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VIA EMAIL AND HAND DELIVERY

John Helmer
San Diego Unified Port District
Land Use Planning Department
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Re: Coastal Act Comments on Lane Field Hotel Development Project (UPD#83356-702)

Dear Mr. Helmer:

I. INTRODUCTION

We are writing on behalf of UNITE-HERE Local 30 to comment on the Port of San Diego's consideration of a Coastal Development Permit ("CDP") for the Lane Field Hotel Development ("Project"). According to the Initial Study and Addendum ("Addendum") for the Project, it entails construction of a 600-800 room hotel complex that also includes approximately 80,000 square feet of retail space on 5.7 acres of land at the northeast corner of Harbor Drive and Broadway Street in San Diego, California.

Our review has found significant inconsistencies between the Project and the Port Master Plan ("PMP"). Specifically, undisclosed contamination of soil and groundwater at the Project site carries the potential to harm water quality and marine life in the San Diego Bay. It also threatens the health and welfare of the people of California, especially those on-site workers who may come into contact with the contamination during construction. The Port cannot make a finding of PMP consistency until it notifies the appropriate regulatory agencies of the contamination and conducts a full analysis of it. Furthermore, because the Project is prohibitively expensive to the vast majority of the public, and it does not comply

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with the setback and building orientation requirements in the PMP, it is not consistent with that Plan. For these reasons, along with the other adverse significant impacts identified in our December 20, 2007 comments on the Project, the Project is not consistent with the public trust and is not eligible for a CDP under the Coastal Act.

Local 30 has members who regularly fish in San Diego Bay for recreation and as a means to provide food for their families. While some people practice catch and release, many Local 30 members belong to ethnic groups for whom it is customary to eat the fish they catch. Until the Bay contamination issues are addressed, these people will continue to be unnecessarily exposed to persistent toxic chemicals.

More broadly, degraded water quality and the compromised integrity of marine life affects Local 30's members' ability to enjoy the natural resources offered by the Bay. A failure to proceed with the cleanup in a timely manner has a direct impact on the health and safety of the working community and undermines the physical beauty of the region.

We have prepared these comments with the assistance of several technical experts, including Dr. Petra Pless and Mr. Matt Hagemann. The comments of both of these experts along with their curriculum vitae are appended hereto as Exhibits A and B. Please note that these experts' comments supplement the issues addressed below and should be addressed and responded to separately.

II. THE PROJECT IS NOT ELIGIBLE FOR A COASTAL DEVELOPMENT PERMIT UNDER THE COASTAL ACT BECAUSE IT IS INCONSISTENT WITH THE PMP

Under the California Coastal Act ("Coastal Act")¹, "no development within the area covered by the certified port master plan shall be approved by the port governing body unless it finds that the proposed development conforms with such certified plan." Coastal Act § 30715.5. Similarly, in reviewing an appeal of a port's decision to issue a CDP for a development under a PMP, the Coastal Commission determines whether there is a "substantial issue . . . as to conformity with the certified port master plan." Coastal Act § 30625(a)(3). Here, the Port cannot find that the Project conforms to the PMP because (1) the Project conflicts with the PMP's development and conservation goals; (2) the Project conflicts with the PMP's

¹ Cal. Pub. Res. Code §§ 30000, *et seq.*
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minimum setback requirements, (3) the orientation of the Project's buildings (perpendicular, rather than parallel, to the Bay) conflicts with the PMP; (4) the luxury hotel complex, which will be unaffordable and thus inaccessible to the vast majority of the public, is an exclusory use of tidelands that is inconsistent with the PMP; and (5) the Project is not consistent with allowable public trust uses of tidelands. Because the Port cannot make the necessary conformity finding, the Project is ineligible for a CDP under the Coastal Act.

A. The Project Conflicts With the PMP's Development and Conservation Goals

According to the PMP, the fundamental development and conservation strategy for the coastal zone is as follows:

The basic direction of development and conservation efforts in the coastal zone is, where feasible, to protect, maintain, enhance and restore the overall quality of the man-made and natural coastal zone environment. ***Port development seeks to minimize substantial adverse environmental impacts.***

PMP, p.11, section entitled "Development and Conservation Strategy," emphasis added. In a similar vein, one of the stated goals of the PMP is to "protect, preserve, and enhance natural resources, including natural plant and animal life in the bay as a desirable amenity, an ecological necessity, and a valuable and usable resource." *Id.* at p. 9. The PMP further directs the Port to "[a]dminister the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust." *Id.* at p. 10. These conservation and development policies find their root in the Coastal Act itself, which calls for maintaining and restoring "the biological productivity and the quality of coastal waters" (Coastal Act § 30231), "minimiz[ing] risks to life, . . .be[ing] consistent with requirements imposed by an air pollution control district or the States Air Resources Control Board . . ., and minimiz[ing] energy consumption and vehicle miles traveled." (Coastal Act § 30253)

Additionally, as stated in the PMP, the "specific recommendations of the Visionary Plan that pertain to Port District land and water areas within the Planning District 3 Precise Plan area [Centre City Embarcadero] ***are incorporated into the Master Plan.***" PMP, p. 58, emphasis added. Because the PMP expressly incorporates the North Embarcadero Visionary Plan ("NEVP"), the

Project must conform to both plans under the Coastal Act. Coastal Act § 30715.5. The NEVP states that “[i]n planning for the future development of the North Embarcadero area, the Alliance [which includes the Port] will honor these guiding principles: . . . ‘Preserve the environmental integrity of land and water.’” NEVP, Appendix A.2 (attached as Exhibit C).

As more fully explained below and in our CEQA comments on the Project, filed on December 20, 2007, the Lane Field Development Project will cause a number of significant adverse environmental impacts that threaten the “overall quality of the man-made and natural coastal zone environment” in a way that **does not** “protect, preserve, [or] enhance natural resources, . . .” *Id.* at 10-11. Specifically, inconsistent with the PMP and the Coastal Act itself, the Project will have significant adverse impact on the Bay’s water quality, on air quality, on climate change, on traffic (vehicle miles traveled), on public services (such as fire protection services) and utilities (such as water supply) in the area. As also discussed below, the Port’s failure to properly mitigate these impacts is inconsistent with the PMP’s requirement that the Port “administer the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust.” *Id.* at 10. The failure to identify and/or limit the retail uses on the Project site is another violation of the public trust doctrine which, as explained below, limits retail to water-dependent uses.

1. Potential Disturbance of Contaminated Soil on the Project Site Will Cause a Substantial Adverse Environmental Impact That Makes the Project Inconsistent with the PMP

As discussed by Matt Hagemann in his attached comments, in 2006, the Port prepared a Phase II report that documented significant pesticide contamination in soil at the Project site. Hagemann reports that the maximum concentrations of dichlorodiphenyltrichloroethane (commonly known as “DDT”) exceed the California criterion for hazardous waste. Additionally, according to Hagemann, the concentrations of DDT and dichlorodiphenyldichloroethylene (commonly known as “DDE”) in soil on the Project site greatly exceed ecologic screening criteria established by the National Oceanic and Atmospheric Administration (NOAA). The potential disturbance of this contaminated soil during construction is a substantial environmental impact that makes the Project inconsistent with the PMP. Failure to fully address this contamination before commencing construction is also inconsistent with Port’s obligation to “protect, preserve, and **enhance** natural

resources . . .” and to “[a]dminister the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust.” PMP, pp. 9-10, emphasis added. Failure to fully investigate and analyze the contamination prior to approving the Project is inconsistent with the Port’s obligation to “[p]reserve the environmental integrity of land and water.” NEVP, Appendix A.2 (attached as Exhibit C).

2. Potential Impact of Contamination on Marine Life is A Substantial Adverse Environmental Impact That Makes the Project Inconsistent with the PMP

Upon construction, soil may become mobilized and deposited as sediment in the Bay where the organisms may be exposed. According to Hagemann and Pless, the soil contaminants may pose a risk to organisms in San Diego Bay. Such a risk to the health of the Bay and its marine life is inconsistent with PMP Goal VIII, which states that “the Port District will enhance and maintain the bay and tidelands as an attractive physical and biological entity.” PMP, p. 9. The risk from release of contaminants to the Bay is consistent with governmental findings on this issue. When the United States Environmental Protection Agency banned DDT in 1972, its then-Administrator issued an opinion and order stating as follows:

I am convinced by a preponderance of the evidence that, once dispersed, DDT is an uncontrollable, durable chemical that persists in the aquatic and terrestrial environments. Given its insolubility in water and its propensity to be stores in tissues, it collects in the food chain and is passed up to higher forms of aquatic and terrestrial life. There is ample evidence to show that under certain conditions DDT or its metabolites can persist in soil for many years, that it will volatilize or move along with eroding soil. . . . evidence in the record shows that it is occasionally found in remote areas or in ocean species, such as whales, far from any known area of application.

Persistence and biomagnifications in the food chain are, of themselves, a cause for concern, given the unknown and possibly forever undeterminable long-range effects of DDT in man, and the environment. Laboratory tests have, however, produced tumorigenic effects on mice when DDT was fed to them at high levels.

. . .

The evidence . . . compellingly demonstrates the adverse impact of DDT on fish and birdlife. Several witnesses testified to first-hand observed effects of DDT on fish and birdlife, reporting lethal or sub-acute effects on aquatic and avian life exposed in DDT-treated areas. Laboratory evidence is also impressively abundant to show the acute and chronic effects of DDT on avian animal species and suggest that DDT impairs their reproductive capabilities.

37 Fed. Reg. 13371 (June 30, 1972) (Opinion and Order of Administrator Ruckelshaus concerning the registrations of products concerning DDT), attached as Exhibit D.² Also, according to the Department of Health and Human Services, “DDT, and especially DDE, build up in plants and in fatty tissues of fish, birds, and other animals.”³

In their attached comments, Mr. Hagemann and Dr. Pless state that the potential additional pollutant load on the Bay represents a substantial adverse environmental impact. The Project is thus inconsistent with the PMP. This inconsistency is a particular cause for concern here because, as both experts note, the water quality in the San Diego Bay is already severely degraded. Any additional pollutant load to the Bay must be prevented.

