



May 24, 2007

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VIA U.S. MAIL

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California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108
Attention: Ms. Diana Lilly, Coastal Planner

Re: Coastal Development Permit Application #6-06-155 (the "Application")
[Manchester Pacific Gateway/Navy Broadway Complex]

We are writing on behalf of our client, Manchester Pacific Gateway LLC ("*Manchester*"), with respect to the development of the Manchester Pacific Gateway/Navy Broadway Complex (the "*Project*"). We understand that a meeting to discuss the Project has been set for Friday, June 1, 2007. This letter is intended to clarify the issues and establish the record in anticipation of that meeting.

On May 7, 1991, pursuant to the Federal Coastal Zone Management Act of 1972 (the "*CZMA*"), the California Coastal Commission ("*CCC*") concurred with a consistency determination from the United States Navy for redevelopment of the Project. In its 1991 Adopted Findings or Consistency Determination, No. CD-47-90, adopted October 9, 1991 (the "*1991 CCC Finding*"), CCC stated that "no further commission action is required for the redevelopment to proceed as presented in the consistency determination." The 1991 CCC Finding expressly approved the Navy's plan to collaborate with a private developer to develop the Project specifically acknowledging that "the Navy will enter into a long-term lease of the site with the private developer."

On November 22, 2006, the Navy entered into such a lease with Manchester (the "*Ground Lease*"). The Ground Lease limits and obligates Manchester to develop the Project in strict accordance with the Development Agreement,¹ the subject matter of which was the basis for the 1991 CCC Finding.

Under the procedures and provisions of the CZMA, Manchester is fully entitled to proceed with such development without any further action by CCC unless the Project "will affect any coastal use or resource substantially different than originally described."² The CZMA directs the Federal agency to determine whether a previously approved project will affect any coastal use or resource substantially different than originally described, and if the Federal agency determines that no such effects will occur, then the State agency may "seek compliance through negotiation, mediation or litigation."³ In this case, the Navy has unequivocally determined and notified CCC that the Project will not affect any coastal use or resource substantially different than originally described. Moreover, our client has provided to CCC substantial documentation to allow CCC to concur with the Navy's determination. In light of the foregoing, our client is fully entitled to proceed with the Project with "no further commission action."

At the time of the execution of the Ground Lease, Manchester met with CCC staff in order to determine the best method to obtain confirmation from CCC of its "concurrence" with the Navy's determination that

¹ Agreement Between The City of San Diego and The United States of America Adopting a Development Plan and Urban Design Guidelines For The Redevelopment of The Navy Broadway Complex dated December 2, 1992, as amended by a First Amendment dated as of December 3, 2001 and by a Second Amendment dated as of January 7, 2003 (the "*Development Agreement*").

² 16 CFR § 930.46).

³ Rules and Regulations, Department of Commerce, National Oceanic and Atmospheric Administration, 65 FR 77124.

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the Project pursuant to the Ground Lease will not affect any coastal use or resource substantially different than originally described. CCC staff advised Manchester that the only vehicle for obtaining such confirmation was an application for a Coastal Development Permit ("CDP"). As an accommodation to CCC, Manchester commenced the application process.

We note most emphatically that Manchester's commencement of the application process did NOT constitute acquiescence to CCC's assertion that a CDP is required for the Project, nor did it constitute a waiver of the Navy's or Manchester's position that the Project pursuant to the Ground Lease is not within the Coastal Zone⁴ and remains solely subject to the CZMA. Upon commencing the application process, Manchester reiterated to CCC that the ONLY purpose for commencing the application process was to obtain confirmation that CCC concurred with the Navy. Manchester provided the Application (and the materials attached thereto) to facilitate CCC's confirmation under the CZMA that the Project will not affect any coastal use or resource substantially different than originally described.

We note that CCC repeatedly asserts two inconsistent and incompatible claims with respect to the Project. On the one hand, CCC claims that the Project will affect coastal uses or resources substantially different than originally described requiring supplemental review under the CZMA. On the other hand, CCC claims the Project is within the Coastal Zone and requires a CDP under the California Coastal Act. CCC's most recent letter of April 4, 2007 continues to espouse these incompatible and confusing challenges.

In light of CCC's actions, and to avoid possible misunderstandings, we think it best that Manchester withdraw the Application and that CCC identify the proper method for us to proceed in accordance with the CZMA. In the event that CCC continues to take the position that the Project requires a CDP, Manchester may be forced to pursue appropriate legal recourse.

As outlined above, our client may proceed with development of the Project without any further action by CCC. This includes the proposed inclusion of condominium and/or fractional interest ownership of hotel units with restrictions that assure "hotel" and not "residential" use.

Nonetheless, Manchester would prefer not to proceed unilaterally, but instead to resolve this matter amicably with CCC. We hope this can take place at the June 1, 2007 meeting.

Very truly yours,

Cooley Godward Kronish LLP



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⁴ The CZMA's definition of "Coastal Zone" provides the following exclusion for Federal land: "Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents."