



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 24, 2007 REPORT NO.: 07-013

ATTENTION: Council President and City Council
Council Meeting of January 30, 2007

SUBJECT: Appeal of Naval Training Center (NTC) Shoreline Plaza
Project No. 80411, Council District 2, Process Four Appeal

REFERENCE: Report to the Planning Commission No. PC-06-295 (Attachment 26)

OWNER: The Redevelopment Agency of the City of San Diego

APPLICANT: Kathi Riser, McMillin-NTC, LLC

REQUESTED ACTION: Should the City Council approve or deny two appeals, one by the Peninsula Community Planning Board, and one by the San Diego County Regional Airport Authority, of the unanimous decision of the Planning Commission to approve an amendment to the Master Planned Development Permit / Coastal Development Permit 99-1076 to allow for development of an approximately 482-space parking lot at the Naval Training Center (NTC) Shoreline Plaza?

STAFF RECOMMENDATION:

1. **DENY** appeal by Peninsula Community Planning Board;
2. **DENY** appeal by the San Diego County Regional Airport Authority;
3. **CERTIFY** Addendum to Environmental Impact Report No. 80411;
4. **ADOPT** Mitigation, Monitoring, and Reporting Program;
5. **APPROVE** Amendment to Master Planned Development Permit / Coastal Development Permit No. 99-1076.

SUMMARY

Project Description:

The issue before the City Council is a matter of two appeals: one by the Peninsula Community Planning Board (Attachment 1), and one by the San Diego County Regional Airport Authority (Attachment 2), of the Planning Commission's unanimous decision (Attachment 14) to amend a portion of Condition 15n of Master Planned Development Permit/Coastal Development Permit 99-1076 (MPDP/CDP) to allow development of Shoreline Plaza parking lot at the former Naval Training Center (NTC). Existing entitlements allow for approximately 336 parking spaces, and the current proposal is for approximately 486 spaces (Attachment 13). The purpose of the proposed project is to provide adequate parking for successful adaptive re-use of the Shoreline Plaza area and the historic district and at the north end of the NTC Redevelopment Project Area (Attachment 3). The need for increased parking is driven by

restrictions on the land use as approved by the Coastal Commission to require a Visitor and Community Emphasis Overlay Zone (VCEO) (Attachment 6). Due to the increase in proposed parking, and given the existing permit condition 15n to “seek to reduce or eliminate parking” (Attachment 7), the City Attorney’s office has determined (Attachment 8) that the project requires an Amendment to the MPDP/CDP 99-1076, specifically, to modify condition 15n as follows:

Prior to the issuance of the first building permit within Units 3 through 6, the Owner/Permittee shall execute a shared parking agreement, and provide a parking management plan, including phasing for the construction of a parking structure(s) (if the intensity of use actually developed warrants the construction of such parking structure or structures) to accommodate up to approximately 3,700 parking spaces, to assure adequate supply of parking on site, satisfactory to the City Engineer. The parking management plan shall include the requirement for annual parking studies, through build-out of Units 3 through 6, to evaluate impacts of non-park users on parking spaces provided within the public park areas, and NTC generated users on adjacent residential streets west of Rosecrans Street. ~~The parking management plan and annual updates should seek to identify potential alternative parking opportunities to either reduce or eliminate parking along the water’s edge at Shoreline Plaza.~~ The first parking study shall be submitted to the City Engineer within one year of issuance of the first building permit. If, based on results of any submitted parking study, it is determined that impacts of non-park users to parking spaces within the public park areas are occurring, or impacts of NTC generated users on adjacent residential streets west of Rosecrans Street are occurring, the Owner/Permittee shall provide an internal shuttle transit system connecting the parking structure and other shared parking facilities to uses within Units 3 through 6 (including the public park areas) ~~shall be implemented~~, satisfactory to the City Engineer and the City Park and Recreation Director. Exceptions to parking standards in the LDC shall be allowed only to permit the use of tandem parking in residential areas.

Parking configuration has been designed to maximize efficient space utilization around six existing non-historic buildings to be retained as part of the Ocean Village use envisioned in this area. The project scope does not include tenant improvements or other actions associated with the retained buildings. The following six non-historic buildings are to remain: 31, 34, 153, 179, 185, and 385 (Attachment 9). The following ten non-historic buildings (25,897 square feet) are to be demolished: 33, 41, 42, 174, 180, 186, 355, 388, 428, and 464; and six, small, un-numbered sheds / support buildings (Attachment 10). When compared to the approved MPDP/CDP, the project scope differs in two ways: (1) Building 186 was proposed to be retained in the Precise Plan, and is now proposed for demolition under the current project; and (2) Buildings 24 and 179 were proposed for demolition in the Precise Plan, and are now proposed to be retained under the current project. Table 1 below summarizes the buildings proposed for demolition as compared with the Precise Plan. Building 186 is in an identified View Corridor and should be removed. Buildings 24 and 179 are more marketable, usable spaces and are proposed to be retained for that reason.

Table 1: Buildings Proposed for Demolition -- Comparison of Approve Precise Plan to Current Proposal					
Bldg No.	Square Feet	Prior Use	Year Built	Approved for Demolition in Precise Plan	Currently Proposed for Demolition
33	5,965	Weld shop	1940	✓	✓
34	2,160	Paint shop	1940	✓	
41	1,440	Kennel	1941	✓	✓
42	1,900	Paint storage	1942	✓	✓
174	3,330	Pesticide / paint storage	1940	✓	✓
179	1,600	Boat house	1941	✓	
180	576	Storage	1941	✓	✓
186	7,400	Security Office	1942		✓
355	1,534	Office	1942	✓	✓
388	2,250	Lumber shed	1943	✓	✓
428	96	Restroom	1945	✓	✓
464	1,260	Boat house	1955	✓	✓
sheds, un-numbered buildings	~ 242	Miscellaneous storage	varies	✓	✓

The project scope includes installation of landscaping, storm water runoff best management practices (BMPs) to treat the surface runoff, and continuation of the public access esplanade through the parking areas and along the water's edge.

The project site is at the former Naval Training Center (NTC) Shoreline Plaza area, northeastern portion of the NTC Project area on a 6.88 acre site in an area identified by the NTC Precise Plan for parking. The site location is identified as 2768 Chauncey Street within the Airport Approach Overlay Zone (AAOZ), Airport Environs Overlay Zone (AEOZ), Runway Protection Zone (RPZ), Coastal Overlay Zone (appealable), First Public Roadway, CR-1-1, NTC Historic District, and NTC Precise Plan Commercial Precinct of the Mixed Use Area.

Background:

Prior to the final approval of MPDP/CDP 99-1076, the restrictions on the allowed use by the California Coastal Commission prohibiting small business uses such as offices, and requiring public uses, such as retail and restaurants, resulted in an increased parking demand in the Seller's Plaza area. Specifically, Coastal Commission directed creation of a Visitor and Community Emphasis Overlay Zone (VCEO) requiring that uses of buildings within that Zone be open to the public. Such uses include restaurant and retail space, where office space was proposed. The parking ratios are higher for these public uses and drove up the parking demand (Attachment 11). However, City Council, in its final approval of MPDP/CDP 99-1076, did not direct the Master Developer to specifically accommodate the increased parking demand. Rather, Council's direction to staff, as written in condition 15n of MPDP/CDP 99-1076, directs the Master Developer to prepare a parking management plan to disperse parking across the entire NTC site and to seek to reduce or eliminate parking at the Shoreline Plaza location.

Council's interest in reducing parking at Shoreline Plaza is believed to originate from the original Reuse Plan for NTC which called for more of a park-like setting characterized by a dredged inlet at this location. However, with approval of the Redevelopment Plan, followed by the Precise Plan, the concept changed from the dredged inlet, to more parking (Attachment 5) given that the NTC project would provide a 46-acre public park next to the water's edge. With the creation of the Historic District and a change in land use restrictions that eliminated small business uses in favor of uses open to the public (such as retail and restaurant uses), the parking demand increased at the north end of NTC.

Council, however, did not change its direction to staff, but rather continued to require the Master Developer to "seek" to reduce or eliminate parking through the required parking management plan. The parking management plan was prepared, but the results led to the conclusion that more parking was required rather than less, and that it was necessary to locate the parking at the north end of the NTC project area. Because of the constraints of the Historic District, the Shoreline Plaza parking lot is the only feasible location at the north end of the project where parking could be increased. . In summary, it was not feasible to reduce parking if the goal of successful adaptive reuse of the north end of NTC was to be realized. The Master Developer and staff conducted the parking management plan as directed, but found the need for an *increase* in parking rather than the hope to *reduce or eliminate* parking. As such, staff is requesting an Amendment to the MPDP/CDP 99-1075, specifically, Condition 15n, to recognize the need for increased parking at this location and approve its design.

Planning Commission Recommendation:

On November 16, 2006, the Planning Commission requested a continuance of the subject project to a date certain of December 7, 2006 to address specific issues of Commissioner Naslund and Chairman Schultz as summarized below:

- reduce parking by some amount
- enhance esplanade treatment at Sellers Plaza adjacent to MCRD
- enhance pedestrian connection to boat ramp
- enhance treatment of paths and edges
- enhance esplanade, make wider
- design landscaped "rooms" around parking areas to screen from view
- re-evaluate the relationship of the parking with Decatur Road
- create a landscaped buffer along Chauncey
- add more green on east side of B-185
- provide economic data supporting need for parking

The applicant responded to these issues at the December 7, 2006 Planning Commission, hearing, modifying the project design accordingly (Attachment 13) resulting in unanimous approval by the Planning Commission, following a failed motion to approve the project by a vote of 3-1, due to uncertainty by the Commission on the matter of consistency with the San Diego International Airport Land Use Compatibility Plan (ALUCP). The motion which passed to approve the project took no position on whether the project had achieved adequate consistency determination with the ALUCP. Consistency with the ALCUP for projects at NTC is an issue that continues to be raised by the Airport Authority (Attachment 2), although

previously determined to be resolved by the City Attorney office (Attachment 8). The appeal by the Airport Authority is further discussed below.

Airport Authority Appeal:

On December 20, 2006, the Airport Authority filed appeal asserting that state law has been violated based on their belief that the appropriate procedures were not followed for two required land use consistency determinations: one for the Runway Protection Zone (RPZ), and the other for the Airport Land Use Compatibility Plan (ALUCP). The complete appeal and staff response is provided in Attachment 2. The Airport Authority requests that the City not take action until the two consistency determinations have been completed. City staff and the City Attorney office maintain that both of the required consistency determinations have been made. The Airport Authority disagrees.

The project application was deemed complete by the City of San Diego in August 2005. The Development Services Department (DSD) Project Tracking System (PTS) shows a routing of plans to the Airport Authority in August 2005 [Attachment 22]. Staff's first issues report (September 2005) provides the RPZ consistency determination [Attachment 23]. While the Airport Authority maintains having no record of receiving this determination, they acknowledge receipt of at least a Notice (August 23, 2005). One year later (August 22, 2006), the Airport Authority contacted the City (phone call from Linda Johnson to Cory Wilkinson) to report no receipt of project plans or an application. On August 24, 2006, an e-mail was sent (by Cory Wilkinson) to the Airport Authority (Linda Johnson) to provide verification of compliance with the procedure set forth in the NTC Precise Plan, Appendix A. Having received no reply from the Airport Authority, a follow-up e-mail was sent on September 25, 2006. Ms. Johnson responded on September 29, 2006 confirming receipt and specifically stating, "I do not object to the City staff's conclusion that the uses proposed are consistent with the uses identified in Appendix A." The record of this e-mail communication is provided as Attachment 24. However, the Airport Authority submitted written and verbal testimony, on public record, by Attorney Amy Gonzalez, Senior Assistant General Counsel to the Airport Authority, at both the Hearing Officer and Planning Commission hearings (Attachment 2) stating a direct contradiction to the facts as presented in Attachment 24 by making the incorrect statement that no RPZ consistency determination has been made (see letters dated December 5, 2006, and November 15, 2006). The Airport Authority appeal (Attachment 2) now acknowledges communications between Airport Authority staff and City staff regarding the RPZ consistency determination, but does not come to the conclusion that the RPZ consistency determination was sufficient. The Airport Authority did not consider all of the facts, specifically the attachments which clearly state City's staff's determination of RPZ consistency as received and accepted by the Airport Authority.

With respect to the broader consistency determination of the Airport Land Use Compatibility Plan (ALUCP), City staff and the City Attorney Office likewise maintain that the compatibility determination is complete. The Airport Authority disagrees. The NTC Precise Plan required issuance of an Avigation Easement for NTC including the Shoreline Plaza area. This Easement was recorded on July 6, 2001 (Attachments 26). The City Council resolution regarding this easement (R-2001-429 COR. COPY) specifically states that conveyance of this easement achieves "a status of **“conditional compatibility” for all future development and land use at NTC** which conforms to the Precise Plan" [emphasis added] (Attachment 25).

This consistency determination applies to the Shoreline Plaza Project as the project location is within the boundary of the Avigation Easement, and is consistent with the Precise Plan.

