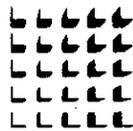


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2/26/08



**Centre City
Development
Corporation**

City Council Hearing of February 26, 2008 (dated February 19, 2008) – Item No. 333.

Supplement to Centre City Development Corporation (CCDC) Staff Report (No. CCDC - 08-03) in Response to Correspondence received from Katheryn Rhodes and Conrad Hartsell, M.D. regarding "Citizen Appeal of the Navy Broadway Complex for by Katheryn Rhodes and Conrad Hartsell, MD."

DATE ISSUED: February 25, 2008
Supplement to Report No. CCDC-08-03

ATTENTION: Council President and City Council
Docket of February 26, 2008

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: Navy Broadway Complex – Appeal of Environmental
Determination -- Marina and Columbia Sub Areas of the Centre
City Redevelopment Project--**PUBLIC HEARING**

COUNCIL DISTRICT: Two (2)

REFERENCE: Development Services Department's (DSD's) Navy Broadway
Complex – Superseding Master Plan CEQA 21166 Evaluation
dated November 27, 2007; DSD CEQA Consistency Analysis for
the Navy Broadway Complex, dated October 19, 2006; DSD
Report to the City Council dated January 3, 2007; Centre City
Development Corporation (CCDC) Report dated October 20, 2006;
CCDC Report dated July 20, 2007, CCDC Initial Study for the
Superseding Master Plan and Phase I Buildings for the Navy
Broadway Complex; Final Navy Broadway Complex Project
Environmental Impact Report/Environmental Impact Statement
(Joint CEQA/NEPA document) dated October 1990, certified in
October 1992; Final Master Environmental Impact Report for the
Centre City Redevelopment Project certified in April 1992; Final
Subsequent Environmental Impact Report to the 1992 Final Master
Environmental Impact Report Addressing the Centre City
Community Plan and Related Documents for the Proposed
Ballpark and Ancillary Development Projects and Associated Plan
Amendments, certified in October 1999; North Embarcadero
Visionary Plan Final Environmental Impact Report, certified in
March 2000; Final Downtown Community Plan Environmental
Impact Report in Conjunction with a new Downtown Community
Plan, New Centre City Planned District Ordinance and Tenth
Amendment to the Redevelopment Plan for the Centre City
Redevelopment Project, certified in February 2006.

STAFF CONTACT: Eli Sanchez, Senior Project Manager–Real Estate
(619) 533-7121

OWNER: United States Navy
APPLICANT: Manchester Financial Group
APPELLANTS: San Diego Navy Broadway Complex Coalition and Katheryn
Rhodes and Conrad Hartsell M.D.

Purpose of Supplement to Staff Report:

On December 7, 2007, the Briggs Law Corporation filed an appeal of the Centre City Development Corporation (CCDC) Board's November 28, 2007 decisions to adopt the November 27, 2007 Development Services Department (DSD) Superseding Master Plan CEQA 21166 Evaluation and to re-approve its consistency determination for the Superseding Master Plan and Basic Concept/Schematic Drawings for Buildings 2A, 2B, 3A and 3B of the NBC. The appeal was filed on behalf of the San Diego Navy Broadway Complex Coalition and Katheryn Rhodes and Conrad Hartsell, M.D.

On February 19, 2008, Appellants Katheryn Rhodes and Conrad Hartsell, M.D. submitted to the City Council additional correspondence in connection with the December 7, 2007 Appeal, referred to by Appellants as "Citizens Appeal of the Navy Broadway Complex." The correspondence does not focus on whether the circumstances set forth in Public Resources Code, section 21166 have occurred in relation to the NBC project. Rather, the correspondence alleges a fault investigation is required at this time connection with CCDC's consistency determination pursuant to CCDC's obligations under the Development Agreement.

Notably, CCDC's consistency determination is not appealable to the City Council. (See San Diego City Attorney Memorandum of Law (Sept. 15, 2006) to Honorable Mayor and City Council, and Nancy Graham, Re. "Navy Broadway Complex and the City's Right to Review Consistency Determination of Centre City Development Corporation".) The San Diego City Attorney has, however, determined that any CEQA determination associated with CCDC's consistency determination is appealable to the City Council under Public Resources Code, section 21151, subdivision (c). (See San Diego City Attorney Memorandum (Oct. 4, 2006) to Honorable Mayor and Members of the City Council, Re. "Applicability of Public Resources Code Sections 21166 and 21151(c) to the Navy Broadway Complex Project".)

No new information is presented in Appellants' February 19, 2008 correspondence that is relevant to the CEQA question before the City Council, i.e., whether there is substantial evidence of substantial changes in the project or the circumstances under which the project is undertaken, or new information of substantial importance concerning the project, that would suggest the project will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects. (See Pub. Resources Code, § 21166).

This supplement to the CCDC's February 20, 2008 staff report responds to the new issues raised in Appellants' February 19, 2008 correspondence. Staff responds to the specific issues raised in the correspondence as follows:

Issue 1¹: Appellants allege the City Council has "been given false information by Bob Manis of DSD and Nancy Graham of CCDC that a valid fault investigation is not required at the CEQA checklist stage for Special Studies Zones. ... "[s]ubmittal of a valid fault investigation during the CEQA checklist stage should have been accomplished at Project Submittal on June 30, 2006, almost 20 months ago to resolve this outstanding problem."

Response 1: Appellants overstate the relationship between the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21100 et seq.) and the City's geotechnical study requirements. The 1992 Final EIR/EIS prepared for the Navy Broadway Complex (NBC) project identified the site as having potentially significant geological impacts. (1992 Final Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), p. 4-147.) The Final EIR/EIS concluded that these impacts could be mitigated to a less than significant level through compliance with federal, state, and local building codes. (*Ibid.*) CCDC's and DSD's recent process for determining whether Public Resources Code section 21166 requires a new environmental document in connection to CCDC's approval of the Superseding Master Plan and Phase I Buildings (Blocks 2 and 3) does not change that conclusion: compliance with building codes and the recommendations contained in the site-specific geotechnical studies that will be required later in the development process will identify and reduce any potential seismic activity risks to a less than significant level. (1992 Final EIR/EIS, p. 4-147; see also 2006 Downtown Community Plan Final EIR, p. 5.5-9.)

Much of Appellants' contentions rest on the theory that a fault investigation is required at the "CEQA checklist phase." CEQA does not, however, prescribe a "CEQA checklist stage." Appellants may be confusing the determination of whether to prepare a subsequent or supplemental EIR with the initial study phase of CEQA. An initial study is a "preliminary analysis prepared by the lead agency to determine whether an EIR or a negative declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR." (CEQA Guidelines², § 15365.) Appendix G to the CEQA Guidelines contains a sample "environmental checklist form" that satisfies the requirements for initial studies when used in conjunction with the sample "environmental information form" (Appendix H). (CEQA Guidelines, § 15063, subd. (f).) Once a Final EIR has been certified for a project – as was the case with the NBC project in 1992 – an initial study is not required to determine whether a subsequent or supplemental EIR is required pursuant to Public Resources Code, section 21166 and CEQA Guidelines, sections 15162, 15163. (See CEQA Guidelines, § 15164, subd. (e); *Benton v. Bd. of Supervisors of Napa County* (1991) 226 Cal.App.3d 1467, 1483.) Rather, the agency determining whether a subsequent or supplemental EIR is required need only provide a

¹ / For ease of reference, this supplemental report assigns numbers to the issues raised in the correspondence and staff responses.

² / The CEQA statute is implemented through the "CEQA Guidelines" at Title 14, Ca. Code Regs., § 15000 et seq.

brief explanation of the decision not to prepare a subsequent or supplemental EIR in the record. (See *Ibid.*) Here, in an abundance of caution, CCDC used a checklist similar to the traditional initial study checklist in order to fully document its determination that no subsequent or supplemental EIR is necessary, which determination DSD subsequently confirmed.

Issue 2: Appellants state, “[i]n order for us to not constantly appeal, please have CCDC reunite the qualitative and quantitative Consistency Analysis Hearings so the project is looked at, and voted on by CCDC as a whole. One Master Plan – One Project – One Hearing – One Vote. Segmenting the project in separate parts is wasting everyone’s time and money.”

Response 2: The NBC project was approved by the City in 1992 when the City entered into the *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* (Development Agreement). The Development Agreement governs the subsequent approval process for the NBC project. Under the terms of the Development Agreement, CCDC has responsibility for determining whether the private developer’s proposals for the NBC project are consistent with the goals and policies set forth in the Development Agreement’s Development Plan and Urban Design Guidelines. The Development Agreement contemplates that the developer will submit plans to CCDC for its consistency review and determination in four steps. Section 5.2, subdivisions (a) through (d) of the Development Agreement detail requirements for each of these stages. CCDC is not “segmenting” the project by choice. Rather, CCDC’s approval process complies with the steps mandated in the Development Agreement. Neither CCDC nor the City has the authority to “reunite the qualitative and quantitative Consistency Analysis Hearings” as requested by Appellants. Rather, the City, CCDC, and Manchester are all bound to follow the requirements of the Development Agreement.

Issue 3: Appellants reference the County Office of Emergency Preparedness (OEP) and discussions regarding the U.S. Department of Homeland Security. Appellants note the next UDC meeting is on February 21, 2008, at which an earthquake tabletop exercises will be performed by the County.

Response 3: It is unclear how the information provided by Appellants regarding OEP is relevant to CCDC’s determination that no further environmental documentation is required for the NBC project. Issues regarding the federal Department of Homeland Security are beyond CCDC’s and the City’s jurisdiction. Appellants have not provided information indicating a subsequent or supplemental EIR is required or that the City or CCDC is violating any rule, regulation, or law applicable to the NBC project.

Issue 4: Appellants inquire about fault investigations for the Hilton tower south of the Convention Center, the existing Manchester tower, the existing Convention Center Expansion, the Broadway Pier and B Street Pier Cruise Ship Terminal Improvements, the Old Police Headquarters and Sunroad’s leasehold on Harbor Island.

Response 4: None of the projects identified by Appellants (other than the NBC project) is before the City Council at this time in connection with the NBC project. The City Council

proceeding considers the CCDC determination that no further environmental review is required for the NBC project in connection with CCDC's approval of the Superseding Master Plan and Phase I Buildings (Blocks 2 and 3). The question before the City Council is whether the City Council should uphold CCDC's determination that no further CEQA review is required.

Issue 5: Appellants state, "[t]he City of San Diego Information Bulletin 515 states that geotechnical reports are required at project submittal unless a written request for exception is provided. Manchester and the Navy never asked for a written exception at their project submittal of June 30, 2006."

Response 5: Appellants misconstrue Bulletin 515. Bulletin 515 states that geotechnical studies are required for Development Permits, Subdivision Approvals, and Grading Permits. The Appellants either ignore or fail to understand that Manchester is not seeking, and CCDC has not granted, any development permits, subdivision approvals, or grading permits at this time. CCDC's only task under the Development Agreement is to perform the consistency review of Manchester's proposed submittals to determine if such submittals are consistent with the aesthetic and land use criteria set forth in the Development Agreement and Urban Design Guidelines. Neither CCDC nor the City can lawfully exceed the scope of their authority granted under the Development Agreement.

CCDC's consistency determination is only a middle step in the process that began in the early 1990s when the NBC project was first proposed, culminating in the certification of the Final EIR and approval of the Development Agreement. The development process is therefore past the initial "project submittal" phase, which occurred in the early 1990s in connection with the City's approval of the Development Agreement. A geologic investigation was performed at that time. (Woodward-Clyde Consultants, Additional Geologic, Seismic and Geotechnical Studies, Navy Broadway Complex, San Diego CA (Sept. 5, 1990).) The development process for the NBC project has not yet reached the grading/construction permit phase, which will occur after CCDC has determined project design submittals are consistent with the criteria specifically delineated by the Development Agreement. When Manchester applies to the City for its construction/grading permit(s), a geotechnical study will be performed as required by the City's Geotechnical Study Requirements.

Issue 6: Appellants reference the County of San Diego's "Guidelines for Determining Significance, Geologic Hazards" (July 30, 2007). Appellants state the County Guidelines state that an adequate fault investigation is needed at the CEQA checklist stage for projects in Alquist-Priolo or Special Study Zones, like downtown San Diego. Appellants request that the City ask the County to explain the requirements of an adequate fault investigation for the CEQA checklist stage in Special Study Zones.

Response 6: The City relies on its own Technical Guidelines for Geotechnical Reports (1988), data from the Seismic Safety Study (1995), its Significance Thresholds (2007) and project specific geotechnical and/or soils investigations in performing CEQA review. It does not rely on the County of San Diego's guidance document in performing CEQA review. With regards to the "CEQA checklist stage," see Response 1 above.

Issue 7: Appellants reference San Diego Municipal Code, section 154.0203 subdivision (a)(1), regarding fault investigations. Appellants do not provide reasons why they believe CCDC and/or the City has failed to comply with Municipal Code, section 154.0203.

Response 7: Appellants misunderstand CCDC's role in the approval process for the NBC project. CCDC's consistency determination does not trigger the City's requirements for submission of a geotechnical report. As relevant to the NBC project, the City requires submission of geotechnical reports for projects located in HCZ 13 and HCZ 31 (such as the NBC site) before approval of a grading permit and/or building Permit. (City of San Diego, Information Bulletin 515, (Oct. 2006); City of San Diego Land Development Code, § 145.0203, Table 145-02A.) The Development Agreement grants the City, and not CCDC, the authority to issue building and related permits for structures not to be occupied by the Navy. (See Development Agreement, § 5.6.) Although construction, grading and excavating phasing of the NBC project has yet to be determined, at a minimum, site-specific geotechnical studies will be performed prior to the City's issuance of any building and/or grading permits. (See *Ibid.*) Thus, and consistent with the conclusions of the 1992 Final EIR/EIS and the 2006 Community Plan EIR, design and construction conducted in conformance with the federal building codes, the San Diego Municipal Code, the Uniform Building Code, and the recommendations contained in the site-specific geotechnical studies will reduce any potential geologic impacts to a less than significant level. (1992 Final EIR/EIS, p. 4-147; see also 2006 Downtown Community Plan Final EIR, p. 5.5-9.)

Issue 8: Appellants state, "Page 4 – Step 7 – Geologic Hazard Category and Earthquake Fault Buffer requires that evidence be submitted for fault buffer in Alquist-Priolo and Special Studies Zones, like downtown San Diego." Appellants claim CCDC and the City cannot look at plans until Fault Buffer setbacks are established.

Response 8: Appellants misunderstand the role of CCDC's consistency determination in the development process of the NBC project as set forth in the Development Agreement. CCDC's consistency determination only considers whether the private developer's plan submittals are consistent with the aesthetic and land use criteria specifically set forth in the Development Agreement. CCDC does not have authority to impose conditions upon Manchester that are not germane to the consistency review process set forth in the Development Agreement.

As noted in Response 5, the development process is past the initial "project submittal" phase, which occurred in the early 1990s in connection with the City's approval of the Development Agreement. A geologic investigation was performed at that time. (Woodward-Clyde Consultants, Additional Geologic, Seismic and Geotechnical Studies, Navy Broadway Complex, San Diego CA (Sept. 5, 1990).) CCDC's consistency determination under the Development Agreement does not trigger preparation of a geologic investigation. That requirement will be triggered when Manchester applies for a grading and/or construction permit. (City of San Diego, Information Bulletin 515, (Oct. 2006); City San Diego Land Development Code, § 145.0203, Table 145-02A.) If the geotechnical study prepared in connection with the grading/construction permit(s) identifies an active fault beneath the NBC site, setback requirements will be imposed

and the development plans for the NBC project will have to be modified accordingly before any permits will be issued.

Issue 9: Appellants reference a Report of Affidavit prepared by now-Supreme Court Justice Antonin Scalia regarding the Coastal Zone Management Act. The affidavit states that “[e]xcluded 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.”

Staff Response: The affidavit is an exhibit to a Request for Judicial Notice filed by Manchester in litigation against the Coastal Commission regarding the intent and interpretation of the Coastal Zone Management Act (CZMA). It is a legal opinion written in 1976 by Justice Scalia when he was still a US Attorney. It is not a ruling by Justice Scalia in his current capacity as a Supreme Court Justice. Issues regarding the Coastal Zone Management Act are not relevant to CCDC’s consistency determination. The project site is under the jurisdiction of the Federal government and therefore, subject to NEPA. Whether the project will require a coastal development permit is an issue currently pending in federal court. Whether supplemental consistency review will be required by CZMA is also an issue before the court and is a determination to be made by the Navy and the Secretary of Commerce. This issue is, therefore, directed toward the Navy and its site developer, not CCDC or the City.

Conclusion:

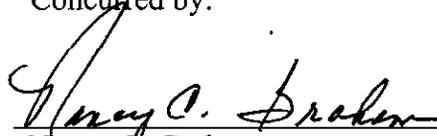
The new information provided by Appellants does not rise to the level of substantial evidence supporting a conclusion under CEQA that the NBC project may result in new or substantially more severe significant impacts beyond those previously disclosed. Moreover, the City’s regulations relating to geologic investigation provide that the kind of studies requested by Appellants are not required at this stage of the development process, although they will certainly be triggered later in the process. CCDC staff therefore recommends the City Council deny the Appeal.

Respectfully submitted,

Concurred by:



Eli Sanchez
Senior Project Manager



Nancy C. Graham
President



Brad S. Richter
Current Planning Manager

RECOMMENDATIONS

COMMUNITY PLANNING GROUP /STAFF'S /PLANNING COMMISSION

Project Manager **must** complete the following information for the Council docket:

CASE NO. Resolution No.s 2007-06 through 2007-07

STAFF'S

Please indicate recommendation for each action. (ie: Resolution / Ordinance)

Staff recommends that the City Council resolve to:

1. DENY the appeal;
 2. UPHOLD the environmental determination; and
 3. Make an express finding that the information submitted by the appellants does not constitute substantial evidence of substantial changes in the project or the circumstances under which the project is undertaken, or new information of substantial importance concerning the project, that would suggest the project will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
-

CENTRE CITY DEVELOPMENT CORPORATION

(List names of Commissioners voting yea or nay)

YEAS: Directors Maas, Kilkenny, LeSar, and McNeely

NAYS: None

ABSTAINING: Directors Brown and Cruz

TO: (List recommendation or action)

On November 28, 2007 the Centre City Development Corporation Board adopted:

A resolution (No.2007-06) finding that based on all of the information in the record, the Board hereby adopts the analysis and conclusions of the November 27, 2007 "Superseding Master Plan CEQA 21166 Evaluation" performed and prepared by the San Diego Development Services Department for the Navy Broadway Complex; and that based on all the information in the record, including the November 27, 2007 "Superseding Master Plan CEQA 21166 Evaluation" performed and prepared by the San Diego Development Services Department for the Navy Broadway Complex, no Subsequent or Supplemental EIR is required for the Navy Broadway Complex Project pursuant to Public Resources Code, section 21166 and California Code of Regulations, Title 14, sections 15162 and 15163; and

A resolution (No.2007-07) finding that CCDC Resolution 2007-06 regarding the November 27, 2007 "Superseding Master Plan CEQA 21166 Evaluation" performed and prepared by the San Diego Development Services Department for the Navy Broadway Complex, the recitals and findings contained therein and attachments thereto, are incorporated herein by reference as though fully set forth in full; that the CCDC staff recommendation for the consistency determination for the Superseding Master Plan is re-approved and incorporated herein as though set forth in full, and

that based thereon, the Board hereby finds that the Superseding Master Plan submission is consistent with the Development Plan and Urban Design Guidelines as defined in the NBC Agreement and attached thereto; that the CCDC staff recommendation on the consistency determination for Basic Concept/Schematic Drawings for Buildings 2A, 2B, 3A and 3B of the Navy Broadway Complex Project are re-approved and incorporated herein as though set forth in full, and that based thereon, the Board hereby finds that the Buildings 2A, 2B, 3A and 3B Basic Concept/Schematic Drawings submissions are consistent with the Development Plan and Urban Design Guidelines as defined in the Navy Broadway Complex Agreement and attached thereto; and the following requirement is retained as a condition of this consistency determination:

Indemnification:

That Manchester Pacific Gateway ("DEVELOPER") shall protect, defend, indemnify, and hold the Centre City Development Corporation ("CCDC"), its appointed officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with the consistency determination issued by CCDC for development of the Navy Broadway Complex and Navy Administration Building, located within the Marina and Columbia Sub Areas of the Centre City Redevelopment Project, in the City of San Diego. Such indemnification shall include all costs and expenses of investigating and defending against same, including without limitation, attorney fees and costs, provided, however, that DEVELOPER'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CCDC, its appointed officials, officers, representatives, agents and employees.

CCDC may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CCDC chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, developer shall pay all of the costs related thereto, including without limitation, reasonable attorney fees and costs. This indemnification shall survive all applicable statutes of limitation.

COMMUNITY PLANNING GROUP (choose one)

LIST NAME OF GROUP:

- No officially recognized community planning group for this area.
- Community Planning Group has been notified of this project and has not submitted a recommendation.
- Community Planning Group has been notified of this project and has not taken a position.
- Community Planning Group has recommended approval of this project.
- Community Planning Group has recommended denial of this project.
- This is a matter of City-wide effect. The following community group(s) have taken a position on the item:

In favor:

Opposed:

By _____
Project Manager

000285



**Centre City
Development
Corporation**

DATE ISSUED: February 20, 2008 REPORT NO.: CCDC-08-03

ATTENTION: Council President and City Council
Docket of February 26, 2008

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: Navy Broadway Complex – Appeal of Environmental
Determination -- Marina and Columbia Sub Areas of the Centre
City Redevelopment Project--**PUBLIC HEARING**

COUNCIL DISTRICT: Two (2)

REFERENCE: Development Services Department's (DSD's) Navy Broadway
Complex – Superseding Master Plan CEQA 21166 Evaluation
dated November 27, 2007; DSD CEQA Consistency Analysis for
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Plan, New Centre City Planned District Ordinance and Tenth
Amendment to the Redevelopment Plan for the Centre City
Redevelopment Project, certified in February 2006.

STAFF CONTACT: Eli Sanchez, Senior Project Manager–Real Estate
(619) 533-7121

OWNER: United States Navy
APPLICANT: Manchester Financial Group
APPELLANTS: San Diego Navy Broadway Complex Coalition and Katheryn
Rhodes and Conrad Hartsell M.D.

REQUESTED ACTION

San Diego City Council ("City Council") denial of the appeal filed on December 7, 2007 by the Briggs Law Corporation on behalf of the San Diego Navy Broadway Complex Coalition and Katheryn Rhodes and Conrad Hartsell M.D., thereby upholding CCDC's November 28, 2007 adoption of DSD's "Superseding Master Plan CEQA 21166 Evaluation" and CCDC's determination that no additional environmental review is necessary for the proposed Navy Broadway Complex ("NBC") project. Pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the City Council certified an Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for this project on October 20, 1992 ("1992 Final EIR/EIS"). The project is located within the Centre City/Downtown Community Planning Area.

STAFF RECOMMENDTION

That the San Diego City Council ("City Council"):

1. Deny December 7, 2007 Appeal by the San Diego Navy Broadway Complex Coalition and Katheryn Rhodes and Conrad Hartsell, MD ("Appellants");
2. Uphold CCDC's adoption of DSD's November 27, 2007 Superseding Master Plan CEQA Consistency Evaluation and CCDC's environmental determination that no additional environmental review is necessary for the NBC project; and
3. Make an express finding that the information submitted by the Appellants does not constitute substantial evidence of substantial changes in the project or the circumstances under which the project is undertaken, or new information of substantial importance concerning the project, that would suggest the project will result in new significant environmental effects or a substantial increase in the severity of previously-identified significant effects.

SUMMARY

The issue before the City Council is the appeal of the environmental determination made by CCDC on November 28, 2007 that based on all the information in the record, including DSD's *Navy Broadway Complex – Superseding Master Plan CEQA 21166 Evaluation*, dated November 27, 2007 (Attachment A), no Subsequent or Supplemental EIR is required for the NBC project.

BACKGROUND

The NBC is a 14.7-acre site located on land owned by the federal government near the downtown San Diego waterfront. The complex currently consists of approximately 361,000 square feet (SF) of U.S. Navy administrative office space and 500,000 SF of warehouse space. The site houses the Commander, Navy Region Southwest, the Navy Fleet Industrial Supply Center and other Navy administrative activities. The four-block site is presently fenced and secured, and restricts access from downtown San Diego to the waterfront.

In 1987, through Public Law (P.L.) 99-661, Congress authorized the U.S. Navy to enter into a long-term lease(s) with one or more private developers who would develop private uses on parts

of the site, with Navy administrative space developed on other parts of the site. A key objective of P.L. 99-661 was to encourage private land uses that are compatible with Navy administrative uses and surrounding land uses. The Navy and the City of San Diego ("City") signed a Memorandum of Understanding ("MOU") in June 1987 to help implement P.L. 99-661. The MOU specified that the Navy and the City would enter into an agreement for the future redevelopment of the NBC site and that the development agreement would include a development plan, urban design guidelines, and phasing for the project. Absent an approved development agreement, the City would have no land use planning, regulatory, or other authority/jurisdiction over the redevelopment of the NBC.

Pursuant to the MOU, in 1992 the City and the Navy executed the *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* ("Development Agreement"). The Development Agreement defines and specifies the future redevelopment of the NBC, and includes a Development Plan and Urban Design Guidelines, which were adopted to ensure the construction of a high-quality development that achieves community objectives for the waterfront site. The Development Agreement also requires adherence to the Mitigation and Monitoring Program that was prepared as part of the 1992 Final EIR/EIS.

The Development Agreement contemplates a maximum total of 3.25 million SF of above-grade development. Within the total maximum of 3.25 million SF, the Development Agreement allows for a maximum of 1.65 million SF of office space, of which 1 million SF are reserved for Navy use, a maximum of 1.22 million SF of hotel uses, including support retail, restaurant, and entertainment uses, a maximum of 25,000 SF of retail space, a maximum of 55,000 SF of public attractions, and a maximum of 300,000 SF of above-ground parking. The Development Agreement also requires a minimum of 1.9 acres of public open space. Precise mix and block-by-block location of allowable land uses were not specified by the Development Agreement. However, the 1992 Final EIR/EIS provided a conceptual illustration of the proposed redevelopment that detailed possible block-by-block uses.

Due to unfavorable market conditions in downtown San Diego, the NBC project was on hold for several years following the approval of the Development Agreement. In late 2001, at the Navy's request, and to prevent the entitlement from expiring, CCDC staff processed an amendment to the Development Agreement to extend its deadline for one year. The extension was to allow time for consideration of alternative strategies to move the NBC project forward. The City Council approved the amendment to the Development Agreement, which changed the expiration date from January 1, 2002 to January 1, 2003. Again in November 2002, the Navy and the City extended the expiration date from January 1, 2003, to January 1, 2007. During the 2005 Base Realignment and Closure ("BRAC") process, the BRAC Commission elected to allow the Navy to continue seeking development opportunities under the Development Agreement. The Navy was given until the January 1, 2007 deadline to enter into a long-term lease for redevelopment of the site, or the property would be closed under the BRAC process.

On March 31, 2006, the Navy selected Manchester Financial Group and Manchester Pacific Gateway, LLC ("Developer") as the developer for the NBC project. Manchester was selected through an extensive "Request for Qualifications/Proposals" process conducted by the U.S.

Navy. The Navy will continue to own the property with the Developer holding a long-term ground lease.

The Development Agreement requires each design phase of the NBC project, including future phases, to be submitted to CCDC for a consistency review and determination, according to the project's Development Plan and Urban Design Guidelines. Each design stage of the project must be approved by CCDC for conformity to the standards and initial consistency determination, and reviewed to determine how the conditions imposed in connection with the previous submissions have been accommodated. Each subsequent submission refines the previous submission until plans are refined to the point of representing one hundred percent (100%) construction drawings, which must be in sufficient detail to obtain a building permit. CCDC's determination must not be unreasonably withheld and may not require any change which is inconsistent with the 1992 Final EIR/EIS. CCDC reviews proposals for consistency with the North Embarcadero Visionary Alliance Plan ("Visionary Plan"), which the Navy formally adopted in the 2003 Amendment to the Development Agreement.

The Developer first submitted a master plan ("First Master Plan") and proposals for the Navy Administration Building to CCDC for a consistency determination in May 2006. On October 25, 2006 the CCDC Board of Directors ("Board") considered the Developer's application and voted *to approve staff recommendations with respect to such determinations, subject to limited modifications and additions*. Specifically, the Board determined that the First Master Plan was consistent with the Design Guidelines, subject to conditions; but the proposals for the Navy Administration Building were not. The Board also voted to adopt DSD's October 19, 2006 *CEQA Consistency Analysis for the Navy Broadway Complex* ("DSD CEQA Consistency Analysis"). The DSD CEQA Consistency Analysis considered whether a Subsequent or Supplement EIR was required for the NBC project pursuant to Public Resources Code section 21166. The analysis concluded that the NBC project was adequately addressed in prior environmental documents that were certified for the NBC project and for other projects in the vicinity and that appropriate mitigation for the project's impacts had been identified. DSD therefore concluded that a Subsequent or Supplemental EIR was not required before CCDC's approval of the First Master Plan for the NBC project. Two appeals were filed to the City Council challenging the DSD CEQA Consistency Analysis and challenging CCDC's approval and adoption of the CEQA Consistency Analysis. Following a public hearing, the City Council denied both appeals on January 9, 2007 and upheld the environmental determinations.

Although a master plan for the NBC project had been approved by CCDC, on July 2, 2007, the Developer submitted a new *Master Plan and Phase I Buildings Basic Concept/Schematic Drawings [of Blocks 2 and 3] for the Navy Broadway Complex Project* ("Superseding Master Plan and Phase I Buildings"). The Superseding Master Plan and Phase I Buildings replace and supersede the First Master Plan, which had been approved by CCDC, and previous building schematics, which had been submitted to CCDC, but not approved. As required by the Development Agreement, CCDC undertook a consistency analysis for the Superseding Master Plan and Phase I Buildings.

On July 25, 2007, the CCDC Board adopted findings that the Superseding Master Plan and Basic Concept Schematic Drawings are consistent with the Design Guidelines, subject to

recommended conditions. The Board also adopted findings that the DSD CEQA Consistency Analysis continues to be adequate with respect to the Superseding Master Plan and that, pursuant to Public Resources Code section 21166, no Subsequent or Supplemental EIR is required for the project. (CCDC Resolutions 2007-1 through 2007-5 (executed July 25, 2007).)

Two appeals were filed to the San Diego City Council challenging CCDC's July 25, 2007 determination that no Subsequent or Supplemental EIR was required for the project. The appeals were scheduled to be heard by the City Council on November 6, 2007. On November 5, 2007, the San Diego City Attorney submitted a memorandum to the San Diego Mayor and City Council advising that DSD must perform a Public Resources Code, section 21166 analysis for the Superseding Master Plan and Phase I Buildings before CCDC may make its consistency determination pursuant to Section 5.2 of the Navy Broadway Complex Agreement and on that basis advised the City Council to grant the appeals. At the November 6, 2007 City Council hearing on the appeals, the City Council voted to continue the hearing to December 4, 2007 in order to further consider the San Diego City Attorney's November 5, 2007 memorandum.

At the December 4, 2007 public hearing to consider the appeals of CCDC's July 25, 2007 determination, based upon all relevant information, evidence and testimony considered by the City Council at this appeal hearing, the City Council concluded, upheld and found that there is substantial evidence to support the position that the 1990 EIR/EIS prepared for the Project and the subsequent environmental documents prepared for other projects in the vicinity, which were identified in the DSD CEQA Consistency Analysis and the information provided by CCDC staff, adequately addressed the potential environmental issues associated with the NBC Project and no additional environmental review was required pursuant to Public Resources Code section 21166. (City Council Resolution 2008-495.)

