

CALIFORNIA COASTAL COMMISSION

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W15a

Staff: D. Lilly-SD
Staff Report: April 1, 2010
Hearing Date: April 14-16, 2010

STAFF REPORT AND RECOMMENDATION ON APPEAL
DE NOVO

LOCAL GOVERNMENT: San Diego Unified Port District

DECISION: Approval with Conditions

APPEAL NO.: A-6-PSD-09-43

APPLICANT: San Diego Unified Port District

PROJECT DESCRIPTION: Realign North Harbor Drive eastward from the B Street Pier to south of the Broadway Pier. Construct 105 foot wide esplanade; public plaza at the foot of West Broadway; gardens; shade pavilions; ticket kiosks; information building; walk-up café; restroom; median improvements on West Broadway between North Harbor Drive and Pacific Highway; and restripe to provide an additional turn lane to the Grape Street and North Harbor Drive intersection. The project will result in a net reduction of 146 existing public parking spaces.

PROJECT LOCATION: North Harbor Drive, from the B Street Pier to south of Broadway Pier; Broadway between North Harbor Drive and Pacific Highway; Grape Street and North Harbor Drive intersection, San Diego (San Diego County).

APPELLANTS: Commissioners Sara Wan and Mary Shallenberger; Katheryn Rhodes & Conrad Hartsell; Ian Trowbridge; Catherine M. O'Leary Carey & John M. Carey; Scott Andrews; Navy Broadway Complex Coalition.

STAFF NOTES:

At its August 14, 2009 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

On February 11, 2010, the Commission postponed action on the project to allow additional time for Port and Commission staff to review how additional park area might be secured to make up for the proposed removal of the oval-shaped park/plaza in the existing certified Port Master Plan.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the de novo permit with special conditions. The primary issues raised by the subject development are the project's inconsistencies with the requirements of the certified Port Master Plan (PMP) that expansive public access and recreation amenities be developed along North Harbor Drive, particularly at the foot of Broadway. The proposed project involves public access improvements, but the nature and usefulness of the proposed improvements are both substantially different and not equivalent to those called for in the certified PMP.

The North Embarcadero Visionary Plan PMP Amendment was approved in 2001 and outlines a program of public access improvements along Harbor Drive including developing a wide esplanade alongside the shoreline, landscaping and streetscaping improvements, passive green spaces, and narrowing and curving Harbor Drive to accommodate a major park or plaza at the foot of Broadway.

The proposed project eliminates both the curve in Harbor Drive and the oval-shaped park/plaza next to the Broadway Pier. Instead, Broadway would terminate at a rectangular plaza/pier entrance, with the esplanade continuing on both sides. The plaza will also function as a driveway to the recently approved auxiliary cruise ship terminal. In addition to the park/plaza and road revisions that are inconsistent with the PMP, the proposed project involves construction of a promenade that is significantly different than Figure 5.3 of the NEVP, which is incorporated by reference into the PMP. The project would also construct a restroom that encroaches into the view corridor at C Street.

However, since the proposed project is a public access project which will improve pedestrian access and visual quality along the waterfront, Commission and Port staff have been discussing ways in which additional public open space could be provided in the North Embarcadero area to replace the planned oval park in approximate 1) size; 2) function; and 3) prominence (i.e., a destination and focal point for the waterfront), while still allowing construction of at least part of the proposed public access project to proceed. Because the proposed project will result in a different development than shown in the certified PMP, a Port Master Plan Amendment must still be obtained. However, if the Commission can be assured through special conditions placed on this permit that the future PMPA will address all of the relevant issues in a comprehensive manner, including development of a new park, and that the environmental review, the PMPA, and construction of the park will be undertaken in a timely manner, in this particular case, the subject project could be allowed to proceed.

Therefore, staff is recommending several special conditions to address these issues. Special Condition #1 requires compliance with a "Waterfront Destination Park Plan" (see Attachment A). This detailed plan has been developed by Commission staff to ensure, to the greatest extent feasible, that a new park replacing the oval park/plaza shown in the certified PMP will be designed and constructed. Essentially, the Park Plan reframes the proposed Phase I permit as a two part permit—Part 1 consisting of the proposed public access improvements on Harbor Drive and West Broadway, and Part 2, development and

construction of an alternative destination park, with both parts given equal importance and commitment.

Development of a new park will require environmental analysis, public outreach, discretionary approvals, including, as noted, a Port Master Plan Amendment. Funding must also be identified and obtained. Thus, a particular site and design has not been determined at this point. However, the Park Plan does establish very specific, mandatory parameters for the size, nature, and function of the park; the potential locations which must be analyzed; and milestones and deadlines for review and construction of the project. For example, the alternative Waterfront Destination Park must be a minimum of 2.5 acres in size, to replace the approximate size of the oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point.

The PMPA for the Park must include clarifying and/or revising the land use category “Park/Plaza” to differentiate between grassy “park” and hardscape “plaza,” converting Navy Pier into a park, and implementing an Embarcadero circulator shuttle.

The Plan requires that the EIR and PMPA for the Park be brought to the Commission for review no later than two years after Commission action on the subject public access improvements permit.

Special Conditions also require implementation of a Parking Management & Transit Opportunity Plan to address the impact the removal of 146 waterside parking spaces will have. The Port has suggested that the demand for all 146 parking spaces can be absorbed in existing parking lots in the vicinity of the North Embarcadero area. However, the 146 parking spaces proposed to be removed are short-term, inexpensive metered, prime waterfront parking, while the replacement parking expected to fulfill the demand for access to the project site would be located in surrounding lots further away from the water, mostly in lots with all-day pricing, which may not be available in the long term as development around the Port continues.

Therefore, the Parking Management & Transit Opportunity Plan requires that the parking be removed in phases to retain the maximum number of on-street parking spaces in the vicinity for as long as possible. While the plan requires all parking removed to be replaced prior to or concurrent with the removal of the parking spaces, the phased approach also allows time for a required Circulator Shuttle to be implemented. Most significantly, the plan prohibits the removal of more than 50% of the existing parking spaces proposed to be removed until a Circulator Shuttle has begun operations.

The North Embarcadero Circulator Shuttle is a proposal the Port has been exploring for several years to help move visitors and residents around the North Embarcadero region. Given that the proposed project would remove 146 prime waterfront parking spaces, it is important that the Shuttle program begin operations before all of these spaces are lost, to avoid significant impacts to public access and recreation on the Embarcadero. The

Shuttle must be developed in coordination with the approved Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties.

Other conditions require a revised public access program that ensures pedestrian access will be protected and promoted alongside Broadway Pier, even when cruise ships are docked, and prohibit the encroachment of any structures into the C Street view corridor. Special conditions also prohibit the use of invasive plants for the proposed landscape improvements.

Standard of Review: Certified Port Master Plan; public access and recreation policies of the Coastal Act

SUBSTANTIVE FILE DOCUMENTS: Appeal by Commissioners Wan and Shallenberger filed 7/23/09; Appeal by Katheryn Rhodes & Conrad Hartsell filed 7/13/09; Appeal by Ian Trowbridge filed 7/13/09; Appeal by Catherine M. O'Leary Carey & John M. Carey filed 7/20/09; Appeal by Scott Andrews filed 7/23/09; Appeal by Navy Broadway Complex Coalition filed 7/23/09; Port Draft Coastal Development Permit 2009-02; Certified San Diego Unified Port District Port Master Plan.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-PSD-08-4 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. 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 the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Port Master Plan. 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.