In furtherance of the City's position that the compatibility determination requirement has been met, the City Attorney Office opined January 28, 2004 (Attachment 8) that the consistency determination requirement was fulfilled by transmittal of the Precise Plan to the Airport Land Use Commission (at the time, the San Diego Association of Governments (SANDAG)), and subsequent lack of reply by SANDAG. If the ALUC does not make a determination of consistency within 60 days, the proposed action shall be deemed consistent with the land use plan. The Airport Authority has not challenged the merits of the January 2004 letter, but continues to object on a project-by-project basis.

Further, the Airport Authority states that in the absence of a consistency determination made at the time of the original land use decision, each project is required to be submitted for a consistency determination. The City believes that there was a land use consistency determination; therefore, the City has not submitted individual projects for this alternate determination.

Community Planning Group Appeal:

On Friday, December 15, 2006 an Appeal Application was filed by the Chair of the Peninsula Community Planning Board (Attachment 1). The reasons for the appeal are listed as: factual error, conflict with other matters, and findings not supported, new information, and city-wide significance. Attachment 1 provides a response to each appeal issue. Attachment 18 provides the community planning group's original recommendation.

Conclusion:

The proposed project would help to provide adequate parking for successful adaptive re-use of the historic district and north end of the NTC Redevelopment Project Area. The action has been determined by the City Attorney office to require an amendment to the Master Planned Development Permit / Coastal Development Permit 99-1076 by modifying permit condition 15n to allow for an increase in parking at this location.

FISCAL CONSIDERATIONS: None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The project was originally heard by the Peninsula Community Planning Board in December 2005, where the Board requested a field visit to better understand the project. The field visit was conducted on January 11, 2006, followed by the January 19, 2006, Board vote of 5-0-4 to deny issuance of a Coastal Development Permit to increase parking, requesting an alternative parking configuration, and alternative uses at the Shoreline Plaza location (Attachment 18). This project has also been the subject of articles published by the San Diego *Union Tribune*. Staff has also responded to written inquiry of the Peninsula Community Planning Board received between the two Planning Commission hearings of November 16, and December 7, 2006 (Attachment 19).

KEY STAKEHOLDERS (& Projected Impacts if applicable): The two key owner / applicant stakeholders are the Redevelopment Agency of the City of San Diego, and the NTC Master Developer, Millin-NTC, LLC. External stakeholders are identified as the Peninsula Community Planning Board, Airport Authority, Save Our NTC, People for Progress, and Liberty Station Organization. Impacts of a successful appeal would mean further reduction in parking at the Shoreline Plaza location resulting in the need for increased parking elsewhere on the NTC Project Area site, or a reduction in the land use proposed for adaptive re-use of the historic district.

Marcela Escobar-Eck
Director
Development Services Department

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

ATTACHMENTS:

1. Community Planning Board Appeal and Staff Response
2. Airport Authority Appeal and Staff Response
3. Location Maps
4. Aerial Photographs
5. Precise Plan Land Use Maps
6. Zoning Maps
7. Existing Master Planned Development Permit 99-1076
8. City Attorney Office Correspondence
9. Buildings to be Retained
10. Buildings to be Demolished
11. Parking Management Plan, Rations, and Assumptions
12. Project Plans as Submitted to Planning Commission
13. Project Plans as Approved by Planning Commission
14. Planning Commission Resolution of Approval
15. Proposed Draft Permit Amendment
16. Draft Resolutions with Findings
17. Draft Environmental Resolution
18. Community Planning Group Recommendation
19. Written Correspondence to Community Planning Group
20. NTC Precise Plan, Appendix A, Notification Requirements and Procedures
21. Distribution of Precise Plan to Airport Authority
22. Distribution of Shoreline Plaza Plans to Airport Authority
23. Staff's Determination of Consistency with the Runway Protection Zone (RPZ)
24. Correspondence with Airport Authority to verify RPZ Consistency
25. Avigation Easement (City Council Resolution)
26. Avigation Easement (as granted by Airport Authority)
27. Report to the Planning Commission No. PC-06-295

ATTACHMENT 1

PENINSULA COMMUNITY PLANNING BOARD

APPEAL ISSUES

AND

STAFF RESPONSES

1. **Issue:** *Statements/evidence relied upon were inaccurate: a) Evidence & studies failed to provide the entire parking lot plan & NTC 'picture.'*

Factual Error: 1. Statements/evidence relied upon were inaccurate: a) Evidence & studies failed to provide the entire parking lot plan & NTC 'picture.' b) No 'annual study' with review by the only public entity requiring oversight, has been done as required by the LCP

Staff's Response: The NTC Parking Management Plan as provided to the public in Attachment 15 of the Report to Planning Commission, is the document required by the existing Master Planned Development Permit 99-1076, condition 15n, to assess parking needs across the entire NTC Redevelopment Project Area.

2. **Issue:** *b) No 'annual study' with review by the only public entity requiring oversight, has been done as required by the LCP & and NTC ReUse Plan as recorded in Section 6.1 of the DDA.*

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Staff's Response: The NTC Parking Management Plan as provided to the public in Attachment 15 of the Report to Planning Commission, is the document required by the existing Master Planned Development Permit 99-1076, condition 15n, to assess parking needs across the entire NTC Redevelopment Project Area.

3. **Issue:** *c) Parking needs require evaluation for the Entire Project, including this area's Consistency to the ALUC in the Runway Protection Zone (RPZ) which may reduce greatly the land uses allowed.*

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Staff's Response: The NTC Parking Management Plan as provided to the public in Attachment 15 of the Report to Planning Commission, is the document required by the existing Master Planned Development Permit 99-1076, condition 15n, to assess parking needs across the entire NTC Redevelopment Project Area. Consistency with the Runway Protection Zone (RPZ) was established through the procedures identified in the NTC Precise Plan, Appendix A.

4. **Issue:** *d) Plan fails to require building of a parking garage at another site to 'mitigate' other parking impacts instead of 'massing' parking per LCP.*

this area's Consistency to the ALUC in the Runway Protection Zone (RPZ) which may reduce greatly the land uses allowed. d) Plan fails to require building of a parking garage at another site to 'mitigate' other parking impacts instead of 'massing' parking per LCP.

Staff's Response: The existing Master Planned Development Permit 99-1076, condition 15n, requires construction of a 3,750 space parking garage depending on the intensity of uses actually developed.

5. **Issue:** *e) Formal Review, was not reviewed for "Building #186 being in a view corridor" and having to be removed by interested parties. Of the "Alteration of Buildings" to be removed, from those in the Precise & NTC Reuse Plans, the EIR, requires Formal Review.*

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Staff's Response: Input of the Peninsula Community Planning Board was obtained in December 2005, at a field visit in January 2006, and at the Board's meeting in January 2006. The project scope was presented to the Board and further examined in the field as verified by the planning board Minutes.