Prior to the December 4, 2007 hearing and pursuant to the City Attorney's recommendation that DSD perform a consistency determination for the Superseding Master Plan and Phase I Buildings, on November 27, 2007, DSD issued a new "Superseding Master Plan CEQA 21166 Evaluation" for the NBC, which concluded that no Subsequent or Supplemental EIR is required for the NBC project as modified by the Superseding Master Plan. On November 28, 2007, the CCDC Board adopted the analysis and conclusions of DSD's November 27, 2007 Superseding Master Plan CEQA 21166 evaluation. The Board also re-approved its consistency determination for the Superseding Master Plan and Phase I Buildings (Blocks 2 and 3) pursuant to the NBC Development Agreement. (CCDC Resolutions 2007-6 through 2007-7 (executed November 28, 2007).)

On December 7, 2007, the Briggs Law Corporation filed an appeal to the City Council of CCDC Board's November 28, 2007 decisions to adopt the November 27, 2007 DSD Superseding Master Plan CEQA 21166 Evaluation and to re-approve its consistency determination for the Superseding Master Plan and Basic Concept/Schematic Drawings for Buildings 2A, 2B, 3A and 3B of the NBC. The appeal was filed on behalf of the San Diego Navy Broadway Complex Coalition and Katheryn Rhodes and Conrad Hartsell, M.D, all of whom were the appellants in the previous appeal of CCDC's determination that no Subsequent or Supplemental EIR is required for the NBC project. The appeal does not raise any new issues as compared to the appeals denied by the City Council on December 4, 2007. Unlike the previous appeals, the

Appeal does not raise any objections based on parking standards, the location of the museum, Coastal Commission review, or financial impacts. Instead, the Appeal focuses on seismic safety laws, alleging that CCDC violated CEQA, the Alquist-Priolo Earthquake Fault Zoning Act, and the Seismic Hazard Mapping Act in taking action on the matters that were the subject of Item 11 on the CCDC Board's meeting agenda for November 28, 2007.

Project Description – The proposed activity for the purposes of conducting the CEQA analysis is the approval of the Superseding Master Plan and Phase I Buildings for the NBC project. The purpose of the Superseding Master Plan is to provide a long-term outline for implementing the 1992 Development Agreement. The Superseding Master Plan is intended to be consistent with the NBC Development Agreement, conform to the Downtown Community Plan, and advance the policies and goals of the Visionary Plan and the objectives of the Centre City Redevelopment project. The Superseding Master Plan is designed to incorporate the fundamental elements of the Central Bayfront Design Principles (view corridors, waterfront public access and stepping development “down” to the Bay), which were later incorporated into the North Embarcadero Visionary Alliance Plan. The NBC project boundaries remain the same and all the components of the original project that were identified in the Development Agreement and analyzed by the 1992 Final EIR/EIS and other environmental documents for projects in the vicinity have been carried forward in the Superseding Master Plan. The main components of the Superseding Master Plan include:

- A maximum of 2,893,434 gross-square feet of above-grade development. This figure is 356,566 gross-square feet less than the maximum building area allowed under the Development Agreement;
- 25,000 SF of independent retail space;
- 1,181,641 SF (1,575 rooms) of hotel space;
- 1.9-acres of open space;
- Museum space in two locations on Block 4 with a combined total-square footage of 40,000. This is the minimum-gross square feet of public attractions, such as museums, allowed under the Development Agreement; and
- 2,988 parking spaces to serve the allocation of uses in the Project. This is 50 spaces less than the estimation in the 1992 Final EIR/EIS of 3,038 on-site parking spaces to be allowed with full buildout of the Project; but is consistent with the parking ratios set forth in the Development Agreement and is more than required by the Centre City Planned District Ordinance section 151.0313 for non-residential off-street parking.

The following is a comparison of the uses approved with the Development Agreement in 1992 with the 2007 proposed NBC Project:

Project component	Minimum or Maximum per 1992 Development Agreement	Proposed 2007 Superseding Master Plan	Difference
Office	1,650,000 sf Max	1,646,793 sf	-3,207 sf
Hotel	1,220,000 sf Max	1,181,641 sf	-38,359 sf
Retail	25,000 sf Max	25,000 sf	--
Public Attraction	40,000 sf Min 55,000 sf Max	40,000 sf	--
Total sf	3,250,000 sf Max	2,893,434 sf	-356,566 sf
Open Space	1.9 acres Min	1.9 acres	--
Parking	3,038 Max	2,988	-50

The Phase I Buildings Basic Concept/Schematic Drawings consist of independent consistency reviews of four individual buildings within the NBC project proposed for Blocks 2 and 3. These building plans are summarized as follows:

- Building 2A: A 13-story, 200-foot tall building containing 296,535 square feet of office space and supporting retail space.
- Building 2B: A 28-story, 350-foot tall building containing 384,324 square feet of office space and 555,826 square feet of hotel space (approximately 943 rooms), including supporting retail space.
- Building 3A: A 10-story, 150-foot tall building containing 195,070 square feet (approximately 193 rooms) plus 16,000 square feet of independent retail space.
- Building 3B: A 17-story, 250-foot building containing 351,000 square feet of Navy office space.

Environmental Review – CEQA requires any government agency that must approve a project to prepare an EIR if the project will have a significant effect on the environment. In 1992, the City certified the 1992 Final EIR/EIS and adopted a Mitigation and Monitoring Program to govern implementation of mitigation adopted for the NBC project. The City was the lead agency on the EIR and retains CEQA responsibilities as outlined in the Development Agreement. The information contained in the 1992 Final EIR/EIS reflects the independent judgment of the City of San Diego as the Lead Agency and was reviewed and considered by the CCDC Board before it approved the Superseding Master Plan and Phase I buildings for the NBC Project.

The Final EIR/EIS is presumed to comply with the provisions of CEQA “unless the provisions of Section 21166 are applicable.” (See Pub. Resources Code, § 21167.2.) Section 21166 provides that no Subsequent or Supplemental EIR shall be prepared unless one or more of the following events occurs:

- Substantial changes are proposed in the project which will require major revisions of the Environmental Impact Report;
- Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the Environmental Impact Report; or
- New information, which was not known and could not have been known at the time the Environmental Impact Report was certified as complete, becomes available. (Pub. Resources Code, § 21166, subs. (a)-(c).)¹

Section 128.0209(b) of the City's Land Development Code (LDC) states that if a previously certified document is to be used, DSD shall provide the decision-making body (here CCDC and the City Council) with an explanatory letter stating that none of the conditions specified in the State CEQA Guidelines, section 15162 (implementing section 21166 of the CEQA statute) exist. Section 128.0209(b) further provides that an EIR prepared in connection with an earlier project may be used for a later project, if the circumstances of the projects are essentially the same and consistent with the State CEQA Guidelines, Section 15153. Before CCDC made its final consistency determinations on the First Master Plan, DSD conducted a section 21166 analysis for the NBC project and submitted an explanatory letter to CCDC and the City Council detailing its conclusions. (DSD (Oct. 19, 2006) *CEQA Consistency Analysis for the Navy Broadway Complex* ("DSD CEQA Consistency Analysis").)

As noted above, at the recommendation of the San Diego City Attorney, DSD conducted a new "Superseding Master Plan CEQA 21166 Evaluation" for the Navy Broadway Complex on November 27, 2007. The DSD Superseding Master Plan CEQA 21166 Evaluation was limited to consideration of CEQA issues associated with the modified project and the previous DSD CEQA Consistency Analysis prepared by DSD for the first NBC Master Plan. The November 27, 2007 DSD Superseding Master Plan CEQA 21166 Evaluation concluded that the proposed project revisions do not substantially change the project nor would the proposed revisions (as reflected in the Superseding Master Plan) result in new impacts or changed circumstances which would require a Subsequent or Supplemental EIR. The analysis also concurred with the conclusions and analysis of CCDC's "Initial Study" dated July 2007 and the CCDC staff report to the CCDC Board dated July 20, 2007, addressing whether a Subsequent or Supplemental EIR was required for the NBC project as refined by the Superseding Master Plan. DSD's November 27, 2007 analysis concluded that there is no need under CEQA to perform additional environmental review of the Superseding Master Plan for the NBC project.

On November 28, 2007, after evaluating DSD's November 27, 2007 Superseding Master Plan CEQA 21166 Evaluation, and based on the entire record, the CCDC Board adopted CCDC staff's recommendation to adopt DSD's November 27, 2007 CEQA analysis. Based on DSD's new analysis and all of the information in the administrative record, the CCDC Board found that no Subsequent or Supplemental EIR is required for the Navy Broadway Complex pursuant to Public Resources Code section 21166 and California Code of Regulations, title 14, sections 15162 and 15163. (CCDC Resolution 2007-06.) The CCDC Board also voted to re-approve its

¹/ The CEQA statute is implemented through the "CEQA Guidelines" at Title 14, Cal. Code Regs, § 15000 et seq. The Guidelines applicable to Pub. Resources Code § 21166 are sections 15162 – 15164.)

consistency determination (made pursuant to the NBC Development Agreement) for the Superseding Master Plan and Basic Concept/Schematic Drawings for Buildings 2A, 2B, 3A and 3B of the NBC subject to the same conditions set forth in CCDC Resolutions 2007-01 through 2007-05 passed and adopted by the CCDC Board at its meeting of July 25, 2007 (CCDC Resolution 2007-07).

ENVIRONMENTAL APPEAL:

Public Resources Code section 21151 subdivision (c) provides “if a nonelected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency’s elected decisionmaking body, if any.”

On December 7, 2007, the Briggs Law Corporation filed an appeal to the City Council of the CCDC Board’s November 28, 2007 decisions to adopt the November 27, 2007 DSD Superseding Master Plan CEQA 21166 Evaluation and to re-approve its consistency determination for the Superseding Master Plan and Basic Concept/Schematic Drawings for Buildings 2A, 2B, 3A and 3B of the NBC based on the conclusion that no Subsequent or Supplemental EIR is required for the NBC project (Attachment B).

The following is a summary of the issues raised in the Appeal with staff’s responses. The following also addresses past objections raised to the First Master Plan adopted for the NBC project and objections raised in the previous appeal of CCDC’s July 25, 2007 approval of the Superseding Master Plan and Phase I Buildings (Blocks 2 and 3) of the NBC project. In responding to the issues raised in the instant appeal, CCDC does not concede that appellants have presented sufficient information and/or evidence to exhaust their respective administrative remedies with respect to the specific issues raised in the appeals. CCDC, moreover, does not concede that appellants have exhausted their administrative remedies on any issue not specifically raised in CCDC’s November 28, 2007 environmental determination for the Superseding Master Plan and Phase I Buildings. Nor does CCDC waive the right to any claim or defense that the appellants failed to exhaust their administrative remedies on the issues discussed below. The San Diego Municipal Code requires an application for an appeal of an environmental determination to contain “[t]he specific grounds, clearly identified, upon which the appellant claims the lower decision maker’s *environmental determination* was made in error. All grounds must be specified in the appeal. Any grounds not stated in the appeal will not be considered.” (San Diego Municipal Code, § 112.0510, subd. (c)(3), italics original.) However, in anticipation of issues that might be raised by appellants at or before the hearing, CCDC has included in this report responses to several objections previously raised to the NBC project, which have not been raised in the instant appeal.

RAISED IN THE DECEMBER 7, 2007 APPEAL AND STAFF RESPONSES

CEQA Compliance – The Appeal states CCDC violated CEQA when it took action on the matters that were subject of item 11 on CCDC’s meeting agenda for November 28, 2007. The Appeal states that there is new information and changed circumstances with respect to the NBC project that require subsequent environmental review under CEQA. Apart from simply stating *new information requires further examination of the project under the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act*, the Appeal provides no support for its allegation that CCDC violated CEQA.

Staff Response – CEQA states that “[t]he purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061.) Public agencies must refrain from approving projects with significant environmental effects if “there are feasible alternatives or mitigation measures” that can avoid or substantially lessen those effects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.) Here, prior to approving the Development Agreement, the City prepared an EIR for the NBC project thoroughly analyzing the environmental consequences of the NBC project and providing alternatives and mitigation measures that would avoid or substantially lessen significant environmental effects associated with the project. Subsequent to the preparation of the 1992 Final EIR/EIS, the City adopted a Mitigation and Monitoring Program incorporating the mitigation measures identified in the EIR/EIS. The City and the Developer are required to implement the Mitigation and Monitoring Program.

When an agency prepares an EIR for a project, it is presumed that no further environmental review shall be required to carry out the project for which the document has been prepared. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15162.) In some instances, however, a change to a proposed project or its surrounding circumstances necessitates the preparation of a Subsequent or Supplemental EIR. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163.) The circumstances requiring preparation of a Subsequent or Supplemental EIR are set forth in Public Resources Code, section 21166 (discussed above).

Roughly 16 years have passed since the City certified the 1992 Final EIR/EIS, and downtown San Diego has experienced considerable growth in the intervening years. In addition, minor changes have been made to the project in terms of layout and intensity of allowed uses. Therefore, prior to taking discretionary action on the Superseding Master Plan, CCDC considered whether the criteria of section 21166 had been met. Additionally, at the request of the City Attorney, DSD also considered whether approval of the Superseding Master Plan would require additional environmental review. (DSD Superseding Master Plan CEQA 21166 Evaluation dated November 27, 2007.) Based on all of the information in the administrative record up to this point, both DSD and CCDC have determined that none of the criteria listed in CEQA section 21166 have been met with respect to the Superseding Master Plan and Phase I Buildings. Therefore, CCDC acted in accordance with CEQA in re-approving its consistency determination for the Superseding Master Plan and Phase I Buildings.

Notably, CEQA section 21166 does not require preparation of a Subsequent or Supplemental EIR unless project changes or new circumstances are so “[s]ubstantial” as to require “major revisions” in the EIR. (Pub. Resources Code, § 21166, subd. (b), emphasis added; *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 166, 170, 175, 180.) That is not the case with the NBC project. The elements of the Development Agreement and the elements proposed in the Superseding Master Plan are virtually the same in terms of use and intensity. The gross square footage proposed in the Superseding Maser Plan is slightly less than approved in the Development Agreement and all required elements included in the Development Agreement have been incorporated into the current design. Although minor changes in terms of placement of buildings have been made to the project analyzed as “Alternative A” in the EIR/EIS, these changes do not result in any new impact. Any changes which have been made in terms of project components and requirements are not so substantial as to require major revisions to the previously certified EIR/EIS.

CCDC does not disagree that changes have occurred in the downtown area over the past sixteen years. However, the currently proposed NBC project was assumed as fully built-out and therefore anticipated in environmental impact reports prepared since 1992 for several subsequent development projects and plans within the Centre City area. While it is true that there has been an increase in traffic since 1992, the mitigation measures contained in 1992 Final EIR/EIS and for any other project related environmental document in Centre City would still be necessary to alleviate the current congestion situation. There is no new information available that was not part of the 1992 Final EIR/EIS and/or considered in subsequent environmental reviews of other projects and plans in the vicinity of the NBC project. It was and continues to be assumed that the downtown area, including the NBC site, would be developed according to adopted land use plans. Because in-depth environmental review has occurred for the NBC project and mitigation measures identified to lessen or reduce to a level of significance any significant environmental impacts associated with the project, a Subsequent or Supplemental EIR is not required. Circumstances have not changed enough to justify repeating the environmental review process for the NBC project. (See Pub. Resources Code, § 21166, CEQA Guidelines §§ 15162, 15163; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1073 [“Section 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired [citation], and the question is whether circumstances have *changed* enough to justify *repeating* a substantial portion of the process.” (italics original).].)

Compliance with the Alquist-Priolo Fault Zoning Act of 1972, the Seismic Hazards Mapping Act of 1990 – The Appeal states CCDC violated the Alquist-Priolo Fault Zoning Act and the Seismic Hazards Mapping Act in taking action on the matters that were subject of Item 11 on CCDC’s agenda for November 28, 2007. The appeal also states there is new information that requires further examination of the project under the Alquist-Priolo Fault Zoning Act and the Seismic Hazards Mapping Act. Lastly the appeal states that under the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act, subsequent geologic reports may be required when new geologic data are obtained. The Appeal offers no specific reasons to support its allegation that CCDC violated either the Alquist-Priolo Fault Zoning Act or the Seismic Hazards Map.

Staff Response – The following staff response was presented to the City Council in relation to the previous determination that no Subsequent or Supplemental EIR is required for the NBC project in relation to the Superseding Master Plan and Phase I Buildings (Blocks 2 and 3) upheld by the City Council on December 4, 2007. The Appeal raises no new concerns with respect to the Alquist-Priolo Fault Zoning Act or the Seismic Hazards Mapping Act not already addressed before the City Council in relation to the previous appeals.

The Alquist-Priolo Fault Zoning Act of 1972 (Alquist-Priolo Act) (Pub. Resources Code, §§ 2621-2630) addresses the hazard of surface fault rupture and is not directed toward other earthquake hazards. The main purpose of the Alquist-Priolo Act is to prevent construction of buildings for human occupancy on the surface trace of active faults. The law requires the State Geologist to establish regulatory zones (Earthquake Fault Zones) around the surface traces of the active faults and to issue appropriate maps. These maps (Alquist-Priolo Maps) are distributed to affected cities, counties and state agencies for their use in planning and controlling new or renewed construction. Local cities and counties must regulate certain development projects, within the zones, which includes withholding permits until geologic investigations demonstrate that development sites are not threatened by future surface displacement. Projects include all land divisions and most structures for human occupancy.

The Seismic Hazards Mapping Act of 1990 (Pub. Resources Code, §§ 2690-2699.5) addresses non-surface fault rupture earthquake hazards, including liquefaction and seismically induced landslides. The purpose of the Act is to protect public safety from the effects of strong ground shaking, liquefaction, landslides, or other ground failure, and other hazards caused by earthquakes. The Act requires the State Geologist to delineate various seismic hazard zones and requires cities, counties, and other local permitting agencies to regulate certain development projects within these zones. The Seismic Hazard Zone Maps identify where a site investigation is required and determines whether structural design or modification of the project site is necessary to ensure safer development. Notably, a Seismic Hazard Map has not yet been prepared for the City of San Diego, and therefore this Act is inapplicable to the NBC project.

Despite the fact that the NBC is located in a seismically active region of California, the NBC site itself is not located within a State designated Alquist-Priolo Earthquake Fault Zone and no active faults are known to underlie the site.² According to the California Geological Survey *Alquist-Priolo Earthquake Fault Zone Map, Point Loma Quadrangle* effective May 1, 2003, the closest active fault (a portion of the Rose Canyon Fault zone) is mapped approximately 2,500 feet east of the site. As with all of downtown, however, the Project site is located within the Downtown Special Fault Zone (DSFZ), Geologic Hazard Category Zone (HCZ) 13. (San Diego Seismic

^{2/} Source: Geocon, *Geotechnical and Geologic Fault Investigation prepared for Manchester Pacific Gateway, LLC for the Navy Administration Building Phase 1*, July 12, 2006. Although the Navy Administration building Phase 1 was not approved by CCDC, the Geotechnical and Geologic Fault Investigation prepared for the building indicates that no active fault underlies the project site. The Geotechnical Report has not been formally reviewed and approved by the City. In compliance with state law and local regulations, additional Geotechnical and Geologic Fault Investigations will be required to be prepared and approved prior to any issuance of a building or grading permit for the NBC Project.

Safety Study (1995 edition) Sheet 3.) Sites located in HCZ 13 are identified as being within the limits of suspected faults. (San Diego Mun. Code, Footnote 3 to Table 145-02A), which is consistent with the description of the site in both the 1992 EIR/EIS. (1992 EIR/EIS, p. 4-145.) The site is also located in HCZ 31 under the San Diego Municipal Code, indicating that, as discussed in the 1992 Final EIR/EIS, the site is at risk for liquefaction during a seismic event.

CCDC's consistency determination does not trigger the City's requirements for submission of a geotechnical report. As relevant to the NBC project, the City requires submission of geotechnical reports for projects located in HCZ 13 and HCZ 31 before approval of a grading permit and/or building permit. (City of San Diego, Information Bulletin 515, (Oct. 2006); City San Diego Land Development Code, § 145.0203, Table 145-02A.) The Development Agreement grants the City, not CCDC, the authority to issue building and related permits for structures not to be occupied by the Navy. Although construction, grading and excavating phasing of the NBC Project has yet to be determined,³ at a minimum, site-specific geotechnical studies will be performed prior to the City's issuance of building and/or grading permits. (See *ibid.*) Thus, and consistent with the conclusions of the 1992 Final EIR/EIS and the 2006 Downtown Community Plan EIR, design and construction conducted in conformance with the federal building codes, the San Diego Municipal Code, the Uniform Building Code, and the recommendations contained in the site-specific geotechnical studies will reduce any potential impacts related to liquefaction, lateral spreading, subsidence, and/or collapse to a less than significant level. (1992 Final EIR/EIS, p. 4-147; 2006 Downtown Community Plan Final EIR, p. 5.5-9.) Accordingly, no Subsequent or Supplemental EIR is required. (See CEQA Guidelines, § 15162, subd. (a)(2).)

CEQA Analysis of New Information or Changed Circumstances – The Appeal states that “there is new information and changed circumstances with respect to the Navy Broadway Complex that requires subsequent environmental review.” Although the Appeal does not state the “new information and changed circumstances” relates to geology or seismicity, in the interest of providing a thorough response and because the appeal purports to raise issues with respect to geology and seismicity, that potential concern is addressed as follows:

Staff Response – The following staff response was presented to the City Council in relation to the previous appeals of CCDC's determination that no Subsequent or Supplemental EIR is required for the NBC project in relation to the Superseding Master Plan and Phase I Buildings (Blocks 2 and 3) upheld by the City Council on December 4, 2007. The Appeal does not raise any new issues beyond those previously considered by the City Council at the December 4, 2007 hearing on the previous appeals of CCDC's approval of the Superseding Master Plan and Phase I Buildings.

The 1992 Final EIR/EIS thoroughly evaluated potential impacts from the proposed project related to geology and seismicity. Specifically, the EIR/EIS includes a discussion addressing the

³/ The Development Agreement sets forth a process by which the Developer is to provide the City with a preliminary schedule under which the developer will seek to obtain building and related permits. (Development Agreement, § 5.6.)

faulting and seismicity impacts associated with the Rose Canyon Fault Zone, which at the time was considered to present a significant seismic hazard to the coastal San Diego area. In addition, the EIR/EIS addressed the potential for liquefaction resulting from loose, sandy, water-saturated soils subjected to strong seismic ground motion of significance and explains that the site would not be at greater risk of liquefaction than other adjacent areas along the bay. The document fully disclosed the potential for strong seismic ground shaking resulting in substantial damage to structures within the project site, which was considered a significant impact. As described in the Final EIR/EIS, compliance with building codes would mitigate this impact to a less-than-significant level. (1992 Final EIR/EIS, p. 4-147.)

While several changes have occurred with respect to information known about geologic conditions since 1990, these changes were most recently addressed in the 2006 Downtown Community Plan EIR. The 2006 Community Plan EIR analyzed the impacts to development in downtown, including the Navy Broadway Complex, associated with seismic activity. As explained in section 5.5.3 of the Community Plan EIR, “[a]ll of downtown San Diego is located essentially within one mile of the Rose Canyon Fault Zone, which is considered a significant seismic hazard to the San Diego metropolitan area.” (Downtown Community Plan Draft EIR p. 5.5-8.)

In conversations with CCDC Staff, Appellant Katheryn Rhodes raised the concern that the illustrative maps contained in the 2006 Downtown Community Plan EIR do not clearly illustrate that the zone 31 area adjacent to the shoreline is also within the confines of the greater Downtown Special Fault Zone. However, these maps do accurately identify the major faults. (Downtown Community Plan Figure 13-31; 2006 Downtown Community Plan EIR Figures 5.5-1 and 5.5-2.) In addition, the green color depicting Alquist-Priolo zones should also include the Coronado and Spanish Blight fault areas; though it would not encompass the NBC site. The fact that the maps contained in the 2006 Downtown Community Plan include inaccuracies does not trigger the need for a Supplemental or Subsequent EIR because the extent of the Downtown Special Fault Zone and the location of the Coronado and Spanish Blight fault area is not “[n]ew information, which was not known and could not have been known at the time the [EIR] was certified as complete.” (See Pub. Resources Code, § 21166, subd. (c).) Moreover, the errors in the maps did not have a substantial effect on, nor was it not material to the findings and conclusions of the 2006 Community Plan EIR. (See San Diego Mun. Code, § 128.0314 subd. (a).)

Furthermore, although the illustrative maps included in the 2006 Downtown Community Plan EIR do not clearly show that the NBC site is within the Downtown Special Fault Zone, as with the rest of downtown, application of the City’s requirements for the Downtown Special Fault Zone, the seismic design requirement of the Uniform Building Code (UBC), the City of San Diego Notification of Geologic Hazard procedures, and all other applicable requirements, including federal laws applicable to the buildings to be occupied by the Navy, would ensure that the potential impacts associated with seismic and geologic hazards in the Downtown Community Plan are not significant. (See 1992 Final EIR/EIS, p. 4-147; 2006 Downtown Community Plan EIR, pp. 5.5-8 – 5.5-9; 2006 Environmental Assessment for the Navy Broadway Complex, pp.3.6-5 – 3.6-3.) In applying these standards, City staff relies on the City’s Municipal Code, the official Alquist-Priolo Maps and the San Diego Seismic Safety Study Maps, not the Downtown

Community Plan map. (See City of San Diego, Information Bulletin 515, (Oct. 2006); City San Diego Land Development Code, § 145.0203, Table 145-02A.)

For these reasons, the fact that the illustrative maps contained in the 2006 Downtown Community Plan EIR contain some inaccuracies bears no relevance to determining the types of studies and measures that will be required prior to the construction of the NBC project. As such, the mitigation measures included in the 1992 Final EIR/EIS and the 2006 Downtown Community Plan EIR will continue to apply to the NBC project and will reduce Project-related impacts to less than significant levels. (See e.g. Pub. Resources Code, § 21083.3, subd. (d).) Accordingly, no further environmental review is required under Public Resources Code section 21166. (See *Friends of Davis v. City of Davis* (2000) Cal.App.4th 1004, 1019 [“Public Resources Code section 21166 provides a balance against the burdens created by the environmental review process and accords reasonable measure of finality and certainty to the results achieved. [citation] At this point, the interests of finality are favored over the policy of favoring public comment, and the rule applies even if the initial review is discovered to have been inaccurate and misleading in the description of a significant effect or the severity of its consequences.”].)

Other Potential Areas of Controversy Not Specifically Raised by the Appeals – The following issues were not raised by the instant Appeal, and therefore, the City Council need not consider them. (San Diego Mun. Code, § 112.0510, subd. (c)(3), italics original.) However, in anticipation that additional concerns may be raised by the Appellants at or before the City Council’s hearing on the instant Appeal, CCDC has chosen to respond in this report to concerns raised by previous appeals to the City Council regarding the environmental determination for the First Master Plan (January 9, 2007 hearing by the City Council (Item-336)) and CCDC’s first environmental determination for the Superseding Master Plan (December 4, 2007 hearing by the City Council (Item-336)).

Fault Buffer Setbacks – A previous appeal of CCDC’s approval of the Superseding Master Plan and Phase I Buildings stated that CCDC did not “know” the required fault buffer setback and that CCDC is “charged with establishing legal and adequate setbacks.” As with the other issues raised in the Appeal, the Appeal does not provide any specific information clarifying the Appellants’ concerns regarding fault buffer setbacks, making it difficult to formulate a specific response.

Staff Response – Under the Alquist-Priolo Act, if a proposed development is within an Earthquake Fault Zone, a developer must perform a geologic investigation to determine whether the construction project area is underlain by active earthquake faults. If an active fault is found, new buildings are required to be set back from the fault. Generally, setback widths are 50 feet from either side of the fault, though setback widths may be smaller or larger, depending on the nature of the fault. The NBC site is not within an Alquist-Priolo Earthquake Fault Zone. Additionally, though not formally reviewed and approved by the City, the geotechnical and geologic fault investigation performed for the formerly proposed Navy Administration Building Phase 1 in July 2006 indicated that no active or potentially active fault transects the NBC site. However, because the project site is within HCZ 13 and HCZ 31, prior to the issuance of any building and/or grading permits for the non-Navy development of the NBC Project, a site-

specific geotechnical study will be required. (San Diego Mun. Code, § 145.0203.) If the geotechnical study identifies an active fault beneath the NBC site, set backs requirements will be imposed and the development plans for the NBC project will be modified accordingly.⁴

Parking Standards – A previous appeal of CCDC’s approval of the Superseding Master Plan and Phase I Buildings stated “CCDC lowered the parking standards.”

Staff Response – The Development Plan and Design Guidelines govern the development of the site, including the amount of parking to be provided. These requirements are vested in the Development Agreement and are not superseded by subsequent City-wide adopted ratios or zoning regulations adopted within the Centre City Planned District Ordinance. Specifically, the Development Plan and Design Guidelines set forth the following parking ratio requirements:

- Navy Office: 1.23 spaces/1000 sf;
- Commercial Office: 1.00 space/1,000 sf;
- Hotel: 0.75 space/room; and
- Retail: 1.00 space/ 1,000 sf.

The Superseding Master Plan proposes 2,988 parking spaces and is consistent with the Development Agreement’s parking requirements (listed above).

The 1992 Final EIR/EIS acknowledged that no minimum or maximum parking requirements had been established for the downtown area at the time the City approved the Development Agreement. However, the 1992 Final EIR/EIS thoroughly evaluated parking demand for the project and concluded that with the availability of transit in the downtown area and the adoption of a Transportation Demand Management Plan (required for each phase of the project), the development would provide an adequate amount of on-site parking and there would be no reliance on off-site parking facilities to meet parking demand. This conclusion is further bolstered by the North Embarcadero Visionary Plan Master EIR, which determined that with implementation of the parking management plan outlined in the mitigation measures for the Visionary Plan, significant impacts associated with parking will be reduced to a less-than-significant level, with no residual impact that could contribute to a cumulative effect. With respect to the NBC project, the Visionary Plan Master EIR concluded that the NBC will provide adequate on-site parking and therefore, is not expected to compete with other projects in the vicinity for public parking.

Since the time the 1992 Final EIR/EIS was certified, the City has adopted parking space requirements for development within the Centre City Planned District through the Centre City Planned District Ordinance (PDO). As the PDO expressly provides:

⁴ / The development lease between the Developer and the City requires the Developer to implement all seismic safety development requirements as recommended in the relevant federal, state, and local building codes. (Real Estate Ground Lease for Broadway Complex, Lease No. N6247307RP07P24, between the United States of America, Acting By and through the Department of the Navy as Lessor, and Manchester Pacific Gateway LLC, as Lessee, entered into as of Nov. 22, 2006, § 13.1 “Compliance with Applicable Laws.”)

Where lands are subject to the jurisdiction of other agencies and organizations, including the *United States Government*, State of California, San Diego Unified Port District, or County of San Diego, any superseding authority of those agencies shall apply.” (PDO, § 151.0301 subd. (b), emphasis added.)

The NBC is under the jurisdiction of the United States government. Although the Development Agreement provides the City and CCDC with limited jurisdiction over the property, that jurisdiction is limited to the terms of the Development Agreement. As such, the PDO does not apply to the redevelopment of the NBC. Because the parking proposed in the Superseding Master Plan is consistent with the parking requirements of the Development Agreement, CCDC did not lower the applicable parking standards in approving the Superseding Master Plan for the NBC project.

