Management Program; • Providing a traffic signal at Pacific Highway/ E St, and at Pacific Highway/G St; • Aligning G St through the property to 	<p>The activity improves circulation via:</p> <ul style="list-style-type: none"> • Extending E, F, and G streets providing pedestrian access between Pacific Highway and North Harbor Dr; • Connecting the Marina neighborhood and the G St Mole by extending G St; • Widening and enhancing Pacific Highway along the property frontage; • Implementing a Long-Term Travel Demand Management Program; • Providing a traffic signal at Pacific Highway/E St, and at Pacific Highway/G St; • Aligning G St through the property to 	<p>No significant change. As found in 1991, the activity includes many improvements to circulation including connecting E, F, and G streets to Harbor Dr and Pacific Highway.</p>

1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
<p>connect with the current G St alignment to the east and west and providing a continuous center turn lane;</p> <ul style="list-style-type: none"> • Providing a four-way stop-controlled intersection at North Harbor Dr/G St; • Enhancing sidewalks along Broadway; • Providing Class II bike facilities along Pacific Highway; and • Providing shared path bike facilities along North Harbor Dr. 	<p>connect with the current G St alignment to the east and west and providing a continuous center turn lane;</p> <ul style="list-style-type: none"> • Providing a four-way stop-controlled intersection at North Harbor Dr/G St; • Enhancing sidewalks along Broadway; • Providing Class II bike facilities along Pacific Highway; and • Providing shared path bike facilities along North Harbor Dr. 	

1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
<p>Using the 1990 trip generation rates, the number of daily trips generated by the activity was calculated to be 39,731.</p>	<p>Using the current trip generation rates, the number of daily trips generated by the activity would be 30,130.</p>	<p>No significant change. Using the 1991 trip generation rates, activity generated trips total 39,731. Using the current trip generation rates, activity generated trips total 30,130. Projected daily trips generated by the activity are reduced by 25% compared to that evaluated in 1991 (9,601 fewer daily trips).</p>
<p>The Navy Broadway Complex vicinity was well served by transit. AMTRAK Intercity rail service (Surfliner) runs north to Los Angeles. 10 bus lines accessible within walking distance. Two Bayside Light Rail Transit (LRT) line stations were planned within walking distance.</p>	<p>The Navy Broadway Complex vicinity is well served by transit. AMTRAK Intercity Rail service (Surfliner) runs north to Los Angeles. North County Transit District runs regional rail service (Coaster) to Oceanside. Metropolitan Transit System now operates two new LRT routes (Orange line and Green line). Stations for all these services are within one block of the site. Nine bus routes run along Broadway at</p>	<p>No significant change. Transit conditions, including rail and light rail, have improved downtown. Downtown trip generation rates have been reduced to reflect increased transit access to the downtown. Activity-related circumstances have improved since 1991.</p>

1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
	the northern property edge.	
Personnel of the Navy were independently responsible for all considerations associated with commuting to and from work.	Navy has implemented the Transportation Incentive Program (TIP), which encourages commuters to use public transit.	No significant change. The introduction of the TIP has reduced the demands for parking and congestion levels contributed by Navy personnel. Existing traffic circumstances have improved since 1991
39,731 daily trips were calculated for air quality impacts evaluation.	30,130 daily trips are calculated for air quality impacts evaluation.	No significant change. The reduced forecast daily trips results in reduced emissions forecasts of pollutants and toxic air contaminants. Consequently, the activity-related air quality circumstances are improved compared to 1991.
Parking		
No public parking was available on-site .	No public parking is available on-site .	No significant change.
3,105 parking spaces will be provided. Except for the 230 parking spaces for the Navy fleet vehicles, the activity's parking (2,875 spaces) will be available for the public at the times demand	3,173 parking spaces will be provided. Except for the 230 parking spaces for the Navy fleet vehicles, the activity's parking (2,943 spaces) will be available for the public at the times demand	No significant change. The public parking spaces for the site available at all times will be 63 spaces greater than described in 1991. As found in 1991, the activity will improve public parking conditions. With the increase in spaces and increased transit opportunities discussed above, the

1991	Current	Summary Comparison Demonstrating No Significant Changed Circumstances
for public parking is the highest (evenings and weekends).	for public parking is the highest (evenings and weekends).	activity-related parking circumstances have improved since 1991.
<p>No City required parking standards. Estimated parking requirement for the program using the parking standards in the Development Agreement is 3,105.</p>	<p>City adopted parking space requirements for developments through the Centre City Planned District Ordinance, which would require the activity to implement 3,033 spaces. Estimated parking requirements for the activity using the parking standards in the Development Agreement remains 3,105. 3,173 are currently included.</p>	<p>No significant change. The City now has adopted parking requirements that would, if applicable, dictate 72 spaces fewer than calculated per the Development Agreement standards and 140 less than the activity currently includes. The parking requirements as specified by the Development Agreement for the activity are unchanged and require a greater number of parking spaces than the city requirements. The activity-related parking circumstances have improved since 1991.</p>

Other Developments

New development has occurred downtown. Each downtown project has been studied and its impact considered by environmental and coastal reviews for each project, with the activity considered as a fully built project. Thus, the effects from the activity have been accounted for in the environmental and coastal reviews of each downtown project. Additionally, the effects of development projects have been considered as cumulative projects in the March 2009 Final EA for the activity.

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Midway Museum

The converted aircraft carrier USS Midway was permanently berthed in 2004 on the south side of the Navy Pier. The presence of the Midway Museum has proven to have considerable benefits to coastal access by attracting 850,000 visitors annually and providing an iconic component to San Diego's waterfront. The Midway Museum has interrupted views along the promenade and from the Navy Broadway Complex property. However, the Development Agreement does not include any limitations that implementation could not occur if a structure (such as the Midway Museum, parking on the Navy Pier, or any other structure) were located on the waterfront. It states that "A 75-foot wide right-of-way shall be maintained along E and F Streets to provide for this access and maximize inland views to the Bayfront." Formal view corridors along E, F, and G streets established by the Development Agreement are not aligned with the Midway Museum and will provide visual access to the Bay as envisioned in 1991.

Furthermore, the visual effect of the Midway Museum was considered and analyzed by the Commission on 28 June 2001, in the San Diego Unified Port District Master Plan Amendment No. 27, North Embarcadero. The Commission concluded that "the creation of a public park on the Navy Pier would improve the visual quality of the North Embarcadero area, thereby mitigating the adverse visual impacts of the carrier." Policy language was added to the Port Master Plan to ensure that the Port District undertook all necessary procedures within its control to allow construction of the park to proceed as quickly as feasible. As such, the Midway Museum was approved as being consistent with the visual protection policies of the California Coastal Act. As stated in the Port Master Plan Amendment, "removal of the existing buildings on the Navy Pier would allow for opening up the proposed view corridor along E Street in the future when the Broadway Complex area is redeveloped, to replace the one along F Street which would be blocked by the Midway." As agreed, the Navy has since relinquished the pier to the Port District for future use as a public park. Therefore, the activity was considered part of the circumstances when the Midway Museum was approved. The existence of the Midway Museum does not inhibit the benefits to coastal resources and uses that will result from implementation of the activity. View corridors along E, F, and

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G, streets will be established. Public recreation opportunities, including a 1.9-acre park, will be provided, complementing the Midway Museum attraction. Thus, the Midway Museum is not a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.

PETCO Park

The new ball park (PETCO Park) in the downtown area was opened in April 2004 with a capacity of 42,000. The effects from PETCO Park are limited to the times when home games occur (minimum of 81 in a year), or when other special events use PETCO Park as a venue. The effects are generally localized to the areas surrounding the stadium. An agreement between the City and the Convention Center mandates that there will be no southbound access from Park Boulevard to Harbor Drive when concurrent events occur at PETCO Park and the Convention Center. The City may close southbound Park Boulevard during other PETCO Park events as well. All southbound through traffic on Park Boulevard will be routed to eastbound Imperial Avenue (PETCO Park Event Transportation and Parking Management Plan, Revised Jan 2004). Parking and transportation programs have been implemented to minimize the effects on parking and traffic during games. The transportation and parking programs succeed in part because of the density and proximity of downtown residents and workers as well as the surrounding transit and parking resources. There are no significant effects from PETCO Park on the coastal resources or uses in the vicinity of the activity. The existence of PETCO Park does not inhibit the benefits to coastal resources and uses in the North Embarcadero that will result from implementation of the activity. Thus, PETCO Park is not a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.

Convention Center Expansion II

The Convention Center Expansion II Project was completed in June 1998, and officially opened in September 2001. The Convention Center Expansion II added approximately 900,000 SF of space, nearly doubling the building space to 2.6 million gross SF. The expanded Convention Center increased the capacity of the existing facility to draw and host visitors to the

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waterfront, as well as continue to boost the viability of visitor serving uses in the vicinity. The existence of the expanded Convention Center does not inhibit the benefits to coastal resources and uses in the North Embarcadero that will result from implementation of the activity. The Convention Center Expansion II was determined not to have substantial effects on public access or recreation along the waterfront and was an expansion of an existing use. Thus, the expansion of the Convention Center is not a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.

Hyatt 2nd Tower

The Hyatt 2nd Tower Project has been completed since 1991. The Hyatt 2nd Tower includes 750 rooms and was officially opened in 2003. The existence of the 2nd Hyatt Tower does not inhibit the benefits to coastal resources and uses in the North Embarcadero that will result from implementation of the activity. Visitors to the 2nd Hyatt Tower and the activity's hotels will benefit from implementation of the activity. The benefits for visitors from the activity include the retail opportunities, museum, enhanced pedestrian experiences (opening up of E, F, and G streets) and new recreational opportunities of the activity. Traffic impacts associated with the 2nd Hyatt Tower include impacts to Pacific Highway between Harbor Drive and Broadway and the intersection of Harbor Drive and Pacific Highway. However, mitigation measures were implemented for the 2nd Hyatt Tower to reduce those impacts and ensure traffic conditions continued at acceptable levels of service. Thus, the 2nd Hyatt Tower is not a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.

Broadway Cruise Ship Terminal

A new cruise ship terminal has been constructed on the Broadway Pier. The terminal is a continuation of the cruise ship use of the Broadway Pier since construction of the pier in 1913. In 1991, the Broadway Pier had structures that facilitated the berthing and provisioning of cruise ships. The new structure does not alter the capacity or dictate the frequency of cruise ship visitation to the Broadway pier. In

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1991, the Broadway Pier was closed when cruise ships, or other visiting vessels, were berthed and available to the public at other times. With completion of the new structure, the Broadway Pier continues to be closed during cruise ship berthing and open to the public at other times. The new structure includes an area that is available for use for civic events. In addition, improvements upon the deck have increased the efficiency of traffic flow and queuing capacity on the pier itself. Because the new cruise ship terminal does not alter the use or capacity of the Broadway Pier it does not represent a changed circumstance relevant to the activity and the activity's effect on any coastal use or resource.

North Embarcadero Visionary Plan (NEVP) Phase 1 Coastal Access Features Project

On April 13, 2011 the Commission approved a de novo permit (A-6-PSD-11-6) that conditionally approved the implementation of the first phase of public coastal access improvements consistent with the vision of the NEVP and the Port Master Plan, as approved by the Commission in 2001. The de novo permit incorporated modifications to the design of the park/plaza component of the NEVP Phase 1 Coastal Access Features Project including the requirement to amend the Lane Field North and South Hotels approvals to revise the setbacks for that adjacent development. The NEVP Phase 1 Coastal Access Features Project consists of broadening the esplanade along the bayfront from the B Street Pier to the Navy Pier and realignment of North Harbor Drive vehicle lanes from B Street to F Street. The esplanade improvements include a continuous bayfront promenade, a running/walking path, public amenities, formal gardens, and public plazas. The realigned North Harbor Drive will be narrowed and street parking replaced with adjacent parking or nearby parking with a shuttle connection. The approved de novo permit incorporated design features for the Broadway Pier to integrate the function of the Broadway Pier Cruise Ship Terminal and surrounding public access areas. The revised de novo permit also included a special condition that the adjacent Lane Field project must establish a 150-foot setback along North Harbor Drive from B street to West Broadway such that an approximately 2.0-acre park/plaza (expandable to approximately 2.5 acres) can be achieved in proximity to the foot of West Broadway. The NEVP Phase 1 Coastal Access Features Project enhances and improves

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the public access and recreation opportunities along the waterfront beginning in front of the proposed Broadway Complex and up to the B Street Pier. Because the NEVP Phase 1 Coastal Access Features Project does not alter the use and enhances the public access and recreation function of the waterfront, it does not represent a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.

Lane Field North and South Hotels

The Lane Field North and South Hotels Project is a future project that is currently under revision to incorporate increased setback requirements agreed to as part of the approval process for the NEVP Phase 1 Coastal Access Features Project. The future project is part of the NEVP concept and has been listed in the Port Master Plan since 2001. Because revisions are underway prior to seeking an amended approval from the Commission and financing has not been secured, the Lane Field North and South Hotels Project is not a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.

Downtown Residential Developments

In general, downtown San Diego has experienced growth since 1991, including a number of high rise residential developments in the vicinity of the activity. While the success of these developments is uncertain because of the current conditions in the broader economy, several towers have been completed. The increased residential units in downtown San Diego upland of the activity have increased the demand for recreation. The effects on coastal resources and uses consist of pressure to eliminate commercial and industrial water-dependent uses and increased visitation to waterfront parks, attractions, promenade, and visitor-serving commercial uses (restaurant and retail). The residential developments are not a significant changed circumstance relevant to the activity's effect on coastal resources.

The activity actually includes elements that ameliorate any potential effects the residential developments might have. The activity continues to include increased recreation

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opportunities, such as the 1.9-acre park. The activity continues to include enhanced connectivity between the downtown residential units and the waterfront through the opening up of E, F, and G streets for pedestrian and vehicular circulation, as well as implementation of the urban design guidelines. The urban design guidelines require the developer to undertake improvements that promote recreational opportunities for the public within the Navy Broadway Complex. For example, pedestrian walkways will be wide and attractively designed. This is particularly important for the new extensions of E, F, and G streets where 35 feet (on E and F streets) to 60 feet (on G Street) are allocated to pedestrian facilities. The activity will contribute to a consistent, 25-foot-wide pedestrian walkway on the east side of Harbor Drive, which will complement the broadwaterfront promenade on the west side of the street. The 20-foot-wide, continuous sidewalk along Pacific Highway, will provide safe and attractive pedestrian access but will not diminish the street's necessary priority for vehicle travel. These design features reinforce opportunities for public and commercial recreation. New pedestrian facilities, gallerias, open space and passive areas are included as part of the activity.

Buildings have historically consistent, lower street-wall heights with taller structures stepped back to maintain a human scale on the streets. Ground-level uses along the project's waterfront side are required to be at least 75% active, public-oriented retail, restaurant, or similar uses. A substantial portion (6.6 acres) of the site is devoted to commercial recreation with hotel, restaurant, museum, and specialty retail uses. Landscape guidelines, facade designs, architectural detailing on lower floors, and use of color and sculpture are all intended to create a comfortable and attractive setting for maximizing use and waterfront orientation of the public spaces.

The accompanying residential population does not require a vehicle to access the nearby coastal resources and thus does not add to traffic congestion or parking demand in the coastal zone. The new residences of developments upland of the activity will experience the benefits to coastal resources and uses that will result from implementation of the activity. Thus, while the new residential developments represent a change in the circumstances, it is not a significant new circumstance relevant

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to the activity and the activity's effect on any coastal use or resource.

In addition to the residential developments, the San Diego Unified Port District is currently constructing the approximately 3.3 acres Ruocco Park. At the southwestern corner of Harbor Drive and Pacific Highway. The Ruocco Park project was approved as part of the Old Police Station Headquarters (OPH) and Park Project by the San Diego Unified Port District on February 7, 2006. Because the Ruocco Park Project under construction is consistent with that approved in 2006 and will enhance public access and recreation opportunities to the waterfront; it does not represent a significant new circumstance relevant to the activity and the activity's effect on any coastal use or resource.

Conclusion

There are no new significant circumstances or information relevant to the activity or its effect on any coastal resource or use. New development has occurred downtown, but each project has been studied and its impact considered by environmental reviews, with the activity considered individually and cumulatively as a fully built project in each environmental document.

The City's traffic generation methodology has been updated, including the trip generation rates. Using the 1991 trip generation rates, activity generated trips total 39,731. Using the current trip generation rates, activity generated trips total 30,130. Traffic projections in downtown using current requirements result in 25% fewer trips projected than projections undertaken in 1990 and used in the CD. The addition of the Midway Museum to the waterfront on the former Navy Pier replaces Navy ships docked periodically on the site and adds to the recreational opportunities already considered for the activity. Public access to the waterfront will be opened when existing streets E, F, and G are continued through the site, which is currently fenced, gated, and guarded, blocking access to the waterfront. Demolition of the Navy warehouse structures on-site and the opening of the views from E, F, and G streets and Pacific Highway will enhance the views from the City to the waterfront. The change in waterfront views occasioned by the

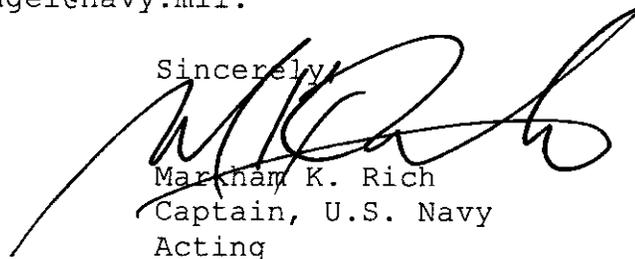
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introduction of the Midway Museum to the waterfront was fully considered by the Commission on 28 June 2001, in the San Diego Unified Port District Master Plan Amendment No. 27, North Embarcadero. The activity itself and additions to the downtown waterfront do not constitute substantial changes to the activity or significant new circumstances relevant to the activity and its effects on coastal resources.

The Department of Commerce made clear in the preamble to the CZMA regulations that a finding of changed circumstances for a federal project is limited to certain prescribed situations, and the ability to make a finding of changed circumstances was not intended to give states multiple opportunities to review particular projects. The preamble section governing changed circumstances provides specifically that "the intent of this section is not to give the State agency a second bite at the apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the state" (65 FR. 77124, 77143 (December 8, 2000)). As the activity contains no substantial project changes or foreseeable coastal effects not reviewed previously, an additional coastal consistency review for the activity is not required by the federal coastal zone management regulations.

The Navy appreciates the excellent working relationship we have with you and your staff. Please do not hesitate to contact my point of contact, Karen Ringel, Director, Real Estate at (619) 524-3747 or karen.ringel@navy.mil.

Sincerely,



Markham K. Rich
Captain, U.S. Navy
Acting

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Exhibits: Figure 1 - Vicinity Map
Figure 2 - Illustration
Figure 3 - Redevelopment Public Access and Recreation
Figure 4 - Rendering

Attachments (provided on CD):

1 - 1990 U.S. Navy Coastal Consistency Determination
for the Navy Broadway Complex Project
2 - 1991 California Coastal Commission Findings
Concurring with U.S. Navy Coastal Consistency Determination for
the Navy Broadway Complex Project
3 - 2009 Final EA for the Navy Broadway Complex
Project
Volume I: Final EA
Volume II: Appendices
Volume III: Responses to Comments
4 - 2009 Finding of No Significant Impact for the Navy
Broadway Complex Project
5 - 2006 California Coastal Commission staff letter to
U.S. Navy
6 - 2007 U.S. Navy letter to California Coastal
Commission staff

CALIFORNIA COASTAL COMMISSION

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W 6a

Correspondence

CD-047-90, Navy, Broadway Complex, San Diego

Attached are letters from:

**Manchester Pacific Gateway, Cooley LLP
San Diego City Councilman Carl DeMaio
Briggs Law Corporation
Unite Here! Local 30
Coastal Environmental Rights Foundation
Coastkeeper
Pacific Energy Policy Center
Marty Kranzberg
League of Women Voters**

Emails:

**Reint Reinders
Richard Dittbenner
Tom Geldner
Save Everyone's Access (SEA)
Dick Goldman
Peter Davis**



Steven M. Strauss
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VIA FEDEX & EXPRESS MAIL

October 26, 2011

Item W 6a – Nov. 2

Dr. Charles Lester, Executive Director
Commissioners (and Alternates) of the California Coastal Commission
Mark Delaplaine, Federal Consistency Supervisor (Staff)
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

**RE: Navy Broadway Complex – U.S. Navy Consistency Determination (CD-047-90)
Item W 6a – Wednesday, November 2, 2011**

Dear Dr. Lester, Commissioners (and Alternates) and Mr. Delaplaine:

We are writing on behalf of our client Manchester Pacific Gateway LLC ("MPG"). As the Navy's selected developer-lessee, MPG has approved and entitled plans to redevelop a blighted parcel of federal property in downtown San Diego known as the Navy Broadway Complex ("Project").

We understand the Commission intends to address issues relating to the Project under the federal Coastal Zone Management Act ("CZMA") at the next Commission meeting in Oceanside. (See Commission Public Hearing Notice dated October 14, 2011 ("Notice").) Specifically, the Commission is purporting to re-consider the Navy's Coastal Consistency Determination for the Project, CD-047-90.

For the following reasons, we urge the Commission to either (1) postpone its consideration of the issues in the Notice or (2) reject the Staff Recommendation On Re-Evaluation Of Consistency Determination ("Staff Report").

In addition, we want the Commission to be aware that many of the "modifications" to the Project proposed by Staff's recommendation are already part of MPG's commitment to the Project and the San Diego community.

The Issues In The Notice Are Not Timely

We request that the Commission continue Item W 6a as stated in the Notice.

As you know, the Project's impacts under contemporary conditions and the Navy's 2009 Environmental Assessment and Finding Of No Significant Impact ("2009 Navy EA") are the subjects of pending, active litigation under the National Environmental Protection Act ("NEPA"). The 2009 Navy EA considers the Project's impacts to the downtown San Diego coastal area under contemporary conditions and applicable laws and regulations, including potential impacts to transportation and circulation, geology, seismicity and soils, and aesthetics and viewshed, among other environmental and land use concerns. The 2009 Navy EA also considers



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applicable land use plans – including California's coastal resource policies pursuant to CZMA. The pending NEPA lawsuit will decide the issue of whether new or additional review of the Project is required under federal law.

We understand the Navy has made several requests to the Commission asking that the Project not be the subject of a public hearing until the NEPA litigation is resolved. The Navy's request is reasonable and justified, and, as far as we know, the Commission has not offered any legitimate reason for denying the Navy's request. We therefore urge the Commission to reconsider its position, grant the Navy's request and not proceed with what could only be a politically motivated, muscle-flexing exercise, where the Navy will be restricted from offering public statements in defense of its approvals. Indeed, we cannot comprehend *why* the Commission would choose to proceed with a consideration of the Navy's Consistency Determination when the Navy itself cannot fully participate. Any determination rendered against the Navy under such circumstances would be tainted by injustice and one-sided dialogue.

In addition to the requests by the Navy, we understand that several members of the public have also requested a continuance of Item W 6a. To date, we are unaware of any legitimate reason offered by the Commission for denying the public's requests.

Further, there is simply no objective reason for the Commission to consider the Project now. MPG entered into the Real Estate Ground Lease for Broadway Complex, Lease No. N6247307RP07P24 ("Ground Lease") with the Navy in November 2006. Since that time, plans for developing the Project have remained on hold due to litigation and financial considerations. The Navy completed the 2009 Navy EA in March 2009, which includes a consideration of the Navy's Coastal Consistency Determination for the Project, CD-047-90. Again, the adequacy of this review by the Navy is the subject of active litigation.

Apart from pending litigation, there is nothing occurring now or at any time in the near future with respect to the Project. Also, due to pending litigation and the recent economic downturn, actual construction of the Project is not likely to start until at least 2013. As such, there is no recent or upcoming action necessitating consideration by the Commission at this time.

It is also possible that the CZMA issues stated in the Commission's Notice will be mooted by a resolution in the NEPA case – to the extent they are not already moot by judicial decisions relating to the project under the California Environmental Quality Act ("CEQA"). It would be a waste of public agency resources – and potentially an abuse of the Commission's discretion – to hold a public meeting addressing issues that are not timely and could be mooted by existing litigation.

In sum, there is no reason to consider the Project now over the Navy's, MPG's and the public's objections – as opposed to months from now when the NEPA litigation may be resolved. Again, we urge the Commission to reconsider its position and continue Item W 6a to a future Southern California meeting date.



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Staff's Recommendation Asks The Commission To Exceed Its Authority Under CZMA

If the Commission elects to proceed with the meeting as noticed, please be advised that Staff has recommended action that far exceeds the Commission's jurisdiction under CZMA.

CZMA provides for federal and state agency coordination to review federal activities within or affecting a state's coastal zone for consistency with state-developed and federally approved coastal zone management programs. A state agency's role in this CZMA consistency review process is entirely defined by federal statute and federal regulations.

Pursuant to CZMA Section 307, the Navy completed a Coastal Consistency Determination for the Project in 1990. See 16 U.S.C. § 1456. The Navy reviewed the Project as a federal activity "not within" but "affecting" the coastal zone under CZMA section 307(c)(1) and determined the Project is consistent to the maximum extent practicable with the enforceable policies of California's coastal management program. See 16 U.S.C. § 1456(c)(1)(A). Also under CZMA Section 307(c)(1), the Commission then reviewed the Project as a federal activity "not within" but "affecting" the coastal zone, concurred with the Navy's consistency determination, and approved Adopted Findings On Consistency Determination No. CD-47-90 (the "Commission's 1991 Concurrence").

Consistent with the procedure afforded by CZMA, the Commission concluded its concurrence by stating that "no further Commission action is required for the redevelopment to proceed as presented in the consistency determination."

Indeed, CZMA does not allow for state agencies to "re-open" the consistency review process, attach an expiration date to a concurrence, or revoke a prior concurrence. See, e.g., 15 C.F.R. § 930.41(d) ("A State agency cannot unilaterally place an expiration date on its concurrence."); see also *State of Delaware Dept. of Natural Resources and Enviro. Control, v. U.S. Army Corps of Engineers*, 681 F. Supp. 2d 546, 557, 560-61 (D. Del. Jan. 29, 2010) (finding state was without power under CZMA to revoke a prior concurrence to a federal consistency determination and could not force the federal agency to prepare a supplemental determination). Once a state agency issues a concurrence under CZMA, "it waive[s] any objections to the [project ... and] may not revoke its concurrence..." 681 F. Supp. 2d at 560.

In other words, CZMA "only authorizes one bite of the consistency apple for any particular Federal agency activity." *State of New Jersey, Dept. of Enviro. Protection v. U.S. Army Corps of Engineers*, 2011 WL 115878, at *9-*10 (D. NJ Jan. 13, 2011) (finding state was without power to revoke a prior concurrence to a consistency determination or require supplemental consistency review) (quoting CZMA Federal Consistency Regulations, 65 FR 77124, 77141 (Dec. 8, 2000)).

A state agency's role in any supplemental consistency review is defined by 15 CFR § 930.46, which states in pertinent part that a "State agency **may notify** the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination." 15 CFR § 930.46(b) (emphasis added). That is all. CZMA



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Regulations simply do not allow for a state agency to re-consider or "re-open" a previous concurrence or require a supplemental consistency determination. This is consistent with principals of federal supremacy and the clear intent of the federal regulations. See (CZMA Federal Consistency Regulations, 65 FR 77124-01, 2000 WL 1791681 (Dec. 8, 2000) ("The intent of this section is not to give the State agency a second bite at the consistency apple, but rather, to give States the opportunity to review **substantial** changes in the project or foreseeable coastal effects **not previously reviewed** by the State.") (emphasis added).

In effect, Commission Staff has already done what the Commission may do under 15 CFR § 930.46, twice – by letters to the Navy dated October 25, 2006 and November 3, 2008. In these letters, Commission Staff notified the Navy of its belief that the Project should be subject to a supplemental consistency review. The Navy considered the points raised by Staff and prepared written responses and comments refuting Staff's position. In connection with its consideration of the Project and Ground Lease under NEPA in 2006 and 2009, the Navy also considered the Project under CZMA and found the triggering conditions under 15 CFR § 930.46 are not met.

Specifically, the Navy has determined that there have been no **substantial** changes to the Project that are relevant to management program enforceable policies and that there are no **significant** new circumstances or information relevant to the Project and its effect on any coastal use or resource. See, e.g., Navy letter dated October 17, 2011; see also, e.g., 2009 Navy EA, Vol I, § 3.1, Vol II, Appendix F, and Vol III Responses to Comments L18-a though L18-p at pp. L-110–L-122.

Even if the Commission proceeds with a public hearing on whether it believes the conditions of 15 CFR § 930.46 are met (despite Staff already having sent two letters to the Navy so stating) and whether to recommend modifications to the Project, that would be the extent of what the Commission could lawfully do under CZMA.

The Commission is without power to "revoke," "re-open," or "reconsider" its prior concurrence. Nor can the Commission meaningfully "object" to the Project. See, e.g., 15 C.F.R. §§ 930.41(d), 930.46; *State of Delaware Dept. of Natural Resources and Enviro. Control*, 681 F. Supp. 2d at 557 (finding state was without power under CZMA to revoke a prior concurrence to a federal consistency determination and could not force the federal agency to prepare a supplemental determination); *State of New Jersey, Dept. of Enviro. Protection* 2011 WL 115878, at *9-*10 (finding state was without power to revoke a prior concurrence to a consistency determination or require supplemental consistency review); CZMA Federal Consistency Regulations, 65 FR 77124 (Dec. 8, 2000).

In short, the Commission is bound by its prior concurrence with the Navy's Coastal Consistency Determination, and it has therefore waived making any valid objection to the Project. See *id.* The only possible mechanism for Commission consideration of the Project now is under CZMA, 15 CFR § 930.46. As discussed in more detail below and for the reasons stated by the Navy, the triggering conditions of 15 CFR § 930.46 are not met and thus supplemental consistency review of the Project is not warranted.



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The Project Defined By The Development Agreement And Guidelines Is Fully Entitled

The Navy Broadway Complex is approximately 16 acres near the waterfront in downtown San Diego, bordered by Broadway on the north, Harbor Drive on the west and south, and Pacific Highway on the east ("NBC"). The NBC is owned by the Federal Government and subject to the Federal Government's exclusive jurisdiction. The NBC currently houses the Commander, Navy Region Southwest, the Naval Facilities Engineering Command Southwest, the Commander, Fleet Industrial Supply Center, and other Navy administrative facilities typically accommodated in office facilities.

The NBC has been called the most singularly blighted urban waterfront property in the State of California. Presently, and as was the case when the Commission approved the Project in 1991, the site contains about 500,000 square feet (SF) of dilapidated warehouse space and about 400,000 SF of Navy administrative space constructed between 1921 and 1944. The rest (more than half) of the four-block site is paved with asphalt parking lots, and the entire site is fenced and secured, completely restricting public access from downtown to the waterfront.

Pursuant to federal legislation, the Navy entered into an approved Development Plan and Urban Design Guidelines with the City of San Diego (the "Development Agreement") to establish parameters for redevelopment of the NBC. The Development Agreement incorporates fixed Urban Design Guidelines ("Guidelines") and defines, among other things, allowable land uses, intensity of uses, views, building heights, parking standards, public improvements, architectural standards for quality of design, architectural form and scale, access, landscape treatment, and open space. The Navy approved these Guidelines to ensure construction of a high-quality development that achieves community objectives.

The Development Agreement contemplates a maximum total of 3.25 million SF of above-grade development, which may include: a maximum of 1.65 million SF of office space, of which 1 million SF are reserved for Navy administrative use; a maximum of 1.22 million SF of hotel uses, including support retail, restaurant and entertainment uses; a maximum of 25,000 SF of retail space; a maximum of 55,000 SF of public attraction space; and a maximum of 300,000 SF of above-grade parking. The Development Agreement also requires 1.9 acres of public open space and extension of E, F, and G streets to create pedestrian and vehicular corridors and view corridors from downtown to the San Diego Bay waterfront. The Development Agreement expressly recognizes several significant Project benefits including creating a significant waterfront open space, improving pedestrian and vehicular access to the waterfront, improving views, balancing a mix of public-oriented uses, creating museum and other public entertainment space, and providing opportunity to generate tax revenues from private development.

The Navy's and its developer-lessee's rights to develop the Project defined by the Guidelines vested with execution of the Development Agreement. In fact, the Project delineated in the Development Agreement and Guidelines has obtained all required discretionary approvals from the Navy, the City, and the Commission under numerous federal, state and local environmental and land use laws and regulations. Three separate courts to consider the Project have already



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and consistently determined that no further discretionary approvals are required for the Project to proceed.

Pursuant to the Ground Lease and Development Agreement, MPG is required to submit plans and specifications for construction of the Project to the City's Centre City Development Corporation ("CCDC")¹ for a four-step "consistency" review. Section 5.2 of the Development Agreement dictates the nature and extent of this phased consistency review. The first step requires the developer-lessee to submit basic concept/schematic drawings. The remaining three steps require submittals of design development drawings, fifty percent construction drawings, and one hundred percent construction drawings, respectively. Section 5.2 also states that CCDC's consistency determination may not be unreasonably withheld.

As stated in the Commission's 1991 Concurrence, the CCDC consistency review process was established and agreed to by the Navy to ensure development of the Project as approved by the Navy, the Commission (and the City) and defined by the Development Agreement and Guidelines. See Commission's 1991 Concurrence, Section D. "Procedures."

MPG has completed the first step of this consistency review process. After holding numerous public workshops and public meetings (where local Commission Staff had opportunity to participate), CCDC made a formal and public determination that MPG's Project Master Plan is consistent with the Development Agreement and Guidelines. MPG's Master Plan is therefore consistent with the Project defined by the Development Agreement and Guidelines and approved by the Commission under CZMA in 1991.

Although the recent Staff Report expresses concern about the fact that the Development Agreement and Guidelines and the proposed project considered by the Commission in 1991 "was somewhat conceptual," this concern is immaterial. The Commission effectively concurred with any development plan by a Navy developer-lessee found by CCDC to be "consistent" with the Development Agreement and Guidelines (i.e., within the maximum allowable density and height limits and consistent with the approved ratio of mixed uses and Design Guidelines). Thus, any variations between MPG's Master Plan and the proposed drawings accompanying the Commission's 1991 Concurrence are not material because any variation is not *substantial* and does not render the development inconsistent with what the Commission approved.

