

CALIFORNIA COASTAL COMMISSION

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

**F 13a****PROPOSED REVISED FINDINGS 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
Subsequent Commission Vote:	11/2/2011
Hearing on Revised Findings:	12/9/2011

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))

**COMMISSION
ACTION:**

Finding of substantially different coastal effects than were previously described, due to both project changes and changed circumstances, such that the project is no longer consistent to the maximum extent practicable with the California Coastal Management Program

**PREVAILING
COMMISSIONERS:**

Commissioners Blank, Bloom, Brennan, Burke, Kinsey, McClure, Kram, Sanchez, Stone, Zimmer, and Chair Shallenberger

Staff Recommendation:

Adopt Proposed Findings in support of the Commission's November 2, 2011, action. Motion is on page 14.

Substantive

File Documents: See page 38.

List of Exhibits

Note: Exhibits not attached to this version. They are available upon request and can be found electronically at <http://documents.coastal.ca.gov/reports/2011/11/W6a-11-2011.pdf>

- 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

PROCEDURAL NOTES: Adoption of the Revised Findings requires a majority vote of Commission members who were on the prevailing side of the November 2, 2011, vote and who are also present at the December 9, 2011, Commission hearing at which these Revised Findings are adopted, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission’s action are eligible to vote on the revised findings. The staff recommendation, motion, and resolution are located starting on page 14 of this report. The remainder of this report is a revised version of the report presented to the Commission in November of this year, revised to reflect the Commission’s November 2, 2011, action. Changes are: (1) the incorporation of the addendum prepared for the November Commission meeting, which can be found on pages 28-30; (2) clarification that the Commission is refraining from any definitive statement, at this time, as to whether the changes recommended at the end of Section III (on pages 36-38) would result in the project being consistent with the CCMP to the maximum extent practicable; and (3) addition of concerns raised during the hearing concerning terrorist threat-related building design needs, which can be found on page 36.

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 than 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. COMMISSION ACTION AND STAFF RECOMMENDATION:

Commission Action

On November 2, 2011, by a vote of 10 in favor, none opposed, the Commission (1) found 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) objected to the Navy's consistency determination (CD-47-90) for the reasons described in these findings.

Staff Recommendation. The staff recommends that the Commission adopt the following motion in support of its decision:

Motion:

I move that the Commission **adopt** the following findings in support of its *determination that the project described in Navy consistency determination CD-047-90 is no longer consistent to the maximum extent practicable with the California Coastal Management Program.*

Staff Recommendation:

The staff recommends a **YES** vote on this motion. Pursuant to section 30315.1 of the Coastal Act, adoption of findings requires a majority vote of the members of the prevailing side present at the November 2, 2011, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action on the consistency determination are eligible to vote. A majority vote by the prevailing Commissioners listed on page 1 of this report will result in adoption of the findings.

Resolution to Adopt Revised Findings:

The Commission hereby adopts the findings set forth below for consistency determination CC-047-90 made by the Navy for the proposed project on the grounds that the findings support and accurately reflect the reasons for the Commission's November 2, 2011, determination that the project is no longer consistent with the CCMP.

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 help bring the project closer to compliance with the CCMP. Although the Commission finds that the changes listed in Section V of this report (see pages 36-38) would bring the project much closer to compliance with the CCMP, it is not in a position to state definitively that such changes would bring it into compliance with the CCMP to the maximum extent practicable.

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 than 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 36-38 below.

The Commission also notes that, prior to its November hearing on this matter, the Commission staff prepared an addendum that responded to several letters received after preparation of the staff recommendation for this item and recommended that those responses be added to the Commission's findings. Accordingly, those additions are included here. The Commission received letters from the Navy, dated October 17, 2011, and counsel for Manchester Pacific Gateway LLC ("MPG"), dated October 26, 2011, responding to Commission staff's position as stated in the staff report and prior correspondence. The Commission staff's response, which was adopted by the Commission, stated:

Navy Letter

The Navy's letter asserts that there have been no substantial changes to the project that are relevant to management program enforceable policies. In support of this position, they cite the fact that certain aspects of the proposal (such as the mix of land uses that would comprise the project, the maximum heights of buildings, the setbacks, the landscaping, and the provision of public access improvements) remain the same. However, the Commission's findings also point out several significant changes to the proposal and discuss the ways in which those changes are relevant to the project's overall consistency with the Chapter 3 policies of the Coastal Act. See pages 19-27 of the staff report. Those changes include:

- *Moving the pedestrian-oriented aspects from the waterfront to the interior*
- *Relocating and shrinking the museum*
- *Changing Block 2A from visitor-serving to commercial*

The Navy also asserts that there have been no significant new circumstances or information relevant to the project or its effect on any coastal use or resource. In support of this assertion, they note that certain characteristics of the site (such as that it provides no access and is not visually attractive) remain applicable. However, the Commission's findings note significant changes both in the surrounding area and in the understanding of how development of a site such as this one could affect coastal resources.