The PDO’s establishment of parking requirements does not constitute a substantial change in the circumstances under which the NBC project is being undertaken which would require major revisions in the EIR/EIS. The Superseding Master Plan actually proposes more parking spaces than would be required under the PDO. Specifically, the PDO imposes the following parking requirements:

- Commercial Office: 1.5 spaces/1,000 sf;
- Hotel: 0.3 space/guest room; and
- Retail: 1.00 space/1,000 sf.

Based on the ratios set forth in the PDO, the land uses identified in the Superseding Master Plan would require a total of 2,968 spaces. The Superseding Master Plan calls for 2,988 parking spaces. Therefore, the minimum parking requirement under the Centre City Planned District Ordinance is 20 spaces fewer than the number of spaces required under the Development Agreement. For this reason, and although the PDO does not apply to the Navy Broadway Complex site, the adoption of the PDO does not constitute new information of substantial importance necessitating the need for a new EIR for the Navy Broadway Complex project. (See Pub. Resources Code, § 21166; see also *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 799 [finding parking impacts of legislation giving residential users preferential parking did not require an EIR because “it cannot be inferred . . . that the legislation may have any environmental impact . . . [because] evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.”].)

Location of the Museum – A previous appeal of CCDC’s approval of the Superseding Master Plan states CCDC “moved the location of the museum.”

Staff Response – For the purposes of the 1992 Final EIR/EIS, the preferred alternative (Alternative A) assumed the museum would be located on Block 2, rather than Block 4, as proposed by the Superseding Master Plan. As explained in the 1992 Final EIR/EIS, however, the “precise mix and location (by block) of land uses would be determined by market conditions.” (EIR/EIS, p. 3-8.) Moreover, the adopted Development Agreement does not identify block-by-

block locations of the allowable uses. Locating the museum on Block 4, rather than Block 2 as shown in the illustrations included in the EIR/EIS, does not rise to a level of significance warranting further review under CEQA. The project currently proposed for the NBC site is located within the same footprint as originally analyzed in the 1992 Final EIR/EIS. The project boundaries are the same and all components of the original project have been carried forward that were identified in the EIR/EIS and the Development Agreement. The Superseding Master Plan still provides 40,000 SF of museum and public attractions, as well as 1.9 acres of open space, 25,000 SF of retail space, 1.2 million SF of hotel space, and extensions of Streets E, F and G through the project site.

Coastal Commission Issues – A previous appeal of CCDC's approval of the Superseding Master Plan and Phase I buildings stated that "CCDC is not requiring the Navy and Manchester (the Developer) to get a discretionary Coastal Development Permit (CDP) as per the original development agreement and plans." The Appeal provides no further information or evidence as to why any issue related to the Coastal Commission would require preparation of a Subsequent or Supplemental EIR, and it is, therefore, difficult to formulate a response.

Staff Response – Issues regarding the California Coastal Commission's consistency review of the NBC project with the California Coastal Management Program are not relevant to the CEQA 21166 analysis. The project site is under the jurisdiction of the Federal government and therefore, subject to NEPA. The need for a coastal development permit for the current proposal will be determined by the Coastal Commission as part of any Federal consistency analysis required by federal law. This issue is, therefore, directed toward the Navy and its site developer, not CCDC or the City.

Financial Impacts – A previous appeal of CCDC's approval of the Superseding Master Plan and Phase I Buildings stated that "CCDC is not protecting the financial and safety interests of the Citizens of San Diego or the State of California."

Staff Response – Fiscal impacts of the Navy Broadway Complex Project are not a subject of the CEQA Section 21166 analysis. CEQA Guidelines section 15131 states that economic or social effects of a project shall not be treated as significant effects on the environment. Such effects of a project are only relevant under CEQA to the extent that they may result in indirect physical changes to the environment, such as urban blight, Public Resources Code section 21082.2 subdivision (c) states that evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment are not "substantial evidence" that would show those impacts to be significant. There is no evidence in the record for this project that suggests that any social or economic effects of this project would result in a significant physical impact, such as urban blight.

Funding associated with the implementation of the project components identified in the 1992 Final EIR/EIS Mitigation Monitoring Program that are the responsibility of the City (such as, but not limited to, roadway improvements, park development and park services) will be addressed at the time construction documents for the NBC project are submitted for the ministerial permitting process.

Consideration of Previously Certified EIRs – An appeal of CCDC’s approval of the first master plan submitted for the NBC project raised the concern that the use of the 1992 Final EIR/EIS along with other EIRs certified in the downtown area is not sufficient to address the proposed NBC project.

Staff Response – A previously-certified EIR is generally presumed valid. (See Pub. Resources Code, § 21167.2.) However, the Legislature has anticipated that, in some instances, changes to a proposed project or its surrounding circumstances subsequent to the certification of an EIR may necessitate further environmental review if changes implicate new or more significant environmental impacts. Thus, Public Resources Code section 21166 requires agencies to prepare a Subsequent or Supplemental EIR to allow a project to be modified in response to substantial changes in circumstances or information. In order to determine if additional environmental review is warranted, an agency with approval power over a project must ask whether: “substantial changes are proposed in the project which will require major revisions of the [EIR]”; “substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the [EIR]”; or “new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.” (Pub. Resources Code, § 21166.)

Here, since the NBC project was originally approved in 1992, the City has approved several large scale planning and development proposals for the Downtown area that relate to and assume the buildout of the NBC project in their analyses. Specifically, the NBC project has been considered or was assumed in the 1992 Final EIR/EIS, the 1992 Final Master EIR for the Centre City Redevelopment Project, the 1999 Final Subsequent EIR for the Ballpark and Ancillary Development Projects, the 2000 North Embarcadero Alliance Visionary Plan EIR, and the 2006 Downtown Community Plan Final EIR. These environmental documents represent the best information available regarding the baseline environmental condition of downtown San Diego, particularly with regard to the area that includes the NBC project, and the potential environmental consequences of this area’s anticipated development. Because the NBC project was considered or assumed in each of these environmental documents, it stands to reason that those documents are relevant to the determination of whether changed circumstances, including changed circumstances and conditions of downtown San Diego, are substantial enough to warrant additional environmental review under CEQA. In addition, the environmental documents set forth mitigation with which the City, CCDC, and/or the Developer must comply in order to lessen or avoid the significant environmental effects associated with planned development in downtown San Diego.

As further explained in DSD’s January 7, 2007 Staff Report to the City Council regarding the previous environmental appeals of the NBC project:

According to Section 15150 of the State CEQA Guidelines, incorporation by reference of the NBC project analysis within environmental documents prepared after the 1990 EIR/EIS was certified is adequate and consistent with CEQA. Incorporation by reference is a necessary device to reduce inconsistencies between EIRs. This section of CEQA authorizes use of incorporation by reference and provides guidance for using it in a manner consistent with the

public involvement and full disclosure functions of CEQA. A public review and comment period was provided at the time of draft distribution in accordance with CEQA for all environmental documents used in the 21166 analysis. Although not analyzed in detail within each Subsequent document, the fact that the NBC project is mentioned and included in the cumulative impact analysis for several of the documents is consistent with CEQA. Furthermore, CEQA requires discussion of past, present, and reasonably foreseeable future projects in the vicinity in order to adequately address cumulative impacts.

The fact that the NBC project is referenced in these other documents and not further analyzed, does not render the current process invalid. The Subsequent environmental documents considered the potential impacts resulting from development of the Navy-owned project site and incorporated consistent mitigation measures or development conditions to reduce community-wide impacts associated with transportation/circulation/parking, air quality, noise, public services/utilities, public health/safety, drainage (i.e. water quality, erosion), and historical resources.

For these reasons, it is reasonable to rely on the 1992 Final EIR/EIS as well as the subsequent environmental documents for projects in the vicinity in determining whether a Subsequent or Supplemental EIR is required for the NBC project.

Cumulative Impacts Analysis – An appeal of CCDC's approval of the First Master Plan for the NBC project questioned the use and/or incorporation by reference of previously certified EIRs when considering cumulative impacts in the CEQA Section 21166 analysis, specifically with respect to traffic-related impacts.

Staff Response – Section 15130 of the State CEQA Guidelines provides guidance to Lead Agencies on how to address cumulative impacts in an EIR. A proposed project is to be considered with other past, present, and reasonably foreseeable projects in the vicinity, and with which implementation could result in significant environmental changes which are individually limited but cumulatively considerable. Environmental documents prepared after the 1992 Final EIR/EIS was certified incorporated by reference any and all relevant, previously certified documents for projects anticipated in the Centre City community, including the NBC project. The use of previously certified documents through incorporation by reference is standard practice amongst agencies implementing CEQA, and is consistent with CEQA Guidelines section 15150. The Downtown Community Plan EIR anticipated mitigation for direct impacts associated with Air Quality Transportation/Circulation/Parking, Cultural Resources and other measures necessary to reduce potential impacts to below a significant level, as well as cumulative impacts to Air Quality and Transportation; however, the impact of buildout of the proposed Community Plan and Ordinance on parking, grid streets and surrounding streets is considered significant and unmitigable. These issue areas, which were addressed on a community-wide basis, take into consideration past, present, and reasonably foreseeable future projects, consistent with CEQA's requirements.

Traffic Impacts – An appeal of CCDC’s approval of the first master plan for the NBC project questioned the use and/or incorporation by reference of previously certified EIRs and their adopted Mitigation Monitoring and Reporting Programs prepared for development projects within the CCDC project area specific to Transportation/Circulation/Parking.

Staff Response – As explained in DSD’s January 7, 2007 staff report to the City Council regarding the environmental determination appeals for the NBC project:

While it is true that the NBC project would result in traffic related impacts first identified in the [1992 Final] EIR/EIS, and would contribute to existing and future traffic congestion conditions in the future, the mitigation measures adopted by the City Council and the Redevelopment Agency in 1992 and those adopted in 2006 as part of the recent Centre City Community Plan Update would help to reduce significant impacts [in the downtown area], but not to below a level of significance in all cases, which is why a statement of overriding consideration was adopted [for the Community Plan Update]. These measures include, but are not limited to the implementation of Congestion Management Plans; Downtown-wide evaluation of the grid street system at five-year intervals; submittal review and approval of traffic studies for large projects; parking management plans; initiation of a multi-jurisdictional effort to develop enforceable plans to identify transportation improvements including freeway off ramps and interchanges. Implementing measures adopted for the project would help alleviate the traffic and parking issues community wide.

(DSD Staff Report to the Council President and City Council, January 7, 2007, p. 9.)

In addition, in 2006, the U.S. Navy prepared an Environmental Assessment (EA) that considered the environmental effects of implementing the Development Agreement, pursuant to the Navy’s obligations under federal environmental law (National Environmental Policy Act). Although the EA is a NEPA document, and not a CEQA document, the EA provides additional recent, relevant information regarding the environmental effects associated with implementation of the Development Agreement. The information presented in the EA was therefore considered by CCDC staff in the preparation of the Initial Study prepared for the Superseding Master Plan. The EA examined existing conditions and compared those conditions to buildout of the NBC Project as set forth in the Development Agreement. Because the Superseding Master Plan implements the Development Agreement, the EA’s analysis is relevant to the question of whether the conditions set forth in Public Resources Code section 21166 are present. The following summarizes the traffic analysis performed by the 2006 EA:

The 1992 Final EIR/EIS used trip generation rates based on the 1990 City of San Diego Trip Generation Manual. Based on those rates, the land uses assumed in the Development Agreement would generate 39,731 average daily trips (ADTs) on the downtown circulation network. The Downtown Community Plan EIR also addressed traffic impacts that would result from implementation of the NBC project and other cumulative projects in the downtown area. The Community Plan EIR used current City of San Diego trip generation rates for the downtown San Diego; these rates for individual land uses are lower than for the rest of the city because of the

high use of public transit and because the density and proximity of land uses downtown reduced the need for multiple automobile trips.

Using the trip generation rates used by the Community Plan EIR, the EA concluded that implementation of the Development Agreement would generate approximately 27,130 ADT. This represents a 32 percent reduction (12,601 ADT) from the number of trips assumed in the Development Agreement. This large reduction in ADT is due mainly to the reduced trip generation rates identified by the City that best reflect greater use of public transportation in the downtown area. According to the EA, the 32 percent reduction in number of trips would lessen the potential traffic impacts that were assumed when the Navy and the City entered into the Development Agreement.

In addition, all of the following transportation improvements in the Development Agreement will be implemented by the City and the developer, as indicated in the Mitigation and Monitoring Program during construction of the project as proposed by the Project:

- E, F, and G streets shall be extended to allow for continuous vehicular and pedestrian access between Pacific Highway and North Harbor Drive;
- G Street shall provide enhanced access between the Marina neighborhood and the G Street Mole by extending G Street as a major pedestrian promenade;
- Pacific Highway shall be widened and improved along the frontage adjacent to the NBC; and
- A Long-Term Travel Demand Management (TDM) Program shall be implemented.

The substantial reduction in ADTs calculated in the traffic analysis contained in the EA supports the conclusions of the Development Agreement and the Final EIR/EIS that the agreed-upon traffic improvements would mitigate potential traffic impacts in today's conditions.

For the foregoing reasons, it is reasonable to conclude that changes in traffic conditions since the 1992 Final EIR/EIS was certified are not so substantial as to require preparation of a Subsequent or Supplemental EIR for the NBC project.

Changes in Water Quality Laws – An appeal of CCDC's approval of the first master plan for the NBC referenced specific changes in State law and local regulations during the past sixteen years related to water quality. The appeal questioned why the City did not require new qualitative analysis for the NBC project relative to its location within proximity to a State identified impaired water body.

Staff Response – The 1992 Final EIR/EIS addressed the effects of the project associated with soil erosion and hydraulic conveyance of sediments downstream of the project site into San Diego Bay and included a discussion addressing surface hydrology and drainage across the site during construction. At the time of the Final EIR/EIS's preparation, both the EPA and the Regional Water Quality Control Board (RWQCB) expressed concerns about potential non-point source water contamination resulting from accidental construction-related fuel spills and/or from construction-related runoff across the site. The RWQCB was consulted on these issues and indicated it had not yet adopted standards on programs for accidental spill response or for control

of runoff water quality, but that once developed, the programs would be implemented by municipalities and not directed toward individual developments. Mitigation in the form of an erosion control plan was incorporated into the 1992 Final EIR/EIS to reduce potential water quality impacts within and adjacent to the San Diego Bay. In addition, authorization to temporarily discharge dewatering waste during project implementation would be obtained from the executive office of the RWQCB. This activity was originally approved under the previous NPDES Permit (CA0109707).

CCDC does not dispute that there have been changes in State law relative to water quality and acknowledges that the San Diego Bay is an impaired water body as stated by the RWQCB. As such, the City of San Diego has adopted Stormwater Regulations that require all project applicants to submit Water Quality documentation to the City of San Diego with application for ministerial (construction grading and/or building permits) and discretionary actions regardless of when the original project was approved and/or whether there is an environmental document with specific mitigation. This information assists in the determination of whether a Water Quality Technical Report (WQTR) is required.

Relative to the NBC project, and in addition to the required mitigation identified in the 1992 Final EIR/EIS, the developer would be required to complete the Stormwater Applicability Checklist to determine whether a WQTR must be submitted for review during the grading and/or building permit process. If the WQTR concludes that additional measures are necessary to reduce sedimentation and protect the waters of San Diego Bay, these measures would be incorporated into the construction documents and compliance with the City's Municipal Permit and would be assured through implementation of recommendations of the WQTR in accordance with the City's Stormwater Regulations and DSD's field inspection.

Police Protection/Law Enforcement & Fire Protection/Emergency Response – An appeal of CCDC's approval of the First Master Plan for the NBC project referenced specific changes in City-wide staffing levels associated with Police and Fire personnel during the past sixteen years as a result of commercial and residential growth in Downtown San Diego. The appeal raised the concern that changes in traffic patterns associated with those new developments and the City's ability to maintain sufficient level of protection in the area might be impacted by the NBC project.

Staff Response – Environmental review under CEQA is required to address potential adverse *environmental* effects associated with a project. For example, with respect to police and fire protection services, environmental review may be required to address environmental effects resulting from construction of new emergency response facilities. The availability of public service staff is not, in and of itself, a CEQA issue, as it does not implicate a physical environmental impact. Instead "[t]here must be a physical change resulting from the project directly or indirectly before CEQA will apply." (Discussion following CEQA Guidelines, § 15131.)

The 1992 Final EIR/EIS concluded that existing fire protection/emergency facilities, manpower and equipment at the city and Federal fire departments are adequate to maintain a sufficient level of fire protection service for the NBC project. The EIR/EIS concluded, therefore, that the

impacts to fire protection associated with implementation of the Development Agreement would be less-than-significant.

Regarding effects associated with buildout of the Downtown Community Plan, the 2006 Downtown Community Plan EIR explains that increased traffic congestion as a result of growth downtown would hinder timely responses to emergency calls. The run volume for the downtown response units has already increased with the current level of growth of the downtown area. In addition, the increase in the number of high rises (particularly residential) would result in an increase in medical aids and a decreased ability to respond to other emergencies. However, the 2006 Community Plan EIR further explains that while the two new fire stations which may be built downtown would result in physical impacts, insufficient information exists to accurately determine the physical impacts that may occur from either of the proposed stations.

Similarly, the 2006 Community Plan EIR explains that population growth and increased residential, commercial, industrial and institutional uses in downtown would correspond to an increased demand in law enforcement services. To keep up with anticipated demand, the San Diego Police Department (SDPD) would need additional resources, such as personnel, equipment, and training. However, the need for a new SDPD substation has not been identified. If such a need is identified in the future, the substation will be subject to an independent environmental analysis under CEQA. Pursuant to CEQA Guidelines section 15145, analysis at this time of physical changes which may occur from future police facility construction would be speculative and no further analysis is required.

Finally, the proposed uses and intensities for the NBC project set forth in the Superseding Master Plan are virtually the same as those outlined by the Development Agreement. For that reason, the proposed Project would not require additional fire or emergency protection beyond that analyzed in the 1992 Final EIR/EIS, the 2006 Downtown Community Plan EIR, or any other relevant environmental review document analyzing development of the Centre City area which assumed buildout of the NBC project. A Subsequent or Supplemental EIR is, therefore, not required in order to address the provision of emergency services to the NBC site.

Terrorism – An appeal of CCDC's approval of the first master plan for the NBC project raised concerns about the increased risks of attack on domestic military installations since the terrorist attack of September 11, 2001. The appeal asserted that these changed circumstances require preparation of a project-specific Supplemental EIR to analyze the impacts of these changed circumstances on public safety.

Staff Response – The lease between the Developer and the Navy requires the Navy's buildings to be constructed in conformance to the Department of Defense's Antiterrorism Standards, requiring minimum construction standards to mitigate antiterrorism vulnerabilities and terrorist threats. Furthermore, as explained by DSD's January 7, 2007 Staff Report to the City Council regarding the Environmental Appeals of the NBC Project:

Matters of national security are typically the purview of the federal government, not local agencies, except where security duties are expressly delegated, and here,

the City has every reason to expect that the Navy will implement adequate security precautions.

... [P]ursuant to CEQA, an impact analysis must only consider those indirect impacts of a project that are reasonably foreseeable. A change that is speculative or unlikely to occur is not reasonably foreseeable. There is no factual evidence in the record currently that suggests the NBC project carries any particularly greater risk of terrorist attack than any other large building downtown; therefore it is not considered a reasonably foreseeable impact, and there is no compelling basis for requiring further environmental review. In the absence of any substantial evidence of unique facts or circumstances supporting a heightened risk of terrorist attack for this particular project, CEQA does not compel the City to undertake such a study.

Public Participation – An appeal of CCDC’s approval of the First Master Plan for the NBC project asserted that DSD ignored the requirement for public participation during the section 21166 consistency analysis, thereby rendering the determination of consistency with the 1992 Final EIR/EIS invalid.

Staff Response – Public Resources Code section 21166 does not require that a public review and comment process be provided during an agency’s determination of whether or not a Subsequent or Supplement EIR is required. If DSD or CCDC had determined that a Subsequent or Supplemental EIR was required, that additional analysis would have been subject to the same public review and comment requirements as for an EIR for a new original project. However, because DSD and CCDC determined that existing environmental documentation was adequate and that no further review was required, there is no requirement under CEQA to afford a public review and comment process for this determination.

Parks and Open Space – An appeal of CCDC’s approval of the First Master Plan for the NBC project raised concerns that there is a deficiency in park area downtown and that the NBC project would contribute to this deficiency.

Staff Response – Consistent with the Development Agreement and the 1992 Final EIR/EIS, the Superseding Master Plan includes 1.9 acres of open space within the project site. The issue of open space was thoroughly addressed in the Downtown Community Plan Update and further debated through the public hearing process, which is the appropriate venue for such discussion. Based on adopted City policies, there is no requirement for development of the NBC site to provide parkland because City park “standards” are based on acres for residential population, of which the project proposes none. Indeed, the Development Agreement for the NBC project proposes an excess of parkland as compared to what would be required to satisfy the City’s General Plan. To the extent that the commercial uses of the NBC project would create psychological or aesthetic demand for park space, the 1.9 acres of open space proposed by the Superseding Master Plan are expected to adequately serve the park and open space demand that office, hotel and retail uses will create. In addition, resolving the deficiency of parkland within the community plan area is not the responsibility of the NBC project, nor can this project be expected to solve this community-wide issue.

CONCLUSION

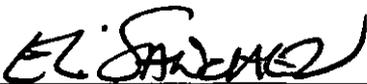
The 1992 Final EIR/EIS and subsequent environmental documents prepared for other projects in the vicinity adequately address the potential environmental issues associated with current plan for the NBC project. None of the conditions outlined in Public Resources section 21166 that would require additional environmental review for the NBC project are met. Therefore, no additional environmental review is required. In addition, the information provided by appellants does not rise to the level of substantial evidence supporting a conclusion that the project may result in new or substantially more severe significant impacts beyond those previously disclosed.

ALTERNATIVES:

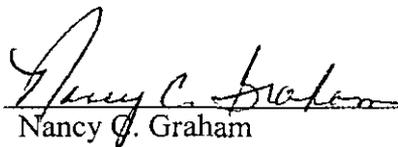
1. GRANT the appeal, set aside the environmental determination, and direct CCDC and/or DSD to conduct additional environmental review with direction or instruction to the City Council as deemed appropriate.
2. GRANT the appeal and direct CCDC and/or DSD to prepare a new environmental document pursuant to Public Resources section 21166. If council chooses this alternative, CCDC respectfully requests that Council identify which subsection(s) of section 21166 applies and what evidence exists that would lead to the preparation of a new environmental document.

Respectfully submitted,

Concurred by:



Eli Sanchez
 Senior Project Manager



Nancy G. Graham
 President



Brad S. Richter
 Current Planning Manager

Attachments:

- A – Memorandum from DSD, dated November 27, 2007
- B – San Diego Navy Broadway Complex Coalition/Katheryn Rhodes and Conrad Hartsell, M.D. Appeal
- C – Ownership Disclosure Statement
- D – CCDC Board Report of November 28, 2007

**CITY OF SAN DIEGO
MEMORANDUM**

DATE: November 27, 2007

TO: William Anderson, Deputy Chief Operating Officer, City Planning and Development

FROM: Robert J. Manis, Deputy Director, Development Services Department

SUBJECT: Navy Broadway Complex – Superseding Master Plan CEQA 21166 Evaluation

The Development Services Department (DSD) was asked to conduct a subsequent CEQA Section 21166 evaluation for the Navy Broadway Complex (NBC) Superseding Master Plan for the Centre-City Development Corporation (CCDC). This review was limited to consideration of CEQA issues associated with the modified project and the previous Section 21166 analysis conducted by DSD dated October 19, 2006. The NBC project is subject to a Development Agreement between the City of San Diego and the Navy which was approved concurrently with an EIR/EIS prepared by the City (EIR) and Navy (EIS) in 1990. The City as Lead Agency for the EIR retains responsibility for the CEQA process as outlined in the Development Agreement. CCDC is responsible for project review and consistency with the Development Plan and Design Guidelines.

DSD conducted a CEQA Section 21166 evaluation, and prepared a memo on October 19, 2006 regarding the first Master Plan. On October 25, 2006, the CCDC Board adopted the DSD CEQA evaluation by Resolution 2006-03. Following the CCDC adoption, the DSD CEQA determination was appealed to the City Council. On January 9, 2007, the City Council denied the appeals and upheld the CEQA 21166 evaluation conducted by DSD in October 2006.

For the purpose of conducting the subsequent CEQA 21166 evaluation of the Superseding Master Plan revisions, DSD considered the previous October 2006 analysis as well as the CEQA Initial Study prepared by CCDC in July 2007 in determining whether the proposed modifications would result in the need for a subsequent or supplemental EIR in accordance with CEQA.

The Superseding Master Plan submitted to CCDC for their consistency review consists of the following components: a maximum of 2,893,434 square feet (sf) of development, including 25,000 sf of retail, 1,181,641 sf of hotel space, 1.9 acres of open space, 40,000 sf of museum space, and 2,988 parking spaces to serve the proposed project uses. These project components analyzed by DSD for the Superseding Master Plan result in a total reduction of 42,616 square feet as compared to the original Master Plan analyzed by DSD in 2006.

Page 2

William Anderson

November 27, 2007

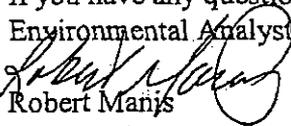
Section 21166 of CEQA states that, when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of the following three events occur:

1. Substantial changes are proposed in the project
2. Substantial changes occur with respect to circumstances under which the project is being undertaken
3. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available.

Based on the above criteria and review of the Superseding Master Plan revisions, DSD staff has determined that the proposed project revisions, which result in a reduction in square footage, yet still retain all the elements required per the Development Agreement, do not result in a substantially changed project. The proposed revisions do not result in new impacts or changed circumstances which would require a subsequent or supplemental EIR. As stated in the October 19, 2006 memo from DSD for the previous CEQA 21166 evaluation there is no new information available that was not part of the original EIR/EIS and/or considered with subsequent reviews of other projects within the Centre City Community Planning Area. Additionally, CCDC prepared an Initial Study pursuant to CEQA for the Superseding Master Plan dated July 2007, and a report to the CCDC Board dated July 20, 2007, both addressing the CEQA 21166 evaluation for the Superseding Master Plan revisions. DSD staff concurs with the conclusions of these documents.

The proposed Superseding Master Plan revisions, when compared to the Master Plan reviewed by DSD in 2006 are minor and result in a less intense development. Therefore, because none of the three events have occurred, DSD does not find a need to conduct additional environmental review of the Superseding Master Plan for the NBC project. All project issues and mitigation for significant impacts have been adequately addressed pursuant to CEQA for the proposed project.

If you have any questions or need any clarification, please contact Myra Herrmann, the assigned Environmental Analyst, at 446-5372.


Robert Manis
Deputy Director

RM/mjh

Attachment: Memo to James T. Waring from Robert Manis, dated October 19, 2006

cc: Kelly Broughton, Development Services Department Director
Nancy Graham, President, CCDC
Eli Sanchez, Project Manager, CCDC
Myra Herrmann, Senior Planner, Development Services Department

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: October 19, 2006

TO: James T. Waring, Deputy Chief of Land Use and Economic Development

FROM: Robert Manis, Assistant Deputy Director, Development Services

SUBJECT: CEQA Consistency Analysis for Navy Broadway Complex

The Development Services Department (DSD) was asked to conduct a CEQA consistency analysis on the proposed Navy Broadway Complex (NBC) for CCDC. The review is limited to consideration of CEQA issues associated with the project and previously certified applicable environmental documents. This review was done pursuant to Section 21166 of CEQA. The NBC project is subject to a Development Agreement between the City of San Diego and the Navy and an EIR/EIS prepared in 1990 (The City prepared and certified the EIR pursuant to CEQA and the Navy prepared the EIS pursuant to NEPA). The City was the lead agency on the EIR and retains CEQA responsibilities as outlined in the Development Agreement. CCDC is responsible for reviewing the project for consistency with the Development Plan and the Design Guidelines.

For purposes of conducting the CEQA consistency analysis, DSD considered the proposed NBC project components. It was found that the proposed Navy Broadway Complex (NBC) project is consistent with the project described in the 1990 EIR/EIS in terms of uses and intensity. The 1990 NBC project included a total of 2,950,000 square feet of office, retail and hotel uses plus 300,000 square feet of above grade parking and 3,105 total parking spaces (including Navy fleet parking). The proposed NBC project is slightly smaller at 2,936,050 square feet of office, retail, and hotel uses and includes a total of 2,961 parking spaces. The layouts of the two projects are similar and CCDC will be reviewing the project for consistency with the adopted Design Guidelines.

DSD's CEQA consistency analysis for the proposed NBC project considered several environmental documents, described below, that have been certified since 1990 in the downtown area.

- **Navy Broadway Complex Project Environmental Impact Report/Environmental Impact Statement (Joint CEQA/NEPA document, October 1990).** Certified by the City of San Diego on October 20, 1992. This document fully analyzed the NBC project at the project level and assumed that build out of the downtown area would occur consistent with the adopted land use plans. The NBC project EIR/EIS also indicates that the precise mix and location (by block) of land uses would be determined by market conditions. As such, it was anticipated that possible changes to the site plan from what was approved in 1992

Page 2
 James T. Waring
 October 19, 2006

would incorporate all relevant mitigation measures identified for transportation/circulation/parking, air quality, cultural resources, noise, etc.

- **Final Master Environmental Impact Report (MEIR) for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency (Resolution #2081) and City Council (Resolution #279875) on April 28, 1992. The 1992 MEIR specifically identified the NBC project within the Land Use section on Page 4.A-17 as follows: "...redevelopment of 1 million square feet of Navy offices; up to 2.5 million mixed commercial, office, and hotel uses, and a plaza at Broadway and Harbor Drive." The MEIR assumed development of the NBC project in the Land Use Impact analysis and anticipated mitigation associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance.
- **Final Subsequent Environmental Impact Report (SEIR) to the 1992 Final Master Environmental Impact Report Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects and Associated Plan Amendments.** Certified by the Redevelopment Agency (Resolution #03058) and the City Council (Resolution #292363) on October 26, 1999. The NBC project is not specifically called out as a project under the Land Use or Cumulative discussion sections of the SEIR. However, in order to determine the short-term and longer-term cumulative impacts with or without the Ballpark and Ancillary development projects, the SEIR assumed build out of the Redevelopment Project Area as defined in the 1992 MEIR which includes the NBC project. In addition, projected land use data in the 2002 SANDAG traffic model was modified to include additional CCDC build out developments consistent with the 1992 MEIR. Since the 1992 MEIR included the NBC project, the same and/or similar intersection, ramp and roadway segment impacts were assumed in the SEIR traffic analysis. Mitigation included an Event Transportation Management Plan, Freeway Deficiency Plan, Parking Management Plan and Transit improvements (all significant/mitigated, unless necessary freeway improvements are not made, resulting in a cumulatively significant and unmitigated impact).

Air Quality was analyzed using the Regional Air Quality Standards (RAQS) for the San Diego Air Basin. Regional impacts from increased traffic would remain significant and unmitigated; however, with proximity to public transit, air emissions would be reduced with implementation of RAQS controls. Potential significant unmitigated, long-term impacts were identified associated with freeway onramp congestion. Recommendation's to implement the Freeway Deficiency Plan were required, but could not be guaranteed.

