

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



# Th16c

Filed: 12/16/22  
180<sup>th</sup> Day: 6/14/23  
Staff: M. Lasiter - SD  
Staff Report: 1/26/23  
Hearing Date: 2/9/23

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-22-1069

**Applicant:** San Diego Unified Port District and USS Midway Museum

**Agents:** Lesley Nishihira and Allison Rolfe

**Location:** Navy Pier, 960 North Harbor Drive, San Diego, CA, San Diego County (APN No. 760-013-41)

**Project Description:** Demolish existing Head House structure; reinforce pier; construct a 3.6-acre public park, including a 32 ft. wide promenade on the north side of pier, public restrooms, 1,000 sq.ft. low-cost snack concessionaire, coastal access and interpretive signage, memorials and monuments, play structures, bicycle racks, benches, and ingress/egress improvements; retain a portion of the pier for parking, increase parking rates, and implement public programming.

**Staff Recommendation:** Approval with conditions.

---

## SUMMARY OF STAFF RECOMMENDATION

Navy Pier is located on northeastern San Diego Bay directly north of the USS Midway Museum ("Midway"). The Midway leases 31,436 square feet of the southern portion of Navy Pier from the San Diego Unified Port District ("Port"), which is used for ticket

sales, an elevator, stairs, emergency backup generator, vending machines, ATMs, and parking for employees and volunteers. The remainder of the pier has been used as a parking lot, primarily by visitors and employees of the Midway, since 2004 when the museum first opened. The proposed project would allow construction of a 3.6 acre public park on the pier, which would require demolishing the vacant Head House building on the eastern portion of the pier and reinforcing the pier to allow for additional loading from the park. The park would include a 32 ft. wide promenade on the north side of the pier, public restrooms, a low-cost snack concessionaire, memorials and monuments, and several seating, play, and shade structures. A portion of the pier would be maintained for 100 public parking spaces and the applicants propose to raise public parking rates to be consistent with surrounding parking lots. No changes are proposed to the portion of the pier on the Midway leasehold.

On March 14, 2001, the Commission approved Port Master Plan Amendment (PMPA) No. 27 that included, among other development, berthing of the USS Midway Aircraft Carrier 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. Not only were visual impacts of the Midway a concern, but also the visual and public access impacts that would occur if the Navy's Head House structure and parking were to remain on Navy Pier long-term.

To mitigate for the visual impacts of the Midway, the proponents of the museum proposed to create a 5.7-acre memorial park on Navy Pier once it was relinquished to the Port by the Navy. The proposal at that time included a conceptual plan to redevelop the pier as a pedestrian-oriented memorial park with plazas, grassy lawns, benches, promenades, design features, and a Navy spouses club and chapel for small social functions. Thus, parking on Navy Pier was approved on an interim basis only. Although the transfer of ownership of the pier from the Navy to the Port occurred twenty years ago in 2003, the pier remains mostly a parking lot. The subject project would satisfy the visual mitigation originally approved by the Commission in 2001.

In order to address the visual and public access impacts that have occurred from the 20-year delay in construction of the park and continued displacement of the park site with an unpermitted parking lot, the applicants have proposed a mitigation package. That package includes a 20-year commitment to fund several new, expanded, or existing programs, detailed in the Project Description section and Exhibit 5, to mitigate for the 20-year temporal loss of the park. Specifically, four new programs would be provided, including an annual scholarship program for 300-450 students to attend the overnight educational Snooze Cruise program with an expanded awareness campaign to target certain groups (Black, Indigenous, and children of color); expanding the museum's volunteer program to place docents in the new park to engage with visitors; a collection of targeted webpages designed to be used with a mobile phone dedicated to educating park visitors on the history of the pier, Midway, and San Diego Bay; and funding and coordinating the annual Veterans Day Parade. The Midway Institute for

Teachers, which provides training and classroom materials, would be expanded to include an additional 25 teachers (for 500 total teachers), and 25,000 new free Midway tickets would be provided to targeted groups using the expanded awareness campaign identified above. Finally, the applicants have proposed to continue several existing programs, including free admission to select groups for day visits to the Museum and during nine free events throughout the year; providing a reduced cost lunch, supplies, and transportation for Title 1 schools as part of the “No Child Left Ashore” program; and awarding \$500,000 in grants to local non-profits annually.

To ensure that construction of the park will occur in a reasonable timeframe, **Special Condition No. 1** identifies that the CDP would be deemed issued upon the Commission’s approval and requires the park to be built within five years of Commission action. To ensure that the retention of parking on the pier does not conflict with opening up bay views, **Special Conditions No. 2 and 3** require final park and landscaping plans that substantially conform to the preliminary plans. To ensure that the temporal loss of the park and unpermitted parking are adequately mitigated, **Special Condition No. 4** requires the applicants to submit a Mitigation Program Management Plan that describes each proposed mitigation program and provides baseline data; facilitates access to the park, Midway, and the mitigation programs for people with limited means, visitors from under-resourced communities, and speakers of languages other than English; develops an outreach program that targets communities for increased access; and implements the program for 20 years beginning no later than one year following the date of Commission action. **Special Condition No. 5** requires parking rates on Navy Pier to be consistent with the market rates proposed by the applicant. To ensure the park remains open and available to the public at all times, **Special Condition No. 6** limits special events to 15% of the year and requires that most of the pier remain open to the public during special events including either the west or east lawns, the northern public promenade, the northern park, restrooms, and concessionaire. **Special Condition No. 7** requires the applicant to install public access signage informing the public of their right to access the park. To avoid and minimize adverse water quality impacts to the San Diego Bay, **Special Condition Nos. 8 and 9** require the applicant to submit a Construction and Pollution Prevention Plan and a Post-Development Runoff Plan. Finally, **Special Condition No. 10** requires the applicant to assume all risks for developing in a location that is subject to coastal hazards, such as waves, storms, and flooding, and **Special Condition No. 11** requires the applicant to submit necessary permits from other agencies.

Note that the applicants’ original application proposed the removal of the free public viewing area, located on the deck of the USS Midway Museum, in the project description; however, its removal cannot be addressed through the subject permit. Free public access to the Midway deck was proposed to mitigate for the visual impacts of berthing the Midway at the pier as part of the approval of the PMPA and Port-issued CDP (2003-3) that authorized the berthing of the Midway. Specifically, the viewing deck on the USS Midway Museum has been incorporated into the certified PMP, which identifies the 0.8-acre site as a public viewing area with a vista point and park/plaza land use in its text, on the land use map, and in the public access plan for the USS Midway Museum; as such, its removal would first require an amendment to the PMP to

## San Diego Unified Port District and USS Midway Museum

revise the text, land use designation, and public access plan. If the Commission approved a PMPA to remove the public viewing area, Port CDP No. 2003-3 could be amended by the Port to remove the deck since the USS Midway Museum has been incorporated into the PMP, and it is located within the Port's jurisdiction. As such, due to additional actions required under differing standards of review, the Commission may not consider removal of the Midway deck under this action. After coordinating with Commission staff, the applicants revised the project description to remove this component from the proposed project; however, they intend to pursue a separate project-driven PMPA in the future to remove the requirement for a free public viewing deck on the Midway.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-1069, as conditioned. The motion is on page 6. The standard of review is Chapter 3 of the Coastal Act.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>6</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>6</b>
<b>III. SPECIAL CONDITIONS .....</b>	<b>6</b>
<b>IV. FINDINGS AND DECLARATIONS .....</b>	<b>22</b>
A. Project Description and Background .....	22
B. Visual Resources .....	28
C. Public Access and Recreation .....	30
D. Marine and Biological Resources .....	35
E. Unpermitted Development .....	37
F. Local Coastal Planning .....	37
G. California Environmental Quality Act .....	38
<b>APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....</b>	<b>39</b>

### **EXHIBITS**

[Exhibit 1 – Vicinity and Site Map](#)

[Exhibit 2 – Existing Site Plan](#)

[Exhibit 3 – Proposed Freedom Park Conceptual Design and Interpretive Plans](#)

[Exhibit 4 – Proposed Site Layout](#)

[Exhibit 5 – Proposed Mitigation Package](#)

[Exhibit 6 – Pre-Midway Views](#)

[Exhibit 7 – Justification for Site Layout](#)

[Exhibit 8 – Proposed Special Event Site Plan](#)

[Exhibit 9 – Revised Findings on San Diego Unified Port District Port Master Plan](#)

[Amendment No. 27 \(North Embarcadero\)](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 6-22-1069 pursuant to the staff recommendation.