6. **Issue:** *f) There was no 'change in land use.' Outside of the RPZ**, retail and restaurants were presumed in the NTC ReUse Plan in the NTC Reuse Plan. The parking requirements addressed in MPDB/CDP condition 15n were interpreted by the City's legal dept. as a mandate to reduce or Eliminate parking by the waterfront.*

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Staff's Response: The change in land use refers to the decision of the California Coastal Commission to create a new Visitor and Commercial Emphasis Overlay Zone (VCEO) which eliminated the potential for low-parking demand uses such as small professional offices, requiring, instead visitor-serving uses such as restaurants, which have a substantially higher parking demand ratio.

7. **Issue:** *g) Staff apparently attempted to by-pass the normal hearing process by holding a DSD officer hearing, an employee of DSD 'approving in favor of the applicant' with no legal hearing. The hearing was withdrawn on advice of the City Attorney.*

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Staff's Response: The Process 3 (Hearing Officer) hearing was conducted in accordance with the requirements of the Municipal Code for a Decision Process 3. Following the written opinion of the City Attorney office on October 9, 2006, a decision was made to re-notice, and re-hear the item as a Decision Process 4 action.

8. **Issue:** *h) The DSD report attempts to crease a case that unsubstantiated changes to necessitate more parking at Shoreline Plaza. However, at recent meeting at Liberty Station (NTC), residents there were infuriated that the absence of the Planned Parking Garage indicated in all documents has already thrust non-resident parking (students from the educational section) upon their residential street parking area. Through the use of artificial demand or improper land use plans (ie. Private lite industrial use for one building with 50 employees, in the RPZ) in the Plaza area, the developer appears to be seeking to shift his costs for Precise Plan Parking Garage construction to Surface parking in areas that were planned and envisioned as respites for urban dwellers and visitors from cement and asphalt, notably along the channel shoreline, for recreational and coastal access uses. Claiming that 'increased parking is needed for restaurants' (15 sp./1000 sf) at the site, the ALCU Plan will show that No Restaurants are allowed in the ** PRZ, that 'food carts' were envisioned to serve esplanade hikers, strollers, cyclers and waterfront visitors.*

*Critical to note is the FAA Advisory Circular 150/5300-13, Airport Design: "The **RPZ's function is to enhance the protection of people and property on the ground." "Land uses prohibited from the RPZ are residences and places of public assembly. (churches, schools, hospitals, OFFICE Buildings, shopping centers and other uses with similar concentrations of persons ...) Chapter 2 Table 2A Countywide Policies for Airports "Prohibits Assemblages of People" in the Runway Protection Zone (RPZ). See page i-16 Figure 1.7 for CNEL Contours and the RPZ.*

The AC 150/5300-13 and the San Diego Countywide Airport Policies supercede the Non-conforming permitted uses indicated in the precise Plan Appendix A on page 3 and map on Appendix A page 6. Non-Conforming uses include: Assembly and entertainment, EATING and DRINKING establishments, nightclub and bars, private clubs, retail sales, sidewalk cafes, theaters of 5000 sf. Ft.

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The AC 150/5300-13 and the San Diego Countywide Airport Policies supercede the Non-conforming permitted uses indicated in the precise Plan Appendix A on page 3 and map on Appendix A page 6. Non-Conforming uses include: Assembly and entertainment, EATING and DRINKING establishments, nightclub and bars, private clubs, retail sales, sidewalk cafes, theaters over 5000 sf. Ft.

Staff's Response: The existing Master Planned Development Permit 99-1076, condition 15n, requires construction of a 3,750 space parking garage depending on the intensity of uses actually developed. The uses contemplated in the proposed Shoreline Plaza area are consistent with the use restrictions of the Runway Protection Zone as identified in Appendix A of the NTC Precise Plan. As stated in the Precise Plan (page I-15), the Runway Protection Zone and Appendix A are consistent with FAA Advisory Circular AC 150/5300-13. With respect to the Shoreline Plaza, the Runway Protection Zone does not affect the following buildings: 11, 24. All other buildings in the Shoreline Plaza are within the Runway Protection Zone and the uses of which are restricted by Appendix A of the NTC Precise Plan which specifically allows for Retail Services, Food, Beverages and Groceries (Appendix A, Page 3).

9. Issue:

2. Conflict with other Matters:

a) The entire Project (Shoreline Plaza) was at first, erroneously reviewed in front of a DSD 'Hearing Officer', under 'Substantial Conformance Review'. Any '100% demolition of buildings' not planned for, such as with Building #186, is Clearly Not Consistent with the City's, State's or Federal Government's definition of 'Substantial Conformance Review.' The City Attorney's office agreed and required this hearing go before the Planning Commission, then City Council. This was not even addressed in the hearing at Planning Commission. This building's removal was denied by the PCPB as it conflicts with the NTC ReUse Plan and other Documents that were agreed to with the Navy and the Community.

Following the documents involved in the NTC project, the DDA, Precise Plan and Reuse Plan are repeatedly interspersed when the issue is clearly established Continued.

throughout the documents, that the Reuse Plan is the overlying guide, and the other policies must conform to those policies.

The DDA states that "*the parcels constituting the site shall be developed in accordance with and within the limitations established in the ReUse plan, ...*"

Staff's Response: The Process 3 (Hearing Officer) hearing was conducted in accordance with the requirements of the Municipal Code for a Decision Process 3 for a new Coastal Development Permit, not a Substantial Conformance Review (SCR), which is a Process 2 decision. Staff was not seeking an SCR determination on Building 186. The opinion by the City Attorney office was that the project should be processed as a permit amendment (Process 4) rather than a new permit (Process 3). This background was disclosed to the Planning Commission in staff report PC-06-295 (page 2).

With respect to the governing documents, the implementing documents are the Master Planned Development Permit / Coastal Development Permit 99-1076, and the NTC Precise Plan. The Precise Plan (September 2001), as certified by the City Council and the Coastal Commission, states its conformance with the earlier Reuse Plan (1998) which preceded the Redevelopment Plan (2000). The Precise Plan was adopted by City Council on November 19, 2001 (R-295752). The Redevelopment Plan was adopted by City Council on May 13, 1997 (O-18405), followed by its Environmental Impact Report (EIR) as certified by Council on February 1, 2000 (R-292724) The Redevelopment Plan, as stated in Ordinance O-18405, "the official redevelopment plan for the Project Area" (page 4 of 8, Section 3). The Reuse Plan was adopted by Council on October 20, 1998 (R-290900), and its associated Environmental Impact Report (EIR) / Environmental Impact Statement (EIS) as certified by City Council on October 20, 1998 (R-290901), were prepared in accordance with the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 for use by the U.S. Department of Housing and Urban Development, and the U.S. Department of Defense for processing in conformance with federal base closure procedures.

