

**CALIFORNIA COASTAL COMMISSION**

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Filed:	3/5/19
180th Day:	10/9/19
Staff:	M. Lasiter-SD
Staff Report:	7/18/19
Hearing Date:	8/8/19

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-19-0094

**Applicant:** U.S.S. Midway Museum

**Agent:** David Wickens

**Location:** 910 North Harbor Drive, San Diego, San Diego County

**Project Description:** Replace existing Brow No. 4 with a new 42 ft. long and 8 ft. wide brow and install a 36 ft. tall elevator and stair structure on Navy Pier.

**Staff Recommendation:** Approval with Conditions

### SUMMARY OF STAFF RECOMMENDATION

The proposed project is the replacement of an existing brow, consisting of a stair structure and ramp, with a new brow consisting of a stair structure, ramp, and elevator on Navy Pier. The purpose of the project is to provide additional elevator capacity for guests and material loading and unloading to the adjacent U.S.S. Midway Museum ("Midway").

While the proposed project would increase access for ticketed guests of the Midway, the Midway is also required to provide free public access to the Midway deck via Brow No. 1, which contains a stair structure and ramp. This free public access was required as part of the approval of the Port Master Plan Amendment that authorized the berthing of the Midway, as well as by the associated Coastal Development Permit (2003-3) issued by the Port; however, availability of public access to the deck has historically not been advertised nor well used. As such, to increase the public's awareness of the free public access on the deck of the

Midway, **Special Condition No. 1** requires the applicant to submit a public access signage plan that clearly identifies that the existing viewing deck is free of charge to the general public. To ensure that Midway staff and volunteers are aware of the procedures for providing free public access to the Midway viewing deck, **Special Condition No. 2** further requires that the applicant develop formal protocols for staff and volunteers to implement to ensure that access is provided, consistent with the U.S.S. Midway Public Access Plan. The Plan requires that access to the deck be available at all times while the museum is open for business with no limits on the amount of time the general public may stay. **Special Condition No. 3** requires the Midway to submit annual reports to document the public's use of the deck. **Special Condition No. 4** requires the applicant to implement the proposed best management practices ("BMPs") to avoid impacts to water quality during construction and future maintenance of the elevator. Finally, since there is a risk developing on a pier that is subject to flooding and hazards from waves, **Special Condition No. 5** requires the applicant to assume all risks for developing in a location that is subject to waves, storms, and flooding. Additional Coastal Act issues associated with this project, including potential impacts to public access during construction, have been addressed in the design of the project.

Commission staff recommends **approval** of coastal development permit application 6-19-0094 as conditioned.

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**EXHIBITS**

[Exhibit 1 – Location Map](#)

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## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-19-0094 subject to the conditions set forth in the staff recommendation.*

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

### Resolution:

*The Commission hereby approves coastal development permit 6-19-0094 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Public Access Signage Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a comprehensive Public Access Signage Plan. The plan shall include, but not be limited to, the following:
  - (a) Plans, dimensions, and locations of signage to notify the public of the free public access available on the U.S.S. Midway deck when the U.S.S. Midway is open to the general public. Signage shall be large enough to be seen by the public and clearly identify that public access on the U.S.S. Midway deck is free of charge. Signage shall be located, at minimum, on the public promenade at the pedestrian entrances to Navy Pier, and on the sign located at the ticket booth that identifies the cost of admission.
  - (b) Notification of the free public access available on the viewing deck of Navy Pier on the webpage that identifies the general admission ticket prices on the U.S.S. Midway Museum website.
2. **Midway Viewing Deck Public Access Protocol.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, protocols for providing free public access to the U.S.S. Midway deck, including access for members of the public who require use of an elevator, as well as a comprehensive plan to educate employees and volunteers on these protocols.
3. **Annual Public Access Monitoring Report.** Within 30 days of the year end, and by January 30 at the latest, of every year, the permittee shall submit a monitoring report containing monthly usage counts of the general public who accessed the Midway deck the previous year.
4. **Construction and Pollution Prevention Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Construction and Pollution Prevention Plan. The Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building,

reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

- (a) A containment area shall be constructed in such a fashion as to restrict any release of contaminants or debris to the aquatic environment. Containment areas on barges, piers and upland areas shall have continuous sidewalls and controls as necessary (e.g. straw bales, oil absorbent boom, ecology blocks, durable plastic sheeting or lining, covers, etc.) to contain all sediment, wood-treating compounds, organisms and debris, and to prevent re-entry of these materials into the aquatic environment.
- (b) Coatings and sealants shall be composed of products that are inert after they have cured and dried.
- (c) Fusion Bonded Epoxy, HDPE, and polyuria products are recommended. No coal tar-based sealants shall be used unless they are themselves coated or wrapped with an inert product to isolate them from the marine environment.
- (d) Installation and application of epoxy, resin, or cementitious grout/fill shall be conducted when predicted weather and ocean conditions allow effective control and full containment of the material and will remain dry until cured, in order to prevent any leaching of uncured treatment materials into coastal waters.
- (e) Work will be performed in dry conditions or off-site in a controlled environment manufacturing facility, when feasible.
- (f) All cleaning and preparation of surfaces shall use wet vacuum techniques, containment booms, or heavy mesh containment netting so that all debris, chips, dust, dirt, and fine particles are collected and disposed of in a location where they will not enter coastal waters.
- (g) Dip nets shall be on-site and used to retrieve debris that fall into the water.
- (h) Methods to contain any leaks or spills of treatment materials during application shall be planned in advance, and any necessary equipment or supplies shall be readily accessible onsite. Any leaks or spills, in particular of anti-corrosion coatings, epoxy fillers, and waterproofing sealants, shall be immediately cleaned up.
- (i) All pressure-injection and gravity-feed applications of epoxy, resin, or cementitious materials shall be closely monitored visually to ensure that these materials do not leak or spill into coastal waters during applications.
- (j) Coating and waterproofing sealants used in the field shall be carefully applied by brush or roller to limit application to the immediate surfaces intended for protection, and to prevent drips or spills into coastal waters.
- (k) All anti-corrosion coatings, epoxy fillers, and waterproofing sealants shall be properly stored and contained so that these products will not leak or spill, or otherwise enter the coastal environment.
- (l) All areas within which construction activities or staging are to take place shall be minimized in size to the extent feasible and sited in order to have the least impact on public access and the marine environment.
- (m) No construction materials or equipment shall be placed outside of staging areas. Materials and equipment shall be stored beyond the reach of tidal waters.
- (n) Construction activities, staging, and storage activities are prohibited outside of the defined construction, staging, and storage areas.

- (o) Equipment washing, refueling, and servicing shall not take place on the tidelands or over-water structures.
- (p) No removal or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (q) Any shavings, sawdust, woody debris (splintered wood, fragments, etc.) or sediment on the water surface shall be retrieved and placed in the containment area.
- (r) Any removal, construction or repair-associated sediment and adhered organisms shall be collected daily, contained on site, and disposed at an approved upland disposal site.
- (s) Tarps or other devices shall be used to capture debris, sawdust, particulates, oil, grease, rust, dirt, and spills to protect the quality of coastal waters.
- (t) A floating containment boom shall be placed around all active portions of the construction site where wood scraps or other floatable debris could enter the water. The containment boom shall be cleared daily or as often as necessary to prevent accumulation of debris.
- (u) Operators shall utilize the designated staging area for sawing and other construction related activities, and use the pier only for assembly.
- (v) Any materials that need to be treated shall be treated at an onshore location to preclude the possibility of spills into the waters.
- (w) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (x) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (y) The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the tidelands).

**5. Assumption of Risk, Waiver of Liability, and Indemnity.**

- (a) By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, and flooding, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury of damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project

against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- (b) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of subsection (a) of this condition.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION & HISTORY**

The proposed project is the replacement of an existing brow, consisting of a stair structure and ramp, with a new brow consisting of a stair structure, ramp, and elevator on Navy Pier. Navy Pier is located on the San Diego Bay just south of the terminus of Broadway and north of the aircraft carrier U.S.S. Midway, which is operated by the U.S.S. Midway Museum (“Midway”), in downtown San Diego ([Exhibit 1](#)). It provides access to and parking for the Midway. Although the pier is now owned and maintained by the San Diego Unified Port District (“Port”), Navy Pier has yet to be incorporated into the certified Port Master Plan, and thus, the Coastal Commission retains permit jurisdiction of the pier. Therefore, the standard of review is the Chapter 3 policies of the Coastal Act.

The purpose of the project is to provide additional elevator capacity for guests and material loading and unloading to the adjacent Midway. Specifically, the proposed project would replace the existing Brow No. 4 with a new brow of approximately the same size and install a 36 ft. tall 5000-pound capacity steel elevator at the eastern exit of the museum ([Exhibit 2](#)). A new reinforced concrete elevator pit would be tied in with the adjacent existing pier slab, beams, and girders. During construction the existing brow would be relocated to the west; however, the brow would be removed and disassembled following construction of the new brow. Project construction is anticipated to take approximately seven months.

#### Project History

On March 14, 2001, the Commission approved Port Master Plan Amendment (“PMPA”) No. 27 that included, among other development, docking of the Midway for use as a museum on the south side of Navy Pier. The primary issue related to the project-driven PMPA was the visual impacts that would occur as a result of the Midway berthing. The landowner of Navy Pier at that time, the Navy, agreed to lease the pier to Midway for use as a parking lot; however, there were indications that the Navy would transfer ownership of the pier to the Port in the future. To mitigate for the visual impacts of the Midway, the proponents of the museum and the Port agreed to create a 5.7-acre memorial park on Navy Pier once it was relinquished to the Port by the Navy and to provide ongoing free public access to the deck of the Midway, which serves as a public viewpoint.