See attached page.

III. Special Conditions.

The permit is subject to the following special conditions:

1. Waterfront Destination Park Plan. The applicant shall comply with all requirements contained in the “Waterfront Destination Park Plan” dated April 1, 2010, attached to this staff report as Attachment A.

Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final site, building, and elevation plans for the permitted development that have been approved by the Port of San Diego. Said plans shall be revised as follows:

The restroom located across from C Street shall be moved or redesigned such that no portion of the structure is located within the 40-foot wide clear zone in the C Street right-of-way.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Public Access Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide, for review and written approval of the Executive Director, a revised public access program, in substantial conformance with the Draft Public Access Program dated March 4, 2010 (attached as Exhibit #5), but with the following revisions:

a. On Page 4, the following revisions shall be made to the second paragraph, which describes public access on the proposed Harbor Drive Esplanade:

This Project facilitates north-south pedestrian and bicycle circulation. A sidewalk and recreational path borders the west side of North Harbor Drive, while an approximately 30-foot wide promenade along the water’s edge runs the length of

the Project. The promenade ~~is wide enough to~~ shall accommodate many types of users, including pedestrians, joggers, runners, and recreational bicyclists. Additional north-south circulation is available through the formal gardens and shade pavilions.

- b. On Page 5, the following revisions shall be made to the last sentence, which describes the new fence and gates proposed to be constructed at the front of the Broadway Pier:

The gates ~~are anticipated to~~ shall be open from sunrise to sunset. ~~f~~For public safety and for security purposes immediately prior to and during a cruise ship visit, access to the pier is limited to passengers and operational personnel. Public access signage shall be provided at the front of Broadway Pier that clearly identifies these hours of operation. No revisions shall be made to the operating hours without an amendment to this coastal development permit, unless the Executive Director determines no amendment is legally required.

- c. On Page 6, the following revisions shall be made to the paragraph titled C Street Corridor:

2.4 C Street Corridor

C Street physically and visually connects Santa Fe Depot (Amtrak, Coaster and Trolley services) to the Bay, serving visitors, tourists, residents and local employees. The Lane Field Public Access Program provides a link for the public between Pacific Highway and Harbor Drive. The Project will not place any structures in the extension of the 40-foot wide C Street view corridor established in the Lane Field Coastal Development Permit.

- d. On Page 6, the following revisions shall be made to the last paragraph:

Early in the morning of a cruise ship arrival, during passenger disembarkation, is a period of two to three hours of heavy vehicular traffic. Trucks bringing provisions for the ship and buses, taxis and other vehicles picking up passengers will be entering and exiting the Pier. Bollards at the eastern edge of Broadway Plaza will be removed to allow vehicles to cross the plaza east-west onto Broadway Pier. To maximize public safety during periods of heavy vehicular traffic, removable bollards and rope will guide pedestrians to two north-south crossing locations at Broadway Plaza: (1) the promenade along the water and (2) the sidewalk along the bayward side of Harbor Drive. As in any managed intersection, security personnel will alternately stop vehicles and pedestrians as needed to maximize east-west and north-south circulation and limit congestion, as shown in Figure 2. As the day progresses, vehicular traffic onto and off the Pier is more sporadic and public transit through the plaza can be more free-flowing, with continued management by security personnel to assure pedestrian safety.

e. On Page 8, the following shall be added to the last paragraph before 4.0 Parking Management Plan:

The Executive Director shall be notified of any changes to security measures that affect public access that the Port is mandated by law to implement immediately. Any permanent security revisions that affect public access shall require an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

f. On Pages 8 and 9, the Section titled **4.0 Parking Management Plan** shall be removed. The Parking Management Plan shall be developed as a separate document (see Special Condition #4, below).

g. On Page 9, Section **5.0 Comprehensive Signage Program** shall be renumbered to 4.0.

The permittee shall undertake development in accordance with the approved Public Access Program. Any proposed changes to the approved Program shall be reported to the Executive Director. No changes to the Program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Revised Final Parking Management & Transit Opportunity Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide, for review and written approval of the Executive Director, a revised, final parking management and transit opportunity plan that includes the following elements:

a. Parking Removal Phasing Plan

The final Parking Management Plan shall include a parking removal phasing plan that indicates the location of the approximately 146 parking spaces to be removed as part of Phases IA and IB. The plan shall detail how the parking spaces shall be removed in phases to retain the maximum number of on-street parking spaces in the project vicinity as long as possible to minimize impacts to public access, and to allow time for the Circulator Shuttle (see below) to begin operation. No removal of public parking shall occur until replacement parking is identified pursuant to subsection (b) below, and no more than 50% of the existing public parking may be removed until operation of the Circulator Shuttle is instituted.

b. Replacement Parking

The final Parking Management Plan shall identify the location of replacement parking spaces for a minimum of 50% of the proposed parking spaces to be permanently removed from the project site (i.e., approximately 73 spaces). The Plan shall document and include the following provisions:

- The replacement spaces are excess spaces not currently in demand;
- The replacement spaces are within 10 minutes walking distance;
- The replacement spaces shall be available at least until the Circulator Shuttle is operating;
- Limitations and restrictions associated with the replacement spaces shall be identified, specifically, any potential fee structure and any time limitations placed on the parking;
- The replacement spaces shall be available and priced for short-term parking, rather than all-day use;
- The replacement spaces shall be secured prior to or concurrent with the removal of the parking spaces, and;
- Signage directing the public to nearby parking opportunities shall be provided at the project site.

c. Circulator Shuttle

The final Parking Management Plan shall include a plan for implementation of the Circulator Shuttle prior to the loss of the remaining 50% of the parking spaces. The Plan shall address the following:

- 1) Retention of at least 50% of the parking spaces until the Circulator Shuttle has begun operation;
- 2) Identification of the shuttle route along Harbor Drive within the North Embarcadero to be developed in coordination with the Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties;
- 3) Identification of the hours and months of operation to include, at a minimum, summer months daily from June 1 through August 31, between 10 am and 9 pm.
- 4) Fee structure which must be equal to or less than the cost of existing transit options between the airport and the Amtrak station;
- 5) A timetable for implementation of the Circulator Shuttle.

d. Wayfinding Signage

The final Parking Management Plan shall include a signage program that includes a multifaceted wayfinding signage element addressing pedestrians, vehicles, and bike paths. The signs will be designed to maximize public access within the Project limits and to establish a common design theme along the North Embarcadero. The Plan shall identify the location and message of the signage and shall require the signage to be installed prior to or concurrent with the loss of any public parking spaces.

e. Transportation Hubs

The final Parking Management Plan shall include one of the three transportation hubs that are recommended to make it easier for the public to move about the North Embarcadero. The recommended hub within the Project limits is near Broadway Plaza. The transportation hub shall include a consistent set of facilities, services, and signage including an Embarcadero circulator shuttle stop, bike racks, transportation information displays, pedicab access, passenger and commercial loading and unloading zones, and clearly marked pedestrian paths. Plans for the hub facilities shall be included in the Plan, and the facilities shall be installed prior to or concurrent with the loss of any public parking spaces.