10. Issue:

Further, the Precise Plan and Local Coastal Program, Adopted by the SD City Council 7/17/01, Approved by the CCC 8/7/01 and Effective 9/7/01, state:

Chapter I. Introduction and Planning Context

A. Purpose of the Plan. *"The Precise Plan is consistent with the NTC Reuse Plan,* which was approved by the City Council in October 1998. The NTC Reuse plan was prepared for and approved by the U.S. Navy under the Federal Guidelines of the Base Reuse Manual, 2nd edition (Dec. 1997). The Reuse Plan provided the necessary financial analysis to enable the Navy to convey the property to the City."

(Note: See figure 9 in the NTC Reuse Plan, indicating Shoreline Plaza area and buildings therein as part of the subarea titled 'Waterfront and Recreation.' They are not part of a Commercial area.)

Staff's Response: The current and most recent enabling plan for NTC is the NTC Precise Plan as adopted in final form by City Council on November 19, 2001 (R-295752) and its associated Mitigated Negative Declaration. The Shoreline Plaza area is clearly designated for commercial use in the NTC Precise Plan (Executive Summary, page 8, and Figure 2.1, page II-6); and is clearly designated for parking (figure 2.5(1) on page II-18; and figure 4.4, page IV-8). References to planning design guidelines made in the Reuse Plan and/or the Redevelopment Plan are of historical importance, but do not constitute the current design guidelines.

11. Issue:

D. Opportunities and Constraints.

1. Opportunities. d. *Water views and waterfront access.* "This precise plan creates opportunities for recreation, pedestrian and bicycle circulation and public access to the waterfront that does not currently exist." (page 8)

b) D. (above continued) 2. Constraints. a. Lindbergh Field. Noise Contours-Avigation Easement:

"At greater than 75 dbL CNEL, Office use is generally inappropriate. At Greater than 80 db, CNEL Industrial uses are generally inappropriate." (page 13)

(This would clearly indicate that any industrial or office use—a robotics company with 50 employees, is Inconsistent and Non-Compliant with Federal and State Safety Standards. The 'parking uses required' for *such Inconsistent and Non-Compliant Land Uses* are what the applicant is using to determine an 'out of proportion', parking space 'need'.)

Staff's Response: The uses contemplated in the proposed Shoreline Plaza area are consistent with the use restrictions of the Runway Protection Zone as identified in Appendix A of the NTC Precise Plan. As stated in the Precise Plan (page I-15), the Runway Protection Zone and Appendix A are consistent with FAA Advisory Circular AC 150/5300-13. With respect to the Shoreline Plaza, the Runway Protection Zone does not

affect the following buildings: 11, 24. All other buildings in the Shoreline Plaza are within the Runway Protection Zone and the uses of which are restricted by Appendix A of the NTC Precise Plan which specifically allows for Retail Services, Food, Beverages and Groceries (Appendix A, Page 3).

12. Issue:

c) Also in the Local Coastal Plan and Precise Plan, it clearly states issues regarding the land uses:

Chapter II. Land Use.

A. General Goals "Guiding principles for development step from the local context," and are, "as defined in the NTC Reuse Plan."

Staff's Response: Guiding principles are derived from public input as documented in the Reuse Plan. The guiding principles are listed in Section A, "General Goals" beginning on page II-1 of the Precise Plan. Each section in this Land Use chapter expands these general goals. The Precise Plan, Land Use chapter (Chapter II) clearly designates the Shoreline Plaza area as a Commercial Precinct (Figures 2.1 and 2.5b), and for parking (Figures 2.5(1), 2.5(2), 2.5(3), 2.5(4), and 2.5b).

B. The Land Use Concept. "Park and Open Space uses are designated along the waterfront." "An urban greenbelt or linear park could Traverse the Length of the Site tying the uses together." (page 3)

(In addition, to turn *the only area of ShorelinePlaza that is Not in the RPZ* into a Waterfront Parking Lot, is incomprehensible to the purposes, opportunities and planning concepts required by the Reuse and Precise Plans and an inappropriate use of Coastal land and recreational access)

13. Issue:

Staff's Response: The NTC Precise Plan identifies the urban greenbelt, known as the Esplanade, in Figure 3.1 and the pedestrian path in Figure 3.3. The proposed project implements this esplanade and extends it to completion to Historic Gate 1. Figure 3.4 identifies the esplanade, parks, and plaza areas. The revised Shoreline Plaza plan, as modified by the Planning Commission on December 7, 2006, carries forward on the theme of a plaza node concept as identified in figure 3.4 on page III-9 of the Precise Plan. The modified plan draws people to the water's edge and provides opportunity for future access to the boat dock at such time as the Boat Channel is released by the U.S. Navy. Such use is appropriate use of coastal land and recreational access.

14. Issue:

d)) Also in the Local Coastal Plan and Precise Plan, it clearly states policy regarding the Park/Open Space areas and Boat Channel:

G. Park/Open Space area. "The park/open space area is intended to provide active and passive recreational opportunities for the residents of greater San Diego area and the surrounding Peninsula Community."

"A 100-foot setback from the edge * of the boat channel will be reserved for the esplanade. This area will be developed into a landscaped pedestrian, bicycle and recreational trail that allows for continuous public access along the water."

(*NOTE: That the edge of the boat channel is defined as commencing Not at the water's edge, but the upper most edge of the riprap at grade level. This makes the 'design' for the walk/bike way(s) along the northmost end of the channel seriously deficient in meeting these Park/Open Space area requirements.)

Staff's Response: The proposed plan clearly implements the esplanade path allowing public access along the water's edge as envisioned by the Coastal Commission.

15. Issue:

H. Boat Channel. "Continuous public access to and along the boat channel is a Guiding Policy that Must be Followed in any Design. (Chapter II page 33)

e) The landscaping plan is also indicated in the Local Coastal Plan and NTC Precise Plan, to be severely in conflict:

Chapter III:

Landscaping Design program.

B. Landscaping Plan elements. The map in Chapter II, page 4, figure 3.1 depicts the esplanade as running the length of the western side of the channel.

D. Pedestrian System.

The Esplanade. "The esplanade, while part of the open space system, is also an integral part of the pedestrian circulation system."

