

## CALIFORNIA COASTAL COMMISSION

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October 25, 2006

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

Re: CD-47-90, Navy Broadway Complex

Dear Rear Admiral Hering:

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

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

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

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

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

*§930.46 Supplemental coordination for proposed activities.*

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

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

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

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

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

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

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

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

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

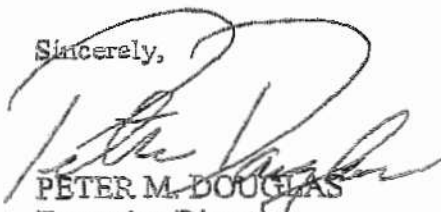
*priority uses for waterfront sites. Several sections of the CCMP, Sections 30221, 30222, 30223, and 30255 of the Coastal Act, identify priority uses for waterfront areas. Although office use is not a high priority use, the development, as a whole, provides for improved coastal access and recreation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

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

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

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

Sincerely,



PETER M. DOUGLAS  
Executive Director

Attachments (2)

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

cc: San Diego Area Office  
CCDC  
Doug Manchester  
OCRM