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*California Coastal Commission*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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 13  
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15 **CALIFORNIA COASTAL COMMISSION, A STATE**  
 16 **AGENCY,**

17 Plaintiff,

18 v.

19 **UNITED STATES DEPARTMENT OF THE NAVY;**  
 20 **SECRETARY OF THE NAVY, RAY MABUS, IN**  
 21 **HIS OFFICIAL CAPACITY; MANCHESTER**  
**PACIFIC GATEWAY LLC, A DELAWARE**  
**LIMITED LIABILITY COMPANY**

22 Defendants.

23 **'13CV0178 DMS JMA**

24 **COMPLAINT FOR INJUNCTIVE AND**  
 25 **DECLARATORY RELIEF**

1 Plaintiff California Coastal Commission alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff California Coastal Commission brings this action to enjoin defendants from  
4 proceeding with the redevelopment of the Navy Broadway Complex in downtown San Diego  
5 until the Navy prepares a supplemental determination under 15 C.F.R. § 930.1 *et seq.* as to  
6 whether the project is consistent to the maximum extent practicable with provisions in the  
7 California Coastal Act. An injunction is necessary to protect public access, recreation, and views  
8 along the California coast.

9 **JURISDICTION AND VENUE**

10 2. This action arises under the Coastal Zone Management Act ("CZMA"), 16 U.S.C. §  
11 1451 *et seq.*; 15 C.F.R. § 930.1 *et seq.*; and the Administrative Procedure Act ("APA"), 5 U.S.C.  
12 § 701 *et seq.* This court has jurisdiction under 28 U.S.C. §§ 1331 and 1361. An actual  
13 controversy exists between the parties, and this Court has authority to grant declaratory,  
14 injunctive, and other relief under 28 U.S.C. §§ 2201 and 2202 and under 5 U.S.C. §§ 705 and  
15 706.

16 3. The United States District Court, Southern District of California is the proper venue  
17 for this case under 28 U.S.C. § 1391(b) because it is the district in which a substantial part of the  
18 events and omissions giving rise to the claims occurred and in which the property that is subject  
19 to this action is located.

20 **PARTIES**

21 4. Plaintiff California Coastal Commission ("Commission") is a public agency of the  
22 State of California. It is created by the California Coastal Act of 1976, California Public  
23 Resources Code § 30000 *et seq.* ("Coastal Act"), and has the power to sue and be sued. Cal. Pub.  
24 Res. Code §§ 30300, 30334. The Commission is designated as the state coastal zone planning  
25 and management agency for any and all purposes and may exercise any and all powers set forth in  
26 the CZMA. Cal. Pub. Res. Code § 30330. The Commission is authorized to grant or issue any  
27 statement required under the CZMA that an activity of a federal agency is in conformity with the  
28 provisions of the Coastal Act, which is California's federally approved coastal zone management

1 program. As the designated agency under the CZMA and the Coastal Act, the Commission is  
2 aggrieved by the activities of defendants and has standing to bring this action. The Commission  
3 has exhausted all available administrative remedies prior to bringing this action.

4 5. Defendant United States Department of the Navy is an agency of the United States  
5 government and bears responsibility, in whole or in part, for the acts complained of in this  
6 complaint.

7 6. Defendant Ray Mabus is the Secretary of the Navy and is sued in his official capacity  
8 as an agent of the United States government bearing responsibility, in whole or in part, for the  
9 acts complained of in this complaint. Defendants United States Department of Navy and Ray  
10 Mabus are referred to collectively as the “Navy.”

11 7. Defendant Manchester Pacific Gateway LLC (“Manchester”) is a Delaware limited  
12 liability company doing business in California, with its principal place of business at 350 Camino  
13 De La Reina, San Diego, California, 92108.

14 **STATEMENT OF FACT**  
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15 8. For more than twenty-five years, the Navy has sought to redevelop a 4-block, 16-acre  
16 site it owns along the waterfront in downtown San Diego. The existing development, known as  
17 the Navy Broadway Complex (“NBC”), consists of Navy offices, warehouses, and parking lots.  
18 The NBC is bordered by the Pacific Coast Highway to the east, Broadway Street to the north, and  
19 Harbor Drive to the west and south.

20 9. In the National Defense Authorization Act for FY 1987, P.L. 99-661, Congress  
21 authorized the Navy to lease the real property and assist any lessee in financing the construction  
22 of any facility on the property. In exchange for leasing the property, P.L. 99-661 requires the  
23 Navy to obtain, without compensation or at substantially below market value, facilities or the use  
24 of facilities constructed on the property by the lessee.

25 10. To proceed with the redevelopment, the CZMA and federal regulations require the  
26 Navy to: (1) determine whether the redevelopment is consistent to the maximum extent  
27 practicable with Chapter 3 of the Coastal Act, California Public Resources Code § 30200 *et seq.*;  
28 and (2) submit the determination to the Commission for the Commission’s concurrence or

1 objection. *See* 16 U.S.C § 1456(c); 15 C.F.R § 930.1 *et seq.* “Consistent to the maximum extent  
2 practicable” means fully consistent with the enforceable policies of the Coastal Act unless  
3 existing law applicable to the Navy prohibits full consistency. 15 C.F.R. § 930.32 (a)(1).

4 11. Chapter 3 of the Coastal Act sets forth enforceable coastal resource planning and  
5 management policies. The policies require the protection and maximization of public access and  
6 recreational opportunities. The policies also require the provision and protection of lower-cost  
7 visitor services and the protection of scenic coastal views. *See* Cal. Pub. Res. Code § 30200 *et*  
8 *seq.*

9 12. In or about August 1990, the Navy prepared a consistency determination under the  
10 CZMA for a redevelopment project at the site. The project proposed the construction of two  
11 office buildings, two hotels, a waterfront maritime history museum and park, waterfront retail,  
12 and above- and below-ground parking. The Navy found the project was consistent to the  
13 maximum extent practicable with Chapter 3 of the Coastal Act.

14 13. In or about May of 1991, the Commission concurred with the Navy's 1990  
15 consistency determination.

16 14. The project as described in the Navy's 1990 consistency determination was never  
17 built.

18 15. More than 15 years later, the Navy signed a lease with Manchester to redevelop the  
19 site, and the Navy and Manchester proposed many changes to the project. The Navy and  
20 Manchester proposed to build 7 towers (apparently three for hotel use, three for office use, and  
21 one for a mix of office and hotel use), and it allocated substantially less space for public use and  
22 recreation on the waterfront side of the site. The Navy and Manchester moved the maritime  
23 history museum (from its waterfront location next to a park) to an inland location, reduced the  
24 size of the museum from 55,000 to 40,000 square feet, and replaced it on the waterfront with a  
25 13-story, 296,535 square foot commercial office building.

26 16. In addition to the changes made by the Navy and Manchester to the project, the area  
27 around the NBC has undergone a major transformation since 1990. For instance:  
28

1 (a) in the last ten years over 13,000 residential units have been constructed downtown (in  
2 1990 there was little residential development downtown, and mostly office, retail, and industrial  
3 use was anticipated);

4 (b) a planned 2.5 acre public park immediately north of the site has been eliminated (it has  
5 been replaced with a planned hotel development that is required to be set back 150 feet from  
6 Harbor Drive);

7 (c) a 2007 downtown community plan calls for development along the shoreline that is  
8 low in scale and in intensity (in contrast to the two 10+ story waterfront buildings proposed by  
9 Manchester);

10 (d) the Midway Aircraft Carrier Museum is now permanently installed at Navy Pier,  
11 which is located immediately bayward of the NBC, and attendance has exceeded expectations;

12 (e) a new cruise ship terminal was constructed on Broadway Pier, which is located  
13 immediately bayward of the NBC;

14 (f) the Port is considering the reduction or elimination of traffic lanes on Harbor Drive;

15 (g) Petco Park was constructed, and the Convention Center was expanded;

16 (h) since 9/11 there are additional anti-terrorism requirements for federal buildings, yet the  
17 Navy has declined to analyze or discuss for purposes of the CZMA whether its building will meet  
18 those requirements;

19 (i) the Navy also has declined to analyze or discuss alternative locations on other naval  
20 bases in the San Diego area for purposes of the CZMA.

21 17. In light of the changes the Navy and Manchester made to the project and the changes  
22 in the surrounding area, Commission staff asked the Navy to provide a supplemental  
23 determination as to whether the proposed project is consistent to the maximum extent practicable  
24 with Chapter 3 of the Coastal Act. The Navy refused to prepare a supplemental consistency  
25 determination.

26 18. On November 2, 2011, the Commission held a public hearing on the NBC  
27 development and found that the proposed project will affect coastal uses and resources in a  
28 manner substantially different from the project described in the Navy's 1990 consistency

1 determination. The Commission referenced provisions in Chapter 3 of the Coastal Act that call  
2 for maximum public access to the coast and which prioritize public recreational opportunities,  
3 lower-cost visitor services, and scenic coastal views. *See, e.g.*, Cal. Pub. Res. Code §§ 30210,  
4 30213, 30222, 30255. The Commission also raised concerns over the adequacy of the available  
5 information concerning traffic effects and geologic hazards; the Commission questioned the  
6 project’s consistency with the traffic, parking, and hazards policies of the Coastal Act. *See, e.g.*,  
7 Cal. Pub. Res. Code §§ 30250, 30252-30254. The Commission found the project is no longer  
8 consistent to the maximum extent practicable with the Coastal Act.

9 19. The Commission recommended several modifications to the project to bring it into  
10 consistency with the Coastal Act, such as increased public space and set-backs on Harbor Drive,  
11 lower-scale structures on Harbor Drive, relocating the maritime museum to its original waterfront  
12 location, and constructing a hostel.

13 20. The Navy continues to refuse to prepare a supplemental consistency determination.

14 21. The Commission is informed and believes and on that basis alleges that the Navy and  
15 Manchester are proceeding with the project without a supplemental consistency determination.

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16 **FIRST CAUSE OF ACTION**

17 **(Violation of 15 C.F.R. § 930.46)**

18 **(Against the Navy)**

19 22. Paragraphs 1 through 21 are re-alleged and incorporated herein by reference.

20 23. 15 C.F.R. § 930.46 governs whether a federal agency must prepare a supplemental  
21 consistency determination. The regulation states:

22 “(a) For proposed Federal agency activities that were previously determined by the State  
23 agency to be consistent with the management program, but which have not yet begun,  
24 Federal agencies shall further coordinate with the State agency and prepare a  
25 supplemental consistency determination if the proposed activity will affect any coastal use  
26 or resource substantially different than originally described. Substantially different  
27 coastal effects are reasonably foreseeable if:  
28

1 (1) The Federal agency makes substantial changes in the proposed activity that are  
2 relevant to management program enforceable policies; or

3 (2) There are significant new circumstances or information relevant to the proposed  
4 activity and the proposed activity's effect on any coastal use or resource.

5 ....”

6 15 C.F.R. § 930.46(a).

7 24. Under 15 C.F.R. § 930.46, the Navy has an affirmative duty to prepare a  
8 supplemental consistency determination because the proposed project will affect coastal uses and  
9 resources substantially different than the project originally described in the Navy’s 1990  
10 consistency determination. The Navy and Manchester have made substantial changes in the  
11 proposed activity that are relevant to Coastal Act management program enforceable policies, such  
12 as those which prioritize public recreational opportunities, lower-cost visitor services, and scenic  
13 coastal views, as well as those addressing traffic, parking, and hazards. *See* Cal. Pub. Res. Code  
14 § 30200 *et seq.* There are also significant new circumstances and information relevant to the  
15 proposed activity’s effect on coastal uses and resources.

16 25. The Navy has violated and continues to violate 15 C.F.R. § 930.46 by failing to  
17 prepare a supplemental consistency determination for the project.

18 26. The Navy’s decision to proceed with the project without preparing a supplemental  
19 consistency determination is “arbitrary, capricious, an abuse of discretion, or otherwise not in  
20 accordance with law.” 5 U.S.C. § 706(2)(A). The project should be set aside unless and until the  
21 Navy prepares a supplemental consistency determination under 15 C.F.R. § 930.1 *et seq.* *See* 5  
22 U.S.C. § 706(2).