The permittee shall undertake development in accordance with the approved final Parking Management Plan. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Final Revised Landscape Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final landscape plans. Said plans shall demonstrate that all landscaping on the site shall be drought-tolerant (or irrigated via reclaimed water) and (1) native or (2) non-invasive plant species. Except as noted below, no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council (CAL-IPC) Inventory Database, 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 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Mexican Fan Palms shall be removed from the proposed plant palette, and only male Canary Island Palms shall be permitted.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Compliance with the San Diego Unified Port District Conditions of Approval. All conditions of approval of San Diego Unified Port District July 7, 2009 decisions (CDP-2009-32/33-142) for the proposed project as shown in Exhibit #4 are hereby incorporated as special conditions of the subject permit unless specifically modified by any special conditions set forth herein. For purposes of condition compliance, the Port District shall be responsible for reviewing and determining compliance with the special conditions referenced above, except for those specifically modified by any special condition set forth herein. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Port District shall notify the Executive Director when all of the conditions have been

met. Any proposed changes shall be limited to immaterial or minor changes which do not have the potential for adverse impacts, either individually or cumulatively, on coastal resources or public access to and along the shoreline. All proposed changes shall be reported to the Executive Director for review and written approval. Changes that are not immaterial or that alter the physical aspect of the project (e.g. building height, building footprint, esplanade width, parking or public access) shall require an amendment to this Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

7. Liability for Costs and Attorneys Fees. The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. **Project Description.** On July 7, 2009, the Port approved a coastal development permit for the North Embarcadero Visionary Plan (NEVP) Phase 1 Coastal Access Features. The project would realign North Harbor Drive roughly from the B Street Pier to south of the Broadway Pier, eastward of its present location, and transition to existing alignments at Ash Street and F Street (see. Exhibit #4, Approved Port CDP, "Exhibit A" attachments). The realigned road would enable construction of an approximately 105 foot wide Esplanade starting at the south side of B Street Pier to the south of Broadway Pier. The esplanade would consist of a bayfront promenade for pedestrians and bicyclists, a storm water treatment system, a running/walking path, improved landscaping and structural architecture, and a public plaza at the foot of West Broadway flanked by formal gardens. Two open shade pavilions, approximately 80 feet long, 70 feet wide, and 18 feet high, would be constructed on the eastern portion of the Esplanade, under which replacement ticket kiosks, an approximately 672 sq.ft., 16-foot high Information building, and an approximately 315 sq.ft., 16-foot high walk-up café would be constructed. The replacement ticket kiosks would be located in a new 12-foot high, approximately 253 sq.ft. building.

An approximately 720 sq.ft., 12-foot high restroom would be constructed on the eastern portion of the Esplanade, along the southern edge of the future C Street alignment. The project would also provide median and storm water improvements along West Broadway between North Harbor Drive and Pacific Highway. In addition, re-striping to provide an

additional turn lane to the Grape Street and North Harbor Drive intersection would be undertaken.

In order to create commercial loading and unloading zones for the recently approved Broadway Pier cruise ship terminal, the project would eliminate 170 existing public parking spaces along Harbor Drive, to be replaced with 24 parallel parking spaces, with the possibility of increasing those spaces to a total of 58 diagonal parking spaces at an unspecified future date.

The size of the plaza at the foot of Broadway would be approximately 16,000 sq.ft., in line with the esplanade that would continue on both sides. Removable bollards would be located on the north and south sides of the plaza to prevent pedestrians from entering the plaza when cruise ships are docked at the Broadway Pier and cruise ship related traffic is accessing the pier. The bollards would be removed when cruise ships are not at dock, to allow pedestrians to cross the plaza/driveway. The Port has not provided an estimate of how many days the pier (and thus the plaza crossing) would be closed due to cruise ships, but the District has stated that in 2006, Broadway Pier was closed for a total 58 days for cruise ships, military vessels and educational/research vessels. Cruise ship traffic in San Diego has increased significantly in the last decade, and Broadway Pier is likely to be used more frequently as an auxiliary terminal in the coming years.

The standard of review for the project is consistency with the certified Port Master Plan (PMP), and, for the portions of the project located between the sea and first public roadway (Harbor Drive), the public access and recreation policies of the Coastal Act.

2. Planning History. The North Embarcadero Visionary Plan (NEVP) is a conceptual-level, illustrative planning document resulting from a coordinated planning effort by the North Embarcadero Alliance, a planning body made up of officials from the Port District, City of San Diego, County of San Diego, Centre City Development Corporation, and U.S. Navy. The Alliance developed the Visionary Plan in 1998 to guide the development of the North Embarcadero area.

Although the proposed project is identified as the "North Embarcadero Visionary Plan" (NEVP) Phase 1 Coastal Access Features project, the NEVP itself is not the standard of review for the coastal development permit. The NEVP was not submitted to nor certified by the Coastal Commission as part of the PMP. Rather, at the Commission meeting of March 14, 2001, the Commission approved the San Diego Unified Port District Port Master Plan (PMP) Amendment #27 (the NEVP PMPA) creating a new "North Embarcadero Overlay District" within the existing Waterfront district. The amendment incorporated many of the goals and projects identified in the Visionary Plan for the North Embarcadero, including: the redevelopment of Lane Field; the narrowing of Harbor Drive from four lanes to three between Grape Street and Pacific Highway; the extension of B and C Streets between Pacific Highway and North Harbor Drive; construction of a new 25-foot wide pedestrian esplanade along the water's edge at Harbor Drive; the replacement of three existing industrial piers with one new public pier at Grape Street; construction of a small commercial recreation facility on the new Grape Street Pier;

construction of a restaurant on the bayfront inland of the Grape Street Pier; modernization of the cruise ship terminal at the B Street Pier; and docking the U.S.S. Midway Aircraft Carrier for use as a museum on the south side of Navy Pier. Only the PMP itself, including the text of the PMP, the exhibits, the project list, and those portions of the NEVP specifically referenced in the PMP are the standard of review for coastal development permits issued by the Port District.

3. Public Access/Recreation/Visitor-Serving Use Priority. The following Coastal Access policies are relevant and applicable:

Section 30210

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 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(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, or,

[...]

Section 30213

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

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....

The following PMP policies are relevant and applicable:

IV. THE PORT DISTRICT, IN RECOGNITION OF THE POSSIBILITY THAT ITS ACTION MAY INADVERTENTLY TEND TO SUBSIDIZE OR ENHANCE CERTAIN OTHER ACTIVITIES, WILL EMPHASIZE THE GENERAL WELFARE OF STATEWIDE CONSIDERATIONS OVER MORE LOCAL ONES AND PUBLIC BENEFITS OVER PRIVATE ONES.