Dr. Pless also explains that even though the use of DDT and Aroclor was discontinued in the 1970s, both pesticides and their breakdown products are very persistent in the environment. DDT and Aroclor are very highly toxic to many aquatic invertebrate and fish species. In addition to acute toxic effects, both pesticides and their metabolites have a tendency to bioaccumulate significantly in fish and other aquatic species, leading to long-term exposure. This occurs mainly through uptake from sediment and water into aquatic flora and fauna, and bioaccumulation may occur in some species at very low environmental concentrations. Bioaccumulation may also result in exposure to species which prey on fish or other aquatic organisms, e.g., birds of prey. Persons eating fish contaminated with these pesticides and their metabolites may be exposed via bioaccumulation of the compound in fish. PCBs are of particular concern because of their potential to cause cancer in those who consume the fish as food.

² *Also see*, <http://www.epa.gov/history/topics/ddt/index.htm>

³ <http://www.atsdr.cdc.gov/tfacts35.html#bookmark02>
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According to Dr. Pless's expert opinion, the concentrations of DDT and DDE found in the soil at the Lane Field Project site are high enough to potentially result in adverse impacts on sensitive species if mobilized. Dr. Pless further explains that mobilization of contaminants could occur throughout the construction phase during rainfall events via stormwater to the San Diego Bay or by wind erosion. Soil particles with adsorbed contaminants would then disperse in the water column and settle out onto the sea bottom. Critical habitats and food chains supporting many estuarine fish and wildlife species involve the benthic environment on the sea bottom. Contaminants in sediments often pose both ecological and human-health risks through degraded habitats, loss of fauna, propagation of contaminants in the coastal ecosystem, and human consumption of contaminated fish and wildlife. In many instances, fish consumption advisories are coincident with severely degraded sediments in coastal water bodies.

Dr. Pless's investigation also revealed that the San Diego Bay is considered to be the second most polluted bay in the United States. Recent studies conducted in some of the most contaminated sites in the Pueblo watershed, which drains into San Diego Bay, have found organic contaminants including PCBs and DDT to be the principal sources of impairment and both ecological and potential human health risk. In many areas, edible fish contain sufficient concentrations of organochlorine pesticides to be a threat to cause cancer for those who consume the fish as food. Five areas within the San Diego Bay are so severely polluted as a result of combined point and non-point source pollution discharges that they have been designated by the Regional Water Quality Board ("RWQB") as Toxic Hot Spots. One of these toxic hot spots is between the B Street and Broadway Piers, 200 feet from the Project site. Contaminants mobilized from the Project site would contribute to the already severe sediment contamination in the San Diego Bay.

Given the level of contamination at the site and its proximity to the San Diego Bay, it is Dr. Pless's expert opinion that the San Diego Unified Port District should conduct an ecological risk assessment to properly assess the potential adverse impacts due to contaminant mobilization from the site.

Although the Addendum states that "[s]tormwater runoff would be captured on site and would be prevented from flowing into the Bay without prior treatment," according to Hagemann, this proposed measure is unreliable because it lacks sufficient detail. For example, it does not address the more specific issue of pesticide contamination, let alone disclose a treatment method for pesticides. This

vague and unsupported statement fails to show how stormwater will be managed to prevent pesticide pollution from reaching the Bay and its marine life.

Hagemann concludes that further evaluation of risk to water quality and organisms in the Bay is necessary. The 2006 Phase II Environmental Site Assessment found that “constituents of potential concern” (“COPCs”) do exist in soil at the Site in the form of DDT and DDE; the detected COPCs are at concentrations that exceed ecologic screening and hazardous waste criteria; and the pathway for ecologic exposure are complete – organisms in San Diego Bay may be exposed to contaminated sediment transported to the Bay during storm events.

3. Groundwater Contamination is a Substantial Adverse Environmental Impact that Makes the Project Inconsistent with the PMP

According to Hagemann, the groundwater beneath the Site is contaminated with total petroleum hydrocarbons, tetrachloroethylene, and cis-1,2-DCE among other contaminants. The 2006 Phase II documents cis-1,2-DCE in Boring B-13 at a concentration of 24 ug/L, in excess of the California drinking water standard of 6 ug/L. This groundwater contamination is a substantial adverse environmental impact that makes the Project inconsistent with the PMP and thus ineligible for a CDP. PMP, p. 11. The failure to disclose and fully investigate this contamination is inconsistent with the Port’s obligation to “restore the overall quality of the man-made and natural coastal zone environment” under the PMP. *Id.* The failure to fully investigate and address this contamination also violates the Port’s obligation to preserve the environmental integrity of land and water. NEVP, Appendix A.2 (attached as Exhibit C).

4. Failure to Notify Regulatory Agencies of Project Site Contamination Is Inconsistent With the PMP

The PMP states that “[t]he quality of water in San Diego Bay will be maintained at such levels as will permit human water contact activities.” PMP, page 9, Goal X. To achieve this goal, the PMP states that the Port will “cooperate with the Regional Water Quality Control Board, the County Health Department and other public agencies *in a continual program of monitoring water quality and identifying source of any pollutant.*” *Id.*, emphasis added. Equally alarming to the detection of contamination, Hagemann’s investigation revealed that *none of the relevant regulatory agencies have been notified of the detection*

of significant amounts of contamination, including DDT and DDE, on the Project site. The Port's failure to notify the RWQCB is inconsistent with the PMP's above directive.

Hagemann thus recommends notification of the presence of these serious contaminants to the proper agencies along with development of specific mitigation measures to address the presence of the known contaminants in soil and groundwater.