23 **SECOND CAUSE OF ACTION**

24 **(Injunctive Relief)**

25 **(Against the Navy and Manchester)**

26 27. Paragraphs 1 through 26 are re-alleged and incorporated herein by reference.

27 28. Unless defendants are enjoined from proceeding with the project, the Commission  
28 and the People of the State of California will be irreparably injured in that access to coastal

1 resources and views will be forever lost and the project will not be consistent to the maximum  
2 extent practicable with the provisions of the Coastal Act.

3 29. Unless defendants are enjoined from proceeding with the project, the Commission  
4 will be irreparably harmed in that the State Legislature's grant of jurisdiction to the Commission  
5 will be directly undermined, and the Commission's ability to carry out the goals and objectives of  
6 the Coastal Act will be seriously impaired. Unless defendants are enjoined from proceeding with  
7 the project, the Commission's ability to control any adverse effects of defendants' project on  
8 California's coastal zone will be rendered ineffective. Moreover, as the agency responsible for  
9 protection of the public's rights in precious coastal resources including the coastal waters, public  
10 access, and public recreation, the Commission will suffer further irreparable harm in that  
11 defendants' activities will permanently and irrevocably harm the public's rights.

12 30. Unless defendants are enjoined from proceeding with the project, the Commission  
13 will be irreparably harmed in that the Commission will be unable to perform its responsibility  
14 under the CZMA to review the Navy's federal activity for consistency with the enforceable  
15 policies of the Coastal Act and to insure the Navy's federal activity is consistent to the maximum  
16 extent practicable with those policies.

17 31. The Commission has no adequate remedy at law for the harm being done by  
18 defendants in that only the exercise of the court's equitable powers can restrain defendants from  
19 continuing their development activities unless and until the Navy prepares a supplemental  
20 consistency determination.

21 **THIRD CAUSE OF ACTION**

22 **(Declaratory Relief)**

23 **(Against the Navy and Manchester)**

24 32. Paragraphs 1 through 31 are re-alleged and incorporated herein by reference.

25 33. An actual controversy exists between the Commission and defendants in that the  
26 Commission contends that 15 C.F.R. § 930.46 requires the Navy to prepare a supplemental  
27 consistency determination for the project and submit that supplemental determination to the  
28



1 Commission for review, whereas the Navy and Manchester contend that 15 C.F.R. § 930.46 does  
2 not require the Navy to prepare a supplemental consistency determination for the project.

3 34. A declaration of the rights and obligations of the parties is appropriate for the  
4 determination of this case pursuant to 28 U.S.C. § 2201.

5 35. The Commission is entitled to a declaration that 15 C.F.R. § 930.46 requires the Navy  
6 to prepare a supplemental consistency determination for the project and that defendants cannot  
7 proceed with the project unless and until the Navy prepares a supplemental consistency  
8 determination and submits that supplemental consistency determination to the Commission for its  
9 review.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against defendants as follows:

12 A. For a declaration that 15 C.F.R. § 930.46 requires the Navy to prepare a supplemental  
13 consistency determination for the project;

14 B. For a declaration that the Navy's failure to prepare supplemental consistency  
15 determination violates 15 C.F.R. § 930.46;

16 C. For a declaration that the Navy's decision to proceed with the project without  
17 preparing a supplemental consistency determination under 15 C.F.R. § 930.1 *et seq.* is arbitrary,  
18 capricious, an abuse of discretion, or otherwise not in accordance with law.

19 D. For a declaration that defendants cannot proceed with the project unless and until the  
20 Navy prepares a supplemental consistency determination under 15 C.F.R. § 930.1 *et seq.* and  
21 submits that supplemental consistency determination to the Commission for its review;

22 E. For temporary, preliminary, and permanent injunctive relief enjoining defendants, and  
23 any persons acting on their behalf, from proceeding with the project unless and until the Navy  
24 prepares a supplemental consistency determination under 15 C.F.R. § 930.1 *et seq.* and submits  
25 that supplemental consistency determination to the Commission for its review;

26 F. For costs of suit incurred, including reasonable attorney's fees; and

27 G. For such other relief as the court deems just and proper.  
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1 Dated: January 18, 2013

Respectfully Submitted,

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