- Develop the multiple purpose use of the tidelands for the benefits of all the people while giving due consideration to the unique problems presented by the area, including several separate cities and unincorporated populated areas, and the facts and circumstances related to the development of tideland and port facilities.
- Foster and encourage the development of commerce, navigation, fisheries and recreation by the expenditure of public moneys for the preservation of lands in their natural state, the reclamation of tidelands, the construction of facilities, and the promotion of its use.
- Encourage non-exclusory uses on tidelands.

VI. THE PORT DISTRICT WILL INTEGRATE THE TIDELANDS INTO A FUNCTIONAL REGIONAL TRANSPORTATION NETWORK

- Encouraging development of improved major rail, water and air systems linking the San Diego region with the rest of the nation.
- Improved automobile linkages, parking programs and facilities, so as to minimize the use of waterfront for parking purposes
- Providing pedestrian linkages
- Encouraging development of non-automobile linkage systems to bridge the gap between pedestrian and major mass systems.

VII. THE PORT DISTRICT WILL REMAIN SENSITIVE TO THE NEEDS, AND COOPERATE WITH ADJACENT COMMUNITIES AND OTHER APPROPRIATE GOVERNMENTAL AGENCIES IN BAY AND TIDELAND DEVELOPMENT.

- The Port District will at all times attempt to relate tidelands to the uplands.
- The Port District will cooperate, when appropriate, with other local governmental agencies in comprehensive studies of existing financing methods and sources which relate to the physical development of the tidelands and adjacent uplands.

IX. THE PORT DISTRICT WILL INSURE PHYSICAL ACCESS TO THE BAY EXCEPT AS NECESSARY TO PROVIDE FOR THE SAFETY AND SECURITY, OR TO AVOID INTERFERENCE WITH WATERFRONT ACTIVITIES.

- Provide "windows to the water" at frequent and convenient locations around the entire periphery of the bay with public right-of-way, automobile parking and
- other appropriate facilities.
- Provide access along the waterfront wherever possible with promenades and paths where appropriate, and elimination of unnecessary barricades which extend into the water.

Page 17 of the PMP states:

Maximum access to the shoreline is encouraged except where security or public safety factors would negate.

Page 38 of the PMP states:

Circulation and Navigation System

...The provision of adequate access to and circulation within the San Diego Bay area is a key element in the success of economic activities, of the viability of public services and amenities, and the preservation of the area's environmental setting. The various modes of transport must be coordinated not only to the various land and water uses they support, but to each other to avoid incompatibilities, congestion, hazardous movements and unnecessary expenditures.

Proposed Coastal Development Permit

The proposed project involves the construction of a variety of public access improvements along the North Embarcadero shoreline, including widening the existing sidewalks along Harbor Drive and West Broadway, adding landscaping, constructing water quality improvements, building new ticket kiosks and restrooms, and narrowing a small portion of Harbor Drive to create a more pedestrian-oriented environment.

Viewed in isolation, the proposed project is an enhancement to existing public access opportunities and is largely unobjectionable. Improving the pedestrian experience and water quality along Harbor Drive is a laudable goal, and a widened esplanade, with the landscape and hardscape features and street furniture proposed, would be an asset to the Embarcadero.

The proposed improvements would potentially have some negative impacts on public access and recreation, however, because the project would eliminate the vast majority of the existing street and off-street public parking spaces. The coastal development permit approved by the Port incorporates a Parking Management Plan required in the Mitigation Monitoring and Reporting Program for the MEIR which identifies specific features to be implemented as part of the NEVP Phase I project (see link to North Embarcadero Visionary Plan Parking Management Plan, 6/29/09 at www.coastal.ca.gov, April 2010 Meeting Agenda, A-6-PSD-09-43, Exhibit #10)

The plan indicates that the existing parking supply in the NEVP study area could absorb the 146 parking spaces at this time. However, the plan does not address the fact that the parking being removed is short-term, inexpensive metered, prime waterfront parking, and the replacement parking in surrounding lots is further away, mostly lots with all-day pricing, and may not be available in the long term as development around the Port continues.

In addition, as proposed, the new restroom would encroach into the designated view corridor on C Street (see discussion below, under 4. Visual Quality).

Each of these impacts are potentially significant, and as such, special conditions have been placed on the permit to mitigate or avoid impacts to coastal resources. These impacts and conditions are discussed in greater detail, below.

However, the more fundamental objections to the proposed project are twofold. First, the proposed development is distinctly different than the public access recreation

improvements planned for and approved in the existing certified Port Master Plan. Second, the proposed improvements are significantly smaller and lower quality—less useful and meaningful to the public—than those adopted in the approved Port Master Plan.

Inconsistencies with the Certified Port Master Plan

The PMP is fairly general about how and where the public improvements along Harbor Drive are to be designed and located, with several significant exceptions: the plan specifically requires plazas at Beech and Ash Streets, B Street Pier, and Broadway Piers; states that Harbor Drive will be narrowed to three lanes; parks must be located between the plazas on the esplanade; the promenade must be a continuous 25-foot wide paved area adjacent to the water's edge; and, the wharf side is to remain clear of objects or furnishings that would block Bay views. Figure 11 of the PMP (ref. Exhibit #1) graphically demonstrates Harbor Drive curving at West Broadway Street to accommodate an oval-shaped park at the foot of Broadway Pier. The PMP designates this area “Park/Plaza.”

The text of the plan describes the area in general terms as follows:

The esplanade expands into plazas at Beach and Ash Streets, B Street Pier, and Broadway Pier. These plazas will be designed to provide open space, sitting and strolling areas for tourist and nearby workers, and to increase the sense of destination for Embarcadero visitors.

Thus, under the certified Plan, these areas could be developed as turf or hardscape plazas, but in either case, the space is to be available for passive recreation. The size of the proposed park/plazas are not specified in the PMP; however, Port staff have attempted to estimate how large the open space at Broadway Pier might be based on the diagram in the PMP. It is not an easy calculation, as the precise plan is not meant to be exactly to scale. In addition, construction of the park (and the accompanying relocation of Harbor Drive) would have required the use of a portion of Lane Field and the Navy Broadway Complex. The Navy Broadway Complex is not within the Port's jurisdiction, and the Commission has certified construction of a hotel project at Lane Field which would have to be revised were a park to be constructed as shown in the certified Plan.

Nevertheless, the graphic depiction of the park, the text of the PMP, and the guidance of the NEVP, all clearly point to the expectation and requirement that a large, destination, waterfront park be constructed at the foot of Broadway. The Port has prepared an estimation of the total size of the park/plaza as graphically depicted in the existing PMP (see Exhibit #8). Not including the portion of the oval shown potentially extending out over the water (the Commission did not approve any construction that would have required the park to be extended out over the bay), the total size of the park would be approximately 104,950 sq.ft., or 2.5 acres.

The most obvious and significant difference between the proposed project and the certified plan is the elimination of the curve in Harbor Drive at the intersection of West Broadway, and redesign of the oval-shaped park/plaza to an approximately 16,000 sq.ft. rectangular-shaped plaza that must also function as a driveway to the approved new cruise ship terminal on Broadway Pier (see. Exhibit #4, Approved Port CDP, "Exhibit D" attachment).