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

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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. 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

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 applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

1. **Permit Expiration, Condition Compliance & Timing of Construction.**

- (a) Because there is existing unpermitted development on the site that is approved after-the-fact, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire.
- (b) WITHIN FIVE YEARS OF COMMISSION ACTION ON THE COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall have completed construction of the public park. The Executive Director may grant an extension of up to one year, in writing, upon demonstration by the applicant of good cause for delays in project completion resulting from circumstances that are beyond the control of the applicant. Any further extension to the deadline must be sought from the Commission through the coastal development permit amendment process.

**2. Final Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of Final Plans, including a Parking Plan, Lighting Plan, Structural Repair Plan, and Head House Demolition Plan, that substantially conform with the preliminary plans submitted to the Commission on December 16, 2022, titled Freedom Park and the Midway Navy Pier, except that:

- (c) Parking Plan. The final project plans shall identify the 45 parking spaces to be used for Midway parking and 100 parking spaces to be used for public parking, including electric vehicle charging, ADA, motorcycle, standard, and those spaces limited to two-hour parking as required by Special Condition No. 5.
- (d) Lighting Plan. The final project plans shall include a lighting plan for the pier that limits lighting to the minimum necessary and to lighting that is directed downward and away from the water, shielded, and does not exceed a correlated color temperature of 2,700 kelvins.
- (e) View Corridor. The final project plans shall include a 32 ft. wide view corridor along the northern perimeter of the pier along the public promenade. Shade structures and other park amenities that are located in the view corridor shall be sited and designed to avoid public view obstructions.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**3. Final Landscape Plans.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit, a full-size set of final landscaping plans, which shall include and be consistent with the following:

- (a) A view corridor, 32 foot wide, shall be preserved in the northern perimeter of the pier along the public promenade. All proposed landscaping in the view corridor shall be maintained at a height of three feet or lower (including raised planters) to preserve the views from Harbor Drive towards San Diego Bay.

- (b) Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants that are non-invasive. No plant species listed as problematic or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
- (c) Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather-based irrigation controllers.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**4. Mitigation Program Management Plan.** WITHIN 90 DAYS OF COMMISSION ACTION, the applicant shall submit, for the review and written approval of the Executive Director, a final Mitigation Program Management Plan in substantial conformance with the framework in the plan submitted on January 13, 2023 updated on January 26, 2023 titled “Attachment C” and included as Exhibit 5, except the program/plan shall be developed and expanded as required by the following requirements:

- (a) The plan shall be implemented for a minimum period of 20 years, commencing within one year of the date of Commission action of this CDP, except for the Park Docent Program (aka Park Ambassadors), restrooms, and concessionaire, which shall be implemented upon completion of the park.
- (b) Provide a detailed description and baseline data for each program including (1) the mobile phone microsite; (2) Park Docent Program (aka Park Ambassadors), including number of docents in the park daily; (3) Snooze Cruise Scholarship Program (aka Overnight Adventure), including a minimum of 300 scholarships per year; (4) Free Daily Pass and Event Programs; (5) No Child Left Ashore Program; (6) Midway Institute for Teachers, including 25 additional teachers per year; (7) Virtual Field Trip component (aka Distance Learning); (8) Comped Ticket Distribution, including 25,000 additional tickets per year; (9) the Veterans Day Parade; and (10) Grant Funding. For each program, indicate the year of inception; the initial funding source and allocated budget, if available; the allocated budget from 2017 to 2022, except for 2020; the number of participants from 2017 to 2022, except for 2020; and a list of schools/grantees that have participated in the program.



- (c) Provide and facilitate access for people with limited means, visitors from under-resourced communities, and speakers of languages other than English to the park and Midway, and to the programs identified in Special Condition No. 4(b).
  - i. The low-cost snack concession stand shall stock relatively inexpensive food and drink items that can be easily carried out.
  - ii. Public education materials shall be available in multiple languages, including English, Spanish, and other locally spoken languages, when written, and as feasible, spoken by docents (aka Park Ambassadors) and available in video and audio recordings.
  - iii. A program for free parking for low-income persons shall be developed and implemented in the public parking lot. The program shall include, at a minimum, the following:
    - a. Members of the public with a State of California Golden Bear Pass displayed shall be eligible to park for free;
    - b. Outreach Plan. Information on how to obtain the pass shall be made easily available to the public both online at the Port and Midway websites and in the form of permanent signage at the Navy Pier parking lot. At least one permanent sign shall be posted at each pay machine identifying the pass program and information on obtaining the passes, where each sign shall be in both English and Spanish. The Plan shall provide sign details, including all text and graphics, and each sign shall include the California Coastal Commission emblem, and recognition of the Coastal Commission's role in providing more inclusive public access at this location. The Port shall share information on how to obtain the pass with any social service providers and local non-profits working with low-income visitors.
    - c. Parking Violation Appeals. Individuals who receive a parking violation or ticket shall have an opportunity to appeal the ticket and have the fee waived if they provide documentation of the Golden Bear pass during the ticket appeal. This information will be available in any signage and outreach materials.
- (d) Access to all park facilities, including the public park, public parking lot, and public restroom shall be available to the public at all times during normal park hours (i.e., 6 am to 10:30 pm) and no personnel shall interfere with public access, except as allowed under Special Condition No. 6 for Special Events.
- (e) Develop an Outreach Program that targets communities for increased access to the Midway and programs included in the plan that have historically received fewer coastal education and stewardship opportunities, or are disproportionately impacted by environmental burdens, such as communities with low incomes; Black communities; Indigenous communities; communities of color; speakers of languages other than English; people with disabilities; foster and transition-age youth; LGBTQIA+ youth; and residents of rural and/or inland areas. Identify the target audience(s) and indicate how outreach will be targeted to these audiences; for example, through Environmental Justice organizations, individual school

## San Diego Unified Port District and USS Midway Museum

demographics (e.g., percentage of English Language Learners, race/ethnicity, low-income) through [www.ed-data.org](http://www.ed-data.org), and community demographics through [CalEnviroscreen](#).

- (f) By January 30 of every year for three years, and every two years thereafter, the permittee shall submit an annual monitoring report that demonstrates the permittee has complied with the approved Mitigation Program Management Plan in the previous year. The report shall include the following:
- i. The level of participation and funding of the subject year and a comparison with prior years under the program.
  - ii. A narrative and data to demonstrate that the permittee has complied with the access provisions in Special Condition No. 4 by increasing access for targeted groups. Identify any programs that are not in compliance and solutions to resolve.
  - iii. Outreach data and use data, where available, for the free parking pass program.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

**5. Parking Management.** By acceptance of this permit, the applicant agrees that the paid parking program shall operate under the following parameters:

- (a) At least 100 parking spaces shall be available to the public at all times.
- (b) Parking rates on Navy Pier shall be clearly posted and shall be no higher than the following:
- i. Transient rate:
    - a. \$5 per hour for up to two hours;
    - b. \$20 for up to 6 hours;
    - c. \$25 for 6 to 24 hours;
  - ii. Special event rate: \$30;
  - iii. USS Midway educational overnight rate: \$10;
- (c) The maximum rates shall be in effect regardless of holidays or weekends; and
- (d) The applicant shall reduce transient and special event rates by at least 25% below the maximum parking rates identified in Special Condition 5(b)i. during the off-season, specifically October 1 – March 31 annually, and during other low demand periods as determined by the Port.
- (e) Designated motorcycle spaces shall pay 50% of the posted rate.

- (f) There shall be a two-hour limit on 20% of public parking spaces.
- (g) Midway employee and volunteer parking shall be prohibited in the public parking area.
- (h) Parking rates may be adjusted annually consistent with the Consumer Price Index.

The applicant shall undertake the parking program in accordance with the approved parking provisions. Any proposed changes to the approved paid parking program shall be reported to the Executive Director. No changes to the approved parking program, including an increase in parking rates beyond the maximum rates identified in subsection (a) and annual adjustments identified in subsection (h) of this special condition, shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**6. Special Event Provisions.** By acceptance of this permit, the applicant agrees that special events shall operate under the following parameters:

- (a) Special events are those events that (1) charge for admission or (2) exclude members of the general public.
- (b) Unrestricted public access through and within the park shall be maintained no less than 85 percent of each year. Special events shall not exceed 15 percent per year, equivalent to 110 half days events or 55 full day events based on normal park hours (i.e., 6 am to 10:30 pm), including event set-up/take-down. Special events shall be spread throughout the year.
- (c) Only one side of the park (east or west areas on Exhibit 8) shall be used for special events on a single day. If one side of the park is used for a special event, the other side of the park shall remain open to the public.
- (d) The 32 ft. northern promenade, north park area, restrooms, low-cost concessioner, and parking lot shall remain open to the public at all times, as depicted on Exhibit 8.
- (e) Prior to January 30 of each year for three years beginning the year following the year the park is completed, and every two years thereafter, the permittee shall submit an annual Special Event programming report that demonstrates the permittee has complied with the Special Event provisions in the previous year. The report shall include a complete list of all events held in the preceding and projected year. The report shall include but is not limited to the following: dates and times for each event; setup/takedown for each event; summary of events held; tabulation of events held in compliance with these provisions (i.e., 15 percent of the year and programming types permitted); names of event promoters and event groups (e.g., musical group, performer, etc.), and number of tickets issued/sold for each event (or estimated number of attendees, if quantity of tickets issued/sold for each event is not available).

The applicant shall undertake special events in accordance with the approved special event provisions unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

**7. Public Access Signage Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, 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, content, font size, and locations of public access signage in and around the public site informing the public of their right to access the park. Each sign shall include the California Coastal Commission emblem and recognition of the Coastal Commission's role in providing public access at this location. Signage shall be large enough to be easily seen by the public and be located, at minimum, on the public promenade at the pedestrian entrances to Navy Pier and along the pedestrian walkways prior to reaching the western park space. All signs should provide information in English and Spanish.
- (b) All signs under the approved Public Access Signage Plan shall contain information approved by the Executive Director informing the public of their right of access, and applicable hours of the access according to the subsections of this Special Condition.
- (c) The public promenade shall be open to the public 24 hours a day year-round. Signage located on the promenade shall identify that the promenade is open to the public at all times.
- (d) Temporary signs shall be placed during special events to alert the public to the areas of the park that remain open to the public per Special Condition No. 6(c).
- (e) No sign under the approved Public Access Plan shall measure less than two feet by three feet and all signs shall be made of material capable of withstanding long exposure to the elements. If any of the signs are damaged or missing for any reason, they shall be replaced by the permittee within thirty (30) days.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**8. Construction and Pollution Prevention Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, 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) **Protect Public Access.** Construction shall protect and maximize public access, including by:

- i. Public access shall be maintained around the project site to provide a continuous connection to the public promenade north and south of Navy Pier, throughout project demolition and construction.
- ii. Staging and storage of construction equipment and materials (including debris) may not take place on the public promenade outside the project area. Staging and storage of construction equipment and materials shall occur at least 25 feet from coastal waters, drainage courses, and storm drain inlets, as feasible. Construction is prohibited outside of the defined construction, staging, and storage areas.
- iii. All construction methods to be used, including all methods to keep the construction areas separated from public recreational use areas (e.g., using unobtrusive fencing or equivalent measures to delineate construction areas), shall be clearly identified on the final plans.
- iv. All bay access points and other recreational use areas impacted by construction activities, other than those approved as part of this project, shall be restored to their pre-construction condition or better within three days of completion of construction.

(b) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

- i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
- ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
- iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
- iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
- v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.

(c) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints,

vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

- i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
  - A. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
  - B. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
  - C. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
  - D. Prompt removal of all construction debris.
  - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

(d) **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:

- i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.
- ii. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
- iii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences)

that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.

**(e) Construction In, Over, or Adjacent to Coastal Waters and Habitat.**

Construction taking place in, over, or adjacent to coastal waters and habitat shall protect the coastal waters and habitat by implementing additional BMPs, including:

- i. No construction equipment or materials (including debris) shall be allowed at any time in the intertidal zone or in coastal waters.
- ii. Construction activity shall not be conducted in the intertidal zone or in coastal waters.
- iii. To the extent feasible, work shall take place during daylight hours. Lighting of the bay area, beyond project area lighting needed for any nighttime work, is prohibited. Any lighting needed for nighttime work shall be shielded and directed away from the bay. Lighting directed at the bay is prohibited.
- iv. All construction equipment and materials shall be stored beyond the reach of tidal waters.
- v. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters.
- vi. All erosion and sediment controls shall be in place prior to the commencement of construction, as well as at the end of each workday. At a minimum, if grading is taking place, sediment control BMPs shall be installed at the perimeter of the construction site to prevent construction-related sediment and debris from entering the bay, ocean, waterways, natural drainage swales, and the storm drain system.
- vii. All debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project.
- viii. If preservative-treated wood is used, appropriate BMPs shall be implemented that meet industry standards for the selection, storage, and construction practices for use of preservative-treated wood in aquatic environments; at a minimum, those standards identified by the Western Wood Preservers Institute, et al. in *Treated Wood in Aquatic Environments: A Specification and Environmental Guide to Selecting, Installing and Managing Wood Preservation Systems in Aquatic and Wetland Environments* (2012) or the latest revision. The preservative-treated wood shall be certified by a third party inspection program, as indicated by the presence of a BMP Quality Mark or Certificate of Compliance, to have been produced in accordance with industry BMP standards designed to minimize adverse impacts in aquatic environments.

**(f) Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and

removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.

- (g) **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- i. A map delineating the construction site, construction phasing boundaries, staging site, temporary public access route, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
  - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
  - iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
  - iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.
- (h) **Construction Site Documents.** The Construction and Pollution Prevention Plan shall specify that copies of the signed CDP and the approved Construction and Pollution Prevention Plan be maintained in a conspicuous location at the construction job site at all times and be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction and Pollution Prevention Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (i) **Construction Coordinator.** The Construction and Pollution Prevention Plan shall specify that a construction coordinator be designated who may be contacted during construction should questions or emergencies arise regarding the construction. The coordinator's contact information (including, at a minimum, a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site and readily visible from public viewing areas, indicating that the coordinator should be contacted in the case of questions or emergencies. The coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.



- (j) **Notification.** The permittee shall notify planning staff of the Coastal Commission's San Diego Coast District Office at least three working days in advance of commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities.

The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

**9. Post-Development Runoff Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit, for the review and written approval of the Executive Director, a Post-Development Runoff Plan. The final Post-Development Runoff Plan shall demonstrate that the project complies with the following requirements:

- (a) **Use a Low Impact Development Approach to Stormwater Management.** Use a Low Impact Development (LID) approach to stormwater management to replicate the site's pre-development hydrologic balance, by implementing site design strategies that reduce runoff, integrated with small-scale, distributed Best Management Practices (BMPs) to retain stormwater runoff close to the source. The project shall comply with the following LID Site Design strategies and BMPs:
- i. Minimize disturbance of coastal waters and natural drainage features such as stream corridors, rivers, wetlands, natural drainage patterns, drainage swales, groundwater recharge areas, floodplains, and topographical depressions.
  - ii. Minimize removal of native vegetation, and plant additional non-invasive vegetation, particularly native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control.
  - iii. Maintain or enhance on-site infiltration of runoff to the greatest extent appropriate and feasible. Use strategies such as avoiding building impervious surfaces on highly permeable soils; avoiding unnecessary soil compaction; amending soil if needed to enhance infiltration; directing runoff to permeable landscaped areas; and installing an infiltration BMP (e.g., rain garden or bioretention system).
  - iv. Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in redevelopment. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious pavement; and installing a permeable pavement system where pavement is required.
  - v. Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas and allow

runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious pavement; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation or plumbing. Convey runoff from impervious surfaces into permeable areas in a non-erosive manner.