There Are No Substantial Changes To The Project Or Significant New Circumstances Or Information Warranting Additional Review

In connection with its step one consistency review, CCDC also considered the Project's impacts under CEQA and determined that no further environmental review of the Project is required. Specifically, CCDC found there have not been any substantial changes to the Project or the conditions in the surrounding area since the Project EIR/EIS was approved in 1992 warranting

¹ CCDC is a public, non-profit corporation created to staff and implement downtown San Diego redevelopment projects.



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supplemental environmental review. CCDC also concluded there is no significant new information available showing any new or significantly different Project impacts than those analyzed and mitigated by the Project EIR/EIS. CCDC made this determination in 2007 under contemporary conditions and regulations, and it was upheld by the California courts when challenged by the San Diego Navy Broadway Complex Coalition ("SDNBCC") in litigation. Specifically, Judge Ronald S. Prager of the San Diego Superior Court of California and a three justice panel of the California Court of Appeal for the Second District have upheld the City and CCDC's findings under CEQA that no further environmental review of the Project is required. (See *San Diego Navy Broadway Complex Coalition v. City of San Diego, et al.*, Appellate Case No. D055699, San Diego Sup.Ct. Case No. GIC880444.)

The Commission should be aware that most, if not all, of the environmental and "project-changing" concerns raised by SDNBCC in recent comment letters to the Commission and by Staff in the recent Staff Report have already been litigated and decided by SDNBCC's CEQA litigation. Specifically, SDNBCC argued that "substantial changes" in MPG's Master Plan and "significant changed circumstances and new information" and "new laws and regulations" required new or supplemental environmental review of the Project.

This included the same "geologic hazards" allegations raised by SDNBCC to the Commission and by Staff (allegedly "new" faults and hazards and new regulations and standards relating to building permits and geologic and fault studies). The court dismissed all of these allegations.

Although no discretionary permits will be required from the City or any other state or local agency, MPG is required under the Development Agreement (and Ground Lease) to obtain building and similar permits from the City for all non-Navy structures. All such development and structures must comply with the City's most up-to-date permitting and construction standards and specifications (those "in effect at the time that any building permits are issued"). Thus, all of MPG's permits must comply with the most up-to-date building standards and specifications, including California's new Title 24 Green Building Standards or "CALGreen" Code and the City's Seismic Safety Study requirements for HCZ 13 and 31.² Further, the Navy has stated that although it will not apply for City building permits for its administrative office (the Government Administrative Facility, of "GAF"), the Navy will comply with all substantive requirements of the same City standards and specifications (i.e., Title 24).

The CEQA litigation also denied SDNBCC's allegations relating to terrorism, traffic and circulation, parking, new development and changes in downtown San Diego, diesel particulates, air quality, energy efficiency, water quality, water supply, greenhouse gasses, public services, cumulative impacts, and parks and open space – all allegedly warranting supplemental review

² SDNBCC is indisputably aware of (1) the court's order denying each of their seismic and geologic hazard allegations and (2) MPG's public and written commitment to complying with Title 24 and the City's building permit and seismic study requirements. Yes, the Project will comply with Title 24 and any applicable seismic study requirements that arise during the building permitting process. SDNBCC's representations to the Commission to the contrary are disingenuous, at best.



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of the Project. After many years of litigation, the court agreed with MPG, the City and CCDC, and it determined that none of SDNBCC's allegations about changes in the project, changed circumstances or new information rose to the level of triggering supplemental review.

Although the considerations under CZMA, NEPA and CEQA are not identical, the standards for supplemental review are understandably similar. The basic inquiries are: (1) has the project changed substantially and in a relevant way that identifies a new or more severe significant impact?; (2) have the circumstances in the project area changed substantially and in a relevant way that identifies a new or more severe significant impact?; and (3) is there significant new information that identifies a new or more severe significant impact? These common and basic inquiries support the intent of the supplemental review processes and the policies favoring finality after a project has been reviewed and approved.

Staff has not identified any change to the Project that is **substantial** and relevant to an enforceable management program policy. Mere "change" to a project is not sufficient to require supplemental CZMA review. Nor has Staff identified any **significant** new circumstances or information showing a foreseeable Project effect on coastal uses and resources that has not been previously reviewed.

Moreover, and in addition to the Navy's and the Commission's review of the Project under CZMA, the Navy's review of the Project under NEPA, and the City and CCDC's review of the Project under CEQA, the NBC Project has been considered by numerous environmental and land use planning documents prepared for the downtown San Diego area since 1992 that each assumed **full** build out of the NBC Project – as they had to do given the Project's status as approved and entitled – including the Final Master EIR for the Centre City Redevelopment Project (1992), the Final Subsequent EIR to the 1992 Final Master EIR Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects and Associated Plan Amendments (1999) ("Ballpark-SEIR"), the North Embarcadero Alliance Visionary Plan EIR (2000) ("NEAVP-EIR"), and the Downtown Community Plan EIR in Conjunction with a new Downtown Community Plan, new Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project (2006) ("DCP-EIR"). Additionally, the NEAVP-EIR and DCP-EIR set forth mitigation for the Project with which the City, CCDC, and/or MPG must comply. While it is true that many years have passed since the original approvals for the Project in the early 1990's, it cannot be said that the Project's impacts have not been considered since that time.

Since the Navy selected MPG as its developer-lessee in 2006, the Project has undergone extensive public and agency review culminating in approvals from the Downtown San Diego Center City Advisory Committee, CCDC, the San Diego City Council, and, ultimately, the Navy. The Navy (and CCDC) held numerous public workshops analyzing all environmental and land use aspects of the Project, and both agencies have confirmed that supplemental environmental review of the Project is not warranted under NEPA or CZMA or CEQA (respectively). Every court and agency to consider the Project since the Navy selected MPG has found that there is nothing substantially different or significantly new to justify re-opening the review process.



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Finally, to the extent the Staff Report points to "changes" in the area that are the product of Commission approvals (such as the Midway or amendments to area plans or Port projects), such changes cannot be relied on by the Commission now to demand changes to a Project that was fully entitled at the time the Commission issued those other approvals.

The Project Will Significantly Improve San Diego's Downtown Waterfront, Invigorate The Local Economy, Create Much Needed Jobs And Greatly Enhance Visual Resources, Public Access And Visitor-Serving Uses In The Area

Please note that Staff's proposed "modifications" to the Project – are not all modifications. Many of the conditions advocated by Staff as making the Project consistent with the Coastal Act are already a part of MPG's plans:

Increased Public And Visitor Serving Access: Again, the NBC has been called the most singularly blighted urban waterfront property in the State of California. Presently the site contains dilapidated warehouses and Navy administrative space constructed between 1921 and 1944. The rest of the NBC site is old asphalt parking lots, and the entire site is fenced and secured, completely restricting public access from downtown to the waterfront.

The Project will transform this fenced-off cement into a welcoming waterfront open space and mixed-use development, incorporating hotel, office, restaurant, entertainment, retail, and cultural attraction/museum uses. The Project will create a 1.9 acre public park at the foot of Broadway and over four and a half acres of new public open space. There can be no question that the Project will significantly improve public and visitor access and views to the Bay over current conditions and generate substantial new tax revenues and new jobs.

MPG is committed to welcoming and encouraging the public to enjoy the Project's recreational, retail, cultural, and entertainment facilities, and to improving public and visitor access to the waterfront. To this end, the Project will provide ample and visible public signage indicating public use areas and public interest locations and attractions, and accommodate long hours of operation for public areas. Pedestrian signage will help to connect downtown residents, business patrons, and tourists and visitors to the waterfront in, through, and around the Project.

MPG will also encourage on-site hotel and recreational uses to adopt government and military discounts consistent with market rates based on the time the uses become operational.

It is unclear why the Staff Report refers to condo-hotels because the Master Plan, as revised by MPG in July 2007, does not include any plans for condo-hotels. As such, the Project's hotels will be entirely visitor-serving and provide a substantial benefit to public use and enjoyment of shoreline in an area that, under current conditions, is closed to all public access.

Commitment To Green Building Standards And LEED Certification: The Navy's GAF will achieve LEED Silver Certification and California's new Title 24 Green Building Standards or "CALGreen" Code will apply to all private development on the NBC. The Project will thus



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promote green building standards and be consistent with California's energy efficiency, water and material conservation, and sustainable development goals. These standards did not exist when the Commission approved the Project in 1991, and, as such, implementation of the Project under contemporary conditions will result in a more energy efficient and environmentally-conscious development than that approved by the Commission.

First Class Design: MPG has participated in an extensive design review process with the Navy, the City, and CCDC. Working under the Navy and the Development Agreement and Guidelines, MPG has collaborated with local and international architectural and urban planners to create a Project Master Plan that is the product of many months of design concepts, refinements, and public review workshops. MPG retained the master planning services of internationally and nationally acclaimed firms Gensler Architects and WRT (Wallace Roberts Todd) Urban Landscape/Planning, both of whom possess significant urban waterfront experience. Local firms Tucker/Sadler and Martinez Cutri were also an integral part of the architectural refinements of MPG's approved Master Plan.

Given the high profile nature of the Project, CCDC also engaged in an additional design review process whereby CCDC retained four national-caliber urban design professionals to work with MPG's Master Plan team. This collaboration was unprecedented in San Diego and resulted in a Master Plan that is contextual, historic, mixed-use, pedestrian-friendly, urban, and world-class. The Master Plan fully embraces the contextual principles of the Development Agreement by locating the tallest buildings at the northeast portion of the NBC along Broadway and Pacific Highway, and cascading the building heights from north to south and east to west.

The Master Plan also creates significant east-west links to the waterfront by extending E, F, and G streets from Pacific Highway to Harbor Drive. G Street will become another major pedestrian link connecting, for the first time, the residential Marina District directly to the waterfront. The Project will also create a significant pedestrian plaza on a north to south orientation in the center part of the Master Plan with visitor-serving retail, restaurants, and cultural uses on the bottom two levels. This north-south pedestrian "Paseo" will be enhanced with public art, public plazas, and cultural amenities linking the City's Seaport Village project to the south with the Cruise Ship terminal to the north along Harbor Drive. The Paseo will also engage the E, F, and G Street intersections with pedestrian nodes reinforcing the connection with the waterfront to the west.

Public Attraction And Cultural Elements: In addition to the public attraction/museum space guaranteed by the Development Agreement, MPG intends to incorporate cultural and entertainment amenities such as original art and sculpture displayed throughout the public and open spaces and live music or public concerts on weekends and holidays.

MPG will, subject to the Navy's ultimate discretion and consistent with the Development Agreement and Guidelines, relocate the planned museum space to Master Plan Block 2-A.

Also during the Master Plan design review process, MPG engaged in a number of charrettes with CCDC and design teams that considered, among other things, the effectiveness of ground



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level pedestrian activation within the Project. Participants in these charrettes concurred on the importance of themed zones for the Project's retail, restaurant, cultural, and entertainment uses, and they created the following concept that MPG has implemented into the Master Plan. The southern portion of the Plan will accommodate the museum/cultural elements and create plazas that can be activated with music (chamber style, like in Venice), the center portion will embody a contemporary theme (jazz music), and the northern portion will incorporate historic elements (mariachi music). Additionally, public art, benches, plazas, and outdoor seating for dining will be integrated into the entire Project area, making the location active, vibrant, safe, and a magnet drawing people not only to enjoy the Master Plan but to the waterfront.

Improvements To Transportation, Parking, And Pedestrian Access: Consistent with the Project's Development Agreement and environmental approvals, the Project will implement a long-term Transportation Demand Management Program ("TDMP"). Implementation of the TDMP will reduce vehicle trips to and from the Project and encourage the office, hotel, retail and other employees working at the site to commute by alternatives to a single-person car. Anticipated TDMP measures include; among other things, transit amenities, a transit pass sale and information area, coordination of a rideshare matching system, preferential carpool or vanpool parking, on-site bike lockers, shared parking arrangements, and development of pedestrian corridors to nearby public transit stops and stations. The NBC is served by several major public transit modes in the immediate vicinity, including the San Diego Trolley, the Coaster Commuter Rail, the Amtrak Intercity Rail, and Local and Express Busses, which include stops within walking distance of the site. Realization of the Project's office, hotel, recreational, retail, and public attraction uses will maximize these public transit modes and invigorate an area of downtown currently restricted to public access.

Additionally, the Project will improve transportation in the area by extending E, F, and G Streets through the NBC to allow for continuous vehicle and pedestrian access between Pacific Highway and North Harbor Drive. The extension of G Street in particular will provide enhanced access by creating a major pedestrian promenade linking the Marina district of downtown to the waterfront. In fact, the Project will create several major pedestrian paths designed to connect downtown uses with the waterfront and the Project's public attraction, retail, and entertainment facilities. Development of the Project will also widen and improve traffic signals along Pacific Highway, and enhance the sidewalks along Broadway and the bike facilities along Pacific Highway and North Harbor Drive.

The Project Master Plan provides for over 3,100 new, on-site, underground parking spaces. On-site parking will be available to the public, with substantially more spaces available to the public during nights, weekends, and holidays.

In addition to the above transportation improvements, MPG will actively support the creation of a rubberized trolley system connecting the Convention Center and the San Diego Airport. MPG will also encourage and support completion of a downtown regional transit program and efforts to connect pedestrian waterfront access with downtown public parking and mass transit.



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The Commission Should Not Take Any Official Position Against Such A Much-Needed And Overall Beneficial Project

MPG is committed to developing the Project consistent with the Development Agreement, Guidelines and Ground Lease and in a manner that will greatly enhance public access, visitor-serving and visual resources on and around the NBC. But for MPG's commitment to this redevelopment, the NBC would remain dilapidated and blighted for all of the foreseeable future.

Again, we urge the Commission to either (1) postpone its consideration of the issues in the Notice or (2) reject the Staff Recommendation On Re-Evaluation Of Consistency Determination. The issues are not timely, and the Staff has recommended actions that far exceed the Commission's authority under CZMA. Moreover, the Navy has correctly determined that supplemental review of the Project is not warranted under CZMA 15 CFR 930.46, and that determination by the Navy is well supported by extensive agency analysis, coordination with Commission Staff, public participation, and substantial evidence.

Sincerely,

Signature on File

Steven M. Strauss

cc. Papa Doug Manchester
Richard Gibbons
Perry Dealy
Karen Ringel

729188 v1/SD



COUNCILMEMBER CARL DEMAIO

FIFTH DISTRICT
CITY OF SAN DIEGO

October 26, 2011

Chair Mary K. Shallenberger
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Support for the New Navy Headquarters Project in San Diego (CD-047-90).

Dear Chair Mary K. Shallenberger and Honorable Commissioners:

The Coastal Commission will be hearing the very important Navy Broadway Complex item on Wednesday, November 2.

This project will bring up to \$1 billion dollars in state-of-the-art redevelopment to one of the most blighted parts of San Diego's downtown waterfront and will provide greater public access and additional open space to the embarcadero. It is important for the continued beautification and redevelopment of San Diego's waterfront that this project moves forward.

Additionally, this project is vital to San Diego's economic future as we ensure that the Navy continues to be one of the largest employers in our region. As defense spending will likely be put under scrutiny nationwide, it is essential that San Diego continues to be an attractive location and cooperative partner with the Department of the Navy as operations are consolidated into fewer locations.

Ensuring that the Navy Broadway Complex moves forward is an important way that San Diego, and the State of California, can send a clear message to the Navy: "We want to partner with you and ensure that well-paying jobs stay here."

I strongly urge the Commission to support the Navy's consistency determination and find the project to be consistent with the Commission's previous findings.

Your own staff report provides you with ample justification to allow this project to proceed forward. The proposal is very clearly "consistent with the overall development plan and urban design guidelines included in the consistency determination." (Page 3 of staff report.) No aspect of that has changed since the initial adoption of the consistency determination.

As the staff report goes on to say, there is no permit question before the Commission, and the project has not substantially changed enough to warrant the Navy and developer to go back to the drawing board.

By holding up this project, the Commission would be doing a disservice to the millions of San Diegans each year who rely on the Navy for employment and desire to see San Diego's waterfront revitalized and public access to the waterfront enhanced.

Rather than enduring chain-link fences, crumbling asphalt parking lots, and dilapidated office buildings built decades ago, the Commission has the opportunity to ensure that a new, well-planned, and environmentally sensitive campus of parks, large pedestrian walkways, office space, hotel rooms, and residential areas will greet visitors and residents as they enjoy San Diego's beautiful embarcadero.

I sincerely hope the Coastal Commission will make the right choice and allow this project to move forward.

In service,

Signature on File

Carl DeMaio
Councilmember

BRIGGS LAW CORPORATION

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BLC File(s): 1434.12

21 October 2011

Mary K. Shallenberger, Chair
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Re: Item 6-a on Commission's Agenda for November 2, 2011 (CD-047-90; Navy, San Diego)

Dear Commissioner Shallenberger:

On behalf of the San Diego Navy Broadway Complex Coalition, I am writing to provide you with evidence in support of 103 reasons why the Commission should find that there are changed circumstances affecting its 1991 consistency determination for the Navy Broadway Complex project and further find that the NBC project is now *inconsistent* with the Coastal Act (which serves as the California Coastal Management Program under the Federal Coastal Zone Management Act, PUB. RES. CODE § 30008).