- **North Embarcadero Visionary Plan Environmental Impact Report.** Certified by the Board of Port Commissioners of the San Diego Unified Port District in March 2000. This EIR assumed development of the NBC project in the Executive Summary and the Land Use discussions. The Visionary Plan Area incorporates the NBC project site, but

Page 3
 James T. Waring
 October 19, 2006

did not include it in the calculation of square footage for the existing and proposed Visionary Plan uses (Table 3.3-1, Page 3-5). The Visionary Plan EIR references the NBC project as an existing entitled project for comprehensive planning purposes and cumulative analysis. The Visionary Plan EIR assumes near-term as 2005 and long-term build out as 2020 for the traffic analysis. A significant unmitigated and cumulative impact was identified for Freeway I-5 and I-5 ramps from 1st to 6th Avenues; impacts to ramp capacity and ramp meters were also identified and mitigable with implementation of SANDAG I-5 Freeway Corridor Study, which addresses deficiencies on the freeway and associated ramps. The Visionary Plan EIR also anticipated mitigation associated with Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance. The Visionary Plan EIR incorporated development and improvements included in the NBC project, but did not consider the project in the cumulative analysis for Urban Design/Visual Quality. Overall, the Visionary Plan adequately addressed the NBC project and is therefore consistent with the certified EIR/EIS.

- **Downtown Community Plan Environmental Impact Report in Conjunction with a new Downtown Community Plan, new Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency and City Council on February 28, 2006. The Downtown Community Plan EIR assumed development of the NBC project in the Project Description and incorporated anticipated land uses and building square footages into the figures and impact analysis. The Community Plan EIR also anticipated mitigation for direct impacts associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance, as well as cumulative impacts to Air Quality and Transportation; however, the impacts from implementation of the proposed Community Plan and Planned District Ordinance on parking, grid streets and surrounding streets is considered significant and unmitigable.

One issue identified and evaluated with the CEQA consistency review was on-site parking relative to the minor modifications to square footage in the proposed NBC project compared to the 1990 NBC project. While the total square footage of the proposed NBC project represents a small reduction from the 1990 NBC project, the total number of proposed parking spaces has been reduced from 3,105 to 2,961. The analysis determined that the 3,105 spaces included 230 Navy fleet car spaces, leaving 2,875 spaces for general use. The Navy has indicated that there is currently a need for only 54 fleet spaces. With a total of 2,961 spaces proposed, that leaves 2,907 spaces for general use, more than with the 1990 NBC project.

In conclusion, DSD noted that the proposed NBC project is substantially the same as the 1990 NBC project. The EIR/EIS done for the 1990 NBC project analyzed the project in detail, assuming build out of the surrounding area consistent with the land use plans and identified mitigation for impacts resulting from the project. Subsequent environmental documents in the downtown area, while not analyzing the NBC project at the project level, did reference the NBC project and assumed it would build out in accordance with the 1990 NBC project. Most recently,

Page 4
James T. Waring
October 19, 2006

in 2006, the EIR for the Downtown Community Plan Update addressed community-wide policy/land use issues and again, assumed build out of the NBC.

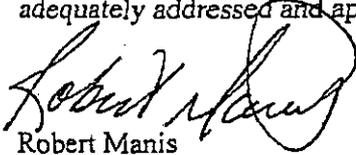
Section 21166 of CEQA states that when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of three events occur. These events are:

1. Substantial changes are proposed in the project
2. Substantial changes occur with respect to circumstances under which the project is being undertaken
3. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available

As stated earlier, there are no substantial changes to the NBC project from the 1990 NBC project. Project uses and intensity are virtually the same. It is acknowledged that the Ballpark and Ancillary Development projects, located in the East Village were not identified in the 1992 CCDC MEIR or the 1990 NBC EIR/EIS and therefore not considered in the cumulative impact analysis for the NBC project. However, because these projects were not anticipated, CCDC required the preparation of a Subsequent EIR which incorporated by reference the NBC EIR/EIS and assumed the same build out land uses adopted for the community plan at that time, which were ultimately used to analyze transportation/circulation impacts, and address regional and local air quality issues. Since these projects were ultimately analyzed with consideration of the NBC project, DSD does not consider this to be a substantial change in circumstances. There is no new information available that was not part of the original EIR/EIS and/or considered with subsequent environmental reviews of other projects. It was and continues to be assumed that the downtown area, including the NBC site, would build out according to adopted land use plans. When the Downtown Community Plan was changed earlier this year, new land use policies were put into place but the assumptions for the NBC site remained.

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James T. Waring
October 19, 2006

Because none of the three events have occurred, DSD does not find a need to conduct additional environmental review for the proposed NBC project. The proposed NBC project is adequately addressed in the prior environmental documents that were certified for the 1990 NBC project and for other projects in the vicinity. Project impacts are adequately addressed and appropriate mitigation has been identified.



Robert Manis

RM/pdh

cc: Marcela Escobar-Eck, Development Services Director
Kelly Broughton, Deputy Director, Development Services
Nancy Graham, President, CCDC
Eli Sanchez, Project Manager, CCDC
Myra Herrmann, Senior Environmental Planner

000519

JD



City of San Diego
Development Services
1222 First Ave. • 3rd Floor
San Diego, CA 92101-4154
(619) 446-5210
www.sandiego.gov/development-services

RECEIVED
CITY CLERK'S OFFICE

Development Permit Appeal Application

07 DEC -7 PM 12:08

See Information Bulletin 505, "Development Permits Appeal Procedures," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Board of Zoning Appeals
- Appeal of a Hearing Officer Decision to revoke a permit
- Process Four Decision - Appeal to City Council

2. Appellant Name Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)
San Diego Navy Broadway Complex Coalition (c/o Cory J. Briggs, Briggs Law Corporation); and Kathryn Rhodes and Conrad
Hartzell, M.D.,

Address	City	State	Zip Code	Telephone
99 East "C" Street, Suite 111	Upland	CA	91786	909-949-7115

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Manchester Pacific Gateway, LLC

4. Project Information

Permit/Approval Being Appealed & Permit/Approval No.:	Date of Decision:	City Project Manager:
Navy Broadway Complex Consistency Determination	November 28, 2007	Eli Sanchez

Decision (describe the permit/approval decision):
Centre City Development Corporation, Inc., took action on item 11 on its agenda for November 28, 2007, including but not limited to considering a new environmental determination by the Development Services Department for the applicant's superseding master plan and affirming a consistency determination previously made by CCDC

5. Reason for Appeal

- Factual Error
- Conflict with other matters
- Findings Not Supported
- New Information
- City-wide Significance (Process Four decisions only)

Description of Reasons for Appeal (Please relate your description to the allowable reasons for appeal noted above. Attach additional sheets if necessary.)

Centre City Development Corporation violated the California Environmental Quality Act, the Alquist-Priolo Earthquake Fault Zoning Act, and the Seismic Hazards Mapping Act in taking action on the matters that were the subject of Item 11 on CCDC's meeting agenda for November 28, 2007. There is new information and changed circumstances with respect to the Navy Broadway Complex that require subsequent environmental review under the California Environmental Quality Act; accordingly, CCDC erred in concluding, after considering the Superceding Master Plan's potential environmental impact, that subsequent environmental review is not required. In addition, there is new information that requires further examination of the project under the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act.

Note that, under the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act, subsequent geological reports may be required when new geologic data are obtained.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature

Date December 7, 2007

Note: Faxed appeals are not accepted.

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To request this information in alternative format, call (619) 446-5446 or (800) 735-2929 (TT)

DS-3031 (03-03)

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City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

08 FEB 14 PM 12: 23

SAN DIEGO, CALIF.

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment • Other CEQA Determination

Project Title Project No. For City Use Only

Manchester Pacific Gateway / Navy Broadway Complex

Project Address:

W. Broadway, Pacific Gateway, N. Harbor Drive
San Diego, California 92101

Part I: To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of Individual (type or print):

Name of Individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Owner Tenant/Lessee Redevelopment Agency

Street Address:

Street Address:

City/State/Zip:

City/State/Zip:

Phone No:

Fax No:

Phone No:

Fax No:

Signature:

Date:

Signature:

Date:

Name of Individual (type or print):

Name of Individual (type or print):

Owner Tenant/Lessee Redevelopment Agency

Owner Tenant/Lessee Redevelopment Agency

Street Address:

Street Address:

City/State/Zip:

City/State/Zip:

Phone No:

Fax No:

Phone No:

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Signature:

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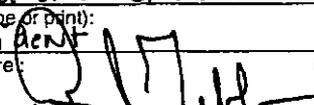
Project Title: Manchester Pacific Gateway/Navy Broadway Complex Project No. (For City Use Only)

Part II - To be completed when property is held by a corporation or partnership

Legal Status (please check):

Corporation Limited Liability -or- General) What State? DE Corporate Identification No. 20-4912085
 Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. Additional pages attached Yes No

Corporate/Partnership Name (type or print):
Manchester Pacific Gateway LLC
 Owner Tenant/Lessee
Street Address:
One Market Place, 33rd Floor
City/State/Zip:
San Diego, California, 92101
Phone No: 619.231.3800 Fax No: 619.696.7100
Name of Corporate Officer/Partner (type or print):
Richard V. Gibbons
Title (type or print):
President
Signature:  Date:

Corporate/Partnership Name (type or print):

 Owner Tenant/Lessee
Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

 Owner Tenant/Lessee
Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

 Owner Tenant/Lessee
Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

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Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:

Corporate/Partnership Name (type or print):

 Owner Tenant/Lessee
Street Address:

City/State/Zip:

Phone No: Fax No:

Name of Corporate Officer/Partner (type or print):

Title (type or print):

Signature : Date:



**Centre City
Development
Corporation**

Item #11

DATE ISSUED: November 20, 2007

ATTENTION: Centre City Development Corporation
Meeting of November 28, 2007, Agenda 655

SUBJECT: Navy Broadway Complex Project (Site bounded by Harbor Drive, Broadway and Pacific Highway) – Consideration of New Environmental Determination by Development Services Department Regarding the Superseding Master Plan and Phase I Buildings for Blocks 2 and 3, Adoption of the Same and Affirmation of CCDC Consistency Determination Previously Approved by CCDC Board in July 2007 – Marina and Columbia Sub Areas of the Centre City Redevelopment Project

STAFF CONTACT: Eli Sanchez, Senior Project Manager

REQUESTED ACTION: Board consideration of a new California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21100 et seq.) Consistency Analysis being prepared by the City of San Diego Development Services Department (“DSD”) that the criteria set forth in Public Resources Code section 21166 -- requiring preparation of a subsequent or supplemental environmental impact report (“EIR”) under the CEQA -- are not present with respect to the Superseding Master Plan and Phase I Buildings for Blocks 2 and 3 (“Superseding Master Plan and Phase I Buildings”) of the Navy Broadway Complex (“NBC”) Project and re-adoption of Centre City Development Corporation (“CCDC”) Consistency Determination for said Superseding Master Plan and Phase I Buildings.

STAFF RECOMMENDATION: That the Board:

- Consider the CEQA Consistency Analysis being prepared by the Development Services Department for the Superseding Master Plan and Phase I Buildings, which is anticipated to conclude that no subsequent or supplemental EIR is required for the NBC Project (Analysis to be provided under separate cover), and consider a Resolution adopting such Consistency Analysis and affirming CCDC’s Consistency Determinations for the Superseding Master Plan and Phase I Buildings, which Consistency Determinations were adopted by the Board on July 25, 2007 (Resolutions 2007-1 through 2007-5).

SUMMARY: On October 25, 2006, the CCDC Board of Directors (“Board”) considered the Developer’s application for the first master plan and proposals for or the Navy

ATTACHMENT D

Administration Building submitted by the Developer in May 2006. That same date, the Board voted to approve staff recommendations with respect to such determinations, subject to limited modifications and additions. The Board also voted to adopt DSD's October 19, 2006 *CEQA Consistency Analysis for the Navy Broadway Complex* ("DSD CEQA Consistency Analysis"). The DSD CEQA Consistency Analysis considered whether a Subsequent or Supplement EIR was required for the NBC project pursuant to Public Resources Code section 21166.

On July 2, 2007, the Developer submitted a new *Master Plan and Phase I Buildings Basic Concept/Schematic Drawings [of Blocks 2 and 3] for the Navy Broadway Complex Project* ("Superseding Master Plan and Phase I Buildings"). As required by the Development Agreement, CCDC undertook a consistency analysis for the Superseding Master Plan and Phase I Buildings.

On July 25, 2007, the CCDC Board adopted findings that the Superseding Master Plan and Basic Concept Schematic Drawings are consistent with the Design Guidelines, subject to recommended conditions. The Board also adopted findings that the DSD CEQA Consistency Analysis continues to be adequate with respect to the Superseding Master Plan and that, pursuant to Public Resources Code section 21166, no Subsequent or Supplemental EIR is required for the project. (Resolutions 2007-1 through 2007-5 (executed July 25, 2007).) (See CCDC Staff Report, dated July 20, 2007 (Attachment B).

Two separate appeals were filed challenging CCDC's July 25, 2007 environmental determination for the NBC project Superseding Master Plan and Phase I Buildings. The first appeal was filed on August 1, 2007 by Katheryn Rhodes and Conrad Hartsell M.D. The second appeal was filed on August 6, 2007 by Briggs Law Corporation on behalf of the San Diego Navy Broadway Complex Coalition. The appeals were scheduled to be heard by the San Diego City Council on November 6, 2007. At the November 6, 2007 hearing, the City Council voted to continue the hearing to December 4, 2007. The City Council's decision to continue the hearing was based on a memorandum submitted by the San Diego City Attorney on November 5, 2007 (Attachment C) advising:

Since only the City and not CCDC has the authority to perform [a Public Resources Code, section] 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.

On November 19, 2007, Sabrina V. Teller, (CCDC's CEQA counsel), conferred by telephone with Councilmember Faulconer and his staff, representatives of the City Attorney's Office, Nancy Graham and Eli Sanchez to discuss the request that had been made to the City's DSD pursuant to Public Resources Code section 21166 for an independent review of the Superseding Master Plan for the Navy Broadway Complex, approved by this Board in July 2007. The appeals of CCDC's July 2007 decision to

adopt DSD's previous environmental consistency determination for the first Master Plan as adequate and valid for the Superseding Master Plan are scheduled to be heard by the City Council on December 4, 2007. It is expected that DSD's new consistency determination will be completed prior to that hearing.

Although staff does not agree with the City Attorney's position that the Board has no authority under the NBC Development Agreement to make any CEQA determination for the project, the City Attorney has recommended that the Board adopt anew DSD's latest environmental determination and reapprove the Consistency Determination under the Development Agreement that is within CCDC's purview. Staff believes such an approach would provide valid and easily-understood documentation that a subsequent or supplemental EIR is not required for the NBC Project.

CONCLUSION

Staff recommends that the Board adopt anew DSD's forthcoming CEQA Consistency Analysis and affirm CCDC's Consistency Determinations for the Superseding Master Plan and Phase I Buildings previously adopted by the Board July 25, 2007. (Resolutions 2007-1 through 2007-5 (executed July 25, 2007).)

Respectfully Submitted,

Concurred by:

for 

Eli Sanchez
Senior Project Manager

for 

Nancy C. Graham
President

Attachments:

- Attachment A – Updated DSD CEQA Consistency Analysis
(under separate cover)
- Attachment B – CCDC Staff Report, dated July 20, 2007 (without attachments)
- Attachment C – San Diego City Attorney Memorandum, dated November 5, 2007
- Attachment D – Memorandum from Sabrina V. Teller to City Council, dated
November 13, 2007

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: November 27, 2007

TO: William Anderson, Deputy Chief Operating Officer, City Planning and Development

FROM: Robert J. Manis, Deputy Director, Development Services Department

SUBJECT: Navy Broadway Complex – Superseding Master Plan CEQA 21166 Evaluation

The Development Services Department (DSD) was asked to conduct a subsequent CEQA Section 21166 evaluation for the Navy Broadway Complex (NBC) Superseding Master Plan for the Centre City Development Corporation (CCDC). This review was limited to consideration of CEQA issues associated with the modified project and the previous Section 21166 analysis conducted by DSD dated October 19, 2006. The NBC project is subject to a Development Agreement between the City of San Diego and the Navy which was approved concurrently with an EIR/EIS prepared by the City (EIR) and Navy (EIS) in 1990. The City as Lead Agency for the EIR retains responsibility for the CEQA process as outlined in the Development Agreement. CCDC is responsible for project review and consistency with the Development Plan and Design Guidelines.

DSD conducted a CEQA Section 21166 evaluation, and prepared a memo on October 19, 2006 regarding the first Master Plan. On October 25, 2006, the CCDC Board adopted the DSD CEQA evaluation by Resolution 2006-03. Following the CCDC adoption, the DSD CEQA determination was appealed to the City Council. On January 9, 2007, the City Council denied the appeals and upheld the CEQA 21166 evaluation conducted by DSD in October 2006.

For the purpose of conducting the subsequent CEQA 21166 evaluation of the Superseding Master Plan revisions, DSD considered the previous October 2006 analysis as well as the CEQA Initial Study prepared by CCDC in July 2007 in determining whether the proposed modifications would result in the need for a subsequent or supplemental EIR in accordance with CEQA.

The Superseding Master Plan submitted to CCDC for their consistency review consists of the following components: a maximum of 2,893,434 square feet (sf) of development, including 25,000 sf of retail, 1,181,641 sf of hotel space, 1.9 acres of open space, 40,000 sf of museum space, and 2,988 parking spaces to serve the proposed project uses. These project components analyzed by DSD for the Superseding Master Plan result in a total reduction of 42,616 square feet as compared to the original Master Plan analyzed by DSD in 2006.

Page 2
 William Anderson
 November 27, 2007

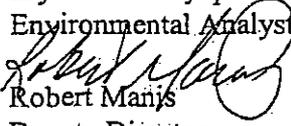
Section 21166 of CEQA states that, when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of the following three events occur:

1. Substantial changes are proposed in the project
2. Substantial changes occur with respect to circumstances under which the project is being undertaken
3. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available.

Based on the above criteria and review of the Superseding Master Plan revisions, DSD staff has determined that the proposed project revisions, which result in a reduction in square footage, yet still retain all the elements required per the Development Agreement, do not result in a substantially changed project. The proposed revisions do not result in new impacts or changed circumstances which would require a subsequent or supplemental EIR. As stated in the October 19, 2006 memo from DSD for the previous CEQA 21166 evaluation there is no new information available that was not part of the original EIR/EIS and/or considered with subsequent reviews of other projects within the Centre City Community Planning Area. Additionally, CCDC prepared an Initial Study pursuant to CEQA for the Superseding Master Plan dated July 2007, and a report to the CCDC Board dated July 20, 2007, both addressing the CEQA 21166 evaluation for the Superseding Master Plan revisions. DSD staff concurs with the conclusions of these documents.

The proposed Superseding Master Plan revisions, when compared to the Master Plan reviewed by DSD in 2006 are minor and result in a less intense development. Therefore, because none of the three events have occurred, DSD does not find a need to conduct additional environmental review of the Superseding Master Plan for the NBC project. All project issues and mitigation for significant impacts have been adequately addressed pursuant to CEQA for the proposed project.

If you have any questions or need any clarification, please contact Myra Herrmann, the assigned Environmental Analyst, at 446-5372.


 Robert Manis
 Deputy Director

RM/mjh

Attachment: Memo to James T. Waring from Robert Manis, dated October 19, 2006

cc: Kelly Broughton, Development Services Department Director
 Nancy Graham, President, CCDC
 Eli Sanchez, Project Manager, CCDC
 Myra Herrmann, Senior Planner, Development Services Department

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: October 19, 2006

TO: James T. Waring, Deputy Chief of Land Use and Economic Development

FROM: Robert Manis, Assistant Deputy Director, Development Services

SUBJECT: CEQA Consistency Analysis for Navy Broadway Complex

The Development Services Department (DSD) was asked to conduct a CEQA consistency analysis on the proposed Navy Broadway Complex (NBC) for CCDC. The review is limited to consideration of CEQA issues associated with the project and previously certified applicable environmental documents. This review was done pursuant to Section 21166 of CEQA. The NBC project is subject to a Development Agreement between the City of San Diego and the Navy and an EIR/EIS prepared in 1990 (The City prepared and certified the EIR pursuant to CEQA and the Navy prepared the EIS pursuant to NEPA). The City was the lead agency on the EIR and retains CEQA responsibilities as outlined in the Development Agreement. CCDC is responsible for reviewing the project for consistency with the Development Plan and the Design Guidelines.

For purposes of conducting the CEQA consistency analysis, DSD considered the proposed NBC project components. It was found that the proposed Navy Broadway Complex (NBC) project is consistent with the project described in the 1990 EIR/EIS in terms of uses and intensity. The 1990 NBC project included a total of 2,950,000 square feet of office, retail and hotel uses plus 300,000 square feet of above grade parking and 3,105 total parking spaces (including Navy fleet parking). The proposed NBC project is slightly smaller at 2,936,050 square feet of office, retail, and hotel uses and includes a total of 2,961 parking spaces. The layouts of the two projects are similar and CCDC will be reviewing the project for consistency with the adopted Design Guidelines.

DSD's CEQA consistency analysis for the proposed NBC project considered several environmental documents, described below, that have been certified since 1990 in the downtown area.

- **Navy Broadway Complex Project Environmental Impact Report/Environmental Impact Statement (Joint CEQA/NEPA document, October 1990).** Certified by the City of San Diego on October 20, 1992. This document fully analyzed the NBC project at the project level and assumed that build out of the downtown area would occur consistent with the adopted land use plans. The NBC project EIR/EIS also indicates that the precise mix and location (by block) of land uses would be determined by market conditions. As such, it was anticipated that possible changes to the site plan from what was approved in 1992

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would incorporate all relevant mitigation measures identified for transportation/circulation/parking, air quality, cultural resources, noise, etc.

- **Final Master Environmental Impact Report (MEIR) for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency (Resolution #2081) and City Council (Resolution #279875) on April 28, 1992. The 1992 MEIR specifically identified the NBC project within the Land Use section on Page 4.A-17 as follows: "...redevelopment of 1 million square feet of Navy offices; up to 2.5 million mixed commercial, office, and hotel uses, and a plaza at Broadway and Harbor Drive." The MEIR assumed development of the NBC project in the Land Use Impact analysis and anticipated mitigation associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance.
- **Final Subsequent Environmental Impact Report (SEIR) to the 1992 Final Master Environmental Impact Report Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects and Associated Plan Amendments.** Certified by the Redevelopment Agency (Resolution #03058) and the City Council (Resolution #292363) on October 26, 1999. The NBC project is not specifically called out as a project under the Land Use or Cumulative discussion sections of the SEIR. However, in order to determine the short-term and longer-term cumulative impacts with or without the Ballpark and Ancillary development projects, the SEIR assumed build out of the Redevelopment Project Area as defined in the 1992 MEIR which includes the NBC project. In addition, projected land use data in the 2002 SANDAG traffic model was modified to include additional CCDC build out developments consistent with the 1992 MEIR. Since the 1992 MEIR included the NBC project, the same and/or similar intersection, ramp and roadway segment impacts were assumed in the SEIR traffic analysis. Mitigation included an Event Transportation Management Plan, Freeway Deficiency Plan, Parking Management Plan and Transit improvements (all significant/mitigated, unless necessary freeway improvements are not made, resulting in a cumulatively significant and unmitigated impact).

Air Quality was analyzed using the Regional Air Quality Standards (RAQS) for the San Diego Air Basin. Regional impacts from increased traffic would remain significant and unmitigated; however, with proximity to public transit, air emissions would be reduced with implementation of RAQS controls. Potential significant unmitigated, long-term impacts were identified associated with freeway onramp congestion. Recommendation's to implement the Freeway Deficiency Plan were required, but could not be guaranteed.

- **North Embarcadero Visionary Plan Environmental Impact Report.** Certified by the Board of Port Commissioners of the San Diego Unified Port District in March 2000. This EIR assumed development of the NBC project in the Executive Summary and the Land Use discussions. The Visionary Plan Area incorporates the NBC project site, but

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did not include it in the calculation of square footage for the existing and proposed Visionary Plan uses (Table 3.3-1, Page 3-5). The Visionary Plan EIR references the NBC project as an *existing entitled project for comprehensive planning purposes and cumulative analysis*. The Visionary Plan EIR assumes near-term as 2005 and long-term build out as 2020 for the traffic analysis. A significant unmitigated and cumulative impact was identified for Freeway I-5 and I-5 ramps from 1st to 6th Avenues; impacts to ramp capacity and ramp meters were also identified and mitigable with implementation of SANDAG I-5 Freeway Corridor Study, which addresses deficiencies on the freeway and associated ramps. The Visionary Plan EIR also anticipated mitigation associated with Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance. The Visionary Plan EIR incorporated development and improvements included in the NBC project, but did not consider the project in the cumulative analysis for Urban Design/Visual Quality. Overall, the Visionary Plan adequately addressed the NBC project and is therefore consistent with the certified EIR/EIS.

- **Downtown Community Plan Environmental Impact Report in Conjunction with a new Downtown Community Plan, new Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency and City Council on February 28, 2006. The Downtown Community Plan EIR assumed development of the NBC project in the Project Description and incorporated anticipated land uses and building square footages into the figures and impact analysis. The Community Plan EIR also anticipated mitigation for direct impacts associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance, as well as cumulative impacts to Air Quality and Transportation; however, the impacts from implementation of the proposed Community Plan and Planned District Ordinance on parking, grid streets and surrounding streets is considered significant and unmitigable.

One issue identified and evaluated with the CEQA consistency review was on-site parking relative to the minor modifications to square footage in the proposed NBC project compared to the 1990 NBC project. While the total square footage of the proposed NBC project represents a small reduction from the 1990 NBC project, the total number of proposed parking spaces has been reduced from 3,105 to 2,961. The analysis determined that the 3,105 spaces included 230 Navy fleet car spaces, leaving 2,875 spaces for general use. The Navy has indicated that there is currently a need for only 54 fleet spaces. With a total of 2,961 spaces proposed, that leaves 2,907 spaces for general use, more than with the 1990 NBC project.

In conclusion, DSD noted that the proposed NBC project is substantially the same as the 1990 NBC project. The EIR/EIS done for the 1990 NBC project analyzed the project in detail, assuming build out of the surrounding area consistent with the land use plans and identified mitigation for impacts resulting from the project. Subsequent environmental documents in the downtown area, while not analyzing the NBC project at the project level, did reference the NBC project and assumed it would build out in accordance with the 1990 NBC project. Most recently,

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in 2006, the EIR for the Downtown Community Plan Update addressed community-wide policy/land use issues and again, assumed build out of the NBC.

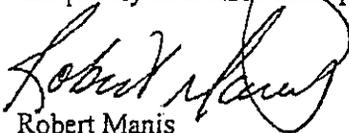
Section 21166 of CEQA states that when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of three events occur. These events are:

1. Substantial changes are proposed in the project
2. Substantial changes occur with respect to circumstances under which the project is being undertaken
3. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available

As stated earlier, there are no substantial changes to the NBC project from the 1990 NBC project. Project uses and intensity are virtually the same. It is acknowledged that the Ballpark and Ancillary Development projects, located in the East Village were not identified in the 1992 CCDC MEIR or the 1990 NBC EIR/EIS and therefore not considered in the cumulative impact analysis for the NBC project. However, because these projects were not anticipated, CCDC required the preparation of a Subsequent EIR which incorporated by reference the NBC EIR/EIS and assumed the same build out land uses adopted for the community plan at that time, which were ultimately used to analyze transportation/circulation impacts, and address regional and local air quality issues. Since these projects were ultimately analyzed with consideration of the NBC project, DSD does not consider this to be a substantial change in circumstances. There is no new information available that was not part of the original EIR/EIS and/or considered with subsequent environmental reviews of other projects. It was and continues to be assumed that the downtown area, including the NBC site, would build out according to adopted land use plans. When the Downtown Community Plan was changed earlier this year, new land use policies were put into place but the assumptions for the NBC site remained.

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Because none of the three events have occurred, DSD does not find a need to conduct additional environmental review for the proposed NBC project. The proposed NBC project is adequately addressed in the prior environmental documents that were certified for the 1990 NBC project and for other projects in the vicinity. Project impacts are adequately addressed and appropriate mitigation has been identified.



Robert Manis

RM/pdh

cc: Marcela Escobar-Eck, Development Services Director
Kelly Broughton, Deputy Director, Development Services
Nancy Graham, President, CCDC
Eli Sanchez, Project Manager, CCDC
Myra Herrmann, Senior Environmental Planner

L L L L L L
 L L L L L L Centre City
 L L L L L L Development
 L L L L L L Corporation
 L L L L L L

DATE ISSUED: July 20, 2007
 ATTENTION: Centre City Development Corporation
 Meeting of July 25, 2007
 SUBJECT: Consistency Determination for The Navy Broadway Complex
 Superseding Master Plan and Phase 1 Buildings for Blocks 2 and 3
 – Proposed by Manchester Financial Group to be Developed and
 Constructed on the Navy Broadway Complex Site -- Marina and
 Columbia Sub Areas of the Centre City Redevelopment Project
 STAFF CONTACT: Eli Sanchez, Senior Project Manager
 Suzanne Drolet, Associate Planner

REQUESTED ACTION: Board consideration of a consistency determination for the
Superseding Master Plan and the Phase 1 Buildings Basic Concept/Schematic Drawings located
 on Blocks 2 and 3 of the Navy Broadway Complex site bounded by Harbor Drive, Broadway and
 Pacific Highway ("Site"), in accordance with the "Agreement Between The City of San Diego
 ("City") and The United States of America ("Navy") Adopting a Development Plan and Urban
 Design Guidelines for the Redevelopment of the Navy Broadway Complex" ("Agreement")
 (Attachment A).

STAFF RECOMMENDATION: That the Board:

- **Adopt a resolution finding that the Superseding** Master Plan for the Navy Broadway Complex ("Project"), as submitted and dated July 2, 2007 ("**Superseding** Master Plan") by the Manchester Financial Group ("Developer"), is consistent with the Agreement's Development Plan and Urban Design Guidelines ("Design Guidelines"), with conditions (Attachment B);
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 2A, submitted and dated July 2, 2007 by the Developer (Attachment B), are consistent with the Agreement's Design Guidelines, with conditions;
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 2B, submitted and dated July 2, 2007, by the Developer (Attachment B) are consistent with the Agreement's Design Guidelines, with conditions;
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 3A, submitted and dated July 2, 2007, by the Developer (Attachment B) are consistent with the Agreement's Design Guidelines, with conditions; and
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 3B, submitted and dated July 2, 2007, by the Developer (Attachment B) are consistent with the Agreement's Design Guidelines, with conditions.

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SUMMARY: In 1992, the City of San Diego ("City") entered into the Agreement with the Navy and thereby adopting the Design Guidelines for redevelopment of the NBC Site. The Agreement gives CCDC the authority to act on behalf of the City to make a determination whether or not plans and specifications for any proposed project are consistent with the Design Guidelines. Staff has reviewed the plans and specifications for the Superseding Master Plan and Phase 1 Basic Concept/Schematic Drawings submitted July 2, 2007, in accordance with the Agreement, North Embarcadero Visionary Plan, the Environmental Impact Report prepared for the Agreement and adopted Design Guidelines. Staff reviewed both the "quantitative" and "qualitative" issues. With regard to the proposed Superseding Master Plan, which only evaluates the more straight-forward "quantitative" issues (i.e., numerical determinations such as square footage, height, setbacks, public open space, etc.), the analysis found no inconsistencies with the parameters set forth in the Agreement and Design Guidelines.

The "qualitative" issues are more complex involving detailed processes with regard to architecture, urban and public realm design (such as the north/south pedestrian walkway/paseo) for each proposed building site. CCDC assembled a panel of noted, nationally recognized design professionals ("Design Panel") to assist with the design review of the qualitative aspects of the proposed Master Plan and proposed buildings for the Site. "Qualitative" measures will continue to be reviewed as they evolve in the future and as each block and individual building(s) are reviewed at subsequent steps in accordance with the Design Guidelines.