5. Significant Pesticide Contamination on the Project Site Threatens Human Health which is Inconsistent with the PMP

In his attached comments, Hagemann further explains that humans may come into contact with the soil contamination discussed above. Hagemann explains that this is a particularly important issue for construction workers when the soil is disturbed during construction. The potential substantial adverse impacts to human health is inconsistent with the PMP's goal of establishing "standards facilitating the retention and development of an aesthetically pleasing tideland environment free of . . . hazards to the health and welfare of the people of California." PMP, p. 9.

6. The Project Will Have Substantial Adverse Air Quality Impacts that Make It Inconsistent with the PMP

a. Construction of the New Subterranean Parking Garage

Both the PMP and the Coastal Act seek to minimize adverse impacts to air quality from new development. The PMP does so by stating, "Port development seeks to minimize substantial adverse environmental impacts." PMP, p. 11. The Coastal Act specifically addresses air quality by stating that "new development shall . . . [b]e consistent with requirements imposed by an air pollution control district or the States Air Resources Control Board as to each particular development." Coastal Act § 30253(3). As explained in our December 20, 2007 comments on the Project, the Project may have substantial, unmitigated and adverse impacts on air quality.

As stated by the Port, "[t]he Proposed Project includes . . . a subterranean parking garage. The Proposed Project no longer includes . . . surface parking on the

site.” Addendum, page 15. These are changes to the Project design that were never before contemplated, and thus never studied, by the Port. According to Dr. Pless’s expert opinion, the construction of the underground parking structure would include demolition of the existing surface parking lot and removal of all surface features and would require dewatering and excavation of approximately 115,000 cubic yards of material. Dr. Pless explains that such excavation and disposal would result in substantial diesel exhaust emissions from construction equipment and haul trucks which were not analyzed or adequately mitigated in any of the environmental documents for the Project. Dr. Pless further explains that diesel exhaust is a carcinogen and that emissions during the 30 month construction period would substantially increase incremental cancer risks. These are substantial environmental impacts that make the Project inconsistent with the PMP and the Coastal Act itself, which states that “new development shall . . . [b]e consistent with requirements imposed by an air pollution control district or the States Air Resources Control Board as to each particular development.” Coastal Act § 30253(3).

Dr. Pless also notes that excavation would result in substantial emissions of fugitive dust particulate matter from a variety of sources not accounted for by the Port. According to Dr. Pless, these emissions would contribute to the region’s non-attainment status. Dr. Pless also opines that in the aggregate, fugitive dust emissions during construction would likely exceed the San Diego Air Pollution Control District’s (“SDAPCD”) threshold of 100 pounds per day. These are substantial adverse environmental impacts that make the Project inconsistent with the PMP.

The Port’s response to the above comment states there is no need to address the new impacts from the subterranean parking garage because “[t]he subterranean parking structure is described in both the subsequent project description for Lane Field in the Master Environmental Impact Report (“MEIR”) and in the Addendum/Initial Study.” Port’s Response to Dr. Pless’s comment 1.a. The response implies that the MEIR prepared for the NEVP in 2000 already addressed and mitigated this impact. This is incorrect. The MEIR clearly contemplated an above-ground parking structure, not an underground one as currently proposed. In fact the MEIR’s project description states that “any **freestanding parking structure** at Lane Field would be consistent with the proposed Visionary Plan design guidelines, which indicate that such a structure should not exceed 60 feet in height.” 2000 MEIR, p. 1-8, emphasis added.

b. Emissions of PM2.5

According to Dr. Pless's expert opinion, new information on the adverse health impacts of particulate matter in ambient air has become available and, in response, the U.S. Environmental Protection Agency ("EPA") and the California Air Resources Board ("CARB") adopted new ambient air quality standards. The Coastal Act mandates compliance with CARB requirements. Coastal Act § 30253.

Dr. Pless notes that EPA and CARB promulgated ambient air quality standards for particulate matter smaller than 2.5 micrometers ("PM2.5"). These standards are not subsets of the old standards for PM10, i.e. particulate matter smaller than 10 micrometers, but new standards for a separate pollutant with distinguishable impacts. As acknowledged in the Port's response to comments, the MEIR did not include these new PM2.5 standards. The Port's Addendum for the Project similarly failed to address and mitigate air quality impacts from PM2.5.

As Dr. Pless explains, to understand the Project's impacts on public health and welfare, it is important to understand the severity of health impacts caused by elevated concentrations of PM2.5 in the ambient air. Since 1996, more than 2,000 peer-reviewed studies have been published validating earlier epidemiologic studies that link both acute and chronic fine particle pollution with serious morbidity and mortality. The EPA concluded with respect to short-term exposure studies that "epidemiological evidence was found to support likely causal associations between PM2.5 and both mortality and morbidity from cardiovascular and respiratory diseases." In response to this new information of substantial importance, the EPA recently tightened the national 24-hour PM2.5 ambient air quality standard from 65 µg/m³ to 35 µg/m³, effective December 17, 2006. Existing and historical ambient concentrations of PM2.5 in the San Diego air basin considerably exceed this new standard and according to Dr. Pless's expert opinion, PM2.5 emissions from the Project's construction and operation would further aggravate the already severely compromised air quality. Dr. Pless further opines that, especially in light of these existing levels of excess PM2.5 in the region, the Project's PM2.5 emissions are likely to be significant. Such substantial adverse air quality impacts would make the Project inconsistent with the PMP. PMP, p.11.