In 2002, the Secretary of the Navy was given the authority to transfer title of Navy Pier to the Midway. Midway had the option to accept ownership of the pier or transfer title to another agency and chose to transfer ownership to the Port in 2003. Since the Port acquired ownership of Navy Pier from the Navy, however, progress towards converting the pier to a park has been delayed. Environmental review for the conversion was begun by the Port in 2009, but put on hold in 2013 prior to completion. In 2012, the Midway submitted conceptual park designs to the Port and the Port responded via letter in 2014 that the conceptual designs were sufficient for the Port to conduct environmental review and process a PMPA; however, the Port has yet to do either and, as such, the Commission retains permitting jurisdiction over Navy Pier.

Thus far, the only requirement that has been satisfied has been the reserve account set up by the Midway to fund the relocation of parking off Navy Pier. Although the Midway has saved over \$1.25 million in this account to fund relocation of parking to nearby offsite locations, the Midway has yet to identify an alternative location for parking. The Midway has also failed to satisfy certain lease requirements – mainly the requirement to commence construction of the park on Navy Pier within ten years from the commencement date of the lease of Navy Pier, or no later than October 1, 2015.

In May 2017, the Commission approved CDP No. 6-16-0258 which authorized the Port to continue parking on Navy Pier for four years, increase parking rates, demolish the Head House building at the east end of the pier, reconfigure parking to add an additional 150 parking spaces for a total of 660 parking spaces, and install interim public access amenities, including a 7,840 sq. ft. public viewing deck on the west side of Navy Pier. The project was proposed as an interim solution to allow the Port additional time to plan for the conversion of Navy Pier from a parking lot into a public park. The removal of the Head House and interim public access amenities were included in the project to partially offset the visual impacts from the continuation of parking on Navy Pier and docking of the Midway, as well as to offset impacts to public access and recreation from the delay of the conversion of the pier to a park by an additional four years. However, while the Port has continued parking operations on Navy Pier, it failed to satisfy the prior-to-issuance special conditions within two years. Port staff has indicated that the removal of the Head House and construction of the interim public access amenities were much higher in cost than the previous estimate identified; thus, the Port decided to instead focus its efforts on a permanent solution that would include demolishing the Head House and converting the pier into a public park. As such, CDP No. 6-16-0258 expired and the existing activities on Navy Pier, including parking on the pier, are not authorized by the Commission and constitute violations of the Coastal Act.

## **B. PUBLIC ACCESS AND RECREATION**

Section 30210 of the Coastal Act states:

*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 30212 of the Coastal Act states, in part:

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) adequate access exists nearby [...]*

Section 30213 of the Coastal Act states, in part:

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

Section 30210 of the Coastal Act requires that maximum public access and recreational opportunities be provided. Section 30212 requires that access from the nearest public roadway to the shoreline be provided except where it is inconsistent with public safety or the protection of fragile coastal resources, or adequate access exists nearby. Section 30213 states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. The proposed project would provide benefits to ticketed visitors of the museum by providing additional elevator capacity to the museum. However, the proposed project would not increase access to the free viewing deck for members of the general public, which has historically not been adequately advertised nor well used.

Free public access to the Midway viewing deck was required as part of the approval of the PMPA that authorized the berthing of the Midway, as well as by the CDP (2003-3) issued for Midway by the Port. However, the current signage does not maximize public access to the Midway as the language is vague ([Exhibit 3](#)) and the signs are not appropriately located to inform the public of the free public viewing deck. For example, one of the public access signs is located on the southern perimeter of the pier west of the ticket booth, where it is visible only to those parking and entering the Midway from the southwest section of the pier. As a condition of approval for CDP No. 6-16-0258 (Navy Pier Parking), the Commission required Special Condition No. 6, which required the creation of a comprehensive and cohesive signage plan to notify the public of all public

amenities on both the Navy Pier and the Midway. However, because that permit was not acted on by the Port, the signage plan was not completed and the existing inadequate signage remains in place. As such, to ensure that the public is notified of the existing free public access on the Midway deck, **Special Condition No. 1** requires the Midway to complete and implement a public access signage plan, similar to the one previously required by CDP No. 6-16-0258. In addition, Special Condition No. 1 requires that signs are large enough and appropriately located so that they are easily visible by the public. As conditioned, signage would be located on the public promenade at the entrances to Navy Pier and on the ticket booth, and would identify that public access on the Midway deck is free of charge. In addition, the applicant would be required to advertise the provision for free access on the website for the Midway.