- vi. Where appropriate and feasible, direct stormwater runoff from all impervious surfaces (e.g., parking areas and driveways, roofs, walkways, and patios) to, in order of priority, a) landscaped areas or open spaces capable of infiltration; b) earthen-based infiltration BMPs (such as a bioretention basin) c) manufactured infiltration BMPs (such as a permeable pavement system) or rainwater harvesting BMPs (such as a cistern); d) flow-through biofiltration BMPs (such as a vegetated swale or green roof); and if infiltration is not feasible, e) proprietary filtration systems (such as an inlet filter) or runoff flow control systems (such as a stormwater detention vault).
- vii. Implement Runoff Control BMPs that are sized and designed to retain runoff on-site (by means of infiltration, evaporation, uptake by plants, or harvesting for later on-site use), to the extent appropriate and feasible. Examples include a bioretention basin, rain garden, permeable landscaped area, permeable pavement system, and cistern.
- viii. If the proposed development will not retain on-site the runoff using an LID approach, an alternatives analysis shall be conducted. The alternatives analysis shall demonstrate that on-site runoff retention is maximized to the extent appropriate and feasible, and there are no appropriate and feasible alternative project designs (such as a reduction in impervious surface area) that would enable on-site retention of the design storm runoff volume.
- ix. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows. Alternative BMPs shall also be used where infiltration BMPs are not adequate to treat a specific pollutant of concern attributed to the development, or where infiltration practices would conflict with regulations protecting groundwater. Examples include an evapotranspiration BMP that does not infiltrate into the ground but uses evaporation and uptake by plants to reduce and attenuate runoff flows (e.g., a vegetated “green roof,” flow-through planter, biofiltration basin, or retention pond); a rainwater harvesting BMP to capture and store runoff for later use in landscape irrigation (e.g., a rain barrel or cistern); directing runoff to an off-site infiltration facility; or a BMP to reduce runoff flow rate (e.g., a manufactured stormwater detention vault) prior to directing runoff to the storm drain system.

- (b) **Implement Treatment Control BMPs if Necessary.** Treatment Control BMPs are structural systems designed to remove pollutants from runoff by processes such as gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or other physical, biological, or chemical process. Examples include vegetated swales, bioretention basins, and storm drain inlet filters. Runoff Control BMPs that promote infiltration or evapotranspiration may also provide Treatment Control.
- i. Implement a Treatment Control BMP (or suite of BMPs) that is sized and designed to remove pollutants of concern from that will not be retained on-site.
  - ii. Where infiltration BMPs are not adequate to remove a specific pollutant of concern attributed to the development, an effective Treatment Control BMP (or suite of BMPs) shall be required prior to infiltration of runoff, or else an alternative BMP that does not involve infiltration shall be substituted for the infiltration BMP.
- (c) **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste. Waste disposal receptacle within the leasehold shall be of a scavenger-proof design to prevent access by animals.
- (d) **Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the extent feasible. The project shall comply with the following requirements:
- i. New outfalls discharging stormwater or dry weather runoff to coastal waters shall be prohibited, and runoff shall be directed inland to the storm drain system or to an existing outfall. If no storm drain system or existing outfall is present, runoff shall be directed to an existing drainage channel. Runoff shall not be allowed to sheet flow to the beach or the bay.
  - ii. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner. If runoff flows to a natural stream channel or drainage course, determine whether the added volume of runoff is large enough to cause erosion.
  - iii. Protective measures shall be used to prevent erosion from concentrated runoff flows at stormwater outlets (including outlets of pipes, drains, culverts, ditches, swales, or channels), if the discharge velocity will be sufficient to potentially cause erosion. The type of measures selected for outlet erosion prevention shall be prioritized in the following order,

depending on the characteristics of the site and the discharge velocity: (1) vegetative bioengineered measures (such as plant wattles); (2) a hardened structure consisting of loose materials (such as a rip-rap apron or rock slope protection); or (3) a fixed energy dissipation structure (such as a concrete apron, grouted rip-rap, or baffles).

- iv. Design and manage the development to minimize discharge of dry weather runoff to coastal waters, to the maximum extent feasible. For example, use efficient landscape irrigation techniques, and design vehicle washing areas to convey wash water to vegetated areas, infiltration system, or the sanitary sewer system to minimize off-site runoff.
- (e) **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and staff training) to keep the water quality provisions effective for the life of the development.
- (f) **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:
- i. A California-licensed professional (e.g., Registered Professional Civil Engineer, Geotechnical Engineer, Geologist, Engineering Geologist, Hydrogeologist, or Landscape Architect) qualified to complete this work shall be in responsible charge of preparing the Post-Development Runoff Plan.
  - ii. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
  - iii. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.
  - iv. A polluted runoff and hydrologic characterization of the existing site (e.g., potential pollutants in runoff, soil properties, infiltration rate, depth to groundwater, and the location and extent of confining layers such as bedrock), as necessary to design the proposed BMPs.
  - v. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Specify the number, location, size, design, and stormwater management function of all BMPs. Include a schedule for installation or implementation of all post-development BMPs.
  - vi. Supporting calculations demonstrating that all required Runoff Control and Treatment Control BMPs shall be sized, designed, and managed to

infiltrate, retain, or treat, at a minimum, the runoff produced by the 85th percentile 24-hour storm event for volume-based BMPs, or the 85th percentile 1-hour storm event (multiplied by a safety factor of two) for flow-based BMPs, to the extent appropriate and feasible, for the portions of the project site that are determined to not already be able to infiltrate the volume produced by an 85th percentile 24-hour storm event. Indicate the values used in the calculations, and the source of data for each variable.

- vii. For the portions of the project site where the 85th percentile 24-hour design storm runoff volume cannot be retained on site using an LID approach, an alternatives analysis shall demonstrate that no feasible alternative project design would substantially improve runoff retention.
- viii. Runoff from all new and replaced impervious and semi-pervious surfaces shall be addressed in the plan. For sites where the area of new and replaced impervious and semi-pervious surfaces is greater than or equal to 50% of the pre-existing impervious and semi-pervious surfaces, runoff from the entire developed area, including the pre-existing surfaces, shall be addressed in the plan.
- ix. A description and schedule for the ongoing management of all post-development BMPs, including operation, maintenance, inspection, and staff training, that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the approved Post-Development Runoff Plan, unless the Commission amends this permit or the Executive Director determines issues a written determination that no amendment is legally required for any proposed minor deviations.

#### **10. Assumption of Risk, Waiver of Liability, and Indemnity.**

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 or 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.

#### **11. Other Permits**

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of all other necessary State, Federal, and local permits that may be necessary for all aspects of the proposed project, including from the U.S. Fish and Wildlife Service, National Marine Fisheries

Service, California Department of Fish and Wildlife, California State Lands Commission, Regional Water Quality Control Board, and the U.S. Army Corps of Engineers. The permittee shall inform the Executive Director of any changes to the project required by the agency. Such changes may not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required for any proposed minor deviations.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

#### Project Location

The San Diego Unified Port District (“Port”) and USS Midway Museum (“Midway”) propose to construct a public park on Navy Pier. Navy Pier is a 5.7 acre pier located on the San Diego Bay immediately north of the USS Midway Museum and is currently used for parking primarily by Midway employees, volunteers, and visitors (Exhibit 1).