As Dr. Pless explains, a large portion of PM2.5 emissions arises from diesel exhaust. Diesel exhaust contains nearly 40 toxic substances, and diesel soot particles are particularly damaging to human health. Diesel exhaust has been

linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.

Dr. Pless's research shows that in the San Diego air basin, where the Project is located, in 2005, diesel exhaust from construction equipment caused 90 premature deaths, 80 hospitalizations for respiratory and cardiovascular disease, 170 cases of acute bronchitis, more than 2,000 incidents of asthma and other lower respiratory symptoms, 38,500 days of lost work and school absences, and more than 100,000 restricted activity days. Total annual costs were estimated at \$718 million dollars. Before it may make a finding of consistency with the PMP, the Port must first ensure that the Project minimizes its diesel exhaust emissions, which are a substantial adverse environmental impact. PMP, p. 11.

According to Dr. Pless's expert opinion, the Project may result in substantial adverse impacts on air quality and public health that were not analyzed or minimized by the Port. Such an analysis must be performed to minimize the Project's impacts on the region's ambient air quality with respect to federal and state PM2.5 standards and to minimize health effects due to diesel particulate matter emissions, particularly during the construction phase of the Project. The failure to address these impacts is inconsistent with the PMP's requirement to "minimize substantial adverse environmental impacts." PMP, p. 11.

The Port's response to this comment is that the CDP includes "measures to reduce the emission of diesel pollutants and fugitive dust that include PM2.5 during construction." Yet, the response does not list those measures nor explain how those measures will minimize the PM2.5 impacts of this Project. The Port provides no evidence to show that its undisclosed mitigation strategy for PM2.5 will properly offset the substantial air quality impacts of the Project.

7. The Project Will Have A Substantial Adverse Impact on Climate Change

The Port simply ignores the carbon dioxide emissions from the Project itself, combined with the increase in traffic caused by the Project, and their substantial adverse impact on climate change.

In 2006, Governor Schwarzenegger signed AB 32, a landmark law to control and reduce the emission of global warming gases in California. AB 32 requires both reporting of greenhouse gas emissions and their reduction on an ambitious time

line, including a reduction of carbon dioxide (CO₂) emissions to 1990 levels by 2020. Local governments, like all agencies, must comply with the legislation's provisions, and identify both CO₂ and other greenhouse gas sources, and offer actions for mitigation of the increases in emissions in greenhouse gases that result from new development projects.

Because global warming is perhaps the most serious environmental threat currently facing California, the Port has a duty to do its part to comply with AB 32 by providing full environmental disclosure of the Project's effects on greenhouse gas emissions, and adopting serious and real mitigation measures to minimize those effects and emissions.

Climate change results from the accumulation in the atmosphere of "greenhouse gases" produced by the burning of fossil fuels for energy. Because greenhouse gases, primarily CO₂, methane and nitrous oxide, persist and mix in the atmosphere, emissions anywhere in the world impact the climate everywhere. The impacts on climate change from greenhouse gas emissions have been extensively studied and documented.

In adopting AB 32, the Legislature made specific findings that global warming will "have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry." Climate change impacts frustrate the PMP's goal to "provide for the present use and enjoyment of the bay and tidelands in such a way as to ***maintain options and opportunities for future use and enjoyment***" and to "administer the tidelands so as to provide the greatest economic, social and aesthetic benefits to present ***and future generations.***" PMP, p. 8, emphasis added. Similarly, to prevent these future harms, AB 32 mandates that greenhouse gas emissions be reduced to 1990 levels through a regulatory program to be adopted and carried out by CARB. Governments are not exempt from AB 32. The Port of San Diego and the businesses within its borders will each have to comply with the regulations and plans that will be adopted to achieve the reduction of greenhouse gas emissions mandated by this legislation.

According to Dr. Pless's expert opinion, the Project would directly emit carbon dioxide ("CO₂") from heating and transportation fuels. Dr. Pless further states that the Project would also contribute to indirect emissions of greenhouse gases due to increased demand on electricity generation and other energy sources. These are

substantial adverse environmental impacts of the Project that make it inconsistent with the PMP.

Apparently, the Port has prepared a list of mitigation measures related to climate change for the first time in its response to comments. By requiring mitigation for the first time, the Port tacitly acknowledges that the Project carries potentially substantial adverse impacts related to climate change that require mitigation, but has provided no analysis of the issue. Under CEQA, the first essential analytical step is to estimate the Project's impacts on climate change and to disclose that analysis to the public. Because the Port has neither estimated nor analyzed the Project's climate change impacts, it is impossible to determine whether the Port's proposed mitigation sufficiently minimizes those impacts. Also, because the Port has not provided that list of mitigation measures to the public for their review and comment, there is thus no way to gauge the efficacy or the enforceability of the proposed mitigation. In sum, because the Port's proposed mitigation exists in a vacuum, the Port cannot conclude that the Project will "minimize substantial adverse environmental impacts" as required by the PMP.