This report provides an overview of the staff analyses of the plans and specifications, submitted on July 2, 2007, in accordance with the Agreement's Design Guidelines. Staff recommends that the Master Plan and Phase 1 Buildings may be found to be consistent with the Design Guidelines, subject to recommended conditions.

FISCAL CONSIDERATIONS: None.

COMMITTEE RECOMMENDATION: On July 20, 2007, the Real Estate Committee will consider the staff recommendation at a special meeting. Staff will provide an oral update to the Board at the regular meeting of July 25, 2007.

CENTRE CITY ADVISORY COMMITTEE RECOMMENDATION: On July 18, 2007, the CCAC took the following two actions:

- **Motion #1:**
CCAC Vote: 21 in favor, 1 opposed, 1 recused
PAC Vote: 19 in favor, 1 opposed, 1 recused
Approval of the Master Plan for the Navy Broadway Complex as submitted and dated July 2, 2007 by the Manchester Financial Group is consistent with the Agreement's Development Plan and Urban Design Guidelines with conditions as outlined by staff's report dated July 13, 2007.
- **Motion #2:**
CCAC Vote: 17 in favor, 3 opposed, 1 recused
PAC Vote: 16 in favor, 2 opposed, 1 recused
Table the design review (Basic Concept/Schematic drawings) for buildings 2A, 2B, 3A and 3B until the CCAC has ample time to review, discuss and make

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motions on each building. The CCAC is scheduled to meet on Tuesday, July 24, 2007 to consider Basic Concept/Schematic drawings.

CHANGES SINCE BOARD COMMITTEE MEETING: Changes made since the Real Estate Committee report are noted in bold font.

OTHER RECOMMENDATIONS: None.

BACKGROUND

On October 25, 2006, the Board adopted Resolution 2006-03, by which it adopted the October 19, 2006 "CEQA Consistency Analysis for Navy Broadway Complex" issued by the City's Development Services Department ("DSD") and the determination by DSD based on such analysis that no further environmental review is warranted for the NBC Project. The Board also approved the staff recommendation on the Master Plan Consistency Determination, as conditioned. November 14, 2006, the Board adopted Resolution 2006-04 incorporating the Master Plan Consistency Determination, as conditioned and subject to certain modifications contained in Resolution 2006-04.

The Basic Concept/Schematic Drawings for the Navy Administration Building on Block 3B was also submitted in June 2006 for a consistency determination by CCDC. However, the Board took no action on such consideration. On November 8, 2006, the Board granted a request by the Developer to resubmit the "Consistency Determination Submittal Requirements" for the Navy Administration Building ("NAB"). At that meeting, the Board also directed staff to meet with the Developer to coordinate the process for the resubmission of the submittal package for the NAB. In December 2006, the Developer submitted revised drawings for the Master Plan and seven buildings on the Site for a consistency determination for each of the buildings in accordance with the Design Guidelines contained in the Agreement. The consistency determination currently before the Committee does not include buildings on Blocks 1 and 4.

DEVELOPMENT TEAM

ROLE/FIRM	CONTACT	OWNED BY
Property Owner United States Navy	Karen Ringel	United States of America
Developer Manchester Financial Group	Perry Dealy, President Manchester Development	Privately Owned
Construction Manager <i>Not Selected</i>		
General Contractor <i>Not Selected</i>		
Subcontractor <i>Not Selected</i>		
Architect Martinez + Cutri Tucker, Sadler	Joe Martinez John Hinkle	Privately Owned Privately Owned
Landscape Architect		

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ROLE/FIRM	CONTACT	OWNED BY
Wallace Roberts & Todd, Inc.	Kathleen Garcia	Privately Owned

DISCUSSION

Design Panel – An expert panel of nationally-recognized architects and urban designers (“Design Panel”) was assembled by CCDC to provide an independent, specialized and professional review of the proposed design of the project.

The Design Panel met with the Developer and CCDC staff on December 8, 2006, February 1, and April 3, 2007 to review the quality of design of the proposed Master Plan and seven buildings on the Site. The meetings were a collaborative effort of the Design Panel, the Developer and CCDC staff. During those meetings, the Design Panel made numerous suggestions to the Developer to enhance the quality of design of the proposed Project. The Design Panel suggestions resulted in the following four primary design principle modifications to the Master Plan:

1. The north/south passage extending from Broadway to Harbor Drive should be revised to create a plaza at each end, connected by a slightly narrowed and more linear paseo. The Design Panel expressed concerns that the paseo should be an activated space and therefore recommended that it be narrowed to 55 to 65 feet in width and bordered by active retail and restaurant spaces within a 2-3 story streetwall. This was to create a series of garden rooms and piazzas rather than a free-form public open space area that would be less pedestrian friendly and activated. In addition, the Design Panel suggested that the footprint of Building 2A be expanded to provide a more formal edge to the paseo and the public open space on Block 1A, which the Design Panel envisions as more of a flexible formal piazza to accommodate gatherings rather than a purely passive landscaped area.
2. The western blocks within the project should establish an approximately 75-foot tall “corniche” streetwall along Harbor Drive in order to create a strong edge to the waterfront, with the tower stepping back from the corniche.
3. Blocks 1B and 4B should be developed with “iconic” buildings, with the remainder of the blocks designed and developed with high quality “background” buildings. A final recommendation made by the Design Panel regarding the iconic buildings was to either create an invited-list competition or to otherwise carefully select an architect of proven and worldwide stature to design them.
4. The required museums and/or public attraction spaces should be located in an iconic building on Block 4B.

After the series of Design Panel workshops, the Design Panel felt that the Developer team had largely incorporated the elements previously discussed and were pleased with the general direction that the Master Plan had taken with some additional suggested adjustments. However, when it came to the architecture, the Design Panel considered the architecture to be barely conceptual in nature, with some structures such as buildings 2A and 1B having only a “blocked out” appearance, i.e. only at the very preliminary stages of design. Other structures were of concern due to the scale and rhythm along Harbor Drive, the difficulties of building facades and storefronts not representing an adequately developed architectural program.

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Based on the Design Panel's review and the input received from the Committee on April 11 and May 16, 2007, the Developer revised the proposed submittal for the Master Plan and seven buildings to the Superseding Master Plan and the Basic Concept/Schematic Drawings for four buildings on Blocks 2 and 3 (Phase 1) that are currently being considered for a consistency determination by CCDC.

Four Steps of Consistency Review – The consistency review includes a review and analysis of whether the development proposed by the Developer substantially conforms to the Development Plan and Urban Design Guidelines. The submittal, review and consistency determination is to proceed in four steps as specified in Section 5.2 of the Agreement. The four steps involve the submission of plans and specifications at the following stages:

1. Basic Concept/Schematic Drawings
2. Design Development Drawings
3. Fifty percent (50%) Construction Drawings
4. One hundred percent (100%) Construction Drawings

A further consistency determination will be made as each individual block(s) and/or building(s), together with the more advanced plans and specifications for the public open space for each block, are submitted and reviewed by CCDC in accordance with Section 5.2 of the Agreement. No development on any portion of the Project can proceed under the Agreement unless and until a determination of consistency has been made by CCDC, and no construction activities on any portion of the Project may commence until CCDC issues the final consistency determinations of each portion or phase of the Project. The Developer, in previous public meetings, has made a commitment to the Board to follow this process as development proceeds.

The four step process is contained in Section 5.2 of the Agreement. The progression of drawings through the four step process shall illustrate how the conditions imposed in connection with previous submissions have been accommodated.

The current review is for consistency of the Superseding Master Plan and Phase 1 Buildings in Blocks 2 and 3 dated July 2, 2007, at the Basic Concept/Schematic Design Drawing stage. The consistency determination matrices for the Superseding Master Plan and Phase 1 Buildings in Blocks 2 and 3 are attached as Attachment C.

The Agreement sets forth minimum submittal requirements for this stage and requires that these drawings are "sufficiently detailed and at a scale to enable CCDC to make the determination of consistency." The Phase 1 Buildings will continue to proceed through the four step consistency determination process as the Developer moves forward with the more advanced drawing stages. The next phase of proposed development on all or portions of Blocks 1 and 4 will be required to submit Basic Concept/Schematic Drawings at the initial stage of review for consistency.

Master Plan Concept – The Navy Broadway Complex Project "Master Plan" is a set of drawings illustrating the conceptual Project in its entirety and establishes the foundation for the distribution of uses and building volumes on the Project site. The Master Plan includes the site plan/ground level usage and basic massing, volumes, and forms of buildings in order to verify required building constraints are observed and that the proposed programs and parking are within the parameters allowed by the Developer Agreement; circulation/development site access is also

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addressed. The Master Plan does not include specific design programs or a level of detail that would enable a qualitative assessment of design at the individual site level. Each individual building/site that is submitted for a Consistency Determination is evaluated against the basic criteria established by the Development Agreement as represented in the Master Plan. If any one of the proposed buildings, whose volumes, massing, and program of uses as represented in this Master Plan, is proposed to be changed in basic footprint, volume, massing, or program of uses in a subsequent submittal of the four-phase review process established by the Developer Agreement, the Master Plan shall be updated to reflect the new building in context with the other proposed or approved buildings and site organization. Architectural refinements and adjustments to building volumes and massing within the parameters established by the Developer Agreement shall not require preparation of an amended Master Plan.

Consistency Review – Superseding Master Plan – Staff has reviewed the Superseding Master Plan, dated July 2, 2007, for consistency and recommends that the Board find the Superseding Master Plan consistent with the Agreement’s Design Guidelines, subject to the conditions included in the Navy Broadway Complex Superseding Master Plan & Phase 1 Building Basic Concept/Schematic Drawings - CCDC Consistency Determination (Attachment C). A summary of the staff findings and conditions for the Master Plan are set forth below.

The Superseding Master Plan is found consistent with the “quantitative” standards and maximums regarding allowable land uses, intensity of uses, public open space, museum square footage and parking standards. Regarding land uses, the drawings indicate ‘condo-hotel’ and ‘condo-office’. Condominium ownership of these allowed uses may require legal and California Coastal Commission review outside the scope of CCDC’s review.

All proposed “quantitative” development standards such as heights, setbacks, access locations and sidewalk dimensions are consistent with the Design Guidelines, with a few minor conditions/corrections. The proposed conditions contain clarifications and explanations of what follow-through will be required in subsequent detailed submittals in accordance with Section 5.2 of the Agreement, especially to implement the North Embarcadero Visionary Plan streetscape design.

Staff finds all proposed building forms fit within the allowable envelopes; that the tower massing maximizes inland views; that the buildings appropriately frame the streets, public open space and define a spacious north/south passage. Staff has included comments/conditions to ensure that key design features will be maintained and consistently developed in much greater detail during required subsequent building submittals of plans and specifications for review under Section 5.2 of the Agreement. Staff recommends that the Superseding Master Plan may be found to be consistent with the Agreement’s Design Guidelines.

Design Review – Consistency Determination – Below is a summary of the consistency review as summarized by Gwynne Pugh, a member of the Design Panel. A copy of the “Design Review of Blocks 2 and 3 For Consistency Determination” letter prepared by Gwynne Pugh is attached as Attachment D.

The Agreement states that *the architecture shall establish a high quality of design. While it is not the intent for the entire Development to represent a single architectural solution, The Agreement does require the establishment of a compatible vocabulary of forms and materials to create a*

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visually harmonious grouping of buildings. Consequently the development should enhance not just the aesthetic and visual values but also the general experience and quality of life.

Within the context of the Navy Broadway Complex buildings 4A and 1A are required to be 'iconic' while the remaining structures should be of high quality design and more retiring or part of the 'fabric of the City'. To these ends these structures should enhance not just the aesthetic and visual values but also to add to the quality of life and to the visceral experience engendered by the development.

Buildings need to respond to the environmental conditions that will make each structure unique, as well as integrated into the development as a whole. The structures need to contribute to the public realm, as well as benefit from the opportunities that are generated by these premium sites consequently producing the high quality of design.

Consistency Review – Block 2A – The massing and general forms of this building are good but significant attention needs to be paid to the pedestrian scale. Texture, scale, color, detail, articulation and visual interest need to be addressed. The tower has good articulation and form providing interest and distinction to the building. More attention needs to be paid to the intrinsic aspects of sustainability based on orientation and weather aspects. Staff recommends that Block 2A may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

Consistency Review – Block 2B – The massing and general forms of this building are good but significant attention needs to be paid to the pedestrian scale. Texture, scale, color, detail, articulation and visual interest need to be addressed. The towers have good articulation and form providing interest and distinction to the building. More attention needs to be paid to the intrinsic aspects of sustainability based on orientation and weather aspects. This structure has missed a prime opportunity to separate the entry functions of the hotel and the offices. A hotel entrance on the promenade could work for considerable mutual benefit to the public realm and to the functions of the structure itself. Staff recommends that Block 2B may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

Consistency Review – Block 3A – This structure is elegant and well detailed with good massing and form, and connected to the environment. Attention to the issues regarding the loading bays, shading of the southerly elevation and articulation of the northerly portion of the westerly elevation should be taken. With good refinement and design development this should be a successful structure and complement the fabric of the development. Staff recommends that Block 3A may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

Consistency Review – Block 3B – Staff finds that this building presents a uniquely-inspired architecture with a subtle nautical theme appropriate for its position in the Project site and proposed use for Navy administrative facilities. The boat-shaped building's curved floor plan offer gently curving facades along the north and south faces that peel away to reveal a transparent west façade to the bay and east elevation offering the slenderest profile to the upland areas. The building is well-articulated and employs quality materials that create interest and variety to promote the pedestrian scale of the street and north-south passage. Abundant landscaping around the building creates a park-like public setting at what will eventually be a highly traveled space as pedestrians walk between the public open space at 1A and the museum spaces at Block 4, and beyond. Staff recommends that Block 3B may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

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PROJECT ANALYSIS AND IMPACT ASSESSMENT

CEQA Review of the First Master Plan – On October 19, 2006, the DSD issued a memorandum explaining DSD’s CEQA Consistency Analysis for the NBC Project (the “CEQA Consistency Analysis”) based on the First Master Plan, in which pursuant to Public Resources Code section 21166, DSD reviewed the proposed project against the 1992 NBC Project EIR/EIS and several more recent EIRs which considered or assumed development approved for the NBC Project. DSD found that the 1992 NBC Project EIR/EIS, the 1992 Final Master EIR for the Centre City Redevelopment Project, the 1999 Final Subsequent EIR for the Ballpark and Ancillary Development Projects, the 2000 North Embarcadero Visionary Plan EIR, and the 2006 Downtown Community Plan Final EIR (collectively, the “Environmental Documents”) all either adequately evaluated the NBC Project or else assumed the full development of the NBC Project in their assessments of other downtown plans and projects. DSD also determined that the mitigation required to be implemented for the NBC Project and related projects (i.e., the Centre City Redevelopment Project, the Ballpark and Ancillary Development Project, the North Embarcadero Visionary Plan and the 2006 Downtown Community Plan) adequately addressed the environmental impacts associated with the NBC Project.

DSD concluded that the First Master Plan was substantially the same as the project assumed in the 1992 NBC Project Final EIR/EIS, and that subsequent environmental documents covering the downtown area assumed the development contemplated for the NBC Project and had updated the impacts analysis for potentially affected resources, such as transportation and parking, air quality, land uses, cultural resources, and others. Therefore, DSD concluded that the conditions listed in Public Resources Code section 21166 triggering subsequent or supplemental environmental review were not present and that no further environmental documentation was required.

Based on DSD’s CEQA Consistency Analysis, CCDC staff determined, consistent with DSD’s conclusions, that no further environmental review was necessary for the Master Plan as originally proposed. In particular, staff found that neither the proposed conditions for the First Master Plan nor the Navy building’s inconsistency with the Development Agreement triggered additional CEQA review because they did not rise to a level of significant adverse aesthetic impacts or significant impacts on the physical environment. Therefore, CCDC Staff concluded that no further environmental review, beyond the analysis contained in their October 25, 2006 staff report and in the accompanying CEQA analysis performed by DSD pursuant to Public Resources Code section 21166, was required for the First Master Plan. On October 25, 2006, the CCDC Board adopted CCDC Staff’s recommendation that no further environmental review was warranted pursuant to Section 21166 of CEQA.

Changes Between the First Master Plan and the Superseding Master Plan – Only minor changes have been made to the First Master Plan to become the currently proposed Superseding Master Plan and Phase I Buildings. Specifically, differences between the First Master Plan and the Superseding Master Plan include:

- The Superseding Master Plan includes a narrower Paseo than proposed in the First Master Plan;
- The Superseding Master Plan modifies the upper level of the towers; and

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Agenda Number 652

- The proposed Superseding Master Plan proposes slightly different square footage for proposed uses than did the First Master Plan. The following table shows the square footage proposed under the First Master Plan with those proposed by the Superseding Master Plan:

Project component	First Master Plan	Proposed Superseding Master Plan	Difference
Office	1,650,000	1,646,793 sf	-3207 sf
Hotel	1,220,000 sf (1,472 rooms)	1,181,641 sf (1,575 rooms)	-38,359 sf (+103 rooms)
Retail	25,000	25,000 sf	--
Public Attraction	41,000	40,000 sf	-1000 sf
Total sf	2,936,000	2,893,434 sf	-42,566
Open Space	1.9 acres	1.9 acres	--
Parking	2,961	2,988	+27

Environmental impact of the proposed Superseding Master Plan and Phase I Buildings –
By the terms of the Agreement, CCDC has only limited ability to conduct its own environmental review. The Urban Design Guidelines adopted with the Agreement set forth largely objective criteria by which future proposed projects within the scope of the Agreement should be assessed by CCDC. Issues relating to maximum-square footage, amount of parking, building heights, setbacks, transparency of facades, and pedestrian access all involve objective criteria, with no discretion afforded to CCDC to impose additional conditions on the Project; however, the Design Guidelines do contain some subjective criteria, and therefore, CCDC must exercise discretion over the design of the NBC Project, albeit limited to the aesthetic considerations set forth in those subjective criteria of the Design Guidelines.

The exercise of *some* discretion does not automatically qualify an agency action as a project subject to CEQA. To trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to “mitigate . . . environmental damage” to some degree (*Leach v. City of San Diego* (1990) 200 Cal.App.3d 389, 395.) Although CCDC has only limited discretion to review the Project as defined in the Agreement for consistency with the subjective criteria in the Design Guidelines, consistent with the approach taken for the First Master Plan, staff has taken a conservative approach and assumed that its consistency determination is discretionary, and therefore, potentially subject to CEQA.

As stated, staff finds the proposed Superseding Master Plan to be substantially similar to the First Master Plan, both in terms of uses and intensity. In addition, staff finds that the proposed Superseding Master Plan and Phase I Buildings are consistent with the Agreement, subject to conditions, which are substantially similar to those approved for the First Master Plan. Therefore, CCDC Staff finds that DSD’s recent CEQA Consistency

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Analysis continues to be valid, relevant, and applicable to the NBC Project as proposed by the Superseding Master Plan.

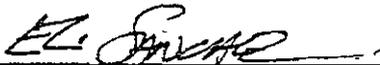
Based on DSD's CEQA Consistency Analysis, as well as the Initial Study attached to this report and prepared by staff for the proposed Superseding Master Plan and Phase I Buildings, Staff finds that none of the conditions described by Section 21166 of CEQA applies. As discussed in the associated Initial Study, the proposed Superseding Master Plan or the circumstances under which it would be undertaken would not result in any new significant impacts not discussed in the Environmental Documents, nor any substantial increase in the severity of impacts identified by the Environmental Documents. In addition, no new information of substantial importance has become available since the Environmental Documents were prepared regarding new significant impacts, or feasibility of mitigation measures or alternatives that apply to the proposed Superseding Master Plan.

Because none of the criteria of Section 21166 of CEQA are present here, staff concludes that the preparation of a Subsequent or Supplemental EIR is not required. The proposed Superseding Master Plan is adequately addressed in the prior Environmental Documents that were certified for the 1990 NBC Project and other projects in the vicinity. Project impacts are adequately addressed and appropriate mitigation has been identified. No further environmental review is required.

CONCLUSION

CCDC staff recommends that the Board find that the Master Plan and Phase I Building Basic Concept/Schematic Drawings for Blocks 2 and 3 are consistent with the Agreement with recommended conditions.

Respectfully submitted,


 Eli Sanchez
 Senior Project Manager

Concurred:


 Nancy Graham
 President


 Suzanne Drolet
 Associate Project Manager

Attachments:

- Attachment A – Development Agreement
- Attachment B – Superseding Master Plan & Basic Concept/Schematic Drawings dated July 2, 2007 – Forwarded with Real Estate Committee Package for July 20, 2007 Meeting
- Attachment C – Updated Consistency Determination Matrices – Master Plan & Phase I Buildings
- Attachment D – Gwynne Pugh Design Review Letter
- Attachment E – CEQA Initial Study

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 Meeting of July 25, 2007
 Agenda Number 652

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: November 5, 2007
TO: Honorable Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: On the Appeal of a CCDC Environmental Determination Under Public Resources Code Section 21166 in Relation to the Navy Broadway Complex Project, Hearing Scheduled for November 6, 2007, Agenda Item 335

The City Attorney's office attaches herein the City Attorney's October 4, 2006 Memorandum to the City Council and Mayor relating to the responsibility of the City to perform CEQA environmental determinations in relation to the Navy Broadway Complex Project. **CCDC is not a party to the Development Agreement and is completing the Consistency Determination, and any amendments thereto, on behalf of the City.**

Under the Development Agreement with the Navy, the City did not delegate its CEQA responsibilities to CCDC. Consistent with the City Attorney's October 4, 2006 advice, the City staff did originally perform an environmental determination under the provisions of the California Environmental Quality Act [CEQA] Section 21166 before CCDC finalized the original Consistency Determination under the Development Agreement.

Within the past few months, CCDC amended the Consistency Determination, but before finalizing it, performed and finalized a 21166 environmental determination which is the subject of the appeal tomorrow. Since only the City and not CCDC has the authority to perform this 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.


MICHAEL J. AGUIRRE, City Attorney

MJA:SRE:pev
Attachment
MS-2007-10

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: October 4, 2006
TO: Honorable Mayor and Members of the City Council
FROM: City Attorney
SUBJECT: Applicability of Public Resources Code Sections 21166 and 21151(c) to the Navy Broadway Complex Project.

INTRODUCTION

In 1992 the City and the United States, Department of Defense, Naval Facilities Engineering Command [Navy], entered into a written agreement entitled "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" [Development Agreement].

Prior to entering into this Development Agreement, in October 1990, the City prepared and certified an Environmental Impact Report [1990 EIR] under California Environmental Quality Act [CEQA] and the Navy prepared an Environmental Impact Statement [EIS] under the National Environmental Policy Act [NEPA] to evaluate the environmental impacts of the Navy Broadway Complex Project. The City of San Diego was identified as the lead agency for purposes of the EIR. CCDC was one of the City entities, among others, consulted in the preparation of the EIR. In 2006, the Navy selected Manchester as the Master Developer for the Navy Broadway Complex Project.

The City Council and the Centre City Development Corporation [CCDC] previously requested clarification on the role of the City of San Diego [City] in reviewing or overseeing the consistency determination of CCDC for the Navy Broadway Complex Project. In response to that prior request, the Office of the City Attorney issued a Memorandum of Law on September 15, 2006. An Addendum to the Memorandum of Law was issued by the City Attorney on September 18, 2006 explaining the City's role in the development of the Navy Broadway Complex Project. On September 19, 2006, the San Diego City Council heard Item 330 where the Navy Broadway Complex Project was discussed. During this discussion, the City Attorney was requested to clarify the applicability of CEQA, Public Resources Code Sections 21166 and 21151(c), to the proposed Navy Broadway Complex Project. See Attachment A.

In addition, a Final Environmental Impact Report for the Proposed San Diego Downtown Community Plan, the CCDC Planned District Ordinance [PDO], and the 10th Amendment to the Downtown Redevelopment Plan, SCH No. 2003041001, was prepared and finalized by CCDC in March 2006 [2006 EIR]. It has yet to be determined whether the 2006 EIR may or may not be used as the additional EIR for the Navy Broadway Complex Project if a 21166 evaluation determines that further documentation is necessary due to changed circumstances. In 2006, the City adopted as its own this 2006 EIR when it approved the Downtown Community Plan, the PDO, and the 10th Amendment to the Downtown Redevelopment Plan.

The Navy has already determined that a second look at the environmental impacts of the Navy Broadway Complex Project is justified and has performed a subsequent environmental analysis under NEPA, including traffic and air quality studies. This Memo analyzes the requisite steps necessary for the City to fulfill its CEQA responsibilities in relation to the Navy Broadway Complex Project.

QUESTIONS PRESENTED

1. As lead agency for the Navy Broadway Complex Project, is the City responsible for evaluating the current adequacy of the 1990 EIR under the provisions of CEQA [Public Resources Code Section 21166]?
2. Would a 21166 evaluation have to be completed before CCDC completes a consistency determination for the City?
3. Is a CEQA determination associated with CCDC's consistency determination appealable to the San Diego City Council under the provisions of CEQA [Public Resources Code Section 21151(c)]?

SHORT ANSWERS

1. Yes. As lead agency for the Navy Broadway Complex Project, the City is responsible for evaluating the current adequacy of the 1990 EIR under the provisions of CEQA [Public Resources Code Section 21166].
2. Yes. A 21166 evaluation will have to be completed before CCDC completes a consistency determination for the City.
3. Yes. A CEQA determination associated with CCDC's consistency determination is appealable to the San Diego City Council under the provisions of CEQA [Public Resources Code Section 21151(c)].

LEGAL ANALYSIS

1. As lead agency for the Navy Broadway Complex Project, the City is responsible for evaluating the current adequacy of the 1990 EIR under the provisions of CEQA [Public Resources Code Section 21166].

The City retained CEQA responsibilities under the Development Agreement. The City only subcontracted out to CCDC its responsibility for completion of its contractual obligation under the Development Agreement to perform a consistency determination and the terms of the contract spell out the duties and responsibilities of CCDC as subcontractor. The City, for purposes of the 1990 EIR, was the express designated lead agency for the Navy Broadway Complex Project. A "lead agency" under CEQA is the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. See Public Resources Code Section 21067. For purposes of entering into and carrying out the Development Agreement, the City remains the lead agency. This responsibility has not been and could not be delegated away.

So significant is the role of the lead agency that CEQA proscribes delegation. This prohibition was articulated in *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770, 779 [128 Cal. Rptr. 781]: "Neither the CEQA nor the state guidelines authorize the city council to delegate its review and consideration function to another body. Delegation is inconsistent with the purpose of the review and consideration function since it insulates the members of the council from public awareness and possible reaction to the individual members' environmental and economic values. Delegation is inconsistent with the purposes of the EIR itself."

Planning and Conservation League et al. v. Department of Water Resources, Central Coast Water Authority (2000) 83 Cal. App. 4th 892, 907, 100 Cal. Rptr. 2d 173. See *Robert T. Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307, 248 Cal. Rptr. 352; see also *Hayward Area Planning Association v. City of Hayward* (2005) 128 Cal. App. 4th 176, 184, 26 Cal. Rptr. 3d 783; *L.R. Hubbard, Jr. v. City of San Diego* (1976) 55 Cal. App. 3d 380, 127 Cal. Rptr. 587.

Contractually, the Development Agreement is clear as to the role of the City and the role of CCDC. It is clear that CCDC is responsible for performing the consistency determination, but it is also clear by the contract terms that the City retained its CEQA responsibilities. See Sections 5.2 and 9.9 of the Development Agreement. Section 9.9 of the Development Agreement expressly states:

[T]he City agrees, consistent with California Public Resources Code Section 21166, that no subsequent or supplemental environmental impact report shall be required by the City for the subsequent implementation of the Project unless required by the criteria set forth in Section 21166.

Furthermore, Attachment 4 of the Development Agreement references, in a footnote, the possibility of additional environmental analysis to be performed by the Navy and the City:

Interfering portions of the Pacific Highway median, if any, shall be removed and other traffic mitigation measures and street

modifications required in the Final Environmental Impact Report and Final Environmental Impact Statement for the Navy Broadway Complex Project shall be implemented unless the City and Navy subsequently find that the traffic circulation and air quality considerations discussed in the EIR/EIS and which led to the inclusion of the requirements for such improvements in the Project are found to be insignificant, are mitigated to a level of insignificance through other actions, or findings are made that override these considerations.

Given that these CEQA duties remain with the City, the question to be determined is whether the City need do anything more than what it did in 1990 when it certified the EIR. The provisions of CEQA provide for a subsequent review of the adequacy of the 1990 EIR where subsequent discretionary actions are to occur. Subsequent discretionary actions by the City may, and on behalf of the City will, take place. The 1990 EIR is presumed to comply with the provisions of CEQA for purposes of its use by responsible agencies "unless the provisions of Section 21166 are applicable." See Public Resources Code Section 21169.2. A Section 21166 review by the City will determine whether there have been substantial changes justifying supplemental or additional environmental documentation/review. Section 21166 comes into play now because in-depth review has already occurred in 1990, the time for challenging the sufficiency of the original EIR has expired, the question remaining is whether circumstances have changed enough to justify repeating a substantial portion of the process, and a subsequent discretionary action is imminent. See *River Valley Preservation Project v. Metropolitan Transit Dev. Bd.* (1995, 4th Dist.) 37 Cal. App. 4th 154, 43 Cal. Rptr. 2d 501. See also Section 15162 of the CEQA Guidelines.

Subsequent actions by and on behalf of the City are contemplated in the Development Agreement. "Building and other related permits for the development of the Property shall be issued by the City in a timely manner." See Section 5.6 of Development Agreement. The Development Agreement, however, also expressly states in Section 1.2 that the redevelopment at the Navy Broadway Complex "shall not require any discretionary permits from the City. Building and similar ministerial permits shall be obtained by the Developer of the Broadway Complex only for those structures which are not to be occupied, in whole or in substantial part, by the Navy." See Section 1.2 of Development Agreement. However, agreeing by contract that no further discretionary permits will be needed (and thus no further CEQA review would follow), does not supercede the City's responsibilities under the law where a discretionary permit or approval is in fact needed and CEQA compliance is required.

A governmental entity cannot contract away its CEQA responsibilities. Contract terms do not supercede the requirements of CEQA. Furthermore, the provisions found in Section 1.2 of the Development Agreement assume that a "building permit" is a ministerial action. It is not the case, however, that in every instance a building permit is a ministerial action. It remains to be determined whether other permitting actions taken by the City will trigger CEQA because they may be discretionary. See *Sheila Donahue Miller v. City of Hermosa Beach* (1993) 13 Cal. App. 4th 1118, 17 Cal. Rptr. 2d 408; *Friends of Westwood v. City of Los Angeles et al* (1987) 191 cal.

App. 3d 259, 235 Cal. Rptr. 788. In addition, there may be other discretionary actions or approvals that the City may conduct with respect to the Navy Broadway Complex Project that do not involve the issuance of "permits." It also remains to be seen what other discretionary approvals or actions will be triggered by other governmental agencies as they permit, authorize or otherwise approve any portion or all of this project moving forward. See *County of Orange v. Superior Court of Orange County; Vedanta Society of Southern California* (2003) 113 Cal. App. 4th 1, 7-8, 6 Cal. Rptr. 3d 286. Any one of these future discretionary approvals may trigger CEQA and a determination by the City or others under Section 21166 of whether the 1990 EIR, 16 or more years later, is good enough.

