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STAFF REPORT: CONSENT CALENDAR

Application No.:	**6-24-0019**
Applicant:	**USS Midway Museum**
Agent:	Christine Pereira
Location:	910 North Harbor Drive, San Diego, San Diego County.
Project Description:	Replace existing Brow (gangway) No. 4 with a new approximately 42 ft. long and 5 ft. 6 in. wide brow and install an approximately 36 ft. 6 in. tall elevator and stair structure on Navy Pier.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project will provide improved access to the USS Midway Museum by providing additional elevator capacity for guests and material loading and unloading. While the proposed project would increase access for ticketed guests of the Midway, no improvements to the required free public access to the Midway deck via Brow No. 1, which contains a stair structure and ramp, is proposed. This free public access was required as part of the approval of the Port Master Plan Amendment that authorized the berthing of the Midway, as well as by the associated Coastal Development Permit (2003-3) issued by the Port; however, availability of public access to the deck has historically not been advertised nor well used. As such, to ensure the project also improves public access, **Special Condition No. 1** requires the applicant to submit a public access signage plan that clearly identifies that the existing viewing deck is free of charge to the general public. To ensure that Midway staff and volunteers are aware of the procedures for providing free public access to the Midway viewing deck, **Special**

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

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-25-0019, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION 4

II. STANDARD CONDITIONS 4

III. SPECIAL CONDITIONS 5

IV. FINDINGS AND DECLARATIONS 8

A. Project Description and Background 8
B. Public Access/Parking 10
C. Water Quality 11
D. Coastal Hazards 12
E. Local Coastal Planning 12
F. California Environmental Quality Act 12

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS 14

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Plan

Exhibit 3 – Photographs

Exhibit 4 - USS Midway Museum Bay Access Procedures

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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. **Expiration**. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation**. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land**. These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Public Access Signage Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a comprehensive Public Access Signage Plan. The plan shall include, but not be limited to, the following:

   a. Plans, dimensions, and locations of signage to notify the public of the free public access available on the USS Midway deck when the USS Midway is open to the general public and comply with the following:

      i. Each sign shall include the California Coastal Commission emblem and recognition of the Coastal Commission's role in providing public access at this location.

      ii. Signage shall be large enough to be seen by the public and clearly identify that public access on the USS Midway deck is free of charge.

      iii. Signage shall be located, at minimum, on the public promenade at the pedestrian entrances to Navy Pier, on the sign located at the ticket booth that identifies the cost of admission, and integrated into directional or information signage in Freedom Park.

      iv. 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.

   b. Notification of the free public access available on the viewing deck of Navy Pier on the webpage that identifies the general admission ticket prices on the USS Midway Museum website.

2. **Final Midway Viewing Deck Public Access Protocol.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, protocols for providing free public access to the USS Midway deck, including access for members of the public who require use of an elevator, as well as a comprehensive plan to educate employees and volunteers on these protocols, that substantially conform to the USS Midway Museum Bay Access Procedures submitted to Commission staff on January 28, 2025 (Exhibit 4).

   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. **Annual Public Access Monitoring Report.** Within 30 days of the year end, and by January 30 at the latest, of every year, the permittee shall submit a monitoring

report containing monthly usage counts of the general public who accessed the Midway deck the previous year.

4. **Construction and Pollution Prevention Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Construction and Pollution Prevention Plan. The Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

   a. A containment area shall be constructed in such a fashion as to restrict any release of contaminants or debris to the aquatic environment. Containment areas on barges, piers and upland areas shall have continuous sidewalls and controls as necessary (e.g. straw bales, oil absorbent boom, ecology blocks, durable plastic sheeting or lining, covers, etc.) to contain all sediment, wood-treating compounds, organisms and debris, and to prevent re-entry of these materials into the aquatic environment.

   b. Coatings and sealants shall be composed of products that are inert after they have cured and dried.

   c. Fusion Bonded Epoxy, HDPE, and polyuria products are recommended. No coal tar-based sealants shall be used unless they are themselves coated or wrapped with an inert product to isolate them from the marine environment.

   d. Installation and application of epoxy, resin, or cementitious grout/fill shall be conducted when predicted weather and ocean conditions allow effective control and full containment of the material and will remain dry until cured, in order to prevent any leaching of uncured treatment materials into coastal waters.

   e. Work will be performed in dry conditions or off-site in a controlled environment manufacturing facility, when feasible.

   f. All cleaning and preparation of surfaces shall use wet vacuum techniques, containment booms, or heavy mesh containment netting so that all debris, chips, dust, dirt, and fine particles are collected and disposed of in a location where they will not enter coastal waters.

   g. Dip nets shall be on-site and used to retrieve debris that fall into the water.

   h. Methods to contain any leaks or spills of treatment materials during application shall be planned in advance, and any necessary equipment or supplies shall be readily accessible onsite. Any leaks or spills, in particular of anti-corrosion coatings, epoxy fillers, and waterproofing sealants, shall be immediately cleaned up.

i. All pressure-injection and gravity-feed applications of epoxy, resin, or cementitious materials shall be closely monitored visually to ensure that these materials do not leak or spill into coastal waters during applications.