#### Project Description

The following project components are proposed to be completed within six years of Commission approval:

- (1) Demolish the Head House Building: The Head House is a two-story, 48,000 sq. ft. building formerly used by the Navy and located on the easternmost portion of the pier adjacent to the public promenade (Exhibit 2). The building is currently vacant. The proposed demolition would include abatement of hazardous materials; removal of the interior, roof, walls and foundation system; capping and abandonment of existing utilities; installation of structural infills in pier deck openings; and paving of the pier in the demolition footprint.
- (2) Reinforce Pier: The pier would be repaired and rehabilitated to support loading requirements of the proposed park and above-deck improvements. Work would occur on the pier and under the pier deck. For the work under the deck, scaffolding would be used and work would occur at low tide. Work on the pier would include concrete and asphalt removal, drilling, installation of reinforcement, and patching with epoxy or grout. Construction activities will occur following demolition of the Head House building and overlap with construction of the park. Staging and storage would be on the pier deck, within the footprint of the Head House.
- (3) Improve Pier Entry and Exit: The pier entry and exit driveways would be modified to improve traffic and pedestrian flow and coordinate with the future North Harbor Drive development.

- (4) Construct Public Park: The proposed 3.6 acre park includes a 32 ft. wide promenade along the northern perimeter of the pier to connect the Embarcadero Promenade to the west end of the pier, several pedestrian walkways, 10 benches, five swings, three shade structures, interactive play structures, lighting, landscaping, bicycle racks, coastal access and interpretive signage, a public restroom, several monuments, a memorial, and a 1,000 square foot pavilion for a low-cost snack concessionaire. (Exhibit 3)
- (5) Maintain a Portion of Pier for Parking, Emergency Access, and Museum Operations: The applicants propose to retain 0.49 acres or 8.6% of the pier for public parking and 0.72 acres or 12.7% of the pier for the Midway leasehold (including 0.22 acre for Midway volunteer parking) (Exhibit 4). In total, approximately 144 parking spaces would remain on the pier, including 100 public parking spaces (74 standard, 6 electric vehicle charging (EV), 10 ADA, 10 motorcycle) and 45 parking spaces for Midway use only (35 standard, 7 ADA, 3 EV).
- (6) Modify Parking Rates: The applicants propose to increase existing parking rates on Navy Pier to be consistent with market rates of nearby lots within the Port and allow for a range of rates depending on the season, with a 25% lower rate charged during the off-peak season of October through March. The existing and proposed parking rates are shown on the table below:

Rate Category	Existing Rates	Proposed Rates (April -September**)
Transient: Up to 1 Hour	\$5	None proposed
Transient: Up to 2 hours	None stated	\$5 per hour
Transient	\$10 (1-12 hrs.)	\$20 (up to 6 hrs.)
Transient Daily Maximum *	None stated	\$25 (6 to 24 hrs.)
Special Event	\$20	\$30
Educational Overnight*	\$10	\$10
Motorcycles		50% of posted rate
*Overnight parking allowed for Midway Educational Overnight Program and when demand is low. ** Rates reduced by 25% Oct.-Mar. and other low periods as determined by the Port.		

- (7) Other Pier Improvements: Other improvements include a storm water drainage system with required retention and filtration installation, and reconfiguration of existing utilities.
- (8) Mitigation Package: To mitigate for the delay in construction of the park and continued displacement of the park site with an unpermitted parking lot, described in greater detail in Exhibit 5, and also discussed in the Project Background and Unpermitted Development findings below, the following summarizes the funding commitments that would be incorporated into Midway's annual budget over the next twenty years:

#### New Programs/Funding

- Snooze Cruise Program Scholarships: The Midway would offer focused scholarships for Black, Indigenous, and children of color to attend an existing overnight educational program.<sup>1</sup> The Midway would expand its awareness campaign by coordinating with Title 1 schools, San Diego's American Indian Education Centers, and environmental justice organizations such as Environmental Health Coalition and the California Environmental Justice Alliance. The scholarships would result in an increased attendance of approximately 300-450 additional students per year, which would double the attendance of the program.
- Park Docent Program: The Midway would expand the museum's volunteer program to place three to five docents in the new park to engage with visitors and provide expertise during the normal working hours of the Midway (currently 10 am to 5 pm daily, except for Thanksgiving and Christmas Day).
- Midway Institute for Teachers: The Midway would expand the existing program, which trains and provides classroom materials to 125 teachers, to an additional 25 teachers per year (and 500 over 20 years).
- Virtual Field Trip Component: The Midway would provide a new virtual component to field trips that provides teachers with free access to pre- and post-“visit” curriculum. This program is anticipated to reach an additional 10,000 students each year in 350 classrooms.
- Free Tickets: In addition to the 115,000 comped tickets currently offered, Midway would provide 25,000 new comped tickets per year using its expanded awareness campaign (discussed in the first bullet above) to distribute the new comped tickets to targeted groups.
- Veterans Day Parade: The Midway would sponsor and coordinate the annual Veterans Day Parade, which was previously managed by the Veterans Museum at Balboa Park. The free event draws 50-60 thousand attendees annually and access to the Midway will be free for the day.

---

<sup>1</sup> See <https://www.midway.org/education/snooze-crewz-overnight-adventure/>



- Mobile Phone Microsite: The Midway would create a mobile phone microsite, which is a collection of targeted webpages designed to be used with a mobile phone, to be used in the new park and dedicated to the history of the pier, the Midway, and San Diego Bay.

#### Continue to Fund Existing Programs

- Daily free admission for the following groups: active-duty service members and first responders, Marine graduates and families, Goldstar families, accessible caregivers, court appointed special advocates and their foster children, children age 5 and under.
- Free admission to attendees of the following free events: Memorial Day, Veteran's Day, Pearl Harbor Day, 9/11 Annual Ceremony, POW/MIA Ceremony, Multi-Cultural Celebration (Midway Birthday), Memorial services, Military ceremony guests, Kids 12 & under in October. (Note that the Midway estimates a 15% increase in attendees, or 17,000 people, under this program, together with the free admissions identified in the bullet above, would occur from increased outreach)
- "No Child Left Ashore<sup>2</sup>": The Midway would continue to fund the "No Child Left Ashore" program, which provides assistance for Title 1 schools to attend field trips to the Midway by offering a reduced cost lunch, free supplies, and free transportation. Approximately 10,000 students currently participate in this program and the Midway estimates approximately 500 new participants would be added. In addition to the expanded awareness campaign identified above, the Midway would also target specific environmental justice communities and update their list of Title 1 schools.
- Other Grant Programs: The Midway and Midway Foundation would continue to grant \$500,000 per year to San Diego non-profits. A dedicated page would be added to the Midway's new website highlighting and promoting the opportunity.
- Wetland Mitigation Monitoring and Maintenance. To mitigate for biological impacts from the docking of the Midway, the Midway was required to create and restore 5.8 acres of jurisdictional waters of the U.S. The mitigation added 5.8 acres to an existing 3.3 acre marshland at Lovett Marsh, resulting in the restoration and conservation of 9.1 acres of tidal wetland. The Midway has been annually monitoring and maintaining all 9.1 acres even though it is only responsible for 5.8 and will continue to monitor and maintain the additional acreage as long as it owns the property.

In addition, the applicants have proposed that the following park-related components also be considered mitigation:

---

<sup>2</sup> See <https://www.midway.org/education/school-youth/school-programs/scholarships/>

## San Diego Unified Port District and USS Midway Museum

- The applicants estimate an additional \$22.8 million will be spent to provide additional amenities at the park as a result of coordination with Commission staff. Examples of amenities include a minimum of ten benches, five swings, one large and two smaller shade structures, interactive play furniture, and other themed elements.
- Midway to pay for 50% of park maintenance in perpetuity, at an estimated cost of \$100,000 per year.
- 100 public parking spaces.
- Midway to pay for 1,000 sq. ft. pavilion for low-cost snack concessionaire in the park.
- Midway to pay for construction of a public restroom in the park.