2. A 21166 evaluation will have to be completed before CCDC completes a consistency determination for the City.

Although not a permit, the consistency determination required by the Development Agreement and performed by CCDC on behalf of the City is a discretionary action and triggers CEQA compliance. The evaluation of the plans and specifications by CCDC will trigger some discretion and judgment. The City has not delegated its CEQA responsibilities to CCDC for this consistency determination. See Section 1.2 of Development Agreement. See *Sheila Donahue Miller v. City of Hermosa Beach* (1993) 13 Cal. App. 4th 1118, 17 Cal. Rptr. 2d 408; *Friends of Westwood v. City of Los Angeles et al* (1987) 191 Cal. App. 3d 259, 235 Cal. Rptr. 788. Before this discretionary action can occur, a 21166 evaluation by the City, and any subsequent environmental documentation, if any, will need to be completed. See Section 15162 of the CEQA Guidelines.

In a situation where the 21166 evaluation demonstrates the need to prepare subsequent environmental documentation, neither the lead agency nor any other responsible agency can grant a subsequent discretionary approval for the project until the subsequent environmental document has been adopted/certified. See Section 15162(c) of CEQA Guidelines. Once all discretionary approvals have been obtained, no further EIRs may be required by the public agency. See *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000, 4th Dist.) 82 Cal. App. 4th 473, 98 Cal. Rptr. 2d 202. See *Santa Teresa Citizen Action Group v. City of San Jose* (2003, 6th Dist.) 114 Cal. App. 4th 689. Courts have set aside government actions where review of the current adequacy of an EIR, given changed circumstances, has not occurred first. See *El Morro Community Assn. v. California Dept. of Parks & Recreation* (2004, 4th Dist.) 122 Cal. App. 4th 1341; see also Section 15162 of the CEQA Guidelines.

The Navy has already determined that a second look at the environmental impacts of the Navy Broadway Complex Project is justified and has performed a subsequent environmental analysis under NEPA, including traffic and air quality studies. A 21166 review by the City, and any subsequent CEQA document determined to be necessary, if any, should cover any future discretionary actions associated with this project, unless and until any future substantial changes occur. A 21166 review now is also consistent with what the Navy has already determined is necessary under NEPA.

3. A CEQA determination associated with CCDC's consistency determination is appealable to the San Diego City Council under the provisions of CEQA [Public Resources Code Section 21151(c)].

Pursuant to Section 21151(c) of the Public Resources Code:

If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.

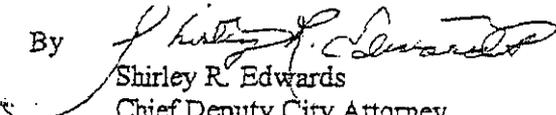
In this case, the local lead agency is the City of San Diego. Any CEQA determination associated with CCDC's consistency determination is appealable to the full City Council as provided for under Section 21151(c). See *Bakersfield Citizens for Local Control v. City of Bakersfield et al* (2004) 124 Cal. App. 4th 1184, 1201-1202, 22 Cal. Rptr. 3d 203, citing *Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal. App. 4th 517, 525-526, 100 Cal. Rptr. 2d 889.

CONCLUSION

Based upon the analysis provided herein, it is the recommendation of the Office of the City Attorney that before CCDC make its consistency determination, the City complete a 21166 evaluation to determine whether any further environmental documentation under CEQA is necessary for the Navy Broadway Complex Project.

MICHAEL J. AGUIRRE, City Attorney

By


Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev

cc: Elizabeth Maland, City Clerk
Development Services Department Director
Centre City Development Corporation

ATTACHMENT A

Section 21166 states:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

To: Honorable Mayor and City Councilmembers
From: City Attorney
Date: November 5, 2007
Re: On the Appeal of a CCDC Environmental Determination under Public Resources Code Section 21166 in relation to the Navy Broadway Complex Project, Hearing Scheduled for November 6, 2007, Agenda Item 335.

The City Attorney's office attaches herein the City Attorney's October 4, 2006 Memorandum to the City Council and Mayor relating to the responsibility of the City to perform CEQA environmental determinations in relation to the Navy Broadway Complex Project. **CCDC is not a party to the Development Agreement and is completing the Consistency Determination, and any amendments thereto, on behalf of the City.**

Under the Development Agreement with the Navy, the City did not delegate its CEQA responsibilities to CCDC. Consistent with the City Attorney's October 4, 2006 advice, the City staff did originally perform an environmental determination under the provisions of the California Environmental Quality Act [CEQA] Section 21166 before CCDC finalized the original Consistency Determination under the Development Agreement.

Within the past few months, CCDC amended the Consistency Determination, but before finalizing it, performed and finalized a 21166 environmental determination which is the subject of the appeal tomorrow. Since only the City and not CCDC has the authority to perform this 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.

**REMY, THOMAS,
MOOSE and MANLEY,
LLP**

MICHAEL H. REMY
1944 - 2003

TINA A. THOMAS
JAMES G. MOOSE
WHITMAN F. MANLEY
ANDREA K. LEISY
TIFFANY K. WRIGHT
SABRINA V. TELLER
ASHLE T. CROCKER

BRIAN J. PLANT
OF COUNSEL

ATTORNEYS AT LAW

455 CAPITOL MALL, SUITE 210
SACRAMENTO, CALIFORNIA 95814

Telephone: (916) 443-2745
Facsimile: (916) 443-9017
E-mail: info@rtmmlaw.com
http://www.rtmmlaw.com

JENNIFER S. HOLMAN
MICHELE A. TONG
AMY R. HIGUERA
HOWARD F. WILKINS III
MEGAN M. QUINN
AMANDA R. BERLIN
JASON W. HOLDER
LAURA M. HARRIS
KATHRYN C. COTTER
COURTNEY K. FRIEH

M E M O R A N D U M

TO: Honorable Mayor and City Council Members

FROM: Sabrina V. Teller, CEQA counsel for CCDC

DATE: November 13, 2007

RE: Response to City Attorney Memorandum (November 5, 2007) regarding "On the Appeal of a CCDC Environmental Determination Under Public Resources Code Section 21166 in Relation to the Navy Broadway Complex Project, Hearing Scheduled for November 6, 2007, Agenda Item 335"

On November 6, 2007, the San Diego City Council voted to continue its hearing on the appeals of the decision of the Centre City Development Corporation's Board of Directors to re-adopt a previously prepared environmental determination for the Superseding Master Plan for the redevelopment of the Navy Broadway Complex (NBC) Project. The decision to continue the hearing was based at least in part on a memorandum submitted by the San Diego City Attorney on November 5, 2007, advising:

Since only the City and not CCDC has the authority to perform [a Public Resources Code, section] 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.

While CCDC neither supported nor opposed the continuance, we welcome the opportunity to respond to the new issues raised at the last minute by the City Attorney.

First, we would like to clarify that CCDC did not amend or substitute DSD's determination. Rather, the CCDC Board re-adopted DSD's October 19, 2006 *CEQA*

Consistency Analysis for the Navy Broadway Complex (DSD's CEQA Consistency Analysis), which was previously upheld by the City Council when the same appellants, alleging the same claims, were heard last January. (See CCDC Resolution No. 2007-01, July 25, 2007.) Upon Manchester's submission of a superseding master plan on July 2, 2007, CCDC staff undertook a review of the same documents considered by DSD in its CEQA Consistency Analysis to be able to confirm to the CCDC Board that the DSD analysis was comprehensive and complete. Staff's review took the form of a modified initial study for the purpose of documenting the scope of their review, but the initial study merely informed the conclusions and recommendations of the staff report to its Board; it was not a substitute or amendment to DSD's CEQA Consistency Analysis. (See Initial Study, Attachment E to CCDC Staff Report, July 20, 2007, regarding the Consistency Determination for the NBC Superseding Master Plan and Phase I Buildings.) Prior to its approval of the Superseding Master Plan that is the subject of the appeals currently pending before the Council, the CCDC Board considered DSD's October 19, 2006 CEQA Consistency Analysis, as informed by CCDC's additional information in the July 20, 2007 staff report, and re-adopted DSD's CEQA Consistency Analysis.

Second, we respectfully disagree with the City Attorney's interpretation of CEQA in his conclusion that CCDC has no authority or obligations under CEQA with respect to the NBC project. As the City Attorney has previously acknowledged, CCDC is a "responsible agency" for the project under CEQA.¹ As explained further below, CCDC could not have made its own consistency determinations for the Master Plan and Phase I buildings required under the Development Agreement without first considering whether the circumstances of Public Resources Code section 21166 applied. (CEQA Guidelines, §§ 15096, subs. (e), (f), 15162.)

Third, if the City Council determines that DSD should undertake another review of the Superseding Master Plan pursuant to Public Resources Code section 21166, the appropriate action would not be to grant the appeals, as the City Attorney suggests, but rather, to suspend or continue the hearing and to direct that DSD perform that task and report back to the Council with its conclusions.

CCDC Re-adopted DSD's CEQA Consistency Analysis

Background

Manchester Financial Group first submitted a master plan to CCDC for a consistency determination under the Development Agreement in May 2006. Before CCDC made its final consistency determinations on that master plan, DSD conducted an analysis under Public Resources Code section 21166 for the NBC project and submitted an explanatory letter to CCDC and the City Council detailing its conclusions. (DSD (Oct. 19, 2006) CEQA Consistency Analysis for the Navy Broadway Complex.) Section 21166 sets forth the criteria under which a

¹ / See City Attorney Memo dated Nov. 22, 2006 re: "Navy Broadway Complex Project Environmental Appeal Hearings", stating "At its October 25 meeting, CCDC did [adopt a] resolution as a *responsible agency* regarding the CEQA analysis for the Navy Broadway Complex Project. The resolution in essence adopted the Analysis of DSD."

Honorable Mayor and Members of the City Council

November 13, 2007

Page 3 of 6

lead or responsible agency must prepare a subsequent or supplemental EIR for a project for which an EIR has already been certified. DSD's CEQA Consistency Analysis concluded the criteria listed in Public Resources Code, section 21166 were not met and that no further environmental was required.² (*Id.* at pp. 4-5.)

Prior to making its consistency determination on the first proposed master plan, on October 25, 2006, the CCDC Board adopted Resolution 2006-03, formally adopting DSD's CEQA Consistency Analysis and determination that no further environmental review was warranted for the Navy Broadway Complex Project. (CCDC Resolution 2006-03.) Thereafter, two separate appeals to the City Council were filed, challenging DSD's analysis and CCDC's adoption of that analysis. The City Council voted to deny the appeals and uphold both DSD's CEQA Consistency Analysis and CCDC's adoption of that analysis.

CCDC's Re-adoption of DSD's CEQA Consistency Analysis

Less than seven months after the City Council upheld DSD's CEQA Consistency Analysis and CCDC's adoption thereof, Manchester submitted a Superseding Master Plan for the project and basic concept/schematic drawings for Blocks 2 and 3 of the site. In comparing the approved master plan with the Superseding Master Plan, CCDC found the two plans similar³ and recent enough, in terms of evaluating potential environmental consequences, that DSD's CEQA Consistency Analysis remained valid and applicable to the superseding master plan. (See CCDC Report to City Council, Report No.: CCDC-07-20, p. 8; see also CCDC Staff Report, July 20,

² / Specifically, DSD found that no substantial changes to the NBC project were being proposed and that the master plan's proposed land uses and intensities were virtually the same as those analyzed in the 1992 Final EIR/EIS. (DSD CEQA Consistency Analysis, at pp. 4-5.) DSD also found that the project was adequately addressed in the 1992 Final EIR/EIS for the project and the several other certified environmental documents for plans and projects in the vicinity of or including the NBC project area. As such, there were no substantial changes in the project or the circumstances under which the project is being undertaken, nor any new information of substantial importance requiring preparation of a subsequent or supplemental EIR. (*Id.* at pp. 4-5.)

³ / As explained in the staff report for the CCDC Board's meeting of July 25, 2007 (pp. 8-9), the differences between the first Master Plan approved by the CCDC Board in October 2006 and the Superseding Master Plan approved in July 2007 are minor:

- The Superseding Master Plan includes a narrower paseo than proposed in the first Master Plan, as suggested by the Design Panel assembled by CCDC;
- The Superseding Master Plan modifies the upper level of the towers; and
- The Superseding Master Plan proposes slightly different square footage for proposed uses than did the first Master Plan [3,207 less sf of office, 38,359 less sf of hotel, 1,000 less sf of public attraction, and 27 more parking spaces.]

Notably, none of the appellants challenging CCDC's re-adoption of DSD's CEQA Consistency Analysis have explained how these changes to the first Master Plan could give rise to a different conclusion by DSD or any other reviewer regarding whether the criteria of Public Resources Code section 21166 are met.

Honorable Mayor and Members of the City Council

November 13, 2007

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2007, regarding the Consistency Determination for the NBC Superseding Master Plan and Phase I Buildings). Therefore, CCDC resolved to re-adopt DSD's CEQA Consistency Analysis and made findings that no subsequent or supplemental EIR was required for the Project. (CCDC Resolution 2007-01.)

Notably, CEQA does not mandate any specific procedure for an agency to follow in determining whether Public Resources Code section 21166 is applicable to the agency's approval of a project. The CEQA Guidelines simply provide that "[a] *brief explanation* of the decision not to prepare a subsequent EIR ... should be included in an addendum to an EIR, the lead agency's required findings on the project, or *elsewhere in the record*. (CEQA Guidelines, § 15164, subd. (e), italics added.) Thus, CCDC could have re-adopted DSD's CEQA Consistency Analysis without any further analysis. However, CCDC chose to take the more conservative approach of considering whether the criteria in Public Resources Code section 21166 were present with respect to the Superseding Master Plan and documenting said evaluation by way of a modified initial study. (See CCDC Report to City Council, Report No. CCDC-07-20, p. 8; see also CCDC Staff Report, July 20, 2007, regarding the Consistency Determination for the NBC Superseding Master Plan and Phase I Buildings.)

Ultimately, CCDC concluded that substantial evidence warranted agreement with DSD's CEQA Consistency Analysis that no further environmental review was required for the Superseding Master Plan. Therefore, CCDC re-adopted DSD's analysis and made findings that no further environmental review was required.

CCDC Fulfilled Its Independent Duty to Consider Whether a Subsequent or Supplemental EIR is Required for the Navy Broadway Complex Project

Even if CCDC chose not to re-adopt DSD's CEQA Consistency Analysis, CEQA requires CCDC to consider whether a subsequent or supplemental EIR is required for the NBC Project. (Pub. Resources Code, §§ 21166, 21069, 21180, subd. (a), CEQA Guidelines, § 15162, subd. (c).) The duty to comply with CEQA arises whenever a public agency makes discretionary decision about whether to approve or carry out a project. (Pub. Resources Code, § 21080, subd. (a).) A subsequent or supplemental EIR may only be prepared in connection with a discretionary approval. According to the CEQA Guidelines, "if after the project is approved, any of the conditions [requiring preparation of a subsequent EIR] occurs, a subsequent EIR or negative declaration *shall only be prepared by the public agency which grants the next discretionary approval for the project, if any.*" (CEQA Guidelines, § 15162 subd. (c).)⁴ In this case, the discretionary approval triggering CEQA is CCDC's consistency determination under the Development Agreement.

⁴/ See, for example, *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480, in which the Fourth District Court of Appeal held that a supplemental or subsequent EIR was not required for a project in which a City denied an application for design review because there had been no secondary discretionary approval.

CCDC agrees that the City is the lead agency for the NBC project and that the City retained CEQA authority over the project in connection with subsequent discretionary approvals *made by the City* under the Development Agreement. As the City Attorney has acknowledged, however, CCDC, not the City, has the authority under the Development Agreement to make the consistency determination at issue in the present appeals.⁵ Because CCDC's consistency determination requires the exercise of discretion, it is a discretionary approval within the meaning of CEQA. (CEQA Guidelines, § 15162 subd. (c).) Thus, even though the City is the lead agency for the project, the Development Agreement also vests CCDC with some further discretionary authority over the project. (Pub. Resources Code, § 21080, subd. (a).)

Because CCDC's consistency determination is a discretionary approval, CCDC has an independent obligation to comply with CEQA in making that determination. As noted above, CCDC is best characterized as a "responsible agency" under CEQA. A responsible agency is a "public agency, other than the lead agency which has responsibility for carrying out or approving a project." (Pub. Resources Code, § 21069.) A responsible agency typically has permitting authority or approval power over some aspect of the overall project for which a lead agency has conducted CEQA review. (Pub. Resources Code, § 21069; CEQA Guidelines, §§ 15096, 15381; *Citizens Ass'n. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Ca.App.3d 151, 173-175.) Here, the Development Agreement vests with CCDC approval power, in the form of the consistency review and determination, over some aspects of the overall NBC Project for which the City, as lead agency, has already conducted a CEQA review. Based on its limited approval power over the project, CCDC's role in the development process for the NBC project is that of a responsible agency.

Notably, after a lead agency approves a project, if a project still requires a subsequent discretionary approval from a responsible agency, the latter agency cannot act until it has "considered" the project's environmental effects as described in the certified final EIR. (CEQA Guidelines, § 15096, subd. (f).) Generally, the responsible agency simply accepts the lead agency's decision regarding the document's adequacy. (See *Lexington Hills Assn. v. State of California* (1988) Cal.App.3d 415, 429-438.) If, however, the criteria of Public Resources Code section 21166 apply, the responsible agency must prepare a subsequent EIR before granting its discretionary approval. (CEQA Guidelines, §§ 15096, subd. (e)(3), 15162.)

Applying these principles to CCDC's consistency determination, it is clear that CCDC acted within its authority in re-adopting DSD's CEQA Consistency Analysis and in developing additional information to support DSD's and CCDC's conclusion that no further environmental review for the NBC project is required. The NBC project was approved by the City in 1992. At that time, the City certified the Final EIR/EIS prepared for the Project. As such, under CEQA, CCDC could not act on the project without considering the 1992 Final EIR/EIS prepared for that

⁵ / The City Attorney's September 15, 2006 memorandum concluded that "Under the Property Clause of the U.S. Constitution The City Council as the legislative body of the City exercised its discretion and delegated the determination of consistency review to CCDC. Any further right of review over CCDC's determination is not authorized by the Development Agreement." (City Attorney Memorandum, Sept. 15, 2006, p. 4.)

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Project. (CEQA Guidelines, § 15096, subd. (f).) Nor could CCDC approve the Superseding Master Plan and Phase I buildings if the criteria of Public Resources Code section 21166 were met. (CEQA Guidelines, §§ 15096, subd. (e)(3), 15162.) Therefore, CCDC reviewed the project's record, including DSD's previously prepared CEQA Consistency Analysis, the 1992 Final EIR/EIS prepared for the Project, the subsequent applicable environmental documents cited in DSD's Consistency Analysis, and additional materials prepared by CCDC staff, which included a modified initial study. Based on this review, CCDC re-adopted DSD's Consistency Analysis and adopted findings that no subsequent or supplemental EIR was required. As such, CCDC acted properly within its own authority under CEQA in re-adopting DSD's CEQA Consistency Analysis and making findings that no further environmental review for the NBC Project is required. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15164, subd. (e).)

For these reasons, the City Council should not grant the appeals on the basis of the City Attorney's mistaken position that CCDC exceeded its authority under CEQA or the Development Agreement authorizing the NBC Project. If the City Council determines that additional review is warranted, it could suspend or continue the hearing and direct DSD to undertake that task.

TD



City of San Diego
Development Services
1222 First Ave. • 3rd Floor
San Diego, CA 92101-4154
(619) 446-5210
www.sandiego.gov/development-services

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Development Permit Appeal Application

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See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Board of Zoning Appeals
- Appeal of a Hearing Officer Decision to revoke a permit
- Process Four Decision - Appeal to City Council

2. Appellant Name Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)
San Diego Navy Broadway Complex Coalition (c/o Cory J. Briggs, Briggs Law Corporation); and Kathryn Rhodes and Conrad Hartsell, M.D.,

Address	City	State	Zip Code	Telephone
99 East "C" Street, Suite 111	Upland	CA	91786	909-949-7115

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Manchester Pacific Gateway, LLC

4. Project Information

Permit/Approval Being Appealed & Permit/Approval No.:	Date of Decision:	City Project Manager:
Navy Broadway Complex Consistency Determination	November 28, 2007	Eli Sanchez

Decision (describe the permit/approval decision):
Centre City Development Corporation, Inc., took action on item 11 on its agenda for November 28, 2007, including but not limited to considering a new environmental determination by the Development Services Department for the applicant's superseding master plan and affirming a consistency determination previously made by CCDC

5. Reason for Appeal

- Factual Error
- Conflict with other matters
- Findings Not Supported
- New Information
- City-wide Significance (Process Four decisions only)

Description of Reasons for Appeal (Please relate your description to the allowable reasons for appeal noted above. Attach additional sheets if necessary.)

Centre City Development Corporation violated the California Environmental Quality Act, the Alquist-Priolo Earthquake Fault Zoning Act, and the Seismic Hazards Mapping Act in taking action on the matters that were the subject of Item 11 on CCDC's meeting agenda for November 28, 2007. There is new information and changed circumstances with respect to the Navy Broadway Complex that require subsequent environmental review under the California Environmental Quality Act; accordingly, CCDC erred in concluding, after considering the Superceding Master Plan's potential environmental impact, that subsequent environmental review is not required. In addition, there is new information that requires further examination of the project under the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act.

Note that, under the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act, subsequent geological reports may be required when new geologic data are obtained.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature

Date December 7, 2007

Note: Faxed appeals are not accepted.

L L L L L
 L L L L L Centre City
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Item #11

DATE ISSUED: November 20, 2007
 ATTENTION: Centre City Development Corporation
 Meeting of November 28, 2007, Agenda 655
 SUBJECT: Navy Broadway Complex Project (Site bounded by Harbor Drive,
 Broadway and Pacific Highway) – Consideration of New
 Environmental Determination by Development Services Department
 Regarding the Superseding Master Plan and Phase I Buildings for
 Blocks 2 and 3, Adoption of the Same and Affirmation of CCDC
 Consistency Determination Previously Approved by CCDC Board in
 July 2007 – Marina and Columbia Sub Areas of the Centre City
 Redevelopment Project

STAFF CONTACT: Eli Sanchez, Senior Project Manager

REQUESTED ACTION: Board consideration of a new California Environmental Quality
 Act (“CEQA”) (Pub. Resources Code, § 21100 et seq.) Consistency Analysis being prepared
 by the City of San Diego Development Services Department (“DSD”) that the criteria set
 forth in Public Resources Code section 21166 -- requiring preparation of a subsequent or
 supplemental environmental impact report (“EIR”) under the CEQA -- are not present with
 respect to the Superseding Master Plan and Phase I Buildings for Blocks 2 and 3
 (“Superseding Master Plan and Phase I Buildings”) of the Navy Broadway Complex
 (“NBC”) Project and re-adoption of Centre City Development Corporation (“CCDC”)
 Consistency Determination for said Superseding Master Plan and Phase I Buildings.

STAFF RECOMMENDATION: That the Board:

- Consider the CEQA Consistency Analysis being prepared by the Development
 Services Department for the Superseding Master Plan and Phase I Buildings, which is
 anticipated to conclude that no subsequent or supplemental EIR is required for the
 NBC Project (Analysis to be provided under separate cover), and consider a
 Resolution adopting such Consistency Analysis and affirming CCDC’s Consistency
 Determinations for the Superseding Master Plan and Phase I Buildings, which
 Consistency Determinations were adopted by the Board on July 25, 2007
 (Resolutions 2007-1 through 2007-5).

SUMMARY: On October 25, 2006, the CCDC Board of Directors (“Board”) considered the
 Developer’s application for the first master plan and proposals for or the Navy

Centre City Development Corporation
Meeting of November 28, 2007
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Administration Building submitted by the Developer in May 2006. That same date, the Board voted to approve staff recommendations with respect to such determinations, subject to limited modifications and additions. The Board also voted to adopt DSD's October 19, 2006 *CEQA Consistency Analysis for the Navy Broadway Complex* ("DSD CEQA Consistency Analysis"). The DSD CEQA Consistency Analysis considered whether a Subsequent or Supplement EIR was required for the NBC project pursuant to Public Resources Code section 21166.

On July 2, 2007, the Developer submitted a new *Master Plan and Phase 1 Buildings Basic Concept/Schematic Drawings [of Blocks 2 and 3] for the Navy Broadway Complex Project* ("Superseding Master Plan and Phase I Buildings"). As required by the Development Agreement, CCDC undertook a consistency analysis for the Superseding Master Plan and Phase I Buildings.

On July 25, 2007, the CCDC Board adopted findings that the Superseding Master Plan and Basic Concept Schematic Drawings are consistent with the Design Guidelines, subject to recommended conditions. The Board also adopted findings that the DSD CEQA Consistency Analysis continues to be adequate with respect to the Superseding Master Plan and that, pursuant to Public Resources Code section 21166, no Subsequent or Supplemental EIR is required for the project. (*Resolutions 2007-1 through 2007-5 (executed July 25, 2007).*) (See CCDC Staff Report, dated July 20, 2007 (Attachment B).

Two separate appeals were filed challenging CCDC's July 25, 2007 environmental determination for the NBC project Superseding Master Plan and Phase I Buildings. The first appeal was filed on August 1, 2007 by Katheryn Rhodes and Conrad Hartsell M.D. The second appeal was filed on August 6, 2007 by Briggs Law Corporation on behalf of the San Diego Navy Broadway Complex Coalition. The appeals were scheduled to be heard by the San Diego City Council on November 6, 2007. At the November 6, 2007 hearing, the City Council voted to continue the hearing to December 4, 2007. The City Council's decision to continue the hearing was based on a memorandum submitted by the San Diego City Attorney on November 5, 2007 (Attachment C) advising:

Since only the City and not CCDC has the authority to perform [a Public Resources Code, section] 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.

On November 19, 2007, Sabrina V. Teller, (CCDC's CEQA counsel), conferred by telephone with Councilmember Faulconer and his staff, representatives of the City Attorney's Office, Nancy Graham and Eli Sanchez to discuss the request that had been made to the City's DSD pursuant to Public Resources Code section 21166 for an independent review of the Superseding Master Plan for the Navy Broadway Complex, approved by this Board in July 2007. The appeals of CCDC's July 2007 decision to adopt DSD's previous environmental consistency determination for the first Master Plan as adequate and valid for

Centre City Development Corporation
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Page 3

the Superseding Master Plan are scheduled to be heard by the City Council on December 4, 2007. It is expected that DSD's new consistency determination will be completed prior to that hearing.

Although staff does not agree with the City Attorney's position that the Board has no authority under the NBC Development Agreement to make any CEQA determination for the project, the City Attorney has recommended that the Board adopt anew DSD's latest environmental determination and reapprove the Consistency Determination under the Development Agreement that is within CCDC's purview. Staff believes such an approach would provide valid and easily-understood documentation that a subsequent or supplemental EIR is not required for the NBC Project.

CONCLUSION

Staff recommends that the Board adopt anew DSD's forthcoming CEQA Consistency Analysis and affirm CCDC's Consistency Determinations for the Superseding Master Plan and Phase I Buildings previously adopted by the Board July 25, 2007. (Resolutions 2007-1 through 2007-5 (executed July 25, 2007).)

Respectfully Submitted,

Concurred by:

Eli Sanchez
Senior Project Manager

Nancy C. Graham
President

Attachments:

- Attachment A – Updated DSD CEQA Consistency Analysis
(under separate cover)
- Attachment B – CCDC Staff Report, dated July 20, 2007 (without attachments)
- Attachment C – San Diego City Attorney Memorandum, dated November 5, 2007
- Attachment D – Memorandum from Sabrina V. Teller to City Council, dated
November 13, 2007

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DATE ISSUED: July 20, 2007
 ATTENTION: Centre City Development Corporation
 Meeting of July 25, 2007
 SUBJECT: Consistency Determination for The Navy Broadway Complex
 Superseding Master Plan and Phase 1 Buildings for Blocks 2 and 3
 – Proposed by Manchester Financial Group to be Developed and
 Constructed on the Navy Broadway Complex Site -- Marina and
 Columbia Sub Areas of the Centre City Redevelopment Project
 STAFF CONTACT: Eli Sanchez, Senior Project Manager
 Suzanne Drolet, Associate Planner

REQUESTED ACTION: Board consideration of a consistency determination for the
Superseding Master Plan and the Phase 1 Buildings Basic Concept/Schematic Drawings located
 on Blocks 2 and 3 of the Navy Broadway Complex site bounded by Harbor Drive, Broadway and
 Pacific Highway ("Site"), in accordance with the "Agreement Between The City of San Diego
 ("City") and The United States of America ("Navy") Adopting a Development Plan and Urban
 Design Guidelines for the Redevelopment of the Navy Broadway Complex" ("Agreement")
 (Attachment A).

STAFF RECOMMENDATION: That the Board:

- **Adopt a resolution finding that the Superseding** Master Plan for the Navy Broadway Complex ("Project"), as submitted and dated July 2, 2007 ("**Superseding** Master Plan") by the Manchester Financial Group ("Developer"), is consistent with the Agreement's Development Plan and Urban Design Guidelines ("Design Guidelines"), with conditions (Attachment B);
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 2A, submitted and dated July 2, 2007 by the Developer (Attachment B), are consistent with the Agreement's Design Guidelines, with conditions;
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 2B, submitted and dated July 2, 2007, by the Developer (Attachment B) are consistent with the Agreement's Design Guidelines, with conditions;
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 3A, submitted and dated July 2, 2007, by the Developer (Attachment B) are consistent with the Agreement's Design Guidelines, with conditions; and
- **Adopt a resolution finding that the** Basic Concept/Schematic Drawings for Building 3B, submitted and dated July 2, 2007, by the Developer (Attachment B) are consistent with the Agreement's Design Guidelines, with conditions.

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Agenda Number **652**

ATTACHMENT B

SUMMARY: In 1992, the City of San Diego ("City") entered into the Agreement with the Navy and thereby adopting the Design Guidelines for redevelopment of the NBC Site. The Agreement gives CCDC the authority to act on behalf of the City to make a determination whether or not plans and specifications for any proposed project are consistent with the Design Guidelines. Staff has reviewed the plans and specifications for the Superseding Master Plan and Phase 1 Basic Concept/Schematic Drawings submitted July 2, 2007, in accordance with the Agreement, North Embarcadero Visionary Plan, the Environmental Impact Report prepared for the Agreement and adopted Design Guidelines. Staff reviewed both the "quantitative" and "qualitative" issues. With regard to the proposed Superseding Master Plan, which only evaluates the more straight-forward "quantitative" issues (i.e., numerical determinations such as square footage, height, setbacks, public open space, etc.), the analysis found no inconsistencies with the parameters set forth in the Agreement and Design Guidelines.

The "qualitative" issues are more complex involving detailed processes with regard to architecture, urban and public realm design (such as the north/south pedestrian walkway/paseo) for each proposed building site. CCDC assembled a panel of noted, nationally recognized design professionals ("Design Panel") to assist with the design review of the qualitative aspects of the proposed Master Plan and proposed buildings for the Site. "Qualitative" measures will continue to be reviewed as they evolve in the future and as each block and individual building(s) are reviewed at subsequent steps in accordance with the Design Guidelines.

This report provides an overview of the staff analyses of the plans and specifications, submitted on July 2, 2007, in accordance with the Agreement's Design Guidelines. Staff recommends that the Master Plan and Phase 1 Buildings may be found to be consistent with the Design Guidelines, subject to recommended conditions.

FISCAL CONSIDERATIONS: None.

COMMITTEE RECOMMENDATION: On July 20, 2007, the Real Estate Committee will consider the staff recommendation at a special meeting. Staff will provide an oral update to the Board at the regular meeting of July 25, 2007.