j. Coating and waterproofing sealants used in the field shall be carefully applied by brush or roller to limit application to the immediate surfaces intended for protection, and to prevent drips or spills into coastal waters.

k. All anti-corrosion coatings, epoxy fillers, and waterproofing sealants shall be properly stored and contained so that these products will not leak or spill, or otherwise enter the coastal environment.

l. All areas within which construction activities or staging are to take place shall be minimized in size to the extent feasible and sited in order to have the least impact on public access and the marine environment.

m. No construction materials or equipment shall be placed outside of staging areas. Materials and equipment shall be stored beyond the reach of tidal waters.

n. Construction activities, staging, and storage activities are prohibited outside of the defined construction, staging, and storage areas.

o. Equipment washing, refueling, and servicing shall not take place on the tidelands or over-water structures.

p. No removal or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.

q. Any shavings, sawdust, woody debris (splintered wood, fragments, etc.) or sediment on the water surface shall be retrieved and placed in the containment area.

r. Any removal, construction or repair-associated sediment and adhered organisms shall be collected daily, contained on site, and disposed at an approved upland disposal site.

s. Tarps or other devices shall be used to capture debris, sawdust, particulates, oil, grease, rust, dirt, and spills to protect the quality of coastal waters.

t. A floating containment boom shall be placed around all active portions of the construction site where wood scraps or other floatable debris could enter the water. The containment boom shall be cleared daily or as often as necessary to prevent accumulation of debris.

u. Operators shall utilize the designated staging area for sawing and other construction related activities, and use the pier only for assembly.

v. Any materials that need to be treated shall be treated at an onshore location to preclude the possibility of spills into the waters.

w. The discharge of any hazardous materials into any receiving waters shall be prohibited.

x. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

y. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the tidelands).

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

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

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project is the replacement of an existing brow (gangway), consisting of a stair structure and ramp, with a new brow consisting of a stair structure, ramp, and elevator on Navy Pier. Navy Pier is located on northeastern San Diego Bay directly north of the USS Midway Museum. The Midway leases 31,436 square feet of the southern portion of Navy Pier from the San Diego Unified Port District, which is used for ticket sales, four brows with stair structures, an elevator, emergency backup generator, vending machines, ATMs, and parking for employees and volunteers. The remainder of the pier is currently used as a parking lot but has been approved to be converted into a 3.6 acre public park (CDP No. 6-22-1069) as required by Port Master Plan Amendment

#27, as described in detail below. The purpose of the project is to provide an enhanced accessway with an additional elevator for ticketed guests and material loading and unloading to the adjacent Midway.

Specifically, the proposed project would replace the existing Brow No. 4 with a new brow of approximately the same size and install an approximately 36 ft. 6 in. tall 5000-pound capacity steel elevator at the eastern exit of the museum (Exhibit 2). A new reinforced concrete elevator pit would be tied in with the adjacent existing pier slab, beams, and girders. During construction the existing brow would be relocated to the west; however, the brow would be removed and disassembled following construction of the new brow. Project construction is anticipated to take approximately seven months. Construction staging would be located adjacent to the work area and would not impact public parking or the public's ability to access the site. As such, no impacts to public access are expected to result during the construction of the proposed project. No improvements are proposed to Brow No. 1, which is the accessway used by members of the public utilizing the free public access to the deck described below.

Although the pier is owned and maintained by the Port, Navy Pier has yet to be incorporated into the certified Port Master Plan, and thus, the Coastal Commission retains permit jurisdiction of the pier. Therefore, the standard of review is the Chapter 3 policies of the Coastal Act.

Project History

On June 28, 2001, the Commission approved Port Master Plan Amendment 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, 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- to 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."

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. 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.

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. Following acquisition by the Port, however, progress towards converting the pier to a park was

delayed until 2023 when the Commission approved CDP No. 6-22-1069 for the construction the public park. The Port and Midway are in the process of submitting final plans for construction.

While the free Midway public viewing deck required by the PMPA and CDP (2003-3) issued for Midway by the Port has been implemented, the public viewing deck has not been widely known or used by the public, due to a variety of reasons including the lack of signage advertising this amenity, and because visitors must be escorted by a staff member to the viewing deck and overseen by staff during their visit. The current signage does not maximize public access to the Midway as the language is vague (Exhibit 3) and the signs are not appropriately located to inform the public of the free public viewing deck. For example, one of the public access signs is located on the southern perimeter of the pier west of the ticket booth, where it is visible only to those parking and entering the Midway from the southwest section of the pier. As a condition of approval for CDP No. 6-16-0258 (Navy Pier Parking), the Commission required Special Condition No. 6, which required the creation of a comprehensive and cohesive signage plan to notify the public of all public amenities on both the Navy Pier and the Midway including the public viewing deck. However, because that permit was not acted on by the Port, the signage plan was not completed and the existing inadequate signage remains in place.