For the most part, the Coalition enthusiastically supports the staff recommendation posted today on the Commission's website. The only point of departure is the suggestion that the Commission could make a determination of consistency at this time based on the imposition of conditions. Not enough is known about the specifics of the project to impose meaningful, enforceable conditions. The Coalition urges the Commission to find that there are changed circumstances rendering the project inconsistent now; but then wait until the developer brings forward a specific, detailed proposal that can be fully evaluated for consistency. Until the Commission knows *exactly* what the developer plans to build on the site, it is not possible for the Commission or the public to articulate adequate conditions ensuring consistency.

With that small caveat out of the way, let me now turn to the specific reasons why the Commission should make a finding of inconsistency based on changed circumstances.

As you know, for years the Coalition has been an active grass-roots organization advocating for more public access and better planning and development along downtown San Diego's waterfront. Planning and development along the waterfront began to take a drastic turn in the mid-1990's--after the 1991 consistency determination--when public agencies, including the Navy, began to recognize the value of planning for the waterfront's development as a collaborative effort rather than as a matter of fiat by the highest levels of government (like the NBC project itself). Perhaps the single biggest planning change since 1991 was the North Embarcadero Alliance's development of the North Embarcadero Visionary Plan--NEVP for short--in 1998; the Alliance, it should be noted, included the Navy.

Be Good to the Earth: Reduce, Reuse, Recycle



Other significant changes in the immediate vicinity of the NBC project site include the Port of San Diego's approval of the Midway Museum and the Navy Pier's conversion to a public park, both immediately west of the site, in 2003; approval of Ruocco Park immediately south of the site in 2006; completion of a permanent cruise-ship terminal on Broadway Pier immediately northwest of the site in 2010; and approval of the 150-foot setback park at Lane Field immediately north of the site earlier this year. The NBC project will now be surrounded on three sides by major parks and other public amenities. None of these were anticipated when the 1991 consistency determination was made.

There is one other major event that was not anticipated in 1991: namely, the terrorist attacks on September 11, 2001. Since then, issues of national security have come to permeate planning and development, including for places that attract large numbers of people (e.g., parks, military museums, cruise-ship terminals, high-profile office buildings) and especially for military facilities (e.g., naval offices). In fact, since the 9/11 attacks, the Department of Defense has imposed new design guidelines on military facilities like the Navy headquarters that will be included in the NBC project. For instance, there must now be large setbacks--in some cases nearly 150 feet--and substantial concrete barriers around military offices. As Admiral Len Herring, formerly the Naval commander in charge of San Diego, famously told Congress about attacks on the military even before 9/11: "[a] lot has changed since October 12, 2000. No one wants to believe that something like the Khobar Towers or the U.S.S. Cole could possibly happen in America's finest city; and, more importantly, not on a military facility. [¶] We all know that it is not true and . . . those risks should not be taken."

There can be no doubt that the NBC project will host high-profile military operations. Not only is it a major Naval headquarters, but it will become the home for the Navy's center for logistics for the global war on terror. It is also located a quarter-mile away from Lindbergh Field, an international airport. So concerned about the anecdotal evidence that the NBC project could be a terrorist target, the Coalition commissioned a report by one of this country's leading experts on anti-terrorism. Brian Jenkins, whose resume includes serving as an advisor to the federal government, examined the evidence and concluded that the Navy facilities to be included as part of the NBC project must be considered a likely terrorist target.

All of this is to say that the NBC project represents a high-risk terrorist target not only because it will host a military headquarters but also because the headquarters will have a major hotel and massive office building as neighbors on the same site. Indeed, what makes the project an even *better* target for terrorists is the potential for casualties not only at the site but at the parks and other public facilities immediately surrounding it. As the Port of San Diego and other local agencies continue to redevelop the Embarcadero so it becomes an even bigger attraction, the risk of a terrorist attack at the NBC project grows and grows.

Developing what cannot help but become a high-profile terrorist target in the middle of a heavily used coastal resource is inconsistent with the Coastal Act. This inconsistency did not exist in 1991. But the events of 9/11 and other terrorist attacks against military facilities before and after provide substantial evidence that the NBC project will create a threat to the public that is not compatible with the purposes of the Coastal Act.

The Coastal Act contains a number of policies that make the development of a high-profile terrorist target inappropriate for San Diego's waterfront. "[M]aximum access . . . 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." PUB. RES. CODE § 30210 (emphasis added). Building a terrorist attraction on the waterfront, in the center of public parks and other high-draw attractions, is not consistent with public safety.



The Coastal Act also gives priority to development projects that increase public opportunities for coastal recreation. "The use of private lands suitable for visitor-serving commercial recreational facilities *designed to enhance public opportunities for coastal recreation* shall have priority over private residential, general industrial, or general commercial development. . . ." PUB. RES. CODE § 30222 (emphasis added). It is true that the NBC site is owned by the federal government, but it is being developed under a long-term lease with a private developer. The site is essentially a general commercial development (*i.e.*, an office building for the Navy and an office building for private businesses) that will do little if anything to enhance affordable public opportunities for coastal recreation.

Additionally, the Coastal Act requires new development to protect unique surroundings that are popular recreational destinations for visitors. "New development shall . . . [w]here appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses." PUB. RES. CODE § 30254. San Diego's waterfront along the Embarcadero, especially the North Embarcadero where the NBC project is located, has been recognized by several local agencies, including the Navy, as the community's "front porch," with "attractions that draw people to the Bayfront." See North Embarcadero Visionary Plan, p. 9. Simply put, building a new development that will increase the risk of a terrorist attack on visitor-serving recreational attractions like the Midway Museum, Broadway Pier, Ruocco Park, and other nearby amenities is contrary to the Coastal Act.

Because the Navy headquarters will be located at the NBC project, an important consideration is whether there are nearby military facilities that could accommodate the headquarters. "When appropriate, coastal-related development should be accommodated within reasonable proximity to the coastal-dependent uses they support." PUB. RES. CODE § 30255. The Navy currently has a base at 32nd Street and another on Coronado Island. Those are secure facilities whose use is supported by the Navy headquarters proposed for the NBC project. The headquarters should be and could be located at either base, putting the development closer to the uses it will support and reducing the risk to public safety, public access, and recreation along the waterfront.

Of course, terrorism is not the only circumstance relevant to the NBC project that has changed and renders the project incompatible with the Coastal Act. As noted above, accompanying this letter is a list of 103 instances of changed circumstances that render the project inconsistent with the Act. For brevity's sake, I will mention only a few of them here.

The hotels to be built as part of the NBC project will not be affordable, visitor-serving hotels. The developer of the NBC project--Manchester Pacific Gateway, LLC--recently announced that its plans include a 1,058-room convention-style hotel. As a general rule, such hotels are not affordable; in fact, there is no evidence in the record to demonstrate that this particular hotel will be affordable. When the Commission approved the 800-room Lane Field hotel project in 2009, its developer was required to pay \$6 million to mitigate for the lack of affordable accommodations. The developer of the NBC project is not required to pay anything to mitigate this impact. The growth in the number of unaffordable hotel rooms along downtown San Diego's waterfront is a substantial change from 1991 and renders the project inconsistent with the Coastal Act, and the NBC project will only make it worse.

Another inconsistency arising from the NBC project will be its lack of structural safety. This is so for at least two reasons. First, there is the newly discovered risk of liquefaction. In 1995, after the original consistency determination, the City of San Diego determined that the site is in an area at high risk of liquefaction. Moreover, sea-level rise can contribute to an increased risk of liquefaction. Second, there is the Coronado Fault, which in 1997 was interpreted by the State of California to run from San Diego Bay northward toward the NBC and which at least one expert,



based on recent studies, "is sure . . . runs north, under the [N]avy's project. . . ." One of the aims of the Coastal Act is to "[a]ssure *stability and structural integrity*, and neither create nor contribute significantly to erosion, *geologic instability*. . ." PUB. RES. CODE § 30253(2) (emphasis added). Based on information that came to light after 1991, it now appears that the NBC project poses a substantial threat to seismic safety and instability.

The NBC project cannot be built without a substantial amount of construction equipment. Most construction equipment runs on diesel fuel. Diesel particulate is now recognized by the State of California as a hazardous air pollutant. The substantial diesel-particulate emissions that the project will cause cannot be made consistent with the applicable air-quality standards. That by itself is a violation of--that is to say, an inconsistency with--the Coastal Act. See PUB. RES. CODE § 30253(3). The 1991 NBC project simply cannot meet today's air-quality standards.

The NBC is also inconsistent with the Coastal Act's policy to promote energy efficiency. "New development shall . . . [m]inimize energy consumption. . ." PUB. RES. CODE § 30253(4). Ordinarily that would mean, at a minimum, compliance with the energy-efficiency regulations in Title 24, which have become significantly stricter since 1991. However, the development agreement under which the NBC project is being built exempts the project from regulations not "specifically enumerated" in the agreement." Title 24 is not mentioned anywhere in the agreement.

In 1991, it was believed that Broadway Pier would serve as a public park and satisfy the need for such space near the NBC project. As recently as 2006, the City of San Diego issued its Downtown Community Plan and counted Broadway Pier as park space. During 2009 and 2010, however, the Port of San Diego (illegally) built a permanent cruise-ship terminal on the Pier, making it impossible for the Pier to serve as a public park. The 150-foot setback park at Lane Field will only provide about half of the park space that Broadway Pier would have provided. To meet the need for park space at the foot of Broadway, more of the NBC project must be dedicated to park space. The amount of park space promised in 1991, even with additional park space nearby, is no longer enough to meet the community's needs.

This is a small sample of the many changed circumstances that render the NBC project inconsistent with the Coastal Act. Please consult the accompanying list of 103 changed circumstances and the supporting evidence (on the enclosed DVD) for a comprehensive statement of the reasons why the Commission should make an inconsistency finding at its upcoming meeting.

My client and I thank you for the opportunity to submit these comments. If you have any questions or need additional information, please do not hesitate to give me a call.

Sincerely,

BRIGGS.LAW CORPORATION

Signature on File

Cory J. Briggs

Enclosure

cc: Mark Delaplaine (via e-mail only)



**103 CHANGES RELEVANT TO THE NAVY BROADWAY COMPLEX
SINCE THE COASTAL COMMISSIONS'S 1991 CONSISTENCY DETERMINATION**

NORTH EMBARCADERO		
1	<p>NEVP The North Embarcadero Visionary Plan was adopted in 1998, which “provides a vision for the revitalization of San Diego’s downtown waterfront from San Diego International Airport at Lindbergh Field on the north to Seaport Village on the south.”</p>	Exs. A1-A2
2	<p>Lane Field In 2007, the Lane Field Development Project was approved, authorizing an 800-room hotel project.</p>	Exs. A3-A5
3	<p>Broadway Pier In 2009, construction began for a Broadway Pier cruise ship terminal. In 2010, the terminal on Broadway Pier was awarded the “Grand Onion” and proclaimed a “pimple” on the waterfront. The permanent terminal on Broadway Pier reduces the amount of public space on the waterfront.</p>	Exs. A6-A10
4	<p>U.S.S. Midway Museum The U.S.S. Midway Museum has been approved and is operational. In its first year of operation, the museum doubled attendance projections by welcoming 879,281 guests. The Midway has now had its seven-year anniversary and has hosted 5.9 million people in that span, continuing to nearly double attendance projections.</p>	Exs. A11-A13
5	<p>NEVP Phase 1 Changes NEVP is under way with modifications from the 1998 vision. There will now be a 150-foot setback park at the northeast corner of Broadway and Harbor Drive. Phase 1 will also create driveway access to Broadway Pier for supply and passenger vehicles serving cruise ships. The “oval park” that the NEVP called for at the foot of Broadway will no longer be built.</p>	Exs. A14-A15

6	Expansion of "B" Street Pier The Port of San Diego plans to expand B Street Pier by 170 feet, which will allow for larger ships and (due to the security zone around moored cruise ships) decrease the amount of space on San Diego Bay available for public use.	Exs. A16-A17
7	Navy Pier The Port of San Diego has amended its master plan to allow for the creation of a park on Navy Pier.	Ex. A18
8	Grape Street Curvilinear Public Pier The Port of San Diego has abandoned its plans to build a curvilinear public pier at Grape Street on San Diego Bay, as contemplated by the NEVP as another location for public space on the waterfront.	Ex. A19
9	NBC-NEVP Open-Space Conflicts The NEVP recognizes a conflict with the Navy Broadway Complex, particularly with the plans for "configuration of the proposed open space at the foot of Broadway" and promises that the conflict will be resolved "in the course of implementation." In light of the compromise earlier this year for Phase 1 changes at Broadway and Harbor Drive, the conflict between the NEVP and the NBC project have gotten worse, not better.	Exs. A1 & A14-A15
10	Ruocco Park After 1991, the Port of San Diego approved the construction of Ruocco Park at the intersection of Harbor Drive and Pacific Highway, immediately south of the Navy Broadway Complex site. (Though treated as part of the South Embarcadero Redevelopment Project, Ruocco Park lies between Lindbergh Field and Seaport Village and thus also falls within the NEVP.)	Exs. A20-A21
SOUTH EMBARCADERO AREA		
11	2001 Convention Center Expansion The Convention Center expansion, which doubled the size of the original building, opened in September 2001.	Exs. B1-B3
12	Planned Convention Center Expansion Another expansion of the convention center is in the planning process.	Exs. B4-B5

13	Manchester Grand Hyatt The Manchester Grand Hyatt was opened in 1992, and the second tower opened in 2003. The hotel is scheduled for another big renovation.	Exs. B6-B7
14	Hilton San Diego Bayfront The Hilton San Diego Bayfront was constructed in 2008 and is located adjacent to the San Diego Convention Center.	Exs. B8-B9
15	Omni Hotel The Omni Hotel opened in April 2004.	Ex. B10
NORTH OF NAVY BROADWAY COMPLEX SITE		
16	Ariel Suites Ariel Suites is a 22-story apartment project north of the Navy Broadway Complex site.	Ex. C1
17	Airport In 2008, the San Diego airport master plan was revised because of four major events: (1) the events of September 11, 2001; (2) the transfer of the airport from the jurisdiction of the Port of San Diego to the Airport Authority; (3) new aviation activity forecast; and (4) a 2006 county-wide ballot measure.	Ex. C2
18	India and Beech India and Beech is a 29-story residential project north of the Navy Broadway Complex site.	Ex. C3
19	Riva Trigoso Riva Trigoso is an 87-foot condominium and office project north of the Navy Broadway Complex site.	Ex. C4
20	Breeza This is a 158-unit condominium project constructed in 2008 north of the Navy Broadway Complex Site.	Ex. C5
21	Lumina Lumina is a 21-story condominium project.	Ex. C6
Downtown Development		

22	Petco Park In 1999, a subsequent environmental impact report to the 1992 Master Environmental Impact Report for downtown San Diego was prepared for the Petco Park because of changed conditions within the Redevelopment Project Area.	Exs. D1-D3
23	Proposed Stadium A new Chargers stadium is proposed for downtown San Diego.	Exs. D4-D5
24	Federal Courthouse Expansion The federal courthouse in San Diego is being expanded on the old San Diego hotel site.	Ex. D6
25	County Courthouse There is a proposal for a new, centralized state courthouse in downtown San Diego.	Ex. D7
26	East Village Redevelopment Plan There is an East Village redevelopment plan that is being touted as being as major as the Petco Park development in downtown San Diego.	Ex. D8
27	Bosa-Kettner and Ash A 285-unit condominium high-rise was approved for development north of Santa Fe Depot near the Navy Broadway Complex site.	Ex. D9
28	Downtown Library In June 2010, the San Diego City Council voted to approve a new main library in downtown San Diego.	Ex. D10
29	880 West Broadway A 34-story project in the Columbia redevelopment area less than half a mile from the Navy Broadway Complex site is planned.	Ex. D11
30	Columbia Tower A 393-unit project in the Columbia redevelopment area less than a mile from the Navy Broadway Complex site is planned.	Ex. D12
31	First and Island A 172-unit project in the Marina redevelopment area near the Navy Broadway Complex site is planned approximately a mile from the Navy Broadway Complex site.	Ex. D13

32	Bosa Pacific Highway at Ash This project is a 36-story condominium project less than a mile from the Navy Broadway Complex site.	Ex. D14
33	Grand at Santa Fe This is a condominium project located less than a mile from the Navy Broadway Complex site with a south tower completed in 2004 and a north tower completed in 2005.	D15
34	Electra Electra is a 43-story condominium project built in 2008 less than a mile from the Navy Broadway Complex site.	D16
35	Treo at Kettner Treo at Kettner is a 26-story, 338-unit condominium project completed in late 2002.	D17
36	Sapphire Tower Sapphire Tower is a 33-story luxury condominium project completed in 2008 and is located less than a mile from the Navy Broadway Complex site.	D18
37	Bosa Pacific Highway at E This is a 271-unit condominium project located approximately a half-mile from the Navy Broadway Complex site.	Ex. D14
38	Bosa Station B Condominiums This is a 43-story condominium project located less than a mile from the Navy Broadway Complex site.	Ex. D14
39	Park Place Park Place is a 178-unit condominium project built in 2003 less than a mile from the Navy Broadway Complex site.	Ex. D19