There are other more minor differences between the project and the certified PMP. The proposed project involves construction of a promenade that is different than Figure 5.3 of the NEVP, which is incorporated by reference into the PMP (ref. Exhibit #2 of this staff report for Figure 5.3; compare to Exhibit C in the "Approved Port CDP," attached to Exhibit #4 of this staff report).

Once a policy, figure, or project is inserted into the PMP, it is no longer guidance, but the standard of review. The configuration of the proposed esplanade is different than the one in Figure 5.3. For example, the proposed promenade is 29, not 25 feet wide; instead of a dedicated bike path adjacent to Harbor Drive, there is a new water quality feature, and other small adjustments have been made to the design of the esplanade including changing a 10-foot wide designated bike path to a 29-foot wide multi-use promenade.

Impacts to Public Access and Recreation

While the Port has acknowledged that the proposed improvements are not identical to those described in the certified Port Master Plan, the Port has taken the position that the proposed project provides equal or superior public benefits.

The Commission cannot evaluate development by its "equivalency" with the standard of review. Equivalency is very subjective, and unlike the NEVP, the Port Master Plan is *not* a guidance document; the plans, policies and standards contained within it are to be followed closely and specifically. If and when circumstances change, the appropriate response is to evaluate the necessary Plan revisions for consistency with the Coastal Act and amend the PMP through a public hearing at both the local and state level. The integrity of the PMP and the planning process depends on the public and the Commission being able to rely on the policies and principles in the PMP being consistently and accurately implemented, including those represented graphically and by reference.

Even if such an "equivalency" analysis should be undertaken here, the comparison of the size and function of the proposed project to the certified PMP shows that they are not equivalent. As noted above, accurately assessing and comparing the size of the open space under the various potential development scenarios is difficult and requires some estimation. However, in any case, looking at the square footage provides only a quantitative comparison and does not acknowledge the changes in the quality of public recreational and open space being provided. The Port Master Plan as currently certified provides for a large, destination park/plaza area at the foot of Broadway which will not be provided with the proposed esplanade improvements which are the subject of this

appeal, and the additional plaza/open space setbacks approved as part of the Lane Field hotel development plan.

Specifically, the Port contends that in lieu of the large park/plaza at Broadway, the “Broadway Hall” concept will connect downtown to the bay. Specifically, “[w]ith the park and plaza spaces that will be created on the Navy Broadway Complex and the Lane Field sites, this will form a dramatic space that creates a Gateway to the Bay and the waterfront...” This space would be enhanced with “broad walks with special paving, large areas of planting, five rows of Medjool Date Palms spaced widely to frame the Hall, and a lighting design that creates a special identity.”

Harbor Drive, as proposed by the Port, “will become a pedestrian friendly street with comfortable walks, trees, plantings and lighting that creates a pedestrian emphasis on the waterfront. The drive will be convertible to have parking when appropriate and to have four moving lanes when appropriate, and to be closed for events and special uses.”

It is important to keep in mind that while the widened, landscaped esplanade proposed alongside Harbor Drive is expected to be a pleasant improvement, there is already an approximately 28-foot sidewalk and ample public access, including parking, along this stretch of Harbor Drive. In contrast, the subject project would eliminate a planned large, destination park and bayfront open space suitable for passive recreation, gatherings and events—something that is not currently available along this stretch of the embarcadero. In fact, at this time, there is no broad public open space along any point of San Diego’s embarcadero shoreline that links downtown to the bay. The existing North and South Embarcadero parks are physically and visually blocked from Harbor Drive by hotels and the convention center.

The majority of the various esplanade improvements proposed in this project, including the widened promenade, water quality improvements, landscaping, etc. are consistent with the certified PMP, and the Commission fully supports implementation of these improvements on Harbor Drive—just not at the foot of Broadway. Similarly, the widened sidewalks and landscaping proposed along West Broadway would be a valuable improvement to the existing access; however, they would not add any new access, and are improvements that might be expected to occur at whatever point the area was redeveloped. They are not a substitution for useable open space. The area referred to as “Broadway Hall” would be a plaza and sidewalk located between a hotel development and a wide, major boulevard, not passive recreational open space or a destination point.

Harbor Drive is already “closed for events or special uses” occasionally, for events such as the Big Bay Parade. Port policy explicitly prioritizes the use of Harbor Drive for cruise ship traffic over special events (BPC Policy No. 455, Adopted December 2008). This Policy states that “[I]n order to ensure that the primary function of the District’s cruise ship facilities is protected and to ensure public safety and a secure environment on and near the cruise ship facilities when cruise ships are in port...scheduled cruise ship calls and related activities shall have priority use.”

Under any development scenario, it is unlikely that Harbor Drive will ever be frequently closed for events, and thus, cannot be expected to truly function as a public gathering space. In contrast, the park/plaza shown in the certified PMP would have created a permanent open area not dependent on the possibility of closing Harbor Drive when no cruise ships are in port.

To be clear, the existing certified PMP does not in any way preclude improvements that support and enhance the existing and approved cruise ship terminals. The cruise ship industry is a coastal-dependent, tourist-oriented, high-priority use under the Coastal Act. The Commission approved construction of the auxiliary terminal on Broadway Pier as a de minimis PMP, with the explicit assurance of the Port District that construction of the terminal would not prevent implementation of the certified PMP in its current form. Just as the Broadway Pier terminal was approved with specific provisions that public access and recreational facilities be available on the pier when cruise ships are not at port, the Commission believes it is possible to achieve a balance of public recreational uses and commercial recreation, tourist-oriented uses along the North Embarcadero.

The proposed project would eliminate almost all of the existing public parking spaces within the project boundaries, and the large open space park expected to be developed at the foot of Broadway. In order for that to be an acceptable impact to public access, the Commission must be assured that the public is getting something significant and meaningful in return. The fragmented arrangement of widened sidewalks and street setbacks simply do not achieve a comparable level or quality of public open space when compared to a large, continuous open destination park shown in the certified PMP.

While the PMP does not contain any textual description of how the oval park was intended to operate, the NEVP does indeed offer guidance on what type of space was envisioned at the foot of Broadway:

It is a landscaped public open space, accommodating recreational activities on a daily basis or large public gatherings. The park includes a central plaza punctuated by a landmark element such as a fountain or sculpture, orienting visitors and drawing attention to this important public precinct.

Broadway Landing Park is approximately two city blocks in size, considerably larger than any of the parks in downtown. Because of its one-sided configuration, with buildings only to the east, the scale of the bay gives the space an expansive feeling larger than its actual size, much as in Baltimore's Inner Harbor or the harbor in Barcelona. The parking located on the west side of Harbor Drive and is not divided by any streets....

On rare occasions, a drive at the western perimeter of the park could provide limited vehicular access to the Broadway Pier to serve visiting ships. (Pages 100-101, NEVP).

The proposed Broadway plaza and setbacks bear little resemblance to this guidance vision in scope or value. Thus, the project is both inconsistent with the content of the certified PMP, and would result in the removal from the plan of an approximately 2.5 acres destination public waterfront park, adversely impact public access and recreation, inconsistent with the Coastal Act .