In 2019, the Commission approved CDP No. 6-19-0094 for a project substantially the same as the one proposed in the current CDP application. This earlier permit included similar special conditions to those required in the subject staff report, including Special Condition No. 1, which mandates the installation of updated signage to inform the public about free access to the public viewing deck. However, the previous permit expired after the Midway indicated they were unwilling to include the word "free" on the updated signage, as required, and thus, the permit was never issued and the improvements were not made.

B. Public Access/Parking

Section 30210 of the Coastal Act requires that maximum public access and recreational opportunities be provided. Section 30212 requires that access from the nearest public roadway to the shoreline be provided except where it is inconsistent with public safety or the protection of fragile coastal resources, or adequate access exists nearby. Section 30213 states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.

The proposed project would provide improved access to ticketed visitors of the museum by providing a new brow with an additional elevator to the museum. However, the project does not propose to concurrently improve the access to the free viewing deck for members of the general public, which has historically not well used due to the lack of advertisement. In addition, because visitors must be escorted by a staff member to the viewing deck and overseen by staff during their visit, the open public access to the deck that was initially envisioned when the viewing deck was approved as mitigation for impacts to views blocked by the Midway also discouraged use of the viewing deck. It is

anticipated that the Port and the Midway will continue to evaluate the public viewing deck in the future.

To ensure that public access is also improved, **Special Condition No. 1** requires the Midway to complete and implement a public access signage plan, with signs that are large enough and appropriately located so that they are easily visible by the public. As conditioned, signage would be located on the public promenade at the entrances to Navy Pier, on the ticket booth, and integrated into directional or information signage in Freedom Park, and would identify that public access on the Midway deck is free of charge. In addition, the applicant would be required to advertise the provision for free access on the website for the Midway.

To ensure that Midway staff and volunteers are aware of the procedures for providing free public access to the Midway viewing deck, **Special Condition No. 2** further requires that the applicant submit final formal protocols for staff and volunteers to implement to ensure that access is provided consistent with the USS Midway Museum Bay Access Procedures that have been submitted by the applicant (Exhibit 4). The procedures submitted by the applicant require that access to the deck be available at all times while the museum is open for business with no limits on the amount of time the general public may stay. In addition, the existing accessway to the Midway viewing deck is by Brow No. 1, which does not contain an elevator and is therefore not adequate to serve members of the public unable to use the stairs. As such, Special Condition No. 2 the written protocols also describe how elevator access to the deck will be provided to the general public. To monitor if public access increases at the Midway as a result of required signage and employee training, **Special Condition No. 3** requires the Midway to submit annual reports to document the public's use of the deck.

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

C. Water Quality

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.

The new brow will be similar in size to the existing brow and will not result in additional overwater coverage or bay shading. The lighting on the new elevator structure and brow will not exceed a correlated color temperature of 2,700 Kelvin, will be shielded, and directed downward away from bay waters. As such, no impacts to marine resources are expected to occur as a result of the permanent structures.

The proposed project includes construction on an existing pier located over coastal waters in the San Diego Bay. While no work is proposed to take place in coastal waters, the proposed project may result in potential adverse effects to surrounding habitat due

to unintentional disturbance from construction and demolition equipment, materials, and debris. Construction and demolition activities associated with the proposed project could result in the generation of debris or presence of equipment, materials and hazardous substances that could be subject to run-off and wind dispersion into the marine environment. The presence of equipment, building materials, and debris on the subject site could pose hazards to sensitive marine organisms if discharged into the marine environment or left inappropriately on the project site. In addition, such potential discharges and disturbances to the marine environment could result in adverse effects to offshore habitat from increased turbidity and pollutant of coastal waters. To address impacts to water quality, the applicant proposes to incorporate water quality best management practices (BMPs) during project construction and future maintenance of the elevator. The Commission's water quality specialist has reviewed the proposed BMPs and agrees they are adequate to prevent water quality impacts. **Special Condition No. 4** requires the applicant to implement the BMPs. Therefore, the Commission finds that the project, as conditioned, is consistent with Sections 30230, 30231, and 30232 of the Coastal Act.

D. Coastal Hazards

Section 30253 requires that new development minimizes risk in areas of high flood hazard. The development is located in an area that may be subject to waves, storms, and flooding. Therefore, **Special Condition No. 5** requires the applicant to assume all risks for developing in a location that is subject to waves, storms, and flooding.

E. Local Coastal Planning

The subject site was formerly owned by the U.S. Navy who transferred ownership to the Port in 2003. However, the Port has yet to incorporate the subject site into the San Diego Unified Port District's certified Port Master Plan. Thus, the Coastal Commission retains permit jurisdiction of this site and Chapter 3 of the Coastal Act remains the legal standard of review with the PMP used as guidance. As conditioned, the development is consistent with Chapter 3 of the Coastal Act. Approval of the project will not prejudice the ability of the local government to incorporate this area into the certified PMP.

F. California Environmental Quality Act

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

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

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified Port Master Plan
- Revised Findings on San Diego Unified Port District PMPA No. 27
- CDP No. 6-22-1069
- CDP No. 6-19-0094
- CDP No. 6-16-0258
- Port of San Diego Coastal Permit 2003-3