CENTRE CITY ADVISORY COMMITTEE RECOMMENDATION: On July 18, 2007, the CCAC took the following two actions:

- Motion #1:
 CCAC Vote: 21 in favor, 1 opposed, 1 recused
 PAC Vote: 19 in favor, 1 opposed, 1 recused
 Approval of the Master Plan for the Navy Broadway Complex as submitted and dated July 2, 2007 by the Manchester Financial Group is consistent with the Agreement's Development Plan and Urban Design Guidelines with conditions as outlined by staff's report dated July 13, 2007.
- Motion #2:
 CCAC Vote: 17 in favor, 3 opposed, 1 recused
 PAC Vote: 16 in favor, 2 opposed, 1 recused
 Table the design review (Basic Concept/Schematic drawings) for buildings 2A, 2B, 3A and 3B until the CCAC has ample time to review, discuss and make

motions on each building. The CCAC is scheduled to meet on Tuesday, July 24, 2007 to consider Basic Concept/Schematic drawings.

CHANGES SINCE BOARD COMMITTEE MEETING: Changes made since the Real Estate Committee report are noted in bold font.

OTHER RECOMMENDATIONS: None.

BACKGROUND

On October 25, 2006, the Board adopted Resolution 2006-03, by which it adopted the October 19, 2006 "CEQA Consistency Analysis for Navy Broadway Complex" issued by the City's Development Services Department ("DSD") and the determination by DSD based on such analysis that no further environmental review is warranted for the NBC Project. The Board also approved the staff recommendation on the Master Plan Consistency Determination, as conditioned. November 14, 2006, the Board adopted Resolution 2006-04 incorporating the Master Plan Consistency Determination, as conditioned and subject to certain modifications contained in Resolution 2006-04.

The Basic Concept/Schematic Drawings for the Navy Administration Building on Block 3B was also submitted in June 2006 for a consistency determination by CCDC. However, the Board took no action on such consideration. On November 8, 2006, the Board granted a request by the Developer to resubmit the "Consistency Determination Submittal Requirements" for the Navy Administration Building ("NAB"). At that meeting, the Board also directed staff to meet with the Developer to coordinate the process for the resubmission of the submittal package for the NAB. In December 2006, the Developer submitted revised drawings for the Master Plan and seven buildings on the Site for a consistency determination for each of the buildings in accordance with the Design Guidelines contained in the Agreement. The consistency determination currently before the Committee does not include buildings on Blocks 1 and 4.

DEVELOPMENT TEAM

ROLE/FIRM	CONTACT	OWNED BY
Property Owner United States Navy	Karen Ringel	United States of America
Developer Manchester Financial Group	Perry Dealy, President Manchester Development	Privately Owned
Construction Manager <i>Not Selected</i>		
General Contractor <i>Not Selected</i>		
Subcontractor <i>Not Selected</i>		
Architect Martinez + Cutri Tucker, Sadler	Joe Martinez John Hinkle	Privately Owned Privately Owned
Landscape Architect		

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ROLE/FIRM	CONTACT	OWNED BY
Wallace Roberts & Todd, Inc.	Kathleen Garcia	Privately Owned

DISCUSSION

Design Panel – An expert panel of nationally-recognized architects and urban designers (“Design Panel”) was assembled by CCDC to provide an independent, specialized and professional review of the proposed design of the project.

The Design Panel met with the Developer and CCDC staff on December 8, 2006, February 1, and April 3, 2007 to review the quality of design of the proposed Master Plan and seven buildings on the Site. The meetings were a collaborative effort of the Design Panel, the Developer and CCDC staff. During those meetings, the Design Panel made numerous suggestions to the Developer to enhance the quality of design of the proposed Project. The Design Panel suggestions resulted in the following four primary design principle modifications to the Master Plan:

1. The north/south passage extending from Broadway to Harbor Drive should be revised to create a plaza at each end, connected by a slightly narrowed and more linear paseo. The Design Panel expressed concerns that the paseo should be an activated space and therefore recommended that it be narrowed to 55 to 65 feet in width and bordered by active retail and restaurant spaces within a 2-3 story streetwall. This was to create a series of garden rooms and piazzas rather than a free-form public open space area that would be less pedestrian friendly and activated. In addition, the Design Panel suggested that the footprint of Building 2A be expanded to provide a more formal edge to the paseo and the public open space on Block 1A, which the Design Panel envisions as more of a flexible formal piazza to accommodate gatherings rather than a purely passive landscaped area.
2. The western blocks within the project should establish an approximately 75-foot tall “corniche” streetwall along Harbor Drive in order to create a strong edge to the waterfront, with the tower stepping back from the corniche.
3. Blocks 1B and 4B should be developed with “iconic” buildings, with the remainder of the blocks designed and developed with high quality “background” buildings. A final recommendation made by the Design Panel regarding the iconic buildings was to either create an invited-list competition or to otherwise carefully select an architect of proven and worldwide stature to design them.
4. The required museums and/or public attraction spaces should be located in an iconic building on Block 4B.

After the series of Design Panel workshops, the Design Panel felt that the Developer team had largely incorporated the elements previously discussed and were pleased with the general direction that the Master Plan had taken with some additional suggested adjustments. However, when it came to the architecture, the Design Panel considered the architecture to be barely conceptual in nature, with some structures such as buildings 2A and 1B having only a “blocked out” appearance, i.e. only at the very preliminary stages of design. Other structures were of concern due to the scale and rhythm along Harbor Drive, the difficulties of building facades and storefronts not representing an adequately developed architectural program.

Based on the Design Panel's review and the input received from the Committee on April 11 and May 16, 2007, the Developer revised the proposed submittal for the Master Plan and seven buildings to the Superseding Master Plan and the Basic Concept/Schematic Drawings for four buildings on Blocks 2 and 3 (Phase 1) that are currently being considered for a consistency determination by CCDC.

Four Steps of Consistency Review – The consistency review includes a review and analysis of whether the development proposed by the Developer substantially conforms to the Development Plan and Urban Design Guidelines. The submittal, review and consistency determination is to proceed in four steps as specified in Section 5.2 of the Agreement. The four steps involve the submission of plans and specifications at the following stages:

1. Basic Concept/Schematic Drawings
2. Design Development Drawings
3. Fifty percent (50%) Construction Drawings
4. One hundred percent (100%) Construction Drawings

A further consistency determination will be made as each individual block(s) and/or building(s), together with the more advanced plans and specifications for the public open space for each block, are submitted and reviewed by CCDC in accordance with Section 5.2 of the Agreement. No development on any portion of the Project can proceed under the Agreement unless and until a determination of consistency has been made by CCDC, and no construction activities on any portion of the Project may commence until CCDC issues the final consistency determinations of each portion or phase of the Project. The Developer, in previous public meetings, has made a commitment to the Board to follow this process as development proceeds.

The four step process is contained in Section 5.2 of the Agreement. The progression of drawings through the four step process shall illustrate how the conditions imposed in connection with previous submissions have been accommodated.

The current review is for consistency of the Superseding Master Plan and Phase 1 Buildings in Blocks 2 and 3 dated July 2, 2007, at the Basic Concept/Schematic Design Drawing stage. The consistency determination matrices for the Superseding Master Plan and Phase 1 Buildings in Blocks 2 and 3 are attached as Attachment C.

The Agreement sets forth minimum submittal requirements for this stage and requires that these drawings are "sufficiently detailed and at a scale to enable CCDC to make the determination of consistency." The Phase 1 Buildings will continue to proceed through the four step consistency determination process as the Developer moves forward with the more advanced drawing stages. The next phase of proposed development on all or portions of Blocks 1 and 4 will be required to submit Basic Concept/Schematic Drawings at the initial stage of review for consistency.

Master Plan Concept – The Navy Broadway Complex Project "Master Plan" is a set of drawings illustrating the conceptual Project in its entirety and establishes the foundation for the distribution of uses and building volumes on the Project site. The Master Plan includes the site plan/ground level usage and basic massing, volumes, and forms of buildings in order to verify required building constraints are observed and that the proposed programs and parking are within the parameters allowed by the Developer Agreement, circulation/development site access is also

addressed. The Master Plan does not include specific design programs or a level of detail that would enable a qualitative assessment of design at the individual site level. Each individual building/site that is submitted for a Consistency Determination is evaluated against the basic criteria established by the Development Agreement as represented in the Master Plan. If any one of the proposed buildings, whose volumes, massing, and program of uses as represented in this Master Plan, is proposed to be changed in basic footprint, volume, massing, or program of uses in a subsequent submittal of the four-phase review process established by the Developer Agreement, the Master Plan shall be updated to reflect the new building in context with the other proposed or approved buildings and site organization. Architectural refinements and adjustments to building volumes and massing within the parameters established by the Developer Agreement shall not require preparation of an amended Master Plan.

Consistency Review – Superseding Master Plan – Staff has reviewed the Superseding Master Plan, dated July 2, 2007, for consistency and recommends that the Board find the Superseding Master Plan consistent with the Agreement’s Design Guidelines, subject to the conditions included in the Navy Broadway Complex Superseding Master Plan & Phase 1 Building Basic Concept/Schematic Drawings - CCDC Consistency Determination (Attachment C). A summary of the staff findings and conditions for the Master Plan are set forth below.

The Superseding Master Plan is found consistent with the “quantitative” standards and maximums regarding allowable land uses, intensity of uses, public open space, museum square footage and parking standards. Regarding land uses, the drawings indicate ‘condo-hotel’ and ‘condo-office’. Condominium ownership of these allowed uses may require legal and California Coastal Commission review outside the scope of CCDC’s review.

All proposed “quantitative” development standards such as heights, setbacks, access locations and sidewalk dimensions are consistent with the Design Guidelines, with a few minor conditions/corrections. The proposed conditions contain clarifications and explanations of what follow-through will be required in subsequent detailed submittals in accordance with Section 5.2 of the Agreement, especially to implement the North Embarcadero Visionary Plan streetscape design.

Staff finds all proposed building forms fit within the allowable envelopes; that the tower massing maximizes inland views; that the buildings appropriately frame the streets, public open space and define a spacious north/south passage. Staff has included comments/conditions to ensure that *key design features will be maintained and consistently developed in much greater detail during required subsequent building submittals of plans and specifications for review under Section 5.2 of the Agreement.* Staff recommends that the Superseding Master Plan may be found to be consistent with the Agreement’s Design Guidelines.

Design Review – Consistency Determination – Below is a summary of the consistency review as summarized by Gwynne Pugh, a member of the Design Panel. A copy of the “Design Review of Blocks 2 and 3 For Consistency Determination” letter prepared by Gwynne Pugh is attached as Attachment D.

The Agreement states that *the architecture shall establish a high quality of design. While it is not the intent for the entire Development to represent a single architectural solution, The Agreement does require the establishment of a compatible vocabulary of forms and materials to create a*

visually harmonious grouping of buildings. Consequently the development should enhance not just the aesthetic and visual values but also the general experience and quality of life.

Within the context of the Navy Broadway Complex buildings 4A and 1A are required to be 'iconic' while the remaining structures should be of high quality design and more retiring or part of the 'fabric of the City'. To these ends these structures should enhance not just the aesthetic and visual values but also to add to the quality of life and to the visceral experience engendered by the development.

Buildings need to respond to the environmental conditions that will make each structure unique, as well as integrated into the development as a whole. The structures need to contribute to the public realm, as well as benefit from the opportunities that are generated by these premium sites consequently producing the high quality of design.

Consistency Review – Block 2A – The massing and general forms of this building are good but significant attention needs to be paid to the pedestrian scale. Texture, scale, color, detail, articulation and visual interest need to be addressed. The tower has good articulation and form providing interest and distinction to the building. More attention needs to be paid to the intrinsic aspects of sustainability based on orientation and weather aspects. Staff recommends that Block 2A may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

Consistency Review – Block 2B – The massing and general forms of this building are good but significant attention needs to be paid to the pedestrian scale. Texture, scale, color, detail, articulation and visual interest need to be addressed. The towers have good articulation and form providing interest and distinction to the building. More attention needs to be paid to the intrinsic aspects of sustainability based on orientation and weather aspects. This structure has missed a prime opportunity to separate the entry functions of the hotel and the offices. A hotel entrance on the promenade could work for considerable mutual benefit to the public realm and to the functions of the structure itself. Staff recommends that Block 2B may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

Consistency Review – Block 3A – This structure is elegant and well detailed with good massing and form, and connected to the environment. Attention to the issues regarding the loading bays, shading of the southerly elevation and articulation of the northerly portion of the westerly elevation should be taken. With good refinement and design development this should be a successful structure and complement the fabric of the development. Staff recommends that Block 3A may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

Consistency Review – Block 3B – Staff finds that this building presents a uniquely-inspired architecture with a subtle nautical theme appropriate for its position in the Project site and proposed use for Navy administrative facilities. The boat-shaped building's curved floor plan offer gently curving facades along the north and south faces that peel away to reveal a transparent west façade to the bay and east elevation offering the slenderest profile to the upland areas. The building is well-articulated and employs quality materials that create interest and variety to promote the pedestrian scale of the street and north-south passage. Abundant landscaping around the building creates a park-like public setting at what will eventually be a highly traveled space as pedestrians walk between the public open space at 1A and the museum spaces at Block 4, and beyond. Staff recommends that Block 3B may be found to be consistent with the Agreement's Design Guidelines subject to conditions.

PROJECT ANALYSIS AND IMPACT ASSESSMENT

CEQA Review of the First Master Plan – On October 19, 2006, the DSD issued a memorandum explaining DSD's CEQA Consistency Analysis for the NBC Project (the "CEQA Consistency Analysis") based on the First Master Plan, in which pursuant to Public Resources Code section 21166, DSD reviewed the proposed project against the 1992 NBC Project EIR/EIS and several more recent EIRs which considered or assumed development approved for the NBC Project. DSD found that the 1992 NBC Project EIR/EIS, the 1992 Final Master EIR for the Centre City Redevelopment Project, the 1999 Final Subsequent EIR for the Ballpark and Ancillary Development Projects, the 2000 North Embarcadero Visionary Plan EIR, and the 2006 Downtown Community Plan Final EIR (collectively, the "Environmental Documents") all either adequately evaluated the NBC Project or else assumed the full development of the NBC Project in their assessments of other downtown plans and projects. DSD also determined that the mitigation required to be implemented for the NBC Project and related projects (i.e., the Centre City Redevelopment Project, the Ballpark and Ancillary Development Project, the North Embarcadero Visionary Plan and the 2006 Downtown Community Plan) adequately addressed the environmental impacts associated with the NBC Project.

DSD concluded that the First Master Plan was substantially the same as the project assumed in the 1992 NBC Project Final EIR/EIS, and that subsequent environmental documents covering the downtown area assumed the development contemplated for the NBC Project and had updated the impacts analysis for potentially affected resources, such as transportation and parking, air quality, land uses, cultural resources, and others. Therefore, DSD concluded that the conditions listed in Public Resources Code section 21166 triggering subsequent or supplemental environmental review were not present and that no further environmental documentation was required.

Based on DSD's CEQA Consistency Analysis, CCDC staff determined, consistent with DSD's conclusions, that no further environmental review was necessary for the Master Plan as originally proposed. In particular, staff found that neither the proposed conditions for the First Master Plan nor the Navy building's inconsistency with the Development Agreement triggered additional CEQA review because they did not rise to a level of significant adverse aesthetic impacts or significant impacts on the physical environment. Therefore, CCDC Staff concluded that no further environmental review, beyond the analysis contained in their October 25, 2006 staff report and in the accompanying CEQA analysis performed by DSD pursuant to Public Resources Code section 21166, was required for the First Master Plan. On October 25, 2006, the CCDC Board adopted CCDC Staff's recommendation that no further environmental review was warranted pursuant to Section 21166 of CEQA.

Changes Between the First Master Plan and the Superseding Master Plan – Only minor changes have been made to the First Master Plan to become the currently proposed Superseding Master Plan and Phase I Buildings. Specifically, differences between the First Master Plan and the Superseding Master Plan include:

- The Superseding Master Plan includes a narrower Paseo than proposed in the First Master Plan;
- The Superseding Master Plan modifies the upper level of the towers; and

- The proposed Superseding Master Plan proposes slightly different square footage for proposed uses than did the First Master Plan. The following table shows the square footage proposed under the First Master Plan with those proposed by the Superseding Master Plan:

Project component	First Master Plan	Proposed Superseding Master Plan	<i>Difference</i>
Office	1,650,000	1,646,793 sf	-3207 sf
Hotel	1,220,000 sf (1,472 rooms)	1,181,641 sf (1,575 rooms)	-38,359 sf (+103 rooms)
Retail	25,000	25,000 sf	—
Public Attraction	41,000	40,000 sf	-1000 sf
Total sf	2,936,000	2,893,434 sf	-42,566
Open Space	1.9 acres	1.9 acres	—
Parking	2,961	2,988	+27

Environmental impact of the proposed Superseding Master Plan and Phase I Buildings –

By the terms of the Agreement, CCDC has only limited ability to conduct its own environmental review. The Urban Design Guidelines adopted with the Agreement set forth largely objective criteria by which future proposed projects within the scope of the Agreement should be assessed by CCDC. Issues relating to maximum-square footage, amount of parking, building heights, setbacks, transparency of facades, and pedestrian access all involve objective criteria, with no discretion afforded to CCDC to impose additional conditions on the Project; however, the Design Guidelines do contain some subjective criteria, and therefore, CCDC must exercise discretion over the design of the NBC Project, albeit limited to the aesthetic considerations set forth in those subjective criteria of the Design Guidelines.

The exercise of *some* discretion does not automatically qualify an agency action as a project subject to CEQA. To trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to “mitigate . . . environmental damage” to some degree (*Leach v. City of San Diego* (1990) 200 Cal.App.3d 389, 395.) Although CCDC has only limited discretion to review the Project as defined in the Agreement for consistency with the subjective criteria in the Design Guidelines, consistent with the approach taken for the First Master Plan, staff has taken a conservative approach and assumed that its consistency determination is discretionary, and therefore, potentially subject to CEQA.

As stated, staff finds the proposed Superseding Master Plan to be substantially similar to the First Master Plan, both in terms of uses and intensity. In addition, staff finds that the proposed Superseding Master Plan and Phase I Buildings are consistent with the Agreement, subject to conditions, which are substantially similar to those approved for the First Master Plan. Therefore, CCDC Staff finds that DSD's recent CEQA Consistency

Analysis continues to be valid, relevant, and applicable to the NBC Project as proposed by the Superseding Master Plan.

Based on DSD's CEQA Consistency Analysis, as well as the Initial Study attached to this report and prepared by staff for the proposed Superseding Master Plan and Phase I Buildings, Staff finds that none of the conditions described by Section 21166 of CEQA applies. As discussed in the associated Initial Study, the proposed Superseding Master Plan or the circumstances under which it would be undertaken would not result in any new significant impacts not discussed in the Environmental Documents, nor any substantial increase in the severity of impacts identified by the Environmental Documents. In addition, no new information of substantial importance has become available since the Environmental Documents were prepared regarding new significant impacts, or feasibility of mitigation measures or alternatives that apply to the proposed Superseding Master Plan.

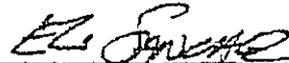
Because none of the criteria of Section 21166 of CEQA are present here, staff concludes that the preparation of a Subsequent or Supplemental EIR is not required. The proposed Superseding Master Plan is adequately addressed in the prior Environmental Documents that were certified for the 1990 NBC Project and other projects in the vicinity. Project impacts are adequately addressed and appropriate mitigation has been identified. No further environmental review is required.

CONCLUSION

CCDC staff recommends that the Board find that the Master Plan and Phase I Building Basic Concept/Schematic Drawings for Blocks 2 and 3 are consistent with the Agreement with recommended conditions.

Respectfully submitted,

Concurred:



Eli Sanchez
Senior Project Manager



Nancy Graham
President



Suzanne Drolet
Associate Project Manager

Attachments:

- Attachment A -- Development Agreement
- Attachment B -- Superseding Master Plan & Basic Concept/Schematic Drawings dated July 2, 2007 -- Forwarded with Real Estate Committee Package for July 20, 2007 Meeting
- Attachment C -- Updated Consistency Determination Matrices -- Master Plan & Phase I Buildings
- Attachment D -- Gwynne Pugh Design Review Letter
- Attachment E -- CEQA Initial Study

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: November 5, 2007
TO: Honorable Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: On the Appeal of a CCDC Environmental Determination Under Public Resources Code Section 21166 in Relation to the Navy Broadway Complex Project, Hearing Scheduled for November 6, 2007, Agenda Item 335

The City Attorney's office attaches herein the City Attorney's October 4, 2006 Memorandum to the City Council and Mayor relating to the responsibility of the City to perform CEQA environmental determinations in relation to the Navy Broadway Complex Project. **CCDC is not a party to the Development Agreement and is completing the Consistency Determination, and any amendments thereto, on behalf of the City.**

Under the Development Agreement with the Navy, the City did not delegate its CEQA responsibilities to CCDC. Consistent with the City Attorney's October 4, 2006 advice, the City staff did originally perform an environmental determination under the provisions of the California Environmental Quality Act [CEQA] Section 21166 before CCDC finalized the original Consistency Determination under the Development Agreement.

Within the past few months, CCDC amended the Consistency Determination, but before finalizing it, performed and finalized a 21166 environmental determination which is the subject of the appeal tomorrow. Since only the City and not CCDC has the authority to perform this 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.


MICHAEL J. AGUIRRE, City Attorney

MJA:SRE:pev
Attachment
MS-2007-10

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: October 4, 2006
TO: Honorable Mayor and Members of the City Council
FROM: City Attorney
SUBJECT: Applicability of Public Resources Code Sections 21166 and 21151(c) to the Navy Broadway Complex Project.

INTRODUCTION

In 1992 the City and the United States, Department of Defense, Naval Facilities Engineering Command [Navy], entered into a written agreement entitled "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" [Development Agreement].

Prior to entering into this Development Agreement, in October 1990, the City prepared and certified an Environmental Impact Report [1990 EIR] under California Environmental Quality Act [CEQA] and the Navy prepared an Environmental Impact Statement [EIS] under the National Environmental Policy Act [NEPA] to evaluate the environmental impacts of the Navy Broadway Complex Project. The City of San Diego was identified as the lead agency for purposes of the EIR. CCDC was one of the City entities, among others, consulted in the preparation of the EIR. In 2006, the Navy selected Manchester as the Master Developer for the Navy Broadway Complex Project.

The City Council and the Centre City Development Corporation [CCDC] previously requested clarification on the role of the City of San Diego [City] in reviewing or overseeing the consistency determination of CCDC for the Navy Broadway Complex Project. In response to that prior request, the Office of the City Attorney issued a Memorandum of Law on September 15, 2006. An Addendum to the Memorandum of Law was issued by the City Attorney on September 18, 2006 explaining the City's role in the development of the Navy Broadway Complex Project. On September 19, 2006, the San Diego City Council heard Item 330 where the Navy Broadway Complex Project was discussed. During this discussion, the City Attorney was requested to clarify the applicability of CEQA, Public Resources Code Sections 21166 and 21151(c), to the proposed Navy Broadway Complex Project. See Attachment A.

October 3, 2006

Page 2

In addition, a Final Environmental Impact Report for the Proposed San Diego Downtown Community Plan, the CCDC Planned District Ordinance [PDO], and the 10th Amendment to the Downtown Redevelopment Plan, SCH No. 2003041001, was prepared and finalized by CCDC in March 2006 [2006 EIR]. It has yet to be determined whether the 2006 EIR may or may not be used as the additional EIR for the Navy Broadway Complex Project if a 21166 evaluation determines that further documentation is necessary due to changed circumstances. In 2006, the City adopted as its own this 2006 EIR when it approved the Downtown Community Plan, the PDO, and the 10th Amendment to the Downtown Redevelopment Plan.

The Navy has already determined that a second look at the environmental impacts of the Navy Broadway Complex Project is justified and has performed a subsequent environmental analysis under NEPA, including traffic and air quality studies. This Memo analyzes the requisite steps necessary for the City to fulfill its CEQA responsibilities in relation to the Navy Broadway Complex Project.

QUESTIONS PRESENTED

1. As lead agency for the Navy Broadway Complex Project, is the City responsible for evaluating the current adequacy of the 1990 EIR under the provisions of CEQA [Public Resources Code Section 21166]?
2. Would a 21166 evaluation have to be completed before CCDC completes a consistency determination for the City?
3. Is a CEQA determination associated with CCDC's consistency determination appealable to the San Diego City Council under the provisions of CEQA [Public Resources Code Section 21151(c)]?

SHORT ANSWERS

1. Yes. As lead agency for the Navy Broadway Complex Project, the City is responsible for evaluating the current adequacy of the 1990 EIR under the provisions of CEQA [Public Resources Code Section 21166].
2. Yes. A 21166 evaluation will have to be completed before CCDC completes a consistency determination for the City.
3. Yes. A CEQA determination associated with CCDC's consistency determination is appealable to the San Diego City Council under the provisions of CEQA [Public Resources Code Section 21151(c)].

LEGAL ANALYSIS

1. As lead agency for the Navy Broadway Complex Project, the City is responsible for evaluating the current adequacy of the 1990 EIR under the provisions of CEQA [Public Resources Code Section 21166].

Honorable Mayor and Members of the City Council

October 3, 2006

Page 3

The City retained CEQA responsibilities under the Development Agreement. The City only subcontracted out to CCDC its responsibility for completion of its contractual obligation under the Development Agreement to perform a consistency determination and the terms of the contract spell out the duties and responsibilities of CCDC as subcontractor. The City, for purposes of the 1990 EIR, was the express designated lead agency for the Navy Broadway Complex Project. A "lead agency" under CEQA is the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. See Public Resources Code Section 21067. For purposes of entering into and carrying out the Development Agreement, the City remains the lead agency. This responsibility has not been and could not be delegated away.

So significant is the role of the lead agency that CEQA proscribes delegation. This prohibition was articulated in *Kleisi v. City of Glendale* (1976) 56 Cal. App. 3d 770, 779 [128 Cal. Rptr. 781]: "Neither the CEQA nor the state guidelines authorize the city council to delegate its review and consideration function to another body. Delegation is inconsistent with the purpose of the review and consideration function since it insulates the members of the council from public awareness and possible reaction to the individual members' environmental and economic values. Delegation is inconsistent with the purposes of the EIR itself."

Planning and Conservation League et al. v. Department of Water Resources, Central Coast Water Authority (2000) 83 Cal. App. 4th 892, 907, 100 Cal. Rptr. 2d 173. See *Robert T. Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307, 248 Cal. Rptr. 352; see also *Hayward Area Planning Association v. City of Hayward* (2005) 128 Cal. App. 4th 176, 184, 26 Cal. Rptr. 3d 783; *L.R. Hubbard, Jr. v. City of San Diego* (1976) 55 Cal. App. 3d 380, 127 Cal. Rptr. 587.

Contractually, the Development Agreement is clear as to the role of the City and the role of CCDC. It is clear that CCDC is responsible for performing the consistency determination, but it is also clear by the contract terms that the City retained its CEQA responsibilities. See Sections 5.2 and 9.9 of the Development Agreement. Section 9.9 of the Development Agreement expressly states:

[T]he City agrees, consistent with California Public Resources Code Section 21166, that no subsequent or supplemental environmental impact report shall be required by the City for the subsequent implementation of the Project unless required by the criteria set forth in Section 21166.

Furthermore, Attachment 4 of the Development Agreement references, in a footnote, the possibility of additional environmental analysis to be performed by the Navy and the City:

interfering portions of the Pacific Highway median, if any, shall be removed and other traffic mitigation measures and street

modifications required in the Final Environmental Impact Report and Final Environmental Impact Statement for the Navy Broadway Complex Project shall be implemented unless the City and Navy subsequently find that the traffic circulation and air quality considerations discussed in the EIR/EIS and which led to the inclusion of the requirements for such improvements in the Project are found to be insignificant, are mitigated to a level of insignificance through other actions, or findings are made that override these considerations.

Given that these CEQA duties remain with the City, the question to be determined is whether the City need do anything more than what it did in 1990 when it certified the EIR. The provisions of CEQA provide for a subsequent review of the adequacy of the 1990 EIR where subsequent discretionary actions are to occur. Subsequent discretionary actions by the City may, and on behalf of the City will, take place. The 1990 EIR is presumed to comply with the provisions of CEQA for purposes of its use by responsible agencies "unless the provisions of Section 21166 are applicable." See Public Resources Code Section 21169.2. A Section 21166 review by the City will determine whether there have been substantial changes justifying supplemental or additional environmental documentation/review. Section 21166 comes into play now because in-depth review has already occurred in 1990, the time for challenging the sufficiency of the original EIR has expired, the question remaining is whether circumstances have changed enough to justify repeating a substantial portion of the process, and a subsequent discretionary action is imminent. See *River Valley Preservation Project v. Metropolitan Transit Dev. Bd.* (1995, 4th Dist.) 37 Cal. App. 4th 154, 43 Cal. Rptr. 2d 501. See also Section 15162 of the CEQA Guidelines.

Subsequent actions by and on behalf of the City are contemplated in the Development Agreement. "Building and other related permits for the development of the Property shall be issued by the City in a timely manner." See Section 5.6 of Development Agreement. The Development Agreement, however, also expressly states in Section 1.2 that the redevelopment at the Navy Broadway Complex "shall not require any discretionary permits from the City. Building and similar ministerial permits shall be obtained by the Developer of the Broadway Complex only for those structures which are not to be occupied, in whole or in substantial part, by the Navy." See Section 1.2 of Development Agreement. However, agreeing by contract that no further discretionary permits will be needed (and thus no further CEQA review would follow), does not supercede the City's responsibilities under the law where a discretionary permit or approval is in fact needed and CEQA compliance is required.

A governmental entity cannot contract away its CEQA responsibilities. Contract terms do not supercede the requirements of CEQA. Furthermore, the provisions found in Section 1.2 of the Development Agreement assume that a "building permit" is a ministerial action. It is not the case, however, that in every instance a building permit is a ministerial action. It remains to be determined whether other permitting actions taken by the City will trigger CEQA because they may be discretionary. See *Sheila Donahue Miller v. City of Hermosa Beach* (1993) 13 Cal. App. 4th 1118, 17 Cal. Rptr. 2d 408; *Friends of Westwood v. City of Los Angeles et al* (1987) 191 cal.

App. 3d 259, 235 Cal. Rptr. 788. In addition, there may be other discretionary actions or approvals that the City may conduct with respect to the Navy Broadway Complex Project that do not involve the issuance of "permits." It also remains to be seen what other discretionary approvals or actions will be triggered by other governmental agencies as they permit, authorize or otherwise approve any portion or all of this project moving forward. See *County of Orange v. Superior Court of Orange County; Vedanta Society of Southern California* (2003) 113 Cal. App. 4th 1, 7-8, 6 Cal. Rptr. 3d 285. Any one of these future discretionary approvals may trigger CEQA and a determination by the City or others under Section 21166 of whether the 1990 EIR, 16 or more years later, is good enough.

2. A 21166 evaluation will have to be completed before CCDC completes a consistency determination for the City.

Although not a permit, the consistency determination required by the Development Agreement and performed by CCDC on behalf of the City is a discretionary action and triggers CEQA compliance. The evaluation of the plans and specifications by CCDC will trigger some discretion and judgment. The City has not delegated its CEQA responsibilities to CCDC for this consistency determination. See Section 1.2 of Development Agreement. See *Sheila Donakue Miller v. City of Hermosa Beach* (1993) 13 Cal. App. 4th 1118, 17 Cal. Rptr. 2d 408; *Friends of Westwood v. City of Los Angeles et al* (1987) 191 Cal. App. 3d 259, 235 Cal. Rptr. 788. Before this discretionary action can occur, a 21166 evaluation by the City, and any subsequent environmental documentation, if any, will need to be completed. See Section 15162 of the CEQA Guidelines.