SECURITY		
40	<p>Admiral Hering Testimony</p> <p>According to Admiral Hering, “[a] lot has changed since October 12, 2000. No one wants to believe that something like the Khobar Towers or the U.S.S. Cole could possibly happen in America’s finest city; and, more importantly, not on a military facility. [¶] We all know that it is not true and . . . those risks should not be taken.”</p>	Ex. E1
41	<p>Building Standards</p> <p>In October 2003, the Department of Defense implemented new antiterrorism/force-protection (ATFP) standards for building construction. “That philosophy affects the general practice of designing inhabited buildings.”</p>	Ex. E2
42	<p>The Navy Broadway Complex proposal “is slated to become the Navy’s center for logistics for the global war on terror.”</p>	Ex. E3
43	<p>The Navy’s military operations in downtown San Diego and in San Diego Bay are expanding significantly, including submarine redeployment, littoral combat ship deployments, mine countermeasure relocation, <i>USS Carl Vinson</i> homeporting, and additional ships.</p>	Exs. E4-E7
44	<p>The Department of Justice and the Federal Emergency Management Agency have issued publications advising public agencies about the need and methods for conducting threat assessments, including attacks against buildings.</p>	Exs. E8-E9.
45	<p>The Department of Defense (and its branches) have issued instructions, guidance, and requirements for the design and location of new facilities and other anti-terrorism measures because of the terrorism risk that military facilities face.</p>	Exs. E10-E13
46	<p>In June 2008, Brian Michael Jenkins opined that the U.S. Naval headquarters to be housed at the Navy Broadway Complex in San Diego must be considered a possible terrorist target.</p>	Exs. E14-E15

47	<p>Cruise Ship Security In April 2010, the U.S. Government Accountability Office issued a report to outline cruise ship security. The report explained: "The Coast Guard, cruise ship and facility operators, and law enforcement officials generally believe waterside attacks are a concern for cruise ships. Agency officials and terrorism researchers also identified terrorists boarding a cruise ship as a concern. The Coast Guard has also identified the potential consequences of an attack, which would include potential loss of life and economic effects."</p>	Ex. E16
48	The Navy Broadway Complex project site is located near a railway. There have been threats identified with railways.	Exs. E17-E19
GREENHOUSE GAS EMISSIONS		
50	Executive Order S-3-05 was signed in 2005.	Ex. F1
51	Assembly Bill 32 was enacted in 2006.	Ex. F2
52	<p>Greenhouse Gas Emissions Recognized as an Air Pollutant The U.S. Supreme Court concluded that "greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant.'" See <i>Massachusetts v. Environmental Protection Agency</i>, 549 U.S. 497 (2007).</p>	Ex. F3
53	<p>CEQA Guidelines The California Natural Resources Agency has approved amendments to the California Environmental Quality Act ("CEQA") addressing analysis and mitigation of greenhouse gas emissions.</p>	Ex. F4 (Final Statement of Reasons)
54	<p>Regional Focus 2050: Climate Change The report concludes that "it is abundantly clear that climate change, coupled with significant population growth, poses serious threats to the region's resources and welfare. While climate change is a global issue, a key message of the analysis in this study is that the San Diego region is uniquely threatened."</p>	Ex. F5 (page 9)

55	<p>Ocean Protection Council Resolution On March 11, 2011, the California Ocean Protection Council adopted a resolution on sea-level rise recognizing that “numerous peer reviewed scientific studies and exhaustive research have determined that sea level rise (SLR) due to climate change will have a dramatic impact on coastal development and natural resources and will pose significant planning challenges.”</p>	Ex. F6 (resolution)
56	<p>Copenhagen Diagnosis In 2009, the UNSW Climate Change Research Centre issued the “Copenhagen Diagnosis,” making several significant findings about the pace of global carbon dioxide emissions, the rate of global temperature rise, the accelerations of sea-ice decline, and sea-level rise.</p>	Ex. F7
57	<p>Climate Change and Loss of Public Access In 2009, the State Lands Commission issued a report indicating that increased storm intensity and sea level rise affiliated with climate change may lead to the loss of sandy beaches in some areas along the coast, while some areas may see an increase in the amount of sand deposited on the beach. These changes could reduce or eliminate public access along the coastline.</p>	Ex. F8
58	<p>San Diego County Emissions In 2008, a report from the Energy Policy Initiatives Center concluded that to meet AB 32 emissions reduction targets by 2020, San Diego County would have to reduce emissions by 33% below projected business-as-usual levels in 2020.</p>	Ex. F9
59	<p>Sea-Level Rise A March 2009 report estimated that a 1.4 meter sea-level rise will put 480,000 people at risk of a 100-year flood event, given the population in 2009.</p>	Ex. F10-F12
60	<p>SB 375 SB 375 calls for the development of Sustainable Communities Strategies. San Diego Association of Governments is in the process of preparing its Sustainable Communities Strategy.</p>	Ex. F13

61	Greenhouse Gas Emission Mitigation There are several feasible mitigation measures available for greenhouse gas emissions and new information on how to quantify their effectiveness.	Ex. F14
62	Coastal State Organization Policy The Coastal State Organization has recognized the unique threat of climate change to the coast.	Exs. F15-F18
AIR QUALITY		
63	Diesel Particulate In 1998, California identified diesel particulate matter as a toxic air contaminant based on its potential to cause cancer, premature death, and many other health problems.	Exs. G1-G4
64	Ozone Non-Attainment In 2003, the State of California recognized that the County of San Diego is in non-attainment under the 8-hour ozone standard. In 2009, the State of California determined that the County of San Diego remains in non-attainment under the revised ozone standards.	Exs. G5-G7.
65	New Ozone Standard The EPA is considering a new ozone standard due to concerns that the current standard is not protective enough of human health.	Exs. G8-G9
66	Sensitive Receptors The California Air Resources Board has designed a new methodology for considering air quality in making land-use decisions from a community health perspective.	Ex. G10
67	Diesel Fuel The California Air Resources Board has adopted new diesel fuel regulations.	Ex. G11
68	PM-2.5 San Diego County is in non-attainment for particulate matter 2.5 under state standards.	Exs. G12 & G14
69	PM-10 San Diego County is in non-attainment for particulate matter 10 under state standards.	Exs. G13-G14

SEISMIC/LIQUEFACTION		
70	In 1995, the City of San Diego concluded that the project site is in an area at high risk for liquefaction.	Ex. H1, Page 364
71	A 1997 survey by the California Division of Mines and Geology shows the interpreted Coronado Fault Zone (Figure 2) passing through the Navy Broadway Complex site.	Ex. H2
72	Rising sea level due to global warming increases the risk of liquefaction at the project site	Exs. H3-H9
73	New mitigation measures for dealing with liquefaction have been identified	Exs. H10-H11
74	At a meeting in August 2007, City staff agreed that three maps in the 11 th amendment to the Downtown Community Plan need to be updated to show the Coronado Fault (and another fault) "as active in the Alquist-Priolo Earthquake Fault Zone."	Ex. H12
75	In 2001, state geologists described the Coronado fault as one of the youngest faults in the Rose Canyon fault system.	Ex. H13
76	In 2006, the City of San Diego determined that the Coronado fault is active.	Ex. H14, page 209
77	A geology expert hired by <i>10News</i> concluded that Geocon's 2006 seismic study for the Navy Broadway Complex was inadequate , while another expert currently mapping the Coronado fault told <i>10News</i> that "he is sure it runs north, under the [N]avy's project. . ."	Ex. H15
78	"Existing regional data and the prior analysis of site-specific data, by Jeffrey A. Johnson, Inc. (JAJ, Inc. 2007), suggests several faults within the Coronado fault zone may underlie the NBC. The potential central location . . . and complexity of the suspected faults and the width of the set back, could require changes to the project including, reducing the footprint and/or eliminating certain structures or rendering the project infeasible."	Ex. H16, p. 5

79	Recent earthquakes have triggered questions about whether threats of damaging earthquakes in the region is bigger and different than previously assumed.	Ex. H17
WATER SUPPLY AND QUALITY		
80	The availability of water in California is so limited that a few years ago the Legislature adopted statutory requirements for assessing the supply of water for projects involving more than 650,000 square feet of floor area when those projects are reviewed under the California Environmental Quality Act. <i>See WATER CODE § 10910 et seq.</i>	Ex. I1
81	The Governor of California declared a drought in June 2008.	Ex. I2
82	On October 30, 2008, the San Diego County Water Authority announced that it will receive only 15% of its normal annual water allocation from the State Water Project--the second lowest allocation in history--and intensified calls for immediate water conservation measures.	Exs. I3-I4
83	In 2008, the Mayor of San Diego commented on the "harm that water shortages pose to our economy and quality of life" and declared a water emergency.	Exs. I5-I6
84	On October 30, 2008, the Metropolitan Water District announced that it "cannot expect any short-term relief from its supply situation if it begins to rain in the Southland, in Northern California or in the Colorado River watershed. The Delta's serious environmental problems are driving court decisions and regulatory actions that are drastically limiting the ability to move water across the estuary. This is not a short-term problem that will be washed away with a few good storms. * * * But now we are facing a continuing historic dry cycle and unprecedented environmental challenges in the Delta."	Ex. I7

85	According to an October 2008 report by California's Department of Water Resources, greenhouse gases and climate change are having an adverse affect on water supplies and make forecasting extremely difficult.	Ex. I8
86	Urban Water Management Plan The San Diego County Water Authority has issued a 2005 Urban Water Management Plan and more recently the 2010 Urban Water Management Plan.	Ex. I9
87	Dry Reservoirs A recent study has found that there is a one-in-two chance that the water reservoirs of the Colorado River will dry up by 2050 if water management practices remain unchanged in our warming world.	Ex. I10-I11
88	Less Flow: Colorado River By 2050, the Colorado River is estimated to have a decline in flow of approximately 18%.	Ex. I12-I15
89	Toxics rule In 2000, the EPA promulgated numeric water quality criteria for priority toxic pollutants and other water quality standards provisions to be applied to waters in the State of California.	Exs. J1-J2
90	Priority Clean Up In 2000, the Regional Water Quality Control Board prepared a toxics hot spots cleanup plan for B Street and Broadway Piers.	Ex. J3
91	Urban Runoff San Diego has needed to apply stricter urban runoff standards in the past decade.	Exs. J4-J6
PUBLIC SERVICES		
92	Police The City of San Diego is struggling with maintaining adequate police protection.	Exs. K1-K3
93	Fire Protection The City of San Diego is struggling to maintain adequate fire protection.	Exs. K4-K8

94	The Unified Port of San Diego has provided substantial evidence of significant changed circumstances and new information concerning the downtown area related to San Diego's financial crisis and other factors.	Ex. K9
95	Strains on Roadways and Parking All of the increased development in San Diego is already straining roadway and parking capacity.	Ex. K10
96	Landfill Capacity Mirimar Landfill will likely be filled to capacity and close by 2022.	Ex. K11
GROWTH, POLICY, AND PLAN CHANGES		
97	City of San Diego General Plan Update A new General Plan was adopted in 2008.	Ex. L1
98	Tourism Marketing District A Tourism Marketing District has been formed in the City of San Diego in order to promote tourism for the benefit of the hotel industry. The Tourism Marketing District was set to expire in 2012, but is in the process of being extended; extension is not certain.	Exs. L2-L3
99	Downtown Community Plan In 2006, Centre City Development Corporation approved the Downtown Community Plan. Notably, at that time, Broadway Pier was identified as a park in the pipeline (Figure 4-1). As noted above, Broadway Pier has been developed as a cruise ship terminal and provides no park space.	Ex. L4
100	Transit Plan In 2007, the San Diego Association of Governments ("SANDAG") approved a transportation plan for the San Diego region recognizing the challenges that the region faces due to its growth.	Ex. L5
101	Population Growth In February 2010, SANDAG accepted the 2050 Regional Growth Forecast, which forecasts that the population of San Diego will reach 4.4 million residents by 2050.	Ex. L6

	<p>San Diego County General Plan San Diego County adopted an updated General Plan in 2011.</p>	Ex. L7
102	<p>California Title 24 Energy Efficiency Paragraph 5.2 of the Development Agreement for the Navy Broadway Complex between the City of San Diego and the Navy provides in part as follows: "The rules, regulations and official policies governing the development of the Navy Broadway Complex shall be only those rules, regulations and policies specifically enumerated in this Agreement."</p>	Ex. L8
103	<p>Navy Broadway Complex Hotel The developer of the Navy Broadway Complex project recently announced that it plans to build a 1,058-room convention-style hotel at the site.</p>	Ex. L9

**ATTACHMENT:
INDEX OF EXHIBITS**

Exhibit	Description	Date
North Embarcadero		
A1	North Embarcadero Visionary Alliance Plan	1998
A2	Final Master Environmental Impact Statement for North Embarcadero Visionary Plan	Not Identified
A3	Addendum to Master Environmental Impact Statement for Lane Field Project	Not Identified
A4	"Port Oks Waterfront Development's Concept" SignOn San Diego	February 14, 2007
A5	Agenda Items #21A,B, and C-Lane Field San Diego Slide Show	February 13, 2007
A6	Addendum to the Master EIR and Initial Study for the North Embarcadero Visionary Plan Broadway Pier Cruise Ship Terminal and Infrastructure Improvement Project	April 23, 2007
A7	Addendum to Item Wed 11b, Coastal Commissions PMP Application PSD-DM-40-09 for the Commission Meeting of April 8, 2009	April 6, 2009
A8	"Activists Offer to Settle Lawsuit Over Broadway Pier"	October 18, 2010
A9	"Ugly, Metal Warehouse on the Bay? I Think Not" SignOn San Diego	August 26, 2007
A10	"Orchids and Onions Awards: Do You Agree with the Jury?" SignOn San Diego	November 4, 2010
A11	USS Midway Museum-The Museum's Odyssey	November 6, 2007
A12	"USS Midway Embroiled in Battle Over Plan to Create San Diego Museum" Stars and Stripes	March 12, 2001
A13	"USS Midway Museum Mark 7-Year Anniversary"	June 6, 2011
A14	Memorandum of Understanding for the North Embarcadero Visionary Plan Phase 1, North Embarcadero Port Master Plan Amendment, and Lane Field Project	November 15, 2010

A15	California Coastal Commission Staff Report and Recommendation on Appeal; Appeal A-6-PSD-11-006	March 23, 2011
A16	Notice of Coastal Development Permit Waiver	June 2, 2011
A17	Notice of Permit Waiver Effectiveness	June 16, 2011
A18	Port of San Diego Master Plan Overview	October 19, 2011
A19	Port of San Diego Notice of a Public Scoping Meeting for and Notice of Preparation of a Draft Environmental Impact Report	September 2009
A20	Port of San Diego Project Background of the Old Police Headquarters and Park	October 20, 2011
A21	Port of San Diego Project Description of Ruocco Park	October 20, 2011
South Embarcadero Area		
B1	San Diego Convention Center-About Us	November 6, 2007
B2	San Diego Unified Port District Proposed Master Plan Amendment	May 26, 1998
B3	Staff Recommendation on San Diego Unified Port District Port Master Plan Amendment No. 31 (South Embarcadero Redevelopment 2) for Commission Consideration and Possible Action at the Meeting of December November 14, 2001	November 15, 2001
B4	Fact Sheet-Mayor Sanders Announces Plans to Expand San Diego Convention Center	September 23, 2008
B5	"Sander to Hoteliers: Convention Expansion Still a Go" SignOn San Diego	October 14, 2011
B6	"Manchester Grand Hyatt Set for Big Renovation," San Diego Business Journal	September 9, 2011
B7	Manchester Grand Hyatt Factsheet	Undated
B8	"Explosion at Hilton Hotel"	May 19, 2008
B9	"New Hilton San Diego Bayfront Is Good, but Nothing Too Special"	January 28, 2009
B10	"Let Omni San Diego Hotel Take You Out to the Ballgame"	March 23, 2011

North of Navy Broadway Complex Site		
C1	Centre City Development Corporation-Information on Ariel Suites	October 17, 2011
C2	Airport Master Plan for the San Diego International Airport-Chapter 1	May 2008
C3	Centre City Development Corporation-Information on India and Beech	October 17, 2011
C4	Centre City Development Corporation-Information on Riva Trigoso	October 17, 2011
C5	Downtown San Diego Condo Information on Breeza	October 17, 2011
C6	Al Mare Realty Information on Lumina	October 17, 2011
Downtown Development		
D1	Final Master Environmental Impact Report for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents	April 1992
D2	Final Subsequent Environmental Impact Report for the Final Master Environmental Impact Report for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendment	September 13, 1999
D3	East Village Ballpark Ancillary Development	2007
D4	"Chargers Make Run at Convention Stadium Design" SignOn San Diego	September 19, 2011
D5	"City Hires Chargers Stadium Consultant" NBC San Diego	October 14, 2011
D6	"Federal Courthouse Expansion Costs Jump to \$300 Million Despite Streamlining" Correctional News	January 8, 2008
D7	"New Downtown Courthouse to be Safer, Bigger" SignOn San Diego	September 9, 2010
D8	"East Village Plan Biggest Since Petco Park" SignOn San Diego	October 13, 2011