8. The Project Will Have a Substantial Adverse Impact on Traffic and Vehicle Miles Traveled Which Makes it Inconsistent with the PMP

Traffic expert Tom Brohard found that when the Lane Field Hotel Development and the 400,000 square foot office space developments are operating, they will generate over 13,000 average daily trips. According to Mr. Brohard's expert opinion attached to our December 20, 2007 comments, this is a new substantial adverse impact on traffic that was not discussed in any of the environmental documents for the Project. This large, unplanned jump in average daily trips from the Project is inconsistent with the PMP's requirement to avoid substantial adverse environmental impacts. PMP, p. 11. It is also inconsistent with the Coastal Act's requirement to "minimize . . . vehicle miles traveled." Coastal Act § 30253(4).

Although page 73 of the Addendum makes reference to a traffic study prepared by Linscott, Law and Greenspan, as explained by Mr. Brohard, that traffic study does not study the Lane Field Hotel Development Project. The study only studies traffic generated from the "B" Street Cruise Ship Terminal.

In fact, in staff's response to comments, staff acknowledges that the traffic study has nothing to do with the Lane Field Project and removed the reference from the final Addendum. Thus, there is *no* traffic study for the Project, even though the Addendum makes trip generation estimates.

Regardless, Mr. Brohard further found that the Project's incremental contribution (9,254 average daily trips) is much larger than previously estimated by the Port. According to Mr. Brohard, these additional, unplanned-for vehicle trips will cause substantial adverse environmental impacts. Under the PMP, these project-specific impacts must be minimized .

Because the Addendum now shows that the Lane Field Project, combined with the 1220 Pacific Highway office space, will generate more trips than that estimated by the environmental documents for the Project, Mr. Brohard opines that additional I-5 Freeway mainline segments and additional ramps not identified in those previous documents may also experience substantial adverse traffic impacts. These impacts must be analyzed and minimized by the Port before it may make a finding of consistency with the PMP and the Coastal Act.

9. The Project Will Have a Substantial Adverse Impact on Public Services, Making It Inconsistent with the PMP

As discussed in our December 20, 2007 comments on the Project, San Diego's fire protection services are woefully under funded and are thus unable to achieve national response-time standards. And, due to drought conditions and a recent Court decision severely curtailing San Diego's water supply from the State Water Project, the region's water supply scenario is dire. These are just a few examples of the challenges facing San Diego's provision of utilities and public services. The Project is a new development that only exacerbates these existing problems. These are substantial adverse environmental impacts that make the Project inconsistent with the PMP. The PMP directs the Port to "[c]urb the misuse of land so that it will not injuriously affect the people of the State of California through the prevention of substandard construction or unnecessarily add inappropriate developments." PMP, p. 10.

In its response to our CEQA comments, the Port states that a firehouse is planned to be built two blocks from the hotel development. This statement tacitly *acknowledges that the current firefighting protection service levels are inadequate to serve the Project*. The response makes general statements about

potential sources of funding for that new fire station and claims that this new facility will be built by 2012.⁴ These statements are unsupported and, more importantly, unenforceable. The Port must first disclose this impact as significant and substantial and impose **enforceable** mitigation for it before it can make a finding that it has minimized substantial adverse environmental impacts, as required by the PMP.

The Port's response to our comments also claims that the requirement to obtain a water supply assessment applies only to cities and counties. Yet, according to the NEVP's own language, the NEVP is

“the outcome of a unique alliance among five government agencies with significant jurisdictional and/or ownership interests in the North Embarcadero. Created through a Memorandum of Understanding (MOU) signed in the summer of 1997, ***the North Embarcadero Alliance consists of the Centre City Development Corporation (designated agent of the Redevelopment Agency of the City of San Diego), the City of San Diego, the County of San Diego, the San Diego Unified Port District, and the United States Navy.***”

NEVP, p. 5, emphasis added. The NEVP's MOU states that the

“[CCDC], the City of San Diego, the County of San Diego, and San Diego Unified Port District, and the United States Navy enter into this [MOU] in order to formalize their voluntary commitment to working together to plan and facilitate the future use and development of the North Embarcadero area. ***All of these agencies have endorsed the concept of a voluntary multi-jurisdictional planning program***”

NEVP MOU, attached as Exhibit C, emphasis added. The NEVP and all its subsequent projects are not exclusively Port District projects, but also projects of the City and County of San Diego, making the Project subject to the water supply assessment requirement established by SB 610. The Port's decision to act as lead

⁴ Even if this date were enforceable, the Port offers no analysis of whether this new firehouse will fully minimize the existing fire protection shortfalls in downtown San Diego. Also, the Project is scheduled to open in 2010, well before the new fire station would be operational.
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agency for purposes of CEQA does not change the multi-jurisdictional nature of the Project itself.

Also, as evidenced by our December 20, 2007 comments, the ever-dwindling water supply scenario in San Diego is well documented. Just as in the Addendum, the Port's response to comments again relies on outdated water planning documents and forecasts that are no longer relevant in the wake of the recent court decision from Judge Wanger severely curtailing San Diego's access to water from the State Water Project. In light of San Diego's water shortage, the addition of a new luxury hotel complex is a substantial adverse environmental impact that makes the Project inconsistent with the PMP.