In a situation where the 21166 evaluation demonstrates the need to prepare subsequent environmental documentation, neither the lead agency nor any other responsible agency can grant a subsequent discretionary approval for the project until the subsequent environmental document has been adopted/certified. See Section 15162(c) of CEQA Guidelines. Once all discretionary approvals have been obtained, no further EIRs may be required by the public agency. See *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000, 4th Dist.) 82 Cal. App. 4th 473, 98 Cal. Rptr. 2d 202. See *Santa Teresa Citizen Action Group v. City of San Jose* (2003, 6th Dist.) 114 Cal. App. 4th 589. Courts have set aside government actions where review of the current adequacy of an EIR, given changed circumstances, has not occurred first. See *El Morro Community Assn. v. California Dept. of Parks & Recreation* (2004, 4th Dist.) 122 Cal. App. 4th 1341; see also Section 15162 of the CEQA Guidelines.

The Navy has already determined that a second look at the environmental impacts of the Navy Broadway Complex Project is justified and has performed a subsequent environmental analysis under NEPA, including traffic and air quality studies. A 21166 review by the City, and any subsequent CEQA document determined to be necessary, if any, should cover any future discretionary actions associated with this project, unless and until any future substantial changes occur. A 21166 review now is also consistent with what the Navy has already determined is necessary under NEPA.

3. A CEQA determination associated with CCDC's consistency determination is appealable to the San Diego City Council under the provisions of CEQA [Public Resources Code Section 21151(c)].

Pursuant to Section 21151(c) of the Public Resources Code:

If a non-elected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.

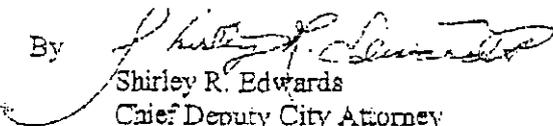
In this case, the local lead agency is the City of San Diego. Any CEQA determination associated with CCDC's consistency determination is appealable to the full City Council as provided for under Section 21151(c). See *Bakersfield Citizens for Local Control v. City of Bakersfield et al* (2004) 124 Cal. App. 4th 1184, 1201-1202, 22 Cal. Rptr. 3d 203, citing *Vedanta Society of So. California v. California Quarries, Ltd.* (2000) 84 Cal. App. 4th 517, 525-526, 100 Cal. Rptr. 2d 889.

CONCLUSION

Based upon the analysis provided herein, it is the recommendation of the Office of the City Attorney that before CCDC make its consistency determination, the City complete a 21166 evaluation to determine whether any further environmental documentation under CEQA is necessary for the Navy Broadway Complex Project.

MICHAEL J. AGUIRRE, City Attorney

By


Shirley R. Edwards

Chief Deputy City Attorney

SRE:pev

cc: Elizabeth Maland, City Clerk
Development Services Department Director
Centre City Development Corporation

ATTACHMENT A

Section 21166 states:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

To: Honorable Mayor and City Councilmembers

From: City Attorney

Date: November 5, 2007

Re: On the Appeal of a CCDC Environmental Determination under Public Resources Code Section 21166 in relation to the Navy Broadway Complex Project, Hearing Scheduled for November 6, 2007, Agenda Item 335.

The City Attorney's office attaches herein the City Attorney's October 4, 2006 Memorandum to the City Council and Mayor relating to the responsibility of the City to perform CEQA environmental determinations in relation to the Navy Broadway Complex Project. **CCDC is not a party to the Development Agreement and is completing the Consistency Determination, and any amendments thereto, on behalf of the City.**

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Within the past few months, CCDC amended the Consistency Determination, but before finalizing it, performed and finalized a 21166 environmental determination which is the subject of the appeal tomorrow. Since **only** the City and not CCDC has the authority to perform this 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.

**REMY, THOMAS,
MOOSE and MANLEY,
LLP**

MICHAEL H. REMY
1944 - 2003

TINA A. THOMAS
JAMES G. MOOSE
WHITMAN F. MANLEY
ANDREA K. LEISY
TIFFANY K. WRIGHT
SABRINA V. TELLER
ASHLE T. CROCKER

BRIAN J. PLANT
OF COUNSEL

ATTORNEYS AT LAW

455 CAPITOL MALL, SUITE 210
SACRAMENTO, CALIFORNIA 95814

Telephone: (916) 443-2745
Facsimile: (916) 443-9017
E-mail: info@rtmmlaw.com
<http://www.rtmmlaw.com>

JENNIFER S. HOLMAN
MICHELE A. TONG
AMY R. HIGUERA
HOWARD F. WILKINS III
MEGAN M. QUINN
AMANDA R. BERLIN
JASON W. HOLDER
LAURA M. HARRIS
KATHRYN C. COTTER
COURTNEY R. FRIEH

M E M O R A N D U M

TO: Honorable Mayor and City Council Members

FROM: Sabrina V. Teller, CEQA counsel for CCDC

DATE: November 13, 2007

RE: Response to City Attorney Memorandum (November 5, 2007) regarding "On the Appeal of a CCDC Environmental Determination Under Public Resources Code Section 21166 in Relation to the Navy Broadway Complex Project, Hearing Scheduled for November 6, 2007, Agenda Item 335"

On November 6, 2007, the San Diego City Council voted to continue its hearing on the appeals of the decision of the Centre City Development Corporation's Board of Directors to re-adopt a previously prepared environmental determination for the Superseding Master Plan for the redevelopment of the Navy Broadway Complex (NBC) Project. The decision to continue the hearing was based at least in part on a memorandum submitted by the San Diego City Attorney on November 5, 2007, advising:

Since only the City and not CCDC has the authority to perform [a Public Resources Code, section] 21166 environmental determination, the City Attorney recommends granting the appeal and remanding the matter to City staff to perform the necessary 21166 analysis under CEQA so that CCDC thereafter may proceed with an amendment to the Consistency Determination.

While CCDC neither supported nor opposed the continuance, we welcome the opportunity to respond to the new issues raised at the last minute by the City Attorney.

First, we would like to clarify that CCDC did not amend or substitute DSD's determination. Rather, the CCDC Board re-adopted DSD's October 19, 2006 CEQA

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Consistency Analysis for the Navy Broadway Complex (DSD's CEQA Consistency Analysis), which was previously upheld by the City Council when the same appellants, alleging the same claims, were heard last January. (See CCDC Resolution No. 2007-01, July 25, 2007.) Upon Manchester's submission of a superseding master plan on July 2, 2007, CCDC staff undertook a review of the same documents considered by DSD in its CEQA Consistency Analysis to be able to confirm to the CCDC Board that the DSD analysis was comprehensive and complete. Staff's review took the form of a modified initial study for the purpose of documenting the scope of their review, but the initial study merely informed the conclusions and recommendations of the staff report to its Board; it was not a substitute or amendment to DSD's CEQA Consistency Analysis. (See Initial Study, Attachment E to CCDC Staff Report, July 20, 2007, regarding the Consistency Determination for the NBC Superseding Master Plan and Phase I Buildings.) Prior to its approval of the Superseding Master Plan that is the subject of the appeals currently pending before the Council, the CCDC Board considered DSD's October 19, 2006 CEQA Consistency Analysis, as informed by CCDC's additional information in the July 20, 2007 staff report, and re-adopted DSD's CEQA Consistency Analysis.

Second, we respectfully disagree with the City Attorney's interpretation of CEQA in his conclusion that CCDC has no authority or obligations under CEQA with respect to the NBC project. As the City Attorney has previously acknowledged, CCDC is a "responsible agency" for the project under CEQA.¹ As explained further below, CCDC could not have made its own consistency determinations for the Master Plan and Phase I buildings required under the Development Agreement without first considering whether the circumstances of Public Resources Code section 21166 applied. (CEQA Guidelines, §§ 15096, subds. (e), (f), 15162.)

Third, if the City Council determines that DSD should undertake another review of the Superseding Master Plan pursuant to Public Resources Code section 21166, the appropriate action would not be to grant the appeals, as the City Attorney suggests, but rather, to suspend or continue the hearing and to direct that DSD perform that task and report back to the Council with its conclusions.

CCDC Re-adopted DSD's CEQA Consistency Analysis

Background

Manchester Financial Group first submitted a master plan to CCDC for a consistency determination under the Development Agreement in May 2006. Before CCDC made its final consistency determinations on that master plan, DSD conducted an analysis under Public Resources Code section 21166 for the NBC project and submitted an explanatory letter to CCDC and the City Council detailing its conclusions. (DSD (Oct. 19, 2006) CEQA Consistency Analysis for the Navy Broadway Complex.) Section 21166 sets forth the criteria under which a

¹ / See City Attorney Memo dated Nov. 22, 2006 re: "Navy Broadway Complex Project Environmental Appeal Hearings", stating "At its October 25 meeting, CCDC did [adopt a] resolution as a *responsible agency* regarding the CEQA analysis for the Navy Broadway Complex Project. The resolution in essence adopted the Analysis of DSD."

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lead or responsible agency must prepare a subsequent or supplemental EIR for a project for which an EIR has already been certified. DSD's CEQA Consistency Analysis concluded the criteria listed in Public Resources Code, section 21166 were not met and that no further environmental was required.² (*Id.* at pp. 4-5.)

Prior to making its consistency determination on the first proposed master plan, on October 25, 2006, the CCDC Board adopted Resolution 2006-03, formally adopting DSD's CEQA Consistency Analysis and determination that no further environmental review was warranted for the Navy Broadway Complex Project. (CCDC Resolution 2006-03.) Thereafter, two separate appeals to the City Council were filed, challenging DSD's analysis and CCDC's adoption of that analysis. The City Council voted to deny the appeals and uphold both DSD's CEQA Consistency Analysis and CCDC's adoption of that analysis.

CCDC's Re-adoption of DSD's CEQA Consistency Analysis

Less than seven months after the City Council upheld DSD's CEQA Consistency Analysis and CCDC's adoption thereof, Manchester submitted a Superseding Master Plan for the project and basic concept/schematic drawings for Blocks 2 and 3 of the site. In comparing the approved master plan with the Superseding Master Plan, CCDC found the two plans similar³ and recent enough, in terms of evaluating potential environmental consequences, that DSD's CEQA Consistency Analysis remained valid and applicable to the superseding master plan. (See CCDC Report to City Council, Report No.: CCDC-07-20, p. 8; see also CCDC Staff Report, July 20,

² / Specifically, DSD found that no substantial changes to the NBC project were being proposed and that the master plan's proposed land uses and intensities were virtually the same as those analyzed in the 1992 Final EIR/EIS. (DSD CEQA Consistency Analysis, at pp. 4-5.) DSD also found that the project was adequately addressed in the 1992 Final EIR/EIS for the project and the several other certified environmental documents for plans and projects in the vicinity of or including the NBC project area. As such, there were no substantial changes in the project or the circumstances under which the project is being undertaken, nor any new information of substantial importance requiring preparation of a subsequent or supplemental EIR. (*Id.* at pp. 4-5.)

³ / As explained in the staff report for the CCDC Board's meeting of July 25, 2007 (pp. 8-9), the differences between the first Master Plan approved by the CCDC Board in October 2006 and the Superseding Master Plan approved in July 2007 are minor:

- The Superseding Master Plan includes a narrower paseo than proposed in the first Master Plan, as suggested by the Design Panel assembled by CCDC;
- The Superseding Master Plan modifies the upper level of the towers; and
- The Superseding Master Plan proposes slightly different square footage for proposed uses than did the first Master Plan [3,207 less sf of office, 38,359 less sf of hotel, 1,000 less sf of public attraction, and 27 more parking spaces.]

Notably, none of the appellants challenging CCDC's re-adoption of DSD's CEQA Consistency Analysis have explained how these changes to the first Master Plan could give rise to a different conclusion by DSD or any other reviewer regarding whether the criteria of Public Resources Code section 21166 are met.

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2007, regarding the Consistency Determination for the NBC Superseding Master Plan and Phase I Buildings). Therefore, CCDC resolved to re-adopt DSD's CEQA Consistency Analysis and made findings that no subsequent or supplemental EIR was required for the Project. (CCDC Resolution 2007-01.)

Notably, CEQA does not mandate any specific procedure for an agency to follow in determining whether Public Resources Code section 21166 is applicable to the agency's approval of a project. The CEQA Guidelines simply provide that "[a] *brief explanation* of the decision not to prepare a subsequent EIR ... should be included in an addendum to an EIR, the lead agency's required findings on the project, or *elsewhere in the record*. (CEQA Guidelines, § 15164, subd. (e), italics added.) Thus, CCDC could have re-adopted DSD's CEQA Consistency Analysis without any further analysis. However, CCDC chose to take the more conservative approach of considering whether the criteria in Public Resources Code section 21166 were present with respect to the Superseding Master Plan and documenting said evaluation by way of a modified initial study. (See CCDC Report to City Council, Report No. CCDC-07-20, p. 8; see also CCDC Staff Report, July 20, 2007, regarding the Consistency Determination for the NBC Superseding Master Plan and Phase I Buildings.)

Ultimately, CCDC concluded that substantial evidence warranted agreement with DSD's CEQA Consistency Analysis that no further environmental review was required for the Superseding Master Plan. Therefore, CCDC re-adopted DSD's analysis and made findings that no further environmental review was required.

CCDC Fulfilled Its Independent Duty to Consider Whether a Subsequent or Supplemental EIR is Required for the Navy Broadway Complex Project

Even if CCDC chose not to re-adopt DSD's CEQA Consistency Analysis, CEQA requires CCDC to consider whether a subsequent or supplemental EIR is required for the NBC Project. (Pub. Resources Code, §§ 21166, 21069, 21180, subd. (a), CEQA Guidelines, § 15162, subd. (c).) The duty to comply with CEQA arises whenever a public agency makes discretionary decision about whether to approve or carry out a project. (Pub. Resources Code, § 21080, subd. (a).) A subsequent or supplemental EIR may only be prepared in connection with a discretionary approval. According to the CEQA Guidelines, "if after the project is approved, any of the conditions [requiring preparation of a subsequent EIR] occurs, a subsequent EIR or negative declaration *shall only be prepared by the public agency which grants the next discretionary approval for the project, if any.*" (CEQA Guidelines, § 15162 subd. (c).)⁴ In this case, the discretionary approval triggering CEQA is CCDC's consistency determination under the Development Agreement.

⁴/ See, for example, *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480, in which the Fourth District Court of Appeal held that a supplemental or subsequent EIR was not required for a project in which a City denied an application for design review because there had been no secondary discretionary approval.

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CCDC agrees that the City is the lead agency for the NBC project and that the City retained CEQA authority over the project in connection with subsequent discretionary approvals *made by the City* under the Development Agreement. As the City Attorney has acknowledged, however, CCDC, not the City, has the authority under the Development Agreement to make the consistency determination at issue in the present appeals.⁵ Because CCDC's consistency determination requires the exercise of discretion, it is a discretionary approval within the meaning of CEQA. (CEQA Guidelines, § 15162 subd. (c).) Thus, even though the City is the lead agency for the project, the Development Agreement also vests CCDC with some further discretionary authority over the project. (Pub. Resources Code, § 21080, subd. (a).)

Because CCDC's consistency determination is a discretionary approval, CCDC has an independent obligation to comply with CEQA in making that determination. As noted above, CCDC is best characterized as a "responsible agency" under CEQA. A responsible agency is a "public agency, other than the lead agency which has responsibility for carrying out or approving a project" (Pub. Resources Code, § 21069.) A responsible agency typically has permitting authority or approval power over some aspect of the overall project for which a lead agency has conducted CEQA review. (Pub. Resources Code, § 21069; CEQA Guidelines, §§ 15096, 15381; *Citizens Ass'n. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Ca.App.3d 151, 173-175.) Here, the Development Agreement vests with CCDC approval power, *in the form of the consistency review and determination, over some aspects of the overall NBC Project* for which the City, as lead agency, has already conducted a CEQA review. Based on its limited approval power over the project, CCDC's role in the development process for the NBC project is that of a responsible agency.

Notably, after a lead agency approves a project, if a project still requires a subsequent discretionary approval from a responsible agency, the latter agency cannot act until it has "considered" the project's environmental effects as described in the certified final EIR. (CEQA Guidelines, § 15096, subd. (f).) Generally, the responsible agency simply accepts the lead agency's decision regarding the document's adequacy. (See *Lexington Hills Assn. v. State of California* (1988) Cal.App.3d 415, 429-438.) If, however, the criteria of Public Resources Code section 21166 apply, the responsible agency must prepare a subsequent EIR before granting its discretionary approval. (CEQA Guidelines, §§ 15096, subd. (e)(3), 15162.)

Applying these principles to CCDC's consistency determination, it is clear that CCDC acted within its authority in re-adopting DSD's CEQA Consistency Analysis and in developing additional information to support DSD's and CCDC's conclusion that no further environmental review for the NBC project is required. The NBC project was approved by the City in 1992. At that time, the City certified the Final EIR/EIS prepared for the Project. As such, under CEQA, CCDC could not act on the project without considering the 1992 Final EIR/EIS prepared for that

⁵ / The City Attorney's September 15, 2006 memorandum concluded that "Under the Property Clause of the U.S. Constitution The City Council as the legislative body of the City exercised its discretion and delegated the determination of consistency review to CCDC. Any further right of review over CCDC's determination is not authorized by the Development Agreement." (City Attorney Memorandum, Sept. 15, 2006, p. 4.)

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Project. (CEQA Guidelines, § 15096, subd. (f).) Nor could CCDC approve the Superseding Master Plan and Phase I buildings if the criteria of Public Resources Code section 21166 were met. (CEQA Guidelines, §§ 15096, subd. (e)(3), 15162.) Therefore, CCDC reviewed the project's record, including DSD's previously prepared CEQA Consistency Analysis, the 1992 Final EIR/EIS prepared for the Project, the subsequent applicable environmental documents cited in DSD's Consistency Analysis, and additional materials prepared by CCDC staff, which included a modified initial study. Based on this review, CCDC re-adopted DSD's Consistency Analysis and adopted findings that no subsequent or supplemental EIR was required. As such, CCDC acted properly within its own authority under CEQA in re-adopting DSD's CEQA Consistency Analysis and making findings that no further environmental review for the NBC Project is required. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15164, subd. (e).)

For these reasons, the City Council should not grant the appeals on the basis of the City Attorney's mistaken position that CCDC exceeded its authority under CEQA or the Development Agreement authorizing the NBC Project. If the City Council determines that additional review is warranted, it could suspend or continue the hearing and direct DSD to undertake that task.

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: November 27, 2007

TO: William Anderson, Deputy Chief Operating Officer, City Planning and Development

FROM: Robert J. Manis, Deputy Director, Development Services Department

SUBJECT: Navy Broadway Complex – Superseding Master Plan CEQA 21166 Evaluation

The Development Services Department (DSD) was asked to conduct a subsequent CEQA Section 21166 evaluation for the Navy Broadway Complex (NBC) Superseding Master Plan for the Centre City Development Corporation (CCDC). This review was limited to consideration of CEQA issues associated with the modified project and the previous Section 21166 analysis conducted by DSD dated October 19, 2006. The NBC project is subject to a Development Agreement between the City of San Diego and the Navy which was approved concurrently with an EIR/EIS prepared by the City (EIR) and Navy (EIS) in 1990. The City as Lead Agency for the EIR retains responsibility for the CEQA process as outlined in the Development Agreement. CCDC is responsible for project review and consistency with the Development Plan and Design Guidelines.

DSD conducted a CEQA Section 21166 evaluation, and prepared a memo on October 19, 2006 regarding the first Master Plan. On October 25, 2006, the CCDC Board adopted the DSD CEQA evaluation by Resolution 2006-03. Following the CCDC adoption, the DSD CEQA determination was appealed to the City Council. On January 9, 2007, the City Council denied the appeals and upheld the CEQA 21166 evaluation conducted by DSD in October 2006.

For the purpose of conducting the subsequent CEQA 21166 evaluation of the Superseding Master Plan revisions, DSD considered the previous October 2006 analysis as well as the CEQA Initial Study prepared by CCDC in July 2007 in determining whether the proposed modifications would result in the need for a subsequent or supplemental EIR in accordance with CEQA.

The Superseding Master Plan submitted to CCDC for their consistency review consists of the following components: a maximum of 2,893,434 square feet (sf) of development, including 25,000 sf of retail, 1,181,641 sf of hotel space, 1.9 acres of open space, 40,000 sf of museum space, and 2,988 parking spaces to serve the proposed project uses. These project components analyzed by DSD for the Superseding Master Plan result in a total reduction of 42,616 square feet as compared to the original Master Plan analyzed by DSD in 2006.

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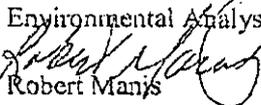
Section 21166 of CEQA states that, when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of the following three events occur:

1. Substantial changes are proposed in the project
2. Substantial changes occur with respect to circumstances under which the project is being undertaken
3. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available.

Based on the above criteria and review of the Superseding Master Plan revisions, DSD staff has determined that the proposed project revisions, which result in a reduction in square footage, yet still retain all the elements required per the Development Agreement, do not result in a substantially changed project. The proposed revisions do not result in new impacts or changed circumstances which would require a subsequent or supplemental EIR. As stated in the October 19, 2006 memo from DSD for the previous CEQA 21166 evaluation there is no new information available that was not part of the original EIR/EIS and/or considered with subsequent reviews of other projects within the Centre City Community Planning Area. Additionally, CCDC prepared an Initial Study pursuant to CEQA for the Superseding Master Plan dated July 2007, and a report to the CCDC Board dated July 20, 2007, both addressing the CEQA 21166 evaluation for the Superseding Master Plan revisions. DSD staff concurs with the conclusions of these documents.

The proposed Superseding Master Plan revisions, when compared to the Master Plan reviewed by DSD in 2006 are minor and result in a less intense development. Therefore, because none of the three events have occurred, DSD does not find a need to conduct additional environmental review of the Superseding Master Plan for the NBC project. All project issues and mitigation for significant impacts have been adequately addressed pursuant to CEQA for the proposed project.

If you have any questions or need any clarification, please contact Myra Herrmann, the assigned Environmental Analyst, at 446-5372.


Robert Manis
Deputy Director

RM/mjh

Attachment: Memo to James T. Waring from Robert Manis, dated October 19, 2006

cc: Kelly Broughton, Development Services Department Director
Nancy Graham, President, CCDC
Eli Sanchez, Project Manager, CCDC
Myra Herrmann, Senior Planner, Development Services Department

CITY OF SAN DIEGO
MEMORANDUM

DATE: October 19, 2006

TO: James T. Waring, Deputy Chief of Land Use and Economic Development

FROM: Robert Manis, Assistant Deputy Director, Development Services

SUBJECT: CEQA Consistency Analysis for Navy Broadway Complex

The Development Services Department (DSD) was asked to conduct a CEQA consistency analysis on the proposed Navy Broadway Complex (NBC) for CCDC. The review is limited to consideration of CEQA issues associated with the project and previously certified applicable environmental documents. This review was done pursuant to Section 21166 of CEQA. The NBC project is subject to a Development Agreement between the City of San Diego and the Navy and an EIR/EIS prepared in 1990 (The City prepared and certified the EIR pursuant to CEQA and the Navy prepared the EIS pursuant to NEPA). The City was the lead agency on the EIR and retains CEQA responsibilities as outlined in the Development Agreement. CCDC is responsible for reviewing the project for consistency with the Development Plan and the Design Guidelines.

For purposes of conducting the CEQA consistency analysis, DSD considered the proposed NBC project components. It was found that the proposed Navy Broadway Complex (NBC) project is consistent with the project described in the 1990 EIR/EIS in terms of uses and intensity. The 1990 NBC project included a total of 2,950,000 square feet of office, retail and hotel uses plus 300,000 square feet of above grade parking and 3,105 total parking spaces (including Navy fleet parking). The proposed NBC project is slightly smaller at 2,936,050 square feet of office, retail, and hotel uses and includes a total of 2,961 parking spaces. The layouts of the two projects are similar and CCDC will be reviewing the project for consistency with the adopted Design Guidelines.

DSD's CEQA consistency analysis for the proposed NBC project considered several environmental documents, described below, that have been certified since 1990 in the downtown area.

- **Navy Broadway Complex Project Environmental Impact Report/Environmental Impact Statement (Joint CEQA/NEPA document, October 1990).** Certified by the City of San Diego on October 20, 1992. This document fully analyzed the NBC project at the project level and assumed that build out of the downtown area would occur consistent with the adopted land use plans. The NBC project EIR/EIS also indicates that the precise mix and location (by block) of land uses would be determined by market conditions. As such, it was anticipated that possible changes to the site plan from what was approved in 1992

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would incorporate all relevant mitigation measures identified for transportation/circulation/parking, air quality, cultural resources, noise, etc.

- **Final Master Environmental Impact Report (MEIR) for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency (Resolution #2081) and City Council (Resolution #279875) on April 28, 1992. The 1992 MEIR specifically identified the NBC project within the Land Use section on Page 4.A-17 as follows: "...redevelopment of 1 million square feet of Navy offices; up to 2.5 million mixed commercial, office, and hotel uses, and a plaza at Broadway and Harbor Drive." The MEIR assumed development of the NBC project in the Land Use Impact analysis and anticipated mitigation associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance.
- **Final Subsequent Environmental Impact Report (SEIR) to the 1992 Final Master Environmental Impact Report Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects and Associated Plan Amendments.** Certified by the Redevelopment Agency (Resolution #03058) and the City Council (Resolution #292363) on October 26, 1999. The NBC project is not specifically called out as a project under the Land Use or Cumulative discussion sections of the SEIR. However, in order to determine the short-term and longer-term cumulative impacts with or without the Ballpark and Ancillary development projects, the SEIR assumed build out of the Redevelopment Project Area as defined in the 1992 MEIR which includes the NBC project. In addition, projected land use data in the 2002 SANDAG traffic model was modified to include additional CCDC build out developments consistent with the 1992 MEIR. Since the 1992 MEIR included the NBC project, the same and/or similar intersection, ramp and roadway segment impacts were assumed in the SEIR traffic analysis. Mitigation included an Event Transportation Management Plan, Freeway Deficiency Plan, Parking Management Plan and Transit improvements (all significant/mitigated, unless necessary freeway improvements are not made, resulting in a cumulatively significant and unmitigated impact).

Air Quality was analyzed using the Regional Air Quality Standards (RAQS) for the San Diego Air Basin. Regional impacts from increased traffic would remain significant and unmitigated; however, with proximity to public transit, air emissions would be reduced with implementation of RAQS controls. Potential significant unmitigated, long-term impacts were identified associated with freeway onramp congestion. Recommendation's to implement the Freeway Deficiency Plan were required, but could not be guaranteed.

- **North Embarcadero Visionary Plan Environmental Impact Report.** Certified by the Board of Port Commissioners of the San Diego Unified Port District in March 2000. This EIR assumed development of the NBC project in the Executive Summary and the Land Use discussions. The Visionary Plan Area incorporates the NBC project site, but

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did not include it in the calculation of square footage for the existing and proposed Visionary Plan uses (Table 3.3-1, Page 3-5). The Visionary Plan EIR references the NBC project as an existing entitled project for comprehensive planning purposes and cumulative analysis. The Visionary Plan EIR assumes near-term as 2005 and long-term build out as 2020 for the traffic analysis. A significant unmitigated and cumulative impact was identified for Freeway I-5 and I-5 ramps from 1st to 6th Avenues; impacts to ramp capacity and ramp meters were also identified and mitigable with implementation of SANDAG I-5 Freeway Corridor Study, which addresses deficiencies on the freeway and associated ramps. The Visionary Plan EIR also anticipated mitigation associated with Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance. The Visionary Plan EIR incorporated development and improvements included in the NBC project, but did not consider the project in the cumulative analysis for Urban Design/Visual Quality. Overall, the Visionary Plan adequately addressed the NBC project and is therefore consistent with the certified EIR/EIS.

- **Downtown Community Plan Environmental Impact Report in Conjunction with a new Downtown Community Plan, new Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency and City Council on February 28, 2006. The Downtown Community Plan EIR assumed development of the NBC project in the Project Description and incorporated anticipated land uses and building square footages into the figures and impact analysis. The Community Plan EIR also anticipated mitigation for direct impacts associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance, as well as cumulative impacts to Air Quality and Transportation; however, the impacts from implementation of the proposed Community Plan and Planned District Ordinance on parking, grid streets and surrounding streets is considered significant and unmitigable.

One issue identified and evaluated with the CEQA consistency review was on-site parking relative to the minor modifications to square footage in the proposed NBC project compared to the 1990 NBC project. While the total square footage of the proposed NBC project represents a small reduction from the 1990 NBC project, the total number of proposed parking spaces has been reduced from 3,105 to 2,961. The analysis determined that the 3,105 spaces included 230 Navy fleet car spaces, leaving 2,875 spaces for general use. The Navy has indicated that there is currently a need for only 54 fleet spaces. With a total of 2,961 spaces proposed, that leaves 2,907 spaces for general use, more than with the 1990 NBC project.

In conclusion, DSD noted that the proposed NBC project is substantially the same as the 1990 NBC project. The EIR/EIS done for the 1990 NBC project analyzed the project in detail, assuming build out of the surrounding area consistent with the land use plans and identified mitigation for impacts resulting from the project. Subsequent environmental documents in the downtown area, while not analyzing the NBC project at the project level, did reference the NBC project and assumed it would build out in accordance with the 1990 NBC project. Most recently,

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in 2006, the EIR for the Downtown Community Plan Update addressed community-wide policy/land use issues and again, assumed build out of the NBC.

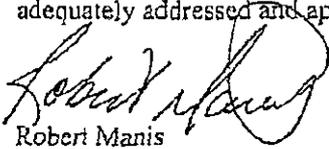
Section 21166 of CEQA states that when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of three events occur. These events are:

1. Substantial changes are proposed in the project
2. Substantial changes occur with respect to circumstances under which the project is being undertaken
3. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available

As stated earlier, there are no substantial changes to the NBC project from the 1990 NBC project. Project uses and intensity are virtually the same. It is acknowledged that the Ballpark and Ancillary Development projects, located in the East Village were not identified in the 1992 CCDC MEIR or the 1990 NBC EIR/EIS and therefore not considered in the cumulative impact analysis for the NBC project. However, because these projects were not anticipated, CCDC required the preparation of a Subsequent EIR which incorporated by reference the NBC EIR/EIS and assumed the same build out land uses adopted for the community plan at that time, which were ultimately used to analyze transportation/circulation impacts, and address regional and local air quality issues. Since these projects were ultimately analyzed with consideration of the NBC project, DSD does not consider this to be a substantial change in circumstances. There is no new information available that was not part of the original EIR/EIS and/or considered with subsequent environmental reviews of other projects. It was and continues to be assumed that the downtown area, including the NBC site, would build out according to adopted land use plans. When the Downtown Community Plan was changed earlier this year, new land use policies were put into place but the assumptions for the NBC site remained.

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Because none of the three events have occurred, DSD does not find a need to conduct additional environmental review for the proposed NBC project. The proposed NBC project is adequately addressed in the prior environmental documents that were certified for the 1990 NBC project and for other projects in the vicinity. Project impacts are adequately addressed and appropriate mitigation has been identified.



Robert Manis

RM/pdh

cc: Marcela Escobar-Eck, Development Services Director
Kelly Broughton, Deputy Director, Development Services
Nancy Graham, President, CCDC
Eli Sanchez, Project Manager, CCDC
Myra Herrmann, Senior Environmental Planner