The Commission recognizes that circumstances change, and plans and projects evolve over time. Rather than incrementally altering individual projects, the Port Master Plan Amendment process is designed to allow revisions and amendments to the plan to occur in a broader context with public and Commission input. As noted above, in the case of the subject project, the proposed public esplanade, water quality improvements, and landscape features would improve the pedestrian experience and visual quality of the area compared to the existing development. The Commission is generally disinclined to discourage public improvements to access and recreation, and appreciates that timing and funding constraints could impact the Port's ability to do any improvements in the area if the first Phase of the NEVP improvements are seriously delayed.

However, in order for the Commission to be able to find the proposed public access improvements consistent with the public access and recreation policies of the Coastal Act, there must be first an assurance that an equal amount and quality of public access and recreational space will be created on the North Embarcadero waterfront to make up for the loss of the oval park. Second, the integrity of the PMP must be preserved, and the changes proposed to the PMP through this project must be reviewed and approved as a PMP Amendment.

Therefore, Special Condition #1 requires implementation of a “Waterfront Destination Park Plan” (see Attachment A). This detailed plan has been designed to ensure, to the greatest extent feasible, that a new park replacing the oval park/plaza shown in the certified plan will be identified, planned and constructed. Essentially, the Park Plan reframes the proposed Phase I permit as a two part permit—Part 1 consisting of the proposed public access improvements on Harbor Drive and West Broadway, and Part 2, development and construction of an alternative destination park, with both parts given equal importance and commitment.

As currently proposed, the Port District has roughly divided the North Embarcadero Phase 1 improvements into two parts—Phase 1A includes the improvements on West Broadway, and Phase 1B consists of the improvements on Harbor Drive. The Waterfront Destination Park Plan creates a “Phase 1C” component to the improvements, which consists of identifying, evaluating, and constructing an alternative park site to replace the oval-shaped park/plaza shown in the certified PMPA. The Park Plan identifies and describes in detail the specific requirements that the alternative Waterfront Destination Park must meet, the components of the associated EIR and the PMPA, and establishes milestones which the San Diego Unified Port District must meet during the environmental review and approval process, to ensure a Waterfront Destination Park will be constructed in a timely manner.

Development of a new park will require environmental analysis, public outreach, discretionary approvals, including, as noted, a Port Master Plan Amendment. Funding must also be identified and obtained. Thus, a particular site and design has not yet been determined. However, the Park Plan does establish very specific, mandatory parameters for the size, nature, and function of the park, potential locations which must be analyzed, and milestones for review and construction of the project. Specifically, the alternative Waterfront Destination Park must be a minimum of 2.5 acres in size, to replace the approximate size of the oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point.

Because the Port Master Plan Amendment will be the primary means by which Phase IC of the NEVP Public Access Improvements permit will be implemented, the Park Plan requires specific elements be included in the EIR analysis and the PMPA. The EIR for the PMPA must analyze, at a minimum the following:

- Identifying potential locations for a proposed alternative Waterfront Destination Park including, at a minimum:
 - The esplanade near Navy Pier, in the area between the Navy Broadway Complex and the waterfront, including an evaluation of closing Harbor Drive (except for emergency or shuttle access) in this location to all but non-auto circulation;
 - The esplanade across from or near the County Administration Building;
 - On the Lane Field hotel site (potential non-waterfront component)

The analysis must include a qualitative (i.e. type of public experience) and quantitative (i.e. accounting of public open space) evaluation of the ability to provide an alternative Waterfront Destination Park in each location that meets the above-stated criteria.

Other elements to be analyzed in the EIR and incorporated into the PMPA must include:

- Revisions to existing Figure 11 to remove the oval park/plaza at the foot of Broadway and incorporate the replacement Waterfront Destination Park;
- Replacing parking removed by development of the alternative Waterfront Destination Park;
- Clarifying and/or revising the land use category “Park/Plaza” to differentiate between grassy “park” and hardscape “plaza;”
- Reducing automobile circulation in the Embarcadero area;
- Identifying opportunities to enhance pedestrian-oriented circulation along the waterfront, including along North Harbor Drive
- Converting Navy Pier into a park;
- Defining future uses of the Grape Street piers*; and
- Implementing the Embarcadero circulator shuttle.

*The existing PMP states that the three existing piers at Grape Street will be removed and replaced with a 30,000 sq.ft. curvilinear public pier with a 12,000 sq.ft. public boat dock

designated as Park/Plaza. If the PMPA includes removal of the curvilinear public pier and/or public boat dock from the PMP, the public pier component must be replaced within the North Embarcadero and the EIR shall include an analysis of the impact to public access and recreation, and replacement of the pier with a substitute public pier.

Other elements and specific projects may be considered as a result of future public outreach, and direction received from the Board of Port Commissioners.

The Plan includes a specific, aggressive timetable for the EIR and PMPA for the Park that requires that the PMPA be brought to the Commission for review no later than two years after Commission action on the subject public access improvements permit. Furthermore, actual construction of the park must be complete within one year of Commission approval of the PMPA. It is the Commission's expectation that the PMPA process will give the Port, the public, and the Commission the opportunity to evaluate various possibilities for creating a new destination park in the context of a plan-level, comprehensive review of open space along the North Embarcadero, while still ensuring that mitigation for the impacts of the proposed project is provided in a timely manner.

Special Condition #4 requires development and implementation of a revised final Parking Management & Transit Opportunity Plan. As noted previously, the 146 parking spaces proposed to be removed are short-term, inexpensive metered, prime waterfront parking, while the replacement parking expected to fulfill the demand for access to the project site would be located in surrounding lots further away from the water, mostly in lots with all-day pricing, which may not be available in the long term as development around the Port continues.

Therefore, the revised Parking Management & Transit Opportunity Plan requires that the parking be removed in phases to retain the maximum number of on-street parking spaces in the vicinity for as long as possible. While the plan requires all parking removed to be replaced prior to or concurrent with the removal of the parking spaces, the phased approach also allows time for a required Circulator Shuttle to be implemented. Most significantly, the plan prohibits the removal of more than 50% of the existing parking spaces proposed to be removed until a Circulator Shuttle has begun operations.

The North Embarcadero Circulator Shuttle is a proposal the Port has been exploring for several years to help move visitors and residences around the North Embarcadero region. The Shuttle must be developed in coordination with the approved Lane Field shuttle and other ongoing efforts toward providing a dedicated, non-automobile circulation system connecting off-site parking and the airport to Port District leaseholds in both the North and South Embarcadero and to adjacent downtown properties. Requiring the shuttle to be implemented before more than 50% of the 146 prime spaces are removed will ensure that visitors and residences will continue to have easy, affordable access to the waterfront.

Special Condition #3 requires several revisions to the Port's draft public access plan to ensure pedestrian access along and around Broadway Pier is maintained when cruise ships are docked. There are security requirements associated with cruise ships that will

restrict public access to Broadway Pier itself shortly before and during cruise ship docking, but continuous (controlled) pedestrian access along the Harbor Drive esplanade must be maintained. Permanent (non-emergency) changes to security requirements that affect public access require an amendment to this permit, unless the Executive Director determines that no permit is necessary. The Port District has indicated that it is mandated under Federal law to implement security requirements immediately; however, these changes must still be submitted to the Executive Director for review, and an after-the-fact amendment to this permit may be deemed necessary.