D9	"Condo High-Rise Approved, Completion in 2015" SignOn San Diego	May 25, 2011
D10	"Downtown Library's Revival Complete" Voice of San Diego	June 28, 2010
D11	Centre City Development Corporation Property Information on 880 West Broadway	October 17, 2011
D12	Centre City Development Corporation Property Information on Columbia Tower	October 17, 2011
D13	Centre City Development Corporation Property Information on First and Island	October 17, 2011
D14	Residential Developments and Mixed Use Projects in the Columbia District	October 17, 2011
D15	The Grande at Sante Fe Place	October 17, 2011
D16	Electra Condos San Diego	October 16, 2011
D17	Information on Property located at 1227 Kettner & 1240 India Street	October 17, 2011
D18	Information on Sapphire Tower Condos San Diego	October 17, 2011
D19	Information on Park Place (Marina Neighborhood)	October 17, 2011
D20	Residential Developments and Mixed Use Projects in the Marina District	October 17, 2011
D21	Interactive Map	Not Identified
D22	Centre City Redevelopment Projects	Not Identified
Security		
E1	Security Against Terrorism on U.S. Military Bases [H.A.S.C. No. 107-25]	November 5, 2007
E2	Unified Facilities Criteria-DoD Minimum Antiterrorism Standards for Buildings	October 8, 2003
E3	"Military Seen as Stabilizing Economic Force in County" SignOn San Diego	August 25, 2008
E4	Statement of Captain Leendert R. Hering, USN Commanding Officer of the Naval Base San Diego	June 28, 2001
E5	"2008 San Diego Economic Impact Study: \$25 Billion" Navy News	September 28, 2008

E6	San Diego Military Economic Impact Study	August 2008
E7	The Economic Impact of the U.S. Military on the San Diego Region	January 2007
E8	Assessing and Managing the Terrorism Threat	September 2005
E9	Risk Management Series-A How to Guide to Mitigate Potential Terrorist Attacks Against Buildings	January 2005
E10	Department of Defense Combating Terrorism Program Procedures	June 15, 1994
E11	Department of Defense Instruction-Antiterrorism Standards	June 14, 2001
E12	Joint Tactics, Techniques, and Procedures for Antiterrorism	March 17, 1998
E13	Department of Defense Handbook-Selection and Application of Vehicle Barriers	February 1, 1999
E14	Initial Comments on the Risk of Terrorism Associated with the New Navy Headquarters and its Effect on the Surrounding Community	October 13, 2008
E15	Profile of Brian Michael Jenkins	October 14, 2008
E16	Report to the Chairman, Committee on Homeland Security, House of Representatives- Maritime Security	April 2010
E17	RAND Corporation Testimony-Terrorism and Rail Security	March 2004
E18	"MTA Plans Security Upgrades on Rail Lines" Los Angeles Times	October 16, 2011
E19	"Rail Security and the Terrorist Threat" Council Foreign Relations	October 16, 2011
GHG's		
F1	Executive Order S-3-05	June 1, 2005
F2	Assembly Bill No. 32 Chapter 488	September 27, 2006
F3	Supreme Court of the United States v. Environmental Protection Agency; Case no. 05-1120	Not Identified

F4	California Natural Resources Agency-Final Statement of Reasons for Regulatory Action	December 2009
F5	The San Diego Foundation Regional Focus 2050 Study	Not Identified
F6	Resolution of the California Ocean Protection Council on Sea-Level Rise Adopted on March 11, 2011	March 11, 2011
F7	The Copenhagen Diagnosis-Updating the World on the Latest Climate Science	2009
F8	A Report on Sea Level Rise Preparedness-Staff Report to the State Lands Commission	December 2009
F9	San Diego County Greenhouse Gas Inventory-Executive Summary	September 2008
F10	The Impacts of Sea-Level Rise on the California Coast	March 2009
F11	Projecting Future Sea Level	March 2006
F12	Climate Change Scenarios and Sea Level Rise Estimates for the California 2008 Climate Change Scenarios Assessment	March 2009
F13	Senate Bill No. 375; Chapter 728	September 30, 2008
F14	CAPCOA: Quantifying Greenhouse Gas Mitigation Measures	August 2010
F15	CSO Recommendations on Objective 5: Resiliency and Adaptation to Climate Change and Ocean Acidification	April 28, 2011
F16	Policy to Support Coastal States and Territories to Adapt to Climate Change and Advance a Coordinated National Climate Adaptation Strategy	October 17, 2011
F17	Emerging Coastal Management Challenges and Solutions	Not Identified
F18	The Role of Coastal Zone Management Programs in Adaptation to Climate Change	September 2008
Air Quality		
G1	Air Resource Board-Summary of Adverse Impacts of Diesel Particulate Matter	July 2005

G2	Air Resource Board-Health Effects of Diesel Exhaust Particulate Matter	Not Identified
G3	Digging Up Trouble-The Health Risks of Construction Pollution in California	November 2006
G4	Findings of the Scientific Review Panel on the Report on Diesel Exhaust	April 22, 1998
G5	Correspondence Letter from Air Resources Board to Jack Broadbent Regarding Ozone Standard	July 15, 2003
G6	San Diego 8 Hour Ozone Nonattainment Area	Not Identified
G7	Correspondence Letter from Air Resource Board to Laura Yoshii Regarding Recommendations for Area Designations	March 11, 2009
G8	Federal Register-Volume 75 No. 11	January 19, 2010
G9	Fact Sheet: Proposal to Revise the National Ambient Air Quality Standards for Ozone	Not Identified
G10	California Air Resources Board-The California Diesel Fuel Regulations	Not Identified
G11	California Air Resources Board-The California Diesel Fuel Regulations	August 14, 2004
G12	2011 Area Designations for State Ambient Air Quality Standards	Not Identified
G13	2011 Area Designations for State Ambient Air Quality Standards	Not Identified
G14	Area Designations Maps/State and National	October 17, 2011
Seismic		
H1	Draft Master Environmental Impact Report for the North Embarcadero Alliance Visionary Plan	December 1999
H2	Geotechnical and Geologic Fault Investigation	July 12, 2006
H3	"Brace for Hide Tide" SignOn San Diego	June 24, 2007
H4	Climate Change 2001: Impacts, Adaptation, and Vulnerability	Not Identified
H5	Influence of Global Warming on Coastal Infrastructural Instability	December 8, 2006

H6	Google Map	November 21, 2007
H7	Seismic Safety Element	Not Identified
H8	Google Map	November 21, 2007
H9	Coastal Impact Study: Nation Under Siege	November 21, 2007
H10	"New Document Published to Aid California Cities and Counties in Taking Protective Measures Against Soil Liquefaction" Southern California Earthquake Center	April 19, 1999
H11	Recommended Procedures for Implementation of DMG Special Publication 117 Guidelines for Analyzing and Mitigating Liquefaction in California	March 1999
H12	Briggs Law Corporation's Record Report	August 28, 2007
H13	California Geology	July/August 2001
H14	Executive Summary Chapter 1.0-Downtown Community Plan	Not Identified
H15	"Will Waterfront Project Sink Due to Safety Concern?"	June 14, 2007
H16	Correspondence from Jeffrey A. Johnson Regarding Engineering Geologic Review	October 15, 2008
H17	"Big Mexican Quake Changes Thinking About Faults" SignOn San Diego	April 4, 2011
Water Supply		
I1	Senate Bill No. 610 Chapter 643	October 9, 2001
I2	Governor Schwarzenegger Proclaims Drought and Orders Immediate Action to Address Situation	June 4, 2008
I3	"State to Limit Water Supply Deliveries in 2009 Water Authority Intensifies for Water Conservation	October 30, 2008
I4	Email from Don Wood Regarding Water Source	November 1, 2008
I5	"Overcoming Financial Challenges" Mayor Jerry Sanders	October 14, 2008
I6	City of San Diego Notice of Stage One Voluntary Compliance	Not Identified

I7	Metropolitan General Manager's Statement on Initial State Water Project Allocation for 2009	October 30, 2008
I8	Managing an Uncertain Future	October 2008
I9	San Diego County Water Authority 2010 Urban Water Management Plan	June 2011
I10	"Western Reservoirs Could be Dry by 2050" Live Science	July 20, 2009
I11	"Future of Western Water Supply Threatened by Climate Change" CIRES	July 20, 2009
I12	The Colorado River's Uncertain Future-How Climate Change May Affect Future Planning Decisions on the Colorado River	January 26, 2007
I13	"Managing the Uncertainties on the Colorado River System"	Not Identified
I14	"Climate Change Means Shortfalls in Colorado River Water Deliveries" Scripps Institution for Oceanography	April 20, 2009
I15	"Sustainable Water Deliveries from the Colorado River in Changing Climate"	February 6, 2009
Water Quality		
J1	Federal Register-Environmental Protection Agency	May 18, 2000
J2	Laws and Regulations-Water Quality Standards	October 17, 2011
J3	Regional Water Quality Control Board-Toxic Hot Spot Cleanup Plans for B Street	November 8, 2000
J4	"State High Court Lets Ruling Stand on Urban Runoff" SignOn San Diego	March 31, 2005
J5	Blank	Not Identified
J6	"The Effects of Urbanization on Water Quality: Urban Runoff" USGS Water Science for Schools	December 14, 2010
Public Service		
K1	Correspondence from the City of San Diego Regarding Centre City Community Plan Update	February 3, 2004
K2	"Thinning Blue Line" SignOn San Diego	October 9, 2005

K3	City of San Diego Manager's Report Regarding Public Safety and Neighborhood Services Committee	January 7, 2005
K4	Fire-Rescue Department Part I Support Services	February 12, 2004
K5	Fire-Rescue Department Part II Support Services	April 29, 2004
K6	San Diego Fire Rescue Strategic Plan	June 2004
K7	"As San Diego Grew, Firefighting Didn't Keep Up" Voice of San Diego	November 9, 2007
K8	"As Fire Chief Departs, Uncertainty Smolders" SignOn San Diego	June 2, 2006
K9	Correspondence from Unified Port of San Diego Regarding Draft Addendum to the Final Subsequent EIR	May 6, 2005
K10	Destination Downtown: The Transit Solution	October 11, 2008
K11	City of San Diego Miramar Landfill	Not Identified
Growth and Policy		
L1	City of San Diego General Plan	2008
L2	San Diego Tourism Marketing District Management Plan	September 2007
L3	Request for Council Action	July 6, 2011
L4	San Diego Downtown Community Plan	March 2006
L5	2030 San Diego Regional Transportation Plan-Final	November 2007
L6	2050 Regional Growth Forecast	February 26, 2010
L7	San Diego County General Plan	August 3, 2011
L8	Agreement Between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines for the Redevelopment of the Navy Broadway Complex	December 15, 1992
L9	"Manchester Moving Forward on Pacific Gateway Complex for Navy" SignOn San Diego	May 5, 2011



Affiliated with...

San Diego and Imperial Counties
Labor Council
State Federation of Labor
State Culinary Alliance
Union Label & Service Trades Council

October 28, 2011

By Email and Fax

Chairperson Mary Shallenberger
and Honorable Commissioners
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Re: Item W6a – Consistency Determination, Navy Broadway Complex
(No. CD-047-90)

Dear Chairperson Shallenberger and Honorable Commissioners:

I am writing on behalf of UNITE HERE Local 30's over 4,500 members in San Diego's hotel, hospitality and food service industries, to express our strong support for Coastal Commission staff's recommendation regarding the Navy Broadway Complex ("Project"). We urge the Commission to find that, 1) There are changed circumstances since those that were considered when the Project was originally heard by the Commission in 1991, and 2) That the Project is no longer consistent with the Chapter 3 policies of the Coastal Act.

Since 1991, there have been over one hundred significant planning, development, and policy changes impacting the character of San Diego's downtown waterfront. The Commission staff report and the October 21, 2011 letter submitted by the Navy Broadway Complex Coalition ("NBCC"), of which UNITE HERE is a member organization, extensively catalog these new circumstances.

October 28, 2011

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Among these changes, the recent passage of the North Embarcadero Visionary Plan ("NEVP") is the most recent and noteworthy example. We have spent the last three years working with the NBCC, Lane Field Developers, Commission staff and other public stakeholders to prevent the Port of San Diego from eliminating a public park at the foot of Broadway from the NEVP. The result of this rare collaboration is a project that provides the open space and quality public amenities required by the Port's Master Plan and concluded with an approval by the Commission earlier this year. It is critical to preserving the progress reflected in the recently approved NEVP that the Commission finds that the Navy Broadway Project will affect coastal resources in a manner substantially different from those considered in 1991.

It is equally important that the Commission find the proposed Project inconsistent with the Chapter 3 policies of the Coastal Act. Again, the many violations have been clearly articulated in the staff report and the NBCC letter. To provide a brief summary - 1) The Project fails to protect the scenic quality of the coastal area, 2) The Project's mass and scale are incompatible with the 2006 Downtown Community Plan and the surrounding area, reflected in the 10-plus story towers built out to the sidewalk, 3) The Project prioritizes non-priority uses under the Coastal Act such as office space and retail at the expense of other high-priority uses, 4) The Project lacks an adequate supply of public parks and open space, 4) The Project provides no provision for affordable accommodations or mitigation for the over 1,000 high end hotel rooms planned for the site, and 5) The Project has not sufficiently analyzed or mitigated potentially adverse impacts from traffic, parking and geologic hazards. For these reasons, the Commission should find the Project is no longer consistent with the Coastal Act.

Over the past 20 years, San Diego has begun to experience a shift in thinking about coastal planning. Long-term planning efforts, collaboration between the government agencies and an increasing public awareness have allowed us to make better decisions about coastal development. The proposed Navy Broadway Project represents a less enlightened past and threatens to undermine the progress we have made. It is our hope that with your leadership and an engaged public, the Navy Broadway site can be developed in a more balanced manner where business thrives, the public can access the waterfront, and coastal resources are protected and enhanced.

On behalf of San Diego hotel workers, I urge the Coastal Commission to support their staff and find changed circumstances have occurred since 1991 and

October 28, 2011

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that the Project is no longer consistent with California Coastal Act. Thank you for your consideration.

Sincerely,

Signature on File

Brigette Browning
President
UNITE HERE, Local 30

cc: Mark Delaplaine
Federal Consistency
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219



COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

October 21, 2011

Mary K. Shallenberger, Chair
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Via Electronic Mail

jstaben@coastal.ca.gov
clester@coastal.ca.gov
tluster@coastal.ca.gov

RE: Item 6-a on Commission's Agenda for November 2, 2011
(CD-047-90; Navy, San Diego)

Dear Commissioner Shallenberger::

The Coastal Environmental Rights Foundation (CERF) would like to take the opportunity to support and join with comments submitted by Briggs Law Corp on behalf of the San Diego Navy Broadway Complex Coalition (the Coalition.) CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF agrees with the Coalition's arguments substantiating that, since the 1991 consistency determination for the Navy Broadway Complex Project, there are now changed circumstances which warrant a finding of inconsistency.

CERF joins in the request that the Commission find there are changed circumstances rendering the Project inconsistent with the Coastal Act. As there is limited detail in the developer's proposal, any additional approvals should be delayed until such time that the developer brings a specific, detailed proposal that may be fully evaluated.

Thank you for your consideration of CERF's comments in advance of the November meeting.

Sincerely,

Signature on File

SARA HONADLE
PROGRAMS DIRECTOR





TEL 619.758.7745
FAX 619.224.4638

ADDRESS 2825 DEWEY ROAD, SUITE # 200
SAN DIEGO, CALIFORNIA 92106

WWW.SDcoastkeeper.org

IMPACT

October 26, 2011

Mary K. Shallenberger, Chair
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

RE: Item 6-a on Commission's Agenda for November 2, 2011 (CD-047-90; Navy, San Diego)

Dear Commissioner Shallenberger and Members of the California Coastal Commission:

San Diego Coastkeeper, the largest professional environmental organization in San Diego County protecting the region's inland and coastal waters for the communities and wildlife that depend on them, strongly concurs with the Navy Broadway Complex Coalition's position on the above-referenced item.

Coastkeeper joins in the Coalition's support of the staff recommendation with the caveat that not enough is known about the specifics of the project to impose meaningful, enforceable conditions at this time.

Although Staff is correct that the Commission may identify measures (pursuant to Section 930.46(b) of the federal regulations implementing the CZMA) that would bring the project into compliance with the California Coastal Management Program (CCMP) to the maximum extent practicable, we urge the Commission to wait until the developer brings forward a specific proposal to be evaluated for consistency. The eleven major categories suggested by Staff (page 33-34 of Staff Report) are testament to the scale of changes required for consistency.

Coastkeeper urges the Commission to find that there are changed circumstances rendering the project inconsistent with the CCMP. Those changed circumstances are fully detailed in the Staff Report and in the October 21, 2011 letter from the Coalition.

Thank you for the opportunity to submit these comments. Coastkeeper will be available on November 2, 2011 for oral testimony on the proposed item.

Sincerely,

Signature on File

Gabriel Solmer
Advocacy Director

October 27, 2011

California Coastal Commission
C/O Diana Lilly, Coastal Planner
7575 Metropolitan Drive
Suite 103
San Diego, CA 92108

**Subject: Item W 6a of the November 2, 2011 meeting agenda:
"Staff Recommendations on Re-evaluation of Consistency Determination"
regarding the proposed Navy Broadway Complex redevelopment project**

Chairwoman Shallenberger and Commissioners:

I am writing to you as a long time activist involved in the planning for San Diego's downtown embarcadero. I have been active in planning for the city's waterfront since the 1980s. Most recently, I served on the San Diego Unified Port District's North Embarcadero Port Master Plan Amendment Citizen's Advisory Committee, providing input on the future redevelopment of the city's downtown waterfront.