Finally, the applicants have proposed the following past programs and projects by the Port be considered mitigation:

- Sponsorship of Free Events: past sponsorship of free events including Annual South Bay PRIDE Art and Music Festival, Annual Fleet Week, Ilan-Lael Foundation Pacific Rim Park Friendship Walk, Annual Martin Luther King Jr. Parade, American Lung Association Lung Force Walk, Imperial Beach Independence Day Celebration Fireworks or Drone Display, Imperial Beach Sun and Sea Festival and Sand Sculpting Competition, Symphony by the Sea, Annual Port of San Diego Holiday Parade of Lights, Big Bay Boom Fireworks Show, Day at the Docks, and Holiday Bowl Parade.
- Environmental Education Program: past funding of environmental education programs including field trips to the Living Coast Discovery Center, sea turtle education with WILDcoast, field trips (including boat rides) to the Maritime Museum of San Diego, whale watching with Ocean Connectors, wetlands restoration with Ocean Discovery Institute, and Chula Vista Elementary School District's Coastal Education Program.
- Past projects providing public open space and recreation opportunities including the 2014 construction of Embarcadero viewing platform; 2016 construction of National City Aquatic Center (and ongoing operation and maintenance); 2016 installation of picnic tables, umbrellas, benches, and chairs at the west end of Cesar Chavez Park Pier; and 2019 construction of the Shelter Island Public Boat Launch.

(9) Removal of Free Public Viewing Deck: The applicants' original application proposed the removal of the free public viewing area, located on the deck of the USS Midway Museum, in the project description; however, its removal cannot be addressed through the subject permit. Free public access to the Midway deck was proposed to mitigate for the visual impacts of berthing the Midway at the pier as part of the approval of the PMPA and Port-issued CDP (2003-3) that authorized the berthing of the Midway. Specifically, the viewing deck on the USS Midway Museum has been incorporated into the certified PMP, which identifies the 0.8-acre site as a public viewing area with a vista point and park/plaza land use in its text, on the land use

map, and in the public access plan for the USS Midway Museum; as such, its removal would first require an amendment to the PMP to revise the text, land use designation, and public access plan. If the Commission approved a PMPA to remove the public viewing area, Port CDP No. 2003-3 could be amended by the Port to remove the deck since the USS Midway Museum has been incorporated into the PMP, and it is located within the Port's jurisdiction. As such, due to additional actions required under differing standards of review the Commission may not consider removal of the Midway deck under this action. After coordinating with Commission staff, the applicants revised the project description to remove this component from the proposed project; however, they intend to pursue a separate project-driven PMPA in the future to remove the requirement for a free public viewing deck on the Midway.

### Project Background

On June 28, 2001, the Commission approved Port Master Plan Amendment ("PMPA") No. 27 that included, among other development, docking of the USS Midway Aircraft Carrier for use as a museum on the south side of Navy Pier. The landowner of Navy Pier at that time, the United States Navy ("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. Commission staff initially recommended denial of the portion of the PMPA related to the Midway due, in part, to the impacts that the Midway would have on public views and the lack of language in the PMPA regarding mitigation. As discussed in the PMPA staff report, docking of the 1,000 foot long and 50-190 foot tall Midway would "block existing public views, contribute to the walling off of San Diego Bay, block a potential view corridor down F Street, and create a 'tunnel' effect on Harbor Drive at the subject site." (Exhibit 9) Not only were visual impacts of the Midway a concern, but also the visual and public access impacts that would occur if parking were to remain on Navy Pier long-term. As discussed in the PMPA staff report, Navy Pier was "not an appropriate place for a permanent parking lot, due to adverse visual impacts a parking lot will have on the surrounding waterfront and the loss of the prime waterfront location for public access and recreational purposes."

To mitigate for the visual impacts of the Midway, the proponents of the museum proposed to create a 5.7-acre memorial park on Navy Pier once it was relinquished to the Port by the Navy, as well as free public access to the Midway viewing deck. The proposal included a conceptual plan to demolish the existing Head House and redevelop the pier as a pedestrian-oriented memorial park with plazas, grassy lawns, benches, promenades, design features, and a Navy spouses club and chapel for small social functions. These commitments by the Port and Midway were accepted by the Commission and later included by the Port as conditions of the Port-issued coastal development permit and lease agreement with the Midway. As a result of the proposal, the following language was incorporated into the PMP:

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 the pier to a 5.7-acre memorial park is a specific planning goal of the Port, and environmental analysis for the park conversion will be conducted prior to the Navy relinquishing ownership and/or control of the Navy Pier such that construction of the park can occur as soon as feasible thereafter. The park conversion will be subject to all appropriate laws at the time the Navy Pier park is proposed.

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. 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 process a PMPA; however, a PMPA was not pursued by the Port.

In 2016, the Commission approved CDP No. 6-16-0258 which authorized the Port to temporarily maintain parking on the pier for four years and provide interim public access improvements; however, that permit later expired before being effectuated for financial reasons, and never became effective. In 2019, the Port submitted CDP Application No. 6-19-1035, which also proposed to temporarily maintain parking for four years and provide interim public access improvements. However, following extensive coordination with Commission staff over several years, the Port and Midway submitted the subject project application for construction of a permanent park.

### Standard of Review

Navy Pier was formerly owned by the U.S. Navy, which transferred ownership to the Port in 2003. However, the Port has yet to incorporate Navy Pier into the San Diego Unified Port District's certified Port Master Plan (PMP). Thus, the Coastal Commission retains permit jurisdiction of Navy Pier and Chapter 3 of the Coastal Act remains the legal standard of review with the PMP used as guidance.

## **B. Visual Resources**

Section 30251 of the Coastal Act states, in part:

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...

Section 30251 of the Coastal Act requires that development is sited to protect public views to and along coastal areas. The proposed project would open visual access to the San Diego Bay by removing the Head House building and converting the majority of the pier from a parking lot into a public park. In addition, the project would advance the provision of mitigation for the berthing of the Midway, which blocks public views along the bayfront on a primary coastal access corridor.

The PMPA that incorporated the Midway into the PMP was approved by the Commission based on the commitment by the Port and Midway that parking on Navy Pier would be an interim use and that the pier would be converted to a public park to mitigate for the visual impacts that occurred from the docking of the 50-190 foot tall, 1,000 foot long aircraft carrier. Prior to the Midway's arrival, existing coastal views were expansive and allowed the public to see to Coronado and San Diego Bay (Exhibit 6); however, docking the Midway replaced the scenic open water and coastline views with views of the Midway. Because the conversion of the pier from a parking lot to a park has not occurred, the visual impacts associated with docking of the Midway have not been appropriately mitigated. However, with construction of the proposed project, the visual impacts of the Midway will finally be mitigated.

The applicants maintain that the Midway does not have an adverse impact on public views but is instead advantageous, based on the popularity of the Midway, which has attracted more than a million visitors per year. However, in addition to the findings that the project would impact visual resources, as memorialized in the staff report for PMPA No. 27 adopted by the Commission, the EIR conducted for the docking of Midway and adopted by the Board of Port Commissioners also concluded that there would be potentially significant impacts to public views caused by the docking of the Midway. There is no doubt that the Midway is a popular visitor-serving destination, however, that status does not negate the loss of visual access that resulted from its docking. While many visitors do attend the museum and some members of the public may take advantage of the free public access to the Midway deck, the vast majority of visitors who drive, bike, or walk along this scenic route and the Embarcadero Promenade lost significant public views of Coronado and San Diego Bay.

However, as detailed in the Project Background section above, although transfer of the pier from the Navy to the Port occurred 20 years ago, the pier has yet to be converted into a public park. To ensure that construction of the park will occur in a reasonable timeframe, **Special Condition No. 1** requires the applicants to complete construction of the proposed project within five years of Commission action.