Finally, the Navy claims that, although there has been a great deal of development in the surrounding area since the Commission's review of the original consistency determination in 1991, build-out of the NBC was assumed in the environmental review of those projects. Thus, the Navy argues, there are no new impacts to be evaluated now. However, this argument misses the point. The standard under the federal regulations is whether there are "significant new circumstances" that are relevant to the project's effect on coastal uses and resources. 15 C.F.R. section 930.46(a)(2). Twenty years of active development throughout the surrounding area, changing demographics in terms of residential use, and new appreciations for waterfront usage clearly constitute significant new circumstances, whether or not those were considered in the context of approvals of other projects. Moreover, some of those approvals were for projects outside the Coastal Zone, so the Commission had no opportunity to review them. Finally, some of these changes relate to new information, which is also part of the 930.46(a)(2) standard, and which the Navy's letter does not address.

In sum, although the Navy correctly points out things that have not changed, there are many things that have changed, and the Commission's findings identify many ways in which those changes satisfy the criteria of section 930.46.

Cooley/Manchester Letter

In his letter, Steven Strauss, counsel for MPG, argues (1) that the Commission should postpone its consideration of this matter; (2) that the action recommended by staff would exceed the Commission's jurisdiction under the CZMA; (3) that the project has all the necessary entitlements; (4) that prior litigation has resulted in judicial determinations that no substantial changes to the project or significant new circumstances or information exist, and (5) that the project will have beneficial effects on visual resources, public access, visitor-serving uses, and the economy.

In terms of postponement, Mr. Strauss argues that proceeding under these circumstances "would be tainted by injustice and one-sided dialogue" because of the Navy's inability to participate. However, the Navy is not precluded from participating, either legally or practically, as evidenced by the fact that it submitted a 25-page comment letter, not to mention the participation of Manchester. Moreover, even if both the Navy and Manchester were precluded from proceeding, Mr. Strauss cites no authority for this assertion that proceeding would be improper, and the Commission is

aware of no reason why it may not proceed. It is entirely within the Commission's discretion whether to proceed under these circumstances.

In terms of the Commission's jurisdiction, the federal regulations clearly state that a state agency may not only notify a federal agency when the state agency believes that the federal agency's proposed actions require supplemental coordination, but also notify the federal agency of "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). The regulations therefore implicitly recognize that the state agency would not only be making a finding of changed circumstances, but also a finding that the project is no longer consistent to the maximum extent practicable with the enforceable policies of the state agency's program. That is the essence of the Commission's objection. Moreover, the Commission is also making express findings that directly follow the language of the regulations and are therefore entirely appropriate. Finally, Mr. Strauss argues that the Commission has already made these findings through its prior correspondence, but that correspondence was issued at a staff level, and the current action is a formal action by the Commission itself.

Mr. Strauss's arguments that the project has all of the necessary entitlements and that it would have beneficial effects on visual resources, public access, visitor-serving uses, and the economy are entirely irrelevant to the current proceeding. Whether or not it received the necessary entitlements prior to the changes that have occurred is a separate question from whether those changes satisfy the criteria of the federal regulations, which is the question before the Commission; and whether or not it has some benefits is a separate question from whether, as a whole, it is consistent with the Chapter 3 policies of the Coastal Act.

Finally, regarding the prior litigation that Mr. Strauss argues has resulted in judicial determinations that no substantial changes or new circumstances exist, Mr. Strauss himself notes that that case law was under a different standard. Moreover, although the court of appeal upheld the CCDC determination, CCDC's review was very limited.

Finally, the Commission has several additional concerns over the adequacy of the available information concerning traffic effects, geologic hazards, and terrorist threat-related building design needs. These three 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

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

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

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.

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 a 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.

4. Terrorist Threat-Related Design. Testimony was provided during the Commission's hearing concerning more stringent antiterrorism building standards enacted by the Department of Defense since the September 11, 2001, terrorist attacks on our nation. These newer standards (e.g., DOD Minimum Antiterrorism Standards for Buildings, October 8, 2003) are intended to incorporate greater levels of security and anti-terrorism protection into military construction projects. These measures include increased setbacks from public areas, and compliance with these standards may result in further modifications to the project, in terms of the location of buildings, necessary setbacks from public areas, and the availability of areas accessible to the public. Any supplemental consistency determination should examine the applicability of current anti-terrorism standards and determine whether, and if so, the degree to which, they would affect public access and recreation at the site, and/or whether they would result in increased risks to visitor-serving uses at the site to terrorist attacks.

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 11 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 34-36 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