10. Piecemealed Analysis of the Project's Impacts Is Inconsistent with the PMP

In numerous places, the Port's responses to comments state that the Project's impacts have been reduced since the Project no longer includes development of 1220 Pacific Highway. This response is both misleading and incorrect. The response is misleading because the Port intends to develop 1220 Pacific Highway, but has simply deferred that development into the future. The response is incorrect because it improperly relies on a piecemealed analysis of the Project. As originally contemplated by the 2000 MEIR, the Lane Field Development Project included both the Lane Field site and 1220 Pacific Highway. The Port cannot now artificially segment the Project into two pieces to claim that impacts from the Lane Field development are somehow reduced. To the contrary, as explained by our December 20, 2007 comment letter, the traffic impacts of the Project as a whole (including 1220 Pacific Highway) are, in fact, much larger than contemplated by the 2000 MEIR. This is a project-specific substantial impact that makes the Project inconsistent with the PMP.

Putting the issue of piecemealing aside, the cumulative development scenario has not changed. Furthermore, the Port may not rely on the cumulative analysis in an expired MEIR to claim that further environmental review is not necessary. As discussed in our December 20, 2007 comments, the conclusions in that long-expired document are no longer valid. Finally, as the responses to comments acknowledge, the Port's current charge is to make *project-specific* findings for the Project. Thus, findings of no substantial changes that the Port made for the B Street Pier or other projects undertaken in the past year are not relevant to the Project currently before

it. Because the Project will have substantial adverse cumulative environmental impacts, it is inconsistent with the PMP.

B. The Project Fails To Comply With The PMP's Minimum Setback Requirements

1. The Proposed Spa and Restaurant Intrudes on the Setback Requirement Along "C" Street

The Addendum plainly acknowledges that on the "Lane Field South hotel, a portion of the proposed spa and restaurant/bar intrudes approximately 15 feet into the 25-foot setback on the 50-foot podium level along the C Street frontage." Addendum, p. 59. The PMP clearly states that "[s]etbacks for upper stories are 25-foot *minimum* at 50-foot building height . . ." PMP, p. 63 (emphasis added). The setback intrusion by the Project's proposed spa and restaurant is inconsistent with the PMP, rendering the Project ineligible for a CDP.

2. The Elevator Penthouses Intrudes on the PMP's Setback Requirements

The Addendum goes on to disclose that "[b]oth hotels propose to provide public realm elevator access to the podium roof levels from the Harbor Drive sidewalk. The elevator penthouses would consist of an approximately 20 feet tall structure. This structure would be mostly transparent and located within the 25-foot setback on the 50-foot podium level." Addendum, p. 59. Again, as explained above, the PMP clearly sets a *minimum* setback requirement of 25 feet. PMP, p. 63. The PMP provides no exceptions to this minimum setback requirement.

3. The Project Is Inconsistent with the NEVP's Setback Requirements

To be consistent with the PMP, the Project must also be consistent with the NEVP's requirements for the planning area. PMP, p. 58. With respect to consistency with the NEVP's setback requirements, the Addendum offers an incoherent discussion related to building height requirements in the NEVP. Addendum, p. 59. It states that the NEVP exempts from maximum building heights structures that occupy no more than 10 percent of the roof area. *Id.* On this basis, the Addendum concludes that the above-mentioned setback intrusions "are consistent with the building height requirements." *Id.* To the contrary, the

NEVP's building height requirements are completely separate from, and have no relevance to, its setback requirements. In fact, the NEVP itself states:

[u]pper-story setbacks assure that buildings maintain a pedestrian scale and that views to the bay are enhanced from inland areas.

Along North Harbor Drive, and Broadway, the upper stories of buildings (between 40 feet/three stories and 50 feet) should step back a minimum of 25 feet from the property line, leasehold line, or minimum setback requirement. Along 'C' Street, and 'E' Street, the upper stories of buildings (between 30-50 feet) should step back a minimum of 25 feet.

NEVP, p. 67. These intrusions on both the PMP and NEVP's minimum setback requirements render the Project inconsistent with the PMP and ineligible for a CDP under the Coastal Act. As a result of this inconsistency, the design of the buildings frustrate the NEVP's above-stated goal of enhancing views to the Bay from inland areas.

Furthermore, as is evident from the setback requirements in the NEVP, the 25-foot setback requirement along North Harbor Drive and Broadway is triggered at a height of *40 feet*. *Id.* Additionally, the 25-foot setback requirement along C Street is triggered at *30 feet*. *Id.* Page 58 of the Addendum incorrectly states that the setback trigger occurs at 50 feet along all three of these streets. There is no evidence to show that the Project will comply with the 25-foot setback requirement at a height of 40 feet along North Harbor Drive and Broadway. There is also no evidence to show that the Project will comply with the 25-foot setback requirement at a height of 30 feet along C Street. The Port cannot find conformity with the NEVP requirements it expressly incorporated into the PMP until there is evidence to show the Project will comply with these minimum setback requirements. Because the Port cannot make the required conformity finding, the Project is ineligible for a CDP.

C. The Orientation of the Project's Buildings Is Inconsistent with the PMP

The front of the Project's buildings are perpendicular to the Bay, rather than parallel to it. See, page 4 of Lane Field Concept Plan, dated April 23, 2007 (attached as Exhibit E), which states that "the hotel is designed as a slender tower

located perpendicular to the waterfront . . .” According to the PMP, “[v]iews should be enhanced through view corridors, the preservation of panoramas, accentuation of vistas, and shielding of the incongruous and inconsistent.” PMP, p. 9. The NEVP contains more specific criteria on this issue. On page 30, it states that the North Embarcadero is an excellent location for hotel development ***due to potential waterfront views . . .***” (Emphasis added.) The NEVP goes on to state that the “buildings in the North Embarcadero should maximize their frontage along the street . . .” NEVP, p. 67.