The proposed project also includes demolition of the Head House building, which sits on the eastern boundary of Navy Pier. The building is dilapidated and blocks any view that would be available to the public walking on the promenade that runs along the San Diego Bay and views from Harbor Drive. Its removal will significantly improve the pedestrian experience along the promenade and is a necessary step in the process to

re-open direct bay views. **Special Condition No. 2** requires that the applicant submit demolition plans for Executive Director review and approval.

The public park at Navy Pier was originally proposed to mitigate for bay views blocked by the Midway and, as such, the future park should be designed to open up views to the bay. In this case, the proposed park design includes a 32 ft. wide promenade along the northern perimeter of the pier that would serve as a view corridor from Harbor Drive and landscape screening of the public parking lot (Exhibit 3). Thus, to ensure that retention of parking on the pier does not conflict with opening up bay views, **Special Conditions No. 2** and **3** require final park and landscaping plans that substantially conform to the preliminary plans.

In summary, the proposed project will open up views and mitigate visual resource impacts that occurred from the docking of the Midway. The proposed project has been conditioned to ensure the necessary steps to convert the pier to a public park are completed within a reasonable timeframe. Therefore, the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

### C. 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 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

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 30212.5 requires parking facilities to be distributed throughout an area to avoid overcrowding of a single area. Section 30213 states that lower cost visitor and recreational facilities shall be provided where feasible. The proposed project will provide public access and recreation benefits by converting the majority of the pier into a public park, which will provide direct access to the shoreline and a lower-cost visitor and recreational facility, priorities under Sections 30212 and 30213 of the Coastal Act.

#### Maintain a Portion of Pier for Parking, Emergency Access, and Museum Operations

There are currently 442 parking spaces on Navy Pier. Of those, 45 spaces on the southern portion of the pier are included in the Midway's lease from the Port and 20 of the parking spaces outside of the Midway's lease are rented to the Midway, which totals 65 parking spaces for Midway use. According to a parking utilization study conducted for the Midway in 2016, of the 377 remaining public parking spaces, visitors to the Midway comprise 74% of the daily parkers and the lot sells out almost daily.

The applicants have proposed to construct a 3.6 acre park (64% of pier) and retain the remainder of the park for public parking (0.49 acres or 8.6% of pier), the Midway leasehold (0.72 acres or 12.7% of pier) including Midway only-parking (0.22 acres), and circulation (.84 acres or 14.8% of pier) (Exhibit 4).

As discussed in the Project Background section, above, the associated PMPA was approved by the Commission based on the proposal that parking on Navy Pier would be limited to an interim period and that conversion of the pier to a 5.7 acre park would occur following the Navy's relinquishment of the pier.

While the proposed project would reduce the amount of park space contemplated in the PMP from 5.7 acres to 3.6 acres, the applicants have provided justification for the proposed configuration (Exhibit 7). Specifically, the egress and ingress configuration with public parking in the middle is needed to allow for the turning radius of delivery trucks and passenger busses and as a staging area for large pallets of cargo to lift on to the Midway, which would occur during non-operating hours of the park. The applicants have indicated that the 0.22-acre pier area on the Midway leasehold proposed to be used for volunteer parking is also needed for craning repair equipment and the semi-trucks that carry the craning equipment, as well as for fire truck vehicle access in case of an emergency on the museum deck.

The project would result in a reduction of approximately 286 public parking spaces; however, these parking spaces were always envisioned as a temporary use until alternative off-site parking could be secured. The Port has provided a study that

indicates that this parking is able to be satisfied at surrounding public parking lots. Nevertheless, any project that does not include adequate parking needs to consider the long-term goals of improving public access and circulation in an environment of increasing population in an expanding, high-density metropolitan area. In evaluating the impact the proposed development would have on coastal access, it is important to keep several factors in mind. The Coastal Act supports the construction of new development in existing developed areas to decrease sprawl and impacts to open space. In a dense downtown neighborhood with limited space to reserve for parking lots and with existing transit infrastructure, designing development dependent upon automobile access and dedicating substantial amounts of land area to parking lots is not necessarily the best or most efficient use of waterfront land. It also discourages the use and development of public transit systems. Instead, development in these locations should be designed to take advantage of existing mass-transit opportunities, and to supplement existing facilities with new alternate transit systems.

In this particular case, the subject site is close to an existing trolley stop and Port summer shuttle stop, and is accessible to pedestrians and bicyclists using the public promenade that runs along the Embarcadero. However, the existing transit system isn't well suited to providing easy waterfront access to all inland communities and until that need is addressed, parking will still serve an important function in providing coastal access. Further, the parking to be provided in the park isn't necessarily a permanent commitment. Should circumstances arise where the parking can be further reduced or eliminated, the park could be further expanded on the pier in the future.

To ensure the public is able to access the full 100 space public parking lot, **Special Condition No. 5** prohibits Midway employee or volunteer parking in the public parking area and requires the applicants to set aside 20% of the public parking reservoir, or 18 public parking spaces, to be limited to two-hour parking, in order to provide parking specifically for parkgoers, since the average museum patron would need to park longer than two hours.

### Parking Rates

The applicant proposes to increase parking rates over existing rates, but consistent with market rates at nearby lots within the Port. There are several reasons why parking rates should not increase over that of surrounding market rates. First, the applicant has collected revenue from public parking on the pier since 2003, or for approximately 20 years. The associated PMPA was approved by the Commission based on the proposal that parking on Navy Pier would be limited to an interim period and that conversion to a park would occur following the Navy's relinquishment of the pier. Thus, the applicant has benefited from the pier remaining a parking lot by collecting revenues while the public has not yet received the benefit of a public park.

Nevertheless, the Midway is located adjacent to downtown San Diego and parking is limited in the immediate project vicinity as well as in the surrounding area. Therefore, the proposed parking rate increases are appropriate, in this case, because the rates are consistent with existing market rates for parking in this downtown area.



Any increase in parking rates will impact the public's ability to visit the coast if they cannot afford it or there are not reasonable options for alternative transit. While it is reasonable to raise parking rates to that of the market in this area, additional increases at this time are not warranted. **Special Condition No. 5** requires parking rates on Navy Pier to be consistent with those proposed by the applicant. In addition, to provide and facilitate access to low-income visitors, the applicants have agreed to accept the State Park Golden Bear Pass at the parking lot, which provides free parking at State Parks and Beaches for qualifying low-income individuals; **Special Condition No. 4(c)iii** memorializes this commitment.

### Mitigation

As identified in the PMP, Navy Pier was never intended to be a long-term parking solution. Instead, it was envisioned that the pier would be converted to a public park upon transfer of the pier from the Navy to the Port. Transfer of the pier occurred in 2003; thus, for the past 20 years the Port has had the benefit of charging for parking on the pier and the Midway has had the benefit of discounted and free parking for its employees and volunteers, and adjacent parking for visitors.

To mitigate for the 20-year temporal loss of the public park and unpermitted parking, the applicants have proposed a mitigation package that includes a 20-year commitment to fund several new, expanded, and existing programs detailed in the Project Description section and Exhibit 5, in addition to the park and associated park amenities, which would be implemented in perpetuity. Specifically, four new programs would be provided, including an annual scholarship program for 300-450 students to attend the overnight educational Snooze Cruise program with a focus on Black, Indigenous, and children of color with an expanded awareness campaign to target specified groups; expanding the museum's volunteer program to place docents in the new park to engage with visitors; a mobile phone microsite dedicated to educating park visitors on the history of the pier, Midway, and San Diego Bay; and funding and coordinating the annual Veterans Day Parade. The Midway Institute for Teachers, which provides training and classroom materials, would be expanded to include an additional 25 teachers (for 500 total teachers), and 25,000 new free Midway tickets would be provided to targeted groups using the expanded awareness campaign identified above. Finally, the applicants have proposed to continue several programs including free admission to select groups for daily museum visits and during nine free events throughout the year; providing a reduced cost lunch, supplies, and transportation for Title 1 schools as part of the "No Child Left Ashore" program; and awarding \$500,000 in grants to local non-profits annually. **Special Condition No. 4** requires the applicants to submit a Mitigation Program Management Plan that describes each proposed mitigation program and provides baseline data; provide and facilitate access to the park, the Midway, and the mitigation programs for people with limited means, visitors from under-resourced communities, and speakers of languages other than English; develop outreach that targets communities for increased access; and implement the program for a minimum of 20 years beginning no later than a year following the date of Commission action.