Western Shoreline: "The esplanade provides pedestrian and bikeway access along the Entire Western Shoreline. At the North end, access will continue to Lytton Street. It is hoped in the future that it will look around to the Eastern Shoreline through what is now MCRD." ... Table 3.2 Recommended Walkway Dimensions.

"Walks at the esplanade... 10 feet wide minimum." (Chap. III pg. 10)

Staff's Response: The proposed plan clearly implements the esplanade path allowing public access along the water's edge as envisioned by the Coastal Commission.

16. Issue:

f) The McMillin proposal of increasing parking at Shoreline plaza is in Direct Conflict with the Coastal Policy Element:

**Chapter VI:
Coastal element
Program for Public Access**

Policies. "Public facilities including parking areas or facilities *Shall Be Distributed* throughout an area so as to mitigate against the impacts, social and otherwise of overcrowding or overuse by the public of any single area."

The Coastal commission specifically Required "the Coastal Waterfront *be kept free for Parks, not Parking lots.*" in all documents.

Staff's Response: The proposal to increase parking at this location is in direct support of the policy as originating with the Coastal Commission to distribute parking throughout the NTC project site. By increasing parking at this location, it allows direct public access to the historical buildings in the north end of NTC since it would not prudent to develop large parking areas within the historic district.

17. Issue:

3. Findings Not Supported:

a) The Demand for Increased parking at Shoreline Plaza (Ocean Village) is Not Supported at this site because of the many Changes in the NTC Project.

Any Traffic/Parking numbers quoted previously in any previous **EIRs are Obsolete.** (ie the changes from 'college student parking' to 'preK-12th Grade parking,' Supposedly "reduces parking need," yet a minor change in wording for 'more Visitor Uses in the Historic Sites (not Shoreline Plaza area), "increases parking need?" As the Annual parking study has never been done with review by the PCPB, even the numbers presented in the past several months have changed,.

Staff's Response: The Precise Plan Mitigated Negative Declaration (MND) provides an analysis of transportation, circulation, and parking, based on trip generation data cited in the NTC Reuse EIS / EIR. The Master Planned Development Permit / Coastal Development Permit 99-1076 requires preparation of a Parking Management Plan and annual updates to evaluate changes in land use development and parking demands. The most recent Parking Management Plan was provided to the public with issuance of the Report to Planning Commission PC-06-205 on November 9, 2006 as Attachment 15. Approximately 6,500 parking spaces were entitled throughout the NTC Redevelopment Project Area, whereas current estimates have been downgraded to approximately 5,100 spaces due to changes in land use primarily in the Educational district.

18. Issue:

b) Because the developer Removed former Existing Parking Lots and Replaced them with at least 3 large buildings in other areas of NTC, it does not mean that the developer should be allowed to 'confiscate public recreational lands or public buildings' to avoid the cost of a needed parking garage to 'mitigate' for his parking space shortage.

No 'increase in parking' as far away as the Channel Shoreline will 'meet the parking need for those areas.' Meanwhile, just adjacent to the site is a 400+ space parking lot, easily within distance of the Plaza. The Project Area, being a Coastal Asset is also considered to be in a "Coastal Parking Impact Overlay Zone," which requires the Developer to 'replace 'lost parking' with new parking spaces.' The different plans refer to 'shuttles, golf carts and vans' as 'ferries' to such structures from the mixed use, visitor, educational and recreational areas.

Staff's Response: This comment refers to construction of Buildings 904, 905, 906, and 907 in Lawrence Court fronting the public promenade. Construction of these office buildings was contemplated in and approved by the Precise Plan (Figure 2.4, page II-15) which allowed up to 380,000 square feet of new office construction in this location. The Precise Plan did not contemplate parking in the location of these office buildings. Parking is identified for these building in Figure 2.4 (page II-15) of the Precise Plan.

19. Issue:

c) Though the Officer's Club (future restaurant) near the Sail Ho Golf course and another building appear to have been 'removed' from the 'Shoreline Plaza' designations, it appears that the developer is using those 'Parking needs' to be 'negotiated for more Parking Spaces in a Lot on the Waterfront' by Demolishing such buildings that are Contrary to the Specific Goal of providing buildings for "visitor-serving, non-profit purposes." What is the total of the sq. ft. of each of the 6 buildings (?) to be left and what are their proposed uses? What 'other' non-area parking demand is this area purporting to 'service' with a 'waterfront parking lot?' (the worse use of Coastal Property)?

Staff's Response: The Shoreline Plaza project is designed to provide parking needs for the entire north end of the NTC Redevelopment Project Area. Building 1 is part of the north end of NTC and would utilize the Shoreline Plaza parking lot for its use. The anticipated mix of land use and the associated parking requirement was presented in Report to Planning Commission PC-06-205 on November 9, 2006 as Attachment 14.

20. Issue:

4. New Information:

a) New (by one of the Planning Commission members) 'Revised Parking Plans' were never submitted for review by the PCPB until the morning of the Planning Commission meeting.

Staff's Response: The revised parking lot layout was submitted to the Planning Commission and the public at the December 7, 2006 Planning Commission hearing for public review and comment. As a courtesy, the applicant provided a preview of the plans to members of the public on the morning of December 7, 2006 before the Planning Commission convened.

21. Issue:

b) Other Potential Plans, brought to both an earlier meeting and to the Planning Commission, were never brought for review to the PCPB.

Staff's Response: This comment is presumed to refer to an alternate plan submitted by a member of the public at the Planning Commission hearing. As this alternate plan was not submitted to Development Services Department for a permit application, it was not distributed by the City to the Peninsula Community Planning Board.

22. Issue:

c) Airport Authority Attorneys were present at the morning hearing of 12/7, and because the Planning Chair left at 11:00 am, there was not a quorum for the vote, with no hearing of the Airport Authority's information available to either the applicant, the planning commission, the PCPB or interested parties.

Staff's Response: The Chair of the Planning Commission announced at the beginning of the hearing that he would need to leave for a previous engagement. When the Chair left, there was not a quorum for the vote so the item was trailed to the afternoon when a quorum would be present. The speaker for the Airport Authority was present in the afternoon session as was a representative of the Peninsula Community Planning Board. The public record of the meeting shows that both the Airport Authority representative and the Peninsula Community Planning Board representative addressed the Commission in public testimony.

23. Issue:

5. City wide Significance

The project, being a regionally based park, and recreational draw to tourists and regional visitors, has significant detriments. Unlike even Balboa Park (green area is 20%), the NTC Project will have less than 13% of its property actually dedicated to Parks and Open Space. This is a poor example of 'preserving the past' for the future.'