The orientation of the buildings not only frustrates the visual access policies of the PMP and NEVP, but also results in a greater potential for noise impacts. Specifically, one of the mitigation measures for noise listed in the MEIR is that “New hotels shall face toward the Bay to use the building mass as a supplemental noise barrier, if feasible.” MEIR, 4.10-15. The Addendum does not explain why a parallel orientation to the Bay is not feasible.

D. The Lane Field Luxury Hotel Complex Represents An Exclusionary Use of Tidelands That Is Inconsistent with the PMP

The PMP states that it will “encourage non-exclusionary uses on tidelands” and will “[d]evelop the multiple purpose use of the tidelands for the benefit of all the people” in an effort to satisfy its goal to “emphasize . . . public benefits over private ones.” PMP, p. 8, Goal IV. This goal is consistent with the Coastal Act’s policy of protecting, encouraging and providing “[l]ower cost visitor and recreational facilities.” Coastal Act § 30213. Yet, the Lane Field Hotel Development would be a luxury hotel complex, which will be unaffordable and, thus, inaccessible to the vast majority of the public.

The developer plans to flag the hotel brand planned for Lane Field South with the ***upper-upscale*** InterContinental Hotels brand. According to Port staff, “[i]n 2006, the 21 InterContinental in North America achieved an average room rate ***in excess of \$200*** (which is ***higher*** than Marriott, Hilton, Hyatt, and Westin . . .)” See, page 1 of a February 2, 2007 memorandum from Port staff to Board of Port Commissioners, attached as Exhibit F (emphasis added). With respect to the suites hotel planning for Lane Field North, according to Port staff, it would be “the largest and finest of [Woodfin’s] all-suite hotels. . . . As proposed, Woodfin’s standards will be at least equal to those of Intercontinental.” *Id.* at p. 2. The staff goes on to report that “Woodfin Suites is in the process of transitioning away from its

historical niche of limited-service, extended-stay, mid-priced hotel product *into a much higher-end*, all-suite, full-service hotel product. . . . [Staff's hotel consultant] believes that the new Woodfin Suites would be a welcome addition to the San Diego *upscale* hotel market." *Id.* at p. 3. Leaving aside the issue of whether Woodfin can pull off a high-end, expensive product, the fact is that they intend to try.

In short, the Lane Field Development represents yet another upscale hotel complex in downtown San Diego that will be economically inaccessible to the vast majority of the public. This luxury hotel concept is not eligible for a CDP because it would be an "exclusory use on tidelands" in a manner that is inconsistent with the PMP. PMP, p. 8, Goal IV.

E. Because the Project Cannot Demonstrate Consistency With The Public Trust Doctrine, It Is Not Eligible For A CDP

The Project area resides in tidelands that are subject to the public trust doctrine. In its introduction, the PMP refers to section 87 of the Port Act to explain the utilization of tide and submerged lands. PMP, p. 1. With respect to the purposes and use of tidelands held in trust by the Port District, Section 87(b) of the Port Act states that the Port "may lease those lands, or any part thereof, for limited periods, not exceeding 66 years, for *purposes consistent with the trusts upon which those lands are held by the State of California*, . . ." *Id.* As explained by the State Lands Commission in a letter dated December 18, 2007 and attached as Exhibit G, the proposed retail uses on the project site are not yet defined. As stated by the letter:

The Port has not yet received detailed plans regarding the Lane Field Development. . . . When reviewing the proposal, it is important to take into account the general commercial, recreational, office, and retail uses are not uses consistent with the public trust doctrine as such uses serve the local citizenry and are not water-related or visitor-serving. Commercial, recreational, office and retail uses, which are maritime related or waterfront visitor-serving and cater to the regional or statewide general public, may be considered incidental and necessary in promoting the public's use of public trust lands and hence consistent with the land use requirements of the trust.

Id. The Port cannot make a finding of consistency with the public trust doctrine and the basic purpose of the PMP until the retail uses planned for the development are defined. The Port must clearly specify the types of retail uses that will be allowed before it may make a conformity finding with the PMP. Because the necessary information is not yet available, it cannot make this conformity finding, rendering the Project ineligible for CDP for yet another reason.

The PMP also mentions the public trust doctrine on page 10 when it states that the Port will “[a]dminister the natural resources so that impacts upon natural resource values remain compatible with the preservation requirements of the public trust.” In light of the environmental concerns with the project discussed above, the Port cannot make a finding of consistency with this aspect of the public trust doctrine. Thus, it also cannot make a consistency finding with this PMP goal, making the Project ineligible for a CDP.

III. CONCLUSION

Under the PMP, the Port has an obligation to “[c]urb the misuse of land so that it will not injuriously affect the people of the State of California” and an obligation to “curtail[] unfounded pollution contributors.” PMP, p. 10. The NEVP further states that “[i]n planning for the future development of the North Embarcadero area, the Alliance will honor these guiding principles: . . . ‘Preserve the environmental integrity of land and water.’” NEVP, Appendix A.2 (Exhibit C). The Lane Field Hotel Development Project is inconsistent with these obligations and is thus ineligible for a Coastal Development Permit under the Coastal Act.

Sincerely,

/s/

Suma Peesapati

SP:bh

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