To ensure that Midway staff and volunteers are aware of the procedures for providing free public access to the Midway viewing deck, **Special Condition No. 2** further requires that the applicant develop formal protocols for staff and volunteers to implement to ensure that access is provided consistent with the U.S.S. Midway Public Access Plan. The Plan requires that access to the deck be available at all times while the museum is open for business with no limits on the amount of time the general public may stay. In addition, the existing accessway to the Midway viewing deck is by Brow No. 1, which does not contain an elevator and is therefore not adequate to serve members of the public unable to use the stairs. As such, Special Condition No. 2 also requires the written protocols to also describe how elevator or ramp access to the deck will be provided to the general public. To monitor if public access increases at the Midway as a result of required signage and employee training, **Special Condition No. 3** requires the Midway to submit annual reports to document the public's use of the deck.

Finally, construction staging would be located adjacent to the work area and would not impact public parking or the public's ability to access the site. As such, no impacts to public access are expected to result during the construction of the proposed project.

In conclusion, while the proposed project would increase access to the Midway for ticketed guests, implementation of Special Condition Nos. 1 and 2 will increase free access to the Midway viewing deck for members of the general public. Special Condition No. 3 will identify if public access increases as a result of advertising the public viewpoint. Therefore, the project, as conditioned, is consistent with the public access and recreation policies of the Coastal Act.

## C. WATER QUALITY

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30232 of the Coastal Act states:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

Section 30253 of the Coastal Act states:

*New development shall do all of the following:*

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

Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. In addition, Section 30231 requires that the biological productivity and quality of coastal waters be maintained. Section 30232 requires protection of coastal waters from spillage of various hazardous substances. Section 30253 requires that new development minimizes risk in areas of high flood hazard.

The proposed project includes construction on an existing pier located over coastal waters in the San Diego Bay. While no work is proposed to take place in coastal waters, the proposed project may result in potential adverse effects to surrounding habitat due to unintentional disturbance from construction and demolition equipment, materials, and debris. Construction and demolition activities associated with the proposed project could result in the generation of debris or presence of equipment, materials and hazardous substances that could be subject to run-off and wind dispersion into the marine environment. The presence of equipment, building materials, and debris on the subject site could pose hazards to sensitive marine organisms if discharged into the marine environment or left inappropriately on the project site. In addition, such potential discharges and disturbances to the marine environment could result in adverse effects to offshore habitat from increased turbidity and pollutant of coastal waters.

To address impacts to water quality, the applicant proposes to incorporate water quality best management practices (BMPs) during project construction and future maintenance of the elevator. The Commission's water quality specialist, Michael Sandecki, has reviewed the proposed BMPs and agrees they are adequate to prevent water quality impacts.

**Special Condition No. 4** requires the applicant to implement the BMPs.

Finally, there is a risk developing on a pier that is subject to flooding and hazards from waves. Therefore, **Special Condition No. 5** requires the applicant to assume all risks for developing in a location that is subject to waves, storms, and flooding.

In conclusion, concerns regarding water quality impacts associated with demolition, construction, and operation activities have been minimized through the project design and proposed BMPs and Special Condition No. 4 requires the applicant to implement the BMPs. As conditioned through Special Condition No. 5, potential impacts from flooding and coastal hazards have been addressed. Therefore, the Commission finds that the project, as conditioned, is consistent with Sections 30230, 30231, 30232, and 30253 of the Coastal Act.

#### **D. UNPERMITTED DEVELOPMENT**

As described in the Project Description and History section, CDP No. 6-16-0258, which authorized, in part, the Port to continue to use Navy Pier for public parking, has expired. Thus, continued use of Navy Pier by the Port and Midway for parking is unpermitted. Continued use of Navy Pier for parking is not included in the proposed project and, thus, violations remain on the site that will not be addressed by the Commission's action on this application. The Commission's enforcement division will consider how to address said violations with the Port as a separate matter.

Although unpermitted development occurred prior to the submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on these permit applications does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit

#### **E. LOCAL COASTAL PLANNING**

Section 30604(a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site was formerly owned by the U.S. Navy who transferred ownership to the Port in 2003. However, the Port has yet to incorporate the subject site into the San Diego Unified Port District's certified Port Master Plan. Thus, the Coastal Commission retains permit jurisdiction of this site and Chapter 3 of the Coastal Act remains the legal standard of review with the PMP used as guidance. As conditioned, the development is consistent

with Chapter 3 of the Coastal Act. Approval of the project will not prejudice the ability of the local government to incorporate this area into the certified PMP.

**F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The San Diego Unified Port District did not adopt a CEQA determination for this project; however, as proposed and conditioned, the project does not have a significant effect on the environment. (See Cal. Code of Regs., tit. 14, § 15061(b)(3).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing public access/recreation and coastal hazards, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.