Staff's Response: The NTC Redevelopment Project has been determined by the City Council to provide significant public benefit, with some significant impacts, such as traffic, which cannot be fully mitigated. The Redevelopment Project is providing substantial preservation of the past through adaptive reuse of the Historic District. Part of that adaptive reuse is the need to get people into the stores and shops in the restored historic buildings. Without people, the adaptive reuse of the buildings will fail. As identified in the Precise Plan Mitigated Negative Declaration, parking should be provided within 600 feet of the intended use in accordance with City shared parking standards. Therefore, in light of these standards, and given the goal of successful adaptive reuse of the historic buildings, the proposed increase in parking is appropriate.

ATTACHMENT 2

AIRPORT AUTHORITY

APPEAL ISSUES

AND

STAFF RESPONSES

1. **Issue:**

The San Diego County Regional Airport Authority ("Airport Authority"), acting as the County's Airport Land Use Commission ("ALUC"), hereby appeals the Planning Commission's action on December 7, 2006 approving Item 9-NTC Shoreline Project No. 80411 (the "Project"). The Airport Authority appeals this decision on the following grounds:

- (1) The Planning Commission's action approving the Project violated state law because an application for a consistency determination of the Project with the existing Airport Land Use Compatibility Plan ("ALUCP") has not been submitted by the City of San Diego to the ALUC and a consistency determination for the Project has not been issued; and

Staff's Response: The Airport Authority is incorrect. An Avigation Easement [Attachment 26] was granted to the Airport Authority by action of the City Council (Resolution R-293942, October 3, 2000) [Attachment 25] which covers, among other areas of NTC, the Shoreline Plaza area. Council stated in the Resolution that is "**intended to fully satisfy** noise compatibility requirements . . . and **California Law . . . by achieving a status of "conditional compatibility" for all future development and use at NTC. . .**" [emphasis added]. The actual text is copied below:

impacts.

The easement shall be conveyed within thirty days for those

The Easement was granted by the Airport Authority on March 1, 2001, and recorded by the County on July 6, 2001. Grant of the Avigation Easement by the Airport Authority was *clearly* intended to fulfill the compatibility determination requirements. As the Comprehensive Land Use Plan for Lindgergh Field (April 1994) was the governing document at the time of granting the avigation easement, and not the current Airport Land Use Compatibility Plan (ALUCP) (October 2004), the City complied with the requirements of the time. The current application process according the ALCUP was not in effect at the time of granting this avigation easement. Therefore the City is in full compliance with the requirement to seek an avigation easement for land use compatibility.

In addition, the City Attorney further supports that an application for consistency determination is not required as written in January 2004 [Attachment 8].

The City's response on this NTC Shoreline Plaza project to the current Airport Authority assertion that the City is in violation of State law, is consistent with past City action on other NTC projects.

2. **Issue:**

- (2) The Planning Commission's action approving the Project violated the provisions of the NTC Precise Plan requiring that the Project first be sent to the Airport Authority for review and a determination as to whether the Airport Authority objects to the City's RPZ use consistency determination. (Appendix A, page 4).

Staff's Response: The NTC Precise Plan, Appendix A, defines a procedure for determining consistency with the Runway Protection Zone (RPZ). Staff has documentation showing this procedure was followed.

The project application was deemed complete by the City of San Diego in August 2005. The Development Services Department (DSD) Project Tracking System (PTS) shows a routing of plans to the Airport Authority in August 2005 [Attachment 22]. Staff's first issues report (September 2005) provides the RPZ consistency determination [Attachment 23]. While the Airport Authority maintains having no record of receiving this determination, they acknowledge receipt of at least a Notice (August 23, 2005). One year later (August 22, 2006), the Airport Authority contacted the City (phone call from Linda Johnson to Cory Wilkinson) to report no receipt of project plans or an application. On August 24, 2006, an e-mail was sent (by Cory Wilkinson) to the Airport Authority (Linda Johnson) to provide verification of compliance with the procedure set forth in the NTC Precise Plan, Appendix A. Having received no reply from the Airport Authority, a follow-up e-mail was sent on September 25, 2006. A reply was received on September 29, 2006 verifying two important points: (1) that the City staff RPZ consistency determination was received by the Airport Authority, and (2) that the Airport Authority did not object to staff's determination of consistency. The record of this e-mail communication is provided as Attachment 24. However, the Airport Authority submitted written and verbal testimony, on public record, by Attorney Amy Gonzalez, Senior Assistant General Counsel to the Airport Authority, at both the Hearing Officer and Planning Commission hearings (Attachment 2) stating a direct contradiction to the facts as presented in Attachment 24 by making the incorrect statement that no RPZ consistency determination has been made (see letters dated December 5, 2006, and November 15, 2006). The Airport Authority appeal (Attachment 2) now acknowledges communications between Airport Authority staff and City staff regarding the RPZ consistency determination, but does not come to the conclusion that the RPZ consistency determination was sufficient. The Airport Authority did not consider all of the facts, specifically the attachments which clearly state City's staff's determination of RPZ consistency as received and accepted by the Airport Authority.

3. Issue:

Since 2003, the ALUC staff has been providing comments to the City and other public agencies, regarding its objection to the approval of the proposed 49-acre park and esplanade project at the former NTC until the City complies with the requirements of the State Aeronautics Act and obtains a consistency review by the ALUC for the NTC Precise Plan, as required by law. In January 2004, the Airport Authority provided a letter to the California Coastal Commission requesting that the item be deleted from the Commission's January agenda stating that the Project is required to be submitted to the ALUC for a consistency determination prior to action by the Coastal Commission. In August 2005, the Airport Authority sent a letter to the City of San Diego's Development Services Department stating that the Project is required to be submitted to the ALUC for a

consistency determination. In August 2006, the ALUC staff received a Notice of Public Hearing for the proposed Project, and a second letter was sent to the Development Services Department, again stating the need for a consistency determination by the ALUC prior to approval or denial of the project by the City. Both state law and the Naval Training Center Precise Plan require that the Project be reviewed by the ALUC before the City of San Diego takes any action to approve or deny the Project. The following is the relevant authority:

- Naval Training Center Precise Plan and Local Coastal Program:
Appendix A section 4.a. states: "Whenever any application is submitted to the City for development in the RPZ pursuant to Chapter 11, Article 2, Division I of the Land Development Code, and such application involves issuance of a discretionary permit or any building permit requiring issuance of a Certificate of Occupancy, then concurrent with the City deeming the application complete within the meaning of the Land Development Code §112.0102(b), the City shall submit a copy of the full application and all supporting documents to the Director of Airport Properties of the San Diego Unified Port District. City staff will also indicate its position to the Port with respect to whether the application is consistent or inconsistent with the development and use restrictions applicable to the RPZ area, as set forth in Appendix A of the Precise Plan." In 2003, the Airport Authority was created and the responsibility to operate San Diego International Airport was transferred to the Airport Authority. As part of this transfer, the role of Director of Airport Properties was assumed by the Airport Authority personnel. (Public Utilities Code §170052).

