

**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