The applicant has also proposed park amenities they wish to be identified as part of the mitigation package for this project. Some of these park amenities are typical of a park;

for example, offering parking and seating, shade, and play structures. In addition, the applicant has included past programs and projects in the mitigation package. Past programs and actions are not typically applied as mitigation. However, the new, expanded, and continued programs identified in the paragraph above will provide a new public benefit and can be so recognized.

The mitigation proposal by the applicants will provide additional public benefit from existing conditions and is therefore adequate to mitigate for the temporal loss of the park and unpermitted parking on Navy Pier.

The project applicants propose to limit the number of special events at the park to 15% of the year, which is consistent with past actions at Port parks. However, since construction of the park at this location is required by the PMPA to mitigate for the berthing of the Midway, the public must have continuous access to the park in order for the mitigation to be fully realized. As such, **Special Condition No. 6** limits special events to 15% of the year and requires that most of the pier remain open to the public during special events, including either the west or east lawns, the 32 ft. wide northern public promenade, the northern park, restroom, and concessionaire (Exhibit 8). As such, the majority of the proposed park would remain open and available to members of the public at all times. **Special Condition No. 7** requires the applicant to install public access signage informing the public of their right to access the park.

### Environmental Justice

The proposed project also addresses environmental justice concerns related to public access. Ensuring maximum and equitable public access to the California coastline (as required by Coastal Act Sections 30210 and 30213) is also consistent with the environmental justice principles reflected in the Coastal Act. Section 30604(h) states: “when acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.” The Commission’s Environmental Justice Policy further expands upon this by reaffirming the Commission’s “long-standing commitment to identifying and eliminating barriers...to provide for those who may be otherwise deterred from going to the beach or coastal zone.” Under Section 30604(h), the Commission has the authority to require and/or negotiate educational programs that provide access and lower-cost recreational facilities for under-resourced communities. Barriers such as high parking fees, inefficient public transit, and a limited supply of affordable overnight accommodations can contribute to coastal access becoming a privilege for only those who can afford it. The mitigation requirements proposed in Exhibit 5 and **Special Condition 4** expand opportunities to bring people to the coast who have experienced greater burdens in accessing the coast, helping to expand equitable public access and its benefits.

### Public Access During Construction

Construction of the project is expected to take approximately five years to complete. To ensure public access impacts do not occur to the adjacent promenade which is a popular public accessway for bikers and pedestrians enjoying the San Diego Bay,

**Special Condition No. 10** requires the applicants to maintain access to the adjacent public promenade during construction.

Therefore, the project, as conditioned, is consistent with the public access and recreation policies of the Coastal Act.

## **D. Marine and Biological Resources**

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 demolition of an existing building, and construction of a park on an existing pier located over coastal waters in the San Diego Bay, as well as in-water structural repairs. Because work is proposed to take place in and over 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 ensure that construction material, debris, or other waste associated with project activities does not enter the water, **Special Condition No. 8** requires the applicant to submit a Construction and Pollution Prevention Plan for review and approval of the Executive Director that includes BMPs to minimize erosion and sediment discharge and the discharge of construction pollutants. **Special Condition No. 11** requires the applicant to submit permit approvals from other agencies.

Because parking lot runoff is a major contributor to non-point source pollution of waterways, impacts to water quality are likely to occur during the use of the pier as a parking lot if not properly planned and managed for. Contaminants can originate from paving materials, automobiles (antifreeze, oil, hydrocarbons, metals from wearing brake linings, rubber particles from tires, nitrous oxide from car exhausts, and grease), and waste discarded by people. These contaminants can enter the bay should they be subject to stormwater run-off. Thus, **Special Condition No. 9** requires the applicant to submit a Post-Development Runoff Plan that includes low impact development strategies and implementation of source control BMPs to minimize the discharge of contaminants into coastal waters by run-off.

A bay-wide eelgrass survey conducted in 2020 indicates that no eelgrass exists within the project footprint. Due to the depth of the bay floor at Navy Pier, eelgrass is unlikely to exist at the project site. All work proposed in and above water is covered under an existing U.S. Army Corps of Engineer (ACOE) Regional General Permit. In accordance with the requirements of the ACOE permit, no work will be performed during the California Least Tern nesting season from April 1 to September 15. **Special Condition No. 2** also requires the applicant to submit final lighting plans for the pier that identifies lighting would be the minimum necessary and directed downward, shielded, and a correlated color temperature below 2,700 kelvins which contains less blue light frequencies that have been shown to disrupt natural circadian rhythms in humans and wildlife, leading to disruption in sleep and wildlife behaviors (e.g., breeding, foraging).

Finally, there is a risk of developing on a pier that is subject to flooding and hazards from waves. Therefore, **Special Condition No. 10** requires the applicant to assume all

risks for developing in a location that is subject to coastal hazards, such as waves, storms, and flooding.

In conclusion, the proposed development raises concerns regarding water quality impacts associated with demolition, construction, and operation activities. As conditioned, potential impacts have been either eliminated or minimized and addressed. Therefore, the Commission finds that the project, as conditioned, is consistent with Sections 30230, 30231, 30232, and 30253 of the Coastal Act.

## **E. Unpermitted Development**

Unpermitted development has occurred on the subject site, including (1) failure to convert the pier into a public park following transfer of the pier from the Navy to the Port as required in the certified Port Master Plan, and (2) continued displacement of the park site with a parking lot on the pier without a coastal development permit. Because there is existing unpermitted development on the site, the subject permit shall be deemed issued upon the Commission's approval. The subsequent performance of the work authorized by the permit in compliance with all the terms and conditions of the permit will result in resolution of the violation described above. In order to ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition No. 1** requires the applicants to construct the proposed project within five years of Commission action. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action to address non-compliance with this permit and the underlying violation described herein. Special Condition No. 1 allows for a one year extension of the five-year deadline by the Executive Director for good cause, which may include delays in permitting or construction materials that limit the applicants' ability to complete construction of the park. In addition, the applicants have proposed adequate mitigation for the temporal loss of the park and unpermitted development, including the implementation of programming elements, discussed in more detail in the Public Access section and in Exhibit 5. **Special Condition No. 4** requires the applicant to fund and implement the proposed programming elements for a minimum period of 20 years to coincide with the 20 years that the pier has been used for public parking and not a park.

Although development occurred prior to the submission of the permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the Port's PMP. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an implied statement of the Commission's position regarding the legality of any development, other than the development addressed herein, undertaken on the subject site without a coastal development permit.

## **F. 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, the Port Master Plan (PMP) being equivalent to an LCP, 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.

## **G. 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. In April 2000, the Port adopted a Master EIR regarding the relocation and operation of the Midway and other potential development on the North Embarcadero that identified parking impacts and the mitigation measure of parking on Navy Pier or other nearby parking locations. (See State Clearinghouse (SCH) No. 1999031037.) The Port has found newer aspects of the project (fee increases, demolition) to be exempted from CEQA review. (See Guidelines 15273, 15301, including subd. (d) and (l), 15304, 15308, 15321(a)(2), 15332.)

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 the protection of visual resources, public access and water quality, 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.

6-22-1069

San Diego Unified Port District and USS Midway Museum

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Certified Port Master Plan
- Revised Findings on San Diego Unified Port District Port Master Plan Amendment No. 27
- Unofficial transcript and digital audio of March 14, 2001 PMPA hearing