As noted above, there are other minor differences between the project and the certified PMP, including revisions to the promenade. Most of these changes are inconsequential improvements to the design of the esplanade. One particular revision which could adversely impact public access is the decision to change the 10-foot wide designated bike path to a 29-foot wide combined bicycle/pedestrian walkway.

Port staff have indicated that local bicycle organizations have expressed a preference for Pacific Highway as the primary, designated north-south bikeway in the Embarcadero. The Commission agrees with the intent of the revised plan to still accommodate bicycles on the Esplanade, but in other areas, it has seen significant conflicts between bicycles and pedestrians on shared-use paths. Proposals to prohibit certain types of uses on public walkways can adversely impact public access and recreation. Therefore, Special Condition #3 also confirms that both bicyclists and pedestrians shall share use of the promenade. Any proposed change to the mix of allowed users on the promenade would require an amendment to this permit.

Special Condition #6 requires that the applicant comply with all of the conditions in the coastal development permit originally approved by the Port District. Because the majority of these conditions are related to detailed construction requirements typically enforced by the Port District, the condition requires the Port District to confirm that all of conditions of the previous Port permit not otherwise revised through this coastal development permit have been complied with. Any revisions must be reported to the Executive Director for review and written approval. Revisions that alter the physical aspect of the project (e.g. building height, building footprint, esplanade width, parking or public access) will require a new coastal development permit or amendment to this permit, unless the Executive Director determines that the revision is immaterial and is consistent with the intent of this permit, and that no amendment is legally required.

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition #7, requiring reimbursement of any costs and attorneys fees the Commission incurs “in connection with the defense of any action brought by a party other than the Applicant/Permittee ... challenging the approval or issuance of this permit.”

Summary

The proposed project involves public access improvements, but the improved sidewalks and paths, additional landscaping, street furniture, and lighting cannot substitute for the major park or plaza that the PMP shows at the foot of Broadway. The nature and usefulness of the proposed improvements are both substantially different and not equivalent to those called for in the certified PMP. As proposed, the project does not provide the quality passive recreational space required by the PMP, nor does it provide any alternate open space that might make up for the loss of the signature park at Broadway.

As conditioned, implementation of the Waterfront Destination Park Plan will allow the proposed public access improvements to proceed while ensuring that a high-quality public open space will be provided on the waterfront, as anticipated and required by the certified Port Master Plan. The Parking Management and Transit Opportunity Plan will ensure that the impacts to public access from the loss of prime waterfront parking will be mitigated through implementation of a shuttle system. Thus, the project can be found consistent with the public access and recreation policies of the certified PMP.

4. Visual Quality. Relevant PMP policies include the following:

- Views should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.

The proposed project includes construction of a restroom that would visually encroach into the proposed extension of C Street.

The Commission is concerned about continuing incremental encroachments into views of San Diego Bay from upland streets and corridors from recently approved and/or proposed development. Specifically, the auxiliary cruise ship terminal approved at Broadway Pier will eliminate existing bay views, and the Port District has recently proposed installing 12-foot high shore-power equipment boxes across the length of the B Street Pier (excepting at the existing driveways). Unlike the South Embarcadero, where views of the bayfront are entirely blocked by development, views of the water and the bayfront environment are still available on the North Embarcadero. Each project that proposes to block bay views must be carefully scrutinized in the context of preserving, not interfering with these precious remaining vistas. As proposed, the project does not enhance view corridors or preserve panoramas, as required by the certified PMP.

The Port has indicated that the restroom could be revised to eliminate the encroachment into the view corridor. Therefore, Special Condition #2 requires that the restroom be relocated or redesigned such that no portion of the structure encroaches into the view corridor. Therefore, as conditioned, the project can be found consistent with the visual protection policies of the certified PMP.

5. Sensitive Biological Resources. Relevant PMP policies include the following:

VIII. THE PORT DISTRICT WILL ENHANCE AND MAINTAIN THE BAY AND TIDELANDS AS AN ATTRACTIVE PHYSICAL AND BIOLOGICAL ENTITY.

XI. THE PORT DISTRICT WILL PROTECT, PRESERVE, AND ENHANCE NATURAL RESOURCES, INCLUDING NATURAL PLANT AND ANIMAL LIFE IN THE BAY AS A DESIRABLE AMENITY, AN ECOLOGICAL NECESSITY, AND A VALUABLE AND USABLE RESOURCE.

The subject site is entirely developed and there are no sensitive biological resources located on the site. However, the site is adjacent to San Diego Bay, and the Commission has typically required that invasive plant species be avoided adjacent to waterbodies.

The Port's draft landscape plan includes two species of palm trees noted by the California Invasive Plant Council (Cal-IPC) as potentially invasive—the Mexican fan palm and Canary Island palm. The Commission's ecologist has reviewed the draft plant list for the project and determined that Mexican fan palms should be prohibited to prevent the spread of this invasive species; however, given the project's urban environment, if only male Canary Island palms are planted, they should not present a problem.

Thus, Special Condition #5 prohibits the use of invasive plant species except for male-only Canary Island Palms, and requires the removal of Mexican fan palms from the proposed plant palette. Therefore, as conditioned, the project can be found consistent with the natural resource protection policies of the certified PMP.

5. Local Coastal Planning. As described above, the proposed project has been designed and conditioned to avoid impacts on public access, public recreation, and visual quality consistent with the certified PMP. Changes to improve public access and recreation shall be addressed through a comprehensive planning effort that analyzes the impact of such a decision on the entire North Embarcadero. Therefore, the Commission finds that approval of the project, as conditioned, will not prejudice the ability of the San Diego Unified Port District to continue to implement its certified Port Master Plan.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, 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.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures include implementation of an alternative waterfront destination park plan, a transit opportunity plan that includes a public shuttle, a public access plan, and removal of the encroachment into the C Street view corridor. These conditions 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 is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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WATERFRONT DESTINATION PARK PLAN

CDP #A-6-PSD-09-43 NEVP Public Access Improvements Phase I

April 1, 2010

Purpose and Intent

The purpose of this plan is to describe and define the “Phase IC” portion of the NEVP Public Access Improvement Phase I Improvements (CDP #A-6-PSD-09-043).

Phase 1 consists of the proposal by the Port of San Diego to construct a variety of public street and pedestrian improvements along Harbor Drive and West Broadway Street. The improvements include realigning North Harbor Drive eastward from the B Street Pier to south of the Broadway Pier; construction of a 105-foot wide pedestrian and bicyclist esplanade; a public plaza at the foot of West Broadway; gardens; shade pavilions; ticket kiosks; an information building; walk-up café; a restroom; and median improvements on West Broadway between North Harbor Drive and Pacific Highway. Phase 1 also includes restriping to provide an additional turn lane to the Grape Street and North Harbor Drive intersection. The project will result in a net reduction of 146 existing public parking spaces. The Port District has roughly divided Phase I into two parts—Phase 1A includes the improvements on West Broadway, and Phase 1B consists of the improvements on Harbor Drive

Phase 1C of the permit, addressed in this Plan, consists of identification and evaluation of an alternative park site, and implementation of a plan to develop a Waterfront Destination Park as an alternative to, and replacement of, the oval-shaped park/plaza shown on Figure 11 of the certified Port Master Plan (PMPA) adopted by the Coastal Commission March 14, 2001. This Plan identifies the requirements of the Waterfront Destination Park, the components of the associated EIR and the PMPA, and establishes milestones which the San Diego Unified Port District, must meet during the environmental review and approval process, to ensure the Waterfront Destination Park will be constructed in a timely manner.