I am writing in strong support of your staff's report and recommendations regarding The Navy Broadway Complex redevelopment project proposal being put forward by the Navy and the Manchester Pacific Gateway group. I agree with staff that changes that have taken place along the North Embarcadero over the last twenty years have significantly changed the context in which this project would proceed and drastically changed the long term impacts this project would have on the city's downtown bayfront.

I also concur with your staff's findings that the currently proposed project is inconsistent with the California Coastal Management Program (CCMP). I agree that over the last twenty years, there has been increasing public awareness of the value of waterfront sites and their land/water connections, the need for more human scale redevelopment of our waterfront, and the need to maximize public access and recreational opportunities, including the creation of public parks, increased opportunities for walking and biking along our bayfront and public transit. We need to move away from today's reality of our bayfront being a huge parking lot for cars, trucks, giant cruise ships, massive new hotels and maritime unrelated office buildings which block public access to our harbor.

I urge you to adopt the resolutions recommended by your staff and find the current proposal inconsistent with the CCMP, and tell the project promoters to go back to the drawing board and bring you a revised and refined project proposal that will increase public access and views from downtown's central business district to the bay. Please reject the current proposal and take no action related to this site until a new redevelopment proposal has been designed and fully vetted by the public through the

state's environmental review process. Any new project proposal should include more public park space along the western portion of the property, and massing of any commercial structures along the Pacific Highway side of the property.

The western half of the property should be kept as public open space to allow San Diegan's and visitors to enjoy our downtown waterfront.

Hopefully, if this project proposal falls through the Navy may decide to build a new regional headquarters in a secure local naval base to reduce the growing risk of terrorist attacks which former Admiral Len Hering warned about in comments to Congress after the 9/11 attack on New York. Perhaps the Navy will even decide to deed the property back to the City of San Diego now that it is no longer needed for military purposes.

In any case, I urge you to support your staff's findings and recommendations, and direct the project promoters to redesign the project in a manner that would make it consistent with the CCMP.

I am aware that the project developer has leaned on local politicians to support the existing project proposal with totally unsupported and unrealistic claims about the economic impacts the project might have on the region's economy, and has paid for new "studies" claiming enormous economic benefits if the project were to go forward. Please consider the source of these wild claims and do your job of protecting the public's access to publicly owned California tidelands. Your staff is right, I urge you to please adopt their recommendations regarding significant changes since 1991 and direct the project promoters to redesign the project to fully comply with California's law and regulations. .

Sincerely,

Don Wood, Sr. Policy Advisor
Pacific Energy Policy Center
4529 Lee Avenue
La Mesa, CA 91941
619-463-9035
dwood8@cox.net

October 28, 2011

California Coastal Commission
C/O Diana Lilly, Coastal Planner
7575 Metropolitan Drive Suite 103
San Diego, CA 92108

RE: Marti E Kranzberg comments for Item W 6a of the November 2, 2011 meeting agenda:

**"Staff Recommendations on Re-evaluation of Consistency Determination"
regarding the proposed Navy Broadway Complex redevelopment project**

Chairwoman Shallenberger and Commissioners:

As a member of the board of directors for Partners for Livable Places/San Diego I have been involved with public input and planning of the San Diego Embarcadero for well-over 20 years. PLP/SD has promoted public/private partnerships since the early 1980s, bringing experts to the community for urban development and waterfront symposiums and seminars prior to building the Convention Center and its expansion, which has successfully, for the most part, blocked public access to the Bay both visually and physically. I have helped lead the successful effort to establish the USS SAN DIEGO Memorial on the G Street Mole. I have a good understanding of the Port, as well as Public, concerns and considerations.

I have recently attended almost all of the Port's "Citizen Advisory Committee" meetings as an alternate member of it, and I am quite well informed and knowledgeable about the Port's plans for substantial changes being discussed regarding the North Embarcadero. I am writing **in support of Coastal Commission staff recommendations** regarding the Broadway Complex redevelopment proposal presented by the Navy and the Manchester Pacific Gateway group. Significant changes have taken place in the world in the last 20 years, which have a profound effect on US Coastal Security. The terrorists' acts of 9/11 have changed the game.

Significant changes in the complexion of the San Diego community, in and around our coastline and the tidelands have also undeniably occurred. Also important, new information regarding seismic activity that was not part of previous considerations 20 years ago has come to light. These are irrefutable facts that must be properly weighed before proceeding with any plans based on old needs, statistics and information.

I urge you to adopt the resolutions your staff has recommended which find the current proposal inconsistent with the CCMP. Please reject the current proposal and take no action until further review of public safety, community access, traffic, including mass transit and personal vehicular, as well as pedestrian and non-motorized modalities, and future parking needs have been addressed appropriately and realistically.

The Navy/Manchester proposal does not adequately address the impact which has resulted from the current changes in the composition of residents and tourists, workers and other NGO operations, as well as the transportation and parking issues which have also changed dramatically over the past 20 years. This project has yet to be examined critically regarding how its "economic feasibility" undermines the mission of the California Coastal Commission and the state laws designed to:

Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.

Thank you for your prudent consideration of this critically important decision for the future fate of San Diego's "Front Porch."

One final concern: I was at CAC meetings, which were comprised of involved and knowledgeable community representatives and experts who generously donated a great amount of personal time to weigh in on what the Port had to present. **One of the most frequently voiced concerns was with providing not just public "green space," but of the placement of the public spaces on the WEST side of Harbor Drive.**

The idea of redesigning Harbor Drive to "meander" with gentle curves instead of a straight, wide boulevard or a narrowing bottleneck was enthusiastically acknowledged as a great way to increase green space on the harborside at various spots, as well as act to slow and calm traffic in order to make the street a more scenic drive. Adding curves to Harbor Drive would allow a more leisurely route around the tidelands to enjoy the view, while encouraging through traffic to route along Pacific Highway and inland. I encourage you to request further investigation of this idea before allowing permanent changes to Harbor Drive as a thoroughfare.

Thanks again for your efforts to protect, conserve and enhance our waterfront here in San Diego, and **find this current proposal inconsistent with the CCMP.**

Warm regards,
Marti E Kranzberg
1625 Hotel Circle So. C106
San Diego, CA 92108
619-296-3434
Marti.K@cox.net

LEAGUE OF WOMEN VOTERS OF SAN DIEGO

4901 Morena Blvd. Bldg 100, Suite 104
San Diego, CA 92117

November 1, 2011

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Re: CD-047-90 (Navy, San Diego) Commission determination on whether the Commission's 1991 concurrence with the Navy's Consistency Determination for Broadway Complex, Broadway and Harbor Drive, San Diego, remains valid, and whether the project, which has not yet commenced, remains consistent to the maximum extent practicable with the California Coastal Management Program.

Dear Chairperson Shallenberger and Commissioners:

The League of Women Voters of San Diego has followed the Navy Broadway Complex since it was first under consideration for redevelopment. Our interest continues for the best development of this site, considering the many environmental issues involved.

The League of Women Voters of San Diego supports the staff recommendation before you: (1) to find that it is reasonably foreseeable that (a) the project will affect coastal uses and resources in a manner substantially different from what was originally described in the Navy's 1990 consistency determination, and that (b) as a result of those effects the project is no longer consistent to the maximum extent practicable with the enforceable policies of the Commission's California Coastal Management Program; and (2) to object to the Navy's consistency determination on the basis of those findings.

Attached to this letter is our full statement regarding the Navy Broadway Complex. The League is available to answer your questions and to work with your staff on this project, if you wish.

Thank you for your attention to our statement.

Sincerely,

Jeanne Brown, Co-President

Mary Jean Word, Co-President

Attachment: League of Women Voters of San Diego Statement of Concerns

NAVY BROADWAY COMPLEX - STATEMENT OF CONCERN

The League of Women Voters of San Diego's (LWVSD) adopted position states that the San Diego Unified Port District should include protection of the natural environment as a primary responsibility, emphasize recreation for the general public and maintain a balance of maritime commerce and other business.

The LWVSD supports the premise that there have been significant changes in the City's downtown core (Centre City), since 1991. Petco Park, the extension of the Convention Center and the U.S.S. Midway, berthed across the street from the Navy Broadway Complex (NBC) site, are some examples of new development that have changed the character of downtown.

In the past 20 years there has been an increase in population density (from an estimated 14,897 in 1990 to 40,326 in 2010) and a greater emphasis on residential development with its accompanying increase in traffic. These new circumstances trigger a greater demand for downtown parks, open space and a need for public access along the waterfront.

Other significant changes since 1991 are 9/11 and new concerns about terrorist attacks, resulting in increased security regulations to protect citizens and infrastructure. In addition, seismic studies of the area have discovered fault lines, subjecting the site to possible earthquake activity. Public safety must be taken into consideration.

Additional changes to the area include the construction of a new cruise ship terminal on the Broadway Pier which serves the cruise ship industry but adversely obstructs the view corridor where Broadway meets the Bay and also results in the loss of the signature destination oval park at the foot of Broadway, which was a centerpiece of the North Embarcadero Visionary Plan (NEVP).

The NBC is a key site in the NEVP and the current project is contradictory to a plan which emphasizes public access, with improvements along Harbor Drive, including an esplanade along the waterfront, landscaping, street alignments and parks. The scale of the NBC development contributes to declining public access due to the cumulative impacts of intensive development along the waterfront that tend to wall off the Bay and discourage pedestrian activity.

The League supports a different vision for this extraordinary site with its remarkable views of the bay, a vision where people will come to simply enjoy the waterfront. The NBC site has the potential for a world class park that would include a grand venue for cultural opportunities, a public space for festivals and public gatherings, water features, walking/biking paths and a children's playground. Our vision would fulfill the need for more park space downtown, reduce the danger of terrorist attacks and provide a vibrant destination for San Diego residents, visitors and all Californians.

Mark Delaplaine

From: reint reinders [reint@reintreinders.com]

Sent: Wednesday, October 26, 2011 3:39 PM

To: Mark Delaplaine

Subject: Navy Complex

For many years we have been anxiously awaiting a resolution to the rebirth of the San Diego waterfront. It is incomprehensible when walking along the waterfront to see the lack of progress and the general malaise the area continues to suffer.

In today's difficult environment of resources it is exciting to see a project that can move forward and that will have an impact on the subsequent development pieces of this waterfront. I urge you to approve this new Navy headquarters building and encourage the continuation of the development of the other pieces of infrastructure on this property. Thank you.

Reint Reinders

Mark Delaplaine

From: rdittbenner [rdittbenner@sprynet.com]

Sent: Thursday, October 27, 2011 6:23 AM

To: Mark Delaplaine

Subject: The Navy Headquarters should not be located in its proposed location on San Diego Harbor
It is a bad idea to put it there. That area should be dedicated for the benefit of all San Diegans. The HQ can be better located away from such a precious water resource.

Thanks,

Richard Dittbenner
San Diego, California USA

ON VALUES - "Courage is the most important of all the virtues, because without courage you can't practice any other virtue consistently." - "I have learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel." Maya Angelou - **ON LEADERSHIP** "If you do not look at things on a large scale, it will be difficult to master strategy."
Miyamoto Murashi - "If your actions inspire others to dream more, learn more, do more and become more; you are a leader" John Quincy Adams

Mark Delaplaine

From: Tom Geldner [geldner@gmail.com]
Sent: Wednesday, October 26, 2011 11:37 PM
To: Mark Delaplaine

Subject: Allow the SD Waterfront project to proceed!

As a long-time San Diego resident, this project NEEDS to go ahead. SD's waterfront could be so much more and provide desperately needed jobs to the community. I'm frankly a bit tired of seeing every last thing go through endless environmental reviews, restrictions and regulations. People count too.

--
Tom Geldner

10/27/2011

Mark Delaplaine

From: Scott Andrews [scott300@earthlink.net]
Sent: Friday, October 28, 2011 2:38 PM
To: Mark Delaplaine
Subject: Navy Broadway Comment Letter

*



October 27, 2011

**Re Item W6a -
Consistency Determination, Navy Broadway Complex**

Dear California Coastal Commissioners,

Save Everyone's Access (SEA), a California 501 C3 non-profit, supports the Coastal Commission staff recommendation because:

- Changed circumstances post 1991 in both the project and area redevelopment zone demand updated federal Environmental Assessment and state EIR studies.
- The project is inconsistent with Coastal Act Chapter 3 coastal access provisions.

Where to start comment on the glaring lack of current study for a project whose high profile partners have let greed move it from ill-conceived, park-killing, and stifling to illegal and a serious security or seismic civil disaster-in-waiting?

The many changes, over decades since the Developer Agreement, in both the project and the expanded North Embarcadero redevelopment zone argue for a new Navy Broadway EA and new project.

Re state of California jurisdiction over the parcel, the same significant circumstances demand not just project tweaking but a new EIR to ensure Coastal Act compliance for the largest single downtown tideland development, and mitigation for significant LCP takings.

To create dense high rise development akin to Hong Kong's bayfront, codevelopers U.S. Navy and Manchester Financial have participated in nullifying a prime regional California Coastal Act-sanctioned park, Broadway Landing Park. Ex-NEVP Port Chair Michael McDade is quoted that "almost a five acre park" will be this public attraction.

In fact, under the appointed boards of the Port Authority and the Centre City Development Corporation (CCDC), the mayor has decided to cancel most all Navy Broadway and North Embarcadero North Embarcadero Visionary Plan (NEVP) area Phase 1 public elements - the "major" and "esplanade" waterside "recreation" parks, public parking, "unobstructed" bay views, and three public piers designated by the city Local Coastal Program (LCP) as signified in the Port Master Plan (PMP). [Broadway Pier, Grape St. Pier, Navy Pier]

The official LCP/PMP Fig. 11 map calls for a corner of the Navy Broadway parcel to receive a Harbor Drive reconfiguration and a corner of Broadway Landing Park.

10/28/2011

So, to finish commercializing the city's last downtown public tidelands, the City plans to violate historic plans, ignore state Coastal Act coastal access provisions, violate federal security regulations, and void legal designation of the project's bay frontage as public space along and over the waters of San Diego Bay - eliminating a public coast under the guise of a Port Master Plan Amendment.

Besides a new EA and EIR, following the unanticipated overcommercialized area coastal development and terrorist considerations post 9/11, the project awaits completion of other official public review now underway:

1. The Port Master Plan Amendment EIR
2. The Port deep water berthing study

This letter lists extensive area and project changes that demand the dense four city block Navy Broadway proposal receive updated studies of project Coastal Act and federal security violations, project security exposure and protective measures, seismic faulting, assignment of parties' cost and legal responsibility re major project security and risk management and liability exposure, project and downtown HAZMAT evacuation, park implementation, park mitigation, multiple canceled public pier replacements, view shed takings' computer modeling and mitigation orders, and renewed consultant analysis of traffic loading, low cost recreation, and degraded coastal parking access.

PROJECT CHANGES:

1. Canceling the PMP's major Broadway Landing park - a signature public space slated for the corner of the Navy Broadway project parcel.
2. Significantly increasing the Navy Broadway project's square footage.
3. Altering the project public museum space by commercializing it - switching it to serve as hotel or condo amenities in the lobbies of two project high rises. Apparently greed blinds City Hall to the harbor's storied multi-cultural history of exploring, sailing, fishing, invention, and aviation. There is apparently no interest to build a stand-alone project museum on San Diego Bay to honor the tens of thousands of veterans who departed from the project's Navy buildings and piers to serve and sacrifice their lives.
4. Repositioning project public open space and facilities away from the water's edge of San Diego Bay.
5. Diminishing Coastal Act mandated public park space, low cost recreation, parking, and view shed. Underground parking is DOD regulation-prohibited under the headquarter building, and is likely to be denied as well under adjacent high rise towers that can be toppled into the headquarters. This further cuts area parking.
6. Announcing the closing of adjacent streets to parking around the project Navy headquarters building to prevent truck bombing.
7. Denying public access to the Navy Broadway project's supposed public open space bordering the headquarters - by use of security berms, bollards, and fencing.
8. Placing the project's reduced park design under developer control.
9. Banning coastal recreation at this and the adjacent Lane Field park by restricting the reduced park space to passive use.

PROJECT AREA (NEVP) CHANGES UNACCOUNTED FOR POST 1991:

It is notable the mayor has fast tracked Harbor Drive reconstruction under an expanded NEVP Phase 1 map - construction to start 1/1/12.

This action will preclude San Diego California's Local Coastal Program, literally paving over PMP-designated park space. City Harbor Drive construction will also waste taxpayers money and remove area planning options by preceding release of official studies.

Further, the City is expanding the NEVP Phase 1 area northward which skews study.

Completion of the PMPA EIR, a new EA, and a new cumulative EIR are necessary for the City to mitigate takings of LCP/PMP parks and public piers either in-area or per indicated acre-for-acre ratio. The Navy Broadway site is the logical area mitigation site for City-cancelled legal park and public pier space waterside.

Other mitigation that may fall to the Navy Broadway site are City cancellations of the children's fountain at the foot of Broadway Pier and the fan out of Broadway Pier. The City has yet to mitigate the complete walling off of the South Embarcadero, or voiding of CCC-ordered downtown view mitigation for the Midway across Broadway Pier by construction of the Broadway Terminal.