- California Public Utilities Code §§21670-21679.5: The Project is located within the Airport Influence Area (AIA) for the San Diego International Airport – Airport Compatibility Land Use Plan (ALUCP), is within the 75-80 decibel (dB) Community Noise Equivalent Level (CNEL) noise contours for SDIA, is located within the Runway Protection Zone ("RPZ") of the San Diego International Airport, and according to State Public Utilities Code §21670, is required to be submitted to the ALUC for a consistency determination.

Consistent with these statutory requirements, the proposal by the City to adopt the NTC Precise Plan was required by law to be referred by the City to the ALUC for consistency review because the Precise Plan is located wholly within the AIA for SDIA as described in the adopted ALUCP and a portion of the Precise Plan is located within the RPZ. Referral was required to take place *prior* to the Commission's and City's actions to adopt the NTC Precise Plan consistent with the requirements of Section 21676(b) of the California Public Utilities Code. Because the City never submitted the NTC Precise Plan to the ALUC for a consistency determination, the City is now required by law to submit all permits, including the referenced project, to the ALUC for a consistency determination prior to consideration by the City or the Commission. Cal.Pub.Util.Code §21675.1(b) and 21676.5(a); see also ALUC Policies §8.30(3)(b)(i).

Staff Response: The Airport Authority does not recognize the written opinion of the City Attorney Office (January 28, 2004) [Attachment 8] specifically addressing the issue of NTC Precise Plan compatibility with the Airport Land Use Compatibility Plan. The City Attorney Office opinion is provided as follows:

The City has looked carefully into the issues raised in your letter. Because NTC was under exclusive federal jurisdiction at the time the ALUC was established and the CLUP adopted, the CLUP is inapplicable to property in NTC. Even if the CLUP does apply to NTC, SANDAG has determined that the NTC Precise Plan is consistent with the CLUP. A copy of the Application/Coastal Development Permit does not have to be submitted to the Airport Authority before the Coastal Commission acts because this is not an application to the City pursuant to Appendix A of the Precise Plan. Finally, as you concede, nothing in your letter prevents the Coastal Commission from acting on Application/Coastal Development Permit No. 6-03-081.

4. **Issue:**

The City's failure to submit the Project to the ALUC for a consistency determination is a serious violation of the State Aeronautics Act. The Planning Commission's action of approving the Project is a violation of state law. No action should be taken on the Project until the City has complied with the important legal requirements concerning ALUC project review.

Staff Response: As demonstrated in response to the previous comments, the City has acted in accordance with the NTC Precise Plan, and in accordance with State Law.

5. **Issue:**

State Law Requires The Proposed Project To Be Submitted to the ALUC for a Consistency Determination

The Airport Authority has been designated as the ALUC for San Diego County (County). Cal.Pub.Util.Code §21670.3. In this capacity, the Airport Authority is responsible for assisting local agencies in ensuring compatible land uses in the vicinity of SDIA, to the extent that the land in the vicinity of SDIA is not already devoted to incompatible land uses. One of the fundamental responsibilities of the Airport Authority in this role is the review of local agencies' general and specific plans and certain other land use projects and actions for compliance with the criteria and policies set forth in the Comprehensive Land Use Plans for SDIA ("the consistency review"). Cal.Pub.Util.Code §§21670.3 and 21676.

- Naval Training Center Precise Plan and Local Coastal Program: Appendix A section 4.b. and 4.c. state: City shall take no action to approve or deny any application described above in paragraph (a) for 15 business days after submitting such application to the Airport Authority. The Airport Authority shall have 15 business days to object to the City Staff's RPZ consistency determination.

The City Has Not Met Procedural Requirements Which Must Be Complied With For Development Projects Within the RPZ for SDIA.

The Precise Plan for NTC requires the City to submit a copy of any development application for a project within the SDIA RPZ to the Airport Authority for review and approval when such application involves issuance of a discretionary permit or specified building permit. See Precise Plan,

Appendix A, Page 4. The City must not take action on the application until the Airport Authority either concurs or objects to City's RPZ consistency determination for the Project. (The Airport Authority must respond within 15 business days of City submittal or the Authority will be assumed to have concurred with the City staff's RPZ consistency determination). If the Airport Authority disagrees with City staff's RPZ consistency determination, the matter must be referred to the ALUC for a final determination. Id. at page 5.

- (2) On August 24, 2006 Cory Wilkinson sent an email to Linda Johnson, Manager of Airport Planning, regarding the Project, it contained a copy of the first Issues report, generated by the City staff review process, dated September 28, 2005 and a copy of the initial assessment letter, addressed to the applicant, dated September 29, 2005. The email did not contain the application, the supporting documents, nor did it *directly* indicate to the ALUC the City staff's position with respect to the development and use restrictions applicable to the RPZ area, as required by the NTC Precise Plan. As set forth above, the NTC Precise Plan provides that whenever any application is submitted to the City for development in the RPZ and such application involves issuance of a discretionary permit then concurrent with the City deeming that application complete, the City shall submit a copy of the full application and all supporting documents to the Airport Authority for review and indicate whether the project is consistent or inconsistent with the use restrictions provided in Appendix A of the Precise Plan. An email without these materials does not satisfy the requirements. Therefore, the City is required to send the application along with supporting documentation to the Airport Authority for review.

Despite these requirements and procedures with respect to development within the SDIA RPZ, the City has failed to comply with the procedural requirements relating to the RPZ use restrictions as follows:

- (1) The City did not submit a copy of the full development application with all of the supporting documents to the Airport Authority concurrent with the development application being deemed complete by the City. The City deemed the application complete on August 12, 2006 The City also failed to provide its determination to the ALUC as to whether the project is consistent with the use restrictions provided for the Precise Plan's projects located within the RPZ for the Airport (see Appendix A).

Conclusion

The City cannot proceed with this matter until it has complied with the law. Specifically, the City must comply with the California State Aeronautics Act and submit the Project to the ALUC for a consistency determination and the City must comply with the Naval Training Center Precise Plan and Local Coastal Plan requirements with respect to the runway protection zone use restrictions. The Airport Authority objects to the approval of this Project until compliance with these requirements have been met by the City.

Staff Response: As demonstrated in response to the previous comments, the City has acted in accordance with the NTC Precise Plan, and in accordance with State Law.