Alternative Park Framework and Composition

The alternative Waterfront Destination Park shall be a minimum of 2.5 acres in size, to replace the approximate size of oval-shaped park/plaza. The Park need not necessarily be entirely contiguous (i.e., the park space could be divided into more than one area), but the majority of the Park must be one contiguous space, such that it forms a significant destination and gathering point. The Park must also include a waterfront component. The Park can have a mix of hardscape and landscape, but it must contain some lawn or turf space appropriate and available for passive recreation such as sitting and picnicking.

Port Master Plan Amendment and Environmental Impact Report Content

The Port Master Plan Amendment will be the primary means by which Phase IC of the NEVP Public Access Improvements permit shall be implemented. The EIR for the PMPA will analyze, at a minimum the following:

- Identifying potential locations for a proposed alternative Waterfront Destination Park including, at a minimum:
 - The esplanade near Navy Pier, in the area between the Navy Broadway Complex and the waterfront, including an evaluation of closing Harbor Drive (except for emergency or shuttle access) in this location to all but non-auto circulation;
 - The esplanade across from or near the County Administration Building;
 - On the Lane Field hotel site (potential non-waterfront component)

The analysis shall include a qualitative (i.e. type of public experience) and quantitative (i.e. accounting of public open space) evaluation of the ability to provide an alternative Waterfront Destination Park in each location that meets the above-stated criteria. The EIR shall identify a preferred alternative.

Other elements to be analyzed in the EIR and incorporated into the PMPA shall include:

- Revisions to existing Figure 11 to remove the oval park/plaza at the foot of Broadway and incorporate the replacement Waterfront Destination Park;
- Replacing parking removed by development of the alternative Waterfront Destination Park;
- Clarifying and/or revising the land use category “Park/Plaza” to differentiate between grassy “park” and hardscape “plaza;”
- A comprehensive evaluation of parks, plazas or other public open space in the North Embarcadero area, including an evaluation of the size and functionality of existing and planned spaces;
- Reducing automobile circulation in the Embarcadero area;
- Identifying opportunities to enhance pedestrian-oriented circulation along the waterfront, including along North Harbor Drive
- Converting Navy Pier into a park;
- Defining future uses of the Grape Street piers*; and
- Implementing the Embarcadero circulator shuttle.

*The existing PMP states that the three existing piers at Grape Street will be removed and replaced with a 30,000 sq.ft. curvilinear public pier with a 12,000 sq.ft. public boat dock designated as Park/Plaza. If the PMPA includes removal of the curvilinear public pier and/or public boat dock from the PMP, the public pier component must be replaced within the North Embarcadero and the EIR shall include an analysis of the impact to public access and recreation, and replacement of the pier with a substitute public pier.

Other programmatic elements and specific projects may be considered as a result of future public outreach, Coastal Commission staff recommendations, and direction received from the Board of Port Commissioners.

Timeframes and Funding Sources

An analysis of timeframes for construction, estimation of park construction costs, and identifying and securing funding sources for the alternative Waterfront Destination Park could either be done through the EIR, or a separate stand-alone document, but in either case, construction schedules and an identified funding source must be included in the PMPA. The construction schedule must provide that completion of the park will occur within one (1) year of Commission approval of the PMPA.

EIR and PMPA Milestones

The PMPA and environmental review processes can be lengthy and controversial. However, the following milestones establish a timeline for the preparing the PMPA for Coastal Commission consideration. Any of these milestones may be completed earlier than the scheduled due dates and all are subject to adjustment only as described below.

The Port commenced the PMPA process in the fall of 2009 and selected an environmental consultant on January 5, 2010. The final scope of the PMPA and accompanying environmental document will be determined through the public outreach described in Task 1 below.

TASK 1: Commence and Complete Public Outreach to Define PMPA. At a minimum, the Port will commence and complete public outreach to establish the parameters of the PMPA and to develop alternatives to study during environmental review. The Port will consult with Coastal Commission staff regarding the scope of public outreach. Additional public outreach otherwise required by the PMPA and environmental review processes will be conducted in accordance with Port policy and practices, the Coastal Act, and California state law.

TASK 1 is due no later than four (4) months after COMMISSION ACTION ON THE SUBJECT COASTAL DEVELOPMENT PERMIT.

TASK 2: Authorize Consultant Team to Prepare Environmental Document for PMPA. Following completion of Task 1, the Port will refine the PMPA scope and content based on the outcome of the public outreach, and authorize its selected consultant to prepare a draft EIR for the PMPA.

TASK 2 is due no later than two (3) months after COMPLETION OF TASK 1.

TASK 3: Finalize Environmental Document and PMPA and Conduct Port Public Hearing, and Transmit PMPA to Coastal Commission.

These processes will be conducted in accordance with Port policy and practices, the Coastal Act, and California state law, and include response to comments and public hearings by the Board of Port Commissioners. If the PMPA and environmental document are approved by the Board of Port Commissioners, then they will be transmitted as soon as practicable thereafter to the Coastal Commission for review and certification.

TASK 3 is due no later than two (2) years after COMMISSION ACTION ON THE SUBJECT COASTAL DEVELOPMENT PERMIT.

At the completion of each Task, Port staff will submit a written status report to Commission staff summarizing the progress made up to that point, and a proposed schedule for completion of the remaining tasks.

Force Majeure Delays

Recognizing the delays inherent in the PMPA and environmental review processes, the milestone schedule will be extended one day for each day that a delay is caused by:

- (i) litigation by a third party not affiliated with or under the direction of the Port that prevents the Port from meeting any of the deadlines expressed or implied within the milestone schedule; and
- (ii) riots; natural disasters and other acts of God, including, without limitation, fires, earthquakes, floods, unusually severe weather conditions, and hurricanes; labor strikes; delays caused by governmental agencies other than the Port; acts of terrorism; and war on United States soil. These events will only extend the schedule if they result in a delay to the Port's ability to process the PMPA despite the Port's diligent and commercially reasonable best efforts to proceed with the PMPA.

Failure to Meet Milestones

Should the Port fail to meet any of the above milestones, subject to any extensions as described above, then the Port will promptly notify the Executive Director of the Coastal Commission of such failure. Within thirty (30) days of missing any milestone, the Port may request an extension of time from the Executive Director of the Coastal Commission, and if the extension is granted, may complete the remaining task(s) within the time granted. If an extension is not granted, the Port agrees to submit an amendment to this permit for a revised PMPA timeline.