City refusal to downsize Harbor Drive and divert traffic per the PMP to adjacent Pacific Highway will impact project access and exacerbate area Harbor Drive gridlock. This must be studied in relation to the dense office, hotel, military, and ground floor retail development contemplated for Navy Broadway, all of whose traffic load will be dumped onto coastal access roads

like Harbor Drive - already rated during peak use at LOS F.

City decision to install tree groves and buildings at the foot of Broadway Pier in the middle of the N. Embarcadero all block project and downtown Bay views, so demand study.

LACK OF SEISMIC STUDIES:

Developer Manchester hid from CCDC, the public, and apparently his U.S. Navy development partner a project earthquake fault study during CCDC hearings. It revealed four [anomalies or faults] under the parcel.

Admiral Hering ignored the peer-reviewed Navy Coronado Tunnel Project Fault Study that shows the young active Coronado Fault runs under the island and Bay to head directly down the middle of the Navy Broadway parcel from a block away.

The adjacent Old Police Station parcel now shows faults, also running north/south in the coastal Rose Canyon Fault Zone. When will the City submit area fault maps to the State Geologist?

LACK OF SECURITY STUDIES:

What circumstances have changed that merit a new, comprehensive Navy EA security study?

- Admiral Hering never presented an AntiTerrorism/Force Protection Study of the project.
- The project violates numerous post 9/11 DOD security, siting, and setback regulations.
- The City has, despite warnings, continued to support clustering High Risk Targets on the N.

Embarcadero upwind of downtown federal, city, and shopping complexes. These targets include two cruise ship terminals, the new USS Midway Museum, and the Navy Broadway complex.

- Despite *increased* U.S. Navy presence in San Diego Bay, the mayor has *decreased* port security by disavowing federal regulations re 100 yard security setbacks for berthed cruise ships.
- The Port board has bare minimum security features for the new Broadway Pier Terminal.
- Re the ill-advised Navy venture into mixed military/civilian development at a time post 9/11 DOD policy is to move leased facilities onto [more secure] military bases with Controlled Perimeters and vehicle inspections, both the City and Navy are ignoring serial site security shortcomings that cannot be mitigated.
- Re the Manchester Financial Navy Broadway project[s high end retail shops, what kind of uniforms and firearms will security personnel be issued to protect civilian shoppers?
- The mayor[s scheme to install tree groves and buildings in the middle of the street (Harbor Drive) next to the project can screen terrorist attack - a new unanticipated danger slated to start construction on 1/1/12. This demands security study
- The Navy Broadway project needs a HAZMAT study for project evacuation and the mass evacuation of downtown.
- The project requires a computerized nuclear, biological, and chemical attack exposure plume study of the urban San Diego and Coronado civilian population.

Does the Navy really intend to construct a major fleet operations facility on top of an earthquake fault? Relabeling the building does not obviate the terrorist risk for a target.

Will the Navy issue gas masks to San Diego civilians massed downwind of the HQ?

Clearly the Navy Broadway project merits updated studies to inform regulator and public review on many serious concerns that have overtaken 1991 project review.

Scott Andrews
President, Save Everyone[s Access (SEA)
Save Our NTC, Inc.
Member, Port NEVP Citizens Advisory Committee
scott300@earthlink.net

Mark Delaplaine

From: Diana Lilly
Sent: Monday, October 31, 2011 8:29 AM
To: Mark Delaplaine
Subject: FW: NBC
FYI

From: Dick Goldman [mailto:rhgoldman@hotmail.com]
Sent: Sunday, October 30, 2011 9:27 PM
To: Diana Lilly
Subject: NBC

I support the staff recommendations on the NBC. Circumstances have hugely changed in the last two decades and a whole new and complete environment assessment is required, among other things that have impacted the desirability of the NBC and how and what should go in that most valuable location. As Marton said:that the material things which will endure longest are those that express the spirit of man in art.....

The current NBC plan is tired and old, and will be sad even in a few years. San Diego deserves better. It deserves a legacy and a monument to future generations, not just some old commercial space that could be anywhere.

Help light the world
d.light | A Brighter Future | <http://www.dlightdesign.com>

From: PQD@aol.com [mailto:PQD@aol.com]
Sent: Monday, October 31, 2011 8:37 AM
To: Diana Lilly
Cc: drbcoombs@msn.com
Subject: Nov 2nd meeting--Navy Const Plans San Diego

I regret I will not be able to attend and speak at this weeks meeting, but I will be out of town. I hope this letter will be accepted and given consideration--

I served for almost 20 years on the City's redevelopment efforts, most of the time as Chairman of the city's CCDC board.

During the time we cleaned the downtown of much of its crime and blight and undesired uses--We also create a strong revenue stream for future generations to use--We also worked during this period with the Port Commission, which it was my pleasure to serve on as Chairman in 2004.

It was always my belief and that of others I served with, that our Tidelands would be saved as a special public place---Open to future generations of Californians to enjoy. With beautiful parks and paths.

The revenues the Port and the City have generated from leasing of tidelands and the work on downtown's redevelopment, during the last 25 years have created sufficient funds for both these organizations--

Developing additional revenue sources is not necessary for either of these organizations and is not in the best interest of the public--These historic tidelands should be preserved for public use.

***The Navy was given this property , for free, to us for military purposes--With the promise they would be returned to the city when those purposes ended--
Instead the Navy took the agreement to Federal Court and had this promise removed so they could gain financially what was really the City and States right-***

BRAC planned to close this facility and return it to the City-The Navy's actions end ran this intention and should not be rewarded.

Please DO NOT allow this development to go ahead.

***Peter Q Davis
Former Chairman of Port and CCDC .***

W 6a

**Additional
Correspondence**

CD-047-90, Navy, Broadway Complex, San Diego

CAPITOL OFFICE:
STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 651-4039
FAX (916) 327-2188

DISTRICT OFFICE:
2445 5TH AVENUE, SUITE 200
SAN DIEGO, CA 92101
TEL (619) 645-3133
FAX (619) 645-3144

California State Senate

SENATOR
CHRISTINE KEHOE

THIRTY-NINTH SENATE DISTRICT



STANDING COMMITTEES:

- APPROPRIATIONS, CHAIR
 - BANKING, FINANCE AND INSURANCE
 - BUDGET AND FISCAL REVIEW
 - ENERGY, UTILITIES AND COMMUNICATIONS
 - LOCAL GOVERNMENT
 - NATURAL RESOURCES AND WATER
 - TRANSPORTATION AND HOUSING
- MEMBER:**
- LEGISLATIVE LESBIAN, GAY, BISEXUAL AND TRANSGENDER CAUCUS
 - LEGISLATIVE WOMEN'S CAUCUS

October 31, 2011

Ms. Mary K. Shallenberger, Chair
Charles Lester, Ph.D., Executive Director
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Re: Item 6-a on Commission's Agenda for 11/2/11, CD-047-90 Navy, San Diego

Dear Chairwoman Shallenberger, Dr. Lester, and Coastal Commission members:

I write in support of the staff recommendation for Item 6-a regarding the Broadway Complex that is on the Commission's agenda for the November 2, 2011 meeting.

The project as proposed will affect coastal uses and resources in a manner substantially different from what was originally described in the consistency determination made by the Navy in 1990. The project is no longer consistent with the Coastal Commission's California Coastal Management Program.

Several changes in the development along San Diego's waterfront have taken place since this project was first proposed in 1990. It is important that the Navy and its development partner bring forward a detailed proposal for how the site would be developed. The Staff Report for this item clearly outlines the specifics that should be addressed in any proposed development plan for the site.

I urge the Commission to support the staff recommendation for the Navy Broadway Complex.

Sincerely,

A handwritten signature in black ink that reads "Christine Kehoe".

CHRISTINE KEHOE
Senator, 39th District



League of Conservation Voters
San Diego

October 31, 2011

Mary K. Shallenberger, Chair
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

Via Electronic Mail
jstaben@coastal.ca.gov
clester@coastal.ca.gov
tluster@coastal.ca.gov

RE: Item 6-a on Commission's Agenda for November 2, 2011
(CD-047-90; Navy, San Diego)

Dear Commissioner Shallenberger::

The League of Conservation Voters San Diego Chapter (LCVSD) would like to take the opportunity to support and join with comments submitted by Briggs Law Corp on behalf of the San Diego Navy Broadway Complex Coalition (the Coalition.) LCVSD is a nonprofit, nonpartisan organization that promotes conservation and environmental protection in San Diego County. LCVSD seeks to protect the environmental quality of the state by working to elect environmentally responsible candidates and hold them accountable to the conservation agenda.

LCVSD agrees with the Coalition's arguments substantiating that, since the 1991 consistency determination for the Navy Broadway Complex Project, there are now changed circumstances which warrant a finding of inconsistency.

LCVSD joins in the request that the Commission find there are changed circumstances rendering the Project inconsistent with the Coastal Act. As there is limited detail in the developer's proposal, any additional approvals should be delayed until such time that the developer brings a specific, detailed proposal that may be fully evaluated.

Thank you for your consideration of LCVSD's comments in advance of the November meeting.

Sincerely,

Livia Borak
President, LCVSD

Mark Delaplaine

From: Jim Silverwood [jim@affirmedhousing.com]
Sent: Monday, October 31, 2011 9:59 AM
To: Mark Delaplaine
Subject: Navy Broadway Complex

Dear Sirs,

Our firm and myself personally are in support of this proposed development. In addition to providing the Navy with a state-of-the-art facility for their West Coast headquarters for their Pacific operations, the Navy Broadway Complex project will transform San Diego's waterfront to provide a 1.9-acre public park, wide pedestrian walkways, public art, and other amenities. The development will bring jobs to the area, and perhaps most importantly confirm our region's longstanding relationship with the Navy. This proposal has been altered over the years to allow for important view sheds and other environmental concerns and we urge a yes vote at the upcoming Coastal Commission meeting of this week.

Jim Silverwood

President, CEO

Affirmed Housing Group

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San Diego Military Advisory Council
5330 Napa Street
San Diego, California 92110

www.sdmac.org

27 October 2011

Chair Mary K. Challenger
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, Ca. 94105-2219

Re: Navy Broadway Complex, Consistency Determination (CD-047-90)

Dear Chair Challenger and Commissioners,

The San Diego Military Advisory Council (SDMAC) is a non-profit mutual benefit corporation, supporting, promoting and representing the common business interests of the military, its quality of life, and the defense industry in the San Diego area. SDMAC has over 125 Corporate members, and 300 individual members. Our corporate members employ over 50, 000 people in the San Diego region.

SDMAC supports the Navy Broadway Complex Redevelopment Project (Project) because of the significant benefits this redevelopment would bring to the citizens of the San Diego region and to the U.S. Navy. Recently, SDMAC commissioned the Fermanian Business and Economic Institute of Point Loma Nazarene University to undertake an independent analysis of the economic impact of the Navy Broadway Complex Redevelopment Project to the San Diego region. The Institute is a renowned and respected organization which has conducted many such studies using accredited methodologies and models accepted throughout the economic community. The report demonstrates the substantial economic benefits the project will bring to the San Diego region. A copy of the Executive summary of the report is included as an attachment to this letter. A copy of the complete report is available on request.

SDMAC has carefully reviewed the Coastal Commission Staff recommendation as well as the 17 Oct 2011 Navy letter. SDMAC contends that the Navy letter more than adequately addresses and mitigates each and every staff cited example of "changes" that have taken place since the initial finding of consistency. SDMAC particularly urges the Commissioners to review the responses on other developments noted on pages 17 through 23 of the responses. The commission's staff use of PETCO Park, and the Convention Center Expansion, facilities that are nearly two miles distant, as an argument for a significant "change" that will impact a coastal use or a coastal resource is stretch at best, and indicates an unfamiliarity with the San Diego Downtown environment.

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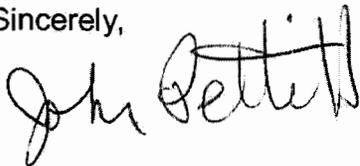
SDMAC strongly disagrees with the staff's recommendation that the project is no longer consistent to the maximum extent practicable with the enforceable policies of the Commission's California Coastal Management Program. Not only has the Navy clearly demonstrated that it is consistent, but also as the SDMAC study indicates, further delay of this project would result in substantial loss to San Diego in terms of jobs, earnings, total output and tax revenue. Of special note, every job and all revenue and output cited in this Report would be all newly created, and the Project itself would be the largest of its type in the San Diego area. In these difficult economic times of a lingering recession and high unemployment, further delay of this project is not in the best interest of the people of the San Diego Region.

SDMAC also believes it is appropriate to comment on the staff recommendations and the potential impact that these measures could have on the project. The staff recommendations attempt to describe measures on how the project could be modified to bring it into conformity"... (items (1) thru (11) on pages 6 and 7),

SDMAC believes that implementation of these recommendations would potentially result in the project becoming economically unviable for the developer. Should this occur, the property would revert back to its original status, and the Pre-World War II buildings and unsightly parking lots adjacent to the San Diego Waterfront will continue as is for the foreseeable future, or until the Defense Military Construction Budget can support replacing them. This is another situation that is not in the best interests of the people of the San Diego Region.

In summary, SDMAC strongly recommends that the Commissioners reject the staff recommendations, and support the Navy's consistency determination and find the project to be consistent with the Commission's previous findings.

Sincerely,



John Pettitt
SDMAC President 2011

PJ/jdc

Enclosure: Executive Summary



The Fermanian Business &
Economic Institute of PLNU

business & economics in action

NAVY BROADWAY COMPLEX REDEVELOPMENT PROJECT THE ECONOMIC IMPACT: 2012 - 2025

October 2011

EXECUTIVE SUMMARY

- > The proposed Navy Broadway Complex Redevelopment Project represents a major development effort for 12 acres of property situated in the North Embarcadero area on San Diego Bay. It culminates collaborations dating back to the late 1980s between the U.S. Navy and the City of San Diego to develop this prime segment of waterfront property.
- > The development is designed as a multi-use Project comprising 2.9 million gross square feet. It will feature three Class A+ office buildings, three luxury hotels, 271,000 gross square feet of retail space, a new administrative headquarters building for the Navy, and two levels of underground parking. Public uses will encompass museum and cultural space plus over 4.5 acres of landscaped open area including a new waterfront park. The Project's cost is estimated at about \$1.2 billion, which will be privately funded.
- > Plans are for the Project to be built out in two phases. The first would commence in mid-2012, with office, hotel, and retail space ready for occupancy in mid-2015. The second construction phase would follow immediately, with its completion targeted for mid-2018.
- > The Project would have a significant economic impact on jobs, income, and the San Diego region's total output of goods and services. Accounting for all of the ripple effects through supply chains and additional consumer spending, the overall impact of the Project on annual total income in terms of employee compensation and proprietors' income should exceed \$350 million by 2022 at its peak of operations. The Project should add nearly \$850 million to the region's total output or gross sales of goods and services by that year.
- > Over the entire period of 2012 through 2025, the total impact on employment from the Project is estimated to average more than 5,300 jobs. This compares with the 5,200 jobs created in total by all industries and economic activities combined throughout San Diego County in 2010. As office, hotel, and retail properties all achieve full operation by 2022, the Project should be responsible for creating about 7,400 total new jobs in the region.
- > The Project should generate sizable tax revenues for all levels of government. Restaurants and other retail stores are projected to generate about \$10 million in annual sales tax revenue when those properties are functioning at peak capacity by 2021 or 2022. Hotels should generate about \$8.5 million in terms of the Transient Occupancy Tax (TOT) and the Tourism Marketing District (TMD) tax by

that time. Property tax revenues are expected to climb to nearly \$10 million per year when both phases of the Project are in operation for the full year in 2019.

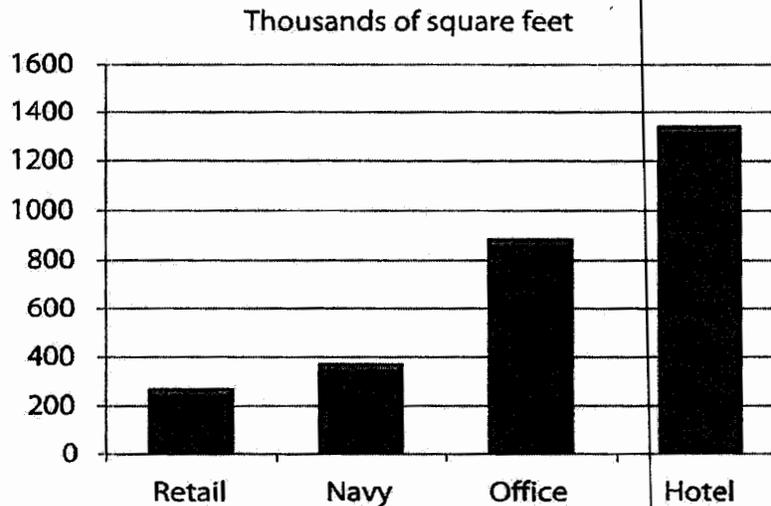
- > The Project should yield a highly productive use of now largely vacant land. It would build on San Diego's redevelopment efforts, complement other downtown enterprises or projects, and enhance the City's attraction as both a prime location for businesses and a leading destination for tourists.

Project to Provide Sizable Economic Gains

	Annual Average 2012-2025	Peak 2022-2025
Jobs	5,328	7,362
Income, \$2011 millions	\$274	\$354
Output, \$2011 millions	\$653	\$843

Source: FBEI

Project Spans 2.9 Million Gross Square Feet



Source: FBEI